Public Record

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION
REPORT TO THE ANTI-DUMPING REVIEW PANEL

REINVESTIGATION OF CERTAIN FINDINGS IN REPORT 379

HOLLOW STRUCTURAL SECTIONS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, REPUBLIC OF KOREA, MALAYSIA AND TAIWAN

29 January 2018

Contents

1 Abbreviations

$	Australian dollars
the Act	*Customs Act 1901*
ADRP	Anti-Dumping Review Panel
AUD	Australian dollar
China	the People's Republic of China
Commission	Anti-Dumping Commission
the Commissioner	The Anti-Dumping Commissioner
Dalian	Dalian Steelforce Hi-Tech Co Ltd
EC Report	*Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence*
GOC	Government of China
HRC	hot rolled coil
HSS	hollow structural sections
Manual	the Dumping and Subsidy Manual
Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 379	Report No 379
SG&A costs	administrative, general and selling costs
SIE	State invested enterprise
Tianjin Youfa	Tianjin Youfa Steel Pipe Group Co Ltd
the goods	the goods the subject of this reinvestigation

2 Summary of findings

2.1 Tianjin Youfa – public body

The Anti-Dumping Commission (Commission) affirms its finding that Tianjin Youfa Steel Pipe Group Co Ltd's (Tianjin Youfa) hot rolled coil (HRC) suppliers that are state invested enterprises (SIEs)[1] are public bodies.

2.2 Tianjin Youfa – benefit

The Commission:

- affirms its finding that Program 20 conferred a benefit in relation to the goods exported to Australia from China on the basis that HRC was provided for less than adequate remuneration (s269TACC(3)(d)); and
- finds that the benchmark of verified actual HRC costs for HSS exporters from Korea, Malaysia and Taiwan is suitable for determining the adequacy of remuneration having regard to the prevailing market conditions in the Chinese HRC market (s269TACC(4)).

2.3 Tianjin Youfa – calculation of subsidy

The Commission finds that Tianjin Youfa's subsidy margin for Program 20, correcting for a miscalculation in Report No 379 (REP 379), is 3.0%.

2.4 Dalian – SG&A costs

The Commission finds that:

- the administrative, general and selling costs (SG&A costs) associated with the sale of Dalian Steelforce Hi-Tech Co Ltd (Dalian) produced HSS in China should not be worked out under reg 44(2);
- rather those SG&A costs should be worked out under reg 44(3)(c); and

on that basis the Commission affirms its approach to calculating the SG&A costs associated with the sale of Dalian produced HSS in China.

2.5 Dalian – profit

The Commission finds that Dalian's dumping margin should change to **11.1 per cent** (from 18.7 per cent stated in REP 379).

[1] For purposes of this report the Commission uses the term SIE to include state owned enterprises (SOEs) and other entities in which the GOC has effective control through investment or ownership links (except where the Commission makes an express distinction). In practice there is a continuum of GOC ownership in Chinese entities and the GOC may even exercise effective control over entities in which it has less than a 50 per cent holding through other arrangements (see the EC Report at section 5.1). The EC Report uses the term SOE to include SIEs and other entities in which the GOC has effective control.

3 Background

3.1 Continuation inquiry

On 31 October 2016, the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated an inquiry (Inquiry 379) into whether the continuation of certain anti-dumping measures was justified. These anti-dumping measures took the form of a dumping duty notice in respect of certain HSS exported from China, Korea, Malaysia and Taiwan, and a countervailing duty notice in respect of the goods exported from China.

The inquiry was initiated as a result of applications by Austube Mills Pty Ltd and Orrcon Manufacturing Pty Ltd.

In REP 379 the Commissioner found that expiration of the measures would likely lead to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the measures were intended to prevent.

Based on that finding, the Commissioner recommended that the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)[2] take steps to secure the continuation of:

- the dumping duty notice applicable to the goods exported from China, Korea, Malaysia and Taiwan; and
- the countervailing duty notice applicable to the goods exported from China by all exporters except Dalian, Huludao City Steel Pipe Industrial Co Ltd and Qingdao Xianxing Steel Pipe Co Ltd.

On 21 June 2017, the Parliamentary Secretary accepted the Commissioner's recommendations and decided to continue anti-dumping measures on exports of HSS from China, Korea, Malaysia and Taiwan. Public notices of this decision were published on the Commission's website on 26 June 2017.

3.2 Review by the ADRP

The Anti-Dumping Review Panel (ADRP) is conducting a review of the Parliamentary Secretary's decision. The ADRP received applications for review from the following parties:

1. Dalian;
2. Ursine Steel Co Ltd;
3. Croft Steel Traders Pty Ltd; and
4. Tianjin Youfa.

[2] On 19 July 2016, the Prime Minister appointed the then Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of Inquiry 379 the Minister was the then Parliamentary Secretary to the Minister for Industry, Innovation and Science.

3.3 Requirement for reinvestigation

The ADRP required a reinvestigation under s269ZZL(1) of the *Customs Act 1901* (the Act)[3] of a number of specific findings that formed the basis of the reviewable decisions in REP 379. The ADRP requested that the Commissioner report the result of the reinvestigation to the ADRP by 20 November 2017. On 20 November 2017 the ADRP granted an extension for the reinvestigation until 29 January 2018.

3.4 Approach to the reinvestigation

The Commissioner must conduct a reinvestigation in accordance with the ADRP's requirements and give the ADRP a report of the reinvestigation concerning the finding or findings within the period specified by the ADRP.[4]

In its report to the ADRP the Commissioner must:[5]

(a) if the Commissioner is of the view that the finding or any of the findings the subject of reinvestigation should be affirmed—affirm the finding or findings; and

(b) set out any new finding or findings that the Commissioner made as a result of the reinvestigation; and

(c) set out the evidence or other material on which the new finding or findings are based; and

(d) set out the reasons for the Commissioner's decision.

3.5 This report

This report addresses the issues raised by the ADRP for reinvestigation according to the following:

- Chapter 4 addresses the issue of whether SIEs supplying HRC to Tianjin Youfa are public bodies for purposes of the Act.
- Chapter 5 addresses the issue of whether HRC provided to Tianjin Youfa was provided for less than adequate remuneration having regard to prevailing market conditions in the Chinese HRC market.
- Chapter 6 recalculates Tianjin Youfa's subsidy margin for Program 20 to correct for a miscalculation in REP 379.
- Chapter 7 addresses the issue of how SG&A should be calculated for Dalian's domestic sales in China.
- Chapter 8 addresses the issue of how profit should be calculated for Dalian's domestic sales in China.

