



Australian Government
Australian Customs and
Border Protection Service

CUSTOMS ACT 1901 - PART XVB

REPORT TO THE MINISTER NO.177

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

7 JUNE 2012



Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 - Part XVB

Certain Hollow Structural Sections

**Exported from the People's Republic of China (China), the
Republic of Korea (Korea), Malaysia and Taiwan**

Findings in relation to a dumping investigation

Notice under section 268TG (1) and (2) of the Customs Act 1901

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its investigations into the alleged dumping of certain hollow structural sections (the goods), classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the *Customs Tariff Act 1995*.

In International Trade Remedies Report No. 177 (REP 177) Customs and Border Protection recommended the publication of a dumping duty notice in respect of the goods exported to Australia from China, Korea, Malaysia and Taiwan. REP 177 outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in REP 177, material findings of fact or law on which Customs and Border Protection's recommendations were based, and particulars of the evidence relied on to support the findings.

On 6 June 2012, Customs and Border Protection terminated its investigation into the goods exported from Thailand (Termination Report No. 177 sets out the reasons for this termination).

Particulars of the dumping margins established for exporters and an explanation of the methods used to compare export prices and normal values to establish each dumping margin are set out in the following table:

China		
Dalian Steelforce Hi-Tech Co. Ltd	13.4%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss.268TACB(2)(a) of the <i>Customs Act 1901</i> .
Hengshui Jinghua Steel Pipe Co., Ltd	23.7%	
Huludao City Steel Pipe Industrial Co., Ltd	10.1%	
Qingdao Xiangxing Steel Pipe Co., Ltd	18.0%	

Zhejiang Kingland Pipeline & Technologies Co. Ltd	10.2%	
Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd.	32.0%	
Selected non-cooperating exporters	57.1%	
Korea		
Kukje Steel Co., Ltd	3.2%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss. 269TACB(2)(a) of the Customs Act 1901.
Selected non-cooperating exporters	8.9%	
Malaysia		
Alpine Pipe Manufacturing SDN BHD	3.0%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss. 269TACB(2)(a) of the Customs Act 1901.
Selected non-cooperating exporters	20.0%	
Taiwan		
Shin Yang Steel Co., Ltd	2.8%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss. 269TACB(2)(a) of the Customs Act 1901.
Ta Fong Steel Co., Ltd	2.4%	
Selected non-cooperating exporters	5.3%	

I, JASON CLARE, Minister for Home Affairs, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 177. I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under s.269TG(1) of the Customs Act 1901 (the Act), I **DECLARE** that s.8 of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act) applies to:

- the goods; and
- like goods that were exported to Australia after 23 December 2011 (when the Chief Executive Officer of Customs and Border Protection made a Preliminary Affirmative Determination under s.269TD(4)(a) of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused, is being caused, or maybe caused in the future. Therefore under ss.269TG(2) of the Act, I **DECLARE** that s.8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China, Korea, Malaysia and Taiwan.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including price depression, price suppression and reduced profits and profitability. In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Trade Measures Review Officer, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

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

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 6173, fax number (02) 6275 6990 or email itrops3@customs.gov.au.

Dated this 12 day of June, 2012.


JASON CLARE
Minister for Home Affairs

PUB



Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 - Part XVB

Certain Hollow Structural Sections

exported from

the People's Republic of China (China)

Findings in relation to a subsidisation investigation

Notice under section 269TJ(2) of the Customs Act 1901

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its investigation into the subsidisation of certain hollow structural sections (the goods), classified to tariff subheading subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the *Customs Tariff Act 1995*, exported to Australia from the People's Republic of China (China).

In International Trade Remedies Report No. 177 (REP 177) Customs and Border Protection recommended the publication of a countervailing duty notice in respect of the goods. REP 177 outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in REP 177, material findings of fact or law on which Customs and Border Protection's recommendations were based, and particulars of the evidence relied on to support the findings.

On 6 June 2012, Customs and Border Protection terminated its subsidy investigation with respect to two Chinese exporters Huludao City Steel Pipe Industrial Co., Ltd (Huludao) and Qingdao Xiangxing Steel Pipe Co., Ltd. (Qingdao Xiangxing) (Termination Report No. 177 sets out the reasons for this termination).

Particulars of the subsidy programs and level of subsidisation established for exporters are set out in the following table:

Dalian Steelforce Hi-Tech Co., Ltd.	5 & 20	11.1%
Hengshui Jinghua Steel Pipe Co., Ltd	20	4.6%
Zhejiang Kingland Pipeline & Technologies Co. Ltd	19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 34 & 35	2.2%
Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd	20	7.9%

Selected non-cooperating exporters	1, 2, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32 & 35	54.8%
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* The names and details of each of the above countervailable subsidy programs are contained within REP 177.

I, JASON CLARE, Minister for Home Affairs, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for the recommendations and the material findings of fact on which the recommendations are based.

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

This declaration applies in relation to all exporters of the goods and like goods from China to Australia (other than Huludao and Qingdao Xiangxing).

The considerations relevant to my determination of material injury to the Australian industry caused by subsidisation are the size of the subsidy margins, the effect of subsidised imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including price depression, price suppression and reduced profits and profitability. In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of subsidised goods, and have not attributed injury caused by other factors to the exportation of those subsidised goods.

Interested parties may seek a review of this decision by lodging an application with the Trade Measures Review Officer, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

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

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 6173, fax number (02) 6275 6990 or email ltrops3@customs.gov.au.

Dated this 12 day June, 2012.


JASON CLARE
Minister for Home Affairs

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
ADA	the <i>Anti-Dumping Agreement</i>
Alpine	Alpine Pipe Manufacturing Sdn Bhd
ASA	Australian Steel Association
ATM	OneSteel Australian Tube Mills Pty Ltd
Australian industry	the Australian industry producing HSS
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
CFR	cost and freight
China	People's Republic of China
CON177	Customs and Border Protection <i>Consideration Report No. 177</i> (the consideration report in this investigation)
CRC	cold-rolled coil
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
Dae Myung	Dae Myung Steel Co., Ltd
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., Ltd
DIT	Department of Internal Trade (Thailand)
Dumping Duty Act	<i>Customs Tariff (Anti Dumping) Act 1975</i>
DXP	dumping export price
ETDZ	economic and technological development zones
FIE	foreign invested enterprise
FOB	free on board
FOT	free on truck
GAAP	generally accepted accounting principles
GOC	Government of China
GOT	Government of Thailand
GQ	Government Questionnaire (China)
HDC	hot-dipped galvanised
Hengshui Jinghua	Hengshui Jinghua Steel Pipe Co., Ltd
HRS	Hot-rolled steel (used in various context to mean HRC and narrow strip collectively; or hot-rolled coil and other types of hot-rolled steel).
HSS	certain hollow structural sections
Huludao	Huludao City Steel Pipe Industrial Co., Ltd
IPP	import parity price
ITM	Independent Tube Mills Pty Ltd
Jinbang	Jinbang Steel Korea Co., Ltd
Korea	the Republic of Korea
Kukje	Kukje Steel Co., Ltd
MEPs	minimum export prices
Minister	the Minister for Home Affairs
NIP	non-injurious price

NSP	the GOC's National Steel Policy
Orrcon	Orrcon Operations Pty Ltd
OneSteel Oil & Gas	OneSteel Oil & Gas Pipe, a division of OneSteel Trading Pty Ltd
Pacific	Pacific Pipe Public Co. Ltd
PAD	preliminary affirmative determination
PAD177	Customs and Border Protection <i>Preliminary Affirmative Determination No 177</i>
PAD177A	Customs and Border Protection <i>Preliminary Affirmative Determination No 177A</i>
Qingdao Xiangxing	Qingdao Xiangxing Steel Pipe Co., Ltd
REP148	Customs and Border Protection Report No 148 (aluminium extrusions from China)
REP177	Customs and Border Protection Report to the Minister No 177 (this report)
Saha	Saha Thai Steel Pipe Public Co., Ltd
Samchai	Samchai Steel Industries Public Company Limited
SBB	Steel Business Briefing
SEF	Statement of Essential Facts
SEF177	Customs and Border Protection <i>Statement of Essential Facts No 177</i> (the SEF for this investigation)
SEZ	special economic zone
SGQ	Supplementary Government Questionnaire (China)
Shandong Fubo	Shandong Fubo Group Co
Shin Yang	Shin Yang Steel Co., Ltd
SIE	state-invested enterprise (used interchangeably with 'SOE')
SOE	state-owned enterprise (used interchangeably with 'SIE')
Southern Steel	Southern Steel Pipe Sdn Bhd
SSGQ	Second Supplementary Government Questionnaire (China)
Steelpia	Steelpia Co., Ltd
Tariff Act	<i>Customs Tariff Act 1995</i>
TER177	Customs and Border Protection <i>Termination of Part of an Investigation Report No177</i>
TGO	Thai Government Questionnaire
Thailand	the Kingdom of Thailand
the Act	<i>Customs Act 1901</i>
the countries under consideration	China, Korea, Malaysia, Taiwan and Thailand
the goods	the goods the subject of the application ('HSS')
the Regulations	the <i>Customs Regulations 1926</i>
Tianjin Jinshengde	Tianjin Jinshengde Steel Tube Product Co., Ltd
USP	unsuppressed selling price
WTO	World Trade Organisation
Yieh Phui	Yieh Phui Enterprise Co., Ltd
Yulchon	Yulchon Co., Ltd
Zhejiang Kingland	Zhejiang Kingland Pipeline and Technologies Co.,

	Ltd
Zibo Fubo	Zibo Fubo Steel Pipes Factory
Zibo Litong	Zibo Litong Steel Pipe Co., Ltd

PUBLIC FILE

1. SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application by OneSteel Australian Tube Mills Pty Ltd (ATM) in relation to the allegation that dumping of certain hollow structural sections (HSS) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia, Taiwan, and the Kingdom of Thailand (Thailand), and subsidisation of HSS exported to Australia from China, caused material injury to the Australian industry that produces like goods.

This report (REP177) sets out the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service's (Customs and Border Protection) recommendations to the Minister for Home Affairs (the Minister) in relation to the investigation.

1.1. Recommendation

The CEO recommends to the Minister that:

- a dumping duty notice be published in respect of HSS exported to Australia from China, Korea, Malaysia and Taiwan; and
- a countervailing duty notice be published in respect of HSS exported to Australia from China by all exporters other than Huludao City Steel Pipe Industrial Co., Ltd (Huludao) and Qingdao Xiangxing Steel Pipe Co., Ltd (Qingdao Xiangxing).

If the Minister accepts this recommendation to give effect to the decision, the Minister must sign the relevant notices and schedules, under s.269TG(1), 269TG(2), 269TJ(1) and 269TJ(2) of the *Customs Act 1901*¹ (the Act), and s.8 and 10 of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act).

1.2. Application of law to facts

1.2.1. Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Minister.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

1.2.2. Application

On 12 August 2011, ATM lodged an application requesting that the Minister publish a dumping duty notice in respect of HSS exported to Australia from

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

China, Korea, Malaysia, Taiwan and Thailand, and a countervailing duty notice in respect of HSS exported to Australia from China.

The CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application.²

1.2.3. Initiation of investigation

After examining the application, the delegate of the CEO was satisfied that:

- there is an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods.³

The CEO decided not to reject the application, and notice of the initiation of this investigation was published on 19 September 2011.⁴

1.2.4. Preliminary Affirmative Determinations

On 23 December 2011, the CEO was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia and Taiwan, and made a preliminary affirmative determination (PAD)⁵ to that effect (PAD177).

Following this PAD, Customs and Border Protection decided to require and take securities⁶ in respect of any interim dumping duty that may become payable in respect of HSS from China, Korea, Malaysia and Taiwan that were entered into home consumption on or after 10 January 2012.

On 5 June 2012 the CEO was satisfied that there were sufficient grounds for the publication of a countervailing duty notice in respect of HSS exported to Australia from China by all exporters except Huludao and Qingdao Xiangxing, and made a PAD to that effect (PAD177A).

Customs and Border Protection has decided to not require and take securities in respect of any interim countervailing duty that may become payable in respect of HSS from China at this stage. Countervailing securities may be required and taken by Customs and Border Protection at a later date if considered necessary.

Further detail of these PADs are contained in Chapter 2 of this report.

² S.269TB

³ S.269TC(1)

⁴ S.269TC(4)

⁵ S.269TD

⁶ S.42

1.2.5. Statement of essential facts

On 23 April 2012, Customs and Border Protection placed its *Statement of Essential Facts No 177* (SEF177) on the Public Record, on which the CEO proposed to base his recommendation to the Minister concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF177 by no later than 14 May 2012. Non-confidential versions of all submissions received are available on the Public Record for this investigation.

Further details of SEF177 are contained in Section 2.4 of this report.

1.2.6. Report 177

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows⁷, the CEO must give the Minister a final report in respect of the goods the subject of the application (this report).

The Minister granted an extension to the date by which SEF177 had to be placed on the Public Record, and this subsequently extended the period of time for provision of this report to the Minister.

This report was completed on 7 June.

1.2.7. Termination 177

After becoming satisfied that:

- the subsidy rate for Huludao and Qingdao Xiangxing during the investigation period was negligible; and
- the total volume of HSS exported to Australia at dumped prices over the investigation period from Thailand was negligible

the CEO terminated the countervailing investigation insofar as it related to Huludao and Qingdao Xiangxing, and terminated the dumping investigation into Thailand on 6 June 2012.

Further details of these terminations are contained in Section 2.6 of this report and in Customs and Border Protection's *Termination of Part of an Investigation Report No 177* (TER177), which was published on 6 June 2012 and is available on the Public Record.

1.3. Final findings and conclusions

Customs and Border Protection has made the following findings and conclusions based on all available relevant information.

⁷ If the date by which the SEF must be placed on the Public Record is extended, this extends the date by which the final report is due to the Minister by a corresponding period – s269TC(4)(bf).

1.3.1. Australian industry (Chapter 4 of this report)

Customs and Border Protection has found:

- there is an Australian industry producing like goods; and
- there were four Australian producers of HSS in the investigation period.

1.3.2. Dumping investigation (Chapter 6 of this report)

HSS exported to Australia from China, Korea, Malaysia and Taiwan during the investigation period was dumped. The volume of dumped goods from these countries/region, and the dumping margins, were not negligible.

Customs and Border Protection has found that some HSS exported to Australia from Thailand during the investigation period was dumped, but the volume of dumped goods was negligible. Customs and Border Protection has terminated the dumping investigation insofar as it relates to Thailand (see Section 1.2.7 above).

Customs and Border Protection found the following dumping margins:

Exporter	Product dumping margins
<i>China</i>	
Dalian Steelforce Hi-Tech Co. Ltd	13.4%
Hengshui Jinghua Steel Pipe Co., Ltd	23.7%
Huludao City Steel Pipe Industrial Co., Ltd	10.1%
Qingdao Xiangxing Steel Pipe Co., Ltd	18.0%
Zhejiang Kingland Pipeline & Technologies Co. Ltd	10.2%
Jiedong Economic Development Testing Zone Tai Feng Cast Metal Products Co., Ltd	32.0%
Selected non-cooperating exporters	57.1%
<i>Korea</i>	
Kukje Steel Co. Ltd	3.2%
Selected non-cooperating exporters	8.9%
<i>Malaysia</i>	
Alpine Pipe Manufacturing Sdn Bhd	3.0%
Selected non-cooperating exporters	20.0%
<i>Taiwan</i>	
Shin Yang Steel Co., Ltd	2.8%
Ta Fong Steel Co., Ltd	2.4%
Selected non-cooperating exporters	5.3%

1.3.3. Subsidy investigation (Chapter 7 of this report)

Following its investigation into 35 alleged subsidy programs, Customs and Border Protection has found that the following 28 programs are countervailable subsidies:

- Program 1: Preferential Tax Policies for Enterprises with Foreign

Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones

- Program 2: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'
- Program 5: Matching Funds for International Market Development for Small and Medium Enterprises
- Program 6: Superstar Enterprise Grant
- Program 7: Research & Development (R&D) Assistance Grant
- Program 8: Patent Award of Guangdong Province
- Program 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
- Program 11: Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)
- Program 12: Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai
- Program 13: Preferential Tax Policies in the Western Regions
- Program 14: Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipments
- Program 15: Innovative Experimental Enterprise Grant
- Program 16: Special Support Fund for Non State-Owned Enterprises
- Program 17: Venture Investment Fund of Hi-Tech Industry
- Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.
- Program 19: Grant for key enterprises in equipment manufacturing industry of Zhongshan
- Program 20: Hot rolled steel provided by government at less than adequate remuneration
- Program 21: Water Conservancy Fund Deduction
- Program 22: Wuxing District Freight Assistance
- Program 23: Huzhou City Public Listing Grant
- Program 27: Huzhou City Quality Award
- Program 28: Huzhou Industry Enterprise Transformation & Upgrade Development Fund
- Program 29: Land Use Tax Deduction
- Program 30: Wuxing District Public List Grant
- Program 31: Anti-dumping Respondent Assistance
- Program 32: Technology Project Assistance
- Program 34: Balidian Town Public Listing Award
- Program 35: Preferential Tax Policies for High and New Technology Enterprises

Subsidy margins determined for Chinese exporters are:

Exporter	Product subsidy margins
Dalian Steelforce Hi- Tech Co. Ltd	11.1%
Hengshui Jinghua Steel Pipe Co., Ltd	4.6%
Huludao City Steel Pipe Industrial Co., Ltd	Negligible
Qingdao Xiangxing Steel Pipe Co., Ltd	Nil
Zhejiang Kingland Pipeline & Technologies Co. Ltd	2.2%
Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd	7.9%
Selected non-cooperating exporters	54.7%

Countervailable subsidies that were not negligible were received in respect of HSS exported from China to Australia in the investigation period by all but two Chinese exporters. Customs and Border Protection has terminated the subsidy investigation so far as it relates to the two exporters with nil or negligible subsidy margins (see Section 1.3).

1.3.4. Economic condition of the industry (Chapter 8 of this report)

During the investigation period, the Australian industry producing like goods experienced injury in the form of:

- price suppression;
- price depression;
- decreased sales volume; and
- lost profit and profitability.

1.3.5. Have dumping and subsidisation caused material injury? (Chapter 9 of this report)

Customs and Border Protection has found that dumping and subsidisation caused material injury to the Australian industry.

1.3.6. Will dumping and subsidy and material injury continue? (Chapter 10 of this report)

Customs and Border Protection found:

- exports of HSS from China, Korea, Malaysia and Taiwan in the future may be at dumped prices;
- exports of HSS from China in the future may be at subsidised prices; and
- continued dumping or subsidisation may cause further material injury to the Australian industry.

1.3.7. Recommendation

Based on these findings, the CEO recommends to the Minister that:

- a dumping duty notice be published in respect of HSS exported to

Australia by all exporters from China, Korea, Malaysia and Taiwan;
and

- a countervailing duty notice be published in respect of HSS exported to Australia from China by all exporters except Huludao and Qingdao Xiangxing.

PUBLIC FILE

2. BACKGROUND

2.1. Initiation

On 12 August 2011, ATM lodged an application⁸ for the publication of a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand, and a countervailing duty notice in respect of HSS exported to Australia from China.

Additional information was received from ATM on 26 August 2011.

Following an examination of the application, the delegate of the CEO decided not to reject the application, and an investigation into the alleged dumping and subsidisation of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand was initiated on 19 September 2011.

Customs and Border Protection published a notice in *The Australian* newspaper on the date of initiation, and released ACDI 2011/13, which contains further details on the investigation.

The investigation period, used to determine whether dumping and subsidisation has occurred, was established as being from 1 July 2010 to 30 June 2011.

Customs and Border Protection has examined the Australian market and the economic condition of the industry from 1 July 2007 for the purposes of injury analysis.

2.2. Previous cases

Customs and Border Protection has previously conducted several investigations, including (review and continuation inquiries) into HSS and specific sub-categories of HSS from various origins.

These have included:

- 2006/2007 Investigation (No. 116);
- 2007/2009 Review (No. 143);
- 2008/2009 Investigation (No. 144);
- 2009 Continuation Inquiry (No. 147); and
- 2009/2010 Review (No. 153).

A summary of these investigations is in Customs and Border Protection's consideration report for this investigation (CON177).

2.3. Preliminary affirmative determination 177

The CEO may, at any time not earlier than 60 days after the date of initiation of an investigation, make a PAD in respect of goods the subject of an

⁸ under s.269TB of the Act

application.

In order to make a PAD, the CEO must be satisfied that:

- a) there appears to be sufficient grounds for the publication of such a notice; or
- b) it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods.

On 23 December 2011, after having regard to the application and submissions made to the investigation, the CEO was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia and Taiwan, and made a preliminary affirmative determination (PAD)⁹ to that effect (PAD177).

No PAD was made in relation to goods exported from Thailand, or in relation to subsidies at that stage.

Following this PAD, Customs and Border Protection decided to require and take securities¹⁰ in respect of any interim dumping duty that may become payable in respect of HSS from China, Korea, Malaysia and Taiwan that were entered into home consumption on or after 10 January 2012.

2.4. Statement of essential facts 177

On 23 April 2012, Customs and Border Protection placed SEF177 on the Public Record, on which the CEO proposed to base his recommendation to the Minister concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF177 by no later than 14 May 2012. Non-confidential versions of all submissions received are available on the Public Record for this investigation.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection's visit reports and other publicly available documents.

The Public Record is available online at <http://adpr.customs.gov.au/Customs/>.

Documents on the Public Record should be read in conjunction with this report.

2.5. Preliminary affirmative determination 177A

On 5 June 2012, following the publication of SEF177, and consideration of submissions received in response to SEF177, the CEO was satisfied that

⁹ S.269TD

¹⁰ S.42

there were sufficient grounds for the publication of a countervailing duty notice in respect of HSS exported to Australia from China by all exporters except Huludao and Qingdao Xiangxing, and made a PAD to that effect (PAD177A).

Notification was made of this PAD in *The Australian* on 6 June 2012, and within ACDN 2012/27.

At the time of making PAD177A, having regard to the quantum of the dumping securities in place for goods entered for home consumption on or after 10 January 2012 (see above), the due date of its final report to the Minister in this investigation, and the operation of the collection and later conversion of securities system, Customs and Border Protection has decided to not require and collect countervailing securities to date.

However, if the CEO becomes satisfied at a later date that countervailing securities should be collected in order to prevent material injury occurring while the investigation continues, Customs and Border Protection may require and take such countervailing securities in the future. Any such imposition of countervailing securities will be subject to public notification.

2.6. Termination 177

As discussed above, following publication of SEF177, and consideration of submissions received in response to SEF177, the CEO is satisfied that:

- Huludao, a Chinese exporter of HSS, had received financial contributions under countervailable subsidy programs that conferred benefits to the exported goods during the investigation period, but that the subsidy rate for this exporter, when measured as a percentage of the export price, was negligible;
- Qingdao Xiangxing, a Chinese exporter of HSS, had not received financial contributions under countervailable subsidy programs that conferred benefits to the exported goods during the investigation period;
- HSS exported to Australia from Thailand by Saha Thai Steel Pipe Public Co., Ltd (Saha) and Pacific Pipe Public Co. Ltd (Pacific) was not dumped; and
- the remaining volume of HSS exported to Australia from Thailand during the investigation period that was, or may be dumped, was negligible.

Under s.269TDA(2), if the CEO is satisfied that there has been no or negligible level of countervailable subsidy received by an exporter, the CEO must terminate the investigation so far as it relates to the exporter.

Under s.269TDA(1), if the CEO is satisfied that there has been no, or negligible dumping by an exporter during the investigation period, the CEO must terminate the investigation so far as it relates to that exporter.

Under s.269TDA(3), if the CEO is satisfied that the total volume of goods the subject of the application that have been exported to Australia from a

particular country of export have been, or may be, dumped is negligible, the CEO must terminate the investigation so far as it relates to that country.

Consequently, on 5 June 2012, the CEO terminated:

- the countervailing investigation so far as it related to Huludao and Qingdao Xiangxing;
- the dumping investigation so far as it related to Saha and Pacific; and
- the dumping investigation in relation to the goods exported from Thailand generally.

Reasons for these decisions are outlined in TER177, which is available on the Public Record. Consequently, this report has limited discussion of the investigation into the alleged dumping of HSS exported to Australia from Thailand.

Public notification of these terminations was made in *The Australian* on 6 June 2012, and in ACDN 2012/25 and ACDN 2012/26.

2.7. Report 177

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows, the CEO must give the Minister a final report in respect of the goods the subject of the application (this report).

The Minister granted a 140 day extension to the date by which SEF177 had to be placed on the Public Record, and this subsequently extended the period of time for provision of this report to the Minister.

This report was provided to the Minister on 7 June 2012

2.7.1. Matters considered by the CEO in this report

In formulating this report to the Minister, the CEO must have regard to:

- the application concerned;
- any submissions concerning publication of the notice to which the Minister delegated the CEO has had regard for the purpose of formulating SEF177;
- SEF177 itself;
- any submission in response to SEF177 received by Customs and Border Protection within 20 days after the day that statement was placed on the Public Record; and
- any other matters considered relevant.¹¹

¹¹ Subsection 269TEA(3)

The following submissions were received in response to SEF177:

Submitted by	Submission title/description	Date received
Alpine Pipe Manufacturing Sdn Bhd	SEF No. 177	27 April 2012
Saha Thai Steel Pipe Public Co., Ltd	SEF No. 177	27 April 2012
Dalian Steelforce Hi-Tech Co., Ltd	Correction of methodological and technical errors in spreadsheets	1 May 2012
Hengshui Jinghua Steel Pipe Co., Ltd	Dumping Margin and Subsidy Margin for Hengshui Jinghua Steel Pipe Co., Ltd. In Statement of Essential Facts No. 177	7 May 2012
OneSteel Australian Tube Mills Pty Ltd	Market Situation for HSS in Thailand	7 May 2012
Sanwa Pty Ltd	HSS (Pipe & Tube) Anti-dumping Action	10 May 2012
Pacific Pipe Public Company Ltd	Statement of Essential Facts No. 177	11 May 2012
Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd	Comments regarding SEF of dumping and subsidization investigation of HSS originating from People's Republic of China dated April 23, 2012 by Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd.	11 May 2012
Alpine Pipe Manufacturing Sdn Bhd	SEF No 177	12 May 2012
Samchai Steel Industries Public Company Ltd	Samchai Steel Industries Public Company Ltd - Thailand	13 May 2012
Howard Consulting Pty Ltd	SEF No 177 - Meeting 1 st May 2012	14 May 2012
Zhejiang Kingland Pipeline and Technologies Co., Ltd	SEF Response to Kingland	14 May 2012
Huludao City Steel Pipe Industrial Co., Ltd	SEF Response by Huludao	14 May 2012
Shin Yang Steel Corporation and Yieh Phui Enterprise Co., Ltd.	SEF No 177	14 May 2012
OneSteel Australian Tube Mills Pty Ltd	OneSteel ATM Response to Statement of Essential Facts	14 May 2012
Senior Steel	ACDN - Submission to anti-dumping enquiry	14 May 2012
Southern Steel Pipe Malaysia	SEF No. 177	14 May 2012
Hingdao Jiangxin	POST SEF No 177	14 May 2012
Ironcon Operations Pty Ltd	Submission in Response to Statement of Essential Facts No. 177	14 May 2012
Australian Steel Association Inc.	Statement of Essential Facts - Response	14 May 2012
Dalian Steelforce Hi-Tech Co., Ltd	Meeting with Australian Customs - Monday, 14 May 2012	14 May 2012
Government of Thailand	Response from GOT	15 May 2012
Steelforce Group	Comments concerning SEF 177	15 May 2012
Government of China	Submission in response to Statement of Essential Facts No. 177	16 May 2012
OneSteel Australian Tube Mills Pty Ltd	Market Situation for HSS in Thailand	22 May 2012
Government of China	Alleged information deficiencies - Statement of Essential Facts 177	23 May 2012
OneSteel Australian Tube Mills Pty Ltd	Like Goods	23 May 2012

Submitted by	Submission title/description	Date received
OneSteel Australian Tube Mills Pty Ltd	Further comment re USP	23 May 2012
OneSteel Australian Tube Mills Pty Ltd	HSS exported from Thailand	24 May 2012
Steelforce Australia Limited	Non-confidential version of certain emails between Steelforce and Customs and Border Protection for electronic public record	24 May 2012
OneSteel Australian Tube Mills Pty Ltd	Submissions from interested parties re SEF No. 177	31 May 2012
Alpine Pipe Manufacturing Sdn Bhd	Investigation No 177 Alpine – Malaysia	6 June 2012
Australian Steel Association Inc.	ASA Response to Onesteel ATM Submissions of 23 rd May	6 June 2012

The due date for submissions in response to SEF177¹² was 14 May 2012.

In accordance with s.269TEA(3), the CEO is not obliged to have regard to submissions received after 14 May 2012 if to do so would, in the CEO's opinion, delay the timely preparation of this report to the Minister. Consequently, the CEO has had no regard to submissions received on or after 5 June 2012.

In addition, following the publication of SEF177, Customs and Border Protection held meetings with:

- ATM;
- the Steelforce Group; and
- the Australian Steel Association (ASA).

Records of these meetings are available on the Public Record.

2.8. Public Interest Submissions

Customs and Border Protection has undertaken to highlight in this final report to the Minister, all submissions lodged during the investigation that raise matters relevant to the consideration of public interest in the decision whether or not to impose anti-dumping and countervailing measures.

The following interested parties lodged submissions that contained points relevant to considerations of the public interest in imposing anti-dumping and countervailing measures:

- Adsteel Brokers Pty Ltd;
- Amity Pacific Pty Ltd;
- Australian Steel Association Inc.;
- Dalian Steelforce Hi Tech Co;
- Digga Australia Pty Ltd;
- Howard Consulting Pty Ltd;

¹² 20 days after the placement of SEF177 on the Public Record

- Palmer Steel Trading (Aust) Pty Ltd;
- ProWay Livestock Equipment;
- Sanwa Pty Ltd;
- Senior Steel;
- Steel Supplies;
- Southern Cross Steel Pty Ltd;
- Super Steel Australia Pty Ltd;
- Townsville Steel & Wire; and
- Waratah Steel Supplies Pty Ltd.

These interested parties included HSS stockists and distributors, fabricators using HSS as an input to production ('end users'), and HSS importers.

The submissions generally claimed that imposition of dumping duties would:

- give ATM an unfair competitive advantage; and/or
- disadvantage end users of HSS, particularly those competing against imports of fabricated products that contain HSS (not subject to this investigation).

An outline of points contained in these submissions is included below.

2.8.1. Reduced/unfair competition in the Australian HSS market

Several interested parties lodged submissions claiming that measures that exclude ATM's import supply source from Vietnam would be anti-competitive and would give ATM an unfair advantage over other HDG pipe importers.

Various submissions also claimed that imposition of measures would lead to greatly reduced competition in the Australian HSS market, which would be costly to the construction industry.

Additionally, it was claimed that ATM's repeated anti-dumping applications are disrupting numerous Australian businesses (particularly small and medium enterprises) as they cannot buy HSS with certainty whilst investigations are underway.

2.8.2. Disadvantaged end-users

Various submissions claimed that Australian fabricators of various products that include HSS as a component compete with increasing volumes of imported fabricated products, and that the imposition of dumping duties and resultant price increase of HSS would severely impact ability of these fabricators to compete with these imports.

Additionally, submissions from several fabricators claimed that imposition of duties would force them to move their manufacturing activities offshore, leading to job losses in the manufacturing sector, while several submissions from fabricators and HSS stockists claimed that imposition of duties would lead to many small businesses closing.

3. THE GOODS AND LIKE GOODS

3.1. Findings

Customs and Border Protection has found that the Australian industry produces HSS that has characteristics closely resembling those of HSS manufactured in China, Korea, Malaysia, Taiwan and Thailand and exported to Australia, and has therefore made a finding that HSS manufactured by the Australian industry are like goods.¹³

3.2. The goods

The goods the subject of the application (the goods) are:

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

Sizes of the goods are, for circular products, those exceeding 21mm up to and including 165.1mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 4.6mm and air heater tubes to Australian Standard (AS) 2556.

The application includes the following information to clarify the nature of the goods.

Finishing

All HSS regardless of finish is included in the application.

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

CHS with other than plain ends (such as threaded, swaged and shouldered) are also included in the application.

Standards

HSS is generally produced to either the British Standard BS 1387 or the Australian Standard AS 1163 or international equivalent standards (including ASTM/JIS and KS).

¹³ In terms of s.269T

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

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

Excluded goods

The following categories are excluded from the goods subject of the application:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation);
- precision RHS with a nominal thickness of less than 1.0 mm (not used in structural applications); and
- air heater tubes to AS.2556.

'Structural' sections

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

3.3. Tariff classification

At initiation, Customs and Border Protection understood the goods to be classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (the *Tariff Act*):

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37);
- 7306.61.00 (statistical codes 21, 22 and 23); and
- 7306.69.00 (statistical codes 26, 27 and 28).

Since initiation, the statistical codes related to these relevant subheadings have been altered, and the goods are now classified to the following tariff subheadings:

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

The goods exported to Australia:

- from Korea and Taiwan are subject to a 5% rate of duty;
- from China and Malaysia are subject to a 4% rate of duty; and

- from Thailand using Thailand Free Trade Agreement rates are free from duty as of 1 January 2010.

There are numerous Tariff Concession Orders applicable to the relevant tariff subheadings.

3.4. Like goods

The Act makes references to 'the goods' and 'like goods'.

'The goods' are those exported to Australia and alleged as being the cause of material injury to the Australian industry.

'Like goods' are those produced by the Australian industry.¹⁴

S. 269T(1) of the Act defines like goods as:

... 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.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, Customs and Border Protection assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.5. Claimed Australian industry does not produce like goods

The following interested parties:

- the ASA;
- Sanwa Pty Ltd;
- Adsteel Brokers Pty Ltd T/as Adsteel;
- Amity Pacific Pty Ltd;
- Orrcon Operations Pty Ltd;
- Howard Consulting Pty Ltd;

¹⁴ The term also refers to goods which are sold on the domestic market in the exporting country, or those which may be exported to Australia in the future.

- Alpine Pipe Manufacturing Sdn Bhd;
- Graham Group; and
- Dalian Steelforce Hi-Tech Co.

lodged submissions claiming that the Australian industry (or certain members thereof) do not, or cannot, supply certain models of HSS that would fit within the goods description. Specifics of any non-confidential claims submitted, where not discussed in this report, are outlined in the respective submissions available on the Public Record.

Interested parties have acknowledged that the Australian industry currently produces and sells many equivalent models to the particular imported models in question. However, some interested parties submit that the Australian industry does not currently produce, or is not willing to produce, certain equivalent models to those which are imported.

With regard to this claim, even if correct, it would not enable Customs and Border Protection to alter the description of the goods subject to investigation.

If it was established that the Australian industry does not manufacture and offer for sale in Australia like goods to a particular and clearly identifiable subset of the imported HSS, it may be open to the Minister to exclude that subset from a dumping duty notice and countervailing duty notice.

Alternatively, it is also possible that separate non-injurious prices (NIPs) for a clearly identifiable subset of the goods could be established to ensure that, if measures are imposed, they are done so in a manner that removes only the injury caused by dumping and subsidisation.

A grouping of non-confidential claims submitted to Customs and Border Protection, under relevant topics, follows.

3.5.1. Galvanised HSS products

Several interested parties lodged non-confidential submissions to Customs and Border Protection that claimed the Australian industry no longer manufactures HDG pipe. The submissions referred to the 'mothballing' of Australian hot-dipped galvanising facilities prior to the initiation of the current dumping action, and consequent cessation of Australian HDG pipe production.

In addition, it was submitted that there is no locally produced, substitutable equivalent for HDG pipe in Australia. In particular, interested parties claimed that in-line galvanised and pre-galvanised HSS, are not a suitable substitute for HDG pipe.

In relation to this issue, ATM has submitted:¹⁵

¹⁵ 'ATM Correspondence 2011/02 - HSS exported from China, Korea, Malaysia, Taiwan and Thailand – Investigation No. 177 – Like Goods and HDG', dated 5 December 2011

- it has mothballed its last operational HDG facility (Acacia Ridge), however ATM continues to make black CHS which is sent to an outsourced galvaniser that hot-dip galvanises the ATM-produced black pipe, and hence ATM still supplies locally-produced HDG pipe;
- the displacement of locally-produced HDG pipe by dumped imports has contributed to this decision to mothball ATM's HDG plant;
- in the event anti-dumping and/or countervailing measures are applied, ATM may re-commence production at Acacia Ridge; and
- ATM's Duragal® and Supagal® HSS, which is either in-line galvanised (only coated externally) or is pre-galvanised¹⁶ is 'fit for purpose' for many applications and directly substitutable with HDG pipe for many common applications.

In relation to ATM's claims of manufacturing industrially-galvanised HDG pipe and that Supagal® and Duragal® are directly substitutable for HDG pipe, interested parties have submitted that neither pre-galvanised pipe or industrially-galvanised HDG pipe are substitutable for air blown and straightened HDG pipe. Submissions have included the following points:

- fluid conveyance and fire systems end uses for HDG pipe have requirements for HDG pipe that is straight, has a clean surface area, individual pipe marking, consistent zinc coating of 42 microns and has been hydrostatically tested.
- Industrially-galvanised black pipe is at increased risk of warping during the production process, resulting in pipe that is not straight and Australia has no capability to hydrostatically test HDG pipe.
- Black pipe that has been industrially-galvanised has zinc dags and excessive internal zinc providing an inconsistent surface area, inconsistent zinc coating and less aesthetically appealing finish.
- Black pipe that has been industrially-galvanised is unable to be bent for fabrication processes and incurs additional costs and additional production time when compared to air blown and straightened HDG pipe.
- Pre-galvanised pipe made by ATM under the brand name Supagal® has a typical coating thickness of 14 microns which is insufficient to offer protection in harsh environments such as fencing applications.

In response to submissions raising the above points, ATM has submitted that its

- industrially-galvanised HDG pipe is produced to AS1163 and AS1074, with AS1163 carrying a tolerance for straightness.
- Acacia Ridge site has product straightening equipment should it be necessary to re-straighten HDG pipe post-galvanising.
- industrially-galvanised HDG pipe is produced with a minimum zinc thickness of 300gm².

Customs and Border Protection considers that it has not been conclusively

¹⁶ Manufactured with pre-galvanised HRC that is formed into HSS the repair-welded.

demonstrated that industrially-galvanised pipe is directly substitutable and 'like' to imported air-blown and straightened HDG pipe in all end uses. It is apparent that there are varying degrees of quality, fitness for purpose and price between industrially- galvanised pipe and HDG pipe imports.

Similarly, Customs and Border Protection are not convinced that pre-galvanised or in-line galvanised HSS (ATM-produced Duragal® and Supagal®, and Orrcon-produced Allgal®) are directly substitutable for HDG in all end uses and directly 'like' to imported HDG pipe.

However, during the investigation period, ATM manufactured HDG pipe at its Acacia Ridge plant that was air blown and straightened, and considered 'like' to imported HDG pipe.

Whilst ATM have since mothballed their HDG pipe manufacturing facility, it submits that injury from the alleged dumped imports has contributed to this decision, and that in the event anti-dumping and/or countervailing measures are applied, they may re-commence HDG pipe production at Acacia Ridge.

Due to the fact that ATM produced HDG pipe during the investigation period that is 'like' to imported HDG pipe, and the fact ATM has still have the capacity to produce this HDG pipe, Customs and Border Protection does not consider that HDG pipe should be treated separately for the purposes of this investigation.

3.5.2. Thickness and cross-sectional size

Some interested party claims have asserted that ATM's production facilities are physically restricted from producing certain thicknesses of non-circular HSS.

While inconsistent, the claims seem to suggest ATM's limitations in terms of wall thickness mean it cannot produce non-circular HSS with a wall thickness 9mm or above.

In terms of cross-sectional size, the claims have asserted that ATM cannot produce non-circular product with a perimeter exceeding 800mm.

In response to the above claims, ATM¹⁷ has stated that it supplied and continues to supply, Australian-manufactured non-circular HSS with dimensions up to and including 250x250x9mm, during (and post) the investigation period. ATM has provided Customs and Border Protection with evidence to support these statements.

A submission by the ASA¹⁸ claims that OneSteel Oil & Gas Pipe is now closed, referencing an OneSteel Limited ASX Release of 15 March 2012, which states that manufacturing at OneSteel Oil & Gas Pipe will cease effective 31 May 2012.

¹⁷ ATM submission of 14 May 2012

¹⁸ ASA submission of 14 May 2012

OneSteel Oil & Gas Pipe (a division of OneSteel Trading Pty Ltd) is a considered to be member of the Australian HSS Industry – see Section 3.6 below. OneSteel Oil & Gas Pipe has been identified as manufacturing larger size HSS.

It is clear that during the investigation period, OneSteel Oil & Gas Pipe was a manufacturer of like goods. The ASX release further states that OneSteel (Limited) intends to sell the plant, equipment and related land. Thus whilst OneSteel Oil & Gas Pipe have recently ceased production, it is still unclear as to whether the business will be bought and recommence production or otherwise.

Further, ATM¹⁹ has submitted that it has the ability to modify its production facilities in order to manufacture an expanded range of sections.

3.5.3. Red painted CHS for use in fire systems

Interested parties lodged submissions suggesting that red painted CHS used for fire fighting equipment should be excluded from the investigation as it is not manufactured in Australia. A non-confidential submission by Howard Consulting²⁰ claims that red painted CHS pipe is specifically for use in manufacturing fire fighting systems and that as such does not enter the competitive general distribution market. The submission further states that it appears that ATM claim its sales of red painted pipe are not priced on import parity considerations and should be excluded from any material injury consideration.

ATM has lodged a submission in response to this claim, stating that red painted pipe is available from local production. ATM's visit report (page 16) notes that the ATM Product Availability Guide indicates that ATM can produce red painted (fire system pipe) and (page 32) makes further mention of ATM's sales of piping for fire systems.

Customs and Border Protection considers that insufficient information and evidence has been provided to support allegations that red painted CHS is not manufactured by Australian Industry and finds no reason for it to be excluded from the investigation or from material injury considerations.

3. Findings - like goods

Customs and Border Protection has identified the following four entities as producers of like goods (collectively referred to as the 'Australian industry'):

- ATM;
- Orrcon Operations Pty Ltd (Orrcon);
- Independent Tube Mills Pty Ltd (ITM); and
- OneSteel Oil & Gas Pipe.

¹⁹ ATM submission of 14 May 2012

²⁰ Howard Consulting submission of 14 May 2012

A submission was received by the ASA claiming that Customs and Border Protection is incorrect in stating that there are four Australian producers of HSS. The ASA claims that OneSteel Oil & Gas Pipe is a division of OneSteel Limited, as is ATM, and they are therefore one Australian industry member.

Customs and Border Protection notes that OneSteel Oil & Gas Pipe is a division of OneSteel Trading Pty Ltd, which is a subsidiary of OneSteel Limited. ATM is also a subsidiary of OneSteel Limited. OneSteel Trading Pty Ltd and ATM are separate legal entities, both producing like goods, and together with ITM and Orrcon, make up four Australian manufacturers of HSS.

Customs and Border Protection considers that the Australian industry produces like goods on the following grounds:

i. Physical likeness:

Australian industry manufactures a wide variety of HSS, available in multiple shapes or profiles and in various finishes.

ii. Commercial likeness:

Australian industry HSS competes directly with imported goods in the Australian market, as evidenced by the supply of HSS from China, Korea, Malaysia, Taiwan and Thailand to many customers of the Australian industry.

iii. Functional likeness:

Both imported and Australian produced HSS have comparable or identical end-uses as evidenced by Australian industry customers that source equivalent HSS from China, Korea, Malaysia, Taiwan and Thailand.

iv. Production likeness:

Australian industry HSS is manufactured in a similar manner to the imported goods.

The findings on i, ii, iii, and iv above lead to the conclusion that the Australian produced products, while not identical, have characteristics closely resembling the imported goods. These findings are not premised on a comparison of individual imported and domestically produced models, but rather represent a global consideration.

4. AUSTRALIAN INDUSTRY

4.1. Findings

Customs and Border Protection has made a finding that there is an Australian industry producing like goods.

4.2. Production process

For goods:

- to be taken to be produced in Australia, they must be wholly or partly manufactured in Australia;
- to be taken to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.²¹

Customs and Border Protection undertook verification visits to one of ATM's premises²² and one of Orrcon's premises.

During these visits, Customs and Border Protection reviewed the associated production processes and costs as detailed in Australian industry visit reports on the Public Record.

The visit to ATM included a tour of the HSS manufacturing facilities. During this tour, Customs and Border Protection observed the production process of HSS (noting that the visit site only produces certain shapes, sizes and finishes of HSS).

ATM's production process is as follows:

- Raw material used is hot-rolled coil (HRC), which is generally black/unfinished, but in some cases purchased pre-galvanised, is delivered to ATM by its suppliers.
- The HRC is loaded into a slitter and uncoiled then slit to various widths, edges trimmed, then re-rolled into smaller slit coils ready for use in the pipe and tube mills.
- The slit coil is then loaded into an accumulator where it is unrolled and fed into a mill for formation into pipe and tube (as the loaded coil ends, the following coil is butt welded to the preceding coil, and the accumulator allows a continuous flow of coil into the production process).
- The slit coil is then cold formed through a series of rolls into a circular pipe. The pipe is welded along the seam, using an electric resistance welding process, into a continuous hollow round tubular shape.
- The round tubular pipe is then further formed through rolls into square, rectangular and other shapes/cross sections as required (or left circular).

²¹ In terms of s.269T(2) and 269T(3)

²² Mayfield, NSW.

- The product is surface-finished by applying various protective coatings such as paint, varnish, oil or galvanising (inline or HDG – see below). HSS, made from pre-galvanised HRC is repair-galvanised along the weld line.
- The HSS is date and time stamped, cut to length, bundled and placed in racks ready for storage or despatch to customers.
- The ends of the bundled HSS are painted with a colour coded to identify its gauge (wall thickness).

In terms of HDG pipe, ATM currently produces black pipe that is then outsourced-galvanised in Australia (see Section 3.5.1). During the investigation period, ATM produced unfinished HSS which was then hot dipped galvanised by being passed through a molten galvanising bath.

Customs and Border Protection therefore considers that HSS is wholly manufactured in Australia, including HDG pipe.

4.3. Conclusion – Australian industry

Based on the information available, Customs and Border Protection considers that:

- the HSS manufactured or produced by the Australian Industry are like goods (see Chapter 5);
- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of persons who produce like goods in Australia²³ in the form of ATM and three other manufacturers.

²³ In terms of s.269T(4)

5. AUSTRALIAN MARKET

5.1. Findings

There is an Australian market for HSS, which Customs and Border Protection understands to be approximately 500,000 tonnes per year. The market is supplied by Australian producers, and by importers which generally supply HSS distributors and (less commonly) end-users.

5.2. Introduction

The Australian HSS market is supplied by Australian producers and importers. HSS is used in a wide variety of applications including automotive, engineering construction, manufacturing, mining, oil and gas, residential and non-residential construction, temporary fencing, transport, furniture and play equipment, and rural applications.

5.3. Market Structure

5.3.1. Australian Producers

The application was lodged by ATM on behalf of the Australian industry producing HSS. Australian industry members have not publicly indicated their support or otherwise. The Australian industry is comprised of four entities (see Section 3.6).

Of these entities, ATM and Orrcon accounted for more than an estimated 98% of the Australian production of like goods during the investigation period.

ATM accounts for an estimated 60% of Australian HSS production, with Orrcon accounting for the vast majority of the remainder.

Customs and Border Protection requested and received information from ATM and Orrcon during the investigation.

5.3.2. Importers

Customs and Border Protection performed a search of its commercial database and identified over 100 importers of HSS, of which seven were classified as 'major' importers of the goods.

Customs and Border Protection undertook visits to the following major importers and prepared reports following the visits:

- CMC Australia Pty Ltd;
- Croft Steel Pty Ltd;
- The Trustee for Pedruco Family Trust (trading as GP Marketing International Pty Ltd);
- Steelforce Trading Pty Ltd;
- Stemcor Australia Pty Ltd;
- Thyssenkrupp Mannex Pty Ltd; and
- Orrcon.

Customs and Border Protection estimates the above importers collectively account for more than 60% of the volume of the goods imported from the countries under consideration during the investigation period.

5.4. Market size

Customs and Border Protection has combined import data from its commercial database with Australian industry sales information to estimate the size of the Australian market for HSS during the investigation period. It understands the Australian market for HSS to be approximately 500,000 tonnes per year.

Available data indicates the market experienced fluctuations in size over the injury analysis period, decreasing approximately 20% in FY2009, increasing approximately 12% in FY2010 and decreasing approximately 10% in FY2011.

PUBLIC FILE

6. DUMPING INVESTIGATION

6.1. Findings

Customs and Border Protection has made a finding that HSS exported to Australia from China, Korea, Malaysia and Taiwan in the investigation period was dumped.

6.2. Introduction

6.2.1. Number and categorisation of exporters

Customs and Border Protection estimates there were a total of around 100 HSS exporters²⁴ from the five countries/region subject of this investigation that exported HSS to Australia in the investigation period.

