

**PUBLIC**



**Australian Government**  
**Anti-Dumping Review Panel**

# ADRP Report No. 143

Precision Pipe and Tube Steel exported from the  
People's Republic of China and the Socialist Republic  
of Vietnam

June 2022

<https://www.adreviewpanel.gov.au>

# Contents

Contents .....	2
Abbreviations.....	3
Summary.....	4
Conduct of the Review .....	4
Background.....	6
Consideration of Grounds.....	9
Ground 1: Orrcon .....	9
Reinvestigation Report findings.....	10
Avoidance of ‘double-count’ .....	11
Recommendation .....	12

# Abbreviations

<b>Term</b>	<b>Meaning</b>
Act	<i>Customs Act 1901</i>
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
Commissioner	Commissioner of the Anti-Dumping Commission
Dalian	Dalian Steelforce Hi-Tech Co., Ltd
Goods	Precision Pipe and Steel Tube
Original Investigation period	1 January 2019 to 31 December 2019
Orrcon	Orrcon Manufacturing Pty Ltd
Manual	Dumping and Subsidy Manual November 2018
Minister	The then acting Minister for Industry, Science and Technology
Reinvestigation Report	Reinvestigation into Certain Findings in Report 550, delivered on May 2022
REQ	Response to Exporter Questionnaire
REP 550	The report published by the Commission in relation to the goods and dated 27 August 2021
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister made on 27 September 2021
SEF 550	Statement of Essential Facts
SIE	State invested enterprise
Yantai Aoxin	Yantai Aoxin International Trade Co., Ltd

# Summary

1. This is a review of the decision of the then acting Minister for Industry, Science and Technology (the Minister) to publish a countervailing duty notice pursuant to s.269TJ(1) and (2) of the *Customs Act 1901* (the Act) in respect of Precision Pipe and Steel Tube (the goods) exported to Australia from the People’s Republic of China (China) (the Reviewable Decision).<sup>1</sup> The applicant for the review was Orrcon Manufacturing Pty Ltd (Orrcon).
2. In coming to the Reviewable Decision, the Minister accepted a recommendation and determination from the Commissioner of the Anti-Dumping Commission (the Commissioner) to the effect that non-cooperative Chinese exporters of the goods had not been provided with a countervailable subsidy under Program 20. This determination differed from the approach adopted by the Commissioner in previous investigations and reviews which had considered the applicability of Program 20.
3. I requested the Commissioner to reinvestigate the recommendation with respect to the applicability of Program 20 to non-cooperative exporters.
4. The Commissioner delivered a Reinvestigation Report on 2 May 2022 which considered it preferable to adopt a revised approach and include Program 20 as a countervailable subsidy when calculating the “all others” rate applicable to other Chinese exporters. However, taking into account adjustments necessary to avoid double counting of anti-dumping measures, the Commissioner’s revised approach does not result in a change to the variable factors and subsidy margins.
5. For the reasons set out in this report, including that the revised approach will not result in any change to the relevant subsidy margin, I recommend that the Reviewable Decision be affirmed.

## Conduct of the Review

6. Orrcon applied under s.269ZZC of the Act for a review of the Reviewable Decision.

---

<sup>1</sup> On 11 August 2021, the Commissioner terminated the subsidy investigation into the goods exported from Vietnam (ADN 2021/100 refers).

7. The Senior Member of the Anti-Dumping Review Panel (Review Panel) directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.
8. The application was accepted and notice of the proposed review, as required by s.269ZZI, was published on 10 November 2021.
9. On 24 December 2021, pursuant to s.269ZZL of the Act, I required the Commissioner to reinvestigate certain findings and recommendations contained within the Commissioner's report dated 27 August 2021 (REP 550).
10. On 2 May 2022, the Commissioner delivered the Reinvestigation Report into certain findings in Report No. 550 (Reinvestigation Report).
11. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision, or revoke it and substitute a specified new decision.
12. In undertaking the review, s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
13. Subject to certain exceptions, the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the Commission had regard or ought to have had regard when making its findings and recommendations to the Minister.
14. If a conference is held under s.269ZZHA of the Act, then the Review Panel may have regard to further information obtained at a conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information.
15. Prior to initiation of the review and pursuant to s.269ZZHA of the Act, I convened a conference with representatives of Orrcon on 4 November 2021. During that conference Orrcon's representatives acknowledged that the review application, and its ground of review, was limited to the Minister's decision with respect to "other

Chinese exporters”.<sup>2</sup> The review, therefore would not examine any matters relating to the exports of the goods by Dalian Steelforce Hi-Tech Co., Ltd (Dalian), a company which had been subject to investigation.

