



CUSTOMS ACT 1901 (CTH) - PART XVB

**ANTI-DUMPING COMMISSION
PRELIMINARY REINVESTIGATION REPORT
FOR THE
ANTI-DUMPING REVIEW PANEL**

**REINVESTIGATION INTO CERTAIN FINDINGS IN
REPORT NO. 550**

**PRECISION PIPE AND STEEL TUBE EXPORTED
TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA**

18 March 2022

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ABBREVIATIONS

Act	<i>Customs Act 1901 (Cth)</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
China	People’s Republic of China
commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
CON 379	<i>Anti-Dumping Commission Continuation Report No. 379</i>
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., Ltd
goods	Precision pipe and steel tube
GOC	Government of China
HRC	Hot rolled coil
HRS	Hot rolled strip
HSS	Hollow structural sections
INV 177	<i>Anti-Dumping Commission Investigation No 177</i>
INV 177	<i>Anti-Dumping Commission Investigation No 550</i>
LTAR	less than adequate remuneration
Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual – December 2021</i>
Minister	Minister for Industry, Science and Technology
Orrcon	Orrcon Manufacturing Pty Ltd
Reinvestigation Request	The request from the ADRP to the Commissioner to reinvestigate a specific finding in REP 550 relating to the application of Program 20 to non-cooperative Chinese entities, as set out in a letter from ADRP to the Commissioner dated 24 December 2021
REP 550	<i>Anti-Dumping Commission Report No 550</i>
REP 379	<i>Anti-Dumping Commission Report No 379</i>
REP 177	<i>Anti-Dumping Commission Report No 177</i>
REV 419	<i>Anti-Dumping Commission Re-investigation Report No 419</i>
REV 529	<i>Anti-Dumping Commission Re-investigation Report No 529</i>
reviewable decision	The Minister’s decision made under sections 269TJ(1) and 269TJ(2) of the Act set out in ADN No 2021/110
SIE	State-invested Enterprise

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report sets out the preliminary findings of the Commissioner of the Anti-Dumping Commission (**the Commissioner**) in respect of a reinvestigation into certain findings made in *Anti-Dumping Commission Report No 550 (REP 550)*.¹ As is set out below in detail, the Commissioner has reinvestigated the issues as requested by the Anti-Dumping Review Panel (**ADRP**), and at this stage of the reinvestigation, considers it preferable to adopt a revised approach in the determination of countervailable benefits conferred by Program 20 to non-cooperative Chinese entities.² Taking into account adjustments necessary to avoid double-counting, application of this revised approach does not result in a change to the variable factors and subsidy margin for these entities.

1.2 The Minister's decision

REP 550 was the Commissioner's final report to the then Minister for Industry, Science and Technology (**the Minister**) in respect of *Investigation No 550 into precision pipe and tube steel (the goods) exported to Australia from the People's Republic of China (China), the Republic of Korea, Taiwan and the Socialist Republic of Vietnam (INV 550)*.

The Minister accepted the Commissioner's recommendations in REP 550,³ including that non-cooperative Chinese exporters received countervailable subsidies in respect of the goods. However, as part of this decision, the Minister accepted the Commissioner's recommendation that an alleged subsidy program, '*Program 20 – Hot rolled steel provided by government at less than fair market value*' did not provide a countervailable benefit to non-cooperative Chinese exporters (**the reviewable decision**).

The Minister made the reviewable decision pursuant to sections 269TJ(1) and 269TJ(2) of the *Customs Act 1901* (Cth) (**Act**).⁴

The Anti-Dumping Commission (**the commission**) published public notice of the reviewable decision on 28 September 2021.

Following the Minister's decision, the ADRP accepted an application for review from Orrcon Manufacturing Pty Ltd (**Orrcon**).

The ADRP initiated a review of the reviewable decision by public notice on 10 November 2021 (ADRP Review No 2021/143).

On 24 December 2021, the ADRP requested that the Commissioner reinvestigate a specific finding in REP 550 '*that there is insufficient evidence that Program 20 conferred a countervailable benefit*' (**the Reinvestigation Request**).⁵

¹ Electronic Public Record (**EPR**) 550, Item 71.

² Non-cooperative exporters include all exporters from China except Dalian Steelforce Hi-Tech Co., Ltd (Dalian Steelforce) and Yantai Aoxin International Trade Co., Ltd, who the Commissioner considered were cooperative exporters in relation to the investigation.

³ Anti-Dumping Notice (**ADN**) No 2021/110. EPR 550, Item 73.

⁴ References to any section in this report relate to provisions of the *Customs Act 1901*, unless specifically stated otherwise.

⁵ Letter from ADRP to the Commissioner - Request for Reinvestigation, EPR 550, Item 77.

1.3 Approach to the reinvestigation

1.3.1 Conduct of the reinvestigation

The Commissioner has conducted the reinvestigation in accordance with section 269ZZL(2).