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[3] All references in this report to a section or s (as abbreviated) are to a section, subsection, paragraph or subparagraph of the Act unless otherwise stated.

[4] The Act at s269ZZL(2).

[5] The Act at s269ZZL(3).

4 Tianjin Youfa – public body

4.1 ADRP request for reinvestigation

The ADRP's request for reinvestigation as it relates to Tianjin Youfa in respect of the issue of public body is stated in the following terms (footnotes omitted):

> The reviewable decision resulted in a countervailing duty of 12% being imposed on exports of HSS by Tianjin Youfa. In the report to the Assistant Minister (the Report), it was found that "HSS producers received financial contributions that conferred a benefit in respect of the goods via countervailable subsidy programs". One of these programs was described as Program 20 "Hot rolled steel provided by government at less than fair market value". The Report states that a detailed analysis in relation to the programs is provided at Appendix B.
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> With respect to Program 20, the analysis is that:
>
> - The Anti-Dumping Commission has found that the Government of China (GOC) "materially influenced conditions within the Chinese hot rolled steel (HRC) market during the inquiry period (Appendix A refers)";
> - The Commission also found that "hot rolled steel" provided by Chinese invested enterprises (SIEs) was less than the competitive market benchmark and therefore conferred a benefit on HSS produced in China; and
> - A similar program in respect of steel billet raw material was countervailed by the Commission in 2016 in relation to steel grinding balls (Program 1) and in that case the Commission also found that SIEs producing steel raw materials continue to be considered as "public bodies" for the purposes of the definition of subsidy in s.269(T) of the Act.
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> The relevance of an SIE being a public body is that the definition of s269T of the Act requires that there be a financial contribution by:
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> - a government of the country of export or country of origin of the goods;
> - a public body of that country or a public body of which that government is a member; or
> - a private body entrusted or directed by that government or public body to carry out a governmental function.
>
> There are a number of issues with the above analysis with respect to "public bodies". Rather than conduct an analysis of the suppliers of HRC to Tianjin Youfa, the Report relies upon a finding made in another investigation. This is not itself necessarily a problem if the investigation covers substantially the same period or is reasonably proximate to the inquiry period in the continuation inquiry and it is clear that the findings do include the product and manufacturers involved in the continuation inquiry. However, contrary to the above statement in the Report, the grinding balls investigation did not conclude that "SIEs producing steel raw materials continue to be considered as 'public bodies'". Rather that report concluded "for the purpose of the current investigation that SIE's that produce and supply raw materials *to manufacturers of grinding balls* should be considered public bodies" (emphasis added). It is not clear from the analysis relied upon by the Commission whether or not the suppliers of HRC to Tianjin Youfa are among the suppliers of grinding ball raw materials or there is some other basis upon which the Commission has extrapolated from the finding in relation to the grinding balls investigation that the suppliers of HRC to Tianjin Youfa are public bodies.

While I note the submission by Austube Mills Pty Ltd that the extent of the fact finding in a continuation inquiry may not be the same as that required in an original investigation, s.269ZHG(5) of the Act still requires that the report to the Minister set out the findings of fact and the evidence relied upon.

A further issue with the finding is that the analysis on the issue of public bodies may have confused the relevant law applicable to this issue. In the analysis it is stated that certain previous investigations and reviews were considered relevant as well as the report of the Appellate Body in DS 379 and the report of the WTO Panel in DS436. It is not clear why the Commission had regard to the WTO Panel report in DS436 when the Panel's finding on the issue of public body was specifically rejected by the Appellate Body in that case.

One aspect on which the Commission's analysis appears to have been influenced by the WTO Panel report (DS436) is the issue of the relevance of the degree of autonomy held by the entity being considered. The Commission's analysis refers to a quote (for which no reference is given) that "(s)/o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies". This quote may not be consistent with the decision of the Appellate Body which considered that the degree of control exercised by the Government over the conduct of the entity and the degree of autonomy enjoyed by that entity to be relevant.

The starting point for the analysis of the issue whether the suppliers of HRC to Tianjin Youfa were public bodies should be the law in Australia. The Federal Court in *Dalian Steelforce Hi-Tech Co. Ltd v Minister for Home Affairs* has expressly adopted the reasoning of the Appellate Body in the US/China Report (DS379). Accordingly, the test for a public body in Australia is consistent with that in the Appellate Body's report. Importantly, the Appellate Body confirmed this test in the subsequent case in which it rejected the WTO Panel's finding in WTO Panel Report DS 436. A public body must be an entity that possesses, exercises or is vested with governmental authority.

In Dalian Steelforce, Nicholas J. referred to an earlier decision of his in which he stated that:

> "As the Appellate Body made clear, different types of evidence may be relevant to show that governmental authority has been conferred on a particular entity. One type of evidence that might demonstrate that this has occurred is "[e]vidence that an entity is, in fact, exercising governmental functions". Another type is that which shows that a government exercises "meaningful control" over an entity which may demonstrate that an entity both possesses and exercises governmental authority in the performance of governmental functions"

This was accepted by his Honour in *Dalian Steelforce* as describing a key aspect of the decision in US/China Report (DS379). In DS436, the Appellate Body clarified that it was not any entity over which a government exercises meaningful control which will be a public body. Evidence of such control may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of government functions. It does not however replace the substantive test which is whether the entity possesses, exercises or is vested with governmental authority.

The *Dalian Steelforce* case involved the previous investigation into the subsidisation of HSS exported from China (INV 177). In that investigation it was found that Chinese SIEs that produce and supply HRC or narrow strip were "public bodies" because they were bodies over which the GOC exercised meaningful control that perform government functions in relation to the iron and steel sector. His Honour found in that case that neither the relevant legislation nor the WTO Appellate Body decision (DS 379) had been misapplied.

It is not possible from the Report to determine whether the Commission has applied the correct test or how that test has been applied to the suppliers of HRC to Tianjin Youfa during the inquiry period.

4.2 Affirmed or new findings

As a result of its reinvestigation the Commission affirms its finding that Tianjin Youfa's HRC SIE suppliers are public bodies.

