



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS
NO. 550

**ALLEGED DUMPING OF
PRECISION PIPE AND TUBE STEEL**

**EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA,
THE REPUBLIC OF KOREA, TAIWAN AND
THE SOCIALIST REPUBLIC OF VIETNAM**

AND

**ALLEGED SUBSIDISATION OF
PRECISION PIPE AND TUBE STEEL**

**EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA AND
THE SOCIALIST REPUBLIC OF VIETNAM**

1 June 2021

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ABBREVIATIONS

2013 Vietnam Subsidy Notice	<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i> published in March 2013
2020 Vietnam Subsidy Notice	<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i> published in February 2020
ABF	Australian Border Force
ADN	Anti-Dumping Notice
The Act	<i>Customs Act 1901</i>
The applicant	Orrcon Manufacturing Pty Ltd
Austube Mills	Austube Mills Pty Ltd
BlueScope	BlueScope Steel Limited
CBSA	Canada Border Services Agency
CBSA Cold-rolled steel case	CBSA investigation into the subsidising of cold-rolled steel from China, South Korea and Vietnam
CBSA Copper pipe case	CBSA investigation into the subsidising of certain copper pipe fittings originating in the Socialist Republic of Vietnam
CBSA COR case	CBSA investigation into the subsidising of certain corrosion-resistant steel sheet originating in Turkey, the United Arab Emirates and Vietnam
CBSA Oil tubes case	CBSA investigation into the subsidising of certain oil country tubular goods originating in or exported from India, Indonesia and Vietnam
China	the People's Republic of China
CDI	Chinh Dai Industrial Co., Ltd.
CDT	Chinh Dai Steel Technology Co., Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make and sell
CON 550	<i>Consideration Report No. 550</i>
DITH	DITH Australia Pty Ltd
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic public record
Five Steel	Five Steel (Tianjin) Tech Co., Ltd
FOB	Free on board
GAAP	Generally accepted accounting principles
GOC	Government of China
the goods	the goods (also referred to as the goods under consideration or GUC) as defined in chapter 3.5.1
GOV	Government of Vietnam
Hoa Phat Binh Duong	Hoa Phat Binh Duong Steel Pipe Co., Ltd

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Hoa Phat Da Nang	Hoa Phat Da Nang Steel Pipe Co., Ltd
Hoa Phat Long An	Hoa Phat Long An Steel Pipe Co., Ltd
Hoa Phat Steel	Hoa Phat Steel Pipe Co., Ltd
HRC	hot rolled coil
HSS	hollow structural sections
HSS countries	China, Korea, Malaysia, Taiwan and Thailand
JFE	JFE Shoji Australia Pty Ltd
Korea	the Republic of Korea
M&H	M&H Vietnam Trading and Services Co., Ltd.
MT	metric tonnes
the Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual (November 2018)</i>
the Minister	the Minister for Industry, Science and Technology
Nguyen Minh Steel	Nguyen Minh Steel Group Joint Stock Company
NIP	non-injurious price
Orrcon	Orrcon Manufacturing Pty Ltd
PAD	Preliminary Affirmative Determination
the PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
RCR	RCR International Pty Ltd
REQ	response to exporter questionnaire
REV 529	Review 529 into hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand
RHS	rectangular or square hollow sections
ROI	return on investment
SEF	statement of essential facts
SOE	State-owned Enterprise
Steelforce Australia	Steelforce Australia Pty Ltd
the subject countries	China, Korea, Taiwan and Vietnam
Ta Fong	Ta Fong Steel Co., Ltd
Thailand	the Kingdom of Thailand
TRAV	Trade Remedies Authority of Vietnam
USP	unsuppressed selling price
Vietnam	the Socialist Republic of Vietnam
Vina One	Vina One Steel Manufacturing Corporation
WTO	World Trade Organization
Yantai Aoxin	Yantai Aoxin International Trade Co., Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Preliminary findings

This statement of essential facts (SEF) No. 550 has been prepared in response to an application by Orrcon Manufacturing Pty Ltd (Orrcon) lodged with the Commissioner of the Anti-Dumping Commission (the Commissioner) seeking the publication of a dumping duty notice in respect of precision pipe and tube steel (the goods) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Taiwan and the Socialist Republic of Vietnam (Vietnam) (collectively, the subject countries) and a countervailing duty notice in respect of the goods exported to Australia from China and Vietnam.

Orrcon, the sole member of the Australian industry manufacturing like goods, claims that it suffered material injury as a result of dumped and subsidised imports of the goods.

The Commissioner has found that the goods exported by:

- Chinese exporters were at dumped and subsidised prices.
- Korean exporters were at dumped prices.

The Commissioner has also found that dumped and subsidised exports from China and dumped exports from Korea have caused material injury to the Australian industry for like goods.

The Commissioner did not find that the goods exported by Taiwanese or Vietnamese exporters were dumped. In respect of Vietnam, exports of the goods by cooperative and residual exporters were not subsidised and for non-cooperative entities, exports of the goods were subsidised, albeit at negligible levels.

Based on these preliminary findings and, subject to any further submissions received in response to this SEF, the Commissioner proposes to:

- recommend that the Minister for Industry, Science and Technology (the Minister) publish a dumping duty notice in respect of all exports of the goods from Chinese and Korean exporters;
- recommend that the Minister publish a countervailing duty notice in respect of all exports of the goods from Chinese exporters; and
- terminate this investigation, in so far as it relates to all Taiwanese and Vietnamese exporters.

1.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*¹ (the Act) describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

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when conducting investigations in relation to goods covered by an application under section 269TB(1).

1.2.1 Application

On 16 March 2020, Orrcon lodged an application alleging that the Australian industry for like goods has suffered material injury caused by the goods exported to Australia from China and Vietnam at dumped and subsidised prices, and from Korea and Taiwan at dumped prices.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation 550 on 31 March 2020.

Consideration Report No. 550 (CON 550) and Anti-Dumping Notice (ADN) No. 2020/050 provide further details relating to the initiation of the investigation.²

1.2.2 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015 (PAD Direction)* directs the Commissioner to publish a status report providing reasons why a PAD was not made.

On 1 June 2020, being 60 days after the initiation of the investigation, the Commissioner published a status report.³

As required by section 9 of the PAD Direction, if the Commissioner has published a status report in relation to an investigation, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the SEF.

The Commissioner has reconsidered whether to make a PAD, and decided to do so in conjunction with publishing this SEF. This is discussed in chapter 13.

1.2.3 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3)⁴, place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.⁵

² Electronic public record (EPR) 550, Items 2 and 3.

³ EPR 550, Item 17.

⁴ This power has been delegated to the Commissioner. See ADN No. 2017/10.

⁵ Section 269TDAA(1).

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In formulating the SEF, the Commissioner must have regard to the application, and any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation.⁶ The Commissioner may also have regard to any other matters considered relevant.⁷

The SEF was originally due to be placed on the public record by 20 July 2020. However, the due date for the SEF was extended.⁸ The Commissioner is now required to place the SEF on the public record by 1 June 2021.

1.2.4 Report to the Minister

The Commissioner's report in relation to this investigation was initially due to be provided to the Minister on, or before, 2 September 2020. However, this due date was extended.⁹ The report and recommendations must now be provided to the Minister on, or before, 23 July 2021,¹⁰ unless the investigation is terminated earlier.

1.3 Findings and conclusions

The Commissioner's preliminary findings and conclusions in this SEF are based on available information at this stage of the investigation. A summary is provided below and there is greater detail in the remainder of this report.

1.3.1 The goods and like goods and the Australian industry (chapters 3 and 4)

The Commissioner considers that locally produced precision pipe and tube steel are 'like' to the goods. The Commissioner is also satisfied that there is an Australian industry producing like goods, comprising solely of Orrcon.

The like goods manufactured by Orrcon are discussed in chapters 3 and 4 of this report and its verification report¹¹. As a result of the Anti-Dumping Commission's (the Commission) inquiries, the Commissioner proposes to:

- recommend an exemption under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) for 'air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter', from any anti-dumping measures on the basis of the Commission's finding that Orrcon does not offer like or directly competitive goods for sale in Australia¹²; and

⁶ Section 269TDAA(2)(a).

⁷ Section 269TDAA(2)(b).

⁸ EPR 550, Items 19, 41 and 43.

⁹ Ibid.

¹⁰ Under section 269TEA.

¹¹ EPR 550, Item 56.

¹² In the event that Orrcon (or another Australian industry member) offers like or directly competitive goods for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, an application may be made to have this exemption revoked.

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- clarify that the goods description applicable for any anti-dumping measures in respect of the thickness for rectangular and square products is limited to goods with a nominal thickness of less than 1.6 mm.

1.3.2 The Australian market (chapter 5)

The Australian market for the goods and like goods is supplied from local production by Orrcon and by imports from several countries, including the subject countries.

1.3.3 Dumping margins (chapter 6)

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

Country	Exporter	Dumping Margin (%)
China	Dalian Steelforce	2.9
	Uncooperative exporters	2.9
Korea	Uncooperative exporters	6.2
Taiwan	Ta Fong	- 9.0
	Uncooperative exporters	- 8.6
Vietnam	CDI	- 12.2
	Vina One	- 12.0
	Residual exporters	- 6.5
	Uncooperative exporters	- 6.5

Table 1 – Dumping Margins

1.3.4 Subsidy margins (chapter 7)

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

Country	Entity	Subsidy Margin (%)
China	Dalian Steelforce	9.0
	Non-cooperative entities	51.6
Vietnam	CDI	0
	Vina One	0
	Residual exporters	0
	Non-cooperative entities	0.01

Table 2 – Subsidy Margins

1.3.5 The economic condition of the Australian industry (chapter 8)

The Commissioner is preliminarily satisfied that the Australian industry experienced injury to its volumes, price and profit as well as other economic indicators during the investigation period.

1.3.6 Material injury caused by dumped and subsidised goods (chapter 9)

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The Commissioner has found that dumped and subsidised exports of the goods from China and dumped exports of the goods from Korea caused material injury to the Australian industry.

1.3.7 Whether dumping and subsidisation may continue (chapter 10)

The Commission is preliminarily satisfied that dumping and subsidisation may continue in relation to the export of the goods by exporters from China and dumping may continue in relation to the export of goods by exporters from Korea.

1.3.8 Non-injurious price (chapter 11)

The Commissioner is satisfied that there is a situation in the Chinese domestic market that renders domestic selling prices unsuitable for determining normal value under section 269TAC(1). This provides an exception to the Minister's mandatory consideration of the lesser duty rule. Accordingly, in relation to China, the Commissioner proposes to recommend that the Minister is not required to have regard to the lesser duty rule for the purposes of sections 8(5BA) and 10(3D) of the Dumping Duty Act, noting that the Minister may still do so.

In addition, the Commission has calculated that the non-injurious price (NIP) is not less than the normal values ascertained for exporters from Korea. The Commissioner recommends that the Minister have regard to the desirability of the lesser duty rule. However, based on the fact that the NIP is not less than the normal value, the lesser duty rule will have no practical effect (i.e. the NIP will not be operative).

1.3.9 Proposed measures (chapter 12)

The Commissioner proposes to recommend to the Minister that anti-dumping measures, using the *ad valorem* duty method, be imposed in the form of:

- a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from China and Korea; and
- a countervailing duty notice in respect of countervailing duty that may become payable by importers of the goods from China.

In this investigation, it was found that a less than adequate remuneration (LTAR) subsidy was available under Program 20 in respect of hot rolled coil (HRC). HRC was a cost input used in constructing the normal value for Chinese exporters (see chapter 6.5).

Accordingly, as exporters from China are subject to both a dumping and countervailing duty, it is necessary to calculate the effective rate of interim dumping duty (IDD) by 'backing out' the subsidy margin attributed to Program 20 and applying interim countervailing duty (ICD).

A summary of the proposed recommendations and effective rates of interim duty are shown in the table below.

Exporter	Proposed duty method	Rate of ICD (%)	Rate of IDD (%)	Combined rate of ICD and IDD (%)
Dalian Steelforce (China)	<i>Ad valorem</i>	9.0	0.0	9.0

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All other Exporters (China)	<i>Ad valorem</i>	51.6	0.0	51.6
All Exporters (Korea)	<i>Ad valorem</i>	N/A	6.2	6.2

Table 3 – Summary of proposed effective interim dumping and countervailing duty

1.3.10 Preliminary affirmative determination (chapter 13)

As part of this SEF, the Commissioner, after having regard to the application, the submissions received and other relevant information, has determined that it is appropriate to make PAD. Pursuant to section 269TD(1)(a), the Commissioner is satisfied that there appears to be sufficient grounds for the publication of:

- a dumping duty notice in respect of the goods exported to Australia by all exporters from China and Korea; and
- a countervailing duty notice in respect of the goods exported to Australia by all exporters from China.

As a result, the Commissioner has made a PAD, pursuant to section 269TD. Securities will be taken in relation to ICD and IDD that may become payable for imports of the goods that are entered for home consumption from 2 June 2021.

1.3.11 Termination (chapter 14)

Section 269TDA provides for when the Commissioner must terminate an investigation.

Subject to any submissions received in response to this SEF, the Commissioner proposes to terminate:

- the dumping investigation in relation to all exporters from Taiwan and Vietnam, on the basis that there has been no dumping of any of the goods, in accordance with section 269TDA(1)(b)(i); and
- the countervailing investigation in relation to all exporters from Vietnam, on the basis that:
 - in respect of CDI, Vina One and residual exporters, no countervailable subsidy has been received in respect of any of those goods pursuant to section 269TDA(2)(b)(i); and
 - in respect of non-cooperative entities, a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level, pursuant to section 269TDA(2)(b)(ii).

2 BACKGROUND

2.1 Initiation

On 16 March 2020, Orrcon lodged an application with the Commissioner under section 269TB(1) seeking the publication of a dumping duty notice in respect of the goods exported to Australia from China, Korea, Taiwan and Vietnam, and a countervailing notice in respect of the goods from China and Vietnam.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation 550 on 31 March 2020. Public notification of the initiation was also made on 31 March 2020. CON 550 and ADN No. 2020/030 provide further details relating to the initiation of the investigation.¹³

In respect of this investigation:

- the investigation period for the purpose of assessing dumping and subsidisation is 1 January 2019 to 31 December 2019; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and subsidised goods is from 1 January 2016.

2.2 Previous cases

There have been no previous cases in relation to precision pipe and tube steel exported to Australia.

2.3 Conduct of the investigation

2.3.1 Statement of essential facts

The initiation notice advised that the SEF would be placed on the public record by 20 July 2020. However, the due date for the SEF was extended.¹⁴ In the most recent extension, as advised in ADN No. 2021/064, the Commissioner approved an extension of time for the publication of the SEF until 1 June 2021.

2.3.2 Australian industry

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

2.3.3 Importers

The Commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from China, Korea, Taiwan and Vietnam during the investigation period. The Commission forwarded importer questionnaires to 27 importers

¹³ EPR 550, Items 2 and 3.

¹⁴ EPR 550, Items 19, 41, 43 and 55.

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and placed a copy of the importer questionnaire on the Commission’s website for completion by other importers who were not contacted directly.

Desktop verifications were undertaken for the following importers:

- Steelforce Australia Pty Ltd (Steelforce Australia) importing from China
- DITH Australia Pty Ltd (DITH), importing from Korea
- Austube Mills Pty Ltd (Austube Mills) importing from Taiwan
- RCR International Pty, importing from Vietnam.

Verification reports relating to each importer are available on the public record.

Responses were received from the following importers, however the Commission elected not to conduct a verification of the data in this instance:

- B&D Metals Group Pty Ltd (Vietnam)
- Marubeni Itochu Steel Oceania Pty Ltd (Vietnam)
- Focus Steel Pty Ltd (China)
- Kuredale Pty Ltd (China).

2.3.4 Exporters

The Commission forwarded questionnaires to 29 suppliers identified from the ABF import database at the beginning of the investigation. Five Steel (Tianjin) Tech Co Ltd, completed a questionnaire response (REQ) prior to the due date of 7 May 2020. Thirteen other entities were granted extensions to provide a REQ, with 12 responses received. Responding entities are summarised below:

Exporter name	Questionnaire submission date
China	
Five Steel (Tianjin) Tech Co., Ltd (Five Steel)	01 May 2020
Yantai Aoxin International Trade Co., Ltd (Yantai Aoxin)	21 May 2020
Dalian Steelforce Hi-Tech Co., Ltd (Dalian Steelforce)	01 Jun 2020
Vietnam	
Vina One Steel Manufacturing Corporation (Vina One)	15 Jun 2020
M&H Vietnam Trading and Services Co., Ltd. (M&H)	5 Jun 2020
Hoa Phat Binh Duong Steel Pipe Co., Ltd (Hoa Phat Binh Duong)	10 Jun 2020
Hoa Phat Steel Pipe Co., Ltd (Hoa Phat Steel)	10 Jun 2020
Hoa Phat Long An Steel Pipe Co., Ltd (Hoa Phat Long An)	10 Jun 2020
Hoa Phat Da Nang Steel Pipe Co., Ltd (Hoa Phat Da Nang)	10 Jun 2020
Chinh Dai Industrial Co., Ltd. (CDI)	9 Jun 2020
Chinh Dai Steel Technology Co., Ltd (CDT)	9 Jun 2020
Nguyen Minh Steel Group Joint Stock Company (Nguyen Minh Steel)	29 May 2020
Taiwan	
Ta Fong Steel Co., Ltd (Ta Fong)	20 May 2020

Table 4 – Entities who provided a REQ

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2.3.5 Foreign Governments

The Commission forwarded questionnaires to the Government of China (GOC) and the Government of Vietnam (GOV) at the beginning of the investigation. A response was received from the GOV which has been considered by the Commissioner in reaching the conclusions contained within this SEF.

No questionnaire response was received from the GOC.¹⁵

2.4 Submissions received from interested parties

The Commission received the following submissions from interested parties prior to the publication of this SEF. These submissions have been considered by the Commissioner in reaching the conclusions contained within this SEF.

Public Record Item No.	Interested Party	Date Received
004	Government of Vietnam	14/04/2020
005	Steelforce	14/04/2020
006	Orrcon	14/04/2020
007	Dalian Steelforce	28/04/2020
008	Vina One Steel	01/05/2020
009	JFE Shoji	01/05/2020
010	Orrcon	08/05/2020
011	RCR International	12/05/2020
012	Romak Hardware	12/05/2020
013	Hoa Phat Steel Pipe	20/05/2020
014	Orrcon	25/05/2020
016	Vina One Steel	27/10/2020
018	M&H Vietnam	09/06/2020
021	Orrcon	04/08/2020
022	Vina One Steel	04/08/2020
023	Hoa Phat Steel Pipe	04/08/2020
024	Nguyen Minh Steel	07/08/2020
038	Government of Vietnam	18/08/2020
039	Orrcon	19/08/2020
042	M&H Vietnam	20/01/2021
051	Orrcon	02/03/2021
052	CDI	19/03/2021
054	Orrcon	30/04/2021

¹⁵ In a recent investigation, *Investigation 553 – Painted Steel Strapping*, the GOC provided a response to a government questionnaire. Due to the similarities between Investigation 553 and this investigation, the Commission has had regard to the response by the GOC to Investigation for the purposes of this investigation. See chapter 6.4.4 for further discussion.

Table 5 – Submissions considered in this SEF

2.5 Preliminary affirmative determination

In accordance with section 269TD(1), the Commissioner may make a PAD, if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or if it appears that there will be sufficient grounds for the publication of such notices subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, a date no earlier than 1 June 2020) and the Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with the PAD Direction, 60 days after the initiation of such an investigation, the Commissioner must make a PAD or provide a Status Report outlining the reasons why a PAD has not been made.

On 1 June 2020, the Commissioner published a Day 60 Status Report in ADN No. 2020/057.¹⁶ In that report, the Commissioner set out that he did not make a PAD because he was not satisfied that, at that stage of the investigation, there appeared to be sufficient grounds for the publication of a dumping duty or countervailing duty notice.

The PAD Direction also requires the Commissioner to reconsider making a PAD after the publication of a status report, at least once prior to the publication of the SEF. In preparing this SEF, the Commissioner has reconsidered whether to make a PAD in view of the additional evidence available.

The Commissioner considers that the Commonwealth should take securities under section 42 of the Act in respect of interim dumping and countervailing duty that may become payable in relation to the goods exported to Australia from China and Korea.

The Commissioner is satisfied that securities are necessary to prevent material injury to the Australian industry occurring while the investigation continues. A detailed discussion of this is set out at Chapter 13 of this report.

Securities will apply to imports of the like goods from China and Korea entered for home consumption on or after **2 June 2021**.

2.6 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base the final recommendations to the Minister.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

¹⁶ EPR 550, Item 17.

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It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making their final report to the Minister. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **21 June 2021**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date, if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

The Commissioner must report to the Minister by 23 July 2021.

Submissions should preferably be emailed to: investigations3@adcommission.gov.au

Alternatively, interested parties may post submissions to:

Director, Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available at the Commission's web site via: www.adcommission.gov.au

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents.

Documents on the public record are intended to be considered in conjunction with this SEF.

3 THE GOODS, LIKE GOODS AND THE AUSTRALIAN INDUSTRY

3.1 Preliminary finding

The Commission is satisfied that locally manufactured precision pipe and tube steel comprises 'like goods' to the goods the subject of the application.

3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice and a countervailing duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Section 269T(1) defines 'like goods' as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports, even if the goods it produces are not identical to those imported. The industry must, however, produce goods that are "like" to the imported goods.

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

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

3.3 The goods

3.3.1 The goods description in the application

The application defined the goods as:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres ("mm") in outside diameter. Also included are air heater tubes to

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Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For rectangular and square products, those with a thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end-configurations such as plain, square-faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.

The subject goods are covered by a range of Australian Standards, including but not limited to: AS 1450 'Tube for Mechanical Purposes', AS 2556 'ERW Steel Air Heater Tubes' and AS/NZS 2053.1 'Conduits and fitting for electrical installations – General requirements.' Precision pipe and tube steel is a light gauge product, with tight dimensional tolerances used in structural customised applications such as gates and fencing, furniture, racking and shelving, automotive components, conduit and heat exchangers.

3.3.2 Tariff classification of the goods

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:¹⁷

Tariff Subheading	Statistical Code	Description
7306		OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL:
7306.30.00		Other, welded, of circular cross-section, of iron or non-alloy steel:
	30	Not exceeding 21 mm external diameter
7306.50.00		
	45	<i>Other, welded, of circular cross-section, of other alloy steel</i>
7306.6		Other, welded, of non-circular cross-section
7306.61.00		<i>Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:</i>
	21	Wall thickness not exceeding 2 mm
7306.69.00	10	Of other non-circular cross-section

Table 6 – General tariff classification for the goods

¹⁷ These tariff classifications and statistical codes may include goods that are both subject and not subject to the antidumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

3.3.3 Submissions received on the goods description – Nominal thickness

In its submission of 23 April 2020,¹⁸ Dalian Steelforce stated that:

- the goods description captures goods already subject to anti-dumping measures, specifically those applicable to hollow structural sections (HSS) exported to Australia from China, Korea, Taiwan, Malaysia and the Kingdom of Thailand (Thailand);
- rectangular or square hollow sections (RHS) with a nominal thickness of 1.6 mm or greater and a perimeter up to and including 1277.3 mm is considered to be part of the HSS goods description;
- HSS is generally produced to the Australian Standard AS 1163 or equivalent international standards, and AS 1163 allows for a thickness tolerance of +/- 10 per cent. RHS with a nominal thickness of 1.6 mm can therefore have an actual thickness range from 1.44 mm to 1.76 mm, meaning that measures may already technically apply to goods with an actual thickness of 1.44 mm and above;
- the description of the goods does not appear to limit the goods to precision pipe only and includes “all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications;” and
- the goods description and the Commission’s consideration of Orrcon’s claims concerning 1.6 mm non-circular precision pipe in CON 550 indicates that RHS already subject to measures likely competes with the goods and could also be considered to be ‘like goods’.

In its submission of 29 April 2020,¹⁹ Vina One requested that the Commission clarify that in respect of RHS, the investigation is limited to tube products with a nominal thickness less than 1.6 mm.

In their submissions of 20 and 25 May 2020 respectively,²⁰ Hoa Phat Steel and Vina One also observed that the goods description did not specify whether the referenced dimensions were nominal or actual, making it difficult to accurately identify subject and non-subject goods. Both Hoa Phat Steel and Vina One also stated that:

- other Australian producers exist and manufacture like goods, noting that in investigations, reviews and continuation inquiries relating to HSS exported from China, Korea, Taiwan, Malaysia and Thailand, the Australian industry included manufacturers other than Orrcon; and
- the thickness of RHS does not define separate classes of goods, and all locally produced structural RHS complying to AS1163 should be considered like goods.

¹⁸ EPR 550, Item 7.

¹⁹ EPR 550, Item 8.

²⁰ EPR 550, Items 13 and 16.

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3.3.4 Commission's assessment – Nominal thickness

In response to the concerns raised by Dalian Steelforce, Hoa Phat Steel and Vina One regarding the scope of the goods under consideration and like goods, the Commission published an issues paper²¹ inviting submissions from interested parties concerning:

- whether they use nominal or actual thickness when selling, supplying, declaring or reporting on RHS (sold either in Australia or other markets which may include reference to the relevant standards in their domestic country) and any reasons for this;
- whether the thicknesses referred to in the description of the goods under consideration are usefully intended to mean 'nominal' or 'actual' thickness; and
- whether there is a lack of clarity in classifying RHS of certain thicknesses.

The Commission received responses from Orrcon, Hoa Phat Steel, Nguyen Minh Steel and Vina One.²² Each confirmed that they use nominal thickness when selling, supplying, declaring or reporting on RHS, and the thickness parameters referred to in the goods description were understood to refer to 'nominal' thickness.

Vina One and Hoa Phat Steel also stated that it is general practice within the steel industry for customers to specify and order pipe and tubing products according to the nominal dimensions relevant to the standards in their jurisdiction, and that both entities do not record the actual thickness for domestic or exported subject goods. Moreover, identification of actual thickness requires recording actual thickness of feed coil purchased and consumed against each production lot. As the feed coil is subject to its own tolerances, it is not practical to account for and record the actual thickness of each production lot.

Based on submissions from interested parties, the Commission considers that the thickness parameters for RHS referred to in the goods description for precision pipe and tube steel (i.e. "those with a thickness of less than 1.6 mm") are nominal. Interested parties should therefore be able to accurately determine whether RHS of certain nominal thicknesses should be classified as the goods under consideration or like goods. The goods description for HSS is consistently distinguished following this interpretation because it specifically excludes "precision RHS with a nominal thickness of less than 1.6 mm" [emphasis added].²³

3.4 Like goods

An application can only be made if there exists an Australian industry producing 'like goods' to the goods the subject of the application. The phrase 'like goods' is defined in section 269T(1). Sections 269T(2), 269T(3), 269T(4), 269T(4A), 269T(4B) and 269T(4C)

²¹ Item 20 on the public record refers.

²² Items 24, 21, 22 and 23 on the public record refer.

²³ The goods description for HSS can be found on the Commission's Dumping Commodity Register at: https://www.industry.gov.au/sites/default/files/adc/measurements/dcr_-_hollow_structural_sections_3.pdf

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are relevant to determining whether the like goods are produced in Australia and whether there is an Australian industry.²⁴

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

3.4.1 Submissions received on like goods – Air heater tubes

For circular products, the goods are limited to products equal to, or less than 21 mm in outside diameter, except for products described as air heater tubes made to AS2556, which are limited, up to and including 101.6 mm in outside diameter.

In a submission received 21 April 2020 from JFE Shoji Australia Pty Ltd (JFE), it was alleged that Orrcon has not supplied air heater tubes for some time and potential customers were advised that they would need to import these products.

3.4.2 Commission's assessment – Air heater tubes

During verification, it was noted that Orrcon's Australian sales for the investigation period did not include goods fitting the description for air heater tubes. During verification, Orrcon advised that it has the capability to supply precision pipe and tube matching this description, but it does not currently do so.²⁵

The Commission notes the following:

- the submission by JFE cites examples of potential Australian customers enquiring with Orrcon for the supply of air heater tubes without success;
- the absence of any products matching the description for air heater tubes in Orrcon's Australian sales listing for the investigation period; and
- the absence of any products matching the description for air heater tubes (i.e. those made to a standard of AS2556) in Orrcon's Precision Product Catalogue.²⁶

Accordingly, the Commission preliminarily considers that Orrcon does not offer like or directly competitive goods to air heater tubes for sale in Australia.

Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act provide that the Minister may exempt goods from interim dumping and interim countervailing duty and dumping and countervailing duty if satisfied that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

²⁴ See Chapter 4 for further discussion on the Australian industry.

²⁵ Orrcon provided additional information to the Commission in respect of air heater tubes shortly before publication of this SEF. The Commission has not had regard to this information at this stage the Commission considers doing so would prevent the timely placement of the SEF on the public record. The Commission will examine this information as part of its preparation of the report to the Minister.

²⁶ Available at <https://www.orrconsteel.com.au/sites/default/files/2019-07/2016-precision-brochure.pdf>

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In light of the Commission's findings above, the Commission proposes to recommend the Minister exempt from interim dumping and interim countervailing duty and dumping and countervailing duty "*air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter*", subject to further submissions received on whether like, or directly competitive goods, are offered for sale by the Australian industry. While the investigation continues, (i.e. until such time as an exemption is granted), it is necessary to take securities on air heater tubes for the purpose of the PAD discussed at chapter 13.

The Commission notes that the proposed exemption of air heater tubes has been taken into account by the Commission in its preparation of this SEF, including in chapters 3.4.3 to 3.4.7.

3.4.3 Physical likeness

The Commission has found that both the imported goods and the goods produced by the Australian industry are physically alike in all aspects. Both are traded in a similar range of grades, shapes, lengths and thicknesses, as specified in the goods description.

3.4.4 Commercial likeness

The Commission has found that the imported and locally produced goods are commercially similar. Imported goods and goods produced by the Australian industry are interchangeable and compete in the same market sectors, e.g. fencing and furniture manufacturing, construction, etc. with direct head-to-head competition between them.

3.4.5 Functional likeness

The Commission has found that the imported and locally produced goods are functionally alike, as they compete for sales to the same customers for similar (or the same) end-uses. These end uses include fencing and gates, furniture, shop fittings, automotive (original equipment and aftermarket), industrial hardware, general engineering, heat exchangers and electrical conduits.

3.4.6 Production likeness

The Commission has found that the production processes and raw material inputs for the imported and locally produced goods are alike in all significant practical aspects.²⁷ HRC, either bare, coated or galvanised, is the major raw material input.

3.4.7 Like goods assessment

Based on the findings above, the Commission considers that goods produced by the Australian industry, other than those products described as air heater tubes, have characteristics identical to, or closely resembling, the goods exported to Australia. The Commission considers that:

²⁷ See Chapter 4.5 for further discussion on the production process.

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

In light of the above, the Commissioner is satisfied that the Australian industry produces 'like goods' the subject of the application (other than air heater tubes) to the goods as defined in section 269T.

3.5 Conclusion

3.5.1 Clarification of goods description

In light of the Commission's findings regarding nominal thickness discussed in chapter 3.3.4, the Commission intends to clarify the goods description to include the word 'nominal', as follows:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres ("mm") in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For rectangular and square products, those with a nominal thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end-configurations such as plain, square-faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.

3.6 Model control codes

The Commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values (the basis for using a MCC structure and the Commission's practice is explained in ADN No. 2019/132). All interested parties participating in this inquiry were requested to provide sales and cost data in accordance with the MCC structure detailed in the table below:

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	Category	Sub-Category	Identifier	Sales Data	Cost Data
1	Prime	Prime	P	Mandatory	Not applicable
		Non-Prime	N		
2	Steel Base/Type * Batch Hot Dipped Galvanised abbreviated as 'Batch HDG'; Electro Galvanised abbreviated as 'EG'; Continuously Galvanised abbreviated as 'CG'; Mild Steel Galvabond as 'MSGB'.	Hot Roll	H	Mandatory	Mandatory
		Cold roll (Semi Bright)	C		
		Galvanised (Batch HDG,EG,CG or MSGB)	G		
		Other (e.g. alloy steel)	A		
3	Steel Grade	C200	1	Mandatory	Mandatory
		C250	2		
		C350	3		
		C450	4		
		Other	5		
4	Surface Protection	Oiled	O	Mandatory	Mandatory
		Clear or painted	P		
		No oil or paint	N		
5	Coating Mass	<20 g/m ² (including none)	1	Mandatory	Mandatory
		≥20 g/m ² to <100 g/m ²	2		
		≥100 g/m ² to <275 g/m ²	3		
		≥275 g/m ²	4		
6	Shape	Circular	C	Mandatory	Mandatory
		Rectangular or Square	R		
7	Circular size * outside diameter ** Circular products with an outside diameter between >21 mm to ≤101.6 mm which are not air heater tubes are not the goods.	Not circular	N	Mandatory	Mandatory
		≤16 mm	1		
		>16 mm to ≤21 mm	2		
		>21 mm to ≤101.6 mm (Air Heater Tubes)	3		
8	Rectangular/Square/ Oval/Other size * outside perimeter	Not rectangular/square	N	Mandatory	Mandatory
		≤40 mm	1		
		>40 mm to ≤80 mm	2		
		>80 mm to ≤260 mm	3		
9	Thickness	<1.6 mm	A	Mandatory	Mandatory
		≥1.6 mm to <3.2 mm	B		
		≥3.2 mm	C		
10	Length	≤4 m	1	Mandatory	Optional
		>4m to ≤8 m	2		
		>8 m to ≤12.0 m	3		
		>12.0 m	4		
11	End configuration	Plain end	P	Optional	Optional
		Threaded/flanged/swaged	T		
		Other (e.g. square faced)	O		

Table 7: MCC Structure

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Any changes to the proposed MCC structure, or alterations in terms of its application in respect of each interested party, have been addressed in the relevant verification reports available on the public record for this investigation.

3.6.1 Submissions received in respect of the MCC structure

In its submission of 14 April 2020,²⁸ Steelforce Trading Pty Ltd (Steelforce Trading)²⁹ stated that:

- the categorisation of the MCC Category 2 (Steel Base/Type) contains some characteristics which are not mutually exclusive, in that a product could be produced from hot rolled coil, as well as be galvanised and alloyed; and
- as a result, this category should be split into three distinct categories, being Coil Production Method (Hot Rolled or Cold Rolled), Chemistry (Alloyed or Non-alloyed) and Finish (Oiled, Painted, Galvanised, Aluminised or None).

3.6.2 Commission's assessment

In response to the concerns raised by Steelforce Trading regarding the MCC structure, the Commission advised Steelforce Trading by email³⁰ of the following:

- MCC Category 2 refers only to the raw material input, which could be for example, hot rolled coil, cold rolled coil, pre-galvanised coil or another steel type (which could, for instance, be an alloyed steel)
- galvanisation is addressed in Category 5 – Coating Mass. The MCC structure is neutral with respect to the coating type, however a sufficiently galvanised product would be categorised between 2 and 4 in Category 5.
- whether or not the goods are alloyed is irrelevant to the MCC structure.

As such, no change to the MCC structure was made.

3.6.3 Verification of MCCs

During the course of the verification of the subject exporters, the Commission identified in some cases exporter specific amendments to the MCC structure. These amendments are included in the exporter verification reports and are discussed in chapter 6.

²⁸ EPR 550, Item 5.

²⁹ Steelforce Trading has subsequently changed its name following the investigation period. It is now named Austeel Trading Pty Ltd.

³⁰ Confidential Attachment 1 – Email exchange between the Commission and Steelforce Trading.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commissioner is satisfied that there is an Australian industry, consisting wholly of Orrcon, producing like goods, and that the like goods are wholly or partly manufactured in Australia.

4.2 Legislative framework

The Commissioner must be satisfied that the like goods are in fact produced in Australia. Sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Australian industry

In its application, Orrcon claimed it is the only Australian manufacturer of the goods. No further Australian industry manufacturers of the goods identified themselves to the Commission following the initiation of the investigation, nor were any further Australian industry manufacturers identified by the Commission during the investigation. This includes examination of:

- whether known manufacturers of similar products also manufactured like goods;³¹ and
- responses from other Australian market participants, similar to Orrcon, who identified themselves as importers during the verification.

4.4 Submissions received in respect of the Australian industry

The Trade Remedies Authority of Vietnam (TRAV) had previously made a submission to the Commission on 21 January 2020 in respect of another application for similar goods (that application was subsequently withdrawn). At the request of the GOV, the submission has been considered by the Commission in this investigation. In this submission, among other things, TRAV submitted that Orrcon's application might not comply with Article 4.1 of the Anti-Dumping Agreement (ADA), if Orrcon is not an Australian producer of like goods to the goods under consideration.

Dalian Steelforce made a submission, published on 28 April 2020³² alleging that Australian industry members manufacturing HSS – Orrcon, Austube Mills Pty Ltd, and Australian Pipe and Tube Pty Ltd state on their websites that they manufacture RHS and SHS to dimensions and thicknesses that would meet the description of like goods. Dalian

³¹ Non-confidential Attachment 1 - Assessment of HSS manufacturers.

³² EPR 550, Item 7.

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Steefforce raised the question as to the constitution of the Australian industry, the goods and like goods, conditions of competition and inquiry and causal link assessments.

Hoa Phat Steel Pipe Co., Ltd (Hoa Phat Steel) and Vina One made submissions, published on 20 May 2020³³ and 27 May 2020³⁴ respectively, regarding the goods, the subject of the investigation. Both submitted that Orrcon's application might not meet the standards set out in section 269TB(4), which requires that an application must be supported by a sufficiently representative percentage of the Australian industry.

4.4.1 Orrcon's status as an Australian manufacturer

TRAV requested that the Commission verify Orrcon's claim as the only Australian manufacturer of precision pipe and tube steel.

TRAV also submitted that Orrcon has a relationship with a Vietnamese exporter of the goods, through its parent company, BlueScope Steel Limited (BlueScope). BlueScope is the owner of NS BlueScope Vietnam, a Vietnamese steel producer. In TRAV's view if Orrcon imported the goods from Vietnam, according to Article 4.1 of the ADA, Orrcon would not be a producer of the goods, and accordingly, the investigation should be terminated on the grounds of there being no domestic Australian producer (if it is accepted there are no other domestic producers).

4.4.2 Commission's assessment

Sole Australian manufacturer of the goods

As noted in chapter 4.3, and further discussed in chapter 4.4.3, no further Australian industry manufacturers of the goods identified themselves to the Commission following the initiation of the investigation, nor were any further Australian industry manufacturers identified by the Commission during the investigation.

No domestic producer of the goods

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

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

Section 269TB(6) provides that such an application is taken to be supported by a sufficient part of the Australian industry:

...if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:

³³ EPR 550, Item 13.

³⁴ EPR 550, Item 16.

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- (a) *account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and*
- (b) *account for not less than 25% of the total production or manufacture of like goods in Australia.*

As detailed in CON 550, the Commissioner was satisfied that Orrcon represents the entire Australian industry and accounts for more than 50% of the total Australian production of like goods, thereby satisfying the requirements of sections 269TB(4)(e) and 269TB(6).

The Anti-Dumping Commission *Dumping and Subsidy Manual* (the Manual) sets out that:

*There are no provisions in the Act to exclude from the definition of Australian industry a producer/manufacturer that is related to an exporter, or that is itself an importer of allegedly dumped or subsidised goods.*³⁵

The Commission has also reviewed imports of the goods, as reported in the ABF import database for the investigation period, and did not identify any imports of the goods by Orrcon or a related party of Orrcon during the investigation period.

In light of the above, the Commission is satisfied that the investigation has been properly initiated in accordance with the Act and that Orrcon is the sole Australian manufacturer/producer of the goods under consideration.

4.4.3 Insufficient members of the Australian industry in application

Hoa Phat Steel and Vina One submitted that neither the initiation notice, nor the application, set out whether the dimensions are nominal or actual, although in later correspondence, the Commission confirmed that the relevant measure of thickness is taken to be nominal. That being the case, the submission proposed that other Australian producers potentially exist which are selling the goods under consideration, in the form of precision pipe and tube with rectangular and square sections, and with nominal thickness less than 1.6mm.

The submission referred to investigations into similar types of imports from China, Korea, Malaysia, Thailand and Taiwan and suggested, based on the findings of these investigations, that Australian industry members making those other types of goods must also be members of the Australian industry for precision pipe and tube steel.

On that basis, according to the submission, if Orrcon is not the sole member of the Australian industry producing like goods, the validity of the Commission's finding that the application is supported by a sufficient part of the Australian industry is, arguably, in

³⁵ The Manual, part 1.1.

doubt. Section 269TB(6) sets out the requirements for standing to bring an application to the Commission.³⁶

Hoa Phat Steel and Vina One urged the Commission to make immediate contact with other Australian manufacturers of similar products to confirm the status of their domestic production of like goods and so as to ascertain whether the applicant is sufficiently representative of the Australian industry to comply with s.269TB(4).

Hoa Phat Steel and Vina One further submitted that the thickness of the sections is insufficient to define a separate and unique class of goods (or in the alternative, the thickness of the sections is insufficient to confine the scope of the goods). Instead, all locally produced sections complying with the same standard and grade, in this case AS1163, are 'like goods' as they each possess the same essential physical, commercial, functional and production characteristics. On that basis, the Australian industry producing 'like goods' includes all domestic producers manufacturing rectangular and square structural sections that comply with Australian Standard AS1163.

Finally, Hoa Phat Steel and Vina One submitted that the application is defective and should, therefore, be terminated.

4.4.4 Commission's assessment

As noted previously, no further Australian industry manufacturers of the goods identified themselves to the Commission following the initiation of the investigation. Nor were any further Australian industry manufacturers identified by the Commission during the investigation. Austube Mills, an Australian company referred to in the submission as a possible manufacturer of the goods, was verified by the Commission as an importer of the goods.³⁷

Contrary to the submission by Hoa Phat Steel and Vina One, the Commission considers that thickness is sufficient to define separate classes of goods. There is no provision in the Act that restricts the use of thickness in defining goods or that requires that all products made to a certain standard are like goods. Recent examples of where a product has been classed into different goods based on differing attributes are *Investigation 540* and *Investigation 541* which examined Aluminium extrusions with different finishes: i.e. mill finish and surface finished, respectively.³⁸

The Commission also notes that thickness is a defining characteristic in many tariff classifications and that not all sections complying with the Australian standard are 'like goods'.