1.3.2 Reinvestigation report

The ADRP requested the Commissioner to provide a reinvestigation report by 21 February 2022.

The Commissioner subsequently sought an extension of time to provide the ADRP with the reinvestigation report.⁶ The ADRP granted an extension and the reinvestigation report is due by **22 April 2022**.⁷

The commission is assisting the Commissioner to conduct the reinvestigation and to prepare a reinvestigation report, pursuant to the commission's function specified in section 269SMD.

Before finalising a reinvestigation report for the ADRP, the Commissioner is seeking submissions from interested parties on a preliminary reinvestigation report (**this report**).

In preparing this report, the Commissioner and the commission have had regard to:

- the commission's previous cases involving Program 20
- REP 550
- Orrcon's application for review
- the grounds accepted for review and published by the ADRP
- the ADRP's reasons for requesting the reinvestigation
- other information where directly specified in this report.

This report sets out the Commissioner's preliminary findings in response to the Reinvestigation Request. It provides interested parties with an opportunity to comment on the proposed findings and for the Commissioner to consider those submissions prior to the submission of his reinvestigation report to the ADRP.

1.4 Preliminary findings

The Commissioner has given further consideration to the available evidence in relation to Program 20 and the ADRP's comments in the Reinvestigation Request. At this stage of the reinvestigation, the Commissioner preliminarily finds that Program 20 conferred a countervailable benefit to non-cooperative Chinese exporters.

In particular, the Commissioner considers that, in determining the countervailable subsidy for non-cooperative exporters, it is preferable to rely on information from previous cases involving Program 20, rather than information relating solely to the circumstances of one cooperating Chinese exporter of the goods, Dalian Steelforce as was the approach in REP 550.

The Commissioner considers that Dalian Steelforce's purchases of hot rolled coil (**HRC**) used in the production of the goods is possibly an exception and is not representative of

⁶ EPR 550, Item 78.

⁷ EPR 550, Item 79.

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HRC purchases by non-cooperative Chinese exporters in respect of the goods more generally.

Given that the commission has found in other cases involving Program 20 that HRC and other raw materials are available in the Chinese domestic market at a price that is less than adequate remuneration (LTAR), it is reasonable for the Commissioner to assume that non-cooperative Chinese exporters of the goods continue to purchase such subsidised inputs.

On this basis, the Commissioner considers that it is preferable to determine Program 20 as conferring a countervailable benefit to non-cooperative Chinese exporters in respect of the goods. This increases the subsidy margin for non-cooperative Chinese exporters by 3.6%, resulting in a total subsidy margin of 46.3%.

Although the revised approach increases the subsidy margin for non-cooperative Chinese exporters, the Commissioner notes that in the construction of the normal value for all Chinese exporters, discussed at chapter 6.5.4 of REP 550, the commission made adjustments to raw material costs to ensure that those costs reflected 'competitive market costs'. The inclusion of Program 20 through this reinvestigation would result in non-cooperative Chinese exporters being subject to both a dumping duty and a countervailing duty for the same 'distortions' in raw material inputs.

To avoid double-counting these adjustments in both the dumping duty and the countervailing duty notices applicable to the goods, the Commissioner considers that it is preferable not to include an amount of countervailable subsidy under Program 20 in the variable factors for non-cooperative Chinese exporters. As a consequence, the subsidy margin applicable to Program 20 would not count in the total subsidy margin currently applicable to non-cooperative Chinese exporters for the purposes of collecting interim countervailing duties. This results in the variable factors and subsidy margin of 42.7% specified in the determination by the Minister in Confidential Tables to ADN No 2021/110 (which form part of the reviewable decision) remaining the same. This finding means there is no practical change to the existing anti-dumping measures.

1.5 Submissions

The Commissioner is inviting interested parties to make submissions in response to this report.

Interested parties should submit submissions to the Commissioner no later than **3 April 2022**. Submissions received by this date will inform the Commissioner's final reinvestigation report to the ADRP. The Commissioner will not consider any submissions received after this date.

Submissions should be sent by email to investigations3@adcommission.gov.au. Alternatively, submissions may also be addressed to:

The Director, Investigations Unit 3
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2600

Interested parties claiming that information contained in their submissions is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

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- provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- satisfy the Commissioner that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked “OFFICIAL: SENSITIVE”. Interested parties must lodge a non-confidential version of their submission, clearly marked “PUBLIC RECORD”.