4.3 Evidence or other material on which the findings are based

The Commission based its findings on:

- verified information gathered during the course of Inquiry 379;
- previous findings by the Commission in REP 177; and
- findings by the European Commission (EC) in a report entitled *Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence* (EC Report).[6]

4.4 Reasons for the Commissioner's decision

In summary, the reasons for the Commissioner's decision are:

- The Commissioner has proceeded on the basis of all the facts available and made such assumptions as the Commissioner considered reasonable (see section 4.4.1 below);
- A number of Tianjin Youfa's HRC SIE suppliers were found to be public bodies in Investigation 177, including Tianjin Youfa's largest two such suppliers (see section 4.4.2 below);
- An extensive study by the European Commission of distortions in China's economy found, among other things, that (see section 4.4.3 below):
    - the GOC controls the behaviour of SIEs;
    - the GOC's current plans are to:
        - strengthen SIEs;
        - strengthen SIEs' control and influence to better serve strategic goals of China;
        - create larger SIEs to serve the GOC's strategic industrial policies (rather than focus on their own economic performance);

[6] The EC Report was published in December 2017. The parts of the EC Report that the Commission considers relevant to this reinvestigation draw on material that is proximate in time to the 1 July 2015 to 30 June 2016 investigation period for Inquiry 379; for example the GOC's 13th Five Year Plan was adopted by the GOC in March 2016 to cover the period 2016 to 2020 and the Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing measures on imports from China had an investigation period of 1 January 2015 to 30 December 2015. In this respect it confirms and updates previous findings by the Commission such as those in REP 177. Accordingly the Commission considers that information in the EC Report is relevant to this reinvestigation.

- SIEs (and large private companies) execute the GOC's policy objectives;
- the GOC no longer directs SIEs to adapt to a market environment or to promote market oriented allocation of resources;

- On the basis of the available facts it is reasonable to assume that SIEs, including those supplying HRC to Tianjin Youfa, possess, exercise and are vested with governmental authority (see section 4.4.4 below).

4.4.1 All facts available and reasonable assumptions

For purposes of this reinvestigation, the Commissioner has proceeded on the basis of all the facts available and made such assumptions as the Commissioner considered reasonable.

The Commission considers that the GOC is the entity that would be best placed to provide relevant information concerning Chinese subsidy programs. The Commission sent a questionnaire to the GOC on 3 February 2017 requesting, among other things, details of subsidy programs that might be available to Chinese HSS exporters. The Commission sought a response from the GOC by 20 March 2017. The GOC did not provide a response to the questionnaire.

Section 269TAACA provides in a continuation inquiry (s269TAACA(1)(a)(iii)) that if the Commissioner is satisfied that the government of the country of export has not given the Commissioner information that the Commissioner considers relevant within a reasonable time (s269TAACA(1)(b)(i)) then the Commissioner may act on the basis of all the facts available to the Commissioner and may make such assumptions as the Commissioner considers reasonable (s269TAACA(1)(c) and (d)).

The Commissioner is satisfied that the GOC, by not providing a response to the questionnaire, has not given the Commissioner information that the Commissioner considers would be relevant to the continuation inquiry. Accordingly, for purposes of this reinvestigation, the Commissioner has proceeded on the basis of all the facts available and made such assumptions as the Commissioner considered reasonable.

4.4.2 Suppliers previously found to be public bodies

The Commission has reviewed Tianjin Youfa's SIE HRC suppliers and found that a number were found to be public bodies in REP 177. SIE HRC suppliers found to be public bodies in REP 177 supply more than half of Tianjin Youfa's HRC from SIE suppliers.[7]

4.4.3 Findings of the EC relevant to the reinvestigation

The EC Report was prepared for the purposes of Article 2(6a)(c) of *Regulation (EU) 2016/1036*. Article 2(6a)(c) provides that where the EC has well-founded indications of

7 [redacted]

the possible existence of significant distortions in a certain country or a certain sector in that country the EC must publish a report describing the market circumstances in that country or sector.[8]

SIEs and private companies execute GOC policy

The EC Report observed that, in practice, both SIEs and large private companies share many similarities in the areas commonly thought to distinguish SIEs from privately owned companies including in proximity to state power and execution of the GOC's policy objectives.[9] Even private entrepreneurs are helping implement Chinese Communist Party goals.[10] This indicates that the dividing line for which entities execute GOC policy and which entities do not falls somewhere within the ranks of private companies rather than SIEs.

That would support a view that all SIEs (as well as some private companies and entrepreneurs)[11] possess, exercise or are vested with governmental authority and are therefore public bodies.

GOC plans to strengthen SIE control and influence to serve China's strategic goals

The EC Report found that the GOC no longer directs SIEs to "adapt to the new market-oriented […] background" and "promote market-oriented allocation of public resources".[12] Rather the GOC's current primary goal with respect to SIEs is make the sector larger and stronger; this includes strengthening the sector's control and influence "in order to better serve the strategic goals of the country".[13] The GOC has decided to maintain SIEs as a means for pursuing policy objectives and not primarily commercial considerations[14] and to selectively create large SIEs to serve the GOC's strategic industrial policies rather than focussing on their own economic performance.[15] The GOC has continued controlling SIEs[16] and planned reforms focus on better controlling state-owned assets.[17]

The GOC is retreating from the market reforms for SIEs that it previously promoted, even as recently as 2013.[18] On that basis, the Commission considers that previous findings

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[8] EC Report at page 2.

[9] EC Report at page 15.

[10] EC Report at page 15.

[11] The Commission has not previously found that a private body has provided a subsidy however the Act provides for such in circumstances where there is a financial contribution by a private body entrusted or directed by a government or a public body to carry out a governmental function (s269T, definition of "subsidy").

[12] EC Report at page 106 citing the GOC's 13th Five Year Plan.

[13] EC Report at page 106 citing the GOC's 13th Five Year Plan.

[14] EC Report at page 107-8; the EC Report at page 362 stated that some forms of GOC support in the steel sector were "permanent" and "structural".

[15] EC Report at page 108-9.

[16] EC Report at page 108.

[17] EC Report at page 106 citing the GOC's 13th Five Year Plan.

[18] EC Report at page 106 citing the GOC's 2013 3rd Plenum Decision.

that SIEs are public bodies (such as the findings in Investigation 177) are pertinent to this inquiry and are likely to understate the GOC's involvement with SIEs.

