



Australian Government
Department of Industry, Science,
Energy and Resources

Anti-Dumping
Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Member Paul O'Connor
Anti-Dumping Review Panel
c/o- ADRP Secretariat

By e-mail: ADRP@industry.gov.au

Dear Member O'Connor,

ADRP Review No. 143 – Precision Pipe and Tube Steel exported from the People's Republic of China and the Socialist Republic of Vietnam

I write with regard to the notice under section 269ZZI of the *Customs Act 1901* (Cth) (the **Customs Act**) published on 10 November 2021. The notice advised of your intention to review the decision of the then Acting Minister for Industry, Science and Technology (the Minister) to publish a countervailing duty notice under sections 269TJ(1) and (2) of the Customs Act in respect of Precision Pipe and Tube Steel exported by non-cooperative entities from the People's Republic of China (the **Reviewable Decision**).

I have considered the application submitted by Orrcon Manufacturing Pty Ltd for a review of the Reviewable Decision and make submissions, pursuant to section 269ZZJ(aa) of the Customs Act, at **Attachment A** (public version).

The Anti-Dumping Commission remains at your disposal to assist you in this matter.

Yours sincerely

Dr Bradley Armstrong PSM
Commissioner, Anti-Dumping Commission
10 December 2021

COMMISSIONER, ANTI-DUMPING COMMISSION SUBMISSIONS

Introduction¹

1. I make this submission in response to an application (**Application**)² by Orrcon Manufacturing Pty Ltd (**Orrcon**) to the Anti-Dumping Review Panel (**ADRP**) for review (**Review**).
2. The Application concerns Anti-Dumping Notice (**ADN**) No. 2021/110, concerning precision pipe and tube steel (**goods**).
3. In ADN 2021/110, the Minister accepted my recommendations in *Anti-Dumping Commission Report No. 550 (REP 550)* and declared under sections 269TJ(1) and 269TJ(2) that section 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) applies to the goods. My recommendations followed the conclusion of *Investigation 550 – Precision pipe and steel tube exported from China, Korea, Taiwan and Vietnam (Investigation 550)*.
4. ADN 2021/110 and REP 550 provide further background and detail on the basis for my recommendations and the Minister’s decision, which I will not repeat here. This submission is intended to respond only to the ground for review set out in the application:

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.

5. Anti-Dumping Commission (**commission**) staff are available to attend any conferences the ADRP may hold under section 269ZZRA to answer any questions about these submissions and REP 550 more broadly.

Background to Program 20

6. Program 20, ‘Hot rolled steel provided by government at less than fair market value’ refers to the provision of hot rolled steel by public bodies³, in this case,

¹ All legislative references are to the *Customs Act 1901* (Cth) (the Act) unless otherwise indicated.

² ADRP Review 143 – *Anti-Dumping Review Panel, Application – Orrcon*, published 10 November 2021.

³ The use of ‘public body’ in this submission refers also to the government of the country of export and a private body entrusted to carry out a government function.

state-owned Chinese steel mills, to manufacturers at less than adequate remuneration.

7. The commission has identified Program 20 as a subsidy in previous investigations of other products manufactured in China from HRC. It was on this basis that the commission investigated whether Program 20 provided a countervailable subsidy in respect of the goods in preparing REP 550.
8. Program 20 is a form of subsidy referred to by the commission as an 'LTAR subsidy'. It is a form of subsidy where a public body provides goods or services at a price that is at less than adequate remuneration (**LTAR**).
9. In its previous investigations, the commission did not identify any specific law, regulation or other document issued by the Government of China that provides for the establishment of Program 20.⁴ 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.⁵

Calculation of non-cooperative subsidy rate

10. Consistent with section 269TAACA, I calculated the subsidy margin for non-cooperative Chinese entities based on information provided by cooperative Chinese exporters in Investigation 550 and on previous findings in respect of subsidies received for other products manufactured in China from HRC.⁶
11. In determining whether a subsidy was provided to non-cooperative entities, I considered it preferable to rely on information from cooperative exporters in Investigation 550 as this information was more relevant than information from previous cases which examined different goods in a different inquiry period.
12. In respect of Program 20, I found no subsidy was provided to cooperative Chinese exporters. My reasoning for this is set out in chapter 7.5.1 and Appendix B2.1 of REP 550.
13. My decision in respect of subsidies received by cooperative Chinese exporters, including Program 20, is set out in ADN 2021/111.
14. My decision in respect of Program 20 as it applies to cooperative Chinese exporters is not under review by the ADRP. I note the final date for an application for review of that decision was 27 July 2021.

⁴ Report to the Minister No. 177, p 224.

⁵ Report No. 419 – Hollow Structural Sections – China, Korea, Malaysia and Taiwan, p 80.

⁶ Review 419 – Hollow Structural Sections from China, Korea, Malaysia and Taiwan and Review 529 – Hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand, both referred to by Orrcon in the application.

15. The Reviewable Decision is only in respect of exports of the goods by non-cooperative Chinese entities.
16. Accordingly, I submit it is outside the scope of the Reviewable Decision to consider my findings in respect of Program 20 as it applies to cooperative exporters.

Materiality

17. Under section 269ZZK(1) of the Act, the ADRP is required to provide a report to the Minister recommending that the Reviewable Decision either be affirmed or revoked and substituted with a specified new decision. Section 269ZZK(1A) provides that the ADRP may recommend revoking the Reviewable Decision only if the new decision is materially different.
18. In the present case, HRC is used as a cost input in constructing normal value and is the input in question for Program 20. In the Statement of Essential Facts for this investigation (SEF 550)⁷, when I considered there was a subsidy under Program 20, I found it necessary to calculate the effective rate of duty by 'backing out' the subsidy margin attributed to Program 20. This is the usual practice when a cost input is also the subject of an LTAR finding.⁸
19. The 'backing out' of any subsidy margin for Program 20 from the interim dumping duty rate would mean that the total effective rate for uncooperative Chinese exporters (i.e. the dumping margin plus the countervailing margin) would likely be unchanged. This was the case in SEF 550.
20. Accordingly, I submit that if a decision was made consistent with the approach advocated by Orrcon in its application, it would result in a decision that is not materially different to the Reviewable Decision.

⁷ Statement of Essential Facts – SEF 550, p 133. Available on the commission website.

⁸ The Anti-Dumping Commission Dumping and Subsidy Manual, p 93.