2 FINDINGS IN REP 550

2.1 Investigation of Program 20 in REP 550

The commission examined the relevancy of Program 20 in INV 550 following Orrcon's allegation that the goods exported from China benefited from a range of countervailable subsidy programs, including Program 20.⁸

After assessing Orrcon's application, the commission was satisfied that there was a reasonable basis for examining Program 20, because the commission had previously found Program 20 to be countervailable in respect of other products made from HRC and other similar raw material inputs, such as hot rolled narrow strip (**HRS**).⁹

The commission sought information about purchases of raw materials in respect of the goods through an exporter questionnaire. Dalian Steelforce was the only exporter to provide detailed information in relation to purchases of raw materials used in the manufacture of the goods.

2.2 Non-cooperative entity subsidy assessment in REP 550

This part outlines the commission's assessment of the non-cooperative entity subsidy margin in REP 550 in order to clarify the approach taken in that investigation given it is the focus of this reinvestigation.

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

Pursuant to section 269TAACA, the commission determined what programs provide a countervailable subsidy and from this calculated a subsidy margin for non-cooperative Chinese exporters in INV 550 as follows:

- with the exception of Program 20, the commission assumed that non-cooperative Chinese exporters benefited from all non-regional countervailable subsidies and the highest region-specific countervailable subsidy identified in the investigation. This resulted in 29 subsidy programs applying to non-cooperative Chinese exporters.
- for each of the 29 countervailable subsidy programs, the subsidy margin was derived from the higher of:
 - the margins applicable to each program based on previous findings made by the commission, and
 - the margin calculated in INV 550 for the cooperating exporter, Dalian Steelforce.
- the commission summed up each of the subsidy margins to obtain a total subsidy margin.

In relation to Program 20, the commission did not have information regarding the HRC purchases in respect of the goods for non-cooperating Chinese exporters, due to their lack of cooperation.

The commission found that the major cooperating exporter Dalian Steelforce had not received any benefit under Program 20, and in the absence of a benefit, there could be no

⁸ Orrcon's application, EPR 550, Item 1.

⁹ *Consideration Report No 550*, EPR 550, Item 2.

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subsidy for Dalian Steelforce. As noted in ADN No 2021/111,¹⁰ Dalian Steelforce purchased all steel coil used in the manufacture of the goods from private enterprises.

The commission's findings in respect of Dalian Steelforce are not part of the reviewable decision but were relevant to the findings for non-cooperative Chinese exporters.

The commission considered that, for the purposes of INV 550, Dalian Steelforce's HRC purchases were relevant facts available in which to make assumptions when determining the countervailable benefit provided to non-cooperative Chinese exporters for Program 20.

The commission considered that the findings for REP 550 in respect of Program 20 were differentiated from previous cases due to the circumstances of Dalian Steelforce's raw material purchases, specifically because:

- Dalian Steelforce was the largest Chinese exporter of the goods to Australia.
- Dalian Steelforce's HRC purchase data relates to the raw materials used in the production of the goods, as opposed to the production of other goods such as HSS previously investigated by the commission.
- The data available for Dalian Steelforce was for the investigation period rather than historical purchase data. The commission considered data for the specific product under investigation for the specific investigation period was preferable.

In REP 550, the commission determined that Program 20 conferred no benefit to Dalian Steelforce, as it made no purchases of raw materials from Chinese state-owned enterprises or state-invested enterprises (**SIEs**). Based on the commission's assessment of the circumstances of Dalian Steelforce, it concluded that Program 20 did not provide a benefit to any Chinese exporter during the investigation period.

¹⁰ The Commissioner notified interested parties that he terminated the subsidy investigation against Dalian Steelforce in this notice.

3 SUMMARY OF PROGRAM 20

3.1 Introduction

This chapter of the report provides a summary of the ARDP's references to Program 20 in its Reinvestigation Request, previous inquiries referred to in REP 550, the commission's understanding of the basis of Program 20 and a summary of the commission's previous findings in relation to Program 20. The commission notes that only limited detail on the characteristics of Program 20 is provided in REP 550 given it was determined not to confer a benefit on any exporter. This part of the report is provided given the reinvestigation findings rely on the commission's previous findings regarding Program 20.

3.2 ADRP: Program 20 and the Reinvestigation Request

The ADRP refers to 2 previous findings by the commission in its Reinvestigation Request: *Investigation 177 into HSS exported from China, Korea, Malaysia, Taiwan and Thailand (INV 177)* and *Continuation 379 into HSS from China, Korea, Malaysia and Taiwan (CON 379)*.

- INV 177 was the original investigation in which anti-dumping measures were imposed in respect of Program 20 on Chinese exporters of HSS.
- CON 379 continued the measures in respect of Program 20 on Chinese exporters of HSS. However, during the continuation inquiry, the commission re-examined the application of Program 20 in light of findings by the Federal Court in *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885.