Finally, the Commission has considered the description of the goods as set out in chapter 3 and considers that Orrcon is the sole manufacturer of the goods in Australia and, therefore, that it meets the standing requirements set out in section 269TB(4).

³⁶ Discussed in chapter 4.4.2.

³⁷ EPR 550, Item 50.

³⁸ Available on the Commission's website.

4.5 Production process

In its verification of the information submitted in Orrcon's application³⁹, the Commission determined the production process for precision pipe and tube steel to be as follows:

- Master coil, in the form of HRC, cold-rolled coil or pre-galvanised HRC is the primary raw material used in the production of precision pipe and tube steel;
- The master coil is un-wound into the slitter, where steel blades cut the coil into predetermined widths;
- After slitting, the coils are re-wound on the re-coiler which 'pulls' the strip through the blades. The slit coils are then strapped and moved to one of four mills for rolling into steel tube;
- The tube forming process starts with the slit coil being placed on the un-coiler, which feeds the coil into the mill. The strip runs through a series of forming rolls that form the strip edges into a circular shape ready for welding;
- An induction welder heats the edges of the coil strip and the edges are 'forged' together;
- Excess material that is extruded along the weld seam on the external and internal surfaces is removed, if applicable using a scarfing tools;
- Metallic thermal spray process is used to repair the weld zone on pre-galvanized tube;
- The tubular product is then sized and formed into circular, rectangular, square and other steel shapes;
- Once the tube forming process is complete, the tube is cut to size and de-burred as required;
- The product goes through final quality checks, is formed into packs and restrained with steel strapping.

Downgrade material which does not meet the required standards for sale and scrap lost from Orrcon's production process is collected through the process and sold separately.

4.6 Commissioner's assessment

In respect of claims made Dalian Steelforce, Hoa Phat Steel and Vina One regarding RHS with a nominal thickness of 1.6 mm and greater, the Commission confirms that such products are outside the scope of this investigation, noting the thickness parameters for RHS outlined in the goods description. Such products are not considered precision RHS, and this distinction is consistent with the Commission's treatment of RHS in investigations, reviews and continuation inquiries relating to HSS exported from China, Korea, Taiwan, Malaysia and Thailand.

The Commission considers the locally produced precision pipe and tube steel to be like to the imported precision pipe and tube steel. This is based on:

- An examination of the manufacturing process for the goods and that part of the process which is carried out in Australia;

³⁹ Orrcon – Industry Verification Report, EPR 550, Item 56

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- An examination on whether known manufacturers of similar products also manufacture like goods; and
- Responses from other Australian market participants similar to Orrcon, who identified themselves as importers during the verification.

The Commissioner is satisfied that there is an Australian industry, consisting wholly of Orrcon, producing like goods, and that the like goods are wholly or partly manufactured in Australia.

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commissioner has found that the Australian market for precision pipe and tube steel is supplied by the Australian industry and imports from a number of countries, including the subject countries. Imports from each of the subject countries, as a percentage of the total Australian import volume of the goods, were above negligible levels.

5.2 Background

The Australian market for the goods and like goods is supplied by Orrcon as the sole member of the Australian industry, as well as manufacturers from other countries who export to Australian customers directly or through intermediaries and distributors.

The analysis of the Australian market detailed in this chapter is based on verified information submitted by Orrcon, import data from the ABF import database, and verified importer and exporter information.

5.3 Market structure

The Australian market for precision pipe and tube comprises Orrcon as the sole local manufacturer, exporters/importers, wholesalers, distributors, re-sellers, and end-users.

Precision pipe and tube steel is supplied to a range of market sectors including fencing, furniture manufacturing, shelving and racking, heat exchangers, outdoor patio structures, exhaust systems and other general mechanical or manufactured end-use applications. Alternate after-market applications include “handy-man” and repair work.

5.3.1 Markets and distribution

Orrcon has two sales channels in the Australian market, with the majority of precision pipe and tube sales made through its related distribution partners. The other sales channel to market is referred to as “mill direct”, which is when a distributor or a customer places an order directly with Orrcon for a limited range of goods. Mill direct orders have a longer lead process time than sales made through its distribution partners.

Exporters were found to generally export their goods to Australian distributors, who then on-sold the goods to end-users, although a limited number of direct sales to end-users was observed.

5.3.2 Supply

Whether a customer can readily change supplier is dependent on the nature of the customer and their business. Wholesalers, distributors and re-sellers can more readily change suppliers, either through shifting to importers or between themselves. For end-users, they can source supplies through Australian suppliers (who may source from Orrcon or from imports) or directly from importers, but this is highly dependent on the end-user being in a position to manage the cash flow and minimum volume order requirements.

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Imported precision pipe and tube steel in the Australian market is sourced from numerous countries, with the highest volumes over the investigation period coming from the subject countries.

5.3.3 Demand

The demand for precision pipe and tube steel is driven by a diverse range of market sectors in the Australian market.

Orrcon highlighted in its application that the increase in overall size of the Australian market recently is attributed to growth in the pool fencing, general fencing (permanent and temporary) and patio tube markets.

The Commission found that fencing has been the most significant market sector for the goods consistently over the last four years, followed by automotive and furniture. Although it is noted that automotive has been steadily decreasing and is likely to continue to decline in light of the winding down of the automotive industry in Australia.

There are also seasonal factors which impact the demand for precision pipe and tube steel, being the construction cycle which results in December and January effectively aggregating to one month of normal sales, due to the traditional construction industry holiday period falling at this time, and rural sector sales in May and June driven by farmers resolving any outstanding repairs and maintenance issues prior to the end of financial year.

The Commission found that, when grouped by industry group, construction made up the majority of sales demand, following by manufacturing. The Commission then examined construction work over the injury period to examine whether there is a correlation in demand both seasonally and on a long term trend.

Using data from the Australian Bureau of Statistics, the Commission observed a strong correlation between the value of building construction within Australia and the value of sales of the goods by Australian industry.⁴⁰ It is also noted that sales tended to fall in the first quarter of each calendar year, before rising again over the remainder of the year, mainly for sales in construction and less so for other sectors. The Commission is therefore satisfied that movements in the construction industry have an effect on demand in Australia for the goods.

5.4 Pricing

Orrcon has a price list framework in place for all manufactured precision pipe and tube steel which is used as a basis to manage market offers. Orrcon receives feedback on prevailing imported market rates, which is then used to adjust its prices on market offers to customers.

⁴⁰ Orrcon – Industry Verification Report, EPR 550, Item 56

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Product features and characteristics, as well as supply and commercial offer attributes will influence the offer price to customers. The nature of the customer and the market segment they operate in may also impact pricing.

Orrcon does not consider itself a price leader for the goods. Net prices are dictated by customer orders and requirements, but are mainly priced to meet import competition via import parity pricing, taking into consideration the market price of like goods using contemporary price information for equivalent imported products.

Prices at a model level are also dictated by the steel feed coil cost and production costs. In setting its prices, Orrcon seeks to recover its full cost to make and sell. However, full cost recovery is not always realised.

Offers are negotiated with customers for a particular supply term, e.g. one month, three months, six months etc. and are reviewed on a case by case basis either monthly, quarterly or annually.

Pricing for exporters was found to generally be based on the cost to make (CTM) of the goods, largely driven by raw material costs, plus a profit margin. Any specific customer requirements will also affect the price, as will the volume of any orders.

5.5 Market size

5.5.1 Submission received in respect of market size

In CON 550, the Commission estimated the size of the Australian market for precision pipe and tube steel by using data extracted from the ABF import database in respect of consignments declared under the identified tariff classifications. This data was filtered to exclude imports subject to existing measures, in particular HSS of different specified dimensions which doesn't comprise 'like goods'. Data was separately extracted to determine the volume of imports from countries already subject to measures. That data was then compared to the volume of imports not subject to measures to determine the ratio of HSS import volumes without measures. This ratio was then applied to the volume of imports from countries where no measures on HSS are in place, including Vietnam.

In its submission dated 7 May 2020⁴¹, Orrcon made the following comments:

- it agreed with the Commission's market size approach with respect to non-circular precision pipe and tube steel imports classified to tariff classification 7306.61.00 statistical code 21;
- the Commission's proportional assessment for circular precision pipe and tube steel is not required, and the total volume should be included in determining the market size, as circular precision pipe and tube steel imports classified to tariff classification 7306.30.00 statistical code 30 are not currently subject to anti-dumping measures; and

⁴¹ EPR 550, Item 10.

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- reassessing the market size to include all imports of circular precision pipe and tube steel will consequently impact the Commission's volume-effect and price-effect injury assessments.

5.5.2 Commission's assessment – market size

The Commission agrees with Orrcon that, with respect to imported circular precision pipe and tube steel classified to tariff classification 7306.30.00 statistical code 30, these goods are not subject to anti-dumping measures and are, therefore, goods subject to this investigation. All imports of circular precision pipe and tube steel are therefore included in the total assessment of the Australian market size.

5.6 Commission's assessment

In light of the above and information gathered during Australian industry and exporter verification, the Commission has estimated the size of the Australian market for the goods during the investigation period as follows:

- Verified sales data from Orrcon has been used to determine sales volumes by Australian industry;
- Data extracted from the ABF import database in respect of consignments declared under tariff classification 7306.30.00/30 and 7306.61.00/21⁴² has been used as a starting point to determine import volumes. To exclude outlying data, which may distort any findings, the Commission has then filtered the data to exclude transactions where the Free on Board (FOB) price per tonne was outside a range of AUD\$500 to AUD\$2,100. This is considered a reasonable price range to use as a filter for the goods, based on the export price and normal values observed by the Commission during the investigation;
- Imports from China, Korea, Malaysia, Taiwan and Thailand (HSS countries) declared under tariff classification 7306.61.00/21 were filtered to exclude imports subject to existing measures on HSS. This volume was included in the import total;
- The ratio of imports of HSS from the HSS countries compared to imports under tariff classification 7306.61.00/21 from the HSS countries which were not HSS was determined;
- This ratio was then applied to volumes of imports under tariff classification 7306.61.00/21 from all other countries not subject to HSS measures (including Vietnam) to determine an estimate of the volume of imports under that tariff classification which were the goods. This volume has been included in the import total;
- Imports declared under 7306.30.00/30 are not currently subject to anti-dumping measures and, accordingly, the whole volume reported in the ABF import database has been included in the import total;
- The import total has then been adjusted to account for differences between the import volumes reported in the ABF import database for each cooperating exporter and the import volumes determined following exporter verification.

⁴² See chapter **Error! Reference source not found.** for further detail.

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Using the approach detailed above, the size of the Australian market is estimated as depicted in the figure below.

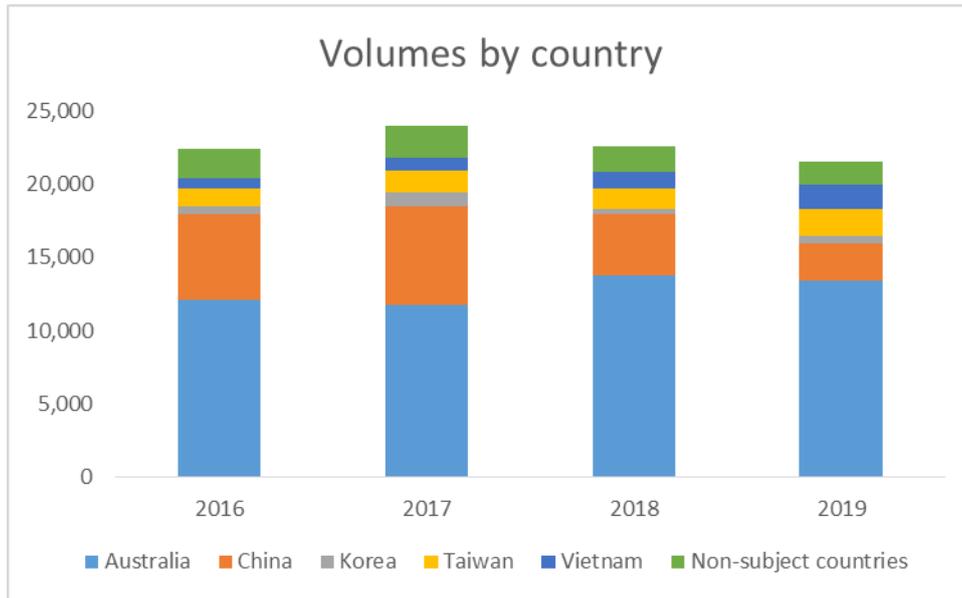


Figure 1 – Australian market for the goods by country

The market for the investigation period was approximately 21,500 tonnes.

This estimate does not include air heater tubes, consistent with the Commission's assessment in section 3.4.2.

The Commission's assessment of the size of the Australian market is at **Confidential Attachment 2**.

6 DUMPING INVESTIGATION

6.1 Preliminary finding

The Commission has found that the goods exported to Australia from China and Korea were dumped.

Goods exported to Australia from Taiwan and Vietnam were found to not have been dumped.

The Commission’s assessment of dumping margins is set out in the table below.

Country	Exporter	Dumping Margin (%)
China	Dalian Steelforce	2.9
	Uncooperative exporters	2.9
Korea	Uncooperative exporters	6.2
Taiwan	Ta Fong	- 9.0
	Uncooperative exporters	- 8.6
Vietnam	CDI	- 12.2
	Vina One	- 12.0
	Residual exporters	- 6.5
	Uncooperative exporters	- 6.5

Table 8 – Dumping Margins

6.2 Legislative and policy framework

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of, in order to publish a dumping duty notice, is that the goods have been dumped.

Section 269TDA(1) requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Section 269TDA(3) requires that the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been, or may be, dumped is a negligible volume.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

6.2.1 Dumping margin

For all dumping margins calculated for the purposes of this investigation, the Commission compared export prices over the whole of the investigation period with the corresponding normal values.

6.2.2 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are 'arms length' transactions under section 269TAA.

Section 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in 'arms length' transactions.

Section 269TAB(1)(b) provides that where goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter, but not at 'arms length', and the goods are then subsequently sold in the condition they were imported to a party not associated with the importer, the export price of goods is the price that the importer sold the goods, less prescribed deductions.

Section 269TAB(1)(c) provides that in all other cases, the export price is a price determined by the Minister having regard to all the circumstances of the exportation.

6.2.3 Normal value

Goods sold in the ordinary course of trade

Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid (or payable) for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are 'arms length' transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

Low volume of domestic sales

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption that are 'arms length' transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the Commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).

Particular market situation

Section 269TAC(2)(a)(ii) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under section 269TAC(1).

Particular market situation is discussed further in section 6.3.

6.3 Particular market situation

6.3.1 Introduction

The application alleged the presence of a particular market situation in the Chinese and Vietnamese domestic markets for the goods.

Section 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the ADA:

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country [footnote omitted], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must further consider whether, because of the situation in the subject market, sales in that market are also not suitable for determining a price under section 269TAC(1).

If a market situation exists in a country, such that domestic sales are not suitable for comparison with export sales, normal values may instead be constructed under section 269TAC(2)(c) or determined by reference to prices from a third country under section 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of a market situation. A market situation will arise when there is some factor (or factors) impacting the relevant market in the country of export generally. When considering whether sales are not suitable for use in determining a normal value under section 269TAC(1), because of the situation in the market of the country of export, the Commission may have regard to factors such as:

- whether the prices are artificially low; or
- whether there are other conditions in the market that render sales in that market not suitable for use in determining prices under section 269TAC(1).

Government influence on prices or input costs could be one cause of artificially low prices. Such government influence could come from any level of government.

In assessing whether a market situation exists due to government influence, the Commission will assess whether government involvement in the domestic market has

materially distorted market conditions. If market conditions have been materially distorted, then domestic prices may be artificially low or not substantially the same as they would be in a competitive market.

Prices for the like goods may also be artificially low or not substantially the same as they would otherwise be, due to government influence on the costs of inputs. The Commission assesses the effect of any such influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market.

The Manual provides further guidance on the circumstances in which the Commission will find that a market situation exists.⁴³

6.3.2 Information relied upon to undertake the Commission's assessment

In undertaking its assessment of whether a market situation exists in either China or Vietnam, the Commission has considered the following:

- the information provided in the application;
- response to the government questionnaire by the GOV;
- REQs by cooperating exporters;
- previous market situation assessments undertaken by the Commission;⁴⁴ and
- desktop research, including information obtained from departmental resources and third party information providers.

6.3.3 The Commission's approach

In accordance with its legislative requirements, the Commission's market situation assessment is undertaken at the level of the goods and like goods.

The Commission has given consideration to conditions:

- within the broader steel industry in each country and the degree to which these may impact on prices and/or raw material costs;
- in the Chinese and Vietnamese market for the raw materials used to produce the goods; and
- in the Chinese and Vietnamese markets for the goods.

6.3.4 Significance of HRC costs in the production of the goods

The Commission has found that steel coil is the major raw material input used in the production of the goods, either as HRC, cold rolled coil (CRC) or pre-galvanised coil.

⁴³ The Manual, p. 36.

⁴⁴ A number of past cases have made market situation findings concerning steel products in China, with the following cases particularly relevant as the products examined have HRC as the chief raw material input: REP 177 (HSS - 2012), REP 379 (HSS - 2017), REP 456 and 457 (coated steels - 2018), REP 419 (HSS - 2018) and SEF 553 (Painted Steel Strapping – 2021).

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Both CRC and pre-galvanised coil are made from HRC which has undergone further processing, either in the form of:

- rolling at low temperatures, generally to alter its thickness, provide a smoother surface and increase yield strength and hardness (cold rolling); or
- galvanising in a thin layer of zinc to prevent corrosion (among other things).

The Commission considers that CRC and pre-galvanised coil costs, while generally higher than HRC due to the additional processing, are closely related to the costs of HRC and are impacted to the same extent as HRC by any influence on the HRC market.

The Commission has verified the HRC associated with the production of the goods during the investigation period for all producers. The Commission found that coil costs represented a significant and broadly consistent proportion of the CTM of the goods. This is depicted in the table below.

Producer	Country	Percentage of total CTM made up by steel coil costs	Percentage of raw material costs made up by steel coil
Orrcon	Australia	64%	92%
Dalian	China	88%	99%
CDI	Vietnam	87%	95%
Vina One	Vietnam	91%	99%
Ta Fong	Taiwan	91%	100% ⁴⁵

Table 9 – Raw material coil as a proportion of CTM of the goods⁴⁶

The percentage of CTM made up by raw material costs for Orrcon is lower than that for Chinese, Taiwanese and Vietnamese producers, primarily due to higher manufacturing overheads, which accounts for 30% of the total cost in Australia.

Cooperating exporters advised the Commission that raw material prices are influential in setting selling prices for the goods, with lower raw material prices resulting in lower prices for the goods.

Given the high cost proportion of steel coil in the production of the goods and its influence on pricing decisions, the Commission considers that the HRC price (and through it, the price of CRC and pre-galvanised coil) has a significant impact on both the production cost and selling price of the goods.

6.3.5 China

In its application, Orrcon claimed that, due to the influence of the GOC in the Chinese iron and steel industry there is a particular market situation in the Chinese domestic market for precision pipe and tube steel that renders sales in that market unsuitable for determining normal values under section 269TAC(1).

⁴⁵ HRC here includes HRC that has been further treated, for example cold rolled steel, pickled and oiled steel.

⁴⁶ Confidential Attachment 3 – CTM breakdown.

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In making its claim, Orrcon has referred to previous findings by the Commission relating to GOC influence in steel markets and the impact on HRC prices, the key raw material used in the manufacture of precision pipe and tube steel.⁴⁷

Upon initiation, the Commission sent a questionnaire to the GOC requesting information in relation to the precision pipe and tube steel market in China. A copy of this questionnaire is available at **Non-confidential Attachment 4**.

The GOC did not provide a response to this questionnaire.

A further Orrcon submission was received on 18 August 2020.⁴⁸ In it, Orrcon provided further information in support of its claim of a market situation in China, including:

- research detailing the levels of state control, subsidisation in the Chinese steel industry, including underreporting of subsidisation by the GOC;
- analysis of raw material prices in China, compared to other Asian countries, showing a “systematic and material difference” between Chinese prices and those of other countries;
- comments on WTO report WTO Panel Report *Australia – Anti-Dumping Measures on A4 Copy Paper* (DS 529)⁴⁹ regarding the Commission’s findings in respect of A4 copy paper and the requirements around proper comparison in a market situation;
- claims that the market situation in China means it is not suitable to compare the prices of the goods that are exported with those sold on the domestic market, as domestic prices are materially and artificially lower than export prices.

In assessing whether a market situation exists in relation to the Chinese precision pipe and tube steel market in the investigation period, the Commission has relied on and considered all the evidence available to it, including REQs, Orrcon’s submission discussed above, findings of previous cases conducted by the Commission and desktop research. This includes:

- the level of import competition in the Chinese domestic market as a result of GOC involvement and influence over the broader steel industry, as well as the HRC and precision pipe and steel tube markets;
- various subsidy programs, lending and credit facilities, preferential loans, land grants and capacity controls affecting domestic output and consumption of steel;
- capacity management measures on bank lending to mills, industry consolidation and use of environmental requirements;
- Chinese steel industry response to GOC directives such as the 13th *Five-Year Plan for National Economic and Social Development* and the *Iron and Steel Industry Adjustment and Upgrade Plan*;

⁴⁷ See, for example, findings set out in *Anti-Dumping Commission Report No. 441* (steel pallet racking), *Anti-Dumping Commission Report Nos. 456 and 457* (aluminium zinc and zinc coated steels) and *Anti-Dumping Commission Report No. 379* (HSS).

⁴⁸ EPR 550, Item 39.

⁴⁹ WTO DS529, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds529_e.htm

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- implementation of GOC objectives through the National Development and Reform Commission, through its dual role of developing planning guidelines and directives and approving large scale investment projects;
- the share of total Chinese steel production by State-owned Enterprises (SOEs); and
- export taxes and export quotas on a number of key inputs in the steel making process, including coking coal, coke, iron ore and scrap steel.

In light of all the information before the Commission, it is the Commission's view that a particular market situation existed in respect of the domestic market for precision pipe and tube steel in China for the investigation period.

A complete examination of the evidence for this finding is set out in **Non-confidential Appendix A**.

6.3.6 Vietnam

Orrcon also claimed in its application that, due to intervention of the GOV in the iron and steel industry raw material supply market, the prices of precision pipe and tube steel have been distorted, resulting in a particular market situation in the Vietnamese domestic market for precision pipe and tube steel that renders sales in that market unsuitable for determining normal values under section 269TAC(1).

Orrcon has claimed the GOV has intervened in the domestic steel industry through:

- electricity prices;
- Steel Master Plans;
- Industrial Development Strategy;
- State ownership of precision tube manufacturers;
- domestic price stabilisation initiatives;
- steel industry construction project and investment control; and
- steel industry subsidisation.

Orrcon made a submission on 9 April 2020 in respect of the Vietnamese Steel Master Plans, which discussed the impact of the plans on capacity, growth, production, investment decisions and regional distribution beyond their revocation at the end of 2018.⁵⁰

A further Orrcon submission was received on 18 August 2020.⁵¹ In it, Orrcon submitted that:

- Orrcon was unable to source domestic selling price information for the goods sold in Vietnam, and would expect the Commission to have similar difficulties;
- a recent Canada Border Services Agency (CBSA) investigation found HRC prices in Vietnam are 18% to 19% lower than average world prices. Orrcon submitted that

⁵⁰ EPR 550, Item 6.

⁵¹ EPR 550, Item 39.

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this difference in raw material costs is indicative of lower than competitive market price for the subject goods in Vietnam;

- Orrcon has compiled data on domestic HRC prices in Vietnam, against those prices in China, South Korea, Japan and Taiwan. This data, if viewed in the context of a market situation in Vietnam, is evidence of lower input costs for the manufacture of the goods;
- a market situation in Vietnam means it is not suitable to compare the prices of the goods that are exported with those sold on the domestic market, as domestic prices are materially and artificially lower than export prices.

The GOV made a submission to the Commission on 21 January 2020 in respect of another application for similar goods (that application was subsequently withdrawn). At the request of the GOV, the submission has been considered by the Commission in this investigation.⁵² In the submission, the GOV expressed a view that a particular market situation does not exist in the Vietnam market for precision pipe and tube steel. The GOV has indicated to the Commission that there have been changes to Steel Master Plans and the Industrial Development Strategy which means they no longer apply to the steel industry. The GOV referred to previous findings of the Commission concerning zinc coated (galvanised) steel in Vietnam, which found that a particular market situation did not exist for that product.

The GOV was also sent a questionnaire requesting further information in relation to the precision pipe and tube steel market in Vietnam. The GOV response to the questionnaire was provided to the Commission on 7 June 2020.⁵³

A further submission was made by the GOV to the Commission regarding the claim of a particular market situation on 7 August 2020.⁵⁴

A submission made by RCR International Pty Ltd (RCR) published on 12 May 2020⁵⁵ supports the GOV submission in relation to any finding that a particular market situation for precision pipe and tube steel may exist in Vietnam. RCR also noted that evidence used by Orrcon in its application does not accurately reflect the current situation in the Vietnamese market, as well as referring to previous investigations where the Commission found no particular market situation in Vietnam.

In assessing whether a market situation exists in relation to the Vietnamese precision pipe and tube steel market in the investigation period, the Commission has relied on all the evidence available to it, including questionnaires and the submissions made in this investigation along with desktop research. This includes:

- previous investigations by the Commission which did not find there to be a particular market situation in respect of the relevant goods;

⁵² EPR 550, Item 4.

⁵³ EPR 550, Item 36.

⁵⁴ EPR 550, Item 38.

⁵⁵ RPR 550, Item 11.

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- the expiry of the Steel Master Plans in late 2018 with no apparent evidence of any ongoing influence in respect of those plans;
- the expiry of legislation implementing price stabilisation measures in 2014;
- the right of enterprises to determine their own prices at which goods and services which they manufacture are sold;
- the lack of evidence of a significant role for Vietnamese State-owned Enterprises in the steel, HRC or precision pipe and tube steel market;
- the minimal levels of subsidisation found in respect of upstream raw materials or the goods themselves;
- the level of import penetration in the domestic steel Vietnamese market; and
- evidence that raw material costs purchased by Vietnamese exporters from Vietnamese suppliers are consistent with raw material costs purchased from other countries, excluding China.

In light of all the information before the Commission, it is the Commission's view that a particular market situation did not exist in respect of the domestic market for precision pipe and tube steel in Vietnam for the investigation period.

A complete examination of the evidence for this finding is set out in **Non-confidential Appendix B**.

6.4 Proper comparison of domestic and export prices

6.4.1 Introduction

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must also consider whether, because of the situation in the market of the country of export, sales of like goods in that market are not suitable for determining a price under section 269TAC(1).

As a particular market situation has been found in respect of the domestic market for the goods in China for the investigation period, the Commission will examine whether goods in that market are suitable for determining a price under section 269TAC(1).

No such examination is required for goods in the domestic market in Vietnam, as the Commission considers that a particular market situation did not exist in respect of the precision pipe and tube steel market in Vietnam for the investigation period.

6.4.2 Approach to proper comparison

In order to assess whether sales are suitable for the purposes of section 269TAC(1), the Commission's approach to assessing proper comparison considers the relative effect of the market situation on both domestic sales and Australian export sales. If there is a finding that domestic sales and export sales are not equally impacted by the market situation, such a finding may render domestic sales not suitable for the purposes of section 269TAC(1).

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The Commission considers this approach consistent with Australia's obligations under the ADA⁵⁶ and the WTO Panel's interpretation of these obligations set out in DS 529.⁵⁷

When assessing the relative effect of the particular market situation on domestic and export prices, the Commission has compared the existing relationships between price and cost in the domestic and export markets of the exporting country. These relationships will be defined by the prevailing conditions of competition in each market. This has involved an examination of:

- the relationship between raw material costs and the domestic and Australian export prices for the goods for each relevant producer of the goods;
- the domestic market conditions (the particular market situation) leading to those costs and prices; and
- export market conditions.

The Commission considers that the relationship between cost, price and competition will provide insight into the effect of the market situation in the country of export (domestic prices) and Australian markets (export prices). In turn, it will provide insight into whether a proper comparison is permitted between domestic prices and Australian export prices.

In particular, the Commission has undertaken:

1. a *quantitative* assessment of prices, noting that “...a purely numerical comparison between the two prices may not reveal anything about whether the domestic price can be properly compared with the export price”;⁵⁸ and
2. a *qualitative* assessment of prices, to “...focus on how the particular market situation affects that comparison.”⁵⁹

This approach assesses both the effect of the particular market situation on domestic and export prices. This is because while “...a particular market situation may have an effect on both domestic and export prices, it does not follow that the impact on domestic and export prices will be the same.”⁶⁰

6.4.3 Examination of Australian conditions of competition

Market structure

The Australian market for precision pipe and tube steel has been discussed in detail in chapter 5.3 of this report. In summary:

- The Australian market for the goods is supplied by Orrcon as the sole member of the Australian industry, imports from the subject and non-subject countries, with goods generally sold to customers through Australian based distributors;

⁵⁶ https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm

⁵⁷ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds529_e.htm

⁵⁸ DS 529 – para. 7.75.

⁵⁹ DS 529 – para. 7.75.

⁶⁰ DS 529 – para. 7.76.

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- Australian industry supplies the greatest volume in Australia, followed by imports from China, Taiwan and Vietnam;
- Customers can readily change between suppliers, either through shifting to importers or between Australian suppliers (who may source themselves from Orrcon or from imports);
- Demand for the goods is driven by a diverse range of market sectors in the Australian market, including fencing, automotive and furniture.

The Commission considers the Australian market for the goods is a competitive market, characterised by a large number of suppliers and customers engaging in commercial negotiations in the sale and purchase of the goods.

Raw material

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

From its previous investigations into HRC, the Commission understands that price is generally the main factor which influences an Australian customer's purchase decision for HRC. Australian producers of HRC set their price based on an import benchmark pricing strategy where known import offers in the Australian market are used to determine the level at which Orrcon sets its selling price.⁶¹

Australian produced HRC competes with imported goods mostly at the wholesale or distribution level of trade. These customers then on-sell the HRC to end users or other resellers, predominantly in the general manufacturing and pipe and tube industry.⁶²

Import penetration

The Commission examined the ABF import database to identify exporters and importers of precision pipe and tube steel during the investigation period. The Commission observed that during the investigation period:⁶³

- the goods were exported to Australia from at least 10 countries by over 60 unique exporters, with approximately 20 exporters from both China and Vietnam, one exporter from Korea and 4 exporters from Taiwan;
- over 60 unique importers were identified as having imported the goods;
- imports accounted for 37% of sales in the Australian market; and
- of these imports, Chinese imports accounted for 32% of sales, Taiwanese imports 24%, Vietnamese imports 20% and Korean imports 6%.

The presence of a number of importers with material import volumes from numerous countries indicates to the Commission that the Australian market for the goods can be

⁶¹ REP 400, chapter 4.3.2.

⁶² REP 400, chapter 4.3.

⁶³ Confidential Attachment 2 – Australian Market Analysis. Only exporters with more than 5MT of export volume during the investigation period have been included in this analysis.

characterised as having a high level of import penetration contributing to a competitive market for the goods between participants.

6.4.4 Examination of Chinese conditions of competition

Market structure

As discussed in chapter 6.3.5, the Commission sent a questionnaire to the GOC requesting information in relation to the precision pipe and tube steel market in China. The GOC did not provide a response to this questionnaire.

Dalian Steelforce advised in its REQ that it was not in a position to provide a response to questions on the Chinese market for the goods as it does not sell the goods on its domestic market.

In its submission, dated 18 August 2020, Orrcon noted the following in respect of the effect of the particular market situation for the goods in the Chinese domestic market:

- *“...[T]he provision of HRC at less than adequate remuneration will result in lower subject goods prices on the domestic market, although potentially higher margins on the export market. Further, the recent (March 2020) change to the VAT export rebate will direct domestic sales to the export market, creating significant export competition and suppressed selling prices (including for the subject goods). While both markets are affected in these instances, the impact would manifest differently.”⁶⁴;*
- *“The Chinese PMS has rendered the subject goods domestic price and export price unsuitable for comparison. This is evident via an assessment of officially traded Asian-regional index prices in which China has significant influence and weighting compared to China’s own in-country pricing.”⁶⁵;*
- *“It is widely considered that prices are materially lower on the export market for steel products, on the premise that steel manufacturers seek to service profitable domestic markets first, and export surplus production (usually covering only variable costs). In the case of China, a clear role-reversal is depicted above, and is driven by the PMS.”⁶⁶;*
- *“Orrcon submits that Chinese producers of Precision pipe & tube have access to cheaper hot-rolled coil inputs due to distortions in the Chinese steel market. In Review inquiry No. 456, the Commission found that Chinese domestic HRC purchase prices were, on average, 14 per cent lower than HRC domestic purchase prices in Korea and Taiwan, and consequently that “...the GOC materially influenced conditions within the Chinese HRC markets during the review period and because of that influence, the domestic price for Chinese aluminium zinc coated steel and galvanised steel was substantially different to those in competitive market conditions.”*

⁶⁴ EPR 550, Item 36, p.9.

⁶⁵ Ibid, p.10.

⁶⁶ Ibid, p.12.

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Precision pipe & tube is a further value-add steel product not unlike the subject goods of Review inquiry No. 456. The impact of the GOC's material influence on market conditions can also be similarly assessed.

On a price-comparison basis, when Chinese Precision pipe & tube export prices are contrasted with selling prices in a competitive market (such as Australia, where pricing is determined on an import parity basis), they are clearly lower (due to GOC influence) and undercut all other participants.”⁶⁷.

Raw material

In a recent investigation, *Investigation 553 – Painted Steel Strapping*, the GOC provided a RGQ in which it commented on the Chinese domestic market for HRC.⁶⁸ Due to the similarities in the particular market situation allegations and the raw material inputs in the two cases, the Commission has had regard to the response by the GOC to *Investigation 553* in its consideration of this investigation, pursuant to section 269TDAA(2)(b).

The GOC submitted prices for HRC are unregulated. Prices are set in the market through commercial transactions between buyers and sellers and result in competitive prices.

While the Commission has found a particular market situation in respect of the Chinese market for the goods, as set out in chapter 6.3.5, the Commission is satisfied, based on the findings of *Investigation 553*, that there is a large volume of participants who engage in commercial negotiations in the sale and purchase of HRC, which is indicative of competition, albeit impacted by government distortions.

As the cooperative Chinese exporter primarily used CRC and pre-galvanised coil, the Commission examined the monthly CRC and pre-galvanised coil price paid by the cooperative Chinese exporter with the monthly CRC and pre-galvanised coil MEPS⁶⁹ prices for China, Korea and Taiwan.⁷⁰

⁶⁷ Ibid, p.14.

⁶⁸ EPR 553, Item 10.

⁶⁹ MEPS is an international independent supplier of steel market data and information. The Commission has a subscription service with MEPS for the provision of such data.

⁷⁰ MEPS prices for HRC and CRC are reported EXW for China and EXW delivered for Japan, Korea and Taiwan. Where direct comparisons have been made, adjustments have been made for delivery costs.

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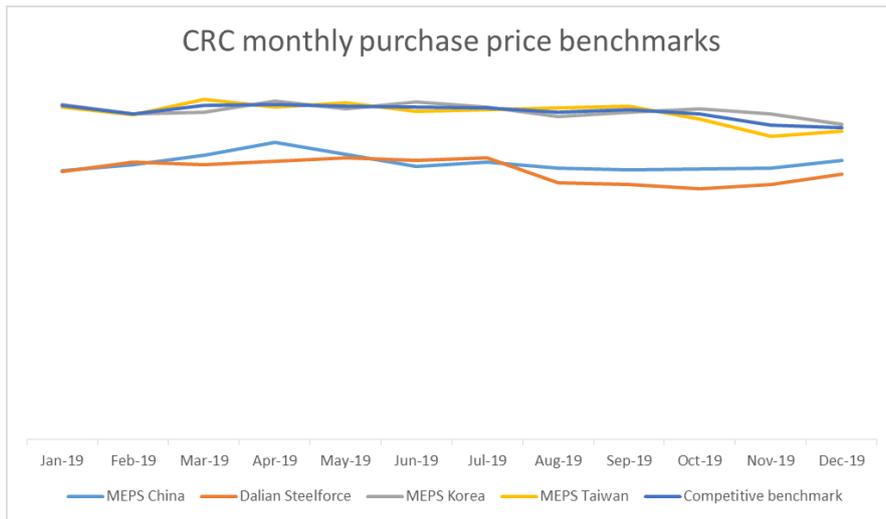


Figure 2 – CRC monthly purchase prices⁷¹

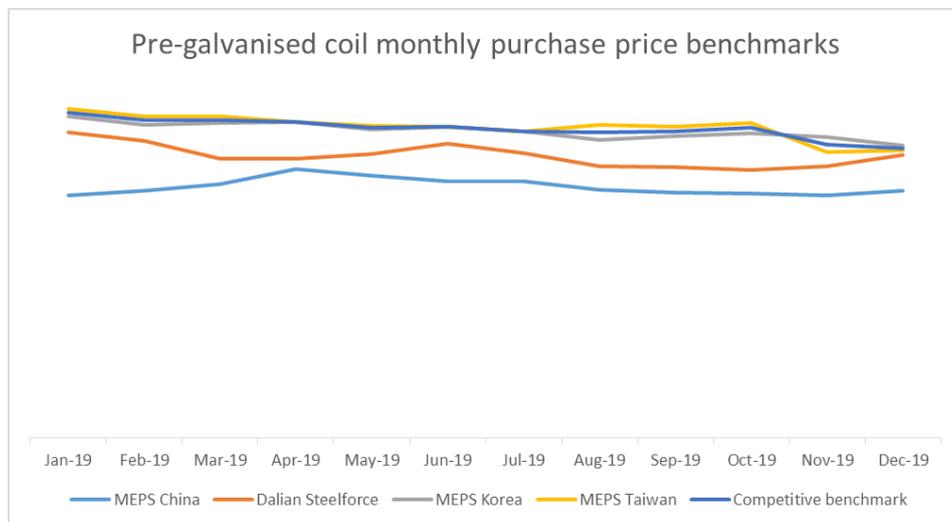


Figure 3 – Pre-galvanised coil monthly purchase prices⁷²

From the figures above, the Commission has observed:

- there are only minor differences between the two coil MEPS prices in Korea compared to the MEPS prices in Taiwan (in other words, Korean and Taiwanese prices are largely the same);
- Chinese prices (both of the Chinese cooperating exporter and according to MEPS data) are lower at all times than the Korean and Taiwan MEPS prices; and
- prices paid by the cooperating Chinese exporter for CRC are generally lower than the Chinese MEPS price, but higher for pre-galvanised coil.

The Commission also compared the monthly HRC MEPS prices for China, Korea and Taiwan, along with the verified HRC purchase prices for the cooperating Chinese and Taiwanese exporters and Australian industry.

⁷¹ Confidential attachment 4 – Raw material cost analysis and benchmark calculation.

⁷² Ibid.

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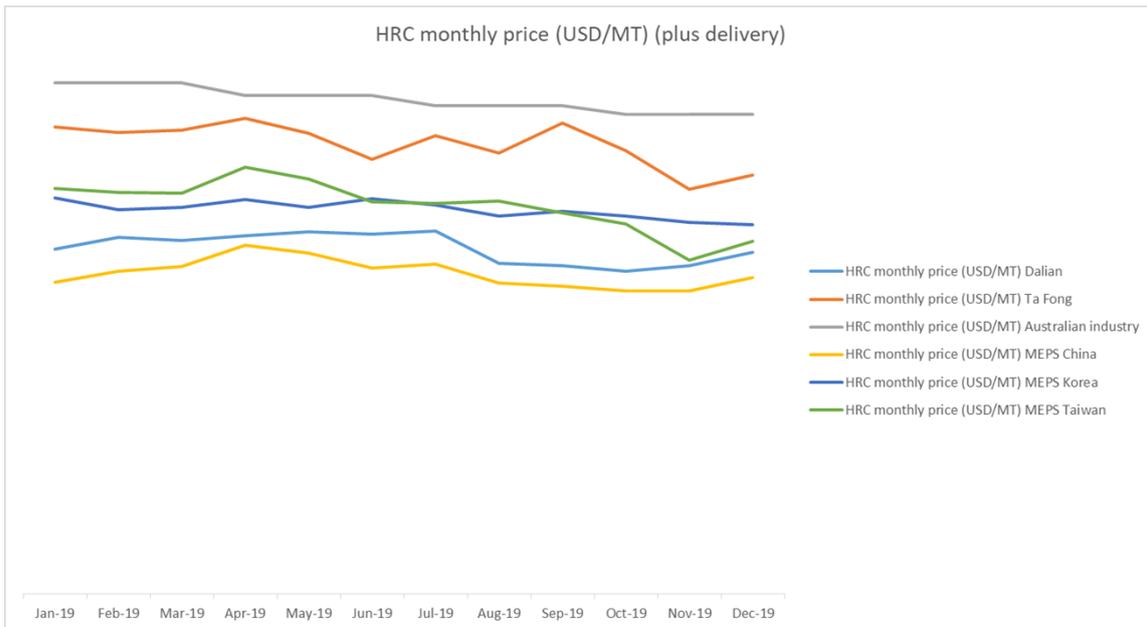


Figure 4 – HRC monthly purchase prices⁷³

The figure above shows that Chinese HRC costs (both in MEPS and from Dalian Steelforce) are the lowest over the investigation period, and well below that of Australian industry.

From the information above, the Commission is satisfied that Chinese manufacturers have access to cheaper raw material inputs. The Commission considers the Chinese domestic market conditions lead to lower prices for steel coil due to the distortions in the Chinese market, as discussed in **Non-confidential Appendix A**.

The Commission's raw material input analysis is at **Confidential Attachment 4**.

Import penetration

The Commission examined the ABF import database and noted there were more Chinese exporters of the goods to Australia during the investigation period than from any other country. Given the relative size of Australia's customer base compared to China's, the Commission considers the number of Chinese manufacturers supplying the Australian market would represent only a small portion of all Chinese manufacturers. The Commission also noted from the information provided by the cooperating exporter that they maintain excess production capacity.

The Commission considers that, due to the number of Chinese producers supplying the Chinese market, and based on the low cost of raw material inputs available to those producers, which is lower than comparable international benchmarks, there would appear to be a competitive disadvantage in respect of the importation of the goods into China.

⁷³ Ibid.

