



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 550

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

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

AND

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

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THE PEOPLE'S REPUBLIC OF CHINA AND
THE SOCIALIST REPUBLIC OF VIETNAM**

27 August 2021

CONTENTS

CONTENTS	2
ABBREVIATIONS.....	5
1 SUMMARY AND RECOMMENDATIONS.....	7
1.1 INTRODUCTION	7
1.2 RECOMMENDATION TO THE MINISTER	7
1.3 TERMINATION OF PART OF THE INVESTIGATION	8
1.4 AUTHORITY TO MAKE DECISION.....	8
1.5 FINDINGS AND CONCLUSIONS.....	10
2 BACKGROUND	14
2.1 INITIATION.....	14
2.2 PREVIOUS CASES	14
2.3 CONDUCT OF THE INVESTIGATION	14
2.4 SUBMISSIONS RECEIVED FROM INTERESTED PARTIES.....	16
2.5 PRELIMINARY AFFIRMATIVE DETERMINATION.....	19
2.6 PUBLIC RECORD	20
3 THE GOODS AND LIKE GOODS	21
3.1 FINDINGS	21
3.2 LEGISLATIVE FRAMEWORK	21
3.3 THE GOODS	21
3.4 MODEL CONTROL CODES	24
3.5 LIKE GOODS	26
4 THE AUSTRALIAN INDUSTRY	31
4.1 FINDINGS	31
4.2 LEGISLATIVE FRAMEWORK	31
4.3 AUSTRALIAN INDUSTRY	31
4.4 SUBMISSIONS RECEIVED IN RESPECT OF THE AUSTRALIAN INDUSTRY	31
4.5 PRODUCTION PROCESS.....	34
4.6 CONCLUSION	35
5 AUSTRALIAN MARKET	36
5.1 FINDINGS	36
5.2 BACKGROUND.....	36
5.3 MARKET STRUCTURE	36
5.4 PRICING.....	37
5.5 MARKET SIZE	38
6 DUMPING INVESTIGATION.....	40
6.1 FINDINGS	40
6.2 LEGISLATIVE AND POLICY FRAMEWORK	40
6.3 PARTICULAR MARKET SITUATION	42
6.4 PROPER COMPARISON OF DOMESTIC AND EXPORT PRICES.....	46
6.5 CONSTRUCTED NORMAL VALUES – CHINA	56
6.6 EXPORTERS.....	61
6.7 DUMPING ASSESSMENT – CHINA	63
6.8 DUMPING ASSESSMENT – KOREA	71
6.9 DUMPING ASSESSMENT – TAIWAN	73
6.10 DUMPING ASSESSMENT – VIETNAM	73
7 SUBSIDY INVESTIGATION – CHINA.....	74

PUBLIC RECORD

7.1	FINDINGS	74
7.2	RELEVANT LEGISLATION	75
7.3	INVESTIGATED PROGRAMS – CHINA	77
7.4	INFORMATION CONSIDERED BY THE COMMISSION	80
7.5	SUBSIDY ASSESSMENT – CHINA	81
7.6	SUMMARY OF SUBSIDY MARGINS	83
7.7	VOLUME OF SUBSIDISED IMPORTS	84
7.8	LEVEL OF SUBSIDISATION	85
8	ECONOMIC CONDITION OF THE INDUSTRY	87
8.1	FINDINGS	87
8.2	APPROACH TO INJURY ANALYSIS	87
8.3	VOLUME EFFECTS	88
8.4	PRICE EFFECTS	90
8.5	PROFIT AND PROFITABILITY	91
8.6	OTHER ECONOMIC FACTORS	91
9	HAS DUMPING AND/OR SUBSIDIES CAUSED MATERIAL INJURY?	96
9.1	FINDINGS	96
9.2	LEGISLATIVE FRAMEWORK	96
9.3	CUMULATIVE EFFECT OF INJURY	96
9.4	APPROACH TO CAUSATION ANALYSIS	98
9.5	SUBMISSIONS TO THE SEF	99
9.6	SIZE OF DUMPING MARGINS	100
9.7	SIZE OF SUBSIDY MARGINS	100
9.8	VOLUME EFFECTS	100
9.9	PRICE EFFECTS	103
9.10	PROFIT EFFECTS	105
9.11	OTHER ECONOMIC FACTORS	106
9.12	FACTORS OTHER THAN DUMPING AND SUBSIDISATION CAUSING INJURY	106
9.13	MATERIALITY OF INJURY	109
9.14	CONCLUSION	110
10	WHETHER DUMPING AND/OR SUBSIDISATION MAY CONTINUE	111
10.1	FINDINGS	111
10.2	INTRODUCTION	111
10.3	WHETHER DUMPING AND SUBSIDISATION MAY CONTINUE	111
10.4	COMMISSIONER’S ASSESSMENT	112
11	NON-INJURIOUS PRICE AND LESSER DUTY RULE	113
11.1	FINDINGS	113
11.2	INTRODUCTION	113
11.3	LEGISLATIVE FRAMEWORK	113
11.4	LESSER DUTY RULE	114
11.5	NON-INJURIOUS PRICE	115
11.6	COMMISSION’S ASSESSMENT OF THE LESSER DUTY RULE	116
12	RECOMMENDED MEASURES	118
12.1	FINDING	118
12.2	FORMS OF DUMPING DUTY AVAILABLE	118
12.3	SUBMISSIONS TO THE SEF	119
12.4	COMMISSION’S CONSIDERATION	119
12.5	RECOMMENDATIONS	121
13	RECOMMENDATIONS	122
13.1	FINDINGS	122
13.2	RECOMMENDATIONS	122

PUBLIC RECORD

APPENDICES AND ATTACHMENTS	127
APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION – CHINA	129
A1 THE GOC ROLE IN THE CHINESE STEEL MARKET	129
A1.1 OVERVIEW	129
A1.2 GOC POLICIES AFFECTING THE STEEL INDUSTRY	129
A1.3 INITIATIVES INFLUENCING CHINESE STEEL MARKETS.....	129
A1.4 INDUSTRY PLANNING GUIDELINES AND DIRECTIVES	131
A1.5 ROLE AND OPERATION OF SOES	135
A1.6 THE ROLE OF THE GOC IN PRIVATE FIRMS	136
A1.7 DIRECT AND INDIRECT FINANCIAL SUPPORT	137
A1.8 TAXATION ARRANGEMENTS	137
A2 COMPETITION IN CHINESE STEEL MARKETS.....	139
A3 GOC INFLUENCE ON THE CHINESE MARKET FOR THE GOODS.....	140
A3.1 COMPARISON OF RAW MATERIAL PRICES.....	140
APPENDIX B ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS	144
B1 INTRODUCTION.....	144
B1.1 DEFINITION OF GOVERNMENT, PUBLIC AND PRIVATE BODIES	144
B1.2 GOVERNMENT	144
B1.3 PUBLIC BODIES	144
B1.4 PRIVATE BODIES	145
B2 ASSESSMENT OF PROGRAMS – CHINA.....	146
B2.1 PROGRAM 20 – HOT ROLLED STEEL PROVIDED BY GOVERNMENT AT LESS THAN FAIR MARKET VALUE...	146
B2.2 OTHER PROGRAMS	148

ABBREVIATIONS

2013 Vietnam Subsidy Notice	<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i> published in March 2013
2020 Vietnam Subsidy Notice	<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i> published in February 2020
ABF	Australian Border Force
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
applicant	Orrcon Manufacturing Pty Ltd
Austube Mills	Austube Mills Pty Ltd
BlueScope	BlueScope Steel Limited
CBSA	Canada Border Services Agency
CBSA Cold-rolled steel case	CBSA investigation into the subsidising of cold-rolled steel from China, South Korea and Vietnam
CBSA Copper pipe case	CBSA investigation into the subsidising of certain copper pipe fittings originating in the Socialist Republic of Vietnam
CBSA COR case	CBSA investigation into the subsidising of certain corrosion-resistant steel sheet originating in Turkey, the United Arab Emirates and Vietnam
CBSA Oil tubes case	CBSA investigation into the subsidising of certain oil country tubular goods originating in or exported from India, Indonesia and Vietnam
China	the People's Republic of China
CDI	Chinh Dai Industrial Co., Ltd.
CDT	Chinh Dai Steel Technology Co., Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	cost to make
CTMS	cost to make and sell
CON 550	<i>Consideration Report No. 550</i>
DITH	DITH Australia Pty Ltd
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
Five Steel	Five Steel (Tianjin) Tech Co., Ltd
FOB	free on board
GAAP	generally accepted accounting principles
GOC	Government of China
the goods	the goods (also referred to as the goods under consideration or GUC) as defined in chapter 3
GOV	Government of Vietnam
Hoa Phat Binh Duong	Hoa Phat Binh Duong Steel Pipe Co., Ltd

PUBLIC RECORD

Hoa Phat Da Nang	Hoa Phat Da Nang Steel Pipe Co., Ltd
Hoa Phat Long An	Hoa Phat Long An Steel Pipe Co., Ltd
Hoa Phat Steel	Hoa Phat Steel Pipe Co., Ltd
HRC	hot rolled coil
HSS	hollow structural sections
HSS countries	China, Korea, Malaysia, Taiwan and Thailand
JFE	JFE Shoji Australia Pty Ltd
Korea	the Republic of Korea
M&H	M&H Vietnam Trading and Services Co., Ltd.
MT	metric tonnes
the Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual (November 2018)</i>
the Minister	the Minister for Industry, Science and Technology
Nguyen Minh Steel	Nguyen Minh Steel Group Joint Stock Company
NIP	non-injurious price
Orrcon	Orrcon Manufacturing Pty Ltd
PAD	Preliminary Affirmative Determination
the PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
RCR	RCR International Pty Ltd
REQ	response to exporter questionnaire
REV 529	Review 529 into hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand
RHS	rectangular or square hollow sections
ROI	return on investment
SEF	statement of essential facts
SOE	State-owned Enterprise
Steelforce Australia	Steelforce Australia Pty Ltd
the subject countries	China, Korea, Taiwan and Vietnam
Ta Fong	Ta Fong Steel Co., Ltd
Thailand	the Kingdom of Thailand
TRAV	Trade Remedies Authority of Vietnam
USP	unsuppressed selling price
Vietnam	the Socialist Republic of Vietnam
Vina One	Vina One Steel Manufacturing Corporation
WTO	World Trade Organization
Yantai Aoxin	Yantai Aoxin International Trade Co., Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Anti-Dumping Commission (Commission) has prepared this *Report No. 550* (REP 550) in response to an application by Orrcon Manufacturing Pty Ltd (Orrcon) lodged with the Commissioner of the Anti-Dumping Commission (the Commissioner). The application seeks the publication of a dumping duty notice in respect of precision pipe and tube steel (the goods) exported to Australia from:

- the People's Republic of China (China)
- the Republic of Korea (Korea)
- Taiwan
- the Socialist Republic of Vietnam (Vietnam)

(collectively, the subject countries).

The application further seeks a countervailing duty notice in respect of the goods exported to Australia from China and Vietnam.

Orrcon, the sole member of the Australian industry manufacturing like goods, claims that it suffered material injury because of dumped and subsidised imports of the goods.

The Commissioner has found that the goods exported by:

- Chinese exporters were at dumped and subsidised prices
- Korean exporters were at dumped prices.

The Commissioner has also found that dumped and subsidised exports from China and dumped exports from Korea have caused material injury to the Australian industry for like goods.

The Commissioner found no dumped goods exported by Taiwanese or Vietnamese exporters. In respect of Vietnam, exports of the goods by cooperative and residual exporters were not subsidised and for non-cooperative entities, exports of the goods were subsidised, albeit at negligible levels.

REP 550 follows the publication of the *Statement of Essential Facts No. 550* (SEF 550) for this investigation¹ on 1 June 2021.

1.2 Recommendation to the Minister

Based on the findings in this report, the Commissioner recommends that the Minister for Industry, Science and Technology (the Minister):

- publish a dumping duty notice in respect of all exports of the goods from Chinese and Korean exporters

¹ Electronic Public Record (EPR) 550, Item 57.

- publish a countervailing duty notice in respect of all exports of the goods from Chinese exporters, except for Dalian Steelforce Hi-Tech Co., Ltd (Dalian Steelforce) and Yantai Aoxin International Trade Co., Ltd (Yantai Aoxin).

1.3 Termination of part of the investigation

Based on the findings contained in a separate report, *Termination Report No. 550* (TER 550), on 11 August 2021, the Commissioner terminated the investigation in respect of Taiwan and Vietnam. TER 550 and the related termination notice, Anti-Dumping Notice (ADN) No. 2021/100 set out the Commissioner's reasons and are on the public record.²

The Commissioner also terminated the subsidy investigation in relation to Dalian Steelforce and Yantai Aoxin on 27 August 2021, ADN No. 2021/111 refers.

1.4 Authority to make decision

Division 2 of Part XVB of the Act describes, among other things, the procedures and considerations for the Commissioner in conducting investigations in relation to the goods covered by an application under section 269TB(1).

1.4.1 Application

On 16 March 2020, Orrcon lodged an application alleging that the Australian industry for like goods has suffered material injury caused by the goods exported to Australia from China and Vietnam at dumped and subsidised prices, and from Korea and Taiwan at dumped prices.

The Commissioner considered the application and decided not to reject it. The Commissioner initiated Investigation 550 on 31 March 2020.

Consideration Report No. 550 (CON 550) and Anti-Dumping Notice (ADN) No. 2020/050 provide further details relating to the initiation of the investigation.³

1.4.2 Preliminary affirmative decision

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied:

- that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or
- if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

Where the Commissioner does not make a PAD within 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD

² EPR 553, Item 67.

³ EPR 550, Items 2 and 3.

PUBLIC RECORD

Direction) directs the Commissioner to publish a status report providing reasons why the Commissioner did not do so.

On 1 June 2020, being 60 days after the initiation of the investigation, the Commissioner published a status report.⁴

As required by section 9 of the PAD Direction, if the Commissioner has published a status report in relation to an investigation, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the SEF.

In preparation of the SEF, the Commissioner was satisfied that there appeared to be sufficient grounds for the publication of a:

- dumping duty notice in respect of the goods exported to Australia by all exporters from China and Korea
- countervailing duty notice in respect of the goods exported to Australia by all exporters from China.

The Commissioner was not satisfied that there appeared to be sufficient grounds for the publication of a dumping or countervailing duty notice in respect of the goods exported from Taiwan or Vietnam.

As a result, the Commissioner published *Preliminary Affirmative Determination No. 550* (PAD 550) in conjunction with SEF 550 on 1 June 2021. ADN No. 2021/074 provides further details and is available on the public record.⁵

1.4.3 Statement of essential facts

Within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3)⁶, the Commissioner must place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.⁷

SEF 550 was originally due for publication on the public record by 20 July 2020. However, the Commissioner extended the due date for the SEF.⁸ The Commissioner placed SEF 550 on the public record on 1 June 2021.

1.4.4 Report to the Minister

The Commissioner was initially due to provide the report in relation to this investigation to the Minister on, or before, 2 September 2020. The Commissioner extended the due date⁹ for this report to 27 August 2021.

⁴ EPR 550, Item 17.

⁵ EPR 550, Item 58.

⁶ This Minister delegated this power to the Commissioner. See ADN No. 2017/10.

⁷ Section 269TDAA(1).

⁸ EPR 550, Items 19, 41, 43 and 66.

⁹ Ibid.

In making the recommendations in this report, the Commissioner had regard to:

- the application
- all submissions concerning and subsequent to the publication of the notice initiating the investigation (ADN No. 2020/030) and submissions received for which the Commission had regard for the purpose of formulating SEF 550
- SEF 550
- all submissions made in response to SEF 550 received on or before, 21 June 2021¹⁰
- any other matters the Commissioner considered relevant.

This report includes a statement of the Commissioner's reasons for the recommendations contained in this report. The statement of the Commissioner's reasons sets out the material findings of fact on which he based his recommendations and provides particulars of the evidence relied upon to support those findings.

1.5 Findings and Conclusions

A summary of the Commissioner's findings and conclusions is below.

1.5.1 The goods and like goods and the Australian industry (Chapters 3 and 4)

The Commissioner considers that locally produced precision pipe and tube steel are 'like' to the goods. The Commissioner is also satisfied that there is an Australian industry producing like goods, comprising solely of Orrcon.

1.5.2 The Australian market (Chapter 5)

Local production and imports from several countries, including the subject countries, supplies the Australian market for the goods and like goods.

Chapters 3 and 4 of this report and Orrcon's verification report¹¹ discuss like goods manufactured by Orrcon. The Commissioner recommends the Minister exempt under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) for 'air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter', from any anti-dumping measures. This is because the Commission found that Orrcon does not offer like or directly competitive goods for sale in Australia.¹²

1.5.3 Dumping margins (Chapter 6)

The Commission's assessment of dumping margins is set out in the table below.

¹⁰ Unless the Delegate of the Commissioner granted an extension of time.

¹¹ EPR 550, Item 56.

¹² In the event that the Minister becomes satisfied that Orrcon (or another Australian industry member) offers like or directly competitive goods for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, the Minister may revoke the exemption.

PUBLIC RECORD

Country	Exporter	Dumping Margin (%)
China	Dalian Steelforce	2.9
	Yantai Aoxin	19.7
	Uncooperative exporters	19.7
Korea	Uncooperative exporters	6.2
Taiwan	Ta Fong Steel Co., Ltd (Ta Fong)	- 9.0
	Uncooperative exporters	- 8.6
Vietnam	Chinh Dai Industrial Co., Ltd. (CDI)	- 12.2
	Vina One Steel Manufacturing Corporation (Vina One)	- 12.0
	Residual exporters	- 6.5
	Uncooperative exporters	- 6.5

Table 1 – Dumping Margins

1.5.4 Subsidy margins (Chapter 7)

The Commission's assessment of Chinese subsidy margins is set out in the table below.

Entity	Subsidy Margin (%)
Dalian Steelforce	0.1
Yantai Aoxin	N/A
Non-cooperative entities	42.7

Table 2 – Subsidy Margins

Because Dalian Steelforce's subsidy margin is negligible and the Commission did not find that Yantai Aoxin received any subsidies, it is necessary for the Commissioner to terminate the subsidy investigation under section 269TDA(2)(b)(ii) in respect of Dalian Steelforce and section TDA(2)(b)(i) in respect of Yantai Aoxin. Chapter 7 discusses this further.

1.5.5 Material injury caused by dumped and subsidised goods (Chapter 8)

The Commissioner is satisfied that dumped imports from China and Korea, and subsidised imports from China, have caused the following forms of injury to Australian industry:

- reduced sales volume
- price depression
- price suppression
- reduced profit
- reduced profitability
- reduced revenue
- reduced employment numbers
- reduced return on investment (ROI)
- reduced inventory turnover.

1.5.6 Whether dumping and subsidisation may continue (Chapter 10)

The Commissioner is satisfied that the export of the goods to Australia from Chinese exporters may continue in the future at dumped and subsidised prices (except for Dalian Steelforce and Yantai Aoxin) and from Korean exporters at dumped prices.

1.5.7 Non-injurious price and lesser duty rule (Chapter 11)

The Commission has considered whether a lesser amount of duty should apply for China and Korea. As part of this consideration, the Commission calculated a non-injurious price (NIP) for Chinese and Korean exporters. In this instance, the Commission calculated the NIP by:

- starting with an unsuppressed selling price (USP) equal to Orrcon's selling prices for like goods in 2016
- adjusting the selling prices to account for underlying raw material costs increases from 2016 to the investigation period
- deducting the costs incurred in getting the goods from the export free on board (FOB) to the relevant level of trade in Australia.

Chinese exporters

In respect of Dalian Steelforce and Yantai Aoxin, the Commissioner is satisfied that there is a situation in the Chinese domestic market that renders domestic selling prices unsuitable for determining normal value under section 269TAC(1).¹³ This provides an exception to the Minister's mandatory consideration of the lesser duty rule for these exporters.

The Commissioner recommends that the Minister apply this exception and not have regard to the lesser duty rule for the purposes of sections 8(5B) of the Dumping Duty Act, in respect of Dalian Steelforce and Yantai Aoxin. Accordingly, a lesser amount of duty is not necessary.

For uncooperative and non-cooperative exporters from China the same statutory exception does not apply. The Commissioner recommends that the Minister have regard to the lesser duty rule for the purposes of sections 8(5BA) and 10(3D) of the Dumping Duty Act. However, in this instance the NIP is not less than the sum of the export price, the amount of interim countervailing duty (ICD) and interim dumping duty (IDD). Accordingly, a lesser amount of duty is not necessary.

Korean exporters

In respect of all exporters from Korea, the Commissioner recommends that the Minister have regard to the lesser duty rule for the purposes of sections 8(5B) of the Dumping

¹³ Under sections 8(5BAA), 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii).

Duty Act. However, because the NIP is not less than the normal value, a lesser amount of duty is not necessary.

1.5.8 Proposed measures (Chapter 12)

The Commissioner recommends to the Minister imposing anti-dumping measures, using the *ad valorem* duty method, in the following form:

- a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from China and Korea
- a countervailing duty notice in respect of countervailing duty that may become payable by importers of the goods from China, except goods exported by Dalian Steelforce and Yantai Aoxin.

2 BACKGROUND

2.1 Initiation

On 16 March 2020, Orrcon lodged an application with the Commissioner under section 269TB(1) seeking the publication of a dumping duty notice in respect of the goods exported to Australia from China, Korea, Taiwan and Vietnam, and a countervailing notice in respect of the goods from China and Vietnam.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation 550 on 31 March 2020. The Commissioner also publically notified initiation of the investigation on 31 March 2020. CON 550 and ADN No. 2020/030 provide further details relating to the initiation of the investigation.¹⁴

The Commissioner examined for this investigation:

- an investigation period of 1 January 2019 to 31 December 2019 to assess dumping and subsidisation
- an injury analysis period from 1 January 2016 to determine whether exports of dumped and subsidised goods caused material injury to the Australian industry.

2.2 Previous cases

There have been no previous cases in relation to precision pipe and tube steel exported to Australia.

2.3 Conduct of the investigation

2.3.1 Statement of essential facts

SEF 550 set out the facts on which the Commissioner proposed to base the recommendations in this report to the Minister.

The initiation notice advised that the Commissioner would place the SEF on the public record by 20 July 2020. However, the Commissioner extended the due date.¹⁵ The Commissioner placed SEF 550 on the public record on 1 June 2021.¹⁶ Following its publication on the public record, interested parties had until 21 June 2021 to respond to SEF 550.¹⁷

The Commissioner considered submissions received in response to SEF 550 when making this report and the recommendations to the Minister. The Commissioner was not obliged to have regard to any submissions made in response to the SEF received after

¹⁴ EPR 550, Items 2 and 3.

¹⁵ EPR 550, Items 19, 41 and 43.

¹⁶ EPR 550, Item 57.

¹⁷ Unless the Delegate of the Commissioner granted an extension.

21 June 2021, if to do so would have, in the opinion of the Commissioner, prevent the timely preparation of this report.

2.3.2 Australian industry

The Commissioner is satisfied that the applicant for the investigation, Orrcon, represents the Australian industry producing like goods to the goods the subject of the investigation.

The Commission verified the information provided by Orrcon. The Commission's report made in relation to the verification is available on the public record.¹⁸

2.3.3 Importers

The Commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from China, Korea, Taiwan and Vietnam during the investigation period. The Commission forwarded importer questionnaires to 27 importers and placed a copy of the importer questionnaire on the Commission's website for completion by other importers who the Commission did not contact directly.

The Commission undertook verifications for the following importers:

- Steelforce Australia Pty Ltd (Steelforce Australia) importing from China
- DITH Australia Pty Ltd (DITH), importing from Korea
- Austube Mills Pty Ltd (Austube Mills) importing from Taiwan
- RCR International Pty Ltd, importing from Vietnam.

The Commission's verification reports relating to each importer are available on the public record.

The following importers also provided responses, but the Commission elected not to conduct a verification of the data in this instance:

- B&D Metals Group Pty Ltd (Vietnam)
- Marubeni Itochu Steel Oceania Pty Ltd (Vietnam)
- Focus Steel Pty Ltd (China)
- Kuredale Pty Ltd (China).

2.3.4 Exporters

The Commission forwarded exporter questionnaires to 29 entities it identified as suppliers in the ABF import database at the beginning of the investigation. Five Steel (Tianjin) Tech Co Ltd completed a questionnaire response (REQ) prior to the due date of 7 May 2020. The Commission granted 13 other entities extensions to provide a REQ, and subsequently received a further 12 REQs. Table 3 summarises the responding entities below:

¹⁸ EPR 550, Item 56.

PUBLIC RECORD

Exporter name	Questionnaire submission date
China	
Five Steel (Tianjin) Tech Co., Ltd (Five Steel)	01 May 2020
Yantai Aoxin	21 May 2020
Dalian Steelforce	01 Jun 2020
Vietnam	
Vina One	15 Jun 2020
M&H Vietnam Trading and Services Co., Ltd. (M&H)	5 Jun 2020
Hoa Phat Binh Duong Steel Pipe Co., Ltd (Hoa Phat Binh Duong)	10 Jun 2020
Hoa Phat Steel Pipe Co., Ltd (Hoa Phat Steel)	10 Jun 2020
Hoa Phat Long An Steel Pipe Co., Ltd (Hoa Phat Long An)	10 Jun 2020
Hoa Phat Da Nang Steel Pipe Co., Ltd (Hoa Phat Da Nang)	10 Jun 2020
CDI	9 Jun 2020
Chinh Dai Steel Technology Co., Ltd (CDT)	9 Jun 2020
Nguyen Minh Steel Group Joint Stock Company (Nguyen Minh Steel)	29 May 2020
Taiwan	
Ta Fong	20 May 2020

Table 3 – Entities who provided a REQ

2.3.5 Foreign Governments

The Commission forwarded questionnaires to the Government of China (GOC) and the Government of Vietnam (GOV) at the beginning of the investigation.

The GOV responded to the questionnaire. The Commissioner considered the GOV's response in reaching the conclusions contained in SEF 550. TER 550 discusses the GOV response in detail.

The GOC did not respond to the questionnaire.¹⁹

2.4 Submissions received from interested parties

The Commission received the following submissions from interested parties prior to the publication of SEF 550. The Commissioner considered these submissions in reaching the conclusions contained within SEF 550. These submissions are available on the public record.

Public Record Item No.	Interested Party	Date Received
004	Government of Vietnam	14/04/2020
005	Steelforce	14/04/2020

¹⁹ In a recent investigation, *Investigation 553 – Painted Steel Strapping*, the GOC provided a response to a government questionnaire. Due to the similarities between Investigation 553 and this investigation, the Commission has had regard to the GOC's response to Investigation 553 for the purposes of this investigation. See chapter 6.4.4 for further discussion.

PUBLIC RECORD

006	Orrcon	14/04/2020
007	Dalian Steelforce	28/04/2020
008	Vina One Steel	01/05/2020
009	JFE Shoji	01/05/2020
010	Orrcon	08/05/2020
011	RCR International	12/05/2020
012	Romak Hardware	12/05/2020
013	Hoa Phat Steel Pipe	20/05/2020
014	Orrcon	25/05/2020
016	Vina One Steel	27/10/2020
018	M&H Vietnam	09/06/2020
021	Orrcon	04/08/2020
022	Vina One Steel	04/08/2020
023	Hoa Phat Steel Pipe	04/08/2020
024	Nguyen Minh Steel	07/08/2020
038	Government of Vietnam	18/08/2020
039	Orrcon	19/08/2020
042	M&H Vietnam	20/01/2021
051	Orrcon	02/03/2021
052	CDI	19/03/2021
054	Orrcon	30/04/2021
065	JFE Shoji	20/10/2020

Table 4 - Submissions considered in SEF 550

Following the publication of SEF 550, the Commissioner received the submissions detailed in the table below. The Commissioner considered these submissions when making this report and recommendations to the Minister.

Public Record Item No.	Interested Party	Date Received
59	Government of Vietnam	11 Jun 2021
60	Orrcon Manufacturing Pty Ltd	21 Jun 2021
61	Dalian Steelforce Hi-Tech Co., Ltd	21 Jun 2021
62	Yantai Aoxin International Trade Co., Ltd	9 Jun 2021
63	DITH Australia Pty Ltd	22 Jun 2021
64	Vina One Steel Manufacturing Corporation	23 Jun 2021

Table 5 – Submissions received in response to SEF 550

2.4.1 Submission by Orrcon

In respect of SEF 550, Orrcon submitted that it:

- supports the Commissioner's preliminary recommendation to publish a dumping and countervailing duty notice for goods exported to Australia from China, and a dumping duty notice for goods exported to Australia from Korea

- welcomes an affirmative finding by the Commission that air heater tubes fall within the goods description
- offers like or directly competitive goods to air heater tubes for sale in Australia, and refutes the evidence used by the Commission in SEF 550 to conclude that Orrcon does not offer air heater tubes for sale in Australia.
- concurs with the finding that a particular market situation exists for the goods in China
- agrees with the Commission's use of benchmark to calculate raw material costs. However, Orrcon submits that the Commission should exclude Chinese originating and other unknown sourced raw materials from the benchmark to minimise the GOCs influence on Korean and Taiwanese MEPS²⁰ CRC and pre-galvanised prices. Orrcon submits that the Commission applied this approach in REV 529 and REV 521/522. Orrcon recommends that adjustments in these cases be used in this investigation where there is an absence of data provided by Korean and Taiwanese exporters
- considers the Commission should review the related party relationship between Dalian Steelforce and Steelforce Trading and determine that prices are not 'arms length'. On this basis, the Commission should ascertain the export price using a deductive export methodology, consistent with REV 529. Orrcon submits that this will also impact the variable factors for uncooperative Chinese exporters
- submits the recommended form of measure be changed to the combination of fixed and variable method, as the *ad valorem* based measure will not adequately address the injury that the measures are intended to prevent, if export prices fall.

2.4.2 Submission by Dalian Steelforce

In its submission, Dalian Steelforce made the following comments in relation to SEF 550:

- the Commission should have regard to verified HRC purchases in REV 529 and this investigation to establish the benchmark for coil used for pre-galvanised goods
- the only verified purchase of coil used for painted goods during the investigation period was in the December 2019 quarter. Adjustments for the first 3 quarters of the investigation period should be benchmarked to the December 2019 quarter using movement in the MEPS data for Korean and Taiwan steel coil prices
- an adjustment for scrap credit should be applied in a manner consistent with the adjustment to coil input costs
- based on using the benchmarks and adjustments outlined, the dumping margin calculated is 0.2%. The dumping investigation as it relates to Dalian Steelforce should be terminated pursuant to section 269TDA(1)(b)(ii) as the dumping margin of 0.2% is less than 2%
- the Commission's calculations of the benefit received under Program 20 for coil used to manufacture painted goods are incorrect. The CRC used to manufacture the painted goods during the investigation period were purchased from a private company, and therefore no benefits were received under this program

²⁰ MEPS is an international independent supplier of steel market data and information. The Commission has a subscription service with MEPS for the provision of such data.

- the Commission's calculations of the benefits received under Program 20 for coil used to manufacture pre-galvanised goods are incorrect. Dalian Steelforce used the galvanised HRC purchased from private companies and SOEs to manufacture pre-galvanised HSS, which is not the goods under investigation, and therefore not relevant to the consideration of whether Dalian Steelforce received a benefit for the goods. The Commission should use the benchmark outlined for galvanised CRC to calculate whether Dalian Steelforce received a benefit under Program 20
- based on excluding coil used to manufacture painted goods under Program 20, and using the difference between the price paid for galvanised CRC and the benchmark and adjustments outlined to calculate the benefit received under Program 20, the subsidy margin calculated is 2.8%.