The ADRP also refers in its Reinvestigation Request¹¹ to the following points from the commission's submission to this review:

- the commission has identified Program 20 as a subsidy in previous investigations of other products manufactured in China from HRC
- Program 20 is a form of subsidy referred to by the Commission as an 'LTAR' subsidy. It is a form of subsidy where a public body provides goods or services at a price that is LTAR
- the commission considers Program 20 as a collective term to describe conditions within the Chinese HRC market under which Chinese state-owned enterprises provide HRC at a price lower than a market benchmark.

The ADRP notes that it proceeded on the basis of these points in preparing its Reinvestigation Request.

3.3 Other investigations relating to Program 20 referred to REP 550

REP 550 refers to 2 further investigations in its discussion of Program 20: *Review 419 into HSS from China, Korea, Malaysia and Taiwan (REV 419)* and *Review 529 into HSS from China, Korea, Malaysia and Taiwan (REV 529)*.

- REV 419 was a review, among other things, of the anti-dumping measures applying to Chinese exporters of HSS. This review included an examination of Program 20 and concluded that Program 20 was a countervailable subsidy.

¹¹ Reinvestigation Request, para. 22.

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- REV 529 was a further review of the anti-dumping measures applying to Chinese exporters of HSS. Its findings were consistent with those in REV 419.

The commission considers that Program 20, as examined and applied in INV 550, is the same program identified in INV 177, which was then confirmed in multiple subsequent cases, including CON 379, REV 419 and REV 529.

3.4 Basis of Program 20

There is no single legislative authority or policy establishing Program 20. Rather, the commission considers Program 20 as a collective term to describe conditions within the Chinese HRC market under which Chinese state-owned enterprises provide HRC at a price lower than a market benchmark.

These conditions were discussed in the market situation assessment in each of INV 177¹², CON 379¹³, REP 419¹⁴, REP 529¹⁵ and INV 550¹⁶.

In each of these cases, the link between the conditions and Program 20 is explicitly referenced. REP 177, where first identified in respect of HSS, provides:

Note: although the analysis and conclusions in Appendix A to this report are focused on assessing whether a particular market situation existed in the Chinese HSS market during the investigation period that rendered domestic HSS selling prices unsuitable for normal value, it is considered that this GOC influence and distortion equally applies to a determination of whether the cost of HRC and narrow strip incurred by HSS manufacturers during the investigation period was a reasonably market cost, or made at adequate remuneration.¹⁷

From its examination of previous cases, the commission has identified three elements required in order for a benefit to be considered a subsidy under Program 20:

- the provision of raw materials
- the provision of those raw materials by a public body
- the provision of those raw materials at LTAR.

3.4.1 Provision of raw materials

The commission considers that Program 20 is limited to the provision of raw material inputs such as HRC, HRS or similar. This is clear from the description provided in INV 177 and the limitation of the commission's consideration of the program in other cases to products made from such materials, i.e. HSS, precision pipe and steel tube, painted steel strapping, zinc coated (galvanised) steel and aluminium zinc coated steel. This includes CON 379, REV 419 and REV 529.

¹² REP 177, Appendix A.

¹³ REP 379, Appendix A.

¹⁴ REP 419, Appendix A.

¹⁵ REP 529, Appendix A.

¹⁶ REP 550, Appendix A.

¹⁷ REP 117, p254.

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Provision of other goods or services, such as aluminium, coking coal and electricity¹⁸ and the provision of goods or services by privately owned and controlled entities are not considered under Program 20.

3.4.2 Provision by a public body

The commission considers that Program 20 is limited to the provision of raw material inputs by public bodies. Public bodies includes, relevantly, SIEs.

Each of the cases discussed in chapter 3.5 examine the status of Chinese SIEs in detail, and are consistent in their conclusions that such entities are public bodies.¹⁹ The same approach was taken in INV 550.²⁰

In the determination of any benefit provided under Program 20, each of the previous investigations examined only purchases of raw materials from SIEs. Purchases from private manufacturers were not considered to have conferred a benefit under Program 20.

This is consistent with the Anti-Dumping Commission Dumping and Subsidy Manual (**the Manual**), which provides:

As a first step where there has been a provision of goods/services by a government, it must be established whether the same goods or services involved are provided both by the government and by private operators. If so, the price charged by the government body would normally constitute a benefit to the extent that it is below the lowest price available from one of the private operators to the company involved for a comparable purchase. The amount of subsidy is the difference between these two prices.²¹

The above extract provides that a benefit in these circumstances is determined with reference to the price charged by the government and the relevant benchmark (normally, a price available from private operators). Where the price is the benchmark price, no benefit is conferred. Where the price is the government price, the benefit conferred is the difference between the benchmark and government price.

3.4.3 At less than adequate remuneration

In order for there to be a subsidy under Program 20, a benefit must be conferred to exporters of the goods in respect of their raw material purchases. That benefit, or lack thereof, is determined as the difference between the prices paid by manufacturers to government suppliers and what is determined to be adequate remuneration for those raw materials.