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Evidence provided in the May 2020 US International Trade Administration Global Steel Trade Monitor Report also indicates import penetration (as a function of consumption) in steel (which would include the goods) has remained low, at 1.6% in 2018 and 2019.⁷⁴

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

6.4.5 Relationship between price and cost

China

The Commission considers that in the Chinese domestic market, Chinese producers of the goods operate under market conditions which differ from those of exporters in other countries, including that of the Australian industry. Specifically, the market situation in China reduces costs across all production of the goods and like goods, due to lower raw material costs.

Dalian Steelforce is an export-oriented producer that does not manufacture goods for the domestic Chinese market. Due to a lack of information, the Commission was unable to compare the CTM of goods produced for sale on the domestic market by Chinese manufacturers against the CTM of goods produced for export to the Australian market.

Information provided by verified exporters from other countries in this investigation indicates there is no difference in the production process between domestically sold and exported goods. On the evidence before it, the Commission has assumed that Chinese manufacturers would also have no difference in their production process for domestically sold and exported goods.

The Commission was also unable to compare domestic selling prices for the goods across different Chinese manufacturers due to a lack of cooperating responses. Nonetheless, from the evidence before it in relation to the HRC market and the likely number of Chinese manufacturers supplying the domestic market, the Commission is satisfied the Chinese domestic market for the goods is highly competitive. As a result of this competitive environment for the goods, the lower raw material costs flowing from the presence of a particular market situation directly affects precision pipe and tube steel prices, such that the prices are lower than they would otherwise have been.

This relationship defines the conditions of competition in China. The effect of the market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between domestic producers selling in the domestic market, as it modifies the conditions of competition in a consistent manner for all market participants.

As a consequence, the Commission considers that Chinese producers have little flexibility with respect to price-setting for sales of the goods in their domestic market.

⁷⁴ United States International Trade Administration, [Global Steel Trade Monitor, Steel Imports Report: China](#), May 2020.

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Due to the lack of data provided by Chinese manufacturers on Australian export prices, the Commission has relied upon import prices available from the ABF import database to undertake its analysis of the relationship between raw material costs and export prices.⁷⁵

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



Figure 5 – Anonymised Chinese import prices of the goods into Australia, weighted average unit price over the investigation period⁷⁶

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

The Commission has also compared the selling price of the goods imported from China with the selling price of goods imported from Korea and Taiwan, along with Australian industry selling prices, using verified importer and Australian industry data. The Commission did not have enough verified price data at the same level of trade to compare Vietnamese imports with Australian industry.

⁷⁵ See chapter **Error! Reference source not found.** for the Commission treatment of ABF import data.

⁷⁶ Confidential attachment 2 – Australian market analysis.

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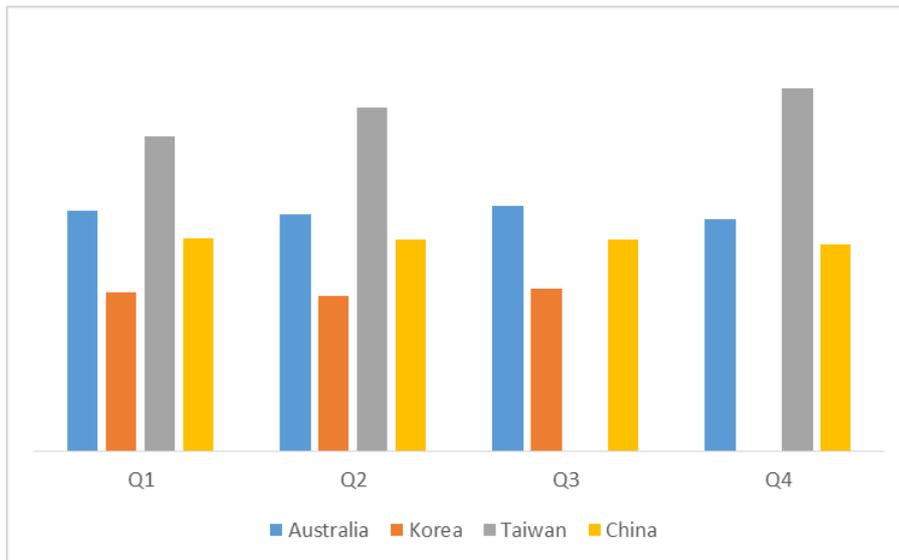


Figure 6 – Price undercutting analysis based on comparison of verified importer selling prices⁷⁷

The Commission observes that the selling prices for goods imported from China undercut Taiwanese and Australian selling prices in every quarter of the investigation period. Lower selling prices are observed for goods imported from Korea, which is discussed further in chapter 9.7.1.

Based on the above analysis, the Commission considers that:

- there is a market which is internally competitive between domestic participants in China where no competitive advantage is derived by any individual manufacturer as the reduced production costs resulting from the situation in the market benefits all producers; and
- the Australian market is a competitive market. The Commission considers variability of pricing between Chinese manufacturers in the Australian market is indicative of a competitive advantage enjoyed by Chinese exporters due to the market situation, which allows them to engage in pricing strategies in the Australian market that allow them to achieve either:
 - higher margins than the margins attainable on the sale of the same goods on the domestic market; or
 - increased sales volumes by significantly undercutting other participants in the Australian market; or
 - a combination of higher margins and increased sales volumes resulting from undercutting.

6.4.6 Conclusion on the effects of the situation in the market

The Commission's analysis indicates that the relationship between price and cost and the prevailing conditions of competition in China are different in comparison to the relationship between price and cost and the prevailing conditions of competition in Australia. Specifically, the effect of the market situation in China is a decrease in input costs across all production that results in a lower level of competitive pricing throughout

⁷⁷ Confidential Attachment 5 – Australian industry and import sales analysis.

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the market in China. This relationship defines the conditions of competition in China. Based on the information before the Commission, on balance, the effect of the market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between market players, being Chinese producers. In other words, the particular market situation modifies the conditions of competition in a consistent manner for the major market participants.

In Australia, where no market situation or input cost decrease exists, competitive pricing prevails at a higher level. Higher production costs for those participants producing without the benefit of a market situation establishes a higher minimum threshold for competitive prices. Under these circumstances, the effect of the market situation in China on the price of the goods sold into the Australian market results in competitive advantages and disadvantages between market players.

Specifically, Chinese exporters enjoy a cost advantage that either manifests as an increased margin at the prevailing level of competitive pricing in the Australian market, a low export price that undercuts the prevailing level of competitive pricing, or a combination whereby the Chinese manufacturer can enjoy a higher margin while still undercutting other market participants. In other words, the effect of the market situation on export price is to modify the conditions of competition in Australia to the benefit of Chinese exporters and, to the extent that benefit manifests as a low price that undercuts the prevailing level of competitive pricing in Australia, to the detriment of all other market participants in that market.

Thus, the relative effect of the market situation on domestic and export prices is different in the relevant markets.

In the present investigation, the Commission considers that the evidence discussed in this chapter indicates that sales in the domestic Chinese market are not suitable for determining a normal value pursuant to section 269TAC(1) because they do not permit a proper comparison with the export price of the goods exported to Australia.

6.5 Constructed normal values – China

6.5.1 Applicable legislation, policy and practice

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

... the sum of:

- (i) such amount as the [Minister] determines to be the cost of production or manufacture of the goods in the country of export; and*
- (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the [Minister] determines would be the administrative, selling and general costs associated with the sale and the profit on that sale*

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As required by sections 269TAC(5A) and 269TAC(5B), the construction of normal values under section 269TAC(2)(c) must be in accordance with the *Customs (International Obligations) Regulation 2015* (the Regulations).

To determine costs of manufacture or production in relation to constructing normal values, section 43(2) of the Regulations requires that the Minister must work out the cost of production or manufacture using the information set out in the exporter or producer's records if:

- an exporter or producer of the goods keeps records relating to the goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of the goods.

It is the Commission's view that, where an exporter's records are otherwise in accordance with GAAP, and are reliable, but the records do not reasonably reflect competitive market costs associated with the production or manufacture of the goods, it is open for the Minister, if practicable, to adjust the records so they reasonably reflect competitive market costs associated with the production or manufacture of the goods in the country of export. In making such adjustments, the Commission considers that the Minister may have regard to all relevant information.

6.5.2 Establishing normal values for selected exporters

The Commission notes that, in accordance with section 269TAC(3A), the Minister is not required to consider working out the normal value of goods under section 269TAC(2)(d) before working out the normal value of goods under section 269TAC(2)(c). Where section 269TAC(1) is not available, the Commission's policy preference, as outlined at chapter 10 of the Manual, is to construct normal values under section 269TAC(2)(c), in the first instance, when the cost data of exporters is available.

When considering whether it is preferable to use the price paid or payable for like goods sold by the exporters to a third country, pursuant to section 269TAC(2)(d), the Commission must be satisfied that it is an 'appropriate third country'. The Commission has regard to the following factors, to determine whether any such third country is 'appropriate':⁷⁸

- whether the volume of trade from the country of export to the selected third country is similar to the volume of trade from the country of export to Australia, and
- the nature of the trade in like goods between the country of export and the selected third country is similar to the nature of trade between the country of export and Australia (when considering 'nature of trade,' such things as the level of trade in a third country may be relevant).

⁷⁸ The Manual, page 51.

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In this case, the Commission considers that the information provided by the exporters in their REQs does not provide a precise or granular level of detail to determine whether a third country would be appropriate and to undertake the calculations required to determine a normal value.

Consequently, the Commission has constructed normal values under section 269TAC(2)(c), and has done so in accordance with sections 43, 44 and 45 of the Regulations, relevant aspects of which are outlined below.

6.5.3 Raw material cost adjustment – China

The Commission has considered all relevant information, including raw material purchases by the cooperative Chinese exporter, and considers it appropriate to use the exporter's records, which are in accordance with GAAP, but only after an adjustment is made to the records relating to the raw material costs. Such an adjustment ensures that the exporter's records reflect "competitive market costs", that is, the cost of production in China absent the market situation. Consistent with this approach, the Commission has replaced the raw material coil costs for Chinese exporters on the basis they were not normal competitive market costs. In doing so, the Commission has considered the individual circumstances of the steel coil purchases and, to the greatest extent possible, has ensured that the adjusted records reflect costs that would be incurred in China without the distortion resulting from the influence of the GOC.

The Commission has examined in **Non-confidential Appendix A3.1** the degree to which steel coil prices in the Chinese domestic market have been distorted as a result of GOC influence.

The Commission considers that the difference in price between verified purchases by the cooperative Chinese exporter of steel coil (EXW, no delivery, excluding VAT) and a competitive benchmark based on MEPS Korean and Taiwan steel coil prices is representative of the level of distortion of Chinese steel coil prices, as from previous cases the Commission considers that normal competitive market conditions prevail in the Korean and Taiwanese domestic markets for steel coil⁷⁹, and that purchases in these markets are not influenced by prices in China.⁸⁰ MEPS data was preferred due to insufficient data provided by Korean and Taiwanese exporters to construct a benchmark price: no data was provided by Korean exporters and exports of the goods by the sole cooperating Taiwanese exporter represent a small volume of exports of the goods from Taiwan during the investigation period.⁸¹

⁷⁹ The Vietnamese steel coil market has previously been considered by the Commission to be subject to normal competitive market conditions, but due to the allegation in this investigation that there is a particular market situation in respect of Vietnamese exports of the goods, steel coil purchases by Vietnamese producers have been excluded from this assessment.

⁸⁰ See SEF 529 available on the Commission's website.

⁸¹ See chapter 6.9.

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Comparative advantage and disadvantage

The Commission considered whether it is appropriate to make an adjustment to the competitive benchmark to reflect any comparative advantages and disadvantages experienced by the domestic Chinese producers.⁸²

The Commission considers that for any adjustment to the benchmark to reasonably reflect any comparative advantages and disadvantages, the Commission would need to:

- identify and quantify what the true, uninfluenced comparative advantage of the domestic Chinese market is, distinct from any advantages which are a result of the GOC influence;
- identify and quantify the comparative disadvantages of the Chinese domestic market; and
- only adjust for those ‘true’ comparative advantages and disadvantages.

This would necessarily result in a determination of a ‘net’ figure in the form of an adjustment.

Noting the complexity and extent of the GOC influence in the raw material market, the Commission presently considers it is not possible to accurately isolate and quantify what amount of any comparative advantage or disadvantage is enjoyed by the Chinese domestic producers from the information before it.

Thus, in this case, the Commission considers an adjustment for comparative advantage or disadvantage is not practicable or reasonable.

6.5.4 Calculation of the raw material cost adjustment

The steel coil costs have been determined by comparing the competitive benchmark cost to the exporter’s actual costs for different coil types, in this case CRC and pre-galvanised coil, and applying the resulting variation as an adjustment to the exporter’s records.

Scrap adjustment

Dalian Steelforce submitted as part of verification that scrap sales should also be adjusted consistent with the adjustment to its coil input costs. The Commission did not make this adjustment as it does not consider that the particular marker situation would extend to the price achieved by Dalian Steelforce for the sale of its scrap.

6.6 Exporters

6.6.1 Exporter questionnaires

At the commencement of the investigation, the Commission contacted a number of entities it had identified as possible exporters of the goods, based on information in the

⁸² *Steelforce Trading Pty Ltd Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 [118], [125] (Perram J).

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ABF import database and in Orrcon's application, and invited them to complete an exporter questionnaire.

The table below sets out those entities from whom the Commission received questionnaire responses.

Country	Name
China	Dalian Steelforce
	Yantai Aoxin
Korea	None
Taiwan	Ta Fong
Vietnam	CDI
	CDT
	Hoa Phat Steel
	Hoa Phat Binh Duong
	Hoa Phat Da Nang
	Hoa Phat Long An
	M&H
	Nguyen Minh Steel
	Vina One

Table 10: Exporter questionnaire responses

6.6.2 Sampling of exporters

Section 269TACAA(1) provides that where there is a dumping or countervailing investigation and the number of exporters from a particular country of export in relation to the investigation is so large that it is not practicable to examine the exports of all of those exporters, the investigation may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters who either constitute a statistically valid sample of those exporters or are responsible for the largest volume of exports to Australia that can reasonably be examined.

Section 269T(1) provides that, in relation to a dumping investigation, an exporter who is not an 'uncooperative exporter' and whose exports are selected to be examined as part of the investigation is a 'cooperative exporter'. An exporter who is not an 'uncooperative exporter' and whose exports are not selected to be examined as part of the investigation is a 'residual exporter'.

6.6.3 Cooperative exporters

Following receipt of the REQs, the Commission determined that the number of exporters from Vietnam was so large that it would not be practicable to examine the exports of all responding Vietnamese exporters. Accordingly, pursuant to section 269TACAA(1), in respect of exporters from Vietnam, the Commission determined to carry out the investigation and make its findings based on information obtained from an examination of

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CDI and Vina One, as they are the two largest Vietnamese exporters of the goods to Australia and together represent the majority of exports.⁸³

As well as CDI and Vina One from Vietnam, Dalian from China and Ta Fong from Taiwan were also cooperative exporters. There were no cooperative exporters from Korea.

6.6.4 Residual exporters

Hoa Phat Steel, Hoa Phat Long An and Nguyen Minh Steel were selected as residual exporters from Vietnam.

There were no other residual exporters from any of the other subject countries.

6.6.5 Trading entities

The Manual provides that the Commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that:

- gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or
- owns, or previously owned, the goods, but need not be the owner at the time the goods were shipped.

The Manual notes that it is common for traders or other intermediaries to play a role in the exportation of the goods. These parties will typically provide services such as arranging transportation (both land and ocean), arranging port services, arranging loading, conducting price negotiations, arranging contracts with producer and customer alike, conveying the customer's specifications to the producer including quality, marking, and packing requirements, and so forth.

Typically the manufacturer, as a principal who knowingly sent the goods for export to any destination will be the exporter.

Consistent with the Manual, the Commission has determined that a number of REQs received were from entities who were not exporters of the goods during the investigation period, but are instead acting as an intermediary for the actual exporter, who may or may not have submitted an REQ to the investigation. These entities are discussed below.

Five Steel (Tianjin) Tech Co.,Ltd

Five Steel provided an REQ to the Commission within the required timeframe.⁸⁴ Following an initial review of the information provided, the Commission formed the view that Five Steel was not an exporter of the goods for the purposes of the investigation, but is instead a trading company. The Commission informed Five Steel of this assessment and invited Five Steel to respond and further explain its role in the exportation process if it disagreed with this finding. Five Steel was also advised that its REQ contained a number of

⁸³ Confidential Attachment 2 – Australian market analysis.

⁸⁴ Confidential Attachment 6 – Five Steel REQ.

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deficiencies which would also need to be addressed before their response could be considered capable of verification.

Five Steel provided a further response to the Commission, but this was not considered to provide evidence satisfactory to the Commission as to its status as a trader, nor did it address the deficiencies in the REQ.⁸⁵ Accordingly, the information provided in Five Steel's REQ was not considered further and was not published on the EPR.

Yantai Aoxin

Yantai Aoxin was granted an extension to provide an REQ to the Commission and did so before the extended deadline. Following receipt of its REQ, the Commission identified a number of deficiencies in its response. Yantai Aoxin was requested to address these deficiencies in a revised REQ, which it subsequently did so.⁸⁶

Following a review of its revised REQ, in which Yantai Aoxin identified itself as a trader of the goods, the Commission sent a further series of questions on 4 September 2020 to clarify its exporter status. Yantai Aoxin provided its response to the Commission on 12 September 2020.⁸⁷

As a result of the assessment of Yantai Aoxin's REQ and its answers to the subsequent clarifying questions sent by the Commission, the Commission does not consider Yantai Aoxin to be an exporter of the goods because:

- Yantai Aoxin does not manufacture the goods;
- The goods Yantai Aoxin sells to its Australian customers are purchased from a manufacturer of the goods who was informed by Yantai Aoxin that the end customer of the goods was an Australian company who required the goods to meet Australian standards.

Accordingly, as the manufacturer of the goods sold the goods to Yantai Aoxin knowing that they would be later exported, the Commission considers the manufacturer to be the exporter.

CDT

CDT was granted an extension to provide an REQ to the Commission and did so before the extended deadline. Following receipt of its REQ, the Commission identified a number of deficiencies in its response. CDT was requested to address these deficiencies in a revised REQ, which it subsequently did so.⁸⁸

A review of CDT's REQ indicated that CDT did not manufacture goods during the investigation period and that the goods exported by CDT to Australia were purchased

⁸⁵ Confidential Attachment 7 – Email exchange between the Commission and Five Steel.

⁸⁶ EPR 550, Item 37.

⁸⁷ Confidential Attachment 8 – Yantai Aoxin response to request for further information.

⁸⁸ EPR 550, Item 26.

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from and manufactured by its related party entity, CDI. This was confirmed during verification of CDI.⁸⁹

Based on the related-party relationship between CDI and CDT, the Commission considers that, in respect of goods exported to Australia by CDT during the investigation period, CDI was aware that those goods sold to CDT would not be sold domestically and would be exported, either to Australia or another third country market. Accordingly, the Commission considers that all goods exported to Australia through CDT during the investigation period were exported by CDI, with CDT acting as a trader.

Hoa Phat Binh Duong

Hoa Phat Binh Duong was granted an extension to provide an REQ to the Commission and did so before the extended deadline. Following receipt of its REQ, the Commission identified a number of deficiencies in its response. Hoa Phat Binh Duong was requested to address these deficiencies in a revised REQ, which it subsequently did so.⁹⁰

A review of Hoa Phat Binh Duong's REQ indicated that it did not manufacture the goods exported to Australia during the investigation period and that the goods exported to Australia were purchased from and manufactured by a related party entity.⁹¹

Based on the related-party relationship between Hoa Phat Binh Duong and the manufacturer, the Commission considers that, in respect of goods exported to Australia by Hoa Phat Binh Duong during the investigation period, the manufacturer of the goods was aware that those goods sold to Hoa Phat Binh Duong would not be sold domestically and would be exported, either to Australia or another third country market. Accordingly, the Commission considers that all goods exported to Australia through Hoa Phat Binh Duong during the investigation period were exported by the manufacturer, with Hoa Phat Binh Duong acting as a trader.

M&H

M&H was granted an extension to provide an REQ to the Commission and did so before the extended deadline. Following receipt of its REQ, the Commission identified a number of deficiencies in its response. M&H was requested to address these deficiencies in a revised REQ, which it subsequently did so.⁹²

Following a review of its revised REQ, the Commission sent a subsequent series of questions to M&H on 4 September 2020 to clarify its status as an exporter of the goods. M&H provided its response to the Commission on 18 September 2020.

⁸⁹ CDI Verification Report, Chapter 3.1, EPR 550, Item 45.

⁹⁰ EPR 550, Item 28.

⁹¹ Confidential Attachment 9 – Hoa Phat Binh Duong Exhibit G-5.

⁹² EPR 550, Item 32.

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As a result of the assessment of M&H's REQ and its answers to the subsequent clarifying questions sent by the Commission⁹³, the Commission does not consider M&H to be an exporter of the goods because:

- M&H does not manufacture the goods;
- M&H purchases the goods from only one manufacturer; and
- The Commission considers that the manufacturer of the goods sold to M&H was aware that those goods would not be sold domestically and would be exported, either to Australia or another third country market, as it was informed by M&H that the goods were to be exported and it loaded the goods for transport to the port of departure.

6.6.6 Other entities

Hoa Phat Da Nang

Hoa Phat Da Nang was granted an extension to provide an REQ to the Commission and did so before the extended deadline. Following receipt of its REQ, the Commission identified a number of deficiencies in its response. Hoa Phat Da Nang was requested to address these deficiencies in a revised REQ, which it subsequently did so.⁹⁴

A review of Hoa Phat Da Nang's REQ indicated that it did not export the goods to Australia during the investigation period. Accordingly, pursuant to section 269TDA(1), as there has been no dumping of the goods during the investigation period (as there have been no exports), the Commission must terminate the investigation, in so far as it relates to Hoa Phat Da Nang.

6.6.7 Uncooperative exporters

Section 269T(1) provides that an exporter is an "uncooperative exporter" where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation. Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction) sets out that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period.

The Commissioner considered the Customs Direction and determined that any exporter which did not do any of the following is an uncooperative exporter for the purposes of this investigation:

- provide a REQ to the Commission; or
- request a longer period to provide a response within the legislated period; or

⁹³ EPR 550, Item 42.

⁹⁴ EPR 550, Item 29.

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- address requests for further information where REQs were given to the Commission.⁹⁵

6.7 Dumping assessment – China

6.7.1 Dalian Steelforce

Verification

The Commission conducted a remote verification of Dalian Steelforce's REQ.

The Commission is satisfied that Dalian Steelforce is the producer of the goods. The Commission is further satisfied that the information provided by Dalian Steelforce is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.⁹⁶

Export price

The Commission considers Dalian Steelforce to be the exporter of the goods as Dalian Steelforce:

- is the manufacturer of the goods;
- is named on the commercial invoice as the supplier;
- is named as consignor on the bill of lading;
- arranges and pays for the inland transport to the port of export; and
- arranges and pays for the port handling charges at the port of export.

The Commission is satisfied that for all Australian export sales during the period that Dalian Steelforce was the exporter of the goods.

In respect of Dalian Steelforce's export sales of the goods during the period, all of which were to its related intermediary, Steelforce Trading, and related party importer in Australia, Steelforce Australia, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price; or
- the price appeared to be influenced by a commercial or other relationship between the buyer (or an associate of the buyer) and the seller; or
- the buyer (or an associate of the buyer), was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The Commission therefore considers that all export sales made by Dalian Steelforce during the period were 'arms length' transactions.

⁹⁵ Requests for further information are contained in deficiency letters.

⁹⁶ EPR 550, Item 46.

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The Commission considers that for the goods imported by Steelforce Australia from Dalian Steelforce, via Steelforce Trading:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have not been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were 'arms length' transactions.

As the goods are not purchased by the importer from the exporter (they were purchased by Steelforce Australia from Steelforce Trading), the export price cannot be established under sections 269TAB(1)(a) or (b). The Commission determined an export price under section 269TAB(1)(c), using the price between Dalian Steelforce and Steelforce Trading.

Normal value

During verification, the Commission found that because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1), the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

The Commission is also satisfied that, due to a situation in the domestic market for the goods in China, sales in that market are not suitable for use in determining a normal value under section 269TAC(1).

The Commission has relied upon the finding of a market situation, in accordance with section 269TAC(2)(a)(ii) to calculate a normal value under section 269TAC(2)(c) using the sum of:

- the CTM that reasonably reflects competitive market costs in accordance with section 43(2) of the Regulations;
- domestic selling, general and administrative expenses (SG&A) on the assumption that the goods, instead of being exported, were sold domestically based on the company's records in accordance with section 44(2) of the Regulations; and
- an amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT⁹⁷ in accordance with section 45(2) of the Regulations.

CTM reasonably reflecting competitive market costs

The Commission has assessed the raw material input costs in the CTM for Dalian Steelforce. While the Commission established during verification that its records relating to the goods have been kept in accordance with the relevant GAAP and reasonably reflect the costs associated with the production and sale of the goods, the Commission was not satisfied that its costs reasonably reflect competitive market costs associated with the production of like goods, due to the influence of the GOC in the domestic Chinese market for raw materials, in this case HRC. Specifically, the Commission

⁹⁷ Section 269TAAD states that domestic sales of like goods are not in the OCOT if 'arms length' transactions are unprofitable in substantial quantities over an extended period and unlikely to be recoverable within a reasonable period. For the purposes of this investigation the "extended period" and "reasonable period" are considered to be the investigation period.

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considers that HRC costs in China, which make up a major proportion of the total costs of production of the goods, are distorted by GOC influence and do not reasonably reflect competitive market costs associated with the production or manufacture of the goods in accordance with section 43(2)(b)(ii) of the Regulations. Accordingly, the Commission considers it appropriate that HRC costs relating to the costs of production in Dalian Steelforce's records be adjusted to reflect competitive market costs as detailed in chapter 6.5 above.

Adjustments

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

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

Table 11 – Summary of adjustments – Dalian Steelforce

Dumping margin

The dumping margin in respect of the goods exported to Australia by Dalian Steelforce for the investigation period is **2.9%**.

The Commission's calculations are included at **Confidential Attachments 10 to 13**.

6.7.2 Residual exporters – China

There were no residual exporters from China.

6.7.3 Uncooperative exporters – China

As detailed in chapter 6.6.7, the Commission considers all exporters of the goods from China, other than Dalian Steelforce, are uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the Commission has determined an export price for the uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

The Commission has examined the ABF database and observed that exports of the goods by the sole cooperating exporter constitute a significant volume of all exports of the goods from China during the investigation period. The Commission has also compared the verified weighted average FOB export price of the cooperating exporter to the weighted average FOB export prices of other Chinese exporters reported in the ABF

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database⁹⁸ and notes that 72% of export volume from other exporters are within one standard deviation of the cooperating exporter's export price as reported in the ABF database.

Accordingly, the Commission considers that the verified export price of the cooperating exporter is representative of uncooperative Chinese exporters of the goods during the investigation period, based on the information before the Commission. The Commission has used this value for determining the export price for the uncooperative exporters.

Normal value

Pursuant to section 269TACAB(1)(e), the Commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the normal value established for the sole cooperating Chinese exporter in the investigation period.

The Commission has chosen the normal value of the sole cooperating exporter on the basis that:

- the Commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value; and
- the normal value of the cooperating exporter demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Chinese market, based on the information before the Commission.

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative Chinese exporters for the investigation period is **2.9%**.

The Commission's calculations are included in **Confidential Attachment 14**.

6.7.4 Summary of dumping margins

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

- Dalian Steelforce were dumped at a margin of 2.9%; and
- Uncooperative exporters from China were dumped at a margin of 2.9%.

6.7.5 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as

⁹⁸ See chapter **Error! Reference source not found.** for further detail on the method used by the Commission for removing distortions from the ABF import database data.

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less than 3% of the total volume of goods imported into Australia over the investigation period, where section 269TDA(5) does not apply. It does not apply to this investigation.

Using the ABF import database and having regard to the information collected and verified during the investigation, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from China and dumped was greater than 3% of the total import volume, and is therefore not negligible.

The Commission's calculations are at **Confidential Attachment 2**.

6.7.6 Level of dumping

Section 269TDA(1) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods, or if satisfied that there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

As found previously in this chapter, the Commission is satisfied that there has been dumping of the goods by all Chinese exporters during the investigation period and the dumping margin for all Chinese exporters of the goods is more than 2%.

6.8 Dumping assessment – Korea

6.8.1 Cooperating and Residual exporters – Korea

There were no cooperating or residual exporters from Korea.

6.8.2 Uncooperative exporters – Korea

The Commission considers all exporters of the goods from Korea are uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the Commission has determined an export price for the uncooperative Korean exporters pursuant to section 269TAB(3), having regard to all relevant information.

In the absence of any data from cooperating Korean exporters which may be representative of the export price of uncooperative exporters, the Commission has used the lowest weighted average FOB export price for the investigation period of Korean exporters who exported to Australia during the investigation period, as reported in the ABF import database. The weighted average export price is calculated using all exports of the goods by that exporter during the investigation period, which constitutes a significant majority of exports from Korea.

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The Commission has chosen the lowest export price on the basis that the lowest weighted average export price demonstrates a price at which an uncooperative exporter may export goods to Australia, based on the information before the Commission.

Normal value

Pursuant to section 269TACAB(1)(e), the Commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission has constructed a normal value for uncooperative Korean exporters as follows:

- raw material coil costs were calculated using MEPS pricing data for Korea for a mixture of different coil types, based on Korean importer data verified during the investigation; plus
- average other raw material unit costs based on verified data for third country exporters of the goods; plus
- average labour costs based on verified data for third country exporters of the goods, adjusted for Korea using data from a reputable independent supplier of economic data; plus
- average manufacturing costs, other costs and scrap offset value based on verified data for third country exporters of the goods; plus
- SG&A costs for Korean exporters on sales of goods of the same general category⁹⁹; plus
- average profit based on verified data for third country exporters of the goods; plus
- the highest inland transport and export handling costs based on verified data for third country exporters of the goods.

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative Korean exporters for the investigation period is **6.2%**.

The Commission's calculations are included in **Confidential Attachments 14 to 15**.

6.8.3 Volume of dumped imports

Using information from the ABF import database and having regard to the information collected and verified during the investigation, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from Korea and dumped was greater than 3% of the total import volume, and is therefore not negligible.¹⁰⁰

The Commission's calculations are at **Confidential Attachment 2**.

⁹⁹ The Commission has SG&A cost data for Korean exporters of the goods from other investigations into products in the same general category as the goods and so has used this data to work out SG&A in accordance with section 44(3)(a) of the Regulations.

¹⁰⁰ See chapter 6.7.5 for further discussion on termination of an investigation due to a negligible level of dumped imports.

6.8.4 Level of dumping

The Commission is satisfied that there has been dumping of the goods by all Korean exporters during the investigation period and the dumping margin for all Korean exporters of the goods is more than 2%.¹⁰¹

6.9 Dumping assessment – Taiwan

6.9.1 Ta Fong

Verification

The Commission conducted a remote verification of Ta Fong's REQ.

The Commission is satisfied that Ta Fong is the producer of the goods and like goods. The Commission is further satisfied that the information provided by Ta Fong is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.¹⁰²

Submission in response to the verification report

In a submission dated 1 March 2021,¹⁰³ Orrcon made the following comments:

- The Commission's offsetting of scrap costs in Ta Fong's CTMS differs from its findings in Review 529 into HSS (REV 529),¹⁰⁴ where the Commission made no adjustments for Ta Fong's lack of scrap allocation. Orrcon submits that Ta Fong's scrap allocation is consistent in its manufacture of HSS and precision pipe and tube steel. Accordingly, the method used in REV 529 should be followed, and no scrap adjustment made in the current investigation;
- The allocation of costs in Ta Fong's CTMS is based on sales revenue, which is inconsistent with the allocation for Ta Fong in REV 529 and other exporter verifications in this investigation for Dalian Steelforce and CDI;
- In considering whether there are insufficient domestic sales of similar models, the Commission does not need to look further if there are no models in the same "key" MCC category;
- The Commission will need to ensure products which are not the goods are not included in its domestic sales listing and will need to examine mill certificates to confirm that the goods have been manufactured to a recognised Taiwanese standard for precision pipe and tube;

¹⁰¹ See chapter 6.7.6 for further discussion on termination of an investigation due to a level of dumping less than 2%.

¹⁰² EPR 540, Item 44.

¹⁰³ EPR 550, Item 51.

¹⁰⁴ Review 529 into HSS from China, Korea, Malaysia, Taiwan and Thailand, available on the Commission's website.

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- The Commission ought to review its dumping margin calculations given the large discrepancy between the dumping margin found in this investigation and REV 529.

Commission's assessment

Scrap costs

As Ta Fong was unable to distinguish revenue derived from sales of scrap from the production of the goods and revenue from scrap sales from all other production, it made no offset to its CTM for the goods in its REQ. The Commission was able to verify revenue derived from the sale of scrap from all general production and proceeded to estimate revenue from scrap sales from the production of the goods based on sales volumes of the goods in order to properly account for this cost offset to the CTM. The Commission considers that not offsetting scrap costs would result in a higher CTM than was actually incurred in the production of the goods by Ta Fong.

Allocation of costs

The allocation of costs in Ta Fong's CTMS is not based on sales revenue, as stated by Orrcon, but on sales quantity.

As noted in Exception 3 to the Ta Fong Verification Report¹⁰⁵, the Commission was unable to reconcile CTM to the audited accounts for Ta Fong. Due to this difference in this verification compared to REV 529 and the verification of other exporters in this investigation, the Commission has instead relied on the actual cost of goods sold data from Ta Fong's sales system to verify its CTM data.

MCC matching

The Manual provides that where there are no sales or insufficient sales of identical models of the goods exported to Australia that are sold in the ordinary course of trade on the domestic market, the Commission may use a surrogate model.

In this instance, the Commission chose MCC P-H-2-N-1-C-1-N-A-2-P as the surrogate model for P-H-2-N-1-C-1-N-B-2-P. The variance between these models was the product thickness. Analysis of the domestic selling prices of the exported model and the surrogate model revealed pricing was within 0.2%, which was considered negligible.

The Commission also notes no key MCC categories were identified in respect of the goods in this investigation.

Goods verification

During verification, the Commission selected fifteen domestic sales by Ta Fong for testing downwards to source documents. Ta Fong provided purchase orders, internal order acceptance documents, ERP system order entry details, packing lists, commercial invoice and proof of payment as part of this process. The Commission was able to verify the product codes, base, shape, diameter, thickness, volume, pieces and values back to the

¹⁰⁵ EPR 550, Item 44.

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sales listing. From this examination, the Commission is satisfied that the domestic sales listing appropriately represents domestic sales of the goods by Ta Fong.

Dumping margin

The dumping margin calculations for Ta Fong have been reviewed for quality and accuracy, as per the Commission's standard operating procedures.

Export price

The Commission considers Ta Fong to be the exporter of the goods, as Ta Fong is:

- the manufacturer of the goods;
- named on the commercial invoice as the supplier;
- named as consignor on the bill of lading;
- arranges and pays for the inland transport to the port of export;
- arranges and pays for the port handling charges at the port of export;
- arranges and pays for the ocean freight and marine insurance.

The Commission is satisfied that for all Australian export sales during the investigation period, Ta Fong was the exporter of the goods.

Ta Fong did not have export sales of the goods to any related customers in Australia during the period.

In respect of Ta Fong's Australian sales of the goods to its unrelated customers during the period, the verification team found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price; or
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The Commission therefore considers that all export sales made by Ta Fong to its Australian customers during the period were 'arms length' transactions.

In respect of Australian sales of the goods by Ta Fong, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal value

The Commission did not find any evidence of related party transactions related to Ta Fong's domestic sales.

In respect of Ta Fong's domestic sales of like goods to its unrelated customers during the period, the Commission found no evidence that:

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- there was any consideration payable for, or in respect of, the goods other than price; or
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.¹⁰⁶

The Commission therefore considers that all domestic sales made by Ta Fong to its domestic customers during the period were ‘arms length’ transactions.

As detailed in the Ta Fong verification report, the Commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the Commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the Commission will consider whether a proper comparison can be made at the MCC level. In these situations, the Commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model. This is detailed in the table below.

Export MCC	Comment	Surrogate MCC
P-H-2-N-1-C-1-N-B-2-P	Volume of domestic sales model is less than 5% of the exported volume.	P-H-2-N-1-C-1-N-A-2-P has been used as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.

Table 12 – Surrogate export model – Ta Fong

Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export port and handling charges	Add an amount for port charges
Export credit terms	Add an amount for export credit terms

¹⁰⁶ Section 269TAAAD refers.

Table 13: Summary of adjustments – Ta Fong

Dumping margin

The dumping margin in respect of the goods exported to Australia by Ta Fong for the investigation period is **negative 9.0%**.

The Commission's calculations are included at **Confidential Attachments 16 to 19**.

6.9.2 Residual exporters – Taiwan

There were no residual exporters from Taiwan.

6.9.3 Uncooperative exporters – Taiwan

As detailed in chapter 6.6.7, the Commission considers all exporters of the goods from Taiwan, other than Ta Fong, are uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the Commission has determined an export price for the uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

The Commission has examined the ABF database and observed that exports of the goods by the sole cooperating exporter represent a small volume of exports of the goods from Taiwan during the investigation period. The Commission has also compared the verified weighted average FOB export price of the cooperating exporter to the weighted average FOB export prices of other Taiwanese exporters reported in the ABF database.¹⁰⁷ The Commission observes that 81% of export volumes from other Taiwanese exporters are within one standard deviation of the cooperating exporter's export price, as reported in the ABF database.

The Commission has then compared the verified export price for Ta Fong against its FOB export price, as reported in the ABF import database, and has observed a 4% difference between the two values.

After considering the volume of Taiwanese exports made up by Ta Fong exports, the volume of Taiwanese exports within one standard deviation of Ta Fong's export price and the desirability of using verified exporter data rather than data from the ABF import database, the Commission considers that the verified export price of the cooperating exporter is likely to be a more accurate representation of the export price for uncooperative Taiwanese exporters of the goods during the investigation period. Based

¹⁰⁷ See chapter **Error! Reference source not found.** for further detail on the method used by the Commission for removing distortions from the ABF import database data.

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on the information before it, the Commission, has used this value for determining the export price for the uncooperative exporters.

Normal value

Pursuant to section 269TACAB(1)(e), the Commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the normal value established for the sole cooperating Taiwanese exporter in the investigation period, less favourable adjustments.

The Commission has chosen the normal value of the sole cooperating exporter on the basis that:

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

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative Taiwanese exporters for the investigation period is **negative 8.6%**.

The Commission's calculations are included in **Confidential Attachment 14**.

6.9.4 Summary of dumping margins

The Commission has assessed that the goods exported to Australia from Taiwan during the investigation period by:

- Ta Fong were not dumped as the dumping margin for this exporter was negative (i.e. -9.0%); and
- Uncooperative exporters from Taiwan were not dumped as the dumping margin was negative (i.e. -8.6%).

6.9.5 Level of dumping

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods.

The Commission is satisfied that there has been no dumping of the goods during the investigation period by Ta Fong or Taiwanese uncooperative exporters. Accordingly, the Commissioner proposes to terminate the dumping investigation as it relates to all Taiwanese exporters, pursuant to section 269TDA(1)(b)(i).

6.10 Dumping Assessment - Vietnam

6.10.1 CDI

Verification

The Commission conducted a remote verification of CDI's REQ.

The Commission is satisfied that CDI is the producer of the goods and like goods. The Commission is further satisfied that the information provided by CDI is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.¹⁰⁸

Submissions in response to the verification report – Orrcon

In a submission dated 1 March 2021¹⁰⁹, Orrcon made the following comments:

- In considering whether there is an absence of competitive market costs in Vietnam, the Commission is reminded that Vietnamese subject good producers have likely sold at a loss during the investigation period.

Commission's assessment

The presence or absence of competitive market costs is relevant where a constructed normal value has been used under section 269TAC(2)(c). As discussed under "Normal Value" below, the normal value for CDI has been determined under section 269TAC(1). Accordingly, the consideration of whether CDI's records reasonably reflect competitive market costs is not required. The Commission notes that it did not find unprofitable sales of domestic goods in substantial volumes for the cooperating exporters during the investigation period.

Submissions in response to the verification report – CDI

In a submission dated 9 March 2021¹¹⁰, CDI made the following comments in respect of the assessment of the export price:

- Generic price offers/quotes are made to Australian customers. When a purchase order is received from the Australian customer at the quoted or negotiated price, CDI or CDT decides which entity will issue the customer's sales contract. The decision is based on a family internal profit-sharing arrangement. CDI and CDT are related by family ownership;
- In respect of Australian sales of the goods by CDI, where CDI exported the goods through CDT, the Commission ought to reconsider the determination of export price under section 269TAB(1)(c). CDI recommended that the export price be

¹⁰⁸ EPR 550, Item 45.

¹⁰⁹ EPR 550, Item 51.

¹¹⁰ EPR 550, Item 52.

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determined as the price negotiated between the Australian customer and CDI/CDT;

- CDI disagrees that domestic sales made by CDI to CDT were 'arms length' transactions as the price is influenced by a commercial or other relationship between the buyer and the seller, and that some consideration, other than the price is payable, being the family internal profit-sharing arrangements. The Commission ought to consider sales between CDI and CDT to be non-arms-length sales made by CDI and therefore excluded from normal value calculations.

Commission's assessment

As discussed in chapter 6.2.2, section 269TAB(1)(a) generally provides that the export price of any goods exported to Australia is the price paid for the goods by the importer where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in 'arms length' transactions.

During verification, the Commission determined that CDI was the exporter of those goods sold by CDT to Australian importers (this is discussed further under "Export Price"). Accordingly, as the goods sold by CDT were not *purchased by the importer from the exporter*, regardless of whether those sales were 'arms length', the export price for CDT sales could not be determined under section 269TAB(1)(a) or section 269TAB(1)(b), leaving only section 269TAB(1)(c) available to determine the export price.

Further, if CDI's submission that domestic sales made by CDI to CDT were not 'arms length' is accepted, then the export price could not be determined under section 269TAB(1)(a), as it is a requirement that sales are 'arms length' transactions. Section 269TAB(1)(b) is also not available as (in addition to CDT not being the exporter) the Commission was not provided with evidence showing that the goods were subsequently sold by the importer, in the condition they were imported, to an unrelated party.

Export price

The Commission considers CDI to be the exporter of the goods as CDI:

- is the manufacturer of the goods;
- knowingly sent the goods for export to Australia or a third country. During the investigation period, CDI sometimes exported the goods directly and in other cases, through CDT.