2.4.3 Submission by DITH

In its submission, DITH made the following comments in relation to SEF 550:

- the Commission's material injury analysis and assessment is flawed as it is not based on affirmative or credible evidence which provides a reliable link between the subject exports and the Australian industry's alleged injury
- the Commission's injury and causation analysis is insufficient, failing to ascertain whether Korean imports themselves were injurious, as effects from Taiwanese and Vietnamese imports, while not dumped, have not been adequately separated
- Korean imports were a small fraction of all dumped imports.

2.5 Preliminary affirmative determination

In accordance with section 269TD(1), the Commissioner may make a PAD if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice. The Commissioner may also make a PAD if satisfied it appears that there will be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice subsequent to the importation of the goods into Australia.

The Commission may make a PAD no earlier than day 60 of the investigation (in relation to this investigation, a date no earlier than 30 May 2020). The Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with the PAD Direction, 60 days after the initiation of such an investigation, the Commissioner must make a PAD or provide a Status Report outlining the Commissioner's reasons for not making a PAD.

On 1 June 2020, the Commissioner published a Day 60 Status Report in ADN No. 2020/057.²¹ In it the Commissioner stated that he did not make a PAD because he was not satisfied, under section 269TD(1)(a), that at that stage of the investigation there

²¹ EPR 550, Item 17.

PUBLIC RECORD

appeared to be sufficient grounds for the publication of a dumping duty or countervailing duty notice.

The PAD Direction also requires the Commissioner to reconsider making a PAD after the publication of a status report at least once prior to the publication of the SEF. On 1 June 2021, the Commissioner made a PAD because there appeared to be sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice.²²

The Commonwealth required securities on imports of like goods from China and Korea, entered for home consumption on, or after 2 June 2021.

Pursuant to section 45, for all Chinese and Korean exporters, the prescribed period before expiration of the security is 4 months. This is on the basis that, under section 45:

- all ICD has a prescribed period of 4 months
- in relation to IDD, the prescribed period is 4 months because the NIP is not less than the normal value of such goods and there was no request for a longer period by exporters of the goods.

2.6 Public record

The public record contains non-confidential submissions by interested parties, the Commission's visit reports, and other publicly available documents. It is available online at: www.adcommission.gov.au Readers should read documents on the public record in conjunction with this report.

²² ADN No. 2021/074.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commissioner is satisfied that locally manufactured precision pipe and tube steel comprises 'like goods' to the goods.

3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Section 269T(1) 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, the Commissioner assesses whether they have characteristics closely resembling each other having regard for the following considerations:

- physical likeness
- commercial likeness
- functional likeness
- production likeness.

3.3 The goods

3.3.1 The goods the subject of the application

The application defined the goods as:

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

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres ("mm") in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For

PUBLIC RECORD

rectangular and square products, those with a thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

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

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

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

A range of Australian Standards relate to the subject goods, including:

- AS 1450 'Tube for Mechanical Purposes', AS 2556 'ERW Steel Air Heater Tubes' and
- AS/NZS 2053.1 'Conduits and fitting for electrical installations – General requirements.'

Precision pipe and tube steel is a light gauge product, with tight dimensional tolerances used in structural customised applications, such as gates and fencing, furniture, racking and shelving, automotive components, conduit and heat exchangers.

3.3.2 Clarification of the goods description

The Commission published an issues paper²³ in response to a number of submissions to the investigation²⁴ regarding the scope of the goods under consideration and like goods. In the issues paper, the Commission invited further submissions concerning whether the thickness parameters for rectangular or square hollow sections (RHS) referred to in the goods description (i.e. "those with a thickness of less than 1.6 mm") are nominal or actual.

Based on submissions received to the issues paper, the Commission considers that the thickness parameters for RHS referred to in the goods description are nominal.

The Commission is satisfied that interested parties can accurately determine whether RHS products are the goods or like goods, based on standard industry practices, which commonly refer to the nominal thicknesses of such goods.

The goods description for a separate set of goods currently subject to anti-dumping measures, HSS, is consistent with the Commission's interpretation, because it specifically excludes "precision RHS with a nominal thickness of less than 1.6 mm" [emphasis added].²⁵

²³ EPR 550, Item 20.

²⁴ EPR 550, Items 8, 13 and 16.

²⁵ The goods description for HSS can be found on the Commission's Dumping Commodity Register at: https://www.industry.gov.au/sites/default/files/adc/measures/dcr_-_hollow_structural_sections_3.pdf

PUBLIC RECORD

Accordingly, the Commission has clarified the goods description for this investigation to include the word 'nominal', as follows:

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

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

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

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

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

3.3.3 Tariff classification of the goods

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:²⁶

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

Table 6 – General tariff classification for the goods

²⁶ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

3.4 Model control codes

The Commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values (the basis for using a MCC structure and the Commission's practice is explained in ADN No. 2019/132).

The Commission requested that all interested parties participating in this inquiry provide sales and cost data in accordance with the MCC structure detailed in the table below:

PUBLIC RECORD

	Category	Sub-Category	Identifier	Sales Data	Cost Data
1	Prime	Prime	P	Mandatory	Not applicable
		Non-Prime	N		
2	Steel Base/Type * Batch Hot Dipped Galvanised abbreviated as 'Batch HDG'; Electro Galvanised abbreviated as 'EG'; Continuously Galvanised abbreviated as 'CG'; Mild Steel Galvabond as 'MSGB'.	Hot Roll	H	Mandatory	Mandatory
		Cold roll (Semi Bright)	C		
		Galvanised (Batch HDG,EG,CG or MSGB)	G		
		Other (e.g. alloy steel)	A		
3	Steel Grade	C200	1	Mandatory	Mandatory
		C250	2		
		C350	3		
		C450	4		
		Other	5		
4	Surface Protection	Oiled	O	Mandatory	Mandatory
		Clear or painted	P		
		No oil or paint	N		
5	Coating Mass	<20 g/m ² (including none)	1	Mandatory	Mandatory
		≥20 g/m ² to <100 g/m ²	2		
		≥100 g/m ² to <275 g/m ²	3		
		≥275 g/m ²	4		
6	Shape	Circular	C	Mandatory	Mandatory
		Rectangular or Square	R		
7	Circular size * outside diameter ** Circular products with an outside diameter between >21 mm to ≤101.6 mm which are not air heater tubes are not the goods.	Not circular	N	Mandatory	Mandatory
		≤16 mm	1		
		>16 mm to ≤21 mm	2		
		>21 mm to ≤101.6 mm (Air Heater Tubes)	3		
8	Rectangular/Square/ Oval/Other size * outside perimeter	Not rectangular/square	N	Mandatory	Mandatory
		≤40 mm	1		
		>40 mm to ≤80 mm	2		
		>80 mm to ≤260 mm	3		
9	Thickness	<1.6 mm	A	Mandatory	Mandatory
		≥1.6 mm to <3.2 mm	B		
		≥3.2 mm	C		
10	Length	≤4 m	1	Mandatory	Optional
		>4m to ≤8 m	2		
		>8 m to ≤12.0 m	3		
		>12.0 m	4		
11	End configuration	Plain end	P	Optional	Optional
		Threaded/flanged/swaged	T		
		Other (e.g. square faced)	O		

Table 7 – MCC Structure

The Commission has addressed any changes to the proposed MCC structure, or alterations in terms of its application in respect of each interested party, in the relevant verification reports, available on the EPR.²⁷

3.5 Like goods

The Commissioner can only accept an application if there is, or is likely to be, an Australian industry producing 'like goods' to the goods. The phrase 'like goods' is defined in section 269T(1). Sections 269T(2), 269T(3), 269T(4), 269T(4A), 269T(4B) and 269T(4C) are relevant to determining whether the like goods are produced in Australia and whether there is an Australian industry.²⁸

The following analysis outlines the Commission's assessment of whether the locally produced goods are identical to, or closely resemble the goods and are, therefore, like goods.

3.5.1 Air heater tubes

During verification, the Commission noted that Orrcon's Australian sales for the investigation period did not include goods fitting the description for air heater tubes. During verification, Orrcon advised that it has the capability to supply precision pipe and tube matching this description, but it does not currently do so.

Shortly before the publication of SEF 550, Orrcon provided additional information to the Commission in respect of air heater tubes. The Commissioner did not have regard to this information in SEF 550, as the Commissioner considered doing so would prevent the timely placement of SEF 550 on the public record. The Commission has examined this information as part of the preparation of this report.

3.5.1.1 Verification of Orrcon's additional information in respect of air heater tubes

Shortly before the publication of SEF 550, Orrcon provided a revised Australian sales listing for the twelve months to September 2019 containing additional sales stated as sales of heater tube. The Commission reconciled these sales back to the original upward verification data provided during the verification of Orrcon's application data²⁹ by removing them from the 'other goods' sales listing and adding them to the like goods totals.³⁰ The Commission also verified the accuracy of the additional sales by reconciling selected sales transactions "downwards" to source documents.³¹

During this process, the Commission requested Orrcon to provide detail confirming that the heater tubes sold by Orrcon during the investigation period conformed to the AS2556 standard, including any relevant product compliance certificates. Orrcon advised that it

²⁷ Based on analysis of the price comparability of the goods under consideration, the Commission considered it necessary to make amendments to the MCC structure for its determination of the variable factors for CDI. This is discussed in detail in its verification report at EPR 550, Item 45

²⁸ See Chapter 4 for further discussion on the Australian industry.

²⁹ EPR 550, Item 56

³⁰ Confidential Attachment 1 - Australian Industry Work Program Addendum

³¹ Ibid

would only issue compliance certificates upon request by its customers. In respect of the relevant sales, Orrcon had not issued compliance certificates. Orrcon provided information to the Commission regarding the manufacturing process for its heater tubes that appeared to meet some of the elements of the AS2556 standard, such as testing regimes. However, this information did not satisfy the Commission that the products in question meet all requirements of the AS2556 standard.

3.5.1.2 Submission by Orrcon

In its submission of 21 June 2021³², Orrcon included a copy of its product catalogue and training guide³³ as evidence supporting its production of air heater tubes. The Commission reviewed these documents. It considers that, while they indicate Orrcon manufactures heater tubes, they explicitly state that Orrcon manufactures the tubes to meet the requirements of AS1450.

Orrcon also provided evidence in respect of an interested party submission citing examples of potential customers enquiring with Orrcon for the supply of air heater tubes.³⁴ The Commission reviewed this evidence, which indicates that the example was in reference to air heater tubes manufactured to a standard different to AS2556.

Orrcon concludes that it has provided evidence to the Commission that it offers like or directly competitive goods to air heater tubes for sale in Australia, and that the interested party submission is not a relevant consideration.

3.5.1.3 Submission by JFE Shoji Australia Pty Ltd

On 20 October 2020, JFE Shoji Australia Pty Ltd made a submission to the Commission regarding an attempt by one of its customers to obtain air heater tubes from Orrcon made to the AS2556 standard.³⁵ The Commission considered this submission in SEF 550. However, the Commission inadvertently omitted to place a public version of the submission on the EPR until after the publication of SEF 550.

The Commission considers that the submission provides evidence indicating that Orrcon does not make air heater tube to the AS2556 standard due to a lack of demand and proper tooling.

3.5.1.4 Commission assessment – air heater tubes

In SEF 550, the Commission preliminarily considered that Orrcon does not offer like or directly competitive goods to air heater tubes for sale in Australia. The Commission proposed to recommend that the Minister exempt from interim dumping duty and dumping duty and interim countervailing duty and countervailing duty ‘air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter’.

³² EPR 550, Item 60.

³³ Ibid, Non-confidential Attachment 1 and Confidential Attachment 2

³⁴ Orrcon submission dated 21 June 2021, confidential version. See Confidential Attachment 2.

³⁵ EPR 550, Item 65

PUBLIC RECORD

The evidence before the Commission is as follows:

- during the investigation period, Orrcon sold air heater tube products
- some of the elements of AS2556 were satisfied during the manufacturing of its air heater tubes, but no product compliance certificates or other documentary evidence was provided to the Commission indicating the air heater tubes sold by Orrcon met the AS2556 standard
- Orrcon's product catalogue states that it manufactures air heater tubes to meet the requirements of AS1450
- in response to a customer enquiry in respect of air heater tubes manufactured to AS2556, Orrcon advised that it does not make, nor does it have the tooling to make, air heater tube to the AS2556 standard.

Based on the information available to it, the Commission considers that Orrcon does not currently offer air heater tubes manufactured to AS2556, and did not sell these during the investigation period.

Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act provide that the Minister may exempt goods from interim dumping duty and dumping duty and interim countervailing duty and countervailing duty. The Minister may do this if satisfied that the Australian industry does not offer for sale in Australia like or directly competitive goods to all purchasers, on equal terms, under like conditions having regard to the custom and usage of trade.

The Commission has therefore considered whether the air heater tubes sold by Orrcon are like or directly competitive goods to air heater tubes made to AS2556. The table below provides the Commission's assessment.

	Commission assessment
Physical likeness	Air heater tubes that conform to AS2556, and those that don't conform both present as circular hollow sections traded in a similar range of grades, shapes, lengths and thicknesses. Products manufactured to the AS2556 standard adhere to a more stringent chemical composition, most notably a lower threshold for maximum carbon content. They also have less tolerance in variation for length and thickness compared to the AS1450 standard.
Commercial likeness	The Commission is not satisfied that end users can readily substitute air heater tubes that do not conform to AS2556 for air heater tubes that do conform to the standard. The Commission received evidence ³⁶ appearing to show that customers distinguish between air heater tubes of different standards.
Functional likeness	Consumers typically use air heater tubes (both conforming to AS2556 and those that don't) in similar heat resistant applications, such as automotive exhausts and domestic gas heaters.
Production likeness	There are a number of similarities in the production of air heater tubes that meet AS2556 and those that don't. Hot rolled or cold rolled steel strip is the main raw material in both. The Commission is satisfied that air heater tubes manufactured and sold by Orrcon meet some of the requirements of AS2556. But the Commission is not

³⁶ EPR 550, Item 65

	<p>satisfied Orrcon manufactures air heater tubes to all requirements of AS2556. Products made to AS2556 are required to meet an expanding test, which is not a requirement of AS1450.</p> <p>The Commission also understands that there are different tooling requirements to make air heater tubes to AS2556.</p>
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Table 8 – Assessment of air heater tubes

In light of the above, the Commission considers that air heater tubes that do not conform to AS2556 are not like or directly competitive goods as compared to air heater tubes that do conform with AS2556, as they have different physical, commercial and production characteristics. As such, the Commission considers that Orrcon does not offer like or directly competitive goods to air heater tubes to AS2556 for sale in Australia.

The Commission recommends the Minister exempt from interim dumping duty and dumping duty and interim countervailing duty '*air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter*'.

The Commission notes that air heater tubes not conforming to AS2556, with an outside diameter exceeding 21 mm, up to and including 165.1 mm, are subject to measures on HSS³⁷.

3.5.2 Like goods assessment

The following assessment of whether the locally produced goods are identical to, or closely resemble, the goods and are, therefore, like goods does not include '*air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter*'.

3.5.2.1 Physical likeness

The Commission has found that both the imported goods and the goods produced by the Australian industry are physically alike in all aspects. Both trade in a similar range of grades, shapes, lengths and thicknesses, as specified in the goods description.

3.5.2.2 Commercial likeness

The Commission has found that the imported and locally produced goods are commercially similar. Imported goods and goods produced by the Australian industry are interchangeable and compete in the same market sectors, e.g. fencing and furniture manufacturing, construction, etc. with direct head-to-head competition between them.

3.5.2.3 Functional likeness

The Commission has found that the imported and locally produced goods are functionally alike, as they compete for sales to the same customers for similar (or the same) end-uses. These end uses include fencing and gates, furniture, shop fittings, automotive

³⁷ The goods description for HSS can be found on the Commission's Dumping Commodity Register at: https://www.industry.gov.au/sites/default/files/adc/measures/dcr_-_hollow_structural_sections_3.pdf

(original equipment and aftermarket), industrial hardware, general engineering, heat exchangers and electrical conduits.

3.5.2.4 *Production likeness*

The Commission has found that the production processes and raw material inputs for the imported and locally produced goods are alike in all significant practical aspects. Hot rolled coil (HRC), either bare, coated or galvanised, is the major raw material input.

3.5.3 Commission's assessment

Based on the findings above, the Commission considers that goods produced by the Australian industry have characteristics identical to, or closely resembling, the goods exported to Australia. The Commission considers that:

- the goods and the domestically produced goods are physically alike, as they have the same or similar the primary physical characteristics
- the goods and the domestically produced goods are commercially alike, as they are sold to common users and directly compete in the same market
- the goods and the domestically produced goods are functionally alike, as they have a similar range of end uses, and
- the goods and the domestically produced goods are manufactured in a similar manner.

In light of the above, the Commissioner is satisfied that the Australian industry produces 'like goods' (other than air heater tubes to AS2556) to the goods as defined in section 269T.

4 THE AUSTRALIAN INDUSTRY

4.1 Findings

The Commissioner is satisfied that there is an Australian industry, consisting wholly of Orrcon, producing like goods, and that the like goods are wholly or partly manufactured in Australia.

4.2 Legislative framework

The Commissioner must be satisfied that manufacturers in Australia produce like goods. Sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. At least one substantial process in the manufacture of the goods must be in Australia in order for the Commission to consider the goods as partly manufactured in Australia.

4.3 Australian industry

In its application, Orrcon claimed it is the only Australian manufacturer of the goods. No further Australian industry manufacturers of the goods identified themselves to the Commission following the initiation of the investigation, nor were any further Australian industry manufacturers identified by the Commission during the investigation. This includes examination of whether known manufacturers of similar products also manufactured like goods³⁸ and responses from other Australian market participants, similar to Orrcon, who identified themselves as importers during the verification.

4.4 Submissions received in respect of the Australian industry

4.4.1 Orrcon's status as an Australian manufacturer

The Trade Remedies Authorities of Vietnam (TRAV) had previously made a submission to the Commission on 21 January 2020 in respect of another application for similar goods (the application was subsequently withdrawn). At the request of the GOV, the Commission considered the submission in this investigation.

TRAV requested that the Commission verify Orrcon's claim as the only Australian manufacturer of precision pipe and tube steel.

TRAV also submitted that Orrcon has a relationship with a Vietnamese exporter of the goods, through its parent company, BlueScope Steel Limited (BlueScope). BlueScope is the owner of NS BlueScope Vietnam, a Vietnamese steel producer. In TRAV's view, if Orrcon imported the goods from Vietnam, according to Article 4.1 of the ADA, Orrcon would not be a producer of the goods, and accordingly, the Commission should terminate the investigation on the grounds that there is no domestic Australian producer (if it is accepted there are no other domestic producers).

³⁸ Non-confidential Attachment 1 - Assessment of HSS manufacturers.

4.4.2 Commission's assessment

Sole Australian manufacturer of the goods

As noted in chapter 4.3, and further discussed in chapter 4.4.3, no further Australian industry manufacturers of the goods identified themselves to the Commission following the initiation of the investigation, nor were any further Australian industry manufacturers identified by the Commission during the investigation.

No domestic producer of the goods

The relevant sections of the Act concerning the initiation of an investigation by Australian industry are:

- sections 269TB(4)(e) which provides that an application for a dumping and/or countervailing duty notice must be supported by a sufficient part of the Australian industry
- section 269TB(6) which outlines that such an application is taken to be supported by a sufficient part of the Australian industry:

...if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:

(a) account for more than 50% of the total production of manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and

(b) account for not less than 25% of the total production of manufacture of like goods in Australia.

As detailed in CON 550, the Commissioner was satisfied that Orrcon represents the entire Australian industry and accounts for more than 50% of the total Australian production of like goods, thereby satisfying the requirements of sections 269TB(4)(e) and 269TB(6).

The Anti-Dumping Commission Dumping and Subsidy Manual (the Manual) sets out that:

There are no provisions in the Act to exclude from the definition of Australian industry a producer/manufacturer that is related to an exporter, or that is itself an importer of allegedly dumped or subsidised goods.³⁹

The Commission has also reviewed imports of the goods, as reported in the ABF import database for the investigation period and did not identify any imports of the goods by Orrcon or a related party of Orrcon during the investigation period.

³⁹ The Manual, part 1.1.

In light of the above, the Commission is satisfied it properly initiated the investigation in accordance with the Act, and that Orrcon is the sole Australian manufacturer/producer of the goods under consideration.

4.4.3 Insufficient members of the Australian industry in application

Dalian Steelforce made a submission, published on 28 April 2020⁴⁰ alleging that Australian industry members manufacturing HSS – Orrcon, Austube Mills Pty Ltd, and Australian Pipe and Tube Pty Ltd state on their websites that they manufacture rectangular or square hollow sections (RHS) to dimensions and thicknesses that would meet the description of the like goods. Dalian Steelforce queried the basis of the constitution of the Australian industry, the goods and like goods, conditions of competition and inquiry and causal link assessments.

Hoa Phat Steel Pipe Co., Ltd (Hoa Phat Steel) and Vina One Steel Manufacturing Corporation (Vina One) made submissions, published on 20 May 2020⁴¹ and 27 May 2020⁴² respectively, that neither the initiation notice, nor the application, set out whether the dimensions are nominal or actual. However, in later correspondence, the Commission confirmed that the relevant measure of thickness is nominal. That being the case, the submission proposed that other Australian producers potentially exist which are selling the goods under consideration.

The submissions referred to investigations into similar type of imports from China, Korea, Malaysia, Thailand and Taiwan, and suggested that Australian industry members making those other type of goods must also be members of the Australian industry for precision pipe and tube steel. Based on this suggestion, if Orrcon is not the sole member of the Australian industry producing like goods, then there may be doubts that a sufficient part of the Australian industry supports the application. Section 269TB(6) sets out the requirements for standing to bring an application to the Commission.

Hoa Phat Steel and Vina One urged the Commission to make immediate contact with other Australian manufacturers of similar products to confirm the status of their domestic production of like goods and to ascertain whether the applicant is sufficiently representative of the Australian industry to comply with section 269TB(4).

Hoa Phat Steel and Vina One further submitted that the thickness of the sections is insufficient to define a separate and unique class of goods. Instead, suggesting that all locally produced sections complying with the same standard and grade, in this case AS1163, are 'like goods' as they each possess the same essential physical, commercial, functional and production characteristics. On that basis, the Australian industry producing 'like goods' includes all domestic producers manufacturing rectangular and square structural sections that comply with AS1163.

⁴⁰ EPR 550, Item 7.

⁴¹ EPR 550, Item 13.

⁴² EPR 550, Item 16.

Finally, Hoa Phat Steel and Vina One submitted that the application is defective and therefore the Commission should terminate the investigation.

4.4.4 Commission's assessment

As noted previously, no further Australian industry manufacturers of the goods identified themselves to the Commission following the initiation of the investigation. Nor were any further Australian industry manufacturers identified by the Commission during the investigation. The submission referred to Austube Mills, an Australian company, as a possible manufacturer of the goods. The Commission confirmed Austube Mills as an importer of the goods, rather than a manufacturer, during verification.

Contrary to the submission by Hoa Phat Steel and Vina One, the Commission considers that thickness is sufficient to define separate classes of goods. There is no provision in the Act that restricts the use of thickness in defining goods or that requires that all products made to a certain standard are like goods.

The Commission has considered the description of the goods as set out in chapter 3 and considers that Orrcon is the sole manufacturer of the goods in Australia and, therefore, meets the standing requirements set out in section 269TB(4).

4.5 Production process

In its verification of the information submitted in Orrcon's application⁴³, the Commission determined the production process for precision pipe and tube steel to be as follows:

- master coil, in the form of HRC, cold-rolled coil or pre-galvanised HRC is the primary raw material used in the production of precision pipe and tube steel
- the master coil is un-wound into the slitter, where steel blades cut the coil into predetermined widths
- after slitting, the coils are re-wound on the re-coiler which 'pulls' the strip through the blades. The slit coils are then strapped and moved to one of 4 mills for rolling into steel tube
- the tube forming process starts with placing the slit coil on the un-coiler, which feeds the coil into the mill. The strip runs through a series of forming rolls that form the strip edges into a circular shape ready for welding
- an induction welder heats the edges of the coil strip and the edges are 'forged' together
- excess material that is extruded along the weld seam on the external and internal surfaces is removed, if applicable using a scarfing tool
- metallic thermal spray process is used to repair the weld zone on pre-galvanized tube
- the tubular product is then sized and formed into circular, rectangular, square and other steel shapes
- once the tube forming process is complete, the tube is cut to size and de-burred as required

⁴³ Orrcon – Industry Verification Report, EPR 550, Item 56

- the product undergoes final quality assurance and is then formed into packs and restrained with steel strapping.

Throughout the process, downgrade material not meeting the required standards for sale, and scrap lost from Orrcon's production process, is collected and sold separately.

4.6 Conclusion

The Commission considers the locally produced precision pipe and tube steel to be like to imported precision pipe and tube steel. This is based on:

- an examination of the manufacturing process for the goods and that part of the process which is carried out in Australia
- an examination on whether known manufacturers of similar products also manufacture like goods
- responses from other Australian market participants similar to Orrcon, who identified themselves as importers during the verification.

The Commissioner is satisfied that there is an Australian industry, consisting wholly of Orrcon, producing like goods, and that the like goods are wholly or partly manufactured in Australia.

5 AUSTRALIAN MARKET

5.1 Findings

The Commissioner has found that the Australian industry, as well as imports from a number of countries, (including the subject countries) supply the Australian market for precision pipe and tube steel. Imports from each of the subject countries, as a percentage of the total Australian import volume of the goods, were above negligible levels.

5.2 Background

Orrcon, as the sole member of the Australian industry, as well as manufacturers from other countries who export to Australian customers directly, or through intermediaries and distributors, supplies the Australian market for the goods.

The Commission has based its analysis of the Australian market detailed in this chapter on verified information submitted by Orrcon, import data from the ABF import database and verified importer and exporter information.

5.3 Market structure

The Australian market for precision pipe and tube steel consists of Orrcon as the sole local manufacturer, exporters and importers, wholesalers, distributors, re-sellers and end-users.

Precision pipe and tube steel is supplied to a range of market sectors including fencing, furniture manufacturing, shelving and racking, heat exchangers, outdoor patio structures, exhaust systems and other general mechanical or manufactured end-use applications. Alternate after-market applications include “handy-man” and repair work.

5.3.1 Markets and distribution

Orrcon has 2 sales channels in the Australian market, with the majority of precision pipe and tube sales made through its related distribution partners. Orrcon refers to the other sales channel to market as “mill direct”, which is when a distributor or a customer places an order directly with Orrcon for a limited range of goods. Mill direct orders have a longer lead process time than sales made through its distribution partners.

Exporters were found to generally export their goods to Australian distributors, who then on-sold the goods to end-users, although a limited number of direct sales to end-users was observed.

5.3.2 Supply

The ease with which a customer can change supplier is dependent on the nature of the customer and their business. Wholesalers, distributors and re-sellers can more readily change suppliers, either through shifting to importers or between themselves. End-users can source supplies through Australian suppliers (who may source from Orrcon or from imports) or directly from importers. However, this is highly dependent on the end-user being in a position to manage the cash flow and minimum volume order requirements.

Numerous countries supply precision pipe and tube steel to the Australian market, with the highest volumes over the investigation period coming from the subject countries.

5.3.3 Demand

A diverse range of sectors in the Australian market drives the demand for precision pipe and tube steel.

Orrcon attributed the increase in the overall size of the Australian market recently to growth in the pool fencing, general fencing (permanent and temporary) and patio tube markets.

The Commission found that fencing has been the most significant market sector for the goods consistently over the last 4 years, followed by automotive and furniture. Although, Orrcon noted that the automotive sector has been steadily decreasing, and is likely to continue to decline in light of the winding down of the automotive industry in Australia.

There are also seasonal factors that affect the demand for precision pipe and tube steel. Construction sector sales are significantly lower in December and January, as this is traditionally a construction industry holiday period. Rural sector sales are higher in May and June, driven by farmers resolving outstanding repairs and maintenance issues prior to the end of the financial year.

The Commission found that, when grouped by industry, construction made up the majority of sales demand, followed by manufacturing. The Commission then examined construction work over the injury period to examine whether there is a correlation in demand, both seasonally and on a long-term trend.

Using data from the Australian Bureau of Statistics, the Commission observed a strong correlation between the value of building construction within Australia and the value of sales of the goods by Australian industry.⁴⁴ It is also noted that sales tended to fall in the first quarter of each calendar year, before rising again over the remainder of the year, mainly for sales in construction and less so for other sectors. The Commission is satisfied that movements in the construction industry have an effect on demand in Australia for the goods.

5.4 Pricing

Orrcon has a price list framework in place for all manufactured precision pipe and tube steel it uses as a basis to manage market offers. Orrcon receives feedback regarding prevailing imported market rates, which it uses to adjust its prices for market offers to customers.

Product features and characteristics, as well as supply and commercial offer attributes will influence the offer price to customers. The nature of the customer and the market segment they operate in may also influence pricing.

⁴⁴ Orrcon – Industry Verification Report, EPR 550, Item 56

Orrcon does not consider itself a price leader for the goods. While customer orders and requirements dictate net prices, Orrcon mainly prices to meet import competition via import parity pricing. This takes into consideration the market price of like goods using contemporary price information for equivalent imported products.

Steel feed coil cost and production costs dictate prices at a model level. In setting its prices, Orrcon seeks to recover its full cost to make and sell. However, full cost recovery is not always realised.

Offers are negotiated with customers for a particular supply term, e.g. 1 month, 3 months, 6 months etc. and are reviewed on a case by case basis either monthly, quarterly or annually.

Pricing for exporters was found to generally be based on the cost to make (CTM) of the goods, largely driven by raw material costs, plus a profit margin. Any specific customer requirements will also affect the price, as will the volume of any orders.

5.5 Market size

5.5.1 Submission received in respect of market size

In CON 550, the Commission estimated the size of the Australian market for precision pipe and tube steel. It did this by using data extracted from the ABF import database in respect of consignments declared under the identified tariff classifications. The Commission filtered this data to exclude imports subject to existing measures. In particular, HSS of different specified dimensions that does not comprise 'like goods'. The Commission separately extracted data to determine the volume of imports from countries already subject to measures. The Commission then compared that data to the volume of imports not subject to measures. It did this to determine the ratio of HSS import volumes without measures. This ratio was then applied to the volume of imports from countries where no measures on HSS are in place, including Vietnam.

Following a submission from Orrcon⁴⁵ and after analysing information gathered during Australian industry and exporter verification, the Commission has estimated the size of the Australian market for the goods. The method for determining the size of the Australian market during the investigation period as follows:

- Verified sales data from Orrcon has been used to determine the Australian Industry's sales volumes
- The Commission has used data extracted from the ABF import database, in respect of consignments declared under tariff classifications 7306.30.00/30 and 7306.61.00/21, as a starting point to determine import volumes. To exclude outlying data, which may distort any findings, the Commission has then filtered the data to exclude transactions where the FOB price per tonne was outside a range of AUD\$500 to AUD\$2,100. This is considered a reasonable price range to use as a filter for the goods, based on the export price and normal values observed by the Commission during the investigation

⁴⁵ EPR 550, Item 10.

PUBLIC RECORD

- Imports from China, Korea, Malaysia, Taiwan and Thailand (HSS countries) declared under tariff classification 7306.61.00/21 were filtered to exclude imports subject to existing measures on HSS. This volume was included in the import total
- The ratio of imports of HSS from the HSS countries compared to imports under tariff classification 7306.61.00/21 from the HSS countries which were not HSS was determined
- The Commission applied this ratio to volumes of imports under tariff classification 7306.61.00/21 from all other countries not subject to HSS measures (including Vietnam) to determine an estimate of the volume of imports under that tariff classification that meet the criteria of the goods. This volume has been included in the import total
- Imports declared under tariff classification 7306.30.00/30 are not currently subject to anti-dumping measures. Accordingly, the whole volume reported in the ABF import database has been included in the import total
- The Commission then adjusted the import total to account for differences between the import volumes reported in the ABF import database for each cooperating exporter and the import volumes determined following exporter verification.