Despite the relatively large number of exporters, Customs and Border Protection has not undertaken a sampling exercise in terms of s.269T ACB(8).

Rather, Customs and Border Protection sought to determine exporter-specific dumping (and subsidy²⁵) margin calculations for all exporters, after investigating the exportations of all exporters in the investigation period, whether or not they cooperated with the investigation. Therefore, Customs and Border Protection regards all exporters to be 'selected exporters' in relation to s.269T.²⁶

Shortly after initiating the investigation, Customs and Border Protection wrote to all known potential exporters of HSS (identified in its commercial database), inviting them to make themselves known as an HSS exporter and cooperate with the investigation by completing an Exporter Questionnaire.

Customs and Border Protection received 22 responses to the Exporter Questionnaire issued in relation to the dumping and subsidy investigation on HSS. There were 13 exporters that provided adequate and timely responses to the Exporter Questionnaires—nine were visited for verification purposes, and data for the other four was examined without on-site verification.

In the case of those exporters that provided an adequate and timely response to the Exporter Questionnaire, Customs and Border Protection was able to base the dumping margin (and subsidy) calculations on the data submitted. These exporters were considered to be 'selected cooperating exporters'.

²⁴It is difficult to estimate the number of exporters accurately because in some cases Customs and Border Protection is only aware of the identities of the suppliers, which can be trading entities or manufacturers. Customs and Border Protection usually regards the manufacturer to be the exporter. Where the supplier details for particular importations in the Customs and Border Protection commercial database relate to traders, this means the identities and number of the exporters (manufacturers) are unknown.

²⁵ In the case of Chinese exporters.

²⁶ S.269T(1) provides that 'selected exporter, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods whose exportations were investigated for the purpose of deciding whether or not to publish that notice.'

In the case of those exporters that provided inadequate responses to the Exporter Questionnaire, or did not respond to the questionnaire, Customs and Border Protection regarded these exporters as 'selected non-cooperating exporters'.

The calculation of dumping margins for each selected cooperating and selected non-cooperating exporter is at **Confidential Attachment 1**.

6.2.2. Selected cooperating exporters

Exporters whose data was verified on-site

Customs and Border Protection undertook verification visits to the following nine selected cooperating exporters (which collectively accounted for more than an estimated 70% of the volume exports of HSS to Australia from the five nominated countries/region in the investigation period) and based dumping margin (and subsidy – see Chapter 7) calculations upon the verified data.

China:

- Dalian Steelforce Hi-Tech Co., Ltd (Dalian Steelforce)
- Huludao
- Hengshui Jinghua Steel Pipe Co., Ltd (Hengshui Jinghua)
- Zhejiang Kingland Pipeline and Technologies Co., Ltd (Zhejiang Kingland)

Korea:

- Kukje Steel Co., Ltd (Kukje)

Malaysia:

- Alpine Pipe Manufacturing Sdn Bhd (Alpine)

Taiwan:

- Shin Yang Steel Co., Ltd (Shin Yang)

Thailand:

- Pacific
- Saha

Exporters whose data was assessed without verification

Customs and Border Protection examined the data contained in responses to Exporter Questionnaires provided by a further four selected cooperating exporters, and found the data to be verifiable and without material deficiency.

However, verification visits were not undertaken in relation to these exporters.

Rather, Customs and Border Protection calculated dumping (and subsidy) margins after analysing the data submitted by these entities.

The analysis included some tests of the data for completeness, relevance and accuracy, and some benchmarking to verified data of a similar nature. The four selected cooperating exporters subject of this approach are listed below.

China:

- Qingdao Xiangxing
- Jiedong Economic Development Testing Zone Tai Feng Qings Metal Products Co., Ltd (TFQ)

Taiwan:

- Ta Fong Steel Co., Ltd (Ta Fong)

Thailand:

- Samchai Steel Industries Public Company Limited (Samchai)

6.2.3. Selected non-cooperating exporters

Customs and Border Protection found that all other responses to the Exporter Questionnaire were deficient to a material degree. In each of the cases of deficiency, Customs and Border Protection provided an opportunity for the exporter concerned to address those deficiencies.

Having regard to the original responses to the Exporter Questionnaires, and to subsequent attempts to address deficiencies, Customs and Border Protection finds the responses to Exporter Questionnaires from the following exporters remained deficient and could not be relied upon for calculating dumping (and subsidy²⁷) margins.

China:

- Shandong Fubo Group Co (Shandong Fubo)
- Tianjin Jinshengde Steel Tube Product Co., Ltd (Tianjin Jinshengde)
- Zibo Fubo Steel Pipes Factory (Zibo Fubo)
- Zibo Litong Steel Pipe Co., Ltd (Zibo Litong)

Korea:

- Dae Myung Steel Co., Ltd (Dae Myung)
- Jinbang Steel Korea Co., Ltd (Jinbang)
- Steelpia Co., Ltd (Steelpia)
- Yulchon Co., Ltd (Yulchon)

²⁷ In the case of Chinese selected cooperating exporters – see Chapter 7.

Malaysia:

- Southern Steel Pipe Sdn Bhd (Southern Steel)

Customs and Border Protection considers that the failure to supply a substantially complete response to the Exporter Questionnaire that is absent of material deficiency amounts to less than full cooperation with this investigation.

The information provided by these entities was assessed as being materially deficient and not sufficient to warrant verification, and it is considered to be unreliable. Customs and Border Protection regards these entities as selected non-cooperating exporters.

It also considers all those entities that exported HSS to Australia from any of the five countries/region subject of the investigation that did not make themselves known to Customs and Border Protection, and did not provide a response to the Exporter Questionnaire to be selected non-cooperating exporters.

The export prices and normal values (and subsidy amounts) for selected non-cooperating exporters have been determined after having regard to all relevant information.

The dumping findings outlined in the sections below are particular to each country/region.

6.3. 'Market situation' assessments

This investigation has involved assessments as to whether there was a situation in the Chinese domestic market for HSS, and whether there was a situation in the Thai domestic market for HSS, during the investigation period, such that selling prices of HSS in those markets were not suitable for the determination of normal value (i.e. a 'market situation' or 'particular market situation' existed).

6.3.1 Market situation assessment - China

After having regard to all relevant information, Customs and Border Protection finds that there was a situation in the Chinese HSS market during the investigation period such that sales in that market are not suitable for use in determining normal value under s.269TAC(1).

Customs and Border Protection's detailed assessment of whether a market situation existed for China is at Appendix A.

Customs and Border Protection therefore considers that all domestic sales of HSS in China are unsuitable for determining normal value under s.269TAC(1) in all circumstances, and consequently the normal values in respect of HSS exported to Australia from China should be constructed under s.269TAC(2)(c) of the Act.

Customs and Border Protection has received several submissions in response to SEF177 that relate to this finding, which are detailed in Appendix A.

It is noted that the construction of normal value under s.269TAC(2)(c) has been undertaken in accordance with the conditions of Regulation 180, 181 and 181A of the *Customs Regulations 1926* (the Regulations),²⁸ as required by s.269TAC(5A) and s.269TAC(5B).

The Regulations provide for an examination of the reasonableness of exporters' recorded costs. This is discussed further in Section 6.4 below.

6.3.2. Market situation assessment - Thailand

After having regard to all relevant information, Customs and Border Protection finds that there was not a market situation in the Thai HSS market during the investigation period such that sales in that market are not suitable for use in determining normal value under s.269TAC(2)(c).

Customs and Border Protection has also determined that the costs of production recorded by Thai HSS manufacturers are reasonable for working out such costs in accordance with Regulation 180(2).

Details of this finding are discussed within Customs and Border Protection's TER177 report (see Section 2.6 above).

6.4. Reasonableness of HSS costs in China

6.4.1. Background and assessment

In terms of costs of manufacture or production, Regulation 180(2) requires that if:

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

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

Where the conditions of Regulation 180(2) are not met, it is Customs and Border Protection's position that the costs records kept by that exporter are not required to be used in working out their costs, and Customs and Border Protection may resort to other information to calculate these costs.²⁹

²⁸ All references to any regulation within this report are to the *Customs Regulations 1926* unless specifically stated otherwise.

²⁹ For example, in the recent investigation into aluminium extrusions from China (REP148), Customs and Border Protection found that the conditions of Regulation 180(2) were not met as, although the

During this investigation, Customs and Border Protection has assessed that the accounting records of all Chinese selected cooperating exporters have been kept in accordance with the Chinese GAAP (with reference to the auditor's opinions in each company's audited financial statements).

However, in the course of making its market situation assessment for China, Customs and Border Protection noted the Government of China (GOC) has significantly influenced the Chinese iron and steel industry, and this influence is likely to have materially distorted competitive conditions and affected supply in that industry.

This assessment and analysis of the effects on HSS prices is detailed in Appendix A of this report.

Customs and Border Protection noted in its market situation assessment that the GOC influences in the iron and steel industry can be broadly categorised as follows:

1. measures to drive structural adjustment;
2. technological, efficiency and environmental development measures;
3. export restrictions on coke; and
4. subsidisation of encouraged practices and products.

Much of the material underpinning the categories of GOC influences above, and the related analysis that led Customs and Border Protection to the market situation finding, is also relevant to assessing whether the various elements of the costs to make and sell HSS in China, as recorded by exporters, are reasonable.

Customs and Border Protection considers it is possible that all HSS cost elements (especially when expressed as averages, or amounts per unit, as is required for constructed normal values) have been distorted by the nature and degree of GOC influence in the iron and steel industry.

However, Customs and Border Protection has formed the view that the GOC influence in the iron and steel industry is most pronounced in the parts of that industry that might be described as upstream from HSS production. In particular, Customs and Border Protection considers that GOC-driven market distortions have resulted in artificially low prices for the key raw materials used in HSS production in China – HRC and narrow strip.

In these circumstances, Customs and Border Protection considers 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).

records of Chinese exports were kept in accordance with the GAAP, the cost of primary aluminium in these records was not reasonably reflective of competitive market costs. Customs and Border Protection instead substituted the prevailing London Metals Exchange (LME) price of primary aluminium for the costs of Chinese manufacturers.

6.4.2. Approach to replacing certain raw material costs

After determining that the costs of HRC and narrow strip incurred by exporters do not reasonably reflect competitive market costs for those goods, Customs and Border Protection 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 for these exporters.

Customs and Border Protection used the HRC and narrow strip costs used for the purposes of the subsidy investigation (i.e. Subsidy Program 2000) referred to in Appendix C of this report) to calculate the amendment required for HRC and narrow strip in exporters' costs. This benchmark was used as it was considered to be a reasonable reflection of competitive market costs for HRC and narrow strip in China, as well as a benchmark for assessing whether goods were provided at adequate remuneration in the case of subsidisation (see Appendix C for further details of the benchmark used).

To arrive at this amended amount, Customs and Border Protection compared the benchmark (as appropriate)³⁰ to all purchases of HRC and narrow strip incurred by selected cooperating exporters to arrive at a percentage difference to be applied to the raw materials cost recorded in the exporters' records. In each case, application of this benchmark resulted in an uplift to exporters' HRC and narrow strip costs (i.e. the actual costs incurred by HSS exporters for HRC and narrow strip were lower than the benchmark amount). This calculation of 'HRC uplift' was undertaken separately for each Chinese selected cooperating exporter.

For selected non-cooperating exporters, the highest percentage uplift found in relation to the selected cooperating exporters was used, in the absence of reliable information to demonstrate this uplift would have been lower for these exporters.

The constructed normal values for Chinese exporters discussed below are based on revised costs to make and sell that take account of the uplift for competitive market HRC and narrow strip costs.

6.4.3. Submissions in response to SEF177

Treatment of VAT

Dalian Steelforce, Huludao and Zhejiang Kingland all made submissions that argued the approach to calculating the HRC uplift was flawed. Huludao and Zhejiang Kingland argued that the benchmark should have been compared to the price it pays to its HRC suppliers, which is inclusive of 17% VAT. Dalian

³⁰ Taking into account delivery terms, and whether the purchase was for HRC or narrow strip, or for pre-galvanised or black materials.

Steelforce submitted that a key cost component of HRC – the non-refundable export VAT of 8% – should be included in the cost of HRC that is compared with the benchmark. Either approach would cause the uplift calculation to be significantly lower than the one calculated by Customs and Border Protection. Customs and Border Protection rejects both of these approaches.

The intention of Customs and Border Protection with respect to replacing HRC costs is simply to remove the Chinese HSS producers' costs of HRC and replace them with that of an appropriate benchmark. Customs and Border Protection chose to do this in a manner whereby it calculated the percentage difference between the HRC costs of the Chinese HSS producers and the benchmark. It used this percentage uplift to increase the HRC costs within the constructed normal value calculations for the Chinese HSS exporters. Customs and Border Protection could equally have chosen to simply replace the HRC costs of the Chinese producers with that of the benchmark, which would have generated the same result for constructed normal values. The preference for the uplift approach is primarily because it automatically accounts for the actual yield efficiencies particular to each exporter.

Importantly, the benchmark used was based on ~~exclusive~~ data. Customs and Border Protection cannot see any merit in comparing the benchmark with HRC (or narrow strip) costs in China that include VAT, whether that is to be the full 17%, or the residual VAT liability of 8% that is calculated with reference to the value of exported finished goods.

It is, however, accepted that a non-recoverable amount of VAT is incurred as a separate cost (in cost of goods sold) with respect to export sales of HSS. This is accounted for by way of an adjustment to constructed normal value. This is considered appropriate given the amount of non-recoverable VAT is a function of FOB export price and the net export VAT liability. The cost of non-refundable VAT is a result of making export sales of HSS, and HSS sold domestically does not incur such a cost. Customs and Border Protection considers its approach is consistent with the accounting treatment of Chinese exporters of HSS which is to treat the non-refundable export VAT as a cost of goods sold and not a cost of production.

Applying the HRC uplift to the correct cost base

Some Chinese exporters noted that the HRC uplift was applied to the total of all materials costs, or all costs of manufacturing, rather than to HRC costs in isolation. Customs and Border Protection agrees the most appropriate approach for the uplift calculations is one that ensures it only applies to the proportion of materials costs, or proportion of manufacturing costs, that are represented by HRC (and/or narrow strip). As that proportion could not be determined accurately for some exporters, Customs and Border Protection relied upon the verified ratio of HRC (and/or narrow strip) costs to material costs (or manufacturing costs) for the Chinese exporters where the cost data was sufficiently detailed to allow for an accurate measure of this proportion. Customs and Border Protection has applied this proportion to the materials costs (or manufacturing costs) before applying the HRC uplift, where

appropriate.

Operation of Regulation 180(2)

During its investigation, and in response to SEF177, Customs and Border Protection has received various submissions that address the operation of Regulation 180(2). Specifically, the GOC has submitted³¹ its opinion that:

- Article 2.2.1.1 of the *Anti-Dumping Agreement* (ADA) (which Regulation 180(2) is the Australian implementation of) requires that the records of a producer must be used for the purposes of determining constructed normal values if they reasonably reflect the costs of that input incurred in the production of the product under investigation and there is no recourse to reject these costs where it has been properly recorded on the basis that they do not reflect those incurred in a competitive market; and
- even if this option is available under Regulation 180(3), if it is established that the market in which the producer purchased the concerned input is a competitive one, then the accurate recording of that cost in the producers records 'precludes and obviates' examination of that cost.

The GOC further submits that the Chinese market for HRC is highly competitive, and prices are derived through the forces of supply and demand. This position has been reflected by various interested parties in response to SEF177, including Dalian Steelforce³², Huludao³³ and Kingland.³⁴

The GOC has made similar submissions to this effect in the context of other investigations involving assessments of costs reasonableness in line with Regulation 180(2).

Customs and Border Protection notes the GOC's interpretation of Article 2.2.1.1 and Regulation 180(2), but considers that the requirements of Regulation 180(2) allow for such an assessment of reasonableness of costs having regard to the competitive nature of the market for the input concerned.

Customs and Border Protection has determined that the factors of competition within the Chinese HRC and narrow strip market have been distorted, paying specific attention to the forces of supply and demand in that market (as detailed in Appendix A).

While Customs and Border Protection observes that certain factors of competition within the Chinese market may have existed (e.g. multiple competing suppliers), the competitive conditions have been significantly distorted by the GOC influence in that market. In these circumstances Customs and Border Protection considers it is possible to find that costs do

³¹ GOC submission of 8 March 2012

³² Dalian Steelforce submission of 15 May 2012

³³ Huludao submission of 14 May 2012

³⁴ Kingland submission of 14 May 2012

not reasonably reflect competitive market costs, as it has found in this case.

I(i) Chinese energy prices and s.269TAC(6) normal values (selected cooperating exporters)

ATM has submitted³⁵ that there is an 'absence of discussion' in SEF177 concerning analysis of energy prices and costs in manufacture of HSS in China'.

ATM submits that:

- energy is a significant cost in the manufacture of HSS (and its raw materials);
- the GOC has acknowledged in its 2001 WTO Accession Protocol that it 'controls' electricity, gas, fuel and water charges;
- electricity prices are influenced by the consuming entity's status within the Directory Catalogue as encouraged, restricted, or eliminated.

Further, ATM submits that it has provided evidence that shows overall conversion costs (including electricity) of HSS manufacturers are artificially low (i.e. subsidised and or/exempted such as 'free rent expenses').

Consequently, ATM submits that:

...all of the costs associated with HSS manufactured in China are impacted by government influence as the overall cost of producing HSS in China (not just because the HRC/narrow strip is artificially low) is lower than it otherwise would be.

ATM concludes that all prices and costs of production of Chinese HSS are unsuitable for determining normal values (including under s.269TAC(2)(c)) and that HSS prices from a suitable market should be 'substituted' as the basis for Chinese HSS normal value, and these should be established under s.269TAC(6) of the Act.

At the outset, Customs and Border Protection considers that, for the purposes of this investigation in constructing the cost of manufacture of HSS for the purpose of determining s.269TAC(2)(c) normal value in line with Regulation 180(2)

- where it is found that a particular cost component is not reasonably reflective of a competitive market cost, this particular cost will be adjusted/replaced with a reasonably competitive market cost alternative; and
- where this is not demonstrated in relation to other costs components, these costs will be considered reasonable for the purposes of Regulation 180(2) and used, as recorded by the exporter, in arriving at the total cost of manufacture.

³⁵ ATM submission of 14 May 2012

It is noted that ATM has provided no evidence to demonstrate that any costs associated with the production and sale of HSS other than:

- the costs incurred in purchasing HRC and narrow strip;
- electricity; or
- land use-related costs (raised for the first time in this context within ATM's submission of 14 May in response to SEF177)

should not be considered competitive market costs for the purposes of Regulation 180(2) and constructing normal values under s.269TAC(2)(c). In the case of HRC and narrow strip purchase costs, these have been determined to be not reasonably reflective of competitive market costs and have been replaced with a competitive market benchmark costs (discussed above).

In terms of land-use, it is noted that the only evidence presented to Customs and Border Protection that relates to the reasonableness of these costs is the fact that subsidy Program 29: Land Use Tax Deduction, has been found to be a countervailable subsidy program, received by selected non-cooperating exporters of HSS during the investigation. While it is noted that the effect of this subsidy program would be to reduce the land use taxation costs of exporters who received this program, no benefit received under this program has been countervailed where applicable in any case.

In relation to electricity costs, it is noted that ATM's application for this investigation made little reference to the impact of electricity prices on the cost to produce HSS in China, other than to state:

- in the context of its application for investigation of subsidy Program 20 (hot rolled steel provided by government at less than fair market value):

OneSteel ATM suggests that the GOC's influence to suppress domestic prices for raw material inputs (i.e. coke and electricity) in combination with the high level of participation of SOEs in the HRC/HRS sector, cause Chinese domestic HRS prices to be artificially low and lower than they otherwise would be in a competitive market;

- in the context of its allegations that a market situation existed in the Chinese HSS market:

It is OneSteel ATM's view that HSS prices in China are artificially low ...due to a range of factors that impact directly and indirectly on the prevailing Chinese HSS prices. These factors include...reduced and/or subsidized energy (i.e. electricity prices) input prices in the manufacture of HRC/HRS and HSS.

Consequently, Customs and Border Protection did not separately investigate the issue if 'subsidized' electricity in the context of a separate potentially-

countervailable subsidy program.

However, certain questions in relation to Chinese electricity prices were posed of the GOC in the GQ. The GOC was asked about the mechanism for setting electricity prices in China. The GOC advised that the price of electricity is subject to government price setting but the government will only intervene subject to the strict requirements of Article 18 of the Price Law. The GOC submitted that Article 18 protects market pricing other than in exceptional circumstances.

The GOC also provided a copy of the *Electric Power Law of the People's Republic of China*.³⁶ Article 36 of that document states that the establishment of electricity rates shall be based on "...the principles of reasonable compensation of cost and reasonable determination of profits, legal incorporation of taxes...". Article 47 of that document states that a preferential policy shall be adopted to provide support to areas inhabited by minority nationalities, in outlying areas and in poverty-stricken areas. Customs and Border Protection has no evidence to suggest that manufacturers of HSS would benefit from such a policy.

During this investigation and previous investigations concerning exports from China, Customs and Border Protection has observed that arrangements for the supply of electricity in China vary from province to province. Customs and Border Protection verified electricity costs for all co-operating exporters and did not find any evidence that the price of electricity during the investigation period reflected anything other than competitive market prices.

Based on the information gathered during the course of the investigation, Customs and Border Protection considers there is insufficient evidence that the electricity costs reflected in the records of the verified cooperating exporters do not reasonably reflect competitive market prices.

There is no basis for Customs and Border Protection to consider HSS manufacturers' costs in aggregate should be considered unreliable. In any event, as the cost of HRC and narrow strip recorded by Chinese exporters has been replaced with a substitute (benchmark) cost, it is noted that the electricity costs involved in manufacturing HRC and narrow strip in China (that necessarily feeds into the prices for these goods paid by HSS manufacturers) have been replaced as part of this benchmarking exercise.

6.5. Determination of profit for constructed normal values in China

Customs and Border Protection notes Regulation 181A provides that, where reasonably possible, profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

³⁶ Attachment A43 to the GQ

Accordingly, Customs and Border Protection calculated a weighted average net profit, measured as a percentage mark-up on full cost to make and sell, for each Chinese selected cooperating exporter, using the verified cost to make and sell data (i.e. prior to substitute HRC and narrow strip costs) and verified domestic selling prices from sales made in the ordinary course of trade in the investigation period.

Where the exporters made domestic sales in the ordinary course of trade, in sufficient quantities, this measure of profit was used to construct normal values that were based on revised unit costs that included uplifted HRC and narrow strip costs using the benchmark data.

Some interested parties submitted that the constructed normal values based on benchmark HRC costs should not have included profit. The parties believed that domestic sales of HSS in China in the investigation period would all have been sold at a loss if prices were compared to a cost to make and sell inclusive of the benchmark HRC costs. Customs and Border Protection disagrees.

The assessment of an amount of profit used for the purpose of constructed normal values is made on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export.³⁷ Customs and Border Protection verified profit amounts applicable to such sales made by the Chinese exporters visited during the investigation period.

The fact that such amounts were measured as a profit achieved after recovering costs to make and sell determined prior to replacing the HSS manufacturers' HRC costs with benchmark HRC costs does not preclude such a measure of profit being applied to a different cost base for constructed normal value. Rather, Customs and Border Protection consider it is appropriate to do so in the circumstances.

Customs and Border Protection considers it is reasonable to expect that if HRC costs were increased to the level of the benchmark, and assuming all other things remained equal in the investigation period, the operation of supply and demand factors in the Chinese market for HSS may settle at or around a new equilibrium price that reflects a similar return on investment for the HSS manufacturers. Customs and Border Protection considers that to maintain the profit levels achieved on HSS prior to the HRC cost replacement, and to apply this to the adjusted costs, is a reasonable means to calculate the new equilibrium price, which in turn provides for a reasonable constructed normal value.

In the case of one Chinese exporter, Dalian Steelforce, which had a low volume of relevant domestic sales, Customs and Border Protection used the average net profit from domestic sales made in the ordinary course of trade by the other selected cooperating exporters from China.

³⁷ Section 269TAC(2)(c) of the Act

Dalian Steelforce submitted³⁸ in response to SEF177 that it would be inappropriate to assign profit to the constructed normal value for Dalian Steelforce. It explained that, given it manufactures HSS to Australian Standard AS/NZS 1163:2009, it cannot be a correct assumption that Dalian Steelforce would earn a profit on domestic sales where it has no domestic sales for normal value purposes and where there is no market for HSS of the type it manufactures.

It is important to clarify that Dalian Steelforce did in fact make domestic sales of HSS during the investigation period. These were not used for normal value purposes because the domestic sales were in low volume relative to its export sales.³⁹ Nonetheless, it is evident that Dalian Steelforce did sell HSS into the domestic market in China in the investigation period.

Customs and Border Protection considered using the profitability of Dalian Steelforce's domestic sales of prime HSS (i.e. not including downgrade product) for the purposes of constructing a normal value. However, having regard to the nature and volume of such sales, Customs and Border Protection consider those sales were not made in the ordinary course of trade.

Customs and Border Protection examined the relative of Dalian Steelforce's unit costs to those of other cooperative HSS exporters from China. Having regard to this comparison, and to the fact that Dalian Steelforce did make domestic sales, Customs and Border Protection considers it is reasonable to conclude that, on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, Dalian Steelforce sales of HSS on the domestic market would have achieved an amount of profit.

Customs and Border Protection considers that the most reliable, and most reasonable, measure of such profit is the average profit of the other selected cooperating exporters. This is consistent with Customs Regulation 181A(3). It should be noted that as a result of the revised profit calculation for Huludao, explained at section 6.7.3 below, the average profit figure used in Dalian Steelforce's constructed normal values has also been revised.

The constructed normal values for Chinese exporters discussed below include the profit amounts calculated in the manner described above.

6.6. Specification, grade and coating differences

ATM considers that Customs and Border Protection has not addressed certain differences between HSS sold domestically by the exporters, and the goods exported to Australia.

³⁸ Dalian Steelforce submission of 1 May 2012, p. 4

³⁹ Section 269TAC(14) of the Act

ATM submitted⁴⁰ that Customs and Border Protection should make upward adjustments to normal values to account for certain differences in specification, grade or coating, including the following:

- mass tolerances, noting for example standard ASTM A500 allows for minus 10%, while AS 1163 allows for only minus 4%;
- minimum yield strengths, noting for example the variations between 250, 270, 350 and 450 MPa;
- impact testing; and
- painting versus oiled coatings.

These ATM concerns appeared to be directed mainly at the Thai and Malaysian exporters that were visited by Customs and Border Protection.

Customs and Border Protection considers it has properly accounted for factors that were demonstrably affecting price comparisons between export and domestic sales of HSS. It has, for example, ensured its approach to model matching and adjustments took account of differences in prices arising from the various forms of HSS finish, and from the various thicknesses of HSS cross section. The evidence showed, and interested parties generally agreed, that clear price distinctions exist between these product attributes.

While it is possible that other product characteristics may have also influenced export price, the evidence did not support the need to adopt an approach to model matching or to adjustments (when comparing domestic prices to export prices) to take account of such differences.

For example, analysis of the domestic price data for selected cooperating exporters that were visited did not support an argument that clear domestic price distinctions existed in accordance with the different HSS standards. Similarly, it was not apparent that price varied in the domestic market because of variations in the minimum yield strength, or because of impact testing. This is not to say that such variations do not affect export price but the need to adjust normal value for such factors is not evident. Furthermore, Customs and Border Protection observed specific examples of export sales where price was not affected by differences in grade and impact testing.

Having regard to the above, Customs and Border Protection is not convinced there is any need to revise its approach to model matching, or to normal value adjustments, on the basis of specification differences or grade differences. It has already taken account of differences in finishes.

ATM also submitted⁴¹ that a number of other adjustments to normal value are required for proper comparison to export price. In particular, ATM claimed that adjustments are required to recognise differences in:

- costs of operational complexity – changing paint lines, grades,

⁴⁰ ATM submission of 14 May 2012, pp. 1-2

⁴¹ ATM submission of 14 May 2012, p. 3

thicknesses;

- impact of paint coatings on lower overall yields (e.g. product unsatisfactory due to poor coating); and
- costs of traceability and individual length line marking to comply with Australian standards.

Customs and Border Protection considers that accounting for such differences in costs that result from each of these items would require an extraordinarily high degree of precision in cost accounting. In the experience of Customs and Border Protection with HSS, these are matters that would not be routinely accounted for in assigning direct costs by any HSS manufacturer, including the Australian manufacturers. In addition, it is likely that the aggregate unit cost of such items for exported goods, to the extent that it differs from similar or other unit costs that are applicable only to the domestic sales, is unlikely to be material and therefore unlikely to be reflected in any price differences. Accordingly, Customs and Border Protection considers that these items do not warrant adjustment to normal value.

6.7. Dumping margins for selected cooperating exporters - China

6.7.1. Dalian Steelforce

Export price

Export prices were established in accordance with s.269TAB(1)(c) of the Act, using Dalian Steelforce's monthly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

It is noted that in Dalian Steelforce's exporter visit report, it was considered by the Customs and Border Protection verification team:

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

Noting the relationship between Dalian Steelforce and its Australian importer (Steelforce Trading), the visit report recommended:

...further enquires be made with Steelforce Trading and Steelforce Australia to calculate the export price at which the goods were sold by Steelforce Australia, in the condition in which they were imported, to a person who is not associated with the Steelforce Group, less prescribed deductions.

Following these further enquiries, Customs and Border Protection is satisfied that the above approach under s.269TAB(1)(c) is suitable in the

circumstances, having regard to the levels of profit achieved within the various entities of the Steelforce Group in relation to exported HSS.

In its response to SEF177,⁴² ATM objected to the use of Dalian Steelforce's monthly weighted average export invoice prices to Steelforce Trading, considering these prices are influenced by the relationship between the two parties and therefore unsuitable for determining export price.

As noted above, Customs and Border Protection has undertaken enquiries with Dalian Steelforce into the suitability of the use of its invoiced price to Steelforce Trading as the basis of export prices under s.269TAB(1)(c). This resulted in Customs and Border Protection being satisfied of the suitability of these invoiced prices. ATM has not provided information that has caused Customs and Border Protection to alter its position in relation to this matter.

Normal value

Normal values were established in accordance with s.269TAC(2)(c) of the Act using Dalian Steelforce's quarterly weighted average cost to manufacture and sell data (revised for raw material cost uplift), by finish, and an amount for profit based on the average profit for domestic sales of like goods made in the ordinary course of trade by the other five selected cooperating exporters. A positive adjustment of 8% was made to normal value in relation to the residual export VAT expense that is incurred for certain export sales but not domestic sales.

In response to SEF177, Dalian Steelforce has submitted⁴³ that, as it had insufficient volumes of domestic HSS sales to calculate normal value under s.269TAC(1) in any case, the findings of a market situation in China rendering domestic sales unsuitable is not a valid route to Section 2369TAC(2)(c) normal values' for that company. Rather, normal value should be calculated under s.269TAC(2)(c) as a result of the operation of s.269TAC(a)(i)⁴⁴ rather than s.269TAC(2)(a)(ii).

Customs and Border Protection observes this point, noting that Dalian Steelforce is not considered to have sufficient volume of domestic HSS sales to calculate normal value based on domestic selling prices irrespective of there being a market situation rendering these sales unsuitable. However, it is noted that this makes no practical difference to the calculation of normal value for Dalian Steelforce under s.269TAC(2)(c) discussed above.

Additionally, it is noted that, even if Dalian Steelforce had made a sufficient volume of domestic sales during the investigation period, as all domestic sales of HSS have been determined to be unsuitable due to the existence of a market situation in the Chinese HSS market, these domestic sales would

⁴² ATM submission of 14 May 2012

⁴³ Dalian Steelforce submission of 1 May 2012,

⁴⁴ Absence or low volume of sales of like goods in the domestic market.

⁴⁵ Situation in the market.

have not been considered suitable for determining s.269TAC(1) normal values in any case.

Further, in response to SEF177, Dalian Steelforce submitted that Customs and Border Protection had erred in its calculation of the benchmark uplift for Dalian Steelforce by applying the established delivered HRC benchmark to Dalian Steelforce's HRC purchase data. Dalian Steelforce submitted that the purchase prices contained within this data were in fact ex-works prices, and should be compared to the ex-works benchmark instead. Dalian Steelforce demonstrated the fact that these recorded HRC prices were ex-works with reference to its accounts.

Customs and Border Protection has accepted Dalian Steelforce's claims on this point, and amended its calculations as necessary.

Dalian Steelforce also submitted in response to SEF177 that the method of application of the competitive market cost uplift to its constructed normal values was inaccurate.

Dalian Steelforce observed that the method used to arrive at uplifted HRC costs within its constructed normal values was to arrive at a weighted average uplift percentage based on the exporters' HRC purchases data (combined for pre-galvanised and black HRC)⁴⁶ and apply this to its HRC costs incurred in producing painted (using black coil) and pre-galvanised HSS. Dalian Steelforce highlighted that this resulted in its uplifted HRC costs within constructed normal values not accurately matching the established benchmark prices.

Dalian Steelforce instead submitted that Customs and Border Protection should calculate separate uplifts for black and galvanised HRC and apply these to its normal value construction appropriately.

Customs and Border Protection observes that this issue seemed to be more pronounced in the calculation of uplifted constructed normal values using the SEF177 benchmark, rather than the revised benchmark, due in part to the inaccurate difference between black and pre-galvanised HRC in the SEF177 benchmark (discussed in detail in Appendix C). This has been amended for the purposes of this report, however the requested method of calculation of the HRC uplift (separate uplifts for black and pre-galvanised HRC) has been undertaken in Dalian Steelforce's calculations in any case.

Further, Customs and Border Protection has assessed the need to perform this separate uplift calculation in constructing normal values for all other selected cooperating exporters and other Chinese exporters, and determined that this either is not applicable, or would make no measurable difference to constructed normal values for these exporters.

⁴⁶ Determined by applying the black and pre-galvanised benchmarks to each purchase as appropriate but then determining the percentage difference between the yearly total actual purchase price (both finishes combined) and the yearly total benchmark purchase price (combined finishes).

Dumping margin

The dumping margin for Dalian Steelforce was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The final dumping margin for Dalian Steelforce is 13.4%.

The difference from the SEF177 assessment of dumping is due to:

- a revision to the level of the HRC uplift, including separation of HRC uplift calculations between black HRC and pre-galvanised HRC; and
- an alteration to the level of profit applied in constructed normal value because of a change to the average rate of profit of other selected cooperating exporters from China.

6.7.2. Hengshui Jinghua

Export price

Export prices were established in accordance with s.269TAB(4)(c) of the Act, using Hengshui Jinghua's quarterly weighted average export invoice prices, by model, excluding any part of that price that related to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(2)(c) of the Act using Hengshui Jinghua's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by finish, and an amount for profit based on domestic sales of the goods made in the ordinary course of trade. No adjustments were made.

Dumping margin

The dumping margin for Hengshui Jinghua was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The final dumping margin for Hengshui Jinghua is 23.7%.

The difference from the SEF177 assessment of dumping is due to:

- a revision to the level of the HRC uplift; and
- application of the uplift to only the proportion of costs represented by HRC (or narrow strip).

6.7.3. Huludao

Export price

Export prices were established in accordance with s.269TAB(1)(a) or 269TAB(1)(c) of the Act, using Huludao's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(2)(c) of the Act using Huludao's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by finish, and an amount for profit based on domestic sales of like goods made in the ordinary course of trade. Negative adjustments were made in relation to domestic credit and inventory carrying costs. A positive adjustment of 8% was made to normal value in relation to the residual export VAT expense that is incurred for certain export sales but not domestic sales. A further positive adjustment was made in relation to port handling expenses.

In response to SEF177, Huludao submitted⁴⁷ that Customs and Border Protection should, in constructing normal value, have used the actual cost in the date of contract. Customs and Border Protection considers that Huludao has not provided evidence to support an argument that normal values (whether based on sales or constructed) and export prices should be compared on any period matching basis other than that which aligns invoice dates (for sales), or quarter of manufacture (for constructed normal values).

Huludao also submitted⁴⁸ that Customs and Border Protection should add an amount for port charges to free alongside ship (FAS) export prices (for 'indirect' export sales), to adjust all export prices to the free on board (FOB) level. Huludao considered that by not including the port charges in the export price denominator (for dumping margin calculations) the denominator was thereby inflated, and the dumping margin was unreasonably inflated. Customs and Border Protection disagrees. The dumping margin calculations compared normal values to FOB, or FAS, export prices, as appropriate. The normal values for the FOB export prices included the port charges and the normal value for FAS export prices did not include the port charges. This provided for an appropriate comparison and accurate calculation of dumping margins.

Huludao also submitted⁴⁹ that no profit should be added in the constructed normal value. It relied firstly on the argument that domestic selling prices would not have recovered the costs to make and sell that included the benchmark cost of HRC. This argument is discussed in section 6.5 above. In

⁴⁷ Huludao submission of 14 May 2012, pp. 19-21

⁴⁸ Huludao submission of 14 May 2012, p. 20

⁴⁹ Huludao submission of 14 May 2012, pp. 16-18

addition, Huludao asserted that the profit figure used by Customs and Border Protection was based on a very small volume of domestic sales, and that its profitability was based on monthly calculations while others were determined quarterly.

On the latter point, Customs and Border Protection notes that if profitability for Huludao is assessed on a quarterly basis, there is an increased volume of sales that are profitable. That volume is considered to be a reasonably representative basis for profit that applies to domestic sales made in the ordinary course of trade. In addition, the change from monthly to quarterly assessment of profit in Huludao's case provides less likelihood of the affect of period mismatching when comparing its costs of goods sold and domestic sales prices. For these reasons, Customs and Border Protection considers it is reasonable to recalculate the profit figure for Huludao and revise the normal value calculations and dumping margins accordingly.

Huludao also submitted⁵⁰ that the cost of production particular to its black square (BS) pipe should be used as the basis for normal value for exports of that product, not the costs of production for black circular (BC) pipe. Huludao noted that the BS product was purchased from third party tooling operations, and the BS production costs were lower than its own BC production costs per unit. However, Customs and Border Protection has not been provided with a sufficient level of detail for Huludao's production costs of BS to allow an accurate replacement of HRC costs with that of the HRC benchmark. Therefore, Customs and Border Protection has used the constructed normal value for BS when comparing export prices of both BS and BC for Huludao.

Dumping margin

The dumping margin for Huludao was established in accordance with s.269TACB(2)(a) of the Act by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The final dumping margin for Huludao is 10.1%.

The difference from the SEF177 assessment of dumping is due to:

- a revision to the level of the HRC uplift;
- application of the uplift to only the proportion of costs represented by HRC (or narrow strip); and
- application of a revised profit rate in constructed normal value.

6.7.4. Qingdao Xiangxing

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Qingdao Xiangxing's quarterly weighted average export invoice prices,

⁵⁰ Huludao submission of 14 May 2012, p.15

by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(2)(c) of the Act using Qingdao Xiangxing's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by finish, and an amount for profit based on domestic sales of like goods made in the ordinary course of trade. A positive adjustment of 8% was made to normal value in relation to the residual export VAT expense that is incurred for export sales but not domestic sales. A further positive adjustment was made in relation to export packing, inland transport, handling and other expenses.

Dumping margin

The dumping margin for Qingdao Xiangxing was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The final dumping margin for Qingdao Xiangxing is 13.0%.

The difference from the SEF177 assessment of dumping is due to:

- a revision to the level of the HRC uplift, and
- application of the uplift to only the proportion of costs represented by HRC (or narrow strip).

6.7.5. TFQ

Export prices

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using TFQ's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal values

Normal values were established in accordance with s.269TAC(2)(c) of the Act using TFQ's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by finish, and an amount for profit based on domestic sales of like goods made in the ordinary course of trade. Negative adjustments were made for domestic inland freight and commissions. A positive adjustment of 8% was made to normal value in relation to the residual export VAT expense that is incurred for export sales but not domestic sales. Further positive adjustments were made in relation to export inland freight, terminal handling charges and other export expenses.

Dumping margin

The dumping margin for TFQ was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The final dumping margin for TFQ is 32.0%.

The difference from the SEF177 assessment of dumping is due to:

- a revision to the level of the HRC uplift;
- application of the uplift to only the proportion of costs represented by HRC (or narrow strip); and
- correction of a mathematical error made in the SEF177 dumping margins calculations for TFQ.

6.7.6. Zhejiang Kingland

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Zhejiang Kingland's quarterly weighted average export invoice prices, by model, excluding any part of that price that related to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(2)(c) of the Act using Zhejiang Kingland's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by finish, and an amount for profit based on domestic sales of like goods made in the ordinary course of trade. A negative adjustment was made for domestic inland freight and a positive adjustment for export inland freight. A positive adjustment of 8% was made to normal value in relation to the residual export VAT expense that is incurred for certain export sales but not domestic sales. A further positive adjustment was made, where appropriate, in relation to export expenses.

In response to SEF177, Zhejiang Kingland submitted⁵¹ that a downward adjustment to constructed normal value is required because costs were based on actual weights and export prices were based on theoretical weights. Customs and Border Protection consider that such an adjustment is required to ensure the normal value is properly comparable to export price. Zhejiang Kingland has calculated the downward adjustment with reference to evidence it supplied during the exporter verification visit that details the actual and theoretical weights of the exported goods over the investigation period.

Zhejiang Kingland also submitted that a downward adjustment to normal value for domestic inventory carrying costs was warranted. It submitted that Customs and Border Protection gave no particular reason for denying the

⁵¹ Zhejiang Kingland submission of 14 May 2012, p. 16

claim other than to say that it did not consider that sufficient information about the nature of the claim was available. In its response to SEF177, Zhejiang Kingland submitted that the inventory carrying cost was an opportunity cost for the domestic sales, but not for the export sales. However, Zhejiang Kingland has not submitted evidence to establish the inventory carrying costs associated with export sales. While it may be that the exported goods are not held in inventory for the same period as domestic sales, Customs and Border Protection cannot accept that the inventory carrying costs (opportunity costs) attached to export sales were zero. Zhejiang Kingland has not provided a basis to measure the difference in inventory carrying costs, if any, and it has not demonstrated that any such difference affects the price comparison between export and domestic sales. Accordingly, Customs and Border Protection has made no adjustment for inventory carry costs when calculating the normal value for Zhejiang Kingland.

Dumping margin

The dumping margin for Zhejiang Kingland was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The final dumping margin for Zhejiang Kingland is 10.2%.

The difference from the SEF177 assessment of dumping is due to three factors:

- a revision to the level of the HRC uplift;
- application of the uplift to only the proportion of costs represented by HRC (or narrow strip); and
- an adjustment for actual and theoretical weight differences to ensure export prices were properly compared with constructed normal values.

6.8. Dumping margins for selected cooperating exporters - Korea

6.8.1. Kukje

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Kukje's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(1) of the Act using Kukje's quarterly weighted average domestic invoice prices for like goods, by model, where those sales were in the ordinary course of trade. Negative adjustments were made in relation to domestic credit, freight and commissions. Positive adjustments were made in relation to export freight, handling expenses and bank charges. Where appropriate, a positive

adjustment was also made in relation to painting.

Dumping margin

The dumping margin for Kukje was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Kukje is 3.2%.

ATM submission

Following the publication of the Kukje visit report on the Public Record, ATM has submitted⁵² various views in relation to the approach applied in calculating Kukje's dumping margin.

These included ATM's submissions that:

- that non-structural HSS produced by Kukje are included in the goods description and should be included in Kukje's normal value assessment;
- the adjustment for export freight does not reflect the costs associated with different shipment ports;
- the reliability of Kukje's HRC costs are questionable due to difficulties in verification of that data at the summary level;
- the methodology applied to arrive at an adjustment for physical differences (painting) does not account for all of the costs associated with making painted pipe; and
- commission on domestic sales should not be deducted (adjusted) from Kukje's normal value.

ATM's comments in relation to all matters raised in its submission have been evaluated and considered not to warrant amendments to the approach to calculating Kukje's dumping margin outlined above or within that exporter's visit report.

Orrcon submission

In its submission in response to SEF177,⁵³ Orrcon provided details of recent Australian market offers for HSS exported by Korean exporters and conducted deductive calculations of these offers that raised '*questions as to how these offers were possible in light of recommended securities*'.⁵⁴

Orrcon submitted that it 'strongly feels that the Korean market needs further investigation' in light of this information.

⁵² ATM submission of 30 April 2012

⁵³ Orrcon submission of 14 May 2012

⁵⁴ Making reference to the 3.2% dumping margin calculated for Kukje in SEF177.

Firstly, Customs and Border Protection notes that it conducted a detailed verification of Korean exporter data with Kukje, including reconciliation of cost to make and sell information to audited accounts (as discussed within Kukje's exporter visit report), and is satisfied with the veracity of the data used to determine the dumping margin for that company.

However, Customs and Border Protection has reviewed Orrcon's information and calculations in any case, and notes that it contains several assumptions in relation to Korean exporters and Australian importation costs. These calculations have been re-assessed based on verified information gathered for Kukje, and this re-evaluation does not cause Customs and Border Protection to consider that further investigations of the Korean market are warranted.

6.9. Dumping margins for selected cooperating exporters Malaysia

6.9.1. Alpine

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Alpine's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(1) of the Act using Alpine's quarterly weighted average domestic invoice prices for like goods, by model, where these sales were in the ordinary course of trade. Negative adjustments were made in relation to domestic credit, freight, commissions and inventory carrying costs. Positive adjustments were made in relation to export freight and FOB charges, container stuffing, commissions, credit, credit insurance and inventory carrying costs. Where appropriate, a positive adjustment was also made in relation to painting and galvanising costs.

Dumping margin

The dumping margin for Alpine was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Alpine is 3.0%.

Alpine submissions

Following the verification visit, Alpine has submitted⁵⁵ (among other things) that:

1. the date of sale for domestic transactions is 'the most appropriate date';
2. a 'tolerance' for differences in actual (domestic) vs theoretical (export) weight sales should be applied; and
3. the production tonne denominators used by Customs and Border Protection to apportion costs to make should be altered to take account for costs incurred in producing different categories of products.

Customs and Border Protection has assessed matters 1 and 2, and considers that, importantly, these claims were not clearly made by Alpine during verification (allowing for proper consideration, collection and/or verification of necessary data). Customs and Border Protection therefore considers that all necessary information to perform these amendments is not in Customs and Border Protection's possession in any case, noting that the reasonableness of these claims would also require assessment.

In relation to matter 3, Alpine has submitted various different understandings of how costs should be apportioned by different production tonnes in a different manner to that outlined in the company's exporter visit report, but has failed to provide data to clearly quantify how this can be performed reasonably.

Customs and Border Protection therefore considers the approach outlined in Alpine's exporter visit report for each matter to be reasonable in the circumstances and has not altered it as a result of these submissions.

ATM submission

Following the publication of the Alpine visit report on the Public Record, ATM has submitted various matters in relation to the approach applied in calculating Alpine's dumping margin.⁵⁶

These included ATM's claims that:

- the selling price of Alpine's scrap and downgrade should have been "adequately benchmarked" to check for consistency with market prices;
- the approaches taken to adjust for physical differences (painting and galvanising) were inadequate;
- despite the findings of the Alpine visit report, Alpine continues to receive rebates from a HRC supplier;
- Alpine's data should generally be considered as not reliable;
- sales commission should be included in Alpine's costs as selling

⁵⁵ Alpine, *Alpine Pipe Manufacturing Sdn Bhd Exporter Visit Report*

⁵⁶ ATM submission of 27 May 2012 and ATM submission of 14 May 2012

- expenses and not excluded; and
- there are differences in price and cost between exported HSS from Alpine that is made to C350, C350L0 and C450 grades, as well as differences in costs and selling prices of HSS produced to different standards (e.g. AS1163 vs less stringent domestic standards) and this should be accounted for in Alpine's dumping calculations,

ATM's comments in relation to all matters raised in its submission have been evaluated. It is considered that all matters raised by ATM do not warrant amendments to the approach to calculating Alpine's dumping margin outlined above or within that exporter's exporter visit report, except for the issue of differences in prices and costs between specifications and grades.

This matter is discussed separately at Section 6.6 of this report.

6.10. Dumping margins for selected cooperating exporters - Taiwan

6.10.1. Shin Yang

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Shin Yang's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(1) of the Act using Shin Yang's quarterly weighted average domestic invoice prices for like goods, by model, where those sales were in the ordinary course of trade. In some cases, models, constructed normal values (including an amount for profit) were used in accordance with s.269TAC(2)(c) of the Act. A negative adjustment was made in relation to domestic inland freight. Positive adjustments were made in relation to export inland freight, commissions, handling and other export expenses, and credit terms.

Dumping margin

The dumping margin for Shin Yang was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Shin Yang is 2.8%.

ATM submission

Following the publication of the Shin Yang visit report on the Public Record,

ATM has submitted⁵⁷ various matters in relation to the approach applied in calculating Shin Yang's dumping margin.