16. A conference was also held with representatives of the Anti-Dumping Commission on 15 November 2021.
17. Non-confidential summaries of the information obtained at the conferences were made publicly available in accordance with s.269ZZX(1) of the Act.
18. In conducting this review, I have had regard to: the application for review and the documentation to which it referred; REP 550 together with Confidential Attachments to that report; confidential documentation provided by the Commission; a submission received from the Commissioner on 10 December 2021 pursuant to s.269ZZJ; information obtained at the conferences; and the Reinvestigation Report.

## Background

19. On 16 March 2020, Orrcon lodged an application to the Commissioner alleging, inter-alia, that the Australian industry producing like goods had suffered material injury caused by exports of the goods to Australia from China at dumped and subsidised prices.
20. The application alleged the existence of 45 what were described as “Programs”, provided by the Government of China (GOC), which were said to subsidise exports of the goods to Australia. Orrcon described one such Program as “*Program 20 - Hot rolled steel provided by government at less than fair market value*”<sup>3</sup> which was said to affect the cost of hot rolled coil (HRC), a major raw material input in the production of the goods. The application alleged that in previous inquiries, as the Commission had accepted that the nominated Programs conferred countervailable subsidies, the goods would be in receipt of the same benefits.

---

<sup>2</sup> Also referred to as “non-cooperative exporters”.

<sup>3</sup> In relation to Program 20, the Commissioner stated at page 10 of the Reinvestigation Report that “there is no single legislative authority or policy establishing Program 20. Rather, the commission considers Program 20 as a collective term to describe conditions within the Chinese HRC market under which Chinese state-owned enterprises provide HRC at a price lower than a market benchmark.”

21. On 31 March 2020, the Commissioner accepted the application and initiated Investigation 550 into the allegations of dumping and subsidisation. An investigation period of 1 January 2019 to 31 December 2019 (investigation period) was nominated to assess dumping and subsidisation.
22. Dalian is a Chinese manufacturer and a major exporter of the goods to Australia. REP 550 describes Dalian as “an export oriented producer that does not manufacture goods for the domestic Chinese market.”<sup>4</sup>
23. The Commissioner provided Dalian with an Exporter Questionnaire which sought the provision of detailed financial and sales data for the investigation period relating to both the allegations of dumping and subsidisation. Dalian provided a detailed response to this questionnaire and the Commissioner conducted what it described as “a remote verification” of the company’s response. The Commissioner was satisfied that the information provided by Dalian was accurate and reliable. Dalian was therefore accepted by the Commissioner as being a “cooperative exporter”.
24. Yantai Aoxin International Trade Co., Ltd (Yantai Aoxin) is also a Chinese producer of the goods. As the company had exported the goods to Australia during the investigation period it was subject to the Commissioner’s anti-dumping and subsidy investigations.
25. The Commissioner invited the GOC for consultations concerning the claims made by Orrcon in relation to the countervailable subsidies. The Commissioner also provided the GOC with a questionnaire which included questions relating to the alleged subsidy Programs identified in Orrcon’s application. The GOC did not respond to this questionnaire.
26. REP 550 notes,

*[T]he GOC did provide a questionnaire response to the Commission in respect of a separate investigation, Investigation 553 - Painted Steel Strapping initiated shortly after this investigation. It was alleged in the Investigation 553 that Chinese exporters of painted steel strapping, also manufactured from HRC, were in receipt of the same countervailable subsidies as alleged were received by Chinese exporters of [the GUC]. Due to the similarities in the subsidy allegations*

---

<sup>4</sup> REP 550 at page 54.

*and the raw material inputs in the 2 cases, the Commission has had regard to the response by the GOC to Investigation 553 its consideration of this investigation.*<sup>5</sup>

27. On 27 August 2021, the Commissioner published ADN 2021/111 which announced the termination of the subsidy investigations into the export of the goods by Dalian and Yantai Aoxin. The notice stated that the Commissioner had found “no evidence that Yantai Aoxin received countervailable subsidies in respect of the goods.”<sup>6</sup>

28. With respect to Dalian, ADN 2021/111 stated,

*[I]n response to SEF 550, [Dalian] submitted to the Commission that it purchased all steel coil used in the manufacture of the goods from private enterprises. While [Dalian] purchased steel coil from Chinese state owned enterprises, these purchases were not in relation to its manufacture of the goods.*<sup>7</sup>