Using the method detailed above, the Commission estimates the size of the Australian market for the investigation period at approximately 21,500 tonnes. This estimate does not include air heater tubes, consistent with the Commission's assessment in section 3.5.1.

The Commission's assessment of the size of the Australian market is at **Confidential Attachment 3**.

6 DUMPING INVESTIGATION

6.1 Findings

The Commission has found that Chinese and Korean exporters exported the goods to Australia at dumped prices.

The Commission has found that Taiwanese and Vietnamese exporters did not export the goods at dumped prices.

The Commission's assessment of dumping margins is set out in the table below.

Country	Exporter	Dumping Margin (%)
China	Dalian Steelforce	2.9
	Yantai Aoxin	19.7
	Uncooperative exporters	19.7
Korea	Uncooperative exporters	6.2
Taiwan	Ta Fong	- 9.0
	Uncooperative exporters	- 8.6
Vietnam	CDI	- 12.2
	Vina One	- 12.0
	Residual exporters	- 6.5
	Uncooperative exporters	- 6.5

Table 9 – Dumping Margins

6.2 Legislative and policy framework

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that exporters exported dumped goods to Australia.

Section 269TDA(1) requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Dumping occurs when an exporter exports a product from one country to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

6.2.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are 'arms length' transactions under section 269TAA.

Section 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in 'arms length' transactions.

Section 269TAB(1)(b) provides that the export price of goods is the price that the importer sold the goods, less the prescribed deductions, where:

- goods have been exported to Australia otherwise than by the importer, and
- were purchased by the importer from the exporter, but not at 'arms length', and,
- the importer subsequently sells the goods in the condition they were imported to a party not associated with the importer.

Section 269TAB(1)(c) provides that in all other cases, the export price is a price determined by the Minister having regard to all the circumstances of the exportation.

6.2.2 Normal value

The normal value is determined in accordance with section 269TAC.

Goods sold in the ordinary course of trade

Section 269TAC(1) provides that:

...[T]he normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade [(OCOT)] for home consumption in the country of export in sales that are 'arms length' transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Low volume of domestic sales

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption that are 'arms length' transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the Commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).

Particular market situation

Section 269TAC(2)(a)(ii) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where 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 section 269TAC(1).

Chapter 6.3 discusses particular market situation.

6.2.3 Dumping margin

For all dumping margins calculated for the purposes of this investigation, the Commission compared export prices over the whole of the investigation period with the corresponding normal values.

6.3 Particular market situation

6.3.1 Introduction

Section 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the World Trade Organization (WTO) Antidumping Agreement (ADA):

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country [footnote omitted], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must further consider whether, because of the situation in the subject market, sales in that market are also not suitable for determining a price under section 269TAC(1).

If a market situation exists in a country, such that domestic sales are not suitable for comparison with export sales, normal values may instead be constructed under section 269TAC(2)(c) or determined by reference to prices from a third country under section 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of a market situation. A market situation will arise when there is some factor or factors influencing the relevant market in the country of export generally. When considering whether sales are not suitable for use in determining a normal value under section 269TAC(1), because of the situation in the market of the country of export, the Commission may have regard to factors such as:

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

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

When assessing whether a market situation exists due to government influence, the Commission assesses whether government involvement in the domestic market has materially distorted market conditions. If government involvement has materially distorted market conditions, then domestic prices may be artificially low or not substantially the same as they would be in a market free of material distortion.

Prices for the like goods may also be artificially low or not substantially the same as they would otherwise be due to government influence on the costs of inputs. The Commission assesses the effect of any such influence on market conditions and the extent to which domestic prices no longer prevail in a normal competitive market.

The Manual provides further guidance on the circumstances in which the Commission will find that a market situation exists.⁴⁶

6.3.2 Significance of HRC costs in the production of the goods

The Commission has found that steel coil is the major raw material input used in the production of the goods, either as HRC, cold rolled coil (CRC) or as pre-galvanised coil.

HRC is the raw material input into both CRC and pre-galvanised coil, with both undergoing further processing, either in the form of:

- rolling at low temperatures, generally to alter its thickness, provide a smoother surface and increase yield strength and hardness (cold rolling), or
- galvanising in a thin layer of zinc to prevent corrosion (among other things).

The Commission considers that CRC and pre-galvanised coil costs, while generally higher than HRC due to the additional processing, closely relate to the costs of HRC, with any influence on the HRC market affecting them to the same extent.

The Commission verified the HRC associated with the production of the goods during the investigation period for all producers. The Commission found that coil costs represented a significant and consistent proportion of the CTM of the goods. See the table below.

Producer	Country	Percentage of total CTM made up by steel coil costs	Percentage of raw material costs made up by steel coil
Orrcon	Australia	64%	92%
Dalian Steelforce	China	88%	99%
CDI	Vietnam	87%	95%
Vina One	Vietnam	91%	99%
Ta Fong	Taiwan	91%	100% ⁴⁷

⁴⁶ The Manual, p. 36

⁴⁷ HRC here includes further treated HRC, for example, cold rolled steel, pickled and oiled steel.

Table 10 – Raw material coil as a proportion of CTM of the goods⁴⁸

The percentage of CTM made up by raw material costs for Orrcon is lower than that for Chinese, Taiwanese and Vietnamese producers, primarily due to higher manufacturing overheads, which accounts for 30% of the total cost in Australia.

Cooperating exporters advised the Commission that raw material prices are influential in setting selling prices for the goods, with lower raw material prices resulting in lower prices for the goods.

Given the high cost proportion of steel coil in the production of the goods and its influence on pricing decisions, the Commission considers that the HRC price (and through it, the price of CRC and pre-galvanised coil) has a significant impact on both the production cost and selling price of the goods.

6.3.3 China

In its application, Orrcon claimed that, due to the influence of the GOC in the Chinese iron and steel industry there is a particular market situation in the Chinese domestic market for precision pipe and tube steel. That particular market situation renders sales in that market unsuitable for determining normal values under section 269TAC(1).

In support of its claim, Orrcon has referred to previous findings by the Commission relating to GOC influence in steel markets and the impact on HRC prices, the key raw material used in the manufacture of precision pipe and tube steel.⁴⁹

Upon initiation, the Commission sent a questionnaire to the GOC requesting information in relation to the precision pipe and tube steel market in China. A copy of this questionnaire is available at **Non-confidential Attachment 2**.

The GOC did not provide a response to this questionnaire.

Orrcon provided a further submission on 18 August 2020.⁵⁰ In it, Orrcon provided further information in support of its claim of a market situation in China, including:

- research detailing the levels of state control, subsidisation in the Chinese steel industry, including underreporting of subsidisation by the GOC
- analysis of raw material prices in China, compared to other Asian countries, showing a “systematic and material difference” between Chinese prices and those of other countries
- comments on WTO report WTO Panel Report *Australia – Anti-Dumping Measures on A4 Copy Paper* (DS 529)⁵¹ regarding the Commission’s findings in respect of

⁴⁸ Confidential Attachment 4 – CTM breakdown.

⁴⁹ See, for example, findings set out in *Anti-Dumping Commission Report No. 441* (steel pallet racking), *Anti-Dumping Commission Report Nos. 456 and 457* (aluminium zinc and zinc coated steels) and *Anti-Dumping Commission Report No. 379* (HSS).

⁵⁰ EPR 550, Item 39.

⁵¹ WTO DS529, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds529_e.htm

A4 copy paper and the requirements around proper comparison in a market situation

- the particular market situation in China renders unsuitable any comparison of the prices of exported goods with those sold on the domestic market, because domestic prices are materially and artificially lower than export prices.

In assessing whether a market situation exists in relation to the Chinese precision pipe and tube steel market during the investigation period, the Commission has considered the evidence available to it. The Commission drew evidence from REQs, Orrcon's submission, the findings of previous cases conducted by the Commission and desktop research. The informative sources guiding the Commission's assessment include:

- the level of import competition in the Chinese domestic market as a result of GOC involvement and influence over the broader steel industry, as well as the HRC and precision pipe and steel tube markets
- various subsidy programs, lending and credit facilities, preferential loans, land grants and capacity controls affecting domestic output and consumption of steel
- capacity management measures on bank lending to mills, industry consolidation and use of environmental requirements
- Chinese steel industry response to GOC directives such as the *13th Five-Year Plan for National Economic and Social Development* and the *Iron and Steel Industry Adjustment and Upgrade Plan*
- implementation of GOC objectives through the National Development and Reform Commission, through its dual role of developing planning guidelines and directives and approving large scale investment projects
- the share of total Chinese steel production by State-owned Enterprises (SOEs)
- export taxes and export quotas on a number of key inputs in the steel making process, including coking coal, coke, iron ore and scrap steel.

In light of the information before the Commission, it is the Commission's view that a particular market situation existed in respect of the domestic market for precision pipe and tube steel in China for the investigation period.

A complete examination of the evidence for this finding is set out in **Non-confidential Appendix A**.

6.3.4 Vietnam

Orrcon also claimed in its application that, due to intervention of the GOV in the iron and steel industry raw material supply market, the prices of precision pipe and tube steel in Vietnam have been distorted, resulting in a particular market situation in the Vietnamese domestic market for precision pipe and tube steel.

The Commission has assessed this claim and concluded that a particular market situation did not exist in respect of the domestic market for precision pipe and tube steel in Vietnam for the investigation period. TER 550 discusses this assessment in detail.

6.3.5 Submissions to the SEF

6.3.5.1 Submission by Orrcon

In its submission of 21 June 2021⁵², Orrcon reiterated that the Commission should determine a particular market situation for the goods existed in Vietnam during the investigation period. Orrcon claims that the recently expired GOV programs, including the Steel Master Plan and price stabilisation initiatives, continue to influence the domestic steel prices in Vietnam. Orrcon also claims that the GOV interferes in, and influences the daily operation and price setting of steel in the Vietnamese market. Orrcon recommends the use of a benchmark HRC/CRC price in the constructed normal value for all Vietnamese exporters.

6.3.5.2 Submission by Vina One

In its submission of 22 June 2021⁵³, Vina One refutes Orrcon's allegation that a particular market situation exists in Vietnam. Vina One observed that HRC purchases sourced from Vietnam were not the lowest prices compared to other countries.

The Commission considered Orrcon and Vina One's submissions and has addressed these in detail in TER 550.

6.3.6 Conclusion

In light of the information before the Commission, including submissions received in respect of the SEF, it is the Commission's view that:

- a particular market situation existed in respect of the domestic market for precision pipe and steel tube in China for the investigation period. That particular market situation may result in domestic sales in China being unsuitable for determining a normal value for Chinese exporters under section 269TAC(1)
- a particular market situation did not exist in respect of the domestic market for precision pipe and steel tube in Vietnam for the investigation period which would result in domestic sales in Vietnam being found not suitable for determining a normal value for Vietnamese exporters under section 269TAC(1).

Chapter 6.4 discusses whether the particular market situation in respect of the domestic market for precision pipe and steel tube in China has resulted in Chinese domestic sales being unsuitable for determining Chinese exporters' normal value under section 269TAC(1) .

⁵² EPR 550, Item 60.

⁵³ EPR 550, Item 64.

6.4 Proper comparison of domestic and export prices

6.4.1 Introduction

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must also consider whether, because of the situation in the market of the country of export, sales of like goods in that market are not suitable for determining a price under section 269TAC(1).

As a particular market situation has been found in respect of the domestic market for the goods in China for the investigation period, the Commission will examine whether goods in that market are suitable for determining a price under section 269TAC(1).

No such examination is required for goods in the domestic market in Vietnam, as the Commission considers that a particular market situation did not exist in respect of the precision pipe and tube steel market in Vietnam for the investigation period.

6.4.2 Approach to proper comparison

In order to assess whether sales are suitable for the purposes of section 269TAC(1), the Commission's approach to assessing proper comparison considers the relative effect of the market situation on both domestic sales and Australian export sales. If there is a finding that the market situation does not equally affect domestic sales and export sales, such a finding may render domestic sales not suitable for the purposes of section 269TAC(1).

The Commission considers this approach consistent with Australia's obligations under the ADA⁵⁴ and the WTO Panel's interpretation of these obligations set out in the WTO Panel Report *Australia – Anti-Dumping Measures on A4 Copy Paper* (DS 529).⁵⁵

When assessing the relative effect of the particular market situation on domestic and export prices, the Commission has compared the existing relationships between price and cost in the domestic and export markets of the exporting country. The prevailing conditions of competition in each market will define these relationships. This has involved the Commission examining the following criteria:

- the relationship between raw material costs and the domestic and Australian export prices for the goods for each relevant producer
- the domestic market conditions (the particular market situation) leading to those costs and prices
- export market conditions.

The Commission considers that the relationship between cost, price and competition will provide insight into the effect of the market situation in the country of export (domestic prices) and Australian markets (export prices). In turn, it will provide insight into whether

⁵⁴ https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm

⁵⁵ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds529_e.htm

the Commission can make a proper comparison between domestic prices and Australian export prices.

In particular, the Commission has undertaken:

1. a *quantitative* assessment of prices, noting that ‘...a purely numerical comparison between the two prices may not reveal anything about whether the domestic price can be properly compared with the export price’⁵⁶ and
2. a *qualitative* assessment of prices, to ‘...focus on how the particular market situation affects that comparison.’⁵⁷

This approach assesses both the effect of the particular market situation on domestic and export prices. This is because while ‘...a particular market situation may have an effect on both domestic and export prices, it does not follow that the impact on domestic and export prices will be the same.’⁵⁸

6.4.3 Examination of Australian conditions of competition

6.4.3.1 Market structure

Chapter 5.3 discusses in detail the Australian market for precision pipe and tube steel. In summary:

- The Australian market for the goods, which is supplied by Orrcon as the sole member of the Australian industry, imports from the subject and non-subject countries, with goods generally sold to customers through Australian based distributors
- Australian industry supplies the greatest volume in Australia, followed by imports from China, Taiwan and Vietnam
- Customers can readily change between suppliers, either through shifting to importers or between Australian suppliers (who may source themselves from Orrcon or from imports)
- A diverse range of market sectors in the Australian market, including fencing, automotive and furniture, drives demand for the goods.

The Commission considers the Australian market for the goods is a competitive market, characterised by a large number of suppliers and customers engaging in commercial negotiations in the sale and purchase of the goods.

6.4.3.2 Raw material

The major raw material used in the production of like goods in Australia is HRC, purchased from Australian suppliers.

⁵⁶ DS 529 – para. 7.75.

⁵⁷ DS 529 – para. 7.75.

⁵⁸ DS 529 – para. 7.76.

From its previous investigations into HRC, the Commission understands that price is generally the main factor that influences an Australian customer's purchase decision for HRC. Australian producers of HRC set their price based on an import benchmark pricing strategy where known import offers in the Australian market are used to determine the level at which Orrcon sets its selling price.⁵⁹

Australian produced HRC competes with imported goods mostly at the wholesale or distribution level of trade. These customers then on-sell the HRC to end users or other resellers, predominantly in the general manufacturing and pipe and tube industry.⁶⁰

6.4.3.3 Import penetration

The Commission examined the ABF import database to identify exporters and importers of precision pipe and tube steel during the investigation period. The Commission observed that during the investigation period:⁶¹

- the goods were exported to Australia from at least 10 countries by over 60 unique exporters, with approximately 20 exporters from both China and Vietnam, one exporter from Korea and 4 exporters from Taiwan
- over 60 unique importers were identified as having imported the goods
- imports accounted for 37% of sales in the Australian market
- of these imports, Chinese imports accounted for 32% of sales, Taiwanese imports 24%, Vietnamese imports 20% and Korean imports 6%.

The presence of a number of importers with material import volumes from numerous countries indicates to the Commission that the Australian market for the goods can be characterised as having a high level of import penetration contributing to a competitive market for the goods between participants.

6.4.4 Examination of Chinese conditions of competition

6.4.4.1 Market structure

As discussed in chapter 6.3.3, the Commission sent a questionnaire to the GOC requesting information in relation to the precision pipe and tube steel market in China. The GOC did not provide a response to this questionnaire.

Dalian Steelforce advised in its REQ that it was not in a position to provide a response to questions on the Chinese market for the goods, because it does not sell the goods on its domestic market.

In its submission, dated 18 August 2020, Orrcon noted the following points in respect of the effect of the particular market situation for the goods in the Chinese domestic market:

⁵⁹ REP 400, chapter 4.3.2.

⁶⁰ REP 400, chapter 4.3.

⁶¹ Confidential Attachment 3 – Australian Market Analysis. Only exporters with more than 5MT of export volume during the investigation period have been included in this analysis.

- “...[T]he provision of HRC at less than adequate remuneration will result in lower subject goods prices on the domestic market, although potentially higher margins on the export market. Further, the recent (March 2020) change to the VAT export rebate will direct domestic sales to the export market, creating significant export competition and suppressed selling prices (including for the subject goods). While both markets are affected in these instances, the impact would manifest differently.”⁶²
- “The Chinese PMS has rendered the subject goods domestic price and export price unsuitable for comparison. This is evident via an assessment of officially traded Asian-regional index prices in which China has significant influence and weighting compared to China’s own in-country pricing.”⁶³
- “It is widely considered that prices are materially lower on the export market for steel products, on the premise that steel manufacturers seek to service profitable domestic markets first, and export surplus production (usually covering only variable costs). In the case of China, a clear role-reversal is depicted above, and is driven by the PMS.”⁶⁴
- “Orrcon submits that Chinese producers of Precision pipe & tube have access to cheaper hot-rolled coil inputs due to distortions in the Chinese steel market. In Review inquiry No. 456, the Commission found that Chinese domestic HRC purchase prices were, on average, 14 per cent lower than HRC domestic purchase prices in Korea and Taiwan, and consequently that “...the GOC materially influenced conditions within the Chinese HRC markets during the review period and because of that influence, the domestic price for Chinese aluminium zinc coated steel and galvanised steel was substantially different to those in competitive market conditions.”

Precision pipe & tube is a further value-add steel product not unlike the subject goods of Review inquiry No. 456. The impact of the GOC’s material influence on market conditions can also be similarly assessed.

On a price-comparison basis, when Chinese Precision pipe & tube export prices are contrasted with selling prices in a competitive market (such as Australia, where pricing is determined on an import parity basis), they are clearly lower (due to GOC influence) and undercut all other participants.”⁶⁵

6.4.4.2 Raw material

In a recent investigation, *Investigation 553 – Painted Steel Strapping*, the GOC provided a RGQ in which it commented on the Chinese domestic market for HRC.⁶⁶ Due to the similarities in the particular market situation allegations and the raw material inputs in the 2 cases, the Commission has had regard to the response by the GOC to *Investigation 553* in its consideration of this investigation, pursuant to section 269TDAA(2)(b).

⁶² EPR 550, Item 36, p.9.

⁶³ Ibid, p.10.

⁶⁴ Ibid, p.12.

⁶⁵ Ibid, p.14.

⁶⁶ EPR 553, Item 10.

PUBLIC RECORD

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

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

In this investigation, Dalian Steelforce primarily used CRC and pre-galvanised coil in the manufacture of the goods. Accordingly, the Commission examined the monthly CRC and pre-galvanised coil price paid by Dalian Steelforce with the monthly CRC and pre-galvanised coil MEPS prices for China, Korea and Taiwan.⁶⁷

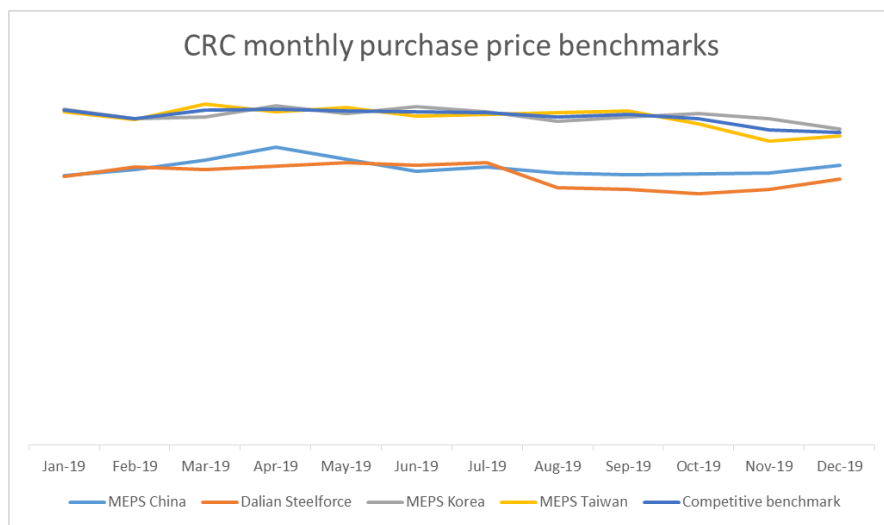


Figure 1 – CRC monthly purchase prices⁶⁸

⁶⁷ MEPS reports prices for HRC and CRC at EXW for China and EXW delivered for Japan, Korea and Taiwan. The Commission has made adjustments for delivery costs where it has made direct comparisons.

⁶⁸ Confidential attachment 5 – Raw material cost analysis and benchmark calculation.

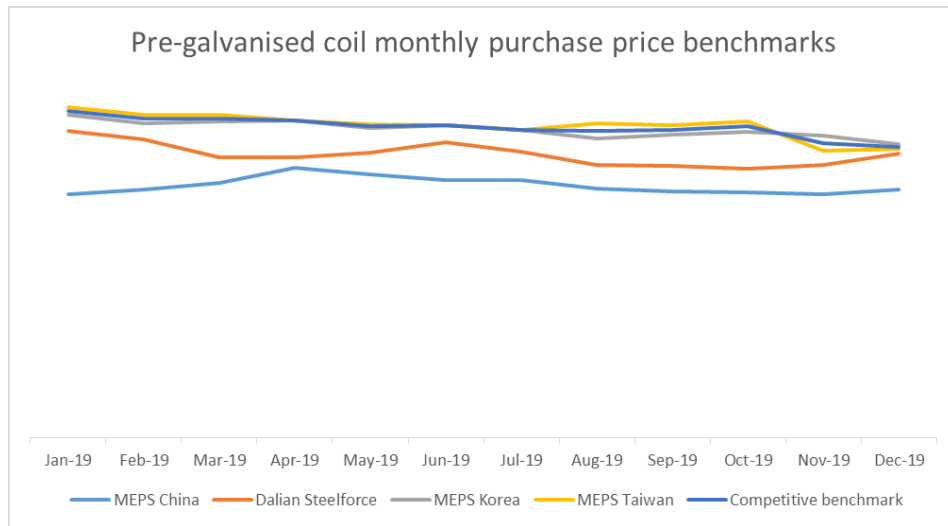


Figure 2 – Pre-galvanised coil monthly purchase prices⁶⁹

From the figures above, the Commission has observed that:

- there are only minor differences between the 2 coil MEPS prices in Korea compared to the MEPS prices in Taiwan (in other words, Korean and Taiwanese prices are largely the same)
- Chinese prices (both of Dalian Steelforce and according to MEPS data) are lower at all times than the Korean and Taiwan MEPS prices
- prices paid by Dalian Steelforce for CRC are generally lower than the Chinese MEPS price, but higher for pre-galvanised coil.

The Commission also compared the monthly HRC MEPS prices for China, Korea and Taiwan, as well as the verified HRC purchase prices for the cooperating Chinese and Taiwanese exporters and Australian industry.

⁶⁹ Ibid.

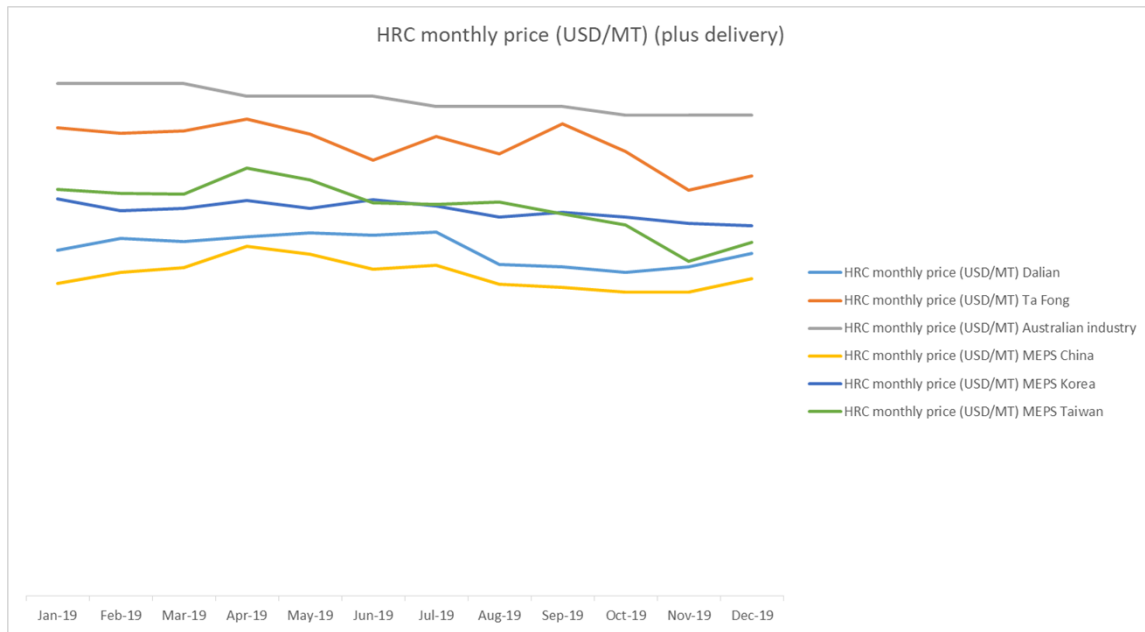


Figure 3 – HRC monthly purchase prices⁷⁰

The figure above shows that Chinese HRC costs (both in MEPS and from Dalian Steelforce) are the lowest over the investigation period, and well below that of Australian industry.

From the information above, the Commission is satisfied that Chinese manufacturers have access to cheaper raw material inputs. The Commission considers that the Chinese domestic market conditions lead to lower prices for steel coil due to the distortions in the Chinese market, as discussed in **Non-confidential Appendix A**.

The Commission's raw material input analysis is at **Confidential Attachment 5**.

6.4.4.3 Import penetration

The Commission examined the ABF import database and noted that there were more Chinese exporters of the goods to Australia during the investigation period than from any other country. Given the relative size of Australia's customer base compared to China's, the Commission considers the number of Chinese manufacturers supplying the Australian market would represent only a small portion of all Chinese manufacturers. The Commission also observed from the information provided by Dalian Steelforce that it is likely Chinese manufacturers maintain excess production capacity.

The Commission considers that there would appear to be a competitive disadvantage in respect of the importation of the goods into China. A large number of Chinese producers who have access to raw material inputs at a cost below that of comparable international benchmarks supply the Chinese market.

⁷⁰ Ibid.

Evidence provided in the May 2020 US International Trade Administration Global Steel Trade Monitor Report also indicates import penetration (as a function of consumption) in steel (which would include the goods) has remained low, at 1.6% in 2018 and 2019.⁷¹

Accordingly, based on the information before the Commission, albeit limited, on balance it appears that import penetration in the Chinese market for the goods was low in the investigation period, relative to the Australian market.

6.4.5 Relationship between price and cost

6.4.5.1 China

The Commission considers that in the Chinese domestic market, Chinese producers of the goods operate under market conditions, which differ from those of exporters in other countries, including that of the Australian industry. Specifically, the market situation in China reduces costs across all production of the goods and like goods, due to lower raw material costs.

Dalian Steelforce is an export-oriented producer that does not manufacture goods for the domestic Chinese market. Due to a lack of information, the Commission was unable to compare the CTM of goods produced for sale on the domestic market by Chinese manufacturers against the CTM of goods produced for export to the Australian market.

Information provided by verified exporters from other countries in this investigation indicates there is no difference in the production process between domestically sold and exported goods. On the evidence before it, the Commission has assumed that there is no difference in the production process of Chinese manufacturers for exported and domestically sold goods.

The Commission was also unable to compare domestic selling prices for the goods across different Chinese manufacturers, due to a lack of cooperating responses from manufacturers. Nonetheless, from the evidence before it in relation to the HRC market and the likely number of Chinese manufacturers supplying the domestic market, the Commission is satisfied that the Chinese domestic market for the goods is highly competitive. Because of this competitive environment for the goods, the lower raw material costs flowing from the presence of a particular market situation directly affects precision pipe and tube steel prices, such that there are lower prices than there otherwise would have been.

This relationship defines the conditions of competition in China. The effect of the particular market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between domestic producers selling in the domestic market. This is because the particular market situation modifies the conditions of competition in a consistent manner for all market participants.

⁷¹ United States International Trade Administration, [Global Steel Trade Monitor, Steel Imports Report: China](#), May 2020.

Consequently, the Commission considers that Chinese producers have little flexibility in setting for sales of the goods in their domestic market.

Due to the lack of data provided by Chinese manufacturers on Australian export prices, the Commission has relied upon import prices available from the ABF import database to undertake its analysis of the relationship between raw material costs and export prices.⁷²

The figure below depicts the range of Australian import prices from all Chinese exporters of the goods during the investigation period.

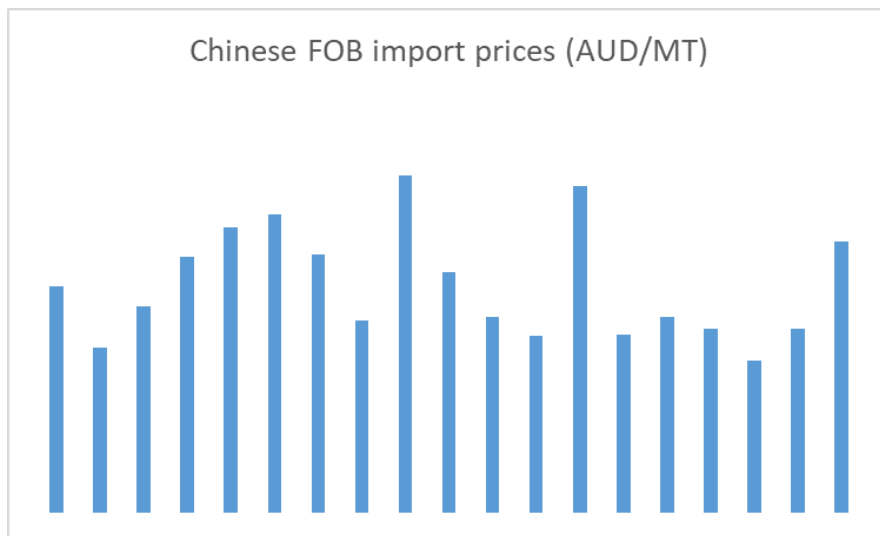


Figure 4 – Anonymised Chinese import prices of the goods into Australia, weighted average unit price over the investigation period⁷³

The figure indicates a variability in import prices into Australia originating from Chinese manufacturers.

The Commission has also compared the Australian selling prices of the goods from China with the Australian selling prices of the goods from Korea and Taiwan, along with Australian industry selling prices, using verified importer and Australian industry data. The Commission did not have sufficient verified data at the same level of trade to compare Vietnamese imports with Australian industry.

⁷² See chapter 5.5 for the Commission treatment of ABF import data.

⁷³ Confidential attachment 3 – Australian market analysis.