4.4.4 SIEs supplying Tianjin Youfa are public bodies

The Commission considers that, in the absence of relevant information held but not provided by the GOC and in light of all available information (including previous findings by the Commission and findings contained in the EC Report) it is reasonable to assume that SIEs possess, exercise and are vested with governmental authority. On that basis the Commission considers that SIEs are public bodies and would find that SIEs supplying Tianjin Youfa are public bodies.

5 Tianjin Youfa – benefit

5.1 ADRP request for reinvestigation

The ADRP's request for reinvestigation as it relates to Tianjin Youfa in respect of the issue of benefit is stated in the following terms (footnotes omitted):

> In order for there to be a subsidy as defined by s.269T(1) there has to be a benefit in relation to the goods exported to Australia. The benefit identified by the Commission in the report in relation to Program 20 was that HRC provided by SIEs was less than the competitive market benchmark. There is no reference to the analysis, findings of fact or evidence on which this conclusion was based. However, it is presumably based, at least in part, on the analysis in Appendix A to the Report.
>
> Appendix A deals with the analysis by the Commission of the situation in the Chinese HSS market such that sales in the market were not suitable for the determination of normal values under s.269TAC(1) of the Act. That analysis did not expressly deal with the question to be answered by s.269TACC which prescribes whether the financial contribution by a public body confers a benefit. While not using the terms of the Act, it is the provision of goods, namely HRC, for less than adequate remuneration which is relied upon by the Commission. S.269TACC(4) requires that the adequacy of remuneration is to be determined having regard to prevailing market conditions for like goods in the country where those goods are provided.
>
> The like goods for the purpose of s.269TACC(4) in this case is HRC and the analysis of market situation in Appendix A is relevant to the extent that it considered the prevailing market conditions for HRC in China. It is stated in Appendix A that in conducting the market situation assessment the Commission had regard to the Chinese HRC market as HRC accounted for 90 per cent of the cost to make HSS and was thus a key determinate of the domestic price of HSS in China.
>
> After an analysis of the Chinese market and particularly GOC interventions in that market, the Commission concluded that "because of the significance of this influence over the Chinese HRC and HSS market, the domestic price for Chinese HSS was substantially different to what it would have been in the absence of these interventions". No similar finding was expressed in relation to the use of the domestic price for HRC for the purpose of determining the adequacy of remuneration in relation to the purchases of HRC by Tianjin Youfa.
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> The Commission in its submission to the Review Panel on this issue stated that the Commission used the same benchmark to determine the amount of the benefit under Program 20 as was calculated for the purposes of establishing normal value under s.269TAC(2)(c), being a weighted average benchmark of verified actual prices paid by cooperating exporters for HRC from Korea, Malaysia and Taiwan.
>
> The difficulty with the approach taken by the Commission is that it has not in the Report set out the relevant findings and the evidence on which they are based in the context of an analysis for the purpose of s269TACC(4). While there is considerable relevance to an analysis for the purpose of s.269TACC(4) of the results of a particular market situation analysis, it cannot be a substitute for it.
>
> In particular, it is not clear from the Report whether regard has been had by the Commission to the question whether there was a need to adjust any external benchmark. In *Dalian Steelforce*, the use of an external benchmark was found not to be inconsistent with the legislation, provided regard is had to prevailing market conditions in the country of export. However, in that case consideration had been given to the question of whether there was a need to adjust any external market benchmark.

The analysis of particular market situation in Appendix A notes that the Commission's preference when benchmarking prices is to use "in region" benchmarks where possible. There is no explanation however as to why India is not within the same region as China or a benchmark based on its pricing is not possible or suitable for the purpose of s.269TACC(4).

5.2 Affirmed or new findings

As a result of its reinvestigation the Commission:

- affirms its finding that Program 20 conferred a benefit in relation to the goods exported to Australia from China on the basis that HRC was provided for less than adequate remuneration (s269TACC(3)(d)); and
- finds that the benchmark of verified actual HRC costs for HSS exporters from Korea, Malaysia and Taiwan is suitable for determining the adequacy of remuneration having regard to the prevailing market conditions in the Chinese HRC market (s269TACC(4)).

5.3 Evidence or other material on which the findings are based

The Commission has based its findings in this reinvestigation on findings made and evidence referred to by the Commission in Appendix A of REP 379 and assessments made by the Australian Customs and Border Protection Service in REP 177.

5.4 Reasons for the Commissioner's decision

Chinese HRC benchmark would be unreliable comparator in assessing adequacy of remuneration

The Commission considers that, absent distortions in the Chinese HRC market, that market would be the most relevant market in which to assess the adequacy of remuneration under s269TACC(3)(d). In that case the Commission would assess adequacy of remuneration for HRC by comparing prices paid by HSS producers for HRC supplied by SIEs with a benchmark using Chinese HRC prices.

However the Commission has had regard to prevailing market conditions for HRC in China (below in section 5.4.1) and considers that the extent and degree of GOC involvement in the Chinese HRC market has significantly distorted all Chinese HRC prices, not just the prices for HRC supplied by SIEs. The Commission considers therefore that any benchmark that uses Chinese HRC prices would be an unreliable comparator in assessing adequacy of remuneration under s269TACC(3)(d).[19]

An external benchmark using verified data must be used, no basis for adjustments

The Commission considers that the distortions in the Chinese HRC market are such that an external benchmark for HRC prices must be used in assessing adequacy of remuneration. The Commission considers that the benchmark of verified actual HRC costs for HSS exporters within the region (namely from Korea, Malaysia and Taiwan) is

[19] Prices for HRC imported to China would be also affected by distortionary GOC policies and hence would be unsuitable for use in assessing adequacy of remuneration, see REP 177 at Part III(i) of Appendix C.

suitable for determining the adequacy of remuneration having regard to the prevailing market conditions in the Chinese HRC market.

The Commission has considered adjusting the external benchmark, specifically for Tianjin Youfa and, more generally, for Chinese comparative advantage in producing HRC. The Commission's consideration of adjustments to the external benchmark is set out below in section 5.4.2. The Commission found that:

- the available evidence did not support arguments made by Tianjin Youfa for a downward adjustment to the external benchmark for Tianjin Youfa's subsidy margin for Program 20;
- it would not be possible to determine any net comparative advantage for purposes of this reinvestigation particularly given the significant involvement of the GOC in relevant markets.

