



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 553

**ALLEGED DUMPING OF PAINTED STEEL STRAPPING
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA
AND THE SOCIALIST REPUBLIC OF VIETNAM**

AND

**ALLEGED SUBSIDISATION OF PAINTED STEEL STRAPPING
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

26 October 2021

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ABBREVIATIONS

| | |
|----------------------|--|
| \$ | Australian dollars |
| ABF | Australian Border Force |
| ABS | Australian Bureau of Statistics |
| the Act | <i>Customs Act 1901</i> (Cth) |
| ADA | WTO Anti-Dumping Agreement |
| the applicant | Signode Packaging Group Australia Pty Ltd (Signode Australia) |
| the commission | Anti-Dumping Commission |
| the Commissioner | the Anti-Dumping Commissioner |
| CON 553 | <i>Consideration Report No. 553</i> |
| CRC | cold rolled coil |
| CTM | cost to make |
| DIE | domestic invested enterprise |
| DS529 | WTO Panel Report <i>Australia – Anti-Dumping Measures on A4 Copy Paper</i> |
| the Dumping Duty Act | <i>Customs Tariff (Anti-Dumping) Act 1975</i> |
| EPR | electronic pubic record |
| FIS | Free into Store |
| FOB | free on board |
| GAAP | generally accepted accounting principles |
| GOC | Government of China |
| the GOC Advice | <i>Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry</i> |
| the GOC Guidelines | <i>Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines</i> |
| the GOC Opinions | <i>The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry</i> |
| the goods | painted steel strapping as described in section 3.3, also referred to the goods the subject of the application |
| GOV | Government of Vietnam |
| the Guidance | <i>Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation</i> |
| HRC | hot rolled coil |
| HSS | hollow structural sections |
| ICD | interim countervailing duty |
| IDD | interim dumping duty |
| the investigation | Investigation No. 553 |
| Jiashilun | Qinhuangdao Jiashilun Packaging Materials Co., Ltd |
| KRW | Korean won |
| Lingyun Steel | Lingyun Steel Strapping Limited |

PUBLIC RECORD

| | |
|---------------------------|--|
| LTAR | less than adequate remuneration |
| Material Injury Direction | <i>Ministerial Direction on Material Injury 2012</i> |
| MCC | model control code |
| the Minister | the Minister for Industry, Energy and Emissions Reduction |
| MOF | Ministry of Finance |
| MOFCOM | Ministry of Commerce |
| MOST | Ministry of Science and Technology |
| NDRC | National Development and Reform Commission |
| NIP | non-injurious price |
| PAD | preliminary affirmative determination |
| PAD 553 | <i>Preliminary Affirmative Determination No. 553</i> |
| PAD Direction | <i>Customs (Preliminary Affirmative Determinations) Direction 2015</i> |
| the Plan | <i>Five-Year Plan for National Economic and Social Development</i> |
| the Regulation | <i>Customs (International Obligations) Regulation 2015 (Cth)</i> |
| REP 553 | <i>Report No. 553</i> |
| REQ | response to the exporter questionnaire |
| RGQ | response to the government questionnaire |
| ROI | return on investment |
| Sam Hwan | Sam Hwan Vina Co. Ltd |
| SAT | State Administration of Taxation |
| SCM Agreement | <i>Agreement on Subsidies and Countervailing Measures</i> |
| SEF | statement of essential facts |
| SEF 553 | <i>Statement of Essential Facts No. 553</i> |
| SG&A | selling, general and administrative expenses |
| Signode Australia | Signode Packaging Group Australia Pty Ltd |
| SOEs | State-owned Enterprises |
| TER 553-A | <i>Termination Report No. 553-A</i> |
| TER 553-B | <i>Termination Report No. 553-B</i> |
| TRAV | Trade Remedies Authority of Vietnam |
| the Upgrade Plan | <i>Iron and Steel Industry Adjustment and Upgrade Plan</i> |
| USITA | US International Trade Administration |
| USP | unsuppressed selling price |
| Vietnam | the Socialist Republic of Vietnam |
| WTO | World Trade Organization |

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Anti-Dumping Commission (the commission) has prepared this *Report No. 553* (REP 553) in response to an application by Signode Packaging Group Australia Pty Ltd (Signode Australia, the applicant). The Commissioner of the Anti-Dumping Commission (the Commissioner) has relied on REP 553 in making recommendations to the Minister for Industry, Energy and Emissions Reduction (the Minister).

Signode Australia's application requests the publication of a:

- dumping duty notice in respect of painted steel strapping (the goods) exported to Australia from the People's Republic of China (China) and the Socialist Republic of Vietnam (Vietnam)¹
- countervailing duty notice in respect of the goods exported to Australia from China.

Signode Australia, the sole member of the Australian industry producing like goods, claims that dumped goods from the subject countries and subsidised goods from China have caused it material injury.

REP 553 follows the commission's publication of the *Statement of Essential Facts No. 553* (SEF 553) for this investigation on 23 April 2021.²

In conducting this investigation, the commission has examined the investigation period 1 April 2019 to 31 March 2020 and found that:

- Qinhuangdao Jiashilun Packaging Materials Co., Ltd (Jiashilun) from China did not export the goods at dumped prices
- while Jiashilun exported the goods at subsidised prices, the subsidy margin was negligible
- all other exporters from China exported the goods at dumped and subsidised prices, with dumping and subsidy margins above negligible levels
- Sam Hwan Vina Co. Ltd (Sam Hwan) from Vietnam exported the goods at dumped prices, however the dumping margin was negligible
- all other exporters from Vietnam exported the goods at dumped prices with a dumping margin above the negligible level.

The commission is satisfied that:

- dumped and subsidised goods exported from China (except by Jiashilun) caused material injury to the Australian industry
- dumped goods exported from Vietnam did not cause or threaten material injury to the Australian industry.

¹ The commission refers to China and Vietnam collectively as 'the subject countries' in this report.

² Electronic Pubic Record (EPR) 553, Item 18. The EPR is available on the commission's website via www.adcommission.gov.au

1.2 Recommendation to the Minister

Based on the commission's findings in this report, the Commissioner recommends that the Minister:

- publish a dumping duty notice and a countervailing duty notice in respect of the goods, applicable to all exporters from China except Jiashilun
- not publish a dumping duty notice in respect of the goods exported from Vietnam.

1.3 Termination of part of the investigation

1.3.1 Sam Hwan

Based on the commission's findings outlined in *Termination Report No. 553-A* (TER 553-A),³ the Commissioner was satisfied that the goods were exported to Australia by Sam Hwan at dumped prices. However, the dumping margin for Sam Hwan was negligible (less than 2%).

Therefore, the Commissioner terminated the investigation with respect to Sam Hwan under section 269TDA(1)(b)(ii) of the *Customs Act 1901* (the Act).⁴

The commission published TER 553-A and a termination notice (Anti-Dumping Notice (ADN) No. 2021/101) on the EPR on 13 August 2021.⁵

1.3.2 Jiashilun

Based on the commission's findings outlined in *Termination Report No. 553-B* (TER 553-B),⁶ the Commissioner was satisfied that Jiashilun:

- did not export dumped goods to Australia
- exported the goods at subsidised prices, however the subsidy margin was negligible (less than 2%).

Therefore, with respect to Jiashilun, the Commissioner terminated:

- the dumping investigation under section 269TDA(1)(b)(i)
- the subsidy investigation under section 269TDA(2)(b)(ii).

The commission published TER 553-B and a termination notice (ADN No. 2021/135) on the EPR on 26 October 2021.⁷

³ EPR 553, Item 26.

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

⁵ EPR 553, Item 27.

⁶ EPR 553, Item 29.

⁷ EPR 553, Item 30.

1.4 Authority to make decision

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

1.4.1 Application

On 31 March 2020, Signode Australia lodged an application alleging that the Australian industry has suffered material injury caused by the goods exported to Australia from the subject countries at dumped prices and China at subsidised prices.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation No. 553 (the investigation) on 27 May 2020.

Consideration Report No. 553 (CON 553) and ADN No. 2020/050 provide further details relating to the initiation of the investigation.⁸

1.4.2 Preliminary affirmative decision

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied there appears to be sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice. The Commissioner may also make a PAD if satisfied that it appears 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 Direction) directs the Commissioner to publish a status report providing reasons why the Commissioner did not do so.

On 27 July 2020, being 60 days after the initiation of the investigation, the Commissioner published a status report.⁹

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 to make a PAD at least once prior to the publication of the statement of essential facts (SEF).

In preparation of SEF 553, the Commissioner was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice and countervailing duty notice in respect of the goods exported to Australia from China, except for exports by Jiashilun.

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

⁸ EPR 553, Items 2 and 3.

⁹ EPR 553, Item 6.

As a result, the Commissioner published *Preliminary Affirmative Determination No. 553* (PAD 553) in conjunction with SEF 553 on 23 April 2021. ADN No. 2021/056 provides further details of the PAD and is available on the public record.¹⁰

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)¹¹, 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.¹²

The Commissioner was originally due to publish a SEF on the public record by 14 September 2020. However, the Commissioner extended this due date.¹³ The Commissioner placed SEF 553 on the EPR on 23 April 2021.

1.4.4 Report to the Minister

The Commissioner was due to provide this report to the Minister on, or before 29 October 2020. However, the Commissioner extended this due date.¹⁴ The Commissioner provided this report to the Minister on 26 October 2021.

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

- the application
- all submissions received prior to publication of SEF 553
- SEF 553
- all submissions made in response to SEF 553 received by the commission on or before 13 May 2021¹⁵
- any other matters the Commissioner considered relevant.

The commission received two submissions after the due date of 13 May 2021 and considered them in preparing this report.

1.5 Findings and conclusions

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

¹⁰ EPR 553, Item 19.

¹¹ The former Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science delegated the Minister's powers to the Commissioner. See ADN No. 2017/10.

¹² Section 269TDAA(1).

¹³ EPR 553, Items 7, 13 and 17.

¹⁴ EPR 553, Items 7, 13, 17, 25 and 27.

¹⁵ Unless the Delegate of the Commissioner granted an extension of time.

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

The Commissioner is satisfied that locally produced painted steel strapping are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises solely of Signode Australia.

1.5.2 The Australian market (Chapter 5)

Local production and imports from several countries, including the subject countries, supply the Australian market.

1.5.3 Dumping margins (Chapter 6)

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

| Country | Exporter | Dumping margin (%) |
|---------|-------------------------|--------------------|
| China | Jiashilun | - 1.4 |
| | Uncooperative exporters | 17.3 |
| Vietnam | Sam Hwan | 1.7 |
| | Uncooperative exporters | 4.3 |

Table 1 – Dumping Margins

1.5.4 Subsidy margins (Chapter 7)

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

| Entity | Subsidy margin (%) |
|--------------------------|--------------------|
| Jiashilun | 0.1 |
| Non-cooperative entities | 42.6 |

Table 2 – Subsidy Margins

1.5.5 Material injury caused by dumped and subsidised goods (Chapters 8 and 9)

The Commissioner is satisfied that the Australian industry has suffered material injury caused by the export of the goods from China (except Jiashilun), in the forms of:

- loss of sales volume
- price suppression
- loss of profit
- reduced profitability
- reduced revenue
- a decline in capital investment
- a decline in return on investment (ROI)
- reduced capacity utilisation.

The Commissioner is not satisfied that the Australian industry has suffered material injury caused by the export of goods from Vietnam.

The key differences between the goods exported from China and Vietnam and their effect on the Australian industry include the following:

- The volume of dumped and subsidised goods from China at above negligible levels far exceeds the volume of dumped goods from Vietnam at above negligible levels.
- The dumping and subsidy margins for China are larger than the dumping margins for Vietnam. This provides importers of the goods from China with a greater competitive advantage to importers of the goods from Vietnam.
- Dumped and subsidised goods from China undercut Signode Australia's prices to a more substantial degree than dumped goods from Vietnam. Dumped goods from Vietnam do not appear to be as influential in the Australian market.

1.5.6 Whether dumping and subsidisation may continue (Chapter 10)

The Commissioner is satisfied that the goods exported from China (except Jiashilun) may continue at dumped and subsidised prices. The Commissioner did not consider these matters for Jiashilun and Sam Hwan, because the Commissioner terminated the investigation against those exporters. In addition, the Commissioner is not recommending a dumping duty notice for Vietnam and did not consider whether dumping may continue for Vietnam.

1.5.7 Proposed measures and the lesser duty rule (Chapters 11 and 12)

The Commissioner recommends that the Minister impose the following anti-dumping measures in relation to China:

- a dumping duty notice pursuant to sections 269TG(1) and 269TG(2) for all exporters (except Jiashilun) with interim dumping duty (IDD) calculated using the *ad valorem* duty method
- a countervailing duty notice pursuant to section 269TJ(1) and 269TJ(2) for all exporters (except Jiashilun) with interim countervailing duty (ICD) calculated as a proportion of the export price.

In imposing the anti-dumping measures, 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 *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

In this instance, the non-injurious prices (NIP) for exporters from China, other than Jiashilun, is less than the sum of the export price, the amount of ICD and the IDD that will apply because of the notices. Accordingly, the Commissioner recommends that the Minister impose a lesser amount of duty.

1.5.8 Recommendation for Vietnam (except Sam Hwan) (Chapter 13)

The Commissioner is satisfied that exports of the goods at dumped prices from Vietnam (except Sam Hwan) did not cause material injury to the Australian industry. Accordingly, the Commissioner recommends that the Minister does not impose a dumping duty notice in relation to the goods exported from Vietnam, because the requirements of section 269TG are not satisfied. The Commissioner recommends that the Minister publish a section 269TL notice.

2 BACKGROUND

2.1 Initiation

On 31 March 2020, Signode Australia lodged an application under section 269TB(1) seeking the publication of a dumping duty notice in respect of the goods exported to Australia from the subject countries and a countervailing duty notice in respect of the goods from China.

Having considered the application, the Commissioner decided not to reject the application and initiated the investigation on 27 May 2020. The Commissioner also published notification of the initiation on 27 May 2020. CON 553 and ADN No. 2020/050 provide further details relating to the initiation of the investigation.¹⁶

In respect of this investigation, the Commissioner established:

- an investigation period of 1 April 2019 to 31 March 2020 for the purpose of assessing dumping and subsidisation
- an injury analysis period from 1 April 2016 for the purpose of determining 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 painted steel strapping exported to Australia.

2.3 Conduct of the investigation

2.3.1 Statement of essential facts

SEF 553 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 publish the SEF on the public record by 14 September 2020. However, the Commissioner extended the due date for the SEF.¹⁷ The Commissioner published SEF 553 on the public record on 23 April 2021.¹⁸ Following its publication on the public record, interested parties had until 13 May 2021 to respond to SEF 553.¹⁹

The Commissioner considered submissions received in response to SEF 553 when making this report and the recommendations to the Minister.

¹⁶ EPR 553, Items 2 and 3.

¹⁷ EPR 553, Items 7, 13 and 17.

¹⁸ EPR 553, Item 18.

¹⁹ Unless the Delegate of the Commissioner granted an extension.

2.3.2 Australian industry

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

The commission verified the information that Signode Australia provided in the application and visited Signode Australia's premises in March 2021. The commission published a verification report on the EPR.²⁰

2.3.3 Importers

The commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from the subject countries during the investigation period. The commission forwarded importer questionnaires to 22 importers and placed a copy of the importer questionnaire on the commission's website for completion by other importers whom the commission did not contact directly.

Three importers provided responses. The commission selected two responses for verification. However, the commission did not complete either verification because both importers decided not to participate fully in the verification process.

2.3.4 Exporters

The commission forwarded questionnaires to 13 potential exporters at the beginning of the investigation and placed a copy of the exporter questionnaire on the EPR.

Lingyun Steel Strapping Limited (Lingyun Steel) submitted a response to the exporter questionnaire (REQ) by the initial due date of 3 July 2020. The commission granted Jiashilun and Sam Hwan extensions to provide a REQ. The table below summarises responding exporters.

| Country | Exporter name | REQ submission date |
|----------------|----------------------|----------------------------|
| China | Lingyun Steel | 2 July 2020 |
| | Jiashilun | 17 August 2020 |
| Vietnam | Sam Hwan | 23 July 2020 |

Table 3 – Exporters 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. Both governments provided a response to the government questionnaire (RGQ) and the Commissioner considered each RGQ in reaching the conclusions contained within this report.

²⁰ EPR 553, Item 16.

PUBLIC RECORD

| EPR Item No. | Interested Party | Date Received |
|--------------|-----------------------|----------------|
| 10 | Government of China | 15 August 2020 |
| 11 | Government of Vietnam | 3 August 2020 |

Table 4 – Government questionnaire responses

2.4 Submissions received from interested parties

The commission received one submission from interested parties prior to the publication of SEF 553. The Commissioner considered this submission when reaching the conclusions contained within SEF 553 and the submission is available on the public record.

| EPR Item No. | Interested Party | Date Received |
|--------------|-----------------------|---------------|
| 4 | Government of Vietnam | 15 May 2020 |

Table 5 – Submissions considered in SEF 553

Following the publication of SEF 553, the Commissioner received the submissions detailed in the table below. The Commissioner considered these submissions in making this report and recommendations to the Minister.

| EPR Item No. | Interested Party | Date Received |
|--------------|--|---------------|
| 20 | Signode Australia – Response to SEF | 13 May 2021 |
| 21 | Sam Hwan– Response to SEF | 16 May 2021 |
| 22 | Government of China | 21 May 2021 |
| 23 | Sam Hwan– Response to applicant submission | 27 May 2021 |

Table 6 – Submissions received in response to SEF 553

2.4.1 Submission by Signode Australia

In its submission dated 13 May 2021²¹, Signode Australia commented on the following matters in SEF 553:

- It is unclear what delivery costs have been accounted for in the commission's benchmark calculation relevant to assessing normal values for Chinese exporters.
- The coil prices for Chinese and Vietnamese exporters do not include pre-slitting costs and therefore the commission's benchmark comparison understates the true cost of the coil by not taking into account additional pre-slitting costs.

²¹ EPR 553, Item 20.

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- The commission should determine a particular market situation for the goods existed in Vietnam during the investigation period. Consequently the commission should have been constructed normal values for Vietnam in accordance with section 269TAC(2)(c) for Sam Hwan and uncooperative exporters. In Signode Australia's view, the commission has not taken fully into account the influence and impact of the recently expired GOV programs, which along with the influence of Chinese steel imports into Vietnam, would continue to influence the domestic steel prices in Vietnam.
- Whether all relevant costs and allocation of costs incurred by Sam Hwan in the production of the goods are complete and accurate. In addition, whether a downward adjustment for sales commissions in Sam Hwan's domestic market is valid.
- The termination of the dumping investigation against Sam Hwan should not go ahead as the company has continued dumping the goods into Australia after the investigation period. This is based on Signode Australia's observations that Vietnamese imports post the investigation period have not trended consistently with raw material price increases over the same period.
- The commission should have assessed the effect of exports from China and Vietnam cumulatively in its injury analysis.

Issues (b), (c), (d) and (e) are relevant to the commission's findings in respect of Sam Hwan and have been considered and addressed by the commission in preparing TER 553-A.

Issues (a) and (b) are relevant to the commission's findings in respect of Jiashilun. The commission has considered and addressed these in preparing TER 553-B.

Issue (f), which is relevant to all other Vietnamese exporters of the goods has been considered and addressed where relevant in this report.

2.4.2 Submission by the Government of China

In its submission dated 21 May 2021²², the GOC provided commented on the following matters in SEF 553:

- (a) the finding of a particular market situation for like goods in China
- (b) the proper comparison test for comparing Chinese export prices with Chinese domestic prices
- (c) the use of out-of-country costs for constructing normal value for Chinese exporters
- (d) the use by the commission of domestic market prices in China for determining the adequacy of remuneration paid for raw materials by Chinese exporters of the goods in determining subsidy margins

²² EPR 553, Item 22.

- (e) the commission's 'default' presumption that Chinese State-owned Enterprises (SOEs) are public bodies.

Issues (a), (b) and (c) above are relevant to the commission's findings in respect of Jiashilun. The commission has considered and addressed these in preparing TER 553-B.

Issues (d) and (e), which are relevant to all other Chinese exporters of the goods have been considered and addressed where relevant in this report.

2.4.3 Second submission by Sam Hwan

The commission received the second submission by Sam Hwan, dated 27 May 2021, 14 days after the 20-day period that interested parties had to respond to SEF 553. The commission has considered the submission in preparing this report but has not addressed the issues raised in the submission directly in this report, noting that the Commissioner terminated the investigation against Sam Hwan.

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 Commissioner 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.

Where the Commissioner does not make a PAD within 60 days after initiation of the investigation, the PAD Direction directs the Commissioner to publish a status report providing reasons why the Commissioner did not do so.

On 27 July 2020, the Commissioner published a Day 60 Status Report in ADN No. 2020/079.²³ In it the Commissioner stated that they did not make a PAD because they were not satisfied, under section 269TD(1)(a), that at that stage of the investigation there 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 23 April 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.²⁴

²³ EPR 553, Item 6.

²⁴ ADN No. 2021/056.

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The Commissioner required securities on imports of like goods from China, except for goods exported from Jiashilun, entered for home consumption on, or after 23 April 2021.

Pursuant to section 45, the prescribed period before expiration of securities for this investigation 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. Parties should read documents on the public record in conjunction with this report.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commissioner is satisfied that the locally manufactured painted steel strapping are like goods to the goods the subject of the application.

3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice or a countervailing duty notice, if 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 it produces goods that are not identical to the imported goods. The industry must however, produce goods that are 'like' to the imported goods.

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

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

3.3 The goods

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

Painted steel strapping, of carbon steel, whether or not in coils, whether or not waxed, with a nominal width of 12 mm to 32 mm, a nominal thickness of 0.5 mm to 1.5mm.

Stainless steel strapping and galvanised steel strapping are excluded from the goods.

The goods are used in load containment or lifting in a range of industries. Hot rolled coil (HRC) or cold rolled coil (CRC) is the major raw material input. There are a number of grades of HRC and CRC used by producers in manufacturing painted steel strapping, which depend on the product and the logistics requirements.

3.4 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:²⁵

| Tariff Subheading | Statistical Code | Description |
|-------------------|------------------|--|
| 7212 | | FLAT-ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF LESS THAN 600 mm, CLAD, PLATED OR COATED: |
| 7212.40.00 | | Painted, varnished or coated with plastics: |
| | 62 | Of a width not exceeding 32 mm |

Table 7 – General tariff classification for the goods

3.5 Model control codes

The commission applied a model control code (MCC) structure to identify key characteristics of the goods. The commission details its MCC structure practice in ADN No. 2019/132. The commission requested that interested parties provide sales and cost data in accordance with the MCC structure detailed in the table below.

| | Category | Sub-Category | Identifier | Sales Data | Cost Data |
|---|--------------------------------|--------------------------------|------------|------------|-----------|
| 1 | Hot rolled coil carbon content | ≤0.22 % | C1 | Mandatory | Mandatory |
| | | >0.22 % to ≤0.37 % | C2 | | |
| | | >0.37 % to ≤0.54 % | C3 | | |
| | | ≥0.54 % | C4 | | |
| 2 | Width | ≤12.7 mm | W1 | Mandatory | Optional |
| | | >12.7 mm to ≤16.0 mm | W2 | | |
| | | >16.0 mm to ≤19.1 mm | W3 | | |
| | | >19.1 mm to ≤32.0 mm | W4 | | |
| 3 | Thickness | ≤0.7 mm | T1 | Mandatory | Optional |
| | | >0.7 mm to ≤1.0 mm | T2 | | |
| | | >1.0 mm | T3 | | |
| 4 | Break force | ≤10 KN | B1 | Mandatory | Optional |
| | | ≥10 to <15 KN | B2 | | |
| | | ≥15 KN to <25 KN | B3 | | |
| | | ≥25 KN | B4 | | |
| 5 | Metres per kilogram | ≤5 m/kg | S | Mandatory | Optional |
| | | ≥5 m/kg to <10 m/kg | M | | |
| | | ≥10 m/kg | L | | |
| 6 | Coil winding | Ribbon wound | R | Optional | Optional |
| | | Mill/rope wound | M | | |
| | | Other (including not in coils) | O | | |

Table 8 – MCC structure

²⁵ These tariff classifications and statistical codes may include the goods and non-subject goods. The listing is for convenience and reference only and does not form part of the goods description.

Verification reports for Jiashilun, Sam Hwan and Signode Australia are available on the EPR and address the MCC structure.²⁶ No alterations to the MCC structure were necessary for Jiashilun and Sam Hwan. A minor alteration was necessary for Signode Australia, which the commission accepted for the reasons outlined in the verification report.

3.6 Like goods

An application can only be made if there exists an Australian industry producing 'like goods' to the goods the subject of the application. 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.²⁷

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

3.6.1 Physical likeness

The commission has found that both the imported goods and the goods produced by the Australian industry are physically alike. Both trade in a similar range of widths, thicknesses and break force, as specified in the goods description.

3.6.2 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, eg steel, timber and mining industries, with direct price competition.

3.6.3 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, ie packaging in the steel, timber and mining industries.

3.6.4 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.²⁸ HRC or cold rolled coil (CRC) is the major raw material input.

²⁶ EPR Items 14-16.

²⁷ See Chapter **Error! Reference source not found.** for further discussion on the Australian industry.

²⁸ See Chapter 4.5 for further discussion on the production process.

3.6.5 Like goods assessment

Based on the findings above, the commission considers that the locally goods have characteristics identical or closely resembling the imported goods. The commission considers that the goods and the locally produced goods are:

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

In light of the above, the Commissioner is satisfied that the Australian industry produces 'like goods' to the goods the subject of the application, as defined in section 269T.

4 THE AUSTRALIAN INDUSTRY

4.1 Findings

The Commissioner finds that there is an Australian industry, consisting wholly of Signode Australia, producing like goods and that Signode Australia wholly or partly manufactures like goods 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 carried out in Australia in order for the goods to be considered as partly manufactured in Australia.

4.3 Australian industry

In its application, Signode Australia claimed it is the only Australian manufacturer of like goods. No further Australian industry manufacturers of like 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.

4.4 Submissions received in respect of the Australian industry

4.4.1 No Australian manufacturer of the goods

The Trade Remedies Authority of Vietnam (TRAV), a body of the GOV, in its submission dated 15 May 2020 queried whether there was a 'domestic industry' producing the goods on the following grounds:²⁹

- Article 4.1 of the Anti-Dumping Agreement (ADA) provides that a domestic industry does not include producers who are related to exporters or importers of the goods, or are themselves an importer of the allegedly dumped goods.
- On this basis, Signode Australia may be excluded from the domestic industry.
- With Signode Australia excluded from the domestic industry, there would remain no other domestic producers of the goods to constitute an Australian domestic industry.

TRAV submits that Article 5.1 of the ADA provides that an investigation into alleged dumping shall be initiated upon an application by or on behalf of the domestic industry. Accordingly, if there is no domestic industry producing the goods pursuant to Article 4.1, an investigation into alleged dumping could not be initiated pursuant to Article 5.1.

²⁹ EPR 553, Item 4.

4.4.2 Commission's assessment

The relevant sections of the Act concerning the initiation of an investigation by Australian industry are sections 269TB(4)(e) and 269TB(6).

Section 269TB(4)(e) provides that an application for a dumping and/or a countervailing duty notice must be supported by a sufficient part of the Australian industry.

Section 269TB(6) provides 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 or 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 or manufacture of like goods in Australia.

As detailed in CON 553, the Commissioner was satisfied that Signode Australia 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 *Dumping and Subsidy Manual* (the Manual) states on this issue:

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.³⁰

After reviewing imports of painted steel strapping as reported in the ABF import database for the investigation period, the commission did not identify any imports of the goods by Signode Australia or a related party of Signode Australia.

In light of the above, the commission is satisfied it properly initiated the investigation in accordance with the Act.

4.5 Production process

As part of its verification of Signode Australia's application,³¹ the commission determined the production process for painted steel strapping by Signode Australia to be as follows:

- HRC is purchased from a domestic supplier
- HRC master coil is processed through a splitter into smaller coil widths
- smaller coils are fed through a slitting line and cut into strips

³⁰ The Manual, part 1.1.

³¹ Signode Australia – Industry Verification Report, EPR 553, Item 16.

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- strips are processed through a heat treatment line to achieve desired tensile and elongation properties
- strips pass through an inline paint process and then through an infra-red oven
- strips are re-wound into coils ranging of varying weights and packaged
- end-users typically cut strapping to length following production.

The above satisfy the commission that Signode Australia undertakes substantial processes in Australia.

4.6 Conclusion

The Commissioner is satisfied that:

- at least one substantial process of manufacture of the like goods is carried out in Australia
- the like goods are wholly or partly manufactured in Australia
- there is an Australian industry, consisting wholly of Signode Australia, producing like goods to the goods exported to Australia.

5 AUSTRALIAN MARKET

5.1 Findings

The Commissioner has found that the Australian industry and imports from a number of countries, including the subject countries, supply the Australian market for painted steel strapping. In the investigation period, the highest import volumes originated from the subject countries.

5.2 Background

The analysis of the Australian market detailed in this chapter relies on verified information submitted by Signode Australia, import data from the ABF import database and verified exporter information.

5.3 Market structure

The Australian market for painted steel strapping consists of Signode Australia as the sole local manufacturer, exporters and importers, distributors, re-sellers and end-users.

Suppliers of painted steel strapping sell to a range of market sectors including food production, steel manufacturing, mining, paper, timber, wool and recycling.

5.3.1 Markets and distribution

Like goods manufactured by the Australian industry are produced for various markets within Australia, but not for any particular application or market segment. Like goods are usually available in stock to fulfil orders, with some products produced on request. Signode Australia distributes its goods from its warehouses located around Australia, either directly to its end-user customers or to third party distributors. There is no formal distribution arrangement between Signode Australia and the third party distributors, who may also import the goods.

Similar to the Australian industry, overseas producers who supply the Australian market have a similar product offering and service the Australian market in a manner comparable to the Australian industry. Overseas producers compete directly with the Australian industry and receive purchase orders from Australian customers directly. Importers of the goods into Australia may ship directly to an end-user customer's location or warehoused at an importer's facility before dispatch.

5.3.2 Supply

Painted steel strapping is a commodity product. Provided the goods meet the relevant grade requirements for the desired end-use, there are limited ways in which suppliers can differentiate their offering beyond price and service. In most circumstances, customers can easily change suppliers.

Signode Australia supplies like goods to end-users, either directly or through third party distributors, who use the goods, with no or only minimal alteration, for load containment.

In addition to domestic producers of like goods, producers from other countries supply the Australian market to their Australian customers directly or via Australian distributors. Overseas producers supply the same market segments as the Australian industry and in some cases the same customers.

Importers of painted steel strapping source from numerous countries, with the highest volumes over the investigation period coming from the subject countries.

5.3.3 Demand

The output of end-users of painted steel strapping drive demand, primarily in the following industries within Australia:

- steel manufacturing
- timber
- mining
- food production
- paper
- wool
- recycling.

The commission considers that movements in the above industries will accordingly affect demand for the goods and like goods.

5.4 Pricing

Signode Australia explained during verification that it is a 'price taker' in the market and bases its prices on an import price parity pricing strategy, also taking into account its cost to make (CTM) the goods which are largely driven by raw material costs. However, there is little price transparency in the Australian market for painted steel strapping. As a result, its awareness of price in the market is generally via interactions with its customers or other publicly accessible market intelligence.

The price sensitivity of steel strapping is dependent on its application, with strapping used in simple applications being particularly price sensitive.

The commission's examination of questionnaire responses from cooperating entities found that pricing for the goods exported to Australia from the subject countries is based on a 'cost-plus' pricing strategy. Exporters seek to set a price based on the CTM of the goods, largely driven by raw material costs, and maximising their margin over their costs, which is based on a consideration of prices offered by competing suppliers. Exporters and customers regularly negotiate prices on a transaction-by-transaction basis.

5.5 Market size

5.5.1 Initial application data

In its application, Signode Australia relied upon its own sales data in relation to the goods and import data for HTISC³² 7212400062, 'Flat-rolled products of iron or non-alloy steel, painted, with a width not exceeding 32 mm' sourced from the Australian Bureau of Statistics (ABS).

The HTISC used by Signode Australia in its application is the same as tariff subheading 7212.40.00, statistical code 62 in Schedule 3 to the *Customs Tariff Act 1995*. Chapter 3.4 discusses this further.

5.5.2 Commission's assessment

The commission is satisfied that the tariff classification identified by Signode Australia is suitable for estimating the size of the Australian market.

In its examination of the volume of imports of the goods into Australia, the commission has used data extracted from the ABF import database in respect of consignments declared under the identified tariff classification. Data from the ABF import database is preferred over data from the ABS as it provides detail to a greater granular level.

To exclude outlying data, which may distort any findings, the commission has then filtered the data to exclude transactions where the free on board (FOB) price per tonne was outside a range of AUD\$500 to AUD\$5,000. The commission considers this a reasonable price range to use as a filter for the goods, based on the export price and normal values it has observed during the investigation. The commission has also excluded transactions it determined were not in relation to the goods, based on the description recorded in the ABF import database.

The commission has then estimated the size of the Australian market for the goods from 1 April 2016 to 31 March 2020 using the import data as discussed above, along with verified sales data from Signode Australia.

³² Harmonised Tariff Item Statistic Code.