These included ATM's claims that:

- downgrade pipes should not be included in normal value calculations;
- the insurance payout for flood damaged pipe should be treated as a revenue item rather than an expense item;
- scrap revenue should have been compared with market prices to ensure that it is representative of market prices; and
- an upwards adjustment should be made to the normal value to account for the different lengths of pipe sold domestically and exported to Australia.

ATM's comments in relation to all matters raised in its submission have been evaluated and considered not to warrant amendments to the approach to calculating Shin Yang's dumping margin outlined above or within that exporter's visit report.

6.10.2. Ta Fong

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Ta Fong's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(1) of the Act using Ta Fong's quarterly weighted average domestic invoice prices for like goods, by model, where those sales were in the ordinary course of trade. Negative adjustments were made in relation to domestic credit and freight. Positive adjustments were made in relation to export inland freight, handling and commissions.

Dumping margin

The dumping margin for Ta Fong was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Ta Fong is 2.4%.

6.11. Dumping margins for selected cooperating exporters - Thailand

As discussed in Section 6.2.2 above, Customs and Border Protection classified the following Thai exporters as 'selected cooperating exporters'

⁵⁷ ATM submission of 27 April 2012

from Thailand during the investigation:

- Pacific;
- Saha; and
- Samchai.

Customs and Border Protection received necessary data from these exporters (and undertook verification of this data with Pacific and Saha) and calculated individual dumping margins for these exporters.

As a result of these investigations, Customs and Border Protection has found that some HSS exported to Australia from Thailand during the investigation period was dumped, but the volume of dumped goods was negligible. Customs and Border Protection has terminated the dumping investigation insofar as it relates to Thailand (see Section 1.2.7 above).

6.12. Dumping margins for selected non-cooperating exporters

Selected non-cooperating exporters of HSS comprise:

- Shandong Fubo;
- Tianjin Jinshengde;
- Zibo Fubo;
- Zibo Litong;
- Dae Myung ;
- Jinbang;
- Steelpia;
- Yulchon;
- Southern Steel; and
- all other exporters of HSS from China, Korea, Malaysia and Taiwan other than the selected cooperating exporters.

6.12.1. Export price

Customs and Border Protection examined and considered a range of options for determining export price for selected non-cooperating exporters, including:

- export price data from the Customs and Border Protection commercial database;
- export price data from importer visits where that data related to exports from the selected non-cooperating exporters;
- export price data from ATM's application; and
- export price data from the selected cooperating exporters.

The import data contained on the Customs and Border Protection commercial database does not clearly and consistently differentiate the separate finishes of HSS, or indeed whether the imported goods are HSS at all. This means that unit export prices derived from that data are a function of the product mix, and therefore not a reliable basis for calculating export price by finish.

The export price data verified in importer visits does not include broad and

detailed coverage of the goods exported by the selected non-cooperating exporters. Rather, that data pertains mainly to the exports of selected cooperating exporters. While it may be possible to identify small volumes of the goods exported by some of the selected non-cooperating exporters, this would represent only a small proportion of the total volume of HSS exported by those exporters.

Export prices submitted in the application for a dumping duty notice and a countervailing duty notice were not segregated into separate finishes. Like the data contained in the commercial database, this source of export price information is also affected by product mix, and precludes accurate assessment of export price by finish.

Customs and Border Protection considers the most directly relevant and therefore best information available would be the export price data obtained and verified in relation to the selected cooperating exporters.

After having regard to all relevant information, export prices for all selected non-cooperating exporters were established in accordance with 269TAB(3) of the Act.

Specifically, in the cases of China and Taiwan (for which there is multiple selected cooperating exporters), Customs and Border Protection used the lowest weighted average export price for the entire investigation period from the selected cooperating exporters by finish, excluding any part of that price that relates to post-exportation charges.

In the cases of Korea and Malaysia, Customs and Border Protection used the lowest quarterly weighted average export price from the selected cooperating exporter in the investigation period (as a measure of weighted average export price over the entire investigation period), by finish, excluding any part of that price that relates to post-exportation charges.

Customs and Border Protection notes that selected non-cooperating exporters did not provide reliable information on export price.

Apart from those selected non-cooperating exporters specified above, other selected non-cooperating exporters did not make themselves known to Customs and Border Protection, and did not respond to the Exporter Questionnaire. In this context it cannot be assumed, and there is no reasonable basis to find, that the export prices of the selected cooperating exporters were any higher than those determined in the approaches described above.

6.12.2. Normal value

Customs and Border Protection examined and considered a range of options for determining normal value for selected non-cooperating exporters, including:

- normal value data from the application; and
- normal value data from the selected cooperating exporters.

The normal values submitted in the application in relation to China, Korea, Malaysia and Taiwan were based on constructions, using Japanese domestic HRC prices, and estimated conversion costs, selling general and administrative expenses, and amounts for profit. However, Customs and Border Protection amended the normal values as submitted in the application in relation to China, Korea, Malaysia and Taiwan when considering the dumping allegations for initiation.

While these amended normal values were found by Customs and Border Protection to be suitable for initiation purposes, Customs and Border Protection has since undertaken verification of exporter data in all of the nominated countries/region. As explained in Customs and Border Protection's *Dumping and Subsidy Manual* (the *Dumping and Subsidy Manual*)⁵⁸ page 43, Customs and Border Protection considers that where there are cooperating and non-cooperating exporters, the most directly relevant and therefore best information would be that obtained from those cooperating.

After having regard to all relevant information, normal values for selected non-cooperating exporters were established in accordance with s.269TAC(6) of the Act.

Specifically, in the cases of China and Taiwan, Customs and Border Protection used the highest weighted average normal value for the entire investigation period from the selected cooperating exporters, by finish.

In the cases of Korea and Malaysia, Customs and Border Protection used the highest quarterly weighted average normal value from the selected cooperating exporter in the investigation period (as a measure of weighted average normal value over the entire investigation period), by finish.

Customs and Border Protection notes that selected non-cooperating exporters did not provide reliable information on normal value.

Apart from those selected non-cooperating exporters specified above, other selected non-cooperating exporters did not make themselves known to Customs and Border Protection, and did not respond to the Exporter Questionnaire. In this context it cannot be assumed, and there is no reasonable basis to find, that the normal values of the selected cooperating exporters were any lower than those determined in the approaches described above.

6.12.3. Dumping margins

The dumping margins for selected non-cooperating exporters from China, Korea, Malaysia, and Taiwan were established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of

⁵⁸ Available online at <http://www.customs.gov.au/site/page5719.asp>

corresponding normal values over the whole of that period. The dumping margin for selected non-cooperating exporters for each country is shown in the table below:

Dumping margins for selected non-cooperating exporters	
China	57.1%
Korea	8.9%
Malaysia	20.0%
Taiwan	5.3%

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7. SUBSIDY INVESTIGATION

7.1. Findings

Customs and Border Protection has made a finding that countervailable subsidies have been received in respect of HSS exported to Australia from China during the investigation period.

7.2. Investigated programs

7.2.1. Original 20 programs

In its application, ATM submitted that Chinese producers of the goods have benefited from a range of countervailable subsidies during the investigation period.

In support of these allegations, ATM relied on:

- the final determination of the Canada Border Services Agency (CBSA) in its 2008 subsidy investigation in respect of carbon steel welded pipe (CSWP) from China; and
- the 2010 findings of Customs and Border Protection from its investigation into certain aluminium extrusions exported to Australia from China (the findings of which are within Trade Measures Report No.148 (REP148)).

In relying on these findings, ATM submitted:

- the Canadian subsidy investigation and its findings are relevant to its application and reliable, given the similarities of the products under investigation⁵⁹ and its understanding that common Chinese exporters are involved in exporting HSS into the Canadian and Australian markets; and
- countervailable subsidy programs identified and countervailed by Customs and Border Protection in REP148 have likely similarly provided benefits to Chinese exporters of HSS (noting that the GOC has recognised both the Chinese aluminium and steel industries as 'pillar' industries).

Further, the application included 'Business Credit Reports' completed in 2011 for four companies that the Applicant believes are exporters of HSS to Australia.

The Applicant highlighted that these reports show that three of these companies have previously been provided with awards and grants, and notes the tax paid by two companies appears to be significantly below the general taxation rate levied in China.

⁵⁹ As CSWP is a sub-category of the HSS covered by this application.

The application also noted these reports indicate that a further company has relocated to a 'high technology investment zone', which the Applicant submitted provides income tax reductions and other financial incentives to businesses located in the zone.

Following consideration of ATM's claims, Customs and Border Protection initiated investigations into 20 programs (Programs 1 – 20), for which it considered the application contained reasonable grounds for publication of a countervailing duty notice in relation to HSS exported to Australia. Of these 18 programs had previously been found to be countervailable subsidy programs in relation to aluminium extrusions from China (see REP148).

To assess these programs further in relation to HSS, Customs and Border Protection included questions relating to each program in the Government Questionnaire (GQ), which was forwarded to the GOC. A response to the GQ was received from the GOC on 6 December 2011.

Following receipt of the GQ, Customs and Border Protection forwarded the GOC a Supplementary Government Questionnaire (SQ), to gather further information in relation to the assessment of allegations of a particular market situation in the Chinese HSS market (see Appendix A), and the assessment of whether HRC and/or narrow strip producing state-invested enterprises (SIEs) are 'public bodies' for the purposes of assessing Program 20 (refer Appendix B)

7.2.2. Programs 21 – 34

During a verification visit by Customs and Border Protection to a selected cooperating Chinese exporter, 14 other potentially countervailable subsidy programs were identified (Programs 21 – 34).

Based on its investigations with this exporter, Customs and Border Protection considered that the information available established reasonable grounds for the publication of a countervailing duty notice for these programs.

To assess these programs further, Customs and Border Protection sent the GOC the Second Supplementary Government Questionnaire (SSGQ) to pose questions and ask for documentation in relation to these new potential programs.

The GOC provided a response to the SSGQ on 4 April 2012.

7.2.3. Program 35

As a result of its investigations with a selected cooperating exporter, Customs and Border Protection found evidence that benefits were received by this exporter under an additional subsidy program (Program 35).

The selected cooperating exporters' initial response to the Exporter Questionnaire indicated that the benefit received under this program may have been received under Program 10. However, investigations with the exporter indicate this program is in fact a separate program.

This assessment came to light after forwarding the GOC the SSGQ, and hence Customs and Border Protection did not pose questions in relation to this program to the GOC in the SSGQ.

7.3. Summary of countervailable programs

After assessing all relevant information available, Customs and Border Protection has found that countervailable subsidies have been received in respect of HSS exported to Australia from China, under 28 subsidy programs.

The findings in relation each investigated program are outlined in the below table.

Program	Countervailable in relation to HSS (Yes/No)
Program 1: Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Yes
Program 2: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Yes
Program 3: Provincial Scientific Development Plan Fund	No
Program 4: Export Brand Development Fund	No
Program 5: Matching Funds for International Market Development for Small and Medium Enterprises	Yes
Program 6: Superstar Enterprise Grant	Yes
Program 7: Research & Development (R&D) Assistance Grant	Yes
Program 8: Patent Award of Guangdong Province	Yes
Program 9: Training Program for Rural Surplus Labour Force Transfer Employment	No
Program 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	Yes
Program 11: Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Yes
Program 12: Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Yes
Program 13: Preferential Tax Policies in the Western Regions	Yes
Program 14: Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipments	Yes
Program 15: Innovative Experimental Enterprise Grant	Yes
Program 16: Special Support Fund for Non State-Owned Enterprises	Yes
Program 17: Venture Investment Fund of Hi-Tech Industry	Yes
Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Yes
Program 19: Grant for key enterprises in equipment manufacturing industry of Zhongshan	Yes

Program	Countervailable in relation to HSS (Yes/No)
Program 20: Hot rolled steel provided by government at less than fair market value	Yes
Program 21: Water Conservancy Fund Deduction	Yes
Program 22: Wuxing District Freight Assistance	Yes
Program 23: Huzhou City Public Listing Grant	Yes
Program 24: Huzhou City Freight Assistance	No
Program 25: Wuxing District Patent Fee Assistance	No
Program 26: Zhejiang Industry New Product or Technology Award	No
Program 27: Huzhou City Quality Award	Yes (limited to one selected cooperating exporter)
Program 28: Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Yes
Program 29: Land Use Tax Deduction	Yes
Program 30: Wuxing District Public List Grant	Yes
Program 31: Anti-dumping Respondent Assistance	Yes
Program 32: Technology Project Assistance	Yes
Program 33: City Level Patent Model Enterprise	No
Program 34: Balidian Town Public Listing Award	Yes (limited to one selected cooperating exporter)
Program 35: Preferential Tax Policies for High and New Technology Enterprises	Yes

7.4. Subsidy margins

7.4.1. Selected cooperating exporters

Customs and Border Protection has determined that the selected cooperating exporters received financial contributions in respect of the goods that conferred a benefit under certain programs.

Exporter-specific subsidy margins have been calculated for each selected cooperating exporter with reference to the specific programs that conferred a benefit on each exporter.

This assessment was made with reference to the data supplied by each selected cooperating exporter in this investigation in their response to the exporter questionnaire.

7.4.2. Selected non-cooperating exporters

In the GQ and SSGQ, Customs and Border Protection requested that the GOC list all Chinese HSS producers and/or exporters that have produced and/or exported HSS destined for Australia during the investigation period that applied for, accrued, or received benefits under Programs 1 – 34.

In its responses to the GQ and SSGQ, the GOC did not provide this information completely, limiting its response to the 'respondents' or 'respondent enterprises' in the GQ, and apparently limiting its response in the SSGQ to the selected cooperating exporter already identified by Customs and Border Protection to have received those programs addressed in the SSGQ.

Customs and Border Protection also requested from the GOC information as to the location of all Chinese HSS exporters to Australia. This was not provided by the GOC.

In the absence of relevant information to identify enterprises that had received financial contributions under each of the investigated subsidy programs, Customs and Border Protection has had regard to the available relevant facts and determines that non-cooperating exporters have received financial contributions that have conferred a benefit under 16 programs found to be countervailable in relation to HSS.⁶⁰

7.4.3. Final margins

Customs and Border Protection has calculated the following subsidy margins for each selected cooperating exporter individually and for selected non-cooperating exporters collectively:

Exporter	Product subsidy margins
Dalian Steelforce	11.1%
Hengshui Jinghua	4.6%
Huludao	Negligible
Qingdao Xianxing	Negligible
Hejian Kingland	2.2%
TQ	7.9%
Selected non-cooperating exporters	54.8%

Customs and Border Protection's findings in relation to each investigated program (including the method of calculation of subsidy margins) are outlined in Appendix B.

The calculation of subsidy margins for each selected cooperating and selected non-cooperating exporter is at **Confidential Attachment 2**.

7.4.4. Termination of countervailing investigation – certain exporters

S.269TDA(2) requires that Customs and Border Protection must terminate a countervailing investigation in relation to an exporter if countervailable subsidisation for that exporter is determined to be negligible.

⁶⁰ It was found that two countervailable subsidy programs (Program 27 - Huzhou City Quality Award and Program 34 - Balidian Town Public Listing Award) were not countervailable in relation to selected non-cooperating exporters.

In relation to goods exported from China (a developing country), countervailable subsidisation is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than 2%.

Customs and Border Protection notes that for goods exported by Huludao and Qingdao Xiangxing during the investigation period, the subsidy margin has been found to be negligible.

In a submission in response to SEF177,⁶¹ ATM submitted that Customs and Border Protection should not terminate its investigation in respect of Qingdao Xiangxing as the exporter was not visited by Customs and Border Protection and it cannot be verified that the exporter did not receive benefit under programs not referenced in its exporter questionnaire response.

ATM considers that the subsidy margin for Qingdao Xiangxing should reflect the average subsidy margin of the selected cooperative exporters as a minimum (and not only those subsidy programs it has divulged in its response to the exporter questionnaire).

It is noted that the exporter questionnaire requested specific information in relation to investigated programs 1-20 (the original 20 programs), as well as whether any other programs were received by the exporter. The selected cooperating exporters were not asked specifically whether they received benefits under investigated programs 21 – 34, which Customs and Border Protection commenced investigation into following a verification visit with one selected cooperating exporter.

In its response to the exporter questionnaire, Qingdao Xinxing did not identify that it received any additional program further to those alleged specifically in the questionnaire (original programs 1-20), including identifying receipt of any program considered to be the alleged programs 21 – 34.

As explained in Section 6.2.2 Customs and Border Protection examined the data submitted by Qingdao Xiangxing in its exporter questionnaire, and found the data to be verifiable and without material deficiency. Customs and Border Protection conducted tests of the data submitted for completeness, relevance and accuracy. Customs and Border Protection therefore relied upon this data in calculating dumping and subsidy margins for Qingdao Xiangxing.

In these circumstances, noting Qingdao Xiangxing's declaration in the exporter questionnaire response that it did not receive benefit from the GOC under any subsidy program not specifically listed in the exporter questionnaire, Customs and Border Protection consider there is sufficient evidence to conclude that no such program was in fact received in the investigation period.

In light of the above, Customs and Border Protection terminated the

⁶¹ ATM submission of 14 May 2012 – *OneSteel ATM response to Statement of Essential Facts No 177*.

countervailing investigation into Huludao and Qingdao Xiangxing on 5 June 2012.

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8. ECONOMIC CONDITION OF THE INDUSTRY

8.1. Findings

Based on an analysis of the information obtained from ATM and Orrcon, Customs and Border Protection is of the view that the Australian industry has experienced injury in the form of:

- price suppression;
- price depression;
- decreased sales volume; and
- lost profit and profitability.

The causes of this injury are discussed in Chapter 9 of this report.

8.2. Introduction

This Chapter reports on the economic condition of the Australian industry and provides an assessment as to whether the industry has suffered injury. The period from 1 July 2007 is being examined for injury analysis purposes for this investigation.

The analysis of injury to the Australian industry is based on verified information from ATM and Orrcon (visit reports available on the Public Record). The remaining two Australian industry members – ITM and OneSteel Oil & Gas Pipe did not participate in this investigation.

Comprehensive sales data submitted to Customs and Border Protection by ATM included sales of HSS from sources other than ATM's own production. By sorting this data, Customs and Border Protection was able to obtain sales volumes of HSS that ATM had bought from OneSteel Oil & Gas. This data was utilised by Customs and Border Protection in estimating the size of OneSteel Oil & Gas HSS sales for market volume purposes.

ITM's sales volume for the investigation period has not been included in the market volume analysis in this chapter. ITM has not provided Customs and Border Protection with any information regarding its sales volumes, while confidential submissions estimating ITM's sales volume during the investigation period have varied considerably.

As the investigation period was ITM's first full year of operation, it is unlikely that ITM's production and sales data would materially alter the assessment of the economic condition of the Australian HSS industry (which is based on the other three producers) in any case.

It is estimated that ATM and Orrcon collectively represent approximately 98 percent of the volume of sales made by Australian manufacturers in the investigation period.

8.3. Approach to injury analysis

The ATM and Orrcon economic data discussed in this section relates to

domestic sales of like goods produced in Australia. Summaries of data on which these assessments are based are at **Confidential Attachments 3 and 4**.

ATM and Orrcon provided economic data (displayed by quarter) for the entire injury analysis period. ATM provided cost and sales data at the level of each finish they manufacture. Orrcon provided cost data at the aggregate level for all finishes, but sales data at individual finish levels. Analysis of profit and profitability has been assessed at the aggregate finish level for Orrcon and at the individual finish level for ATM.

For the purposes of the price undercutting analysis, sales have been analysed by finish.

Export sales and sales of imported HSS by Orrcon and ATM were excluded from the analysis.

Sales of Orrcon's imported HSS have been included in the analysis as import sales. ATM's sales of imported HSS were not included in the price undercutting analysis as they were from countries not the subject of this investigation.

Financial year 2011 sales volume and the data from HSS importers whose data was verified by Customs and Border Protection during the investigation was collated and analysed for purposes of the price undercutting analysis. The volume of import sales included in the price undercutting analysis represents an estimated 49% of the total import volume (from the five countries/region subject to the investigation) included in Customs and Border Protection's commercial database.

Customs and Border Protection considers that, as this sales data represents a significant proportion of total imports for the FY2011, it allows a reasonably representative and accurate basis for an assessment of price relationships in the Australian market.

8.4 Submissions made in response to SEF177

Non-confidential submissions were lodged by the ASA and Howard Consulting claiming:

- that Customs and Border Protection should exclude Australian industry's sales of downgrade pipe from material injury considerations.
- That ATM's treatment of downgrade pipe as a distinct product category is an attempt to accentuate price undercutting.

The chart at 8.5.1 displays ATM's average unit CTMS and sales price for all finishes of HSS, including downgrade. When downgrade pipe is excluded from the analysis, the relationship between unit CTMS and sales price follows the same trend with the resulting graph almost identical to the graph below. The inclusion of downgrade pipe for the purposes of determining price depression and suppression does not materially alter any results.

As discussed in 9.6.2, Customs and Border Protection's price undercutting analysis "covered sales of black, painted, pre-gal and HDG finishes over the investigation period." Australian Industry's sales of downgrade pipe were not compared to sales of imported HSS in black, painted, pre-gal or HDG finishes for the purposes of the price undercutting analysis.

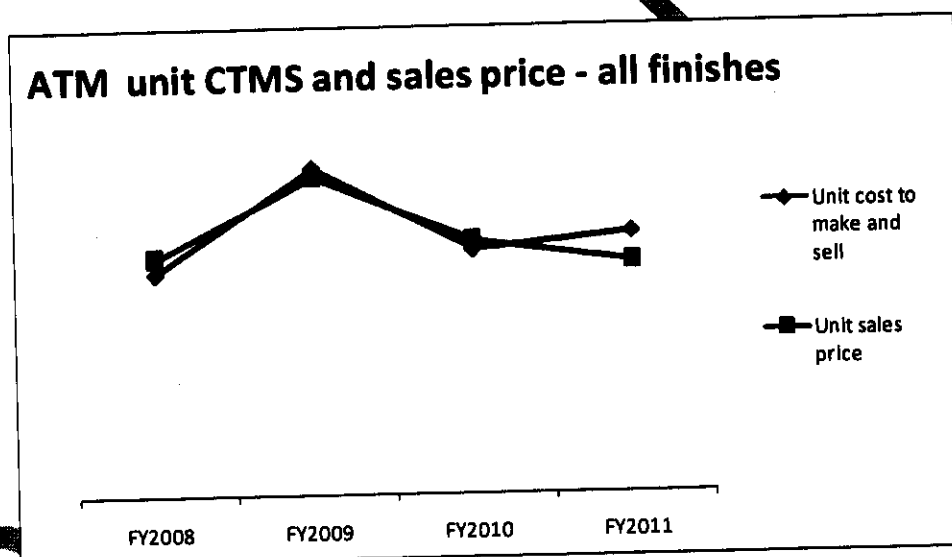
8.5. Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which would otherwise have occurred, have been prevented.

Orrcon and ATM have claimed that they have had to lower their prices to compete with the prices of imported HSS and that their prices have remained suppressed due to continued pressure by customers to match prices of imported HSS.

8.5.1. ATM sales revenue and CTMS

The following graph illustrates ATM's unit selling price and unit CTMS for all finishes of HSS.



The above chart displays that, when considered as a weighted average over all finishes, the unit selling prices for ATM were slightly higher than its unit CTMS for FY2008, before falling below unit CTMS in FY2009. In FY2010, unit selling prices recovered to be slightly above unit CTMS (though both fell that year), prior to prices falling below unit CTMS in FY2011, when prices were unable to increase in line with rising unit CTMS.

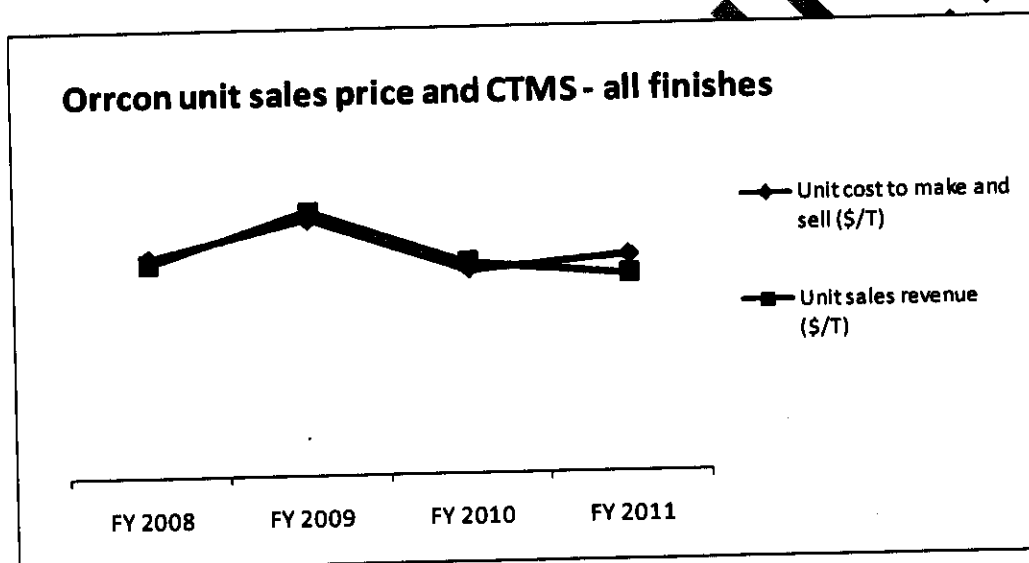
Customs and Border Protection examined unit prices and CTMS separately for each finish, with this analysis showing:

- painted HSS - the trend for CTMS and sales mirrored the above graph;
- black HSS - the unit CTMS was higher than the unit sales price in FY2008, sales prices increased in FY2009 and were higher than unit

- CTMS for FY2009 and FY2010. In FY2011 CTMS remained relatively steady but the sales prices decreased below CTMS;
- unit selling prices for in-line galvanised HSS were steadily above unit CTMS for FY2008 – FY2010, before falling to be only slightly above unit CTMS in FY2011 (when unit CTMS increased and unit sales prices fell);
 - HDG HSS – sales price was above CTMS in FY2008, but CTMS increased sharply in FY2009 and unit prices only slightly increased to remain at a level below CTMS from FY2009 – FY2011; and
 - downgrade HSS – unit selling prices for downgrade HSS were consistently below unit CTMS over the four year period.

8.5.2. Orrcon sales revenue and CTMS

Orrcon's economic data was only provided at the aggregate level for all finishes and their unit sales price and CTMS is displayed in the chart below.



The above chart displays that, when considered as a weighted average over all finishes, the unit selling prices for Orrcon were slightly lower than its unit CTMS for FY2008, before rising above unit CTMS in FY2009. In FY2010, unit selling prices remained above unit CTMS (though both fell that year), prior to prices falling below unit CTMS in FY2011, when prices were unable to increase in line with rising unit CTMS.

8.6. Volume effects

Customs and Border Protection updated the Australian HSS market volume estimates in ATM's application with ATM and Orrcon's verified sales data.

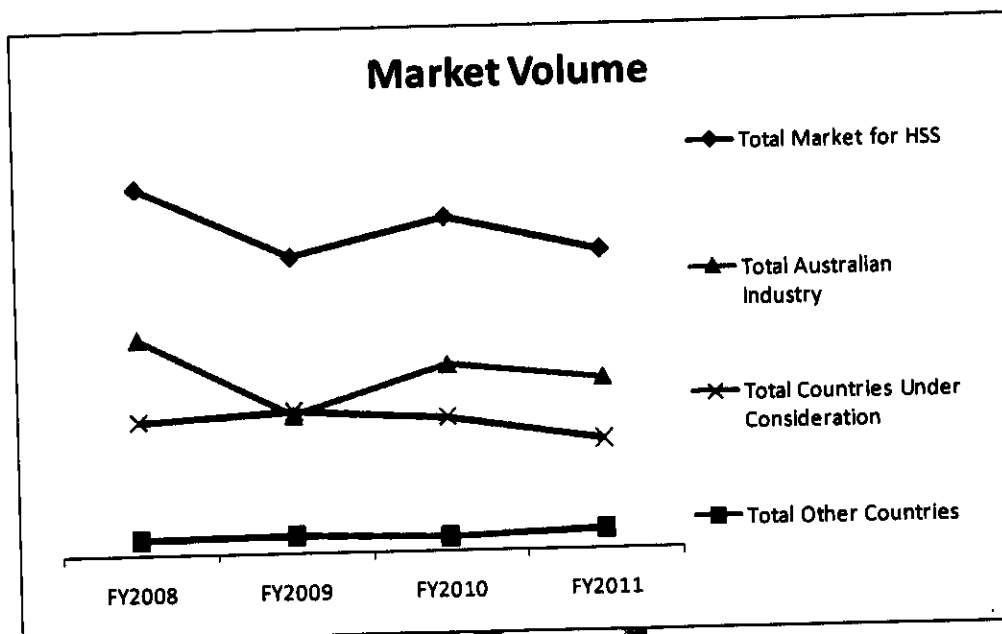
The import volume estimates provided in ATM's application were compared to import volume data in Customs and Border Protection's own database and sales volumes provided in the Exporter and Australian industry Questionnaires for FY2011.

This established that the import volume estimates provided in the application are a reasonable indication of export volumes to Australia from the countries

under consideration (China, Korea, Malaysia, Taiwan and Thailand) and other remaining countries (not the subject of this investigation) over the injury analysis period.

8.6.1. Sales Volume

ATM claimed that it experienced a loss of sales volume. Australian industry's sales volume over the injury analysis period is displayed on the below chart.



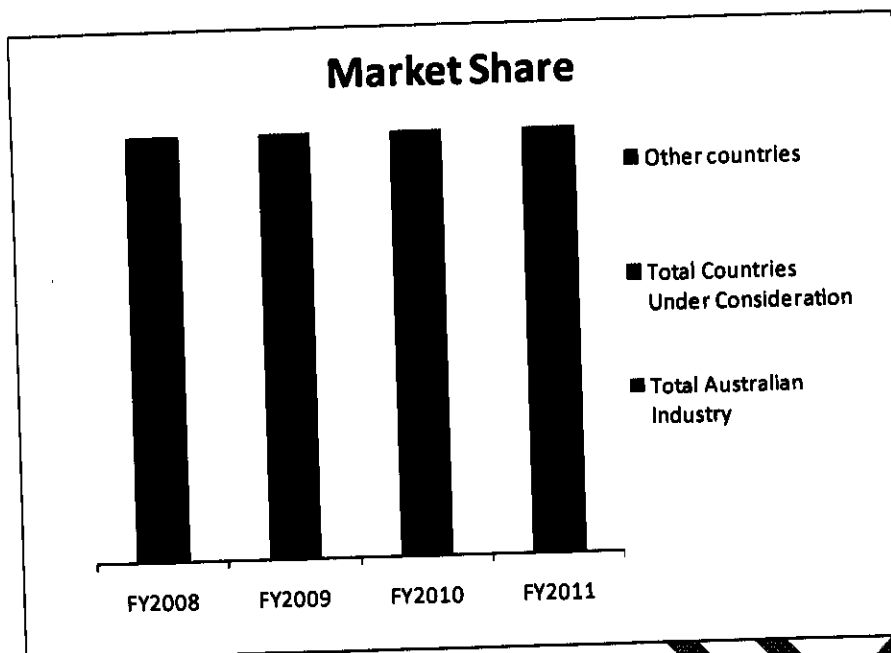
The analysis of this chart shows Australian industry's sales of domestically manufactured HSS decreased in FY2009 before recovering in FY2010 to a level below the volume of sales in FY2008. In FY2011 sales volume again decreased.

Volume of sales of imports from the countries/region under consideration followed a similar trend to that experienced by Australian industry, with a slight increase in volume in FY2009 followed by an almost equivalent decrease in FY2010. FY2011 saw sales of imports from the countries/region under consideration decline.

Volume of sales of imported HSS from countries not under consideration (other countries) increased in FY2009 before declining in FY2010 to a low point for the injury analysis period. FY2011 saw an increase in sales volume, representing an overall increase in sales volume over the four-year injury analysis period.

8.7. Loss of market share

The chart below illustrates market share for Australian industry, imports from the investigated countries/region and imports from other countries, in relation to all finishes of HSS.



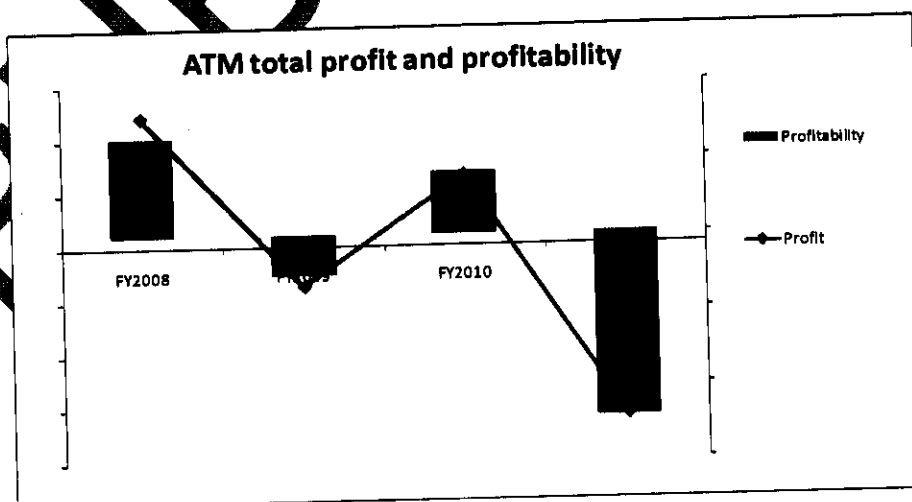
The above chart displays that Australian industry's market share decreased in FY2009 before recovering in FY2010 to a level similar to the FY2008 market share and remaining relatively steady in FY2011.

The market share for the countries/regions under consideration increased in FY2009, before declining in both FY2010 and FY2011.

The market share for other countries increased in FY2009 before decreasing in FY2010 and then increasing in FY2011.

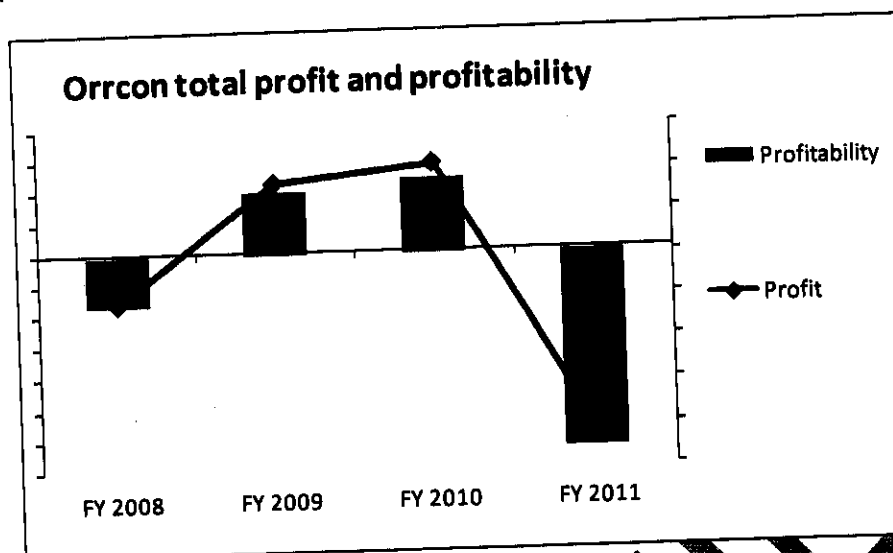
8.8. Profit effects

The following profit and profitability analysis is related to verified data from Orrcon and ATM. The following charts depict movements in total profits and profitability of Orrcon and ATM over the injury analysis period.



The above shows that ATM's profit and profitability were positive in the first year of the injury analysis period (FY2008), before falling to a position of being unprofitable in FY2009. ATM recovered to a position of profitability (though lower than FY2008) in FY2010. The investigation period shows a

significant reduction in profit and profitability with both measures reaching the lowest point for the injury analysis period.



The data submitted by Orrcon shows that it was unprofitable in FY 2008 but was profitable in FY2009 and FY2010. During the investigation period of FY2011, profit and profitability decreased significantly, with Orrcon becoming unprofitable in FY2011.

8.9. Other economic factors

Customs and Border Protection analysed data relating to other economic factors that was provided by ATM and Orrcon.

8.9.1. ATM

We observed the following trends in the Appendix A7 data provided by ATM:

- return on equity increased in FY2009 from FY2008 then fell in FY2010 and declined sharply in FY2011;
- value of assets used in the production of HSS increased significantly in FY2008 from FY2007 but has declined from FY2009 to FY2011;
- capital investment for the production of HSS has been declining since FY2007 and continued to decline sharply in FY2010 and FY2011;
- there has been no expenditure on R&D of HSS after FY2006;
- capacity utilisation of HSS declined from FY2007 to FY2009, then increased in FY2010 and decreased again in FY2011;
- the number of workers associated with the production of HSS employed declined sharply in FY2009 compared to FY2008 and continued to decline in FY2010 and FY2011; and
- productivity significantly decreased in FY2009 from FY2008 then recovered in FY2010 and again decreased in FY2011.

8.9.2. Orrcon

In respect of the data presented on other relevant economic factors for the period July 2007 to June 2011, Customs and Border Protection has noted:

- net sales revenue generated from Orrcon's sales of domestically produced HSS increased each year from July 2007 to June 2010 before decreasing in FY2011.
- actual production of HSS by Orrcon increased during FY2008, decreased in FY2009, increased in FY2010 before decreasing in FY2011.

Customs and Border Protection concludes that these findings do not detract from the assessment of injury that is based on the price, volume and profit factors above.

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9. HAVE DUMPING AND SUBSIDY CAUSED MATERIAL INJURY?

9.1. Findings

Customs and Border Protection has made a finding that the dumping and subsidisation of the goods exported from China, Korea, Malaysia, and Taiwan has caused material injury to the Australian HSS industry.

9.2. Introduction

In the case of concurrent dumping and subsidisation, where it is established that the exported goods are both dumped and subsidised, there is no need to quantify separately how much of the injury being suffered is the result of dumping or subsidisation. Customs and Border Protection has examined whether the exports of HSS to Australia, at dumped and subsidised prices, have caused material injury to the Australian industry producing like goods.

In this case, for China, the substitution of benchmark HRC and narrow strip costs in constructed normal values, and the use of benchmark HRC and narrow strip costs for subsidy Program 20 (see Appendix C), leads to an assessment of dumping margins and subsidy margins that may contain some element of overlap, or double-count. To the extent that this exists, in varying degrees for each exporter, or group of exporters, Customs and Border Protection has ensured that any such overlap or double count has been removed before taking account of the size of the dumping margin⁶³ and the particulars of the countervailable subsidy⁶⁴ when assessing whether dumping and subsidisation has caused material injury.

Further discussion of the removal of any overlap or double-count of dumping and subsidisation in the context of the recommended measures, is contained in Chapter 12 of this report.

9.3. Dumping

Customs and Border Protection found that all HSS exported to Australia from China, Korea, Malaysia and Taiwan in the investigation period was dumped, with dumping margins ranging from 2.4% to 57.1%.

Customs and Border Protection has found that during the investigation period the volume of dumped imports from China, Korea, Malaysia and Taiwan represented approximately two-thirds of the total Australian HSS import volume or greater than one-quarter of the Australian HSS market.

9.4. Subsidy

Customs and Border Protection has established that HSS exported from

⁶² In the case of HSS exported to Australia from China.

⁶³ S. 269TAE(1)(aa)

⁶⁴ S. 269TAE(1)(ab)

China were subsidised during the investigation period. The subsidy margins ranged from 2.2% to 54.8%.⁶⁵

9.5. Cumulation of injury

In determining the effect of the exportation of the goods to Australia from the countries under consideration, the cumulative effect of those exportations can be considered if it is appropriate to consider, having regard to:

- the conditions of competition between the exported goods; and
- the conditions of competition between the exported goods and the like goods that are domestically produced.

Customs and Border Protection considers that the conditions of competition between imported and domestically produced HSS are similar, as domestically-produced HSS can be directly substituted with imported HSS.

Data submitted to Customs and Border Protection shows that some importers of HSS have imported the same finish of HSS from at least two of the countries/region subject to the investigation. This indicates that the products are used by the same or similar customers.

As discussed in Section 3.46, Customs and Border Protection considers that domestically produced HSS is like to the goods (including having similar end-uses, and competing in the same markets). The conditions of competition are such that it is appropriate to consider the cumulative effect of the dumped imports from China, Korea, Malaysia and Taiwan.

9.6. Price effects

Customs and Border Protection considers that the magnitude of dumping and subsidisation described above⁶⁶ provided exporters the ability to offer HSS at significantly lower prices than would otherwise have been the case. The effects of this are discussed below.

9.6.1. Price undercutting

Price undercutting occurs when the imported product is sold at a price below that of the Australian manufactured product.

'Macro' analysis

Customs and Border Protection compared the weighted average monthly selling prices of Australian industry, individual importers and an aggregate of importers. The analysis covered sales of black, painted, pre-gal and HDG finishes over the investigation period.

The price undercutting analysis was also conducted for each country,

⁶⁵ Excluding Huludao and Qingdao Xiangxing, which had nil or negligible subsidy margins.

⁶⁶ After removing any element of overlap or double-count from using HRC benchmarks in constructed normal value and assessment of subsidy Program 20.

aggregating the total sales of HSS for each finish for that country and comparing the weighted average price per month to the weighted average price of sales of domestically produced HSS by the Australian industry. The price undercutting analysis reveals the following:

- Australian industry's prices for all finishes were consistently undercut by the prices of imported HSS over the investigation period, whether considered at the level of individual importer data or aggregate of importer data.
- The margins at which Australian industry's prices were undercut (at the aggregate importer level) were:

Black	5% - 25%
Painted	4% - 18%
Pre Gal	11% - 21%
HDG	19% - 46%

- The prices of imported HSS were consistently lower than Australian industry's HSS prices for each country, with very few exceptions where prices of imported HSS were higher than Australian industry prices for certain combinations of country, finish and month.

'Micro' analysis

To obtain a more accurate, though narrower, view of the level of price undercutting, Customs and Border Protection sought to compare prices from different suppliers to major dual sourcing customers.

Using verified sales transaction data for the investigation period, provided by ATM, Orrcon and importer, Customs and Border Protection compared monthly sales prices of HSS to several large Australian Distributors at the individual finish level.

This analysis revealed that over the investigation period, the four major customers examined were consistently purchasing HSS from Australian industry members at higher weighted average monthly prices than the HSS they were purchasing from imported sources.

In summary, during the investigation period prices of imported HSS from China, Korea, Malaysia, Taiwan and Thailand consistently undercut Australian industry's selling prices.

9.6.2. Price depression and suppression

ATM and Orrcon have claimed that they had to reduce prices as a direct result of price pressure from the imported product from China, Korea, Malaysia, Taiwan and Thailand.

In addition to the price undercutting analysis discussed above, Customs and Border Protection notes the following relevant evidence that HSS exported from China, Korea, Malaysia, Taiwan and Thailand to Australia in the injury analysis period appeared to have exerted direct price pressure on the

Australian industry.

1. Copies of Orrcon's monthly Import Parity Price (IPP) List – monthly price offering for certain products, taking into consideration price offers of imported HSS.
2. Copies of ATM's monthly Oztube and Ozrail price lists based on import parity pricing.
3. Market intelligence from ATM showing market price offers of imported HSS, demonstrated by emails showing formal price offers from HSS importers and internal emails recording verbal offers. It could be seen that the imported HSS prices were lower than the prices offered by Australian industry in the same time period (and indeed over the entire investigation period).

Customs and Border Protection considers this illustrates a significant degree of price transparency and sensitivity in the Australian HSS market. In this context, it is reasonable to expect that Australian industry would be cognisant of, and influenced by, competitors' prices when determining the prices they could achieve in the Australian market.

Using information provided by ATM and Orrcon and verified importer data, Customs and Border Protection has compared the Australian industry's monthly Import Parity Price (IPP) with the prices of imported HSS for a similar time period.

The data shows that ATM's and Orrcon's weighted average monthly IPP prices closely tracked monthly prices of HSS imported from the countries/region the subject of the investigation. This evidence supports the claim made by Australian industry that import prices were used to lever parity pricing from Australian manufacturers.

Having regard to the evidence discussed above, Customs and Border Protection considers that the dumping and subsidisation has afforded importers the capacity to offer HSS in Australia at prices significantly lower than they otherwise would have been in the investigation period. This has placed significant price pressure on the Australian industry, causing ATM and Orrcon to reduce prices to maintain volume.

The price pressures from dumped and subsidised⁶⁷ HSS have also prevented, to a significant degree, the Australian industry from increasing prices in line with increasing costs.

Accordingly, Customs and Border Protection finds that the dumping and subsidisation has caused the Australia HSS industry to experience price depression and price suppression in the investigation period.

⁶⁷ In the case of HSS exported to Australia from China.

9.7. Volume effects

9.7.1. Loss of sales volume

Whilst the Australian industry did lose sales volume over the injury analysis period, this was in-line with and in fact less pronounced than the lost sales volume in the overall market. The sales volume of imports from the countries/region the subject of the investigation experienced a contraction sharper than the contraction in the total market over the injury analysis period.

During Customs and Border Protection's verification visit, ATM submitted circumstantial evidence that they have lost some sales to imported products from the countries/region the subject of the investigation.

Notwithstanding ATM's evidence, Customs and Border Protection considers that the Australian industry's overall lost sales in FY2011 were more related to the overall downturn in the Australian HSS market. Customs and Border Protection concludes that the evidence is not sufficient to demonstrate that Australian industry suffered lost sales volume as a result of dumped or subsidised imports of HSS.

9.8. Profit effects

9.8.1. Reduced profit and profitability

The sections above indicate that the dumped and subsidised⁶⁸ HSS from China, Korea, Malaysia and Taiwan have caused price depression and price suppression. Noting that the Australian industry's volume decreased in the injury analysis period, the price effects caused by dumping and subsidisation have resulted in reduced profits and profitability.

9.9. Other possible causes of injury

Customs and Border Protection has considered whether injury to the Australian industry is being caused, or threatened by a factor other than HSS exported to Australia at dumped and subsidised prices.⁶⁹

9.9.1. Claims of poor service, or non-price factors

Southern Cross Steel Pty Ltd's submission of 24 February 2012 claimed that in addition to prices, there were other non-price factors that drove them to import HSS rather than purchase it from ATM. This submission stated:

In the past ATM would produce non-standard lengths to our requirements, store and allow draw down of stock over a given period. They now refuse to do so and demand minimum pack numbers...

⁶⁸ In the case of HSS exported to Australia from China.

⁶⁹ S.269TAE(2A)

Customs and Border Protection considers that whilst non-price factors may have been a consideration in purchaser's decisions to purchase imported HSS rather than locally manufactured HSS, it is clear that price remains an important factor.

Having regard to the magnitude and extent of the dumping and subsidisation, which afforded significantly increased price competitiveness for the importers of HSS, Customs and Border Protection considers the non-price factors do not detract from its conclusion that dumping and subsidisation has caused material injury.

9.9.2. Undumped Imports and imports from countries not the subject of the investigation

Customs and Border Protection has received several submissions from interested parties regarding the importation to Australia of HSS from origins other than China, Korea, Malaysia, Taiwan and Thailand.

An ASA submission of 30 March 2012 contends that imports from sources other than China, Korea, Malaysia, Taiwan and Thailand increased in the investigation period.

Customs and Border Protection has utilised the data in its commercial database to examine import volumes from origins other than China, Korea, Malaysia, Taiwan and Thailand during the investigation period.

It was noted that other sources of supply in the investigation period include Japan, South Africa and Vietnam.

Whilst the volume of imports from Japan, South Africa, and Vietnam is not immaterial, the volume is small in comparison to the volume of dumped and/or subsidised imports from China, Korea, Malaysia and Taiwan.

Given the transparency of price in the market discussed earlier, and the volume of dumped imports, it is considered likely that the price of the dumped imports has influenced the prevailing Australian HSS market price, including that of the imports from countries not subject of the investigation.

As the HSS exported to Australia from Saha and Pacific was found to be at export prices that were not dumped, Customs and Border Protection also considered whether these could have been a cause of injury to the Australian industry that cannot be attributed to dumping and subsidisation.

While it is recognised that the aggregate volume of HSS exported to Australia from Thailand by Saha and Pacific is not insignificant, Customs and Border Protection is of the view that the significantly larger volume of HSS that was dumped and subsidised⁷⁰ would have had greater influence on prevailing market prices for HSS in Australia during the investigation period.

⁷⁰ In the case of HSS exported to Australia from China.

Similarly, if the volume of HSS exported from Saha and Pacific are combined with the exports from countries not subject of the investigation, the aggregate volume is still significantly smaller than the volume of dumped and subsidised⁷¹ HSS in the investigation period.

9.9.3. New Australian industry entrant

Interested parties have provided submissions claiming that the Australian market for HSS has been strong throughout the investigation period; based on the fact that there was a new market entrant - ITM - during the investigation period. Confidential versions of submissions have estimated the size of ITM's sales during the investigation period and claimed that this volume equated to the volume of sales lost by ATM during the investigation period.