No reliable Indian HRC cost data available for a benchmark

The Commission did not have reliable HRC cost data for India for the relevant period. The Commission's consideration of the use of Indian HRC costs as a benchmark is set out below in section 5.4.3.

5.4.1 Prevailing market conditions for HRC in China

5.4.1.1 Findings on prevailing market conditions for HRC in China

Based on the following, the Commission considers that the GOC materially affected prevailing market conditions for HRC in China during the inquiry period. The GOC was able to exert this influence through its directives and oversight, subsidy programs, taxation arrangements and the significant number of SIEs (described in further detail below).

The Commission also concludes that this influence over the Chinese HRC market has significantly distorted all Chinese HRC prices, not just the prices for HRC supplied by SIEs. The Commission considers therefore that any benchmark that uses Chinese HRC prices would be an unreliable comparator in assessing adequacy of remuneration under s269TACC(3)(d).[20]

5.4.1.2 Information relied on in having regard to prevailing HRC market conditions

In having regard to prevailing market conditions for HRC in China the Commission relied on findings of the Commission, and information used by the Commission, in making its assessment of a market situation in Appendix A of REP 379. The assessment of market situation in REP 379 is relevant to the extent it considers prevailing market conditions for HRC in China.

The prevailing market conditions to which the Commission must have regard under s269TACC(4) concern the market for the goods that are alleged to be provided for less than adequate remuneration, in this case HRC.[21] In having regard to the prevailing

[20] Prices for HRC imported to China would be also affected by distortionary GOC policies and hence would be unsuitable for use in assessing adequacy of remuneration, see REP 177 at Part III(i) of Appendix C.

[21] Submission by Australian Tube Mills Pty Ltd dated 30 March 2017.

market conditions for HRC the Commission observes that HRC is a key input to HSS production (accounting for above 90 per cent of the cost to make HSS).

The Commission has also considered conditions in the broader Chinese steel industry because of a paucity of information concerning aspects of the Chinese HRC market. This paucity of information is in part due to the GOC's decision not to provide the Commission with a response to its government questionnaire. The Commission considers this approach reasonable as HRC accounts for a significant share of total steel production in China and is a key input in producing a number of different steel products.

5.4.1.3 Conditions in the Chinese HRC market

In REP 379 the Commission found that Chinese HRC production increased by around 40 per cent during 2010 to 2015 notwithstanding that Chinese HRC prices fell by around 48 per cent in the same period. In addition, Chinese HRC prices were below comparable benchmarks within the Asian region on a sustained basis.

The Commission found that significant declines in prices between 2010 and 2015 and price differences between China and other Asian steel producing nations reflect structural imbalances between capacity, production and consumption in Chinese steel markets. In particular, HRC production is unresponsive to changes in price and the broader steel industry's low level of capacity utilisation and profitability. There are persistently high levels of HRC production and productive capacity despite low profitability and substantial losses.

The Commission's findings in REP 379 concerning conditions in the Chinese HRC market reflect prevailing market conditions to which the Commission must have regard under s269TACC(4). Details of the Commission's findings concerning conditions in the Chinese HRC market are contained in section A3 of Appendix A of REP 379.

5.4.1.4 Imbalances in Chinese steel markets

In REP 379 the Commission found that the GOC's involvement in and influence over the steel industry is a primary cause of the prevailing structural imbalances both in the broader steel industry and the HRC market. The Commission recognised the GOC's attempts to restructure and reorganise the industry to manage excess capacity and oversupply concerns however the Commission considered that those attempts confirm the extent both of distortions and of the GOC's involvement in and influence over the Chinese steel industry. The Commission considers that the structural imbalances for Chinese steel generally and HRC in particular are prevailing market conditions to which the Commission must have regard.

Details of the Commission's findings, including specific initiatives by and examples of the GOC reshaping the steel industry, are contained in section A4 of Appendix A of REP 379.

5.4.1.5 GOC influence in Chinese steel markets

In REP 379 the Commission identified a number of key mechanisms through which the GOC distorted conditions in the Chinese steel industry, including in the HRC market. These same key mechanisms distort prevailing HRC market conditions. These key mechanisms include:

- The role and operation of SIEs: the Commission found, among other things, that steel producing SIEs have received and continue to receive significant indirect and

direct financial support from a number of levels of government in China (see section A5.1 of Appendix A of REP 379 for details);

- Industry planning guidelines and directives: the Commission found, among other things, that the GOC's involvement in the Chinese steel industry through numerous planning guidelines and directives materially contributed to the industry's overcapacity, oversupply and distorted structure (see section A5.2 of Appendix A of REP 379 for details);
- Provision of direct and indirect financial support: the Commission found, among other things, that programs providing direct and indirect financial support directly contributed to conditions in the Chinese steel industry including those for HRC (see section A5.3 of Appendix A of REP 379 for details); and
- Taxation arrangements: the Commission found among other things that the GOC selectively altered VAT rebates and taxes applied to steel exports to alter the relative profitability of different types of steel exports and of exports compared to domestic sales and used the same mechanisms to alter the relative supply of particular steel products in the domestic market (see section A5.4 of Appendix A of REP 379 for details).

5.4.2 No basis for adjustment of the external benchmark

5.4.2.1 Adjustment for Tianjin Youfa

By submission dated 22 May 2017 Tianjin Youfa argued that a downward adjustment should be made to the HRC benchmark for its cost to reflect its use of hot rolled narrow strip as the raw material input rather than HRC. Tianjin Youfa claimed that the Commission was provided evidence supporting its argument at the onsite verification of Tianjin Youfa.

The Commission reviewed the evidence provided at the onsite verification and found that Tianjin Youfa did not raise the issue of lower cost narrow strip as the raw material used in the production of HSS, nor did it request a downward adjustment during the onsite verification or in its REQ. A raw materials purchase list provided to the Commission at the verification and with Tianjin Youfa's 22 May 2017 submission did not differentiate between purchases of narrow strip and purchases of HRC. The Commission found that Tianjin Youfa did not provide any evidence substantiating the use of narrow strip as the only raw material or evidence that demonstrated pricing differences between narrow strip and HRC. Therefore, the Commission was not satisfied that any adjustment was warranted on that basis.[22]

5.4.2.2 Adjustment for comparative advantage

The Commission considers that it would not be possible to determine any net comparative advantage for purposes of this reinvestigation particularly given the significant involvement of the GOC in relevant markets.