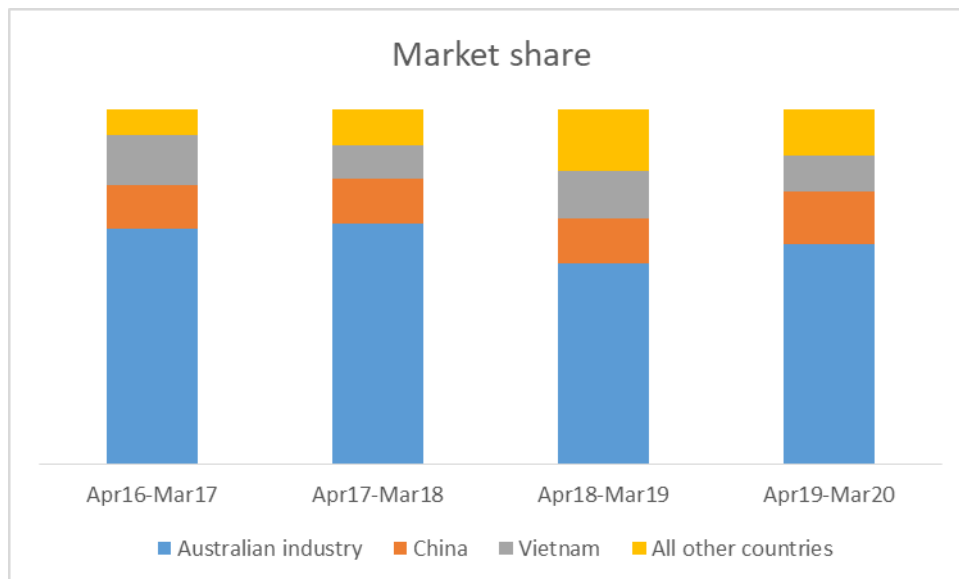


Figure 1 – Australian market share

The commission's assessment of the size of the Australian market is at **Confidential Attachment 1**.

6 DUMPING INVESTIGATION

6.1 Findings

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

| Country | Exporter | Dumping margin (%) |
|---------|-------------------------|--------------------|
| China | Jiashilun | - 1.4 |
| | Uncooperative exporters | 17.3 |
| Vietnam | Sam Hwan | 1.7 |
| | Uncooperative exporters | 4.3 |

Table 9 – Dumping margins

Based on the commission's dumping margins, the Commissioner is satisfied that, during the investigation period:

- Jiashilun did not export dumped goods to Australia
- uncooperative exporters from China exported dumped goods to Australia at a margin that is not negligible
- Sam Hwan exported dumped goods to Australia at a negligible margin
- uncooperative exporters from Vietnam exported dumped goods to Australia at a margin that is not negligible.

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 dumped were exported goods to Australia.

Section 269TDA(1) also 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 goods from one country to another country at a price less than the 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) generally 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.

6.2.2 Normal value

Cooperative exporters

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

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 Minister is satisfied that because of a situation in the market of the country of export, such sales in that market are not suitable for use in determining a price under section 269TAC(1).³³

Signode Australia alleged in its application that a particular market situation exists in relation to the domestic market for like goods in both China and Vietnam.

The commission conducted an examination and determined that:

- a particular market situation existed in respect of the domestic market for like goods in China for the investigation period
- because of that particular market situation, sales of like goods in the Chinese domestic market are not suitable for determining a price under section 269TAC(1).

³³ Referred to in this report as a 'particular market situation'.

This is because the price of such sales does not permit a proper comparison with the export price in determining the dumping margin.

Non-confidential APPENDIX A contains the commission's particular market situation analysis for China.

Non-confidential APPENDIX B contains the commission's proper comparison analysis for China.

The commission conducted an examination and determined that a particular market situation did not exist in respect of the domestic market for like goods in Vietnam for the investigation period. TER 553-A discusses this further.

Uncooperative exporters

Section 269TACAB(1)(e) sets out that, if the normal value of goods for an uncooperative exporter is to be worked out in relation to an investigation, the normal value is to be worked out under section 269TAC(6), which provides that the normal value is determined by having regard to all relevant information.

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 Exporters

6.3.1 Exporter questionnaires

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 from Signode Australia's application and invited them to complete an exporter questionnaire.

Jiashilun and Sam Hwan provided REQs. The commission assessed these REQs as not containing any material deficiencies. Lingyun Steel also provided a REQ, however as outlined at section 6.3.3, the commission assessed Lingyun's REQ as insufficient.

6.3.2 Cooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' if the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

The commission examined the exports of Jiashilun and Sam Hwan and both exporters were not uncooperative exporters. Jiashilun and Sam Hwan are therefore, cooperative exporters in the investigation.

6.3.3 Uncooperative exporters

Section 269T(1) provides that an exporter is an 'uncooperative exporter' in relation to an investigation where the Commissioner is satisfied that:

- the exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable or
- the exporter significantly impeded the investigation.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015*

(the Customs Direction) states at section 8 that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter:

- fails, within the legislated period, to:
 - provide a response;³⁴ or
 - request a longer period to provide a response; or
- provides a response within the legislated period that the Commissioner considers did not provide information relevant to the case.

The Commissioner considered the Customs Direction and section 269T and determined that any exporter, which did any of the following, is an uncooperative exporter for the purposes of this investigation:

- failed to provide a response or request a longer period to provide a response within the time specified in ADN No. 2020/050, being 3 July 2020³⁵
- provided a REQ within the legislated period that did not provide information relevant to the case.³⁶

On this basis, the Commissioner considers that all exporters from China except Jiashilun are uncooperative exporters for the investigation. This includes Lingyun Steel for the reasons outlined below.

Lingyun Steel Strapping Limited

Lingyun Steel from China provided information to the Commissioner in a partially completed REQ within the legislated period. The Commissioner considered that this response contained extensive deficiencies on the basis that Lingyun Steel:

- did not answer the questions in the exporter questionnaire
- partially completed the exporter questionnaire spreadsheets, but omitted critical data on sales to Australia, sales in China, sales to third countries, CTM the goods, selling, general and administrative expenses (SG&A) and raw material purchases.

³⁴ Defined in the Customs Direction as any document or thing provided to the Commissioner in relation to any case, including submissions, information or answers to the questions in questionnaires.

³⁵ This is the relevant legislated period.

³⁶ Requests for further information are contained in deficiency letters.

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Such information might have been relevant to determining the export price and normal value and whether Lingyun dumped the goods exported to Australia

- provided photographs of untranslated documentation with no explanations as to their content or its relevance to the investigation.

The Commissioner considers that Lingyun Steel's response:

- was insufficient
- contained extensive deficiencies that could not be quickly or easily rectified in a further response, without significantly impeding the conduct of the investigation in a timely and efficient manner
- did not provide information relevant to the investigation.

On 31 July 2020, the Commissioner informed Lingyun Steel that for the purposes of this investigation Lingyun Steel is an uncooperative exporter pursuant to section 269T(1). Lingyun acknowledged this decision but did not provide any further late responses.

6.4 Dumping assessment – China

6.4.1 Jiashilun

Verification

The commission verified the information in Jiashilun's REQ. The commission is satisfied that Jiashilun is the producer and exporter of the goods. A report covering the commission's verification findings is available on the EPR.³⁷

Export price

The commission considers Jiashilun to be the exporter of the goods as Jiashilun:

- is the producer 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 and
- arranges and pays for the ocean freight and marine insurance.

In respect of Jiashilun's exports of the goods to Australia, which were all to unrelated customers during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its 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

³⁷ EPR 553, No. 015.

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- 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 considers that all export sales made by Jiashilun to Australian customers during the investigation period were 'arms length' transactions.

The commission determined an export price under section 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

Normal value

As outlined in **Non-confidential APPENDIX A**, the commission considers that the situation in the domestic market for like goods in China is such that sales in that market are not suitable for use in determining a normal value for Jiashilun under section 269TAC(1). This is on the basis that those prices would not permit a proper comparison with the export price for the purposes of determining the dumping margin.

The commission has calculated a normal value for Jiashilun under section 269TAC(2)(c) using the sum of:

- the cost of production that reasonably reflects competitive market costs, that is, Jiashilun's cost of production in China absent the particular market situation, in accordance with section 43(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation)
- domestic SG&A on the assumption that the goods, instead of being exported, were sold domestically based on Jiashilun's records in accordance with section 44(2) of the Regulation
- an amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT³⁸ in accordance with section 45(2) of the Regulation.

In determining Jiashilun's cost of production, the commission examined Jiashilun's records relating to the goods and like goods and is satisfied that Jiashilun kept the records in accordance with generally accepted accounting principles (GAAP) in China.

Further, the commission assessed each of the individual cost items recorded in Jiashilun's records associated with the production of like goods. The commission was satisfied that Jiashilun's records reasonably reflect costs associated with the production of like goods.

However, the commission was not satisfied that Jiashilun's records reasonably reflect competitive market costs associated with the production or manufacture of like goods. This was due to GOC influence in the domestic market in China for raw materials, in this instance CRC. The GOC's influence has led to the finding of a particular market situation

³⁸ 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 'extended period' and 'reasonable period' are the investigation period.

for like goods. The commission considers that the GOC's influence on CRC costs has a consequential effect on the CRC costs in Jiashilun's records that is not insignificant, such that Jiashilun's overall cost of production for like goods does not reflect competitive market costs.

Accordingly, the commission adjusted the CRC costs in relation to the production of like goods in Jiashilun's records to reflect competitive market costs, ie the costs absent the particular market situation caused by the GOC's influence. The commission has not adjusted any of the other items recorded in Jiashilun's cost of production.

After having made this adjustment, the commission considers that Jiashilun's records satisfy the requirements of section 43(2) of the Regulation. The commission consequently worked out the amount for the cost of production in Jiashilun's normal value under section 269TAC(2)(c) using information set out in Jiashilun's records.

Non-confidential APPENDIX C provides further details of this calculation.

Adjustments

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

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

Table 10 – Summary of adjustments – Jiashilun

Dumping margin

The commission calculated a dumping margin in respect of the goods exported by Jiashilun to Australia for the investigation period. The dumping margin is **negative 1.4%**.

This dumping margin differs from that in SEF 553 (which was negative 6.2%) because the commission made two changes to the normal value calculation:

- The commission removed a domestic inland transport adjustment, which originally reduced Jiashilun's normal value. The commission removed this adjustment because the normal value for Jiashilun included SG&A costs, which omitted direct sales costs (such as domestic inland transport). As the constructed normal value already excluded domestic inland transport, no further adjustment was necessary.
- The commission revised its calculation of an adjustment to Jiashilun's costs of production. **Non-confidential APPENDIX C4** discusses this change in detail.

Accordingly, the Commissioner terminated the dumping investigation in relation to Jiashilun in TER 553-B, on the basis there has been no dumping of the goods by Jiashilun, pursuant to section 269TDA(1)(b)(i).

Confidential Attachments 12 to 15 contain Jiashilun's dumping margin calculations.

6.4.2 Uncooperative exporters – China

As detailed in chapter 6.3.3, the commission considers that all exporters of the goods from China, other than Jiashilun, 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 exporters pursuant to section 269TAB(3), having regard to all relevant information.

The commission has used the lowest weighted average FOB export price for the investigation period of Chinese exporters who exported to Australia during the investigation period, as declared by importers in the ABF import database.³⁹ The commission calculated the weighted average export price using all exports of the goods by that exporter during the investigation period.

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. The commission considers that the ABF import database is a reliable source for determining an export price for the goods to China in this case because importers generally classify the goods under only one tariff code, as discussed in chapter 3.4. This limits the likelihood of the ABF import data including imports of products that are not the goods, particularly after the commission cleansed the data, as discussed in chapter 5.5.

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 used the normal value established for Jiashilun.

The commission considers that the normal value of Jiashilun is most relevant information on the basis that:

- the commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value
- the normal value of Jiashilun demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Chinese market, absent a particular market situation, based on the information before the commission.

³⁹ See chapter **Error! Reference source not found.** for further detail on the method used by the commission for removing outliers from the ABF import database data.

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative exporters from China for the investigation period is **17.3%**.

The commission's calculations are included in **Confidential Attachment 2**.

This dumping margin differs from that in SEF 553 (which was 11.5%) due to a change in the normal value for Jiashilun, as discussed in chapter 6.4.1.

6.4.3 Submissions to the SEF in respect of the particular market situation

6.4.3.1 Submission by the Government of China

In its submission in response to SEF 553⁴⁰, the GOC made the following comments regarding the particular market situation finding:

- There is nothing 'distinct, individual, single, specific' about the situation of the painted steel strapping market in China.
- There has been no quantitative or qualitative assessment by the commission of the effect of various Chinese government policies regarding the Chinese steel industry.
- The GOC disagrees that the existence of such policies renders the Chinese market for the goods as being subject to a particular market situation.
- The only distinctive feature identified in SEF 553 was that HRC/CRC prices are lower in China compared to Korea and Taiwan.
- The Chinese steel market is the most competitive in the world in terms of the number of entities, the demand for steel, and the scale of industrial development.
- The GOC does not regulate or control steel prices, which extends to HRC/CRC and painted steel strapping.
- SEF 553 provides no evidence that GOC policy and regulations would result in or cause lower HRC/CRC prices and that the lower prices are instead a result of Chinese economic conditions, market forces and competition.
- The GOC has in place measures aimed at reducing capacity, reducing over-competition and increasing environmental standards, which are more likely to increase prices.
- The commission should not make an assessment of a particular market situation in China based on a benchmark found in a market not characterised by GOC influence.
- SEF 553 does not acknowledge the influence of iron ore prices on the cost of production and price of steel products, which would make insignificant any influence GOC policy might have on steel prices.
- Relevant economic factors and conditions in China and the influence of international costs determine the prices and costs of steel production, including HRC and other inputs used for the production of the goods. They are no more and no less 'particular' than the economic factors and conditions that exist in other countries. The commission cannot expect that the economic conditions relevant to HRC, or other steel products in China, would be identical to the conditions in any other country, whether that be Australia, Korea, or Vietnam.

⁴⁰ EPR 553, Item 22.

- Lower prices in Korea and Taiwan can be explained by differences in the cost of steel making, the large number of competitors and strong competition in the Chinese domestic market, differences in product specification, economic conditions and other factors.
- SEF 553 indicates Chinese producers have lower conversion costs for the goods than Australian and Vietnamese producers and if the commission applied these findings to the steelmaking process more broadly, Chinese costs for HRC/CRC would also be lower than other countries.

The GOC's submission contains similar statements to its RGQ.⁴¹

6.4.3.2 Commissioner's response to the Government of China's submission

Nature of the particular market situation

In response to SEF 553, the GOC disagreed with the commission's view that a particular market situation exists in the domestic market for painted steel strapping. The GOC's submission disagrees that the existence of certain policies, or the fact that government policies and laws may 'influence' or be influenced by a particular industry, somehow renders the Chinese market for painted steel strapping as being subject to a 'particular market situation'. Citing a World Trade Organization (WTO) Panel Report⁴², the GOC submits that there is nothing 'distinct, individual, single, specific' about the situation of the painted steel strapping market in China.⁴³

The commission notes that the DS529 Panel Report cited by the GOC closely considered the proper interpretation of the term 'particular market situation'. The report states:

*...a 'situation' is a 'state of affairs' or a 'set of circumstances'. This term is qualified by the terms 'particular' and 'market' functioning as adjectives in Article 2.2 of the Anti-Dumping Agreement. The situation in question must arise in, or relate to the 'market', and the market situation must be a 'particular' one. It follows from the qualifier 'particular' that the market situation must be 'distinct, individual, single, specific'. Thus, a fact-specific and case-by-case analysis of the particular market situation is necessarily called for.*⁴⁴

The commission considers that the facts and evidence before it support a finding that a particular market situation existed in relation to painted steel strapping in the investigation period. The particular market situation comprised of a 'state of affairs' or a 'set of circumstances' in respect of the buying and selling of the goods or like goods in China that is 'individual' or 'distinct'. Relevantly, the commission notes the following (which Appendix A further explains):

- The GOC's involvement and influence over the broader steel industry in China was the primary cause of prevailing structural imbalances for Chinese steel markets

⁴¹ EPR 553, Item 10.

⁴² The WTO Panel Report *Australia – Anti-Dumping Measures on A4 Copy Paper* (DS529).

⁴³ EPR 553, Item 22, page 03.

⁴⁴ DS529 Panel report, para 7.21.

generally. By extension, this included the markets for HRC/CRC and painted steel strapping.

- The GOC's issuance of policies, planning guidelines and directives along with provisions of direct and indirect financial support supported over-investment in steel production capacity.
- The GOC supported inefficient enterprises, but did not support access to, and therefore restricted, import competition from foreign producers.
- The GOC's involvement and influence encouraged excessive production and over supply of primary steel, intermediate steel products (including HRC/CRC), and downstream steel products (including painted steel strapping).
- In this case, HRC or CRC is the major raw material input used in the production of painted steel strapping. Coil costs (whether HRC or CRC) represent a significant and broadly consistent overall proportion of the CTM of painted steel strapping.
- The GOC's programs and policies in the steel industry increased the supply of HRC/CRC relative to demand. Over supply and low import penetration contributed to a situation, which significantly affected the dynamics and price setting in the domestic market. This manifested in lower prices and costs for HRC/CRC.
- The lower prices for HRC/CRC in turn affected the prices and costs for painted steel strapping.
- The resultant price of painted steel strapping in China is lower than it would otherwise be absent the particular market situation. The lower prices in China are confirmed by regional benchmarks that are unaffected by the particular market situation. The commission's observations regarding lower prices are the result of the GOC's involvement and influence.
- The structural imbalances, excess capacity and lack of import competition in China represent a state of affairs, which caused a distinct and unique situation in the market for painted steel strapping.

Taken together, the factors above clearly demonstrate a 'particular market situation' within Article 2.2 of the Anti-Dumping Agreement, being a state of affairs or a set of circumstances in respect of the buying and selling of painted steel strapping in China that was 'distinct' and 'individual'.

The commission therefore disagrees with the GOC's submission that there is nothing 'distinct' or 'particular' as to the market situation for painted steel strapping in China. Absent the GOC's involvement and influence, such a market situation for painted steel strapping may not have arisen.

Qualitative/quantitative assessment and evidence relied on

The GOC states that the only 'distinctive' feature that SEF 553 could identify was lower HRC/CRC costs and prices in China, as compared to Korea and Taiwan. Implicit in this argument and the GOC's related arguments is that lower HRC/CRC costs and prices are due solely to competitive market factors in China and that the particular market situation is not a factor in those lower prices and costs.

That HRC/CRC prices and costs are generally lower in China compared to Korea and Taiwan is accurate, but as stated in **Non-confidential Appendix A**, the commission found that the evidence before it demonstrates that the particular market situation is not an insignificant cause of the difference in HRC/CRC prices in China compared to Korea

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and Taiwan. In other words, lower HRC/CRC in China are a result of the particular market situation in China, rather than a cause of the particular market situation. The evidence relied on by the commission in making its finding includes:

- 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 painted steel strapping markets
- various subsidy programs, lending and credit facilities, preferential loans, land grants and capacity controls affecting domestic output and consumption of steel, noting that individual exporters will be affected differently based on the level of subsidisation they receive
- 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 (NDRC), through its dual role of developing planning guidelines and directives and approving large scale investment projects
- the share of total Chinese steel production by 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.

Comparative advantages

The commission acknowledges that internal economic factors in China, including a large number of participants in the market, as well as international economic factors that affect all global producers of steel products, such iron ore prices, are influential to the cost and price of steel in China. However, as detailed in **Non-confidential Appendix A**, the commission is satisfied that the various policies, subsidy programs, taxation arrangements, etc. which are provided by the GOC form part of the state of affairs contributing to the particular market situation. This state of affairs influences internal factors in a manner that is not insignificant and distort the HRC/CRC costs used in the production of like goods.

The commission further acknowledges the GOC observations that, in this investigation, Jiashilun's conversion costs from CRC to painted steel strapping were lower than the Australian and Vietnamese manufacturers of like goods that the commission examined. This indicates Chinese producers of painted steel strapping have a comparative advantage to other producers of painted steel strapping due to conversion cost efficiencies. Any such comparative advantages are reflected in Jiashilun's normal value insofar as these conversion costs are recorded in Jiashilun's records and were not adjusted by the commission. However, the GOC does not explain how its observation regarding conversion costs from CRC to painted steel strapping applies more generally to the steel making process. Specifically, the GOC has provided no evidence of how its observation regarding conversion costs from CRC to painted steel strapping is relevant to raw material inputs, eg HRC/CRC, which account for a high percentage of the overall CTM of the goods and like goods.

On this basis, the commission cannot make a broader finding as submitted by the GOC that the comparative advantage observed regarding conversion costs for painted steel strapping explains lower cost/lower prices of HRC/CRC in China. The comparative advantage that the GOC refers to does not negate the evidence the commission relied on which demonstrates that the effect of the particular market situation on HRC/CRC is not insignificant.

The commission also considered in this investigation whether it was possible to quantify any other comparative advantages and disadvantages experienced by the domestic Chinese producers. The commission considers that for any such quantification to be possible, 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 and
- 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 steel markets generally and the HRC/CRC market specifically, the commission considers that it is not possible to isolate and quantify a 'net' amount of comparative advantage (or disadvantage) enjoyed by Chinese domestic producers using the information before it.⁴⁵

Iron ore

The GOC states that the SEF fails to acknowledge that the most influential factor in the cost of production and the prices of steel products in China is not the GOC's policies, but the cost of iron ore. The GOC's submission refers also to pages 8 to 10 of the RGQ, mentioning in particular the following:

- The data indicates that the iron ore industry in China is import-oriented. As iron ore is one of the main raw materials of steel product, the price of its downstream product, including the goods, is 'closely aligned' to the prices of iron ore. That is to say, one of the most significant factors in a Chinese steel producer's cost, and the steel price in China, is the price of iron ore from Australia.
- Steel prices in the Chinese market have trended in a similar fashion to the cost of the major raw material input, iron ore.
- Unless the Chinese steel market was to behave in a way that is inconsistent with market prices of iron ore, it is plainly impossible for any policy of the GOC to have a comparatively significant influence on the cost and prices of steel products in China.

⁴⁵ The commission notes that it came to similar conclusions in recent steel cases, refer to Report Nos. 419, 441, 466, 516, 517, 521/522 and 529.

The RGQ and other independent sources confirm that China imports a significant amount of iron ore, including a large proportion from Australia and Brazil. Despite being imported-oriented in relation to iron ore, the commission understands that some domestically sourced iron ore is used in Chinese steel production.⁴⁶

The commission has examined iron ore prices and their significance to CRC/HRC, inputs used in the production of like goods during the investigation period. In doing so, the commission notes that roughly 1.5-1.6 tonne of iron ore is consumed for every one tonne of steel produced.⁴⁷ Using iron ore steel prices sourced from MEPS International Ltd (MEPS), a reputable independent supplier of steel market pricing data, the commission estimates that iron ore prices were roughly one quarter of Chinese CRC prices in the investigation period. The commission acknowledges the GOC's submission that iron ore is a significant factor in a Chinese steel producer's costs.

The commission also acknowledges the GOC's submissions that CRC prices in China are trending in a similar fashion to iron ore prices in the investigation period. However, the commission's acknowledgement does not amount to agreement with the GOC's statements that iron ore prices and painted steel strapping prices are 'closely aligned'. In addition, the commission does not agree that the GOC's observations about iron ore trends eliminates the possibility that GOC policies influence cost and prices of primary steel, intermediate steel products and downstream steel products in China to a degree that is not insignificant. The commission considers that CRC prices and painted steel strapping prices in China are lower than what they otherwise would be, absent the particular market situation caused by the GOC influence, noting the greater significance of other costs involved in the steel making process that are in addition to iron ore costs.⁴⁸

The commission also clarifies that the SEF did not make any finding that the GOC's policies are the 'most influential factor' to the cost of production and the prices of steel products in China as implied by the GOC's submission. The commission also notes the GOC's point in its RQG where it states '...if the commission, for any reason, considers that the Chinese producer's cost of production can be rejected on the basis of 'abnormality' caused by any cost 'distortion' in the Chinese steel market, the commission must properly identify and specify the effect of the distortion' [emphasis added].

The commission does not consider there to be any requirement that government influence must be the 'most influential factor' or precisely measurable for there to be a particular market situation finding. The commission considers that the GOC's influence on the market for like goods in this investigation is not insignificant and, therefore, has enough of an impact, such that the market conditions for the like goods renders prices not normal and ordinary.

⁴⁶ GOC RGQ, page 9. Refer also to <https://www.scmp.com/economy/china-economy/article/3120761/how-iron-ore-powering-chinas-infrastructure-boom-and-why>
<https://www.aspistrategist.org.au/no-end-in-sight-for-chinas-dependence-on-australian-iron-ore/>

⁴⁷ Refer to <https://www.bhp.com/what-we-do/products/iron-ore> and <https://www.scmp.com/economy/china-economy/article/3120761/how-iron-ore-powering-chinas-infrastructure-boom-and-why>
<https://www.mining-technology.com/features/how-china-is-moving-beyond-australia-for-its-iron-ore-hunger/>

⁴⁸ For example land, buildings, coal, scrap, gas, fluxes, alloys, electricity, labour, transport, SGA etc.

6.4.4 Submissions to the SEF in respect of the proper comparison of domestic and export prices

6.4.4.1 Submission by the Government of China

In its submission⁴⁹, the GOC disagreed with the commission's finding that if a particular market situation does not equally affect domestic sales and export sales, such a finding might render domestic sales not suitable for the purposes of proper comparison. The GOC submits the following:

- SEF 553 has not established that the alleged particular market situation has affected Chinese exporter domestic sales of the goods differently to its Australian sales.
- SEF 553 has found that the only difference between domestic and exported goods is to be found in the competitive market conditions in China and Australia, and there are major flaws in this approach.
- The proposition that because the cost of production in China is on average lower, therefore all competitors in that market compete on the same basis and have no competitive advantages or disadvantages between them is incorrect, and that the Chinese steel industry is highly dynamic and competitive and steel prices are unregulated.
- Lower production costs and prices in China compared to Australia reflects comparative advantages between different producers in different countries. The disadvantages suffered by Australian producers are higher overheads and has nothing to do with the cost of steel coil in China and Australia.
- There is nothing about Chinese market conditions that makes them more or less cost-efficient when producing the goods for the Chinese or Australian market.
- By the reasoning in SEF 553, once a particular market situation in the form of lower costs has been determined, it is inevitable the particular market situation affects proper comparison. As such, the price at which Chinese exporters sell the goods in Australia is irrelevant to the proper comparison determination in the SEF.
- By the reasoning in SEF 553, the only scenario in which the approach taken in the SEF would result in a conclusion that a particular market situation does not affect proper comparison would be where the exporter's home market and the Australian market have identical conditions of competition and identical prices. Such a scenario does not exist.

6.4.4.2 Commissioner's response to the Government of China's submission

The commission notes that the GOC in its RGQ did not provide substantive evidence regarding the Chinese market for the goods and advised the commission to undertake its own inquiry with market participants to gain further understanding of the Chinese market for the goods. However, the sole cooperating Chinese exporter, Jiashilun, stated in its REQ that it is unable to provide any specific detail regarding the market, including sources of demand, market segmentation and competition between Chinese and imported goods, other than an assertion the Chinese market for the goods is competitive.

⁴⁹ EPR 553, Item 22.

The commission's findings are relevant to Jiashilun, as it was the only cooperating Chinese exporter in the investigation. The commission does not possess data on other Chinese manufacturers of the goods given that other Chinese exporters did not cooperate with the investigation. The commission has therefore drawn reasonable inferences regarding competition and competitive advantages or disadvantages between Chinese manufacturers informed by all information available to it.

As noted in **Non-confidential Appendix B**, the commission acknowledges that the evidence available suggests that the Chinese domestic market for the goods consists of a number of producers that compete with each other, albeit where a particular market situation distorts the costs of materials and production in a manner that affects all domestic producers. Based on the information available, the commission does not consider that all competitors in the market compete on the same basis and have no competitive advantages or disadvantages between them. The commission considers it likely that there are various levels of comparative advantage between Chinese exporters based on factors such as varying overhead costs and levels of efficiency (although it notes that there is a lack of cooperative exporter data to confirm this). However, the commission does consider that all exporters compete in a market impacted by a particular market situation that modifies the conditions of competition in a consistent manner for all market participants. As a result, Chinese producers have less flexibility with respect to price setting for sales of painted steel strapping in their domestic market.

In response to the GOC's submission that, applying the reasoning in the SEF, a finding of a particular market situation would inevitably lead to a finding that such a situation will affect a proper comparison, the commission notes the following:

- DS529 established that 'the "proper comparison" language calls for an assessment of the relative effect of the particular market situation on domestic and export prices' and that the relative effect 'is likely to depend significantly upon a number of factors, including the prevailing conditions of competition in each market and the existing relationship between price and cost'.⁵⁰
- The 'relative effect' does not simply encompass differences in prevailing domestic and export prices. It encompasses an assessment of the relationship between price and cost and the conditions of competition in each market and how any differences in these factors impact an exporter's options to take advantage of an input cost decrease.⁵¹
- This assessment is fact-specific and must be made on a case-by-case basis.⁵² All relevant factual circumstances, including the actions of individual market participants, must be taken into account.⁵³ An assessment using this approach will not necessarily lead to a determination that the relative effect is different in every case where a particular market situation exists in the exporting country but not in the importing country.

In this investigation, the commission has applied the approach outlined above in respect of the sole cooperating exporter and determined that the relative effect of the particular

⁵⁰ DS529, paras. 7.75 and 7.80.

⁵¹ DS529, para. 7.80.

⁵² DS529, para. 7.76.

⁵³ DS529, paras. 7.80 and 7.81.

market situation on Chinese domestic and export prices of the goods in this case is not the same.

Another case, *Review 551 into A4 Copy Paper exported from Brazil, China, Indonesia and Thailand*, also applied the approach outlined above. However, under the different circumstances of that case, and contrary to the claims in the GOC's submission, the commission found that despite there being a particular market situation in Indonesia, the domestic sales of like goods in the Indonesian domestic market permitted a proper comparison with export prices of the goods exported to Australia for the relevant review period.⁵⁴

6.4.5 Submissions to the SEF in respect of constructed normal values – China

6.4.5.1 Submission by Signode Australia

In its submission⁵⁵, Signode Australia claimed the benchmark cost for CRC does not include the slitting of coil for use in the manufacturing process of painted steel strapping, thereby 'understating the true cost of the raw material CRC input as supplied to the steel strapping manufacturer's premises in China' as Chinese manufacturers purchase pre-slit coil. Signode Australia requested the commission recalculate the normal values for Jiashilun and all other Chinese exporters to include the cost of slitting the coil.

Signode Australia also sought clarification if the MEPS CRC prices used in the benchmark analysis between China, Korea and Taiwan included delivery cost, claiming it is a cost incurred by Chinese exporters from a domestic supplier of raw materials.

6.4.5.2 Commissioner's response to Signode Australia's submission

The commission is satisfied that the benchmark cost for CRC used to calculate the level of distortion of Chinese CRC prices is comparable to the CRC price supplied to steel strapping manufacturers in China. The commission confirmed during verification of Jiashilun that the slitting of coil is part of the steel strapping production process⁵⁶ and is incorporated in the production cost and not included in the cost of raw material. The commission has therefore not made further adjustments to the benchmark cost for CRC.

The commission confirms that adjustments made to the MEPS CRC price for China include delivery cost. However, as the commission has amended its raw material cost adjustment based on Jiashilun's verified CRC purchase prices instead of the MEPS Chinese CRC price, as discussed in **Non-confidential Appendix C**, this is no longer relevant. The commission confirms that delivery costs have been included in Jiashilun's CRC purchase price, as well as the MEPS CRC price for Korea and Taiwan.

6.4.5.3 Submission by the Government of China

In its submission⁵⁷, the GOC submitted that the commission's approach in SEF 553 to calculate the normal value for Chinese exporters by reference to the 'competitive market

⁵⁴ Available on the commission's website.

⁵⁵ EPR 553, Item 20.

⁵⁶ See chapter 2.1 of Jiashilun Verification Report, EPR 553, Item 15.

⁵⁷ EPR 553, Item 22.

costs' of CRC in Korea and Taiwan was inconsistent with both Australian domestic law and the ADA. The GOC submits that, pursuant to previous rulings by the WTO, the commission cannot rely upon an external 'benchmark' cost in an exporter's constructed normal value.

6.4.5.4 Commissioner's response to the GOC's submission

The commission notes that it did not replace cost items which it considered were unaffected by the particular market situation, ie conversion costs from CRC⁵⁸ to painted steel strapping which includes elements of labour costs, manufacturing overheads and other material costs. The commission used those costs as reported in Jiashilun's records to calculate its normal value.

In determining the method for replacing steel coil costs, the commission first considered whether it could use prices paid by Chinese producers of the goods in China. As the commission had found the particular market situation affected all supplies of steel coil in China, it determined there was no suitable market price for steel coil in China available to use to calculate an adjustment.

The approach in using an external benchmark to adjust the raw material costs of Chinese exporters is consistent with chapter 9.3 of the Manual. It provides that a substitute value for a major cost input may be ascertained using other country surrogate prices, where prices paid to input suppliers do not reflect a competitive market price for that input and government influence is found to extend to all suppliers of that cost input (as is the case here). The commission considers this practice is consistent with the Act. Moreover, since the use of the external benchmark is to eliminate the effect of a particular market situation which prevents the proper comparison of Chinese domestic and export prices for painted steel strapping, it is also consistent with the applicable provisions of the ADA, as interpreted and applied in DS529.