Customs and Border Protection understands that ITM commenced production in Australia in 2010. It seems apparent that ITM would not undertake the substantial investment required to establish a HSS production facility if they did not see a potentially profitable opportunity to supply elements of the Australian market.

Considering that ITM entered the market in approximately August 2010, it is expected that they would undergo a start-up transition period and their initial production volume, particularly in the first year of operation, would represent a very small percentage of the total Australian HSS production. ITM have declined to participate in this investigation and Customs and Border Protection have not received any accurate information pertaining to ITM's sales volume throughout the investigation period.

Considering the price sensitivity of the HSS market in Australia it is likely that as a new market entrant with a relatively small volume of sales, ITM would have little if any influence over the prevailing market prices of HSS in Australia. Customs and Border Protection consider that any injury caused to ATM and Orrcon from competition by ITM would be minimal.

9.9.4. Appreciation of the Australian dollar

A submission lodged on March 29 2010 by Howard Consulting, on behalf of several Australian importers, claimed that the significant appreciation of the Australian Dollar had improved the competitiveness of imports.

The submission provided as an attachment, slides from a presentation delivered by OneSteel on 2 May 2011 (OneSteel Operational Site Tour Presentation). These slides noted various market conditions and external factors affecting business performance, with page 37 of the presentation noting that:

Rapid FX appreciation particularly since August 2010 has led to lower

⁷¹ In the case of HSS exported to Australia from China.

import prices.

The submission later refers to OneSteel's Full Year Report to June 2011 which states that:

margins were adversely affected by the impact of the strong Australian Dollar on prices.

Customs and Border Protection accepts that the strong Australian dollar has made imported HSS more affordable (assuming all other factors remained the same).

However, in the context of HSS being exported to Australia from China, Korea, Malaysia and Taiwan at dumped and subsidised⁷² prices, the strong Australian dollar has served to amplify the increased affordability arising from the dumped and subsidised⁷³ export prices.

9.9.5. Inability or unwillingness to supply

A submission dated 25 November 2011 by Steel Supplies (a wholesaler steel merchant) claims that they have been denied supply of Australian tubular steel by OneSteel (Distribution) and BlueScope (Distribution) despite being aware of other industry members being able to purchase smaller quantities than Steel Supplies from both OneSteel and BlueScope.

A submission dated 24 November 2011 by Townsville Steel and Wire claims that they have been denied supply by OneSteel ATM and advised by Orrcon that they would not receive a competitive rate due to being in competition with Orrcon's distribution business.

Several other submissions have been received from interested parties claiming that they were denied supply of domestically manufactured HSS, and forced to purchase HSS from imported sources.

Customs and Border Protection is of the understanding that ATM predominantly sell to their own related distributors and other select, large distributors and Orrcon predominantly sell to their own distribution chain as well as independent distributors on application.

It is understood that, whilst some purchasers of HSS may not be able to purchase Australian manufactured HSS at a point in the supply chain that they are satisfied with (i.e. direct from ATM or Orrcon rather than via their distribution networks) it is apparent that locally manufactured HSS is available for purchase further along the supply chain.

However it is noted that any Australian industry unwillingness to sell at any point in the supply chain may influence purchasers to look to imported sources of HSS, rather than purchase Australian manufactured HSS.

⁷² In the case of HSS exported to Australia from China.

⁷³ In the case of HSS exported to Australia from China.

9.10. Summary – causal link

Customs and Border Protection has established a connection between imports of HSS from China, Korea, Malaysia and Taiwan at dumped and subsidised prices and the fact that prices of HSS at dumped and subsidised prices sold in Australia undercut the Australian industry prices across all finish categories of HSS throughout the investigation period.

The price undercutting and associated price pressures have contributed to price depression and suppression for the Australian industry, which has resulted in lower profitability.

Customs considers that other possible causes of injury do not detract from the assessment that dumping and subsidisation have caused material injury to the Australian industry.

Customs and Border Protection finds that dumped or subsidised imports of HSS imported to Australia from China, Korea, Malaysia and Taiwan have caused material injury to the Australian industry producing like goods.

PUBLIC FILE

10. WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?

10.1. Findings

Customs and Border Protection makes a finding that exports of HSS from Korea, Malaysia and Taiwan in the future may be at dumped prices, and exports of HSS from China may be at dumped and subsidised prices and that continued dumping and subsidisation may cause further material injury to the Australian industry.

10.2. Introduction

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping and subsidisation, anti-dumping measures and countervailing measures may be imposed on future exports of like goods. If the Minister is satisfied that the dumping and subsidisation and material injury may continue.

10.3. Customs and Border Protection's assessment

10.3.1. Will dumping continue?

Customs and Border Protection's dumping analysis shows that HSS exported to Australia from China, Korea, Malaysia and Taiwan during the investigation period were at dumped prices, with dumping margins ranging from 2.4% to 57.1%.

It is evident that many importers and distributors prefer to source HSS from multiple suppliers and they will continue to look for alternatives to locally produced HSS. Given the transparency and price sensitivity of the Australian HSS market, and the magnitude of the price undercutting by the dumped and subsidised imports, imported HSS will continue to be an attractive source of supply.

Considering the above factors existing in the Australian HSS market and the established routes to market, Customs and Border Protection considers that dumping will continue if anti-dumping measures are not imposed.

10.3.2. Will subsidisation continue?

Customs and Border Protection found that HSS exported to Australia from China during the investigation period were subsidised, with subsidy margins ranging from 2.2% to 54.8% ⁷⁴.

Some information has been presented which indicates that some of the programs found to be countervailable subsidies would cease to provide financial contributions in the future (particularly those tax programs under

⁷⁴ Excluding Huludao and Qingdao Xiangxing, which had nil or negligible subsidy margins

transitional arrangement until end 2012).⁷⁵ However, no information has been presented that indicates that other programs found to be countervailable subsidies would cease to provide HSS exporters financial contributions, or that these exporters are unlikely to continue to benefit from these programs.

Among these programs that it is considered will continue in future and is thus likely to benefit HSS exporters in future, is Program 20. This program is the program under which the majority of benefit to HSS exporters has been observed during the investigation period.

It is therefore considered that subsidisation will continue in the future.

10.3.3. Will material injury continue?

Customs and Border Protection has reviewed the Australian industry's performance over the injury analysis period and has made a finding that HSS exported at dumped and subsidised⁷⁶ prices has caused material injury to the Australian industry.

Customs and Border Protection considers that continuation of price competition from dumped imports from Korea, Malaysia and Taiwan and dumped and subsidised imports from China are likely to have a continuing adverse impact on the Australian industry. Customs and Border Protection considers that this impact may be particularly evident in price depression, price suppression and reduced profits and profitability.

Based on the available evidence, Customs and Border Protection makes a finding that exports of HSS from China, Korea, Malaysia and Taiwan in the future may be at dumped or subsidised prices and that continued dumping or subsidisation may cause further material injury to the Australian industry.

⁷⁵ See Appendix C.

⁷⁶ In the case of HSS exported to Australia from China.

11. NON-INJURIOUS PRICE

11.1. Introduction

Duties may be applied where it is established that dumped or subsidised imports have caused, or threatened to cause, material injury to the Australian industry producing like goods.

Under the *Customs Tariff (Anti-dumping) Act 1975*, the Minister must have regard to the desirability of ensuring that the amount of dumping and countervailing duty is not greater than is necessary to prevent injury or a recurrence of the injury.

S.269TACA of the Act identifies the non-injurious price (NIP) of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping and/or subsidisation.

Anti-dumping and countervailing duties are based on free-on-board (FOB) prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

Customs and Border Protection 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).

Having calculated the USP, Customs and Border Protection 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 import or export expenses and profit.

11.2. Assessment of NIP in SEF177

ATM provided a submission on USP and NIP and claimed that a USP should be based on the Australian industry's costs to make and sell from the investigation period plus an amount of profit based on the period January to September 2008.

ATM explained that the period used for a profit amount was found by Customs and Border Protection in Trade Measures Branch Report Number 144 (REP144 – in relation to investigation No 144) to be a period absent of material injury. Indeed, in REP144, Customs and Border Protection found that:

...the Australian HSS industry performed strongly in the first three quarters of 2008 in terms of profits and profitability before the onset of the global financial crisis.

Customs and Border Protection considered, for the purposes of the preliminary assessment of NIP in the SEF, that it was reasonable to adopt the approach to calculating USP that was submitted by ATM. Customs and

Border Protection calculated a USP for each different finish of HSS.

To calculate NIPs for the purposes of the SEF, Customs and Border Protection deducted from the USPs amounts for overseas freight, insurance, into store costs, importer expenses and profit. These deductions were based on verified importer data in relation to the four largest importers (by volume in the investigation period) from the countries/region subject of the investigation.

Customs and Border Protection noted that the average post-exportation expenses and profit did not vary significantly between HSS exported from different countries. Therefore, it calculated separate NIPs by finish but not by country.

11.3. Submissions in response to the SEF

ATM acknowledged the reason why Customs and Border Protection had not calculated NIPs separately by country, but submitted⁷⁷ that at least the overseas freight component of post-exportation costs should be specific to each country.

The ASA proposed⁷⁸ that in establishing the USP, Customs and Border Protection should consider prices in relation to HSS that was:

- deemed not to be dumped in this investigation;
- imported by the applicant;
- imported from countries not subject to this investigation; or
- from Australian HSS manufacturers "who have not supported the application".

Alternatively, if a constructed USP was retained, the ASA submitted⁷⁹ that the HRC cost should be the lesser of a range of specified HRC cost options; the cost to make and sell should be based on the most efficient Australian manufacturer and profit should be based on the average Australian HSS industry profitability two years either side of the 2008/09 financial year.

The ASA also submitted that, in determination of the NIP, certain subsidy assistance supplied to the applicant should be directly offset against the applicant's CTMOs.

Sanwa Pty Ltd submitted⁸⁰ that Customs and Border Protection should consider basing NIPs on ATM's imports from Vietnam, or imports from suppliers found not to be dumping.

Howard Consulting Pty Ltd submitted⁸¹, on behalf of Amity Pacific Pty Ltd; CMC Australia Pty Ltd; Stemcor Australia Pty Ltd; and Croft Steel Pty Ltd,

⁷⁷ ATM submission of 14 May 2012, p. 7-8

⁷⁸ ASA submission of 14 May 2012, p. 4

⁷⁹ ASA submission of 14 May 2012, p. 5

⁸⁰ Sanwa Pty Ltd submission of 9 May 2012.

⁸¹ Howard Consulting submission of 14 May 2012, p. 3

that an ATM 'domestic price premium' needs to be taken into consideration in calculating a NIP.

Orrcon submitted⁸² that the SEF calculation of NIP used profit numbers from a period of unprecedented profit in the Australian market.

The Steelforce Group⁸³ submitted that NIP calculations should take account of:

- the necessity for the Australian industry to compete with the lowest priced undumped HSS import competition;
- the benefit of the subsidies paid to Bluescope Steel (as ATM's HRC supplier) and to ATM; and
- any HRC import parity pricing policy in place between Bluescope Steel and ATM.

11.4. Final assessment of NIP

The arguments that NIP should be based on the prices of HSS exported to Australia that was undumped, or based on prices from countries other than those subject of the investigation, are not compelling. As discussed earlier, the aggregate volume of HSS exported to Australia that was either verified as undumped, or was imported from countries not subject of the investigation, is not insignificant. However, the aggregate volume of HSS exported to Australia at prices that were dumped and subsidised is significantly larger. It is reasonable to conclude that the sales in Australia of dumped and subsidised HSS have had a greater influence on the prevailing Australian market prices for HSS. Further, it is likely that the prices in Australia of dumped and subsidised HSS have influenced prices in Australia for the HSS that was undumped or imported from a country/region other than China, Korea, Malaysia and Taiwan.

In relation to the ASA proposal of basing USP on the prices of Australian manufacturers other than ATM, Customs and Border Protection considers it is not reasonable to regard the HSS prices in the investigation period of Orrcon, and/or ITM, as being a reasonable basis for USP and NIP. Earlier analysis concluded with a finding that dumping and subsidisation has caused price depression and price suppression for Orrcon. Logically then, its selling prices cannot be a suitable basis for USP and NIP. In the case of ITM, it is generally recognised that this relatively new Australian manufacturer accounted for a small proportion of Australian HSS production, and an even smaller proportion of the Australian HSS market, in the investigation period. Its prices are therefore unlikely to reflect a measure of the prices that ATM and Orrcon would have achieved in a market unaffected by dumping.

The remaining submissions relate to constructed USPs and subsequent NIP calculations.

⁸² Orrcon submission of 14 May 2012, p. 7

⁸³ Steelforce Group submission of 15 May 2012, p. 3

In terms of what cost should be used for HRC in a constructed USP, some interested parties presented alternatives to the verified costs of ATM, but failed to explain why the alternatives were necessary. Customs and Border Protection considers the most reliable and relevant HRC cost available for a constructed USP is the verified costs of ATM for the investigation period. While the Orrcon costs were also verified, the data was not suitable for distinguishing between different finishes accurately and was therefore excluded when constructing the USP.

Using the "most efficient" (or lowest cost) Australian producer as a basis for constructed USP is not considered reasonable in this case as such an approach would ignore the costs of one of the major producers of HSS in Australia, and thereby become less representative of the Australian industry as a whole. In any case, as explained above, the Orrcon unit costs were not considered suitable for USP purposes, and ATM's costs were not provided.

The ASA and the Steelforce Group considers that subsidies paid to ATM need to be taken into account for NIP calculations. The Steelforce Group did not provide any rationale or suggested methodology for such an approach, while the ASA submitted a calculation of its view of the effect on ATM's costs. This calculation assumed that the entire subsidy for OneSteel Limited was attributable to ATM's HSS products. Customs and Border Protection notes the \$64 million advance, provided by the Federal Government to OneSteel Limited under the Steel Transformation Plan, will be recorded as income in the company's financial statement for the 2011 financial year⁸⁴. It is difficult to see how this is relevant to the calculation of a NIP being calculated with respect to the investigation period (financial year 2011).

In considering an appropriate amount of profit for the USP, it is recognised that the profit rate used in the SEF calculations of USP reflects a period of particularly strong results for ATM relative to the remainder of the injury analysis period. Nevertheless, this profit was considered reasonable for the purposes of the SEF because it was a period found by Customs and Border Protection in a previous inquiry to be one where injury, if any, to the Australian industry that was caused by dumping and/or subsidisation was negligible. In addition, the profit result was one actually achieved by ATM, over a reasonable period of time (9 months), and it was verified by Customs and Border Protection.

However, Customs and Border Protection considers the inclusion of Orrcon's profit rates for the same period would be an improvement in terms of ensuring the profit rate used in USP calculations reflects one that was achieved in relation to all Australian production and sales of HSS at that time.

Accordingly, Customs and Border Protection calculated a weighted average profit margin for ATM and Orrcon for the first nine months of 2008, and used this as a basis for adding profit to the full cost to make and sell of ATM in the investigation period. Customs and Border Protection calculated separate

⁸⁴ <http://www.asx.com.au/asxpdf/20120130/pdf/4240544cf9v9f3.pdf> accessed 2 Jun 2012

USPs in this manner for each finish of HSS.

A price premium for domestic product is often not factored into a NIP calculation because it is difficult to accurately quantify. This is also the case for HSS. While some interested parties acknowledged that a domestic price premium exists, or should exist, the opinions of the magnitude were varied and supported only by anecdotal evidence. Customs and Border Protection has not taken account of any price premium when calculating NIP.

Lastly, Customs and Border Protection reviewed the post-exportation costs (per tonne), including overseas freight, used for NIP calculation and concluded the variation between such costs, per tonne, applicable to China, Korea, Malaysia and Taiwan was immaterial. Customs and Border Protection therefore remains satisfied that the deductions required from USP to arrive at NIP need not be calculated separately by country. This means the USP for each finish is the same for each country/region.

Having regard to the above, Customs and Border Protection found it was appropriate to construct USPs, separately by finish, and these should be based upon the verified CTMS data for ATM in the investigation period. An amount of profit, based on the weighted average profit rate (measured as a mark-up on full CTMS) of the ATM and Orrcon results for the first nine months of 2008 has been added. The NIPs have been calculated by deducting from the USPs amounts for overseas freight, insurance, into store costs, importer expenses and profit. These deductions were based on verified importer data in relation to the four largest importers (by volume in the investigation period) from the countries/region subject of the investigation. Customs and Border Protection calculated separate NIPs by finish, but not by country.

11.5. Comparison of NIPs and export prices

Customs and Border Protection compared NIPs with weighted average export prices of HSS exported from China, Korea, Malaysia and Taiwan during the investigation period. When considering the comparison separately for each country/region, each finish, and each exporter (or category of exporters), the NIPs were higher than the weighted average export prices in almost all cases.

This analysis supports the conclusion that dumped HSS exported to Australia from China, Korea, Malaysia and Taiwan, and subsidised HSS exported to Australia from China, have caused material injury to the Australian industry.

12. ANTI-DUMPING AND COUNTERVAILING MEASURES

Customs and Border Protection recommends to the Minister that a dumping duty notice be published in respect of HSS exported to Australia by all exporters from China, Korea, Malaysia and Taiwan. It also recommends that a countervailing duty notice be published in respect of HSS exported to Australia by all exporters from China, except for Huludao and Qingdao Xiangxing.

It is recommended that these duties include both fixed and variable duty components. This would be the combination of:

- a variable component of duty calculated as the difference between the export price like goods are exported at (the dumping export price or DXP) and a 'floor' price;⁸⁵ and
- a fixed percentage rate of duty that is calculated as a percentage of either the DXP of the floor price, whichever is the greater.

The levels of interim dumping duties recommended for HSS exports from Korea, Malaysia, and Taiwan are linked to the full margin of dumping in the case of all exporters. This is because, although the lesser duty rule is being applied, the NIP is not lower than the normal value for any HSS finish category, for any exporters from these countries. This can be described as the normal value forming the 'operative measure' in all cases for recommended measures in relation to Korea, Malaysia, and Taiwan.

In the case of China, the calculation of combined dumping and countervailing duties is not simply a matter of adding the reported dumping and subsidy margins together for any given exporter, or group of exporters. Rather, subject to the lesser duty rule (given effect through the NIP), the collective interim dumping duty and interim countervailing duty imposed in relation to HSS from China, as recommended in this REP, is the sum of:

- the subsidy rate calculated for all countervailable programs, including Program 20 – hot rolled steel provided by government at less than adequate remuneration; and
- the dumping rates calculated, less an amount for the subsidy rate applying to Program 20.

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 includes a major cost component that is based on surrogate data.

The lesser duty rule can only reduce the magnitude of the collective interim

⁸⁵ The ascertained export price determined in this investigation.

dumping duty and interim countervailing duty. This happens only in the case of certain finishes in the recommended measures for selected non-cooperating exporters from China.

Therefore, the operative measure in relation to all selected cooperating exporters from China is the normal value, and the recommended measures are linked to the full margin of dumping. The operative measure in relation to selected non-cooperating exporters is a mixture of the NIP and normal value, depending on the finish category.

Where the NIP is the operative measure, the lesser duty rule has taken effect to reduce the duties to a level sufficient to remove the injury caused by dumping and subsidisation.

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13. RECOMMENDATIONS

The Delegate of the CEO is satisfied that the dumping of HSS exported to Australia from China, Korea, Malaysia and Taiwan, and the subsidisation of HSS exported to Australia from China has caused material injury to the Australian industry producing like goods.

The Delegate of the CEO recommends that the Minister impose:

- anti-dumping measures on HSS exported to Australia from China, Korea, Malaysia and Taiwan; and
- countervailing measures on HSS exported to Australia from China (from all exporters other than Huludao and Qingdao Xiangxin).

The Delegate of the CEO recommends the Minister be satisfied:

- in accordance with s.269TAAD(1), that like goods sold in the country of export in arms length transactions in substantial quantities during an extended period for home consumption or export to a third country:
 - at a price that is less than the cost of such goods and;
 - it is unlikely that the seller of the goods will be able to recover the cost of those goods within a reasonable period;

the price paid for those goods is taken to not have been paid in the ordinary course of trade;

- in accordance with s.269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of HSS exported to Australia from China, Korea, Malaysia and Taiwan by the category of 'selected non-cooperating' exporters be determined under s.269TAA(1)(a), (b) or (c);

in accordance with s.269TAC(2)(a)(ii), that because of the situation in the market of the country of export is such that sales in that market are not suitable for use in determining price under subsection 269TAC(1), the normal value of goods exported to Australia from China cannot be determined under s.269TAC(1);

- in accordance with s.269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under s.269TAC(1), (2), (5C) or (5D) for the category 'selected non-cooperating' exporters;
- in accordance with s.269TACC(7) that subsections 269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred, or subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to a conferred benefit;

- in accordance with s.269TG(1) the amount of the export price of HSS that have been exported to Australia from China, Korea, Malaysia and Taiwan is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s.269TG(2) the amount of the export price of HSS already exported to Australia from China, Korea, Malaysia and Taiwan is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from China, Korea, Malaysia and Taiwan in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s.269TJ(2), countervailable subsidies have been received in respect of HSS already exported to Australia from China, and may be received in respect of like goods that may be exported to Australia from China in the future and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s.269TJA(1), that as to HSS that have been exported to Australia from China:
 - the amount of the export price of the goods is less than the amount of the normal value of the goods; and
 - a countervailable subsidy has been received in respect of the goods; and
 - because of the combined effect of the two, material injury to the Australian industry producing like goods has been and is being caused;
- in accordance with s.269TJA(2), that as to HSS that have already been exported to Australia from China:
 - the amount of the export price of the goods is less than the amount of the normal value of the goods and the amount of the export price if the goods exported to Australia in the future may be less than the normal value of the goods; and
 - a countervailable subsidy has been received in respect of the goods and may be received in respect of like goods that may be exported to Australia in the future; and
 - because of the combined effect of the two, material injury to the Australian industry producing like goods has been and is being caused.

The delegate of the CEO recommends the Minister determine:

- in accordance with s.269TAAD(4), the amounts for the cost of production or manufacture of goods in the country of export and the

administrative, selling and general costs associated with the sale of those goods;

- in accordance with s.269TAB(1)(c) the export prices for Dalian Steelforce, Hengshui Jinghua and Huludao be calculated having regard to all the circumstances of the exportation;
- in accordance with s.269TAB(3), the export prices for the categories of 'selected non-cooperating' exporters be determined having regard to all relevant information;
- in accordance with s.269TAC(2)(c), the cost of production or manufacture of the goods in the country of export, and the administrative, selling and general costs associated with the sale and the profit on that sale;
- in accordance with s.269TAC(6), normal values for the categories of 'selected non-cooperating' exporters having regard to all relevant information;
- in accordance with s.269TACB(1), by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of HSS from China, Korea, Malaysia and Taiwan were dumped; and,
- in accordance with s.269TACC(3), that financial contribution, received in respect of the goods, or of kind of goods other than that referred to in s.269TACC(2), has conferred a benefit;
- in accordance with s.269TACC(7), for selected non-cooperating exporters an alternative basis for deciding whether a benefit has been conferred or for working out the amount of subsidy attributable to the benefit.

The delegate of the CEO recommends the Minister direct:

- in accordance with s.269TAC(8), the price paid or payable for like goods sold by:
 - Dalian Steelforce;
 - Hengshui Jinghua;
 - Huludao;
 - Qingdao Xiangxing;
 - Zhejiang Kingland;
 - TFQ
 - Kukje;
 - Alpine;
 - Shin Yang; and
 - Ta Fong

be taken to be such a price adjusted for differences between domestic

and export sales to ensure a fair comparison.

The delegate of the CEO recommends the Minister compare:

- in accordance with s.269TACB(2)(a), the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The delegate of the CEO recommends the Minister declare:

- in accordance with s.269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to:
 - the goods exported by all exporters from China, Korea, Malaysia and Taiwan, to the extent permitted by s.269TN; and
 - like goods that were exported to Australia by all exporters from China, Korea, Malaysia and Taiwan, after the CEO made a PAD under s.269TD on 23 December 2011 but before publication of the notice, to the extent permitted by s.269TN;
- in accordance with s.269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, Korea, Malaysia and Taiwan, after the date of publication of the notice;
- in accordance with s.269TJ(2), by public notice, that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, except Qingdao Xiangxing and Huludao, after the date of publication of the notice.

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APPENDIX A – ASSESSMENT OF MARKET SITUATION – CHINA

PART I INTRODUCTION

Customs and Border Protection's assessment of whether a particular market situation existed in the Chinese HSS market during the investigation period is detailed within this appendix.

I(i) Allegations of a market situation

In its application, ATM alleged that, during the investigation period, a particular market situation existed in the Chinese HSS market that rendered sales in that market unsuitable for determining normal value under s.269TAC(1).

This claim focussed on allegations that the GOC has heavily influenced the domestic HSS market in China through:

- provision of steel raw materials (HRC and/or narrow strip) at less than adequate remuneration (alleged subsidy Program 20);
- the prevalence of SOEs (SIEs) involved in the manufacture of HRC and narrow strip in China that receive benefits for the production of these materials resulting in artificially low raw material input prices for HSS manufacturers in China;
- reduced and/or subsidised energy (electricity) input prices in the manufacture of HRC, narrow strip and HSS itself; and
- benefits received by HSS manufacturers from the GOC including reductions in taxes, exemptions on duties and VAT, the provision of grants, and concessional interest payments (i.e. government subsidies) that impact the selling prices for HSS manufactured in China.

ATM's allegations strongly relied on the findings of CBSA in its 2008 investigation into carbon steel welded pipe (CSWP) from China (a sub-set of HSS), during which the CBSA conducted a 'Section 20'⁸⁶ inquiry.

This inquiry resulted in the CBSA finding that:

... the GOC has substantially determined the domestic prices in the welded pipe sector through a number of methods, namely:

- *by controlling the export levels of welded pipe sector through various tax mechanisms to maintain domestic prices in the welded pipe sector at a certain level;*
- *by influencing the price of the main raw material input, hot-rolled sheet and strip that is used in welded pipe sector, and by doing so*

⁸⁶ Of the Canadian Special Import Measures Act 1985

maintaining the domestic prices in the welded pipe sector at a certain level;

- *through various VAT tax policies that have affected the level of profits of the producers in the welded pipe sector which will affect domestic selling prices; and*
- *through various means regulated the number of and controlled the production of producers in the welded pipe sector in order to affect the domestic prices.*⁸⁷

Further, ATM relied upon the findings of the 2008 European Commission (EC) investigation into welded tubes and pipes of iron or non-alloy steel. During this investigation, 6 Chinese exporters of the investigated goods claimed 'market economy treatment' from the EC, however the EC did not find that these exporters qualified for this treatment, as they did not meet the following criteria:

- (i) business decisions are made in response to market signals, without significant state interference and must reflect market values
- (ii) firms have one clear set of independently audited accounting records; and
- (iii) no distortions have been carried over from the non-market.

It is noted that both the EC and Canadian tests applied in the above-mentioned investigations are distinctive from that applied by Customs and Border Protection in its assessment of whether a 'market situation' exists in a particular market. However, it is considered that certain considerations of the EC and CBSA are relevant to Customs and Border Protection's assessment, and have been taken into account in this assessment where relevant.

In CON177, it was accepted that ATM provided sufficient evidence in the application to support its claim that domestic sales of HSS were unsuitable for the purposes of determining a normal value in China under s.269TAC(1), given the degree of government interference and the likely impact on competitive conditions on the domestic market in China, and investigations into these allegations were conducted.

(ii) Australian legislation, policy and practice

China as a market economy

Australia treats China as a market economy for anti-dumping purposes and Customs and Border Protection conducts its investigation in the same manner for China as it does for other market economy members of the World Trade Organisation (WTO).

Irrespective of the country subject of the investigation, the Australian anti-

⁸⁷ CBSA, *Statement of Reasons Concerning the making of final determinations with respect to the dumping and subsidizing of Certain Carbon Steel Welded Pipe Originating in or Exported from the People's Republic of China*, August 2008 at page 64.

dumping framework allows for rejection of domestic selling prices in market economies as the basis for normal value where there is a situation in the market making the sales unsuitable, as outlined below.

The Act

S.269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold domestically in the ordinary course of trade in arm's length transactions.

However, s.269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the Minister⁸⁸ is satisfied that:

'...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 (1).'

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction⁸⁹ or third country sales.⁹⁰ Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

S.269TAC(2)(c) provides that a cost construction of normal value comprises the sum of what the Minister determines to be the cost of production or manufacture of the exported goods (on the assumption the goods were sold domestically in the ordinary course of trade rather than being exported) and the administrative, selling and general costs associated with the sale and the profit on that sale.⁹¹

S.269TAC(2)(d) provides that where the Minister directs that third country sales be used for normal value, it will be based upon the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country.

Policy and practice

In relation to market situation, the Dumping and Subsidy Manual states:

'Sales that would otherwise be relevant for determination of normal value may be unsuitable because the price does not reflect a fair price in normal market conditions. The legislation does not define market

⁸⁸ In this case, the Minister for Home Affairs.

⁸⁹ S.269TAC(2)(c)

⁹⁰ S.269TAC(2)(d)

⁹¹ The inclusion of an amount for profit is conditioned by s. 269TAC(13), which provides that 'where, because of the operation of s.269TAAD, the normal value of goods is required to be determined under subsection (2), the Minister shall not include in his or her calculation of that normal value any profit component under subparagraph (2)(c)(ii).' S.269TAAD applies to sales deemed not to be in the 'ordinary course of trade' due to sales being at below cost prices.

situations that would render domestic sales as unsuitable. The investigation and analysis of each case must fully set out the reasons for the unsuitability of sales before determining normal value under succeeding provisions of s.269TAC of the Act.

In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) of the Act because of the situation in the market of the country of export, Customs and Border Protection may have regard to factors such as:

- *whether the prices are artificially low; or*
- *whether there is significant barter trade; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1) of the Act.*

Government influence on prices or costs could be one cause of 'artificially low pricing'. Government influence means influence from any level of government.

*In investigating whether a market situation exists due to government influence, Customs and Border Protection will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.*⁹²

[Emphasis added]

It is considered that the underlined text reflects the nature of Customs and Border Protection's assessment in this appendix in relation to the existence of a market situation in the Chinese HSS market.⁹³

It is considered that the assessment as to whether a market situation exists in a particular market constitutes a positive test. That is, before actual selling prices are rejected, Customs and Border Protection needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes.

Although it is for Customs and Border Protection to establish the nature and consequence of the 'market situation', including an evaluation of whether

⁹² Customs and Border Protection Dumping and Subsidy manual June 2009, pp 26-27

⁹³ It noted that Customs and Border Protection considers it is possible for a degree of government influence to exist in a market without rendering the situation in the market such that sales are unsuitable for establishing normal value under s.269TAC(1). However, Customs and Border Protection considers that significant government influence in relevant market factors could distort prices to a degree that those prices may be unsuitable for normal value.

there is an impact on domestic prices, it is considered that the pricing effect does not have to be quantified.

I(III) Previous HSS market situation investigations

2006 Investigation (No 116)

In 2006, Customs and Border Protection conducted an investigation into HSS from China (and other countries/regions).

That investigation also involved an assessment of whether there was a particular market situation in China that made domestic prices unsuitable for determining normal value. The final findings of that investigation (including the assessment of market situation) are contained in Customs and Border Protection *Report to the Minister No 116* (REP116).

In REP116, Customs and Border Protection concluded that it was not satisfied that such a market situation existed in China during that case's investigation period.

2008 review (No 143) and Investigation (No 144)

In 2008, Customs and Border Protection conducted an investigation into HSS from China and Malaysia (certain exporters) and a review of HSS exported from China.

This investigation and review also involved allegations and a subsequent inquiry into whether there was a particular market situation in the Chinese HSS market during the investigation and review's investigation period.

However, both the investigation and review were terminated on the grounds that Customs and Border Protection was not satisfied that injury had been caused by dumping and consequently no final assessment was made as to whether a market situation existed.

I(iv) Information relied upon

In addition to the information contained in ATM's application for this investigation, Customs and Border Protection has also received the following information relevant to the assessment of the existence of a particular market situation in China:

- various submissions from interested parties;
- responses to the Chinese Exporter Questionnaire; and
- the response from the GOC to the GQ, SGQ and SSGQ.

In addition, independent research into these matters has been conducted.

This information has been analysed, and assessed in arriving at the conclusions in this appendix.

I(v) Background – HSS raw materials

It is understood that HSS can be made from either:

- HRC;
- cold-rolled coil (CRC); or
- narrow strip.

These can either be unfinished (black) or pre-galvanised.

Most commonly, HSS is manufactured from HRC in most of the countries/region investigated, but in China, HSS is commonly made from both HRC and narrow strip (which is a distinguishing feature of the Chinese market not seen in the other countries/region under investigation. Customs and Border Protection is not aware of any instances in China where HSS manufacturers use CRC.

It is understood that narrow strip is produced directly from heating and rolling steel billet, as opposed to HRC, which is made from heating and rolling wider steel slabs, and has a different production process and different cost structure from HRC (including higher scrap output and lower production efficiency).

During the current investigation, importers, exporters and the Australian industry have expressed the understanding that the use of narrow strip is decreasing in the production of HSS in China.

As part of its examination of the Chinese HSS market, Customs and Border Protection has also examined the Chinese markets for HRC and narrow strip, and the raw materials for these products themselves.

For the purposes of this appendix, it is considered useful to briefly outline the process of making these raw materials.

As discussed above, Customs and Border Protection understands that HRC is produced by the heating and rolling of wide steel slabs. This results in large, wide steel coils. Conversely, narrow strip is made from heating and rolling narrower steel billets, which results in smaller, narrower steel coils.

In terms of the production of HRC and narrow strip itself, it is understood that:

- steel billets and slabs are made from liquid steel that has been cast to the certain form
- liquid steel is made by combining iron, varying amounts of steel scrap and fluxes in a furnace;
- iron is smelted by combining iron ore, coke and limestone in a furnace; and
- coke is produced from coking coal, which is converted to coke through a heating process ('coking').

Customs and Border Protection understands that it is common for steel billets in China to contain a higher proportion of scrap steel than steel slabs (in most cases consisting predominantly of re-cast scrap steel). For this reason,

narrow strip (made from billets) is commonly of a lower quality than HRC (and is expected to be lower in price as a result).

Customs and Border Protection also understands that, due to its lower quality properties, narrow strip can only be used to make CHS, as it cannot be formed into RHS or SHS (rectangular or square) without experiencing cracking/splitting in its corners.

It is further understood that, in relation to coke, the practice in China is generally to import coking coal and convert it to coke in country, for use in domestic iron smelting.

I(vi) Appendix structure

In undertaking its assessment of the Chinese iron and steel industry (including the HSS market), Customs and Border Protection has identified and examined various GOC influences in the Chinese iron and steel markets, and assessed their likely impact on the price of HSS.

This appendix therefore takes the format of:

- PART II - outlining the major identified GOC influences and measures in the Chinese iron and steel markets
- PART III - assessing whether a particular market situation was created by this influence
- PART IV - consideration of submissions made in response to SEF177

I(vii) The 'iron and steel industry'

This appendix focuses on an assessment of the Chinese iron and steel industry, and uses this and related terms throughout (e.g. 'iron and steel enterprises').

The GOC's *Development Policies for the Iron and Steel Industry* (the National Steel Policy or NSP)⁹⁴ defines the 'iron and steel industry' as follows.

The term 'the iron and steel industry' as mentioned in the present Development Policies covers:

the selection of iron mines, manganese mines and chromium mines and working techniques and relevant supporting techniques such as agglomeration, carbonization, iron alloy, carbon products, fire-resisting materials, iron smelting, steel rolling and metal products.

The NSP is discussed in detail in II(ii) of this appendix.

The NSP definition of the Chinese iron and steel industry is broad, and extends from raw material mining through to the production of steel products

⁹⁴ GOC response to the GQ, Attachment A11.

themselves (including HSS).

The term 'iron and steel industry' and related terms is therefore used in this appendix by Customs and Border Protection in the broad sense that the GOC uses it – ranging from the mining of steel raw materials, through to the manufacture of HSS and other metal products.

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PART II GOC INFLUENCE ON CHINESE IRON AND STEEL INDUSTRY

II(I) Introduction

Customs and Border Protection has identified various GOC influences that relate to the Chinese iron and steel industry.

These take the form of:

1. broad, overarching GOC macroeconomic policies and plans that outline aims and objectives for the Chinese iron and steel industry; and
2. more specific 'implementing measures' that go towards actively executing the aims and objectives of these policies and plans.

These identified policies, plans and implementing measures are numerous, and it is considered that it is not practicable to undertake detailed discussion of each identified item. Instead, Customs and Border Protection has sought to outline and assess the most prominent of these in this appendix.

II(II) Broad macroeconomic policies

The National Steel Policy

On July 8 2005, the GOC's Order No. 35 of the National Development and Reform Commission and the National Steel Policy (or NSP) were promulgated, after the approval of the GOC's State Council.⁹⁵

The introduction to the NSP reads as follows:

...In order to elevate the whole technical level of the iron and steel industry, promote the structural adjustment, improve the industrial layout, develop a recycling economy, lower the consumption of materials and energy, pay attention to the environmental protection, enhance the comprehensive competitiveness of enterprises, realize the industrial upgrading and develop the iron and steel industry into an industry with international competitiveness that may basically satisfy the demand of the national economy and social development in terms of quantity, quality and varieties, we have formulated the development policies of the iron and steel industry according to the relevant laws and regulations and the domestic and international situations the iron and steel industry faces so as to guide the sound development of the iron and steel industry.

⁹⁵China's Cabinet, which has the power to enact and amend administrative regulations at the national-level pursuant to national legislation, and in areas where there is no legislation enacted by the NPC, the State Council also has powers to enact or amend administrative regulations in any other aspects of economic and social affairs under the Constitution.

The NSP goes on to outline the GOC's aims and plans for the Chinese iron and steel in Chapter I as follows:

- maintain steel production capacity of iron and steel at a 'reasonable scale' and have the 'comprehensive competitiveness' reach an 'internationally advanced level';
- by 2010, elevate the production proportion of 'good' iron and steel products and satisfy the development requirements of other national industries;
- increase the size of 'backbone' enterprises by acquisition and reorganisation, increasing industry concentration, so that by 2010 the top ten enterprises account for over 50% of national production (70% by 2020);
- change 'unreasonable layout' by 2010 through 'layout adjustment' and form a 'comparatively reasonable industrial layout' by 2020;
- elevate environmental protection and resource utilisation, and waste management (setting targets for energy and water consumption per tonne of coal and steel by 2010 that 'shall' be met; and
- meeting standards for 'wastes as discharged' and controlling volume of this waste.

The policy continues by outlining matters that go towards meeting the aims of the NSP. These appear to be more tangible 'action-items' rather than broad policy aims. Of note are:

- cutting of production and relocation of enterprises in certain regions while encouraging establishment in other regions;
- elimination of 'backwards capacity';
- prescribing equipment levels 'technical and economic indexes' and industry access conditions;
- offering support for research and development;
- encouraging the use of domestic technologies and equipment and prohibiting the use of second-hand 'backward' production equipment that has been 'eliminated';
- encouraging mergers and reorganisation of iron and steel enterprises;
- closely scrutinising new steel projects (subject to examination, approval and verification by the NDRC);
- setting minimum levels of 'self-owned capital' in certain projects and limiting foreign investment in the iron and steel industry (foreign investors prohibited from having a controlling share); and
- restricting exports of 'preliminary processed products' such as coke, iron alloy, pig iron, waste steel and steel ingot with 'high energy-consumption and serious pollution'.

The NSP further outlines the repercussions for not adhering to its policies (for enterprises in the industry and administrative entities as well) e.g. relevant GOC departments are to deny registration, not issue production permits, not process import tax refund, etc. for enterprises that do not comply with the NSP, and financial institutions are not to provide finance to these entities.

National and regional five-year plans/guidelines

National FYPs

At the Central Government level, the GOC develops and issues five-year plans (FYPs) for the economic and social development of the nation. The first of these national FYPs was issued in 1953, and subsequent FYPs have been issued periodically since this time.

Customs and Border Protection understands that China's National Development and Reform Commission (NDRC)⁹⁶ plays a primary role in the development of these FYPs, and they are debated and given final approval by the National People's Congress (NPC), the Chinese legislature and highest GOC body.

Further, each FYP is compiled in accordance with the 'suggestions' of the Central Committee of the Communist Party of China on the formulation of that particular FYP.

The current national FYP is the *Guidelines of the 12th Five-Year (2011-2015) Plan of the People's Republic of China for the National Economic and Social Development*⁹⁷ (the 12th National FYP), which was approved by the NPC in March 2011, a few months prior to the end of the investigation period.

The previous plan, the *Eleventh Five Year (2006 – 2010) Plan of the People's Republic of China for the National Economic and Social Development* (11th National FYP)⁹⁸ was promulgated in 2006 and relates to the years preceding, and the majority the investigation period itself. The 11th FYP is therefore considered most relevant to the investigation into HSS.

The stated purpose of the 11th National FYP is to:

'...clarify the national strategic intention, define key emphasis in the government work, and guide the behaviour of market subject'.

The plan's introduction notes it is:

'...the common program of action of our people...and is the important basis for the government to fulfil the responsibility of economic adjustment market control and surveillance, social management and public service'.⁹⁹

⁹⁶ The GOC submitted in response to Part C1 of the GQ that the NDRC is 'China's high-level macroeconomic and social development strategy planning agency. It has been responsible for introducing and facilitating the implementation of China's macroeconomic and overall social development strategies.'

⁹⁷ GOC response to the GQ, Attachment 143.

⁹⁸ GOC response to the GQ, Attachment 22.

⁹⁹ 11th National FYP, page 1.

The 11th National FYP (and all other FYPs) sets out the GOC's general aims, principles and objectives for development of the Chinese economy of the following five-year period, as well as specific development aims for regions, social groups (e.g. peasants) and industries/sectors in China.

In relation to the steel industry, Chapter 13, of the 11th National FYP refers to the adjustment of the raw material 'structure and distribution'. Section 1 of Chapter 13 outlines the GOC's aims and objectives relating to the iron and steel industry specifically:

Adhere to domination of domestic demand, make efforts to resolve surplus production capacity, strictly control additional iron and steel production capacity, accelerate the elimination of backward technology, equipment and product and improve iron and steel product grade and quality. Push iron and steel industry to develop recycle economy and exert the product manufacture, energy conversion and waste digestion and treatment function of iron and steel enterprises. Encourage enterprises to carry out transregional collective restructuring and form several enterprises with international competitive force. In combination with the relocation of urban iron and steel enterprises such as Shougang and elimination of backward production capacity, construct ¹⁰⁰ Heifidian iron and steel base. Actively utilize low grade iron ore resources.

Further, Chapter 19 of the 11th National FYP outlines specific development goals for certain regions of China, noting that the Central and Northeast regions should focus on the development of the steel industry in those regions (and the iron industry in the Central region as well).

These statements clearly articulate the GOC's desire to re-structure, develop and in some cases 'control' aspects of the domestic iron and steel industry, and display the importance placed by the GOC on the development of its iron and steel industries.

Further, many of these aims, goals, and objectives have been clearly carried into the current (12th) FYP, in fact noting the GOC has issued an industry-specific '12th Five-Year Plan of Iron and Steel Industry'¹⁰¹ that operates in conjunction with the 12th National FYP, listing objectives such as 'accelerate products upgrading', 'promote energy conservation and emission reduction in depth', 'strengthen technology innovation and technology reform', 'eliminate backward production capacity', 'optimize industry layout', and 'enhance resource safeguard ability'.

¹⁰⁰ 11th National FYP, page 16.

¹⁰¹ GOC response to the SGQ, Attachment 144.

Regional FYPs

At the provincial (and in some cases municipal) level, the GOC develops and disseminates subordinate FYPs, which reflect the GOC's objectives of the national FYP as they apply specifically to that province/region.

As with the 11th National FYP, Customs and Border Protection has observed multiple references to developing and advancing the Chinese iron and steel industry in the 11th FYPs of various provinces, as outlined below.

*Outline of the Eleventh Five-Year Plan for the Economic and Social Development of Hebei Province:*¹⁰²

According to high-end, high-quality goods, specialization, deeper processing direction, catching a variety, grasping quality, to grasp integration, supporting excellent and eliminating inferior, optimizing enterprise organization structure, product structure, technical equipment structure and industrial layout, improve industrial concentration and the level of technology. Build Tang gao and Han Gang two enterprise group with millions tons level, and Caofeidian high-quality plate, Chengde vanadium and titanium products two big base, strengthen six products series of board strips, wire rods, pipe, section bar, special steel and deep processing. Speed up project construction of overall plan of optimizing industrial update and Caofeidian steel, Han Gang structure, and realizes big province of steel to strong province of steel.

Outline of the Eleventh Five-Year Plan for the Economic and Social Development of Shandong Province:

Strictly execute the state iron and steel industrial policies, encourage combination and restructuring, enhance industrial concentration, develop high efficiency steel products, consolidate large-scale iron and steel bases, strengthen market competitiveness, and by 2010, the sales revenue of the material industry will reach RMB 760 billion.

Note: This FYP includes a specific reference to the central iron and steel industry industrial policies, i.e. the NSP.

*Outline of the Eleventh Five-Year Plan for the Economic and Social Development of Jilin Province (2006-2010):*¹⁰⁴

Transform and update metallurgy industry cluster. Use high and new technology actively; strive to develop high quality and high value-added metallurgy products, form relative thorough metallurgy industry system, and construct important high-quality fine steel production base

¹⁰² GOC response to the SGQ, Attachment 147

¹⁰³ GOC response to the SGQ, Attachment 146

¹⁰⁴ GOC response to the SGQ, Attachment 148

in the northeast. Focus on supporting three series products: stainless steel and products, and actively promote reorganization of ferroalloy group and carbon group, on the basis of strengthening reconstruction and enlarging capacity of ferroalloy and carbon products, and promote the construction of million tons high-quality goods steel project, extend to develop stainless steel series products; Special steel, rely on Jianlong firm accelerate the implementation of million tons of steel project, and plan and construct Panshi metal products industrial park...

Outline of the Eleventh Five-Year Plan for the Economic and Social Development of Tianjin City:¹⁰⁵

Strengthen competitive industry

Metallurgical industry - According to principles of controlling total amount, expanding high-quality goods, reducing energy consumption, speeding up restructure of the, promote adjustment of metallurgical industry structure actively. Adopting advanced technology and equipment, accelerate transform and upgrade of steel pipe capacity, 'TianSteel' move to east, build plate base and high-grade metal products and other important projects, form commanding heights of industry. Build tubular product base with seamless steel as leading, high quality steel production base with cold rolled sheet, galvanized sheet, color-coated plate, copper and stainless steel plate as leading, and high quality steel products processing base with special wire rope, and tyre cord, prestressed steel strand of low relaxation as leading, and build petroleum steel pipes and fine steel deep processing base in the downstream of Haihe river. By 2010, obtain capacity of 2.6 million tons of seamless steel tube, 10 million tons of plates, 1 million tons of high-grade sheet metal products.

The statements made in these provincial and municipal FYPs closely align with objectives outlined in the 11th National FYP in relation to the iron and steel industry.

HSS enterprises that manufactured and exported HSS to Australia during the investigation period were located in all of these provinces/regions.

Blueprint for Steel Industry Adjustment and Revitalization

In March 2009, the Chinese State Council released the *Blueprint for Steel Industry Adjustment and Revitalization* (the Revitalization Plan).¹⁰⁶

The Revitalization Plan, which identifies the importance of the steel industry to the Chinese national economy, states its purpose and objectives follows:

To cope with the impact of international financial crisis on the national

¹⁰⁵ GOC response to the SGQ, Attachment 145

¹⁰⁶ GOC response to the GQ, Attachment A12.

economy, materialize the general principle by the State Council of stabilizing growth, enhancing domestic demands and adjusting the structure, ensure stable operation of steel industry, accelerate structural adjustment, and facilitate industrial upgrading, this blueprint is hereby formulated as an comprehensive action plan of measures for the steel industry to deal with the current situation, which is valid from 2009 to 2011.

The Revitalization Plan goes on to highlight the challenges faced by the Chinese steel industry at the time of formulating the plan, including production capacity exceeding demand, weak innovation (with high-end products being imported rather than domestically made), poor geographical location of certain enterprises (restricted as to resource access), low concentration in the industry with major producers accounting for less than 30% of total production), and 'weak' domestic resources (in particular, limited domestic sources of iron ore).

The Revitalization Plan is aimed at addressing these matters, and sets out principles and targets of the plan.

The Revitalisation Plan outlines 8 broad 'achievements' (which have also been referred to as 'tasks') designed to carry out the plan. These are:

1. stabilising the domestic market and improving climate for export;
2. speeding up the dismantling of 'backward capacity' while 'strictly keeping the total standstill' (controlling production levels);
3. increasing industry concentration and 'enhance' reorganisation (through promoting mergers and acquisitions including promoting specifically-named mergers)
4. encouraging technical innovation and progress;
5. rationalising the location of capacity (including building a 'coastal steel base' and ensuring the Shougang and Caofeidian Steel projects are realised)
6. raising product quality and changing product types produced (e.g. developing 'key steel products (high-speed railway, high-strength automotive, etc) and raising the 'certificate standard' to promote steel quality to 'reach advanced international level');
7. stabilizing the import of iron ore (including 'normalize' the market order – including building an 'import pricing mechanism'¹⁰⁷ – some sources have said this is aimed to go as far as reducing the price of iron ore);¹⁰⁸ and
8. develop resources domestically and internationally (increasing the level of iron ore exploitation, encourage ore exploitation abroad, etc.).