PUBLIC RECORD

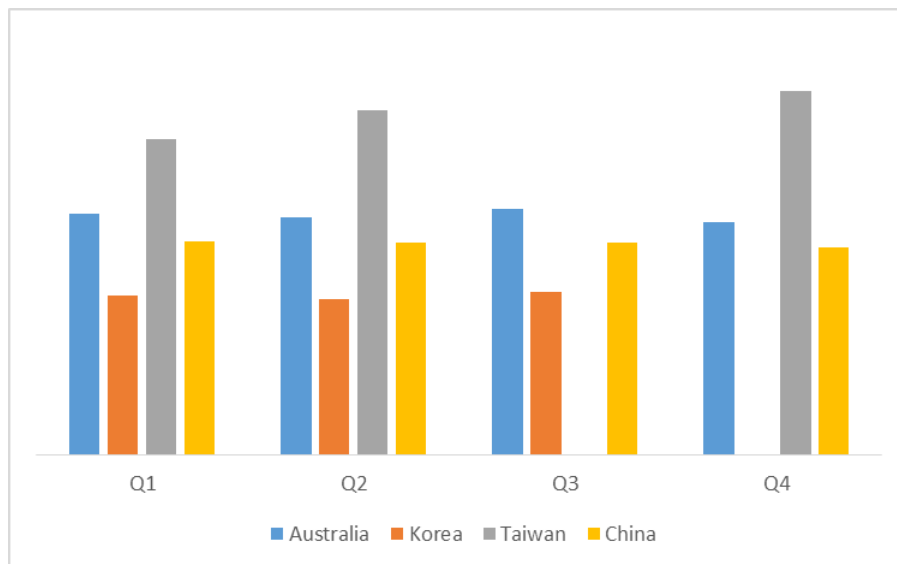


Figure 5 – Price undercutting analysis based on comparison of verified importer selling prices⁷⁴

The Commission observes that the Australian selling prices for goods imported from China undercut Taiwanese and Australian selling prices in every quarter of the investigation period. The Commission also observes lower selling prices for goods imported from Korea. Chapter 9.9.2 discusses this further.

Based on the above analysis, the Commission considers that:

- there is a market that is internally competitive between domestic participants in China where no individual manufacturer derives a competitive advantage. This being due to the reduced production costs resulting from the situation in the market, which benefits all producers
- the Australian market is a competitive market. The Commission considers that the variability of pricing between Chinese manufacturers in the Australian market is indicative of a competitive advantage enjoyed by Chinese exporters. This being due to the particular market situation, which allows these exporters to engage in pricing strategies in the Australian market enabling them to achieve:
 - higher margins than the margins attainable on the sale of the same goods on the domestic market
 - increased sales volumes by significantly undercutting other participants in the Australian market, or
 - a combination of higher margins and increased sales volumes resulting from undercutting.

6.4.6 Conclusion on the effects of the situation in the market

The Commission's analysis indicates that the relationship between price and cost, and the prevailing conditions of competition in China are different in comparison to the relationship between price and cost and the prevailing conditions of competition for exports to Australia.

⁷⁴ Confidential Attachment 6 – Australian industry and imports sales analysis.

Specifically, the effect of the particular market situation in China is a decrease in input costs across all production that results in a lower level of competitive pricing throughout the market in China. This relationship defines the conditions of competition in China. Based on the information before the Commission, on balance, the effect of the particular market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between Chinese producers. In other words, while there may be competition between Chinese producers based on manufacturing efficiencies and other factors (the Commission received no evidence of this during the investigation), the particular market situation nonetheless modifies the conditions of competition in a consistent manner for these market participants. Any competition within the domestic market for the goods is limited between domestic market participants in a market that the particular market situation has distorted.

In Australia, where no particular market situation or input cost decrease exists in respect of the goods, competitive pricing prevails at a higher level. Higher production costs for those participants producing in the absence of a particular market situation entails a higher minimum threshold for competitive prices. Under these circumstances, the effect of the particular market situation in China on the price of the goods sold into the Australian market results in competitive advantages and disadvantages between market players.

Specifically, Chinese exporters enjoy a cost advantage that either manifests as an increased margin at the prevailing level of competitive pricing in the Australian market, a low export price that undercuts the prevailing level of competitive pricing, or a combination whereby the Chinese manufacturer can enjoy a higher margin while still undercutting other market participants. In other words, the effect of the particular market situation on the export price is to modify the conditions of competition in Australia to the benefit of Chinese exporters. This manifests as a lower price that allows the goods to undercut the prevailing level of competitive pricing in Australia, to the detriment of all other market participants in that market.

Thus, the relative effect of the market situation on domestic and export prices is different in the relevant markets.

In the present investigation, the Commission considers that the evidence discussed in this chapter indicates that sales in the domestic Chinese market are not suitable for determining a normal value pursuant to section 269TAC(1) because they do not permit a proper comparison with the export price of the goods exported to Australia.

6.5 Constructed normal values – China

6.5.1 Applicable legislation, policy and practice

Where the Minister is satisfied that normal value cannot be determined under section 269TAC(1), as is the case in this investigation for China, section 269TAC(2)(c) provides that the normal value is:

... the sum of:

- (i) such amount as the [Minister] determines to be the cost of production or manufacture of the goods in the country of export; and*

- (ii) *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—such amounts as the [Minister] determines would be the administrative, selling and general costs associated with the sale and the profit on that sale*

As required by sections 269TAC(5A) and 269TAC(5B), the construction of normal values under section 269TAC(2)(c) must be in accordance with the *Customs (International Obligations) Regulation 2015* (the Regulations).

To determine costs of manufacture or production when constructing normal values, section 43(2) of the Regulations requires that the Minister must work out the cost of production or manufacture. The Minister must use the information set out in the exporter or producer's records, if:

- an exporter or producer of the goods keeps records relating to the 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 the goods.

The Commission considers that, where an exporter's records are reliable and otherwise in accordance with GAAP, but do not reasonably reflect competitive market costs associated with the manufacture of the goods, the Minister may, if practicable, adjust the records. The Minister may do so in order that those records reasonably reflect competitive market costs associated with the manufacture of the goods in the country of export. When making such an adjustment, the Commission considers that the Minister may have regard to all relevant information.

6.5.2 Establishing normal values

The Commission notes that, in accordance with section 269TAC(3A), the Minister is not required to consider working out the normal value of goods under section 269TAC(2)(d) before working out the normal value of goods under section 269TAC(2)(c). Where section 269TAC(1) is not available, the Commission's policy preference, as outlined at chapter 10 of the Manual, is to construct normal values under section 269TAC(2)(c), in the first instance, when the cost data of exporters is available.

When considering whether it is preferable to use the price paid or payable for like goods sold by the exporters to a third country, pursuant to section 269TAC(2)(d), the Commission must be satisfied that it is an 'appropriate third country'. The Commission has regard to the following factors, to determine whether any such third country is 'appropriate': ⁷⁵

- whether the volume of trade from the country of export to the selected third country is similar to the volume of trade from the country of export to Australia, and

⁷⁵ The Manual, page 51.

- the nature of the trade in like goods between the country of export and the selected third country is similar to the nature of trade between the country of export and Australia (when considering ‘nature of trade,’ such things as the level of trade in a third country may be relevant).

In this case, the Commission considers that the information provided by the exporters in their REQs does not provide a precise or granular level of detail to determine whether a third country would be appropriate and to undertake the calculations required to determine a normal value.

Consequently, the Commission has constructed normal values for cooperating exporters under section 269TAC(2)(c). The Commission has done so in accordance with sections 43, 44 and 45 of the Regulations, discussed further below.

6.5.3 Raw material cost adjustment – China

The Commission has considered all relevant information, including raw material purchases by Dalian Steelforce. The Commission considers it appropriate to use the exporter’s records, which are in accordance with GAAP, but only after the Commission adjusts the records relating to the raw material costs. Such an adjustment ensures that the exporter’s records reflect ‘competitive market costs’, that is, the cost of production in China absent the market situation. Consistent with this approach, the Commission has replaced the raw material coil costs for Chinese exporters on the basis they were not competitive market costs. In doing so, the Commission has considered the individual circumstances of the steel coil purchases and, to the greatest extent possible, has ensured that the adjusted records reflect costs incurred in China if not for the distortion resulting from the influence of the GOC.

The Commission considers that the difference in price between verified purchases by Dalian Steelforce of steel coil (EXW, no delivery, excluding VAT) and a competitive benchmark is representative of the level of distortion of Chinese steel coil prices. In SEF 550, the Commission used a benchmark based on MEPS Korean and Taiwan steel coil prices. Having regard for previous cases the Commission considers that normal competitive market conditions prevail in the Korean and Taiwanese domestic markets for steel coil⁷⁶, and that prices in China do not influence purchases in these markets.⁷⁷ MEPS data was preferred due to insufficient data provided by Korean and Taiwanese exporters to construct a benchmark price: Korean exporters provided no data and exports of the goods by the sole cooperating Taiwanese exporter represent a small volume of exports from Taiwan during the investigation period.⁷⁸

⁷⁶ The Commission previously considered the Vietnamese steel coil market to be subject to normal competitive market conditions, but due to the allegation in this investigation that there is a particular market situation in respect of Vietnamese exports of the goods, steel coil purchases by Vietnamese producers are not included in this assessment.

⁷⁷ See SEF 529, available on the Commission’s website.

⁷⁸ See chapter 6.9.

6.5.3.1 Submission by Dalian Steelforce

In its submission of 21 June 2021, Dalian Steelforce submitted that the Commission has not used all relevant information available when considering how to calculate the raw material cost adjustment. Dalian Steelforce submitted that:

- for pre-galvanised goods, the Commission should have regard to the verified HRC purchases in REV 529 and refer to this investigation to establish the benchmark price used for the raw material. This method follows the Commission's previous practice, as noted in REP 177 and REP 419. Where there are time periods with missing data of coil purchases used for pre-galvanised goods, then movement in the MEPS data for Korean and Taiwan steel coil prices should be used for the benchmark
- for painted goods, the Commission should have regard to the only verified purchase of coil during the investigation period, being the December 2019 quarter. Adjustments for the first 3 quarters of the investigation period should be benchmarked to the December 2019 quarter, using movement in the MEPS data for Korean and Taiwanese steel coil prices
- the Commission should apply an adjustment for scrap credit consistent with the adjustment to its coil input costs. Dalian Steelforce further noted that in Anti-Dumping Review Panel Report No. 88 (ADRP REP 88) regarding REV 419 into HSS, the exporter argued for scrap adjustment, to which the Commission agreed.

6.5.3.2 Commission assessment

Benchmark price

The Commission has considered the use of using verified coil purchase data from REV 529 as the basis for the competitive cost benchmark as submitted by Dalian Steelforce. However, the Commission is not satisfied that the use of data from REV 529 is preferable, in relation to this case, to data available from MEPS. Coil purchase data from REV 529 does not include data for every quarter within the investigation period for the relevant coil types, whereas MEPS data is available for the entire investigation period.

REV 529 also considered coil purchases used by manufacturers in the production of HSS, rather than in the manufacture of precision pipe and tube steel. While the Commission has verified in this investigation that Dalian Steelforce used the same coil types for manufacturing certain types of HSS and precision pipe and steel tube, the Commission cannot say the same for other manufacturers of the goods.⁷⁹

Dalian Steelforce's submission further proposed that the Commission could use movements in the MEPS data to index the REV 529 data for those quarters where relevant coil purchase data is not available. Taking this approach would involve determining a benchmark based on 2 sets of data, i.e. from MEPS and REV 529. The

⁷⁹ Ta Fong is the only other exporter of the goods and of HSS in REV 529, other than Dalian Steelforce. Chapter 6.5.3 discusses the Commission's decision against using Ta Fong's coil purchase data in the benchmark.

Commission considers that, in this instance, the use of a single source of data provides a more reliable based from which a benchmark can be determined.

Accordingly, the Commission has made no changes to the benchmark used in SEF 550.

Scrap adjustment

The Commission has not adjusted the value of scrap offsets in the calculation of Dalian Steelforce's normal value. In SEF 550, the Commission stated that it did not make this adjustment as it does not consider that the particular market situation necessarily extends to the price achieved by Dalian Steelforce for the sale of its scrap. Relevantly, the particular market situation is in relation to like goods, precision pipe and tube. Scrap is a different product to the like goods. Prices, market forces and the extent of any GOC influence on scrap prices is not something the Commission has examined in detail in this investigation. Dalian Steelforce has not provided persuasive evidence that the GOC distorts the market for scrap in relation to the investigation period. Nor has it provided the Commission with any data on what would be a competitive market price for scrap for use in determining such whether an adjustment to the exporter's records is necessary.

6.5.3.3 Comparative advantage and disadvantage

The Commission considered whether it is appropriate to adjust the competitive benchmark to reflect any comparative advantages and disadvantages experienced by the domestic Chinese producers.⁸⁰

The Commission considers that for any adjustment to the benchmark to reflect reasonably any comparative advantages and disadvantages, the Commission would need to:

- identify and quantify what the true, uninfluenced comparative advantage of the domestic Chinese market is, distinct from any advantages which are a result of the GOC influence
- identify and quantify the comparative disadvantages of the Chinese domestic market
- only adjust for those 'true' comparative advantages and disadvantages.

This would necessarily result in a determination of a 'net' figure in the form of an adjustment.

Noting the complexity and extent of the GOC influence in the raw material market, the Commission presently considers it is not possible to accurately isolate and quantify what amount of any comparative advantage or disadvantage Chinese domestic producers enjoy from the information before it.

Thus, in this case, the Commission considers an adjustment for comparative advantage or disadvantage is not practicable or reasonable.

⁸⁰ *Steelforce Trading Pty Ltd Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 [118], [125] (Perram J).

6.5.4 Calculation of the raw material cost adjustment

The steel coil costs have been determined by comparing the competitive benchmark cost to the exporter's actual costs for different coil types, in this case CRC and pre-galvanised coil, and applying the resulting variation as an adjustment to the exporter's records.

6.6 Exporters

At the commencement of the investigation, the Commission contacted a number of entities it had identified as possible exporters of the goods, based on information in the ABF import database and in Orrcon's application. The Commission invited them to complete an exporter questionnaire.

The table below sets out those entities from whom the Commission received questionnaire responses.

Country	Name
China	Dalian Steelforce
	Yantai Aoxin
	Five Steel (Tianjin) Tech Co., Ltd
Korea	None
Taiwan	Ta Fong
Vietnam	CDI
	CDT
	Hoa Phat Steel
	Hoa Phat Binh Duong
	Hoa Phat Da Nang
	Hoa Phat Long An
	M&H
	Nguyen Minh Steel
	Vina One

Table 11 – Questionnaire responses

6.6.1 Cooperative and residual exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter who is not an 'uncooperative exporter' and whose exports are selected to be examined as part of the investigation is a 'cooperative exporter'. An exporter who is not an 'uncooperative exporter' and whose exports the Commission does not examine as part of the investigation is a 'residual exporter'.

Dalian Steelforce and Yantai Aoxin were the only cooperating exporters from China. There were no cooperative exporters from Korea.

CDI and Vina One from Vietnam and Ta Fong from Taiwan were also cooperative exporters. Hoa Phat Steel, Hoa Phat Long An and Nguyen Minh Steel from Vietnam were selected as residual exporters. TER 550 discussed the dumping investigation in respect of Taiwanese and Vietnamese exporters.

6.6.2 Trading entities

The Manual provides that the Commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that:

- gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia, or
- owns, or previously owned, the goods, but need not be the owner at the time the goods were shipped.

The Manual notes that it is common for traders or other intermediaries to play a role in the exportation of the goods. These parties will typically provide services such as arranging transportation (both land and ocean), arranging port services, arranging loading, conducting price negotiations, arranging contracts with producer and customer alike, conveying the customer's specifications to the producer including quality, marking, and packing requirements, and so forth.

Typically, the manufacturer, as a principal who knowingly sent the goods for export to any destination will be the exporter.

Consistent with the Manual, the Commission has determined that a number of REQs received were from entities who were not exporters of the goods during the investigation period, but are instead acting as an intermediary for the actual exporter, who may or may not have submitted an REQ to the investigation.

6.6.2.1 Five Steel (Tianjin) Tech Co.,Ltd

Five Steel provided an REQ to the Commission within the required timeframe.⁸¹ The Commission reviewed the REQ and concluded that Five Steel was not an exporter of the goods for the purposes of the investigation, but was instead a trading company.

The Commission informed Five Steel of this assessment and invited Five Steel to respond and further explain its role in the exportation process, if it disagreed with this finding. The Commission advised Five Steel that its REQ contained a number of deficiencies, which Five Steel would also need to address before the Commission could consider the response capable of verification.

Five Steel provided a further response to the Commission, but this was not considered to provide evidence satisfactory to the Commission as to its status as a trader, nor did it address the deficiencies in the REQ.⁸² Accordingly, the information provided in Five Steel's REQ was not considered further and was not published on the EPR.

6.6.3 Uncooperative exporters

Section 269T(1) provides that an exporter is an "uncooperative exporter" where the Commissioner is satisfied that an exporter did not give the Commissioner information that

⁸¹ Confidential Attachment 7 – Five Steel REQ.

⁸² Confidential Attachment 8 – Email exchange between the Commission and Five Steel.

the Commissioner considered to be relevant to the investigation within a reasonable period, or if satisfied that an exporter significantly impeded the investigation. Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction) sets out that the Commissioner must determine an exporter to be an uncooperative exporter, in certain circumstances. In particular, if the exporter provides no relevant information in a reasonable period, if that exporter fails to provide a response, or fails to request a longer period to do so, within the legislated period.

The Commissioner considered the Customs Direction and determined that any exporter, which did not do any of the following, is an uncooperative exporter for the purposes of this investigation:

- provide a REQ to the Commission
- request a longer period to provide a response within the legislated period
- address requests for further information from the Commission after submitting an REQ to the Commission.⁸³

6.7 Dumping assessment – China

6.7.1 Dalian Steelforce

Verification

The Commission conducted a remote verification of Dalian Steelforce's REQ.

The Commission is satisfied that Dalian Steelforce is the producer of the goods. The Commission is further satisfied that the information provided by Dalian Steelforce is accurate and reliable for ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.⁸⁴

Export price

The Commission considers Dalian Steelforce to be the exporter of the goods as Dalian Steelforce:

- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export.

The Commission is satisfied that for all Australian export sales during the period, Dalian Steelforce was the exporter of the goods.

⁸³ Requests for further information are contained in deficiency letters.

⁸⁴ EPR 550, Item 46.

PUBLIC RECORD

All of Dalian Steelforce's export sales of the goods during the investigation period were to its related intermediary, Steelforce Trading, and related party importer, Steelforce Australia.⁸⁵ Regarding these exports, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer (or an associate of the buyer) and the seller
- the buyer (or an associate of the buyer), was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The Commission therefore considers that all export sales made by Dalian Steelforce during the period were 'arms length' transactions.⁸⁶

The Commission considers that for the goods imported by Steelforce Australia from Dalian Steelforce, via Steelforce Trading:

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

As the goods are not purchased by the importer from the exporter (they were purchased by the importer, Steelforce Australia from Steelforce Trading an intermediary, who purchased the goods from Dalian Steelforce, the exporter), the export price cannot be established under sections 269TAB(1)(a) or (b). The Commission determined an export price under section 269TAB(1)(c), using the price between Dalian Steelforce and Steelforce Trading.

Normal value

During verification, the Commission found that because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1), the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

The Commission is also satisfied that, due to a situation in the domestic market for the goods in China, sales in that market are not suitable for use in determining a normal value under section 269TAC(1).

⁸⁵ The Commission considers Steelforce Australia to be the beneficial owner of the goods at the time of importation and therefore the importer of the goods. See Dalian Steelforce verification report, EPR 550, Item 46.

⁸⁶ The Commission notes that this finding differs from previous findings in respect of Dalian Steelforce (see, for example, REV 529). However, the Commission distinguishes this finding as here the Commission has found that Dalian's Steelforce sales of the goods have different characteristics to other products previously investigated.

PUBLIC RECORD

The Commission has relied upon the finding of a particular market situation, in accordance with section 269TAC(2)(a)(ii), to calculate a normal value under section 269TAC(2)(c), using the sum of the following:

- the CTM that reasonably reflects competitive market costs in accordance with section 43(2) of the Regulations
- domestic selling, general and administrative expenses (SG&A) on the assumption that the goods, instead of being exported, were sold domestically based on the company's records in accordance with section 44(2) of the Regulations
- an amount for profit based on data relating to the sale of like goods on the domestic market in the OCOT⁸⁷ in accordance with section 45(2) of the Regulations.

CTM reasonably reflecting competitive market costs

The Commission has assessed the raw material input costs in the CTM for Dalian Steelforce. The Commission verified that Dalian Steelforce kept its records relating to the goods in accordance with the relevant GAAP and that the records reasonably reflect the costs associated with the production and sale of the goods. However, the Commission was not satisfied that Dalian Steelforce's costs reasonably reflect competitive market costs associated with the production of like goods, due to the influence of the GOC in the domestic Chinese market for HRC. Specifically, the Commission considers that HRC costs in China, which make up a major proportion of the total costs of production of the goods, are distorted by GOC influence and do not reasonably reflect competitive market costs associated with the production or manufacture of the goods in accordance with section 43(2)(b)(ii) of the Regulation. Accordingly, the Commission considers it appropriate to adjust HRC costs relating to the costs of production in Dalian Steelforce's records to reflect competitive market costs as detailed in chapter 6.5 above.

Adjustments

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

Adjustment Type	Deduction/addition
Export inland transport and port charges	Add an amount for export inland transport and port charges
Non-refundable VAT	Add an amount for non-refundable VAT

Table 12 – Summary of adjustments – Dalian Steelforce

Dumping margin

⁸⁷ Section 269TAAD states that domestic sales of like goods are not in the OCOT if 'arms length' transactions are unprofitable in substantial quantities over an extended period and unlikely to be recoverable within a reasonable period. For the purposes of this investigation, the Commission considers the "extended period" and "reasonable period" are the investigation period.

The dumping margin in respect of the goods exported to Australia by Dalian Steelforce for the investigation period is **2.9%**.

The Commission's calculations are included at **Confidential Attachments 10 to 13**.

6.7.2 Yantai Aoxin

The Commission granted Yantai Aoxin an extension to provide an REQ, which it did so before the extended deadline. Following receipt of its REQ, the Commission identified a number of deficiencies in Yantai Aoxin's response. Yantai Aoxin addressed these deficiencies in a revised REQ.⁸⁸

Following a review of its revised REQ, in which Yantai Aoxin identified itself as a trader of the goods, the Commission sent a further series of questions on 4 September 2020 to clarify its exporter status. Yantai Aoxin provided its response to the Commission on 12 September 2020.⁸⁹

The Commission assessed Yantai Aoxin's REQ and subsequent clarifying response, and determined in SEF 550 that Yantai Aoxin was not an exporter of the goods because:

- Yantai Aoxin does not manufacture the goods
- Yantai Aoxin purchases the goods from a manufacturer of the goods whom it informed that the end customer of the goods was an Australian company who required the goods to meet Australian standards. Yantai Aoxin then sells the goods to its Australian customers.

In a submission to SEF 550 received by the Commission on 9 June 2021, Yantai Aoxin made the following comments:

- The Commission did not inform Yantai Aoxin that it is not considered to be an exporter
- Yantai Aoxin does not manufacture the goods, although it stocks inventory, packs/unpacks steel and organises cutting/painting of the steel before exporting
- Yantai Aoxin sells the goods to both domestic and international markets. It has multiple suppliers, whom Yantai Aoxin does not always inform the goods are for export. The quantity and size of steel for each purchase from the manufacturer is dependent on Yantai Aoxin's stock levels
- The main consideration for Yantai Aoxin's Australian customer is that the goods meet the Australian standard. Yantai Aoxin's own research found that most of the Chinese produced goods could match Australian standard AS 1450:2007. During the investigation period, Yantai Aoxin did not inform its supplier regarding the Australian customer requirement, except for one occasion when the supplier advised that it only manufactures the goods based on its own factory standard.

Chapter 6.2 of the Manual provides that:

⁸⁸ EPR 550, Item 37.

⁸⁹ Confidential Attachment 9 – Yantai Aoxin response to request for further information.

PUBLIC RECORD

Depending on the facts, the Commission considers that only in rare circumstances would an intermediary be found to be the exporter. Typically this will only occur where the intermediary has purchased the goods from the manufacturer; the manufacturer has no knowledge at all that the goods are destined for export to any country; and the essential role of the intermediary is that of a distributor rather than a trader and because it is acting more like a distributor the intermediary would usually have its own inventory for all export sales.⁹⁰

After considering the submission, the Commission requested further information from Yantai Aoxin, to verify its circumstances. Specifically, the Commission requested details on Yantai Aoxin's audited accounts, sales process, sales contracts, shipping and other direct selling expenses, and selling and administration costs.

Noting that the Manual provides that, depending on the facts, there might be rare circumstances that the Commission will consider an intermediary to be an exporter, the Commission reviewed all of the facts available.

While Yantai Aoxin is an intermediary, the Commission considers that, based on the facts of this case, it acts in a role more akin to a distributor of the goods. Yantai Aoxin has its own inventory of the goods, comingled from a variety of manufacturers, who are not aware whether the goods supplied to Yantai Aoxin are destined for export or domestic sale. The Commission is satisfied that Yantai Aoxin demonstrates the following characteristics of an exporter:

- it owns the goods at the time they are shipped to Australia and regularly arranges delivery from its own stock of the goods
- it arranges delivery of the goods to the port of export for delivery to Australia
- it ships the goods to Australia to customers with whom it has negotiated the sales of the goods on its own behalf.

Export price

The Commission considers Yantai Aoxin to be the exporter of the goods because Yantai Aoxin:

- is the principal located in China, the country of export
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges transportation of the goods to the port of export to Australia
- sells goods to Australian customers from its own inventory of the goods, comingled from a variety of manufacturers, who are not aware whether the goods supplied to Yantai Aoxin are destined for export or domestic sale
- knowingly placed the goods in the hands of a freight company for delivery to Australia.

⁹⁰ See Chapter 6.2 of the Manual.

PUBLIC RECORD

The Commission is satisfied that, for all Australian export sales during the investigation period, Yantai Aoxin was the exporter of the goods.

Yantai Aoxin did not have export sales of the goods to any related customers in Australia during the period.

In respect of Yantai Aoxin's Australian sales of the goods to its unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.⁹¹

The Commission therefore considers that all export sales made by Yantai Aoxin to its Australian customers during the period were 'arms length' transactions.

In respect of Australian sales of the goods by Yantai Aoxin, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs after exportation.

Normal value

The Commission is satisfied that, due to a situation in the domestic market for the goods in China, sales in that market are not suitable for use in determining a normal value for Yantai Aoxin under section 269TAC(1).

The Commission has relied upon the finding of a particular market situation, in accordance with section 269TAC(2)(a)(ii) to calculate a normal value under section 269TAC(2)(c), using the sum of the following:

- the CTM that reasonably reflects competitive market costs in accordance with section 43(2) of the Regulations
- domestic selling, general and administrative expenses (SG&A) on the assumption that the goods, instead of being exported, were sold domestically based on the company's records in accordance with section 44(2) of the Regulations, and
- an amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT⁹² in accordance with section 45(2) of the Regulations.

⁹¹ Section 269TAA refers.

⁹² Section 269TAAD states that domestic sales of like goods are not in the OCOT if 'arms length' transactions are unprofitable in substantial quantities over an extended period and unlikely to be recoverable within a reasonable period. For the purposes of this investigation, the Commission considers the "extended period" and "reasonable period" are the investigation period.

CTM reasonably reflecting competitive market costs

Yantai Aoxin does not manufacture the goods. Accordingly, its records do not reasonably reflect costs associated with the production of the goods (its records do not reflect any costs associated with the production of the goods).

Section 269TAC(2)(c)(i) provides that the Minister may determine an exporter's normal value using the CTM of goods in the country of export. The requirement in section 43(2) of the Regulations to use an exporter's records does not apply when the records do not reasonably reflect the CTM of the goods, as is the case here. Accordingly, the Commission has determined the CTM for goods sold by Yantai Aoxin using the CTM calculated for Dalian Steelforce in this investigation, as chapter 6.7.1 details.

In accordance with section 44(2) of the Regulations, the Commission has then used the information in Yantai Aoxin's records to determine SG&A. In accordance with section 45(2) of the Regulations, the Commission has used the profit margin of domestic sales in the OCOT. The Commission has used this information for constructing Yantai Aoxin's normal value.

Adjustments

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

Adjustment Type	Deduction/addition
Export inland transport and warranty	Add an amount for export inland transport and warranty
Non-refundable VAT	Add an amount for non-refundable VAT

Table 13 – Summary of adjustments – Yantai Aoxin

Dumping margin

The dumping margin in respect of the goods exported to Australia by Yantai Aoxin for the investigation period is **19.7%**.

The Commission's calculations are included at **Confidential Attachments 14 to 17**.

6.7.3 Uncooperative exporters – China

As detailed in chapter 6.6.3, the Commission considers all exporters of the goods from China, other than Dalian Steelforce and Yantai Aoxin, to be 'uncooperative exporters' for the purposes of this investigation.

Section 269TACAB sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the Commission has determined an export price for the uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

PUBLIC RECORD

In SEF 550, the Commission used the verified export price of Dalian Steelforce for determining the export price for the uncooperative exporters, as this was the most relevant information before the Commission at the time.

After classifying Yantai Aoxin as a cooperative exporter and examining its sales data, the Commission now has additional relevant information available to it to determine the export price of uncooperative exporters.

The Commission has used the lowest verified weighted average FOB export price for the investigation period of the cooperating Chinese exporters who exported to Australia during the investigation period.

The Commission has chosen the lowest verified export price on the basis that the lowest weighted average export price demonstrates a price at which an uncooperative exporter may export the goods to Australia, based on the information before the Commission.

Normal value

Pursuant to section 269TACAB(1)(e), the Commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. In SEF 550, this was the normal value established for Dalian Steelforce in the investigation period.

As the Commission has additional relevant information available, as discussed above, the Commission has used the highest verified normal value for the investigation period. The Commission has used the highest verified normal value of the cooperating Chinese exporters who exported to Australia during the investigation period. The Commission chose this approach on the basis that:

- the Commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value, and
- the highest normal value of cooperating exporters demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Chinese market, based on the information before the Commission.

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative Chinese exporters for the investigation period is **19.7%**.

The Commission's calculations are included in **Confidential Attachment 18**.

6.7.4 Summary of dumping margins

The Commission has assessed that the goods exported to Australia from China during the investigation period by:

- Dalian Steelforce were dumped at a margin of 2.9%
- Yantai Aoxin were dumped at a margin of 19.7%
- Uncooperative exporters from China were dumped at a margin of 19.7%.

6.7.5 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period. Section 269TDA(5) does not apply to this investigation.

Using the ABF import database and having regard to the information collected and verified during the investigation, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from China and dumped was greater than 3% of the total import volume. The volume of dumped goods is therefore not negligible.

The Commission's calculations are at **Confidential Attachment 3**.

6.7.6 Level of dumping

Section 269TDA(1) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that:

- there has been no dumping by the exporter of any of those goods, or
- that there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

As found previously in this chapter, the Commission is satisfied that there has been dumping of the goods by all Chinese exporters during the investigation period and the dumping margin for all Chinese exporters of the goods is more than 2%.

6.8 Dumping assessment – Korea

6.8.1 Cooperating and residual exporters – Korea

There were no cooperating or residual exporters from Korea.

6.8.2 Uncooperative exporters – Korea

The Commission considers all exporters of the goods from Korea are uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the Commission has determined an export price for the uncooperative Korean exporters pursuant to section 269TAB(3), having regard to all relevant information.