6.4.6 Summary of dumping margins

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

- Jiashilun, were not dumped
- uncooperative exporters from China, were dumped at a margin of 17.3%.

6.4.7 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, where section 269TDA(5) does not apply, which it does not in this investigation.

⁵⁸ The commission notes that Jiashilun is not an integrated steel producer and purchases its CRC from suppliers. For this reason, the commission is unable to examine individual cost items involved in the production of CRC.

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 (which excludes goods imported from Jiashilun) was greater than 3% of the total import volume, and is therefore not negligible.

The commission's calculations are at **Confidential Attachment 1**.

6.4.8 Level of dumping

Section 269TDA(1)(b)(i) 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.

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 (other than Jiashilun) and the dumping margin for all Chinese exporters is more than 2%.

6.5 Dumping assessment – Vietnam

6.5.1 Sam Hwan

The commission calculated a dumping margin in respect of the goods exported to Australia by Sam Hwan for the investigation period. The dumping margin is **1.7%**.

Accordingly, the Commissioner terminated part of the dumping investigation in relation to Sam Hwan in TER 553-A, on the basis there has been negligible dumping by Sam Hwan in relation to the goods, pursuant to section 269TDA(1)(b)(ii).

The commission considered that all export sales made by Sam Hwan to its Australian customers, all of whom were unrelated, during the investigation period were 'arms length' transactions. The commission accordingly determined an export price under section 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

The commission considered that domestic sales made by Sam Hwan to its related customers during the investigation period were not 'arms length' transactions, pursuant to section 269TAA(1)(b). The commission removed these sales from the domestic sales listing. The commission considered all domestic sales made by Sam Hwan to its unrelated customers during the period were 'arms length' transactions. The commission was then able to calculate Sam Hwan's normal value under section 269TAC(1).

Full details on the calculation of Sam Hwan's dumping margin are provided in TER 553-A.

6.5.2 Uncooperative exporters – Vietnam

As detailed in chapter 6.3.2, the commission considers all exporters of the goods from Vietnam, other than Sam Hwan, 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 exporters pursuant to section 269TAB(3), having regard to all relevant information.

The commission has used the lowest weighted average FOB export price for the investigation period of Vietnamese 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.

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 like 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 used the normal value established for Sam Hwan, less favourable adjustments.

The commission has chosen the normal value of Sam Hwan on the basis that:

- the commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value
- the normal value of Sam Hwan, less favourable adjustments, demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Vietnamese market, based on the information before the commission.

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative exporters for the investigation period is **4.3%**.

The commission's calculations are included in **Confidential Attachment 2**.

6.5.3 Summary of dumping margins

The commission has assessed that the goods exported to Australia from Vietnam during the investigation period by:

- Sam Hwan were dumped at a margin of 1.7%
- uncooperative exporters were dumped at a margin of 4.3%.

6.5.4 Volume of dumped imports

As discussed in chapter 6.4.7 the Commissioner must terminate the investigation, as far as it relates to a country, if satisfied there is a negligible volume of dumped goods.

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 allegedly dumped goods from Vietnam was greater than 3% of the total import volume, and is therefore not negligible.

The commission's calculations are at **Confidential Attachment 1**.

6.5.5 Level of dumping

Section 269TDA(1)(b)(ii) 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 dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%.

The commission is satisfied that there has been dumping of the goods by Sam Hwan, but at levels below 2%. Accordingly, the Commissioner terminated the dumping investigation as it relates to Sam Hwan, pursuant to section 269TDA(1)(b)(ii).

7 SUBSIDY INVESTIGATION – CHINA

7.1 Findings

The commission has found that, in respect of the investigation period:

- exports of the goods from China to Australia were at subsidised prices
- the subsidy margin in respect of Jiashilun is negligible
- the subsidy margin for non-cooperative entities is 42.6%
- the volume of subsidised goods exported to Australia from China was not negligible.

7.2 Relevant legislation

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.⁵⁹

⁵⁹ 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.

7.3 Investigated programs

The applicant alleged the existence of 45 programs in relation to exports of the goods from China, based on previous findings made by the commission in respect of subsidies

received for other products manufactured in China from HRC, specifically hollow structural sections (HSS). The applicant argued that such subsidies would be applicable to the goods because, like HSS, the production process relies on HRC as an input.

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.⁶⁰

Consistent with the statement above, the commission is satisfied that subsidies for HRC or CRC may be applicable to the goods. Producers of the goods may receive such subsidies directly if they are integrated, ie produce the HRC or CRC inputs themselves. Alternatively, if the producers of the goods purchase HRC or CRC from upstream suppliers, such subsidies may pass through from the upstream supplier.

As discussed in **Non-confidential Appendix A6.1**, the commission considers that CRC and HRC costs are closely related, and any subsidies on HRC would equally apply to CRC.

After considering the information before the commission on the identified subsidies, the commission is also satisfied that the subsidies may also be applicable to the goods, as HSS and the goods are comparable products.

Information on a further 3 programs not previously investigated by the commission was provided by the GOC and the cooperating exporter in its REQ. This brought the total of investigated programs to 48 for this investigation.

7.4 Summary of programs

The commission has set out the description and finding for each program in the table below.

| Program Number ⁶¹ | Program name | Program Type | Countervailable? |
|--|---|--------------|------------------|
| 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 |

⁶⁰ The Manual, chapter 19.

⁶¹ The commission has maintained the program number used in the application.

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| Program Number ⁶¹ | Program name | Program Type | Countervailable? |
|------------------------------|--|--|------------------|
| 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 (LTAR) | No |
| 21 | Water Conservancy Fund Deduction | Grant | Yes |
| 22 | Wuxing District Freight Assistance | Grant | Yes |
| 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 |

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| Program Number ⁶¹ | Program name | Program Type | Countervailable? |
|------------------------------------|--|--------------|------------------|
| 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 |
| Further Identified Programs | | | |
| 553-1 | Income tax relief for small low-profit enterprises | Tax | No |
| 553-2 | Special fund for industrial transformation and upgrading in 2019 | Grant | Yes |
| 553-3 | Exemption and reduction of social insurance payments for enterprises during the epidemic period | Grant | No |

Table 11 – Investigated subsidy programs – China

Non-confidential APPENDIX D provides further information regarding the commission's findings in relation to each program investigated.

7.5 Information considered by the commission

7.5.1 Information provided by exporters

The commission has relied upon information provided by Jiashilun in assessing the alleged subsidy programs. This included information provided by Jiashilun in the REQ as well as information provided during verification.

7.5.2 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 on the claims made by the applicant in relation to countervailable subsidies.

The commission sent a questionnaire to the GOC upon initiation of this investigation, which among other things included questions relating to each of the alleged subsidy programs identified in the application. The GOC provided its RGQ to the commission on 15 August 2020⁶². The commission has considered the RGQ as part of this investigation.

The commission has also considered the GOC submission dated 21 May 2021⁶³.

7.5.3 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 exporters⁶⁴
- information provided to the WTO by the GOC in July 2019 in its notification 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)*⁶⁵
- previous investigations by the commission into subsidies provided to Chinese exporters.

7.6 Subsidy assessment – Jiashilun

The commission calculated a subsidy margin in respect of the goods exported to Australia by Jiashilun for the investigation period.

This commission's subsidy assessment for Jiashilun is discussed in TER 553-B. The commission found Jiashilun benefited from program 553-2 during the investigation period. The subsidy margin is **0.1%**.

Accordingly, the commission has recommended in TER 553-B that the Commissioner terminate part of the subsidy investigation in relation to Jiashilun, on the basis that the countervailable subsidy received by Jiashilun in relation to the goods, never at any time

⁶² EPR 553, Item 10.

⁶³ EPR 553, Item 22.

⁶⁴ EPR 553, Item 12 – Signode Australia Exporter Briefing.

⁶⁵ Available on the WTO website at https://www.wto.org/english/tratop_e/scm_e/scm_e.htm

during the investigation period, exceeded a negligible level, in accordance with section 269TDA(2)(b)(ii).

7.7 Subsidy assessment – Non-cooperative entities

7.7.1 Legislative framework

Section 269TAACA(1) provides that, in determining whether a countervailable subsidy has been received in respect of particular goods, or in 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 circumstances where an entity:⁶⁶

- 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’. The Commissioner considers all exporters except Jiashilun are non-cooperative entities in this investigation consistent with section 6.3.3 of this report. The Commissioner includes Lingyun Steel as a non-cooperative entity for the reasons outlined below.

7.7.2 Lingyun Steel

As discussed in chapter 6.3.2, the Commissioner considered that the REQ provided by Lingyun Steel contained extensive deficiencies. In the opinion of the Commissioner, Lingyun Steel could not quickly or easily rectify the deficiencies in its REQ in a further response without significantly impeding the conduct of the investigation in a timely and efficient manner. The Commissioner considers that the information in Lingyun Steel’s REQ is insufficient and does not contain information that is relevant to the countervailing investigation. Lingyun Steel provided no other relevant information. Accordingly, the Commissioner considers Lingyun Steel to be a non-cooperative entity pursuant to section 269TAACA.

7.7.3 Subsidies received by non-cooperative entities from China

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

In determining the countervailable subsidies for non-cooperative entities, the Commissioner has made such assumptions as considered reasonable in determining whether an entity has received a countervailable subsidy in respect of the goods and in determining the amount of countervailable subsidy for all other entities.

The commission has assumed that non-cooperative entities benefited from non-regional countervailable subsidies and the highest region-specific subsidy. The commission

⁶⁶ Entities covered by section 269TAACA(1) are described in section 269TAACA(2).

considers that the approach taken avoids double-count of similar programs between regions.

With the exception of program 20, discussed separately below, the subsidy margin for each program is the higher of:

- 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 application⁶⁷
- the margins calculated for the cooperating exporter as part of this investigation.

The commission summed 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 **42.6%**.

The commission's countervailable subsidy calculations for non-cooperative entities are contained in **Confidential Attachment 4**.⁶⁸

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

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 did not have information from non-cooperative entities about their hot rolled steel purchases. Notwithstanding, Jiashilun's REQ provided contemporary facts in relation to program 20 and the prevailing market conditions for HRC in the investigation period. The commission considers that this information is relevant and informative to base assumptions about program 20 for non-cooperative entities in this investigation.

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.⁶⁹ The determination of whether a countervailable subsidy exists is a different and separate determination to whether a particular market situation exists. Both determinations involve different considerations and can be independent of each other.

⁶⁷ Review 419 – Hollow structural sections from China, Korea, Malaysia, Taiwan and Review 529 - Hollow structural sections from China, Korea, Malaysia, Taiwan, Thailand.

⁶⁸ This attachment is confidential as it contains commercially sensitive information relating to exporters.

⁶⁹ See Non-confidential Appendix A, TER 553-B.

To determine the adequacy of remuneration and to determine whether a countervailable subsidy exists, in accordance with the approach outlined in Chapter 17 of the Manual, the commission has compared the following data:

- Jiashilun's purchases of HRC in China from private companies
- Jiashilun's purchases of HRC from SOEs.

The commission found that prices offered to Jiashilun by SOEs for the investigation period were higher than prices offered by private companies. From this, the commission considers that there is insufficient evidence that this program conferred a countervailable benefit to Jiashilun. The commission does not have any other information regarding purchases of HRC in China by other exporters of the goods. The Commissioner considers it reasonable to assume, based on Jiashilun's information, that non-cooperative entities have not received a countervailable subsidy from this program.

7.7.5 Submission by the Government of China

In its submission to SEF 553 in respect of program 20⁷⁰, the GOC supported the use by the commission of a domestic HRC market in China for determining the adequacy of remuneration paid for HRC by non-cooperative exporters of the goods.

The GOC further submitted that it is incorrect for the commission to adopt a 'default' presumption that SOE's in China are public bodies.

The commission's considers that it does not adopt a default approach of treating SOE's in China as public bodies. The commission's approach to determining whether an entity is a public body for the purposes of section 269T(1) is particular to each case. In this instance, the assessment is set out and supported by the facts at **Non-confidential Appendix D1**. The commission notes that part of full ownership by the government and the government's involvement in appointing management and in making business decisions is indicative that an entity is a public body. While an entity may be commercially driven, is not a factor considered in whether it is a public body or not.

The commission is satisfied that the GOC owns Chinese SOEs for this investigation. SOEs have close connections with the GOC and play an important role in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy.⁷¹ The commission has found previously that Chinese SOEs within the steel industry are public bodies. No interested parties provided evidence in this investigation to indicate that the previous findings by the commission are no longer valid.

7.8 Summary of subsidy margins

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

⁷⁰ EPR 553, Item 22.

⁷¹ The State Council, notice advising the issuing of the [guideline on reorganization of SOEs](#) (July 2016).

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| Exporter | Programs | Subsidy margin |
|--------------------------|--|-----------------------|
| Jiashilun | 553-2 – Special fund for industrial transformation and upgrading in 2019 | 0.1% |
| Non-cooperative entities | <p>Program 553-2 – Special fund for industrial transformation and upgrading in 2019</p> <p>Program 1 – Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones</p> <p>Program 2 – One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'</p> <p>Program 5 – Matching Funds for International Market Development for Small and Medium Enterprises</p> <p>Program 6 – Superstar Enterprise Grant</p> <p>Program 7 – Research & Development (R&D) Assistance Grant</p> <p>Program 8 – Patent Award of Guangdong Province</p> <p>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</p> <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 Shiyong</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 Project</p> | 42.6% |

Table 12 – Countervailable subsidies and subsidy margins

7.9 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.⁷²

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.⁷³

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

7.10 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
- if an exporter did receive a subsidy, the level of the subsidy did not at any time during the investigation period 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%.⁷⁴

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 Jiashilun and is therefore negligible
- for non-cooperative entities, exceeded 2% throughout the investigation period.

⁷² China is classed as a Developing Country under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

⁷³ Confidential Attachment 4, worksheet 'All other entity import volume'.

⁷⁴ China is classed as a Developing Country under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Findings

Based on the commission's analysis of the information contained in Signode Australia's application and information obtained during an Australian industry verification, the Commissioner is satisfied that the Australian industry experienced a deterioration in its economic performance during the investigation period. This was through the following forms of injury:

- loss of sales volume
- price suppression
- loss of profit
- reduced profitability
- reduced revenue
- a decline in capital investment
- a decline in ROI
- reduced capacity utilisation.

8.2 Approach to injury analysis

The commission is satisfied that the Australian industry is comprised solely of Signode Australia. This chapter details the injury analysis based on verified financial information submitted by Signode Australia, ABF import data and export volumes from cooperating exporters.

The injury analysis period in this investigation is from 1 April 2016. Graphs and tables in this chapter depict years ending 31 March, unless otherwise stated.

The data supporting the commission's analysis of the Australian market and the economic condition of the Australian industry is at **Confidential Attachments 5 and 6**.

8.3 Volume effects

8.3.1 Sales volume

The figure below depicts Signode Australia's domestic sales volumes of like goods since April 2016.

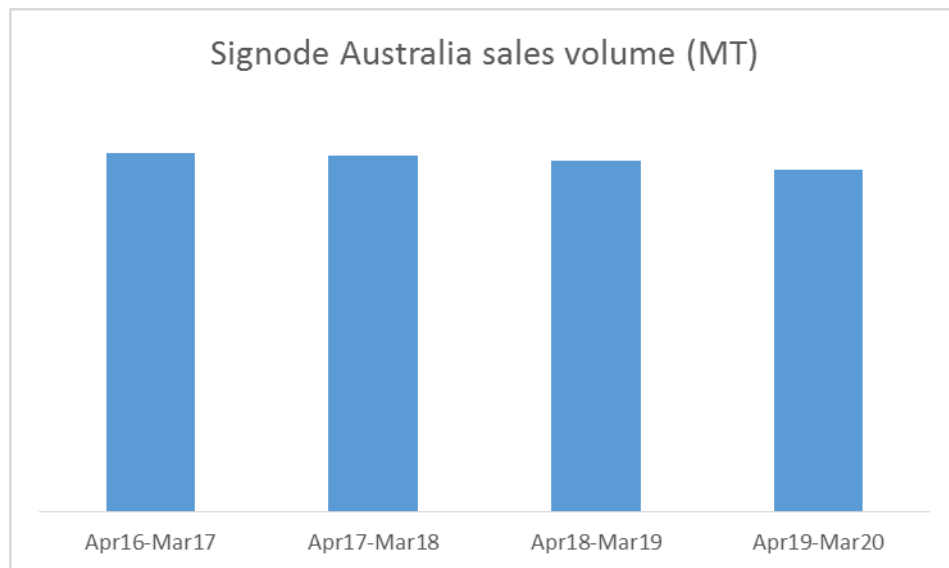


Figure 2 – Australian industry's domestic sales volume since April 2016

The figure shows that sales volumes declined over the injury analysis period.

8.3.2 Market share

The figure below sets out the commission's assessment of the market share held by the Australian industry, imports from China and Vietnam (excluding Jiashilun and Sam Hwan), imports from Jiashilun and Sam Hwan, and imports from all other countries since the injury analysis period commenced.

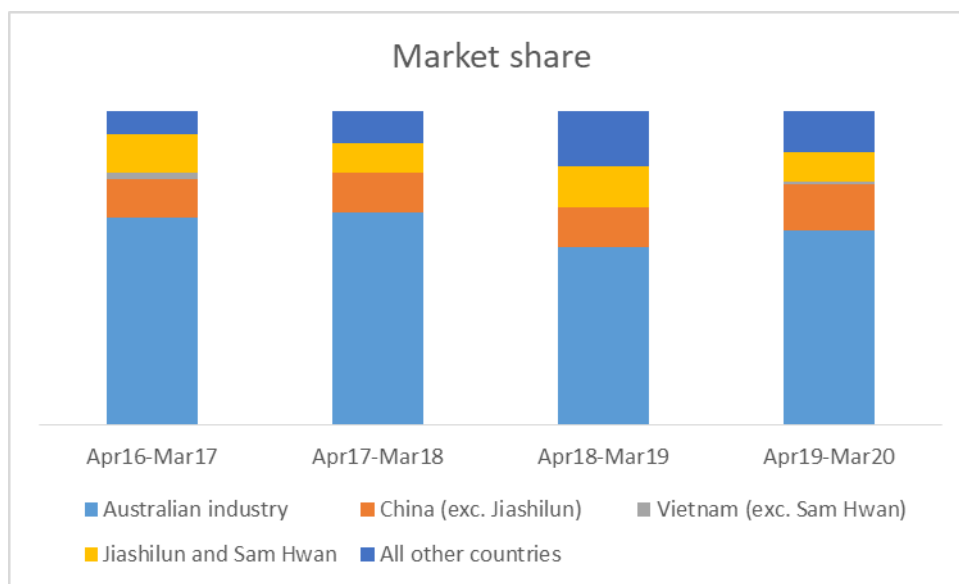


Figure 3 – Market share

The figure above indicates that the Australian industry's market share has remained generally steady, with a slight increase in the investigation period. Despite increasing in the investigation period, the Australian industry's market share is less than the beginning of the injury analysis period. The market share held by Chinese imports also remained steady, before increasing for the investigation period.

Vietnamese imports, after excluding Sam Hwan, make up a small share of the Australian market over the injury analysis period.

Combined imports of Jiashilun and Sam Hwan, who the commission found to be not dumping or dumping the goods at negligible volumes during the investigation period, have fluctuated over the injury analysis period, ending at lower levels.

8.3.3 Conclusion – volume effects

Based on the available information, the commission is satisfied that the Australian industry experienced injury in the form of reduced sales volume over the investigation period.

Although Signode Australia's market share reduced across the injury analysis period, it increased in the investigation period. This does not satisfy the commission that there is injury in the form of reduced market share.

8.4 Price effects

8.4.1 Price suppression and 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.

The figure below depicts the weighted average selling price of the goods sold by Signode Australia compared to its weighted average cost to make and sell (CTMS) for like goods.

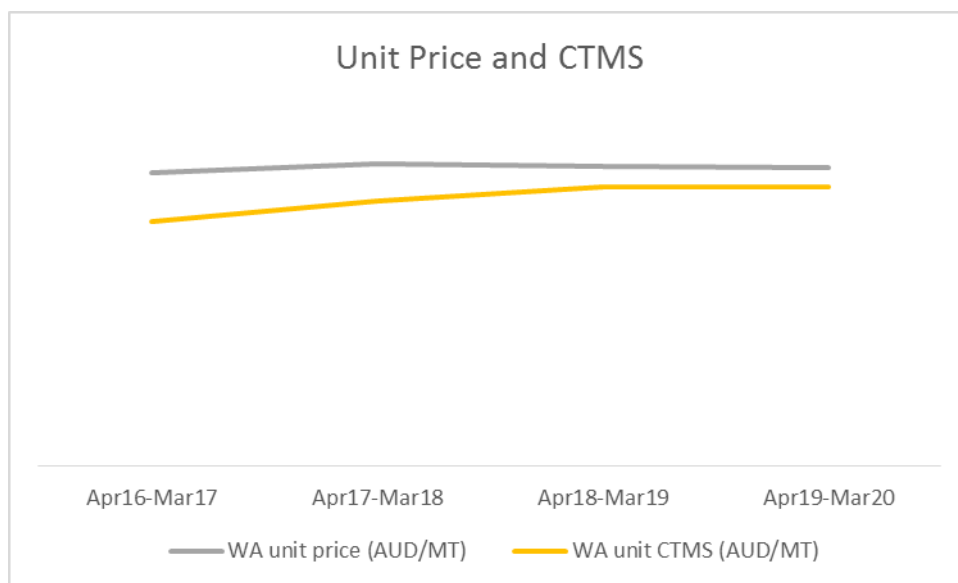


Figure 4 – Unit CTMS and unit selling price

The margin between the unit sales price and unit CTMS for like goods has narrowed consistently over the injury analysis period. Prices increased slightly in 2017/2018 before steadying, while the CTMS continued to rise.

8.4.2 Conclusion – price effects

The commission is satisfied that Signode Australia has experienced injury in the form of price suppression. However, the commission is not satisfied that Signode Australia has experienced price depression. While there was a slight drop in unit selling price from April 2017 to March 2019, this drop is negligible. Prices during the investigation period remain higher than at the beginning of the injury analysis period.

8.5 Profits and profitability

The figure below depicts the Signode Australia's total profit and unit profitability in respect of goods over the injury analysis period.

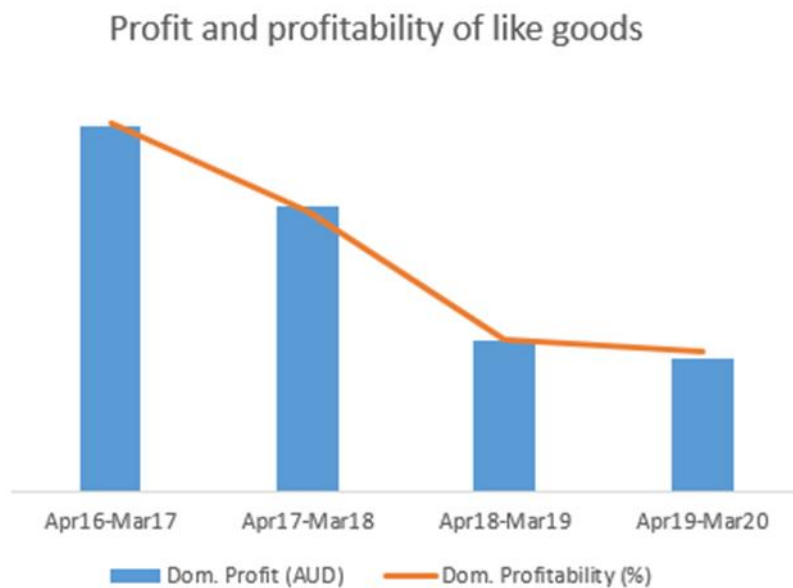


Figure 5 – Profits and profitability

The figure indicates Signode Australia's profit from the sale of like goods has dropped consistently each year over the injury analysis period. Profitability has followed a similar decline.

8.5.1 Conclusion – profit and profitability

The commission is satisfied that Signode Australia has experienced injury in the form of lost profits and reduced profitability.

8.6 Other economic factors

Signode Australia claimed the following forms of injury:

- reduced revenue
- a decline in capital investment
- a decline in ROI
- reduced capacity utilisation.

The commission has examined the data Signode Australia provided in respect of each of these claims.

8.6.1 Revenue

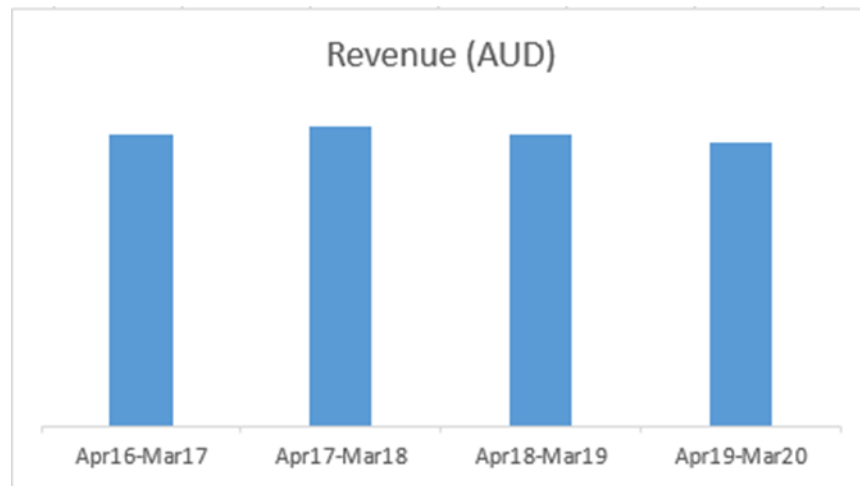


Figure 6 – Revenue

The figure above depicts Signode Australia revenue from the sale of like goods over the injury analysis period. It indicates that revenue increased in the second year, before dropping the following year and then dropping further in the investigation period.

8.6.2 Capital investment

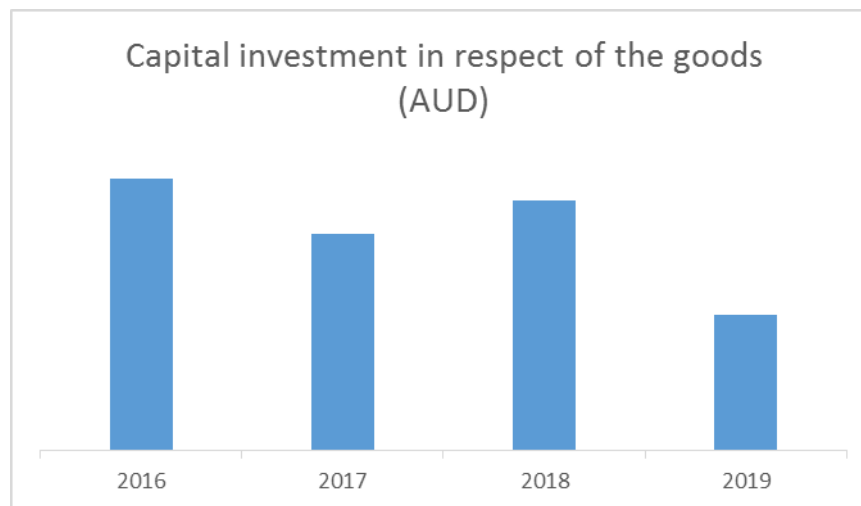


Figure 7 – Capital investment

The figure above depicts Signode Australia capital investment in respect of its manufacture of like goods on a calendar year basis, rather than on an April to March basis. The difference in reporting period is due to how Signode Australia reported its capital investment data. The commission considers that due to the significant overlap of reporting periods, the difference in reporting will not affect the veracity of the data.

The figure indicates that capital investment has dropped over the course of the injury analysis period.

8.6.3 Return on investment

Signode Australia calculated its ROI as a return on sales, which is an accepted form of ROI calculation by the commission. The following chart illustrates a downward movement over the injury analysis period.

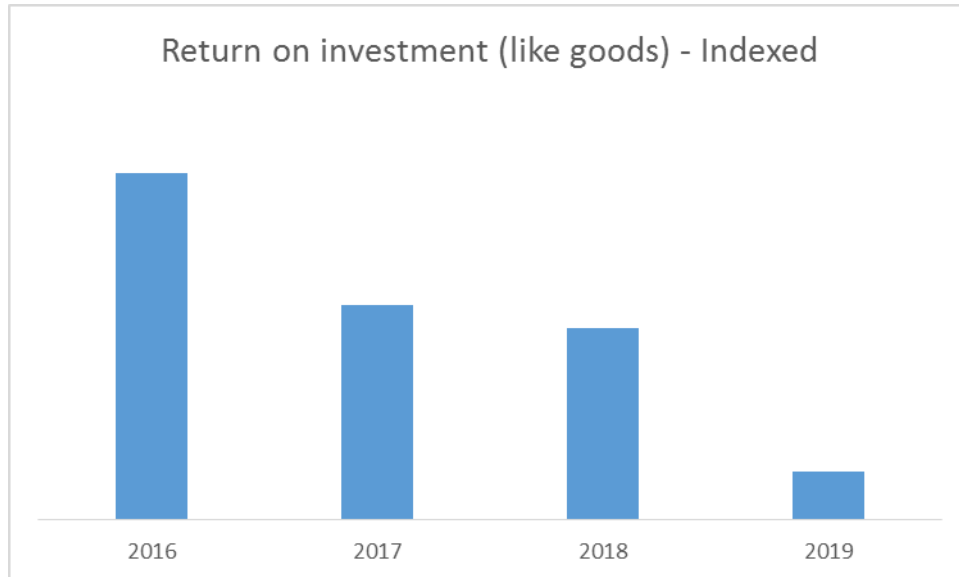


Figure 8 – Return on investment

8.6.4 Capacity utilisation

The figure below depicts capacity utilisation using production data for all like goods, domestic and export, provided by Signode Australia. It indicates that capacity utilisation has dropped over the course of the injury analysis period.

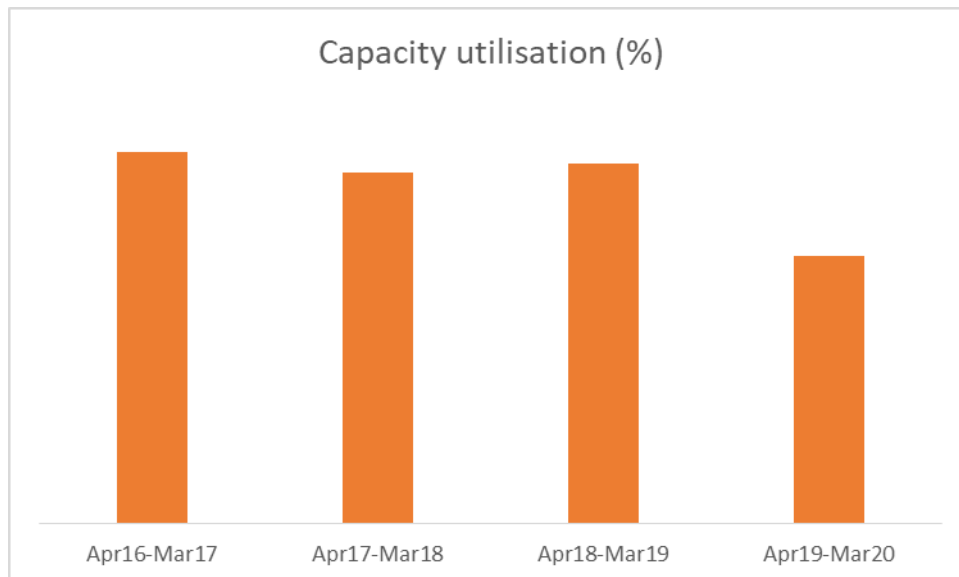


Figure 9 – Capacity utilisation

8.7 Conclusion

Based on the information above, the commission considers that Signode Australia has experienced the following forms of injury:

- loss of sales volume
- price suppression
- loss of profit
- reduced profitability
- reduced revenue
- a decline in capital investment
- a decline in ROI
- reduced capacity utilisation.

9 HAS DUMPING AND/OR SUBSIDIES CAUSED MATERIAL INJURY?

9.1 Findings

The Commissioner is satisfied that the Australian industry has suffered material injury from dumped and subsidised goods by exporters from China (except Jiashilun) in the forms of:

- loss of sales volume
- price suppression
- loss of profit
- reduced profitability
- reduced revenue
- a decline in capital investment
- a decline in ROI
- reduced capacity utilisation.

The commission is not satisfied that Australian industry has suffered material injury caused by dumped goods by exporters from Vietnam.

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, the Australian industry has experienced material injury.⁷⁵

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 *Ministerial Direction on Material Injury 2012* (Material Injury Direction).

⁷⁵ Section 269TJA relates to concurrent dumping and countervailable subsidisation. This provision provides that, where goods are both dumped and subsidised, and because of the combined effects of the dumping and the amount of countervailable subsidy received in respect of the goods, material injury to an Australian industry producing like goods has been or is being caused, the Minister may publish a notice under either sections 269TG(1), 269TG(2), 269TJ(1) or 269TJ(2) or notices under such sections at the same time. Section 269TJA is relevant in this investigation due to the combined dumping and subsidisation in relation to goods exported to Australia from China by uncooperative and non-cooperative exporters.