The Commission is satisfied that for all Australian export sales during the investigation period, CDI was the exporter of the goods.

CDI did not have export sales of the goods to any related customers in Australia during the period.

In respect of CDI's direct Australian sales of the goods to its unrelated customers during the period, the Commission found no evidence that:

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

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- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed , compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.¹¹¹

The Commission therefore considers that all direct export sales made by CDI to its unrelated Australian customers during the period were ‘arms length’ transactions.

In respect of Australian sales of the goods by CDI, where CDI exported the goods directly, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs arising after exportation.

In respect of Australian sales of the goods by CDI, where CDI indirectly exported through CDT, the Commission has determined an export price under section 269TAB(1)(c), being the price determined having regard to all the circumstances of the exportation. This is because these particular goods exported to Australia were not purchased by the importer from the exporter, but were instead purchased by the importer from CDT. The Commission has determined an export price for these goods, as the price paid to CDI by CDT plus inland transport and port handling costs, in order to makes these sales on the same terms as goods exported directly by CDI.

Normal value

In the verification report for CDI¹¹², the Commission found no evidence that domestic sales made by CDI to its related customers during the period were not ‘arms length’ transactions. However, as noted in its submission of 9 March 2021, CDI advised the Commission that domestic sales made by CDI to related party CDT were not ‘arms length’ as consideration other than price was payable, in the form of internal profit-sharing arrangements between family members with shares in both companies

Accordingly, domestic sales between CDI and CDT are not considered ‘arms length’ and have been excluded from the calculation of normal value.

In respect of CDI’s domestic sales of like goods to its unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

¹¹¹ Section 269TAA refers.

¹¹² EPR 550, Item 45.

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- the buyer, or an associate of the buyer, was directly or indirectly reimbursed , compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.¹¹³

The Commission therefore considers that all domestic sales made by CDI to its unrelated customers during the period were ‘arms length’ transactions.

The application claimed that the market in the country of export is such that sales in that market are not suitable for use in determining a normal value under section 269TAC(1), in accordance with section 269TAC(2)(a)(ii). The application also claimed that CDI’s records do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

The Commission has determined that a particular market situation did not exist in respect of the domestic market for precision pipe and tube steel in Vietnam for the investigation period. The Commission therefore considers it appropriate to calculate a normal value under section 269TAC(1), excluding those sales to its related party CDT.

The Commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the Commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the Commission will consider whether a proper comparison can be made at the MCC level. In these situations, the Commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model. This is detailed in the table below.

Export MCC	Comment	Surrogate MCC
G-C-N-1-N-L2-T1 G-C-N-2-N-L2-T1	Volume of domestic sales model is less than 5% of the exported volume.	G-R-N-N-3-L2-T1 has been used as a surrogate to make a specification adjustment as it is the next most comparable model. Domestic sales of the surrogate model are greater than 5% of the exported volume.
G-R-N-N-3-L1-T2	Volume of domestic sales model is less than 5% of the exported volume.	G-R-N-N-3-L2-T1 has been used as a surrogate to make a specification adjustment and timing adjustment. Due to a lack of sales data for G-R-N-N-3-L2-T1 in the Dec-19 quarter, the Commission has used the difference in the production costs for the surrogate model between quarters to make the timing adjustment.

¹¹³ Ibid.

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		Domestic sales of the surrogate model are greater than 5% of the exported volume.
G-R-O-N-2-L2-T2	Volume of domestic sales model is less than 5% of the exported volume.	G-R-N-N-2-L2-T2 has been used as a surrogate to make a specification adjustment as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.
G-R-O-N-3-L2-T2	Volume of domestic sales model is less than 5% of the exported volume.	G-R-N-N-3-L2-T2 has been used as a surrogate to make a specification adjustment as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.

Table 14 - Surrogate export model - CDI

Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic other costs	Deduct an amount for domestic other costs
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges
Export other costs	Add an amount for 'other costs'

Table 15: Summary of adjustments - CDI

Dumping Margin

The dumping margin in respect of the goods exported to Australia by CDI for the investigation period is **negative 12.2%**.

The Commission's calculations are included at **Confidential Attachments 20 to 23**.

6.10.2 Vina One

Verification

The Commission conducted a remote verification of Vina One's REQ.

The Commission is satisfied that Vina One is the producer of the goods and like goods. The Commission is further satisfied that the information provided by Vina One is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

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A report covering the verification findings is available on the public record.¹¹⁴

Submission in response to the verification report

In a submission dated 1 March 2021¹¹⁵, Orrcon requested that the source used by the Commission in comparing Vina One's HRC purchase price against benchmark prices be disclosed to allow all interested parties to validate the Commission's finding that Vina One's CTMS data was accurate, on the basis that "...*Vietnamese HRC pricing is lower than available Asia-regional price benchmarks, and that this therefore translates into a lower than-competitive market price for subject goods selling prices in Vietnam.*"

Commission's assessment

The benchmark used by the Commission was based on prices out of Vietnam. The Commission notes that the comparison to the benchmark was for the purposes of verifying the accuracy of Vina One's CTMS data and was not in relation to whether these costs were representative of a competitive market price. Having been satisfied that the data was accurate and reliable, the use of a benchmark from a different market to that in which Vina One actually purchased HRC would not be informative for the purpose of verification. As contemplated elsewhere in this report, the Commission has concluded that a market situation is not operative in Vietnam in respect of the like goods.

Export price

The Commission considers Vina One to be the exporter of the goods because Vina One:

- is the principal located in Vietnam, the country of export;
- is the manufacturer of the goods;
- is named on the commercial invoice as the supplier;
- is named as consignor on the bill of lading;
- arranges transportation of the goods to the port of export in Australia; and
- knowingly placed the goods in the hands of a freight company for delivery to Australia.

The Commission is satisfied that, for all Australian export sales during the investigation period, Vina One was the exporter of the goods.

Vina One did not have export sales of the goods to any related customers in Australia during the period.

In respect of Vina One's Australian sales of the goods to its unrelated customers during the period, the Commission found no evidence that:

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

¹¹⁴ EPR 550, Item 47.

¹¹⁵ EPR 550, Item 51.

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- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed , compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price¹¹⁶.

The Commission therefore considers that all export sales made by Vina One to its Australian customers during the period were 'arms length' transactions.

In respect of Australian sales of the goods by Vina One, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs after exportation.

Normal value

The Commission did not find any evidence of related party transactions related to Vina One's domestic sales.

In respect of Vina One's domestic sales of like goods to its unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price; or
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed , compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.¹¹⁷

The Commission therefore considers that all domestic sales made by Vina One to its domestic customers during the period were 'arms length' transactions.

The application claimed that the market in the country of export is such that sales in that market are not suitable for use in determining a normal value under section 269TAC(1), and that a market situation applies in accordance with section 269TAC(2)(a)(ii). The application also claimed that Vina One's records do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

Since the publication of Vina One's verification report, the Commission determined that a particular market situation did not exist in respect of the domestic market for precision pipe and tube steel in Vietnam for the investigation period. The Commission therefore considers it appropriate to calculate a normal value for Vina One under section 269TAC(1), as the price paid or payable for like goods sold in the ordinary course of trade

¹¹⁶ Section 269TAA refers.

¹¹⁷ Section 269TAA refers.

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for consumption in the country of export in sales that are ‘arms length’ transactions. As normal value was calculated under section 269TAC(1), the Commission did not further consider whether Vina One’s records reasonably reflect competitive market costs.¹¹⁸

The Commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the Commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the Commission will consider whether a proper comparison can be made at the MCC level. In these situations, the Commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model. This is detailed in the table below.

Export MCC	Comment	Surrogate MCC
P-G-3-N-3-R-N-2-A-1-P	Volume of domestic sales model is less than 5% of the exported volume.	P-G-3-N-3-R-N-3-A-1-P has been used as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.
P-G-3-N-3-R-N-2-A-2-P	Volume of domestic sales model is less than 5% of the exported volume.	P-G-3-N-3-R-N-3-A-1-P has been used as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.
P-G-3-N-3-R-N-3-A-2-P	Volume of domestic sales model is less than 5% of the exported volume.	P-G-3-N-3-R-N-3-A-1-P has been used as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.

Table 16 - Surrogate export model - Vina One

Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers these adjustments to be necessary to ensure a fair comparison of normal value and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export handling and other	Add an amount for export handling and other

¹¹⁸ See chapter 6.5.1 for further discussion.

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Table 17 : Summary of adjustments - Vina One

Dumping margin

The dumping margin in respect of the goods exported to Australia by Vina One for the investigation period is **negative 12.0%**.

The Commission's calculations are included at **Confidential Attachments 24 to 27**.

6.10.3 Uncooperative exporters – Vietnam

As detailed in chapter 6.6.7, the Commission considers all exporters of the goods from Vietnam are uncooperative exporters for the purposes of this investigation, other than:

- CDI;
- Vina One;
- Hoa Phat Steel (residual exporter);
- Hoa Phat Long An (residual exporter); and
- Nguyen Minh Steel (residual exporter).

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the Commission has determined an export price for the uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

The Commission has used the lowest verified weighted average FOB export price for the investigation period of cooperating Vietnamese exporters who exported to Australia during the investigation period.

The Commission has chosen the lowest verified export price on the basis that the lowest weighted average export price demonstrates a price at which an uncooperative exporter may export like goods to Australia, based on the information before the Commission.

Normal value

Pursuant to section 269TACAB(1)(e), the Commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the highest verified normal value for the investigation period of cooperating Vietnamese exporters who exported to Australia during the investigation period, less favourable adjustments. This was chosen on the basis that:

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

Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative Vietnamese exporters for the investigation period is **negative 6.5%**.

The Commission's calculations are included in **Confidential Attachment 14**.

6.10.4 Residual exporters – Vietnam

Hoa Phat Steel, Hoa Phat Long An and Nguyen Minh Steel were selected as residual exporters from Vietnam.

As the Commission has calculated a negative dumping margin for all exporters, including uncooperative exporters from Vietnam, and intends to terminate the investigation against these exporters, it has not calculated a separate dumping margin for residual exporters and has instead set the dumping margin for residual exporters at the same rate as for uncooperative exporters.

Dumping margin

The dumping margin in respect of the goods exported to Australia by residual Vietnamese exporters for the investigation period is **negative 6.5%**.

6.10.5 Summary of dumping margins

The Commission has assessed that the goods exported to Australia from Vietnam by all exporters were not dumped.

6.10.6 Level of dumping

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods.

The Commission is satisfied that there has been no dumping of the goods during the investigation period by CDI, Vina One, Vietnamese residual exporters or Vietnamese uncooperative exporters. Accordingly, the Commissioner proposes to terminate the dumping investigation as it relates to all Vietnamese exporters, pursuant to section 269TDA(1)(b)(i).

7 SUBSIDY INVESTIGATION

7.1 Preliminary finding

7.1.1 China

The Commission has found that countervailable subsidies were received in respect of the goods exported to Australia from China during the investigation period.

The Commission has found that the volume of subsidised goods exported to Australia from China during the investigation period was not negligible.

The subsidy margin determined by the Commission in respect of Dalian Steelforce is 9%. The subsidy margin for non-cooperative entities is 51.6%.

7.1.2 Vietnam

The Commission has found that:

- no countervailable subsidies have been received in respect of the goods exported to Australia from Vietnam during the investigation period by CDI, Vina One and residual exporters; and
- countervailable subsidies have been received in respect of the goods exported to Australia from Vietnam non-cooperative entities during the investigation period, albeit at negligible levels.

The Commission has found that the volume of subsidised goods exported to Australia from Vietnam by non-cooperative entities during the investigation period was not negligible.

The subsidy margin determined by the Commission in respect of non-cooperative exporters is negligible.

Accordingly, the Commissioner is satisfied that:

- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(i) in respect of the cooperating exporters, CDI and Vina One and the residual exporters; and
- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(ii) in respect non-cooperative entities.

7.2 Relevant legislation

7.2.1 Countervailable subsidies

Section 269T(1) defines 'subsidy' as follows:

subsidy, in respect of goods exported to Australia, means:

- (a) a financial contribution:
 - (i) by a government of the country of export or country of origin of the goods; or

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- (ii) by a public body of that country or a public body of which that government is a member; or
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
 - (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
 - (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
 - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
 - (viii) the purchase by that government or body of goods or services; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.¹¹⁹

Section 269TACC defines a 'countervailable subsidy' as follows:

- (1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
 - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
 - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
 - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
 - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
 - (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
 - (b) eligibility for the subsidy is automatic; and
 - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
 - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

¹¹⁹ Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

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- (4) The Minister may, having regard to:
- (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
 - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
 - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
 - (d) the manner in which a discretion to grant access to the subsidy has been exercised;
- determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
 - (b) the length of time during which the subsidy program has been in operation.

Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.

7.2.2 Non-cooperative entities

Section 269TAACA(1) provides that, when determining whether a countervailable subsidy has been received in respect of particular goods, or when determining the amount of a countervailable subsidy in respect of particular goods, the Commissioner may act on the basis of all the facts available and may make such assumptions as the Commissioner considers reasonable. In particular, in circumstances where an entity:¹²⁰

- has not given the Commissioner information the Commissioner considers to be relevant to the investigation, review or inquiry within a period the Commissioner considers to be reasonable; or
- has significantly impeded the investigation, review or inquiry.

Such entities are referred to in this report as “non-cooperative entities”.

7.3 Investigated programs

7.3.1 China

The applicant alleged the existence of a total of 45 programs in relation to exports of precision pipe and tube steel from China, based on previous findings made by the Commission in respect of subsidies received for other products manufactured in China from HRC, namely HSS. The applicant argued that such subsidies would be applicable to the goods. Like HSS, precision pipe and tube is manufactured from HRC. Both HSS and HRC have been the subject of previous findings in relation to countervailable subsidies

¹²⁰ Entities contemplated by section 269TAACA(1) are also described in section 269TAACA(2).

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from China. Accordingly, the applicant considers that the goods from China would be expected to be in receipt of the same benefits.

In respect of subsidies for HRC, the Manual provides that:

“Upstream” subsidy refers to a subsidy (non-export) paid to an input product such as raw material or a manufactured product used in the production of the goods in question, and countervailing action may be taken where the benefit received by the upstream recipient of the subsidy passed through, in whole or in part, to the downstream purchaser.

Where it is established that the price of the input product reflects the benefit of the subsidy, in whole or in part, received by the upstream supplier, then the downstream purchaser is taken to have received a subsidy.¹²¹

Consistent with the statement above, the Commission is satisfied that subsidies for HRC may be applicable to the goods, with such subsidies being “upstream subsidies”.

After considering the information before the Commission regarding the identified subsidies, the Commission is also satisfied that the subsidies may also be applicable to the goods, as HSS and the goods are used in similar industries.

The Commission has investigated each of the 45 alleged subsidy programs.

The Commission has set out each program investigated in respect of exports of the goods from China and its finding in respect of each program in the table below.

Program Number ¹²²	Program name	Program Type	Countervailable subsidy received? (Yes/No)
Programs included in questionnaires			
1	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Tax	Yes
2	One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’	Grant	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes

¹²¹ The Manual, chapter 19.

¹²² The Commission has maintained the Program Number used in the application.

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Program Number¹²²	Program name	Program Type	Countervailable subsidy received? (Yes/No)
10	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Tax	Yes
11	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Tax	Yes
12	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Tax	Yes
13	Preferential Tax Policies in the Western Regions	Tax	Yes
14	Tariff and VAT Exemptions on Imported Materials and Equipment	Tax	Yes
15	Innovative Experimental Enterprise Grant	Grant	Yes
16	Special Support Fund for Non State-Owned Enterprises	Grant	Yes
17	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
20	Hot rolled steel provided by government at less than fair market value	Less than adequate remuneration	Yes
21	Water Conservancy Fund Deduction	Grant	Yes
22	Wuxing District Freight Assistance	Grant	Yes
23	Huzhou City Public Listing Grant	Grant	Yes
27	Huzhou City Quality Award	Grant	Yes
28	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
29	Land Use Tax Deduction	Tax	Yes
30	Wuxing District Public Listing Grant	Grant	Yes
31	Anti-dumping Respondent Assistance	Grant	No
32	Technology Project Assistance	Grant	Yes
34	Balidian Town Public Listing Award	Grant	Yes
35	Preferential Tax Policies for High and New Technology Enterprises	Tax	Yes
36	Local Tax Bureau Refund	Tax	Yes
37	Return of Farmland Use Tax	Tax	Yes
38	Return of Land Transfer Fee	Tax	Yes
39	Return of Land Transfer Fee From Shiyou	Tax	Yes

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Program Number¹²²	Program name	Program Type	Countervailable subsidy received? (Yes/No)
40	Dining lampblack governance subsidy of Jinghai County Environmental Protection Bureau	Grant	Yes
41	Discount interest fund for technological innovation	Grant	Yes
42	Energy conservation and emission reduction special fund project in 2015	Grant	Yes
43	Enterprise famous brand reward of Fengnan Finance Bureau	Grant	Yes
44	Government subsidy for construction	Grant	Yes
45	Infrastructure Construction Costs Of Road In Front Of No.5 Factory	Grant	Yes
46	New Type Entrepreneur Cultivation Engineering Training Fee Of Jinghai County Science And Technology Commission	Grant	Yes
47	Subsidy for Coal-Fired Boiler of Fengnan Subtreasury	Grant	Yes
48	Subsidy for Coal-Fired Boiler Rectification	Grant	Yes
49	Subsidy for District Level Technological Project	Grant	Yes
50	Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau	Grant	Yes
51	Subsidy from Science and Technology Bureau of Jinghai County	Grant	Yes
52	Subsidy of Environment Bureau transferred from Shiyou	Grant	Yes
550-2	Loan Interest Subsidy	Grant	Yes

Table 18 Investigated subsidy programs – China

The Commission’s findings in relation to each program investigated are outlined in **Non-confidential Appendix C2**.

7.3.2 Vietnam

The applicant alleged the existence of a total of 44 unique programs in relation to exports of precision pipe and tube steel from Vietnam, based on the findings of anti-dumping and countervailing cases conducted by the CBSA in relation to the provision of subsidies granted by the GOV, as well as Vietnam’s notifications in March 2013 and September 2015 to the World Trade Organization (WTO) Committee on Subsidies and Countervailing Measures pursuant to *Article XVI:1 of the GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures*.

The Commission has investigated each of the 44 alleged subsidy programs.

The Commission has set out each program investigated in respect of exports of the goods from Vietnam and its finding in respect of each program in the table below.

PUBLIC RECORD

Program Number ¹²³	Program name	Program Type	Countervailable subsidy received? (Yes/No)
Programs included in questionnaires			
1	Preferential Import Tariff Rates contingent upon Localisation Ratios with respect to products and Parts of Mechanical-Electric-Electronic Industries (updating Programme II of Notification of Subsidies period 2003-2004)	Tariff policy	No
2	Support for the Implementation of Projects Manufacturing Priority Industrial Products (Updating Programme III of 2003-2004)	Financial grant	No
3	Investment Incentives Contingent upon Export Performance For Domestic Businesses (Updating Programme IV of 2003-2004)	Financial grant	No
4	Other Investment Incentives for Domestic Businesses (Updating Program V of Period 2003-2004)	Financial grant	No
5	Investment Incentives Contingent upon Export Performance for Foreign Invested Enterprises (Updating Programme VI of the Period 2003-2004)	Financial grant	No
6	Other Investment Incentives for Foreign Invested Enterprises (Updating Programme VII for Period 2003-2004)	Financial grant	No
7	Preferential Investment Credit for Development Contingent upon Export Criteria (Updating Programme VIII of Period 2003-2004)	Financial grant	No
8	Preferential Development Credit for Investment Contingent Upon Localisation Ratios (Updating Programme IX of Period 2003-2004)	Financial grant	No
9	Other Preferential Investment Credit for Development (Updating Program X of Period 2003-2004)	Financial grant	No
10	Export Promotion	Financial grant	No
11	Trade Promotion (Updating of Programme XIII of Period 2003-2004)	Financial grant	No
12	Support for Mechanical Products (Updating Program XV of Period 2003-2004)	Financial grant	No
13	Support for Shipbuilding Industry (Updating of Programme XV of Period 2003-2004)	Financial grant	No
14	Assistance for Commercial Development in Mountainous, Island and Ethnic Minority Areas (Updating Programme XVI of Period 2003-2004)	Financial grant	No

¹²³ The Commission has maintained the Program Number used in the application.

PUBLIC RECORD

Program Number¹²³	Program name	Program Type	Countervailable subsidy received? (Yes/No)
15	Assistance to Enterprises Facing Difficulties due to Objective Reasons	Financial grant	No
16	Incentives for Investment Projects in Science and Technology (Updating Programme XVIII of Period 2003-2004)	Financial grant	No
17	Preferential Import Tariff Rates for enterprises investing in regions or sectors entitled to investment incentives	Tariff policy	No
18	Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives	Tax benefit	Yes
19	Incentives on non-agricultural land use	Tax benefit	No
20	Grants to Firms that Employ more than 50 Employees	Financial grant	No
21	Investment Support (consisting of two separate programs)	Tax benefit	Covered under Program 18
22	Acquisition of State Assets at Less Than Fair Market Value	LTAR	No
23	Export & Import Support in the Form of Preferential Loans, Guarantees, and Factoring (consisting of five separate programs)	Preferential loan/interest	No
24	Export Support Loans at Preferential Rates	Preferential loan/interest	No
25	Interest Rate Support Program under the State Bank of Vietnam	Preferential loan/interest	No
26	Preferential Lending under the Viet Bank Export Loan Program	Preferential loan/interest	Covered under Program 24
27	Accelerated Depreciation of Fixed Assets	Tax benefit	No
28	Additional Income Tax Preferences for Exporters	Tax benefit	No
29	Enterprise Income Tax Exemption/Reduction for Business Expansion and Intensive Investment Projects	Tax benefit	Covered under Program 18
30	Enterprise Income Tax Preferences, Exemptions, and Reductions (consisting of seven separate programs)	Tax benefit	No
31	Establishments Dealing with Exported Goods	Tax benefit	Covered under Program 28
32	Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets	Tax benefit	Covered under Program 17
33	Exemptions/reductions of Land Rent, Tax, and Levies (consisting of five separate programs)	Tax benefit	No
34	Land-Use Levy Exemptions/Reductions	Tax benefit	No
35	Preferential Income Tax Rates for Enterprises within Economic Zones or Industrial Parks	Tax benefit	Covered under Program 18
36	Preferential Provisions for Carry-forward of Losses	Tax benefit	No

PUBLIC RECORD

Program Number¹²³	Program name	Program Type	Countervailable subsidy received? (Yes/No)
37	Tax Exemptions and Reductions for Encouraged Sectors	Tax benefit	Covered under Program 18
38	Tax Exemptions and Reductions for Foreign-Invested Enterprises	Tax benefit	No
39	Tax Exemptions and Reductions for Investment in Disadvantaged Regions	Tax benefit	Covered under Program 18
40	Tax Exemptions and Reductions for Investments in Economic Zones or High-Tech Industrial Parks	Tax benefit	Covered under Program 18
41	Tax Preferences for Investors Producing and/or Dealing in Export Goods	Tax benefit	Covered under Program 28
42	Excessive Duty Exemptions for Imported Raw Materials for Exported Goods	Tariff policy	No
43	Exemptions of Import Duty (consisting of seven separate programs)	Tariff policy	No
44	Refund of Import Duty	Tariff policy	No

Table 19 Investigated subsidy programs – Vietnam

The Commission’s findings in relation to each program investigated are outlined in **Non-confidential Appendix C3**.

7.4 Information considered by the Commission

7.4.1 Information provided by exporters

The Commission has relied upon information provided by cooperating exporters when assessing the alleged subsidy programs for both China and Vietnam. This included information provided by exporters in the REQs as well as information provided by exporters during verification.

7.4.2 Information provided by the Government of China

In accordance with section 269TB(2C), the Commission invited the GOC for consultations during the consideration phase of the investigation concerning the claims made by the applicant in relation to countervailable subsidies.

On 31 March 2020, the Commission also sent a Government Questionnaire to the GOC, which included questions relating to each of the alleged subsidy programs identified in the application.

No response was received from the GOC to either communication.

Notwithstanding the above, the GOC did provide a questionnaire response to the Commission in respect of a separate investigation, *Investigation 553 – Painted Steel*

*Strapping*¹²⁴ initiated shortly after this investigation. It was alleged in *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 precision pipe and tube steel. Due to the similarities in the subsidy allegations and the raw material inputs in the two cases, the Commission has had regard to the response by the GOC to *Investigation 553* in its consideration of this investigation, pursuant to section 269TDAA(2)(b).

7.4.3 Information provided by the Government of Vietnam

The Commission also invited the GOV for consultations on the claims made by the applicant in relation to countervailable subsidies. On 24 March 2020, the GOV advised the Commission that its submission dated 20 January 2020 in relation to a similar investigation (which was withdrawn by the applicant) could also be considered by the Commission for the purposes of Investigation 550.¹²⁵

On 31 March 2020, the Commission sent a Government Questionnaire to the GOV, which included questions relating to each of the alleged subsidy programs identified in the application. A response to the questionnaire was provided by the GOV to the Commission on 10 June 2020.¹²⁶

7.4.4 Other information considered as part of this assessment

The Commission also considered as part of this assessment:

- information provided in the application;
- submissions received in relation to subsidies provided to Chinese and Vietnamese exporters;¹²⁷
- information provided to the WTO by the GOC in July 2019 and by the GOV in February 2020 in their respective notifications in the *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)*;¹²⁸ and
- previous investigations by the Commission into subsidies provided to Chinese exporters.

¹²⁴ EPR 553, Item 10.

¹²⁵ EPR 550, Item 4.

¹²⁶ EPR 550, Item 38.

¹²⁷ EPR 550, Item 4 – GOV submission in response to application; EPR 550, Item 38 – GOV submission regarding particular market situation and countervailable subsidies and EPR 550, Item 39 – Orrcon submission regarding Chinese and Vietnamese particular market situation.

¹²⁸ Both are available on the WTO website at: https://www.wto.org/english/tratop_e/scm_e/scm_e.htm

7.5 Subsidy Assessment – China

7.5.1 Dalian Steelforce

7.5.1.1 Program 550-2 – Loan Interest Subsidy

During verification, it was found Dalian Steelforce had received a subsidy under this program. The Commission has further examined this program and determined this program is specific, as it is available only to entities located in the Dalian region. See **Non-confidential Appendix C2**.

The amount received under this program has been attributed to all of the company's sales. It was then allocated to the goods based on the export revenue over the investigation period.

7.5.1.2 Program 20 - Hot rolled steel provided by government at less than fair market value

The Commission is satisfied that Chinese manufacturers of the goods will have received a subsidy under this program. The Commission considers this program is specific, as it is only available to purchases of HRC and other coil types derived from HRC. See **Non-confidential Appendix C2**.

The amount received under this program has been attributed to all of the company's sales. It was then allocated to the goods based on the export revenue over the investigation period.

7.5.1.3 Subsidy margin

Based on the information available to the Commission, the Commission has calculated a subsidy margin for Dalian Steelforce of **9.0%**. See **Confidential Attachment 34**.

7.5.2 Non-cooperative Chinese entities

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

When determining the countervailable subsidies for non-cooperative entities, the Commissioner has made reasonable assumptions, so as to determine whether a countervailable subsidy has been received in respect of the goods and the amount of the countervailable subsidy.

The Commission has assumed that non-cooperative entities benefited from non-regional countervailable subsidies and the highest region-specific subsidy. The Commission considers that this approach avoids the potential for double-count of similar programs between regions.

The subsidy margin for each program is the higher of:

PUBLIC RECORD

- the margins applicable to each program based on previous findings made by the Commission in respect of subsidies received for other products manufactured in China from HRC, consistent with the approach taken in the application¹²⁹; and
- the margins calculated for the cooperating exporter as part of this investigation.

The subsidy margins for each program were summed to obtain the total subsidy margin.

Based on the information available to the Commission, the Commission has calculated a subsidy margin for non-cooperative entities of **51.6%**.

The Commission's countervailable subsidy calculations are contained in **Confidential Attachment 28**.¹³⁰

7.6 Subsidy assessment – Vietnam

7.6.1 Chinh Dai Industrial

7.6.1.1 Program 43 – Exemptions of Import Duty¹³¹

During verification, it was found CDI had received a subsidy under this program. The Commission has further examined this program and determined that no subsidy was provided. The findings in relation to this program are discussed in **Non-confidential Appendix C3**.

7.6.1.2 Subsidy margin

Based on the information available to the Commission, the Commission has not found CDI to be receipt of any countervailable subsidies. See **Confidential Attachment 35**.

7.6.2 Vina One Steel Manufacturing

The Commission has found no evidence that Vina One received a subsidy in relation to any of the alleged programs.

7.6.2.1 Subsidy margin

Based on the information available to the Commission, the Commission has not found Vina One to be receipt of any countervailable subsidies. See **Confidential Attachment 36**.

¹²⁹ Review 419 – Hollow structural sections from China, Korea, Malaysia, Taiwan and Review 529 - Hollow structural sections from China, Korea, Malaysia, Taiwan, Thailand.

¹³⁰ This attachment has been kept confidential as it contains commercially sensitive information relating to exporters.

¹³¹ Due to similarities with other programs, this subsidy may be alternatively classed under Program 42 or 44.

7.6.3 Residual exporters

The Commission has determined that the residual exporters will receive benefits by having regard to the examination of the selected cooperative exporters. As the selected cooperative exporters for Vietnam were found not to be in receipt of any countervailable subsidies, the Commission has determined that residual exporters have also not received any countervailable subsidies in respect of the goods during the investigation period.

7.6.4 Non-cooperative Vietnamese entities

As discussed in chapter 7.5.2, the subsidy margin for non-cooperative entities is determined on the basis of all facts available and based on reasonable assumptions.

7.6.4.1 Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives

The Commission has determined that non-cooperative entities may be in receipt of a benefit under this program and that this program is countervailable.

As discussed in **Non-confidential Appendix C3**, the Commission has found the lowest preferential tax rate that eligible entities may receive is 10%. The Commission considers that non-cooperative entities in Vietnam may have received the most favourable preferential rate of 10% during the investigation period.

Accordingly, in working out the benefit received during the investigation period, the Commission has determined the benefit received by non-cooperative entities under this program by applying a preferential rate of 10% to the weighted average verified taxable income of the cooperating exporters for the investigation period.

The amount received under this program has been attributed to a weighted average of all of the cooperating exporters' sales. It was then allocated to the goods based on the weighted average of the cooperating exporters' export revenue over the investigation period.

The subsidy margin for non-cooperative entities has then been calculated using the amount of the unit benefit expressed as a percentage of the lowest verified weighted average FOB export price for the investigation period of cooperating Vietnamese exporters who exported to Australia during the investigation period.

The Commission has chosen the lowest verified export price on the basis that the lowest weighted average export price demonstrates a price at which a non-cooperative entity may export like goods to Australia, based on the information before the Commission.

7.6.4.2 Subsidy margin

Based on the information available to the Commission, the Commission has calculated a subsidy margin for non-cooperative entities of **0.01%**.

PUBLIC RECORD

The Commission's countervailable subsidy calculations for non-cooperative entities is contained in **Confidential Attachment 28**.¹³²

7.7 Summary of subsidy margins

The table below summarises what programs have been found countervailable and the corresponding subsidy margins for each exporter.

¹³² This attachment has been kept confidential as it contains commercially sensitive information relating to exporters.

PUBLIC RECORD

Exporter	Programs	Subsidy margin
China		
Dalian Steelforce	Program 550-2 – Loan Interest Subsidy Program 20 – Hot rolled steel provided by government at less than fair market value	9.0%
Non-cooperative entities	Program 550-2 – Loan Interest Subsidy Program 1 – Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones Program 2 – One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’ Program 5 – Matching Funds for International Market Development for Small and Medium Enterprises Program 6 – Superstar Enterprise Grant Program 7 – Research & Development (R&D) Assistance Grant Program 8 – Patent Award of Guangdong Province Program 10 – Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years Program 14 – Tariff and VAT Exemptions on Imported Materials and Equipments Program 15 – Innovative Experimental Enterprise Grant Program 16 – Special Support Fund for Non State-Owned Enterprises Program 17 – Venture Investment Fund of Hi-Tech Industry Program 18 – Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment Program 19 – Grant for key enterprises in equipment manufacturing industry of Zhongshan Program 20 – Hot rolled steel provided by government at less than fair market value Program 21 – Water Conservancy Fund Deduction Program 29 – Land Use Tax Deduction Program 32 – Technology Project Assistance Program 35 – Preferential Tax Policies for High and New Technology Enterprises Program 36 – Local Tax Bureau Refund Program 37 – Return of Farmland Use Tax Program 38 – Return of Land Transfer Fee Program 39 – Return of Land Transfer Fee From Shiyou Program 41 – Discount interest fund for technological innovation Program 42 – Energy conservation and emission reduction special fund project in 2015 Program 44 – Government subsidy for construction	51.6%

PUBLIC RECORD

	Program 45 – Infrastructure Construction Costs Of Road In Front Of No.5 Factory Program 48 – Subsidy for Coal-Fired Boiler Rectification Program 49 – Subsidy for District Level Technological Program 50 – Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau Program 51 - Subsidy from Science and Technology Bureau of Jinghai County Program 52 – Subsidy of Environment Bureau transferred from Shiyu	
Vietnam		
CDI	None	N/A
Vina One	None	N/A
Residual exporters	None	N/A
Non-cooperative entities	Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives	0.1%

Table 20 - Countervailable subsidies and subsidy margins received by exporters

7.8 Volume of subsidised imports

Section 269TDA(7) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to a country, if satisfied that the total volume of goods that has been, or may have been, exported to Australia during a reasonable examination period and in respect of which a countervailable subsidy has been, or may be, received, is negligible.

Pursuant to section 269TDA(8), a negligible volume for both China and Vietnam is a volume less than 4% of the total volume of goods imported into Australia over a reasonable examination period.¹³³

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of goods exported to Australia from China and Vietnam during the investigation period. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods and excluding Vietnamese cooperating entities, which were found not to have imported subsidised goods, the volume of subsidised goods from both China and Vietnam was greater than 4% of the total Australian import volume and is therefore not negligible.¹³⁴

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

¹³³ China and Vietnam are classed as Developing Countries under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

¹³⁴ Confidential Attachment – All other entities subsidy analysis, worksheet “All other entity import volume”.

7.9 Level of subsidisation

Section 269TDA(2) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to an exporter of the goods, if satisfied either that no countervailable subsidy was received in respect of the goods, or if a subsidy was received, the level of the subsidy did not at any time during the investigation period exceed a negligible level.

Pursuant to section 269TDA(16)(b), a countervailable subsidy received in respect of goods exported to Australia from both China and Vietnam is negligible if, when expressed as a percentage of the export price of the goods, the level of the subsidy is not more than 2%.¹³⁵

7.9.1 China

Based on its investigation into countervailable subsidies provided to Chinese exporters of the goods to Australia, the Commission is satisfied that the total level of countervailable subsidies, when expressed as a percentage of the export price of the goods:

- for Dalian Steelforce, exceeded 2% throughout the investigation period; and
- for non-cooperative Chinese entities, exceeded 2% throughout the investigation period.

Accordingly, the Commissioner is satisfied that:

- a countervailable subsidy has been received by Dalian Steelforce in respect of the goods exported to Australia, at a margin of 9.0%; and
- a countervailable subsidy has been received by non-cooperative Chinese entities in respect of the goods exported to Australia, at a margin of 51.6%.

7.9.2 Vietnam

Based on its investigation into countervailable subsidies provided to Vietnamese exporters of the goods to Australia, the Commission is satisfied that the total level of countervailable subsidies, when expressed as a percentage of the export price of the goods never, at any time during the investigation period, exceeded 2% for either CDI, Vina One, residual exporters or non-cooperative entities and is therefore negligible for those exporters.

Accordingly, the Commissioner is satisfied it is necessary to terminate the countervailable subsidy investigation under section 269TDA(2) in respect of all Vietnamese exporters.

¹³⁵ China and Vietnam are classed as Developing Countries under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Preliminary finding

The Commissioner is preliminarily satisfied that the Australian industry has experienced injury in the forms of:

- reduced sales volume;
- price depression;
- price suppression;
- reduced profit
- reduced profitability;
- reduced revenue;
- reduced employment numbers;
- reduced return on investment (ROI); and
- reduced inventory turnover.

8.2 Approach to injury analysis

The Commission considers that the Australian industry is comprised solely of Orrcon.

The injury analysis detailed in this chapter is therefore based on verified financial information submitted by Orrcon.

The injury analysis period being considered for the purpose of this investigation is from 1 January 2016.

The data supporting the Commission's analysis of the Australian market and the economic condition of the Australian industry is at **Confidential Attachments 2 and 29**.

8.2.1 Submission concerning approach to injury analysis

In its submission dated 20 January 2020,¹³⁶ TRAV raised concerns that based on the non-confidential version of the application, the requirements of Articles 15.1, 15.2 and 15.4 of the SCM Agreement as it pertains to injury have not been met. TRAV's claims specifically relate to the volume of subsidised imports, their impact on prices in the domestic market and the evaluation of other relevant economic factors.

In assessing injury to the Australian industry, the Commission relied on the requirements set out in section 269TAE and sections 269TG and 269TJ, the *Ministerial Direction on Material Injury 2012* (Material Injury Direction) and the Manual.

The Commission was also provided with confidential attachments to the application that formed the basis for the assessment of injury to the Australian industry as set out in the following sections. To the extent required, this confidential information is addressed in the confidential attachments to this report. Assessments of injury factors are contained within

¹³⁶ EPR 550, document number 4.

this chapter and the impacts of dumped and subsidised imports on the domestic industry is in Chapter 9.

8.3 Volume effects

8.3.1 Sales volume

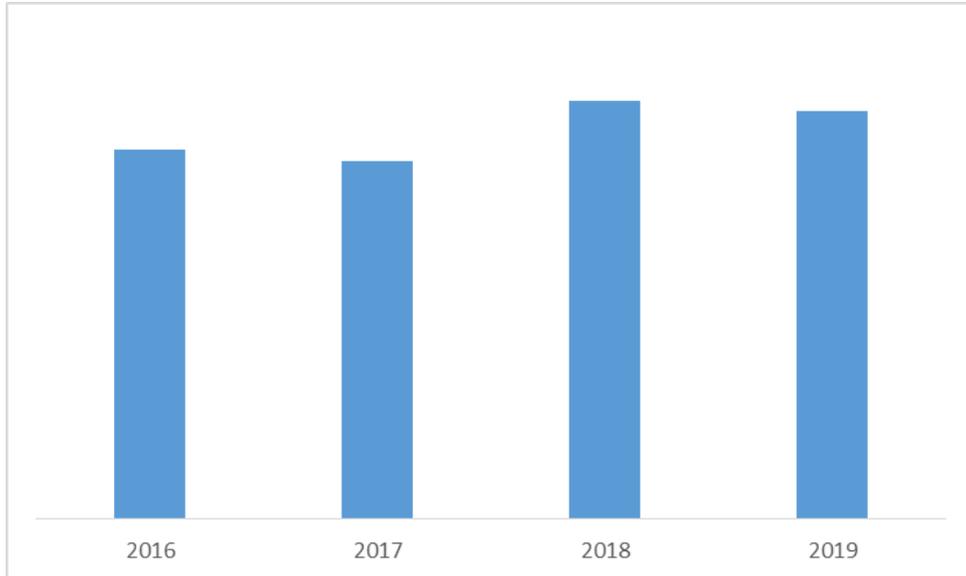


Figure 7 – Orrcon sales volumes

Orrcon’s sales volumes have fluctuated over the injury analysis period, however, Orrcon’s sales volumes reduced in the investigation period. In the application, Orrcon claimed that while it has seen some increases of volumes during the period, in a growing market it should have seen a greater increase. Therefore, it claimed injury in the form of reduced sales volumes. The Commission assessed the growth of the market during the period and found that total market volumes contracted during the period after an initial increase between 2016 and 2017.

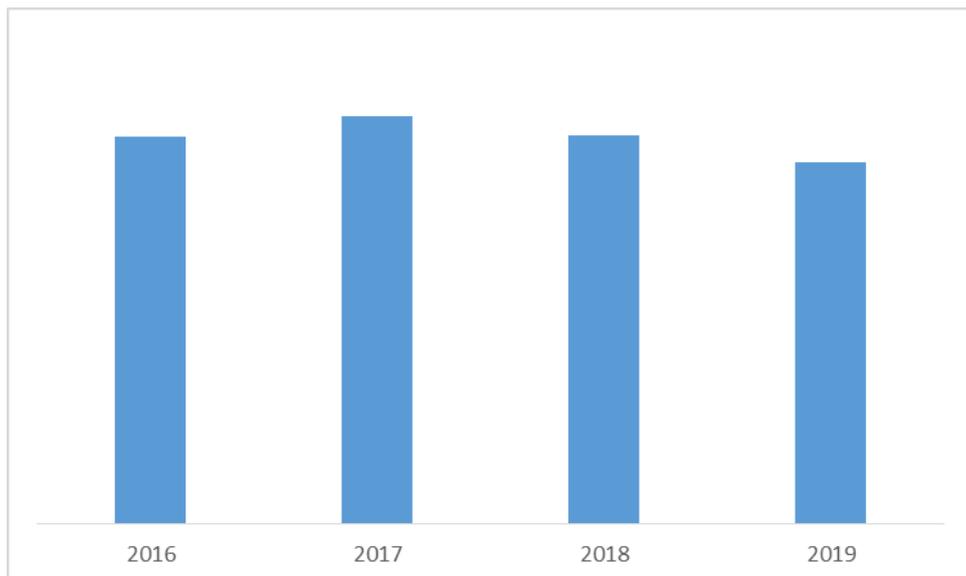


Figure 8 – Total market volumes

8.3.2 Market share

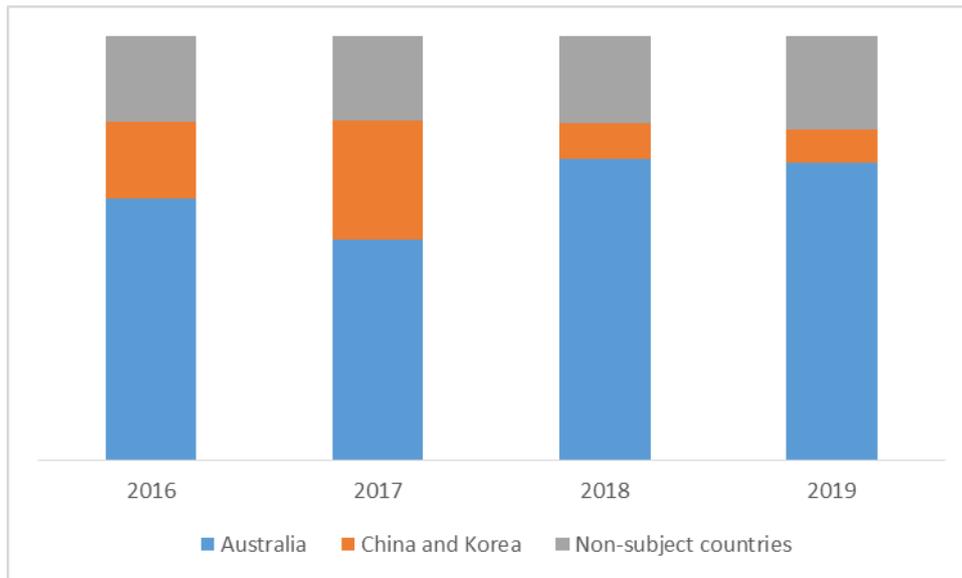


Figure 9 – Market shares¹³⁷

The Commission analysed changes in market share during the injury analysis period.¹³⁸

After an initial increase in market share between 2016 and 2017, the market share of China and Korea reduced between 2017 and 2018 and largely remained unchanged between 2018 and 2019. Orrcon’s market share increased between 2017 and 2019.