In *Dalian Steelforce* Nicholas J considered the treatment in REP 177 of a more general adjustment to benchmark prices, namely for a claimed Chinese comparative advantage in

[22] REP 379 at section 7.4.4.4.

production of HRC. Nicholas J accepted the view of the Australian Customs and Border Protection Service that such an adjustment was not practical, reasonable or warranted in that case and that the more reasonable approach was to use a benchmark that reflected an average price of HRC that did not include any adjustment for competitive advantage.

The Commission has considered whether the HRC benchmark should be adjusted for comparative advantage for purposes of this reinvestigation. The Commission observes that no information or evidence on the subject was provided during Investigation 379 that was additional to that provided in Investigation 177.

The Australian Customs and Border Protection Service found in REP 177 that China had both comparative advantages and disadvantages in producing HRC. That would require calculating a net figure for comparative advantage;[23] that task would be difficult enough. In addition, to calculate a net comparative advantage with any degree of accuracy would require the Commission to isolate and subtract the effect of GOC's significant involvement in the Chinese steel market generally, and the Chinese HRC market in particular. Similarly for this reinvestigation, the Commission considers that it would not be possible to isolate and quantify to effect of GOC involvement in the relevant markets and to determine a net comparative advantage for purposes of this reinvestigation.

5.4.3 No reliable data for Indian HRC costs

Tianjin Youfa's application to the ADRP claims that the Commission used prices for the benchmark that it knew were higher and that Indian prices would be lower.[24] In support of its claim Tianjin Youfa points to the Commission's undercutting analysis in section 10.5.3 of REP 379.

The Commission does not consider that the undercutting analysis in section 10.5.3 of REP 379 supports Tianjin Youfa's claims. That undercutting analysis showed prices charged to Australian customers for HSS. A price undercutting analysis for HSS does not show what HRC costs would be for the exporters involved. The Commission did not have reliable HRC cost data for India for the relevant period.

[23] REP 177 at pages 166 to 167.

[24] Tianjin Youfa application to the ADRP at [82].

6 Tianjin Youfa – calculation of subsidy

6.1 ADRP request for reinvestigation

The ADRP's request for reinvestigation as it relates to Tianjin Youfa in respect of the calculation of the amount of the subsidy is stated in the following terms (footnotes omitted):

> In its application for review Tianjin Youfa contends that there was a significant computational error in the calculation of the subsidy in that the Commission deducted the total benchmark and not simply the difference in the HRC pricing. In its submission to the Review Panel on this point, the Commission referred to the conference held with the Review Panel and the representative of Tianjin Youfa on 15 August 2017. During that conference the Commission representative advised that the Commission agreed there had been a miscalculation of the amount of the subsidy.

6.2 Affirmed or new findings

The Commission finds that Tianjin Youfa's subsidy margin for Program 20, correcting for a miscalculation in REP 379, is 3.0%.

6.3 Evidence or other material on which the findings are based

The Commission based its findings on a review of the subsidy margin calculation for Program 20 following correspondence with Tianjin Youfa.

6.4 Reasons for the Commissioner's decision

The Commission made an error in calculating the subsidy margin for Program 20 by attributing the total benchmark price as the subsidy received by Chinese HSS producers. The correct subsidy margin should rather have been the difference between the benchmark price and the price paid by Chinese HSS producers for HRC.

The Commission's corrected calculations for the subsidy margin for Tianjin Youfa, is contained at **Confidential Appendix 1 – Tianjin Youfa Subsidy Calculations**. The corrected subsidy margin is set out in the following table:

Exporter	Corrected subsidy margin
Tianjin Youfa	3.0%

7 Dalian – SG&A costs

7.1 ADRP request for reinvestigation

The ADRP's request for reinvestigation as it relates to Dalian in respect of the issue of SG&A costs is stated in the following terms (footnotes omitted):

> In the Report, it is stated that the Commission constructed normal values under s269TAC(2)(c) and as required by s.269TAC(5A) and s.269TAC(5B), in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation). In particular, the Commission had worked out an amount for SG&A cost using the information set out in Dalian Steelforce records relating to sales of like goods during the inquiry period.
>
> In its application for review, Dalian Steelforce asserted that the statement in the Report was not correct and that the Commission disregarded Dalian Steelforce's SG&A costs and relied solely on information from the records of a [redacted].
>
> In its submission to the Review Panel, the Commission rejected the claim that only the SG&A costs of [redacted] were used in determining the amount of SG&A costs associated with the sale of like goods. The Commission had verified that a large majority of [redacted] domestic sales were made to [redacted] and then sold by [redacted] to [redacted] domestic customers. As the sales were not made in the ordinary course of trade (OCOT) an adjustment was required to Dalian Steelforce's SG&A to include the SG&A incurred by [redacted]. This treatment of the SG&A costs for Dalian Steelforce was set out in the Exporter Visit Report for Dalian Steelforce which was conducted for Duty Assessments 59 and 71.
>
> As the Report correctly notes, the SG&A in relation to goods under s.269TAC(2)(c)(ii) must be worked out in accordance with s.44 of the Regulation.15 The Report states that the SG&A costs for Dalian Steelforce were worked out under s.44(2) of the Regulation. S.44(2) provides that if "an exporter or producer of like goods keeps records relating to the like goods" and certain conditions are met in relation to those records, then "the Minister must work out the amount by using the information set out in the records". Apparently, it was accepted by the Commission that the records of Dalian Steelforce met the conditions of s.44(2) given the statement in the Report.
>
> The difficulty with the submission made by the Commission is that there is no qualification in s.44(2) that the SG&A costs in the records of the exporter have to be with respect to OCOT sales. Even if this requirement can by implied into s.44(2), it would mean that the Commission would have to work out the SG&A costs under s.44(3) which is not what the Commission has done. There does not appear to be any basis under the relevant legislation for the approach taken by the Commission to the calculation of the SG&A costs for Dalian Steelforce. Either the records of Dalian Steelforce met the conditions of s.44(2), in which case the information in those records has to be used, or the Minister must use one of the methods in s.44(3). There is nothing in s.44(2) allowing the records of the exporter to be adjusted as the Commission has done in this case.
>
> A footnote to the Commission's submission on this issue seems to contend that the adjustment to the SG&A costs was made under s.269TAC(9) of the Act. However, the list of adjustments the Commission considered necessary to be made under s.269TAC(9) is set out in the Report and does not include an adjustment made to the SG&A costs to include the SG&A costs of [redacted]. Any such adjustment would need to come within the criteria of s.269TAC(9) which requires the Minister to make such adjustments as are necessary to ensure that the normal value ascertained under s.269TAC(2)(c) is properly comparable with the export price of the goods. In any event, if the Commission is going to

recommend to the Minister that an adjustment by made under s.269TAC(9), that adjustment and the basis for it should be set out in the report to the Minister.