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
- the volume of dumped and/or subsidised imports from each country is not negligible
- 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.

9.3.1 Margin of dumping and the amount of countervailable subsidies received

As detailed in chapters 6.4 and 6.5, the dumping margins for exporters, other than Jiashilun and Sam Hwan, are not negligible.

The subsidy margin for Chinese exporters, other than Jiashilun, is also not negligible, as detailed in chapters 7.6 and 7.7.

9.3.2 Volume of dumped and subsidised imports

In chapter 6.4.7, the commission found that the volume of dumped imports from China is not negligible. Imports from Jiashilun were not included in this volume, as the commission found Jiashilun did not export dumped goods.

In chapter 6.5.4, the commission found that the volume of dumped imports from Vietnam is not negligible. The commission notes that the volume of dumped imports from Vietnam includes those imports from Sam Hwan. While imports from Sam Hwan were dumped at negligible levels, ie at less than 2%, these imports remain included in the dumped volume assessment for Vietnam pursuant to section 269TDA(3).

As discussed in chapters 7.9 and 7.10, the commission found that the volume of subsidised imports from China is not negligible. While imports from Jiashilun were at negligible levels, these imports remain included in the subsidised volume assessment for China pursuant to section 269TDA(7).

9.3.3 Conditions of competition

The commission has examined the conditions of competition between the imported goods from China and Vietnam and the like goods produced by Australian industry. As detailed in chapter 5.3, painted steel strapping is a commodity product, with imported goods competing directly with each other and with Australian produced goods in the Australian market. Imported goods are substitutable with Australian produced goods in the same market segments, with customers able to change suppliers easily. The Australian market is sensitive to price. There are limited ways in which suppliers can differentiate their product offerings beyond price and service, with customers able to change suppliers easily.

9.3.4 Commission's assessment

As there are dumping and subsidy margins above negligible levels, volumes of dumped and subsidised goods above negligible volumes and having regard to the conditions of competition between the Chinese and Vietnamese exports, and between Chinese and Vietnamese exports and domestically produced like goods, it would be appropriate to consider the cumulative effects of Chinese and Vietnamese exports. However, the commission undertook further analysis of the specific factual circumstances of this case and identified reasons for not considering the cumulative effects of Chinese and Vietnamese exports.

The figure below depicts the share of import volume between the respective exporters into the Australian market over the injury analysis period.

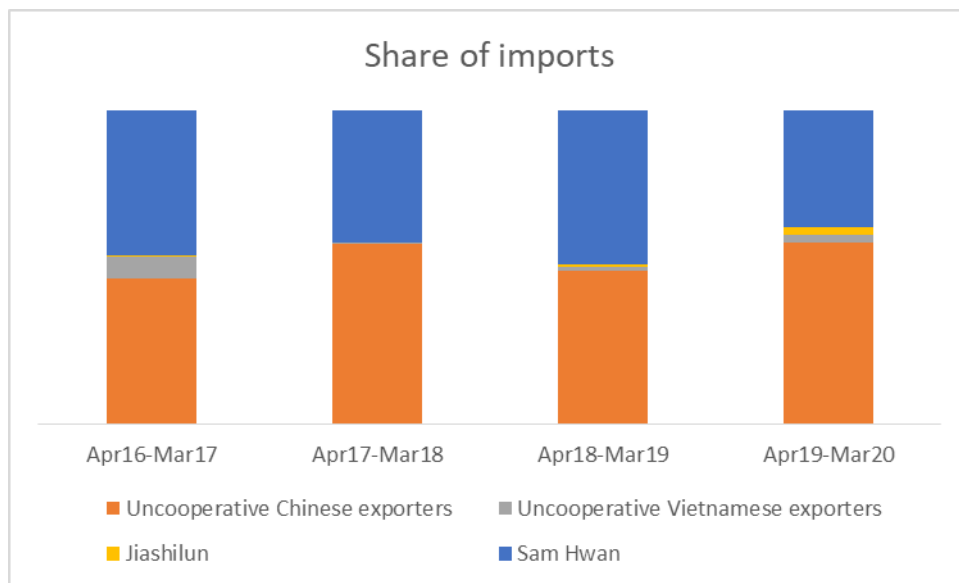


Figure 10 – Share of import volume – subject countries

Imports from uncooperative Chinese exporters and Sam Hwan make up the majority of import volumes from the subject countries, with Jiashilun and uncooperative Vietnamese exporters each having a similar level of minor import volumes.

The tables below show a breakdown of import sources from each of the subject countries during the investigation period.

| Chinese exporters | % of exports from China |
|-------------------|-------------------------|
| Uncooperative | 96 |
| Jiashilun | 4 |

Table 13 – Share of import volume – China

| Vietnamese exporters | % of exports from Vietnam |
|----------------------|---------------------------|
| Uncooperative | 7 |
| Sam Hwan | 93 |

Table 14 – Share of import volume – Vietnam

The commission notes the significant majority of imports from China are from uncooperative exporters, who sold at dumped levels. This compares to Vietnam, where the significant majority of imports are from Sam Hwan, who sold goods dumped, but at negligible levels.

The table below depicts the breakdown of volumes of goods dumped above negligible levels exported from each country.

| % of exports at non-negligible levels of dumping | |
|--|----|
| China | 96 |
| Vietnam | 4 |

Table 15 – Share of imports from the subject countries above negligible levels

The commission also notes that imports from China received a large subsidy margin, compared to imports from Vietnam.

Having examined the elements set out in section 269TAE(2C), the commission does not consider that the cumulative effect of exports from China and Vietnam should be used to determine whether material injury to an Australian industry has been, or is being, caused or threatened by exports to Australia, for the following reasons:

- a significant volume of goods from China are at above negligible levels of dumping, compared to a relatively small volume of goods from Vietnam at above negligible levels of dumping
- the dumping margin for dumped goods from China is more than 4 times the dumping margin for dumped goods from Vietnam, 17.3% to 4.3%
- 96% of goods exported from China have a large subsidy margin, compared to no subsidised exports from Vietnam.

In light of the above, the Commissioner is of the view that the Minister should not consider the cumulative effect of exports from China and Vietnam in this instance. To do so would result in an inaccurate consideration of the impact of exports from each country when determining whether the Australian industry has experienced injury caused by dumped and subsidised goods.

The commission has based the analysis in the remainder of this chapter on the individual effect of exports from each of the subject countries.

The commission's assessment for cumulation is at **Confidential Attachment 5**.

9.4 Approach to causation analysis

As outlined in Chapter 8, the commission considers that the Australian industry has experienced injury in the investigation period and this injury has coincided with the presence of dumped and subsidised goods from China and Vietnam. 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
- verified sales data from cooperating exporters to determine sales prices and volumes achieved by these exporters from China and Vietnam
- information from the ABF import database to determine import volumes and export prices
- the broader context of the economic condition of the Australian industry.

9.5 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:

- uncooperative exporters from China: 17.3%
- uncooperative exporters from Vietnam: 4.3%

The commission found that the dumping margins for the cooperative exporters were either negative or below negligible levels of 2%. As noted in chapter 9.3, the volume of exports from Jiashilun was minimal, whereas export volume from Sam Hwan accounted for a significant majority of the volume exported from Vietnam during the investigation period. The commission has not attributed injury to the Australian industry in relation to exports from the subject countries by the two cooperating exporters.

The Commissioner considers that the magnitude of dumping by uncooperative Chinese and Vietnamese exporters, 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.

9.6 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 calculated a countervailable subsidy margin for non-cooperating entities from China at 42.6%.

The Commissioner considers that the magnitude of subsidisation of Chinese non-cooperative entities (excluding Jiashilun) provided them with the ability to offer the goods to importers in Australia at prices lower than if there was no subsidisation.

9.7 Volume effects

As discussed in chapter 8.3, the commission is satisfied that Signode Australia has suffered volume related injury.

The figure below depicts the change in Signode Australia's sales volumes and the cumulative volumes of exporters from China and Vietnam (excluding Jiashilun and Sam Hwan).

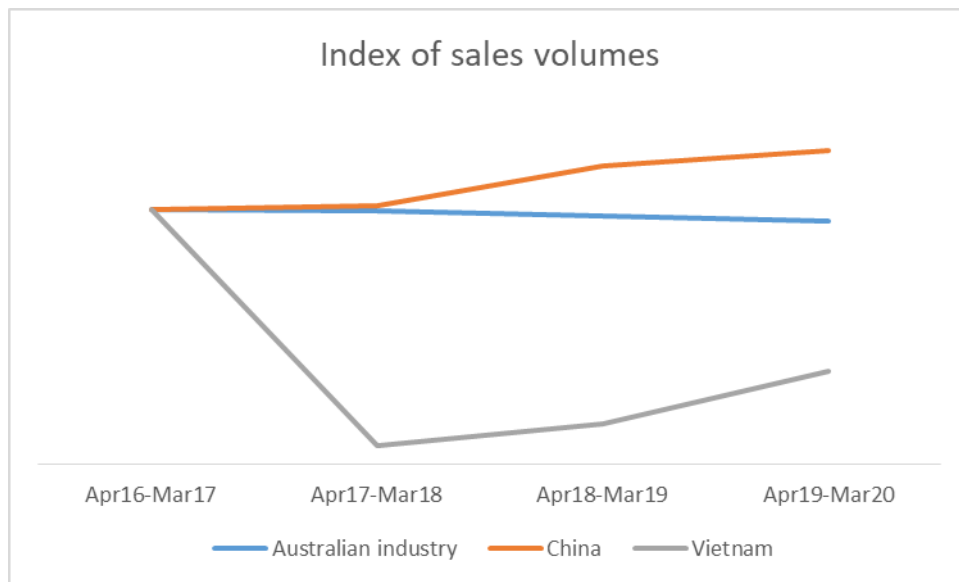


Figure 11 – Index of sales volumes⁷⁶

The figures indicates that sales volumes of painted steel strapping have declined steadily for the Australian industry over the injury analysis period.

Sales volumes of goods from China have increased over the injury period, particularly over the last 3 years.

Sales volumes of goods from Vietnam dropped considerably between the April 2016 to March 2017 and April 2017 to March 2018 periods, before a slight increase.

Based on this analysis, the commission considers that there appears to be a coincidence between increased imports from China (excluding Jiashilun) and decreased sales volumes for the Australian industry. This supports Signode Australia's claim that it has suffered volume related injury from dumped and subsidised goods from China. The commission does not consider that such a coincidence exists with Vietnamese imports.

The commission has also examined undumped imports, ie imports from all other countries (not including the subject countries) over the injury analysis period along with imports from Jiashilun and Sam Hwan, to examine what impact these imports may have had on Australian industry.

⁷⁶ Excluding Jiashilun and Sam Hwan.

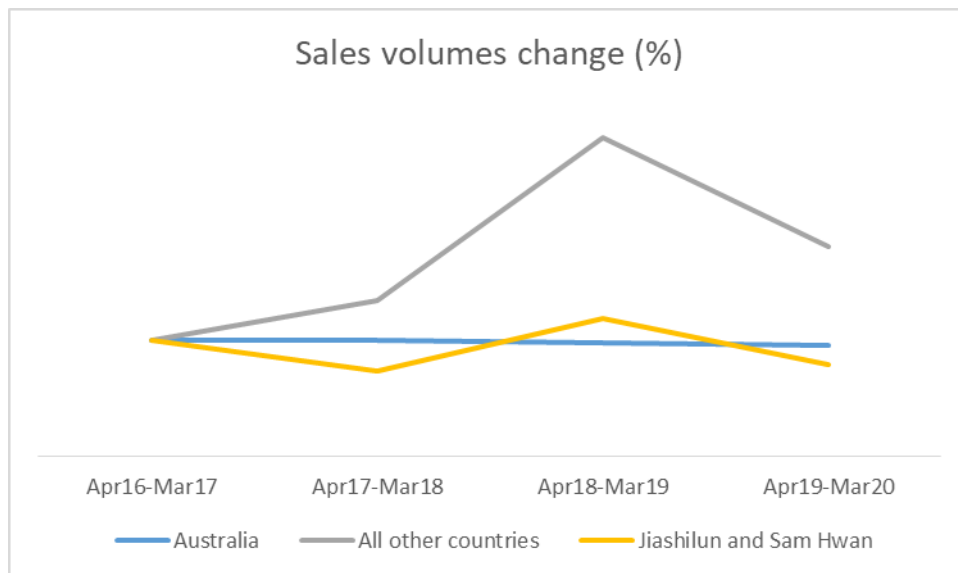


Figure 12 – Index of sales volumes – undumped imports

This figure above shows that import volumes from all other countries have increased significantly over the injury analysis period. Imports from Jiashilun and Sam Hwan have varied in each year, and ended the investigation period slightly down on where they started compared to the beginning of the injury analysis period.

The Material Injury Direction provides that injury from dumping or subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree. It further provides that 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.

Noting the above, the commission considers that while dumped and subsidised goods from China (excluding Jiashilun) have contributed to the volume injury suffered by Signode Australia, it is not the sole cause, and that imports from other countries may have contributed to the cause of such injury. Chapter 9.12 discussed the materiality of this injury.

The commission does not consider that dumped goods from Vietnam (excluding Sam Hwan) have contributed to any volume injury.

9.8 Price effects

As discussed in chapter 8, the commission is satisfied that Signode Australia has experienced injury in the form of price suppression. Signode Australia claimed in its application that it has been unable to increase its prices for like goods, in a period where its production costs have risen, because of dumped and subsidised imports from the subject countries undercutting its selling prices.

Imported goods sold at a price below that of the Australian produced like goods is price undercutting.

9.8.1 Data relied on in the commission's price undercutting analysis

Background

When conducting a price undercutting analysis the commission generally relies on verified data. As noted in chapter 2.3.3, 3 importers provided data to the investigation. Due to a lack of further participation from the importers, the commission did not verify the data to the importers records.

However, the commission has other ways to satisfy itself of the reliability of data. In this instance, the commission assessed the level of detail in the importer sales data. In particular, to test the veracity of the data, the commission compared the data against an importation costs model created using verified importer data from two similar recent cases:

- Review 528 into hot rolled coil steel exported from Taiwan
- Investigation 550 into precision pipe and tube exported from China, Korea, Vietnam and Taiwan.

The commission selected verified importer data from these two cases for the following reasons:

- they examined periods similar and contemporaneous to the investigation period
- they have HRC as a raw material input
- they involves countries that are within the same geographical region.

Vietnam

In relation to importer data from Vietnamese exports, while there was a minor discrepancy between the importation costs model and the unverified importer data, the commission considered this marginal. Having considered relevant information, the commission considers that the sales data is reliable for the purposes of a price undercutting analysis. The commission has preferred to use the sales data to that of the importation costs model, in this instance, as it considers it more likely to reflect the true price of importing the goods from Vietnam into Australia for the investigation period. The commission used the sales data along with sales data from cooperating Vietnamese exporters and data from Australian industry, to calculate the likely price importers sold the goods for in Australia. The commission then used this price in the price undercutting analysis for Vietnam.

China

The importer data from Chinese exports was incomplete. There was insufficient data for the commission to undertake a reliable price undercutting analysis. The commission has preferred to use the importation costs model in the price undercutting analysis for China in this instance. This data was used along with sales data from cooperating Vietnamese exporters and data from Australian industry, to calculate the likely price importers sold the

goods for in Australia. The commission then used this price in the price undercutting analysis for China.

The commission's importation model analysis is at **Confidential Attachment 7**.

9.8.2 Price undercutting analysis

In order to compare Signode Australia's prices to the price of the dumped goods, the commission compared the quarterly weighted average free into store (FIS) selling price of like goods by Signode Australia against the quarterly weighted average FIS selling price of the goods imported from China, Vietnam (excluding Jiashilun and Sam Hwan) and all other countries.

Signode Australia has provided its selling price data for the investigation period at the FIS level of trade and so no adjustment was required.

The commission calculated the FIS selling price for imports as follows:

- the weighted average FOB price for imports was derived from data available from the ABF import database plus
- an average importation cost, SG&A and profit using the figures from the importation costs model for imports from China and all other countries, and the figures from the unverified Vietnamese importer for Vietnamese imports.

Having regard to the approach outlined above, the commission's price undercutting analysis found that Signode Australia's price for the goods were undercut by Chinese and Vietnamese exporters.

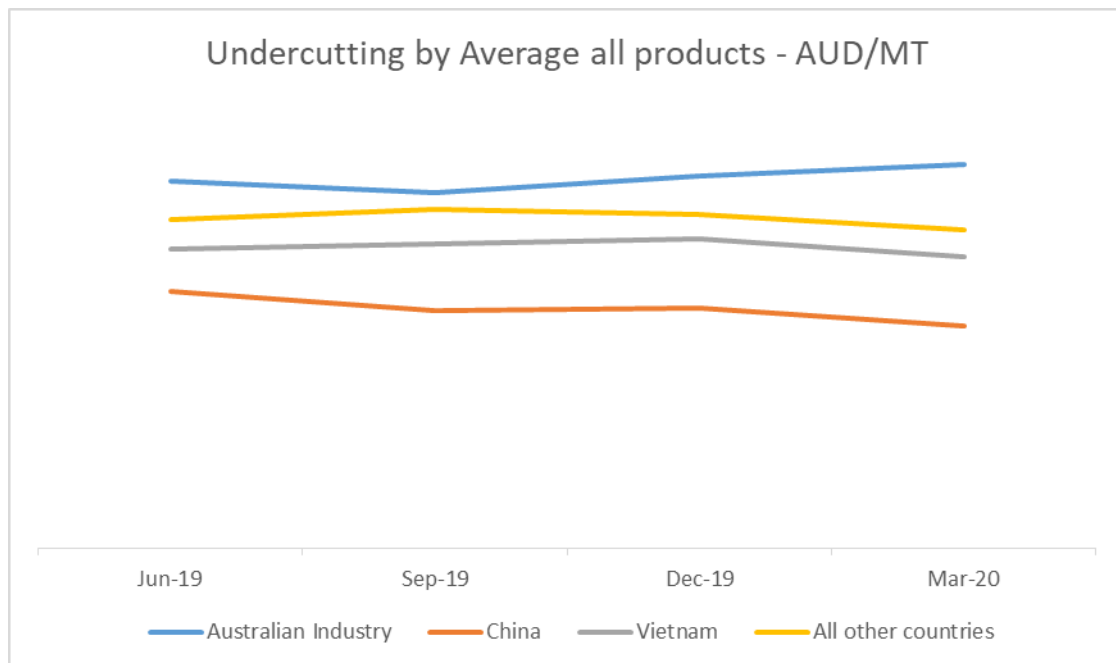


Figure 13 – Price undercutting comparison

The commission found that the price of the goods exported from the subject countries undercut Signode Australia's prices in each quarter of the investigation period. The level of undercutting increased over the entire period, with goods imported from China and

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Vietnam undercutting Australian manufactured goods by 30% and 18% respectively at the commencement of the investigation period, and ending the period undercutting at 42% and 24% respectively.

The commission has also undertaken a price undercutting analysis using remedied Chinese and Vietnamese prices, ie including the applicable dumping and subsidy margins.

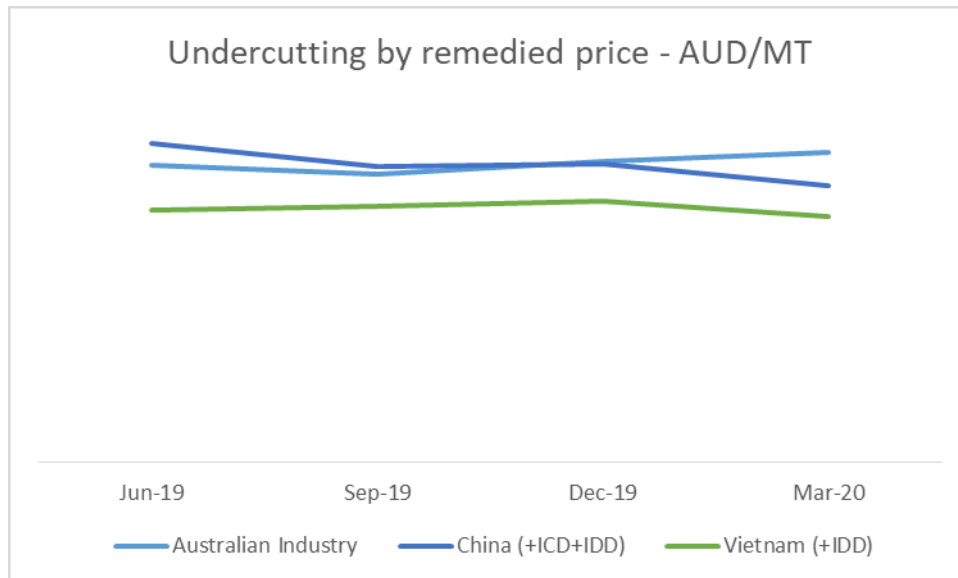


Figure 14 – Price undercutting comparison with remedied price

The remedied Chinese price closely matches the Australian industry price over the investigation period, indicating a close relationship between the level of undercutting by Chinese imports (excluding Jiashilun) and the level of dumping and subsidisation of the goods.

Remedied Vietnamese prices (excluding Sam Hwan) are still below those of Australian industry, indicating that the undercutting by Vietnamese imports is not wholly a result of dumping.

The price trends discussed above support the claims in the application that Signode Australia has been unable to increase the price of its like goods, in a period where its production costs have increased, because of the availability of cheaper dumped and subsidised goods on the Australian market from China. The commission considers that, in the absence of dumped and subsidised goods from China, Signode Australia would have been able to increase its prices to limit the injury suffered because of its rising production costs. However, the presence of dumped and subsidised goods from China is not the sole cause of such injury suffered by Signode Australia, as Vietnamese goods, if imported at an undumped or remedied price, still undercut Australian industry prices. Chapter 9.11.3 discussed this further.

9.8.3 Real world examples

Signode Australia provided a number of 'real-world' examples of price undercutting to the commission where it has as a result reduced its prices in order to compete with goods imported from China and Vietnam. The examples examined by the commission referred

to negotiations with its customers where imports of the goods undercut the prices offered by Signode Australia, and the pressures put on Signode Australia's margins caused by higher concurrent raw material costs. Following verification of Signode Australia, the commission was satisfied these were valid examples of price injury, but was not satisfied that the undercutting referred to was because of imports from the subject countries due to a lack of evidence linking the examples with goods imported from China and Vietnam undercutting Signode Australia prices.⁷⁷

9.8.4 Conclusion

Noting the above, the commission considers that dumped and subsidised goods from China, and to a lesser extent, dumped goods from Vietnam, have contributed to the price suppression injury suffered by Signode Australia. However, dumped imports from the subject countries may not be the sole cause on injury, as undumped imports from other countries and Vietnam may have contributed to such injury.

The commission's price undercutting analysis is at **Confidential Attachment 8**.

9.9 Profit effects

As discussed in chapter 8.5, the commission is satisfied that Signode Australia has suffered injury in the form of lost profits and reduced profitability in respect of the goods.

The figure below depicts the changes in sales volume, sales price, profit and per unit profit for Signode Australia over the injury analysis period.

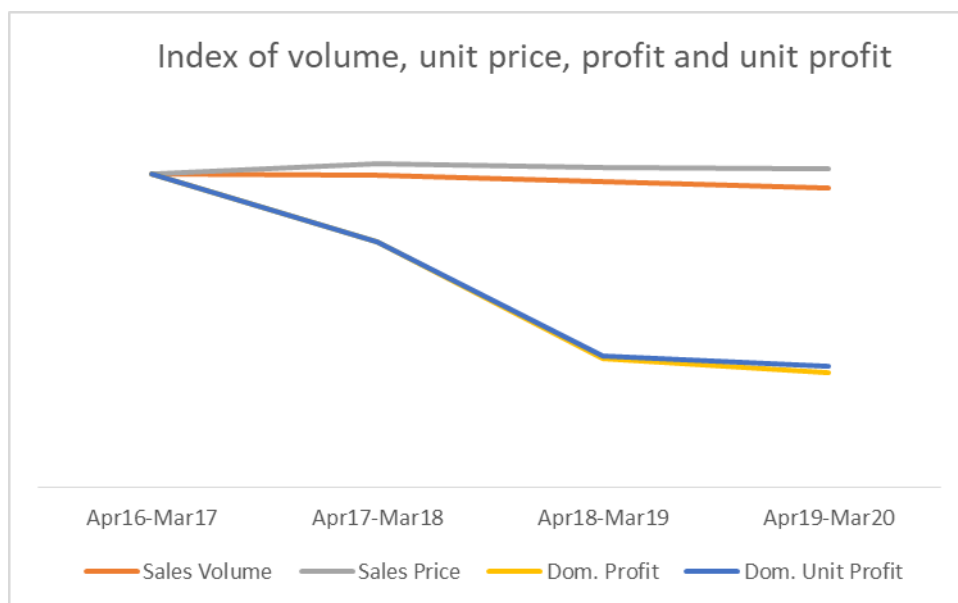


Figure 15 – Index of sales volume, unit price, profit and unit profit

The figure indicates there is a strong correlation between profit from the sale of like goods by Signode Australia and per unit profit. Sales volume and sale price appear to have negligible correlation to profit.

⁷⁷ EPR 553, Item 16, Confidential Attachment 1.

As the per unit profit of painted steel strapping is contingent on the sales price and CTMS of the goods, and noting that the sales price has remained relatively steady, the commission considers the most significant driver of profit is CTMS. This is consistent with Signode Australia's claims that it has been unable to increase its prices in a time of increasing costs. As discussed above in chapter 9.8, the commission is satisfied that Signode Australia has been unable to increase its prices because of dumped and subsidised goods from China, and to a lesser extent, the dumped goods from Vietnam. The effect is that Signode Australia has experienced reduced profit and profitability.

9.10 Other economic factors

As discussed in chapter 8.6, the commission is satisfied that Signode Australia has suffered injury in the form:

- reduced revenue
- a decline in capital investment
- a decline in ROI
- reduced capacity utilisation.

9.10.1 Revenue

Revenue is a product of sales volume and sales price. A decrease in either will result in a corresponding decrease in revenue.

As discussed in chapters 8.3 and 8.4, sales prices have remained steady over the injury period and sales volumes have dropped. The commission is satisfied that sales volumes for Signode Australia have decreased over the injury analysis period because of dumped and subsidised goods from China. Accordingly, the commission is satisfied that any reduction in revenue is partly because of the import of dumped and subsidised goods into Australia from China.

9.10.2 Capital investment and ROI

Signode Australia submits it has reduced its capital investment in painted steel strapping as profit and profitability has deteriorated to levels where further investment cannot achieve an adequate return on funds.

The figure below depicts the changes in Signode Australia profit, capital investment and ROI over the injury analysis period.

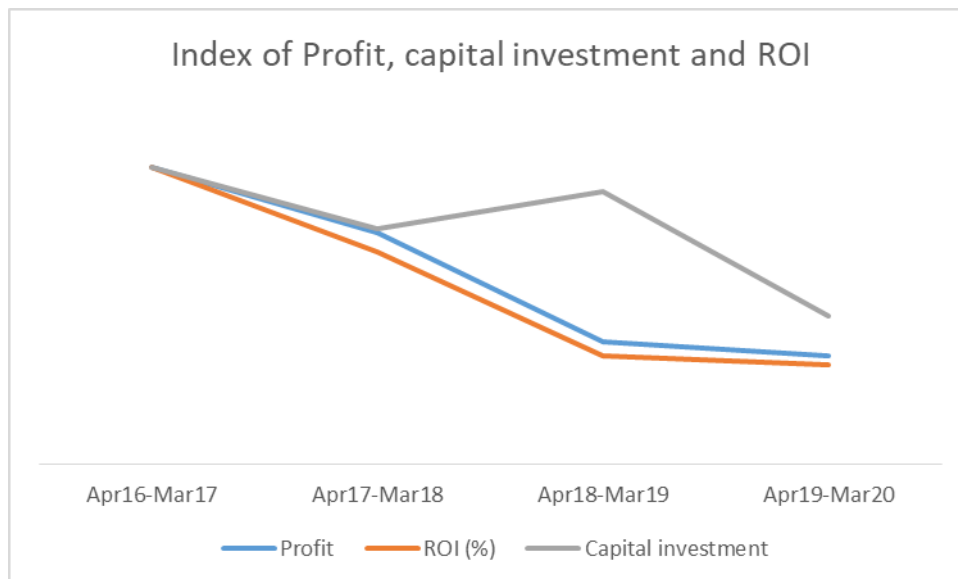


Figure 16 – Index of profit, capital investment and ROI

Consistent with Signode Australia's claims, capital investment and ROI have declined broadly in line with its decreasing levels of profit over the whole of the injury analysis period. However, the commission notes that there is an increase in capital investment in the April 2018 to March 2019 period.

As discussed above in chapter 9.9, the commission is satisfied that the decrease in profit is because of the import of dumped and subsidised goods into Australia from the subject countries. This is likely to have resulted in a decrease in capital investment and ROI.

9.10.3 Reduced capacity utilisation

Signode Australia's production capacity was unchanged over the injury analysis period. The reduction in production volumes discussed in chapter 9.7 has resulted in a corresponding reduction in capacity utilisation. As found in chapter 9.7, the commission was satisfied that the decrease in production volumes was because of dumped and subsidised imports of the goods. Accordingly, the commission is also satisfied that Signode Australia's reduced capacity utilisation has also resulted from such imports.

9.11 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 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 the subject countries.

As well as imports from other countries, discussed already in chapter 9.7, the commission also considers that a fall in demand from customers may also have an impact on the economic condition of the Australian industry producing like goods.

9.11.1 Imports from other countries, Jiashilun and Sam Hwan

As already discussed in chapter 9.7, the commission considers that while dumped and subsidised goods from the subject countries have contributed to the volume injury suffered by Signode Australia, it is not the sole cause, and that imports from other countries may have also contributed to the cause of such injury. Chapter 9.12 discussed whether imports from the subject countries caused material injury to Australian industry in the presence of undumped imports.

9.11.2 Changes in demand

Signode Australia states it has maintained relatively stable domestic sales volumes of steel strapping over the 4-year period 2016 to 2019 by lowering its selling price to respond to lower priced imports from China and Vietnam.

As discussed in chapter 5.3.3, the output of customers, primarily in food products, steel manufacturing, raw material ores, paper, timber, wool and recycling, drives demand.

The figure below depicts the relative change in the sales of each of the key customer industries of Signode Australia since the 2015-2016 financial year.

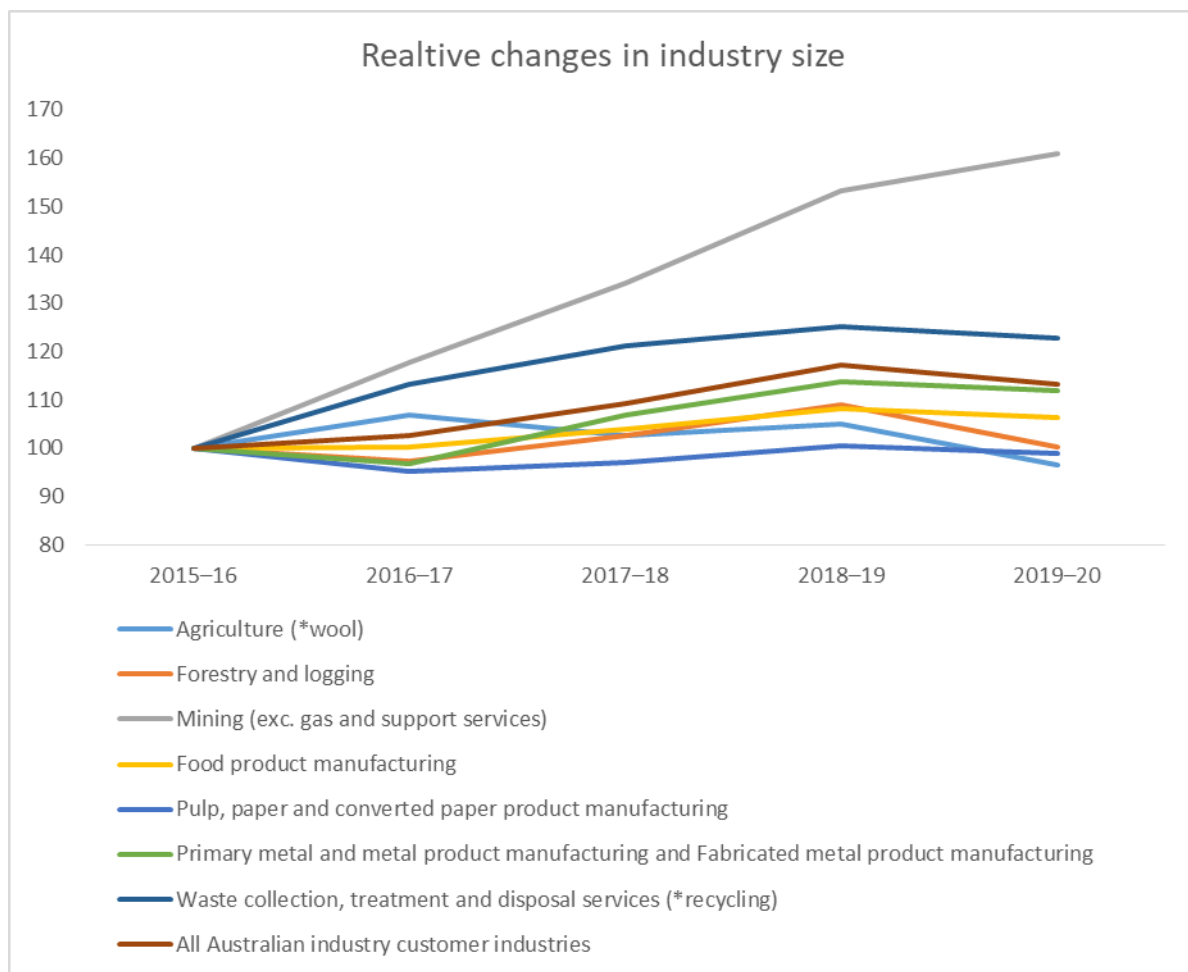


Figure 17 – Relative changes in key customer industries

The figure above has been derived from ABS sales and service income for relevant Australian industry sectors.