In the absence of any data from cooperating Korean exporters, which may be representative of the export price of uncooperative exporters, the Commission has used

the lowest weighted average FOB export price for the investigation period of Korean exporters who exported to Australia during the investigation period, as reported in the ABF import database. The Commission calculated the weighted average export price using all exports of the goods by that exporter during the investigation period, which constitutes a significant majority of exports from Korea.

The Commission has chosen the lowest export price on the basis that the lowest weighted average export price demonstrates a price at which an uncooperative exporter may export goods to Australia, based on the information before the Commission.

Normal value

Pursuant to section 269TACAB(1)(e), the Commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission has constructed a normal value for uncooperative Korean exporters as follows:

- raw material coil costs were calculated using MEPS pricing data for Korea for a mixture of different coil types, based on Korean importer data verified during the investigation, plus
- average other raw material unit costs based on verified data for third country exporters of the goods, plus
- average labour costs based on verified data for third country exporters of the goods, adjusted for Korea using data from a reputable independent supplier of economic data, plus
- average manufacturing costs, other costs and scrap offset value based on verified data for third country exporters of the goods, plus
- SG&A costs for Korean exporters on sales of goods of the same general category⁹³, plus
- average profit based on verified data for third country exporters of the goods, plus
- the highest inland transport and export handling costs based on verified data for third country exporters of the goods.

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative Korean exporters for the investigation period is **6.2%**.

The Commission's calculations are included in **Confidential Attachments 18**.

6.8.3 Volume of dumped imports

Using information from the ABF import database and having regard to the information collected and verified during the investigation, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume

⁹³ The Commission has SG&A cost data for Korean exporters of the goods from other investigations into products in the same general category as the goods and so has used this data to work out SG&A in accordance with section 44(3)(a) of the Regulations.

of goods that have been exported from Korea and dumped was greater than 3% of the total import volume, and is therefore not negligible.⁹⁴

The Commission's calculations are at **Confidential Attachment 3**.

6.8.4 Level of dumping

The Commission is satisfied that there has been dumping of the goods by all Korean exporters during the investigation period and the dumping margin for all Korean exporters of the goods is more than 2%.⁹⁵

6.9 Dumping assessment – Taiwan

The Commission calculated the following dumping margins in respect of the goods exported to Australia by Taiwanese exporters for the investigation period.

Exporter	Dumping Margin (%)
Ta Fong	- 9.0
Uncooperative exporters	- 8.6

Table 14 – Dumping margins – Taiwanese exporters

TER 550 discussed this dumping assessment.

Accordingly, the Commission has recommended in TER 550 that the Commissioner terminate part of the dumping investigation in relation to all Taiwanese exporters, on the basis there has been no dumping in relation to the goods, pursuant to section 269TDA(1)(b)(i).

6.10 Dumping assessment – Vietnam

The Commission calculated the following dumping margins in respect of the goods exported to Australia by Vietnamese exporters for the investigation period.

Exporter	Dumping Margin (%)
CDI	- 12.2
Vina One	- 12.0
Residual exporters	- 6.5
Uncooperative exporters	- 6.5

Table 15 – Dumping margins – Vietnamese exporters

TER 550 discussed this dumping assessment.

⁹⁴ See chapter 6.7.5 for further discussion on termination of an investigation due to a negligible level of dumped imports.

⁹⁵ See chapter 6.7.6 for further discussion on termination of an investigation due to a level of dumping less than 2%.

PUBLIC RECORD

Accordingly, the Commission has recommended in TER 550 that the Commissioner terminate part of the dumping investigation in relation to all Vietnamese exporters, on the basis there has been no dumping in relation to the goods, pursuant to section 269TDA(1)(b)(i).

7 SUBSIDY INVESTIGATION – CHINA

7.1 Findings

7.1.1 China

The Commission has found that goods exported to Australia from China during the investigation period received countervailable subsidies.

The Commission has found that the volume of subsidised goods exported to Australia from China during the investigation period was not negligible.

The subsidy margin determined by the Commission in respect of Dalian Steelforce and Yantai Aoxin is negligible. The subsidy margin for non-cooperative entities is 42.7%.

Accordingly, the Commissioner is satisfied that:

- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(ii) in respect of Dalian Steelforce
- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(i) in respect of Yantai Aoxin
- non-cooperative Chinese entities received a countervailable subsidy in respect of the goods exported to Australia, at a margin of 42.7%.

7.1.2 Vietnam

The Commission has found that:

- no countervailable subsidies have been received in respect of the goods exported to Australia from Vietnam during the investigation period by CDI, Vina One and residual exporters
- the goods exported to Australia from Vietnam non-cooperative entities during the investigation period received countervailable subsidies, albeit at negligible levels.

The Commission has found that the volume of subsidised goods exported to Australia from Vietnam by non-cooperative entities during the investigation period was not negligible.

The subsidy margin determined by the Commission in respect of non-cooperative exporters is negligible.

Accordingly, the Commissioner is satisfied that:

- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(i) in respect of the cooperating exporters, CDI and Vina One and the residual exporters
- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(ii) in respect non-cooperative entities.

TER 550 discusses this subsidy assessment in detail.

7.2 Relevant legislation

7.2.1 Countervailable subsidies

Section 269T(1) defines ‘subsidy’ as follows:

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

(a) a financial contribution:

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

that involves:

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

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.⁹⁶

⁹⁶ Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

Section 269TAAC defines a 'countervailable subsidy' as follows:

- (1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
 - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
 - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
 - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
 - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
 - (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
 - (b) eligibility for the subsidy is automatic; and
 - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
 - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
 - (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
 - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
 - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
 - (d) the manner in which a discretion to grant access to the subsidy has been exercised;determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
 - (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
 - (b) the length of time during which the subsidy program has been in operation.

Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.

7.2.2 Non-cooperative entities

Section 269TAACA(1) provides that, when determining whether a countervailable subsidy has been received in respect of particular goods, or when determining the amount of a countervailable subsidy in respect of particular goods, the Commissioner may act on the

basis of all the facts available and may make such assumptions as the Commissioner considers reasonable. In particular, in circumstances where an entity:⁹⁷

- has not given the Commissioner information the Commissioner considers to be relevant to the investigation, review or inquiry within a period the Commissioner considers to be reasonable
- has significantly impeded the investigation, review or inquiry.

This report refers to such entities as “non-cooperative entities”.

7.3 Investigated programs – China

The applicant alleged the existence of 45 programs in relation to exports of precision pipe and tube steel from China, based on previous findings made by the Commission in respect of subsidies received for other products manufactured in China from HRC, namely HSS. The applicant argued that such subsidies would be applicable to the goods, as, like HSS, HRC is the main raw material in the manufacture of precision pipe and tube. Both HSS and HRC have been the subject of previous findings in relation to countervailable subsidies from China. Accordingly, the applicant considers that the goods from China would be in receipt of the same benefits.

In respect of subsidies for HRC, the Manual provides that:

“Upstream” subsidy refers to a subsidy (non-export) paid to an input product such as raw material or a manufactured product used in the production of the goods in question, and countervailing action may be taken where the benefit received by the upstream recipient of the subsidy passed through, in whole or in part, to the downstream purchaser.

Where it is established that the price of the input product reflects the benefit of the subsidy, in whole or in part, received by the upstream supplier, then the downstream purchaser is taken to have received a subsidy.⁹⁸

Consistent with the statement above, the Commission is satisfied that subsidies for HRC may be applicable to the goods, with such subsidies being “upstream subsidies”.

After considering the information before the Commission regarding the identified subsidies, the Commission is also satisfied that the subsidies may also be applicable to the goods, as HSS and the goods are in similar industries.

The Commission has investigated each of the 45 alleged subsidy programs.

The Commission has set out each program investigated in respect of exports of the goods from China and its finding in respect of each program in the table below.

⁹⁷ Entities contemplated by section 269TAACA(1) are also described in section 269TAACA(2).

⁹⁸ The Manual, chapter 19.

PUBLIC RECORD

Program Number ⁹⁹	Program name	Program Type	Countervailable subsidy received? (Yes/No)
Programs included in questionnaires			
1	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Tax	Yes
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
10	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Tax	Yes
11	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Tax	Yes
12	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Tax	Yes
13	Preferential Tax Policies in the Western Regions	Tax	Yes
14	Tariff and VAT Exemptions on Imported Materials and Equipment	Tax	Yes
15	Innovative Experimental Enterprise Grant	Grant	Yes
16	Special Support Fund for Non State-Owned Enterprises	Grant	Yes
17	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
20	Hot rolled steel provided by government at less than fair market value	Less than adequate remuneration	No
21	Water Conservancy Fund Deduction	Grant	Yes
22	Wuxing District Freight Assistance	Grant	Yes

⁹⁹ The Commission has maintained the Program Number used in the application.

PUBLIC RECORD

Program Number⁹⁹	Program name	Program Type	Countervailable subsidy received? (Yes/No)
23	Huzhou City Public Listing Grant	Grant	Yes
27	Huzhou City Quality Award	Grant	Yes
28	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
29	Land Use Tax Deduction	Tax	Yes
30	Wuxing District Public Listing Grant	Grant	Yes
31	Anti-dumping Respondent Assistance	Grant	No
32	Technology Project Assistance	Grant	Yes
34	Balidian Town Public Listing Award	Grant	Yes
35	Preferential Tax Policies for High and New Technology Enterprises	Tax	Yes
36	Local Tax Bureau Refund	Tax	Yes
37	Return of Farmland Use Tax	Tax	Yes
38	Return of Land Transfer Fee	Tax	Yes
39	Return of Land Transfer Fee From Shiyou	Tax	Yes
40	Dining lampblack governance subsidy of Jinghai County Environmental Protection Bureau	Grant	Yes
41	Discount interest fund for technological innovation	Grant	Yes
42	Energy conservation and emission reduction special fund project in 2015	Grant	Yes
43	Enterprise famous brand reward of Fengnan Finance Bureau	Grant	Yes
44	Government subsidy for construction	Grant	Yes
45	Infrastructure Construction Costs Of Road In Front Of No.5 Factory	Grant	Yes
46	New Type Entrepreneur Cultivation Engineering Training Fee Of Jinghai County Science And Technology Commission	Grant	Yes
47	Subsidy for Coal-Fired Boiler of Fengnan Subtreasury	Grant	Yes
48	Subsidy for Coal-Fired Boiler Rectification	Grant	Yes
49	Subsidy for District Level Technological Project	Grant	Yes
50	Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau	Grant	Yes
51	Subsidy from Science and Technology Bureau of Jinghai County	Grant	Yes
52	Subsidy of Environment Bureau transferred from Shiyou	Grant	Yes
550-2	Loan Interest Subsidy	Grant	Yes

Table 16 – Investigated subsidy programs – China

Non-confidential Appendix B2 outlines the Commission's findings in relation to each program.

7.4 Information considered by the Commission

7.4.1 Information provided by exporters

The Commission has relied upon information provided by cooperating exporters when assessing the alleged subsidy programs for China. This included information provided by exporters in the REQs as well as information provided by exporters during verification.

7.4.2 Information provided by the Government of China

In accordance with section 269TB(2C), the Commission invited the GOC for consultations during the consideration phase of the investigation concerning the claims made by the applicant in relation to countervailable subsidies.

On 31 March 2020, the Commission also sent a Government Questionnaire to the GOC, which included questions relating to each of the alleged subsidy programs identified in the application.

The GOC provided no response to the Commission.

Notwithstanding the above, the GOC did provide a questionnaire response to the Commission in respect of a separate investigation, *Investigation 553 – Painted Steel Strapping*¹⁰⁰ initiated shortly after this investigation. It was alleged in *Investigation 553* that Chinese exporters of painted steel strapping, also manufactured from HRC, were in receipt of the same countervailable subsidies as alleged were received by Chinese exporters of precision pipe and tube steel. Due to the similarities in the subsidy allegations and the raw material inputs in the 2 cases, the Commission has had regard to the response by the GOC to *Investigation 553* in its consideration of this investigation, pursuant to section 269TDAA(2)(b).

7.4.3 Other information considered as part of this assessment

The Commission also considered as part of this assessment:

- information provided in the application
- submissions received in relation to subsidies provided to Chinese exporters¹⁰¹
- information provided to the WTO by the GOC in July 2019 in its notifications in the *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)*¹⁰²
- previous investigations by the Commission into subsidies provided to Chinese exporters.

¹⁰⁰ EPR 553, Item 10.

¹⁰¹ EPR 550, Item 39 – Orrcon submission regarding Chinese and Vietnamese particular market situation.

¹⁰² Available on the WTO website at: https://www.wto.org/english/tratop_e/scm_e/scm_e.htm

7.5 Subsidy assessment – China

7.5.1 Dalian Steelforce

7.5.1.1 Program 550-2 – Loan Interest Subsidy

During verification, the Commission found Dalian Steelforce received a subsidy under this program. The Commission has further examined this program and determined this program is specific, as it is available only to entities located in the Dalian region. See **Non-confidential Appendix B2**.

The Commission attributed the amount received under this program to all of the company's sales. The Commission then allocated the amount to the goods based on the export revenue over the investigation period.

7.5.1.2 Program 20 - Hot rolled steel provided by government at less than fair market value

The Commission determined in SEF 550 that Chinese manufacturers of the goods received a subsidy under this program and that this program is specific, as it is only available to purchases of HRC and other coil types derived from HRC.

7.5.1.3 Submissions to the SEF

In its submission of 21 June 2021, Dalian Steelforce submitted that the Commission's calculations of the benefit received under Program 20 for coil used to manufacture the goods were incorrect. Dalian Steelforce submitted that:

- the Commission calculated the benefit received under Program 20 as the difference between price paid to a private company for the CRC used to manufacture the exported painted goods and prices paid to SOEs for HRC used to manufacture painted and no oil or paint HSS. The CRC used to manufacture the painted goods during the investigation period were purchased from a private company, and therefore no benefit were received under this program
- the Commission calculated the benefit received under Program 20 as the difference between price paid to a private company for the galvanised HRC used to manufacture pre-galvanised HSS and prices paid to SOEs for galvanised HRC used to manufacture pre-galvanised HSS and the grade of galvanised CRC used to manufacture HSS and the goods. Dalian Steelforce only used the galvanised HRC purchased from private companies and SOEs to manufacture pre-galvanised HSS, which was not the goods under investigation, and therefore not relevant to the consideration of whether the goods received a benefit. The Commission should instead use the benchmark outlined for galvanised CRC to calculate whether Program 20 provided a benefit.

7.5.1.4 Subsidy margin

The Commission has considered Dalian Steelforce's submission and changed its calculation of the benefit it received under Program 20. As a result, the Commission has determined that this program provided no benefit to Chinese exporters during the investigation period.

The amount of benefit received where there has been a provision of goods or services by the government is the difference between the price paid by enterprises for the government provided goods or service, and adequate remuneration for the product or service in relation to prevailing market conditions.

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

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

To determine the adequacy of remuneration, in accordance with the approach outlined in Chapter 17 of the Manual, the Commission has compared the following data:

- purchases of HRC in China from private companies
- purchases of HRC from SOEs.

The Commission found that prices offered to Dalian Steelforce by SOEs were higher than prices offered by private companies. From this, the Commission considers that there is insufficient evidence this program conferred a countervailable benefit.

This has resulted in a change in the subsidy margin calculated for Dalian Steelforce in SEF 550, to **0.1%**. See **Confidential Attachment 19**.

7.5.2 Yantai Aoxin

The Commission has not seen any positive evidence that Yantai Aoxin received any subsidies in respect of the goods during the investigation period. The Commission notes that Yantai Aoxin purchases the goods from upstream Chinese manufacturers of like goods. However, the Commission has no evidence that any subsidies provided to its suppliers (if any) were passed on to Yantai Aoxin in the form of lower, and hence subsidised, prices.

In the absence of such evidence, the Commission is not satisfied that Yantai Aoxin received any subsidies in respect of the goods.

7.5.3 Non-cooperative Chinese entities

The subsidy margin for non-cooperative entities is determined, pursuant to section 269TAACA, based on all facts available and having regard to reasonable assumptions.

When determining the countervailable subsidies for non-cooperative entities, the Commissioner has made reasonable assumptions to determine whether non-cooperative entities received a countervailable subsidy in respect of the goods and the amount of the countervailable subsidy.

The Commission has assumed that non-cooperative entities benefited from non-regional countervailable subsidies and the highest region-specific subsidy. The Commission considers that this approach avoids the potential for double-count of similar programs between regions.

PUBLIC RECORD

The subsidy margin for each program is the higher of the following:

- the margins applicable to each program based on previous findings made by the Commission in respect of subsidies received for other products manufactured in China from HRC, consistent with the approach taken in the application¹⁰³
- the margins calculated for the cooperating exporters as part of this investigation.

The Commission summed up the subsidy margins for each program to obtain the total subsidy margin.

Based on the information available to the Commission, the Commission has calculated a subsidy margin for non-cooperative entities of **42.7%**. This differs from the finding in SEF 550 due to the change in the calculation of the benefit received by Dalian Steelforce under Program 20 discussed above.

The Commission's countervailable subsidy calculations are contained in **Confidential Attachment 20**.¹⁰⁴

7.6 Summary of subsidy margins

The table below summarises what programs the Commission found countervailable and the corresponding subsidy margins for each exporter.

Exporter	Programs	Subsidy margin
China		
Yantai Aoxin	N/A	N/A
Dalian Steelforce	Program 550-2 – Loan Interest Subsidy	0.1%
Non-cooperative entities	Program 550-2 – Loan Interest Subsidy 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	42.7%

¹⁰³ Review 419 – Hollow structural sections from China, Korea, Malaysia, Taiwan and Review 529 - Hollow structural sections from China, Korea, Malaysia, Taiwan, and Thailand.

¹⁰⁴ This attachment is confidential as it contains commercially sensitive information relating to exporters.

PUBLIC RECORD

	<p>Program 14 – Tariff and VAT Exemptions on Imported Materials and Equipments</p> <p>Program 15 – Innovative Experimental Enterprise Grant</p> <p>Program 16 – Special Support Fund for Non State-Owned Enterprises</p> <p>Program 17 – Venture Investment Fund of Hi-Tech Industry</p> <p>Program 18 – Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment</p> <p>Program 19 – Grant for key enterprises in equipment manufacturing industry of Zhongshan</p> <p>Program 21 – Water Conservancy Fund Deduction</p> <p>Program 29 – Land Use Tax Deduction</p> <p>Program 32 – Technology Project Assistance</p> <p>Program 35 – Preferential Tax Policies for High and New Technology Enterprises</p> <p>Program 36 – Local Tax Bureau Refund</p> <p>Program 37 – Return of Farmland Use Tax</p> <p>Program 38 – Return of Land Transfer Fee</p> <p>Program 39 – Return of Land Transfer Fee From Shiyou</p> <p>Program 41 – Discount interest fund for technological innovation</p> <p>Program 42 – Energy conservation and emission reduction special fund project in 2015</p> <p>Program 44 – Government subsidy for construction</p> <p>Program 45 – Infrastructure Construction Costs Of Road In Front Of No.5 Factory</p> <p>Program 48 – Subsidy for Coal-Fired Boiler Rectification</p> <p>Program 49 – Subsidy for District Level Technological</p> <p>Program 50 – Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau</p> <p>Program 51 - Subsidy from Science and Technology Bureau of Jinghai County</p> <p>Program 52 – Subsidy of Environment Bureau transferred from Shiyou</p>	
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Table 17 – Countervailable subsidies and subsidy margins received by Chinese exporters

7.7 Volume of subsidised imports

Section 269TDA(7) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to a country, if satisfied that the total volume of goods that has been, or may have been, exported to Australia during a reasonable examination period and in respect of which a countervailable subsidy has been, or may be, received, is negligible.

Pursuant to section 269TDA(8), a negligible volume for China is a volume less than 4% of the total volume of goods imported into Australia over a reasonable examination period.¹⁰⁵

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of goods exported to Australia from China during the investigation period. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of subsidised goods from China was greater than 4% of the total Australian import volume and is therefore not negligible.¹⁰⁶

Accordingly, the Commissioner does not propose to terminate the subsidy investigation under section 269TDA(7).

7.8 Level of subsidisation

Section 269TDA(2) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to an exporter of the goods, if satisfied either that:

- an exporter did not receive a countervailable subsidy in respect of the goods, or
- if an exporter did receive a subsidy, at no time during the investigation period did the level of the subsidy exceed a negligible level.

Pursuant to section 269TDA(16)(b), a countervailable subsidy received in respect of goods exported to Australia from China is negligible if, when expressed as a percentage of the export price of the goods, the level of the subsidy is not more than 2%.¹⁰⁷

Based on its investigation into countervailable subsidies provided to Chinese exporters of the goods to Australia, the Commission is satisfied that the total level of countervailable subsidies, when expressed as a percentage of the export price of the goods:

- never, at any time during the investigation period, exceeded 2% for Dalian Steelforce and is therefore negligible
- never, at any time during the investigation period, exceeded 2% for Yantai Aoxin and is therefore negligible
- for non-cooperative Chinese entities, exceeded 2% throughout the investigation period.

Accordingly, the Commissioner is satisfied that:

- it is necessary to terminate the subsidy investigation under section 269TDA(2) in respect of Dalian Steelforce

¹⁰⁵ China and Vietnam are classed as Developing Countries under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

¹⁰⁶ Confidential Attachment 20 – All other entities subsidy analysis, worksheet “All other entity import volume”.

¹⁰⁷ Part 4, Division 1 of the *Customs Tariff Regulations 2004* classes China as a Developing Country

PUBLIC RECORD

- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(i) in respect of Yantai Aoxin
- non-cooperative Chinese entities received a countervailable subsidy in respect of the goods exported to Australia, at a margin of 42.7%.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Findings

The Commissioner is satisfied that the Australian industry has experienced the following forms of injury:

- reduced sales volume
- price depression
- price suppression
- reduced profit
- reduced profitability
- reduced revenue
- reduced employment numbers
- reduced ROI
- reduced inventory turnover.

8.2 Approach to injury analysis

The Commission considers that the Australian industry is comprised solely of Orrcon. The Commission has therefore based its injury analysis on verified financial information submitted by Orrcon.

The injury analysis period for the purpose of this investigation is from 1 January 2016.

The data supporting the Commission's analysis of the Australian market and the economic condition of the Australian industry is at **Confidential Attachment 3**.

8.2.1 Submission concerning approach to injury analysis

In its submission dated 20 January 2020,¹⁰⁸ TRAV raised concerns that, based on the non-confidential version, the application had not met the injury requirements of Articles 15.1, 15.2 and 15.4 of the SCM Agreement. TRAV's claims specifically relate to the volume of subsidised imports, their impact on prices in the domestic market and the evaluation of other relevant economic factors.

In assessing injury to the Australian industry, the Commission relied on the requirements set out in section 269TAE and sections 269TG and 269TJ, the *Ministerial Direction on Material Injury 2012* (Material Injury Direction) and the Manual.

The application also included confidential attachments that formed the basis for the Commission's assessment of injury to the Australian industry, as set out in the following sections. To the extent required, the confidential attachments to this report address this confidential information. Assessments of injury factors are contained within this chapter and the effect of dumped and subsidised imports on the domestic industry is in chapter 9.

¹⁰⁸ EPR 550, document number 4.

8.3 Volume effects

8.3.1 Sales volume

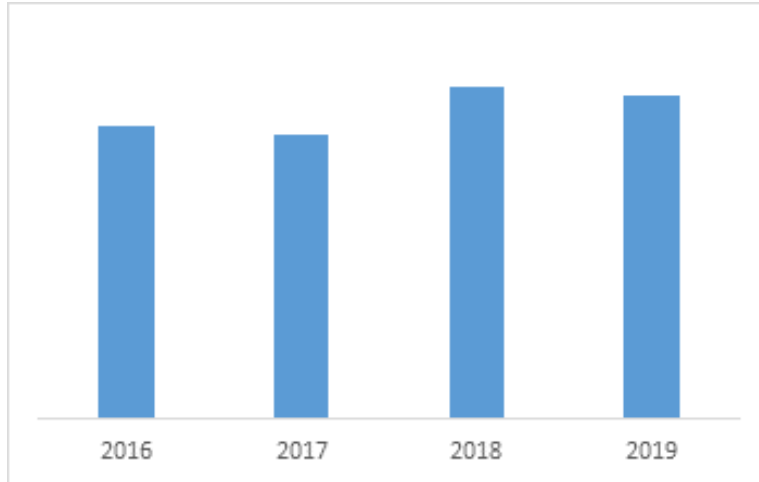


Figure 6 – Orrcon sales volumes

Orrcon's sales volumes have fluctuated over the injury analysis period. However, Orrcon's sales volumes reduced in the investigation period. In the application, Orrcon claimed that while it has seen some increases of volumes during the period, in a growing market it should have seen a greater increase. Therefore, it claimed injury in the form of reduced sales volumes. The Commission assessed the growth of the market during the period and found that total market volumes contracted during the period after an initial increase between 2016 and 2017.

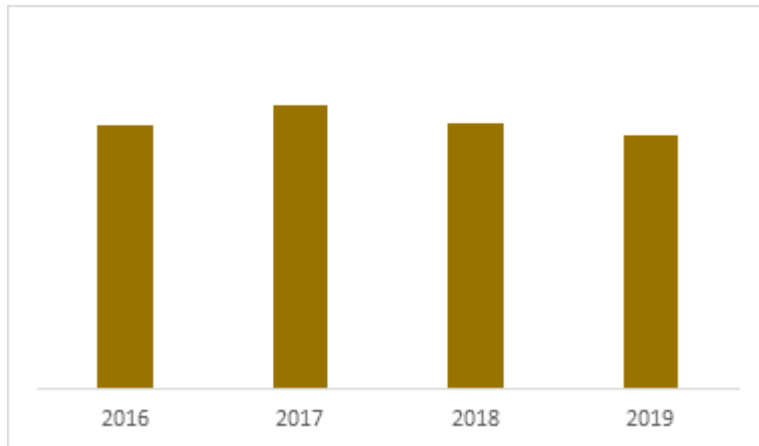


Figure 7 – Total market volumes

8.3.2 Market share

The figure below depicts the market share of Australian industry, the share made up by dumped and subsidised exports from China and Korea, and the share held by all other countries, which includes Taiwan and Vietnam (whom the Commission found were not dumping during the investigation period).

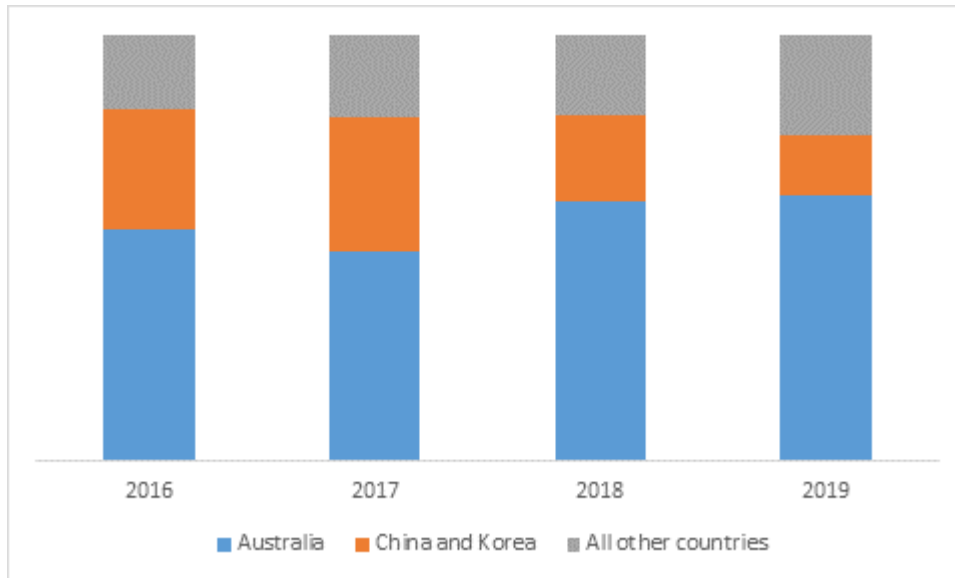


Figure 8 – Market shares¹⁰⁹

The Commission analysed changes in market share during the injury analysis period.¹¹⁰

After an initial increase in market share between 2016 and 2017, the market share of China and Korea reduced between 2017 and 2018 and between 2018 and 2019. Orrcon's market share increased between 2017 and 2019.

The Commission notes that Figure 8 above differs from the figure in SEF 550 used to depict market share of the Australian industry. This is due to minor adjustments in the calculation of volumes of verified exporters, which the Commission identified following the publication of the SEF.

8.3.3 Submissions to the SEF

In its submission on 22 June 2021, DITH commented in respect of Figure 8 that *“The hidden volume of the non-dumped injurious imports from Taiwan and Vietnam prevents the reader from understanding as to whether import substitution has occurred and the combined import volumes from Taiwan and Vietnam have increased sharply over that same period.”*¹¹¹

¹⁰⁹ The market shares of Taiwanese and Vietnamese exports have been included in the share of non-subject countries because of the Commission's termination of the investigation in relation to all Taiwanese and Vietnamese exporters as discussed in TER 550.

¹¹⁰ Confidential Attachment 3 – Australian Market analysis

¹¹¹ EPR 550, Item 63, page 4.

The Commission acknowledges that this figure does not depict Taiwan and Vietnam's import volumes. However, the Commission considers that the individual effect of imports from a country not considered to be exporting dumped or subsidised goods to Australia is not necessary in making a determination on whether dumped or subsidised goods have caused material injury to Australian industry. In respect of examining factors other than dumped or subsidised goods that may have caused injury to the Australian industry, the cumulative effect (among other things) of undumped and unsubsidised volumes is relevant.

The Commission further addresses DITH's submission in chapter 9.5.

8.3.4 Conclusion – volume effects

While Orrcon increased its market share from 2017, it experienced a reduction in sales volumes in the investigation period. The Commission is satisfied that Orrcon experienced injury in the form of reduced sales volumes during the injury analysis period.

8.4 Price effects

8.4.1 Price suppression and price depression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise might have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

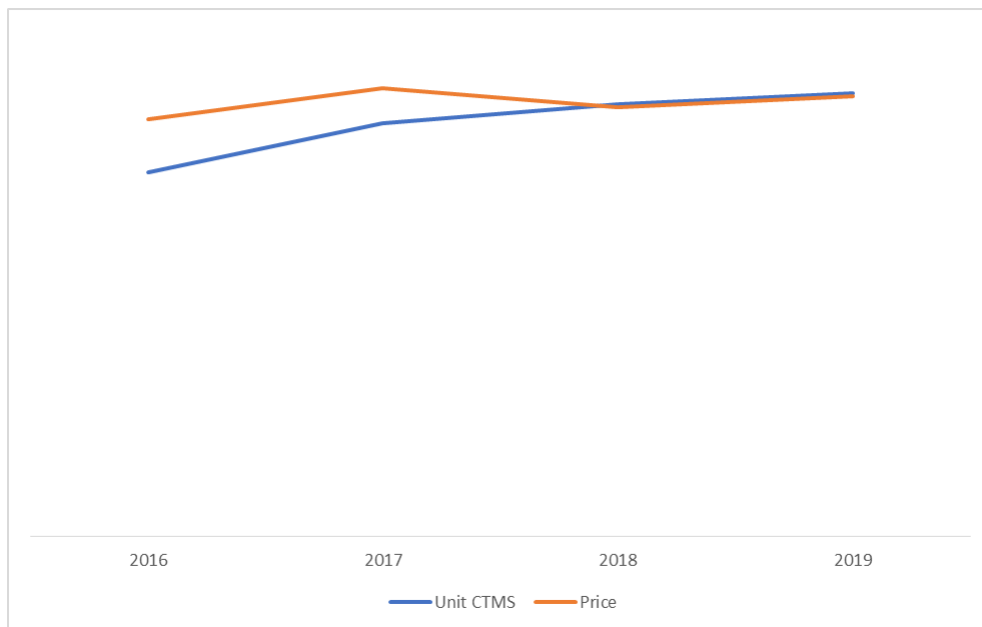


Figure 9 – Unit CTMS and unit selling price

The figure above depicts a downward movement in unit pricing since 2017. There is a minor recovery between 2018 and 2019. Unit CTMS has seen a steady increase since 2017, however, prices have not kept up with the unit CTMS increase resulting in a reduction in Orrcon's profit margin.