8.3.3 Conclusion – volume effects

While Orrcon increased its market share from 2017, it experienced a reduction in sales volumes in the investigation period. The Commission is satisfied that Orrcon experienced injury in the form of reduced sales volumes during the injury analysis period.

8.4 Price effects

8.4.1 Price suppression and price depression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise might have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

¹³⁷ The market shares of Taiwanese and Vietnamese exports have been included in the share of non-subject countries as a result of the Commission’s proposed termination of the investigation in relation to all Taiwanese and Vietnamese exporters as discussed in sections 6.9, 6.10 and 7.6.

¹³⁸ Confidential Attachment 29 – Australian market analysis – injury analysis.

PUBLIC RECORD

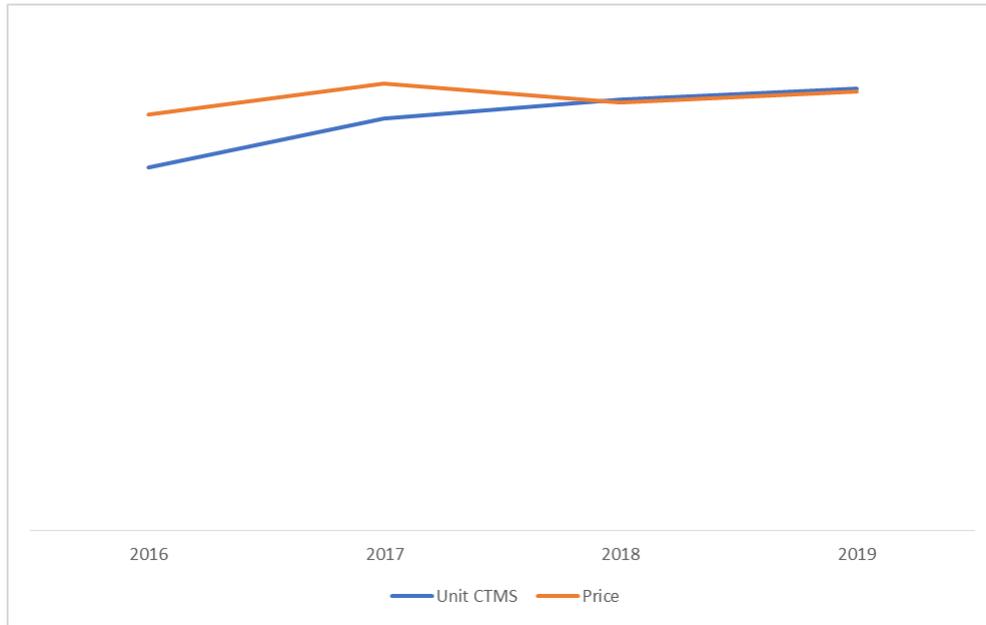


Figure 10 – Unit CTMS and unit selling price

The figure above depicts a downward movement in unit pricing since 2017. There is a minor recovery between 2018 and 2019. Unit CTMS has seen a steady increase since 2017, however, prices have not kept up with the unit CTMS increase resulting in a reduction in Orrcon's profit margin.

8.4.2 Conclusion – price effects

The Commission is satisfied that Orrcon experienced injury in the form of price depression and price suppression during the injury analysis period.

8.5 Profit and profitability

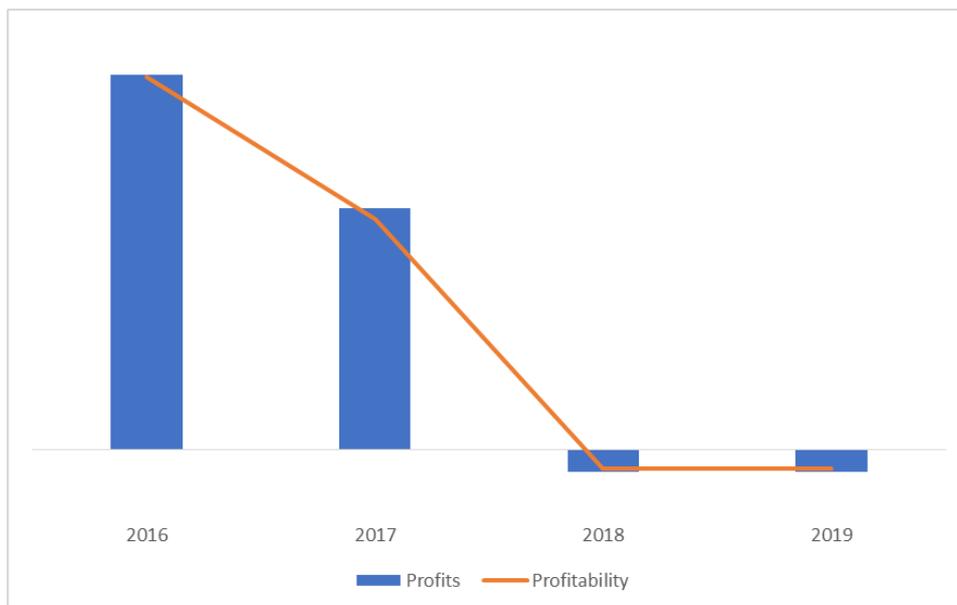


Figure 11 – Profits and profitability

PUBLIC RECORD

The figure above shows a reduction in profits and profitability between 2016 and 2018. Between 2018 and 2019, there was minimal change in Orrcon's net loss and profitability position.

8.5.1 Conclusion – profit and profitability

The Commission is satisfied that Orrcon experienced injury in the form of reduced profits and profitability during the injury analysis period.

8.6 Other economic factors

8.6.1 Revenue

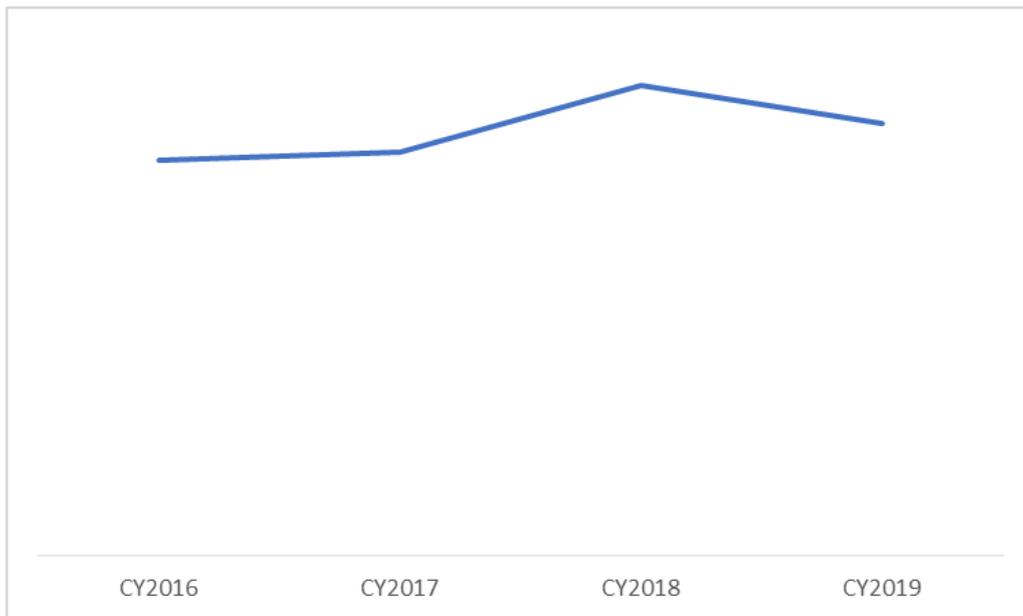


Figure 12 - Revenue

Orrcon has experienced revenue growth between 2017 and 2018, followed by a decrease in the investigation period.

8.6.2 Employment numbers

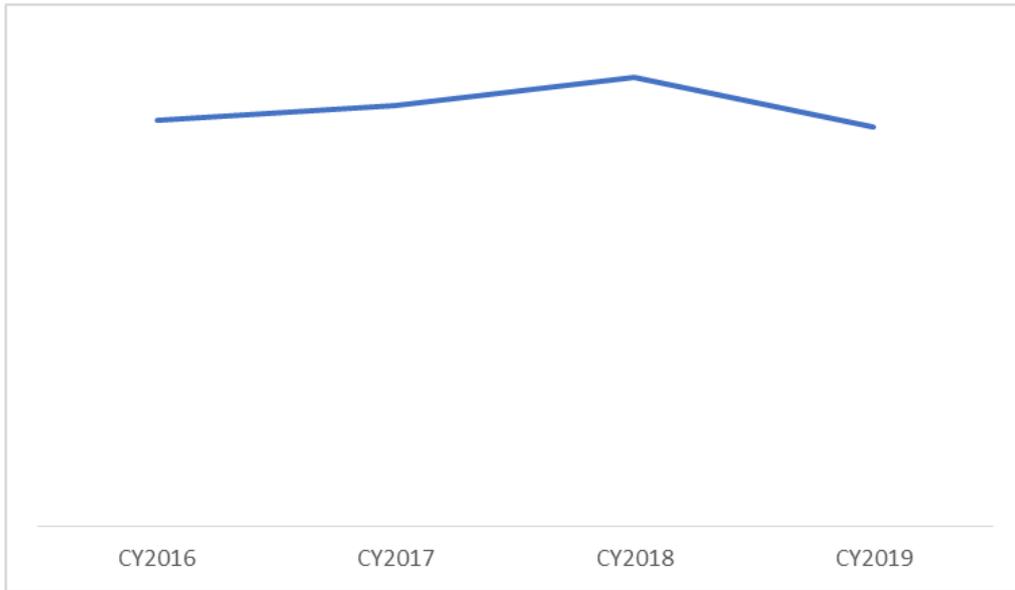


Figure 13 – Employment numbers

Orrcon’s employee numbers reduced between 2018 and 2019.

8.6.3 Return on investment

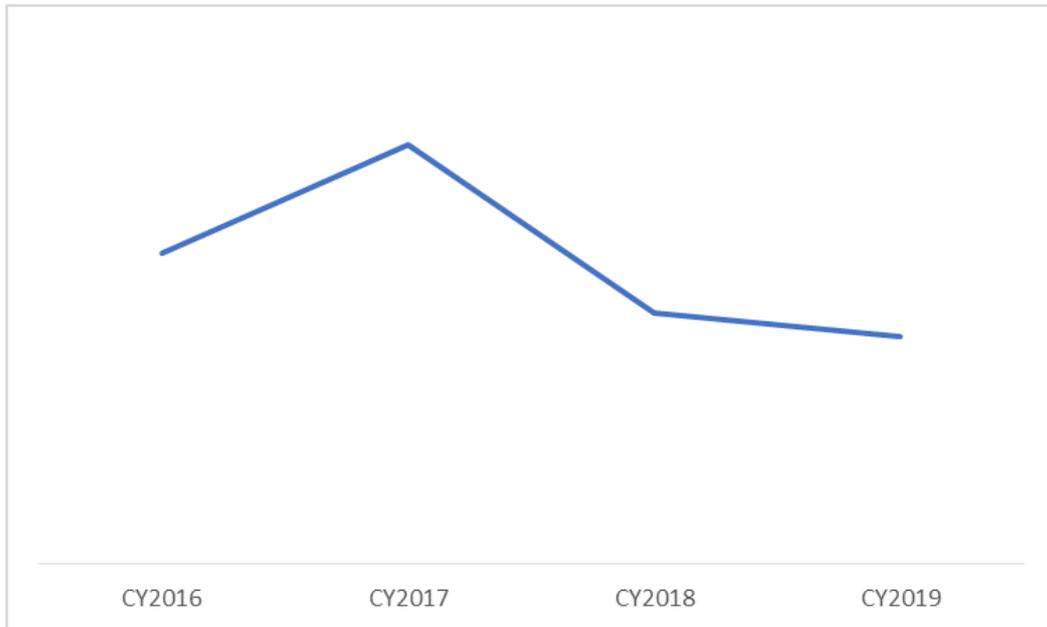


Figure 14 – Return on investment

Orrcon’s ROI for like goods has reduced between 2017 and 2019, with a significant reduction between 2017 and 2018.

8.6.4 Reduced inventory turnover

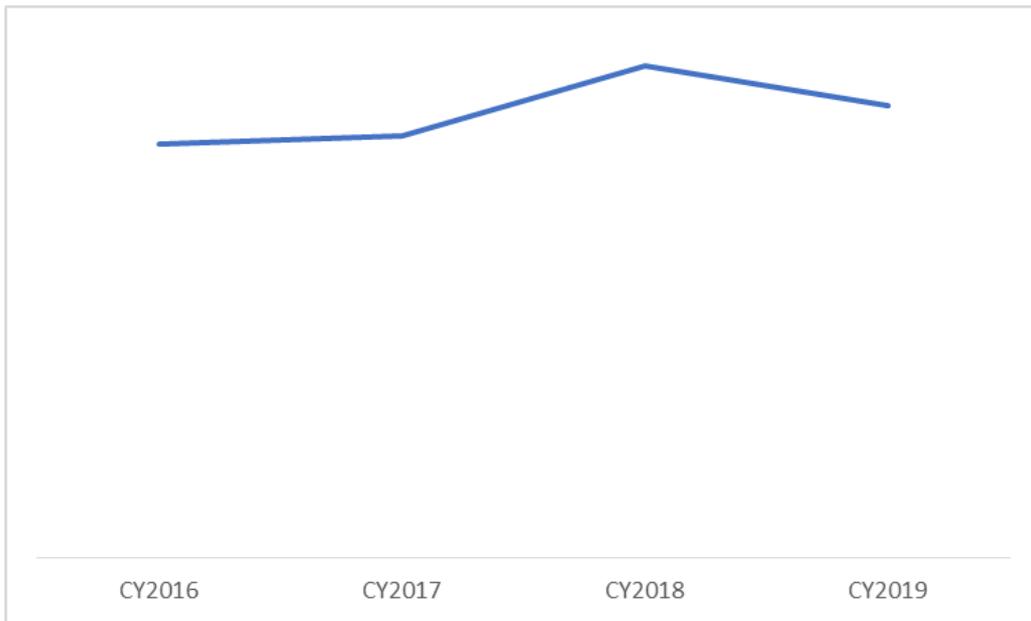


Figure 15 – Inventory turnover

Orrcon’s inventory turnover has decreased in the investigation period after increasing between 2017 and 2018.

8.6.5 Production and capacity utilisation

In its application, Orrcon claimed that its increase in production volumes since the 2015/16 year are “materially insignificant when contrasted with the 60 per cent increase in the precision pipe and tube market over the same period.” The Commission has analysed the claim of both the increase in Orrcon’s own production as well as the size of the market. It is noted that while the initial data provided to the Commission in Orrcon’s application was for years ending 30 September, updated data has been provided to the Commission for calendar years 2016 to 2019.

PUBLIC RECORD

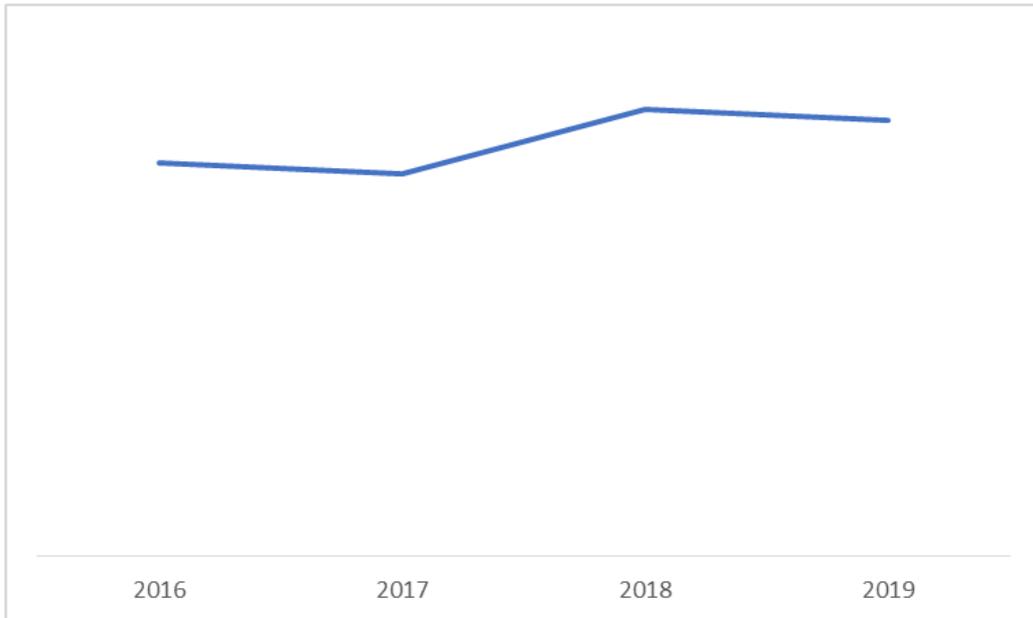


Figure 16 – Production quantity

The Commission notes that, as stated by Orrcon, there has been an increase in production of the goods between 2017 and 2018, with a slight reduction in 2019. Orrcon contrasted this with the increase in the size of the overall market. Accordingly, the Commission reviewed the size of the market in Australia for precision pipe and tube.

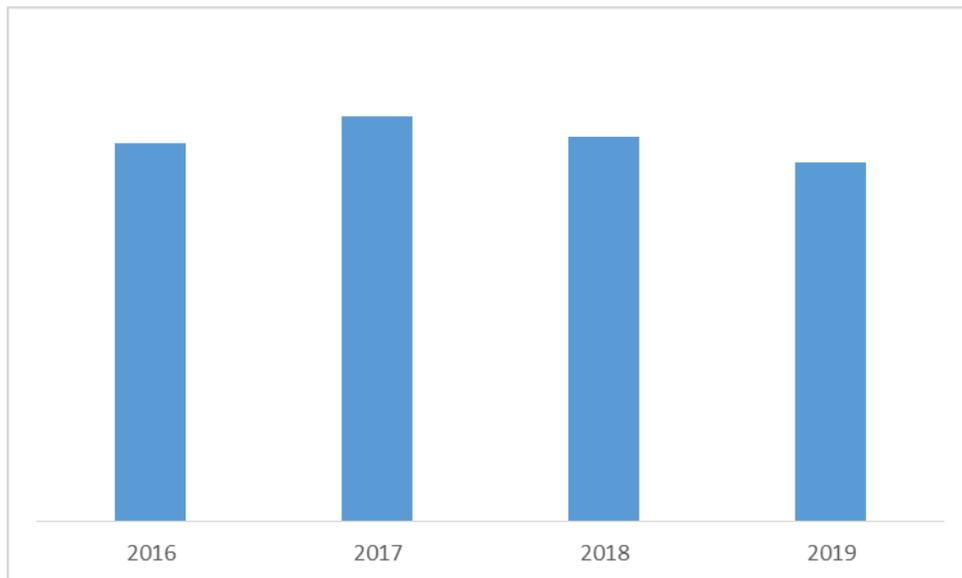


Figure 17 – Australian market for precision pipe (volume, MT)

As demonstrated in figure 11, the Commission found that the market for precision pipe and tube in Australia reduced between 2017 and 2019.

During the injury analysis period, Orrcon's capacity utilisation also increased as demonstrated in Figure 12 below.

PUBLIC RECORD

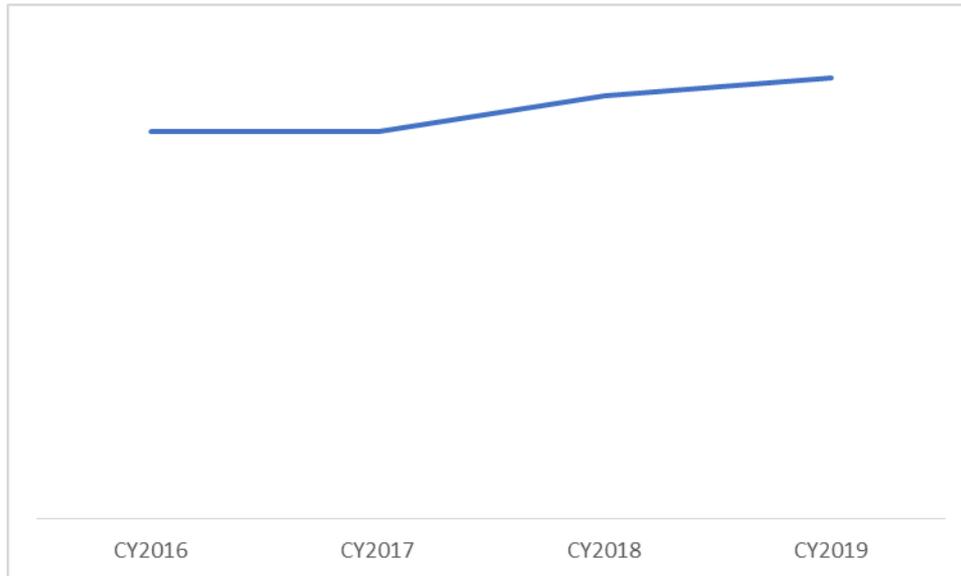


Figure 18 – Capacity utilisation

8.6.6 Other indicators

Assets – Orrcon has seen an increase in assets during the injury analysis period.

Capital investment – Orrcon's capital investment in relation to like goods increased between 2017 and 2019, after an initial decrease.

Productivity - Productivity increased between 2017 and 2019, after an initial decrease between 2016 and 2017.

Average wages – Average wages trended up during the injury analysis period.

8.6.7 Conclusion – other economic factors

The Commission is satisfied that Orrcon experienced injury in the form of reduced revenue, employment numbers, ROI and inventory turnover.

9 HAS DUMPING AND/OR SUBSIDIES CAUSED MATERIAL INJURY?

9.1 Preliminary assessment

The Commissioner is preliminarily satisfied that dumped exports of the goods from China and Korea, and subsidised exports of the goods from China, caused material injury to the Australian industry.

In investigating the cause of injury to the Australian industry the Commissioner had regard to the economic indicators of the Australian industry, the size of dumping margins, the volumes and prices of exports from the subject countries, the importance of price in the industry, and evidence of import prices impacting pricing negotiations in the market.

9.2 Legislative framework

Under sections 269TG, 269TJ and 269TJA, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and/or countervailing duty notice is that, because of dumping and subsidisation, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.¹³⁹

Section 269TAE(1) outlines the factors, to which the Commissioner has had regard, and that may be taken into account when determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Section 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is being caused by a factor other than the exportation of the goods, and provides examples of such factors.

In assessing material injury, the Commission also has regard to the Material Injury Direction.

9.3 Approach to causation analysis

As outlined in Chapter 8, the Commission considers that the Australian industry has experienced injury and this injury has coincided with the presence of dumped goods from China and Korea and subsidised goods from China. This chapter will analyse whether injury to the Australian industry was caused by dumping and subsidisation and whether that injury is material.

¹³⁹ Section 269TJA relates to concurrent dumping and countervailable subsidisation. This provision provides that, where goods are both dumped and subsidised, and because of the combined effects of the dumping and the amount of countervailable subsidy received in respect of the goods, material injury to an Australian industry producing like goods has been or is being caused, the Minister may publish a notice under either sections 269TG(1), 269TG(2), 269TJ(1) or 269TJ(2), or notices under such sections at the same time. Section 269TJA is relevant in this investigation, due to the combined dumping and subsidisation in relation to goods exported to Australia from China.

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The Commission has, for the purposes of this SEF, assessed injury and causation by examining the following evidence:

- verified volume, price, and profit effects of the Australian industry during the injury analysis period and investigation period (refer Chapter 8 above);
- verified sales data from cooperating exporters and importers to determine sales prices and volumes achieved by the subject exporters from China and Korea;
- dumping margins for the subject countries;
- subsidy margins for China;
- information from the ABF import database to determine import volumes and export prices;
- examples and related evidence relating to negotiations with customers provided by Orrcon; and
- the broader context of the economic condition of the Australian industry.

Evidence included in the analysis undertaken by the Commission in this chapter is in **Confidential Attachment 30**.

9.4 Size of dumping and subsidy margins

Sections 269TAE(1)(aa) and 269TAE(1)(ab) provide that regard may be given to the size of each of the dumping and subsidy margins worked out in respect of the goods of that kind that have been exported to Australia. The dumping and subsidy margins, as detailed in Table 8 above are reproduced below with the subsidy margins.

Exporter	Dumping Margin (%)	Subsidy Margin (%)
Dalian Steelforce	2.9	9.0
Uncooperative Chinese exporters	2.9	51.6
Uncooperative Korean exporters	6.2	N/A
Ta Fong	- 9.0	N/A
Uncooperative Taiwanese exporters	- 8.6	N/A
CDI	- 12.2	N/A
Vina One	- 12.0	N/A
Residual Vietnamese exporters	- 6.5	N/A
Uncooperative Vietnamese exporters	- 6.5	N/A

Table 21 – Dumping and subsidy margins

The Commission found that dumping margins for three of the four co-operating exporters for whom a verification was undertaken were below negligible levels (2%). Their margins range from -7.1 per cent to -12 per cent. These exporters were from Taiwan and Vietnam.

As set out in chapter 6.9.5 of this report, in accordance with section 269TDA(1), the Commissioner has preliminarily determined that the investigation into dumped goods from Taiwan will be terminated in its entirety, subject to submissions, on the basis that there has been no dumping by those exporters of the goods the subject of the application.

As set out in chapters 6.10 and 7.6 of this report, in accordance with section 269TDA(1), the Commissioner has preliminarily determined that the investigation into dumped and

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subsidised goods from Vietnam will be terminated in its entirety, subject to submissions on the basis that there has been no dumping and subsidisation of the goods the subject of the application.

The Commissioner has not attributed injury to the Australian industry in relation to exports of the goods from Taiwan and Vietnam. The Commissioner has had regard to the above de minimis dumping and subsidy margins from China and Korea in assessing whether the Australian injury has experienced material injury in relation to those goods.

9.5 Cumulation of injury

The Commissioner's view is that it is appropriate to consider the cumulative effects of exports from China and Korea.

Section 269TAE(2C) provides that when determining whether material injury to an Australian industry has been, or is being, caused or threatened by exports to Australia from different countries, the Minister should consider the cumulative effect of those exports only if the Minister is satisfied that:

- the margin of dumping established for each exporter and/or the amount of countervailable subsidy received is not negligible;
- the volume of dumped and/or subsidised imports from each country is not negligible; and
- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods.

As detailed in Table 21 above, the Commission assessed the dumping margins for Chinese and Korean exporters and found that they were 2.9% and 6.2%, respectively. The subsidy margins for China are between 9 and 51.6%.

The Commission ascertained that the volume of dumped and/or subsidised exports from China and Korea were not negligible. Refer **Confidential Attachment 29**.

The Commissioner has assessed the conditions of competition between the goods exported from China and Korea, and the goods exported from China, Korea and like goods produced by the Australian industry. Due to the nature of the good, customers can purchase precision pipe and tube from a range of sources. ABF data shows importers that have sourced the goods from more than one country during the injury analysis period. The Commission is aware of customers in Australia advising Australian industry of a range of available import sources from the subject countries. Similarly, domestically produced goods compete against exports from China and Korea for sales in Australia.

Having regard to the above analysis, the Commissioner's view is that it is appropriate to consider the cumulative effects of exports from China and Korea.

9.6 Volume effects

Figure 8 in chapter 8.3.1 depicts the sales volumes in the Australian market commencing 2016.

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Chapter 8.3.2 sets out the market share of the Australian industry, imports from the subject countries and imports from other countries.

The Australian industry has gained a larger share of the precision pipe and tube market between 2017 and 2018 and largely maintained that market share in 2019. In the same period of time, it appears that the share of the market relative to the subject countries reduced.

In its application, Orrcon argues that its transition from a business with a reasonable return in 2016/17 to an underperforming operation in 2018/19 coincides with what it terms a “rapid and dramatic increase” in dumped imports from the subject countries. As seen in the figure above, there has been an increase in the share of the market supplied by China and Korea between 2016 and 2017 which reduced between 2017 and 2018 and then marginally again between 2018 and 2019. The Commission observes that while Orrcon has lost volumes between 2018 and 2019, it has not lost market share to exports from China and Korea.

The Commission analysed the import volumes from China and Korea as depicted in the following figure.

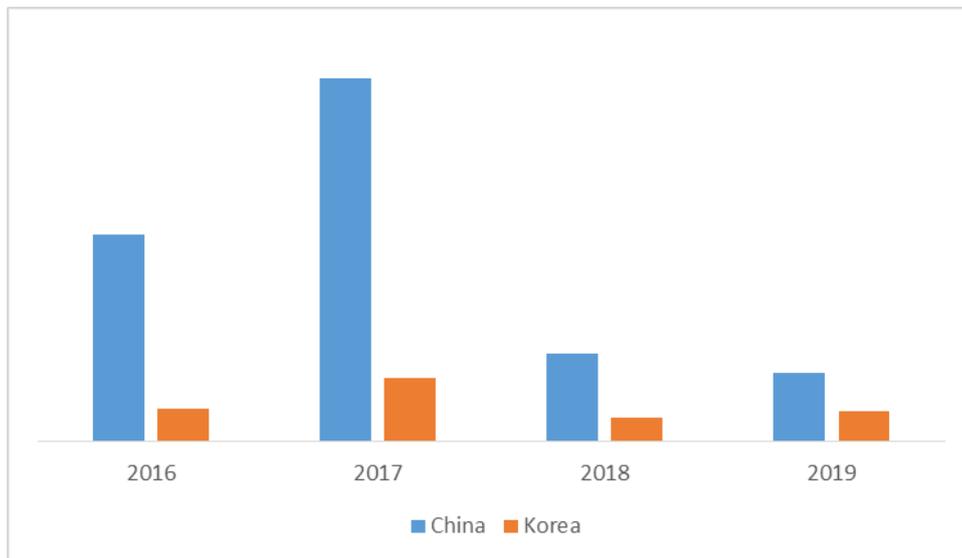


Figure 19 – Imports from the subject countries (CY, MT)

While there was a sharp increase in import volumes from China between 2016 and 2017, this has seen a decline between 2017 and 2019. Korean imports increased between 2016 and 2017 and have remained low since, with a marginal increase in 2019.

Orrcon’s argument that its transition to an underperforming operation between 2016/17 and 2018/19 is caused by higher volumes from the subject countries during 2018 and 2019, is not supported by the volumes observed by the Commission.

Orrcon provided the Commission with 7 examples of price negotiations. Three of these negotiations resulted in Orrcon missing out on sales volumes, as it was unable to match import prices. These examples demonstrate the vulnerability of sales volumes to low import prices. In the case of Chinese and Korean prices, Australian industry competed with dumped and subsidised prices in order to secure volumes. The remaining four examples relate to price related injury and these are addressed in the following section.

Example 5¹⁴⁰

Orrcon was unable to supply to a customer that it has supplied historically, as it was unable to profitably match the import prices that the customer claimed it had access to. Specific import prices were supplied from China, however no specific sources were identified. However, as Orrcon is the only domestic producer of the goods, it is apparent that the goods not sourced from Orrcon were subsequently sourced from imports.

Example 6

In 2016 and 2017, Orrcon supplied minimal volumes to a customer who historically purchased both locally produced and imported goods. Evidence was provided to the Commission of the customer purchasing imported goods. In order to secure volume, Orrcon offered a price below its fully absorbed costs in 2018. In 2019, Orrcon increased its offer price (still below fully absorbed costs) and the customer reduced its purchase volumes. This example provided evidence of the vulnerability of volumes to import prices.

Example 7

During the verification, Orrcon advised that it experiences magnified injury due to its customers on-selling imported goods to secondary markets. Orrcon provided evidence of a downstream market customer approaching Orrcon and requesting it to match a competitor's imported price. The Commission has confirmed Orrcon's claim that the competitor (also a customer) has historically purchased imported goods. Orrcon was unable to match this price and was unsuccessful in securing the volume.

9.7 Price effects

In its application, Orrcon claimed that production costs increased year-on-year since 2015/16 with increases in global HRC prices impacting precision pipe and tube producers. As stated in the Orrcon verification report,¹⁴¹ Orrcon advised the Commission of an internal project designed to reduce its costs to a target level. Orrcon stated that this was due to the current margins being unsustainable. The Commission reviewed Orrcon's raw material costs and found that it had experienced rising feed costs during the injury analysis period.

In its application¹⁴² and during the verification, Orrcon provided evidence of internal tracking of competing import prices. Orrcon provided further evidence of the importance of import prices in its own pricing decisions with its submission dated 30 April 2021.¹⁴³

In recent years, Orrcon has attempted to increase prices to account for increases in costs. Evidence before the Commission shows that customers have used import prices to reduce the quantum of these price increases. This and further examples of price

¹⁴⁰ Examples 1, 2, 3 and 4 are related to price injury and discussed in the Price effects section.

¹⁴¹ EPR 550, Item 56

¹⁴² EPR 550, Item 1.

¹⁴³ EPR 550, Item 54.

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negotiations have been provided by Orrcon where import sources were used in an effort to drive down its own prices.

Example 1

Orrcon's first offer to a customer was rejected as too high in comparison to a Korean import price. Orrcon reduced its offer due to the requirement to maintain volume at one of its mills. According to data provided to the Commission, this new price did not cover Orrcon's fully absorbed costs in the 2018-19 year.

Example 2

Citing increases in costs, Orrcon attempted to increase its prices. Orrcon claims that the relevant customer quoted import prices from Korea and negotiated down the price increase. Orrcon provided internal company notes in support of its claims.

Example 3

This example details ongoing attempts by Orrcon to increase pricing to a customer where its current price is not covering its full absorbed costs. On several occasions, the customer rejected the requested price increases based on import comparisons, and provided a list of import prices to demonstrate Orrcon's prices were higher. The Commission has assessed the correspondence relating to this customer and agrees that the customer uses import prices to drive down Orrcon's prices.

Example 4

The negotiation relates to import prices from the subject countries. The customer expressly uses these prices, and it is clear from internal documents that Orrcon has also referenced import prices in calculating its competing offer. Orrcon has calculated its forgone revenue due to price depression.

9.7.1 Price undercutting

The Commission analysed and compared the selling price of verified importers with the price of Orrcon's precision pipe and tube at the same level of trade.

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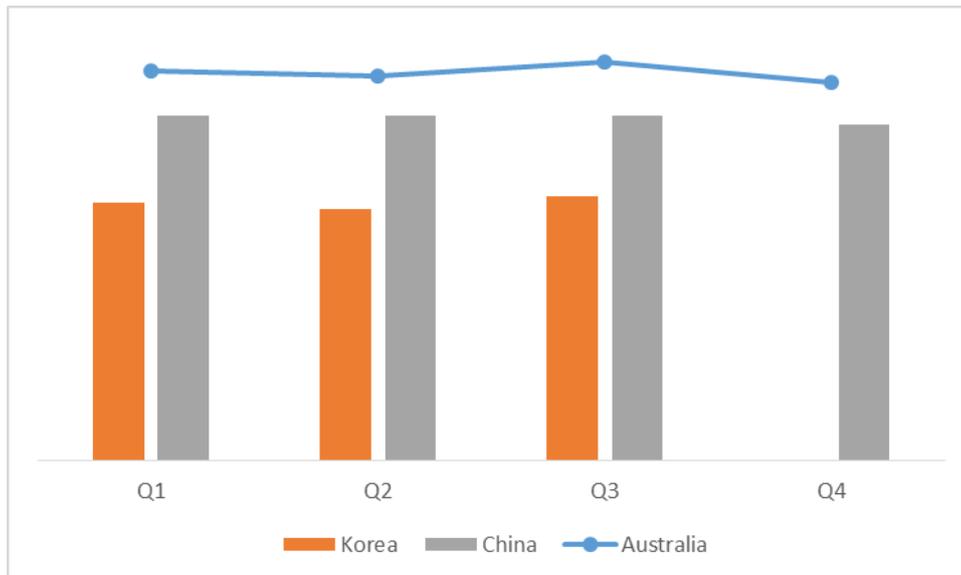


Figure 19– Price undercutting analysis based on comparison of verified importer selling prices

The data demonstrates that imports sourced from both China and Korea undercut the Australian industry during the investigation period. Korean prices in particular significantly undercut Australian industry prices in the three quarters for which the Commission had verified data for a comparison.

Price undercutting analysis is at **Confidential Attachment 5**.

9.8 Profit effects

Orrcon experienced a downward trend in its profitability position as demonstrated in Figure 5 above. Orrcon moved from a net profit position to a net loss position in 2018 which continued through the investigation period.

Profit is a function of sales revenue and costs. As stated in section 9.7 above, Orrcon experienced increases in its costs, in particular its HRC raw material costs. As seen in Figure 10, Orrcon was unable to increase selling prices in order to account for increasing costs, resulting in a narrowing of its profit margin to a net loss position as shown in Figure 11. Examples provided by Orrcon provide the reasons for Orrcon's inability to raise prices. These examples provide evidence of the impact of import prices on negotiations. In one instance, Orrcon attempted to raise prices due to cost increases, and this price increase was negotiated down, citing import prices. In three of the examples provided, Orrcon lost volumes, as it was unable to compete with import prices.

In its submission dated 30 April 2020,¹⁴⁴ RCR argued that if Orrcon has adopted an aggressive strategy in terms of competition in the market, any downturn in profit or profitability is likely to be the result of that commercial decision and is not the result of allegedly dumped (or subsidised) goods. In its application¹⁴⁵ and in the examples provided, Orrcon claims that it has needed to offer unprofitable and unsustainable prices

¹⁴⁴ EPR 550, document number 11.

¹⁴⁵ EPR 550, Item 1.

in order to maintain volumes to manage its fixed costs at its two plants. This is supported by the minor reduction in volumes between 2018 and 2019, while at the same time experiencing sustained price and profit related injury.

The Commission finds that the reduction in prices by Orrcon was a necessity in order to manage its fixed costs through maintaining volumes, and was a result of reduced pricing and profitability, as a result of competition with low import prices.

9.9 Other economic factors

In chapter 8.6.7, the Commission concluded that the Australian industry experienced injury in the form of reduced revenue, employment numbers, ROI and inventory turnover.

The Commission has found that price pressure from dumped and subsidised imports resulted in price suppression and price depression, and some reduction in volumes. These factors together have resulted in reduced revenue.

In addition to reduced employment numbers, in its application, and in documents provided to the Commission, the Australian industry notes job insecurity among staff due to reduced volumes and the inability to cover costs of production. The Commission is unable to make a finding concerning job insecurity among staff based on the evidence provided.

As seen in Figure 10, in chapter 8.4.1, Australian industry has experienced a narrowing of its margin and in recent years unit CTMS is higher than the unit selling price. At the same time, the Australian industry has experienced a minor reduction in volumes which have been maintained in order to cover fixed costs. This has been evidenced by the Australian industry offering prices below total costs in order to win orders. These two factors together have resulted in reduced ROI.

9.10 Factors other than dumping and subsidisation causing injury

RCR submitted¹⁴⁶ that it is appropriate for the Commission to consider factors such as increased energy and raw material costs and how these apply to Australian industry's claims of material injury before imposing measures.

During the verification, Orrcon claimed that there has been an increase in the volume of finished goods being imported to Australia that has impacted the demand from the manufacturing customer segment. Orrcon has identified this segment as the second largest market for precision pipe and tube. As seen in Figure 9, in chapter 8.3.1 above, the precision pipe and tube market has seen a decline in overall volumes, which may be partially explained by the increase in finished goods imports. However, as finished goods are not captured within this investigation, the Commission is unable to ascertain the proportion of the decline that is attributable to finished goods imports.

Orrcon further advised that the cessation of automotive manufacturing in Australia has impacted demand for Australian precision pipe and tube. The Commission notes that

¹⁴⁶ EPR 550, Item 11

Toyota and Holden ceased manufacture in Australia in 2017, which may have contributed to the decline in the overall size of the market as seen in Figure 8 in chapter 8.3.1.

Concerning imports from countries not named in this investigation, Orrcon advised that of these, Thailand and India were the main countries exporting precision pipe and tube. However, Orrcon does not believe these countries have engaged in dumping or material injury to the Australian industry.

In addition, Orrcon cited high energy costs and the increase in online shopping that resulted in fewer orders for shop fit-out.

Orrcon also advised of higher raw material costs, as discussed in chapter 9.7 above.

Despite these factors, Orrcon claims that higher manufacturing costs could not be passed on to customers due to price pressure from dumped and subsidised imports.

The Commission observes that as stated in the *Ministerial Direction on Material Injury*,¹⁴⁷ injury from dumping and subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree.

9.11 Materiality of injury

ADN No. 2012/24 provides that the materiality of injury caused by a given degree of dumping and subsidisation can be judged differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the Commission must consider whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.

The Commission's analysis of the economic condition of the Australian industry found that the Australian industry's:

- sales volumes reduced in the investigation period;
- per unit selling price has reduced since 2017;
- per unit CTMS has continued to increase, overtaking unit selling prices in 2018;
- profits and profitability have seen a steady decline since 2016, with a transition to a net loss position since 2018; and
- prices during the investigation period were undercut by prices of precision pipe and tube imported from China and Korea.