It can be seen that in every customer industry from 2015-16 to 2019-2020 (the closest data range available to the commission to the injury period) most industries have experienced sales growth.

The figure below depicts an index of sales for all customer industries combined, which the commission considers representative of the demand in Australia for painted steel strapping, versus the size of the Australian market for painted steel strapping

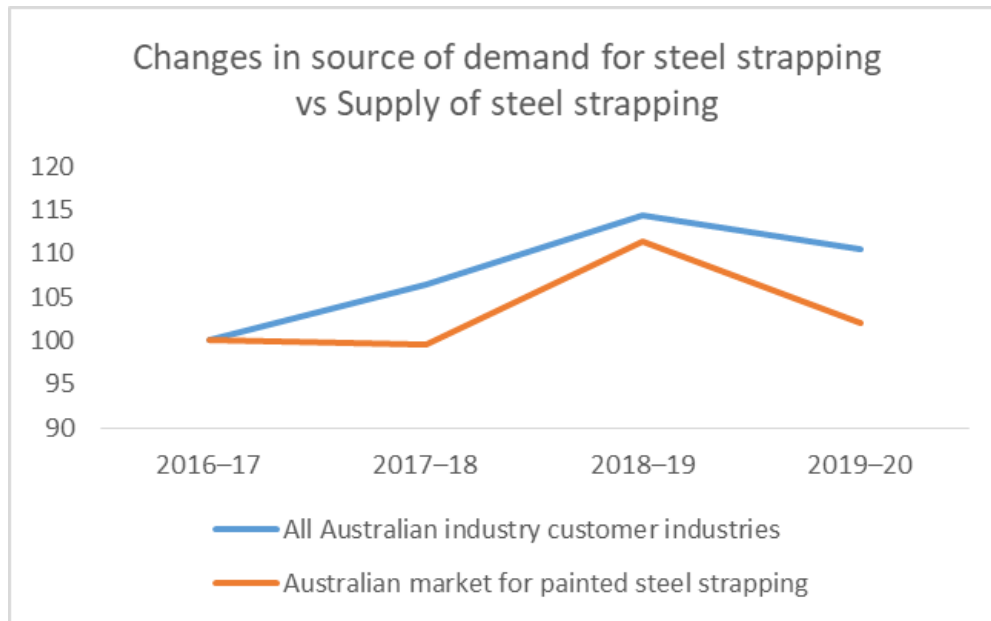


Figure 18 – Index of sales for all customer industries combined vs Australian sales of steel strapping

The commission is satisfied, based on the above, that sales of the goods by the Australian industry and importers generally corresponds with movements in the sales by its customer industries and therefore that demand is driven by customer output, consistent with the claims made by Signode Australia.

The commission considers that movements in its key customer industries would affect demand in painted steel strapping. The commission expects that an increase in the size of its potential customer base would lead to greater sales volume, and in the event of consistent sales volume, greater prices.

However, as noted previously, sales volumes by Signode Australia have fallen slightly over the injury analysis period, while prices have remained the same.

Accordingly, the commission is satisfied that the injury suffered by Australian industry is not because of changes in customer demand.

9.11.3 Lower Vietnamese prices

The price undercutting analysis in chapter 9.8 indicates that remedied Chinese prices (ie after the applicable dumping and subsidy margin has been applied to Chinese import prices) are close to Australian industry prices, indicating that price related injury from dumped and subsidised Chinese imports is closely correlated with the level of dumping and subsidisation. However, remedied Vietnamese prices still undercut Australian industry prices. This indicates that dumped prices only partly correlate with price related

injury, with undumped prices still undercutting Australian prices and thereby causing injury. The commission examined the level of undercutting by remedied and dumped import prices and found a difference of between 3% and 4% in each quarter of the investigation period, indicating the level at which the commission considers that dumped Vietnamese imports correlate with price related injury.

9.11.4 Conclusion

China

The commission is satisfied that injury including loss of sales volumes and price suppression has occurred because of dumped and subsidised goods from China for the following reasons:

- Import volumes of dumped and subsidised goods from China increased over the injury period, correlating with a decrease in Australian industry sales volumes.
- China sales prices undercut Australian industry prices by up to 42% over the injury period, with the level of undercutting closely related to the level of dumping and subsidisation.

Vietnam

The commission is satisfied that some injury in the form of price suppression has occurred due to the presence of dumped goods from Vietnam in the Australian market over the injury analysis period, undercutting the Australian industry's prices. However, the commission notes that dumping is not wholly contributable to the level of undercutting by Vietnamese prices.

Chapter 9.12 examines the materiality of injury caused by Chinese and Vietnamese imports.

9.12 Materiality of dumping and subsidisation causing injury

In addressing the materiality of the injury caused by dumping and subsidisation, the commission has had regard to those forms of injury caused by the dumped and subsidised imports from the subject countries:

- loss of sales volume
- price suppression
- loss of profit
- reduced profitability
- reduced revenue
- a decline in capital investment
- a decline in ROI
- reduced capacity utilisation.

The information before the commission indicates that Australian industry has suffered injury in the form of reduced sales volumes and market share because of both dumped and subsidised goods, as well as undumped and unsubsidised goods. The commission considers it would have achieved a higher volume of sales and a higher market share if not for these imports. As noted previously, the Material Injury Direction provides that

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injury from dumping or subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree.

Volume injury

The figures below depict changes in sales volume and market share for Australian industry, dumped and subsidised imports from China and Vietnam, imports from Jiashilun and Sam Hwan and all other countries.

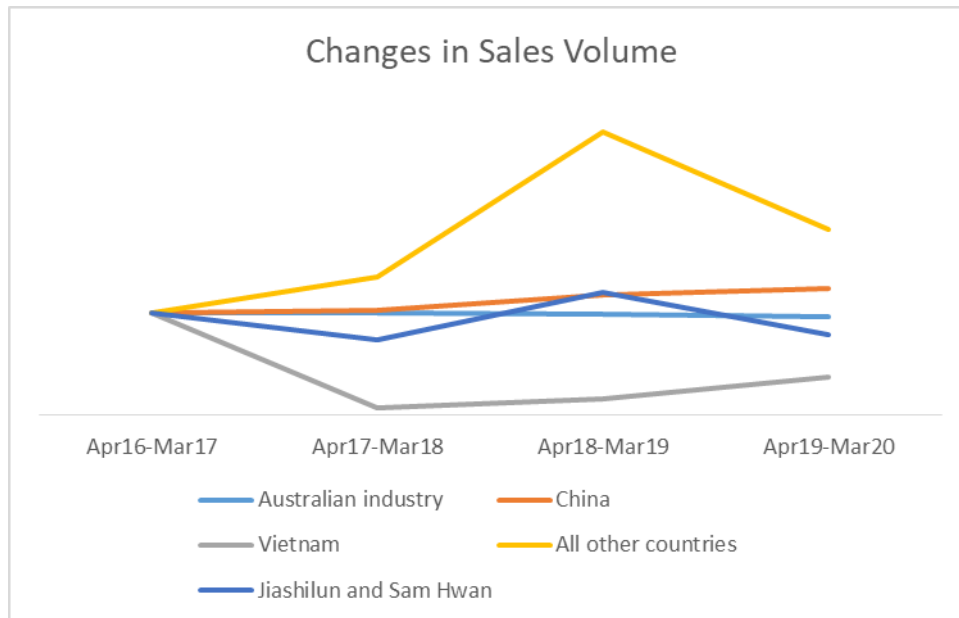


Figure 19 – Changes in sales volumes

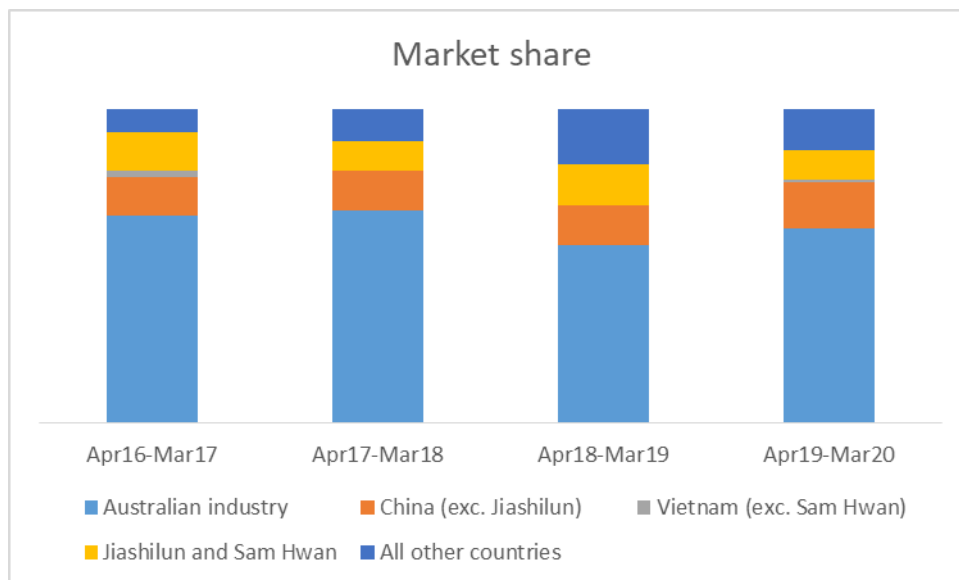


Figure 20 – Market share⁷⁸

Australian industry sales volumes have dropped 5% over the injury period (down 2% over the investigation period), compared to a rise of imports from China of 24% (up 5% in the

⁷⁸ This figure differs to **Error! Reference source not found.** due to the separation of Jiashilun and Sam Hwan from their respective country volume count.

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investigation period) and a decrease of 63% of imports from Vietnam (up 135% in the investigation period, albeit from a low base). This compares to an increase of 2% in the size of the Australian market for painted steel strapping over the injury analysis period.

Imports from Jiashilun and Sam Hwan dropped by more than 20% over this period, while imports from all other countries rose by more than 80%, also from a low base.

When the changes in sales volume are put into context looking at respective market share, it can be seen that the impact in the movement in sales by Australian industry, China, Jiashilun and Sam Hwan and all other countries are much more material than movements in sales of dumped Vietnamese goods.

After considering the movements above in sales volume, the commission considers undumped and unsubsidised imports have likely caused some sales volume injury to Australian industry in the investigation period. These are mostly increases in imports from all other countries as opposed to imports from Jiashilun and Sam Hwan, which have remained relatively steady.

However, dumped and subsidised imports from China (excluding Jiashilun) contribute to a proportion of volume injury. While Chinese imports have not increased to the same extent as undumped imports, they have still increased in the investigation period and represent the largest market share of imports in Australia. The commission considers it likely that sales volumes and market share for Australian industry would have been higher were it not for the presence of these imports in the Australian market.

The level of volume injury caused by dumped and subsidised Chinese imports, combined with the level of undercutting of these imports, satisfies the commission that the injury caused to Australian industry by dumped and subsidised Chinese imports is material.

The available information indicates the Australian industry would have likely achieved a higher profit and improved profitability had it not experienced injury in the form of price suppression due to the availability of dumped and subsidised goods exported to Australia from China. The figures in chapter 8.5 show both profit and profitability has dropped significantly over the injury period.

The commission found dumping and subsidisation of these goods and the resulting injury had a direct impact on injury in the form of other economic factors such as reduced revenue, decreased capital investment and reduced ROI. Chapter 8.6 discusses the extent of this impact.

The injury suffered by Signode Australia because of these dumped and subsidised imports from China, when taken as a whole, is not immaterial. Key indicators of profit and profitability, linked to lower sales volumes and price suppression, declined consistently over the injury analysis period to levels now less than half than where they were prior to the importation of dumped and subsidised imports from China.

As noted in chapter 9.7, the commission does not consider that Vietnamese exports contributed to any volume injury suffered by Australian industry over the investigation period due to a lack of correlation and a decrease in volumes over the injury period. The commission notes that dumped imports from Vietnam represented less than 1% of the Australian market in the investigation period.

The level of undercutting by dumped Vietnamese imports is not as great as that observed for Chinese imports, and as discussed in chapter 9.11.3, dumped Vietnamese imports only partly contributed to price related injury, with undumped Vietnamese prices still undercutting Australian prices.

The commission is satisfied that dumped Vietnamese goods have caused some injury to the Australian industry. However, the commission is not satisfied that dumped Vietnamese goods have caused material injury to the Australian industry during the investigation period.

9.13 Submissions to the SEF

9.13.1 Submission by Signode Australia

In its submission⁷⁹, Signode Australia submits that the analysis in relation to the material injury to the Australian industry should have included exports from Vietnam and aggregated with the dumped and subsidised exports from China. Signode Australia further submits that if the commission had correctly assessed normal values for Sam Hwan, there would be a finding that dumped exports from Vietnam have caused material injury to Australian industry.

9.13.2 Commission's consideration

The commission has addressed Signode Australia's comments regarding the calculation of the normal value for Sam Hwan in TER 553-A. The commission made no changes from the findings of the commission in SEF 553.

Chapter 9.3.4 of this report outlines the reasons why the commission does not consider it should consider the cumulative effect of exports from China and Vietnam. If, as submitted by Signode Australia, the commission found a non-negligible dumping margin for Sam Hwan, then the commission's assessment of cumulation and material injury might be more consistent with Signode Australia's submission. However, the commission has found negligible dumping by Sam Hwan, and the factual circumstances in relation to Vietnam and China are different in the context of injury for this investigation. Because of not cumulating the effect of exports from China and Vietnam, the commission based its analysis on the individual effect of exports from each of the subject countries.

Accordingly, the commission has not changed its material injury assessment from SEF 553.

9.14 Conclusion

The commission has found that, in respect of goods imported from China (except Jiashilun):

- the volume of dumped and subsidised goods exported to Australia is not negligible
- all dumped and subsidised goods exported to Australia were above negligible levels

⁷⁹ EPR 553, Item 20.

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- the sales volume of like goods sold in the Australian market by Australian industry has dropped by 5% over the injury period, while imports from China (excluding Jiashilun) have risen 24% and the size of the Australian market as a whole has risen 2%
- it is likely Australian industry would have had a higher sales volume, if not for the presence of dumped and subsidised goods from China in the Australian market
- the goods exported to Australia from China at dumped and subsidised prices have undercut Australian industry's prices during the investigation period by up to 42%
- the price undercutting is comparable to the dumping and subsidy margins found
- the price of the goods exported to Australia from China would not have undercut the Australian industry's prices, at least to the same extent, if the goods were not dumped or subsidised
- throughout the investigation period, the goods imported from China were the lowest priced imports in the market
- the volume and level of undercutting of the Australian industry's prices by the goods imported from China (excluding Jiashilun) has prevented the Australian industry from obtaining a higher selling price for its painted steel strapping
- the Australian industry would have been able to increase its prices in a market not affected by the goods exported to Australia from China at dumped and subsidised prices. Such increases would have reflected positively on the Australian industry's profits and profitability over the investigation period
- the injury caused by goods exported to Australia from China at dumped and subsidised prices can be separated from other potential causes of injury
- other potential causes of injury were found not to have broken the causal link between the imports of dumped and subsidised goods and the injury suffered by Australian industry
- the link between the goods exported from China at dumped and subsidised prices, in the form of volume, price and profit effects, has had a negative impact on the Australian industry's decisions in relation to other economic factors.

The commission has found that, in respect of goods imported from Vietnam:

- the volume of dumped goods exported to Australia from Vietnam is not negligible
- 93% of dumped goods exported to Australia from Vietnam were dumped at negligible levels
- imports from Vietnam (excluding Sam Hwan) have dropped 63% over the injury period, compared to a 5% drop in sales for Australian industry and an increase of 2% for the size of the Australian market as a whole
- the goods exported to Australia from Vietnam at dumped prices have undercut Australian industry's prices during the investigation period by up to 24%
- the price of the goods exported to Australia from Vietnam would not have undercut the Australian industry's prices to this extent if the goods were not dumped
- while goods exported to Australia from Vietnam have undercut Australian industry prices, it is unlikely that the volume and level of undercutting would have prevented the Australian industry from obtaining a higher selling price for its painted steel strapping.

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In light of the above, the commission has determined that Australian industry has suffered material injury caused by dumped and subsidised imports from China in the form of:

- loss of sales volume
- price suppression
- loss of profit
- reduced profitability
- reduced revenue
- a decline in capital investment
- a decline in ROI
- reduced capacity utilisation.

However, the commission is not satisfied that Australian industry has suffered material injury because of the exports of the goods at dumped prices from uncooperative exporters from Vietnam.

The commission's analysis for this chapter is at **Confidential Attachments 5 and 6**.

10 WHETHER DUMPING AND/OR SUBSIDISATION MAY CONTINUE

10.1 Findings

The commission is satisfied that exports of dumped and subsidised goods from China (except by Jiashilun), may continue.

10.2 Introduction

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

In assessing whether dumping and subsidisation may continue, the Commissioner considers the term 'may' to mean 'possible'. The Commissioner considers prior evidence of dumping and/or subsidisation to be a relevant consideration. The Commissioner will have regard to the available evidence and weigh up a number of factors as outlined in the Manual, with no single factor necessarily being determinative.

The Commissioner has found that, during the investigation period, exports of the goods to Australia by:

- exporters from China, except by Jiashilun, were at dumped prices
- exporters from Vietnam were at dumped prices. However, the dumping margin for Sam Hwan was negligible.

Chapter 1.3 discussed the commission's termination of the investigation in relation to Jiashilun and Sam Hwan. Chapter 13.2 discusses the recommendation not to publish a dumping duty notice in relation to uncooperative exporters from Vietnam.

Accordingly, this chapter does not apply to Jiashilun and all exporters from Vietnam and all graphs in this chapter exclude such exporters.

10.3 Whether dumping may continue

The commission found that uncooperative exporters from China exported the goods to Australia during the investigation period at dumped prices, with a dumping margin of 17.3%.

In this investigation, the commission has considered the following:

- movements in the dumping margin across the investigation period
- export volumes and prices following the investigation period
- domestic prices following the investigation period
- available exporter production capacity.

10.3.1 Movements in the dumping margin

The figure below depicts the quarterly dumping margins calculated over the investigation period in relation to uncooperative exporters from China.

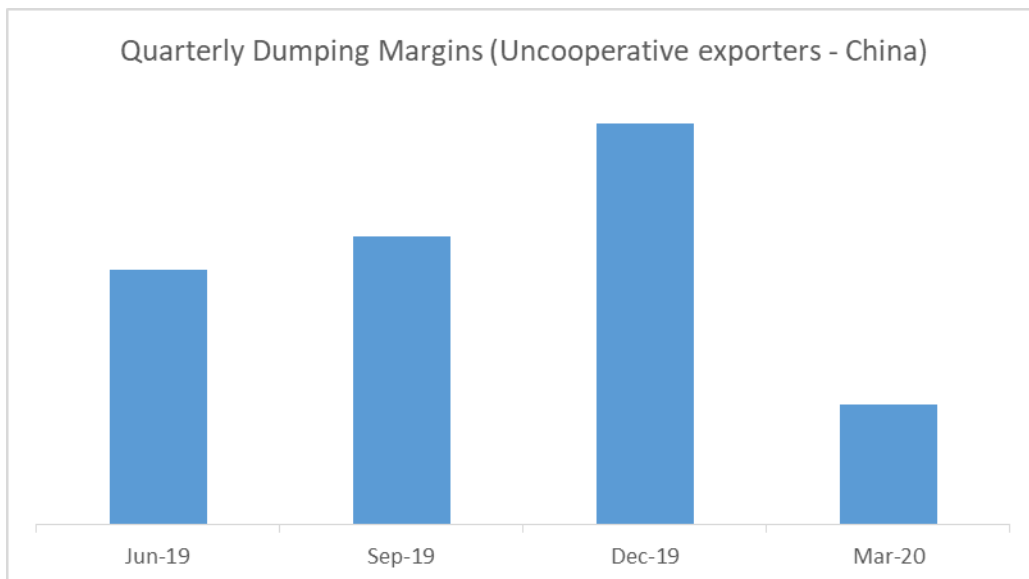


Figure 21 – Quarterly dumping margins – uncooperative exporters from China⁸⁰

The figure indicates consistent and sustained quarterly dumping margins over the investigation period. Although there is a drop in the dumping margin in the final quarter, the dumping margin was positive in all 4 quarters. This trend supports that dumping may continue.

10.3.2 Export volumes and export prices following the investigation period

The figure below depicts the volume of imports from China in the year following the investigation period.

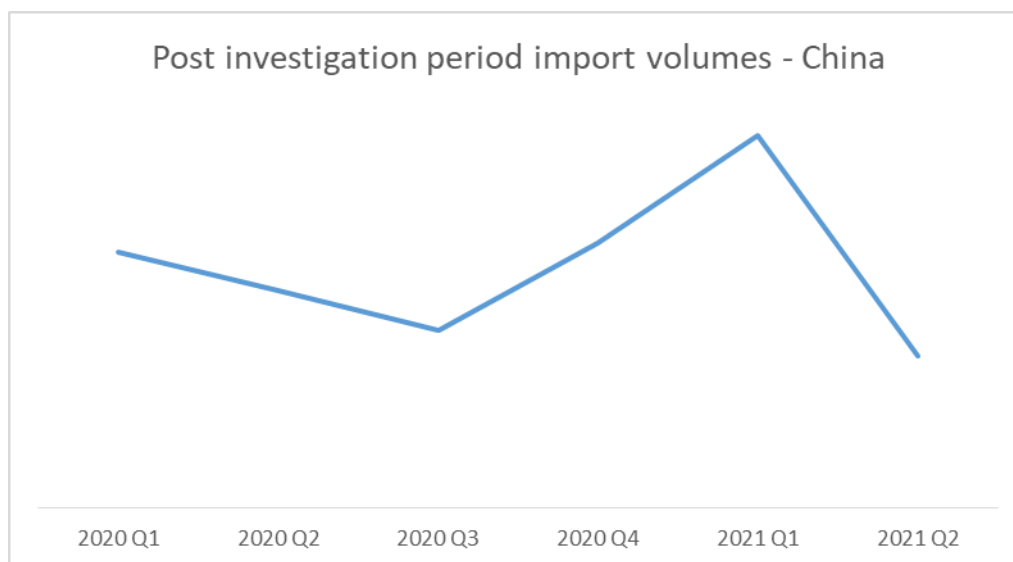


Figure 22 – Import volumes following the investigation period – China

Import volumes dropped in the first quarter following the investigation period. The commission considers that drop was potentially due to the initial impacts of the COVID-19 pandemic, which may have disrupted supply chains. However, import volumes increased

⁸⁰ Confidential Attachment 2.

in the following 3 quarters, to reach almost pre COVID-19 pandemic levels, before dropping again in the second quarter of 2021.

The figure below depicts the weighted average FOB export price of imports from China following the investigation period. The commission sourced this information from the ABF import database, which the commission considers is reliable for assessing whether dumping may continue.



Figure 23 – Export prices following the investigation period – China

Export prices increased slightly in the June 2020 quarter before returning to pre COVID-19 pandemic levels in 2021. Given the dumping margin of 17.3%, it is unlikely that the observed changes in export prices after the investigation period have removed all possibility of dumping continuing. The export prices following the investigation period support that dumping may continue.

10.3.3 Domestic prices

The commission does not have evidence of domestic prices or costs specific to the goods in China following the investigation period. No interested party has submitted evidence that would demonstrate a shift in the normal value following the investigation period of the magnitude required to remove the possibility of dumping continuing. The commission notes however, that the normal values for the goods are highly dependent on costs of raw material inputs, in particular HRC and CRC. MEPS price data following the investigation period for HRC and CRC in China initially drops before increasing in late 2020 and early 2021. The commission considers that this supports that dumping may continue.

10.3.4 Exporter production capacity

Jiashilun's REQ indicates that it has excess production capacity in relation to the goods. However as the investigation is terminated against Jiashilun, this information is not relevant to the assessment of whether dumping may continue. The commission does not have evidence of the production capacity held by other exporters due to their non-cooperation with the investigation. The commission is unable to make a broader finding regarding production capacities more generally available in China.

10.3.5 Submissions to the SEF in relation to whether dumping may continue

Signode Australia submitted⁸¹ that the commission should have examined the threat of dumping and material injury following the investigation period, particularly in respect of exports by Sam Hwan given it has a negligible dumping margin.

Signode Australia considers that the termination of the dumping investigation against Sam Hwan should not go ahead as Sam Hwan has continued dumping the goods into Australia following the investigation period. Signode Australia submits that the commission should have continued to monitor export prices from Vietnam between 1 April 2020 and 31 March 2021. According to Signode Australia, price movements in that time for imports from Vietnam are not in line with price increases of the raw material input HRC over the same period.

Section 269TDA(1) requires the Commissioner to terminate a dumping investigation, so far as it relates to an exporter, if that exporter is found either not to have dumped or to have dumped at a percentage, worked out under section 269TACB, as less than 2%.

Section 269TACB provides that, when determining a dumping margin in an investigation, the Minister must determine whether dumping has occurred with reference to export prices and normal values during the investigation period.

Accordingly, any claims made by Signode Australia as to dumping after the investigation period are not relevant to whether an investigation should be terminated where a negligible dumping margin has been found.

The commission's considerations are limited in this chapter to whether dumping may continue, but only for those exporters dumping at non-negligible levels in the investigation period. This does not include Sam Hwan.

10.4 Whether subsidisation may continue

The commission found that non-cooperative entities from China received countervailable subsidies in respect of the goods exported to Australia, at a margin of 42.6%. These entities:

- did not provide a REQ
- did not request a longer period to provide a response in time
- did not address requests for further information where they did provide a REQ.

The commission has considered, where possible, the nature and the qualifying criteria of the various subsidy programs investigated. Legislation and policies underpinning many of these subsidy programs indicate that the subsidies will remain in place. In the absence of information to the contrary, the commission has assumed that non-cooperative entities will continue to receive countervailable subsidies identified in chapter 7.

⁸¹ EPR 553, Item 20.

10.5 Commissioner's assessment

Based on the available evidence, the Commissioner is satisfied that exports of the goods may continue in the future at dumped and subsidised prices from China (except Jiashilun), for the following reasons:

- Import volumes from China have continued following the investigation period.
- The commission found dumping in each quarter of the investigation period, with no indication that margins were trending towards no dumping.
- Export prices for China have not changed substantially following the investigation period.
- Despite there being limited information about normal values for China following the investigation period, MEPS CRC/HRC price data trended upwards. This indicates that normal values are unlikely to have reduced such that there is no dumping following the investigation period.
- Legislation and policies underpinning many of the countervailing subsidy programs relevant to non-cooperative entities indicate that the subsidies will remain in place.

The commission's analysis for this chapter is in **Confidential Attachment 9**.

11 NON-INJURIOUS PRICE AND LESSER DUTY RULE

11.1 Background and summary

The Commissioner:

- has terminated the dumping and countervailing investigation in relation to Jiashilun and the dumping investigation in relation to Sam Hwan
- is not recommending that the Minister publish a dumping duty notice for Vietnam.

Therefore, the Minister is not required to have regard to the desirability of applying a lesser amount of duty for Jiashilun and all exporters from Vietnam. On this basis, this chapter relates only to exports of the goods from China (other than by Jiashilun).

For exports of the goods from China (other than by Jiashilun), the commission has calculated a NIP and considered whether to recommend that the Minister have regard to the desirability of applying a lesser amount of duty.

The commission has determined that the NIP is less than an amount equal to the sum of the ascertained export price, the IDD and the ICD payable on the goods. Furthermore, no exceptions listed in the Dumping Duty Act apply such that the Minister is required to have regard to the desirability of applying a lesser amount of duty.

The Commissioner therefore recommends that the Minister have regard to, and apply a lesser amount of duty in relation to exports of the goods from China (other than by Jiashilun).

11.2 Introduction

The NIP is relevant to the Minister's consideration of whether to apply a lesser amount of duty (lesser duty rule).

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 *Customs Tariff (Anti-Dumping) Act 1975* (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 the 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 (exceptions) apply:⁸²

- 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 enterprises⁸³
- 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 any of the above exceptions apply, the Minister is not required to have mandatory consideration of the lesser duty rule, but may still wish to exercise a discretion to do so.

11.4 Lesser duty rule exceptions

The commission does not consider that any of the exceptions in the Dumping Duty Act apply in respect of exports of the goods from China (other than by Jiashilun) because:

- the commission has determined the normal value for these exporters pursuant to section 269TAC(6) (see chapter 6.4), which was not due to the operation of 269TAC(2)(a)(ii)⁸⁴
- China has complied with Article 25 of the SCM Agreement⁸⁵
- the Australian industry does not consist of at least 2 small-medium enterprises (Signode Australia is the sole industry member).

On the basis that no exceptions apply, the commission recommends that the Minister consider the desirability of applying the lesser duty rule.

11.5 Unsuppressed selling price

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:⁸⁶

- the price or market approach of the Australian industry's selling prices in a period unaffected by dumping

⁸² 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.

⁸³ As defined in the *Customs (Definition of 'small-medium enterprise') Determination 2013*.

⁸⁴ Section 269TACAB(1)(e) sets out that if the normal value of goods for an uncooperative exporter is to be worked out in relation to an investigation, that normal value is to be worked out under section 269TAC(6).

⁸⁵ 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>

⁸⁶ The Manual, pp. 137-140

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

Signode Australia provided sales and cost data for the period from 1 April 2016 to 31 March 2019. Signode Australia submitted that it began to suffer injury from dumped goods exported from the subject countries during 2017. Signode Australia's claims regarding injury are consistent with the findings in chapters 8 and 9 of this report.

The first full year of the injury analysis period examined by the commission was 1 April 2016 to 31 March 2017. The commission has not made a determination that dumping occurred during this period. Accordingly, this period is unaffected by dumping. The commission considers that the Australian industry's selling prices in 1 April 2016 to 31 March 2017 are appropriate for determining a USP.

11.6 Non-injurious price

The Commissioner has calculated a NIP by deducting from the USP the costs incurred in getting the goods from an export FOB point in China to the relevant level of trade in Australia. The deductions include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The commission's NIP calculation is at **Confidential Attachment 10**.

11.7 Commission's assessment

The commission has assessed that the NIP for exports of the goods from China (other than by Jiashilun) is less than the sum of the following:

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

The commission does not consider that any of the exceptions in the Dumping Duty Act apply in respect of exports of the goods from China (other than by Jiashilun).

Accordingly, the Commissioner recommends that the Minister have regard to, and apply the lesser duty rule in respect of exports of the goods from China (other than by Jiashilun).

12 RECOMMENDED MEASURES

12.1 Finding

The Commissioner recommends that the Minister impose the following anti-dumping measures:

- a dumping duty notice for all exporters from China (except Jiashilun) with IDD calculated using the *ad valorem* duty method
- a countervailing duty notice for all exporters from China (except Jiashilun) with ICD calculated as a proportion of the export price.

12.2 Forms of dumping duty available

The *Customs Tariff (Anti-Dumping) Regulation 2013* prescribes the dumping duty methods available to the Minister when imposing anti-dumping measures. They include:

- fixed duty method (\$X per tonne)
- floor price duty method
- combination duty method
- *ad valorem* duty method (ie a percentage of the export price).⁸⁷

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances. When considering which form of dumping 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* and relevant factors in the market for the goods.⁸⁸

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.

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

⁸⁷ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

⁸⁸ Available on the commission website.

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 two elements: the 'fixed' element and the 'variable' duty element. The fixed element is determined when the Minister exercises powers to 'ascertain' an amount (ie 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, ie 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.

12.2.5 Commission's consideration – form of dumping duty

The commission considers that the *ad valorem* duty method is the most appropriate method for determining the IDD in this instance.

The commission considers the *ad valorem* duty method appropriate as:

- the commission has not witnessed complex company structures amongst exporters of the goods from China, limiting the likelihood of circumvention behaviour through related party dealings
- other forms of measures, such as the combination of fixed and variable duty method which rely on an ascertained export price, are considered unreliable as such a price would be based on limited exporter data available
- the *ad valorem* duty method does not show the same variability in the 'effective rate' of the duty as export prices fluctuate that arises under the other methods
- the *ad valorem* duty method is the simplest and easiest duty required to deliver in the intended protective effect and may require less frequent reviews than other methods.

12.3 Forms of countervailing duty

The Dumping Duty Act specifies that ICD can be ascertained:

- as a proportion of the export price of those particular goods
- by reference to a measure of the quantity of those particular goods or
- by reference to a combination of a proportion of the export price of those particular goods and a measure of the quantity of those particular goods.