7.2 Affirmed or new findings

As a result of its reinvestigation the Commission finds that:

- the SG&A costs associated with the sale of Dalian produced HSS in China should not be worked out under reg 44(2);
- rather those SG&A costs should be worked out under reg 44(3)(c); and

on that basis the Commission affirms its approach to calculating the SG&A costs associated with the sale of Dalian produced HSS in China.

7.3 Evidence or other material on which the findings are based

The Commission based its findings on a review of:

- the application to Dalian of the relevant regulations;
- relevant case law concerning interpretation of regulations.

7.4 Reasons for the Commissioner's decision

In summary the reasons for the Commissioner's decision are that:

- prices between Dalian and [redacted] should not be treated as arms length (see section 7.4.1;
- Dalian's records of non arms length transactions do not reasonably reflect SG&A costs associated with those transactions so the amount of those costs may not be worked out using those records under reg 44(2) (see section 7.4.2 below); and
- the amount of those SG&A costs should be worked out using another reasonable method having regard to all relevant information under reg 44(3)(c) (see section 7.4.3 below).

The method used by the Commission in REP 379 is reasonable and has regard to all relevant information and accordingly is in accordance with reg 44(3)(c) (see section 7.4.3 below).

7.4.1 Dalian – [redacted] transactions are not arms length

The Commission considers that prices between Dalian and [redacted] should not be treated as arms length because:[25]

- prices between Dalian and [redacted] appear to be influenced by their [redacted] relationship and therefore transactions between them shall not be treated as arms length (s269TAA(1)(b));
- transactions between Dalian and [redacted] would not be considered arms length in the ordinary sense of the term.

[25] The verification team visiting Dalian in October 2017 only found arms length domestic sales to be those from Dalian and [redacted] to unrelated parties, Dalain visit report at 5.4.

Prices between Dalian and [redacted] appear to be influenced by relationship

The Commission has reviewed the evidence provided by Dalian and assessed whether prices between Dalian and [redacted] appear to be influenced by a commercial or other relationship. During the verification visit to Dalian in October 2016 Commission staff asked Dalian management how the sale price to [redacted] was determined. Commission staff recorded the following response:[26]

[redacted]

There is no commercial or otherwise arms length negotiation between Dalian and [redacted]. Given that [redacted] the Commission considers that genuinely commercial or otherwise arms length negotiations would not be possible.[27] On that basis the Commission would find that prices between Dalian and [redacted] appear to be influenced by their [redacted] relationship and therefore transactions between them shall not be treated as arms length under s269TAA(1)(b).

Transactions between Dalian and [redacted] not arms length in ordinary sense

The term arms length is not defined in s269TAA(1),[28] neither is it defined elsewhere in the section or the Act. In the absence of a definition, terms should be taken to be used in their ordinary sense.[29] On that basis, if the evidence indicates that transactions are not arms length in the ordinary sense of that term then the Commission may make a finding of fact that the transactions are not arms length.

The Commission has reviewed the evidence provided by Dalian and assessed whether transactions between Dalian and [redacted] are arms length in the ordinary sense of the term. During the verification visit to Dalian in October 2016 Commission staff asked Dalian management whether [redacted]. Commission staff recorded the following relevant response:[30]

[redacted]

This lack of [redacted] and the lack of commercial or otherwise arms length negotiation between Dalian and [redacted] (evidence referred to above) indicate that transactions between Dalian and [redacted] could not be considered arms length in the ordinary sense of the term.

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[26] Notes taken by Commission staff in AGENDA.xlsx.

[27] Notes taken by Commission staff in AGENDA.xlsx.

[28] *Nordland* at [17].

[29] *R v Peters* (1886) 16 QBD 636 at 641 as cited in *Statutory Interpretation in Australia*, 8ed, Pearce and Geddes at [3.30].

[30] Notes taken by Commission staff in AGENDA.xlsx.

7.4.2 Records of non arms length transactions do not reasonably reflect SG&A costs associated with those transactions

The Commission considers that Dalian's records do not reasonably reflect SG&A costs associated with domestic transactions because many of those transactions, namely those between Dalian and [redacted], are not arms length.

Regulation 44(2) provides that SG&A costs must be worked out using the information set out in the exporter's records if, among other things, the exporter's records "*reasonably reflect* the administrative, general and selling costs associated with the sale of the like goods" (reg44(2)(b)(ii), emphasis added).

The Commission considers that identifying arms length issues and ensuring that dumping margins are not affected by any arms length nature of transactions is given primary importance in the Act.[31] The Commission considers that records of transactions found not to be arms length cannot be said to reasonably reflect the administrative, general or selling costs associated with those transactions. The [redacted] regardless of the actual costs associated with those transactions.

The Commission considers that the likely operation of the reg 44(2) (properly construed) must reasonably be adopted as a means of fulfilling the statutory object of the empowering legislation;[32] in this case that statutory object is to determine a dumping margin that is not rendered unreliable by arms length issues. On that basis if reg 44(2) required the Commission and the Minister to use records of the exporter that infected the dumping margin with non arms length issues then the regulation would be invalid. On the Commission's interpretation of reg 44(2), namely that records of transactions found not to be arms length do not reasonably reflect the administrative, general or selling costs associated with those transactions, there is no such invalidity.

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[31] Sections 269TAA, 269TAB(1), 269TAC(1).