In addition, the Australian industry provided the Commission with examples showing it reduced its own prices in order to compete with import prices, or customers using import prices to negotiate prices. In some of these negotiations, Australian industry lost volumes, as it was unable to compete.

¹⁴⁷ ADN No. 2012/24 dated 27 April 2012.

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The Commission calculated a dumping margin for China of 2.9% and for Korea of 6.2% in the investigation period. In addition, the Commission calculated a subsidy margin for Chinese exporters of between 9.0% and 51.6%. Both China and Korea maintained volumes during the period from 2016 to 2019, being the first and third largest exporters of the goods to Australia.¹⁴⁸

The Commission found that imports from both China and Korea undercut the Australian industry's price during the investigation period. Orrcon provided examples where customers requested Orrcon to reduce its prices in response to low import prices, which in the case of Chinese and Korean prices, are dumped and subsidised prices. Based on this analysis, the Commissioner is preliminarily satisfied that dumped prices from China and Korea, and subsidised prices from China, placed downward pressure on Australian industry prices resulting in material injury.

9.12 Preliminary findings

The Commissioner is preliminarily satisfied that dumped imports from China and Korea, and subsidised imports from China, have caused injury to the Australian industry in the forms of:

- reduced sales volume;
- price depression;
- price suppression;
- reduced profit
- reduced profitability;
- reduced revenue;
- reduced employment numbers;
- reduced ROI; and
- reduced inventory turnover.

¹⁴⁸ Taiwan was the second largest exporter of the goods to Australia in the period.

10 WHETHER DUMPING AND/OR SUBSIDISATION MAY CONTINUE

10.1 Preliminary finding

The Commissioner is preliminarily satisfied that, among other things:

- dumping and subsidisation may continue in relation to the export of the goods by exporters from China; and
- dumping may continue in relation to the export of goods by exporters from Korea.

10.2 Introduction

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

When assessing whether dumping and subsidisation may continue, the Commissioner considers the term 'may' to mean 'possible'.

10.3 Whether dumping and subsidisation may continue

When assessing whether dumping or subsidisation may continue, the Commissioner considers prior evidence of dumping or subsidisation to be a relevant consideration.

The Commission's analysis found dumping margins of 2.9% for Chinese exporters and 6.2% for Korean exporters during the investigation period.

The Commission examined import volumes from the ABF import database during and following the end of the investigation period. The Commission observes that imports from China and Korea have continued.

The Commission found that China and Korea are the first and third largest exporters of the goods to Australia and therefore maintain an established share of the market. Both Chinese and Korean prices undercut Australian industry during the investigation period.

The Commission's assessment of the market found that purchasers of the goods will change their sources of supply and purchase decisions are heavily influenced by price. The Commission was provided with clear examples of customers requesting price reductions based on lower priced imports.

The Commissions' countervailing subsidy analysis found a subsidy margin of 9.0% applying to Dalian Steelforce and 51.6% for non-cooperative entities. The Commission has considered, where possible, the nature and the qualifying criteria of the various subsidy programs investigated. In the absence of information to the contrary, the Commission has assumed that these entities will continue to receive countervailable subsidies identified in chapter 7.1.1.

Based on the magnitude of the dumping and subsidy margins found, the importance of price in this market, price undercutting, and the established links and volumes maintained

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by Chinese and Korean exporters, the Commissioner considers that dumping and subsidisation may continue.

10.4 Commissioner's assessment

Based on the available evidence, the Commissioner is satisfied that exports of the goods may continue in the future at dumped prices from Korea and at dumped and subsidised prices from China.

11 NON-INJURIOUS PRICE

11.1 Preliminary assessment

The Commissioner is satisfied that there is a situation in the Chinese domestic market that renders domestic selling prices unsuitable for determining normal value under section 269TAC(1). This provides an exception to the Minister's mandatory consideration of the lesser duty rule. Accordingly, in relation to China, the Commissioner proposes to recommend that the Minister is not required to have regard to the lesser duty rule for the purposes of sections 8(5BA) and 10(3D) of the Dumping Duty Act, noting that the Minister may still do so.

In addition, the Commission has calculated the NIP for Korean exporters to be an amount equal to an un-dumped price. The Commissioner recommends that the Minister have regard to the desirability of the lesser duty rule. However, based on the fact that the NIP is not less than the normal value, the lesser duty rule will have no practical effect.

11.2 Introduction

The NIP is defined in section 269TACA as "the minimum price necessary to prevent the injury, or a recurrence of the injury" caused by the dumped or subsidised goods, the subject of a dumping duty notice or a countervailing duty notice. The Commission will generally derive the NIP from the Australian Industry's unsuppressed selling price (USP).

11.3 Legislative framework

Where the Minister is required to determine the IDD, section 8(5B) of the Dumping Duty Act applies. Where the Minister is required to determine both ICD and IDD, sections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

Sections 8(5B), 8(5BA) and 10(3D) require the Minister to have regard to the 'lesser duty rule' when determining the ICD and IDD payable. In relation to a dumping duty notice, the lesser duty rule requires consideration of whether the NIP is less than the normal value of the goods. In respect of concurrent dumping and countervailing notices, the lesser duty rule requires the Minister to consider the desirability of fixing a lesser amount of duty, such that the sum of the export price of the goods ascertained for the purposes of the notices, the ICD and IDD, do not exceed the NIP.

However, pursuant to sections 8(5BAA), 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:¹⁴⁹

- the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii);

¹⁴⁹ Sections 8(5BAAA)(a) to (c) of the Dumping Duty Act concern the calculation of dumping duty and sections 10(3DA)(a) to (c) of the Dumping Duty Act concern the calculation of countervailing duty.

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- there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises;¹⁵⁰
- if a countervailing subsidy has been received in respect of the goods – the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *WTO Agreement on Subsidies and Countervailing* for the compliance period.

Nonetheless, the Minister is not required to consider imposing a lesser amount of duty, but may still wish to exercise the discretion to do so.

11.4 Lesser Duty Rule

11.4.1 China

As discussed in chapters 6.3 and 6.4, the Commission has found that there is a situation in the Chinese domestic market that renders domestic selling prices unsuitable for determining normal value under section 269TAC(1). Accordingly, the Commission considers that sections 8(5BAAA)(a) and 10(3DA)(c) of the Dumping Duty Act apply, and as a result, the Minister is not required to consider the lesser duty rule for the purposes of sections 8(5BA) and 10(3D) of the Dumping Duty Act in respect of Chinese exports, although the Minister may still do so.

The Commissioner recommends that the full dumping and subsidy margins be applied to any IDD and ICD taken in relation to the goods exported to Australia from China from all exporters.

11.4.2 Korea

The Commission does not consider that any of the exceptions in the Dumping Duty Act apply in respect of exports of the goods from Korea. The Commission therefore has considered whether to recommend that the Minister consider the desirability of applying a lesser rate of duty to Korean exports, if applicable.

11.4.3 Taiwan and Vietnam

As the Commission proposes to terminate the dumping investigation as it relates to Taiwanese and Vietnamese exporters, as well as the subsidy investigation as it relates to Vietnamese exporters, the Commission has not had regard to the lesser duty rule for exports from Taiwan or Vietnam.

11.5 Calculation of the non-injurious price

The method of calculating a NIP is not prescribed in the legislation, however there are several methods outlined in the Manual.

¹⁵⁰ As defined in the *Customs (Definition of "small-medium enterprise") Determination 2013*.

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The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commission's preferred approach to establishing the USP is set out in the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates the NIP by deducting the costs incurred in transitioning the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

11.6 Submissions received in respect of the non-injurious price

In its submission on 25 May 2020¹⁵¹, with regard to the NIP, Orrcon states that:

- Due to the existence of a particular market situation for goods sold on the Chinese domestic market, the lesser duty rule is not required to be considered by the Minister for exports of the goods from China;
- Injury from dumping commenced in 2017. While market selling prices for the goods may have been unaffected by dumping at that time, the selling prices for the goods in 2016 reflects lower raw material costs and do not reflect the input costs incurred by Australian industry in 2019. Therefore, market selling prices from an earlier period are unsuitable for determination of a USP;
- 2019 selling prices are suppressed due to the continued presence of dumped and injurious imports of the goods from the subject countries and therefore cannot be used as a basis for the USP; and
- Consistent with previous investigations into HSS, the most appropriate USP is that based on Australian industry CTMS, plus an amount of profit.

11.7 Commission's assessment

The Commission has found that there is a situation in the Chinese domestic market that renders domestic selling prices unsuitable for determining normal value under section 269TAC(1). Accordingly, the Commission considers that the Minister is not required to consider the lesser duty rule for exporters from China.

As the Commission proposes to terminate the dumping investigation, as it relates to Taiwanese and Vietnamese exporters, as well as the subsidy investigation as it relates to

¹⁵¹ EPR 550, Item 14.

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Vietnamese exporters, the Commission has not had regard to the lesser duty rule for exports from Taiwan or Vietnam.

For exporters from Korea, the Commission does not consider that a change in the raw material costs for the goods requires deviation from the usual method for calculating the NIP by establishing a USP by reference to industry selling prices at a time unaffected by dumping, which in this case is selling prices in 2016. However, noting Orrcon's submission regarding changing raw material costs, the Commission has examined Orrcon's raw material costs between 2016 and the investigation period and has observed a significant change.

The Manual states that where the USP is older than 5 years, the Commission will consider updating old prices by indexing or other means where possible. In the present circumstances, the proposed period of industry selling prices is 3 years before the investigation period.

The Manual does not preclude the Commission from making adjustments to industry selling prices less than 5 years old. In the current circumstances, due to the significant change in the underlying raw material costs which feed into industry selling prices, which as discussed in chapter 5.4 are dictated by steel coil costs, the Commission considers that to not make an adjustment would result in fixing a USP that is not representative of undumped prices for the investigation period.

Accordingly, to account for this change, in its calculation of the USP as the first step in calculating the NIP, the Commission has adjusted Orrcon's selling prices for the goods from 2016 to account for an increase in the underlying raw material costs.

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

The Commission has assessed that the calculated NIP is not less than the normal values ascertained for exporters from Korea. As such, there is no basis to apply a lesser rate of duty, as the NIP is not the operative measure.

The Commission's NIP calculation is at **Confidential Attachment 31**.

12 PROPOSED MEASURES

12.1 Preliminary finding

The Commissioner proposes to recommend to the Minister that anti-dumping measures, using the *ad valorem* duty method, be imposed in the form of:

- a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from China and Korea; and
- a countervailing duty notice in respect of countervailing duty that may become payable by importers of the goods from China.

12.2 Forms of dumping duty available

The forms of duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- fixed duty method (\$X per tonne);
- floor price duty method;
- combination duty method; or
- *ad valorem* duty method (i.e. a percentage of the export price).¹⁵²

The various forms of duty all have the purpose of removing the injurious effects of dumping and/or subsidisation. However, in achieving this purpose, certain forms of duty will better suit particular circumstances than others. When considering which form of duty to recommend to the Minister, the Commissioner will have regard to the published *Guideline on the Application of Forms of Dumping Duty November 2013* (the Guidelines) and relevant factors in the market for the goods.¹⁵³

12.2.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Minister exercises their powers to ascertain an amount for the export price and the normal value.

12.2.2 Floor price duty method

The floor price duty method sets a “floor” – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

¹⁵² Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

¹⁵³ Available on the Commission website.

12.2.3 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* duty is determined for the product as a whole. This means that a single ascertained export price is required when determining the dumping and/or subsidy margin. The *ad valorem* duty method is the simplest and easiest form of duty to administer when delivering the intended protective effect.

12.2.4 Combination duty method

The combination duty method comprises two elements: the “fixed” element and the “variable” duty element. The fixed element is determined when the Minister exercises powers to “ascertain” an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* applied to the ascertained export price.

If the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount, i.e. the difference between the ascertained export price and the actual export price. It is called a “variable” element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

12.3 Submissions received in respect of form of measures

In its submission published on 25 May 2020¹⁵⁴, Orrcon referred to the forms of measures determined by the Commission in previous steel-related cases, which included calculating dumping duty either by the floor price method, *ad valorem* method, and combination duty method. Orrcon recommended that, in its view, the most appropriate form of measure for precision pipe and tube steel is the combination duty method.

12.4 Commission’s consideration

The Guidelines list the following considerations in respect of the combination duty method:

- it may not suit those situations where there are many models or types of the good with significantly different prices;
- it is suited to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely;
- it can be applied more precisely to certain goods in some cases;
- the ‘effective’ rate of this duty, when the duty has been imposed as a fixed amount per unit, diminishes in a rising market making it ineffective. The ‘effective’ rate increases in a declining market making it punitive, which can have adverse effects on downstream industries; and
- the ascertained export price used in this measure can become out-of-date.

¹⁵⁴ EPR 550, Item 14.

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In the present investigation, the Commission has observed a number of different model types across exporters with significant variance in price – see Figure 5 in chapter 6.4.5 for an example of variance in Chinese pricing.

The Commission is also aware that there is variance of pricing within the market over time, as discussed in chapter 11.7, in respect of adjusting Orrcon’s selling prices for the goods from 2016 to account for an increase in the underlying raw material costs in the calculation of a USP.

The market for the goods in Australia has been decreasing year-on-year since 2017, as discussed in chapter 8.3.

The Commission notes that Dalian Steelforce has a comparatively complex company structure, with its export sales to Australia sold to its related intermediary, Steelforce Trading, and related party importer in Australia, Steelforce Australia.

The Commission has also considered the use of the *ad valorem* duty method. The Guidelines list the following considerations in respect of this method:

- it has an advantage where there are many models or types as it does not require an ascertained export price or ascertained floor which may not be meaningful where models show significant price variation;
- it has an advantage for goods which are subject to significant price variations over time because it does not show the same variability in the ‘effective rate’ of the duty;
- it may not be the most appropriate duty method when applied to goods which may have high priced varieties or models of the goods, particularly where a particular variety of goods was not causing injury to the Australian industry; and
- it has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty.

The Commission has considered the advantages and disadvantages of these two duty methods in the table below.

Does it suit the characteristics of the goods	Many model types with different prices	Complex company structures	Variability of ‘effective’ rate of duty	Relevance of ascertained export price
<i>Ad valorem</i>	Yes – there are many different models of the goods with varying prices	No	Yes – price fluctuations have been observed for the goods along with significant variance in raw material costs over time	No ascertained export price is required. However, exporters may lower their prices to avoid the effect of this duty.
Combination	No	Yes – a significant volume of goods exported from China are by Dalian Steelforce, which has a complex corporate structure	No	The ascertained export price may become out of date, which is likely where the underlying raw material costs vary.

Table 22 – Consideration of duty method

12.5 Proposed recommendations

In light of the analysis above, the Commissioner proposes that duties be calculated, in respect of any ICD and IDD that may become payable, using the *ad valorem* duty method.

Where exporters are subject to both a dumping and countervailing duty, the Commission must consider whether, where a cost input used in constructing normal value is also the subject of an LTAR subsidy finding, it is necessary to ‘back out’ the relevant subsidy from the dumping margin to avoid any double counting.

In this investigation, it was found that an LTAR subsidy was available under Program 20 in respect of HRC. HRC was a cost input used in constructing the normal value for Chinese exporters.

Accordingly, as exporters from China are subject to both a dumping and countervailing duty, it is necessary to calculate the effective rate of IDD by ‘backing out’ the subsidy margin attributed to Program 20.

A summary of the proposed recommendations and effective rates of interim duty are shown in the table below.

Exporter	Proposed duty method	Rate of ICD (%)	Rate of IDD (%)	Combined rate of ICD and IDD (%)
Dalian Steelforce (China)	<i>Ad valorem</i>	9.0	0.0	9.0
All other Exporters (China)	<i>Ad valorem</i>	51.6	0.0	51.6
All Exporters (Korea)	<i>Ad valorem</i>	N/A	6.2	6.2

Table 23 – Summary of proposed effective interim dumping and countervailing duty

13 PRELIMINARY AFFIRMATIVE DETERMINATION

13.1 Introduction

Under section 269TD, if at any time not earlier than 60 days after the date of the initiation of an investigation, the Commissioner is satisfied that there appears to be, or that it appears that there will be subsequent to the importation of goods into Australia, sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, in respect of the goods subject to the application, the Commissioner may make a PAD.

The Commonwealth may, at the time of making a PAD (or at any later time during the investigation), require and take securities under section 42, in respect of any IDD or ICD that may become payable, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

13.2 Finding

In chapters 6 and 7, the Commissioner has found that:

- goods exported from China during the investigation period were at dumped and subsidised prices; and
- goods exported from Korea were at dumped prices.

As outlined in chapters 8 and 9, the dumped and subsidised exports have caused material injury to the Australian industry producing like goods.

Accordingly, the Commissioner has decided to make a PAD under section 269TD and is satisfied that it is necessary to require and take securities under section 42 to prevent material injury to the Australian industry occurring while this investigation continues.

13.3 Securities

The PAD, including the level of securities, will be publicly notified by way of an ADN.¹⁵⁵ Securities will be collected from all exporters of the goods from China and Korea and entered for home consumption on, or after, 2 June 2021.

The Commonwealth will calculate the amount of securities payable using the *ad valorem* duty method. The securities applicable to the goods exported to Australia will apply as follows:

¹⁵⁵ In accordance with sections 269TD(4)(a) and 269TD(5).

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Exporter	Proposed duty method	Rate of ICD (%)	Rate of IDD (%)	Combined rate (%)
Dalian Steelforce (China)	<i>Ad valorem</i>	9.0	0.0	9.0
All Other Exporters (China)	<i>Ad valorem</i>	51.6	0.0	51.6
All Exporters (Korea)	<i>Ad valorem</i>	N/A	6.2	6.2

Table 24 – Summary of securities

14 TERMINATION

Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation in its entirety, or solely in respect of a specific exporter. Section 269TDA provides for rules of termination on the basis of volumes and scale of dumping by countries and exporters.

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate:

- the dumping investigation in relation to all exporters from Taiwan and Vietnam, on the basis that there has been no dumping of any of the goods, in accordance with section 269TDA(1)(b)(i); and
- the countervailing investigation in relation to all exporters from Vietnam, on the basis that:
 - in respect of CDI, Vina One and residual exporters, no countervailable subsidy has been received in respect of any of those goods pursuant to section 269TDA(2)(b)(i); and
 - in respect of non-cooperative entities, a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level, pursuant to section 269TDA(2)(b)(ii).

APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Email exchange between the Commission and Steelforce Trading
Confidential Attachment 2	Australian market analysis
Confidential Attachment 3	CTM breakdown
Confidential Attachment 4	Raw material cost analysis and benchmark calculation
Confidential Attachment 5	Australian industry and import sales analysis
Confidential Attachment 6	Five Steel REQ
Confidential Attachment 7	Email exchange between the Commission and Five Steel
Confidential Attachment 8	Yantai Aoxin response to request for further information
Confidential Attachment 9	Hoa Phat Binh Duong Exhibit G-5
Confidential Attachment 10	Dalian Export Price (Replacement)
Confidential Attachment 11	Dalian CTMS (Replacement)
Confidential Attachment 12	Dalian Normal Value (Replacement)
Confidential Attachment 13	Dalian Dumping Margin (Replacement)
Confidential Attachment 14	All other exporters dumping margin
Confidential Attachment 15	Korea constructed normal value calculations
Confidential Attachment 16	Ta Fong Export Price
Confidential Attachment 17	Ta Fong CTMS
Confidential Attachment 18	Ta Fong Normal Value
Confidential Attachment 19	Ta Fong Dumping Margin
Confidential Attachment 20	CDI Export Price
Confidential Attachment 21	CDI CTMS
Confidential Attachment 22	CDI Normal Value
Confidential Attachment 23	CDI Dumping Margin
Confidential Attachment 24	Vina One Export Price
Confidential Attachment 25	Vina One CTMS
Confidential Attachment 26	Vina One Normal Value
Confidential Attachment 27	Vina One Dumping Margin
Confidential Attachment 28	All other entities subsidy analysis
Confidential Attachment 29	Australian market analysis – injury analysis

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Confidential Attachment 30	Orrcon injury examples
Confidential Attachment 31	NIP calculation
Confidential Attachment 32	Vietnam electricity prices
Confidential Attachment 33	Preferential loan benchmark calculation
Confidential Attachment 34	Dalian Steelforce subsidies
Confidential Attachment 35	CDI subsidies
Confidential Attachment 36	Vina One subsidies
Non-Confidential Attachment 1	Assessment of HSS manufacturers
Non-Confidential Attachment 2	Vietnam Steel Master Plan 2015-2025
Non-Confidential Attachment 3	GOV Decision 4977/QD-BCT 2018
Non-Confidential Attachment 4	GOC questionnaire
Non-Confidential Appendix A	Assessment of particular market situation – China
Non-Confidential Appendix B	Assessment of particular market situation – Vietnam
Non-Confidential Appendix C	Assessment of alleged subsidy programs - China

APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION – CHINA

This appendix sets out the Commission's assessment of whether a particular market situation existed in the Chinese market for the goods during the investigation period.¹⁵⁶

A1 The GOC role in the Chinese steel market

A1.1 Overview

The Chinese economy in general has undergone significant economic structural reforms to transition towards greater liberalisation of trade and foreign direct investment inflows and outflows. However, the role of government at all levels in the Chinese economy, controlling trade and foreign direct investment liberalisation for social and economic purposes, has created a hybrid system in China where decisions of the market are heavily influenced by government, as opposed to conditions of competition. Simply put, Chinese firms selling and purchasing in China's steel markets set prices and make purchasing decisions that are influenced by the directives and policies of the GOC, competition with SOEs that reflect the economic, social and fiscal goals of the GOC, as well as private firm competition on price, product and market share.

A1.2 GOC policies affecting the steel industry

The Chinese steel industry is of significant importance to China's national, economic and social security. Growth in this industry has been dependent on structured investment in, and funding of, fixed assets in SOE steel mills, steel production output for massive infrastructure and urbanisation projects supported by the GOC and export oriented trade.

A1.3 Initiatives influencing Chinese steel markets

In order to achieve such significant steel manufacturing output to achieve supply-side economic growth and reform, the GOC manages an array of subsidy programs, soft lending and credit facilities, preferential loans, land grants and capacity controls to drive domestic output and consumption of steel. In recent years, China's steel industry has played an important role in its economic structural reform and as such, changes in response to global issues and concerns are slow and incremental. The Commission understands that the GOC has a preference for incremental reform, so as not to induce "shock" changes and sudden reforms in its steel industry, which has the potential to risk the livelihoods of directly employed workers and workers employed in related industries.

Specific initiatives, implemented to address imbalances in the Chinese steel market broadly, include the Central Government's supply-side reform initiatives, *Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry* (GOC Advice) and *The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry* (GOC Opinions).

¹⁵⁶ The Commission's assessment of proper comparison is set out in respect of each exporter in 6.4.

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The GOC Advice proposed that SOE capacity be reduced by 100 to 150 million tonnes by 2020, via the banning of new capacity building and elimination of what are colloquially known as “zombie mills”.¹⁵⁷ The Central Government had also pledged a RMB 100 billion fund for employee compensation, social security payments and plant closure incentives in the coal and steel sectors.¹⁵⁸

The GOC Opinions forbid the registration of new production capacity in any form and requires that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline.¹⁵⁹

The Commission recognises the GOC’s attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. Examples of these capacity management measures announced include tightening bank lending to smaller mills, industry consolidation through mergers and acquisitions and use of stricter environmental requirements to forcibly shut down capacity.¹⁶⁰ While noting these efforts are targeted at correcting current imbalances and resulting distortions, the Commission considers them to be evidence of the extent of the GOC’s involvement within and influence over the broader steel industry during the investigation period.

The key concern with zombie mills is that they reflect capacity that is idle rather than capacity that has been removed from the market permanently. This means that, while the temporary removal of this capacity has helped support competitive market conditions, those same plants have potential to return to production when higher steel prices prevail, leading to further distortions.¹⁶¹ The extent of this issue is reflected in the concern that a significant amount of the capacity removed in 2016 was already idle, and that the real capacity permanently removed is estimated to be in the range of 12 million to 20 million tonnes per year, compared to the reported 65 million tonnes.¹⁶² As at April 2017, it was reported that China had an estimated 650 million tonnes of overcapacity, and favourable market conditions would likely extend the lifespan of zombie companies, delaying the GOC’s steel industry reforms.¹⁶³

In addition, local governments have not fully implemented the central directives on capacity reduction, with reports that steel mills engage in “capacity swapping” by moving capacity to more favourable regions, thereby maintaining or increasing the mill’s capacity.¹⁶⁴

¹⁵⁷ Liu. H & Song. L, 2016, pp338-339. AME Group, Steel 2016: June Quarter, Strategic Market Study. 2016, Q2. p.9. These mills would be shut down under normal competitive market conditions, due to either poor profitability or insolvency.

¹⁵⁸ Duke Centre on Globalisation, Governance & Competitiveness (Duke Centre), 2016. *Overcapacity in Steel: China’s role in a global problem*, September 2016, p.38.

¹⁵⁹ KPMG, 2016. The 13th 5 Year Plan: China’s Transformation and Integration with the World Economy, p.29. Sourced from GOC Opinions, State Council, 4 February 2016.

¹⁶⁰ Platts, 2016. Global Market Outlook, Steel Business Briefing. January 2016, p.14.

¹⁶¹ Platts, 2017. Global Market Outlook, Steel Business Briefing. January 2017, p.10.

¹⁶² Ibid.

¹⁶³ DBS Asian Insights, China’s steel sector supply reform, April 2017, p.5.

¹⁶⁴ Steel Guru, [China to further tighten steel capacity swapping rules - NDRC](#) (10 May 2019) and [China to Halt Capacity Swaps Project Approvals in Steel Industry](#) (24 January 2020).

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The effectiveness of the GOC's attempts to address overcapacity through mergers and acquisitions have been constrained by:

- the replacement of older mills with new larger and more efficient mills; and
- closing smaller mills to offset the commissioning of new larger mills.

While this is likely to improve the industry's structure over the longer term, its impact to date has been to increase production and exacerbate the existing structural imbalances. For example, the announcement of the creation of the BAOWU Steel Group indicated that it would decommission 2.5 million tonnes of capacity to address overcapacity, however, it also commissioned nine million tonnes of new capacity at its Zhanjiang facility.¹⁶⁵ In 2019, BAOWU Steel Group expected to increase its annual steel production capacity by twenty million tonnes after an agreement to merge with Magang (Group) Holding Co Ltd.¹⁶⁶

In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commission's view that these attempts to address existing structural imbalances have had limited success to date. Constraints in the effectiveness of these initiatives not only relate to the extent of the existing imbalances in the industry, but also difficulties in coordinating activities between central, provincial and local levels of government. The resistance of provincial and local governments to closing down mills relates to their role as major employers, sources of tax revenue and providers of social services within their respective regions.¹⁶⁷ Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and gross domestic product (GDP) oriented performance measures which encourage over-investment.¹⁶⁸

A1.4 Industry planning guidelines and directives

The central body responsible for developing and administering planning directives, and providing overarching approval of large scale investment projects within China is the National Development and Reform Commission¹⁶⁹ (NDRC). It is the Commission's view that directives from the NDRC, as the GOC's central planning authority, would thus be central to both industry specific 'five-year plans' and the planning decisions of all levels of government more generally. More explicit enforcement mechanisms are reflected in the *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines* (the GOC Guidelines).¹⁷⁰ Mechanisms to address non-compliance include:

- revoking of pollutant discharge permits;
- restrictions on financial institutions providing new credit support;
- restrictions on examination and approval of new investment projects;
- restrictions on approval of new land for use by the enterprise; and

¹⁶⁵ Platts, 2016. Global Market Outlook, Steel Business Briefing. June 2016, p.11.

¹⁶⁶ Reuters, 2019, '[China Baowu Steel to take majority stake in rival Magang](#)'.

¹⁶⁷ Platts, 2016. Global Market Outlook, Steel Business Briefing. April 2016 p.16.

¹⁶⁸ Duke Centre, *op cit* (172), p.29.

¹⁶⁹ [National Development and Reform Commission](#).

¹⁷⁰ [*Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities*] State Council (China), Notice no. 7, 6 April 2010 ('GOC Guidelines').

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- restrictions on issuing of new, and cancelling of existing, production licenses.

According to reports, the GOC Guidelines state that enterprises that do not conform to the industrial policy shall not be provided financial support by financial departments. More implicit enforcement mechanisms are reflected by the regulatory powers of bodies, such as the Ministry of Industry and Information Technology. It is the Commission's understanding that such bodies maintain lists of companies that are deemed to be either compliant or non compliant with national standards on production, environmental protection, energy efficiency and safety. Those deemed non-compliant are to be closed.¹⁷¹

It is the Commission's view that the effectiveness of the above mentioned mechanisms are reflected in the responsiveness of industry groups and major companies to the GOC's various directives.

China adopted its 13th *Five-Year Plan for National Economic and Social Development* (the Plan) on 15 March 2016. The Plan outlines China's goals, principles and targets for infrastructure, the environment, financial services, health and social and economic development for the five years to 2020. The Plan has a strong emphasis on supply-side structural reform that promotes the upgrade of industrial structures, strengthening market oriented reforms, reducing industrial capacity, inventory, financial leverage and costs, and correcting structural shortcomings.¹⁷² The Plan remained current in the review period.

To support the Chinese steel industry's development in line with the Plan, the *Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)* (the Upgrade Plan) was developed. The Upgrade Plan proposed to raise the average annual growth rate of industrial added value from 5.4% in 2015 to 6% by 2020, raise the capacity utilisation rate from 70% in 2015 to 80% by 2020, and raise the industrial concentration in top ten producers from 34.2% in 2015 to 60% by 2020.¹⁷³ Examples of the Chinese steel industry's response to these directives was reflected in the restructuring of the BAOWU Steel Group. In 2019, BAOWU Steel Group was the largest producer of crude steel in China and the second largest worldwide.¹⁷⁴

There have been a number of GOC policies, plans and initiatives relevant to the China steel industry published over many years, including the *National Steel Industry Development Policy* (2005), the *Blueprint for the Adjustment and Revitalisation of the Steel Industry* (2009) and the *2011-2015 Development Plan for the Steel Industry* (2011).¹⁷⁵ As these plans have ended, the Commission's view is that these have been largely superseded by further policies and plans.

¹⁷¹ Office of the Chief Economist, Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2015), p. 47.

¹⁷² KPMG, 2016. The 13th 5 Year Plan: China's Transformation and Integration with the World Economy, p.3. Sourced from GOC Opinions, State Council, 4 February 2016.

¹⁷³ King & Spalding, China Issues 13th Five Year Plan for the Steel Industry, Yan, Linga, November 22, 2016.

¹⁷⁴ [2020 World Steel in Figures](#), World Steel Association, May 2020.

¹⁷⁵ In noting that some of the listed documents are now dated, the Commission considers that this further demonstrates long term involvement of the GOC within the Chinese steel industry.

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Some of the key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry include:

1. Steel Industry Adjustment Policy (2015 Revision)
 - upgrading product mix;
 - rationalising steel production capacity;
 - adjustments to improving organisational structures;
 - energy conservation, emission reductions, environmental protection;
 - production distribution;
 - supervision and administration;
 - guiding market exit;
 - methods of orientation and oversight of mergers and reorganisations;
 - consolidate number of steel companies; and
 - lift capacity utilisation rates to 80% by 2017.
2. Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy
 - promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion; and
 - intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.
3. State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation¹⁷⁶
 - SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach;
 - state-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position; and
 - related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, non-ferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.
4. The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)
 - removal of 100 to 150 million tonnes of capacity between 2016 and 2020;
 - raising of capacity utilisation rates to 80% by 2020; and
 - further industry consolidation leading to 10 largest producers accounting for 60% of production by 2020.

¹⁷⁶ *General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring*] State Council on Promoting Central Enterprises (China), Notice no. 56, 26 July 2016 http://www.gov.cn/zhengce/content/2016-07/26/content_5095050.htm.

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5. Guiding Opinions on Accelerating the Merger and Acquisition and Reorganisation in Key Industries (2013);¹⁷⁷
6. Three-Year Action Plan to Win the Blue Sky War (2018–2020, published 2018).¹⁷⁸

In addition, broader industrial restructuring and reorganising directives of the GOC have an impact on the Chinese steel industry.¹⁷⁹

In assessing the relevance of these planning guidelines and directives, the Commission notes the importance of the GOC's national five year plans which provide the overarching framework for the industry and local government plans. Regarding industry specific planning guidelines and directives, the Commission notes, but does not agree with, the GOC's previously expressed view that they are for guidance and are not enforceable.¹⁸⁰ Mechanisms through which the Commission considers the GOC is able to enforce these guidelines and directives include the presence and role of SOEs within the broader steel industry, the role of the NDRC and explicit enforcement mechanisms. The GOC, where it is also the majority owner of an SOE, can exert its influence through the appointment of board directors and chief executives.¹⁸¹

SOEs' significant share of total Chinese steel production, and propensity to follow government guidance and directives, ensures that the GOC is able to influence broader trends in industry capacity and steel production. Similarly, the NDRC, through its dual role of developing planning guidelines and directives and approving large scale investment projects, has the capacity to ensure that the broader objectives of the central government are implemented. Explicit enforcement mechanisms detailed within directives, such as the State Council notice on *Further Strengthening the Elimination of Backward Production Capabilities and Guidelines*, includes a range of sanctions, such as revocation of pollutant discharge permits, restrictions on the provision of new credit support, restrictions on the approval of new investment projects, and restrictions on the issuing of new and cancelling of existing production licenses.¹⁸²

A further example of the GOC's use of planning guidelines and policy directives to achieve its objective can be seen in the GOC's *Standard Conditions of Production and Operation of the Iron and Steel Industry*. It is the Commission's understanding that this document sets out the minimum requirements for production and operation in the Chinese steel industry. Firms are incentivised to comply with the standard conditions, as doing so

¹⁷⁷ *Guiding Opinions on Accelerating the Merger and Acquisition and Reorganisation in Key Industries*] Ministry of Industry and Information Technology (China), Notice no. 16, 22 January 2013 http://www.gov.cn/zwqk/2013-01/22/content_2317600.htm.

¹⁷⁸ *Three-Year Action Plan to Win the Blue Sky War*] State Council (China), Notice no. 22, 27 June 2018 http://www.gov.cn/zhengce/content/2018-07/03/content_5303158.htm.

¹⁷⁹ For example, Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009), Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013), Guiding Opinions on Resolving Serious Excess Capacity Contradictions (2013) and Directory Catalogue on Readjustment of Industrial Structure (2013 Amendment).

¹⁸⁰ *International Trade Remedies Branch Report No. 177* (REP 177), p.123 refers.

¹⁸¹ Dong Zhang and Owen Freestone, *China's Unfinished State-Owned Enterprise Reforms* (2013), [Economic Roundup](#), The Treasury, Australian Government, issue 2, pp. 79-102.

¹⁸² REP 177, p.128 refers.

provides the basis for policy support. In contrast, firms that do not conform are required to reform, and if they still fail to conform, must gradually exit the market.¹⁸³

A1.5 Role and operation of SOEs

It has been observed that:

[SOEs] are an organic component of China's political and economic governance, although their contribution to the national output has shrunk to 40%. They are still considered to be substantial building blocks of the economy and act as a buffer against internal shocks and external threats.¹⁸⁴

The Chinese economy is commonly described as a 'socialist market economy' as it features dominant SOEs co-existing with market capitalism and private enterprise.¹⁸⁵ Commentary provided with the 2019 Fortune 500 list indicates that of the 129 Chinese companies listed that year, SOEs accounted for 80% of the revenue earned, an increase of 4% on the previous year.¹⁸⁶

Between 2010 and 2015, SOEs accounted for 44% of total Chinese steel production.¹⁸⁷ However this may have been as high as 60%.¹⁸⁸

The World Bank has found that "state enterprises have close connections with the Chinese government. SOEs are more likely to enjoy preferential access to bank finance and other important inputs, privileged access to business opportunities, and even protection against competition."¹⁸⁹

While the Commission does not consider that the presence of these entities alone causes markets to be distorted, it does consider that the presence of these entities is likely to result in the GOC's plans and directives being adhered to. The Commission also considers that the support provided to these entities by the GOC has enabled many of them to be operated on non-commercial terms for extended periods, significantly impacting supply and pricing conditions within the domestic Chinese market.¹⁹⁰

Examples of these support mechanisms include government subsidies, support from associated enterprises (through direct subsidy, interest-free loans or provision of loan guarantees) and loans from state-owned banks.¹⁹¹

¹⁸³ Announcement on the *Standard Conditions of Production and Operation of the Iron and Steel Industry*. Included in the context of REP 177 on the [EPR for that case](#).

¹⁸⁴ Amir Guluzade, published on the World Economic Forum website, [How reforms have made China's state owned enterprises stronger](#) (21 May 2020).

¹⁸⁵ Asialink Business, [Overview of China's economy](#), accessed 21 July 2020.

¹⁸⁶ <https://fortune.com/2019/07/27/ceo-daily-july-27-sino-saturday/>.

¹⁸⁷ Liu. H & Song. L, 2016, p.349.

¹⁸⁸ Platts Steel Business Briefing (Platts), *Global Market Outlook*, January 2016, p.14.

¹⁸⁹ World Bank, China 2030: Building a Modern, Harmonious, and Creative Society, Report No. 96299 (March 2013), p.25.

¹⁹⁰ Anti-Dumping Commission, Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016 (Commissioner's Steel Report), p.47.

¹⁹¹ Liu. H & Song. L, 2016, p.348.

The Commission considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated attempts by the Central Government to reduce the scale of steel production. It is also the Commission's view that these support mechanisms have created rigidities in the way recipient firms respond to price and profit signals and hence have significantly contributed to the excessive investment in capacity, excess steel production and distorted prices.

The significance of SOEs to the broader Chinese economy, including the steel industry, is also reflected in the State Council of China's *Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation* (the *Guidance*).¹⁹² In introducing the *Guidance*, the State Council notes the important role of SOEs in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The *Guidance* also indicates that the State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation include the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures more generally.

In 2019, the GOC announced its intention to introduce a three year action plan on SOE reform, which reflects the continuation of the significance of SOEs to the Chinese economy.¹⁹³ The plan is designed to target mixed-ownership reform and strategic restructuring in sectors including coal and electricity, steel and non-ferrous metal. In recent years SOE reform has focussed on consolidation through mergers and acquisitions, which has (arguably) increased the state's presence in the market.¹⁹⁴

The Commission considers that in combination with slow, incremental policy reform and the GOC's economic and fiscal stimulus packages, the role of SOEs in general, involved in "...capital intensive sectors that produce intermediate but highly tradable goods with important linkages to other upstream and downstream economic activities, such as the mining, chemicals or even electronics sectors..."¹⁹⁵ provides a buffer to the Chinese steel industry from external market forces. Those SOEs "...operating in upstream sectors... provide inputs to steel companies at below-market prices and in preferable terms. The same applies to downstream [SOE] companies buying steel products at above-market rates, thus providing support to steel companies. In addition, several concerns relate to the functioning of the financial sector in the presence of [SOEs]."¹⁹⁶

A1.6 The role of the GOC in private firms

In addition, the Commission understands that whilst not expressly compulsory under law, private firms engage with the policies and objectives of the GOC by aligning their

¹⁹² The State Council, notice advising the issuing of the [guideline on reorganization of SOEs](#) (July 2016).

¹⁹³ The State Council, notice [urging SOEs to increase profitability and deepen reform](#) (July 2020).

¹⁹⁴ Hong, Y (2019), 'Reform of State-owned Enterprises in China: The Chinese Communist Party Strikes Back', *Asian Studies Review*, pp.332-351.

¹⁹⁵ OECD Steel Committee, [State Enterprises in the Steel Sector](#) (20 December 2018), p.5.

¹⁹⁶ OECD Steel Committee, [State Enterprises in the Steel Sector](#) (20 December 2018), p.8.

commercial interests with industry directives and where relevant, appointing party members on supervisory boards.

A1.7 Direct and indirect financial support

Examples of specific support programs provided to Chinese steel producers by the GOC, as identified by the American Iron and Steel Institute and the Steel Manufacturers Association, include preferential loans and directed credit, equity infusions and/or debt-to-equity swaps, access to land at little or no cost, government mandated mergers (permitting acquisition at little or no cost) and direct cash grants for specific steel construction projects.¹⁹⁷ Similar programs have been previously identified by the Commission in respect of the Chinese steel industry. It is the Commission's view that these programs have directly contributed to conditions within the Chinese steel industry during the investigation period by providing direct financial support to recipient steel producers.

The Commission notes that countervailable subsidies have been received by exporters from China (see chapter 7 of this Report). These subsidies and tax concessions reduce the operating costs of Chinese steel enterprises, confer a competitive advantage through the ability to offer steel products at lower prices, and increase the profitability of steel production.¹⁹⁸ It supports unprofitable producers, delaying or preventing their timely exit from the industry.

A1.8 Taxation arrangements

The Commission has previously identified evidence of export taxes and export quotas on a number of key inputs in the steel making process including coking coal, coke, iron ore and scrap steel in *Anti-Dumping Commission Report No. 198*.¹⁹⁹ The Commission found that these measures would keep input prices artificially low and create significant incentives for exporters to redirect these products into the domestic market, increasing domestic supply and reducing domestic prices to a level below what would have prevailed under normal competitive market conditions.

The GOC has traditionally operated, amongst other taxation arrangements, a VAT and a VAT rebate system for certain exported goods which has undergone incremental change. In 2018 and 2019, the GOC implemented a further series of VAT reforms, which included lowering the VAT rates paid, as described in the table below.

¹⁹⁷ Duke Centre, *op cit* (172), p.25.

¹⁹⁸ Commissioner's Steel Report, at www.adcommission.gov.au p.45.

¹⁹⁹ Concerning hot rolled plate steel exported from China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan; pp. 41-43.

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	Tier 1 VAT rate payable	Tier 2 VAT rate payable	Tier 3 VAT rate payable	Tier 4 VAT rate payable
Pre-1 July 2017	17%	13%	11%	6%
1 July 2017	17%	11%	6%	<i>Tier 4 revoked</i>
1 May 2018	16%	10%	6%	
1 April 2019	13%	9%		

Table 25: VAT rate reform in China 2017 to 2019²⁰⁰

The relevant VAT rate for the goods during the investigation period was 16% from 1 January to 31 March 2019, and then 13% from 1 April 2019 onwards.