3.5 Previous findings in relation to Program 20

3.5.1 Examination of Program 20 in INV 177

Part IV of the Final Report into INV 177 (**REP 177**) describes Program 20 as:

¹⁸ See <https://www.industry.gov.au/data-and-publications/anti-dumping-commission-subsidies-register>

¹⁹ REP 177, Part IV; REP 379, Appendix B-2; REP 419, Non-confidential Attachment C; REP 529, Appendix B.

²⁰ REP 550, Appendix B-1.

²¹ The Manual, p.76.

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...a financial contribution that involves the provision of goods (HRC and/or narrow strip) by SIEs, being public bodies, at less than adequate remuneration.

As Chinese exporters use HRC and/or narrow strip in their production of HSS, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of HSS, Customs and Border Protection²², considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by Customs and Border Protection.

Where the financial contribution involves the provision of HRC and/or narrow strip by public bodies to private intermediaries that then trade those inputs to the exporters of HSS, Customs and Border Protection considers, in accordance with s.269T(2AC)(a)²³, that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of HSS by way of HRC and/or narrow strip being provided at less than adequate remuneration.

These benefit amounts are equal to the amount of the difference between the purchased price and the adequate remuneration.²⁴

[emphasis added]

REP 177 goes on to state:

Given that HRC and/or narrow strip is a key input into the manufacture of downstream products (including HSS) it is clear that only enterprises engaged in the manufacture of these products would benefit from the provision of the input by the [Government of China (GOC)] at less than adequate remuneration.

For this reason the subsidy is determined to be specific.²⁵

REP 177 sets out the following steps taken to determine the amount of benefit received for cooperating exporters:²⁶

- Purchases by Chinese exporters of hot rolled steel (in the form of HRC or HRS) manufactured by SIEs were identified
- Each purchase of HRS manufactured by an SIE was then assessed to determine whether it had been purchased for adequate remuneration.

This approach was confirmed by the commission during this reinvestigation in an examination of the confidential calculation spreadsheets for REP 177, where only sales of HRS manufactured by SIEs were included in the calculation of the benefit provided. The per tonne price paid by Chinese exporters for each purchase transaction was compared against a monthly benchmark. Any difference between the per tonne purchase price and the benchmark was multiplied by the weight of HRS purchased to determine a benefit

²² The role of the commission was formerly performed by Customs and Border Protection.

²³ Since repealed.

²⁴ REP 177, p225.

²⁵ Ibid.

²⁶ REP 177, p226.

amount for that transaction. The benefit for all transactions were then summed to determine a total benefit over the inquiry period.

The subsidy rate under Program 20 for non-cooperative Chinese exporters was then determined by applying the highest rate calculated for cooperating exporters.

3.5.2 Examination of Program 20 in CON 379

Between INV 177 and CON 379, the specificity of Program 20 was successfully challenged in the Federal Court²⁷. However, subsequent to INV 177, the relevant legislation to which the Court referred to in its decision was amended, and the commission found in the Final Report into CON 379 (**REP 379**) that Program 20 is specific²⁸.

As the specificity of Program 20 is not a question at issue in this reinvestigation, this report will not address this issue further. Chapter 8.4.2 of REP 379 discusses this in more detail.

Other than in respect of the issue of specificity, REP 379 does not provide significant commentary on Program 20. In Appendix B.4 '*Subsidy programs considered*'²⁹, it provides the following in respect of Program 20:

Commission has found that the GOC materially influenced conditions within the Chinese hot rolled steel (HRC) market during the inquiry period... The Commission also found that hot rolled steel provided by Chinese state invested enterprises (SIEs) was less than the competitive market benchmark and therefore conferred a benefit on HSS provided in China.

Similar program in respect of steel billet raw material was countervailed by the Commission in 2016 in relation to steel grinding balls (Program 1). In that case the Commission also found that SIEs producing steel raw materials continue to be considered as 'public bodies' for the purposes of the definition of 'subsidy' in subsection 269(T) of the Act.

[emphasis added]

The steps taken in CON 379 to determine the amount of benefit received under Program 20 are consistent with INV 177:

- Purchases by Chinese exporters of HRC manufactured by SIEs were identified
- The quarterly weighted average purchase price paid by Chinese exporters for those purchases is compared against the corresponding quarterly benchmark price to determine whether all HRC purchased in that quarter had been purchased for adequate remuneration
- Any difference between the weighted average purchase price and the benchmark across the four quarters is multiplied by the total weight of HRC purchased to determine a total benefit amount.

For non-cooperative Chinese exporters, the subsidy margin for each program was the higher of the margin applicable to that program under the existing countervailing duty notice (i.e. that imposed in INV 177) and the margin calculated for cooperating exporters. In CON 379, that was the margin calculated for cooperating exporters.

²⁷ Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885.

²⁸ REP 379, p45.

²⁹ REP 379, p102.