8.4.2 Conclusion – price effects

The Commission is satisfied that Orrcon experienced injury in the form of price depression and price suppression during the injury analysis period.

8.5 Profit and profitability

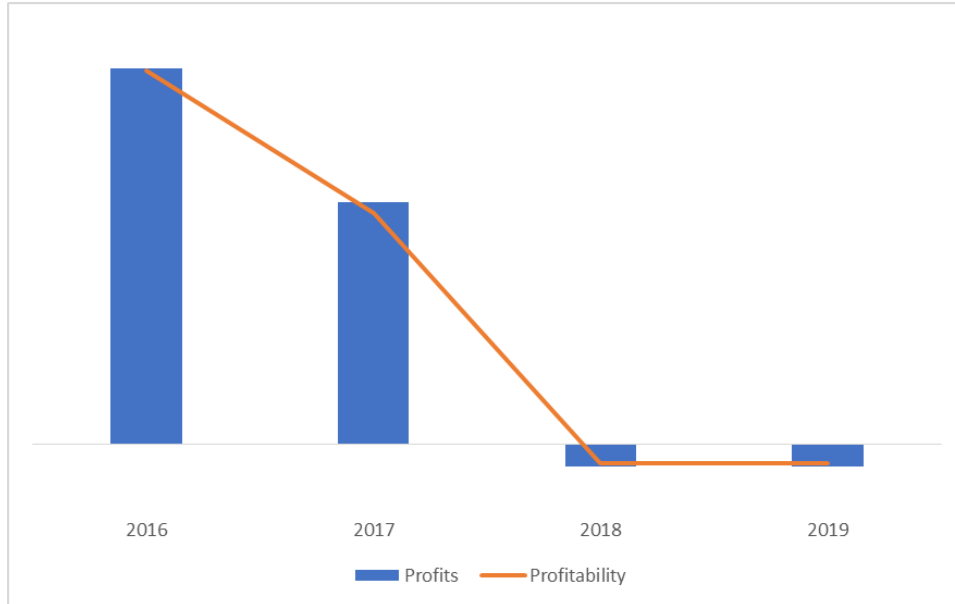


Figure 10 – Profits and profitability

The figure above shows a reduction in profits and profitability between 2016 and 2018. Between 2018 and 2019, there was minimal change in Orrcon's net loss and profitability position.

8.5.1 Conclusion – profit and profitability

The Commission is satisfied that Orrcon experienced injury in the form of reduced profits and profitability during the injury analysis period.

8.6 Other economic factors

8.6.1 Revenue

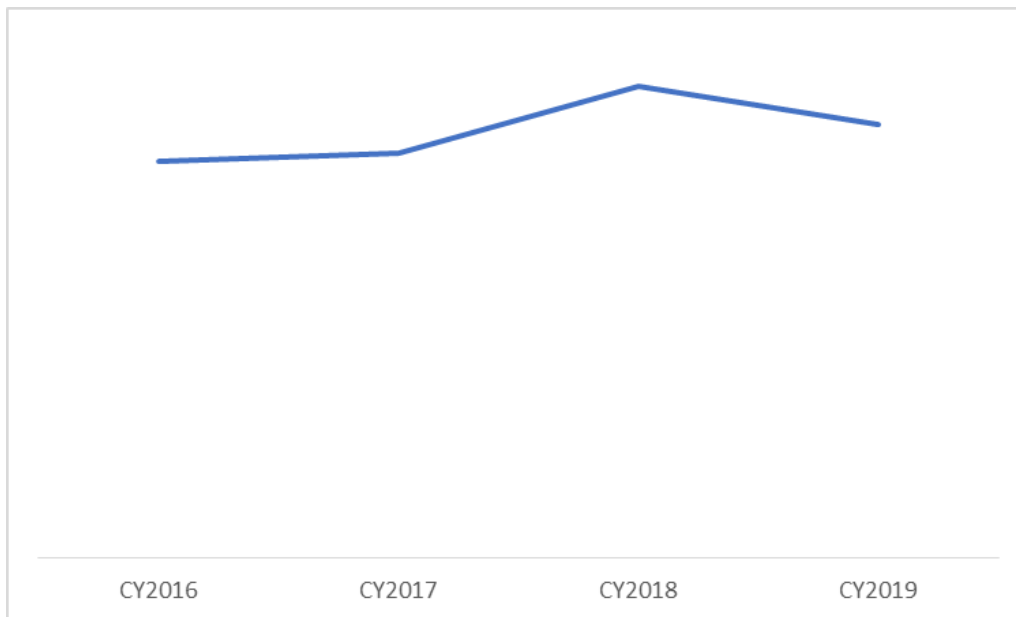


Figure 11 - Revenue

Orrcon has experienced revenue growth between 2017 and 2018, followed by a decrease in the investigation period.

8.6.2 Employment numbers

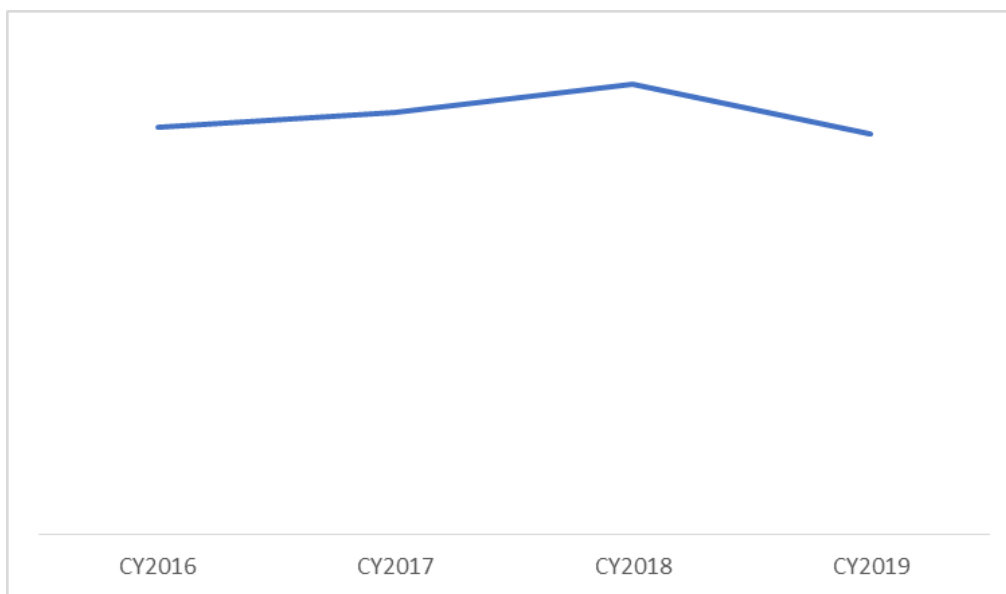


Figure 12 – Employment numbers

Orrcon's employee numbers reduced between 2018 and 2019.

8.6.3 Return on investment

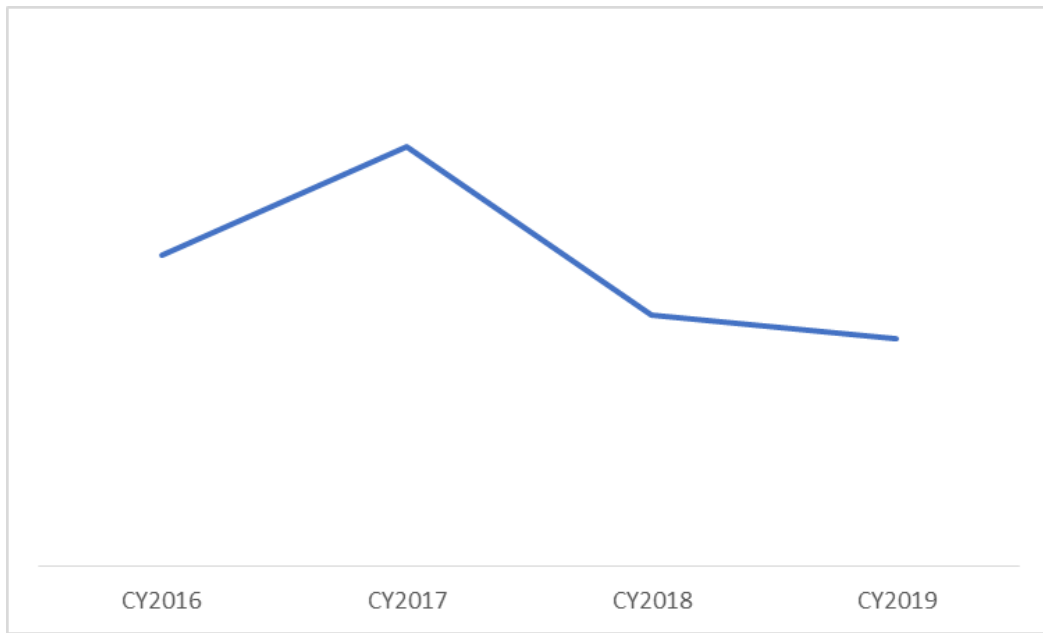


Figure 13 – Return on investment

Orrcon's ROI for like goods has reduced between 2017 and 2019, with a significant reduction between 2017 and 2018.

8.6.4 Reduced inventory turnover

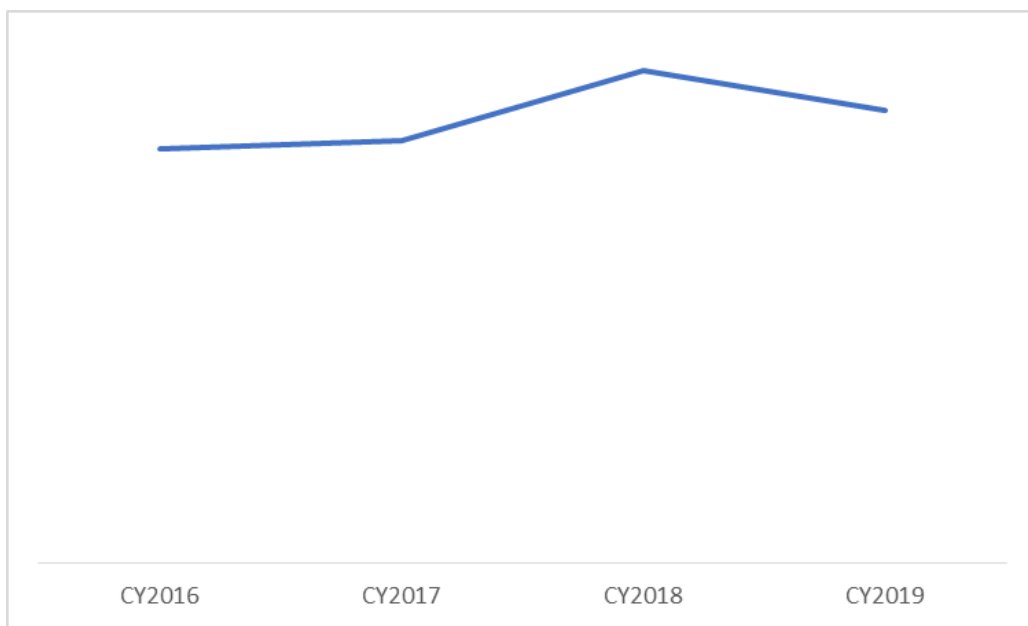


Figure 14 – Inventory turnover

Orrcon's inventory turnover has decreased in the investigation period after increasing between 2017 and 2018.

8.6.5 Production and capacity utilisation

In its application, Orrcon claimed that its increase in production volumes since the 2015/16 year are “materially insignificant when contrasted with the 60 per cent increase in the precision pipe and tube market over the same period.” The Commission has analysed the claim of both the increase in Orrcon’s own production as well as the size of the market. The Commission notes that while the initial data provided to the Commission in Orrcon’s application was for years ending 30 September, Orrcon provided updated data to the Commission for calendar years 2016 to 2019.

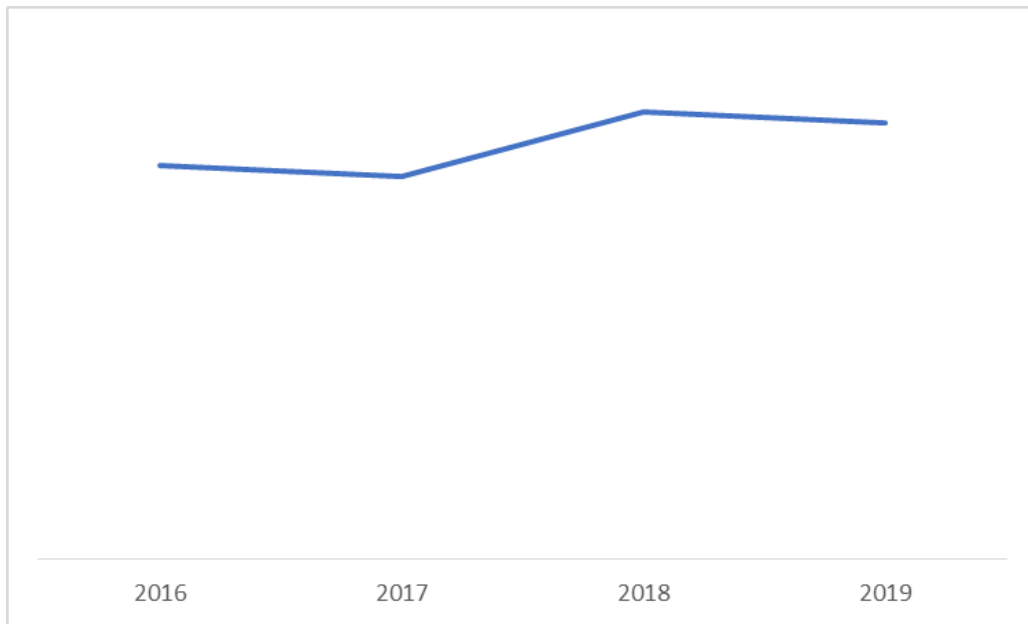


Figure 15 – Production quantity

The Commission notes that, as stated by Orrcon, there has been an increase in production of the goods between 2017 and 2018, with a slight reduction in 2019. Orrcon contrasted this with the increase in the size of the overall market. Accordingly, the Commission reviewed the size of the market in Australia for precision pipe and tube.

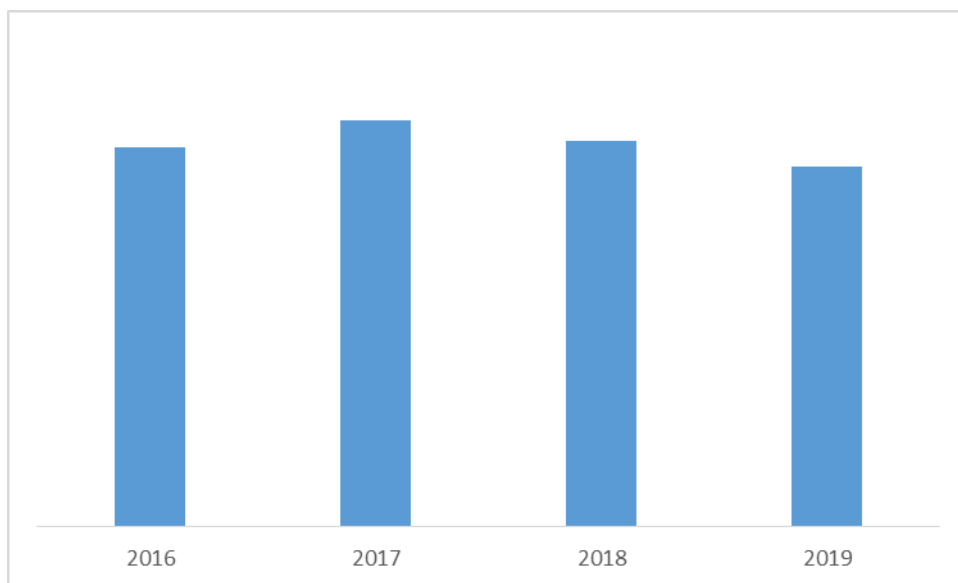


Figure 16 – Total market volumes

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As demonstrated in Figure 16, the Commission found that the market for precision pipe and tube in Australia reduced between 2017 and 2019.

During the injury analysis period, Orrcon's capacity utilisation also increased as demonstrated in Figure 17 below.

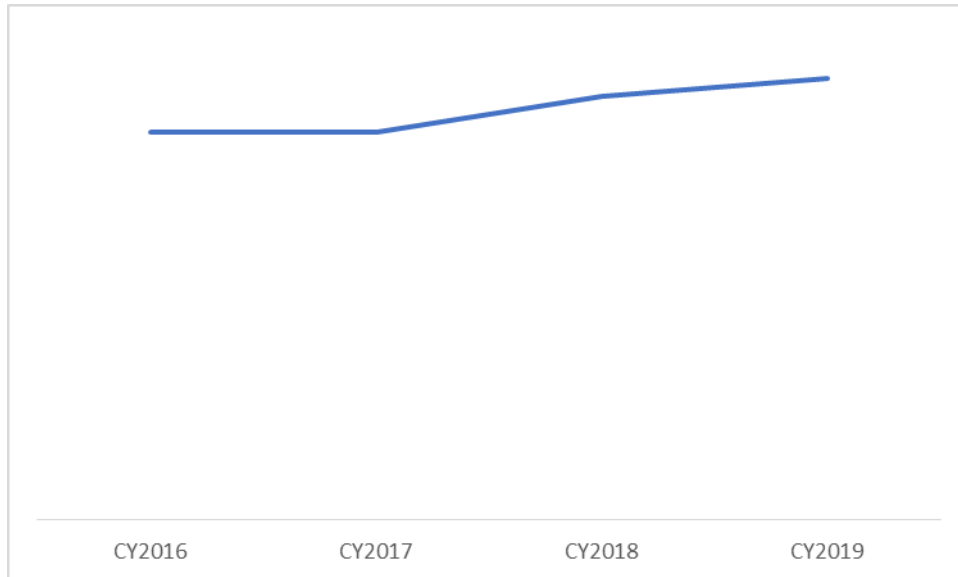


Figure 17 – Capacity utilisation

8.6.6 Other indicators

Assets – Orrcon has seen an increase in assets during the injury analysis period.

Capital investment – Orrcon's capital investment in relation to like goods increased between 2017 and 2019, after an initial decrease.

Productivity - Productivity increased between 2017 and 2019, after an initial decrease between 2016 and 2017.

Average wages – Average wages trended up during the injury analysis period.

8.6.7 Conclusion – other economic factors

The Commission is satisfied that Orrcon experienced injury in the form of reduced revenue, employment numbers, ROI and inventory turnover.

9 HAS DUMPING AND/OR SUBSIDIES CAUSED MATERIAL INJURY?

9.1 Findings

The Commissioner is satisfied that dumped exports of the goods from China and Korea, and subsidised exports of the goods from China (other than goods exported by Dalian Steelforce and Yantai Aoxin), caused material injury to the Australian industry.

In investigating the cause of injury to the Australian industry the Commissioner had regard to the economic indicators of the Australian industry, the size of dumping margins, the volumes and prices of exports from the subject countries, the importance of price in the industry, and evidence of import prices impacting pricing negotiations in the market.

9.2 Legislative Framework

Under sections 269TG, 269TJ and 269TJA, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and/or countervailing duty notice is that, because of dumping and subsidisation, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.¹¹²

Section 269TAE(1) outlines the factors, to which the Commissioner has had regard, and that may be taken into account when determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Section 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is being caused by a factor other than the exportation of the goods, and provides examples of such factors.

In assessing material injury, the Commission also has regard to the Material Injury Direction.

9.3 Cumulative effect of injury

Section 269TAE(2C) provides that when determining whether material injury to an Australian industry has been, or is being, caused or threatened by exports to Australia from different countries, the Minister should consider the cumulative effect of those exports only if the Minister is satisfied that:

- the margin of dumping established for each exporter and/or the amount of countervailable subsidy received is not negligible

¹¹² Section 269TJA relates to concurrent dumping and countervailable subsidisation. It provides that the Minister may publish a notice under sections 269TG(1), 269TG(2), 269TJ(1) or 269TJ(2) where goods are both dumped and subsidised, and because of the combined effects of the dumping and subsidisation, material injury to an Australian industry producing like goods has been or is being caused. Section 269TJA is relevant in this investigation, due to the combined dumping and subsidisation in relation to goods exported to Australia from China.

- the volume of dumped and/or subsidised imports from each country is not negligible, and
- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods.

The Commissioner's view is that it is appropriate to consider the cumulative effects of exports from China and Korea.

9.3.1 Margin of dumping and the amount of countervailable subsidies received

In chapters 6.7 and 6.8, the Commission found that the dumping margins for each exporter from China and Korea are not negligible.

In chapter 7.5, the Commission found that the subsidy margin for Chinese exports, other than Dalian Steelforce and Yantai Aoxin, is also not negligible.

9.3.2 Volume of dumped and subsidised imports

In chapters 6.7.5 and 6.8.3, the Commission found that the volume of dumped imports from both China and Korea is not negligible.

In chapter 7.7, the Commission found that the volume of subsidised exports from China is not negligible. There was no investigation into the subsidisation of Korean imports.

9.3.3 Conditions of competition

The Commission has examined the conditions of competition between the imported goods from China and Korea and the like goods produced by Australian industry. As discussed in chapter 5.3, customers can readily change suppliers, sourcing from Australian suppliers, including Australian industry and importers, or importing the goods themselves. ABF data indicates importers can source the goods from numerous countries. The Commission is also aware of Australian customers importing from numerous sources within the China and Korea.

The Commission is satisfied that domestically produced goods compete against exports from China and Korea for sales in Australia, and that these imported goods compete between themselves.

9.3.4 Commission's assessment

The figure below depicts the share of the volume of dumped goods imported from China and Korea into the Australian market over the investigation period.

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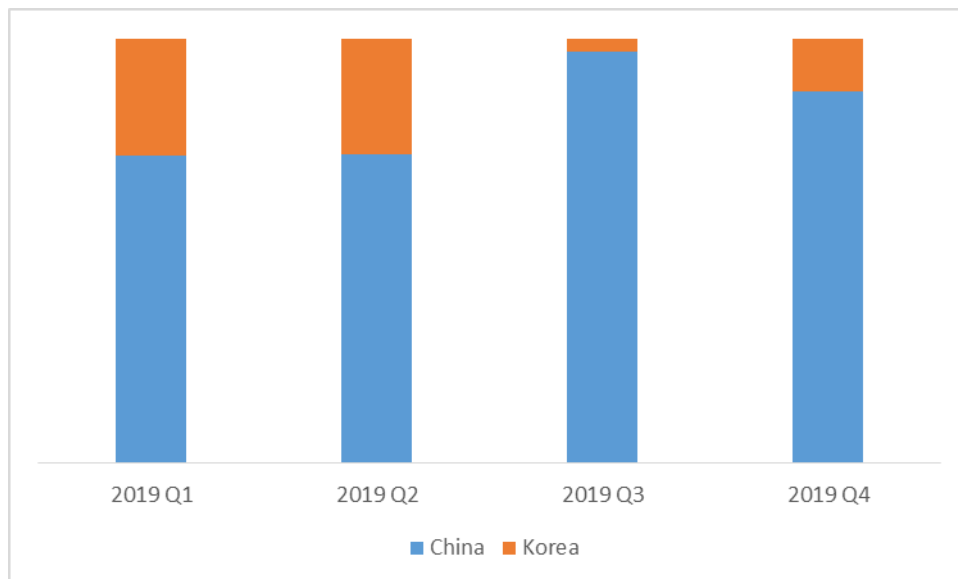


Figure 18 – Share of import volume – China and Korea

Over the entire investigation period, Chinese imports represented 85% of dumped precision pipe and tube entering the Australian market, with imports from Korea making up the remaining 15%.

Having regard to the above analysis, the Commissioner's view is that it is appropriate to consider the cumulative effects of exports from China and Korea, for the following reasons:

- the margin of dumping established for exporters from each country is not negligible
- the volume of dumped imports from each country is not negligible
- the conditions of competition between the Chinese and Korean exports and between those exports and domestically produced like goods are such that it is appropriate to cumulate.

The Commission has also observed that there has been material volumes of imports from both Chinese and Korean exporters during the investigation period.

9.4 Approach to causation analysis

As outlined in Chapter 8, the Commission considers that the Australian industry has experienced injury and this injury has coincided with the presence of dumped goods from China and Korea and subsidised goods from China. This chapter will analyse whether dumping and subsidisation caused injury to the Australian industry and whether that injury is material.

The Commission has assessed injury and causation by examining the following evidence:

- verified volume, price, and profit effects of the Australian industry during the injury analysis period and investigation period (refer chapter 8 above)
- verified sales data from cooperating exporters and importers to determine sales prices and volumes achieved by the subject exporters from China and Korea

- verified sales data from cooperating exporters and importers to determine sales prices and volumes achieved by exports of undumped goods from Taiwan and Vietnam
- dumping margins for China and Korea
- subsidy margins for non-cooperative entities from China
- information from the ABF import database to determine import volumes and export prices
- examples and related evidence relating to negotiations with customers provided by Orrcon
- the broader context of the economic condition of the Australian industry.

Evidence included in the analysis undertaken by the Commission in this chapter is in **Confidential Attachment 21**.

9.5 Submissions to the SEF

9.5.1 Submission by DITH

In its submission on 22 June 2021¹¹³, DITH submitted that the Commission's injury and causation analysis is insufficient and failed to ascertain whether the Korean imports themselves were injurious as:

- it has not identified, separated and distinguished the injurious effects of imports from Korea, from other causal factors such as the non-dumped imports from Taiwan and Vietnam, despite those imports being specifically investigated and the applicant providing evidence of injury as a result of these imports
- it conducted price undercutting analysis for China and Korea only, neglecting the impact of imports from Taiwan and Vietnam as import substitutes when it was noted that imports from Korea and China have been decreasing since 2017
- examples provided of imports causing injury cannot be specifically attributed to Korean imports
- Korean imports were a small fraction of all dumped imports.

9.5.2 Commission's assessment

In assessing whether material injury was caused by dumped goods, the Commission agrees with the submission by DITH that the Minister must consider whether any injury to Australian industry is being caused or threatened by a factor other than the exportation of dumped and subsidised goods.¹¹⁴

However, the Commission does not agree that this requires consideration of the level of injury caused by exports of undumped goods on an individual country level. Section 269TAE(2A) provides a non-exhaustive list of matters for the Minister to consider, which includes the volume and prices of imported like goods that are not dumped. Accordingly, for the purposes of the injury and causation analysis in this investigation, the Commission

¹¹³ EPR 550, Item 63.

¹¹⁴ As per section 269TAE(2A).

has considered the impact of all undumped imports, made up of imports from all countries other than China and Korea, which includes Taiwan and Vietnam.

Further, as discussed in chapter 9.3, section 269TAE(2C) provides that the Minister should consider the cumulative effect of dumped exports where certain conditions have been satisfied. As those conditions have been satisfied, it is the Commissioner's view that it is appropriate to consider the cumulative effects of exports from China and Korea.

In chapter 6.8.3, the Commission discusses its finding that the volume of goods imported from Korea during the investigation period was greater than 3% of the total import volume from all countries, and is therefore not negligible. The Commission further notes that, while the volume of dumped Korean imports is less than dumped Chinese imports, the proportion of Korean imports out of all dumped imports is material, making up 15% of the total dumped volume during the investigation period.

9.6 Size of dumping margins

Section 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins worked out in respect of the goods exported to Australia. The Commission has calculated the following dumping margins:

- Dalian Steelforce: 2.9%
- Yantai Aoxin: 19.7%
- Uncooperative exporters from China: 19.7%
- Uncooperative exporters from Korea: 6.2%

The Commissioner considers that the magnitude of dumping by the exporters above, whose margins were not negligible, provided them with the ability to offer the goods to importers in Australia at prices that were lower than would otherwise have been the case.

9.7 Size of subsidy margins

Section 269TAE(1)(ab) provides that regard may be given to the size of each countervailable subsidy margin worked out in respect of the goods exported to Australia. The Commission has calculated the following countervailable subsidy margins:

- Uncooperative exporters from China: 42.7%

The Commissioner considers that the magnitude of subsidisation of Chinese entities provided them with the ability to offer the goods to importers in Australia at prices lower than would otherwise have been the case if there were no subsidisation.

9.8 Volume effects

Chapter 8.3 discusses the Commission's finding that Australian industry suffered injury in the form of reduced sales volumes during the injury analysis period.

In its application, Orrcon submits that its transition from a business with a reasonable return in 2016/17 to an underperforming operation in 2018/19 coincides with what it terms a "rapid and dramatic increase" in dumped imports from the subject countries.

9.8.1 Sales volumes analysis

The figure below depicts changes in sales volumes over the injury period for Australian industry, dumped imports from China and Korea, and imports from all other countries (including Taiwan and Vietnam).

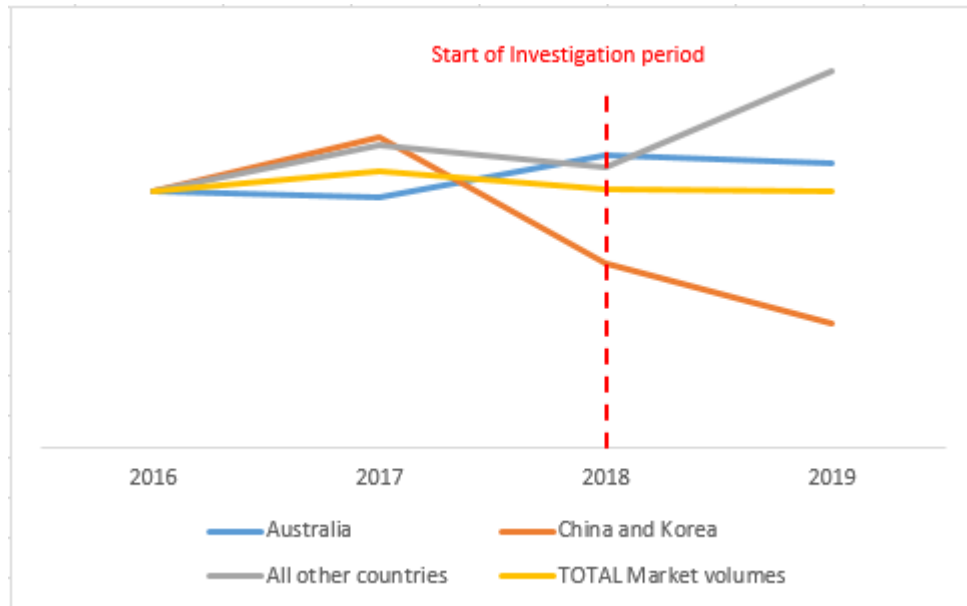


Figure 19 – Changes in sales volumes (indexed)

As seen in the figure above, sales volumes by Australian industry remained largely steady over the injury period, falling in 2017 before rising in 2018 and falling again over the investigation period.

There has been an increase sales volume by Chinese and Korean exporters between 2016 and 2017, which reduced between 2017 and 2018 and continued to reduce during the investigation period.