29. The significance of this fact was further elaborated upon in REP 550 where the Commissioner,

*[F]ound that prices offered to [Dalian] by SOEs were higher than prices offered by private companies. From this, the Commission considered that there is insufficient evidence this program conferred a countervailable benefit.*<sup>8</sup>

30. As Dalian and Yantai Aoxin no longer formed part of the countervailing investigation, the Reviewable Decision has no application to either exporter. The Reviewable Decision is stated to only apply to “non-cooperative entities”<sup>9</sup> exporting the goods from China, i.e. any exporters of the goods from China other than Dalian and Yantai Aoxin.

31. A subsidy margin of 42.7% was declared to apply to such exporters. This percentage is the aggregate of individual subsidy margins determined for a number of Programs nominated in Orrcon’s application. Importantly, Program 20 was not

---

<sup>5</sup> REP 550 at page 82.

<sup>6</sup> ADN 2021/111 at page 2.

<sup>7</sup> Ibid.

<sup>8</sup> REP 550 at page 84.

<sup>9</sup> ADN 2021/110.



one of the Programs for which an individual margin was determined and consequently no countervailable measure is in place with respect to that Program.

32. In relation to the non-cooperative Chinese exporters, the Commissioner may determine, pursuant to s.269TAACA, whether a countervailable subsidy has been received in respect of particular goods and the amount based on all facts available and having regard to reasonable assumptions. The Reinvestigation Report conveniently summarises the Commissioner's rationale for the exclusion of Program 20 from the Programs found to have constituted a countervailable subsidy with respect to the "non-cooperative exporters". As the Commissioner did not have relevant data relating to purchases of HRC (whether it be from a State invested enterprise (SIE) or private mill) used by non-cooperative Chinese exporters, the Commissioner considered in REP 550 that Dalian's data was the most relevant from which to make assumptions when determining the countervailable subsidy provided to non-cooperative Chinese exporters. Stated differently, in the absence of data relating to purchases of HRC by non-cooperative Chinese exporters, the Commissioner assumed that Dalian's circumstances were applicable and that non-cooperative exporters had not received any countervailable subsidy as a result of Program 20.

## Consideration of Grounds

### Ground 1: Orrcon

33. The ground of review relied upon by the applicant is as follows:

The decision by the Minister to accept the Commissioner's recommendation that the determination of a Chinese exporter countervailable subsidy under Program 20 - Hot rolled steel provided by government at less than fair market value ("Program 20") using the Chinese domestic steel market as the prevailing market benchmark was not the correct or preferable decision. The Minister did not have sufficient regard to the prevailing market conditions for Hot Rolled Coil ("HRC") steel in China, and did not consider that the extent and degree of the Government of China's influence in the Chinese HRC market significantly distorted all Chinese HRC prices, not just the prices of HRC supplied by State Invested/State Owned Enterprises.

34. Orrcon's application to the Review Panel challenges the exclusion of Program 20 from the countervailable subsidies received by the "non-cooperative entities". The application argues, inter-alia, "the Minister did not have sufficient regard to the prevailing market conditions for Hot Rolled Coil ("HRC") steel in China. Additionally, the Minister did not consider that the extent and degree of the Government of China's influence in the Chinese HRC market significantly distorted all Chinese HRC prices..." This approach appeared to be inconsistent with previous decisions in which the Commissioner had accepted that the Government of China's influence in the Chinese HRC market significantly distorted prices. Based upon my review of the evidence I concluded that there was merit in Orrcon's argument.

35. Accordingly, in my Reinvestigation Request to the Commissioner I stated,

*I note that Dalian produces a range of steel products and purchases inputs to those products from both "private" and public body steel mills. However, in relation to the production of the [goods], it had exclusively purchased HRC from "private" mill suppliers. It was on this basis, which could be viewed as an exception, that the Commission decided that Program 20 would not be relevant to any subsequent exports of the [goods] from any 'non-cooperative entities'. Such an outcome seems anomalous given that the Commission, through its earlier enquiries, has accepted both the prevalence and influence of Program 20 upon the price of steel exports from China. Given the object of the legislation is to provide Australian industry with a response to subsidised exports it would seem imprudent to accept an exception as the norm.<sup>10</sup>*

## Reinvestigation Report findings

36. The Reinvestigation Report noted,

*Upon reinvestigation, the commission is of the view that the absence of positive evidence that the findings in respect of [Dalian] could be extrapolated as being representative of other Chinese exporters was not, of itself, sufficient*

---

<sup>10</sup> Letter from Review Panel to the Commissioner – Request for Reinvestigation for Report No.550 at paragraph 46.