3.5.3 Examination of Program 20 in REV 419

In its analysis of Program 20, the Final Report for REV 419 (**REP 419**) states:

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

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

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

The Commission considers that, absent distortions in the Chinese HRC market, that market would be the most relevant market in which to assess the adequacy of remuneration. In that case the Commission would assess adequacy of remuneration for HRC by comparing prices paid by HSS producers for HRC supplied by SIEs with a benchmark using Chinese HRC prices.³⁰

[emphasis added]

REP 419 goes on to discuss that a benchmark based on Chinese HRC prices cannot be used because of the degree of GOC involvement in that market.

Consistent with INV 177 and CON 379, REV 419 only calculates the benefit received under Program 20 in respect of purchases of HRS and HRC purchased from SIEs. REV 419 followed the approach taken in CON 379, with quarterly weighted average purchase prices compared with the corresponding benchmark price for that quarter.

The non-cooperative entity subsidy margin was calculated in the same manner as CON 379, i.e. the higher of existing subsidy margin and the subsidy margins calculated for cooperating exporters.

3.5.4 Examination of Program 20 in REV 529

The commission's approach to Program 20 in REV 529 was largely unchanged from that set out in REV 419. Based on information before the commission and submissions to the review, some amendments were made to the method for calculating a benchmark. These changes resulted in the exclusion of HRC which originated from China from the benchmark, even when used by exporters of the goods outside of China (whereas previously, these coil prices would have been included in the benchmark). This is discussed in detail in chapter 5.3.2 of REP 529. Nonetheless, the adjustment method remained consistent with that in INV 177 and REP 419.³¹

Consistent with REV 419, REV 529 determined a benefit under Program 20 only in respect of purchases of HRC from SIEs. This was emphasised in Chapter 5.6.6 of the Final Report, where an error in identifying a private supplier of HRC as an SIE (which was later

³⁰ REP 419, Non-confidential Appendix D, p87.

³¹ REP 529, p42.

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corrected) resulted in a change to the subsidy margin determined for one cooperating exporter. This change removed those purchases from the private supplier from the calculation of the benefit received.

4 RELEVANT EVIDENCE AVAILABLE FOR PROGRAM 20 IN INVESTIGATION 550

4.1 Introduction

The ADRP requested that the commission reinvestigate ‘*That there is insufficient evidence that Program 20 conferred a countervailable benefit*’. As part of this reinvestigation, the ADRP requested that the commission’s reinvestigation address the application of Program 20 to non-cooperative Chinese exporters.³²

This chapter examines the evidence before the Commissioner in respect of the application of Program 20 to non-cooperative Chinese exporters after considering:

- the history and context of the nature of Program 20, as discussed in chapter 3, and
- the comments made by the ADRP in its Reinvestigation Request, discussed below.

Following this examination, the commission considers it is preferable to use evidence from previous findings to determine whether Program 20 conferred a countervailable benefit on non-cooperative Chinese entities. After taking into account adjustments necessary to avoid double-counting, this approach does not result in a change to the variable factors and subsidy margin for these entities.

4.2 ADRP comments regarding Dalian Steelforce’s circumstances

In its Reinvestigation Request, the ADRP made the following comments regarding the commission’s findings regarding Dalian Steelforce’s HRC purchases:

I note that Dalian produces a range of steel products and purchases inputs to those products from both “private” and public body steel mills. However, in relation to the production of the GUC³³, it had exclusively purchased HRC from “private” mill suppliers. It was on this basis, which could be viewed as an exception, that the Commission decided that Program 20 would not be relevant to any subsequent exports of the GUC from any ‘non-cooperative entities’. Such an outcome seems anomalous given that the Commission, through its earlier enquiries, has accepted both the prevalence and influence of Program 20 upon the price of steel exports from China. Given the object of the legislation is to provide Australian industry with a response to subsidised exports it would seem imprudent to accept an exception as the norm.

Given the ADRP’s comments, the commission has further examined Dalian Steelforce’s HRC purchases, both in INV 550 and previous cases.

Notwithstanding its findings in INV 550, the commission is satisfied Dalian Steelforce has purchased HRC and other similar raw materials from SIEs during the investigation period, albeit for the production of other products,³⁴ and the relevant period of previous cases³⁵.

³² Reinvestigation Request, para. 47.

³³ ‘Goods under consideration’, otherwise referred to as ‘the goods’.

³⁴ Dalian Steelforce submission to INV 550. EPR 550, Item 61, p5.

³⁵ Dalian Steelforce Exporter Questionnaire Response (REQ) to CON 379. EPR 379, Item 14, Appendix 17; Dalian Steelforce REQ to REV 419. EPR 419, Item 14, Appendix 17.