[32] *Attorney-General (SA) v Corporation of the City of Adelaide* [2013] HCA 3 per French CJ at [122]-[123] citing Brenner J in *South Australia v Tanner* [1989] HCA 3 (footnotes omitted):

> … Brennan J emphasised that, where the validity of regulations (or in this appeal a by-law) is concerned, the problem is one of characterisation, which requires ascertainment of the character of the impugned regulation by reference to its operation and legal effect in the circumstances to which it applies. The court must make its "own assessment of the directness and substantiality of the connexion between the likely operation of the regulation and the statutory object to be served". The regulation is invalid if the directness and substantiality of that connection "is *so exiguous* that the regulation *could not reasonably* have been adopted as a means of fulfilling the statutory object" (emphasis added).
>
> The references to "so exiguous" and "could not reasonably have been adopted" demonstrate that the question to be asked and answered is not whether the by-law is a reasonable or a proportionate response to the mischief to which it is directed but whether, in its legal and practical operation, the by-law is authorised by the relevant by-law making power. The question of validity is to be decided by characterising the impugned provisions and assessing the directness and substantiality of the connection between the likely operation of the by-law and the statutory object to be served. Could the by-law, so characterised and assessed, reasonably be adopted as a means of fulfilling that object? No further inquiry into the proportionality of the by-law is permitted or required.

7.4.3 Commission should work out SG&A costs using reasonable method having regard to all relevant information

Regulation 44(3) provides that, if the Commission is unable to work out the amount using the information mentioned in reg 44(2) then the Commission must work out the amount by one of the alternative methods in reg 44(3)(a) to reg 44(3)(c).

The Commission considers that reg 44(3)(c) is the most suitable method for working out Dalian's domestic SG&A costs because:

- reg 44(3)(c) requires the Commission to use another reasonable method and having regard to all relevant information;
- the Commission has relevant information from Dalian's records and from [redacted] records concerning actual amounts of SG&A costs incurred in selling the goods in the domestic market; the Commission considers that it is reasonable to use this information because, while separate entities, Dalian and [redacted] (it is not reasonable to use transfer pricing information between Dalian and [redacted] that is unreliable because of arms length issues). The Commission considers that, absent a compelling reason indicating the contrary, actual SG&A cost information from an entity or entities involved in the relevant transactions is the best SG&A cost information for use in the Commission's calculations.

The Commission does not consider that reg 44(3)(a) is a suitable method for working out Dalian's domestic SG&A costs because:

- reg 44(3)(a) requires the Commission to identify the actual amounts of administrative, selling and general costs incurred by the exporter in the production and sale of the same general category of goods in the domestic market of China;
- however the great majority of goods sold by Dalian in the domestic market of China are sold through [redacted] and, as set out above, these sales are not arms length; on that basis the majority of Dalian's records would not reasonably reflect the SG&A costs associated with domestic sales and the remainder of Dalian's records would not be representative of Dalian's domestic sales.

The Commission does not consider that reg 44(3)(b) is a suitable method for working out Dalian's domestic SG&A costs because:

- reg 44(3)(b) requires the Commission to identify the weighted average of the actual amounts of SG&A costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of China;
- however Dalian maintains that it is an export oriented producer that does not manufacture HSS for the Chinese domestic market and that sales made in the Chinese domestic market are the small fraction of HSS produced that does not meet the Australian standards for various reasons;[33] on that basis the Commission considers that SG&A costs incurred by other exporters or producers in the

[33] Dalian Response to Exporter Questionnaire DA0071 at page 36.

production and sale of like goods in the domestic market of China may differ materially from Dalian's SG&A costs.

8 Dalian – profit

8.1 ADRP request for reinvestigation

The ADRP's request for reinvestigation as it relates to Dalian in respect of the issue of profit is stated in the following terms (footnotes omitted):

> In the Report it is stated that the Commission has calculated an amount for profit under s.45(3)(a) of the Regulation using actual amounts realised by Dalian Steelforce from the sale of the same general category of goods in the domestic market in the country of export. In its application for review, Dalian Steelforce contends this statement is not correct and that what the Commission did was to calculate the profit based on the amounts realised by [redacted].
>
> The submission by the Commission to the Review Panel appears to accept that the contention by Dalian Steelforce is correct, that is that the profit on the sale by [redacted] was used, not that from the sale of the goods by Dalian Steelforce. The basis for the approach taken by the Commission is stated in the submission to be that when constructing normal value, the Act mandates an assumption that the goods have been sold in the OCOT and that the transfer of the goods from Dalian Steelforce to [redacted] is not an OCOT sale.
>
> It is correct that s.269TAC(2)(c)(ii) does refer to the assumption that the goods have been sold in the OCOT. However, s.269TAC(5B) states that the amount of profit is to be determined as the regulations provide for that purpose. While s.45(2) of the Regulation refers to the sale of like goods by the exporter in the OCOT, there is no such requirement in s.45(3). The approach by the Commission in this case also seems at odds with the Commission's policy as set out in the Dumping and Subsidy Manual which relevantly states when referring to s.45(3):
>
> > "There is no requirement to test for ordinary course of trade in any of these three alternatives, nor will the Commission read any ordinary course of trade requirement into them."
>
> The Commission's submission also refers to the decision of the Federal Court in *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* as support for the approach taken by the Commission. However, there is no reference in that case to the profit not being based on the sales of the exporter under s.45(3). That case proceeded on the basis that the Commissioner worked out the amounts under s.45(3) based on the prices received by Dalian Steelforce. The decision of the Federal Court in that case does not provide support for the approach taken by the Commission in this case.

8.2 Affirmed or new findings

As a result of its reinvestigation the Commission finds that Dalian's dumping margin should change to **11.1 per cent** (from 18.7 per cent stated in REP 379).

8.3 Evidence or other material on which the findings are based

The Commission based its findings on a review of the application to Dalian of the relevant regulations.

8.4 Reasons for the Commissioner's decision

On its current understanding of reg 45(3)(a) the Commission accepts that it must work out an amount for Dalian's domestic profit under that provision by identifying only actual

amounts realised by Dalian in the relevant domestic sales. These actual amounts would include amounts realised by Dalian in sales to [redacted] but would not include amounts realised by [redacted] to third parties.

The Commission has recalculated Dalian's profits on that basis and made consequential changes to Dalian's normal value and dumping margin. The Commission has found that Dalian's dumping margin would be **11.1 per cent** (Dalian's dumping margin was stated as 18.7 per cent in REP 379). Details of the Commission's recalculations are set out in **Confidential Appendix 2 – Dalian DM Recalculation**.

9 Appendices

Confidential Appendix 1	Tianjin Youfa Subsidy Calculations
Confidential Appendix 2	Dalian DM Recalculation (comprises 4 files a-d)