Imports from all other countries, being imports that were not dumped or subsidised, steadily increased over the injury period, including in the investigation period, other than a small decrease in 2018.

The following figure depicts a breakdown of import volumes from China and Korea and all other countries.

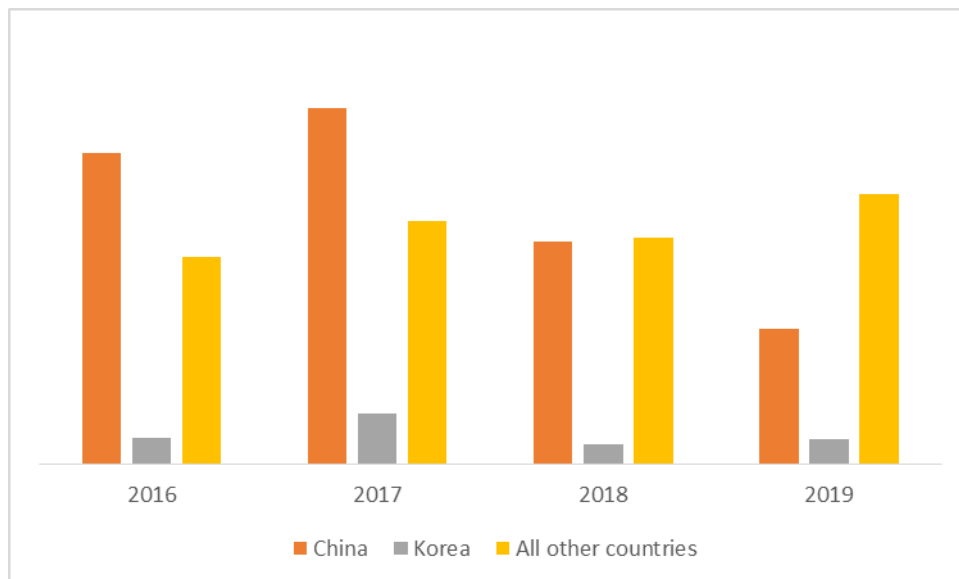


Figure 19 – Import volumes

While there was an increase in import volumes from China between 2016 and 2017, volumes declined between 2017 and 2019. Korean imports increased between 2016 and 2017 and have remained low since, with a marginal increase in 2019. Imports from all other countries (including Taiwan and Vietnam) increased between 2016 and 2017 and again during the investigation period. The Commission observed that in the investigation period, imports from countries other than China and Korea make up the bulk of import volumes.

In light of the above, Orrcon's argument that its transition to an underperforming operation between 2016/17 and 2018/19 is caused by higher volumes of dumped goods from the subject countries during 2018 and 2019 is not supported by the volumes observed by the Commission, although it is noted that volumes from Korea did increase in the investigation period.

9.8.2 Examples of volume injury

Orrcon provided the Commission with 7 examples of price negotiations. Three of these negotiations resulted in Orrcon missing out on sales volumes, as it was unable to match import prices. These examples demonstrate the vulnerability of sales volumes to low import prices. In the case of Chinese and Korean prices, Australian industry competed with dumped and subsidised prices in order to secure volumes. Chapter 9.9.1 addresses the remaining 4 examples that relate to price related injury.

9.8.2.1 Example 5¹¹⁵

Orrcon was unable to supply to a customer that it has supplied historically, as it was unable to match profitably the import prices that the customer claimed it had access to. Orrcon provided specific import prices from China, however did not identify specific sources. However, as Orrcon is the only domestic producer of the goods, it is apparent

¹¹⁵ The Commission has used the numbering from the application. Examples 1, 2, 3 and 4 relate to price injury. Chapter 9.9.1 discusses these examples.

that as Orrcon did not supply the goods, the customer subsequently sourced from imports.

9.8.2.2 Example 6

In 2016 and 2017, Orrcon supplied minimal volumes to a customer who historically purchased both locally produced and imported goods. The Commission received evidence of the customer purchasing imported goods. In order to secure volume, Orrcon offered a price below its fully absorbed costs in 2018. In 2019, Orrcon increased its offer price (still below fully absorbed costs) and the customer reduced its purchase volumes. This example provided evidence of the vulnerability of volumes to import prices.

9.8.2.3 Example 7

During the verification, Orrcon advised it experiences magnified injury due to its customers on-selling imported goods to secondary markets. Orrcon provided evidence of a downstream market customer approaching Orrcon and requesting it to match a competitor's imported price. The Commission has confirmed Orrcon's claim that the competitor (also a customer) has historically purchased imported goods. Orrcon was unable to match this price and was unsuccessful in securing the volume.

9.8.2.4 Commission's assessment

The above examples provide casual evidence of volume injury because of increased imports of the goods. However, without further evidence, it is not clear whether such injury is because of dumped or undumped imports.

9.9 Price effects

In its application, Orrcon claimed that production costs increased year-on-year since 2015/16 with increases in global HRC prices affecting precision pipe and tube producers. As stated in the Orrcon verification report,¹¹⁶ Orrcon advised the Commission of an internal project designed to reduce its costs to a target level. Orrcon stated that this was due to the current margins being unsustainable. The Commission reviewed Orrcon's raw material costs and found that it had experienced rising feed costs during the injury analysis period.

In its application¹¹⁷ and during the verification, Orrcon provided evidence of internal tracking of competing import prices. Orrcon provided further evidence of the importance of import prices in its own pricing decisions with its submission dated 30 April 2021.¹¹⁸

In recent years, Orrcon has attempted to increase prices to account for increases in costs. Evidence before the Commission shows that customers have used import prices to reduce the quantum of these price increases. This and further examples of price

¹¹⁶ EPR 550, Item 56

¹¹⁷ EPR 550, Item 1.

¹¹⁸ EPR 550, Item 54.

negotiations have been provided by Orrcon where import sources were used in an effort to drive down its own prices.

9.9.1 Examples of price injury

9.9.1.1 Example 1

A customer rejected Orrcon's first offer as too high in comparison to a Korean import price. Orrcon reduced its offer due to the requirement to maintain volume at one of its mills. According to data provided to the Commission, this new price did not cover Orrcon's fully absorbed costs in the 2018-19 year.

9.9.1.2 Example 2

Citing increases in costs, Orrcon attempted to increase its prices. Orrcon claims that the relevant customer quoted import prices from Korea and negotiated down the price increase. Orrcon provided internal company notes in support of its claims.

9.9.1.3 Example 3

This example details ongoing attempts by Orrcon to increase pricing to a customer where its current price is not covering its fully absorbed costs. On several occasions, the customer rejected the requested price increases based on import comparisons, and provided a list of import prices to demonstrate Orrcon's prices were higher. The Commission assessed the relevant correspondence and agreed that the customer used import prices to drive down Orrcon's prices.

9.9.1.4 Example 4

The negotiation relates to import prices from the subject countries. The customer expressly uses these prices, and it is clear from internal documents that Orrcon has also referenced import prices in calculating its competing offer. Orrcon has calculated its forgone revenue due to price depression.

9.9.2 Price undercutting

The Commission analysed and compared the selling price of verified importers with the price of Orrcon's precision pipe and tube at the same level of trade.

The Commission has considered DITH's submission that the Commission neglected to include import prices from Taiwan and Vietnam in its price undercutting analysis. The Commission has included Taiwanese and Vietnamese import prices, based on importer data verified during the investigation, in the figure below.

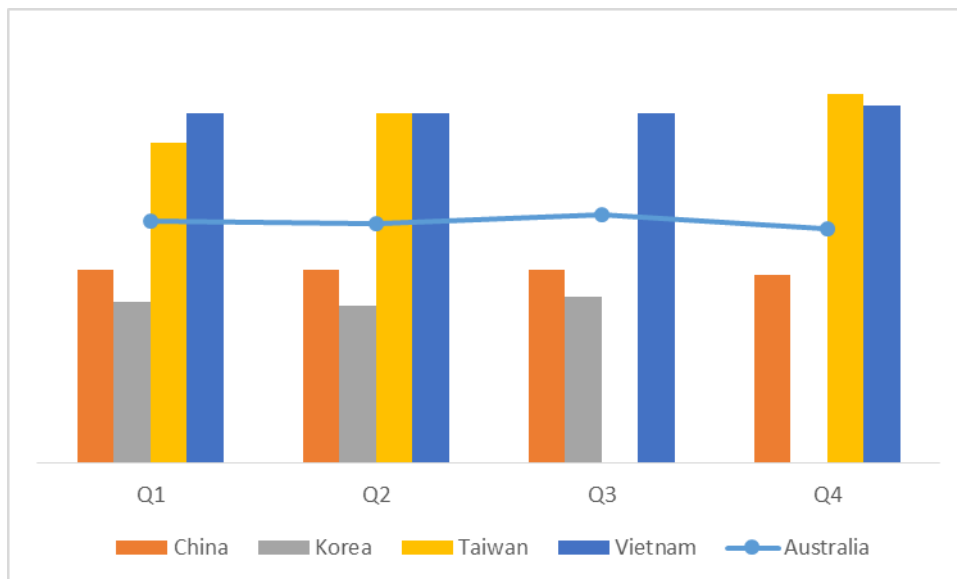


Figure 20 – Price undercutting analysis based on comparison of verified importer selling prices

Consistent with the findings in SEF 550, the data confirms that imports sourced from both China and Korea undercut the Australian industry during the investigation period. Korean prices in particular significantly undercut Australian industry prices in the 3 quarters for which the Commission had verified data for a comparison. Prices for undumped goods imported from Taiwan and Vietnam are higher than Australian industry prices.

Price undercutting analysis is at **Confidential Attachment 22**.

9.10 Profit effects

Orrcon experienced a downward trend in its profitability position as demonstrated in Figure 10 above. Orrcon moved from a net profit position to a net loss position in 2018, which continued through the investigation period.

Profit is a function of sales revenue and costs. As stated in chapter 8.4 above, Orrcon experienced increases in its costs, in particular its HRC raw material costs. As seen in Figure 9, Orrcon was unable to increase selling prices in order to account for increasing costs, resulting in a narrowing of its profit margin to a net loss position as shown in Figure 10. Examples provided by Orrcon provide the reasons for Orrcon's inability to raise prices. These examples provide evidence of the impact of import prices on negotiations. In one instance, Orrcon attempted to raise prices due to cost increases, and customers negotiated this price increase down, citing import prices. In 3 of the examples provided, Orrcon lost volumes, as it was unable to compete with import prices.

In its submission dated 30 April 2020,¹¹⁹ RCR argued that if Orrcon has adopted an aggressive strategy in terms of competition in the market, any downturn in profit or profitability is likely to be the result of that commercial decision and is not the result of allegedly dumped (or subsidised) goods. In its application¹²⁰ and in the examples

¹¹⁹ EPR 550, document number 11.

¹²⁰ EPR 550, Item 1.

provided, Orrcon claims that it has needed to offer unprofitable and unsustainable prices in order to maintain volumes to manage its fixed costs at its 2 plants. The minor reduction in volumes between 2018 and 2019 supports this claim, while at the same time experiencing sustained price and profit related injury.

The Commission finds that the reduction in prices by Orrcon was a necessity in order to manage its fixed costs through maintaining volumes, and was a result of reduced pricing and profitability, because of competition with low import prices.

9.11 Other economic factors

In chapter 8.6.7, the Commission concluded that the Australian industry experienced injury in the form of reduced revenue, employment numbers, ROI and inventory turnover.

The Commission has found that price pressure from dumped and subsidised imports resulted in price suppression and price depression, and some reduction in volumes. These factors together have resulted in reduced revenue.

In addition to reduced employment numbers, in its application, and in documents provided to the Commission, the Australian industry notes job insecurity among staff due to reduced volumes and the inability to cover costs of production. The Commission is unable to make a finding concerning job insecurity among staff based on the evidence provided.

As seen in Figure 9, in chapter 8.4.1, Australian industry has experienced a narrowing of its margin and in recent years unit CTMS is higher than the unit-selling price. At the same time, the Australian industry has experienced a minor reduction in volumes, which Australian industry has maintained in order to cover fixed costs. The evidence for this is the Australian industry offering prices below total costs in order to win orders. These 2 factors together have resulted in reduced ROI.

9.12 Factors other than dumping and subsidisation causing injury

Section 269TAE(2A) states that the Minister must consider whether any injury to an industry is being caused or threatened by a factor other than the exportation of the goods. If so, the Minister must not attribute any such injury solely to the exportation of the goods.

Section 269TAE(2A) outlines several considerations for the decision maker when making a determination of injury. The Commission has considered these factors, and has examined other potential causes of injury to the Australian industry, other than dumped and subsidised goods exported from China and Korea. The Commission notes DITH's submission that the Commission had not properly distinguished the injurious effects of imports from Korea from other causal factors. The Commission considers the following analysis addresses these comments.

9.12.1 Imports from other countries

Concerning imports from countries not named in this investigation, Orrcon advised that of these, Thailand and India were the main countries exporting precision pipe and tube. However, Orrcon does not believe these countries have engaged in dumping or material injury to the Australian industry. The Commission examined imports volumes from non-subject countries.

PUBLIC RECORD

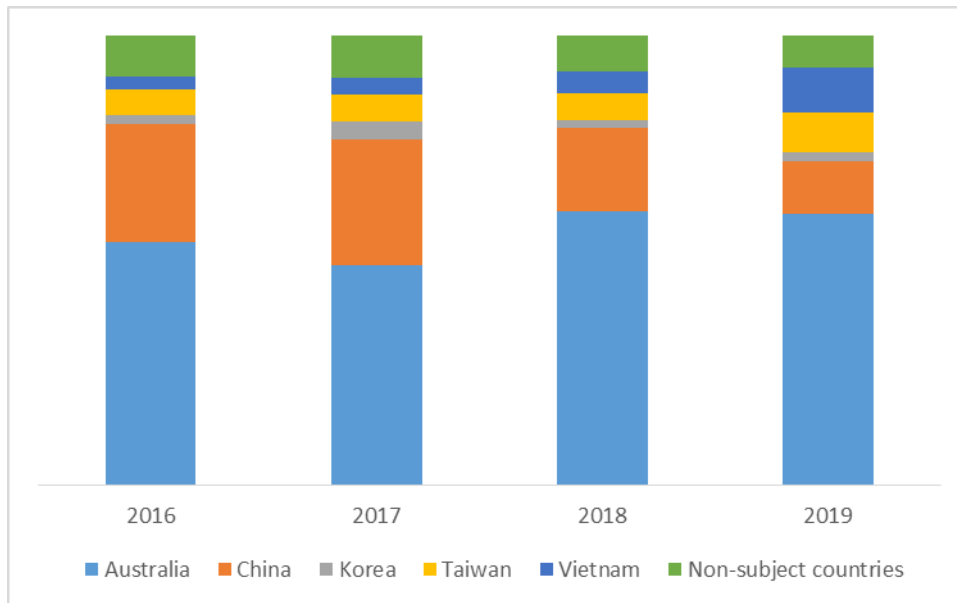


Figure 21 – Australian market share

The figure above indicates imports from non-subject countries make up a small, but material share of the Australian market. The share is less than China, Taiwan and Vietnam, but greater than Korea. Of imports from non-subject countries, 80% comes from 3 countries. The Commission does not have verified data for any of the non-subject countries. Nonetheless, using data from the ABF importer database, it has attempted to determine whether imports from these 3 countries may have caused injury to the Australian industry.

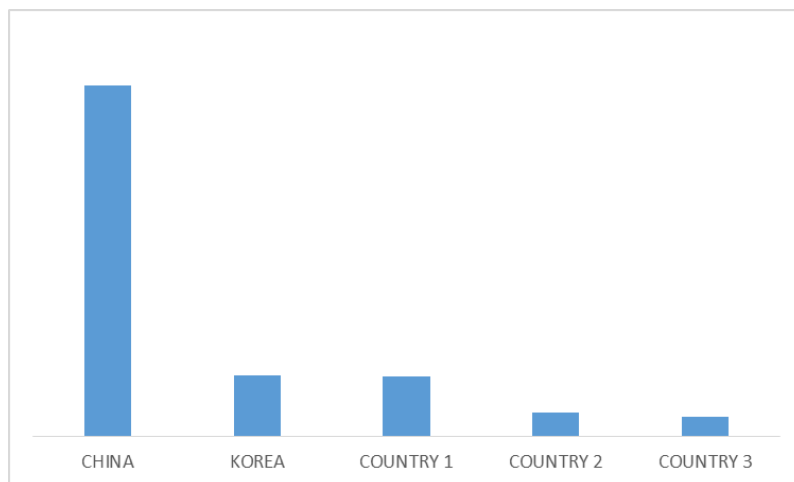


Figure 22 – Import volumes, China, Korea and largest non-subject exporting countries – 2019

Import volumes from Korea and Country 1 are very similar. Volumes from Countries 2 and 3 make up a much smaller volume, each approximately 3% of total imports of the goods during the investigation period.

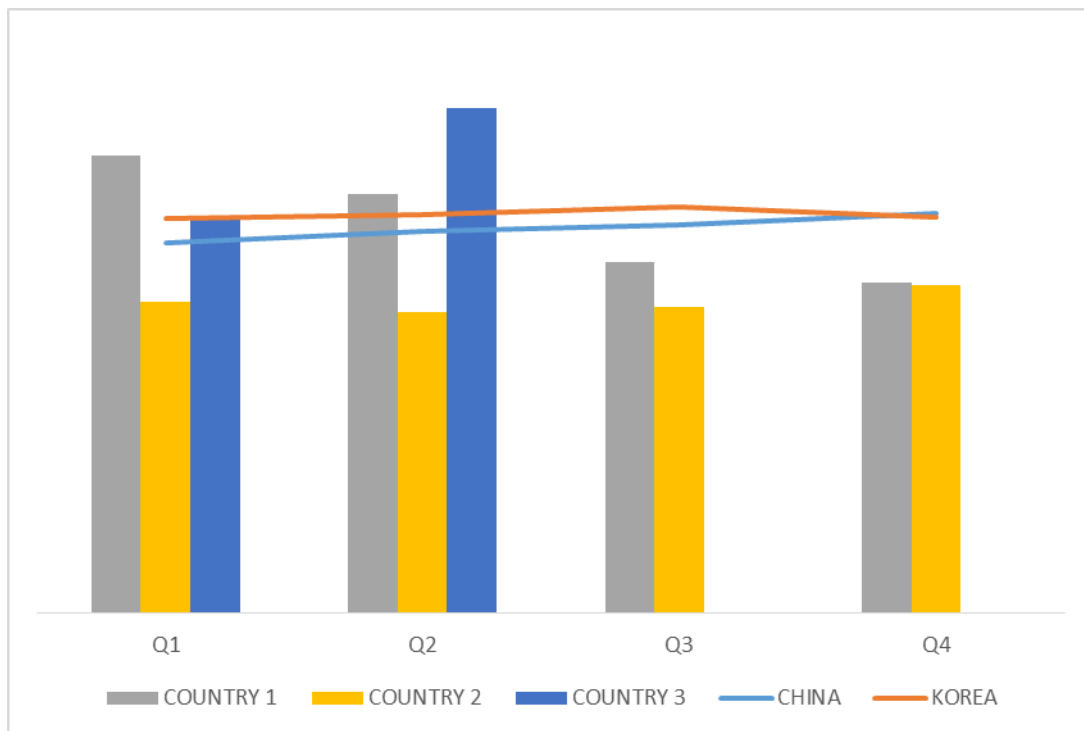


Figure 23 – FOB export prices, China, Korea and largest non-subject exporting countries – 2019

The Commission has used FOB price data from the ABF database to compare prices between China and Korea with those of the 3 largest non-subject countries. The figure above shows prices from Country 1, on average across the investigation period, at similar levels to China and Korea. Prices for Country 3 are higher, and prices for Country 2 are lower at all times across the investigation period.

The Commission considers that the presence of lower priced goods from non-subject countries, in particular Country 2, sold into the Australian market may have contributed to some price injury to Australian industry.

9.12.2 Other factors

RCR submitted¹²¹ that it is appropriate for the Commission to consider increased energy costs and raw material costs, and how these apply to Australian industry's claims of material injury.

During the verification, Orrcon claimed that there was an increase in the volume of finished goods imported into Australia, which affected the demand from the manufacturing customer segment. Orrcon has identified this segment as the second largest market for precision pipe and tube. As seen in Figure 8, in chapter 8.3.1 above, the precision pipe and tube market has seen a decline in overall volumes, which may be partially explained by the increase in finished goods imports. However, as the Commission did not examine finished goods in this investigation, the Commission is unable to ascertain the proportion of the decline that is attributable to finished goods imports.

¹²¹ EPR 550, Item 11

Orrcon further advised that the cessation of automotive manufacturing in Australia has affected demand for Australian precision pipe and tube. The Commission notes that Toyota and Holden ceased manufacture in Australia in 2017, which may have contributed to the decline in the overall size of the market as seen in Figure 7 in chapter 8.3.1.

In addition, Orrcon cited high energy costs and the increase in online shopping that resulted in fewer orders for shop fit-out.

Orrcon also advised of higher raw material costs, as discussed in chapter 9.9 above.

Despite these factors, Orrcon claims that it could not pass on higher manufacturing costs to customers due to price pressure from dumped and subsidised imports.

9.12.3 Commission's assessment

The Commission considers that lower priced imports from some non-subject countries may have also contributed to the injury suffered by Australian industry. However, the Commission observes that the *Ministerial Direction on Material Injury*¹²² states that injury from dumping and subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree.

9.13 Materiality of injury

ADN No. 2012/24 provides the Commission will judge the materiality of injury caused by a given degree of dumping or subsidisation differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the Commission must consider whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.

The Commission's analysis of the economic condition of the Australian industry found that the Australian industry suffered:

- reduced sales volumes in the investigation period
- reduced per unit selling prices since 2017
- increased per unit CTMS, overtaking unit selling prices in 2018
- declining profits and profitability since 2016, with a transition to a net loss position since 2018
- undercutting of prices during the investigation period of precision pipe and tube imported from China and Korea.

In addition, the Australian industry provided the Commission with examples showing it reduced its own prices in order to compete with import prices, or customers using import prices to negotiate prices. In some of these negotiations, Australian industry lost volumes, as it was unable to compete.

¹²² ADN No. 2012/24 dated 27 April 2012.

The Commission calculated dumping margins for China ranging from 2.9% to 19.7% and for Korea of 6.2% in the investigation period. In addition, the Commission calculated a subsidy margin for Chinese exporters (other than Dalian Steelforce and Yantai Aoxin) of 42.7%. Both China and Korea maintained volumes during the period from 2016 to 2019, being the first and third largest exporters of the goods to Australia.¹²³

The Commission found that imports from both China and Korea undercut the Australian industry's price during the investigation period. Orrcon provided examples where customers requested Orrcon to reduce its prices in response to low import prices, which were dumped and subsidised prices in the case of Chinese and Korean prices.

The Commission observed that sales volumes during the investigation period for non-subject countries increased and that a small proportion of these sales were at prices that undercut Australian industry.

Based on this analysis, the Commissioner is satisfied that dumped prices from China and Korea, and subsidised prices from China, placed downward pressure on Australian industry prices resulting in material injury. Lower priced imports from some non-subject countries may have also contributed to the injury suffered by Australian industry but as these imports are in smaller volumes, not to such an extent that the injury caused by imports from China and Korea are not material.

9.14 Conclusion

The Commissioner is satisfied that dumped imports from China and Korea, and subsidised imports from China, have caused injury to the Australian industry in the following forms:

- reduced sales volume
- price depression
- price suppression
- reduced profit
- reduced profitability
- reduced revenue
- reduced employment numbers
- reduced ROI
- reduced inventory turnover.

¹²³ Taiwan was the second largest exporter of the goods to Australia in the period.

10 WHETHER DUMPING AND/OR SUBSIDISATION MAY CONTINUE

10.1 Findings

The Commissioner is satisfied that, among other things:

- dumping and subsidisation may continue in relation to the export of the goods by exporters from China, and
- dumping may continue in relation to the export of goods by exporters from Korea.

10.2 Introduction

To publish a notice under sections 269TG(2) and/or 269TJ(2) the Minister must be satisfied that, among other things, dumping and subsidisation may continue.

When assessing whether dumping and subsidisation may continue, the Commissioner considers the term ‘may’ to mean ‘possible’.

10.3 Whether dumping and subsidisation may continue

When assessing whether dumping or subsidisation may continue, the Commissioner considers prior evidence of dumping or subsidisation to be a relevant consideration.

The Commission’s analysis found the following dumping margins during the investigation period:

- Dalian Steelforce: 2.9%
- Yantai Aoxin: 19.7%
- Uncooperative exporters from China: 19.7%
- Uncooperative exporters from Korea: 6.2%

The Commission examined import volumes from the ABF import database during and following the end of the investigation period. The Commission observes that imports from China and Korea have continued.

The Commission found that China and Korea are the first and fourth largest exporters of the goods to Australia and therefore maintain an established share of the market. Both Chinese and Korean prices undercut Australian industry during the investigation period.

The Commission’s assessment of the market found that price heavily influences sources of supply and purchase decisions of purchasers of the goods. The Commission received clear examples of customers requesting price reductions based on lower priced imports.

The Commissions’ countervailing subsidy analysis found a subsidy margin of 42.7% for non-cooperative entities. The Commission has considered, where possible, the nature and the qualifying criteria of the various subsidy programs investigated. In the absence of information to the contrary, the Commission has assumed that these entities will continue to receive countervailable subsidies identified in chapter 7.1.1.

PUBLIC RECORD

Based on the magnitude of the dumping and subsidy margins found, the importance of price in this market, price undercutting, and the established links and volumes maintained by Chinese and Korean exporters, the Commissioner considers that dumping and subsidisation may continue.

10.4 Commissioner's assessment

Based on the available evidence, the Commissioner is satisfied that exports of the goods may continue in the future at dumped prices from Korea and at dumped and subsidised prices from China.

11 NON-INJURIOUS PRICE AND LESSER DUTY RULE

11.1 Findings

The Commission calculated the NIP for exporters of the goods from China and Korea. The NIP is relevant to the Minister's consideration of the lesser duty rule.

Chinese exporters

In respect of Dalian Steelforce and Yantai Aoxin, the Commissioner is satisfied that there is a situation in the Chinese domestic market that renders domestic selling prices unsuitable for determining normal value under section 269TAC(1). This provides an exception to the Minister's mandatory consideration of the lesser duty rule.

The Commissioner recommends that the Minister apply this exception and not have regard to the lesser duty rule for the purpose of section 8(5B) of the Dumping Duty Act, in respect of Dalian Steelforce and Yantai Aoxin. Accordingly, a lesser amount of duty is not necessary.

For uncooperative and non-cooperative exporters from China, the same statutory exception does not apply. The Commissioner recommends that the Minister have regard to the lesser duty rule for the purposes of sections 8(5BA) and 10(3D) of the Dumping Duty Act. However, in this instance the NIP is not less than the sum of the export price, the amount of ICD and IDD. Accordingly, a lesser amount of duty is not necessary.

Korean exporters

In respect of all exporters from Korea, the Commissioner recommends that the Minister have regard to the lesser duty rule for the purposes of sections 8(5B) of the Dumping Duty Act. However, because the NIP is not less than the normal value, a lesser amount of duty is not necessary.

11.2 Introduction

Section 269TACA defines the NIP as 'the minimum price necessary to prevent the injury, or a recurrence of the injury' caused by the dumped or subsidised goods, the subject of a dumping duty notice or a countervailing duty notice. The Commission will generally derive the NIP from the Australian industry's unsuppressed selling price (USP).

11.3 Legislative framework

Where the Minister is required to determine the IDD, section 8(5B) of the Dumping Duty Act applies. Where the Minister is required to determine both ICD and IDD, sections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

Sections 8(5B), 8(5BA) and 10(3D) require the Minister to have regard to the 'lesser duty rule' when determining the ICD and IDD payable. In relation to a dumping duty notice, the lesser duty rule requires consideration of whether the NIP is less than the normal value of the goods. In respect of concurrent dumping and countervailing notices, the lesser duty rule requires the Minister to consider the desirability of fixing a lesser amount of duty,

such that the sum of the export price of the goods ascertained for the purposes of the notices, the ICD and IDD, do not exceed the NIP.

However, pursuant to sections 8(5BAA), 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:¹²⁴

- the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii)
- there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises¹²⁵
- if an exporter of the goods has received a countervailing subsidy in respect of the goods – the exporter's country has not complied with Article 25 of the WTO *Agreement on Subsidies and Countervailing* for the compliance period.

Where an exception applies, the Minister is not required to consider imposing a lesser amount of duty, but may still wish to exercise a discretion to do so.

11.4 Lesser duty rule

11.4.1 China

As discussed in chapters 6.3 and 6.4, the Commission has found that there is a situation in the Chinese domestic market that renders the domestic selling prices of Dalian Steelforce and Yantai Aoxin unsuitable for determining normal value under section 269TAC(1).

The Commission considers that sections 8(5BAAA)(a) of the Dumping Duty Act apply in respect of Dalian Steelforce and Yantai Aoxin. As a result, the Minister is not required to consider the lesser duty rule for the purpose of sections 8(5B) of the Dumping Duty Act in respect of these exporters, although the Minister may still do so.

The Commissioner recommends the Minister apply the full dumping margins (noting that the Commission found negligible subsidy margins for these exporters) to any IDD taken in relation to the goods exported to Australia from China by Dalian Steelforce and Yantai Aoxin.

The Commission does not consider that any of the exceptions in the Dumping Duty Act apply in respect of exports of the goods by uncooperative and non-cooperative Chinese exporters because:

- the Commission has determined the normal value for uncooperative Chinese exporters pursuant to section 269TAC(6) (see chapter 6.7.3)

¹²⁴ Sections 8(5BAAA)(a) to (c) of the Dumping Duty Act concern the calculation of dumping duty and sections 10(3DA)(a) to (c) of the Dumping Duty Act concern the calculation of countervailing duty.

¹²⁵ As defined in the *Customs (Definition of 'small-medium enterprise') Determination 2013*.

- China has complied with Article 25 of the SCM Agreement¹²⁶
- the Australian industry does not consist of at least 2 small-medium enterprises (Orrcon is the sole industry member).

The Commission therefore has considered whether to recommend that the Minister have regard to the desirability of applying a lesser rate of duty to uncooperative and non-cooperative Chinese exporters.

11.4.2 Korea

The Commission does not consider that any of the exceptions in the Dumping Duty Act apply in respect of exports of the goods from Korea. The Commission therefore has considered whether to recommend that the Minister have regard to the desirability of applying a lesser rate of duty to Korean exports.

11.5 Non-injurious price

Legislation does not prescribe the method of calculating a NIP. However, there are several methods outlined in the Manual. The Manual outlines that the Commission generally derives a NIP by first calculating an USP.

The Manual provides that the Commission will normally use the following approaches, in order of preference, for establishing a USP, subject to the facts of the case:¹²⁷

- the price or market approach of the Australian industry's selling prices in a period unaffected by dumping
- the constructed approach, using the Australian industry's CTMS plus a reasonable amount for profit, or
- selling prices of undumped imports in the Australian market.

Having calculated the USP, the Commission then calculates the NIP by deducting the costs incurred in transitioning the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

Orrcon submitted¹²⁸ that, with regard to the NIP, injury from dumping commenced in 2017. While market selling prices for the goods may have been unaffected by dumping at that time, the selling prices for the goods in 2016 reflects lower raw material costs and do not reflect the input costs incurred by Australian industry in 2019. Therefore, selling prices from that period are unsuitable for determination of a USP. Orrcon submitted that the USP ought to be based on Australian industry CTMS, plus an amount of profit, consistent with previous investigations into HSS.