INV 550 is the first investigation into precision pipe and tube steel. In the absence of other verified data concerning HRC purchased to manufacture the goods in China, it is difficult for the commission to conclude whether or not Dalian Steelforce's circumstances are an exception in relation to precision pipe and tube.

The commission also notes that while it has 'accepted both the prevalence and influence of Program 20 upon the price of steel exports from China', it has not done so in respect of any exports of any goods by Dalian Steelforce, with the exception of INV 177, which was later overturned by the Federal Court.³⁶ The commission has therefore reassessed as part of this reinvestigation whether Dalian Steelforce's circumstances are the most relevant information available in which to make assumptions in respect of non-cooperative Chinese exporters, pursuant to section 269TAACA.

4.3 Application of Program 20 to non-cooperative Chinese exporters

4.3.1 Consideration of available evidence

This chapter considers whether a benefit is conferred under Program 20 on the available evidence.

The determination of whether a benefit is provided under Program 20 must be pursuant to section 269TACC(3)(d) which provides that a benefit is not conferred unless the goods or services are provided by a government or body referred to in section 269TACC(2) for LTAR.

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

To assess the adequacy of remuneration in previous cases, the commission's practice for Program 20 is to compare the prices of raw materials (in this case HRC) provided by a government or a body referred to in section 269TACC(2) to exporters, with a 'market benchmark' price.³⁷

In INV 550, the commission did not have relevant data regarding purchases of HRC (whether it be from an SIE or private mill) used by non-cooperative Chinese exporters in the production of the goods for comparison to a benchmark price. As noted previously, in the case of non-cooperative Chinese exporters, the Commissioner may determine, pursuant to section 269TAACA, the amount of a countervailable subsidy based on all facts available and having regard to reasonable assumptions.

As outlined in chapter 2.2, the commission considered in INV 550 that Dalian Steelforce's data was the most relevant from which to make assumptions when determining the countervailable benefit provided to non-cooperative Chinese exporters. Upon review, the commission is of the view that the absence of positive evidence that the findings in respect of Dalian Steelforce could be extrapolated as being representative of other Chinese exporters was not, of itself, sufficient evidence. As remarked upon by the ADRP, the Dalian Steelforce purchases '*could be viewed as an exception...*'

³⁶ Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885.

³⁷ REP 550 includes discussion on these prevailing market conditions.

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In considering whether Dalian Steelforce's HRC purchases in INV 550 are an exception to raw material purchases by other Chinese manufacturers of the goods, the commission considered the following evidence before it:

- As observed by the ADRP, the commission has accepted in previous cases that Program 20 confers a countervailable benefit for other exporters (albeit not in respect of Dalian Steelforce).
- As part of its market situation analysis in REP 550, the commission was satisfied that SIEs continue to provide inputs to Chinese steel companies at below-market prices.³⁸

As outlined in chapter 3.5, the commission has extensively examined Program 20 in numerous previous cases. These cases have provided significant data regarding raw material purchases by Chinese exporters over a number of years. No evidence was provided to the commission in INV 550 that the purchasing behaviour of non-cooperative Chinese exporters would have changed from these previous cases.

Given the continuing presence of raw materials available from SIEs at below market prices, notwithstanding the availability of input products from private suppliers, it is reasonable for the Commissioner to assume, pursuant to section 269TAACA, that non-cooperating Chinese exporters would purchase such raw materials to manufacture the goods.

Upon review, and on the basis of the above, the commission is of the view that the use of previous findings to determine whether Program 20 conferred a countervailable benefit on non-cooperative Chinese exporters is preferable evidence in determining whether a countervailable subsidy had been received by non-cooperative Chinese entities in respect of the goods. This would also align with the commission's approach for determining an amount of subsidy for all other countervailable subsidies identified as applying to non-cooperative Chinese exporters in INV 550, as discussed in chapter 2.1.

4.3.2 Determination of the amount of benefit

The commission considers that the amount of countervailable subsidy and in turn the subsidy margin for Program 20 to apply to non-cooperative Chinese exporters should preferably be determined by reference to the higher of either:

- the subsidy margin established in REV 529³⁹, being the most recent relevant review
- the subsidy margin determined for Dalian Steelforce in INV 550.

This results in applying the same subsidy margin for Program 20 from REV 529 and a change to the non-cooperative Chinese exporters' subsidy margin from 42.7% to **46.3%**.

The revised non-cooperative subsidy analysis is in **Confidential Attachment 1**.

³⁸ REP 550, Appendix 1.5

³⁹ As discussed in chapter 2.1, in REP 550, the margin established in REV 419 was used for the determination of the subsidy rate for non-cooperative entities for countervailable programs other than Program 20. The commission notes that the non-cooperative entity subsidy margin rates for these other programs are the same in both REV 419 and REV 529.

4.4 Avoidance of ‘double-count’

This chapter 4.4 sets out the commission’s approach to ascertaining variable factors when there is both an adjustment to raw material costs as part of constructing a normal value and a countervailable LTAR subsidy (such as Program 20).