The plan further outlines 'policy options' for the Revitalisation Plan:

¹⁰⁷ In is response to the SGQ, the GOC submitted that there has been 'no detailed progress' on implementing this mechanism (Question 33(c)(ii)).

¹⁰⁸ CISA Unveils revitalisation plan for Chinese steel industry,
<http://www.mineprocessing.com/News/detail-a738-b0-c0-d0-e0-f.html>

- rescheduling import and export tariff rates – continuing the policy orientation of controlling the export of ‘two high, one resource’¹⁰⁹ and low value-added goods;
- raising VAT refund rates for ‘steel products featured with high technical content and high value-added’;
- ‘severely’ enforcing environmental and resource management policies;
- improve the ‘Steel Industry Policy’ (the NSP) including updating the ‘Catalogue of Structural Adjustment of Industries’ (thought to be the ‘Directory Catalogue on Readjustment of Industrial Structure’ – see Section II(iii) of this appendix);
- establishing an information-sharing system for GOC departments to provide information for future decision-making;
- providing grants to iron and steel enterprises for various reasons (research and development, cash flow management); and
- ‘discriminate financially’ enterprises that build in violation with laws or regulations, or who have ‘backwards capacity’.

Many of these aims and objectives closely align with those of the NSP and the 11th National FYP. Specifically, the aims to direct the structural adjustment of the domestic steel industry through the merger and consolidation of steel enterprises, the elimination of backwards capacity, the setting of standards for the industry and establishing technological development standards.

In many ways, the Revitalization Plan appears to be a continuation and a reiteration of many of the aims and objectives of the NSP and the 11th National FYP, in response to the challenges highlighted during the global financial crisis (GFC).

Alignment and importance of GOC policies

The 11th National FYP was issued for the period 2006 – 2010, shortly after the promulgation of the NSP in 2005, while the Revitalisation Plan was promulgated in 2009 for the period 2009 – 2011. Each policy/plan is complementary, and consistent in their aims and objectives for the Chinese iron and steel industry, with many common aims and objectives between the three documents observed, such as to:

- eliminate backwards capacity;
- control production levels;
- encourage mergers, restructuring and relocation;
- promote technological and product quality improvement; and
- implement and encourage environmental measures.

It is considered that the 11th National FYP, the NSP and the Revitalization

¹⁰⁹ The GOC has advised this refers to high emission, high energy consumption, resource commodities (response to SGQ, Question 33(d)).

Plan comprehensively and collectively outline the GOC's macroeconomic policy for the Chinese iron and steel industry from 2005-2011, and that these policy aims and objectives have been continued past 2011 in the 12th National FYP and the 12th Five-Year Plan of Iron and Steel Industry.

It is further observed that multiple GOC policies, plans and measures issued prior to the NSP in 2005 have similar goals and objectives to the NSP, 11th National FYP and Revitalization Plan. These include the:

- *Tenth Five-Year Plan for the National Economic and Social Development of the People's Republic of China (2001 – 2005)*.¹¹⁰
- the *Directory Catalogue on Readjustment of Industrial Structure* (discussed in Section II(iii) of this appendix); and
- the State Economic and Trade Commission's (SETC)¹¹¹ *Development Plan for the Metallurgical Industry (2001 - 2005)*.¹¹²

Customs and Border Protection observes that the Chinese iron and steel industry has been a focus of the GOC for over a decade.

In addition to outlining the GOC aims and objectives in relation to the Chinese iron and steel industry, these macroeconomic plans highlight the overall importance of the industry to the Chinese economy. For example, the NSP identifies the iron and steel industry as 'an important basic industry of the national economy', the Revitalization Plan identifies the industry as a 'pillar industry' and states:

Steel industry is an important mainstay industry for national economy, which is widely influenced to the whole society, highly interrelated between industries, and significantly stimulated the consumption, and plays a crucial role in the economy, social development, finance and taxation, national defense construction and employment stability.

Customs and Border Protection observes that the importance of the iron and steel industry to the entire Chinese economy and development is consistently acknowledged by the GOC.

Implementation of GOC macroeconomic policies

GOC position

¹¹⁰ GOC response to the GQ, Attachment 23.

¹¹¹ This entity no longer exists. The functions of SETC were absorbed by the NDRC in 2003.

¹¹² Although Customs and Border Protection has been able to access the text of this plan, Asia Times Online reported in its article *Execution plan for China's industrial revolution* of July 20, 2001 (<http://www.atimes.com/china/CG20Ad04.html>) that it was 'based on China's 10th Five-Year Plan ... (and) is aimed at promoting the restructuring and upgrading of the industrial sector. The article further reported the objectives of the plan include advancing the product quality of certain enterprises (Baosteel, Anshan Steel, Wuhan Steel and Shougang) up to the 'world's advanced level' and enable them to clinch a certain share of the international market, and to 'improve the quality of steel products and further explore H-shape steel market, to strictly control the construction of new welded tube units and speed up the pace of eliminating backward high-frequency welded tube units.'

In its response to the GQ and SGQ, the GOC has indicated that the importance of its broad macroeconomic policies is limited, suggesting that they are somewhat intangible and set out the GOC's aspirations for the steel industry, rather than act as enforceable plans that the GOC sets out to achieve.

In relation to its FYPs, the GOC has submitted that:

*An FYP is an aspirational guidance document, and does not set mandatory targets for the steel industry. Moreover, industrial policy aspirations of an FYP are relatively macroeconomic and vague, rather than being specific and quantifiable aims.*¹¹³

Similarly, the GOC has submitted in its response to Question C2.9(a) of the GQ:

The National Steel Policy is an aspirational document, not a legal document. It sets out the means by which the steel industry can modernize its operation and remain competitive and efficient in the future. As such, the objectives of the National Steel Policy are to elevate the levels of technology used in the iron and steel industry; to promote structural adjustment; to improve the industry layout; to promote recycling and to minimize the industry's environmental impact; and generally to guide the sound development of the iron and steel industry.

This is despite the fact that the NSP itself is written in such a way that indicates its importance and binding nature. Indeed, the 'Other Matters' included in Chapter IX state (among other things):

- persons or entities that violate the policy shall be 'given punishments' by relevant GOC departments (Article 36); and
- the policy 'shall be observed by all the administrative departments of the people's governments' (Article 39).

The GOC response to the GQ further submits that:

- the NSP is an isolated document, is not specifically monitored by the GOC;¹¹⁴
- there are no additional laws, decrees, rules, promulgations, edicts, opinions, measures, regulations or directives developed or implemented as part of the NSP;¹¹⁵ and
- there are no monitoring mechanisms in place which specifically relate to the realisation of the objectives outlined in Chapter 1 of the National

¹¹³ GOC response to the SGQ, Question 10(a).

¹¹⁴ Ibid. Question C2.9(b)

¹¹⁵ Ibid

Steel Policy.¹¹⁶Customs and Border Protection's assessment

Customs and Border Protection consider that the 'aspirational' nature of these policies/plans does not necessarily mean that the aims and objectives they establish are not attempted to be realised by the GOC, or their progress monitored.

Significant evidence has been observed to suggest that the aims, objectives and action items/measures in these policies are actively implemented and monitored by the GOC, and adhered to by Chinese steel enterprises.

For example, during its recent investigation into aluminium extrusion from China (REP148), Customs and Border Protection undertook verification meetings with the GOC. During this verification, the GOC's NDRC was queried about FYPs in China generally.

This discussion was summarised in Customs and Border Protection's *Government of the People's Republic of China Visit Report, February 2010*, which observes:

The NDRC stated that GOC's FYPs¹¹⁷ is (the) most important plan of China, like a blueprint for the next five years of development of the country. The NDRC noted that the national FYPs are the leading document in planning the economy and social development of China.

However, the NDRC stressed that FYPs are only guidance documents rather than an (sic) operable documents, and there are no details for operation and implementation in the FYPs.

... The NDRC noted that implementation of the objectives of the FYPs is at the GOC agency level, whereby each area will release specific policies and regulations (i.e. each responsible area develops and implements its own policies to implement the FYPs).¹¹⁸

Additionally, during that same verification visit, the China State Reserve Bureau noted the 11th National FYP was a legally binding document.¹¹⁹

While the NDRC confirmed the guidance or 'aspirational' nature of these FYPs, the above statement is clear evidence that the GOC makes efforts to achieve the outcomes of the plans through various sub-policies and

¹¹⁶ Ibid, Question C2.9(f)

¹¹⁷ In reference to the national-level FYP.

¹¹⁸ Page 39.

¹¹⁹ Customs and Border Protection's *Government of the People's Republic of China Visit Report, February 2010*, page 49.

measures in the sphere of responsibility of each level of GOC and its relevant departments.

Specifically, it is noted that GOC has issued numerous sub-policies, directives, notices, etc. and imposed multiple measures since the promulgation of the NSP, the 11th National FYP and the Revitalization Plan that appear to go towards achieving at least some of the goals and aims outlined in these documents.¹²⁰

These include:

- measures to eliminate backwards production capacity and encourage technical and environmental improvement;
- market entry criteria and industry operating conditions;
- measures to curb 'production capacity redundancy';
- guiding industry mergers and restructuring;
- import and export measures on coke; and
- subsidies in the iron and steel industry.

These measures are discussed separately in more detail in Section II(iii) of this appendix.

II(iii) Implementing measures

During its investigation, Customs and Border Protection has identified numerous GOC measures that considers go towards meeting at least some of the objectives of the above-mentioned GOC macroeconomic policies in relation to the domestic iron and steel industry.

The most prominent of these are discussed below.

Measures to eliminate backwards production capacity and to encourage technical and environmental improvement

The elimination of 'backwards production' or 'backward technology' is a common theme observed in the GOC's macroeconomic policies relating to the iron and steel industry.

Conversely, the encouragement of certain more advanced technology or 'hi-tech' products, and environmental improvements are also common objectives of the GOC's macroeconomic policies and plans.

Specific measures that are considered to be aimed at implementing these policy objectives are discussed in this section.

The Directory Catalogue on Readjustment of Industrial Structure and the Interim Provisions on Promotion Industrial Structure Adjustment

¹²⁰ In some cases, these macroeconomic policies are stated specifically in implementing documents.

The GOC has promulgated the *Directory Catalogue on Readjustment of Industrial Structure* (the Directory Catalogue), which is issued and updated by the NDRC.

The GOC provided the revised Directory Catalogue (issued in 2011) as Attachment 173 of the SGQ,¹²¹ and the 2005 (original) version at Attachment A6-1 of the GQ.

In the Directory Catalogue, certain industry activities, products and equipment are listed into three categories:

- 'Encouraged Investment Industries';
- 'Restricted Investment Industries'; and
- 'Eliminated Investment Industries'.

Customs and Border Protection has observed the following items of note in the Directory Catalogue (original and updated version) in relation to the iron and steel industry (among other items).

	Encouraged Investment Industries	Restricted Investment Industries	Eliminated Investment Industries
2005 Directory Catalogue	<ul style="list-style-type: none"> • Construction of new-generation coking ovens. • Development and application of modern hot-rolled broad-band steel rolling mill and key part manufacturing. • Production of oil well pipe...high-pressure roller pipe....and steel pipe used in the long-distance transport of oil and gas. 	<ul style="list-style-type: none"> • Hot-rolled steel sheet projects of below 800mm. • Hot-dip galvanising sheet project of below 250,000 T/per annum. 	<ul style="list-style-type: none"> • Hot-rolled narrow strip steel mills.
2011 Directory Catalogue	<ul style="list-style-type: none"> • Special steel bars and wires and high quality steel forged parts used for technology of high performance and high quality and upgrade and update and product development and application. • Non-ferrous metal making processing and coke oven gas. • High-performance oil and gas transmission pipeline steel. • On-line quality testing technology application in productive process 	<ul style="list-style-type: none"> • Melted iron for steel-making. • Hot rolled strip project less than 1450mm. • Hot galvanized steel sheet rolls project less than 300,000 ton /year. 	<ul style="list-style-type: none"> • Hot-rolled narrow strip steel mills.

The original and updated Directory Catalogue also categorises certain items of coal, power, and petroleum and natural gas as encouraged, restricted or eliminated.

From the above, it appears as though there is a desire to discourage and/or eliminate the manufacture of narrow strip in China (a possible raw material for HSS), as well as restrict the investment in smaller-scale galvanised hot rolled

¹²¹ Customs and Border Protection notes this 2011 revision is consistent with an aim of Section IV(6) of the Revitalization Plan to 'Update the Catalog of Structural Adjustment of Industries'.

steel.

The original (2005) Directory Catalogue was issued alongside the *Decision of the State Council on Promulgating the 'Interim Provisions on Promoting Industrial Structure Adjustment' for Implementation* (the Interim Provisions),¹²² which provides context to the Directory Catalogue.

The Interim Provisions note:

The formulation and implementation of the 'Interim Provisions' is an important measure to implement the spirit of the fifth plenary session of the 16th CPC Central Committee, to achieve the objective of the 'Eleventh Five-year' planning, and is of great significance to ensure the all-round implementation of the scientific view of development, to strengthen and improve macro-control, to further transform the ways of economic growth, to propel industrial structure adjustment, optimization and upgrading, and to keep the stable and fast development of the national economy.

The people's governments...shall take the promotion of industrial structure adjustment as an important reform and development task at present and within a period in the future, establish the liability system, lay emphasis on implementation, and shall, in accordance with the 'Interim Provisions' and in light of the local situation on industrial development, formulate specific measures, rationally guide the investment directions, encourage and support the development of advanced production capacities, protect and eliminate outdated production capacities, prevent blind investments and low-level redundant construction, and effectively propel industrial structure optimization and upgrading.

The Interim Provisions go on to outline specific objectives, principles and 'key points' for adjustment of the Chinese 'industrial structure'. This includes several iron and steel industry-related aims and objectives, including:

*We shall support the development of cold rolled stainless steel sheets, cold rolled silicon steel... We shall urge the industries of oil refining, ethylene, steel, cement and paper making to develop towards those of large bases and of large scale. We shall strengthen the geological survey of important resources such as iron ... increase the geological reserve of resources, and practice rational exploitation and comprehensive utilization.*¹²³

¹²²In SEF177, Customs and Border Protection noted its understanding that the Interim Provisions were abolished, but noted the date of this abolition is unclear. In response to SEF177 (submission of 23 May 2012), the GOC has provided clarification on the Interim Provisions and noted that these were not abolished, but rather the 2005 Directory Catalogue has been abolished and replaced with the 2011 Directory Catalogue, and that the Interim Provisions and Directory Catalogue are 'part of the same policy'. The GOC further clarified that the Interim Provisions set out the criteria under which certain processes can be categorised into the three Directory Catalogue categories, while the Directory Catalogue identifies what processes have been characterised under the Interim Provisions.

¹²³ Chapter II, Article 6

The Interim Provisions make reference to the Directory Catalogue, observing:

- The 'Catalogue for the Guidance of Industrial Structure Adjustment' (the Directory Catalogue) is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.¹²⁴
- The restricted category...need to be transformed or prohibited from being newly built.¹²⁵
- The eliminated category mainly include the outdated techniques, equipment and products which do not conform to the relevant laws and regulations, seriously waste resources, pollute environment, do not meet the work safety conditions and need to be eliminated.¹²⁶

The Interim Provisions go on to state:

- financial institutions shall provide credit support to encouraged investment industries; and
- investments are prohibited towards projects in the restricted and eliminated categories.

In its response to the SGQ, the GOC confirmed that:

*Investments are prohibited for projects under the 'restricted' or 'eliminated' categories. Relevant departments shall supervise projects of the eliminated category to exit the industry within the prescribed time limit in accordance with law.*¹²⁷

The GOC also noted

*the encouraged category enjoys some corresponding preferential treatment with regard to imported equipment.*¹²⁸

It is observed that the Interim Provisions make direct reference to the 11th National FYP and its role in implementing the objectives of that plan. Further, Article 19 states:

If any enterprise of the eliminated category refuses to eliminate the production technique, equipment or products, the local people's government at each level and the relevant administrative department

¹²⁴ Chapter III, Article 12

¹²⁵ Chapter III, Article 15

¹²⁶ Chapter III, Article 16

¹²⁷ In response to Question 32(b)(ii)

¹²⁸ In response to Question 32(b)(ii)

shall, in accordance with the relevant laws and regulations of the state, order it to stop production or close it, and shall take appropriate measures to resettle the employees of the enterprise, and guarantee the safety of financial institutions' credit assets, etc. If its products are subject to the administration by permit for production, the relevant administrative department shall lawfully revoke its permit for production; the administrative department for industry and commerce shall urge it to lawfully go through modification registration or nullification registration; the administrative department of environmental protection shall revoke its permit for pollution discharge; and the electric power supply enterprise shall lawfully stop supplying electricity to it. If any enterprise violates the provisions, its persons directly held liable and the relevant leaders shall be subject to liabilities in accordance with the law.

The Interim Provisions therefore give wide-ranging powers to GOC agencies to impose the requirements of the Directory Catalogue to eliminate certain production processes, equipment and products, and encourage others.

Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities

Further to the Directory Catalogue, the GOC's State Council issued its *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities*¹²⁹ (the Backward Capacities Notice) in 2010.

In its response to Question 35 of the SGQ, the GOC has explained that:

'Backward production capacity means the out-dated techniques, equipment and products which do not conform to the relevant laws and regulations, which seriously waste resources; which pollute the environment; or which do not meet work safety conditions (same as those in the eliminated category).'

Customs and Border Protection notes from the above that the concept of 'backward production capacity' is linked directly to the category of eliminated items of the Directory Catalogue.

The Backward Capacities Notice focuses on the elimination of backward production capacities 'on schedule' by:

...focusing on such industries as electricity, coal, iron and steel, cement, nonferrous metal, coke...in accordance with the scopes of and requirements for elimination of backward production capacities as prescribed in such documents as the Decision of the State Council on Promulgating and Implementing the Interim Provisions on Promoting the Industrial Restructuring (No. 40 [2005] of the State Council) [the Interim Provisions]...Catalogue for Guiding Industrial Restructuring

¹²⁹ GOC response to the SGQ, Attachment 176.

[the Directory Catalogue] and the plans for restructuring and revitalizing industries including iron and steel, nonferrous metal, light industry, textile, etc.

It is considered these 'plans' for restructuring and revitalising the iron and steel industry include the NSP, the 11th National FYP and the Revitalization Plan.

The Backward Capacities Notice states there has been 'remarkable progress' in China in terms of the elimination of backwards production capacities, but notes the targets for eliminating this capacity have not yet been met.

The Backwards Capacities Notice outlines how this goal is to be achieved, through measures such as:

- strengthening the 'Policy Constraint Mechanism'—controlling market access, strengthening the 'economic and legal means', 'intensifying' law enforcement and punishment (including revising the Directory Catalogue);
- improving policy incentives – strengthening fiscal support of backwards capacity elimination, resettling employees, supporting the transformation of enterprises (science and technology upgrading);
- improving the 'supervision and inspection mechanism'— including each region and the central Ministry of Industry and Information Technology (MIIT) producing an annual list of enterprises with 'backward production capacities to be eliminated, the backward technologies and equipment, the deadlines for elimination and the overall progress' and the monitoring and reporting on the progress of the elimination of backward production capacities;
- strengthening SOE organisation and leadership of the elimination of backward production capacities;
- supporting competitive enterprises in elimination of backward production capacities through merger, acquisition or restructuring of enterprises with a backward production capacity;
- Relevant GOC agencies and government levels shall 'earnestly work out implementation plans, divide the objectives and tasks among cities and counties, assign them to specific enterprises, and timely submit lists of to-be-eliminated enterprises with a backward production capacity to the Ministry of Industry and Information Technology and the National Energy Administration';
- Improving the regulation and control of land use plans, and prohibiting land supply for construction projects of backward production capacities and in industries with severe overcapacity;
- giving 'full play to the role of pricing mechanisms, such as differential prices for electricity and reform of prices for resource products, in eliminating backward production capacities... and raise the costs for energy, resources, environment and land used by enterprises and projects with a backward production capacity'.

The Backwards Capacities Notice further outlines that, if an enterprise fails to eliminate its backward production capacities before the prescribed time limit:

- its pollutant discharge permit shall be revoked,
- no banking financial institution shall provide any form of new credit support to it,
- the investment management department shall not examine and approve new investment projects of the enterprise,
- the land and resources management department shall not approve new land for use by the enterprise, and
- the relevant management department shall not issue any production license for it or shall withdraw any production license or production safety permit previously issued.

The Backwards Capacities Notice further provides for enterprises that do not eliminate backward production capacities according to the relevant provisions to be closed down.

Customs and Border Protection's assessment

The Directory Catalogue, Interim Provisions and Backward Capacities Notice are examples of sub-policies and measures for GOC macroeconomic policies that are designed to implement the 'aspirational' goals of those policies.

Further, evidence exists to demonstrate that the GOC actively monitors the elimination of backwards production and measures the success of this objective. For example, General Steel Holding, Inc (General Steel) in its Form 10-K (annual report) filing with the United States Securities and Exchange Commission (SEC) for the period ended 31 December 2007 observed:

In November 2007, the National Development and Reform Commission (NDRC), the nation's top economic planner, reported that to date 29.4 million tons of outdated iron smelting capacity and 15.21 million tons of outdated steel smelting capacity had been eliminated.

General Steel is a United States-incorporated company that, through a 100% owned subsidiary, operates a portfolio of four Chinese steel companies with various focuses.¹³⁰ One General Steel subsidiary, the Baotou Steel Pipe Joint Venture, produces spiral steel welded pipe, but not HSS itself.

General Steel went on to state:

...(the NDRC) also later announced obligation contracts with 18 provinces, autonomous regions and municipalities to eliminate 49.31 million tons of outdated iron smelting capacity and 36.1 million tons of outdated steel smelting capacity. The obligation letters involved 573 enterprises.

¹³⁰ Daqiuzhuang Metal, Baotou Steel – General Steel Special Steel Pipe Joint Venture Co., Ltd., ('Baotou Steel Pipe Joint Venture'), Shaanxi Longmen Iron and Steel Co., Ltd. ('Longmen Joint Venture'), and Maoming Hengda Steel Group Co., Ltd.

This again demonstrates the GOC's measures (which appear from General Steel's statement to be binding in nature) and commitment to ensure the implementation of this particular aspect of its macroeconomic policies and plans.

Further, in response to the GQ, the GOC provided listings of companies that have been affected by the elimination of backwards capacity since 2005, specifically:

- Attachment 27 - *List of Closed and Disused Iron & Steel Production Capability of Enterprise*; and
- Attachment 28 - *2010 Enterprises list of Elimination Steel-making Production Capacities*.

In these attachments, the GOC has provided details of 'closed and disused equipments' including details of types of furnaces and their capacities. This listing included enterprises that, from their name, appeared to be involved in various iron and steel products, including:

- manufacture of steel pipes;
- manufacture of 'special steel' products;
- steel rolling;
- iron casting and smelting;
- steelmaking and casting; and
- coking.

It is observed that these closures have more involved a variety of iron and steel enterprises, including those involved in making pipe and tubes (potentially including HSS and rolled steel (HRS - consisting of HRC and/or narrow strip)).

The GOC has submitted, in relation to these listings, that:

Closure of these companies can be due to any one of a number of factors, or to a combination of factors. These factors would include bankruptcy, increasing competition, old equipment, inability to invest, local protectionism, increasing overheads, enforcement of environmental regulations. Their closure was not forced on them by any decision made by the GOC outside China's legal framework of laws and regulations.

It is noted that this statement by the GOC does not indicate that it has not been involved in the closure of these enterprises, merely that these closures have not been forced on enterprises outside China's legal framework of laws and regulations.

It is further noted that the GOC has included 'old equipment' as one such factor, which is considered is likely to relate to the elimination of 'backwards' equipment.

In response to SGQ, the GOC emphasised that the Directory Catalogue is

essentially an environmental measure:

The GOC defends its right to legislate for the Protection of its environment and the health of its people. The Directory Catalogue is not an instrument of industry intervention with the commercial intention of making Chinese industries the most competitive in the world or of forcing the industry to conduct its business as dictated by the GOC. It is a regulatory document which articulates how environmental laws are to be applied.

Customs and Border Protection agrees that certain measures of the Interim Provisions and Directory Catalogue would reasonably be considered to be environmentally-focussed, particularly those that relate to the elimination of older, environmentally harmful technologies and techniques.

However, it is considered that all of these measures cannot be considered to be purely environmental, particularly when the nature of some 'encouraged' items on the Directory Catalogue are observed.

In particular, the Directory Catalogue can reasonably be considered to go towards meeting the GOC's policy aims of encouraging technical innovation, raising product quality, and changing the product mix, as well as encouraging environmental improvements.

Market entry criteria and industry operating conditions

Standard Conditions of Production and Operation of the Iron and Steel Industry

The *Standard Conditions of Production and Operation of the Iron and Steel Industry* (the Steel Standard Conditions), dated 21 June 2010, were provided by the GOC as Attachment 160 to its response to the SGQ.

The Steel Standard Conditions state their purpose is:

To further strengthen management of iron and steel industry, provide norms to production and operation of the steel industry... to practice standard norms of production and operation for existing enterprises in iron and steel industry and to be used as the basis for relevant departments and agencies in project approval or filing, resource allocation, approving and issuing Production License of Construction Steel, providing norms for iron ore business and advancing elimination of backward capacity etc.. Conditions of production and operation of the iron and steel industry shall be combined with mergers and reorganization, elimination of backward capacity and etc., in order to reduce the quantity of steel enterprises step by step, lower the proportion of backward capacity, improve and consummate industry management.

The Steel Standard Conditions go on to state they are:

....the basic condition for production and operation of existing iron and steel industry, and it is the transitional norms which is in line with current development level of our iron and steel industry and will be constantly improved with the improvement of the overall level of our iron and steel industry. The higher Admittance conditions required for the construction and reconstructions projects of iron and steel industry shall be implemented in accordance with the requirements concerned in 'Development Policies for the Iron and Steel Industry' [the NSP].

The conditions then outline a multitude of requirements for enterprises in the Chinese steel industry. These specifically relate to:

- product quality standards;
- environmental protection;
- energy consumption and comprehensive utilisation of resources;
- workmanship and equipment;
- production scale; and
- safety, sanitation and social responsibility.

Of these, some notable conditions include the following:

- *Iron and steel enterprises 'shall possess sound environmental protection management system, be equipped with complete monitoring and management facilities for pollutant emission, install automatic monitoring system network with the local environmental protection department.'*¹³¹
- The volume of blast furnaces shall be more than 400m³, the normal capacity of converters shall be more than 30 T, the normal capacity of electric furnaces shall be more than 30 T, the area for Sintering machine shall be more than 10 m², the height of Coke oven chambers shall be more than 3m, and all of these shall comply with the Directory Catalogue.¹³²
- Iron and steel enterprises shall eliminate backward production facilities in accordance with the NSP, the Revitalisation Plan and the revised Directory Catalogue.¹³³
- 'Crude steel production of common steel enterprises' shall be 1,000,000 ton or more, of special steel enterprises shall be 300,000 ton or more, and the 'proportion of alloy steel' is to be more than 60% ('specialization' enterprises such as HSS manufacturers that use 100% percent alloy steel' are excluded from this provision).¹³⁴

The Steel Standard Conditions further note that:

Enterprises does not meet the Standard Conditions shall be reformed

¹³¹ Article II(B)(2)

¹³² Article II(D)(1)

¹³³ Article II(D)(2)

¹³⁴ Article E

in accordance with the Standard Conditions. Where the enterprises still fails to meet the Standard Conditions, (it) shall exit steel production gradually.

For enterprise that does not meet the Standard Conditions, relevant departments shall not approve or file its new projects, shall not be equipped with the new mining resources and land, shall not issue new production license for products and shall not provide credit and finance support.

[Emphasis added]

It is noted that the Steel Standard Conditions align with the NSPR in many ways (in fact mentioning it explicitly in Article II(D)(2)).

Admittance Conditions for Coking Industry

The GOC has provided the *Admittance Conditions for the Coking Industry* (the Coking Admittance Conditions) as Attachment 160 of the SPC.

At the time of publishing SEF177, the GOC had not provided a full translation of this document as requested, but has since provided a full translation.¹³⁵

It is understood the Coking Admittance Conditions were promulgated in 2004.

These conditions set conditions for entry to the coking industry, including:

- industry layout;
- techniques and equipment used, including production scale and environmental measures;
- product quality standards; and
- resource and by-product utilisation standards.

The conditions also include provisions for 'Supervision and management' of coking enterprises, which outlines that adherence to the Coking Admittance Conditions is monitored, and enterprises that do not meet the conditions shall have action taken against them by the GOC.

It is noted that the Coking Admittance Conditions are directly referred to in the Ministry of Commerce's 2008 *Notice Regarding Declaration Conditions and Procedure of 2009 Trade Coke Export Quota*,¹³⁶ discussed further in Section II(iii) of this appendix. These conditions provide that only enterprises that meet the Coking Admittance Conditions could apply for an export quota for coke (i.e. enterprises that do not meet the conditions could not export coke).

Customs and Border Protection's assessment

¹³⁵ GOC submission of 23 May 2012

¹³⁶ GOC response to the GQ, Attachment 44.

Customs and Border Protection considers that the GOC's measures for market entry and industry operation for the iron and steel industry and coking industry can reasonably be considered to go towards the GOC's aims of making environmental improvements, and to encourage technological and product quality advancement and structural adjustment in the Chinese iron and steel industry.

The linkages between the Steel Standard Conditions, the Coking Admittance Conditions, and the GOC's measures to eliminate backwards production capacity and to encourage technical and environmental advancement are observed.

Customs and Border Protection notes the potential impact these market entry and industry operation criteria may have on enterprises operating in the iron and steel industries. For example, iron and steel enterprises that do not meet the Steel Standard Conditions may have to upgrade their facilities to remain in operation, or face potential closure by the GOC.

Measures to curb production capacity redundancy

Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy

In 2006, the State Council promulgated its *Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy* (the Redundancy Circular).¹³⁷

The Redundancy Circular notes the

...major and difficult task' of the 11th National FYP to 'promote the strategic restructuring of the economy as well as to elevate the international competitiveness of all sectors.

The document goes on to note that some sectors

...make such blind investment and inefficient expansion that they have incurred production capacity redundancy, which has turned into a predominant problem in the economy.

The Redundancy Circular singles out the iron and steel industry as one that is particularly affected by this problem. The Redundancy Circular further outlines the observed downfalls or 'aftermaths' of production capacity redundancy, and observes

If such situation is let go at random, the conflict rooting in the binding force of resource scarcity will pop up further, the issue of structural imbalance will be worsen off, there will witness an obvious increase in enterprise bankruptcy as well as in unemployment. So we should

¹³⁷ GOC response to the GQ, Attachment A20.

resolutely make efforts to solve all the problems.

The Redundancy Circular continues by outlining the 'requirements and principles' and 'key measures' to accelerate the restructuring of sectors with production capacity redundancy.

The Redundancy Circular notes:

The key to promote the restructuring...is to give full play to the fundamental role of the market in allocating resources and fully exert the market strength to promote the survival of the fittest...

but goes on to state

...we should, by means of restructuring, reform and elimination through selection, accelerate the restructuring process in the sectors with production capacity redundancy.

In relation to the iron and steel industry, the Redundancy Circular states the GOC's key measures to do so will include:

- strictly control newly-initiated projects, including generally not granting approval for the establishment of any new steel plant;
- eliminate outdated production capacity including in iron smelting and coking industries;
- 'promote the joint restructuring between a predominant large-sized iron & steel enterprise and other iron & steel enterprises in the same region so as to form several iron & steel enterprise conglomerates with an annual production capacity of more than 30 million tons';
- 'earnestly' implement the Directory Catalogue; and
- make efforts to implement iron and steel industry policies and strengthen their 'examination'.

Customs and Border Protection considers that these measures are inconsistent with the notion of giving 'full play' to the fundamental role of the market in allocating resources.

Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of Iron and Steel Industry

The iron and steel industry-specific *Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of Iron and Steel Industry* (the Steel Industry Capacity Circular) was issued by the GOC in 2006.

The GOC has been requested to supply a copy of this document, but has declined to do so, observing the document has been superseded in 2009 by the *Notice of the State Council on Ratifying and Forwarding the Several Opinions of the National Development and Reform Commission and Other Departments on Curbing Overcapacity and Redundant Construction in Some Industries and Guiding the Sound Development of Industries*¹³⁸ (the 2009 Overcapacity Notice).

Despite not having access to a copy of the Steel Industry Capacity Circular, Customs and Border Protection understands from the CBSA's analysis of this document within its 2008 CSWP *Statement of Reasons* report that this GOC document outlined improvements observed in the iron and steel industry due to GOC macroeconomic controls (e.g. reduced investment, reduced consumption, improving product mix to high value goods, increased mergers and eliminated backwards production).

It is further understood that the Steel Industry Capacity Circular further noted that 'powerful measures' should be implemented to eliminate backward capacity,¹³⁹ which the circular notes are important aims of the 11th National FYP.

2009 Overcapacity Notice

The 2009 Overcapacity Notice, which the GOC has provided as the replacement notice for the Steel Industry Capacity Circular, notes that, at the time of its publication, issues of overcapacity continued to cause problems in the Chinese economy. This includes 'serious problems including vicious market competition, low economic benefits, business failure or underproduction, unemployment and increasing bad debts of the bank'.

The notice goes on to outline 'guiding opinions' designed to

...fulfil the Party Central Committee and the State Council's package plan coping with international financial crisis, consolidate and develop good economic situation, promote structure adjustment, curb overcapacity and redundant construction in some industries and guiding the sound development of industries and guide new industry in

¹³⁸ GOC response to the SGQ, Attachment 150.

¹³⁹ As quoted in CBSA, *Statement of Reasons Concerning the making of final determinations with respect to the dumping and subsidizing of Certain Carbon Steel Welded Pipe Originating in or Exported from the People's Republic of China*, August 2008 at page 59.

orderly development.

At the time of publishing SEF177, the GOC had declined to provide a full translation of this document as requested, but has since provided a copy of the document with 'all sections relevant to the investigation' translated.¹⁴⁰

Guiding industry mergers and restructuring

Evidence of restructuring

The GOC has not provided any specific circular, notice or other GOC document subordinate to the above-identified macroeconomic policies that directly relates to the implementation of mergers in the iron and steel industry. However, it is noted that the macroeconomic policies themselves are comprehensive in terms of these aims, outlining specific mergers that should occur, geographic areas that are to be built up, and GOC measures that should be implemented to facilitate these mergers.

For example, section IV(5) of the Revitalization Plan states the GOC should:

Formulate measure to facilitate merger, acquisition and/or reorganization of steel mills, i.e. to make things more viable for enterprises in planning M&A and reorganization, such as relocate or resettle extra workers in other jobs, transfer or refer assets to some other entities out of original management scope, evaluate and settle the debts, and resolve issue of the fiscal interests therein. Prioritize in sequencing decision making on renewing or upgrading project by those enterprises out of interregional reorganization. To better implement the favorable taxation policy for reorganization among steel mills.

In light of these policies, evidence has been observed that demonstrates that the GOC aim of industry restructuring, relocation and creation of large iron and steel enterprises has occurred.

In response to the GQ, the GOC provided a requested (non-exhaustive) listing of steel companies that have merged (or been acquired by other enterprises) since 2005 (Attachment 29). This list displayed multiple mergers of iron and steel enterprises since 2005 (the year of promulgation of the NSR), including mergers involving large SIEs.

Further, in Attachment 26 to the GQ, the GOC provided a report by KPMG entitled *China's Iron and Steel Industry Amid the Financial Crisis*, which included a (non-exhaustive) listing of iron and steel industry mergers and acquisitions for the period 2004 - 2009 (at page 24).

This table is reproduced below.

¹⁴⁰ GOC submission of 23 May 2012

Chart 7: M&As for China's iron and steel sector between 2004 and 2009

[illegible]

Source: China Metallurgical News

Additionally, the following mergers of Chinese iron and steel enterprises that occurred in the year prior to 30 June 2009, have been reported by General Steel Holdings in its Form 10-K (annual report) filing with the SEC for the period ended 30 June 2009:

- Wuhang Iron & Steel Group (WISCO) (referred to in the above table as 'Wugang Group') acquired Liuzhou Iron & Steel Group and established Guangxi Iron & Steel Group for the purpose of building a new mill in Fangchenggang city, Guangxi province;
- Baoshan Iron & Steel Co., Ltd (Baosteel), an SIE and China's largest steelmaker, acquired and recapitalised Guangzhou Iron & Steel Enterprises Group and Shaoguan Steel Co. Ltd. with the goal of building a new facility in Guangdong province; and
- Tangshan Changcheng Steel Group and Tangshan Bohai Steel Group incorporated in late December 2008 (though further evidence suggests that Tanshan Bohai Steel Group was not physically formed until early 2012).

Customs and Border Protection also notes evidence exists to display the

following additional recent mergers.

- The creation of Tianjin Bohai Iron & Steel Group Corp in 2010 through the merger of Tianjin Pipe (Group) Corp (TPCO), Tianjin Iron & Steel Group, Tianjin Tiantie Metallurgy Group and Tianjin Metallurgy Group Co.¹⁴¹
- The formation of Angang New Co. in July 2010 after Anshan Iron & Steel Group won government approval to take over Pangang Group Co.¹⁴²

The *China Steel Yearbook 2011* (the Steel Yearbook, published annually by the China Steel Development Research Institute) includes reports on the 'improved concentration ratio' of the Chinese iron and steel industry. Reporting that the 'concentration' of the Chinese steel industry (by production output) in the 'top 10' Chinese producers has increased from 35.4% in 2005 to 48.6% in 2010.¹⁴³

Types of merged enterprises

It is noted that these mergers have involved a variety of enterprises in the iron and steel industry, producing varying types of steel products and steel raw materials. Customs and Border Protection's research indicates that products and activities of merged steel enterprises include:

- steel plate;
- HRC;
- narrow strip;
- pipe and tube;
- steel bars and rods;
- steel wire;
- CRC;
- steel making and casting;
- mining, smelting and processing of iron; and
- rolling.

Specifically in relation to pipe and tube (the sector that HSS falls within), Tianjin Pipe (Group) Corp (TPCO) is a large producer of pipe and tubing in China that focuses largely on larger-sized oil pipe (non-HSS). However, the company's website indicates that it is also a producer of structural tube in the parameters of HSS.¹⁴⁴

¹⁴¹ Chinamining.org in *4 Steel Companies in Tianjin starts merger to form 20 million tonne giant*, <http://www.chinamining.org/News/2010-01-07/1262844995d33153.html> (accessed 2/4/12)

¹⁴² Bloomberg, *China's Top 10 Steelmakers in 2010 Ranked by Production*, <http://www.bloomberg.com/news/2011-01-26/china-s-top-10-steelmakers-in-2010-ranked-by-production-table-.html> (accessed 2/4/12)

¹⁴³ China Steel Development Research Institute, *China Steel Yearbook 2011*, Beijing Metallurgical Industry Press, 2011 at page 19.

¹⁴⁴ <http://www.tianjinpipe.com/about-test.htm>

In addition, Customs and Border Protection notes that Baosteel, which has been shown to be a leader in the structural adjustment of the Chinese iron and steel industry via mergers and acquisitions (see below and extracts from Baosteel's annual report), is itself a manufacturer of HSS.¹⁴⁵

GOC position

At Question 2.9(r)(i) of the GQ, the GOC was asked to describe how it had (if at all) encouraged or requested mergers to take place amongst iron and steel enterprises in China.

The GOC submitted:

The National Steel Policy sets out the vision for the future landscape of the steel industry, consistent with the macro-economic goals of sustainability, resource efficiency and land use. The GOC does not request mergers or consolidations at the commercial level. In fact, the GOC has an interest in the maintenance of commercially desirable conditions in the industry, from the point of view of sustainability, social objectives, infrastructure costs, and welfare costs to the community. The government itself does not determine the situations of market for the purchase and sales of steel or HSS. The GOC does not play a 'commanding' role. Instead, the GOC's role is at the coordination level. Any mergers or consolidations would take place at the corporate level, because the enterprises involved consider for themselves that the policy environment that the government seeks is conducive to their development in that way.

Customs and Border Protection's assessment

Despite the above submission of the GOC, evidence exists to indicate the GOC has played a guiding role in the restructuring of the iron and steel industry through enterprise mergers, and has closely monitored the progress of this structural adjustment.

Firstly, it is anecdotally evident from the number, type and entities involved in these mergers that this consolidation is in fact the realisation of certain aims and objectives of the macroeconomic policies of the GOC (e.g. construction of the Caofeidian iron and steel base,¹⁴⁶ the reorganisation of TPCO,¹⁴⁷ and the concentration of production capacity in the 'top' enterprises¹⁴⁸). That is, several GOC policies have specifically stated that certain enterprises will merge, and these mergers have in fact occurred.

¹⁴⁵ As displayed in Baosteel's Electric Resistance Welded Pipe product catalogue, available at <http://tv.baosteel.com/web/plc/p-pdf/1103C0104.pdf> (accessed 6/4/12).

¹⁴⁶ An aim of the 11th National FYP, the Revitalization Plan and the *Outline of the Eleventh Five-Year Plan for the Economic and Social Development of Hebei Province*.

¹⁴⁷ An aim of the Revitalisation Plan.

¹⁴⁸ Aim of the NSP.

Secondly, available evidence suggests that this structural adjustment has in many cases been progressed, and in some cases led by GOC-owned and invested large iron and steel enterprises. Many of the larger-scale mergers that have occurred have been through the consolidation of SIEs and acquisitions by these enterprises (e.g. Baosteel, WISCO, Anshan Iron and Steel (referred to in the above table as 'Anben Group', Hebei Iron and Steel Group and Shougang Corporation).

Indeed, Baosteel notes its role as a leader of industry restructuring in its 2010 Annual Report:

As one of the engines of domestic iron and steel industry, Baosteel has been taking an active part in the reorganization of the industry in accordance with the national policies on iron and steel industry. By way of various capital operation including acquisition, merging and transfer of free, Baosteel has quickly enlarged its production scale, and strengthened its comprehensive power, enhancing its core competitive power.

[Emphasis added]

Note: in its assessment of Chinese HRC and narrow strip producers for the purposes of its countervailing investigation into HSS from China, Customs and Border Protection has closely examined Chinese iron and steel industry SIEs and determined they are in fact 'public bodies' of the GOC, as evidence exists to demonstrate the GOC exercises meaningful control over these entities.

Additionally, following observations made by General Steel in relation to iron and steel industry mergers, listing the GOC's goals in relation to industry consolidation, and its actions to achieve this are noted:

- It is the goal of the central government to consolidate 50% of domestic production among the top ten steel companies by 2010 and 70% by 2020. Throughout 2008, it steadily heightened its consolidation efforts.¹⁴⁹*
- The central government has had a long-stated goal to consolidate 50% of domestic steel production among the top ten producers by 2010 and 70% by 2020. In September 2009, the central government published an industry target to eliminate 80 million metric tons of inefficient capacity from the steel industry by the end of 2011.¹⁵⁰*
- In 2007, the government held firm on its resolve to consolidate the highly fragmented domestic steel industry through coerced mergers and heightened operating requirements.¹⁵¹*

¹⁴⁹ General Steel Form 10-K SEC filing for the period to 30 June 2009

¹⁵⁰ General Steel Form 10-K SEC filing for the period ended 31 December 2010

¹⁵¹ General Steel Form 10-K (annual report) SEC filing for the period ended 31 December 2007

[Emphasis added]

Further, General Steel's Form 10-K SEC filing for the period to 30 June 2009 observes that 'major mergers and acquisitions have been government-directed'.

Additionally, evidence exists to demonstrate that the GOC actively monitors and evaluates the progress of this industry consolidation, and feed this into further policies, plans and measures (including outlining measures to be taken by the GOC to further support this restructuring).

For example, the Revitalisation Plan, at Section II C.3 observes the 'Significant progress concerning reorganization and integration' noting:

Some super large enterprises emerged which are stronger in self-innovation of technologies and in competitive edge in the international market, the capacity of top 5 steel producers occupy 45% of national total, and the capacity located along the rivers or in the coastal areas account for 40% or more of the national total, industrial location remarkably optimized and pollution by steel makers in key centre cities substantially decreased.

It is therefore considered that there is evidence to determine that significant restructuring of the Chinese iron and steel industry has been (and is still) occurring, and that this is led by, monitored and encouraged by the GOC (and certain evidence exists to display that this restructuring is in fact GOC-mandated and directed). It is considered that this restructuring has occurred as a result of factors other than basic market forces (i.e. government influence).

Customs and Border Protection further notes the linkage between this industry restructuring and the elimination of 'backwards capacity', as mergers appear to also contribute to the elimination of backwards capacity (e.g. Tangshan Bohai Steel was formed (after MIIT approval) by amalgamating 12 private steelmakers and will undergo 'restructuring work' and the elimination of 'inefficient' facilities by the end of 2012 'in accordance with the 2011-2015 steel industry development plan released by the ministry' (MIIT).¹⁵²

Export measures on coke

The GOC has provided requested schedules of its import and export tariffs, and VAT rebate rates for coal (including coking coal)¹⁵³ and coke from 1 July 2006 to 30 June 2011 (among other items). The GOC also provided data on the total import and export volume of these products for that period (though the GOC did not provide import data on HSS itself), as well as information on export quotas, export licensing, and restrictions in processing trade.

¹⁵² Platts, *China approves consolidation no 2 units into Tangshan Bohai Steel Group*, 9 February 2012, available at www.platts.com (accessed 7 April 2012).

¹⁵³ HS code tariff classification 27011210

From this data, it is evident that, in the years preceding the investigation period, the GOC imposed a suite of export measures on coke, a key raw material in the production of iron (which is a major input into liquid steel, that is itself cast and used to make HRC and/or narrow strip).

These measures included:

- export tariffs; and
- export quotas and an accompanying export licensing system (2009 – 2011).¹⁵⁴

Throughout this period, the GOC offered no VAT rebate on exports of coke from China.

Export tariff

The level of export tariff over time is summarised in the below table.

	2006	2007	2008	2009	2010	2011 (Jan - Jun)
Export tariff (%)	0	5	25	40	40	40

Further, the GOC had low level of import duty (5%) on coke from 2006 to 2008. This was eliminated in 2009 and remained at 0% for the rest of the examined period.

The GOC has explained the rationale behind the changes in export tariffs outlined in the above table as being:

...to remove excessive incentive to produce and export 'two high' (high energy consumption and high pollution) products, in order to meet the ultimate purpose of environment Protection.

Export quota and license

In relation to the export quota and license, as mentioned in Section II(iii) of this appendix., MOFCOM issued the *Notice Regarding Declaration Conditions and Procedure of 2009 Trade Coke Export Quota* in 2008. This document established an export quota for coke from 2009 onwards (correlating with a large increase in export tariff from 25% to 40%).

These conditions provide that only enterprises that meet the Coking Admittance Conditions can apply for an export quota for coke. The conditions also place further restrictions on which enterprises can apply for a coke

¹⁵⁴ GOC response to the GQ, Question C3.5 and GOC response to the SGQ, Attachment 155.

¹⁵⁵ GOC response to the GQ, Attachment 42.

export quota (meet certain product quality standards, be of a certain production size, have environmental protection measures, and position of certain levels and types of insurance). The conditions also set out application and approval procedures for the coke export quotas.

In relation to the rationale behind the export quota on coke, the GOC has submitted that similar reasons to those behind the export tariff on coke were also behind this measure, and noted:

Enterprises failing to conform to environment Protection standards, or to honour common practices in promoting social responsibilities, may be denied export quotas.

Over the years, the above management approach has obtained achievements: the growth of coke industry investment and production has slowed down, and the industry has reduced its backward capacity and achieved upgrading of its investment and industrial structure.

In terms of environmental improvement, the effects have been obvious. In Shanxi province, the dominant province of coke export and production, air quality has improved greatly.

Export measures on coking coal

Customs and Border Protection notes that, during the period of 2006 – 2011, the GOC also changed rates of import and export tax on coking coal as identified in the below table.

	2006	2007	2008	2009	2010	2011 (Jan - Jun)
Export tariff (%) ¹⁵⁷	0	5	5	10	10	10
Import tariff %		3	3	0	0	0

As observed in Section II(iii) of this appendix, it is Customs and Border Protection's understanding that the practice in China is to import coking coal (which is seen to be imported in substantial volumes in the GOC's provided import and export data), and convert this to coke in China for use in domestic iron production.

The tariff rates on coking coal, though much lower than those noted for coke itself, appear to correlate with the GOC's shift to high export tariffs on coke, where import tariff rates on coking coal decreased as export tariffs on coke increased.