¹²⁶ China's notification under Article 25 of the SCM Agreement is available online at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N343CHN.pdf&Open=True>

¹²⁷ The Manual, pp. 137-140

¹²⁸ EPR 550, Item 14.

The Commission does not consider that a change in the raw material costs for the goods requires deviation from the usual method for calculating the NIP by establishing a USP by reference to industry selling prices at a time unaffected by dumping, which in this case is selling prices in 2016. However, noting Orrcon's submission regarding changing raw material costs, the Commission has examined Orrcon's raw material costs between 2016 and the investigation period and has observed a significant change.

The Manual states that where the USP is older than 5 years, the Commission will consider updating old prices by indexing or other means where possible. In the present circumstances, the proposed period of industry selling prices is 3 years before the investigation period.

The Manual does not preclude the Commission from adjusting selling prices less than 5 years old. In the current circumstances, due to the significant change in the underlying raw material costs which feed into industry selling prices, which as discussed in chapter 6.3.2 are dictated by steel coil costs, the Commission considers that to not make an adjustment would result in fixing a USP that is not representative of undumped prices for the investigation period.

Accordingly, to account for this change, in its calculation of the USP as the first step in calculating the NIP, the Commission has used Orrcon's selling prices for like goods in 2016 and adjusted them to account for an increase in the underlying raw material costs from 2016 to the investigation period.

Having calculated the USP, the Commissioner has calculated a NIP by deducting the costs incurred in getting the goods from the export FOB point to the relevant level of trade in Australia. The deductions include overseas freight, insurance, into-store costs and amounts for importer expenses and profit. As there are different costs associated with importing the goods from China and Korea, the Commission has calculated separate NIPs for each country.

11.6 Commission's assessment of the lesser duty rule

11.6.1 Dalian Steelforce and Yantai Aoxin

The Commission has found that there is a situation in the Chinese domestic market that renders domestic selling prices unsuitable for determining normal value under section 269TAC(1). Accordingly, the Commission considers that the Minister is not required to consider the lesser duty rule for Dalian Steelforce and Yantai Aoxin.

The Commissioner recommends that the Minister not have regard to the lesser duty rule in respect of Dalian Steelforce and Yantai Aoxin. Therefore, a lesser amount of duty is not necessary.

11.6.2 Uncooperative and non-cooperative Chinese exporters

The Commission has assessed that the calculated NIP for uncooperative and non-cooperative Chinese exporters is greater than the sum of the following:

- the export price ascertained for the goods
- the IDD payable on the goods

PUBLIC RECORD

- the ICD payable on the goods.

Therefore, a lesser amount of duty is not necessary.

11.6.3 Uncooperative Korean exporters

The Commission has assessed that the calculated NIP is not less than the normal values ascertained for exporters from Korea. As such, a lesser amount of duty is not necessary.

The Commission's NIP calculations are at **Confidential Attachment 23**.

12 RECOMMENDED MEASURES

12.1 Finding

The Commissioner recommends the Minister impose anti-dumping measures, using the *ad valorem* duty method, as follows:

- a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from China and Korea
- a countervailing duty notice in respect of countervailing duty that may become payable by importers of the goods from China, except for imports of the goods from Dalian Steelforce and Yantai Aoxin.

12.2 Forms of dumping duty available

The *Customs Tariff (Anti-Dumping) Regulation 2013* prescribes the forms of duty available to the Minister when imposing anti-dumping measures. They include:

- fixed duty method (\$X per tonne)
- floor price duty method
- combination duty method, or
- *ad valorem* duty method (i.e. a percentage of the export price).¹²⁹

The various forms of duty all have the purpose of removing the injurious effects of dumping and/or subsidisation. However, in achieving this purpose, certain forms of duty will better suit particular circumstances. When considering which form of duty to recommend to the Minister, the Commissioner will have regard to the published *Guidelines on the Application of Forms of Dumping Duty November 2013* (the Guidelines) and relevant factors in the market for the goods.¹³⁰

12.2.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Minister exercises their powers to ascertain an amount for the export price and the normal value.

12.2.2 Floor price duty method

The floor price duty method sets a ‘floor’ – for example, a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

¹²⁹ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

¹³⁰ Available on the Commission website.

12.2.3 *Ad valorem* duty method

The *ad valorem* duty method applies a proportion of the actual export price of the goods. An *ad valorem* duty is determined for the product as a whole. This means that a single ascertained export price is required when determining the dumping and/or subsidy margin. The *ad valorem* duty method is the simplest and easiest form of duty to administer when delivering the intended protective effect.

12.2.4 Combination duty method

The combination duty method comprises 2 elements: the 'fixed' element and the 'variable' duty element. The fixed element is determined when the Minister exercises powers to 'ascertain' an amount (i.e. set a value) for the export price and the normal value. Either this may take the form of a fixed duty or an *ad valorem* applied to the ascertained export price.

If the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount, i.e. the difference between the ascertained export price and the actual export price. It is a 'variable' element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

12.3 Submissions to the SEF

Orrcon submitted that the *ad valorem* based measure recommended in SEF 550 would not adequately address the injury that the measures are intended to prevent if export prices fall. Orrcon recommended changing the form of measure to the combination method.

12.4 Commission's consideration

The Commission has considered Orrcon's submission regarding the most suitable measure to remove the injurious effects of dumped and subsidised goods.

SEF 550 set out the Commission's examination of the most appropriate anti-dumping measure, which included a detailed comparison of the *ad valorem* duty method and the combination duty method advocated by Orrcon.

The Guidelines list the following considerations in respect of the *ad valorem* duty method:

- it has an advantage where there are many models or types as it does not require an ascertained export price or ascertained floor which may not be meaningful where models show significant price variation
- it has an advantage for goods which are subject to significant price variations over time because it does not show the same variability in the 'effective rate' of the duty
- it may not be the most appropriate duty method when applied to goods which may have high priced varieties or models of the goods, particularly where a particular variety of goods was not causing injury to the Australian industry
- it has a potential disadvantage in that exporters might lower export prices to avoid the effects of this duty.

PUBLIC RECORD

The Guidelines list the following considerations in respect of the combination duty method:

- it may not suit those situations where there are many models or types of the good with significantly different prices
- it is suited to circumstances where there are complex company structures with related parties and where circumvention of measures is likely
- it can be applied more precisely to certain goods in some cases
- the ‘effective’ rate of this duty, when imposed as a fixed amount per unit, diminishes in a rising market making it ineffective. The ‘effective’ rate increases in a declining market making it punitive, which can have adverse effects on downstream industries
- the ascertained export price used in this measure can become out-of-date.

In the present investigation, the Commission has observed a number of different model types across exporters with significant variance in price – see Figure 4 in chapter 6.4.5 for an example of variance in Chinese pricing.

The Commission is aware that there is variance of pricing within the market over time, as discussed in chapter 11.5 where the Commission adjusted Orrcon’s selling prices from 2016 upwards in the calculation of a USP to account for an increase in the underlying raw material costs.

The market for the goods in Australia has been decreasing year-on-year since 2017, as discussed in chapter 8.3.

The Commission notes that Dalian Steelforce has a comparatively complex company structure, with its export sales to Australia sold to its related intermediary, Steelforce Trading, and related party importer in Australia, Steelforce Australia.

The Commission has considered the advantages and disadvantages of these 2 duty methods in the table below.

Does it suit the characteristics of the goods	Many model types with different prices	Complex company structures	Variability of ‘effective’ rate of duty	Relevance of ascertained export price
<i>Ad valorem</i>	Yes – there are many different models of the goods with varying prices	No	Yes – price fluctuations have been observed for the goods along with significant variance in raw material costs over time	No ascertained export price is required. However, exporters may lower their prices to avoid the effect of this duty.
Combination	No	Yes – a significant volume of goods exported from China are by Dalian Steelforce, which has a complex corporate structure	No	The ascertained export price may become out of date, which is likely where the underlying raw material costs vary.

Table 18 – Consideration of duty method

Orrcon submits that the *ad valorem* duty method is not appropriate where prices fall. However, the Guidelines indicate that the *ad valorem* duty method is more appropriate than the combination duty method where there are price fluctuations, as in the current investigation and that the combination may be punitive in a declining market.

12.5 Recommendations

In light of all the information before the Commission, including submissions received in respect of the SEF, the Commissioner recommends that duties be calculated, in respect of any ICD and IDD that may become payable, using the *ad valorem* duty method.

The table below shows a summary of the recommended and effective rates of interim dumping duty.

Exporter	Recommended duty method	Combined rate of ICD and IDD (%)	Rate of ICD (%)	Rate of IDD (%)
Dalian Steelforce (China)	<i>Ad valorem</i>	2.9	N/A ¹³¹	2.9
Yantai Aoxin (China)	<i>Ad valorem</i>	19.7	N/A ¹³²	19.7
All other Exporters (China)	<i>Ad valorem</i>	62.4	42.7	19.7
All Exporters (Korea)	<i>Ad valorem</i>	6.2	N/A	6.2

Table 19 – Summary of recommended effective interim dumping and countervailing duty

¹³¹ As the Commission found Dalian Steelforce's subsidy margin to be negligible, the Commissioner has terminated the subsidy investigation in respect of Dalian Steelforce. See chapter 7.

¹³² As the Commission found Yantai Aoxin did not receive any subsidies, the Commissioner has terminated the subsidy investigation in respect of Yantai Aoxin. See chapter 7.

13 RECOMMENDATIONS

13.1 Findings

The Commissioner has found that the goods exported by:

- Chinese exporters, were at dumped prices
- Dalian Steelforce and Yantai Aoxin, were not at subsidised prices
- Uncooperative Chinese exporters, were at subsidised prices
- Korean exporters, were at dumped prices.

The Commissioner has also found that dumped and subsidised exports from China and dumped exports from Korea have caused material injury to the Australian industry for like goods.

The Commissioner did not find that Taiwanese or Vietnamese exporters exported dumped goods to Australia during the investigation period. In respect of Vietnam, exports of the goods by cooperative and residual exporters were not subsidised and for non-cooperative entities, exports of the goods were subsidised, albeit at negligible levels.

13.2 Recommendations

The Commissioner recommends that the Minister publish a dumping duty notice in respect of all exports of precision pipe and tube steel exported to Australia from China and Korea.

The Commissioner recommends that the Minister publish a countervailing duty notice in respect of all exports of precision pipe and tube steel exported to Australia from China, except for exports of the goods to Australia by Dalian Steelforce and Yantai Aoxin.

The Commissioner recommends that, in accordance with the following provisions, the Minister **be satisfied that**:

- Section 269TAB(3) - Sufficient information has not been furnished to enable the export price of the goods exported to Australia from China and Korea, except for exports of the goods by Dalian Steelforce and Yantai Aoxin, to be ascertained under section 269TAB(1)
- Section 269TAC(6) - Sufficient information has not been furnished to enable the normal value of goods exported to Australia from China and Korea to be ascertained under the preceding sections of section), except for exports of the goods by Dalian Steelforce and Yantai Aoxin
- Section 269TAC(2)(a)(ii) - The normal value of the goods exported to Australia from China cannot be ascertained under section 269TAC(1) because the situation in the market of China is such that sales in that market are not suitable for use in determining a price under section 269TAC(1)

PUBLIC RECORD

- Section 269TACD(1) - Countervailable subsidies have been received in respect of goods exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin
- Section 269TAE(2C) - The cumulative effect of exportations of the goods from China and Korea can be considered because:
 - (a) the margin of dumping established for exporters from each country is not negligible
 - (b) the volume of dumped imports from each country is not negligible
 - (c) the conditions of competition between the Chinese and Korean exports and between those exports and domestically produced like goods are such that it is appropriate to cumulate
- Section 269TG(1) - The amount of the export price of the goods exported to Australia from China and Korea 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
- Section 269TG(2) - The export price of the goods that have already been exported to Australia from China and Korea is less than the amount of the normal value of those goods. And the amount of the export price of the goods that may be exported to Australia from China and Korea by all exporters in the future may be less than the normal value of the goods. As a consequence of that, material injury to the Australian industry producing like goods has been or is being caused
- Section 269TJ(1) - Countervailable subsidies have been received in respect of the goods exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin. As a consequence of that material injury to the Australian industry producing like goods has been or is being caused
- Section 269TJ(2) - Countervailable subsidies have been received in respect of the goods that have already been exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin, and may be received in respect of the goods exported to Australia in the future. As a consequence of that material injury to the Australian industry producing like goods has been or is being caused
- Section 269TJA(1) - In respect of the goods exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin:
 - (a) the amount of the export price of the goods is less than the amount of the normal value of those goods
 - (b) that a countervailable subsidy has been received in respect of the goods
 - (c) because of the combined effect of the difference in paragraph (a) and of the subsidy referred to in paragraph (b), material injury to the Australian industry has been or is being caused

PUBLIC RECORD

- Section 269TJA(2) - In respect of the goods that have already been exported or that may be exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin:
 - (a) 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 export price of like goods that may be exported to Australia in the future may be less than the normal value of those goods
 - (b) that a countervailable subsidy has been received in respect of the goods that have already been exported to Australia, and may be received in respect of like goods that may be exported to Australia in the future
 - (c) the combined effect of the difference in paragraph (a) and of the subsidy referred to paragraph (b) is causing material injury to the Australian industry producing like goods.

The Commissioner recommends that, in accordance with the following provisions, the Minister **determine**:

- Section 269TAB(1)(c) - The export price of the goods exported to Australia from Dalian Steelforce, having regard to all the circumstances of the exportation, as set out in chapter 6.7.1 of this report
- Section 269TAB(1)(a) - The export price of the goods exported to Australia from Yantai Aoxin, using the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in chapter 6.7.2 of this report
- Section 269TAB(3) - The export price of the goods exported to Australia from China and Korea, having regard to all relevant information, as set out in chapters 6.7.3 and 6.8.2 of this report
- Section 269TAC(2)(c) - The normal value of goods exported to Australia by Dalian Steelforce and Yantai Aoxin, as set out in chapter 6.7.1 and 6.7.2 of this report
- Section 269TAC(6) - The normal value of goods exported to Australia from China and Korea, other than goods exported by Dalian Steelforce and Yantai Aoxin, having regard to all relevant information, as set out in chapters 6.7.3 and 6.8.2 of this report
- Section 269TACB(2)(aa) and sections 269TACB(1) and (4) - That the goods exported to Australia from China and Korea, are taken to have been dumped. The dumping margin for those exporters in respect of those goods is the difference between the weighted average export prices of the goods over the whole investigation period and the weighted average corresponding normal values over the whole of that period (as set out in chapters 6.7 and 6.8 of this report)
- Sections 269TAAC(4) and 269TAAC(5) - That the subsidies identified as countervailable in chapter 7.3 of this report are specific

PUBLIC RECORD

- after having regard to all relevant information in accordance with section 269TACC(1) and the guidelines in section 269TACC(3), that the financial contributions provided under the countervailable subsidies identified in chapter 7.3 have conferred a benefit
- Section 269TAACA - Having regard to all the facts available to the Commission and having made reasonable assumptions, that a countervailable subsidy has been received in respect of the goods exported to Australia from China. Except for exports of the goods by Dalian Steelforce and Yantai Aoxin, and that the amount of the countervailable subsidy received is as set out in chapter 7 of this report.
- Section 8(5) of the Dumping Duty Act - That the interim dumping duty payable in respect of the goods exported to Australia from China is an amount, which will be worked out in accordance with the *ad valorem* duty method, pursuant to sections 5(2) and 5(3) of the Customs Tariff (Anti-Dumping) Regulation 2013.

The Commissioner recommends that, in accordance with sections 10(3A) and 10(3B) of the Dumping Duty Act, the Minister **direct**:

- That the interim countervailing duty payable in respect of the goods exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin, be ascertained as a proportion of the export price of those particular goods.

The Commissioner recommends that, in accordance with the following provisions, the Minister **declare** by public notice:

- Section 269TG(1) - That (subject to section 269TN) section 8 of the Dumping Duty Act applies to:
 - (a) the goods exported to Australia from China and Korea
 - (b) the goods that were exported to Australia from China and Korea after the Commission made a PAD under section 269TD, on 1 June 2021
- Section 269TG(2) - That section 8 of the Dumping Duty Act applies to goods that are exported to Australia from China and Korea after the date of publication of the notice
- Section 269TJ(1) - That (subject to section 269TN) section 10 of the Dumping Duty Act applies to:
 - (a) the goods exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin
 - (b) goods that were exported to Australia from China, except for exports of the goods by Dalian Steelforce and Yantai Aoxin, after the Commission made a PAD under section 269TD on 1 June 2021

PUBLIC RECORD

- Section 269TJ(2) - That section 10 of the Dumping Duty Act applies to like goods exported to Australia from China, except for exports of the goods by Dalian Steelforce, after the date of publication of the notice.

APPENDICES AND ATTACHMENTS

Non-confidential Appendix A	Assessment of particular market situation – China
Non-confidential Appendix B	Assessment of alleged subsidy programs
Confidential Attachment 1	Australian Industry Work Program Addendum
Confidential Attachment 2	Orrcon submission dated 21 June 2021 (Confidential version)
Confidential Attachment 3	Australian market analysis
Confidential Attachment 4	CTM breakdown
Confidential Attachment 5	Raw material cost analysis and benchmark calculation
Confidential Attachment 6	Australian industry and imports sales analysis
Confidential Attachment 7	Five Steel REQ
Confidential Attachment 8	Email exchange between the Commission and Five Steel
Confidential Attachment 9	Yantai Aoxin response to request for further information
Confidential Attachment 10	Dalian Steelforce Export Price
Confidential Attachment 11	Dalian Steelforce CTMS (Replacement)
Confidential Attachment 12	Dalian Steelforce Normal Value (Replacement – Revised)
Confidential Attachment 13	Dalian Steelforce Dumping Margin (Replacement – Revised)
Confidential Attachment 14	Yantai Aoxin Export Price
Confidential Attachment 15	Yantai Aoxin CTMS
Confidential Attachment 16	Yantai Aoxin Normal Value
Confidential Attachment 17	Yantai Aoxin Dumping Margin
Confidential Attachment 18	All other exporters Dumping Margin
Confidential Attachment 19	Dalian Steelforce Subsidies
Confidential Attachment 20	All other entities subsidy analysis
Confidential Attachment 21	Australian market injury analysis

PUBLIC RECORD

Confidential Attachment 22	Import price analysis
Confidential Attachment 23	NIP Calculation and LDR
Non-confidential Attachment 1	Assessment of HSS manufacturers
Non-confidential Attachment 2	GOC questionnaire

APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION – CHINA

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

A1 The GOC role in the Chinese steel market

A1.1 Overview

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

A1.2 GOC policies affecting the steel industry

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

A1.3 Initiatives influencing Chinese steel markets

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³⁹ Ibid.

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

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

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

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

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

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

A1.4 Industry planning guidelines and directives

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Steel Industry Adjustment Policy (2015 Revision)
 - upgrading product mix
 - rationalising steel production capacity
 - adjustments to improving organisational structures
 - energy conservation, emission reductions, environmental protection
 - production distribution
 - supervision and administration
 - guiding market exit
 - methods of orientation and oversight of mergers and reorganisations
 - consolidate number of steel companies
 - lift capacity utilisation rates to 80% by 2017.
2. Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy
 - promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion
 - intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.
3. State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation¹⁵³
 - SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach
 - state-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position
 - related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, non-ferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.
4. The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)

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

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

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

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

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

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

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

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

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

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

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

¹⁵⁹ REP 177, p.128 refers.

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

A1.5 Role and operation of SOEs

It has been observed that:

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

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

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

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

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

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

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

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

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

¹⁶⁴ Liu. H & Song. L., 2016, p.349.

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

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

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

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

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

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

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

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

¹⁶⁸ Liu. H & Song. L, 2016, p.348.

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

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

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

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

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

A1.6 The role of the GOC in private firms

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

A1.7 Direct and indirect financial support

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

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

A1.8 Taxation arrangements

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

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

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

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

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

PUBLIC RECORD

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

Table 20 – VAT rate reform in China 2017 to 2019¹⁷⁷

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

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

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

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

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

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

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

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

A2 Competition in Chinese steel markets

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

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

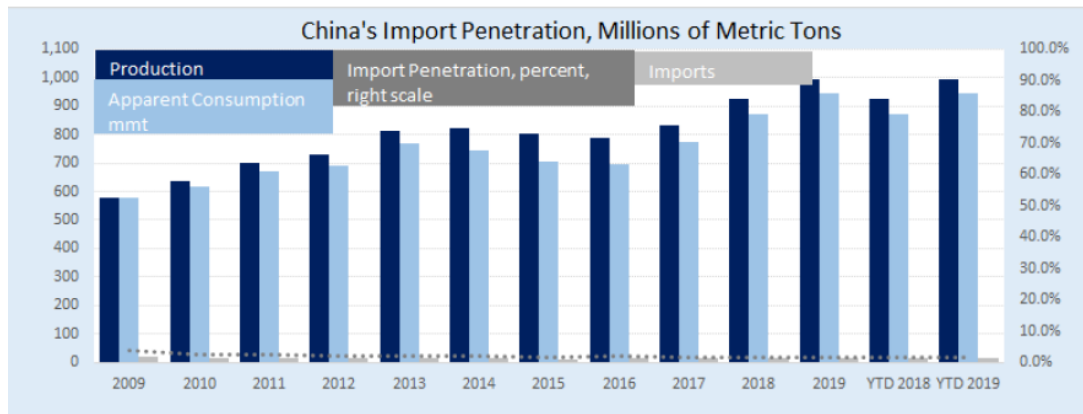


Figure 24 – Steel imports in China¹⁸⁰

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

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

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

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

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

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

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

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

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

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

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

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

A3 GOC influence on the Chinese market for the goods

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

A3.1 Comparison of raw material prices

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

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

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

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

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

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

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

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

PUBLIC RECORD

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

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

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

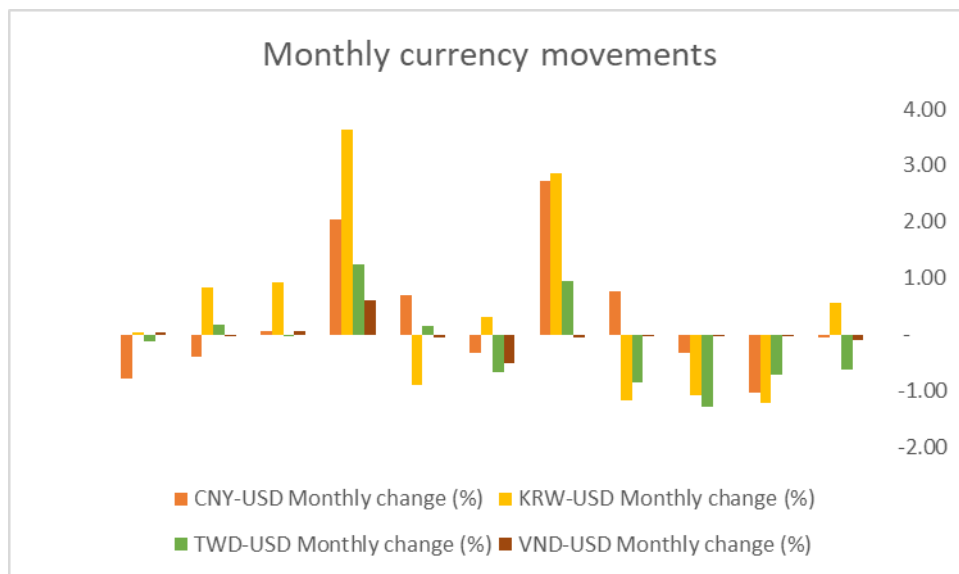


Figure 25 – Monthly currency movements to the USD

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

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

PUBLIC RECORD

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

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

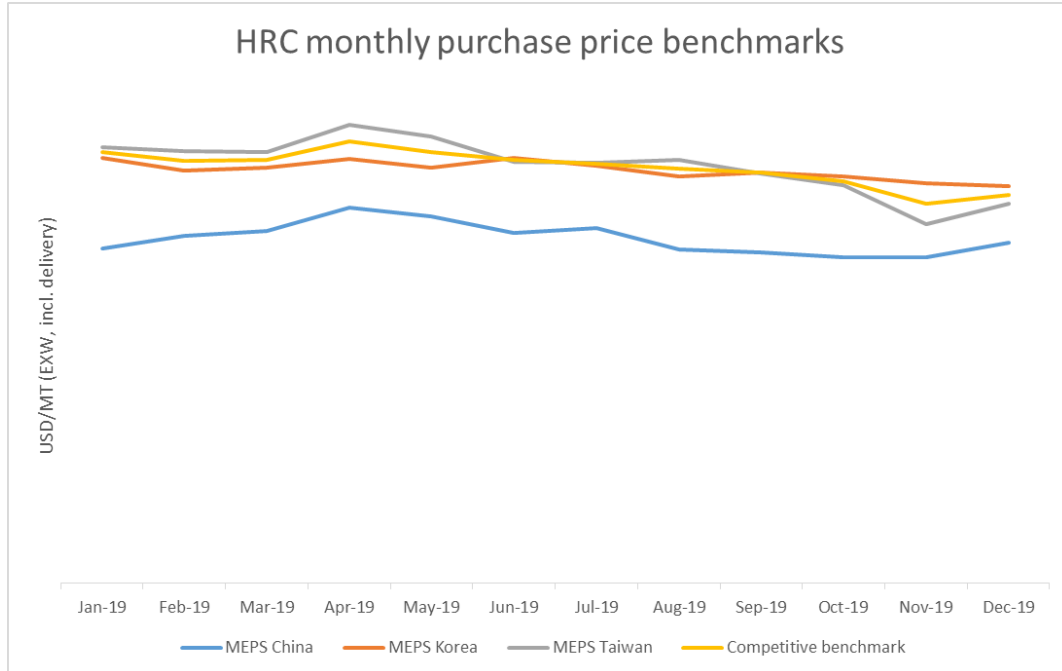


Figure 26 - HRC prices – EXW, plus delivery in USD/MT

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

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

PUBLIC RECORD

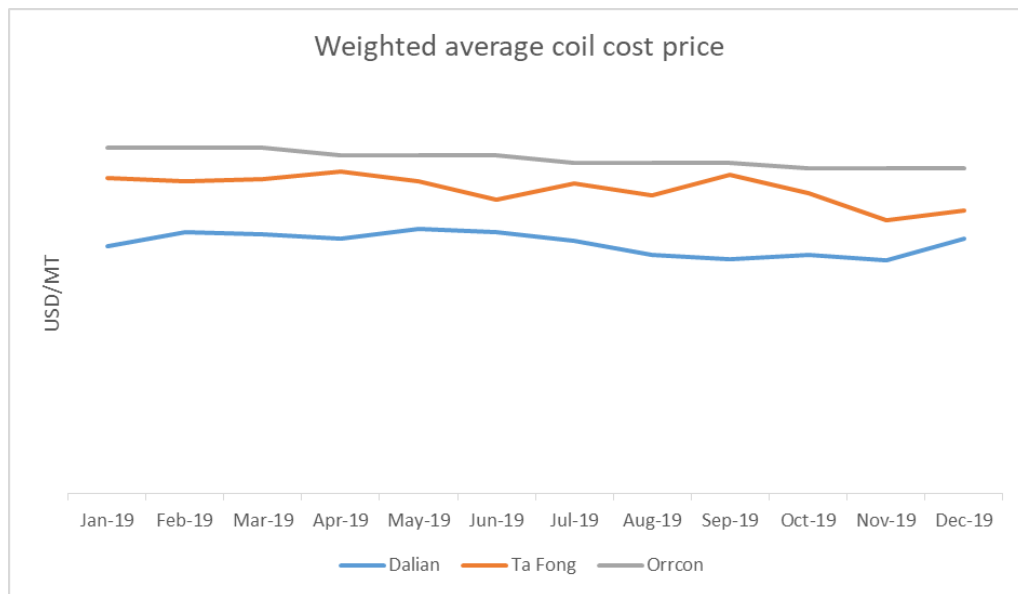


Figure 27 – Weighted average HRC cost price

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

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

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

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

APPENDIX B ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS

B1 Introduction

B1.1 Definition of Government, public and private bodies

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

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

B1.2 Government

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

B1.3 Public bodies

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

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

The Commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)* ¹⁹⁰ In that case the Appellate body referred to the following 3 indicia which may assist in assessing whether an entity was a public body vested with, or exercising, government authority:

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

These principles have also previously been considered in the Federal Court of Australia.¹⁹¹

B1.4 Private bodies

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

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

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

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

¹⁹⁰ DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

¹⁹¹ See; *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73]

B2 Assessment of Programs – China

B2.1 Program 20 – Hot rolled steel provided by government at less than fair market value

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

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

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

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

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

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

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

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

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

To determine the adequacy of remuneration, the Commission has compared Chinese HRC purchase price data by private companies against purchases from SOEs, consistent with the approach outlined in Chapter 17 of the Manual.

PUBLIC RECORD

The Commission found that prices offered to Dalian Steelforce by SOEs were higher than prices offered by private companies. From this, the Commission considers that there is insufficient evidence this program conferred a countervailable benefit.

B2.2 Other Programs

No.	Program name	Evidence that program is still countervailable	Countervailable?
1	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Notified during the investigation period by the GOC to the WTO in WTO document G/SCM/N/220/CHN (Program 8). ¹⁹²	Yes
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 7). ¹⁹³	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 8). Appears to have been notified during the investigation period by the GOC to the WTO in G/SCM/N/220/CHN (Program 36).	Yes
6	Superstar Enterprise Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 3).	Yes
7	Research & Development (R&D) Assistance Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 10).	Yes
8	Patent Award of Guangdong Province	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 34).	Yes
10	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Notified during the investigation period by the GOC to the WTO in G/SCM/N/220/CHN (Program 1).	Yes
11	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Notified during the investigation period by the GOC to the WTO in G/SCM/N/220/CHN (Program 7).	Yes

¹⁹² See WTO document number [G/SCM/N/220/CHN](#) dated 30 October 2015.

¹⁹³ *Anti-Dumping Commission Report No. 316* (REP 316)

PUBLIC RECORD

No.	Program name	Evidence that program is still countervailable	Countervailable?
12	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Notified during the investigation period by the GOC to the WTO in G/SCM/N/220/CHN (Program 9).	Yes
13	Preferential Tax Policies in the Western Regions	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 3). Notified during the investigation period by the GOC to the WTO in G/SCM/N/220/CHN (Program 11).	Yes
14	Tariff and VAT Exemptions on Imported Materials and Equipment	Notified during the investigation period by the GOC to the WTO in G/SCM/N/220/CHN (Program 61).	Yes
15	Innovative Experimental Enterprise Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 11).	Yes
16	Special Support Fund for Non State-Owned Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 12).	Yes
17	Venture Investment Fund of Hi-Tech Industry	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 13).	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 14).	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 15).	Yes
20	Hot rolled steel provided by government at less than fair market value	Not countervailed as outlined in B2.1.	No
21	Water Conservancy Fund Deduction	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 16).	Yes
22	Wuxing District Freight Assistance	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 35).	Yes
23	Huzhou City Public Listing Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 36).	Yes
27	Huzhou City Quality Award	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 37).	Yes
28	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 38).	Yes

REP 550 Precision pipe and tube steel – China, Korea, Taiwan and Vietnam

PUBLIC RECORD

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

PUBLIC RECORD

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

PUBLIC RECORD

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

PUBLIC RECORD

No.	Program name	Evidence that program is still countervailable	Countervailable?
51	Subsidy from Science and Technology Bureau of Jinghai County	<u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Science and Technology Bureau.	Yes
52	Subsidy of Environment Bureau transferred from Shiyou	<u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Environment Protection Bureau.	Yes
550-2	Loan Interest Subsidy	<u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Local Bureau of Foreign Trade and Economic Cooperation in Dalian.	Yes