Under the Chinese VAT system, VAT is paid on consumption of goods, including the inputs used in the production of steel. For goods produced and sold within China, the tax is ultimately paid by the final consumers of the particular good "...and successive tax payers are allowed to deduct the VAT they pay on their purchases while they account for VAT they collect on the 'value added'".²⁰¹ Because it is difficult for exporters to pass on the input VAT tax to export customers, eligible steel exporters have traditionally been compensated for input VAT paid during the production process via the payment of VAT rebates.

Through altering the VAT rebates and taxes applied to steel exports, the GOC is able to alter the relative profitability of different types of steel exports compared to domestic sales. For example, by either reducing VAT rebates or increasing export taxes on steel exports, the GOC is able to reduce the relative profitability of exports to domestic sales and hence provide significant incentives for traditional exporters to redirect their product into the domestic Chinese market. By using these mechanisms to alter the relative supply of particular steel products in the domestic market, the GOC is also able to influence the domestic price for those products.

During the investigation period, the applicable VAT rebate rates for exports of the goods was 10%.

These changes, along with changes to the domestic VAT rate, resulted in applied VAT rates for exports of the goods until 31 March 2019 of 6% and 3% for the remainder of the investigation period. No export tariffs were payable on the goods, which when combined with the reduction in actual VAT paid on exporters of the goods, would create a further incentive for export.²⁰²

²⁰⁰ <https://www.oecd.org/tax/consumption/status-of-the-vat-reform-in-the-peoples-republic-of-china-2018.pdf> - 2019 rates verified for the goods in the investigation period.

²⁰¹ <https://www.oecd.org/tax/consumption/status-of-the-vat-reform-in-the-peoples-republic-of-china-2018.pdf>.

²⁰² GOC RGQ, Attachment D6 – Schedule of rates, EPR item 10

A2 Competition in Chinese steel markets

One of the important features of the Chinese steel market is the lack of import competition such that price setting and competition in the domestic market is predominantly, if not solely, influenced by domestic firms.

The May 2020 US International Trade Administration (USITA) Global Steel Trade Monitor Report highlights that steel production in China is driven by its domestic demand and consumption, such that import penetration (as a function of consumption) in steel has remained low, at 1.6% in 2018 and 2019. The figure below shows the USITA analysis.

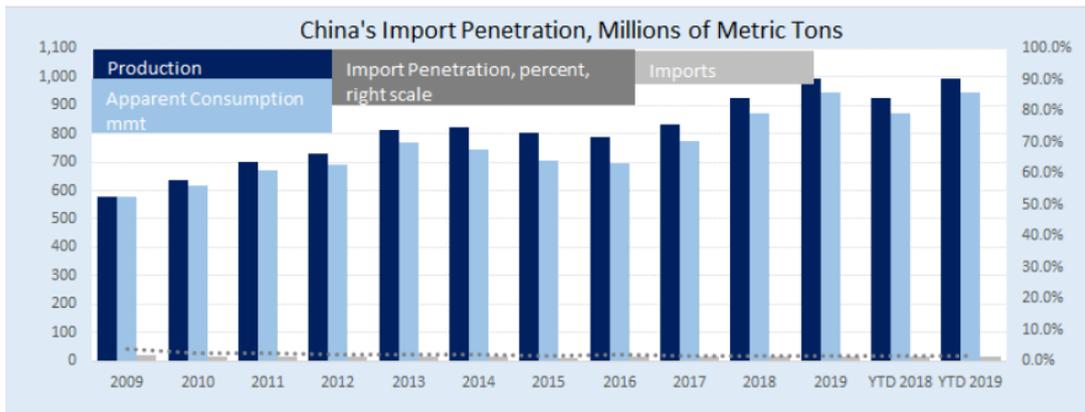


Figure 20 – Steel imports in China²⁰³

Conversely, China’s exports of steel represent approximately 62 million tonnes in 2019 or about 6% of its production.²⁰⁴

The Commission considers the GOC’s involvement and influence over the steel industry to be a primary cause of the prevailing structural imbalances within both the broader steel industry and the HRC and precision pipe and tube steel markets. The issuance of planning guidelines and directives along with provisions of direct and indirect financial support^{205, 206} creates a domestic market that benefits domestic producers and supports inefficient enterprises, but does not support access and therefore competition from foreign producers.

The Commission acknowledges that China’s supply side structural reform targets the structure of production, to make it more efficient and to balance the supply side of China’s economy with the demand side.²⁰⁷ It is a “...suite of policies focus[ing] on reducing

²⁰³ United States International Trade Administration, [Global Steel Trade Monitor, Steel Imports Report: China](#), May 2020.

²⁰⁴ United States International Trade Administration, [Global Steel Trade Monitor, Steel Exports Report: China](#), May 2020.

²⁰⁵ Support measures include stimulus programs, land and energy subsidies and soft lending policies.

²⁰⁶ Duke Centre, *op cit* (172), p.24.

²⁰⁷ <https://www.rba.gov.au/publications/bulletin/2018/dec/chinas-supply-side-structural-reform.html>

distortions in the supply side of the [Chinese] economy and upgrading the industrial sector.”²⁰⁸ China’s steel industry has been a key focus of these policy reforms.

In short, the Chinese steel market is constructed such that preferential treatments, whether focussed at SOEs or not, creates a situation of “...competition for factors of production...”²⁰⁹ rather than market driven competition based on price, service and value.

The Commission therefore considers that the GOC’s historic and continued involvement in the Chinese steel industry, through its policies, planning guidelines, plans and directives, materially contributed to its steel industry’s overcapacity, oversupply and distorted structure during the review period. It is the Commission’s view that these features have the effect of limiting foreign competition and that the price of HRC (and therefore precision pipe and tube) would be substantially different in a market not characterised by GOC influence.

A3 GOC influence on the Chinese market for the goods

The Commission has found in the preceding section that the GOC exerts significant influence over the Chinese steel market. This section identifies the degree of that influence on HRC prices in China and therefore the cost of the primary steel input feed in the manufacture of the goods by Chinese producers.

A3.1 Comparison of raw material prices

As a result of previous cases and after considering the evidence before it for this investigation, the Commission considers that normal competitive market conditions prevail in the Korean and Taiwanese domestic markets for steel coil and that purchases of steel coil in these markets are not influenced by prices in China.²¹⁰ The Commission therefore considers that steel coil purchases in these markets are suitable for comparison with steel coil purchases in China to quantify the effect of GOC influence on Chinese steel coil prices during the investigation period.²¹¹

The Commission notes that Dalian Steelforce, the sole cooperating Chinese exporter, sourced steel coil solely from Chinese steel mills.

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

- the CRC price paid by the cooperative Chinese exporter and the CRC MEPS prices for China, Korea and Taiwan;

²⁰⁸ <https://www.rba.gov.au/publications/bulletin/2018/dec/chinas-supply-side-structural-reform.html>

²⁰⁹ Dong Zhang and Owen Freestone, *China’s Unfinished State-Owned Enterprise Reforms* (2013), [Economic Roundup](#), The Treasury, Australian Government, issue 2, pages 79-102, December; at p.91

²¹⁰ See SEF 529 available on the Commission’s website.

²¹¹ The Vietnamese HRC market has previously been considered by the Commission to be subject to normal competitive market conditions, but due to the allegation in this investigation that there is a particular market situation in respect of Vietnamese exports of the goods, HRC purchases by Vietnamese producers have been excluded from this assessment.

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- the pre-galvanised coil price paid by the cooperative Chinese exporter and the pre-galvanised coil MEPS prices for China, Korea and Taiwan; and
- the Chinese HRC MEPS price and the HRC MEPS benchmark for Taiwan and Korea.

As all pricing data used by the Commission in its analysis was reported in the relevant local currency, the Commission has converted and compared prices in USD. The Commission performed a currency fluctuation analysis as part of this process to examine whether any such fluctuations may have distorted its price comparisons.

As the currency conversion has been made on an average monthly exchange rate, the Commission has not undertaken an assessment for short-term (i.e. on a daily basis) currency fluctuations. However, the Commission has assessed whether there has been a sustained currency fluctuation experienced between the USD and any of the local currencies used. Figure 21 below depicts monthly movements in the exchange rate for each of the relevant currencies to the USD.

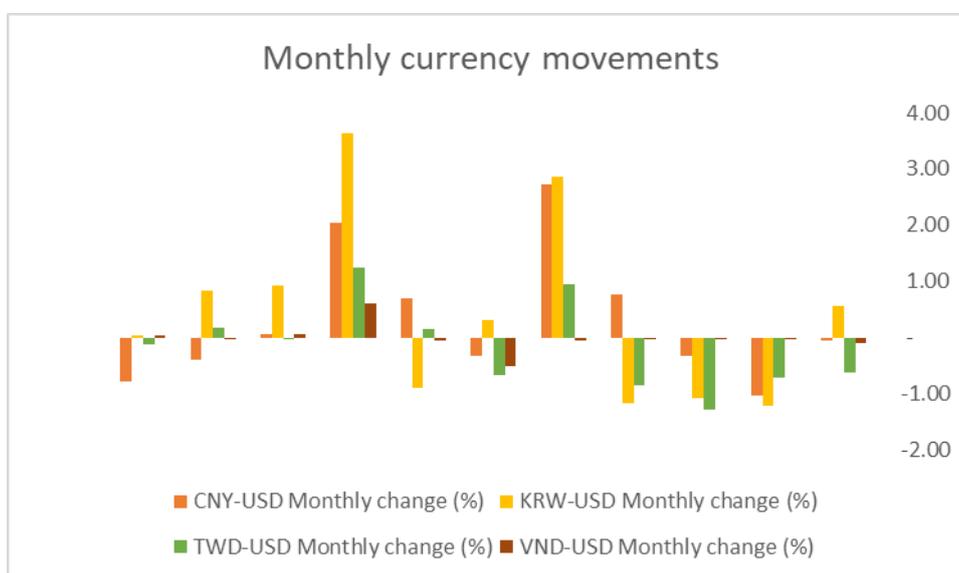


Figure 21 – Monthly currency movements to the USD

The currency with the greatest monthly movement against the USD is the Korean won (KRW). However, the largest monthly movement in the KRW-USD exchange rate is less than 4%, with no cumulative movement of greater than 5% over any two consecutive months. The Commission considers a fluctuation equal to or greater than 5% over an 8 week period to constitute a sustained currency movement. Accordingly, as there appears to have been no sustained currency fluctuation over the investigation period, the Commission is satisfied that a USD comparison between prices will provide a result undistorted by currency movements.

Figure 2 and Figure 3 in chapter 6.4.4 examined the CRC and pre-galvanised coil prices paid by the cooperative Chinese exporter and the CRC MEPS prices for China, Korea and Taiwan. The figures show that prices for these coil types in China, whether purchased by the cooperating Chinese producers or reported in the MEPS data, are substantially lower than equivalent average prices for Korea and Taiwan, with differences of between 5% and 16% for pre-galvanised coil and 17% and 25% for CRC.

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The Commission has also examined HRC prices over the investigation period as it forms the base for CRC and pre-galvanised coil (see chapter 6.3.4).

Figure 22 below depicts the monthly price of HRC over the investigation period as reported by MEPS for China, Korea and Taiwan, including the average for Korea and Taiwan, which has been taken as the competitive benchmark for HRC.²¹²

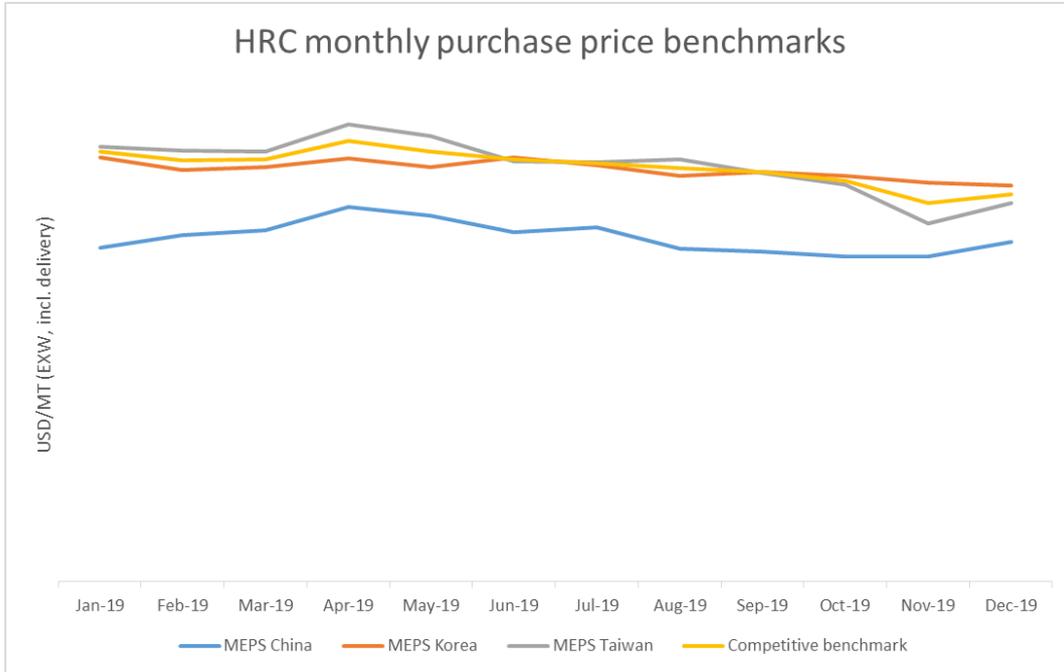


Figure 22 - HRC prices – EXW, plus delivery in USD/MT

Figure 22 shows similar prices paid during the investigation period in Korea and Taiwan between the competitive benchmark and Chinese prices, with differences of between 12% and 22% in any given month.

²¹² Adjusted to be at EXW including any delivery costs where necessary.

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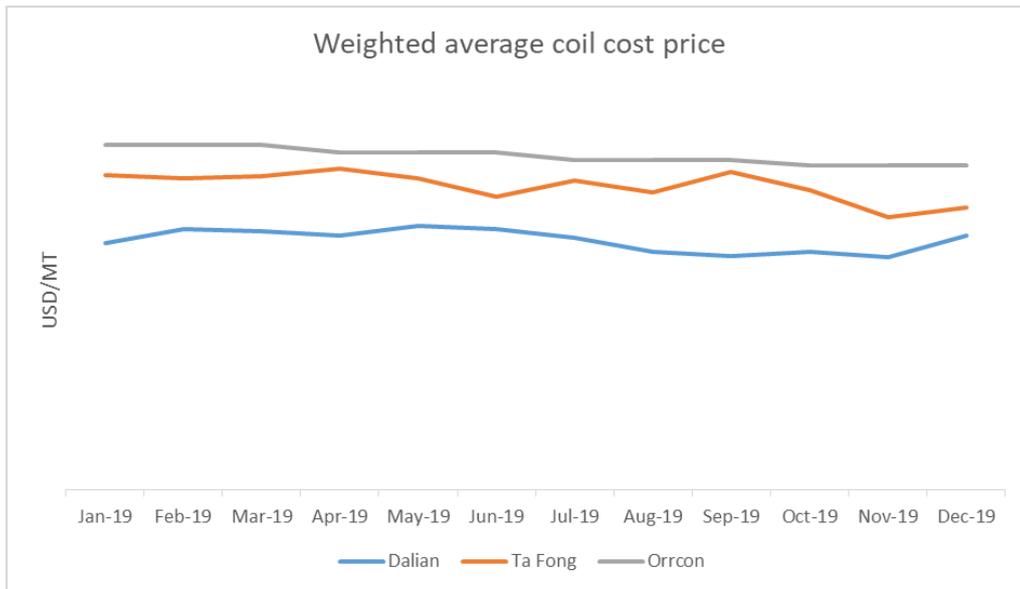


Figure 23 – Weighted average HRC cost price

Figure 23 above shows that domestic steel coil prices, regardless of coil type, paid by Dalian Steelforce are considerably lower than the verified prices paid by producers in Taiwan and Australia, being at least 10% lower in any given month, and as much as 29% lower at other times. No steel coil purchasing data was provided by Korean exporters during the investigation.

The Commission therefore considers that Chinese exporters clearly benefit from lower prices for raw materials than other producers, as a result of a market situation affecting steel prices in the country.

The Commission considers that the difference between prices represents the degree to which steel coil prices in the Chinese domestic market have been distorted as a result of GOC influence.

The Commission’s raw material input analysis is provided at **Confidential Attachment 4**.

APPENDIX B ASSESSMENT OF PARTICULAR MARKET SITUATION – VIETNAM

This appendix sets out the Commission's assessment of whether a particular market situation existed in the Vietnamese market for the goods during the investigation period.

B1 Introduction

In its submission²¹³, Orrcon alleged that the domestic prices of precision pipe and tube are not suitable for the determination of normal values on the basis that intervention by the GOV in the iron and steel industry raw material supply markets has distorted the prices of the subject goods during the investigation period.

Orrcon's submission quotes the terms set out in Vietnam's Protocol of Accession to the WTO. Vietnam therein agreed that other WTO Members would be permitted to use special rules for the determination of whether non-market economy conditions exist in the context of anti-dumping cases. Specifically, Vietnam agreed that an importing Member would be permitted to "...use a methodology that is not based on a strict comparison with domestic prices or costs in Vietnam if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product."²¹⁴

Under these terms, the burden of proof lies with the Vietnamese exporter to show that market conditions prevail, with the assumption otherwise being that the market conditions in Vietnam are not representative of a properly competitive market. However, this provision expired on 31 December 2018, and so is not considered to be in force during this investigation.

Further, Orrcon submits that prices in Vietnam for the goods are "artificially low, or lower than they would otherwise be in a competitive market". Specifically, Orrcon points to GOV influence in the areas of:

- electricity prices;
- Steel Master Plans;
- industrial development strategy;
- state ownership of precision tube producers;
- domestic price stabilisation initiatives;
- steel industry construction project and investment control; and
- steel industry subsidisation

²¹³ INV 550 application by Orrcon, available on the Commission's website

²¹⁴ WTO, Report of the Working Party on the Accession of Vietnam, WT/AA/VNM/48, 27 October 2006, at para 255

B2 The GOV role in the Vietnamese steel market

B2.1 Electricity prices

The Commission has previously considered the issue of GOV influence and control over electricity prices in *Investigation 416 into steel rod in coils exported from Indonesia, Korea and Vietnam*. In that investigation, the Commission found that “the level of control exercised by the GOV on electricity prices has artificially suppressed the price of electricity in Vietnam.”²¹⁵ As a result, the Commission substituted the price of electricity with a market rate as determined by the World Bank. Orrcon here asserts that, in respect of the goods under consideration in this case, “cost distortions in the Vietnamese electricity market have a significant impact on the production costs of Vietnamese precision tube manufacturers, and that competitive conditions do not exist for domestic electricity prices in Vietnam.”²¹⁶

The Commission notes that the production process for steel rod in coil differs significantly to that of the goods in this case. The production of billet from iron ore and metallurgical coke to then produce steel rod in coil is a much more energy intensive process than that detailed in chapter 4.5 for precision pipe and tube steel. Raw material costs, rather than manufacturing overheads (under which electricity would be reported) also make up a larger proportion of the CTM for the goods, compared to steel rod in coil, as detailed in chapter 6.3.4.

In its RGQ, the GOV confirmed that electricity pricing is regulated by the government, with different prices between the manufacturing sector, administrative and governmental sector, trading sector and households. Within each sector, all entities are charged at the same rate.²¹⁷

The Commission has compared the prices provided by the GOV with prices provided by the World Bank. Noting that in Vietnam different rates apply to different sectors and are dependent on voltage, the Commission is satisfied that the World Bank electricity price adequately reflects electricity prices in Vietnam and aligns with the data provided by the GOV.

The Commission has then examined the World Bank price for electricity for the investigation period and notes that prices in Korea, Malaysia and Taiwan are all cheaper than Vietnam, although it notes China and Australia are higher.²¹⁸

In light of the above, the Commission is not satisfied that there are significant cost distortions in the Vietnamese electricity market, and that, if there were distortions, they would have a significant impact on the production costs of Vietnamese precision tube manufacturers.

²¹⁵ SEF 416 and Termination Report 416, available on the Commission website

²¹⁶ EPR 550, Item 1, p. 48

²¹⁷ EPR 550, Item 36, Exhibit 45

²¹⁸ Confidential Attachment 32 – Vietnamese electricity prices

B2.2 Steel Master Plans

As detailed by the applicant, the GOV has in recent decades detailed their plans for their domestic steel industry in a two stage Master Plan, as below:

- The Steel Master Plan 2007-2015 (Decree No. 145/2007/QD-TTg)²¹⁹; and
- The Steel Master Plan 2015-2025 (Decision No. 694/QD-BCT).²²⁰

The original Steel Industry Plan (2007-2015) contained production targets of 23 million tonnes of finished steel production by 2020 and 28 million tonnes by 2025.²²¹ This was to be achieved via large investment projects in a number of steel manufacturing facilities. The GOV sought to develop a domestic steel industry through a range of policy objectives including:

- (i) Protection of the domestic industry through technical barriers and environmental standards;²²² and
- (ii) Tasking various Ministries in the GOV with enacting various policies, including protecting domestic steel manufacture against competition from foreign steel products and imposing import tax and export tax policies to step up investment in the development and restructuring of the steel industry in Vietnam.²²³

The Steel Master Plan 2007-2015 was superseded by the Steel Master Plan 2015-2025. The later plan details a diversification in domestic steel production into the production of hot-rolled, cold-rolled and galvanised steel.

- Article 1(5)(a) demonstrates a shift to greater diversification:

Having incentive policies for combined steel plant projects. Prioritising the investment in projects of manufacturing pig iron, steel billets, hot rolled steel sheet, alloy steel, steel of high quality, large shaped steel and stainless steel...

- Article 2(3) seeks to influence and control steel prices:

People's Committee of centrally-affiliated cities and provinces shall: Direct the market management force in the area to coordinate with the authorities to strengthen the inspection and control of prices of steel products; prevent speculation, fake and ensure price stability steel in the area.

In response to these claims by the applicant, the GOV submitted that the Steel Master Plans were made redundant from the beginning of 2019, as a result of further laws passed by the GOV²²⁴. The first, Law on Planning No. 21/2017/QH14, decreed that manufacturing industries, including steel, are no longer the subject of master plans

²¹⁹ Available on the GOV legislative gazette at <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=3341&Keyword=145/2007/QD-TTg>

²²⁰ Non-confidential Attachment 2

²²¹ Steel Master Pan 2007-2015, Article 1(3)(a)

²²² Ibid, Article 1(3)(c)

²²³ Ibid, Article 2

²²⁴ INV 550 Document No. 004, GOV submission, available on the Commission website

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developed by the GOV. Following that law, the Ministry of Industry and Trade promulgated Decision No. 4977/QD-BCT to repeal specific products planning under the provisions on Law on Planning No. 21/2017/QH14, including Decision No. 694/QD-BC (otherwise known as the Steel Master Plan 2015-2025).²²⁵

The Commission has verified the claims of the GOV:

- Article 59(1)(d) of the Law on Planning No. 21/2017/QH14 provides that:

The planning for investment in and development of specific goods, services and products, determination of the volume of goods, services and produced and sold products that is decided or approved is null and void no later than December 31, 2018.

- Article 1 of Decision No. 4977/QD-BCT provides that the *Steel production and distribution system development planning up to 2020, with a vision to 2025* was annulled on 27 December 2018.

Accordingly, the Commission is satisfied that the legal basis for the Steel Master Plans referenced by the applicant are no longer in force.²²⁶

In its submission, dated 9 April 2020²²⁷, Orrcon submitted that the revocation of the Steel Master Plan in no way hinders or minimises the effects of the plan on Vietnamese production of the goods and prices over the investigation period. Rather, the effects of the plans, which impacted the structure and capacity of Vietnam's precision pipe and tube steel industry, continue beyond December 2019. The plans, when in force, set production capacity goals, established guidelines for the development of Vietnam's steel distribution channels, including distribution centre market shares, established forecasts and targets for steel product consumption to 2025, protected, expanded and stabilised the domestic steel market, mandated the removal of outdated production facilities and improved competitiveness, enabling the Vietnamese industry to garner a competitive advantage over foreign producers. Orrcon submits that the impact of the plans will significantly affect the Vietnamese steel industry, including producers of the goods, for years to come.

The Commission has not been presented during the investigation with evidence regarding the long term effects of the Steel Master Plans on the Vietnamese steel industry. While there are forecasts for increased production to 2025, whether these production goals are met and whether there is then a causal link between the Steel Master Plans and the increased production is, with respect to the information before the Commission, merely speculation.

²²⁵ Ibid, p240

²²⁶ Non-confidential Attachment 3 - GOV Decision 4977 _ QD-BCT 2018 abolishes planning for specific products and services

²²⁷ EPR 550, Item 6

B2.3 Government Policies and Directives – Industrial Development Strategy

Orrcon's application details the GOV's industrial development strategy, as laid out in the Steel Master Plans. In particular, Orrcon highlights the strategic goals below:

- To develop the industrial sector on the basis of effective mobilization of resources from all economic sectors; to encourage the development of the private sector and foreign invested sector;
- To develop priority industries and industrial fields, primarily focusing on agricultural and rural industrialization and modernization, on the basis of high-quality human resources and advanced technologies, regarding competition as a driving force for development;
- To utilize existing advantages and international opportunities; to associate production with services and trade, and to actively participate deeply into the world industrial production value chain;
- To focus on developing a number of dual-purpose industries to serve national defence and security; and
- To develop the industrial sector on the basis of green growth, sustainable development and environmental protection.²²⁸

As with the Steel Master Plans, the GOV submitted that Law on Planning No. 21/2017/QH14 and Decision No. 4977/QĐ-BCT render the Industrial Development Strategy now unenforceable within the steel industry.

Similar to the ongoing effects of the Steel Master Plans, the Commission has not been presented during the investigation with evidence regarding the long term effects of the strategies outlined above on the Vietnamese steel industry.

B2.4 State Ownership of Large Steel Tube Producers

Vina One

Orrcon submitted that Vina One, a co-operating exporter of precision pipe and tube in this investigation, is an SOE. Vina One's questionnaire response indicates that, while originally set up by the Department of Planning and Investment of Long An Province,²²⁹ Vina One is now a privately owned enterprise, and is not controlled or influenced by the GOV. This was verified by the case team during the investigation.

Vietnam Steel

The large integrated steel producer Vietnam Steel (VN Steel) manufactures a range of steel products, including both inputs for and finished products and is operated in

²²⁸ VGP Prime Minister Nguyen Tan Dung on June 9, 2014 signed Decision No. 879/QĐTTg to approve the Industrial Development Strategy through 2025, vision toward 2035

²²⁹ INV 550 no. 35, available on the Commission's website

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accordance with a charter from the GOV. The GOV has an active role in VN Steel's management and daily operations.

In a paper by Nozomu Kawabata published in 2017, it was suggested it is debatable whether VN Steel has a significant role in the market relating to prices and production of other firms. VN Steel does not receive GOV subsidies, and any GOV intervention may only be due to it falling into management crisis, itself a result of delays in corporate governance reforms.²³⁰

VN Steel has an annual finished steel production capacity of 2.5 million tonnes, with an additional capacity to produce 1.5 million tonnes of billet. This compares to Hoa Phat Group, a private company, which has an annual steel production capacity of finished steel products of 2.77 million tonnes.²³¹ Hoa Phat now considers itself the market leader, above VN Steel, in construction steel companies.

Assessment

In light of the above, the Commission does not consider large scale GOV policy initiatives are enacted through SOEs.

B2.5 GOV price stabilisation

Orrcon submits evidence of the GOV engaging in price stabilisation initiatives in the steel industry, by referencing:

- Directives to the state owned VN Steel in 2008 to maintain unchanged steel prices for as long as possible;
- A quote from the Price Management Department of the Ministry of Finance from April 2010 – “The government has long had steel on a list of products in need of price stabilisation...if there're [are] sudden changes to the price, government agencies totally have the power to stabilise it;”²³²
- Circular 122, which delegates authority to the Ministry of Finance to control price over an extensive list of goods when the prices of those goods increase or decrease without legitimate cause. Steel is among the list of goods subject to price controls. Circular 122 has been superseded by the Price Law (coming into effect January 1, 2013).²³³

VN Steel

The Commission considers that the impact of any directives from the GOV to VN Steel in 2008 are unlikely to have a continuing impact during the investigation period. The

²³⁰ KAWABATA Nozomu, 2017. "Decline and Restructuring of a State-owned Enterprise Group in the Vietnamese Iron and Steel Industry (Japanese)," Discussion Papers (Japanese) 17066, Research Institute of Economy, Trade and Industry (RIETI), available at <https://ideas.repec.org/p/eti/rdpsjp/17066.html>

²³¹ Hoa Phat Annual Report 2019, p37, available at <https://file.hoaphat.com.vn/hoaphat-com-vn/2020/05/annual-report-2019.pdf>

²³² Thanhnien News, “Vietnam steel producers manipulating prices”, 9 April 2010

²³³ Export.Gov, “Vietnam – Trade Barriers,” 24 August 2018

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Commission also notes, as discussed in **Non-confidential Appendix B2.4**, VN Steel does not have an influential impact of the Vietnamese steel industry.

Price management

The Commission notes that the quote provided by Orrcon in the application regarding price management²³⁴ is from 2010 and was in the context of allegations of steel price manipulation by Vietnamese metal producers. The Commission also understand that the powers referred to by the Price Management Department to stabilise prices come from Circular 122, which is discussed further below.

Circular 122

The Commission has examined Circular 122 and confirms that it relates to the implementation of price stabilisation; powers and responsibilities of agencies, organisations and individuals in the elaboration, submission and appraisal of price plans and price decisions; price consultation dossiers and procedures; control for price factors; forms and procedures for price registration and declaration of prices of goods and services.²³⁵ Such measures can be implemented where: ²³⁶

- the price increase is higher than the increase in the price of the inputs, or higher than the cost price of imported goods;
- the price increases or decreases are not grounded, while the price constituents have no change, in the event of natural disasters, fires, epidemics, enemy sabotage, economic-financial crisis, or loss, temporary supply-demand balance or due to unfounded rumours of price increases or decreases; and
- unreasonable increase or decrease in prices due to abuse of monopoly position or market dominance.

Circular 122 also specifies that the measures relate only to certain goods and services, listed in Decree 75/2008.²³⁷ Decree 75/2008 lists “Construction steel” as a good which is subject to price stabilisation.

However, both Decree 75/2008 and Circular 122 expired on 1 January 2014.

B2.6 GOV control over projects and investments

In its application, Orrcon provided the following examples of GOV control within the Vietnamese steel market:

- In April 2017, the GOV halted construction on the Hoa Sen Ca Na steel plant in Ninh Thuan Province, an approx. US\$10.6B project that had approval from almost 97% of Hoa Sen shareholders. The project is yet to receive GOV approval,

²³⁴ Thanhnien News, “Vietnam steel producers manipulating prices”, 9 April 2010, available at <http://www.thanhniennews.com/business/vietnam-steel-producers-manipulating-prices-16995.html>

²³⁵ Article 1 of Circular No. 122/2010/TT-BTC, available at <http://vbpl.vn/TW/Pages/vbpg-toanvan.aspx?ItemID=25631>

²³⁶ Ibid, Article 2(2)

²³⁷ Available at <http://vbpl.vn/TW/Pages/vbpg-toanvan.aspx?ItemID=12714>

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however the impact of this decision is an overall reduction in steel production in Vietnam compared to if the project had gone ahead, and therefore not likely to result in lower steel prices in the country. Moreover, environmental and planning concerns have been quoted as the reasons behind the decision.²³⁸

- The GOV in 2016 removed 12 projects from the most recent Steel Master Plan due to “ineffective investments and incapable investors.”²³⁹ The GOV also directs steel companies to upgrade their production technologies, find ways to save production costs, and require greater flexib[ility] in monthly and quarterly plans to better promote brands and build distribution networks.²⁴⁰

The GOV in its RGQ provides that investment projects related to the goods or any of the upstream raw materials used to manufacture the goods are subject to the same investment regulations as other sectors, in accordance with:²⁴¹

- Law on Investment 67/2014/QH13²⁴²; and
- Decree 118/2015/ND-CP²⁴³, which details the implementation of a number of articles of the Law on Investment.

The Commission has reviewed Law on Investment 67/2014/QH13 and Decree 118/2015/ND-CP and is satisfied that investors may make their own investment decisions, in accordance with the relevant laws of Vietnam. The relevant laws restrict investment in certain areas, but do not appear to impose a level of power and control within the GOV over the steel industry, such as to prevent market decisions on investment within the industry.

B2.7 Vietnamese steel industry subsidisation

Orrcon identified in its application that the CBSA recently published findings of countervailable subsidies from Vietnam. The CBSA investigation found that the following subsidies were in place:²⁴⁴

- Program 1 – Exemptions of import duty
- Program 2 – Refunds of import duty
- Program 3 – Exemptions/Reductions of Land Rent, Tax and Levy
- Program 4 – Incentives on non-agricultural land use tax
- Program 5 – Export and import support in forms of preferential loan, guarantee and factoring
- Program 6 – Enterprise income tax preferences, exemptions and reductions

²³⁸ The Nation Thailand, “Vietnam PM halts \$10.6 billion steel plant”, 17 April 2017

²³⁹ Viet Nam News, “Steel masterplan drops 12 projects”, 12 December 2016, available at <https://vietnamnews.vn/economy/347832/steel-masterplan-drops-12-projects.html>

²⁴⁰ Vietnam Net, “Vietnam’s steel production set for 2017 surge”, 10 January 2017, available at <http://english.vietnamnet.vn/fms/business/170953/vietnam-s-steel-production-set-for-2017-surge.html>

²⁴¹ EPR 550, Item 36, p.279

²⁴² EPR 550, Item 36, Exhibit 46

²⁴³ EPR 550, Item 36 Exhibit 23

²⁴⁴ CBSA numbering has been maintained.

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- Program 7 – Accelerated Depreciation of Fixed Assets
- Program 8 – Establishments Dealing with Exported Goods
- Program 9 – Investment support
- Program 10 – Export Promotion Program
- Program 11 – Grants to Firms that Employ More than 50 Employees
- Program 12 – Assistance to Enterprises Facing Difficulties for Objective Reasons

Each program was found to be specific by the CBSA and therefore countervailable.

In its investigation, the CBSA received no response from the GOV to its request for information of the subsidies and so determined a subsidy rate on the facts available to it. The CBSA calculated the subsidy margin based on the difference between the estimated full costs of the subject goods, which are the costs of producing the goods plus allocated SG&A, and the estimated export price of the goods as declared on import documentation. From this, the CBSA calculated a subsidy margin of 6.5% for Vietnamese exports of cold-rolled steel.

The Commission has undertaken its own investigation into alleged subsidies in Vietnam, including those identified above. The Commission's findings are detailed in chapter 7.9.2 and **Non-confidential Appendix C3.1**. The Commission concluded that the level of subsidisation for all Vietnamese exporters is negligible.

B3 Competition in Vietnamese steel markets

In 2020, Vietnam imported 13.3 million tons of steel, compared to 9.85 million tons of exports, valued at over USD\$8 billion and USD\$5 billion respectively.²⁴⁵ The high level of import penetration indicates a high level of competition within the Vietnamese steel market.

With HRC being the major raw material input for the goods, a comparison of costs paid by verified Vietnamese exporters for Vietnamese HRC and HRC imported from other countries provides an indication of the relative CTM of precision pipe and tube steel.

²⁴⁵ Vietnamese Steel Association, *Vietnam steel market in January 2021*, available at <http://vsa.com.vn/tinh-hinh-thi-truong-thep-viet-nam-thang-1-2021/>

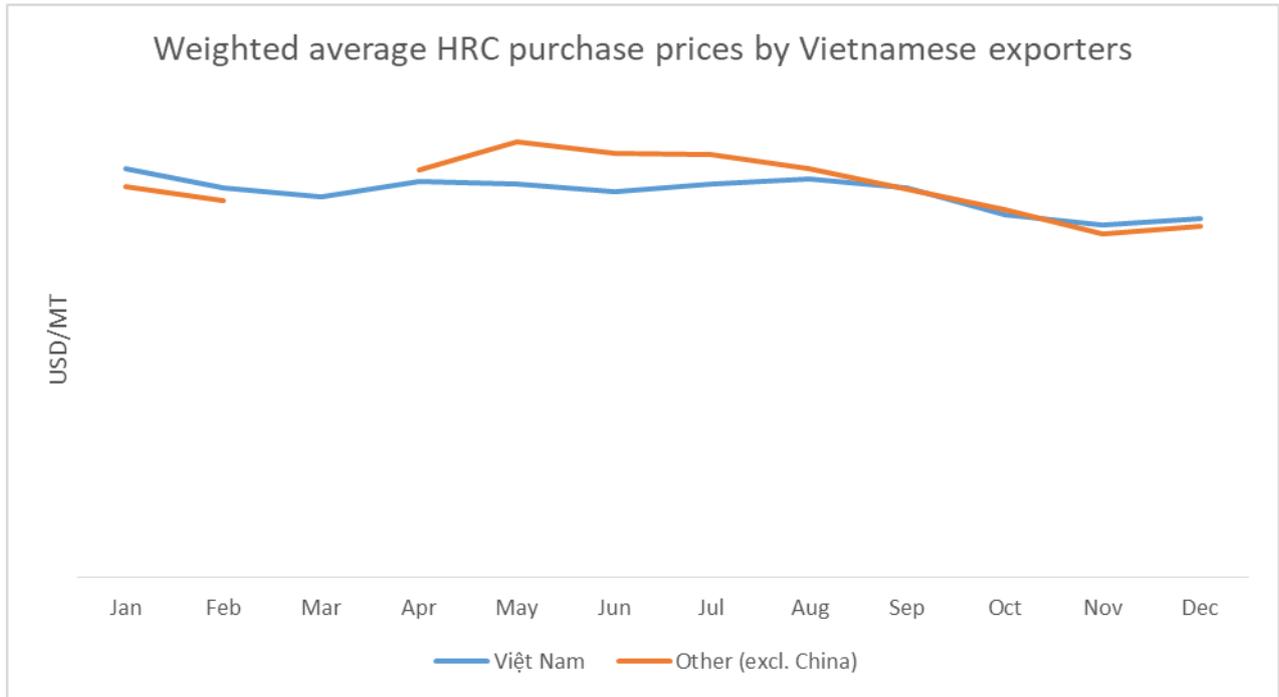


Figure 24 – Weighted average HRC purchase prices by Vietnamese exporters

Figure 24 shows weighted average HRC purchase prices made by Vietnamese exporters over the investigation period, by country of supply. This shows that for the majority of the period, Vietnamese exporters paid a similar amount or slightly less for domestically sourced HRC as they did for HRC from other countries, excluding China. Vietnamese HRC costs were lower for 6 months of the investigation period. For 3 of those months, prices were less than 3% lower than other country prices, and for the other 3 months, prices were between 7% and 10% lower. However, over the course of the investigation period, Vietnamese prices were 0.2% lower overall.

Based on the above, the Commission considers this indicates no significant advantage exists for Vietnamese producers to use local materials, which would be evident if a market situation existed.

B4 GOV influence on the Vietnamese precision pipe and tube steel market

From the evidence available to it, the Commission does not consider that the GOV exerts influence on the steel market in Vietnam such that domestic selling prices for precision pipe and tube steel in Vietnam are unsuitable for use for determining a normal value under section 269TAC(1).

In respect of the applicant’s assertion that the Steel Master Plans developed by the GOV are evidence of GOV intervention, and following that, a market situation, the repeal of these Master Plans, as documented through official Government decrees (Decision No. 4977/QD-BCT and Law on Planning No. 21/2017/QH14), renders these plans invalid from 2019 onwards. Given there exists no official Government plans to control or otherwise influence the Vietnamese steel industry, no positive evidence of a continuing impact as a result of the Steel Master Plans, no impact of distorted electricity prices on the CTM of the

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goods, negligible subsidisation of the goods and no evidence of significantly different prices for raw materials in Vietnam compared to other Asian countries, the Commission is satisfied there is no market situation that makes calculating the normal value for Vietnamese exports under section 269TAC(1) inappropriate.

APPENDIX C ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS

C1 Introduction

C1.1 Definition of Government, public and private bodies

In its assessment of each program, the Commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the contribution must have been made by:

- a government of the country of export or country of origin of the goods; or
- 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.

C1.2 Government

As described in section 16.2 of the Manual, the Commission considers that the term “government” is taken to include government at all different levels, including at a national and sub-national level.

C1.3 Public bodies

The term “public body” is not defined in the Act. Determining whether an entity is a “public body” requires evaluation of all available evidence of the entity’s features and its relationship with government, including the following:

- (1) The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
 - legislation and other legal instruments,
 - the degree of separation and independence of the entity from a government, including the appointment of directors, and
 - the contribution that an entity makes to the pursuit of government policies or interests, such as taking into account national or regional economic interests and the promotion of social objectives.
- (2) The body’s ownership and management structure, such as whether the body is wholly- or part-owned by the government or whether the government has a majority of shares in the body. A finding that a body is a public body may be supported through:
 - the government’s ability to make appointments,
 - the right of government to review results and determine the body’s objectives, and
 - the government’s involvement in investment or business decisions.

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The Commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)*²⁴⁶ In that case the Appellate body referred to the following three indicia which may assist in assessing whether an entity was a public body vested with, or exercising, government authority:

- Where a statute or other legal instrument expressly vests government authority in the entity concerned;
- Where there is evidence that an entity is, in fact, exercising governmental functions; and
- Where there is evidence that a government exercises meaningful control over an entity and exercises governmental authority in the performance of government functions.

These principles have also previously been considered in the Federal Court of Australia.²⁴⁷

C1.4 Private bodies

Where an entity is neither a government nor public body, the Commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established in order for the contribution to be considered a subsidy, as defined by section 269T(1).

Pursuant to section 16.3 of the Manual, in determining the character of an entity which may have provided a financial contribution, the Commission will consider whether a private body has been:

- “entrusted” to carry out a government function, which occurs when a government gives responsibility to a private body; or
- “directed” to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts will be considered as entrusting or directing a private body. Encouragement or mere policy announcements by government, of themselves, are not sufficient to satisfy this test. However, threats and inducements may be evidence of entrustment or inducements. It is where the private body is considered a proxy by government to give effect to financial contributions that this test will be satisfied.