For the same reasons at 12.2.5, the commission recommends that the ICD be ascertained as a proportion of the export price (which is equivalent to the ad valorem dumping duty method).

12.4 Recommendations

The table below summarises the recommended anti-dumping measures and effective rates of IDD and ICD.

| Exporter | Anti-dumping measures | Recommended dumping duty method | Recommended countervailing duty method | Rate of ICD (%) ⁸⁹ | Rate of IDD (%) | Effective rate of ICD and IDD (%) ⁹⁰ |
|---|--|---------------------------------|--|-------------------------------|-----------------|---|
| All exporters from China (except Jiashilun) | Dumping duty notice and countervailing duty notice | Ad valorem | Proportion of export price | 22.5 | 17.3 | 39.8 |

Table 16 – Summary of recommended anti-dumping measures and effective rates of IDD and ICD

⁸⁹ Because of the application of the lesser duty rule, the effective rate of ICD (22.5%) is less than the subsidy margin (42.6%) calculated for non-cooperative exporters. See chapters 7 and 11.

⁹⁰ The combined dumping margin and subsidy margin is 59.9%. Because of the application of the lesser duty rule, the effective rate of ICD and IDD is less than the combined dumping margin and subsidy margin calculated for non-cooperative exporters.

13 RECOMMENDATIONS

13.1 Findings

The Commissioner has found that goods exported to Australia from China (except by Jiashilun) during the investigation period were at dumped and subsidised prices. Furthermore, those dumped and subsidised exports have caused material injury to the Australian industry producing like goods.

The Commissioner has found that goods exported to Australia from Vietnam (except by Sam Hwan) during the investigation period were at dumped prices. However, the Commissioner is not satisfied that material injury, has been or is being caused, or is being threatened to the Australian industry producing like goods due to dumped goods from Vietnam.

13.2 Recommendations

The Commissioner recommends that the Minister publish a dumping duty notice and a countervailing duty notice in respect of all exports of the goods from China (except by Jiashilun).

The Commissioner does not recommend that the Minister publish a dumping duty notice in respect of exports of the goods from Vietnam. If the Minister decides, after having regard to this recommendation, not to declare the goods exported from Vietnam to be goods to which section 8 of the Dumping Duty Act applies, the Commissioner recommends that the Minister give notice to that effect, in accordance with section 269TL.

The Commissioner recommends the Minister **be satisfied that**:

- in accordance with section 269TAB(3), sufficient information has not been furnished to enable the export price of the goods exported to Australia from China, except for exports of the goods by Jiashilun, to be ascertained under section 269TAB(1)
- in accordance with section 269TAC(6), sufficient information has not been furnished to enable the normal value of goods exported to Australia from China, except for exports of the goods by Jiashilun, to be ascertained under the preceding sections of section 269TAC
- in accordance with section 269TAC(2)(a)(ii), the normal value of the goods exported to Australia from China by Jiashilun 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
- in accordance with section 269TG(1), the amount of the export price of the goods exported to Australia from China, except for exports of the goods by Jiashilun, 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 caused

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- in accordance with section 269TG(2), the export price of like goods that have already been exported to Australia from China, except for exports of like goods by Jiashilun, is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia from China by all exporters, except for exports of like goods by Jiashilun, in the future may be less than the normal value of the goods, and because of that, material injury to the Australian industry producing like goods has been caused
- in accordance with section 269TACD(1), countervailable subsidies have been received in respect of goods exported to Australia from China, except for exports of the goods by Jiashilun
- in accordance with 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 Jiashilun, and because of that, material injury to the Australian industry producing like goods would have been caused
- in accordance with 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 Jiashilun, and countervailable subsidies may be received in respect of like goods that may be exported to Australia in the future, and because of that, material injury to the Australian industry producing like goods has been caused
- in accordance with section 269TJA(1), in respect of the goods exported to Australia from China, except for exports of the goods by Jiashilun
 - (a) the amount of the export price of the goods is less than the amount of the normal value of those goods
 - (b) a countervailable subsidy has been received in respect of the goods, and
 - (c) that, because of the combined effect of the difference between the two amounts in paragraph (a) and of the subsidy referred to in paragraph (b), material injury to the Australian industry producing like goods has been caused
- in accordance with 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 Jiashilun:
 - (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 a countervailable subsidy may be received in respect of like goods that may be exported to Australia in the future, and

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(c) that, because of the combined effect of the difference referred to in paragraph (a) and of the subsidy referred to in paragraph (b), material injury to the Australian industry producing like goods has been caused.

- In accordance with section 269TAE(2C), the cumulative effect of exportations of the goods exported from China and Vietnam can be considered because:

(a) each of the exportations is the subject of an investigation;

(b) the investigations of those exportations resulted from applications lodged with the Commissioner on the same day;

(c) the margin of dumping from China and Vietnam is at least 2% of the export price or weighted average of export prices;

(d) the volume of imports from each country is not negligible; and

(e) a cumulative assessment is appropriate in light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods;

however, the Commissioner recommends that the Minister **does not consider** the cumulative effect of the goods exported from China and Vietnam when determining whether material injury has been or is being caused by dumped goods exported to Australia, as set out in Chapter 9 of this report.

The Commissioner recommends the Minister ought **not to be satisfied** that:

- material injury to an Australian industry producing like goods has been caused because the export price of the goods exported to Australia from Vietnam is less than the normal value of those goods, and
- material injury to an Australian industry producing like goods has been caused because the export price of like goods that have already been exported to Australia from Vietnam is less than the normal value of those goods.

The Commissioner recommends the Minister **determine**:

- in accordance with section 269TAB(3), the export price of the goods exported to Australia from China and Vietnam, except for exports of the goods by Jiashilun and Sam Hwan, having regard to all relevant information, as set out in chapters 6.4.2 and **Confidential Attachment 2**
- in accordance with section 269TAC(6), the normal value of goods exported to Australia from China and Vietnam, except for exports of the goods by Jiashilun and Sam Hwan, having regard to all relevant information, as set out in chapters 6.4.2 and **Confidential Attachment 2**
- having applied section 269TACB(2)(aa) and in accordance with sections 269TACB(1) and (4), that the goods exported to Australia from China and Vietnam, except for exports of the goods by Jiashilun and Sam Hwan, are taken to have been dumped, and 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 6.4.2 and **Confidential Attachment 2**

- having regard to all relevant information in accordance with section 269TACC(1) and subject to sections 269TACC(2) and 269TACC(3), that financial contributions provided under programs 1, 2, 5-8, 10-19, 21-23, 27-30, 32, 34-52 and 553-2 confer a benefit, as set out in **Chapter 7**.
- being satisfied that a countervailable subsidy has been received by Jiashilun under program 553-2 in accordance with section 269TACD(1), that a countervailable subsidy has been received under program 553-2 in respect of the goods exported from China by non-cooperative entities as set out in **Confidential Attachment 4**, having regard to all the facts available and having made reasonable assumptions in accordance with section 269TAACA as set out in **Chapter 7**.
- in accordance with section 269TAACA, having regard to all the facts available and having made reasonable assumptions, that a countervailable subsidy has been received under programs 1, 2, 5-8, 10-19, 21-23, 27-30, 32, 34-52 in respect of the goods exported to Australia from China by non-cooperative entities as set out in **Chapter 7**.
- in accordance with section 269TAACA, having regard to all the facts available and having made reasonable assumptions as set out in **Chapter 7**, the amount of the countervailable subsidy received under programs 1, 2, 5-8, 10-19, 21-23, 27-30, 32, 34-52 and 553-2 in respect of the goods exported to Australia from China by non-cooperative entities, is the amount set out in **Confidential Attachment 4**.
- in accordance with section 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of the goods exported to Australia from China, except for exports of the goods by Jiashilun, is an amount which will be worked out in accordance with the *ad valorem* duty method pursuant to section 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

The Commissioner recommends the Minister **direct**:

- in accordance with section 10(3B) of the Dumping Duty Act, that the interim countervailing duty payable in respect of the goods exported to Australia from China, except for exports of the goods by Jiashilun, be ascertained as a proportion of the export price of those particular goods, and, in accordance with section 10(3D), that the amount of countervailable duty payable be fixed such that the sum of the amounts outlined in section 10(3D)(a), (b) and (c) do not exceed the NIP as set out in Table 16 and **Confidential Attachment 10**.

The Commissioner recommends the Minister **declare**:

- in accordance with section 269TG(1), by public notice, that (subject to section 269TN) section 8 of the Dumping Duty Act applies:

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- (a) to the goods exported to Australia from China, except for exports of the goods by Jiashilun, and
- (b) to like goods that were exported to Australia from China, except for exports of the goods by Jiashilun, after the Commissioner made a PAD under section 269TD on 23 April 2021 but before the publication of the notice
- in accordance with section 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia from China, except for exports of the goods by Jiashilun, after the date of publication of the notice
- in accordance with section 269TJ(1), by public notice, that (subject to section 269TN) section 10 of the Dumping Duty Act applies:
 - (a) to the goods exported to Australia from China, except for exports of the goods by Jiashilun, and
 - (b) to like goods that were exported to Australia from China, except for exports of the goods by Jiashilun, after the commissioner made a PAD under section 269TD on 23 April 2021 but before the publication of the notice
- in accordance with section 269TJ(2), by public notice, that section 10 of the Dumping Duty Act applied to like goods that are exported to Australia from China, except for exports of the goods by Jiashilun, after the date of publication of the notice.

The Commissioner recommends the Minister **have regard to:**

- in accordance with section 8(5BA), in relation to the goods exported to Australia from China, except by Jiashilun, the desirability of specifying a method such that the sum of the amounts outlined in sections 8(5BA)(c), (d) and (e) do not exceed the NIP
- in accordance with section 10(3D), in relation to interim countervailing duty in respect of the goods exported to Australia from China except by Jiashilun, the desirability of fixing the amount of interim countervailing duty in respect of the goods such that the sum of the amounts outlined in section 10(3D)(a), (b) and (c) do not exceed the NIP as set out in Table 16 and **Confidential Attachment 10**.

APPENDICES AND ATTACHMENTS

| | |
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| Confidential Attachment 1 | Australian market analysis |
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APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION IN CHINA

A1 Introduction

Having regard to all available information, the commission's view is that a particular market situation exists in respect of the domestic market for painted steel strapping in China. The particular market situation renders sales in that market unsuitable for use in determining a price that would permit proper comparison with the export price in determining the margin of dumping.

A2 Australian legislation, policy and practice

Australia treats China as a market economy for anti-dumping purposes, and the commission conducts its investigation in the same manner for China as it does for other market economy members of the WTO.

Irrespective of the country whose products are the subject of investigation, the Australian anti-dumping framework allows for rejection of domestic selling prices as the basis for normal values where there is a 'particular market situation'. This is only if the particular market situation renders sales in that market unsuitable for use in determining a price that would permit proper comparison with the export price in determining the margin of dumping.

A2.1 Legislation

Section 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the 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 to exist in the domestic market of the exporting country, pursuant to section 269TAC(2)(a)(ii), the commission must further consider whether, because of that situation, sales in that market are unsuitable for determining a price under section 269TAC(1) that would permit a proper comparison with the export price in determining the margin of dumping.

Where the commission determines that because of the particular market situation, such that domestic sales are unsuitable for determining a price under section 269TAC(1), 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).

A2.2 Policy and practice

The Act does not define or prescribe what is required to reach a finding of a particular market situation. A particular market situation will arise when there is some factor or

factors affecting the relevant market in the country of export generally. When considering whether a particular market situation renders sales unsuitable for use in determining a normal value under section 269TAC(1), the commission may consider factors such as whether:

- government intervention in the industry and/or market of the exporting country results in prices that are lower than it would otherwise be absent the particular market situation
- there are other conditions in the market that render sales in that market unsuitable for use in determining prices under section 269TAC(1).

The Manual provides further guidance on the circumstances in which the commission will find that a particular market situation exists.⁹¹

A3 Assessing particular market situation in this investigation

The commission has assessed whether a particular market situation exists in relation to the painted steel strapping market in the investigation period and whether such a particular market situation affects domestic sales in China in a manner that renders them unsuitable for determining a normal value for Jiashilun under section 269TAC(1).

In assessing whether a particular market situation exists due to government influence, the commission has assessed whether government involvement in the domestic market has distorted market conditions in a manner that is not insignificant. If government influence has distorted market conditions in a manner that is not insignificant, then domestic prices may be lower or not substantially the same as they would be in a market free of the particular market situation.

Prices for the like goods may also be lower or not substantially the same as they would otherwise be due to the influence of the particular market situation on the costs of inputs. The commission assessed the effect of any such influence on market conditions and the extent to which domestic prices prevail (or not) in a normal competitive market absent the particular market situation.

In making these assessments, the commission has relied on and considered all the evidence available to it, including the GOC's RGQ, Jiashilun's REQ, all relevant submissions made in this investigation, the findings of previous cases conducted by the commission and desktop research.

A complete examination of the evidence for this finding is below.

A4 The GOC role in the Chinese steel market

A4.1 Overview

The Chinese economy in general has undergone significant economic structural reforms to transition towards greater liberalisation of trade and foreign direct investment inflows

⁹¹ The Manual, p. 36.

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.

A4.2 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.

A4.3 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 programs⁹², 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).

The GOC Advice proposed reducing SOE capacity by 100 to 150 million tonnes by 2020, via the banning of new capacity building and elimination of colloquially named 'zombie mills'.⁹³ The Central Government had also pledged a RMB 100 billion fund for employee

⁹² These subsidy programs affect individual exporters differently depending on the level of subsidy they receive.

⁹³ Liu. H & Song. L, 2016. Issues and Prospects for the Restructuring of China's Steel Industry. China's New Sources of Economic Growth. Vol.1. Reform, Resources and Climate Change, pp.338-339. These mills would be shut down under normal competitive market conditions, due to either poor profitability or insolvency.

compensation, social security payments and plant closure incentives in the coal and steel sectors.⁹⁴

The GOC Opinions forbid the registration of new production capacity in any form and require that any production that does not meet environmental, energy consumption, quality, safety or technical standards to be taken offline.⁹⁵

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.⁹⁶ 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.

One key concern with zombie mills is that they reflect capacity that is idle rather than capacity permanently removed from the market. This means that, while the temporary removal of capacity helps moves toward competitive market conditions, those same plants have potential to return to production when higher steel prices prevail, leading to further distortions.⁹⁷ An example of this relates to a significant amount of capacity removed in 2016, which was already idle. 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.⁹⁸ 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.⁹⁹

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.¹⁰⁰

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.

⁹⁴ Duke Centre on Globalisation, Governance & Competitiveness (Duke Centre), 2016. *Overcapacity in Steel: China's role in a global problem*, September 2016, p.38.

⁹⁵ 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.

⁹⁶ Platts, 2016. Global Market Outlook, Steel Business Briefing. January 2016, p.14.

⁹⁷ Platts, 2017. Global Market Outlook, Steel Business Briefing. January 2017, p.10.

⁹⁸ Ibid.

⁹⁹ DBS Asian Insights, China's steel sector supply reform, April 2017, p.5.

¹⁰⁰ 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).

While it is hoped that this will eventually 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.¹⁰¹ In 2019, BAOWU Steel Group expected to increase its annual steel production capacity by 20 million tonnes after an agreement to merge with Magang (Group) Holding Co Ltd.¹⁰²

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.¹⁰³ Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and gross domestic product oriented performance measures which encourage over-investment.¹⁰⁴

A4.4 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 NDRC¹⁰⁵. 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).¹⁰⁶ 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
- 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

¹⁰¹ Platts, 2016. Global Market Outlook, Steel Business Briefing. June 2016, p.11.

¹⁰² Reuters, 2019, '[China Baowu Steel to take majority stake in rival Magang](#)'.

¹⁰³ Platts, 2016. Global Market Outlook, Steel Business Briefing. April 2016 p.16.

¹⁰⁴ Duke Centre, *op cit* (172), p.29.

¹⁰⁵ [National Development and Reform Commission](#).

¹⁰⁶ [*Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities*] State Council (China), Notice no. 7, 6 April 2010 ('GOC Guidelines').

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.¹⁰⁷

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.¹⁰⁸ The Plan remained current in the review 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 2020.¹⁰⁹ 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.¹¹⁰

There have been a number of GOC policies, plans and initiatives relevant to the China steel industry published within the last 20 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* (2011).¹¹¹ As these plans have ended, the commission's view is that these were 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

¹⁰⁷ Office of the Chief Economist, Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2015), p. 47.

¹⁰⁸ 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.

¹⁰⁹ King & Spalding, China Issues 13th Five-Year Plan for the Steel Industry, Yan, Linga, November 22, 2016.

¹¹⁰ [2020 World Steel in Figures](#), World Steel Association, May 2020.

¹¹¹ 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.

- 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 Reorganisation¹¹²
 - 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)
 - 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)¹¹³
 6. Three-Year Action Plan to Win the Blue Sky War (2018–2020, published 2018)¹¹⁴

¹¹² *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

¹¹³ *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/zwgk/2013-01/22/content_2317600.htm

¹¹⁴ *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

In addition, broader industrial restructuring and reorganising directives of the GOC have an impact on the Chinese steel industry.¹¹⁵

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.¹¹⁶ 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.¹¹⁷

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.¹¹⁸

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*. The commission understands 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.¹¹⁹

¹¹⁵ 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).

¹¹⁶ *International Trade Remedies Branch Report No. 177* ([REP 177](#)), p.123 refers.

¹¹⁷ Dong Zhang and Owen Freestone, [China's Unfinished State-Owned Enterprise Reforms](#) (2013), [Economic Roundup](#), The Treasury, Australian Government, issue 2, pp. 79-102.

¹¹⁸ REP 177, p.128 refers.

¹¹⁹ 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](#).

A4.5 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.*¹²⁰

The Chinese economy is commonly described as a 'socialist market economy' as it features dominant SOEs co-existing with market capitalism and private enterprise.¹²¹ 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.¹²²

Between 2010 and 2015, SOEs accounted for 44% of total Chinese steel production.¹²³ However, this may have been as high as 60%.¹²⁴

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.'¹²⁵

While the commission does not consider that the presence of these entities alone causes market distortions, it does consider that the presence of these entities is likely to result in adherence with the GOC's plans and directives. 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.¹²⁶

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.¹²⁷

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

¹²⁰ Amir Guluzade, published on the World Economic Forum website, [How reforms have made China's state owned enterprises stronger](#) (21 May 2020).

¹²¹ Asialink Business, [Overview of China's economy](#), accessed 21 July 2020.

¹²² <https://fortune.com/2019/07/27/ceo-daily-july-27-sino-saturday/>.

¹²³ Liu. H & Song. L, 2016, p.349.

¹²⁴ Platts Steel Business Briefing (Platts), *Global Market Outlook*, January 2016, p.14.

¹²⁵ World Bank, China 2030: Building a Modern, Harmonious, and Creative Society, Report No. 96299 (March 2013), p.25.

¹²⁶ 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.

¹²⁷ Liu. H & Song. L, 2016, p.348.

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).¹²⁸ 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.¹²⁹ 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.¹³⁰

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...' ¹³¹ 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].' ¹³²

A4.6 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.

¹²⁸ The State Council, notice advising the issuing of the [guideline on reorganization of SOEs](#) (July 2016).

¹²⁹ The State Council, notice [urging SOEs to increase profitability and deepen reform](#) (July 2020).

¹³⁰ Hong, Y (2019), 'Reform of State-owned Enterprises in China: The Chinese Communist Party Strikes Back', *Asian Studies Review*, pp.332-351.

¹³¹ OECD Steel Committee, [State Enterprises in the Steel Sector](#) (20 December 2018), p.5.

¹³² OECD Steel Committee, [State Enterprises in the Steel Sector](#) (20 December 2018), p.8.

A4.7 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.¹³³ 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 **Non-confidential Appendix D**). 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.¹³⁴ Although subsidies affect specific exporters differently based on the level of subsidy they receive, subsidisation supports unprofitable producers, delaying or preventing their timely exit from the industry. These industry-wide effects are broader than the recipient-specific subsidisation that is the subject of countervailing duties.

A4.8 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*.¹³⁵ 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.

¹³³ Duke Centre, *op cit* (172), p.25.

¹³⁴ Commissioner's Steel Report, at www.adcommission.gov.au p.45.

¹³⁵ Concerning hot rolled plate steel exported from China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan, pp. 41-43.

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| | 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 17 – VAT rate reform in China 2017 to 2019¹³⁶

The relevant VAT for painted steel strapping during the investigation period was 13%.

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’’.¹³⁷ 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% from 1 April 2019 until 22 March 2020, where it increased to 13%.

These changes, along with changes to the domestic VAT rate, resulted in applied VAT rates for exports of painted steel strapping of 3% for all of the investigation period, except for the final 9 days, where it was 0%. No export tariffs were payable on the goods, which when combined with the reduction in actual VAT paid on painted steel strapping exporters, would create a further incentive for export.¹³⁸

A5 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.

¹³⁶ <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.

¹³⁷ <https://www.oecd.org/tax/consumption/status-of-the-vat-reform-in-the-peoples-republic-of-china-2018.pdf>

¹³⁸ GOC RGQ, Attachment D6 – Schedule of rates, EPR item 10.

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.

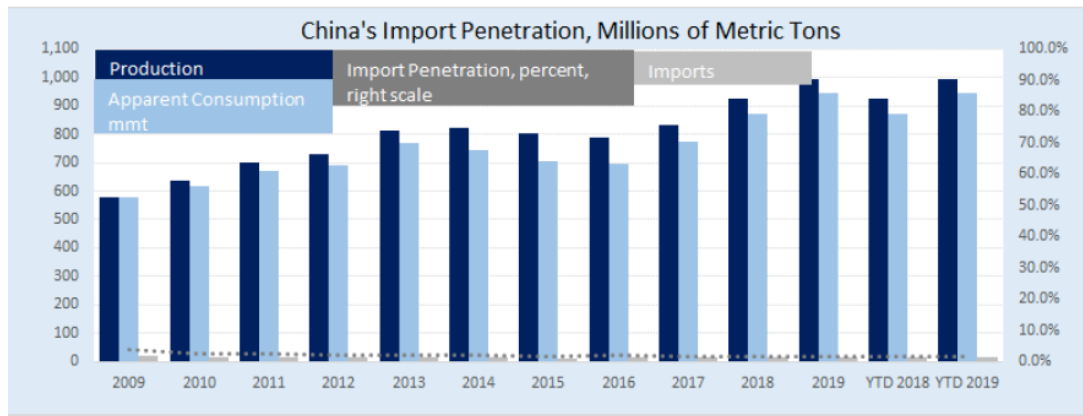


Figure 24 – Steel imports in China¹³⁹

Conversely, China's exports of steel represent approximately 62 million tonnes in 2019 or about 6% of its production.¹⁴⁰

The commission considers the GOC's involvement and influence over the steel industry to be a primary cause of the prevailing structural imbalances within both the broader steel industry and the HRC/CRC and painted steel strapping markets. The issuance of planning guidelines and directives along with provisions of direct and indirect financial support^{141, 142} 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.¹⁴³ It is a '...suite of policies focus[ing] on reducing distortions in the supply side of the [Chinese] economy and upgrading the industrial sector.'¹⁴⁴ 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, create a situation of '...competition for factors of production...' ¹⁴⁵ rather than market driven competition based on price, service and value.

¹³⁹ United States International Trade Administration, [Global Steel Trade Monitor, Steel Imports Report: China](#), May 2020.

¹⁴⁰ United States International Trade Administration, [Global Steel Trade Monitor, Steel Exports Report: China](#), May 2020.

¹⁴¹ Support measures include stimulus programs, land and energy subsidies and soft lending policies.

¹⁴² Duke Centre, *op cit* (172), p.24.

¹⁴³ <https://www.rba.gov.au/publications/bulletin/2018/dec/chinas-supply-side-structural-reform.html>

¹⁴⁴ <https://www.rba.gov.au/publications/bulletin/2018/dec/chinas-supply-side-structural-reform.html>

¹⁴⁵ 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.

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, over supply and distorted structure during the investigation period. It is the commission's view that these features have also limited foreign competition. When considered together, the state of affairs created by the GOC significantly affected the dynamics and price setting in the domestic market.

A6 GOC influence on the Chinese painted steel strapping market

The commission has found in the preceding section that the GOC exerts significant influence over the Chinese steel market. This section assesses the effect of that influence on HRC and CRC prices in China¹⁴⁶ and therefore on the cost of the primary steel input feed in the manufacture of the goods by Chinese producers.

A6.1 Significance of HRC/CRC costs in the production of the goods

The commission has found that HRC and CRC are the major raw material inputs used in the production of painted steel strapping.

CRC is made from HRC that has undergone further processing through rolling at low temperatures (generally room temperature). The process affects the performance and application properties of the coil, but not its specifications or grade. There is no additional material input other than HRC in the production of CRC, with CRC retaining the same metallurgical composition as its HRC input. The commission considers that CRC costs, while generally higher than HRC due to the additional processing, closely relate to the costs of HRC and are impacted to the same extent as HRC by any influence on the HRC market.

The commission has verified the HRC and CRC costs associated with the production of the goods and like goods during the investigation period for participating producers. The commission found that coil costs (whether HRC or CRC) represented a significant and broadly consistent proportion of the CTM of the goods and like goods. This is depicted in the table below.

| Country of production | Percentage of total CTM made up by HRC/CRC | Percentage of raw material costs made up by HRC/CRC |
|------------------------------|---|--|
| Australia | 70% | 100% |
| China | 90% | 99% |
| Vietnam | 83% | 95% |

Table 18 – Raw material coil as a proportion of CTM of the goods¹⁴⁷

The proportion of CTM represented by raw material costs for Australian producers is lower than that for Chinese and Vietnamese producers primarily due to higher manufacturing overheads. The higher proportion of CTM represented by raw material

¹⁴⁶ As noted in chapter 6.3.4, the commission considers that CRC costs are closely related to HRC costs and are impacted to the same extent as HRC by influences on the HRC market.

¹⁴⁷ Confidential Attachment 11 – CTM breakdown.

costs for Chinese producers (Jiashilun) is also partly explained by it using CRC as the raw material input which involves additional processing, as explained above.

Cooperating exporters from both China and Vietnam advised the commission that raw material prices are influential in setting selling prices for the goods and like goods, with lower raw material prices resulting in lower painted steel strapping prices.

Given the high cost proportion of HRC/CRC in the production of the goods and like goods and its influence on pricing decisions, the commission considers that HRC/CRC price has a significant impact on both the production cost and selling price of the goods and like goods.

A6.2 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 absent a particular market situation prevail in the Korean and Taiwanese domestic markets for HRC (and hence CRC) and that purchases of HRC in these markets are not influenced by prices in China.¹⁴⁸ The commission therefore considers that purchases of HRC and CRC in these markets are suitable for comparison with purchases of HRC and CRC in China to quantify the effect of the particular market situation on Chinese prices during the investigation period.¹⁴⁹

The commission notes that Jiashilun, the sole cooperating Chinese exporter, sourced CRC solely from Chinese steel mills.

In its analysis, the commission has compared, on a monthly basis:

- weighted average CRC prices which Chinese exporters of the goods paid in the investigation period (EXW, no delivery, excluding VAT) with the Chinese benchmark for CRC as reported by MEPS150
- the Chinese CRC MEPS benchmark with the CRC MEPS benchmarks for Korea and Taiwan
- the Chinese HRC MEPS benchmark with the HRC MEPS benchmarks for Korea and Taiwan.

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.

¹⁴⁸ See REP 529 available on the commission's website.

¹⁴⁹ The Vietnamese HRC market has previously been considered by the commission to be subject to normal competitive market conditions absent a particular market situation, 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.

¹⁵⁰ MEPS prices for HRC and CRC are reported EXW for China and EXW delivered for Japan, Korea and Taiwan. Where direct comparisons have been made, adjustments have been made for delivery costs. 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.

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As the currency conversion has been made on an average monthly exchange rate, the commission has not undertaken an assessment for short-term (ie 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. The figure below depicts monthly movements in the exchange rate for each of the relevant currencies to the USD.

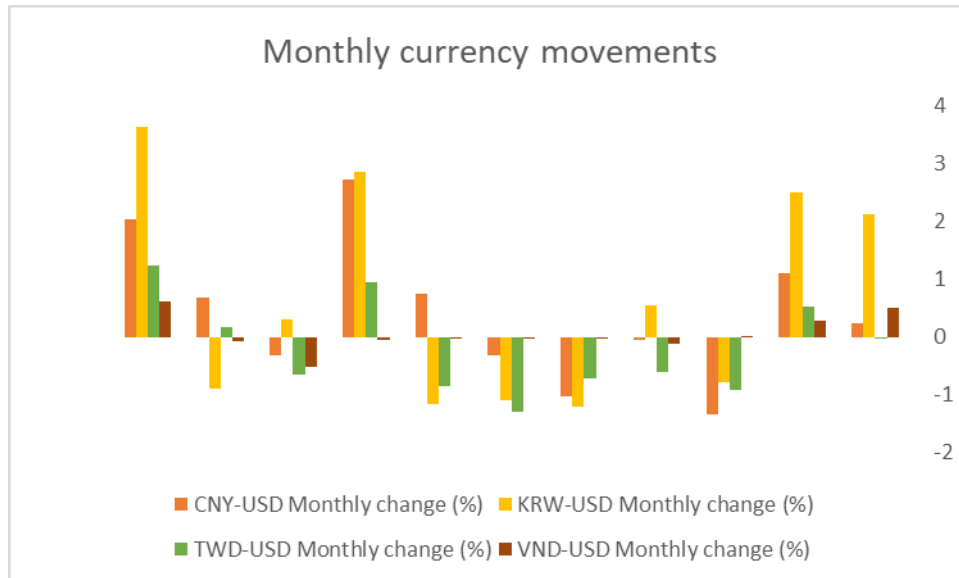


Figure 25 – Monthly currency movements to the USD

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 two 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 there a USD comparison between prices will provide ac result undistorted by currency movements.

The figure below depicts the monthly price of CRC over the investigation period as reported by MEPS for China, Korea and Taiwan and the price paid by cooperating Chinese producers of the goods. The prices have been adjusted to be at EWX including any delivery costs.

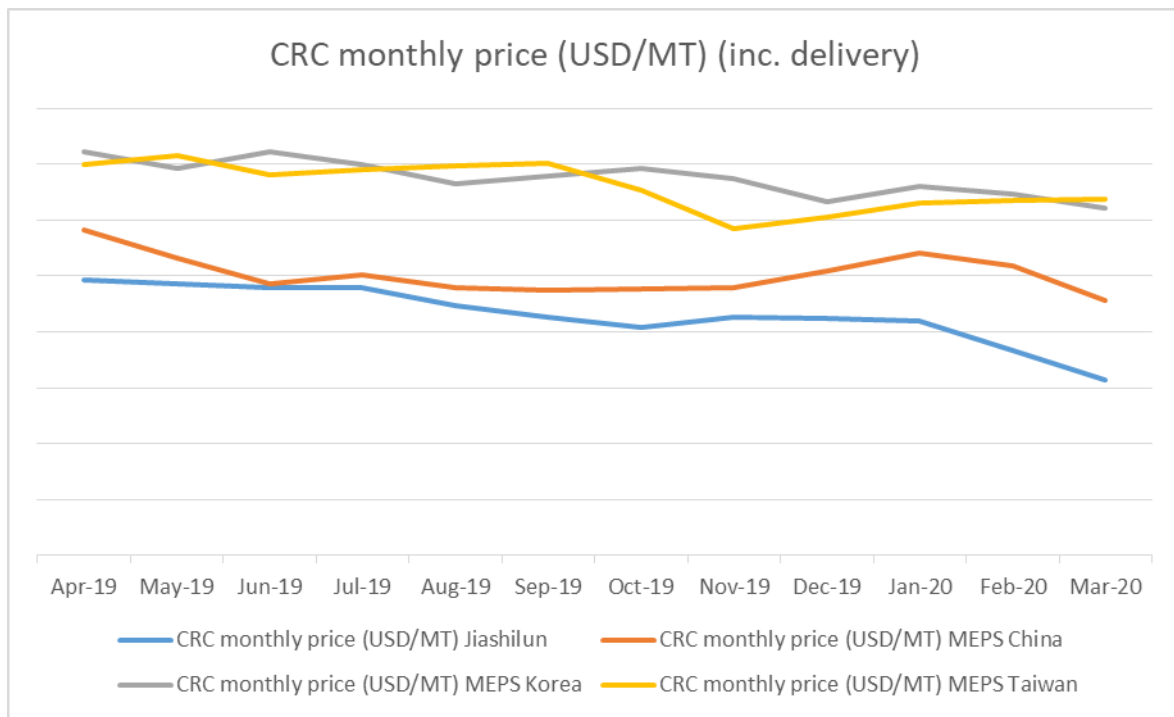


Figure 26 – CRC prices – EXW, inc. delivery in USD/MT

The figure shows that CRC prices in China, whether purchased by the cooperating Chinese producers or reported in the MEPS data, are substantially lower than equivalent prices for CRC purchased in Korea and Taiwan. The commission considers that CRC prices in China, Korea and Taiwan all appear to follow a similar price trend. The commission considers that the difference between prices represents, to a not insignificant degree, the GOC influences and distortions on CRC prices in the Chinese domestic market.

Confidential Attachment 3 provides the commission's raw material input analysis.