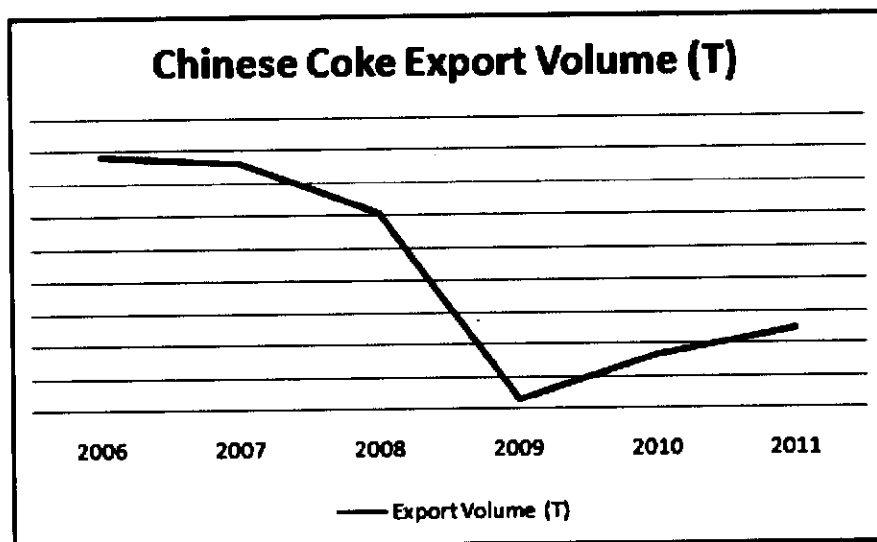
¹⁵⁶ GOC response to the SGQ, Question 25(a).

¹⁵⁷ GOC response to the GQ, Attachment 42.

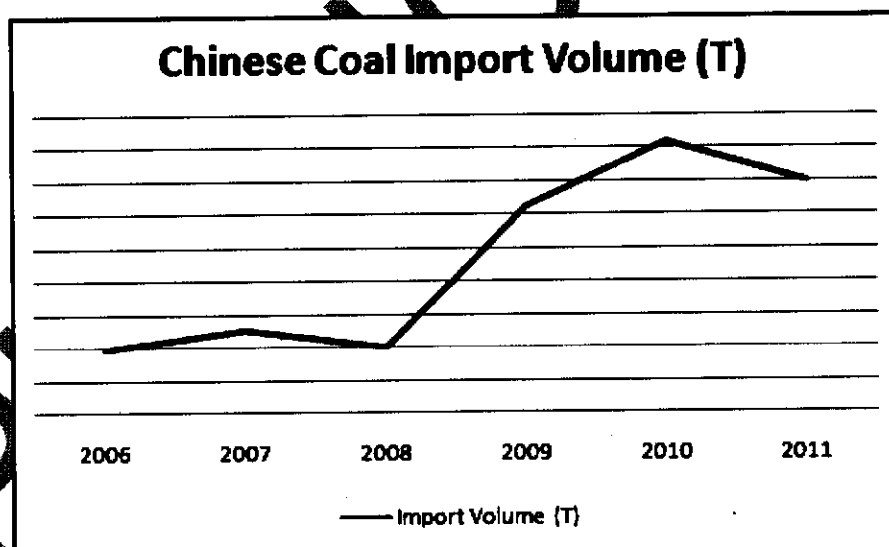
¹⁵⁸ GOC response to the GQ, Attachment 43.

Traded volumes of coke and coking coal

The export volume data for coke provided by the GOC in its SGQ response¹⁵⁹ has been charted below.



Chinese imports of coal over the same period (noting this data was provided for coal collectively and not split into coking and other coal, though it is considered the general trend of coal imports into China is relevant nonetheless):



¹⁵⁹ This data was pro-rated for 2006 and 2011, as the GOC was only asked to provide data from July 2006 – June 2011.

WTO Dispute DS394, 395 and 398

China's export tariffs,¹⁶⁰ and export quotas and licensing of coke (and other raw materials) has recently been subject to a WTO dispute before a WTO Panel and then the Appellate Body, the findings of which were handed down in July 2011 and January 2012 respectively.

This dispute also involved objections to the setting of minimum export prices (MEPs) for these raw materials.

Both the Panel and Appellate Body (which considered an appeal lodged by the GOC on certain matters) found that these Chinese measures were WTO-inconsistent, with the Appellate Body finding in conclusion:

The Appellate Body recommends that the DSB request China to bring its measures, found in this Report and in the Mexico Panel Report as modified by this Report, to be inconsistent with China's Accession Protocol and the GATT 1994, into conformity with China's obligations thereunder, such that the 'series of measures' do not operate to bring about a WTO-inconsistent result¹⁶¹

Of particular note is the fact that the Panel found that China had not demonstrated that the application of export restrictions on coke are justified pursuant to Article XX(b) of the GATT 1994 (i.e. the general exception to allow parties to adopt or enforce measures that are necessary to protect human, animal or plant life or health by any contracting party of measures) – noting that the Panel found that the export duties on coke were inconsistent with China's WTO Accession Protocol in any case and the exception under XX(b) was not available in any case, hence the findings in relation to export tariffs on this matter were made *arguendo*. This point was not appealed by China to the WTO Appellate Body.

Customs and Border Protection's Assessment

Customs and Border Protection observes these measures on coke appear to be consistent with the aims of the NSP to restrict exports of coke (see Section II(ii) of this appendix.) and the aim of the 2009 Revitalization Plan to 'Continue on policy orientation of controlling export of 'two high, one resource' and low value-added goods (see Section II(iii) of this appendix.).

It is considered that the GOC's export measures on coke (particularly from 2009 onwards) can reasonably be considered to have had a significant impact on the domestic iron and steel industry – discussed further in Section II(iii) of this appendix.

¹⁶⁰ Particularly that from 2009 onwards.

¹⁶¹ Reports of the Appellate Body, China – Measures Related to the Exportation of Certain Raw Materials (AB201-5) at 363.

Subsidies in the Iron and steel Industry

Subsidies to HSS producers

During its investigation, Customs and Border Protection has found that HSS producers in China have benefited from 28 identified countervailable subsidy programs.

The largest of these programs (i.e. the program that has resulted in the largest single subsidisation of exporter) is Program 20, which concerns the provision of steel raw materials (HRC and narrow strip) to HSS producers by SIEs (also referred to previously as state-owned enterprises or SOEs) at a price that is considered to have been at less than adequate remuneration.

Other subsidies that have been identified as being countervailable include grants for research and development, brand excellence, hi-tech industry investment, and holding specific patents, as well as tax reductions based on location and enterprise type.

It is reasonable to consider that at least some of these subsidies will assist with the implementation of the GOC's macro-economic plans for the steel industry (e.g. encouraging hi-tech steel enterprises and steel product research and development).

'Upstream' subsidies

In addition to these investigated subsidies, Customs and Border Protection notes that the identified GOC macroeconomic policies and implementing measures it has examined have made multiple references to the provision of grants, financial support and other subsidies to enterprises in the iron and steel industry generally (i.e. including 'upstream' enterprises to HSS manufacturers) to assist with the implementation of GOC policies and plans.

For example the Backwards Capacities Notice outlines that the GOC will strengthen 'fiscal support of backwards capacity elimination' and support the transformation of enterprises (science and technology upgrading). Further, the Revitalization Plan mandates the provision of grants to iron and steel enterprises for research and development, cash flow management, and other reasons.

Although Customs and Border Protection notes evidence of these upstream subsidies in the context of this assessment of market situation in China, it is not considered that sufficient evidence has been found that suggests that there are reasonable grounds for the publication of a countervailing duty notice in relation to these programs, as required by s.269TC when initiating investigations into alleged programs.

Specifically, sufficient evidence has not been found that suggests:

- that these subsidies could reasonably be considered to be

- countervailable; or
- that benefit received under these subsidies by upstream producers has passed through to HSS manufacturers.

For this reason, these subsidies have not been further investigated by Customs and Border Protection for the purposes of the concurrent countervailing investigation.

II(iv) Further evidence of implementation and impact of GOC policies

Further to the above-outlined measures, Customs and Border Protection has encountered more general evidence that highlights the importance, widespread implementation, and mandatory nature of these GOC policies. This is outlined below.

Implementation by SIEs

Customs and Border Protection observes Article 17 of the Law of the People's Republic of China on the State-Owned Assets of Enterprise,¹⁶² which requires;

A state-invested enterprise making investments shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

[Emphasis added]

Publicly available evidence displays that large Chinese SIEs in the iron and steel sector have complied with this Article, and play a leading role in implementing and achieving the aims of the NSP, the Revitalization Plan, and other GOC policies. In particular, Customs and Border Protection has observed the following remarks in various annual reports of Baosteel.

2006 Annual Report

...in order to achieve the restrictive target of energy saving, consumption lowering and pollution reducing, the Chinese government has promulgated a series of policies and regulations, explicitly pointing out the direction and timetable for the structural adjustment and elimination of the outdated capacity or the steel industry, and it is becoming common understanding to realise the adjustment of industrial layout by replacing the outdated capacity with the advanced capacity.

...

Baosteel firmly set up the scientific outlook on development, solidly

¹⁶² GOC response to the GQ, Attachment B27.

implemented the state's policies for the development of steel industry, adhered to the sustainable development, strictly controlled the investment scale, rationally arranged the construction projects and optimized the investment structure...

2008 Annual Report:

In 2008, guided by Policies for Development of Iron & Steel Industry and Circular Economy Promotion Law of the People's Republic of China, a series of progress in the steel industry have been made: regional and cross-regional consolidation in China's domestic steel industry has been accelerated; the strategic coastal deployment of major steel enterprises has basically formed, optimizing the industrial layout; the technical equipment of these enterprises has been rapidly boosted, improving the mix of products; new development in obsolete capacity shutdown, energy conservation and emission reduction has been achieved.

2010 Annual Report:

As one of the engines of domestic iron and steel industry, Baosteel has been taking an active part in the reorganization of the industry in accordance with the national policies on iron and steel industry. By way of various capital operation including acquisition, merging, and transfer for free, Baosteel has quickly enlarged its production scale, and strengthened its comprehensive power, enhancing its core competitive power.

[Emphasis added]

The extract from Baosteel's 2008 Annual Report, reproduced in Section II(iv) of this appendix, is also noted.

These statements confirm that Baosteel, a leading enterprise in the Chinese steel industry, a known manufacturer of HRC used by HSS exporters in manufacturing HSS, and a manufacturer of structural pipe and tubes itself, is aware of, and actively implements, aspects of the GOC macroeconomic iron and steel policies (including participation industry restructuring through merger, eliminating outdated capacity (backwards), and implementing environmental measures).

Further, Baosteel notes the restrictive nature of the GOC's policies, and the progress that has been made 'guided' by these policies.

General influence on enterprises

Customs and Border Protection has also observed evidence (in addition to the above Baosteel comments) that demonstrates the impact or potential impact the GOC macroeconomic policies, plans and implementing measures can have on iron and steel enterprises operating in China. It is noted that these are both potentially positive and negative.

General impact

The general impact of these GOC policies, plans and measures on iron and steel enterprises operating in China is observed by General Steel in its Form 10K Annual Report filing with the SEC for the period ended 31 December 2010:

We face the risk that changes in the policies of the Chinese government could have significant impact upon the business we may be able to conduct in China and the profitability of such business.

The economy of China is transitioning from a planned economy to a market oriented economy, subject to five-year and annual plans adopted by the government that set down national economic development goals. Policies of the Chinese government can have significant effects on the economic conditions of China. The Chinese government has confirmed that economic development will follow a model of a market economy under socialism. Under this direction, we believe that China will continue to strengthen its economic and trading relationships with foreign countries and business development in China will follow market forces. While we believe that this trend will continue, there can be no assurance that such will be the case. A change in policies by the Chinese government could adversely affect our interests through, among other factors: changes in laws; regulations or the interpretation thereof; confiscatory taxation; restrictions on currency conversion; imports or sources of supplies; or the expropriation or nationalization of private enterprises. Although the Chinese government has been pursuing economic reform policies for approximately two decades, the Chinese government may significantly alter such policies, especially in the event of a change in leadership, social or political disruption, or other circumstances affecting China's political, economic and social climate

[Emphasis added]

This statement (which is mirrored thorough General Steel's annual reports from as far back as 2006) indicates the potential impact of GOC policies on Chinese iron and steel enterprises generally.

Impact of environmental constraints

General Steel has also made the following observations in relation to the specific impact of environmental measures on its Chinese operations in its Form 10-K Form for the period ended 31 December 2010.

We are subject to environmental and safety regulations, which may increase our compliance costs and reduce our overall profitability.

We are subject to the requirements of environmental and occupational

safety and health laws and regulations in China. We may incur substantial costs or liabilities in connection with these requirements. Additionally, these regulations may become stricter, which will increase our costs of compliance in a manner that could reduce our overall profitability. The capital requirements and other expenditures that may be necessary to comply with environmental requirements could increase and become a significant expense linked to the conduct of our business.

[Emphasis added]

Impact of industry operating conditions, elimination of backwards capacity, and consolidation

In its Form 10-K Form for the period ended 31 December 2010, General Steel made the following observations.

On July 12, 2010, the Ministry of Industry & Information Technology Commission issued the Steel Industry Admittance and Operation Qualifications. The new standard specified requirement for all aspects of steel production, which include: size of blast furnace, size of converters, emission of waste water, dust per ton of steel producing, quantity of coal used for each process of steel making and output capacity commencing in 2011.

...

While the operational conditions become more stringent, more small and medium size companies will likely to (be) aggressively look for valued partners which could lead to opportunities for high quality acquisition for our Company. We believe the directives have indirectly strengthened our position as an industry consolidator by creating quantitative measure we can use to better qualify potential acquisition targets.

In its Form 10-K filing for the year ended 31 December 2007, General Steel also noted:

We believe the government will continue, and likely strengthen, its industry consolidation effort. As capacity from weaker market players is removed, capacity allotments are shifted to existing companies,¹⁶³ such as our Longmen Joint Venture.

...

We believe that the government will continue to strengthen its industry consolidation effort. As excess capacity from weaker market players is removed, the eliminated capacity will be reassigned to steel

¹⁶³ General Steel Form 10-K filing for the period ended 31 December 2007.

companies which have gained government approval for expansion.¹⁶⁴

[Emphasis added]

II(v) Conclusion

After reviewing the identified GOC macroeconomic policies in relation to the iron and steel industry, and related implementing measures, Customs and Border Protection considers there is extensive evidence on the record to show that the GOC plays a significant role in the iron and steel industry in China, through its various policies, plans and implementing measures (including through the implementation of these policies by iron and steel industry SIEs as public bodies).

For ease of analysis, it is considered that these GOC influences can be broadly categorised as follows:

1. measures to drive structural adjustment;
2. technological, efficiency and environmental development measures;
3. export restrictions on coke; and
4. subsidisation of encouraged practices and products.

In categorising the above, it is noted that there is some degree of overlap between these categories (e.g. subsidisation is considered to be used to encourage technological and efficiency development).

The likely impact of these measures, and whether they have created a 'market situation' is examined in the following chapter.

¹⁶⁴ General Steel Form 10-KQ filing for the period ended 31 March 2008.

PART III ASSESSMENT OF MARKET SITUATION

After identifying numerous GOC influences on the iron and steel industry, Customs and Border Protection has undertaken an assessment as to whether it is reasonable to consider that a market situation existed in the Chinese HSS market during the investigation period, such that sales in that market are unsuitable for determining normal value under s.269TAC(1).

III(i) Approach to assessment

In assessing whether a market situation has been created by government influence on an industry, it is considered that several approaches may be open to Customs and Border Protection.

In examining whether a market situation existed in the Chinese HSS market, Customs and Border Protection has focussed particularly on an economic assessment of the likely impact of these GOC influences on the determinants of supply of HSS, and the resulting likely impact on the price of HSS in China.

In doing so, the likely impact of these GOC influences on the determinants of supply of HSS has been outlined below in relation to each identified category of influence.

III(ii) Economics of supply

It is generally accepted that demand and supply side factors of a market for a product influence prevailing prices for that product.

It is accepted economic analysis that if a factor that influences supply (other than the price of a product) changes, this will cause a change in supply. A change in supply, or a shift in the supply curve, can have the effect of:

- increasing supply, which causes producers to supply more products at any given price,
- decreasing supply, which causes producers to supply less products at any given price.

In each of these cases, the equilibrium price (the price at which the quantity demanded equals the quantity supplied) will be different to the price before the shift in supply.

It is in this context that Customs and Border Protection explains whether the GOC policies and measures have led to HSS prices that are considered likely to be significantly different to what they would have been without GOC influence in the iron and steel sector.

III(iii) Determinants of supply

The supply of any given goods can be shifted by changes in the determinants of supply. These determinants include:

- the costs of the factors of production;
- technology;
- the price of related goods;
- the number of suppliers in the market; and
- expected future prices.

It is considered that, of these determinants of supply in relation to HSS:

- the costs of the factors of production;
- technology; and
- the number of suppliers in the market

have likely been impacted by the GOC influences outlined in the appendix.

Cost of the factors of production

The term 'factors of production' relates to the inputs of production of a good, including land, labour and capital goods.

It is generally accepted that if the price of a factor of production decreases, supply of the product increases, while if the price of a factor of production increases, supply of the product decreases.

It is considered likely that the impact of GOC influences have overall increased supply in the iron and steel industry, as discussed in Section III(iv).

Technology

It is accepted that changes in technology are a determinant of supply.

Generally, it is accepted that adoption of newer technologies enable producers to use fewer factors of production to produce goods, which lowers the cost of production and increases supply.

It is considered likely that the impact of GOC influences have increased the use of more advanced technology equipment and production practices in the iron and steel industry and this has increased supply – as discussed in Section III(iv).

Number of suppliers in the market

It is accepted that, all other things being equal, the greater the number of firms in the market producing a good, the larger the supply of that good.

It is considered likely that the impact of GOC influences have decreased the number of market participants throughout the iron and steel industry (though this has not had the effect of reducing production overall).

III(iv) Impacts of GOC Influences

Structural adjustment

As noted in PART II of this appendix, significant evidence of the implementation of the GOC policy of restructuring, re-locating and consolidation of the Chinese iron and steel industry into larger, more favourably located enterprises has been observed. Further, evidence that the GOC has implemented measures to eliminate redundant capacity in the iron and steel industry has been observed.

Consequently, structural adjustment has been seen both in 'upstream' producers of HSS raw materials (and the upstream inputs of these raw materials as well), but also in the Chinese pipe and tube sector and amongst enterprises that themselves produce HSS and other pipe and tube products.

Furthermore, it is considered that the merging and consolidation of the iron and steel industry is likely to be more widespread than those mergers listed in this appendix, which are non-exhaustive listings. It is therefore considered likely that numerous other iron and steel enterprises including HSS manufacturers and other pipe and tube producers, have undergone mergers and restructuring in line with these GOC policies.

It is considered that the effects of this structural adjustment for enterprises are likely to include:

- greater cost efficiency through the creation of economies of scale;
- shifts in market share;
- improved profitability;
- improved research and development through consolidated efforts (and a resulting improvement in production processes and efficiency, as well as product quality and output levels);
- increased administrative efficiency;
- improved ease of access to funds; and
- reduced number of competitors.

Many of these effects are considered to be beneficial for enterprises involved, and the industry overall. These benefits appear to be in line with the GOC aims and objectives to:

...realize the industrial upgrading and develop the iron and steel industry into an industry with international competitiveness that may basically satisfy the demand of the national economy and social development in terms of quantity, quality and varieties

as stated in the NSP.

Indeed, Customs and Border Protection notes General Steel's comments in its 10-K filing for the period ended 31 December 2007, and Form 10-KQ filing for the period ended 31 March 2008, that identify this restructuring and shifting in capacity from 'weaker market players' to larger enterprises as an

opportunity for General Steel.

Technological, operating efficiency and environmental development measures

As outlined throughout this appendix, many of the GOC's macroeconomic policies and implementing measures for the iron and steel industry focus on achieving goals of technological advancement, increased industry efficiency (noting the overlap of this with the above-mentioned mergers and restructuring) and environmental protection. In many ways, these measures appear to overlap (e.g. technologically advanced machinery is also more environmentally friendly), so have been considered collectively.

The impact of these measures on the iron and steel industry and the enterprises operating within it are considered to be manifold, and are considered may have a variety of impacts. Some likely impacts are outlined below:

- increased efficiency through the use of more modern equipment and manufacturing processes (resulting in lower costs and increasing industry competitiveness globally);
- decreased supply of certain materials and the need to use alternatives (e.g. the elimination of narrow strip mills in line with the Directory Catalogue will likely decrease the supply of narrow strip and force HSS and other metal product producers to use HRC or other alternatives – which may itself require technological upgrades, etc);
- increased capital expenditure (e.g. having to invest in new environmentally-sound equipment or newer production technology);
- further consolidation of the industry as enterprises that do not meet environmental production capacity, or use of non-backwards production are forced to close/merge with compliant enterprises;
- improved product quality; and
- effect on decision-making of enterprises to comply with environmental requirements.

While Customs and Border Protection considers that it is common for governments to impose measures on their industries designed to protect the domestic and international environment, it nevertheless considers that such measures likely directly impact the operations and business decisions of enterprises, the costs incurred by these businesses, and subsequently their profits and/or selling prices.

Indeed, Customs and Border Protection notes General Steel's comments in its Form 10-K Form for the period ended 31 December 2010, which notes the ability of GOC-enforced environmental measures to significantly impact the business' costs.

Export restrictions on coke

Customs and Border Protection considers export restrictions on coke¹⁶⁵ are likely to have acted as a strong barrier to exports of coke from China, as the competitiveness of Chinese exports of coke would have been seriously eroded by the export taxes and lack of VAT export rebate, and the ability of enterprises to be involved in the export of coke was restrained.

These barriers to export would reasonably be considered to have an impact on the volume of coke exported, which has been observed in a correlating significant decline in exports of coke from China, resulting in an increased supply of coke in China.

In turn, this increased volume of coke retained in China could reasonably be considered to have resulted in decreased prices.

Note: publicly available cost models (available at www.steelonthnet.com) demonstrate that:

- *the cost of coke represents a significant proportion (over 20%) of the cost of cast steel (being first used to smelt iron, and this iron then used to produce steel);*
- *steel represents the majority of the cost of HRC (the proportion of cost for narrow strip will depend on the amounts of scrap used to produce the billets that this strip is rolled from, though it is considered that a significant proportion of this steel scrap will also be attributable to coke); and*
- *verified information of Chinese exporters shows that HRC and/or narrow strip represents in excess of 90% of the total cost of HSS.*

It is therefore considered that the cost of coke represents a significant proportion of the cost of HRC, narrow strip, and HSS itself.

Subsidization

It is noted that Customs and Border Protection has found that Chinese exporters of HSS have been in receipt of numerous countervailable subsidies from the GOC, and that evidence exists to suggest that upstream suppliers of steel and steel raw materials have also potentially been in receipt of subsidies.

The likely impact of these subsidies on the iron and steel industry are considered to be diverse.

¹⁶⁵ Particularly from 2009 onwards when export licensing, quotas and a significant increase in export tariffs were imposed by the GOC

For example:

- direct injections of funds into enterprises may result in lower costs for factors of production being passed on to their customers by reduced selling prices;
- grants for research and development may result in greater operating efficiency through technological innovation, and increased product quality;
- GOC funds to assist with the consolidation and merger of enterprises (such as those outlined in the Backwards Capacities Notice) may assist with the adjustment of the industry and the potential impacts of this.

III(v) Impact on supply and price of HSS

In examining the above, it is considered that a combination of the likely impacts of GOC influences on the Chinese iron and steel market are likely to have affected the determinants of supply of HSS in China.

Likely impact on each determinant

Structural adjustment is likely to have impacted on the supply of HSS and hence the price of HSS in the following ways.

- Reducing prices of the factors of production of HSS including the price of HSS raw material inputs due to increases in supply brought about in the HRC and narrow strip markets (as well as changes in supply of upstream steel, iron and other raw material manufacturers).
- Improving the technology used by consolidated enterprises (including as a result of consolidated research and development) and hence reducing the cost of production and increasing supply.
- Increasing operating costs through the costs of compliance with environmental standards and industry operating conditions which would likely decrease supply (this influence would likely also have the effect of decreasing supply in upstream industries due to their own compliance costs, decreasing the supply of HSS inputs and increasing the cost of these inputs).
- Eliminating redundant capacity and consolidating production into larger, merged steel enterprises. It is noted that, while this may, in terms of economic analysis, be expected to decrease supply, this is not likely given the circumstances – that is, the structural adjustment is aimed at eliminating redundant and backward capacity and, while the shift of demand to larger more efficient producers may have reduced the number of producers and some overall capacity, it is unlikely to have resulted in less production and a decrease in supply.¹⁶⁶ Rather, it is likely to have removed a significant proportion of redundant or backward capacity, in line with the GOC aims. This is confirmed by

¹⁶⁶ Refer to the comments within general Steel's Form 10-K filing for the year ended 31 December 2007 that discuss the shifting of capacity amongst industry members.

statistics published in the Steel Yearbook that demonstrate that both crude steel output and steel product output grew each year from 2006 to 2010 (approximately 50% and 70% in the period respectively).

Technological and operating efficiency measures are likely to have increased the supply of HSS (and hence decreased the price of HSS) through the elimination of backwards capacity and adoption of more technologically-advanced production techniques, reducing the cost of production (both of HSS manufacturers, as well as for HRC and narrow strip manufacturers and in upstream industries, affecting supply in those industries as well).

Export restrictions on coke are likely to have impacted the supply of HSS and the price of HSS through the reduction of input prices through the impact of the reduced price of coke on the supply of iron, and then the flow through effects of supply in steelmaking and casting, HRC and narrow strip production, then HSS itself.

Subsidisation is likely to have impacted the prices of factors of production of HSS and hence the price of HSS through:

- improving the technology used by HSS manufacturers, decreasing the cost of production, as well as affecting the supply and hence price of HRC and narrow strip enterprises (and upstream industries that are also likely to have received subsidies);
- decreasing the cost of inputs of HRC and HSS through the encouraged structural adjustment of HRC, narrow strip, and upstream industry entities (see above); and
- directly reducing input prices of products at each stage of production where the subsidies are passed on by the recipient enterprises.

Customs and Border Protection therefore determines that the price of HSS in China is likely to have been influenced by changes in the determinants of supply, leading to increased supply and consequently lower prices in both the HSS and upstream industries.

Overall Impact

It is noted that some of these influences could reasonably be considered to have increased the price of factors of production and (in isolation) create a shift in the supply curve to the left, which would likely have the impact of raising HSS prices. However, it is considered that the majority of these GOC influences on the prices of factors of production, and improvements in technology, would have resulted in an overall shift in the supply curve to the right, resulting in a lowering of the price of HSS.

In noting the above, Customs and Border Protection has undertaken comparative analysis of the domestic Chinese selling prices of HSS by exporters that have co-operated with this investigation, and the selling prices of the co-operating exporters from other investigated countries (taking into account product mix). In doing so, it has been observed that the Chinese domestic HSS prices were commonly below those of all other origins

investigated.

While it is noted that this disparity may be due to several reasons, it is considered that this analysis correlates Customs and Border Protection's assessment that HSS prices in China are likely to have been suppressed overall, as outlined above.

Customs and Border Protection observes that the changes in supply in HSS and resultant impact on HSS prices have been brought about in a significant part by the GOC influence within the iron and steel industry.

III(vi) Conclusion – market situation

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

The impact of these GOC influences on supply are extensive, complex and manifold, and their resulting impact on the price of HSS is not able to be easily quantified. However, as discussed in Section 1(ii) of this appendix, it is not considered that the quantification of price effects is necessary in assessing the suitability of prices for normal value under s.269TAC(1).

Customs and Border Protection's analysis of the information available indicates that prices of HSS in the Chinese market are not substantially the same (likely to be artificially low), as they would have been without the GOC influence. Customs and Border Protection considers that GOC influences in the Chinese iron and steel industry have created a 'market situation' in the domestic HSS market, such that sales of HSS in that market are not suitable for determining normal value under s.269TAC(1).

After making this assessment, Customs and Border Protection has further considered the reasonableness of exporters' costs to make and sell in line with the Regulation. This assessment is discussed in Section 6.4 of this report.

PART IV SUBMISSIONS IN RESPONSE TO SEF177

Multiple interested parties have made submissions in response to SEF177 in relation to Customs and Border Protection's findings of a particular market situation in the Chinese HSS market.

Matters raised in these submissions are discussed below, and have been considered by Customs and Border Protection in arriving at the conclusions within this appendix.

IV(I) SEF177- alleged GOC deficiencies

In its submission of 23 May 2012, the GOC noted that SEF177 alleged 'certain deficiencies' in the information provided by the GOC to the investigation.

The GOC addressed these identified 'deficiencies' and provided further clarification and additional documentation (some of which were more detailed translations of documents previously provided with partial translations).

The information provided within this submission is discussed throughout this appendix.

IV(II) GOC Influences on scrap prices

ATM has submitted¹⁶⁷ that it understands that Chinese domestic scrap 'sells at a discount' to that in the Asian region, submitting that the GOC has also imposed a 10% export tax on steel scrap to 'discourage export'.

ATM further submitted that the GOC measures on coking coal and 'other alloys' serves to further suppress Chinese domestic scrap prices that are already influenced by the operation of this 10% export tax.

It is not clear to Customs and Border Protection from ATM's submission what impact ATM considers this information in relation to scrap should have on its assessment of a market situation in the Chinese HSS market, other than to strengthen Customs and Border Protection's positive finding on this matter.

Customs and Border Protection highlights that its findings in relation to the existence of a market situation in the Chinese HSS market have examined the entire Chinese iron and steel industry in detail, and assesses the impact of multiple GOC policies, plans and implementing measures (not limited to export measures on coking coal) in this industry, ranging from steel raw materials, to HRC raw materials (HRC and narrow strip) and through to the HSS market itself.

It is noted at Section II(i) that the matters discussed in detail within this appendix are a selection of the major policies, plans and measures identified

¹⁶⁷ ATM submission of 14 May 2012

by Customs and Border Protection within its assessment. Discussion and analysis of these influences on their own have resulted in Customs and Border Protection finding that a market situation existed in the Chinese HSS market.

While it is considered plausible that export taxes on scrap may have been effective during the investigation period, and these may have further influenced the market, it is not considered that further investigation/discussion of this point would impact the already-positive finding of a market situation.

Consequently, Customs and Border Protection has not undertaken further investigations to correlate ATM's submission that an export tax exists on Chinese steel scrap, and what impact this may have on the price of scrap in China.

IV(iii) Test applied to establish market situation

The GOC has submitted¹⁶⁸ that Customs and Border Protection has not applied a 'proper or recognised' test to establish the existence of a market situation that did not permit the determination of normal values based on domestic sales in the meaning of Article 2.2 of the ADA, or a proper comparison within the meaning of Article 2.4 of the ADA. The GOC further submitted that the test applied by Customs and Border Protection does not conform with the requirements of s. 369TAC(2)(a)(ii).

The GOC submits that Customs and Border Protection's assessment of market situation appears to:

...believe it is sufficient to establish that prices of HSS in the Chinese market are not substantially the same as they would have been without GOC influence.

However, the GOC considers that Customs and Border Protection does not make a finding of what prices of HSS would have been without the GOC influences that Customs and Border Protection considers have created a market situation, and that a finding that prices of HSS in China were not the same as they would have been without GOC 'regulation' of its market is

...irrelevant to determination of normal value in the economy of a WTO member.

The GOC stresses that prices in every economy will be influenced by government regulation, and that HSS prices in China were at all times determined by supply and demand in a competitive market.

This submission is mirrored by Huludao and Kingland in their submissions of 14 May 2012

The GOC's position on the 'test' applied by Customs and Border Protection in

¹⁶⁸ GOC submission of 16 May 2012

its determination of the existence of a particular market situation in China is noted.

However, Customs and Border Protection respectfully disagrees with the GOC's assertion that a finding that government influence (which the GOC has identified as 'regulation') in an economy of a WTO member has caused prices within that economy/market to be not the same as they would have been without this influence is not relevant to a determination of the existence of a particular market situation.

On the contrary, Customs and Border Protection notes its policy outlined in the Dumping and Subsidy manual that specifically relates to such circumstances (referred to earlier in this Appendix at Section I(ii)).

*In investigating whether a market situation exists due to government influence, Customs and Border Protection will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or are substantially the same as they would be if they were determined in a competitive market.*¹⁶⁹

[Emphasis added]

The analysis and conclusions within this appendix have been made in accordance with this position outlined in the Dumping and Subsidy Manual.

IV(iv) Economic analysis of market situation

The GOC has submitted that:

The economic assumptions and/or constructions allegedly applied to the assessment of a particular market situation...are variously unscientific, unconventional, and unrealistic.

The GOC submits that this analysis appears to be based on a degree of economic theory, but that there is no confirmation that this reflects the experience of Chinese iron and steel producers, nor the impacts of GOC policies on the inputs of HSS.

As an example, the GOC notes Customs and Border Protection's findings that certain GOC measures have likely caused HSS prices in China to be lowered, but provides 'no evidence' of a lower price or of any increases in efficiency in the production of HRC.

Huludao and Kingland¹⁷¹ also consider that Customs and Border

¹⁶⁹ Customs and Border Protection Dumping and Subsidy manual June 2009.

¹⁷⁰ GOC submission of 16 May 2012

¹⁷¹ Submissions of 14 May 2012

Protection should have undergone some measurement of the impact of GOC influences in the iron and steel industry on the domestic prices of HSS. These entities also submit that the categories of GOC influence identified by Customs and Border Protection were not of the nature that would lower prices of HSS in China.

Further to the above, the GOC reproduces an extract from Customs and Border Protection's 2006 REP116, in relation to an earlier investigation into HSS, in which Customs and Border Protection refers to the NSP and states it:

...is unaware of the success or degrees of policy implementation (under the NSP) and cannot possibly assess the actual influence, if any, on HSS prices.¹⁷²

Dalian Steelforce has also made reference to the above extract in its submission of 15 May 2012.

The GOC submits that there is nothing in Customs and Border Protection's current assessment of a market situation in the Chinese HSS market that shows:

...appreciation of the impact of policy implementation, whether such policies have in fact been adhered to and to what degree, of their influence on HSS prices.

Customs and Border Protection notes the statements made in REP116 in relation to the NSP, and consider these reflect the best understanding and evidence available to Customs and Border Protection at the time of that investigation.

Customs and Border Protection has undertaken thorough analysis of all available information to the current investigation, as detailed throughout this appendix. This includes specific assessments of the impact of the implementation of various GOC policies, and evidence of the implementation of these policies. The likely influence on HSS prices (i.e. likely to be lower than if they were determined in a market without this extensive GOC influence) has also been assessed.

In undertaking this assessment, Customs and Border Protection notes that vast volumes of information and GOC documents have been examined, many of which have been developed well after the 2006 investigation into HSS, and its findings as detailed in REP116.

Customs and Border Protection disagrees with the GOC's submission that the economic analysis applied in the assessment of the existence of a particular market situation is unconventional. Customs and Border Protection considers its assessment that a shift in the supply curve, all other things being equal, results in a new equilibrium price, reflects well established and readily accepted economic

¹⁷² REP166 page 70.

principles.

Customs and Border Protection therefore considers that the application of these principles to the observed GOC influences on the Chinese iron and steel industry is a solid way to arrive at the conclusion in this appendix that prices of HSS in the Chinese market are not substantially the same (likely to be artificially low), as they would have been without the examined GOC influence (see Section III(vi) of this appendix).

In addition, Customs and Border Protection notes its position, as outlined in Section I(ii) of this appendix, that it is considered that the pricing effect of the impact of government policies on domestic prices of HSS does not have to be quantified. Customs and Border Protection notes that, even if it were its intention to perform this quantification, the nature and extent of GOC influence noted in the Chinese iron and steel industry (as detailed throughout this appendix) is so broad it would make accurate quantification impossible.

Regardless, although Customs and Border Protection does not consider this type of analysis is necessary, examination of HSS domestic and export prices from all 5 investigated countries/region shows that Chinese HSS prices during the investigation period were consistently the lowest of those prices. It is noted that some of this lower price may be attributable to certain comparative advantages of the Chinese iron and steel industry (which Huludao and Kingland have submitted must be taken into account in any such price comparison)¹⁷³, though the extent of this comparative advantage is unable to be quantified, and considered in part to be due itself to GOC influence.¹⁷⁴

Consequently, it is concluded that, within this appendix, Customs and Border Protection has reasonably demonstrated that prices of HSS in China during the investigation period were likely to be artificially lower than what they would have been in the absence of GOC influence in the Chinese iron and steel industry. This assessment was based on detailed analysis of GOC policies, plans and implementing measures and accepted economic analysis of the effect of these GOC influences on the price of HSS in China.

IV(v) Isolation of certain provinces from influence

Orrcon has submitted¹⁷⁵ that, in Zhejiang province where the HSS exporter Zhejiang Kingland is located, the NSP has had no effect. In doing so, Orrcon acknowledges that the NSP does exist and has 'some effect' on larger raw material suppliers, but submits that various provincial governments in China

¹⁷³ Submissions of 14 May 2012

¹⁷⁴ This issue is discussed in more detail in Section V(i) of Appendix C with reference to HRC and narrow strip, though this also applies to comparative advantage in the Chinese HSS market.

¹⁷⁵ Orrcon submission of 14 May 2012

(including Zhejiang) have 'actively resisted' the NSP, making the practical success of the NSP 'slow to non-existent in many provinces'.

Further, Hengshui Jinghua has claimed that it has not been affected by any GOC actions identified by Customs and Border Protection as creating a particular market situation in the Chinese HSS market and has operated in 'complete market conditions'.¹⁷⁶

Customs and Border Protection considers it possible that certain provinces in China may have played a more active role in implementing the Central Government's policies (not merely limited to the NSP, but including various other policies and plans) than others. However, as observed in this appendix, Customs and Border Protection has observed significant evidence that suggests:

- the GOC at all levels, and across multiple agencies/departments, actively implements and monitors the success of the NSP, Revitalisation Plan and other broad macroeconomic policies that affect the steel industry (noting various provincial FYPs that make specific reference to aims to implement national level iron and steel policies);
- the implementation of the GOC's national iron and steel industry policies by provincial governments, as well as GOC agencies and departments, is mandatory; and
- the impact of these policies, plans and measures can be seen in various provinces in China.

Customs and Border Protection therefore considers it likely that the impact of GOC policies, plans and implementing measures are felt by members of the iron and steel industry in all Chinese provinces, though certain provinces may be more directly impacted than others.

Furthermore, Customs and Border Protection notes it has observed that iron and steel products are traded across regions in China (i.e. HRC produced in one province is used to produce HSS in another province), making any GOC influence that may be disproportionately experienced from province to province somewhat mobile.

Customs and Border Protection therefore considers that the impact of GOC policies, plans and implementing measures have influenced the entire Chinese iron and steel industry and all entities within it, regardless of their location (either through direct intervention in business affairs, impact on the available equipment and permitted production processes, influence on raw material supply, influence on the factors of competition (e.g. number of market players), or in various other ways).

Customs and Border Protection therefore does not exclude Kingland or Hengshui Jinghua from its findings of a market situation in the Chinese HSS

¹⁷⁶ Hengshui Jinghua submission of 2 May 2012

market.

IV(vi) Applicability of NSP to HSS sector

Huludao and Kingland have submitted¹⁷⁷ that the NSP does not apply to the HSS sector in China, and that this policy substantially focuses on the mining and 'rolling' part of the Chinese iron and steel industry.

Customs and Border Protection notes that the NSP clearly identifies the iron and steel industry, the target of the policy, as including 'metal products' (see Section I(vii) of this appendix), which it is considered includes HSS (though Huludao and Kingland challenge this interpretation and consider it is too broad).

Further, Customs and Border Protection also notes that the NSP is only one of multiple GOC macro-economic policies examined in the determination made within this appendix that a market situation existed in the Chinese HSS market (i.e. the findings are not solely reliant on the NSP in any case).

Regardless, Customs and Border Protection observes that this appendix contains detailed analysis of an array of GOC policies, plans and measures, many of which have established links back to the NSP and other macro economic policies, as well as a demonstrated impact on manufacturers of metal products (specifically steel pipe) in China.¹⁷⁸

Customs and Border Protection considers that the analysis in this appendix has demonstrated that the NSP and other GOC policies, plans and measures (implemented and developed at various levels of government), impact the entire iron and steel industry in China, including metal product producers (thereby concluding this impact is also felt by HSS manufacturers as well).

IV(vii) Aluminium extrusions approach should have been adopted

In their submissions of 14 May 2012, Huludao and Kingland observed the approach taken in Customs and Border Protection's previous investigation into aluminium extrusions, which involved an investigation into whether a market situation existed in China in relation to those goods and found:

- there was no market situation in relation to aluminium extrusions in China; however
- the cost of primary aluminium (the main raw material for aluminium extrusions) was not a reasonable cost for the purposes of Regulation 180(2);

after which Customs and Border Protection constructed costs for aluminium extruders that included uplifted primary aluminium prices and performed ordinary course of trade tests with these uplifted costs to establish sufficient

¹⁷⁷ Huludao submission of 14 May 2012, Kingland submission of 14 May 2012.

¹⁷⁸ Refer to the comments made by General Steel in its various SEC filings, as reproduced at Section II(iv) of this appendix.

volumes of domestic sales in the ordinary course of trade used to establish s.269TAC(1) normal values.

Huludao and Kingland appear to submit that this approach should have been taken in relation to HSS.

Customs and Border Protection reiterates that its detailed analysis of the Chinese HSS market has found that domestic sales of HSS during the investigation period were not suitable for determination of normal values under s.269TAC(1) due to the existence of a particular market situation. This finding therefore renders all domestic sales of HSS unsuitable for use in determining normal values, regardless of whether they would have been in the ordinary course of trade after uplifted HRC and narrow strip costs were used to conduct this test.

IV(viii) Evidentiary issues

The GOC has submitted¹⁷⁹ its concern over the treatment of certain evidence it has provided to the investigation, as well as the weight placed by Customs and Border Protection on certain evidence from various sources.

The GOC expresses concern that:

- Customs and Border Protection has undertaken its own interpretation of GOC laws and rejected GOC explanations of its own laws;
- there is no evidence of consideration being given to evidence supplied in the SSGQ;
- material has been relied upon that has not been 'tendered' to Customs and Border Protection for the purposes of the investigation, specifically:

- EC and WSA findings;

- WTO Panel and Appellate Body findings in DS394, 395

and 396 and

- various comments made by General Steel.

Interpretation of GOC laws

Within this report and appendices, Customs and Border Protection has endeavoured to assess and analyse vast amounts of information requested of, and provided by the GOC (including laws, regulations, policies and other GOC documents). In doing so, Customs and Border Protection has sought to reasonably interpret these documents in an impartial and reasoned manner, having regard to all available evidence.

Customs and Border Protection observes that this has necessarily involved the interpretation of the text of various GOC documents, including GOC laws. However, this has at all times been undertaken bearing in mind the context of those documents, and related information provided by the GOC (including its written responses to the GQ, SQG and SSGQ). This is relevant to the

¹⁷⁹ GOC submission of 16 May 2012

assessment of a market situation in the Chinese HSS market that is the focus of this appendix, but also to the assessment of the countervailability of subsidy programs in China (discussed in detail in Appendix B of this report).

This analysis of GOC information, supported by evidence provided by other parties and sourced from publicly available information, has led to the findings within this appendix and other parts of this report.

Consideration of SSGQ

It is noted that the SSGQ, and the GOC's response to this questionnaire, relate specifically to the assessment of the countervailability of alleged subsidy programs 21 – 34, discussed in detail in Appendix B of this report. However, this issue of consideration of the SSGQ is contained within this appendix for convenience.

In any case, Customs and Border Protection considers that the GOC's assertion that there is no evidence of the SSGQ being considered is not supportable. Numerous references to information submitted in response to the SSGQ were contained in SEF177 and repeated in this report, including findings that alleged subsidy programs were not countervailable based on information provided in the SSGQ/

For example, Section III(ii) of Appendix B to this report states, in relation to the alleged programs 25, 26 and 31:

Having regard to the eligibility criteria for these programs outlined in the GOC's response the SSGQ, and its investigations with the concerned selected cooperating exporter, Customs and Border Protection is satisfied that the financial contribution received under these grants can not be attributed to HSS and therefore did not confer benefit on the goods.

EC, and CBSA Information

The GOC's concerns in relation to EC and CBSA information in the context of this investigation relates to the fact that the findings of both administrations mentioned by Customs and Border Protection were based on different laws to those that govern the Australian system, and related to different periods of investigation.

Customs and Border Protection observes that it has specifically acknowledged the differences between the tests applied by the CBSA and EC and those applicable to its own assessment of HSS in China (see Section I(i) of this appendix). This has been borne in mind by Customs and Border Protection throughout its assessments within this report.

Customs and Border Protection acknowledges the different investigation periods of the EC and CBSA's investigations into sub-sets of HSS discussed in this report, but notes that its own findings have been based on a variety of available information, including recent GOC policies, plans and measures that

have been imposed following the CBSA and EC findings.

Furthermore, Customs and Border Protection has made its findings within this report after asking the GOC extensive questions related to the applicable investigation period.

WTO dispute findings

The GOC's submits in relation to the DS394, 395 and 398 disputes that the

...quoted recommendation did not in fact apply to many of the measures listed in SEF177 because lengthy sections of the Panel's findings were declared moot and of no legal effect.

The GOC further considers that none of the findings referred to in SEF177 in relation to these disputes support a finding of particular market situation in any case.

The GOC's submissions on this matter are noted and Customs and Border Protection does not consider it necessary to discuss the particulars of the legality of the Appellate Body's recommendation quoted in Section II(iii) of this appendix.

Customs and Border Protection notes that references made to these WTO disputes in this appendix have been applied to simply demonstrate that the GOC has imposed certain implementing measures on coke that are consistent with the aims of its NSR and the 2009 Revitalization Plan (i.e. further evidence that such measures existed).

General Steel comments

The GOC raises concerns over Customs and Border Protection's reliance on certain comments contained within various documents lodged by General Steel with the US SEC. The GOC observes that this information is unverified, not available on the investigation Public Record, and taken from a different context to that of an anti-dumping and countervailing investigation.

The GOC further submits that companies commonly report to the SEC on matters including international risks associated with their business operations, and that the views expressed by General Steel that it is subject to environmental and safety laws and regulations, and that compliance with these may affect costs, is not prejudicial to China in any sense.

Customs and Border Protection notes that, in making final recommendations to the Minister, the CEO of Customs and Border Protection may have regard to any other matters considered to be relevant.¹⁸⁰ It is considered that the statements of General Steel are such a relevant consideration.

¹⁸⁰ S.269TEA

It is noted that the General Steel comments are publicly available from the SEC, and are not of a nature that warrants verification (i.e. general statements of risks posed by business). In relying on these statements, Customs and Border Protection has undertaken an assessment of the context of these comments, and considers that, though they are provided to the SEC for different purposes, they reflect the opinion of General Steel in relation to the risks posed by GOC policies in China, and the costs associated with compliance with GOC policies.

While Customs and Border Protection considers that these statements are indeed not 'surprising', they do serve to offer insight into the potential and actual impact of GOC policies, plans and measures in the Chinese iron and steel industry on entities operating within that industry (indeed, those that manufacture various forms of steel pipe).

PUBLIC FILE

**APPENDIX B — ASSESSMENT OF COUNTERVAILABILITY
OF SUBSIDIES**

This appendix details Customs and Border Protection's assessment of the 35 subsidy programs investigated in relation to HSS.

PART I INTRODUCTION**I(I) Investigated programs**

At the date of initiation of this investigation, Customs and Border Protection considered that the application had presented reasonable grounds for the publication of a countervailing duty notice in respect of 20 alleged subsidy programs, and Customs and Border Protection commenced investigations into these programs.

During its investigations with selected cooperating Chinese HSS exporters, a further 15 possible subsidy programs came to Customs and Border Protection's attention as potentially countervailable subsidies in respect of HSS. Investigations into these programs were commenced, taking the total of investigated programs to 35.

The countervailability of each of these 35 programs, and the subsidy amount received by Chinese exporters under these programs, is detailed in this appendix.

I(II) The Act

S.269T of the Act defines 'subsidy' as follows:

'subsidy' in respect of goods that are exported to Australia, means:

(a) financial contribution:

- (i) by a government of the country of export or country of origin of those goods; or*
- (ii) by a public body of that country or 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 is made in connection with the production, manufacture or export of those goods and that involves:

- (iv) a direct transfer of funds from that government or body to the enterprise by whom the goods are produced, manufactured or exported; or*
- (v) a direct transfer of funds from that government or body to that enterprise contingent upon particular circumstances occurring; or*
- (vi) the acceptance of liabilities, whether actual or potential, of that enterprise by that government or*

body; or

- (vii) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body by that enterprise; or
- (viii) the provision by that government or body of goods or services to that enterprise otherwise than in the course of providing normal infrastructure; or
- (ix) the purchase by that government or body of goods provided by that enterprise; 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 in relation to those goods.

S.269TAAC defines a countervailable subsidy as follows:

(1) For the purposes of this Part, a subsidy is 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

(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 access to the subsidy:

(a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

(c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) Despite the fact that access to a subsidy is established by objective criteria, 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.