Part 20.3 of the Manual provides:

The Commission may decide to construct normal value for the goods in question under section 269TAC(2)(c) in certain circumstances. In some of these circumstances, the cost of an input may not reasonably reflect competitive market costs and therefore an adjustment to that input cost is made in constructing normal value.

Where that input was also the subject of a less than adequate remuneration subsidy finding, it is necessary to ‘back out’ the relevant subsidy from the dumping margin in order to avoid any double counting⁴⁰

In INV 550, the circumstances outlined in this extract from the Manual are met: HRC was a cost input used in constructing the normal value for Chinese exporters. Program 20 is in respect of HRC being provided at LTAR. Therefore, the impact of Program 20 on Chinese exporters’ costs has already been addressed in the dumping margins. These margins, and the underlying analysis, are not the subject of reinvestigation.

If, in applying the commission’s revised approach, Program 20 is determined to apply to non-cooperative Chinese exporters, those entities will be subject to both a dumping and countervailing duty where ‘distortions’ to the HRC price have been taken into account.

To avoid this double counting, it is necessary for the commission to ‘back-out’ the Program 20 subsidy from one of the duplicative counts. The usual practice of the commission to give effect to avoiding a double count is to deduct the LTAR subsidy margin from the dumping margin, as outlined in the Manual. However, it is open under the Act to make a deduction from either the dumping margin or the subsidy margin. In the present case, a deduction from either the dumping margin or subsidy margin will result in no material difference.

The reviewable decision is the Minister’s decision set out in ADN No 2021/110⁴¹ which only relates to the countervailing duty notice applying to non-cooperative Chinese exporters. The Minister’s decision relating to dumping margins applying to these entities is set out in ADN No 2021/109⁴² (referred to as ‘Uncooperative exporters’) and is a separate decision not subject to review. It is not clear to the commission that it is open to the ADRP to recommend to the Minister a change to the dumping duty notice.

While a deviation from the commission’s usual practice in an investigation⁴³, in the present circumstances, the commission considers it preferable to avoid interfering with the dumping analysis and calculations, as these are not the subject of reinvestigation. As a result, the commission proposes to calculate the variable factors and effective subsidy rate

⁴⁰ The commission notes the World Trade Organization Appellate Body’s comments in DS379, that ‘double remedies’ are inconsistent with the requirement in Article 19.3 of the Subsidies and Countervailing Measures Agreement.

⁴¹ EPR 550, Item 73.

⁴² EPR 550, Item 72.

⁴³ The commission notes that it has on occasion backed out a double count from a countervailing duty notice in relation to accelerated reviews.

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for non-cooperative Chinese exporters by deducting any benefit, and thereby ‘backing-out’, Program 20 from the countervailing duty notice.

The table below shows a summary of the resultant interim duty rates available if the ADRP determines that Program 20 is countervailable, depending on whether Program 20 is backed out or not.

Exporter	Rate of Interim Countervailing Duty (ICD) with Program 20 included	Effective rate of ICD with Program 20 backed-out	Rate of Interim Dumping Duty (IDD)	Combined rate of ICD and IDD with Program 20 included	Combined rate of ICD and IDD with Program 20 backed-out
All other Exporters (China)	46.3%	42.7%	19.7%	66.0%	62.4%

Table 1 – Summary of interim duty rates

5 CONCLUSION

5.1 Preliminary findings and recommendation

The commission preliminarily considers that it is preferable to rely upon information from previous cases in determining the application of Program 20 to non-cooperative Chinese exporters, rather than information from the sole cooperating exporter, Dalian Steelforce. This is on the basis that Dalian Steelforce's circumstances may be an exception, rather than representative of other Chinese exporters. This results in a finding that Program 20 provides a countervailable benefit to non-cooperative Chinese exporters.

The commission considers that, following on from this finding, the subsidy margin for Program 20 as it applies to non-cooperative entities ought to be calculated consistent with how it was determined in these previous cases. This approach also makes the calculation of the Program 20 subsidy margin consistent with the determination of the subsidy margin for all other programs in INV 550.

The change in approach results in a change to the non-cooperative subsidy margin from 42.7% to 46.3%. However, the inclusion of Program 20 in the total subsidy margin applying to non-cooperative Chinese exporters results in these entities being subject to both a dumping and countervailing duty where 'distortions' to raw materials have been taken into account. To address this issue, the Commissioner considers it preferable that the subsidy margin available under Program 20 be backed-out to avoid double-counting of anti-dumping measures, and that it be backed-out of the total subsidy margin. This would result in the same total subsidy margin currently applicable in INV 550 of 42.7%.

6 ATTACHMENTS

Confidential Attachment 1

All other entities subsidy analysis (China)