*evidence. As remarked upon by the ADRP, the [Dalian] purchases 'could be viewed as an exception...'<sup>11</sup>*

37. The Reinvestigation Report acknowledged that the Commissioner has extensively examined Program 20 in numerous previous cases, some of which were referenced in REP 550. These cases have provided significant data regarding raw material purchases, particularly HRC, by Chinese exporters and the Commissioner received no evidence in the context of REP 550 to suggest that the purchasing behaviour of non-cooperative Chinese exporters has changed from these previous cases.
38. The Reinvestigation Report concluded that given the continuing prevalence of HRC available from SIEs at below market prices it is reasonable for the Commissioner to assume, pursuant to section 269TAACA, that non-cooperating Chinese exporters would purchase such raw materials to manufacture the goods thereby conferring a countervailable subsidy. This conclusion differed from the approach adopted in REP 550 where the Commissioner had excluded consideration of the application of Program 20 from the measures to apply to all other exporters.
39. Accordingly, the Commissioner revised its approach and determined that the use of its previous findings with respect to Program 20 was preferable in its determination of whether that program conferred a countervailable subsidy to non-cooperative Chinese exporters. The Commissioner therefore adopted the same subsidy margin for Program 20 that it had determined in a previous report, REP 529, which resulted in an increase to the subsidy margins determined with respect to the non-cooperative Chinese exporters.

## Avoidance of 'double-count'

40. In applying a revised approach to Program 20, the Commissioner identified that the non-cooperative Chinese exporters would be subject to both dumping and countervailing duty in which 'distortions' to the cost of HRC would arise. Such distortions would arise as adjustments to HRC prices would form part of both the constructed normal value, so as to reflect 'competitive market cost,' as well as the determination of the countervailable subsidy. Article VI of the *General Agreement on Tariffs and Trade 1994* (GATT) requires "no product of the territory of any

---

<sup>11</sup> Reinvestigation into Certain Findings in Report No. 550 (Reinvestigation Report) at page 16.

contracting party imported into the territory of another contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping and export subsidisation.”

41. Article 10 of the World Trade Organization’s (WTO) *Agreement on Subsidies and Countervailing Measures* requires that members of the WTO ensure that the imposition of countervailing measures is consistent with Article VI of the GATT.
42. To avoid this “double counting” in both the dumping duty and the countervailing duty notices applicable to the goods, the Commissioner considered it preferable to avoid interfering with the dumping analysis and calculations and “to calculate the variable factors and effective subsidy rate for non-cooperative Chinese exporters by deducting any subsidy, and thereby ‘backing-out’, Program 20 from the countervailing duty notice”.<sup>12</sup> This results in the variable factors in the subsidy margin of 42.7%, specified in the reviewable decision<sup>13</sup>, remaining the same. The application of this methodology is reflected in “Table 1 - Summary of interim duty rates” which forms part of the Reinvestigation Report. I agree with the adoption of this methodology as it addresses the ‘double counting’ issue.
43. Notwithstanding there will be no change in the subsidy margin, as the revised approach aligns with the Commissioner’s previous stated satisfaction as to the influence of the Government of China over HRC prices, the outcome will provide continuing certainty to interested parties.

## Recommendation

44. I note that the Review Panel’s powers on review are limited by s.269ZZK(1) to recommending that the Reviewable Decision either be affirmed or revoked and substituted with a specified new decision. Further, s.269ZZK(1A) specifies that a recommendation to revoke can only be made in circumstances where “the new decision is materially different from the reviewable decision.” The revised approach of the Commissioner, with which I agree, makes no material difference to the Reviewable Decision.

---

<sup>12</sup> Reinvestigation Report at pages 18-19.

<sup>13</sup> ADN 2021/110 refers.

45. Accordingly, pursuant to s.269ZZK(1)(a) of the Act and for the reasons given above, I am satisfied that the Reviewable Decision was the correct or preferable decision and I recommend that the Minister affirm that decision.

A handwritten signature in black ink that reads "Paul O'Connor". The signature is written in a cursive style with a horizontal line underneath the name.

Paul O'Connor  
Panel Member  
Anti-Dumping Review Panel  
1 June 2022