S.269TACC of the Act directs how it is to be determined whether benefits have been conferred by a subsidy and the amount of this benefit.

Customs and Border Protection makes references to these sections throughout this appendix.

I(III) Information relied upon

In addition to the information contained in ATM's application for this investigation, Customs and Border Protection has had regard to the following in arriving at the conclusions regarding countervailable subsidies in this appendix:

- the responses from the GOC to the GQ, SGQ and SSGQ;
- responses to the Exporter Questionnaire by selected cooperating exporters, and information gathered from and verified with these exporters; and
- information submitted to Customs and Border Protection's 2009 investigation into aluminium extrusion from China (REP148), and Customs and Border Protection's analysis and findings in this investigation.

Customs and Border Protection has decided, for this investigation, not to undertake a visit to the GOC to verify information contained in its GQ, SGQ and SSGQ, as Customs and Border Protection considers the responses of the GOC to these questionnaires contain limited information that is by nature 'verifiable', and primarily consist of written responses and documentation that does not need itself to verification.

In making this determination, Customs and Border Protection considered that, where necessary, it would likely be more practicable in the context of the HSS investigation to pose additional questions to the GOC in the form of supplementary government questionnaires or requests for comment, rather than during face-to-face meetings with GOC officials.

PART II EXEMPTION/REDUCTION OF TAXATION

II(I) Program 10: Preferential Tax Policies for Foreign Invested Enterprises (FIEs) – Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years

Background

The Applicant has alleged that Chinese exporters of HSS have benefited from a preferential tax policy for FIEs provided for under the Chinese *Foreign Invested Enterprise and Foreign Enterprise Income Tax Law 1991* (the FIE Income Tax Law) which came into effect on 1 July 1991.

During the investigation period (July 2010 – June 2011) the prevailing income tax rate for FIEs in China was 25%.

Under this program, from the year an FIE begins to make a profit, they may receive a full exemption from income tax in the first and second years and a 50% reduction in income tax in the third, fourth, and fifth years.

This program begins in the first profitable year of the FIE and concludes at the end of the fifth subsequent year. There is no deferral of the exemption or reduction for subsequent years where the enterprise does not make a profit.

Legal Basis

The income tax reduction and exemption for FIEs under this program is provided for in Article 8 of the FIE Income Tax Law.

The program is a national program administered by the State Administration of Taxation (SAT) and its local Branch Offices or Bureaus. It is administered in accordance with the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law* (the FIE Tax Regulations).

The FIE Income Tax Law and the FIE Tax Regulations were repealed with the introduction of the *Enterprise Income Tax Law 2008* (the EITL).

However, transitional arrangements extend the operation of this program and other preferential tax programs in accordance with the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* (State Council Notice No 39 of 2007). This notice provides that:

- as of 1 January 2008, enterprises that previously enjoyed a 2-year exemption and 3-year half payment of the enterprise income tax and other preferential treatments (including periodic tax deductions and exemptions) may continue to enjoy any preferential treatments previously enjoyed until the expiration of the transitional time period; and
- for enterprises that previously had not enjoyed preferential treatment,

the preferential time period shall be calculated from 2008.

WTO Notification

The GOC notified this program in WTO document G/SCM/N/123/CHN dated 13 April 2006 (Notification No. 1).

Eligibility Criteria

Under Article 8 of the FIE Income Tax Law, to be eligible for this program, the enterprise must be:

- an FIE;
- 'production-orientated';
- an enterprise which has an anticipated term of operation of at least 10 years; and
- an enterprise that has had a financial year in which it made a profit.

To be categorised as an FIE, the enterprise must be a Chinese-Foreign equity joint venture, a Chinese-Foreign cooperative joint venture or a wholly foreign owned enterprise established in China.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC by eligible production-oriented FIEs in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including HSS).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of HSS during the investigation period received tax savings under the program it would therefore confer a benefit in relation to HSS, and the financial contribution would meet the definition of a subsidy under s.269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

Previous estimates by the GOC indicate that FIEs constitute approximately 3.2% of all enterprises in China. This means that the preferential tax treatment explicitly limited to FIEs is not available to approximately 97% of enterprises in China.

Only FIEs are eligible for the subsidy. Other companies in China (being domestic invested enterprises or DIEs) are not eligible for the subsidy. Further, only production-oriented FIEs are eligible for the subsidy (i.e. FIEs that are not production-oriented are not eligible for the program).

As the criteria or conditions providing access to the subsidy favour particular enterprises, being those eligible production-orientated FIEs, over all other enterprises in China, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

For these reasons, Customs and Border Protection finds that the subsidy is specific.

The amount of subsidy in respect of the goods

Selected cooperating exporters

One selected cooperating exporter identified that it was eligible for a 50% reduction in income tax under this program during the investigation period. However, as the enterprise was not profitable during the period, it was not liable for income tax in any case, and hence did not receive a benefit under this program during the investigation period.

Customs and Border Protection therefore considers a zero subsidy rate is applicable to that selected cooperating exporter, and all other selected cooperating exporters under this program.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information, and enterprise ownership information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to these exporters under this program. This information was not provided.

In the absence of this information, Customs and Border Protection considers that, given:

- the fact that the program operates on a national level;
- the understanding that approximately 3.2% of enterprises in China are FIEs and certain selected cooperating exporters of HSS are FIEs; and
- Customs and Border Protection found that one selected cooperating Chinese HSS exporter was eligible for this program

it is likely that selected non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a

financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including HSS.

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to the benefit under s.269TACC(7), Customs and Border Protection is mindful that, under this program, the maximum benefit that can be conferred is a zero tax liability.

To ascertain the quantum of this benefit, Customs and Border Protection has calculated the maximum amount of benefit that could have been attributed to each of the six selected cooperating exporters under this program during the investigation period (zero tax liability on profits, making the benefit 25% of profit) and attributed this amount to HSS per unit by dividing this benefit by the total sales volume of each enterprise (in accordance with s.269TACC(10)).

A subsidy margin was then calculated (per unit benefit amount for each selected cooperating exporter as a percentage of the weighted average export price for that exporter).

Customs and Border Protection has then attributed the highest subsidy margin for the program of the selected cooperating exporter to all selected non-cooperating exporters.

II(1) Programs 1, 11, and 12 - Income tax reduction for foreign-invested enterprises (FIEs) based on location

Background

The application alleges that HSS producers/exporters that are FIEs are likely to have benefited from exemptions to income tax based upon the location of those exporters in a particular province or locality.

These programs apply to certain industries with operations in certain designated zones or certain specific geographic locations. They reduce the normal FIE tax payable rate of 25% to various levels, depending on the particular location.

Legal Basis

The income tax reductions under programs 1, 11 and 12 are provided for in the FIE Income Tax Law, Article 7.

The programs are national programs and are administered by the SAT and its local Branch Offices or Bureaus, in accordance with the FIE Tax Regulations.

As noted in Section II(i) of this appendix, the FIE Income Tax Law and the FIE Tax Regulations were replaced by the EITL in 2008. However, transitional arrangements for these programs until end 2012 are in place under State Council Notice No 39 of 2007.

WTO Notification

The GOC notified the following programs in WTO document G/SCM/N/123/CHN dated 13 April 2006.

- Preferential tax policies enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area) (Notification No. X).
- Preferential tax policies enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones (Notification No. XI).
- Preferential tax policies enterprises with foreign investment established in Pudong area of Shanghai (Notification No. XII).

Eligibility criteria

Program 1: Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones.

- Only FIEs located in economic and technological development zones (ETDZs) or the Coastal Economic Open Areas are eligible for the subsidy.
- FIEs and/or companies located outside ETDZs or the Coastal Economic Open Areas are not eligible for the subsidy.

Program 11: Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area)

- Only FIEs located in a special economic zone (SEZ) designated geographical region are eligible for the subsidy.
- FIEs and/or enterprises located outside an SEZ are not eligible for the subsidy.

Program 12: Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.

- Only FIEs located in a special economic zone (SEZ) designated geographical region are eligible for the subsidy.
- DIEs and enterprises outside the Pudong area are not eligible for the program.

Are there subsidies?

Based on the information above, Customs and Border Protection considers that the laws governing these programs mandate a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in China.

Due to the nature of these programs (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under these programs would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including HSS).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of HSS during the investigation period received tax savings under these programs, it would therefore confer a benefit in relation to HSS, and these financial contributions would meet the definition of a subsidy under s.269T.

Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in s.269TAAC(2)(b), a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority.

A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)).

These programs limit eligibility to FIEs based in certain geographic locations under the jurisdiction of the granting authority (SAT).

As the criteria or conditions providing access to each of the subsidies favours particular enterprises, being FIEs in particular locations, over all other enterprises, the specificity of these subsidies is not excepted by reference to s.269TAAC(3).

For these reasons Customs and Border Protection finds that the above subsidies are specific.

The amount of subsidy in respect of the goods

Selected cooperating exporters

Customs and Border Protection has determined that none of the selected cooperating exporters have received financial contributions in respect of the goods under these programs during the investigation period.

Customs and Border Protection therefore considers a zero subsidy rate is applicable to selected cooperating exporters under these programs.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information and enterprise ownership information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under these programs. This information was not provided.

Furthermore, it is noted that these programs are limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all HSS exporters in China, but this was not provided.

Customs and Border Protection's commercial database does list 'supplier' addresses, but it is not certain for each 'supplier' whether they are in fact the exporter of the goods, and whether the supplier operates in more locations than the one listed (e.g., the listed location could represent a central or head office of an enterprise that operates HSS manufacturing facilities in multiple locations in China).

In the absence of the above relevant information, Customs and Border Protection considers it is likely that selected non-cooperating exporters meet the eligibility criteria for these programs, have accessed these programs, and therefore received financial contributions under these programs.

It is considered that this financial contribution has been made in respect of all products of these exporters, including HSS.

In calculating the amount of subsidy attributable to selected non-cooperators under these programs, it is noted that as:

- these programs would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 10 (0% tax liability) has already been applied to selected non-cooperating exporters;

the maximum benefit amount available under these programs has already been countervailed in relation to Program 10.

Customs and Border Protection has therefore calculated a zero amount of subsidy under these tax programs for selected non-cooperating exporters.

II(iii) Program 13: Preferential Tax Policies in the Western Regions

Background

The application alleges that HSS exporters are likely to have benefited from exemptions to income tax based upon the location of enterprises in the Western Regions of China.

Under this program, enterprises established in the Western Region engaged in industries encouraged by the State are eligible for a reduced tax rate of 15% (as opposed to the standard 25% taxation rate).

In certain circumstances, the program also operates to extend the duration of the preferential tax period under Program 10, and exempts enterprises from VAT and tariff on imported goods (Program 14). As Customs and Border Protection has examined Programs 10 and 14 as separate programs in this investigation that operate at the national level, the assessment of Program 13 focuses specifically on the reduced income tax rate part of the program.

Legal Basis

Established pursuant to:

- the *Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions*, State Council Circular Guo Ban Fa No. 33 of 2000;
- the *Implementing Some Policies and Measures for the Development of Western Regions*, General Office of State Council Circular Guo Ban Fa No. 73 of 2001;
- the *Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas* (Cai Shui (2001) No. 202);
- the *SAT Circular Guo Shui Fa No. 172 of 1999*; and
- the *Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions* (CAISHUI[2011]No.58).

The program is administered by the SAT and its local Branch Offices or Bureaus.

WTO Notification

The GOC notified this program in WTO document G/SCM/N/123/CHN (Notification No. XIV).

Eligibility criteria

The program is available to enterprises established in the Western regions which are engaged in industries encouraged by the State as defined in the:

- *Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State*
- *Guiding Catalogue for Industry Restructuring*
- *Circular on the Preferential Tax Policy of the Western Regions*
- *Catalogue for the Guidance of the Foreign Investment Industries*
- *Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment*

Eligibility criteria for the program are outlined in detail in the GOC response to Question D1.1 in the GQ, in relation to this program.

Is there a subsidy?

Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC which involves the foregoing, or non-collection, of revenue (income) due to the GOC by eligible enterprises in the Western Regions in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including HSS).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of HSS during the investigation period received tax savings under the program it would therefore confer a benefit in relation to HSS and the financial contribution would meet the definition of a subsidy under s.269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(2)(b), a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority. A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)).

For enterprises located in the Western Regions, only those industries which are 'encouraged' are eligible for the subsidy. Other companies in the designated geographical region (being those enterprises which are not 'encouraged') are not eligible for the subsidy.

Further, this program is limited in eligibility to enterprises based in the Western Region, under the jurisdiction of the granting authority (SAT).

As the criteria or conditions providing access to the subsidy favours particular enterprises, being those 'encouraged' enterprises in the Western Regions, over all other enterprises, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

For these reasons Customs and Border Protection finds that the subsidy is specific.

The amount of subsidy in respect of the goods

Selected cooperating exporters

Customs and Border Protection has determined that none of the selected cooperating exporters have received financial contributions in respect of the goods under this program during the investigation period.

Customs and Border Protection therefore considers a zero subsidy rate is applicable to selected cooperating exporters under this program.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide the information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred on those exporters under this program. This information was not provided.

Furthermore, it is noted that this program is limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all HSS exporters in China, but this was not provided.

In the absence of the above relevant information, Customs and Border Protection considers it is likely that selected non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including HSS.

In calculating the amount of subsidy for attributable to selected non-cooperators under this program, it is noted that as:

- this program would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 10 (0% tax liability) has already

been applied to selected non-cooperating exporters;
the maximum benefit amount available under this program has already been
countervailed in relation to Program 10.

Customs and Border Protection has therefore calculated a zero amount of a
subsidy under this program for selected non-cooperating exporters.

II(iv) Program 35: Preferential Tax Policies for High and New Technology Enterprises

Introduction

As a result of its investigations with a selected cooperating exporter, Customs
and Border Protection found evidence that benefits were received by this
exporter under this program.

Customs and Border Protection has not posed questions of the GOC
regarding this program. However it is considered that sufficient information
has been provided to allow for an assessment of this program based on all
available information.

This program reduces the income tax paid by high and new technology
enterprises to 15% (from the standard enterprise income tax rate of 25%).

Legal Basis

This program is provided for under Article 26 of the EITL.

It is considered likely that this program is a national program, administered by
the SAT.

WTO Notification

Customs and Border Protection is not aware of any WTO notification of this
program.

Eligibility criteria

From the EITL, it is understood that all high and new technology enterprises
are eligible for this program.

Is there a subsidy?

Customs and Border Protection considers that the law governing this program
mandate a financial contribution by the GOC, which involves the foregoing, or
non-collection, of revenue (income tax) due to the GOC by eligible
enterprises in China.

Due to the nature of this program (general exemption on income tax
regardless of what activities generate this income (profit)), it is considered
that a financial contribution under this program would be made in connection

to the production, manufacture or export of all goods of the recipient enterprise (including HSS).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of HSS during the investigation period received tax savings under the program it would therefore confer a benefit in relation to HSS, and the financial contribution would meet the definition of a subsidy under s.269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

A subsidy is considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)).

The eligibility criteria of this subsidy limits it to enterprises that are considered higher and/or new technology enterprises. As the criteria or conditions providing access to the subsidy favour these particular enterprises over all other enterprises in China, the specificity of the subsidy is not exempted by reference to s.269TAAC(3).

The amount of subsidy in respect of the goods

Selected cooperating exporters

As discussed above, Customs and Border Protection has found that one selected cooperating Chinese HSS exporter received a financial contribution under this program during the investigation period, and therefore received a benefit under this program.

It is considered that this financial contribution has been made in respect of all products of this exporter, including HSS.

The selected cooperating exporter advised that it qualifies as a high technology enterprise due to the fact that it produces specific products that are not HSS. However, as this program operates to reduce the overall income tax paid on profits by the enterprise, regardless of whether that profit is from the enterprises HSS or non-HSS activities, it is considered that this program has been received in respect of HSS (and indeed in respect of all goods sold by that exporter).

As the financial contribution under this program takes the form of reduced tax liability (rather than a direct transfer of funds) it is determined that the financial contribution has conferred a benefit under s.269TACC(3).

In accordance with s.269TACC(6)(d) the amount of subsidy is determined to be the amount of tax revenue forgone by the GOC.

In accordance with s.269TACC(10), the total amount of subsidy received by the selected cooperating exporter has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all remaining selected cooperating exporters under this program.

Selected non-cooperating exporters

Neither the GOC or the individual exporters themselves provided information regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Noting that a selected cooperating exporter received this program during the investigation period, in the absence of relevant information, Customs and Border Protection considers it is likely that certain selected non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In calculating the amount of subsidy attributable to selected non-cooperators under this program, it is noted that:

- this program would operate to reduce enterprises' income tax liability; but
- the maximum benefit under program 10 (0% tax liability) has already been applied to selected non-cooperating exporters;

the maximum benefit amount available under this program has already been countervailed in relation to program 10.

Customs and Border Protection has therefore calculated a zero amount of a subsidy under this program for selected non-cooperating exporters.

III) Program 11: Tariff and VAT Exemptions on Imported Materials and Equipments

Background

The Applicant has alleged that Chinese producers of HSS are likely to have benefited from this program, under which the GOC provides an exemption of VAT and tariffs on imported equipment used as 'productive' assets.

GOC GQ response

In its GQ response, the GOC submitted:

The GOC notes that neither the applicant nor Customs have suggested what the legal basis is for this program. The GOC is not aware of such a program. However, the GOC consider the following

program meets this description:

- *Tariff and VAT Exemptions for Imported Materials and Equipment*

The GOC confirms that this program has been repealed by the State Council. The last date for the operation of this program was 31 December 2000. The relevant instrument in this regard is Circular of the State Council on Reforming and Readjusting Import Taxation Policies Attachment 123.

Accordingly the GOC can readily advise that none of the responding companies have applied for or benefited from this program that impacted in the production and sale of the subject HSS during the investigation period.

Previous findings and provided information

In its 2009 investigation into aluminium extrusions from China, Customs and Border Protection found that three selected cooperating exporters had received benefit under a program entitled '*Program 123: Exemption of Tariff and Import VAT for Imported Technologies and Equipment*' as late as mid 2009.

In the GQ response to the aluminium extrusions investigation, the GOC acknowledged the existence of this program, noting the legislative basis for this program was the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment* (the same notice that the GOC has submitted to this investigation as repealing the program).

Further, in response to the aluminium extrusions GQ, the GOC advised that the duration of this program was:

- for the tariff component was 29 December 1997 – present (submitted in September 2009); and
- for the VAT exemption component was 29 December 1997 – 31 December 2008.

This earlier advice from the GOC, and the fact that aluminium extrusions exporters have been found to have accessed the program as late as 2009, has led Customs and Border Protection to determine that the program was in operation later than December 2000 as submitted by the GOC.

The remainder of the assessment of this program relies on the assessment of the countervailability of the program made during the aluminium extrusions investigation, in accordance with the information provided by the GOC and selected cooperating exporters to that investigation.

Legal Basis

- *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37);
- *Catalogue of Industries for Guiding Foreign Investment*;
- *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004);
- *State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and.
- *Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue*.

The program appears to operate on a national level. The National Development and Reform Commission (NDRC) or its provincial branches issue certificates under this program, while local customs authorities administer the VAT and tariff exemptions.

WTO Notification

The GOC notified this program in WTO document G/SCM/N/23/CHN dated 13 April 2006 (Notification No. LX).

Eligibility Criteria

Under Articles 1 and 2 of the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37) to be eligible for this program:

- the enterprise must be an FIE which falls in the 'encouraged' or 'restricted' categories in the *Catalogue of Industries for Guiding Foreign Investment* (2004) (until 30 November 2007) or the *Catalogue of Industries for Guiding Foreign Investment* (2007) (after 1 December 2007);
- the imported equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise's own use and not fall in the *State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- the total value of the purchase must not exceed the investment 'cap';

or

- the enterprise must be a domestic invested enterprise (DIE) which falls in the *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004) and the imported equipment must be for the enterprises own use and not fall in the *Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue*; and
- the total value of the purchase must not exceed the investment 'cap'.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers this program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC (tariff and VAT) by eligible encouraged enterprises in China.

It is Customs and Border Protection's understanding that pipe and tube mills used in China by HSS manufacturers are predominantly imported mills. However, further research indicates that Chinese HSS exporters do import other various equipment.¹⁸¹

It is considered that, depending on the nature of the imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of HSS.

Where received, this financial contribution is considered to confer a benefit because of the tariff and VAT savings realised.

Where exporters of HSS during the investigation period received tax savings under the program for equipment related to their HSS activities, it would therefore confer a benefit in relation to HSS, and the financial contribution would meet the definition of a subsidy under s.269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(2), a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

FIEs that fall in the category of 'encouraged' or restricted' enterprises of the FIE catalogues are eligible for the subsidy, or DIEs that fall under the DIE catalogue are eligible for the subsidy. As the criteria or conditions providing access to this program favour these particular enterprises, over all other enterprises in China, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

For these reasons, Customs and Border Protection finds that the subsidy is specific.

The amount of subsidy in respect of the goods**Selected cooperating exporters**

Customs and Border Protection has found that none of the selected cooperating exporters have received financial contributions in respect of the goods under this program during the investigation period.

¹⁸¹ SMS Meer Zhejiang Kingland orders energy-efficient spiral pipe welding line, February 8 2012, <http://www.sms-meer.com/en/news-media/news/single/article/zhejiang-kingland-bestellt-energieeffiziente-spiralrohrschweissanlage.html> (accessed 17/4/12).

Customs and Border Protection therefore considers a zero subsidy rate is applicable to selected cooperating exporters under this program.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

However, in the absence of this information, and having regard to:

- the fact that the program operates nationally; and
- Customs and Border Protection's understanding that HSS exporters import various equipment;

Customs and Border Protection considers it is likely that selected non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of information to the contrary, and having regard to the type of equipment likely to be imported by HSS manufacturers, it is considered this financial contribution was received in respect of equipment used in relation to selected non-operator HSS activities (however, it is also considered that financial contributions under this program may have also been received in respect of non-HSS equipment).

Therefore, in the absence of relevant information, it is considered that this financial contribution has been made in respect of all products of these exporters, including HSS.

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them by financial contributions under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), in the absence of other information, Customs and Border Protection considers that the subsidy amount calculated for selected cooperating exporters in the aluminium extrusions investigation as a reasonable basis for calculating the subsidy amount attributable to selected non-cooperating HSS exporters in this investigation, and has used this information as a basis for its calculations.

II(vi) Program 29: Land Use Tax Deduction

Background

This program provides for the reduction or exemption of land use taxes for high and new technology enterprises.

Legal Basis

Approval of Tax (Expense) Deduction (ZhengDiCheng Shui [2010] No. 1581).

This program is administered by Huzhou City Local Taxation Bureau and Wuxing Sub-Bureau.

WTO Notification

Customs and Border Protection is not aware of any WTO notification of this program.

Eligibility criteria

The program is available to new high and new technology enterprises within three years of their establishment.

It is noted that, during Customs and Border Protection's investigation into toilet paper from China (Investigation 138), it was found in Customs and Border Protection's *Preliminary report on existence of countervailable subsidies – Government of People's Republic of China* report that an alleged program identified as 'Reductions in Land Use Fees' was not a countervailable subsidy.

Customs and Border Protection notes the program examined during the toilet paper investigation is considered to be separate from the one examined in this investigation, as that program's effect was to exempt FIEs from land tax, while this program focuses on the reduction or exemption of land tax for high and new technology enterprises.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the reduction in land use tax provided under this program is a financial contribution by the GOC which involves the forgoing of land use tax revenue otherwise due to the GOC.

Due to the nature of this program (exemption of land use tax), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including HSS).

Where received, financial contribution is considered to confer a benefit to recipient manufacturers of HSS because of the reduced tax liability owed to the GOC.

Where exporters of HSS during the investigation period received tax savings under the program it would therefore confer a benefit in relation to HSS, and the financial contribution would meet the definition of a subsidy under s.269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269T AAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, this program is limited to high and new technology enterprises that are less than three years old.

As the criteria or conditions providing access to the subsidy favours particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to s.269T AAC(3).

Customs and border Protection therefore considers this subsidy to be specific.

The amount of subsidy in respect of the goods

Selected cooperating exporters

A selected cooperating exporter reported receiving a financial contribution under this program during the investigation period.

It is considered that this financial contribution has been made in respect of all products of this exporter, including HSS.

In accordance with s.269T ACC(2), receipt of the subsidy is taken to have conferred a benefit because of the reduced taxation liability under the program.

In accordance with s.269T ACC(6)(a), the amount of that benefit is taken to be equal to the taxation exempted/reduced.

In accordance with s.269T ACC(10), the total amount of subsidy received by the selected cooperating exporter has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to

all other selected cooperating exporters under this program.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Furthermore, it is noted that this program is limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all HSS exporters in China, but this was not provided.

In the absence of the above relevant information, Customs and Border Protection considers it is likely that selected non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program, and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection considers that the benefit received by the selected cooperating exporter should be considered to be the subsidy amount received by the selected cooperating exporter in this investigation.

In attributing the amount of subsidy to each unit of HSS under s.269TACC(10), the benefit under the subsidy program has been attributed using the lowest total sales volume of the selected cooperating exporters, in the absence of actual sales data for the selected non-cooperating exporters.

II(vii) Conclusion – exemption/reduction of taxation programs

In light of the above, Customs and Border Protection determines the following

taxation programs to be countervailable subsidies in relation to HSS:

- Program 1: Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones.
- Program 10: Preferential Tax Policies for Foreign Invested Enterprises (FIEs) – Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years
- Program 11: Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area)
- Program 12: Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.
- Program 13: Preferential Tax Policies in the Western Regions
- Program 14: Tariff and VAT Exemptions on Imported Materials and Equipments
- Program 29: Land Use Tax Deduction
- Program 35: Preferential Tax Policies for High and New Technology Enterprises

PUBLIC FILE

PART III FINANCIAL GRANTS - PROGRAMS 2, 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33 AND 34

III(I) Background

The application alleged that Chinese producers of HSS are likely to have benefited from the following grant programs:

- Program 2: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China';
- Program 3: Provincial Scientific Development Fund;
- Program 4: Export Brand Development Fund;
- Program 5: Matching Funds for International Market Development for small and medium size enterprises (SMEs);
- Program 6: Superstar Enterprise Grant;
- Program 7: Research & Development (R&D) Assistance Grant;
- Program 8: Patent Award of Guangdong Province;
- Program 9: Training Program for Rural Surplus Labour Force Transfer Employment;
- Program 15: Innovative Experimental Enterprise Grant;
- Program 16: Special Support Fund for Non-State-Owned Enterprises
- Program 17: Venture Investment Fund of Hi-Tech Industry, and
- Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- Program 19: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

Further, investigations with selected cooperating exporters have shown that HSS exporters have received benefits under the following further grant programs:

- Program 21: Wuxing Conservancy Fund Deduction
- Program 22: Wuxing District Freight Assistance
- Program 23: Huzhou City Public Listing Grant
- Program 24: Huzhou City Freight Assistance
- Program 25: Wuxing District Patent Fee Assistance
- Program 26: Zhejiang Industry New Product or Technology Award
- Program 27: Huzhou City Quality Award
- Program 28: Huzhou Industry Enterprise Transformation & Upgrade Development Fund
- Program 30: Wuxing District Public List Grant
- Program 31: Anti-dumping Respondent Assistance
- Program 32: Technology Project Assistance
- Program 33: City Level Patent Model Enterprise
- Program 34: Balidian Town Public Listing Award

Under these programs certain enterprises are eligible for cash grants provided by the GOC.¹⁸² Benefits are conferred to these enterprises in the amount of funds provided.

III(ii) WTO Notification

Customs and Border Protection is not aware of any WTO notification in respect of these programs.

III(iii) Expired programs and those not considered countervailable in relation to HSS

Program 3: Provincial Scientific Development Fund

Customs and Border Protection observes the Notice of *Termination of Administrative Measures on Special Fund for Developing Trade through Science and Technology of Guangdong Province* provided by the GOC and is satisfied that this program was terminated in accordance with this notice in April 2009.

Customs and Border Protection considers that the nature of this program, that is a grant given in connection with development and export of high technology products, is likely to be expensed in the year the benefit was conferred, and therefore is satisfied that any benefit conferred under the program prior to its cessation was not attributable to the goods during the investigation period.

Customs and Border Protection therefore considers this program to not be countervailable in respect of HSS.

Program 4: Export Brand Development Fund

Following consideration of all relevant supporting documents and information provided by the GOC, the Applicant and selected cooperating exporters, Customs and Border Protection has determined that this alleged program did not constitute a countervailable subsidy with respect to the goods during the investigation period.

Customs and Border Protection is satisfied that this program ceased to operate in 2009.

Customs and Border Protection is satisfied that any benefit conferred under this program prior to its cessation was not attributable to the goods during the investigation period. This determination is due to the nature of the benefit conferred under the program, that is, a grant for brand development.

Customs and Border Protection therefore considers this program to not be countervailable in respect of HSS.

¹⁸² Either centrally, or through provincial or local government.

Program 9: Training Program for Rural Surplus Labour Force Transfer Employment

Following consideration of all relevant supporting documents and information provided by the GOC, the Applicant and selected cooperating exporters, Customs and Border Protection has determined that this alleged program did not constitute a countervailable subsidy with respect to the goods during the investigation period.

Customs and Border Protection is satisfied that this program ceased to operate in 2009.

Customs and Border Protection is satisfied that any benefit conferred under this program prior to its cessation was not attributable to the goods during the investigation period. This determination is due to the nature of the benefit conferred under the program, that is, a subsidy for the training of staff which is likely to be expensed in the year the benefit was conferred.

Customs and Border Protection therefore considers this program to not be countervailable in respect of HSS.

Program 24: Huzhou City Freight Assistance

Customs and Border Protection has found that one selected cooperating exporter reported receiving financial contributions under this program during the investigation period. However, this program appears to be a duplicate of Program 22, as it is governed by the same legislation, contains the same eligibility requirements and provides the same benefits.

Therefore, Customs and Border Protection therefore considers this program to not be separately countervailable in relation to HSS.

In calculating the subsidy amount for Program 22, the amount reported to have been received for Program 22 and Program 24 by the selected cooperating exporter have been combined under Program 22.

Programs 25, 26 and 33

Customs and Border Protection has found that one selected cooperating exporter received financial contributions under the following programs during the investigation period:

- Program 25: Wuxing District Patent Fee Assistance
- Program 26: Zhejiang Industry New Product or Technology Award
- Program 33: City Level Patent Model Enterprise

However, that exporter explained that it was only eligible for these grants after conducting research and development (and patenting) a non-HSS steel and plastic composite pipe, and that the financial contribution made under these grants cannot be attributed to HSS.

Having regard to the eligibility criteria for these programs outlined in the GOC's response the SSGQ, and its investigations with the concerned selected cooperating exporter, Customs and Border Protection is satisfied that the financial contribution received under these grants can not be attributed to HSS and therefore did not confer benefit on the goods.

Customs and Border Protection therefore considers this program to not be countervailable in relation to HSS.

III(iv) Remaining programs (2, 5, 6, 7, 8, 15, 16, 17, 18, 19, 21, 22, 23, 27, 28, 30, 31, 32 and 34) - legal basis and eligibility criteria

Program 2: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'

Legal basis

Decision Concerning Commending and/ or Awarding to Enterprises in Guangdong Province Whose Products Qualify for the Title of 'China Worldwide Famous Brand', 'China Famous Brand', or 'China Well-Known Brand'.

The government of Guangdong province is responsible for the administration and management of this program.

Eligibility criteria

- enterprises whose products qualify for the title of 'China Worldwide famous Brand'; and
- enterprises whose products qualify for the title of 'China well-known brand' and/or 'famous trademark (China famous Trademark)'

Program 5: Matching Funds for International Market Development for SMEs

Legal basis

Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises.

The program is administered by the Ministry of Finance and Ministry of Commerce, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions.

Eligibility criteria

SME enterprises that have:

- a legal personality according to law;
- the capacity to manage an import or export business;
- made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less;
- sound financial management systems and records;
- employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and
- a solid market development plan.

Program 6: Superstar Enterprise Grant

Legal basis

- *Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises*, and
- *Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises*.

This program is administrated by the Huzhou Economic Committee

Eligibility criteria

Enterprises located in Huzhou city that satisfy the following criteria.

- (a) The 'output scale' of the enterprise must meet one of the following criteria:
- business income of the current year not exceeding RMB 3.5 billion and sales;
 - revenue within the city exceeding RMB 2 billion;
 - sales revenue within the city exceeding RMB 2.5 billion;
 - sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than RMB 10 million; or
 - revenue from self-export of current year is more than USD150 million.
- (b) The enterprise's accumulated industrial input between 2006 to 2008 must have exceeded RMB 150 million.
- (c) The enterprise must be profitable, and its VAT 'paid up', while its
- consumption tax;
 - income tax;

- business tax;
- city construction tax; and
- education supplementary tax

must exceed RMB 30 million.

- (d) The enterprise must not have suffered environmental or 'unsafe production accidents' (or other illegal incidents) in the current year.
- (e) If the enterprise is not state-owned, it must have passed the 'Five-Good Enterprises' assessment conducted by its county or district.

Program 7: Research & Development (R&D) Assistance Grant

Legal basis

Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.

The government of Wuxing district and the Science and Technology Bureau of Wuxing District ('STB') are jointly responsible for the administration of this program.

Eligibility criteria

Emphasis is placed on selecting enterprises with:

- research projects addressing scientific and technological problems;
- technology innovation projects; or
- projects aimed at innovation in science and technology in the agricultural sector

as well as some high and new technology industries

Program 8: Patent Award of Guangdong Province

Legal basis

2005 Guangdong Patent Award Implementation Proposal.

Administered by the Guangdong Province Department of Intellectual Property and Department of Personnel.

Eligibility criteria

The award is granted to enterprises that have an 'innovations and utility models' or an 'industrial design' patent.

An application under the 'innovations and utility models' patent category must establish that:

- the product in question is skilfully constructed and innovative with high creation and technical level;
- the product contributes to technical improvement and creation;
- the patent has created or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

An application under the industrial design category must establish that:

- the industrial design has reached high level at shape, pattern and colour;
- application of this industrial design has brought or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

Program 15: Innovative Experimental Enterprise Grant

Legal basis

Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises.

Administered by the administrative office of Science and Technology Bureau of Zhejiang province.

Eligibility criteria

Eligible enterprises are those that are located in Zhejiang Province, and are:

- independent economic entities with 'reasonable asset-liability ratios, consistent earnings over the past 3 years, and an increasing market share;
- well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres;
- investing at least 5% of annual sales income;
- using intellectual property rights to protect major products; and
- strongly committed to technological innovation and Protection with previous technological achievements.

Program 16: Special Support Fund for Non-State-Owned Enterprises

Legal basis

Notions concerning accelerating the growth of the non-state-owned economy.

Eligibility criteria

- non-SOEs (SIEs) located in Yunnan Province.

Program 17: Venture Investment Fund of Hi-Tech Industry

Legal basis

Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing.

The program is administered by the Chongqing Venture Investment Fund.

Eligibility criteria

Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District.

In addition:

- the program must have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority);
- the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone;
- the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities;
- the enterprise must have good legal standing; and
- the total investment in the program must be RMB 100 million or more.

Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment

Legal basis

Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters

Administered by the local commerce authority of Guangzhou.

Eligibility criteria

This program is available to enterprises whose headquarters are established in the Guangzhou Municipality by a foreign investor.

To qualify as 'Headquarters' the facility must control all the operations and management of any enterprises it is invested in, both in China and

internationally.

Only one enterprise Headquarters is permitted in the Guangzhou Municipality.

To qualify as 'Regional Headquarters', the facility must control operations and management of some or all enterprises it is invested in a certain area of China.

Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.

Program 19: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

Legal basis

Notice of Issuing 'Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan,' Zhongshan (2005) No. 27.

The program is administered by the local economic and trade office, by the Municipal Economic and Trade Bureau ('METB') and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City ('MLG').

Eligibility criteria

For an enterprise to be eligible for this program:

- it must be established, registered and carrying out business in Zhongshan City;
- its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies;
- it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise's main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development;
- it must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation; and
- it must have good credit standing.

Program 21: Water Conservancy Fund Deduction

Legal basis

Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local

Taxation Bureau (ZheDiShuiFa [2007] No.63).

This program is administered by the Local Taxation Bureau of Zhejiang Province and it is implemented by the competent local taxation authorities of the municipal and county levels in Zhejiang Province.

Eligibility criteria

The GOC has confirmed that only enterprises satisfying one of following criteria will eligible for the grant under this program:

- provide job opportunities to laid-off workers, the disabled and retired soldiers searching for jobs;
- enterprises that 'utilize resource comprehensively as designated by government department above municipal level';
- trading enterprises of commodities with annual gross profit rate less than 5%;
- enterprises undertaking 'State reserve and sale, the portion of revenues incurred from that undertaking may qualify for an exemption of the fee';
- 'advanced manufacturing enterprises' or 'new enterprises as designated by the municipal government, which are undertaking technology development projects and incurring development expenditure at an amount above RMB1 million';
- 'insurance company's revenue from sales which are subject to exemption of excise tax';
- 'bank's revenue from turnovers between banks';
- 'revenue from sales between members of an enterprise group subject to same consolidated financial statement'.

Program 22 – Wuxing District Freight Assistance

Legal basis

Several Opinions on Further Supporting Industrial Sector To Separate And Develop Producer-Service Industry (HuZhengBanFa [2008] 109).

This program is administered by the Finance Bureau of Huzhou City.

Eligibility criteria

Those enterprises whose annual freight cost is RMB 3 million or above, will be refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007.

For enterprises whose annually paid income tax is RMB100,000 or above:

- 100% of the income tax paid by the 'separated enterprise' and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise; and

- 50% of the turnover tax paid by the separated enterprise and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise.

Program 23: Huzhou City Public Listing Grant

Legal basis

Notification of Government of Huzhou City (HuBan No.160).

This program is administrated by the Finance Bureau of Huzhou City.

Eligibility criteria

Enterprises that successfully completed listing of shares during 20

Program 27: Huzhou City Quality Award

Legal basis

Notification of the Office of People's Government of Huzhou City (HuZhengBanFa No.60).

The Government of Huzhou City and the Bureau for Quality and Technical Supervision are jointly responsible for the administration of this program.

Eligibility criteria

The award is granted to no more than three enterprises each year that are registered in Huzhou City and have been in operation for more than three years and that have:

- 'enjoyed excellent performance';
- 'implemented quality management'; and
- 'obtained a leading position in industry with significant economic benefits and social benefits'.

The products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy.

Program 28: Huzhou Industry Enterprise Transformation & Upgrade Development Fund

Legal basis

The purpose of the program is to promote industrial structure adjustment and upgrading, and to support technology updating and innovation of enterprises.

The GOC has advised that there is no single purpose legal document directly related to any benefit received by a respondent under investigation.

The Bureau of Finance and the Economic and Information Committee of Huzhou City are jointly responsible for the administration of this program. The Bureau of Finance and the Economic and Information Committee of Huzhou City examine and approve applications, with the funds provided from the budget of the Financial Bureau of Huzhou City.

Eligibility criteria

This Program is limited to enterprises registered in Huzhou and encourages the transformation and upgrade of enterprises, 'including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new technology industry and new industry'.

Program 30: Wuxing District Public List Grant

Legal basis

Notification on Awarding Advanced Individuals and Advanced Enterprises of Industrial Economy and Open Economy for the Year of 2010 (WuWeiFa [2011] No.14).

This program is administered by the Government of Wuxing District.

Eligibility criteria

A grant is available to eligible advanced publicly listed enterprises.

Program 31: Anti-dumping Respondent Assistance

Legal basis

Notification on Responding Foreign Trade Assistance by Wuxing Foreign Economic and Trade Bureau.

This program is administered by Wuxing District Foreign Economic and Trade Bureau.

Eligibility criteria

Enterprises which incurred expenses in an anti-investigation proceeding may benefit from this program.

Program 32: Technology Project Assistance

Legal basis

Interim Measure for Administration of Post-completion Assistance or Loan Interest Grant for Industrialization of Science and Technology Achievements Insured by Zhejiang Province (2008).

The Bureau of Finance and the Science and Technology Bureau of Huzhou City are jointly responsible for the administration of this program.

Eligibility criteria

This program is available to enterprises that undertake a scientific research project which meets the scope of the projects encouraged under this program.

Program 34: Balidian Town Public Listing Award

Legal basis

The GOC has advised that there is no relevant legislation governing this program.

This program is administrated by the Government of Wuxing District.

Eligibility criteria

The program was a one-time grant provided to enterprises in the Kingland Pipeline Industrial Park, Wuxing District that conducted successful public listing of shares and investing funds raised through its public listing into a pipeline construction project in Wuxing.

III(v) Remaining programs are there subsidies?

Based on the information above, Customs and Border Protection considers that the grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.

Due to the nature of each grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including HSS).

Noting that:

- Programs 2, 5, 2, 5, 6, 7, 8, 15, 16, 17, 18, 19 have been found to be countervailable in relation to aluminium extrusions; and
- Programs 21, 22, 23, 27, 28, 30, 31, 32 and 34 have been identified by the selected cooperating exporter that received these programs to have been received in respect of 'all products'.

This financial contribution is considered to confer a benefit to recipient manufacturers of HSS because of receipt of funds from the GOC.

Where exporters of HSS during the investigation period received grants under any of the above programs, these would therefore confer a benefit in relation to HSS, and these financial contributions would meet the definition of a subsidy under s.269T.

III(vi) Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, each grant is limited to specific enterprises either by location, enterprise type, product manufacture, ownership structure, the possession of certain patents, trading focus (export oriented), public listing status, participation in an anti-dumping investigation, hi-tech status, length of operation, level of freight costs or other criteria.

As the criteria or conditions providing access to the subsidies favours particular enterprises over all other enterprises in China, the specificity of these subsidies is not excepted by reference to s.269TAAC(3).

Customs and border Protection therefore considers each of the above-listed grant programs to be specific.

III(vii) The amount of subsidy in respect of the goods

Program 2: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'

Selected cooperating exporters

One selected cooperating exporter reported receiving a financial contribution during the investigation period that, although not being granted by the government of Guangdong, appears to be the same grant to this program for the province in which that exporter was located.

Having regard to the nature and eligibility criteria for the subsidy, it is considered that the financial contribution received was in respect of all goods sold by that exporter (including HSS).

In accordance with s.269TACC(2), receipt of the grant is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with s.269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with s.269TACC(10), the total amount of subsidy received by the selected cooperating exporter has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all other selected cooperating exporters under this program.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Furthermore, it is noted that this program is limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all HSS exporters in China, but this was not provided.

In the absence of the above relevant information, and in light of the above receipt of the program by a selected cooperating exporter, Customs and Border Protection considers it is likely that selected non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection considers that the subsidy amount calculated for selected cooperating exporters as a reasonable basis for calculating the subsidy amount attributable to selected non-cooperating HSS exporters in this investigation, and has used this information as a basis for its calculations.

In attributing the amount of subsidy to each unit of HSS under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the selected cooperating exporters, in the absence of actual sales data for the selected non-cooperating exporters.

Program 27: Huzhou City Quality Award

Selected cooperating exporters

Customs and Border Protection has found that one selected cooperating exporter received a financial contribution under this program during the investigation period.

In accordance with s.269TACC(2), receipt of this grant is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with s.269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with s.269TACC(10), the total amount of subsidy received by the selected cooperating exporter under this program has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all other selected cooperating exporters under this program.

Selected non-cooperating exporters

Customs and Border Protection notes the fact that this program is limited to being granted to only 3 enterprises per annum (see section III(iv) above).

The GOC was asked to provide us the information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

While it is not in the possession of evidence that definitively proves the other recipient enterprises during the investigation period were not selected non-cooperating HSS exporters, it is considered unlikely that they would be.

Customs and Border Protection therefore considers this program to not be countervailable in respect of selected non-cooperating exporters.

Program 34: Bandian Town Public Listing Award

Selected cooperating exporters

Customs and Border Protection has found that one selected cooperating exporter received a financial contribution under this program during the investigation period.

In accordance with s.269TACC(2), receipt of this grant is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with s.269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with s.269TACC(10), the total amount of subsidy received by the selected cooperating exporter under this program has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all other selected cooperating exporters under this program.

Selected non-cooperating exporters

Customs and Border notes the fact that this program is limited to being granted as a one-time grant provided to enterprises in the Kingland Pipeline Industrial Park, Wuxing District that conducted successful public listing of shares and investing funds raised through its public listing into a pipeline construction project in Wuxing (see Section III(iv) above).

The GOC was asked to provide usage information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determine whether a benefit had been conferred to those exporters under this program. This information was not provided.

While it is not in the possession of evidence that definitively proves that selected non-cooperating HSS exporters did not receive this grant during the investigation period, it is considered unlikely that they would have received the grant due to the very limited nature of its eligibility criteria.

Customs and Border Protection therefore considers this program to not be countervailable in respect of selected non-cooperating exporters.

Programs 5, 21, 22, 23, 24, 30, 31 and 32

Selected cooperating exporters

Selected cooperating exporters reported receiving financial contributions under each of these programs during the investigation period.

In accordance with s.269TACC(2), receipt of these grants is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with s.269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with s.269TACC(10), the total amount of subsidy received by the selected cooperating exporter under each program has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all other selected cooperating exporters under these programs.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under these programs. This information was not provided.

Additionally, it is noted that some of these programs are limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all HSS exporters in China, but this was not provided.

In the absence of the above relevant information, and in light of the above receipt of the program by selected cooperating exporters, Customs and Border Protection considers it likely that selected non-cooperating exporters are eligible for these programs in their respective provinces.

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under these programs; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under these programs during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection considers that the subsidy amount calculated for selected cooperating exporters as a reasonable basis for calculating the subsidy amount attributable to selected non-cooperating HSS exporters in this investigation, and has used this information as a basis for its calculations.

In attributing the amount of subsidy to each unit of HSS under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the selected cooperating exporters, in the absence of actual sales data for the selected non-cooperating exporters.

Programs 6, 7, 8, 15, 16, 17, 18 and 19

Selected cooperating exporters

Customs and Border Protection has determined that none of the selected cooperating exporters have received financial contributions in respect of the goods under these programs during the investigation period.

Customs and Border Protection therefore considers a zero subsidy rate is applicable to all selected cooperating exporters under these programs.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under these programs. This information was not provided.

Additionally, it is noted that some of these programs are limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all HSS exporters in China, but this was not provided.

Furthermore, Customs and Border Protection requested from the GOC information as to the location of all HSS exporters in China, but this was not provided. Noting that at least some of these programs are limited in operation to specific areas in China, Customs and Border Protection does not have reliable information as to the location of selected non-cooperating exporters.

However in light of the above receipt of the program by selected cooperating exporters, Customs and Border Protection considers it likely that selected non-cooperating exporters are eligible for these programs in their respective provinces.

In accordance with s.269TACC(2), receipt of the above grants are taken to have conferred a benefit because of the direct financial payment.

Having regard to the nature and eligibility criteria for each subsidy, and in light of further information, it is considered that the financial contribution received for each program was in respect of all goods sold by that exporter (including HSS).

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining

whether a benefit has been conferred to selected non-cooperating exporters under these programs; and

- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under these programs during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection considers that:

1. where the legislative instrument that establishes the program specifies the maximum financial contribution that can be made under that program, that maximum amount be the amount determined to be the benefit for each program;
2. where the maximum financial contribution grantable under a program is not stipulated in its legal instrument (or where no known legal instrument exists), the amount of the financial contribution shall be considered to be the maximum amount found in relation to point 1.

This is summarised in the below table:

Program	Financial contribution basis
Program 5	<i>Notice of Hubei Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises</i>
Program 6	Program 18
Program 7	Program 18
Program 15	Program 18
Program 16	Program 18
Program 17	Program 18
Program 18	<i>Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters</i>
Program 19	Program 18

In attributing the amount of subsidy to each unit of HSS under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the selected cooperating exporters, in the absence of actual sales data for the selected non-cooperating exporters.

III(viii) Conclusion – financial grants

In light of the above, Customs and Border Protection determines the following financial grants to be countervailable subsidies in relation to HSS:

- Program 2: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China';
- Program 5: Matching Funds for International Market Development for small and medium size enterprises (SMEs);

- Program 6: Superstar Enterprise Grant;
- Program 7: Research & Development (R&D) Assistance Grant
- Program 8: Patent Award of Guangdong Province;
- Program 15: Innovative Experimental Enterprise Grant;
- Program 16: Special Support Fund for Non-State-Owned Enterprises
- Program 17: Venture Investment Fund of Hi-Tech Industry, and
- Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- Program 19: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan
- Program 21: Water Conservancy Fund Deduction
- Program 22: Wuxing District Freight Assistance
- Program 23: Huzhou City Public Listing Grant
- Program 27: Huzhou City Quality Award (limited to one selected cooperating exporter)
- Program 28: Huzhou Industry Enterprise Transformation & Upgrade Development Fund
- Program 30: Wuxing District Public List Grant
- Program 31: Anti-dumping Respondent Assistance
- Program 32: Technology Project Assistance
- Program 34: Balidian Town Public Listing Award (limited to one selected cooperating exporter)

Customs and Border Protection determines the following financial grants to not be countervailable subsidies in relation to HSS:

- Program 3: Provincial Scientific Development Plan Fund
- Program 4: Export Brand Development Fund
- Program 9: Training Program for Rural Surplus Labour Force Transfer Employment
- Program 24: Huzhou City Freight Assistance
- Program 25: Wuxing District Patent Fee Assistance
- Program 26: Zhejiang Industry New Product or Technology Award
- Program 33: City Level Patent Model Enterprise

PART IV PROGRAM 20: HOT ROLLED STEEL PROVIDED BY GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION

IV(I) Background

The Applicant has alleged that Chinese exporters of HSS have benefited from the provision of raw material in the form of hot rolled steel (HRC and narrow steel strip) by the GOC at less than adequate remuneration.