A6.3 GOC submissions to the SEF

The arguments of the GOC in respect of the market situation are set out in section 6.4.3. It is implicit in the arguments that the GOC's position is that lower HRC/CRC prices, the primary inputs in painted steel strapping, are due solely to competitive market factors in China. In other words, the GOC considers that lower input prices are not caused by government influence and therefore there is no particular market situation in respect of the like goods, being painted steel strapping. The GOC does not present evidence to support its arguments nor is such evidence provided by the cooperating exporter. This limits the commission's assessment of the GOC's arguments to the evidence before it.

To the extent that the GOC's arguments on competitive market factors concern the production of painted steel strapping and not HRC/CRC inputs, those competitive market factors are taken into account in the normal value calculation, which relies on Jiashilun's records for these costs.

To the extent the arguments relate to international commodity prices, such as those for iron ore, those international commodities are used as inputs in all steel markets including Korea and Taiwan. There is no evidence that such costs are different in China and,

therefore, there is no evidence they impact the assessment of the Chinese market situation.

To the extent that the arguments relate to competitive market factors related to HRC/CRC production, the GOC makes assertions but provides no evidence to establish that such advantages exist compared to Korea and Taiwan. Moreover, central to the GOC's argument, there is no evidence that these competitive market factors account for the full amount of the lower HRC/CRC prices and, therefore, the prices of painted steel strapping. The commission acknowledges the GOC's argument that the Chinese market for painted steel strapping consists of a number of producers that compete with each other. This supports the commission's conclusion that the lower HRC/CRC prices are reflected in the price of painted steel strapping.

Based on the foregoing and on the evidence before it, the commission concludes that the market situation is linked to lower HRC/CRC prices. The effect of the lower HRC/CRC prices are not insignificant and, therefore, cause lower prices for painted steel strapping that is also not insignificant.

A7 Conclusion

In light of all 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 painted steel strapping in China for the investigation period which may result in domestic sales in China being found not suitable for determining a normal value for Jiashilun under section 269TAC(1).

Whether the particular market situation in respect of the domestic market for painted steel strapping in China has resulted in Chinese domestic sales being not suitable for determining Jiashilun's normal value under section 269TAC(1) is discussed in

Non-confidential Appendix B.

APPENDIX B PROPER COMPARISON OF DOMESTIC AND EXPORT PRICES

B1 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 painted steel strapping in China for the investigation period, the commission has examined whether goods in that market are suitable for determining Jiashilun's normal value under section 269TAC(1).

B2 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 particular market situation on both domestic sales and Australian export sales. If there is a finding that the particular 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 ADA¹⁵¹ and the WTO Panel's interpretation of these obligations set out in DS529.¹⁵²

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

- the relationship between raw material costs and the domestic prices and Australian export prices for the goods for each relevant producer of the goods and like goods
- 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 particular market situation in the country of export (domestic prices) and Australian markets (export prices). In turn, it will provide insight into whether a proper comparison is permitted between domestic prices and Australian export prices.

¹⁵¹ https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm

¹⁵² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds529_e.htm

In particular, the commission has undertaken:

- 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’¹⁵³
- a *qualitative* assessment of prices, to ‘...focus on how the particular market situation affects that comparison’.¹⁵⁴

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’.¹⁵⁵

B3 Examination of Australian conditions of competition

B3.1 Market structure

Chapter 5 of this report discusses the Australian market for painted steel strapping. In summary:

- Australian industry and imports from other countries supply the Australian market for painted steel strapping, selling it directly to customers or through local distributors.
- Australian industry supplies the greatest volume in Australia. The highest volume of imports come from China and Vietnam.
- Overseas producers compete directly with the Australian industry and supply the same market segments as Australian industry, with Australian produced like goods and imported goods readily substitutable.
- Customer output drives demand for painted steel strapping, primarily from steel manufacturing, timber, mining, food production, paper, wool and recycling.

The commission considers the Australian market for painted steel strapping is a competitive market, characterised by a large number of suppliers and customers engaging in commercial negotiations.

B3.2 Raw material

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

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

¹⁵³ DS529 – para. 7.75.

¹⁵⁴ DS529 – para. 7.75.

¹⁵⁵ DS529 – para. 7.76.

strategy where known import offers in the Australian market are used to determine the level at which it sets its selling price.¹⁵⁶

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.¹⁵⁷

B3.3 Import penetration in the Australian market

The commission examined the ABF import database to identify exporters and importers of painted steel strapping during the investigation period. The commission observed that during the investigation period:¹⁵⁸

- the goods were exported to Australia from 7 countries by 25 unique exporters, with 12 exporters from China and 2 from Vietnam
- 31 unique importers were identified as having imported the goods
- imports accounted for 38% of sales volume in the Australian market
- of these imports, Chinese imports accounted for 39% of sales volume and Vietnamese imports 27%.

The GOC in its RGQ observed that the nature of the Australian market, with only one local manufacturer, might create an uncompetitive market, driving up prices and therefore attracting imports.

While the observation that there is only one domestic manufacturer of the goods in Australia is accurate, the commission does not agree that the Australian market is uncompetitive. The presence of a number of importers with material import volumes from numerous countries indicates to the commission that the Australian market for painted steel strapping can be characterised as having a high level of import penetration contributing to a competitive market for the goods between participants.

B4 Examination of Chinese conditions of competition

B4.1 Market structure

The commission sent the GOC a questionnaire at the beginning of the investigation requesting information, among other things, in relation to the painted steel strapping market in China. The GOC provided its RGQ to the commission on 15 August 2020¹⁵⁹ which the commission considered as part of this investigation.

In its RGQ, the GOC submitted that painted steel strapping is a relatively new product in the Chinese market, widely used in construction, shipbuilding, automotive manufacturing, white goods and electric appliances sectors.

¹⁵⁶ REP 400, chapter 4.3.2.

¹⁵⁷ REP 400, chapter 4.3.

¹⁵⁸ Confidential Attachment 1 – Australian Market Analysis.

¹⁵⁹ EPR 553, Item 10.

Questionnaire responses from the GOC and Jiashilun indicated pricing for painted steel strapping industry is unregulated. Prices are set in the market in commercial transactions between buyers and sellers resulting in competitive market prices.

On the information available to it, the commission is satisfied there is a large number of participants engaging in commercial negotiations for the sale and purchase of painted steel strapping, which is indicative of competition, albeit where a particular market situation affects all participants.

B4.2 Raw material

The GOC submitted that Chinese producers of the goods used raw materials sourced from both local and foreign suppliers. However, from the data provided to the commission during verification, the major raw material used in the production of the goods in China is CRC, purchased from Chinese suppliers.

The GOC submitted prices for HRC (and accordingly CRC) 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 the goods, the commission is satisfied that, like the market for painted steel strapping, there is a large volume of participants who engage in commercial negotiations in the sale and purchase of HRC and CRC. This is indicative of competition, albeit impacted by government distortions.

The commission examined the monthly CRC price paid by Jiashilun with the monthly Chinese CRC MEPS benchmark and the CRC MEPS benchmarks for Korea and Taiwan. The commission also compared the monthly HRC MEPS benchmark for China, Korea and Taiwan.

The commission was unable to compare directly the raw material costs paid by Jiashilun with that of Australian industry (as the data for Jiashilun available to the commission is only for CRC, whereas the data for Australian industry is only for HRC). However, the commission was able to analyse patterns in CRC prices paid by Jiashilun and CRC MEPS benchmark prices for China, Korea and Taiwan. The commission also analysed pricing patterns in the HRC MEPS benchmark prices for China, Korea and Taiwan. From these datasets, the commission has observed that in relation to the investigation period:

- there are only minor differences between CRC and HRC benchmark prices in Korea compared to CRC and HRC benchmark prices in Taiwan (in other words, Korean and Taiwanese prices are largely the same)
- Chinese benchmark prices for both CRC and HRC are lower at all times than the Korean and Taiwan benchmark
- Jiashilun CRC prices are the same or lower than the Chinese CRC benchmark price.

The commission has compared the Chinese HRC benchmark price with the HRC price paid by Australian industry and found that Chinese HRC is well below Australian prices throughout the investigation period.

As part of its RGQ, the GOC rejected the assertion that raw material costs for the goods are artificially low. It submitted that the Chinese steel market is the most competitive in the world with more participants than any other countries and that purchases of raw materials are competitive and based on market conditions. The Chinese domestic market consumes most Chinese steel production. However, the GOC claims that China is a significant steel importer and a net importer of both HRC and CRC.

Based on the information available to the commission, the commission agrees with the GOC that the Chinese domestic market for CRC and HRC consists of a number of players that compete with each other. However, the commission disagrees that prices are not lower than what they otherwise would be, absent the particular market situation caused by the GOC influence. The commission is satisfied that the evidence from the verification of the cooperative exporter's raw material costs and MEPS data indicates Chinese manufacturers have access to lower priced raw material inputs relative to Korean, Taiwanese and Australian manufacturers. The commission considers the Chinese domestic market conditions lead to lower prices for HRC and CRC 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 3**.

B4.3 Import penetration in the Chinese market

The GOC provided confidential information in its RGQ regarding the degree of import penetration into the Chinese market. A significant majority of painted steel strapping manufactured in China was sold domestically, with a small amount exported and a negligible amount of imports.

The GOC advised there are a large number of producers of the goods within China, with a low barrier for entry into the market. This includes foreign companies. However, the examples of foreign companies identified by the GOC did not import the goods but had manufacturing facilities within China.

From the information provided by the GOC, the commission has determined that the size of the Chinese market for the goods is significantly larger than the Australian market.

The commission examined the ABF import database and noted that 12 Chinese manufacturers exported to Australia during the investigation period. This is more than 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 noted from the information provided by the cooperating exporter that it maintains excess production capacity.

The commission considers that, due to the number of Chinese producers supplying the Chinese market, and based on the low cost of raw material inputs available to those producers, relative to comparable international benchmarks absent of a particular market situation, there would appear to be a competitive disadvantage in respect of the importation of painted steel strapping into China.

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 2019.¹⁶⁰

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

B5 Relationship between price and cost – China

The commission considers that Chinese producers supplying painted steel strapping to the Chinese domestic market operate under unique market conditions that differ from those in other countries, including in Australia. Specifically, the particular market situation in China reduces costs across all production due to lower raw material costs.

From analysis of the cooperative exporter's records, the commission found that raw material costs affected the CTM for both domestic and exported goods equally. During verification, the commission found that the cooperating Chinese exporter used the same facilities, raw material inputs and manufacturing processes to manufacture painted steel strapping sold into the Chinese domestic market as that exported to Australia, with raw materials accounting for the majority of the total CTM.¹⁶¹

The commission compared the CTM of painted steel strapping produced for sale on the domestic market by the cooperating exporter against the CTM of painted steel strapping produced for export to the Australian market. The commission observed there was no difference in the CTM between goods produced for domestic consumption and those produced for export to Australia.

Chinese domestic prices

The commission was unable to compare domestic selling prices for the goods across different Chinese manufacturers due to a lack of cooperating responses. Nonetheless, from the evidence before it from the questionnaire responses, the commission is satisfied the Chinese domestic market for painted steel strapping consists of a number of producers that compete with each other. As a result of this environment for the goods, the lower raw material costs attributable to the particular market situation directly affect painted steel strapping prices, such that the prices are lower than they would otherwise 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 as it modifies the conditions of competition in a consistent manner for all market participants.

¹⁶⁰ United States International Trade Administration, [Global Steel Trade Monitor, Steel Imports Report: China](#), May 2020.

¹⁶¹ See table 18.

Therefore, the commission considers that Chinese producers have little flexibility with respect to price setting for sales of painted steel strapping in their domestic market.

Chinese export prices

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.¹⁶²

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



Figure 27 – Anonymised Chinese import prices of the goods into Australia, weighted average unit price over the investigation period¹⁶³

The figure indicates a variability in pricing by Chinese manufacturers in the Australian market.

The commission has also compared the weighted average FOB Chinese export prices for each exporter as reported in the ABF import database with those from Vietnam, Korea, Germany and Malaysia, who represent the second, third, fourth and fifth largest source of imports of painted steel strapping into Australia. The weighted average FOB export price of the cooperating exporter has also been included in the comparison.

¹⁶² See chapter 5.5 for the commission treatment of ABF import data.

¹⁶³ Confidential Attachment 1 – Australian Market Analysis.

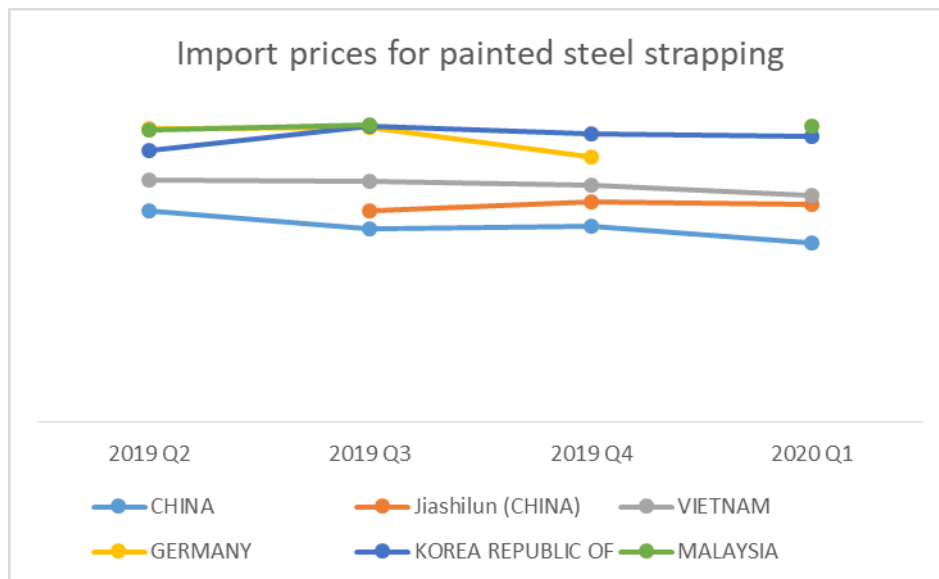


Figure 28 – FOB import prices for painted steel strapping imported into Australia during the Investigation period¹⁶⁴

The commission observed that the weighted average FOB export prices of Chinese exporters to Australia (including the cooperating exporter) was lower than those of German, Malaysian and Korean exporters to Australia in each quarter of the investigation period. This finding provides evidence that the distortions in the Chinese raw material market enabled Chinese manufacturers to undercut other participants in the Australian market, in addition to undercutting the Australian industry.

Based on the above analysis, the commission considers that:

- there is a market which is internally competitive between domestic participants in China where no competitive advantage is derived by any individual manufacturer as the reduced production costs resulting from the situation in the market benefits all producers
- the Australian market is a competitive market. The commission considers variability of pricing between Chinese manufacturers supplying to the Australian market is indicative of a competitive advantage attributable to the particular market situation, which allows Chinese exporters to engage in pricing strategies in the Australian market which achieve either:
 - 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
 - a combination of higher margins and increased sales volumes resulting from undercutting.

B6 Arguments of the GOC

The arguments of the GOC in respect of the proper comparison of domestic and export prices are set out and addressed in section 6.4.3. To the extent that those arguments

¹⁶⁴ Ibid.

concern the comparative costs of Chinese producers, they are addressed above in the context of the market situation.

B7 Conclusion

The commission's analysis indicates that the relationship between price and cost and the prevailing conditions of competition in China is different in comparison to the relationship between price and cost and the prevailing conditions of competition in Australia. 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 market participants, being Chinese producers. In other words, while there may be competition between Chinese producers based on manufacturing efficiencies and other factors (no evidence of which was presented to the commission during the investigation), the particular market situation nonetheless modifies the conditions of competition in a consistent manner for market participants. The commission considers this is broadly consistent with the GOC submission that the Chinese market for painted steel strapping is highly competitive and that transactions (for the goods and raw materials) are made under competitive conditions. However, that competition between domestic market participants is impacted by the particular market situation which distorts (lowers) the level of competitive pricing.

In Australia, where no particular market situation or input cost decrease exists, competitive pricing prevails at a higher level. Higher production costs for those participants producing without the benefit of a particular market situation establishes a higher minimum threshold for competitive prices. Under these circumstances, the effect of the particular market situation in China on the price of Chinese painted steel strapping 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 export price is to modify the conditions of competition in Australia to the benefit of Chinese exporters and, to the extent that benefit manifests as a low price that undercuts 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 particular 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 for Jiashilun pursuant to section 269TAC(1) because the price of such sales do not permit a proper comparison with the export price of the goods exported to Australia.

APPENDIX C CONSTRUCTED NORMAL VALUES – CHINA

C1 Applicable legislation, policy and practice

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

... the sum of:

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

In constructing normal values, section 43(2) of the Regulation requires that the Minister must work out the cost of production or manufacture using 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 GAAP in the country of export, and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods.

In determining whether costs reasonably reflect competitive market costs associated with the production or manufacture of like goods, the commission will determine whether those costs reasonably reflect the costs associated with the production or manufacture of like goods **and** are competitive market costs suitable for the purpose of constructing normal values.

The commission may determine, pursuant to section 43(2) of the Regulation, that while costs may be in accordance with GAAP **and** may reasonably reflect the costs associated with the production or manufacture of the like goods, being the costs actually incurred by the exporter or producer, the costs may not be a competitive market cost suitable for the purpose of constructing normal value. In those circumstances, it is the commission's practice to provide a reasoned explanation of why those costs do not reflect competitive market costs and why they are not suitable for constructing a normal value. Where an allegation that particular market situation exists, the reasoned explanation will include any relevant particular market situation assessment and finding.

It is the commission's view that it is open for the Minister to adjust an exporter or producer's records to reasonably reflect competitive market costs associated with the manufacture of the goods in the country of export, where an exporter or producer's records are reliable and in accordance with GAAP but do not reasonably reflect

competitive market costs associated with the manufacture of like goods suitable for the purpose of constructing normal values. In making such adjustments, the commission considers that the Minister may have regard to all relevant information.

C2 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 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':¹⁶⁵

- 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
- 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 (in 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 Jiashilun in its REQ 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 under section 269TAC(2)(c) for Jiashilun, and has done so in accordance with sections 43, 44 and 45 of the Regulation, relevant aspects of which are outlined below.

C3 The records of Jiashilun

The commission is satisfied that Jiashilun kept records in relation to the production of like goods. Further, the commission is satisfied that Jiashilun's records are in accordance with GAAP in China and reasonably reflect costs associated with the production of like goods, being that they reflect the costs actually incurred by Jiashilun.

Additionally, the commission assessed whether the costs of production as reported in Jiashilun's records reasonably reflect *competitive market costs* suitable for constructing a normal value.

¹⁶⁵ The Manual, page 51.

The commission highlights that Jiashilun's records for the production of like goods include the following items:

- raw materials, being CRC
- other materials
- direct labour
- manufacturing overheads
- an offset for scrap.

The vast majority of the Jiashilun's overall costs of production relate to CRC (representing approx. 90%). CRC costs therefore are most relevant the commission's assessment of whether Jiashilun's records reflect competitive market costs. HRC costs, which are comparable to CRC costs, due to the similar characteristics of both inputs, were the only cost items directly mentioned in Signode Australia's application as linked to the particular market situation in respect of like goods. The commission has examined in **Non-confidential Appendix A6.2** the degree to which particular market situation impacts on CRC prices in the Chinese domestic market.

Noting the commission's finding that a particular market situation exists in respect of like goods in China, the commission compared Jiashilun's recorded CRC costs to a competitive international benchmark unaffected by the particular market situation. The purpose was to assist the commission's determination of whether Jiashilun's recorded CRC cost is a competitive market cost suitable for constructing a normal value.

The commission has established the competitive international benchmark based on CRC prices in Korea and Taiwan as published by MEPS International Ltd, a steel market analysis company.

From previous cases, the commission considers that the particular market situation is absent and normal competitive market conditions prevail in the domestic markets for HRC in Korea and Taiwan. CRC costs in China do not influence purchases in these markets.¹⁶⁶

The commission considers that the difference between the MEPS CRC prices for Korea and Taiwan and Jiashilun's recorded CRC cost is an indicator of the level of distortion of CRC cost in China caused by the particular market situation.

The commission notes that this approach differs from that taken in SEF 553, where the commission compared MEPS CRC prices for Korea and Taiwan to MEPS CRC prices for China. Following SEF 553, the commission reviewed the competitive international benchmark and considers that Jiashilun's records were preferable to third party data (albeit the third party data is also a reliable source of information) because the commission verified Jiashilun's records during the investigation and the data therein is relevant because Jiashilun is an exporter of the goods during the investigation period.

The commission considers that the competitive international benchmark is indicative of a competitive market cost unaffected by the same particular market situation in respect of the like goods in China. The competitive international benchmark indicates that the CRC cost in such a competitive market, after allowing for differences that might affect the

¹⁶⁶ See REP 529 available on the commission's website.

comparison, were materially higher during the investigation period than the CRC cost recorded in Jiashilun's records.

The commission considers that the CRC cost in the records of Jiashilun reflect the impact of the particular market situation to a degree that is not insignificant. The commission considers that the programs and policies of the GOC together with the other interventions in the steel market have lowered the price and cost of CRC in China. This induced and allowed producers of the goods and like goods in China, including Jiashilun, to produce and supply more like goods at a lower price point than otherwise possible.

The commission considers that this lowered price of CRC in Jiashilun's records do not reflect competitive market prices but rather reflect market conditions that are not normal and ordinary.

The commission is therefore satisfied that while the CRC cost recorded in Jiashilun's records may reasonably reflect the costs associated with the production or manufacture of the goods, because of the particular market situation, they do not reasonably reflect competitive market costs associated with the production or manufacture of the goods and are therefore unsuitable for the purpose of constructing normal value.

The commission has adjusted the recorded CRC costs for Jiashilun on the basis that they did not reasonably reflect competitive market costs absent the market situation.

In doing so, the commission has considered the individual circumstances of Jiashilun's purchases of CRC and has ensured that Jiashilun's adjusted records reasonably reflect costs in China absent the particular market situation.

The commission has not adjusted any of the other items recorded in Jiashilun's cost of production.

C4 Calculation of the raw material cost adjustment

The commission has determined the adjusted CRC cost for Jiashilun by comparing the above competitive international benchmark cost to Jiashilun's actual costs, and applying the resulting variation as an adjustment to its records.

Specifically, the commission calculated an adjustment for each quarter based on the difference between:

- a benchmark CRC cost for each quarter (based on MEPS monthly CRC price data for Korea and Taiwan)
- Jiashilun's actual CRC cost for each quarter (based on the weighted average of actual prices paid by Jiashilun to its CRC suppliers in that quarter).

Confidential Attachment 3 provides the commission's benchmark analysis.

Confidential Attachment 13 shows the adjustment made to Jiashilun's CRC costs using the calculated adjustment for each quarter.

APPENDIX D ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS – CHINA

D1 Introduction

D1.1 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 following must provide the contribution:

- 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
- a private body entrusted or directed by that government or public body to carry out a governmental function.

D1.2 Government

As described in section 16.2 of the Manual, the commission considers that the term ‘government’ includes government at all different levels, including at a national and sub-national level.

D1.3 Public bodies

The Act does not define the term ‘public body’. 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
 - 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 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
 - 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)*¹⁶⁷ 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
- where there is evidence that a government exercises meaning control over an entity and exercises governmental authority in the performance of government functions.

The Federal Court of Australia has also previously considered these principles.¹⁶⁸

D1.4 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 that 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, or
- ‘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 are 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. This test is satisfied where the private body is a proxy by government to give effect to financial contributions.

¹⁶⁷ DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

¹⁶⁸ 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].

D2 Assessment of Programs

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|--|---|--|---|---|
| Program 553-1 Income tax relief for small low-profit enterprises | <p>Reduce the cost of entrepreneurship and innovation, stimulate the development of small and micro businesses, and promote the expansion of employment.</p> <p>The program is a provided through reduction of tax rate to eligible companies upon approval.</p> <p>The commission is not aware of any WTO notification of this program.</p> | Announcement of the State Administration of Taxation on Issues Relating to Implementation of Inclusive Income Tax Relief Policy for Small Low-profit Enterprises 'State Administration of Taxation Announcement [2019] No. 2' | The program is offered to small low-profit enterprise engaging in non-restricted and non-prohibited businesses, that meets 3 criteria: annual taxable income under RMB3 million, no more than 300 employees and total assets of less than RMB50 million. | <p>The reduced income tax rate under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The amount of benefit from received from paying a lower amount of income tax as a result of this program has been attributed to all the company's sales over the period. It was then allocated to the goods based on the net revenue over the period.</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> | <p>The commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria as set out in State Administration of Taxation Announcement [2019] No. 2. Eligible enterprises will automatically be in receipt of a reduced tax rate.</p> <p>Based on the information available to the commission regarding the nature of the program, in that it is available to small enterprises of any industry and location, there is no evidence to indicate that any of the factors in section 269TAAC(4) have been manifested in the administration of this program.</p> <p>Having considered the factors set out in section 269TAAC(4), the commission is satisfied that the requirements of section 269TAAC(3) have been met.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|--|--------------------------------------|--|---|--|
| | | | | | Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC. |
| Program 553-2 Special fund for industrial transformation and upgrading in 2019 | <p>The program provides grants for qualifying projects.</p> <p>From the information provided to the commission, the scope of projects appears quite broad, with finding decisions resting with municipal bodies.</p> <p>The commission is not aware of any WTO notification of this program.</p> | No legal basis information provided. | Eligibility is limited to enterprises based in Qinhuangdao City. Eligible projects must be for more than RMB3million. Applications are reviewed the Municipal Finance Bureau and Municipal Bureau of Industry. | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>The amount received from this fund has been attributed to all of the company's sales. It was then allocated to the goods based on the export revenue over the period.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> | <p>Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section 269TAAC(3), it is limited to entities carrying on business within a designated geographical region.</p> <p>The commission is satisfied this program provides a grant to enterprises located in the Qinhuangdao region, thereby satisfying the criteria in section 269TAAC(2)(b).</p> <p>The commission does not consider that section 269TAAC(3) applies as the subsidy favours enterprises within Qinhuangdao over those located elsewhere.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---|--|---|--|--|--|
| | | | | The financial contributions made under this program meet the definition of a subsidy under section 269T. | |
| Program 553-3 Exemption and reduction of social insurance payments for enterprises during the epidemic period | <p>The Ministry of Human Resources and Social Security, the Ministry of Finance (MOF) and the State Taxation Administration exempted medium, small and micro enterprises from contributions to the 3 social security items: basic pension insurance, unemployment insurance and work injury insurance.</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Notice of the Ministry of Human Resources and Social Security, the MOF and the State Taxation Administration on the Reduction/Exemption of Enterprises' Social Security Contributions in Phases, 2 February 2020</p> | <p>Medium, small and micro enterprises are automatically eligible for this program.</p> <p>Exemptions may be granted by all provinces, autonomous regions, centrally-administered municipalities (except Hubei Province) and Xinjiang Production and Construction Corps based on the epidemic impact and the fund threshold.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> | <p>The commission has examined the eligibility criteria for the program and considers that eligibility appears broad.</p> <p>The commission considers that, having regard to the provisions of section 269TAAC(4), this program is not specific and therefore not countervailable.</p> |
| Program 1 Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones | <p>The purpose of this subsidy is to absorb foreign investment and expand the open-up policy and enhance development of designated areas.</p> <p>This program was found to be countervailable in REP 419.</p> | <p>Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991)</p> <p>Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign</p> | <p>Enterprises with foreign investment of a production nature established in the economic and technological development zones shall be levied at the reduced income tax rate of 15%.</p> <p>Enterprises with foreign investment of a production nature established in the</p> | <p>The reduced income tax rate under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>Due to the nature of this program (reduced income tax rate) it is considered that</p> | <p>The commission considers that this subsidy is limited to enterprises established in the economic and technological development zones and in the coastal economic open areas.</p> <p>The commission also considers that this subsidy</p> |

Report 553 – Painted steel strapping – China and Vietnam

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---------|---|---|--|--|--|
| | <p>In INV 559, the GOC made a submission that the <i>Enterprise Income Tax Law</i> came into force in 2008, and the <i>Income Tax of Enterprises with Foreign Investment and Foreign Enterprises</i> expired, which is the basis of this program.¹⁶⁹</p> <p>Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 8).</p> | <p>Investment and Foreign Enterprises (1991)</p> <p>State Administration of Taxation (SAT) Circular Guo Shui Fa No.139 of 1995</p> <p>SAT Circular Guo Shui Fa No.135 of 2003</p> <p>Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>State Council Circular Guo Fa No.39 of 2007.</p> <p>This program is administered by MOF, SAT, Ministry of Commerce (MOFCOM), MOST.</p> | <p>coastal economic open areas and in the old urban districts of cities where the economic and technological development zones are located and which are engaged in the following projects:</p> <p>technology-intensive or knowledge-intensive projects, with major products listed in the 'Catalogue of High and New Technology Products of China' promulgated by MOST and the sales revenue of these products of a year accounting for over 50% of the total annual sales revenue of the enterprise of that year</p> <p>projects with foreign investments of over US\$30 million and having long periods for return on investment</p> <p>energy resources, transportation and port construction projects, shall be levied at the</p> | <p>a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>targets enterprises with foreign investment.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

¹⁶⁹ Available on the commission website

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---|---|--|--|--|--|
| | | | reduced income tax rate of 15%. | | |
| Program 2 One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China' | <p>This program was found to be countervailable in REP 419 (Program 2), and prior to that in REP 316 (Program 7).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Decision Concerning Commending and/or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of 'China Worldwide Famous Brand', 'China Famous Brand', or 'China Well-Known Brand'</p> <p>The government of Guangdong Province is responsible for the administration and management of this program.</p> | <p>Enterprises whose products qualify for the Title of 'China Worldwide Famous Brand'.</p> <p>Enterprises whose products qualify for the Title of 'China well-known brand' and/or 'famous trademark (China famous Trademark)'.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>This program is limited to enterprises in the Guangdong Province whose products qualify for the title of 'China worldwide famous brand', 'China well-known brand' and/or 'China famous brand'.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|--|---|---|---|---|
| Program 5 Matching Funds for International Market Development for Small and Medium Enterprises | This program was found to be countervailable in REP 419 (Program 5), and prior to that in REP 316 (Program 8). The commission is not aware of any WTO notification of this program. | Regulatory instrument: <i>Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises.</i> The program is administered by the MOF and MOFCOM, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions. | SME enterprises that have: a legal personality according to law the capacity to manage an import or export business made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less sound financial management systems and records employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics a solid market development plan. | Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T. | The commission considers that this program is limited to small and medium enterprises involved in foreign trade. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3). |
| Program 6 Superstar Enterprise Grant | This program was found to be countervailable in REP 419 (Program 6), and prior to that in REP 316 (Program 9). | Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises | Enterprises located in Huzhou City that satisfy the following criteria: (a) The 'output scale' of the enterprises must | Grants provided under this program are financial contributions by a government which involve | This program is limited to enterprises in Huzhou City meeting the specified 'output scale'. |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---------|--|--|--|---|--|
| | The commission is not aware of any WTO notification of this program. | <p>Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises.</p> <p>This program is administered by the Huzhou Economic Committee.</p> | <p>meet one of the following criteria:</p> <p>business income of the current year not exceeding RMB 3.5 billion and sales</p> <p>revenue within the city exceeding RMB 2 billion</p> <p>sales revenue within the city exceeding RMB 2.5 billion</p> <p>sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than RMB 10 million</p> <p>revenue from self-export of current year is more than USD 150 million.</p> <p>(b) The enterprise's accumulated industrial input between the years 2006 to 2008 must have</p> | <p>the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---|--|---|---|--|--|
| | | | <p>exceeded RMB 150 million</p> <p>(c) The enterprise must be profitable, and its VAT 'paid up', while its consumption tax, income tax, business tax, city construction tax and education supplementary tax must exceed RMB 30 million</p> <p>(d) The enterprise must not have suffered environmental or 'unsafe production accidents (or other illegal incidents) in the current year</p> <p>(e) If the enterprise is not state-owned, it must have passed the 'Five-Good Enterprises' assessment conducted by its county or district.</p> | | |
| Program 7 Research & Development (R&D) Assistance Grant | <p>This program was found to be countervailable in REP 419 (Program 7), and prior to that in REP 316 (Program 10).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory instrument:</p> <p>Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.</p> | <p>In REP 316, the GOC stated that to qualify for this grant, applicant must meet the following requirements:</p> <p>register and operate in Jinzhou New District</p> <p>have complete organisational structure, R&D facilities and</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to</p> | <p>This program is limited to enterprises in Jinzhou New District with research and development facilities.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---------|---------------------------------|--|--|--|--|
| | | <p>The GOC stated that the funding shall not be more than RMB150,000 and the duration for supporting an enterprise shall not be more than 3 years.</p> <p>The government of Wuxing district and the Science and Technology Bureau of Wuxing District are jointly responsible for the administration of this program.</p> | <p>intellectual protection measures</p> <p>have definite direction and task for technology development and technology research and have independent assets and funds</p> <p>have a technology team with strong capacities to do research and development</p> <p>have more than one patent or science and technology project of municipal level and above.</p> <p>The GOC provided further information stating that the purpose of the grant is to accelerate the transformation of the economic development pattern and economic restructure of Jinzhou New District, enhance the capacity of self-dependent innovation of the district, implementing the strategy on 'innovative Urban District', and making efforts to achieve the sound and rapid economy</p> | <p>the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|--|--|--|--|--|
| | | | development of Jinzhou New District. | | |
| Program 8 Patent Award of Guangdong Province | <p>This program was found to be countervailable in REP 419 (Program 8), and prior to that in REP 316 (Program 34).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory instrument:</p> <p>2009 Guangdong Patent Award Implementation Proposal.</p> <p>Administered by the Guangdong Province Department of Intellectual Property and Department of Personnel.</p> | <p>The award is granted to enterprises that have an 'innovations and utility models' or an 'industrial design' patent.</p> <p>An application under the 'innovations and utility models' patent category must establish that:</p> <ul style="list-style-type: none"> the production in question is skillfully constructed and innovative with high creation and technical level the product contributes to technical improvement and creation the patent has created or has the potential to bring significant economic or social benefit the patent holder has significantly protected the patent. | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>This program is limited to enterprises in Guangdong Province that have an 'innovations and utility models' or an 'industrial design' patent.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|---|--|--|--|--|
| | | | <p>An application under the industrial design category must establish that:</p> <p>the industrial design has reached high level at shape, pattern and colour</p> <p>application of this industrial design has brought or has the potential to bring significant economic or social benefit</p> <p>the patent holder has significantly protected the patent.</p> | | |
| <p>Program 10</p> <p>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</p> | <p>This program was found to be countervailable in REP 419 (Program 10).</p> <p>In INV 559, the GOC made a submission that the <i>Enterprise Income Tax Law</i> came into force in 2008, and the <i>Income Tax of Enterprises with Foreign Investment and Foreign Enterprises</i> expired, which is the basis of this program.</p> <p>Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 1)</p> | <p>This subsidy is granted under the following legislation:</p> <p>Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991)</p> <p>Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise (1991)</p> | <p>This subsidy is provided to any enterprise with foreign investment of a production nature to operate for a period of no less than 10 years shall, from the year beginning to make profit, be exempted from the enterprise income tax in the first and second years and allowed a reduction by half in the third to the fifth years ('2 years of exemption and 3 years of reduction by half').</p> | <p>The reduced income tax rate under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The reduced income tax rate is considered a financial contribution made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> | <p>This program is limited to enterprises with foreign investment of a production nature.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|---|--|--|--|---|
| | | <p>State Council Circular Guo Fa No. 37 of 2000</p> <p>Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>State Council Circular Guo Fa No. 39 of 2007</p> <p>MOF Circular Cai Shui No. 1 of 2008.</p> <p>This program is authorised by: MOF, State Administration of Taxation, MOFCOM.</p> | | <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 11</p> <p>Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)</p> | <p>This program was found to be countervailable in REP 419 (Program 11).</p> <p>In INV 559, the GOC made a submission that the <i>Enterprise Income Tax Law</i> came into force in 2008, and the <i>Income Tax of Enterprises with Foreign Investment and Foreign</i></p> | <p>The legal basis to establish this subsidy is pursuant to the following:</p> <p>Article 7 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991)</p> <p>Articles 69 and 75 of the Rules for the</p> | <p>This program is available to enterprises with foreign investment established in the Hainan Special Economic Zones and engaged in infrastructure projects such as airports, harbours, docks, highways, railways, power stations, coal mines and water conservation projects, and enterprises with foreign investment engaged in the development of and</p> | <p>The reduced income tax rate under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The reduced income tax rate is considered that a financial contribution made in connection to the production, manufacture or</p> | <p>This program is limited to enterprises with foreign investment in the Hainan Special Economic Zones.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> |

Report 553 – Painted steel strapping – China and Vietnam

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|--|---|---|---|--|
| | <p><i>Enterprises</i> expired, which is the basis of this program.</p> <p>Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 1) and G/SCM/N/343/CHN (Program 2).</p> | <p>Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (1991)</p> <p>SAT Circular Guo Shui Fa No.139 of 1995</p> <p>SAT Circular Guo Shui Fa No.135 of 2003</p> <p>Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007) State Council Circular Guo Fa No.39 of 2007</p> <p>State Council Circular Guo Fa No.40 of 2007.</p> <p>This program is authorised by: MOF, State Administration of Taxation, MOFCOM.</p> | <p>operations in agriculture with an operation period of no less than fifteen years.</p> | <p>export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 12</p> <p>Preferential Tax Policies for Enterprises with Foreign</p> | <p>This program was found to be countervailable in REP 419 (Program 12).</p> | <p>The legal basis to establish this subsidy is pursuant to the following:</p> | <p>This program is available to enterprises with foreign investment of a production nature established in</p> | <p>The reduced income tax rate under this program is a financial contribution by a government which involves</p> | <p>This program is limited to enterprises with foreign</p> |

Report 553 – Painted steel strapping – China and Vietnam

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|---|--|--|--|--|
| Investment Established in Pudong area of Shanghai | <p>In INV 559, the GOC made a submission that the <i>Enterprise Income Tax Law</i> came into force in 2008, and the <i>Income Tax of Enterprises with Foreign Investment and Foreign Enterprises</i> expired, which is the basis of this program.</p> <p>Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 9) and G/SCM/N/343/CHN (Program 3).</p> | <p>Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>State Council Circular Guo Fa No.39 of 2007</p> <p>State Council Circular Guo Fa No.40 of 2007.</p> <p>This program is authorised by MOF and SAT.</p> | Pudong area of Shanghai and enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations. | <p>foregoing or not collecting of revenue by a government.</p> <p>The reduced income tax rate is considered a financial contribution would made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>investment in the Pudong area of Shanghai.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 13</p> <p>Preferential Tax Policies in the Western Regions</p> | The policy objective and/or purpose of this subsidy is to accelerate the development of the western regions, expand the opening up, lessen the imbalance of economic development among different areas and | <p>The legal basis to establish this subsidy is pursuant to the following:</p> <p>Circular of the State Council Guo Fa No. 33 of 2000, Circular of the State Council Guo Ban Fa No. 73 of 2001, Law of the People's Republic of China</p> | <p>The subsidy is provided to:</p> <p>1) Enterprises established in the western regions which have the items included in the Catalogue of Encouraged Industries in Central and Western Regions as their major business with the income</p> | <p>This program is limited to enterprises with foreign investment in the Pudong area of Shanghai.</p> <p>It provides preferential tax treatment in the form of a reduced tax rate to eligible enterprises.</p> | <p>This program is limited to enterprises engaged in particular industries and businesses in the western region.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---------|--|---|--|---|--|
| | <p>promote the development of the regions.</p> <p>This program was found to be countervailable in REP 419 (Program 13), and prior to that in REP 316 (Program 3).</p> <p>Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 11) G/SCM/N/315/CHN (Program 1.4) and G/SCM/N/343/CHN (Program 4).</p> | <p>on Enterprise Income Tax (2007)</p> <p>Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007)</p> <p>MOF GACC SAT Announcement No.43 of 2008</p> <p>MOF Circular Cai Shui No.58 of 2011</p> <p>MOF Circular Cai Shui No.4 of 2013</p> <p>Catalogue of Encouraged Industries in Central and Western Regions Fa Gai Wei No.15 of 2014</p> <p>State Council Circular Guo Fa No. 39 of 2007</p> <p>MOF Circular Cai Shui No.1 of 2008</p> <p>The program is authorised by MOF, State Administration of Taxation, MOFCOM and other relevant authorities under the State Council.</p> | <p>from that major business accounting for over 70% of total revenue of the current year</p> <p>2) The domestic and foreign-invested enterprises which are newly established in the western regions before 31 December 2010 and engaged in business such as transportation, electric power, water conservancy, postal service, radio and television, enjoying 'two years of exemption and 3 years of reduction by half' in accordance with Circular Cai Shui No. 202 of 2001, MOF, SAT, GACC, Circular on Preferential Tax Treatment Policy of Western Regions Development</p> <p>3) The imported equipment for self-use within the total amount of the capital invested by domestic enterprises established in the western regions and engaged in the encouraged industries or by foreign-invested enterprises established in the western regions and</p> | <p>The reduced income tax rate is considered a financial contribution would made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|--|--|---|---|--|
| | | | engaged in the encouraged or advantageous industries, except for those listed in the Catalogue for the Imported Products not Subject to Tax Exemption in Foreign Invested Projects, the Catalogue for the Imported Products not Subject to Tax Exemption in Domestic Invested Projects, or the Catalogue for the Imported Major Technical Equipment and Products not Subject to Tax Exemption. | | |
| Program 14 Tariff and VAT Exemptions on Imported Materials and Equipment | This program was found to be countervailable in REP 419 (Program 14), and prior to that in REP 316 (Program 6). Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 61). | Regulatory instrument: Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (Guo Fa [1997] No. 37) Catalogue of Industries for Guiding Foreign Investment Catalogue of Industry, Product and Technology Key Supported by the State at Present (2004) | Under Articles 1 and 2 of the <i>Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment</i> (Guo Fa [1997] No. 37) to be eligible for this program: the enterprise must be an FIE which falls in the 'encouraged' or 'restricted' categories in the <i>Catalogue of Industries for Guiding Foreign Investment</i> (2004) (until 30 November 2007) or the <i>Catalogue of Industries for Guiding</i> | The commission considers that the tariff and VAT exemptions under this program is a financial contribution by the GOC which involves the forgoing or not collecting of revenue by a government. Due to the nature of this program it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise | This program is limited to foreign invested enterprises that fall in the category of 'encouraged' or 'restricted' enterprises of the FIE catalogues, or domestic invested enterprises that fall under the DIE catalogue. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---------|---------------------------------|--|--|---|---|
| | | <p>State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue</p> <p>Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue.</p> <p>The program appears to operate on a national level. The commission NDRC or its provincial branches issue certificates under this program, while local customs authorities administer the VAT and tariff exemptions.</p> | <p><i>Foreign Investment</i> (2007) (after 1 December 2007)</p> <p>the imported equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise's own use and not fall in the State Council's <i>Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue</i> and</p> <p>the total value of the purchase must not exceed the investment 'cap'</p> <p>or</p> <p>the enterprise must be a domestic invested enterprise (DIE) which falls in the <i>Catalogue of Industry, Product and Technology Key Supported by the State at Present</i> (2004) and the imported equipment must be for the enterprises own use and not fall in the <i>Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue</i></p> | <p>(including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | | | the total value of the purchase must not exceed the investment 'cap'. | | |
| Program 15 Innovative Experimental Enterprise Grant | <p>This program was found to be countervailable in REP 419 (Program 15), and prior to that in REP 316 (Program 11).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory instrument:</p> <p>Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises.</p> <p>Administered by the administrative office of Science and Technology Bureau of Zhejiang province.</p> | <p>Eligible enterprises are those that are located in Zhejiang Province, and are:</p> <p>independent economic entities with 'reasonable asset-liability ratios', consistent earnings over the past 3 years, and an increasing market share</p> <p>well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres</p> <p>investing at least 5% of annual sales income</p> <p>using intellectual property rights to protect major products</p> <p>strongly committed to technological innovation and protection with previous technological achievements.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>This program is limited to enterprises engaged in research and development and technological innovation and protection in Zhejiang province.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| Program 16 Special Support Fund for Non State-Owned Enterprises | <p>This program was found to be countervailable in REP 419 (Program 16), and prior to that in REP 316 (Program 12).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory Instrument:</p> <p>Notions concerning accelerating the growth of the non-state-owned economy, 18 April 2003.</p> | <p>Non-SOEs (SIEs) located in Yunnan Province.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> | <p>This program is limited to non-SOEs located in Yunnan province.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| Program 17 Venture Investment Fund of Hi-Tech Industry | <p>This program was found to be countervailable in REP 419 (Program 17), and prior to that in REP 316 (Program 13).</p> | <p>Regulatory Instrument:</p> <p>Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment</p> | <p>Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District.</p> <p>In addition:</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a</p> | <p>This program is limited to enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District.</p> <p>The commission is satisfied that this meets the criteria</p> |

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| | The commission is not aware of any WTO notification of this program. | <p>Fund of Hi-tech Industry in Chongqing.</p> <p>The program is administered by the Chongqing Venture Investment Fund.</p> | <p>the program must have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority)</p> <p>the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone</p> <p>the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities</p> <p>the enterprise must have good legal standing</p> <p>the total investment in the program must be RMB 100 million or more.</p> | <p>financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 18</p> <p>Grants for Encouraging the Establishment of Headquarters and Regional</p> | This program was found to be countervailable in REP 419 (Program 18), and prior | <p>Regulatory Instrument:</p> <p>Provisions of Guangzhou Municipality on Encouraging Foreign</p> | This program is available to enterprises whose headquarters are established in the | Grants provided under this program are financial contributions by a government which involve | This program is limited to enterprises whose headquarters are established in the |

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| Headquarters with Foreign Investment | <p>to that in REP 316 (Program 14).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Investors to Set up Headquarters and Regional Headquarters.</p> <p>Administered by the local commerce authority of Guangzhou.</p> | <p>Guangzhou Municipality by a foreign investor.</p> <p>To qualify as 'Headquarters' the facility must control all the operations and management of any enterprises it is invested in, both in China and internationally.</p> <p>Only one enterprise Headquarters is permitted in the Guangzhou Municipality.</p> <p>To qualify as 'Regional Headquarters', the facility must control operations and management of some or all enterprises it is invested in a certain area of China.</p> <p>Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.</p> | <p>the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> | <p>Guangzhou Municipality by a foreign investor.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 19</p> <p>Grant for key enterprises in equipment manufacturing industry of Zhongshan</p> | <p>This program was found to be countervailable in REP 419 (Program 19), and prior to that in REP 316 (Program 15).</p> | <p>Regulatory Instrument:</p> <p>Notice of Issuing 'Method for Determination of Key Enterprises in Equipment Manufacturing Industry of</p> | <p>For an enterprise to be eligible for this program:</p> <p>it must be established, registered and carrying</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> | <p>This program is limited to enterprises whose primary product must be a part of the equipment manufacturing industry and established, registered and</p> |

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| | The commission is not aware of any WTO notification of this program. | <p>Zhongshan,' Zhong Fu (2005) No.127.</p> <p>The program is administered by the local economic and trade office, by the Municipal Economic and Trade Bureau and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City.</p> | <p>out business in Zhongshan City</p> <p>its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies</p> <p>it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise's main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development</p> <p>it must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation</p> <p>it must have good credit standing.</p> | <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>carrying out business in Zhongshan City.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| <p>Program 20</p> <p>Hot rolled steel provided by government at less than fair market value</p> | <p>Chapter 17 of the Manual provides that where there has been a provision goods or services by the government, the amount of subsidy 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.</p> <p>It is alleged under this program that hot rolled steel products are provided by the GOC at LTAR and therefore result in a subsidy.</p> <p>This program was also found countervailable in in REP 419 (Program 20).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>The commission has not identified any specific legal basis for this program.</p> | <p>There is no eligibility criteria. HRC is available at a distorted rate to all market participants in China.</p> | <p>The commission has previously found that Chinese SOEs producing steel raw materials are 'public bodies' for the purposes of section 269T.</p> <p>The amount of benefit 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. If the price paid to the government is less than this amount, a benefit has been conferred.</p> <p>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.</p> <p>Accordingly, to determine the adequacy of remuneration, the commission has compared</p> | <p>N/A</p> |

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| | | | | <p>purchases of HRC by the sole cooperating exporter from private companies against purchases from SOEs, consistent with the approach outlined in Chapter 17 of the Manual. The commission has examined the raw material purchase prices paid by the cooperating exporter and found that prices offered by SOEs are higher than non-SOE sellers for this exporter.</p> <p>Accordingly, no benefit has been conferred under this program.</p> | |
| <p>Program 21</p> <p>Water Conservancy Fund Deduction</p> | <p>This program was found to be countervailable in REP 419 (Program 21), and prior to that in REP 316 (Program 16).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory Instrument:</p> <p>Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local Taxation Bureau (ZheDiShuiFa [2007] No.63).</p> <p>This program is administered by the Local Taxation Bureau of Zhejiang Province and it is implemented by the competent local taxation authorities of the municipal</p> | <p>The GOC has confirmed that only enterprises satisfying one of following criteria will eligible for the grant under this program:</p> <p>Provide job opportunities to laid-off workers, the disabled, and retired soldiers searching for jobs.</p> <p>Enterprises that ‘utilize resource comprehensively as designated by government department above municipal level’.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a</p> | <p>This program is limited to enterprises located in Zhejiang province that satisfy one of the specific criteria.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in</p> |

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| | | and county levels in Zhejiang Province. | <p>Trading enterprises of commodities with annual gross profit rate of less than 5%.</p> <p>Enterprises undertaking 'State reserve and sale, the portion of revenues incurred from that undertaking may qualify for an exemption of the fee'.</p> <p>'Advanced manufacturing enterprises' or key enterprises as designated by the municipal government, which are undertaking technology development projects and incurring development expenditure at an amount above RMB1 million.</p> <p>'Insurance company's revenue from sales which are subject to exemption of excise tax'.</p> <p>'Bank's revenue from turnovers between banks'.</p> <p>'Revenue from sales between members of an enterprise group subject</p> | <p>benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| | | | to same consolidated financial statement'. | | |
| Program 22 Wuxing District Freight Assistance | <p>This program was found to be countervailable in REP 419 (Program 22), and prior to that in REP 316 (Program 35).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory instrument:</p> <p>Several Opinions On Further Supporting Industrial Sector To Separate And Develop Producer-Service Industry (HuZhengBanFa [2008] 109).</p> <p>This program is administered by the Finance Bureau of Huzhou City.</p> | <p>Those enterprises whose annual freight cost is RMB 3 million or above, will be refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007.</p> <p>For enterprises whose annually paid income tax is RMB100,000 or above:</p> <p>100% of the income tax paid by the 'separated enterprise' and retained by the city will be granted as assistance in each of the 3 years after the establishment date of the separated enterprise.</p> <p>50% of the turnover tax paid by the separated enterprise and retained by the city will be granted as assistance in each of the 3 years after the establishment date of the separated enterprise.</p> | <p>The refunded income tax and turnover tax under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The refunded income tax and turnover tax is based on annual freight cost. It is considered that this financial contribution would be made in connection to the export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> | <p>This program is limited to enterprises whose annual freight cost is RMB 3 million or above located in Wuxing district.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |

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| Program 23 Huzhou City Public Listing Grant | <p>This program was found to be countervailable in REP 419 (Program 23), and prior to that in REP 316 (Program 36).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory instrument:</p> <p><i>Notification of Government of Huzhou City (HuBan No.160).</i></p> <p>This program is administrated by the Finance Bureau of Huzhou City.</p> | <p>This program is available to enterprises that successfully completed listing of shares during 2010.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>This program is limited to enterprises in Huzhou City that successfully completed listing of shares during 2010.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| Program 27 Huzhou City Quality Award | <p>This program was found to be countervailable in REP 419 (Program 27), and prior to that in REP 316 (Program 37).</p> | <p>Regulatory instrument:</p> <p>Notification of the Office of People's Government of Huzhou City (HuZhengBanFa No.60).</p> | <p>The award is granted to no more than 3 enterprises each year that are registered in Huzhou City and have been in operation for more than 3 years and that have 'enjoyed excellent performance', 'implemented</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> | <p>This program is awarded to no more than 3 enterprises each year located in Huzhou City and have excellent performance, implemented quality management and an industry leader with</p> |

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| | The commission is not aware of any WTO notification of this program. | The Government of Huzhou City and the Bureau for Quality and Technical Supervision are jointly responsible for the administration of this program. | quality management' and 'obtained a leading position in industry with significant economic benefits and social benefits'. The products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy. | Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. | significant economic and social benefits. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3). |
| Program 28 Huzhou Industry Enterprise Transformation & Upgrade Development Fund | This program was found to be countervailable in REP 419 (Program 28), and prior to that in REP 316 (Program 38). The commission is not aware of any WTO notification of this program. | The purpose of the program is to promote industrial structure adjustment and upgrading, and to support technology updating and innovation of enterprises. In REP 316, the GOC advised that there is no single purpose legal document | This program is limited to enterprises registered in Huzhou and encourages the transformation and upgrade of enterprises, 'including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new | Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant it is considered that a financial contribution would | This program is limited to enterprises which encourages the transformation and upgrade of enterprises and registered in Huzhou. The commission is satisfied that this meets the criteria of a countervailable subsidy |

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| | | <p>directly related to any benefit received by a respondent under investigation.</p> <p>The Bureau of Finance and the Economic and Information Committee of Huzhou City are jointly responsible for the administration of this program. The Bureau of Finance and the Economic and Information Committee of Huzhou City examine and approve applications, with the funds provided from the budget of the Financial Bureau of Huzhou City.</p> | technology industry and new industry'. | <p>be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> | <p>under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 29</p> <p>Land Use Tax Deduction</p> | <p>This program provides for the reduction or exemption of land use taxes for high and new technology enterprises.</p> <p>This program was found to be countervailable in REP 419 (Program 29), and prior to that in REP 316 (Program 4).</p> <p>This program was identified as having received by a</p> | <p>Regulatory instrument:</p> <p>Approval of Tax (Expense) Deduction (ZhengDiCaShui [2010] No.11581).</p> <p>This program is administered by Huzhou City Local Taxation Bureau and Wuxing Sub-Bureau.</p> | This program is available to new high and new technology enterprises within 3 years of their establishment. | <p>The commission considers that the reduction in land use tax provided under this program is a financial contribution by the GOC which involves the forgoing of land use tax revenue otherwise due to the GOC.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient</p> | <p>This program is limited to high and new technology enterprises that are less than 3 years old.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in</p> |

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| | <p>cooperative exporter in REP 419.</p> <p>The commission is not aware of any WTO notification of this program.</p> | | | <p>enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 30</p> <p>Wuxing District Public Listing Grant</p> | <p>This program was found to be countervailable in REP 419 (Program 30), and prior to that in REP 316 (Program 39).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory instrument:</p> <p>Notification on Awarding Advanced Individuals and Advanced Entities of Industrial Economy and Open Economy for the Year of 2010 (WuWeiFa [2011] No.14).</p> <p>This program is administered by the Government of Wuxing District.</p> | <p>A grant is available to eligible advanced publicly listed enterprises.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program</p> | <p>This program is limited to eligible advanced publicly listed enterprises in Wuxing District.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over</p> |

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| | | | | meet the definition of a subsidy under section 269T. | others. It therefore does not satisfy the exception to specificity in section 269TAAC(3). |
| Program 31 Anti-dumping Respondent Assistance | <p>This program was found to be countervailable in REP 419 (Program 31), and prior to that in REP 316 (Program 17).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory Instrument:</p> <p>Notification of Receiving Fair Trade Assistance by Wuxing Foreign Economic and Trade Bureau.</p> <p>This program is administrated by Wuxing District Foreign Economic and Trade Bureau.</p> | Enterprises which incur expenses in an anti-dumping proceeding may benefit from this program. | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>However, the commission, after reviewing its previous anti-dumping investigations, is satisfied that any contribution received under this program is not in respect of the export of the goods to Australia, as this is the first such case into the goods.</p> <p>In light of the above, the commission has determined that no subsidy was provided under this program in respect of the goods</p> | N/A |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | | | | during the investigation period. | |
| Program 32 Technology Project Assistance | <p>This program was found to be countervailable in REP 419 (Program 32), and prior to that in REP 316 (Program 18).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>Regulatory Instrument:</p> <p>Interim Measure for Administration of Post-completion Assistance or Loan Interest Grant for Industrialization of Science and Technology Achievements Sponsored by Zhejiang Province (2008).</p> <p>The Bureau of Finance and the Science and Technology Bureau of Huzhou City are jointly responsible for the administration of this program.</p> | <p>This program is available to enterprises that undertake a scientific research project which meets the scope of the projects encouraged under this program.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>This program is limited to enterprises that undertake a scientific research project encouraged under this program.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a).</p> <p>As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies.</p> |
| Program 34 Balidian Town Public Listing Award | <p>This program was found to be countervailable in REP 419 (Program 34), and prior to that in REP 177 (Program 34).</p> | <p>In investigation 177, the GOC advised that there is no relevant legislation governing this program.</p> <p>This program is administered by the</p> | <p>The program was a one-time grant provided to enterprises in the Kingland Pipeline Industrial Park, Wuxing District that conducted successful public listing of shares and investing funds raised</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> | <p>This program is limited to enterprises that conducted successful public listing of shares and investing funds raised through its public listing into a pipeline</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | The commission is not aware of any WTO notification of this program. | Government of Wuxing District. | through its public listing into a pipeline construction project in Wuxing. | <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>construction project in Wuxing.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| Program 35 Preferential Tax Policies for High and New Technology Enterprises | <p>This program reduces the income tax paid by high and new technology enterprises to 15% (from the standard enterprise income tax rate of 25%).</p> <p>This program was found to be countervailable in REP 419 (Program 35), and prior</p> | This program is provided for in Article 28 of the <i>PRC Enterprise Income Tax Law</i> 2007, which states: 'With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its | <p>Companies recognised by the GOC as a high and new technology enterprise are eligible for this program.</p> <p>To be recognised as a high and new technology enterprise, companies must meet certain criteria, submit an application, alongside</p> | <p>The reduced income tax rate under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The reduced income tax rate is considered a financial</p> | <p>This program is limited to enterprises recognised by the GOC as a high and new technology enterprise.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | <p>to that in REP 316 (Program 5).</p> <p>Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 6) G/SCM/N/315/CHN (Program 1.5) and G/SCM/N/343/CHN (Program 5).</p> | <p>income shall be reduced at a rate of 15%.'</p> <p>It is considered likely that this program is a national program, administered by the GOC's State Administration of Taxation.</p> <p>Article 28 of the Law of the People's Republic of China on Enterprise Income Tax (2007) Article 93 of the Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007) .</p> <p>This program is authorised by MOST, MOF, SAT.</p> | <p>copies of the company's business registration and other relevant documentation, and have the application approved by relevant authorities.</p> | <p>contribution made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>under section 269TAAC(2)(a).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 36</p> <p>Local Tax Bureau Refund</p> | <p>This program was found to be countervailable in REP 419 (Program 36), and prior to that in REP 379 (Program 36).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by the local tax bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include company location, employment and tax contributions to the local government.</p> | <p>The refund of government revenue to the recipient enterprise under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The financial contribution would be made in connection to all goods manufactured by the recipient enterprise</p> | <p>This program is limited to enterprises within the jurisdiction of the local authorities.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | | | | <p>(including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 37</p> <p>Return of Farmland Use Tax</p> | <p>This program was found to be countervailable in REP 419 (Program 37), and prior to that in REP 379 (Program 37).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by the local tax bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include company location, employment and tax contributions to the local government.</p> | <p>The refund of government revenue to the recipient enterprise under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The financial contribution would be made in connection to all goods manufactured by the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program</p> | <p>This program is limited to enterprises within the jurisdiction of the local authorities.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|---|--|--|--|--|
| | | | | meet the definition of a subsidy under section 269T. | satisfy the exception to specificity in section 269TAAC(3). |
| Program 38 Return of Land Transfer Fee | <p>This program was found to be countervailable in REP 419 (Program 38), and prior to that in REP 379 (Program 38).</p> <p>The commission is not aware of any WTO notification of this program.</p> | In REP 379, this program was administered by the local tax bureau. | According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include company location, employment and tax contributions to the local government. | <p>The refund of government revenue to the recipient enterprise under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government.</p> <p>The financial contribution would be made in connection to all goods manufactured by the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>This program is limited to enterprises within the jurisdiction of the local authorities.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| Program 39 Return of Land Transfer Fee From Shiyou | This program was found to be countervailable in REP 419 (Program 39), and prior | In REP 379, this program was administered by the local tax bureau. | According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the | The refund of government revenue to the recipient enterprise under this program is a financial contribution by a | This program is limited to enterprises within the jurisdiction of the local authorities. |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | <p>to that in REP 379 (Program 39).</p> <p>The commission is not aware of any WTO notification of this program.</p> | | <p>eligibility criteria which may include company location, employment and tax contributions to the local government.</p> | <p>government which involves foregoing or not collecting of revenue by a government.</p> <p>The financial contribution would be made in connection to all goods manufactured by the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 40</p> <p>Dining lampblack governance subsidy of Jinghai County Environmental Protection Bureau</p> | <p>This program was found to be countervailable in REP 419 (Program 40), and prior to that in REP 379 (Program 40).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Jinghai County Environment Protection Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Jinghai County Environment Protection Bureau.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | | | | <p>enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 41</p> <p>Discount interest fund for technological innovation</p> | <p>This program was found to be countervailable in REP 419 (Program 41), and prior to that in REP 379 (Program 41).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Handan City Industry Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Handan City Industry Bureau.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---|---|--|---|---|--|
| | | | | <p>goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 42</p> <p>Energy conservation and emission reduction special fund project in 2015</p> | <p>This program was found to be countervailable in REP 419 (Program 42), and prior to that in REP 379 (Program 42).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Daqiuzhuang Town Financial Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Daqiuzhuang Town Financial Bureau.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | | | | <p>goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 43</p> <p>Enterprise famous brand reward of Fengnan Finance Bureau</p> | <p>This program was found to be countervailable in REP 419 (Program 43), and prior to that in REP 379 (Program 43).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Fengnan District Science and Technology Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Fengnan District Science and Technology Bureau.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | | | | <p>goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 44</p> <p>Government subsidy for construction</p> | <p>This program was found to be countervailable in REP 419 (Program 44), and prior to that in REP 379 (Program 44).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Handan City Local Tax Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Handan City Local Tax Bureau.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|---|--|---|---|--|
| | | | | <p>goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 45</p> <p>Infrastructure Construction Costs Of Road In Front Of No.5 Factory</p> | <p>This program was found to be countervailable in REP 419 (Program 45), and prior to that in REP 379 (Program 45).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Jinghai County Local Tax Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Jinghai County Local Tax Bureau.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|---|--|---|---|--|
| | | | | <p>goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 46</p> <p>New Type Entrepreneur Cultivation Engineering Training Fee Of Jinghai County Science And Technology commission</p> | <p>This program was found to be countervailable in REP 419 (Program 46), and prior to that in REP 379 (Program 46).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Jinghai County Science and Technology Committee.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Jinghai County Science and Technology commission.</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
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| | | | | <p>goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 47</p> <p>Subsidy for Coal-Fired Boiler of Fengnan Subtreasury</p> | <p>This program was found to be countervailable in REP 419 (Program 47), and prior to that in REP 379 (Program 47).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Fengnan District Environment Protection Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax contributions to the local government.</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the Fengnan District</p> |

PUBLIC RECORD

| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|---|---|--|--|---|--|
| | | | | <p>goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>Environment Protection Bureau.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 48</p> <p>Subsidy for Coal-Fired Boiler Rectification</p> | <p>This program was found to be countervailable in REP 419 (Program 48), and prior to that in REP 379 (Program 48).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Handan City Environment Protection Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the</p> |

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| Program | Background and WTO Notification | Legal Basis | Eligibility Criteria | Is there a subsidy? | Is the subsidy countervailable? |
|--|---|--|--|---|--|
| | | | contributions to the local government. | <p>be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>Handan City Environment Protection Bureau.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 49</p> <p>Subsidy for District Level Technological Project</p> | <p>This program was found to be countervailable in REP 419 (Program 49), and prior to that in REP 379 (Program 49).</p> <p>The commission is not aware of any WTO notification of this program.</p> | <p>In REP 379, this program was administered by Daqizhuang Town Science and Technology Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the</p> |

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| | | | contributions to the local government. | <p>be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>Daqiu Zhuang Town Science and Technology Bureau.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| Program 50 Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau | <p>This program was found to be countervailable in REP 419 (Program 50), and prior to that in REP 379 (Program 50).</p> <p>The commission is not aware of any WTO notification of this program.</p> | In REP 379, this program was administered by Fengnan District Environment Protection Bureau. | According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a financial contribution would</p> | The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within the jurisdiction of the |

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| | | | contributions to the local government. | <p>be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>Fengnan District Environment Protection Bureau.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| <p>Program 51</p> <p>Subsidy from Science and Technology Bureau of Jinghai County</p> | <p>This program was found to be countervailable in REP 419 (Program 51), and prior to that in REP 379 (Program 51).</p> | <p>In REP 379, this program was administered by Jinghai County Science and Technology Bureau.</p> | <p>According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax</p> | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a</p> | <p>The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within</p> |

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|--|--|--|---|--|---|
| | The commission is not aware of any WTO notification of this program. | | contributions to the local government. | <p>financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>the jurisdiction of the Jinghai County Science and Technology Bureau.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |
| Program 52 Subsidy of Environment Bureau transferred from Shiyou | This program was found to be countervailable in REP 419 (Program 52), and prior to that in REP 379 (Program 52). | In REP 379, this program was administered by Jinghai County Environment Protection Bureau. | According to information provided by the cooperative exporter in REP 379, local authorities are responsible for determining the eligibility criteria which may include protection of environment, facility construction and tax | <p>Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.</p> <p>Due to the nature of the grant it is considered that a</p> | The commission consider this program is available to enterprises that have conducted environment protection, facility construction and tax contributions to the local government. Access is limited to enterprises within |

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|---------|--|-------------|--|--|---|
| | The commission is not aware of any WTO notification of this program. | | contributions to the local government. | <p>financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).</p> <p>The commission considers that this constitutes a benefit in relation to the goods exported to Australia.</p> <p>The financial contributions made under this program meet the definition of a subsidy under section 269T.</p> | <p>the jurisdiction of the Jinghai County Environment Protection Bureau.</p> <p>The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).</p> <p>No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).</p> |