In particular it was claimed that HRC and/or narrow strip, the main raw materials used in the manufacture of HSS, was being produced and supplied by SIEs in China at less than adequate remuneration.

The definition of a subsidy under s.269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that produce HRC and/or narrow strip are public bodies, and that a financial contribution in the form of provision of raw material inputs (HRC and/or narrow strip) at less than adequate remuneration by these SIEs to HSS producers constitutes a countervailable subsidy.

Customs and Border Protection's assessment of whether SIEs producing HRC and/or narrow strip constitute a public body in the meaning of s.269T(a)(ii) is discussed separately at PART V of this appendix.

This assessment concludes that these Chinese SIEs that produce HRC and/or narrow strip are 'public bodies' for the purposes of s.269T, and the remainder of this section continues on the basis of this finding.¹⁸³

Under this program a benefit to exported HSS is conferred by HRC and/or narrow strip being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

Customs and Border Protection's assessment of what constitutes 'adequate remuneration' for HRC and/or narrow strip in China is contained in Appendix C of this report.

Customs and Border Protection requested information from all Chinese exporters in relation to their purchases of HRC and/or narrow strip during the investigation period.

For each supplier of HRC and/or narrow strip, the Chinese HSS exporters were required to identify whether the supplier was a trader or manufacturer of

¹⁸³ If it were to be determined that these SIEs are not 'public bodies', this program would not meet the definition of a 'subsidy' in s.269T.

the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

As well as identifying the manufacturers of all purchased HRC and/or narrow strip, the exporters were also asked to indicate whether these enterprises were SIEs.

Information presented by these exporters showed that SIEs were significant suppliers of HRC and/or narrow strip to HSS exporters. This is further supported by information provided by the GOC in response to the GQ and SGQ, which showed the share of total domestic HRC and/or narrow strip production in China by SIEs to be significant.¹⁸⁴

IV(II) Submissions in response to SEF177 – Program 20 (general)

Customs and Border Protection received several submissions in response to SEF177 that relate to:

- the finding that Program 20 is a countervailable subsidy in respect of HSS (in particular whether SIEs can be regarded as 'public bodies');
- the receipt/calculation of Program 20 in relation to specific exporters; and
- the accuracy/reasonableness of the benchmark used to determinate adequate remuneration under Program 20 (and in relation to uplifting Chinese exporters' costs for HRS, which was performed using the same benchmark as that established for the purposes of Program 20 – see Section 6.4).

These submissions will be discussed and assessed where appropriate throughout the remainder of this Appendix (in this and subsequent chapters), as well as in Appendix C, which specifically considers the benchmark used to calculate adequate remuneration under Program 20.

IV(III) Legal basis

Customs and Border Protection has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

IV(IV) WTO Notification

Customs and Border Protection is not aware of any WTO notification in respect of this program.

IV(v) Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving HRC and/or narrow strip at less than adequate remuneration.

¹⁸⁴ GOC SGQ Confidential Attachment 138 '2010 and 2011 Hot Rolled Narrow Strip Production by Ownership'

IV(vi) Is there a subsidy?

Based on the information above, Customs and Border Protection considers that this program involves a financial contribution that involves the provision of goods (HRC and/or narrow strip) by SIEs, being public bodies, at less than adequate remuneration.

As Chinese exporters use HRC and/or narrow strip in their production of HSS, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of HSS, Customs and Border Protection considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by Customs and Border Protection.

Where the financial contribution involves the provision of HRC and/or narrow strip by public bodies to private intermediaries that then provide those inputs to the exporters of HSS, Customs and Border Protection considers, in accordance with s.269T(2AC)(a), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of HSS by way of HRC and/or narrow strip being provided at less than adequate remuneration.

These benefit amounts are equal to the amount of the difference between the purchased price and the adequate remuneration.

Where exporters of HSS during the investigation period received a financial contribution of HRC and/or narrow strip under the program at less than adequate remuneration, it would therefore confer a benefit in relation to HSS, and the financial contribution would meet the definition of a subsidy under s.269T.

IV(vii) Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

Given that HRC and/or narrow strip is a key input in the manufacture of downstream products (including HSS) it is clear that only enterprises engaged in the manufacture of these products would benefit from the provision of the input by the GOC at less than adequate remuneration.

For this reason the subsidy is determined to be specific.

IV(viii) The amount of subsidy in respect of the goods**Selected cooperating exporters**

Customs and Border Protection found that five of the six selected cooperating

exporters received a financial contribution that conferred a benefit under this program during the investigation period through the purchase of HRC and/or narrow strip at less than adequate remuneration from SIEs (as public bodies), under s.269TACC(4)(d) in accordance with s.269TACC(3) of the Act.

Purchases of HRS manufactured by SIEs were identified for each selected co-operating exporter with reference to the 'HRS Purchases' spreadsheet supplied by each selected cooperating exporter, which listed each exporters' purchases of HRS (both HRC and narrow strip) during the investigation period. This spreadsheet identified whether each listed purchase was of HRS manufactured by an SIE or not.

The data reported in these HRS purchases spreadsheets were verified with those selected cooperating exporters that underwent in-country verification, and examined without verification for the remaining two selected cooperating Chinese exporters (TFQ and Qingdao Xiangxing). Tests were also performed on whether the selected cooperating exporters correctly identified manufacturers as SIEs or not in the HRS purchases spreadsheets.

Using this data, each purchase of HRS from an SIE was assessed for adequate remuneration. Where an exporter did not identify the manufacturer of the HRS purchase, or whether that manufacturer was an SIE or not, Customs and Border Protection considered this purchase to have been manufactured by an SIE, in the absence of reliable information to the contrary and having regard to the fact that a significant number of purchases of HRS by the selected cooperating exporters were in fact of SIE-manufactured HRC.

In accordance with s.269TACC(5), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration, established having regard to the prevailing market conditions in China (discussed in detail in Appendix C).

In accordance with s.269TACC(6)(d), the amount of subsidy attributable to the benefit has been determined as the difference between adequate remuneration (as established) and the actual purchase price paid for HRC and/or narrow strip incurred by the selected cooperating exporters in purchasing these goods from SIEs.

In accordance with s.269TACC(10), the amount of subsidy received in respect of HSS has been apportioned to each unit of HSS using the total sales volume of selected cooperating exporters (noting that sufficient information is not available to ascertain precisely what proportion of all sales of these exporters do or do not use HRC as their raw material).

In response to SEF177, both Huludao¹⁸⁵ and TFQ¹⁸⁶ raised issues with the calculation of their Program 20 subsidy rates.

¹⁸⁵ Submission of 14 May 2012

¹⁸⁶ Submission of 11 May 2012

Huludao submitted that there were instances where it had identified the manufacturer of its HRS as not being an SIE, but that these were incorrectly treated as SIEs by Customs and Border Protection. This has been corrected in the final calculations of Program 20 for Huludao.

TFQ submitted that, in cases where it did not identify the manufacturer of its purchased HRS, or whether this manufacturer was an SIE or not, Customs and Border Protection should not have presumed these purchases were from SIEs, and that any such presumption 'shall at least be based on some logics (sic)...(or) statics'.

TFQ has not provided further information to identify whether these concerned purchases of HRS were manufactured by SIEs or not, and submits that it is not in the position to know this information, or to compel its suppliers to provide this information.

As noted above, where exporters could not accurately identify whether the listed purchases of HRS were from SIEs or not, these purchases were treated as though they were from SIEs, in the absence of other information, and noting the prevalence of SIEs supplying HRS to HSS exporters.

Although TFQ's submissions surrounding the difficulty of providing this information are noted, it is also noted that other cooperating exporters were able to provide this information, and that TFQ has had several months to provide this information.

Customs and Border Protection therefore considers this approach to be reasonable in the circumstances.

Selected non-cooperating exporters

For the selected non-cooperating exporters, no information was provided by either the GOC or individual exporters themselves to identify whether a financial contribution has been received under this program.

However, considering the facts that:

- HSS exported from China is made using either narrow strip or HRC;
- a significant proportion of Chinese enterprises that produce HRC and/or narrow strip are known to be SIEs (see PART V of this appendix);
- selected cooperating exporters purchased a significant amount of HRC and/or narrow strip from SIEs during the investigation period;

it is considered likely that selected non-cooperators purchased HRC and/or narrow strip from SIEs and therefore received a financial contribution under this program.

In the absence of information that demonstrates the volume of HRC and/or narrow strip purchased from SIEs by selected non-cooperating exporters, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

In accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of subsidy attributable to that benefit by reference to the highest individual subsidy rate of the six selected exporters (in the absence of other reliable information).

IV(ix) Conclusion – Program 20: Hot rolled steel provided by government at less than adequate remuneration

In light of the above, Customs and Border Protection determines that Program 20: Hot rolled steel provided by government at less than adequate remuneration, to be a countervailable subsidy in relation to HSS.

PART V DO HOT ROLLED COIL/NARROW STRIP- PRODUCING SIES QUALIFY AS 'PUBLIC BODIES' UNDER THE ACT (FOR THE PURPOSES OF PROGRAM 20)?

As outlined in Section I(ii) of this appendix, the definition of a subsidy under s.269T of the Act includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that produce HRC and/or narrow strip are public bodies, such that a financial contribution in the form of less than adequate remuneration for raw material inputs of HRC and/or narrow strip supplied by these SIEs constitutes a countervailable subsidy.

V(i) Prevalence of HRC and/or narrow strip SIEs in China

To assess the prevalence of these HRC and/or narrow strip SIEs in the Chinese market, Question B4 of the GQ requested the GOC to provide a list of all enterprises in China which produced HRC and/or narrow strip during the investigation period, and to identify the ownership structure of the business (i.e. state-owned, private enterprise, FIE, etc).

Note: in the GQ, HRC and/or narrow strip were referred to collectively as 'hot rolled steel' or HRS.

In response, the GOC provided a list of HRS enterprises (i.e. those with an annual production value of over a certain threshold) as Attachment 5, which was revised with further translations of entity names at Attachment 137 of the SGQ. This list identifies, by a 'holding status code', whether each listed entity is:

- a state holding enterprise/company;
- a collective holding enterprise/company;
- a private capital holding enterprise/company;
- a Hong Kong, Macao, or Taiwan investment holding enterprise/company;
- FIE; or
- an other holding enterprise/company.

The GOC submitted (in response to Question 4(b) of the SGQ) that it was unable to indicate in this listing whether these entities produce HRC, narrow strip, or both.

Additionally, the GOC provided (at Attachment 139 to the SGQ) a listing of the top 15 producers in China of 'Hot-roll narrow strip' in 2010. Customs and Border Protection observes that, in requesting this information, that it desired the GOC to indicate:

*...the top 15 HRS producers in China during the investigation period,
and the total volume of their production of HRC and/or narrow strip.*

From the title of Attachment 139, there is some confusion as to whether this listing refers to both HRC and/or narrow strip as requested.

Further, as outlined above, the selected cooperating Chinese exporters of HSS provided Customs and Border Protection with data to identify the manufacturer of HRC and/or narrow strip purchased by that exporter, and whether these entities were SIEs or private enterprises.

This data indicates that HSS producers in China have purchased both HRC and/or narrow strip manufactured by SIEs during the investigation period, and that a significant proportion of these purchases were from SIEs.

From this data, and the information provided by the GOC, Customs and Border Protection notes that a significant proportion of HRC and/or narrow strip in China is produced by SIEs.

V(ii) What are 'public bodies'?

Definition

The term 'public bodies', is not expressly defined under the Act, or the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement)

However, the WTO Appellate Body in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, dispute (DS379), recently considered the meaning of 'public body' in accordance with Article 1.1(a)(1) of the SCM Agreement. The Report of the Appellate Body¹⁸⁷ (the Appellate Body Report), circulated 11 March 2011, outlines its findings in relation to this matter.

In ACDN 2011/1, Customs and Border Protection announced that its countervailing investigations involving allegations of subsidies being granted by public bodies would be assessed in accordance with the findings of the Appellate Body in DS379.

The assessment of public bodies in this appendix therefore takes account of the DS379 findings in arriving at its conclusions.

DS379 findings

In its findings report, the Appellate Body stated:

... the determination of whether a particular conduct is that of a public body must be made by evaluating the core features of the entity and its relationship to government in the narrow sense. That assessment must focus on evidence relevant to the question of whether the entity is

¹⁸⁷ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R

vested with or exercises governmental authority.¹⁸⁸

[Emphasis added]

The Appellate Body provided further guidance on this point as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):¹⁸⁹

- where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Appellate Body considered¹⁹⁰ that the existence of *mere formal links* (i.e. majority government ownership) between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority, because this does not automatically demonstrate that the government exercises *meaningful control* over the conduct of that entity, much less that the government has bestowed it with governmental authority.

The Appellate Body further advised that in all cases, an investigating authority must give due consideration to all relevant characteristics of the entity and avoid focussing exclusively or primarily on any single characteristic without affording due consideration to others that may be relevant¹⁹¹.

The Appellate Body went on to acknowledge (in the context of examining state-owned enterprises in China (referred to in this paper as SIEs)):¹⁴

determining whether an entity is a public or private body may be a complex exercise, particularly where the same entity exhibits some characteristics that suggest it is a public body, and other characteristics that suggest that it is a private body.

¹⁸⁸ Appellate Body Report, at 345

¹⁸⁹ Ibid at [318]

¹⁹⁰ Ibid

¹⁹¹ Ibid at [319]

¹⁴ Ibid at 345

V(iii) SIEs in China generally

The GOC advised, in response to D2.1(b), that the main laws governing the establishment and operation of SIEs are:

1. the *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (GQ Attachment 15) for wholly-state-owned enterprises (the SOA Law); and
2. the *Company Law* (GQ Attachment 12) in relation to the other three categories of SIEs.

The GOC, as part of its GQ response, explained that the notion of the 'capital contributor' is equivalent to the term 'shareholder' of a company as used in *Company Law*. The GOC further explained that the term capital contributor is a legal notion that indicates the shareholding body comprising the State. The GOC stated that the National State-Owned Assets Supervision and Administration Commission (SASAC) and/ or the provincial or local equivalents perform the role of capital contributor on behalf of the State Council or local people's government respectively¹⁹². The GOC has submitted that the institutions performing contributors' functions are shareholders in the normal sense.¹⁹³

The GOC has advised that SASAC is the main body responsible for the implementation of the system for the administration and supervision of state-owned assets in accordance with the *Law on State Owned Assets*¹⁹⁴. As stated above, the responsibilities of SASAC include performing the capital contributor functions for SIEs.

In accordance with the *Company Law*, a Board of Supervisors may be established to undertake functions of scrutiny and supervision of the enterprise¹⁹⁵. For a wholly state-owned enterprise, its board of supervisors shall be appointed by the agency performing the contributor's functions¹⁹⁶. Hence SASAC for some SIEs shall appoint a board of supervisors. The responsibilities of the board of supervisors are set out in Article 54 of the *Company Law*.

(iv) The GOC's response

Customs and Border Protection sought extensive information in the GQ and SGQ concerning the core features of SIEs producing HRC and/or narrow strip and their relationship to the GOC, which it considered necessary to evaluate whether Chinese HRS SIEs are public bodies in light of the DS379 findings.

The GOC provided responses to both the GQ and SGQ, including multiple

¹⁹² GOC GQ Response, response to question D2.11, pg.210

¹⁹³ GOC GQ Response, response to question, D2.7(b), pg. 207

¹⁹⁴ GOC GQ Response, response to question D2.8, pg.208

¹⁹⁵ GOC GQ Response, response to question D2.14, PG.214

¹⁹⁶ Law on State Owned Assets, Article 19

requested documents. However, Customs and Border Protection considers that the GOC did not provide detailed responses to several questions posed in the GQ and SGQ.

The GOC did respond to certain questions regarding the core features of the SIEs producing HRC and/or narrow strip in a general manner with reference to legislative and regulatory provisions.

Key Information not provided

As part of the GQ, the GOC was requested to respond to a series of questions regarding:

- ownership;
- governance;
- performance and profits; and
- enterprise functions

of identified SIEs that produce HRC and/or narrow strip.

Included in the GQ was a request at Question D.26 to describe the legal structure of SIEs that produce HRC and/or narrow strip, showing:

- the percentage of ownership by the GOC and other entities; and
- the ownership of all entities including subsidiaries and parent companies, and the ownership of these entities (also indicating the functions and roles of each associated entity including whether they are involved in the production of HRS, HSS or any other steel product).

The GOC did not provide a detailed response to this question, stating:

HSS and HRC sectors are huge, diversified and dynamic, with a low concentration ratio. Unfortunately the GOC has no systematic and comprehensive statistical data to respond to the level of detail required by this question.

At Question D.27 of the GQ, the GOC was further asked to identify any payments or injections of funds made by the GOC into HRC and/or narrow strip SIEs for a 10 year period. The GOC did not provide this information, stating:

...the GOC is not responsible or authorised to hold and provide such detailed information about individual enterprises.

Further, at C3.11, the GOC was requested to provide the annual reports of 11 identified iron and steel industry SIEs. The GOC provided the requested annual reports for 6 of these entities, only 5 of which were provided in English.

It is considered that this requested information, particularly the annual reports of these entities (which are at least in part owned by the GOC and it is

therefore reasonably considered that the GOC would have access to these reports), would have assisted Customs and Border Protection in its analysis of this matter.

GOC access to requested information

As discussed above, it is considered that the GOC, as an investor in SIEs, would have access to the annual reports of iron and steel industry SIEs as requested in the GQ, however not all requested annual reports were provided.

Further, as part of its response to the GQ, the GOC provided Customs and Border Protection with a translated copy of the *Interim Measure for the Administration of Comprehensive Performance Evaluation of Central Enterprises, Order of the State-owned Assets Supervision and Administration Commission of the State Council*(No.14).

It is noted that this instrument requires enterprises whose investment contribution duties are performed by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to undertake comprehensive performance evaluations in respect of financial and management performance.

In response to question D2.19 of the GQ, the GOC indicated that there are SIEs in the steel sector in China for which SASAC performs the role of capital contributor.

Customs and Border Protection therefore considers that the GOC is in possession, for at least some SIEs in the steel sector, information relevant to the questions concerning ownership, governance, performance and profit, and enterprise function.

V(v) Indicia of an Appellate Body in DS379

In assessing whether SIEs in China that produce HRC and/or narrow strip are public bodies, Customs and Border Protection has addressed each of the three indicia outlined as guidelines for this assessment by the Appellate Body in DS379 below.

Indicia 1: The existence of a 'statute or other legal instrument' which 'expressly vests government authority in the entity concerned'

Customs and Border Protection is not aware of any statute or other legal instrument which expressly vests government authority in any SIE producing HRC and/or narrow strip.

As discussed above, the GOC has submitted that the key pieces of legislation that govern Chinese SIEs are the SOA Law and the *Company Law*. Customs and Border Protection has not found provisions in these laws that expressly vest SIEs with government authority.

On the contrary, the GOC submitted that these enterprises operate in line

with the general principle of separating government functions from enterprise management.

The GOC observed in response to Question D2.22:

The principle of separation of government functions from enterprise management requests strict separation of government from the enterprise, to ensure that the enterprises themselves are the market players. The principle of separation of public administrative functions and the responsibilities of State-owned assets contributors requests that public administrative functions of government at any level be separated from the responsibilities of State-owned assets contributors of government at all levels. Both of the two principles of 'separation' request GOC entities not to interfere with the normal business activities of enterprises.

This was (sic) policy was first proposed and implemented mainly in the late 1980s and continued into the 1990s. After implementation of the policies explained in response to questions D2.21, the focus of State investment reform moved to 'reform and restructuring'; 'advancing' the establishment of modern enterprise systems and 'improving corporate governance'.

The GOC submitted this principle exists in the SOA Law, where Article 6 states that the capital contributor functions for wholly-owned SIEs must be carried out:

...based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

Article 15 further requires the capital contributor to act as a market participant:

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

The evidence above indicates that the capital contributor is, expressly through legislative means, prevented from exercising government functions in the performance of its duties.

However, Customs and Border Protection observes that these legislative provisions relate to the role of the capital contributor, and do not expressly prevent SIEs themselves from being vested with government authority or exercising government functions (though, as mentioned above, no statute or

other legal instrument has come to light that appears to vest this authority).

Indicia 2: Evidence that an entity is, in fact, exercising governmental functions

Customs and Border Protection has not encountered direct evidence to suggest that HRC and/or narrow strip-producing SIEs in China have expressly been granted the authority to exercise governmental functions (e.g. provided for in the entity's article of association, etc.).

However, Customs and Border Protection observes Article 36 of the SOA Law, which requires;

A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

[Emphasis added]

Customs and Border Protection considers this direction requiring SIEs to comply with national industrial policies, albeit related to investments in this instance, amounts to a direction that SIEs carry out a government function, namely the achievement of the GOC's national industrial policy objectives. Further evidence has been encountered that suggests this function is actively performed by SIEs (see below).

Additionally, Customs and Border Protection considers that there is a significant body of circumstantial evidence to suggest that SIEs play an integral and leading role in the implementation of various GOC policies and plans in relation to the steel industry.

Broad GOC policies and plans

Customs and Border Protection has examined the various policies, plans and implementing measures of the GOC outlined in the following documents:

- the *Development Policies of the Iron and Steel Industry* (2005)¹⁹⁷ (the 'National Steel Policy' or NSP);
- the *Blueprint for Steel Industry Adjustment and Revitalisation* (2009 – 2011)¹⁹⁸ (the 'Revitalisation Plan');
- the *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities* (No.2 [2010] of the State Council)¹⁹⁹ (the Backwards Capacity Notice);
- the *Directory Catalogue on Readjustment of Industrial Structure*²⁰⁰ (the

¹⁹⁷ GOC GQ Response Attachment A1

¹⁹⁸ GOC GQ Response Attachment A12

¹⁹⁹ GOC SGQ Response Attachment 176

²⁰⁰ GOC GQ Response Attachments A6.1 and SGQ response Attachment 173

Directory Catalogue), and the *Decision of the State Council on Promulgating the 'Interim Provisions on Promoting Industrial Structure Adjustment' for Implementation*²⁰¹ (the Interim Provisions)

- the *Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy*²⁰² (the Redundancy Circular);
- *Notice of the State Council on Ratifying and Forwarding the Several Opinions of the National Development and Reform Commission and Other Departments on Curbing Overcapacity and Redundant Construction in Some Industries and Guiding the Sound Development of Industries*²⁰³ (the 2009 Overcapacity Notice);
- the *Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of Iron and Steel Industry* (the Steel Industry Capacity Circular);²⁰⁴ and
- the *Standard Conditions of Production and Operation of the Iron and Steel Industry*²⁰⁵ (the Steel Standard Conditions).

These policies, plans and implementing measures are discussed in detail Appendix A to this report.

These GOC documents comprehensively outline the GOC's aims and objectives for the iron and steel industry²⁰⁶ in China (including manufacturers of HRC and/or narrow strip). The overall aim of these policies, plans and measures is summarised in the NSP:

...to elevate the whole technical level of the iron and steel industry, promote the structural adjustment, improve the industrial layout, develop a recycling economy, lower the consumption of materials and energy, pay attention to the environmental protection, enhance the comprehensive competitiveness of enterprises, realize the industrial upgrading and develop the iron and steel industry into an industry with international competitiveness that may basically satisfy the demand of the national economy and social development in terms of quantity, quality and varieties.

²⁰¹ GOC SGQ Response Attachment A19

²⁰² GOC response to the GQ, Attachment A20.

²⁰³ GOC GQ Response Attachment 150

²⁰⁴ Not provided by the GOC although requested, but outlined by the CBSA in its CSWP Statement of Reasons.

²⁰⁵ GOC GQ Response Attachment 160

²⁰⁶ The GOC's NSP defines the 'iron and steel industry' as 'the selection of iron mines, manganese mines and chromium mines and working techniques and relevant supporting techniques such as agglomeration, carbonization, iron alloy, carbon products, fire-resisting materials, iron smelting, steel rolling and metal products'. This is broad, and extends from raw material mining through to the production of steel products themselves (including HSS). However, in practice, the NSP and other GOC macroeconomic policies extend beyond those activities and products listed in the NSP definition to include further matters, including coking coal mining and coking and steelmaking and casting. The term 'iron and steel industry' and related terms is therefore used in this report in the broad sense that the GOC uses it – ranging from the mining of steel raw materials, through to the manufacture of HSS and other metal products.

Thus, the essential objective of these policies, plans and measures is to advance and improve the Chinese steel industry, which is clearly a government mandate and function.

Evidence of SIE role in policy compliance and implementation

In Appendix A, Customs and Border Protection outlines evidence that the GOC actively implements and monitors the progress of its policies, plans and implementing measures. It is considered this activity is in line with Article 36 of the SOA Law.

Further evidence has been encountered that demonstrates that Chinese iron and steel industry SIEs (particularly Baosteel, China's largest steel producer and a known manufacturer of HRC) are in fact leading the implementation of these policies, particularly the merger and restructuring of the industry.

The evidence that indicates this is occurring is outlined in Appendix A, however the below extract from Baosteel's 2010 Annual Report has been reproduced here as an example of this evidence:

As one of the engines of domestic iron and steel industry, Baosteel has been taking an active part in the reorganization of the industry in accordance with the national policies on iron and steel industry. By way of various capital operations including acquisition, merging, and transfer for free, Baosteel has quickly enlarged its production scale, and strengthened its comprehensive power, enhancing its core competitive power.

[Emphasis added]

Further to the above, Customs and Border Protection observes the provisions of:

- *the Guiding Opinions of the SASAC of the State Council about Promoting the Adjustment of State-owned Capital and the Reorganization of State-owned Enterprises (SASAC Guiding Opinion);²⁰⁷ and*
- *the Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises (the Interim Measures);²⁰⁸*

which further indicate that SIEs have played an integral role in implementing GOC policies and plans.

²⁰⁷ December 5, 2006, General Office of the State Council – GOC response to the GA Attachment XX

²⁰⁸ Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, Attachment 170

The GOC provided the SASAC Guiding Opinion in response to the GQ. The purpose of the SASAC Guiding Opinion is to further economic reform through the adjustment of state-owned capital, reorganisation of state-owned enterprises as well as improvement of the mechanism of entry-withdrawal and rational movement of state-owned capital²⁰⁹.

This document indicates that SIEs have played an integral role in implementing GOC policies and plans, particularly those in relation to *'execute(ing) the spirits of the Third and Fifth Plenary Sessions of the Sixteenth CPC Central Committee, and the Opinions of the State Council about Deepening the Economic System Reform, namely:*

- *'...enhance the state-owned economy's controlling power, influence, driving force, bring the leading role of state-owned economy into play...';*
- *'...persist in strengthening supervision over state-owned assets, rigidly enforce the procedures for property right transaction, and equity transfer, promote orderly flow, prevent the loss of state-owned assets and ensure the value maintenance and increase of state-owned assets';*
- *'... persist in safeguarding the legitimate rights and interests of workers, protect the workers' rights to enterprise reorganisation, restructuring and other kinds of reform, and fully mobilize and protect the initiatives of the vast majority of workers to participate in the reform and reorganisation of state-owned enterprises';*
- *'promote state-owned capital to concentrate on major industries and key fields relating to national security and national economic lifelines... and accelerate the formation of a batch of predominant enterprises with independent intellectual property rights, famous brands and strong international competitiveness';*
- *'enhancing the controlling power of state-owned economy, and bringing its leading role into play'.*

Further, the GOC has provided the Interim Measures in response to the GQ. The purpose of the Interim Measures is to establish a State-owned assets supervision and management system that suits the needs of a socialist market economy, to better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realise the preservation of and increase in the value of State-owned assets²¹⁰.

Article 14 of the Interim Measures vests as one of SASAC's main obligations the responsibility to:

(2) maintain and improve the controlling power and competitive power of the State economy in areas which have a vital bearing on the lifeline of the national economy and State security, and improve the overall

²⁰⁹ SASAC Guiding Opinion, preamble

²¹⁰ Interim Measures, preamble

quality of the State economy.

[Emphasis added]

The sentiments of Article 14 reflect those of the SASAC Guiding Opinion, although it is acknowledged that this Article discusses the responsibilities of SASAC not SIEs.

In relation to the SASAC Guiding Opinion, the GOC has submitted that this is not a legally binding document (rather having the status of a research and discussion paper), and cannot override current law.

Further, the GOC has submitted that the current law, as outlined in Article 7 of the Interim Measures, which prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

The contradiction between Articles 7 and 14 of the Interim Measures is observed.

Conclusion and Indicator

Customs and Border Protection considers that significant evidence exists to suggest that Chinese iron and steel industry SIEs, including those that produce HRC and/or narrow strip, play a leading and active role in implementing GOC policies and plans for the development of the iron and steel industry.

This development is considered to be a 'governmental function', and it is therefore considered these SIEs are in fact exercising governmental functions.

In SEF177, Customs and Border Protection noted that additional information considered likely to be in the possession of the GOC was requested of, and not provided by, the GOC (e.g. annual reports of SIEs). Customs and Border Protection considered in SEF177 that further evidence of this indicator may have been observed in this omitted information.

In response to SEF177,²¹¹ the GOC has observed Customs and Border Protection's position on this matter, but has referred to its response to Question C3.11 of the GQ in which it explained that in many cases this information was not routinely collected by the GOC in the ordinary course of its administration and hence could only provide information that it gathered from public sources.

The GOC has further noted in response to SEF177 that several of those companies identified by Customs and Border Protection (and annual reports requested from) are not publicly listed companies and are not required to publish annual reports to the public.

Customs and Border Protection notes these observations offered by the GOC, and notes that it considers that, even in the absence of this requested information, sufficient evidence exists to consider that the requirements of this indicia of public bodies has been found in relation to Chinese iron and steel industry SIEs.

Indicia 3: Evidence that a government exercises meaningful control over an entity and its conduct

Customs and Border Protection considers that sufficient evidence exists to determine that the GOC is in fact exercising meaningful control over Chinese SIEs generally, and SIEs the produce HRC and/or narrow strip.

Iron and steel industry policy implementation

As discussed above, the GOC has issued a multitude of plans, policies and implementing measures aimed at realising its overall policy aims in relation to the Chinese iron and steel industry. Furthermore, evidence exists to demonstrate that SIEs are leaders in the implementation of these policies and plans.

In addition to this SIE-led implementation, significant further evidence exists that demonstrates the GOC itself (including provincial governments, the national government, and associated GOC bodies, agencies and ministries) actively implement and monitor the progress of these GOC policies and plans.

This is outlined in detail in Appendix A. However, examples of this include:

- evidence of SIEs that the plans are in fact binding or restrictive in nature;²¹²

²¹¹ GOC submission of 23 May 2012

²¹² For example, the Baosteel 2006 Annual Report states '*...in order to achieve the restrictive target of energy saving, consumption lowering and pollution reducing, the Chinese government has promulgated a series of policies and regulations, explicitly pointing out the direction and timetable for the structural adjustment and elimination of the outdated capacity or the steel industry, and it is becoming common understanding to realise the adjustment of industrial layout by replacing the outdated capacity with the advanced capacity.'* [Emphasis added]

- reporting on the progress of industry consolidation and elimination of backwards capacity (such as the *Significant progress concerning reorganization and integration* outlined in the Revitalization Plan); and
- statements by Chinese iron and steel enterprises that mergers have been GOC-directed.

Furthermore, the text of multiple GOC documents themselves indicate the binding nature of the policies and measures therein, such as the Interim Measures, which refer the Directory Catalogue and state in Article 19:

If any enterprise of the eliminated category refuses to eliminate the production technique, equipment or products, the local people's government at each level and the relevant administrative department shall, in accordance with the relevant laws and regulations of the state, order it to stop production or close it, and shall take appropriate measures to resettle the employees of the enterprise, and guarantee the safety of financial institutions' credit assets, etc. If its products are subject to the administration by permit for production, the relevant administrative department shall lawfully revoke its permit for production; the administrative department for industry and commerce shall urge it to lawfully go through modification registration or nullification registration; the administrative department of environmental protection shall revoke its permit for pollution discharge; and the electric power supply enterprise shall lawfully stop supplying electricity to it. If any enterprise violates the provisions, its persons directly held liable and the relevant leaders shall be subject to liabilities in accordance with the law.

[Emphasis added]

This indicates the GOC's ability and willingness to exercise meaningful control over enterprises to the extent of refusing access to permits registration, necessary resources, and even forced closure.

Evidence that the GOC is actively enforcing these provisions, or that the provisions are having the desired impact (backwards production capacity being eliminated and/or inefficient enterprises closing or merging before direct intervention is made), is discussed in Appendix A.

Additionally, the impact of GOC policies on iron and steel industry SIEs is further noted in the documents submitted by Hebei Iron and Steel Co., Ltd (an HRC-producing SIE) to the Shenzhen Stock Exchange on issuing public A type shares. In these, the enterprise makes note of the GOC's iron and steel industry policies, including the NSP, *Revitalisation Plan* and *Notice on Curbing Overcapacity*, and makes the following assessment;

'In the background of State macroeconomic control of the steel industry, if Hebei Iron and Steel Co., Ltd is not in accordance with the

relevant policies in a timely manner to eliminate backward production capacity, optimize product structure and improve technological level, future development of Hebei Iron and Steel Co., Ltd would be subject to certain policy constraints²¹³

The above extract further highlights to Customs and Border Protection the fact that GOC policies, plans and measures for the iron and steel industry places constraints on SIEs, and thus meaningful control is placed over the activities, decisions and conduct of enterprises in this industry by the GOC.

'Go Out' / 'Going Global' strategy implementation

Further to the above evidence of control through the implementation and monitoring of policies examined in Appendix A, evidence exists that the GOC's broad (i.e. not iron and steel-industry specific) 'Go Out' or 'Going Global' strategy is also implemented by the GOC and exercises control over the business decisions of Chinese iron and steel industry SIEs.

Customs and Border Protection requested the GOC provide documentation on the 'go out' policy as part of its GQ.

The GOC responded that it could not identify a document matching this description.

Regardless, it is understood that the 'go out' policy or 'going global' strategy involves a GOC initiative to encourage Chinese iron and steel enterprises to invest in foreign mineral companies so that they can have an input in ore pricing to help stabilise production costs and upgrade risk controls. This was outlined in a report by KPMG entitled *China's Iron and Steel Industry Amid the Financial Crisis*²¹⁴ submitted by the GOC as Attachment 26 to its response to the GQ.

It is understood that this policy/ strategy is embodied in relation to the iron and steel industry in the following articles.

Article 30 of the NSP:

We should, according to the principles of making their advantages complement each other and achieving the win-win situation, intensify the international cooperation regarding overseas mineral resources. We should support those large backbone enterprise groups to establish overseas production and supplying bases of iron mines, chrome ore mines, manganese mines, nickel ore mines, waste steel and coking coal, etc. by way of setting up solely-funded enterprises, joint-equity enterprises, contractual enterprises and purchase of mineral resources. For such important raw materials and

²¹³ Hebei Iron and Steel Co., Ltd, *Public Issuance of Type A Share Prospectus*, pg.22

²¹⁴ pg 30.

auxiliary materials as bulk ores and coke as needed by the enterprises in coastal areas, the state encourages them to solve it by way of overseas market.

The iron and steel industrial association shall do a good job in the industrial self-discipline and coordination and stabilize the raw material market both at home and abroad. Where two or more domestic enterprises are engaged in vicious competition for overseas resources, the state may adopt administrative coordination to hold alliance or select one of them to make investment so as to avoid vicious competition. The relevant enterprises shall be subject to the administrative coordination of the state...

- Article 10 of the Revitalisation Plan:

Actively realize going global strategy

Further streamline scrutiny procedure for product going abroad, rationalize accordingly the measures in terms of credit, foreign exchange, fiscal and taxation and border control. Raise access criteria for going abroad of resource exploitation enterprises, and support those key eligible enterprises going abroad to do exploitation, development, technical cooperation and M&A. Further improve management of assets abroad to avoid and mitigate risks thereof. Increase scale of export credit for metallurgical equipments. Rationalize insurance policy of export credit. Encourage steel enterprises to establish marketing network abroad and stabilize market share for high end products. Support enterprise to realize strategy of going global to enhance capacity of ensuring resource safety by making full use of various funds.

In its above-mentioned report, KPMG makes the following assessment in respect of the 'go-out'/'go global' strategy;

...large steel enterprises emerging from restructuring continue to implement the existing overseas expansion strategy. Case studies of overseas mining investments by Wuhan Iron and Steel, Baosteel, Angang and Chinalco show that state-owned giants with a background in China will be the only choices to implement the strategy of 'go-out' and control resources. This is why they can easily get support for various aspects – including government policies and financial funding – and successfully acquire overseas resources'.

Customs and Border Protection considers this to be evidence that large state invested steel enterprises carrying out the GOC's industrial development strategy of 'go-out'/'going global' are acting under the meaningful control of the GOC, such that SIE steel producers including HRC and/or narrow strip producers possess governmental authority and exercise such authority in the performance of government functions, namely, the achievement of the GOC's

industrial development policy.

Conclusion – Indicia 3

For the reasons outlined above, it is considered that the GOC is exercising meaningful control over HRC and/or narrow strip producers.

The impact of these GOC measures is assessed in Appendix A.

As with indicia 2, SEF177 noted that additional information considered likely to be in the possession of the GOC was requested of, and not provided by, the GOC (e.g. annual reports of SIEs). SEF177 considered that further evidence of this indicia may have been observed in this omitted information.

However, the comments of the GOC in response to SEF177 in relation to this issue²¹⁵ are again noted.

As with Indicia 2, Customs and Border Protection considers that the above analysis has adequately established that the requirements of Indicia 3 have been established in relation to Chinese iron and steel industry SIEs in any case.

V(vi) Conclusion

It is considered that evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers, though sufficient evidence exists to satisfy the requirements of Indicia 1 (the existence of a 'statute or other legal instrument' which 'expressly vests government authority in the entity concerned').

It is further noted that the GOC was likely to be in possession of further information that may have assisted in Customs and Border Protection's analysis of these matters and provided further evidence of indicia 1 and 2 in particular (particularly the annual reports of identified SIEs), but that this information was not provided.

Although not all 3 indicia have been satisfied in this case, it is noted that the Appellate Body in DS379 stated that:

*...where the evidence shows that the formal indicia of government control are manifold and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.*²¹⁶

The Appellate Body's statement at 345 of the Appellate Body Report is again

²¹⁵ GOC submission of 23 May 2012

²¹⁶ DS379 Appellate Body Report, at [318]

acknowledged:

...determining whether an entity is a public or private body may be a complex exercise, particularly where the same entity exhibits some characteristics that suggest it is a public body, and other characteristics that suggest that it is a private body.

It is considered that the position of SIEs that produce HRC and/or narrow strip in China are examples of entities that exhibit some public body characteristics and some private body characteristics.

Notably, GOC submissions and evidence suggest there is a certain degree of separation and independence of SIEs from the GOC, and that they are given certain freedoms to behave relatively independently. However, no other evidence exists to show that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.

In noting this, Customs and Border Protection considers that sufficient evidence exists to reasonably consider that, for the purposes of its investigation into the alleged subsidisation of HSS from China, SIEs that produce and supply HRC and/or narrow strip should be considered to be 'public bodies', in that the GOC exercises meaningful control over SIEs and their conduct.

As such, Customs and Border Protection considers that these SIEs qualify as 'public bodies' under the Act.

PART VI SUBMISSIONS TO SEF177

The GOC's submission of 16 May 2012²¹⁷ reiterates the GOC position that SIEs operating in the iron and steel industry in China are not public bodies, nor do they provide, or are authorised or delegated to provide HRC or narrow strip to HSS producers for less than adequate remuneration.

The GOC particularly takes issue with Customs and Border Protection's finding, that 'the achievement of the GOC's industrial policy' is a government function. The GOC alleges this finding is based on s.36 of the *Law of the People's Republic of China on the State-Owned Assets of Enterprises* which provides;

A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

In SEF177, and again in this report, Customs and Border Protection has noted this Article, and observed:

Customs and Border Protection considers this direction requiring SIEs to comply with national industrial policies, albeit related to investments in this instance, amounts to a direction that SIEs carry out a government function, namely the achievement of the GOC's national industrial policy objectives.

The GOC questions "how compliance with a law which is an emanation of government policy, can be characterised as the exercise of a government function, or can in anyway be considered to constitute the vesting of government authority". The GOC reasons that if this is the criteria for the determination of a public body, every Australian company which is required to partake in any regulatory framework could be characterised as a public body.

Customs and Border Protection clarifies that it's finding that SIEs exercise government authority in the performance of a government function, namely the achievement of the GOC's industrial policies, is based, not only on the above law, but on a significant body of evidence that suggest that SIEs play an integral and leading role in the implementation of various GOC policies and plans in relation to the steel industry. This evidence including the provisions of a number of policies and laws and evidence of SIEs implementing these policies is outlined in this appendix.

Customs and Border Protection highlights that it is the degree of control exhibited in a multitude of GOC industrial policies in respect of the iron and

²¹⁷ GOC submission, 16 May 2012, 'Submission in response to Statement of Essential Facts No. 177'

²¹⁸ Section V(v) of Appendix C to SEF177, Section V(v) of Appendix B to this report.

²¹⁹ Ibid, p.5

steel industry that leads to the conclusion that SIEs in complying with these policies are performing a government function. This is observed in the context of the statement made in the Appellate Body's report in DS379 in relation to the existence of manifold items of evidence permitting inferences that entities are public bodies (see Section V(vi) of this appendix).

GOC in its submission of 16 May 2012, the GOC also objects to the following statement made in SEF177:

It is further noted that the GOC was likely to be in possession of further information that may have assisted in Customs and Border Protection's analysis of these matters and provided further evidence of indicia 1 and 2 in particular (particular the annual report of identified SIEs), but that information was not provided.

The GOC asserts that the implication that the GOC withheld information and the assumption that the information would have proved the case against it, are both incorrect and unfairly prejudicial. The GOC submits that the reason why no evidence can be cited of the vesting of government authority in SIEs is because there is no such vesting and no government programs to provide HRC or narrow strip to HSS producers at inadequate remuneration.

Customs and Border Protection again notes that the *Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises, Order of the State-owned Assets Supervision and Administration Commission of the State Council (No. 14)* requires enterprises whose investment contribution duties are performed by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to undertake comprehensive performance evaluations in respect of financial and management performance.

Further, in response to question D2.19 of the GQ, the GOC indicated that there are SIEs in the steel sector in China for which SASAC performs the role of capital contributor.

Customs and Border Protection therefore considers that the GOC is in possession, for at least some SIEs in the steel sector, information relevant to the questions concerning ownership, governance, performance and profit, and enterprise functions.

In respect of the annual reports of SIEs, the GOC's submissions on Customs and Border Protection's position on the failure of the GOC to provide many requested annual reports is addressed earlier in this appendix at Section V(v).

APPENDIX C - ASSESSMENT OF ADEQUATE REMUNERATION AND COMPETITIVE MARKET COSTS FOR HRC AND NARROW STRIP IN CHINA

PART I INTRODUCTION

After determining:

- that SIEs that supplied HRC and/or narrow strip in China are 'public bodies' for the purposes of the Act in relation to subsidy Program 20 (see PART IV of Appendix B); and
- 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) (due to the influence of the GOC in the Chinese iron and steel industry - see Section 6.4);

Customs and Border Protection has sought to determine:

- a benchmark cost that represents adequate remuneration for HRC and narrow strip in China, to determine benefit received under subsidy Program 20 (purchases of HRC and/or narrow strip from SIEs at less than adequate remuneration); and
- a competitive market cost for HRC and narrow strip in China for use in constructing normal values for HSS.

Customs and Border Protection notes that the concept of 'adequate remuneration' for the purposes of its subsidy investigation, and the notion of a competitive market cost for the purposes of constructing normal values in line with Regulation 180(2) are separate concepts.

It is considered that these do not necessarily require the same calculation/data base, and there may be circumstances in which it is reasonable to use separate information to establish adequate remuneration and competitive market costs for the same goods in an investigated country.

However, Customs and Border Protection considers it reasonable to determine that the benchmark established to determine adequate remuneration for HRC and narrow strip in China is also suitable for use to determine competitive market costs for those goods.

In the circumstances of HRC and narrow strip in China, a competitive market cost is considered to be adequate remuneration for those goods, and vice versa. Consequently, the same amount has been applied by Customs and Border Protection in each context (hereafter referred to as 'the benchmark' irrespective of the context of its use).²²⁰

²²⁰ I.e. whether it refers to adequate remuneration, or competitive market costs for HRC and narrow strip.

PART II LEGAL AND POLICY CONSIDERATIONS

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

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

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

The Act and SCM Agreement

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

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

[Emphasis added]

Article 14(d) of the SCM Agreement provides:

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

[Emphasis added]

Appellate Body in DS257 (use of external benchmarks)

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

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

GOC submissions

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

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

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

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

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

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

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

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

²²² GOC submission of 16 May 2012, page 6.

Customs and Border Protection's assessment

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

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

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

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

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

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

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

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

²²³ At paragraph 90.

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

Regulation 180(2) requires that if:

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

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

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

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

II(iii) Aim of HRC and narrow strip benchmark

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

As required by s 269(4)(d) of the Act and Article 14(d) of the SCM Agreement, this should be determined having regard to the prevailing market conditions for HRC and narrow strip in China.

PART III BENCHMARK USED

III(i) Starting point – Internal benchmarks

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

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

Option one: private domestic prices

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

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

Indeed, Appendix A concludes

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

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

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

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

²²⁴ At page 55.

domestic prices unsuitable for determining adequate remuneration.

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

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

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

Option two: import prices

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

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

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

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

²²⁵ GOC submission of 16 May 2012.

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

²²⁷ GOC submission of 16 May, at page 6.

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

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

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

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

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

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

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

Conclusion – Internal benchmarks

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

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

²²⁸ As well as before and since the investigation period.

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

China is not suitable or reasonable in the circumstances.

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

Final approach

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

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

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

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

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

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

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

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

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

SEF177 approach

²³⁰ Kukje, Alpine and Shin Yang

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

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

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

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

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

Adjustments to the benchmark

Pre-galvanised adjustment

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

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

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

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

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

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

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

Narrow strip adjustment

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

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

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

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

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

Delivery

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

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

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

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

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

Use of Thai data in benchmark

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

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

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

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

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

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

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

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

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

Use of Taiwan data in benchmark

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

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

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

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

PART IV REASONS FOR CHOSEN BENCHMARK

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

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

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

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

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

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

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

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

PART V SUBMISSIONS IN RESPONSE TO SEF177

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

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

Summary of submissions

ATM

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

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

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

The ASA

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

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

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

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

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

²³⁹ Submission of 14 May 2012, page 10.

²⁴⁰ Submission of 14 May 2012, page 4.

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

Dalian Steelforce

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

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

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

Huludao, Kingland and TFQ

Huludao and Kingland have each submitted²⁴³ that:

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

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

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

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

Additionally, Huludao and Kingland have submitted:

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

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

The GOC

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

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

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

Customs and Border Protection's assessment

Comparative advantage/'low cost' market

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

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

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

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

²⁴⁴ TFQ submission of 11 May 2012.

²⁴⁵ GOC submission of 16 May 2012, page 6.

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

[Emphasis added]

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

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

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

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

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

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

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

²⁴⁶ 8 March 2012

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

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

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

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

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

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

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

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

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

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

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

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

Customs and Border Protection therefore considers that

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

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

Other benchmark options proposed

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

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

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

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

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

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

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

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

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

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

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

Verifying Accuracy and calculation of benchmark

Costs and pre-galvanised HRC

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

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

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

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

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

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

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

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

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

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

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

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

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

This difference was compared with:

- the verified quarterly average differences in purchase price for HDG

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

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

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

Grade and standards of HRC and narrow strip

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

In particular, Orrcon asserted that the hot-dipped galvanised HSS exported from China usually complies with AS1163 or BS1387 standards, and would be manufactured from Chinese HRC grades Q195 and Q235, whereas HSS exported to Australia from the countries used as the basis for the benchmark is mainly HSS complying with AS/NZS1163 C350. Orrcon claimed that the raw material grades required for the AS/NZS1163 C350 HSS attract 'extras' in price.

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

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

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

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

²⁴⁹ Orrcon submission of 14 May 2012

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

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

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²⁵⁰ In comparison to As1163.

PART VI CONCLUSION

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

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

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

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

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

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