²⁴⁶ DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

²⁴⁷ See; *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73]

C2 Assessment of Programs – China

C2.1 Program 20 – Hot rolled steel provided by government at less than fair market value

The Commission considers that its analysis in Appendix A describes how SOEs operate in the Chinese steel market and industry. In particular, the analysis shows that:

- the Chinese steel industry is an industry of national strategic importance, which is influenced by the GOC; and
- the Chinese steel industry is a vehicle to promulgate the government's directives, objectives, reforms and mission.

While the Commission notes that mixed-ownership reform is an ongoing feature of the Chinese steel industry, the information before the Commission does not suggest that mixed-ownership results in a greater degree of market orientation, which offsets or diminishes the influence of the GOC when it is a shareholder.

The Commission considers that the GOC, as a shareholder in a steel mill, has direct influence over the operations of that mill. As steel mills in China, regardless of ownership, are already subject to the directives, plans and guidelines of the central government, the Commission considers that the role of the GOC as shareholder serves to strengthen compliance with, and serve the direction of, the central government.

In the absence of relevant information held, but not provided by the GOC, and in light of all available information, the Commission concludes that Chinese steel mills, whether wholly or partially owned by the GOC, possess, exercise and are vested with governmental authority and are, therefore, public bodies.

In determining whether there has been a benefit provided under this program, the amount of benefit received where there has been a provision of goods or services by the government has been determined as the difference between the price paid by enterprises for the government provided goods or service, and adequate remuneration for the product or service in relation to prevailing market conditions.

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

The Commission considers that the prevailing market conditions for HRC (and other coil types such as CRC and pre-galvanised coil derived from HRC) is the Chinese domestic market for HRC, notwithstanding that the Commission has found that there is a market situation in respect of HRC within the domestic Chinese market.

To determine the adequacy of remuneration, the Commission has compared data for purchases of HRC in China from private companies against purchases from SOEs, consistent with the approach outlined in Chapter 17 of the Manual.

The Commission found that prices offered to Dalian Steelforce by SOEs were lower than prices offered by private companies. Accordingly, the Commission considers that a benefit was conferred under this program, equal to the difference between the price paid

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by Dalian Steelforce for the government provided HRC and the price that would otherwise have been paid to private suppliers.

The Commission is satisfied that Chinese manufacturers of the goods will have received a subsidy under this program. The Commission considers this program is specific, as it is only available to purchasers of HRC and other coil types derived from HRC.

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C2.2 Other Programs

No.	Program name	Evidence that program is still countervailable	Countervailable?
1	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Notified during the review period by the GOC to the WTO in WTO document G/SCM/N/220/CHN (Program 8). ²⁴⁸	Yes
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 7). ²⁴⁹	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 8). Appears to have been notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 36).	Yes
6	Superstar Enterprise Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 3).	Yes
7	Research & Development (R&D) Assistance Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 10).	Yes
8	Patent Award of Guangdong Province	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 34).	Yes
10	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 1).	Yes
11	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 7).	Yes
12	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 9).	Yes

²⁴⁸ See WTO document number [G/SCM/N/220/CHN](#) dated 30 October 2015.

²⁴⁹ *Anti-Dumping Commission Report No. 316* (REP 316)

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No.	Program name	Evidence that program is still countervailable	Countervailable?
13	Preferential Tax Policies in the Western Regions	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 3). Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 11).	Yes
14	Tariff and VAT Exemptions on Imported Materials and Equipment	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 61).	Yes
15	Innovative Experimental Enterprise Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 11).	Yes
16	Special Support Fund for Non State-Owned Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 12).	Yes
17	Venture Investment Fund of Hi-Tech Industry	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 13).	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 14).	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 15).	Yes
20	Hot rolled steel provided by government at less than fair market value	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). In that case the Commission also found that SOEs producing steel raw materials continue to be considered as 'public bodies' for the purposes of the definition of subsidy in section 269(T) of the Act. ²⁵⁰ The Commission has found that the GOC materially influenced conditions within the Chinese HRC market during the review period (see Appendix A). The Commission also found that HRC provided by Chinese SOEs was less than the competitive market benchmark and therefore conferred a benefit on HSS produced in China. See Non-confidential Appendix C2.1 .	Yes

²⁵⁰ Anti-Dumping Commission Report No. 316 at A3.3.1 and Appendix 5

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No.	Program name	Evidence that program is still countervailable	Countervailable?
21	Water Conservancy Fund Deduction	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 16).	Yes
22	Wuxing District Freight Assistance	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 35).	Yes
23	Huzhou City Public Listing Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 36).	Yes
27	Huzhou City Quality Award	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 37).	Yes
28	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 38).	Yes
29	Land Use Tax Deduction	Cooperating exporter declared receipt of a benefit under this program during the review period.	Yes
30	Wuxing District Public Listing Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 39).	Yes
31	Anti-dumping Respondent Assistance	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 17).	Yes
32	Technology Project Assistance	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 18).	Yes
34	Balidian Town Public Listing Award	The exporter that benefitted from this program during the original investigation (Kingland) is still exporting to Australia and did not make a submission in relation to this program.	Yes
35	Preferential Tax Policies for High and New Technology Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 5). Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 6).	Yes
36	Local Tax Bureau Refund	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local tax bureau.	Yes

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No.	Program name	Evidence that program is still countervailable	Countervailable?
37	Return of Farmland Use Tax	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
38	Return of Land Transfer Fee	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
39	Return of Land Transfer Fee From Shiyou	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
40	Dining lampblack governance subsidy of Jinghai County Environmental Protection Bureau	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Environment Protection Bureau.</p>	Yes
41	Discount interest fund for technological innovation	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Handan City Industry Bureau.</p>	Yes
42	Energy conservation and emission reduction special fund project in 2015	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Daqiu Zhuang Town Financial Bureau.</p>	Yes

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No.	Program name	Evidence that program is still countervailable	Countervailable?
43	Enterprise famous brand reward of Fengnan Finance Bureau	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Science and Technology Bureau.</p>	Yes
44	Government subsidy for construction	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Handan City Local Tax Bureau.</p>	Yes
45	Infrastructure Construction Costs Of Road In Front Of No.5 Factory	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Local Tax Bureau.</p>	Yes
46	New Type Entrepreneur Cultivation Engineering Training Fee Of Jinghai County Science And Technology Commission	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Science and Technology Commission.</p>	Yes
47	Subsidy for Coal-Fired Boiler of Fengnan Subtreasury	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Environment Protection Bureau.</p>	Yes
48	Subsidy for Coal-Fired Boiler Rectification	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Handan City Environment Protection Bureau.</p>	Yes

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No.	Program name	Evidence that program is still countervailable	Countervailable?
49	Subsidy for District Level Technological Project	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Daqiu Zhuang Town Science and Technology Bureau.</p>	Yes
50	Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Environment Protection Bureau.</p>	Yes
51	Subsidy from Science and Technology Bureau of Jinghai County	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Science and Technology Bureau.</p>	Yes
52	Subsidy of Environment Bureau transferred from Shiyou	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Environment Protection Bureau.</p>	Yes
550-2	Loan Interest Subsidy	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Local Bureau of Foreign Trade and Economic Cooperation in Dalian.</p>	Yes

C3 Assessment of Programs – Vietnam

C3.1 Programs repealed as part of Vietnam's accession to the WTO

The following programs were listed in the *New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures* published in March 2013 (2013 Vietnam Subsidy Notice).²⁵¹ They were repealed as part of Vietnam's accession to the WTO in 2007. They are not listed in its more recent *New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures* published in February 2020 (2020 Vietnam Subsidy Notice)²⁵²:

- Program 1 – Preferential Import Tariff Rates contingent upon Localisation Ratios with respect to products and Parts of Mechanical-Electric-Electronic Industries (updating Programme II of Notification of Subsidies period 2003-2004)
- Program 2 – Support for the Implementation of Projects Manufacturing Priority Industrial Products (Updating Programme III of 2003-2004)
- Program 3 – Investment Incentives Contingent upon Export Performance For Domestic Businesses (Updating Programme IV of 2003-2004)
- Program 4 – Other Investment Incentives for Domestic Businesses (Updating Program V of Period 2003-2004)
- Program 5 – Investment Incentives Contingent upon Export Performance for Foreign Invested Enterprises (Updating Programme VI of the Period 2003-2004)
- Program 6 – Other Investment Incentives for Foreign Invested Enterprises (Updating Programme VII for Period 2003-2004)
- Program 7 – Preferential Investment Credit for Development Contingent upon Export Criteria (Updating Programme VIII of Period 2003-2004)
- Program 8 – Preferential Development Credit for Investment Contingent Upon Localisation Ratios (Updating Programme IX of Period 2003-2004)
- Program 10 – Export Promotion
- Program 12 – Support for Mechanical Products (Updating Program XV of Period 2003-2004)
- Program 13 – Support for Shipbuilding Industry (Updating of Programme XV of Period 2003-2004)
- Program 14 – Assistance for Commercial Development in Mountainous, Island and Ethnic Minority Areas (Updating Programme XVI of Period 2003-2004)
- Program 15 – Assistance to Enterprises Facing Difficulties due to Objective Reasons

The Commission is satisfied that the above programs have ceased. The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under any of these programs.

²⁵¹ Available on the WTO website at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N155VNM.pdf&Open=True>

²⁵² Available on the WTO website at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N284VNM.pdf&Open=True>

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In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with any of the above programs.

C3.2 Corporate Income Tax Programs

Corporate income taxation in Vietnam is governed by the *Law Amending and supplementing a number of articles of Law on Corporate Income Tax 2008* (the Amended Law 2013)²⁵³ and *Decree 218/2013/ND-CP* (Decree 218) detailing and guiding the implementation of the Law on Corporate Income Tax. Pursuant to Article 1.6 of the Amended Law 2013 and Article 10 of Decree 218²⁵⁴, the standard tax rate applicable for corporate entities during the investigation period was 20%. The standard tax rate applies to all entities, regardless of whether they are manufacturers or traders and regardless of whether their products are steel pipes and tubes or not.

The following programs were identified by the Commission as providing possible preferential treatment to exporters in respect of Vietnam's corporate income tax:

- Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives
- Program 21 – Investment Support (consisting of two separate programs)
- Program 29 – Enterprise Income Tax Exemption/Reduction for Business Expansion and Intensive Investment Projects
- Program 35 – Preferential Income Tax Rates for Enterprises within Economic Zones or Industrial Parks
- Program 37 – Tax Exemptions and Reductions for Encouraged Sectors
- Program 39 – Tax Exemptions and Reductions for Investment in Disadvantaged Regions
- Program 40 - Tax Exemptions and Reductions for Investments in Economic Zones or High-Tech Industrial Parks

After reviewing the information provided for each program, the Commission has determined that all programs provide for a similar benefit under the same legal basis, with broadly similar eligibility criteria. Accordingly, the Commission considers it appropriate to address each of these programs under Program 18.

Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives

It is alleged that this program provides corporate income tax incentives to enterprises operating in certain regions or sectors in Vietnam.

Program 18 was not alleged in the application, but was identified and assessed by the Commission in INV 370²⁵⁵ into zinc coated galvanised steel from India, Malaysia and Vietnam.

²⁵³ EPR 550, Item 36, GOV REQ, Exhibit 4

²⁵⁴ EPR 550, Item 36, GOV REQ, Exhibit 2

²⁵⁵ Termination Report No. 370, p. 34. Available on the Commission website.

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Programs 21, 29, 35, 37, 39 and 40 were alleged in the following CBSA investigations:

- the subsidising of cold-rolled steel from China, South Korea and Vietnam (CBSA Cold-rolled steel case);
- the subsidising of certain copper pipe fittings originating in the Socialist Republic of Vietnam (CBSA Copper Pipe case);
- the subsidising of certain corrosion-resistant steel sheet originating in Turkey, the United Arab Emirates and Vietnam (CBSA COR case);
- the subsidising of certain oil country tubular goods originating in or exported from India, Indonesia and Vietnam (CBSA Oil Tubes case).

Eligibility criteria

Eligible regions and sectors for incentives under this program are identified in Article 15 of Decree 218 or Appendix II to Decree 118/2015/ND-CP (Decree 118).

Article 15 of Decree 218 provides a broad list of areas of eligibility, based on region, areas of new investment and levels of new investment.²⁵⁶

Is there a subsidy?

The general corporate tax rate for the investigation period was 20%. Eligible entities may receive under this program preferential tax rates ranging from 10% to 17%.

The Commission considers that the laws governing this program provide for a financial contribution by the GOV to eligible entities, being the foregoing of revenue, varying depending on which eligibility criteria have been met, which would be otherwise payable to the GOV by those entities.

As the deduction is available for income derived from export activities (among other things), the Commission considers that a financial contribution under this program would be made in connection with all exports of goods.

Where received, this financial contribution is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of tax on such income, which would otherwise be payable.

Where exporters of the goods have received a deduction under this program during the investigation period, that deduction confers a benefit in relation to the goods and the financial contribution satisfies the definition of a subsidy under section 269T.

The Commission has determined that all Vietnamese cooperating and residual exporters did not receive a benefit under this program and paid the full rate generally payable. However, based on information provided by the GOV, the Commission has determined that uncooperative exporters may be in receipt of a benefit under this program.

Is the subsidy countervailable?

²⁵⁶ Refer to Decree 218 for full detail of eligibility criteria.

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A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC. Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section 269TAAC(3), it is limited to entities carrying on business within a designated geographical region.

The Commission is satisfied this program provides an exemption based on, among other things, the geographical location of entities, thereby satisfying the criteria in section 269TAAC(2)(b).

Section 269TAAC(3) provides that a subsidy is not specific, subject to section 269TAAC(4), if:

- (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
- (b) eligibility for the subsidy is automatic; and
- (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
- (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

The Commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria set out in the Amended Law 2013, Decree 118 and Decree 218. There is no application process to apply for the subsidy, with responsibility for seeking a benefit under the program resting with entities as part of their payment of tax. However, the taxation preferences available under the program are only available to certain sectors and locations as identified in Decree 118 and Decree 218.

Accordingly, having considered the factors set out in section 269TAAC(4), the Commission is not satisfied that the requirements of section 269TAAC(3) have been met, therefore any subsidy available under this program is countervailable.

Amount of subsidy

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the entity would otherwise have had to pay the taxes associated with the exemption.²⁵⁷ Accordingly, the Commission has determined that any amount deductible under this program in relation to the investigation period (or a portion thereof) is to be attributed to the investigation period.

Non-cooperative entities

The Commission has determined that uncooperative exporters received a benefit under this program during the investigation period, in accordance with section 269TACC(3)(b).

²⁵⁷ Part 17.3 of the Manual, p. 93

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In accordance with section 269TACD(1), the amount of the subsidy has been determined. The Commission considers that non-cooperative entities in Vietnam may have received the most favourable preferential rate of 10% during the investigation period.

This percentage has then been applied to the weighted average verified taxable income of the cooperating exporters for the investigation period.

In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all products produced by each company during the investigation period.

C3.3 Import duty preferences

The following programs were identified by the Commission as providing possible exemptions to the payment of import duties for Vietnamese exporters:

- Program 17 – Preferential Import Tariff Rates for enterprises investing in regions or sectors entitled to investment incentives
- Program 32 - Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets
- Program 42 – Excessive Duty Exemptions for Imported Raw Materials for Exported Goods
- Program 43 – Exemptions of Import Duty
- Program 44 – Refund of Import Duty

Program 17 was not alleged in the application, but was identified and assessed by the Commission in INV 370. Programs 32, 42, 43 and 44 were alleged in the application, based on findings in the in the CBSA Copper Pipe case, the CBSA Cold-rolled steel case and the CBSA Oil Tubes case.

Legal basis

In its RGQ, the GOV submitted that import duty preferences available under Programs 17, 32 and 43 are subject to the same governing legislation and therefore provided a single response for all three programs. The Commission confirmed during the investigation that these programs were established under the Law 107/2016/QH13 on export and import duties (Law 107)²⁵⁸ and Decree 134/2016/ND-CP providing guidelines for the Law on export and import duties (Decree 134)²⁵⁹.

The Commission also confirmed that Programs 42 and 44, for which the GOV has also provided a combined response, were governed by Law 107 and Decree 134.

WTO notification

Preferential policies on import tax under Law 107 and Decree 134 are included in the 2020 Vietnam Subsidy Notice.

²⁵⁸ Law 107 replaced the Law on Import Duty and Export Duty, No. 45/2005/QH11, which was the governing legislation for Program 17 in INV 370. Available on EPR 550, Item 36, GOV RGQ, Exhibit 22

²⁵⁹ EPR 550, Item 36, GOV RGQ, Exhibit 37

Programs 17 and 32 – Preferential Import Tariff Rates

Articles 14 and 15 of Decree 134 provide for exemption of duties on imported fixed assets, raw materials, supplies and components for eligible investments. These are set out in Appendices I and II to Decree 118 and clause 11 of Article 16 of Law 107. This includes, among other things, investments in specified regions with deductions for *“Machinery and equipment; components, parts, spare parts for assembly or operation of machinery and equipment; raw materials for manufacture of machinery and equipment, components, parts, or spare parts of machinery and equipment”*.

Is there a subsidy?

The Commission considers that the laws governing this program provide for a financial contribution by the GOV to eligible entities, being the foregoing of revenue which would be otherwise payable to the GOV by those entities.

As the exemption of import duty is available for machinery which may be used in connection with export activities (among other things), the Commission considers that a financial contribution under this program would be made in connection with all exports of goods.

Where received, this financial contribution is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of import duty which would otherwise be payable.

Where exporters of the goods have received an exemption under this program during the investigation period, that exemption confers a benefit in relation to the goods and the financial contribution satisfies the definition of a subsidy under section 269T.

The GOV advised that no exporter of the goods was in receipt of any benefit under this program.

The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Programs 42, 43 and 44 – Refund of Import Duty

Eligibility criteria

Any exporter may apply to use the program.

Exporters must provide the following information to the GOV to receive a benefit under the program:

- Prior to the first import of raw materials, inform the GOV about its production facility, including storage arrangements for imported materials, finished export goods and installed manufacturing equipment and machinery;
- Maintain certain records regarding material consumption for each raw material type, required material to produce a unit of the relevant exported good, and rates of loss in production, including waste;

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- Provide reports on stock in, stock out for manufacturing and leftovers of imported materials for each finished product code, which is to be reconciled to finance documentation;
- Following export, the producer submits documentation to the GOV seeking a refund of the relevant import duty paid, including various evidence on payment for imported goods, import/export contracts, duties paid, and in respect of the manufacturing facilities.

Is there a subsidy?

Import duty exemptions are provided on imported raw materials used in the production of exported goods. The exemption amount is the amount of the duty corresponding to the value of imported materials actually used in the processing of the exported goods.

Section 17.3 of the Manual – *Remission or drawback of import charges upon export* provides that, in the case of an exemption of import charges upon export, such as provided under this program, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product (making normal allowances for waste) or if the exemption covers charges other than import charges imposed on the input. The amount of the benefit will be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product and the amount of charges other than import charges covered by the exemption.

However, the Commission may determine that the entire exemption amount constitutes a benefit if the foreign government has not examined the inputs in order to confirm that such inputs are consumed in the production of the exported goods, in what amounts, and the taxes that are imposed on the inputs. If it is found that there is a system in place that confirms this information, the Commission will examine that system to see if it is reasonable.

Based on the GOV RGQ and the provisions of Law 107 and Decree 134, the Commission has determined that the GOV has a system in place for monitoring compliance under this program as follows:

- Details on production facilities used to produce exported goods are provided to the GOV, including information on the storage of raw materials, machinery used in production and details on the exported products;
- Facilities are inspected where necessary to verify information provided by producers;
- Reports on use of raw materials submitted by exporting producers are reconciled against financial reports;
- Customs post-clearance examination of exporters may be carried out where any information provided is suspect.

The Commission is satisfied from the information available that the GOV has in place a reasonable system for confirming which inputs are consumed in the production of the exported goods, in what amounts, and the taxes that are imposed on those inputs. The Commission is also satisfied that the system in place ensures that import duty refunds are only provided for those inputs consumed in the production of exported goods.

Accordingly, consistent with the approach set out in the Manual, the Commission is satisfied that no subsidy is provided under this program.

C3.4 Other Programs

Program 11: Trade Promotion

The applicant requested that a program known as “Trade Promotion (Updating of Programme XIII of Period 2003-2004)” be included as part of the investigation into countervailable subsidies.

The basis for the applicant’s request was the inclusion of the program in the 2013 Vietnam Subsidy Notice. The 2013 Vietnam Subsidy Notice states that this program was terminated in 2006 and is not included in the 2020 Vietnam Subsidy Notice.

However, the GOV has advised that a Trade Promotion program is still available. Eligible organisations may apply under the program for government funding to engage in trade promotion activities, such as participation in trade delegations.

Legal basis

The current iteration of the program is governed by the following legislation:

- *Decision 5016/QD-BCT* dated 27 December 2018; and
- *Decision 72/2010/QD-TTg* dated 15 November 2010.²⁶⁰

WTO notification

The program is not included in the most recent WTO notification.

Eligibility criteria

The Commission understands that this program is available to all Vietnamese enterprises, cooperatives and trade promotion organisations, for export and domestic promotion. In respect of export trade, applications are submitted to the Minister of Industry and Trade for funding in the following areas:

- market research;
- advertising;
- hire domestic and foreign experts to give advice on product development, enhancement of product quality, export development and entering foreign markets;
- internal and external short-term training courses in trade promotion;
- organise and participation in trade fairs;
- trade delegations; and
- other trade promotion activities.

Is there a subsidy?

The Commission considers that the laws governing this program provide for a financial contribution by the GOV to eligible entities, by way of a direct grant paid to recipients.

²⁶⁰ EPR 550, Item 36, GOV REQ, Exhibit 14

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From the information provided by the GOV, the Commission has determined that CDI and its related trading entity, CDT, have received a benefit under this program during the investigation period, by way of a direct grant in respect of a trade delegation to Korea. It is noted that CDI did not provide any details in respect of its receipt of funding under this program. However, the Commission is satisfied that any contribution received by CDI under this program is not in respect of the export of the goods to Australia.

In light of the above, the Commission has determined that no subsidy was provided under this program in respect of the goods during the investigation period.

Program 23 - Export & Import Support in the Form of Preferential Loans, Guarantees, and Factoring (consisting of five separate programs)

The existence of the five separate programs below were alleged in the CBSA Cold-rolled steel case and the CBSA COR case:

- (a) Interest rate support program under the State Bank of Vietnam
- (b) Preferential Lending to Exporters
- (c) Export Factoring
- (d) Financial Guarantees by VietinBank and VietcomBank for Export Activity
- (e) Export and Import Support in Forms of Preferential Loan, Guarantee and Factoring

In its investigations, the CBSA combined these five programs into one, on the basis they were very similar.

The GOV advised in its RGQ that sub-programs (b), (c) and (e) relate to the provision of credit to exporters by Vietnam Development Bank and has relied upon its response to Programs 24 and 26 in addressing these elements of the program. The Commission has also adopted a combined approach with these sub-programs, which are addressed under Program 24.

The GOV addressed sub-program (a) in its response to Program 25 and the Commission has done the same.

Accordingly, the Commission's examination of Program 23 is limited to sub-program (d) – "Financial Guarantees by VietinBank and VietcomBank for Export Activity".

The GOV submitted in its response that Vietinbank and Vietcombank are commercial joint stock banks and are not run by the GOV or any Vietnamese public body. It notes that both banks are subject to the Law on Credit Institution 2010 and the Law on Amendments to Some Articles of the Law on Credit Institutions 2017, Article 7 of which provides that credit institutions "...*have autonomy in their business activities and take accountability for their business results.*"²⁶¹ As a result, the GOV has not provided a substantive response on this program.

VietinBank

The Commission has found for the investigation period, VietinBank was majority owned by the GOV, through the State Bank of Vietnam, which is the central bank of Vietnam.

²⁶¹ EPR 550, Item 36, GOV RGQ, p.169

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VietinBank's 2019 Annual Report indicates 64.46% of its shares are owned by the State Bank of Vietnam.²⁶²

The report emphasises VietinBank's role as "...the pioneering bank in implementing policies of the Government and the [State Bank of Vietnam] and contributed significantly to the country's socio-economic development."²⁶³ It also cites examples of where VietinBank has acted to implement GOV policy, including:

- prioritising a large proportion of loans to [the] manufacturing sector, as encouraged by the GOV and the State Bank of Vietnam;²⁶⁴ and
- initiating programs to promote socio-economic development in priority areas guided by the Government, which includes an interest rate ceiling for short-term loans of 6%.²⁶⁵

After considering **Non-confidential Appendix C1.3**, the Commission has determined that VietinBank is a public body, due to the contribution it makes to the pursuit of GOV policies and its majority ownership by the State Bank of Vietnam.

VietcomBank

The Commission has found for the investigation period, VietcomBank was 74.8% owned by the GOV, with the shares held through the State Bank of Vietnam.²⁶⁶ Through its shareholding, the GOV has appointed both the chairman of the board and the Chief Executive Officer.

VietcomBank's 2019 Annual Report refers to it "proactively implementing policies of government and [the State Bank of Vietnam]" including measures to support domestic enterprises through the reduction of loan interest pursuant to government guidance and government direction.²⁶⁷

The report notes that the Ministry of Finance and the State Bank of Vietnam, through the GOV shareholding in VietcomBank, are related parties.²⁶⁸

After considering **Non-confidential Appendix C1.3**, the Commission has determined that VietcomBank is a public body, due to the contribution it makes to the pursuit of GOV policies, it being majority owned by the GOV and the control of the GOV over appointments to the board and management.

Background

The Commission understands that under this program, VietinBank and VietcomBank provide guarantees on behalf of customers to fulfil the financial requirements of those

²⁶² VietinBank 2019 Annual Report, p.67, available at: <https://www.vietinbank.vn/sites/mediafile/VTB149105>

²⁶³ Ibid, p.14

²⁶⁴ Ibid, p.75

²⁶⁵ Ibid, p.116

²⁶⁶ VietcomBank 2019 Annual Report, p.56, available at: https://portal.vietcombank.com.vn/content/en-us/Investors/Investors/Annual%20Reports/Year%202019/20200730_AR_Vietcombank2019_English.pdf

²⁶⁷ Ibid

²⁶⁸ Ibid, p.173

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customers in the event that they are unable to meet fully their financial commitments. It is alleged that this guarantee provides a financial benefit to their customers in that they are able to obtain credit at a lower level than would be otherwise available, with the benefit being the difference between the interest rate they are able to obtain with the aid of the guarantee, compared to the interest rate they would have otherwise been entitled.

Legal basis

The CBSA in its investigation of this program, when combined with the four other sub-programs, found the legal basis for the program to be Decree No. 75/2011/ND-CP153 dated August 30, 2011, on state investment credit and export credit (Decree No. 75)²⁶⁹ and Decree No. 151/2006/ND-CP154 dated December 20, 2006, on state investment credit and export credit (Decree No. 151).²⁷⁰

The Commission notes that Decree No. 75 replaced Decree No. 151, which was itself repealed in 2017 pursuant to Decree 32/2017/ND-CP.²⁷¹

The Commission is not aware of any other legislation requiring VietinBank and VietcomBank to provide preferential guarantees. However, the involvement of both banks in the implementation of GOV policy, as indicated in their annual reports, suggests that such guarantees may be made.

WTO notification

None

Eligibility criteria

The Commission is not aware of any eligibility for this program.

Is there a subsidy?

Section 269TACC(3)(c) provides that, when determining whether a financial contribution has conferred a benefit, the guarantee of a loan by a government or public body does not confer a benefit unless the recipient of the guarantee is required to repay on the loan a lesser amount than would have been required under a comparable commercial loan without a guarantee.

The Commission has undertaken an analysis of the information provided by cooperating and residual exporters in relation to loans they have sourced from VietinBank and VietcomBank, privately owned banks and government owned banks operating on a commercial basis. The Commission established that interest rates differed between exporters and between banks, which it considers indicative of financial institutions setting lending rates based on commercial risk assessments, which is a fundamental tenet of a functioning financial market.

²⁶⁹ EPR 550, Item 36, GOV RGQ, Exhibit 28

²⁷⁰ EPR 550, Item 36, GOV RGQ, Exhibit 10

²⁷¹ EPR 550, Item 36, GOV RGQ, Exhibit 28

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The Commission has used interest rate data from privately owned banks and government owned banks operating on a commercial basis for short-term loans (as these were the only loans found to be provided by VietinBank and VietcomBank), weighted by the value of each loan, to establish a benchmark of market rates against which loans from VietinBank and VietcomBank can be compared over the investigation period.

The Commission considered this basis for the calculation of a benchmark rate more appropriate than the rate offered by the State Bank of Vietnam as it more accurately represents rates actually available to exporters in the market.

The Commission has determined the differential between this benchmark rate and the rate actually charged at the time the loan was sourced from VietinBank and VietcomBank as a subsidy available under this program, as defined by section 269T.

The Commission's analysis is at **Confidential Attachment 33**.

Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC. Section 269TAAC(2) provides that a subsidy is specific if, subject to section 269TAAC(3):

- (a) it is explicitly limited to particular entities;
- (b) it is limited to entities carrying on business in a designated geographical region;
- (c) it is contingent on export performance; or
- (d) it is contingent on the use of domestically produced goods over imported goods.

The CBSA COR case, which was the basis for alleging that a countervailable subsidy was provided under this program, referred only to legislation which has since been repealed. No examination was made by the CBSA of the terms and eligibility criteria under which guarantees from VietinBank and VietcomBank were provided. The GOV RQQ also does not address this, on the basis that VietinBank and VietcomBank are not public bodies.

The Commission has examined information provided by the cooperating exporters for loans provided by VietinBank and VietcomBank. However, this did not indicate any specific eligibility criteria.

From the information before it, the Commission does not have any evidence indicating that guarantees offered by VietinBank and VietcomBank satisfy any of the criteria of section 269TAAC(2). Accordingly, the Commission considers that any benefit received under this program is not countervailable.

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C3.5 Remaining programs where no subsidy was found

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
9	<p>Other Preferential Investment Credit for Development (Updating Program X of Period 2003-2004)</p> <p>Current iteration: “Other Preferential Investment for Development, May 2017”</p>	<p>The application referred to this program as detailed in <i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i> published in March 2013. That iteration of the program ceased in 2007.</p> <p>However, since 2017, the program has continued. Under the program, the Vietnam Development Bank provides state investment loans to eligible projects. Eligible projects must relate to socio-economic infrastructure, agriculture and industry, none of which directly related to the goods.</p>	<p>Decree 32/2017/ND-CP dated May 15, 2017.²⁷²</p>	<p>This program, was listed in the “<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i>” published in March 2013.</p> <p>Despite still running, the program is not listed in the more recent “<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i>” published in February 2020.</p>	<p>The program is limited to investment projects identified in Decree 32/2017/ND-CP.</p> <p>Eligible borrowers wishing to receive benefits under this program are required to follow Vietnam Development Bank’s regulations and procedures of providing investment loan.</p> <p>Eligible projects must relate to socio-economic infrastructure, agriculture and industry, which includes:</p> <ul style="list-style-type: none"> • pharmaceuticals • power supply • key mechanical products designated by the prime minister • energy efficiency • supporting industries designated by the prime minister • agriculture machinery • clean technology • hi-tech products • certain geographic areas • off-shore projects. 	<p>The GOV advised that no exporter of the goods was in receipt of any benefit under this program.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>

²⁷² EPR 550, Item 36, GOV REQ, Exhibit 12

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
16	Incentives for Investment Projects in Science and Technology (Updating Programme XVIII of Period 2003-2004)	<p>It is alleged that this program, which ceased in 2014, provided corporate tax preferences depending on whether entities were domestic and foreign owned. Such preferences included:</p> <ul style="list-style-type: none"> • Domestic enterprises were granted preferences in relation to land rent/use fees • Import duty exemptions • Investment credit • Financial support for scientific and technology research. 	<p>Established under Decree 119/1999/ND-CP dated 18 September 1999.²⁷³</p> <p>Repealed in various stages from 2003 to 2014 pursuant to:</p> <ul style="list-style-type: none"> • The Law on Corporate Income Tax 2003²⁷⁴ • Decree 142/2005/ND-CP dated 14 November 2005.²⁷⁵ • Decree 149/2005/ND-CP dated 8 December 2005²⁷⁶ • Decree 08/2014/ND-CP dated 27 January 2014²⁷⁷ 	<p>This program, was listed in the 2013 Vietnam Subsidy Notice.</p> <p>This program has not been listed in Vietnam's "New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures" since September 2015.</p>	<p>A broad range of scientific and technology activities by domestically or foreign owned enterprises were eligible for this program.</p>	<p>The Commission is satisfied that changes to the corporate income tax law in 2003 led to the removal of differences in tax treatment between domestic and foreign owned entities and the resulting termination of many parts of this program. Preferences in relation to Investment credit were replaced with <i>Other Preferential Investment for Development, May 2017</i> (see Program 9). The remainder of the program was terminated in 2014.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any</p>

²⁷³ EPR 550, Item 36, GOV REQ, Exhibit 21

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
						Vietnamese exporter received a financial benefit in connection with this program.
19	Incentives on non-agricultural land use	<p>It is alleged that under this program, tax incentives are provided for non-agricultural land use.</p> <p>The existence of this program was alleged in the CBSA Cold-rolled steel case, the CBSA Copper Pipe case and the CBSA COR case.</p>	<p>Law on Non-Agricultural Land Use Tax 48/2010/QH12²⁷⁸ and Decree 53/2011/ND-CP²⁷⁹ implementing this Law.</p> <p>Non-agricultural land use tax benefits including tax exemption and reduction are provided under Article 9 and 10 of the Law and Article 8 of Decree 53.²⁸⁰</p>	None	<p>Appendix 1 of Decree No. 118/2015/ND-CP defines sectors eligible for investment promotion and sectors eligible for special investment preferences. Appendix 2 defines areas with extreme socio-economic difficulties and areas with socio-economic difficulties eligible for investment preferences.</p> <p>There is no separate application process. Taxpayers are responsible for calculating their tax liability in accordance with the relevant tax law and regulations.</p>	<p>The GOV advised that no exporter of the goods was in receipt of any benefit under this program.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
20	Grants to Firms that Employ More than 50 Employees	<p>It is alleged that this program, which ceased in 2006, provides various forms of investment preferences and support for firms employing more than 50 employees.</p>	<p>The GOV advised in its RGQ that there has never been a grant program as described. Rather, this program, established under Decree</p>	None	<p>Investment projects of any production and business sectors that had an average number of at least 50 employees was eligible for investment</p>	<p>The basis for alleging the existence of this program is CBSA investigations in 2018, which found the program was terminated in 2006.</p>

²⁷⁸ EPR 550, Item 36, GOV REQ, Exhibit 27

²⁷⁹ Ibid.

²⁸⁰ EPR 550, Item 36, GOV REQ, Exhibits 23 and 27

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>The existence of this program was alleged in the CBSA Cold-rolled steel case and the CBSA Copper Pipe case.</p> <p>In both investigations, based on the information before it, the CBSA found the program to be specific because it is limited to particular enterprises with a certain size. The CBSA also found that the last date a company could apply for a benefit under this program was 2006.</p>	<p>51/1999/ND-CP²⁸¹ is an incentive program. This establishing legislation is the same identified in the CBSA investigations.</p> <p>The program was terminated in 2006 by Decree 108/2006/NDCP.²⁸²</p>		<p>incentives. These included:</p> <ul style="list-style-type: none"> • 3-year exemption of land rent • 2-year exemption of income tax with a 50% reduction for the subsequent 2 years. 	<p>The Commission has been provided evidence by the GOV confirming that the program was terminated in 2006.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
22	Acquisition of State Assets at Less Than Fair Market Value	<p>The existence of this program was alleged in a 2015 investigation by the CBSA into the subsidising of certain oil country tubular goods originating in or exported from the Republic of India, the Republic of Indonesia and the Socialist Republic of Vietnam.</p> <p>During its investigation, no exporter in Vietnam provided sufficient information to the</p>	<p>The GOV advised in its REQ that there is no case of acquisition of state assets at less than fair market value.</p> <p>The GOV advised that the sale of state assets of property is required under Articles 4 and 6 of the Law on Property Auction dated 17</p>	None	N/A	<p>The basis for alleging the existence of this program is a CBSA finding based on the non-response of Vietnamese exporters during its investigation. The Commission notes that the CBSA investigation did not find positive evidence of the existence of this</p>

²⁸¹ EPR 550, Item 36, GOV REQ, Exhibit 7

²⁸² Ibid.

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.</p> <p>No further information was provided to the Commission in respect of this program.</p>	<p>November 2016²⁸³ to be auctioned in an independent, honest, public, transparent, equal and objective way.</p>			<p>program or of any benefits received.</p> <p>The Commission has been provided evidence by the GOV indicating that this program does not exist, and that it is contrary to existing legislation.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
24	Export Support Loans at Preferential Rates	<p>It is alleged that under this program, Export credit or preferential lending for exporter was provided to certain sectors by the Vietnam Development Bank. Eligible borrowers were offered export credit amount up</p>	<p>Established under Article 16 of Decree 75/2011/ND-CP.²⁸⁴</p> <p>Repealed in 2017 under Article 28 of Decree 32/2017/ND-CP.²⁸⁵</p>	None	<p>Article 16 of Decree 75 identified certain exporting sectors eligible for lending from the Vietnam Development Bank. These sectors are</p>	<p>The basis for alleging the existence of this program is a CBSA finding based on the non-response of Vietnamese exporters during its investigation.</p>

²⁸³ EPR 550, Item 36, GOV REQ, Exhibit 28

²⁸⁴ EPR 550, Item 36, GOV REQ, Exhibit 28

²⁸⁵ Ibid.

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>to 85% of the value of the export contract at preferential interest rates.</p> <p>The existence of this program was alleged in the CBSA Oil Tubes case.</p> <p>During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.</p>			<p>provided under Appendix II of Decree 75.</p>	<p>The Commission notes that the CBSA investigation did not find positive evidence of the existence of this program or of any benefits received.</p> <p>The Commission has been provided evidence by the GOV indicating that this program no longer exists.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
25	Interest Rate Support Program under the State Bank of Vietnam	<p>It is alleged that this program provided various levels of interest rate support depending on the length of the loan.</p> <p>The existence of this program was alleged in the CBSA Oil Tubes case.</p> <p>During its investigation, no exporter in Vietnam provided sufficient information to the</p>	<p>The program was implemented to provide short-term support following the 2009 global financial crisis. The program was established under:</p>	None	<p>This program was available to enterprises of all manufacturing sectors.</p>	<p>The basis for alleging the existence of this program is a CBSA finding based on the non-response of Vietnamese exporters during its investigation. The Commission notes that the CBSA investigation did not</p>

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		CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.	<ul style="list-style-type: none"> • Decision 131/QD-TTg, dated January 23, 2009²⁸⁶ • Decision 443/QD-TTg, dated April 4, 2009²⁸⁷ • Decision 2072/QD-TTg, dated December 11, 2009²⁸⁸ • Circular 05/2009/TT-NHNN dated 4 July 2009²⁸⁹ • Circular 04/2009/TT-NHN dated 13 March 2009²⁹⁰ <p>The final date for receiving support under the program was 31 December 2012, 24 months after the final disbursement of loans in 2010.</p>			<p>find positive evidence of the existence of this program or of any benefits received.</p> <p>The Commission has been provided evidence by the GOV indicating that this program no longer exists.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
26	Preferential Lending under the Viet Bank Export Loan Program	See Program 24				

²⁸⁶ EPR 550, Item 36, GOV REQ, Exhibit 27

²⁸⁷ EPR 550, Item 36, GOV REQ, Exhibit 27

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
27	Accelerated Depreciation of Fixed Assets	<p>It is alleged that under this program, any Vietnamese enterprise operating with “high economic efficiency” may accelerate their depreciation up to double the normal rate, for fixed assets involved in business activities including machinery and equipment, experimental and measuring instruments, equipment and means of transport, management tools, animals, perennial orchards.</p> <p>The existence of this program was alleged in four separate investigations by the CBSA: the CBSA COR case, the CBSA Cold-rolled steel case, the CBSA Copper Pipe case and the CBSA Oil Tubes case.</p>	Accelerated depreciation of fixed assets is available under Circular 45/2013/TT-BTC. ²⁹¹	None	Under Circular 45/2013/TT-BTC, all enterprises operating in Vietnam are eligible for this program, if they are operating with “high economic efficiency”.	The Commission considers that this program is not specific as it is available to all enterprises established and operating in Vietnam and is therefore not countervailable.
28	Additional Income Tax Preferences for Exporters	<p>It is alleged that this program, repealed in 2006, provided income tax preferences to exporters.</p> <p>The existence of this program was alleged in the CBSA Oil Tubes case, which was conducted in 2015. During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to</p>	<p>Established under Chapter 5 of Decree 164/2003/ND-CP²⁹², detailing the implementation of the Law on Corporate Income Tax.²⁹³</p> <p>Repealed in 2006 pursuant to Decree 108/2006/ND-CP.²⁹⁴</p>	Investment incentives contingent on export performance under Decree 164/2003/ND-CP and the repeal of that program under Decree 108/2006/ND-CP were included in	This program was limited to sectors identified in Annex A to Decree 164/2003/ND-CP, which included exporters with an export value of more than 50% of their total production value.	<p>The CBSA re-examined this program in the CBSA COR case in 2019 and determined it was covered under other subsidy programs examined by the CBSA in respect of Vietnam.</p> <p>The Commission is satisfied that this</p>

²⁹¹ EPR 550, Item 36, GOV REQ, Exhibit 30

²⁹² EPR 550, Item 36, GOV REQ, Exhibit 31

²⁹³ EPR 550, Item 36, GOV REQ, Exhibit 21

²⁹⁴ EPR 550, Item 36, GOV REQ, Exhibit 31

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters in that case was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.		the 2013 Vietnam Subsidy Notice. It is not included in the 2020 Vietnam Subsidy Notice.		program ceased in 2006. The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program. In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.
30	Enterprise Income Tax Preferences, Exemptions, and Reductions (consisting of seven separate programs)	The existence of the 7 separate programs below were alleged in the CBSA Cold-rolled steel case: (a) Enterprise Income Tax preferences, exemptions and reductions (b) Enterprise Income Tax exemptions and reductions for business expansion and intensive investment (c) Enterprise income tax and import duty preferences (d) Tax preferences for investors producing and/or dealing in export goods	Income Tax Preferences under Chapter V of Decree 24/2007/ND-CP ²⁹⁵ , which was repealed by Income Tax Preferences under Chapter IV of Decree 124/2008/ND-CP ²⁹⁶ . Decree 124/2008/ND-CP was later repealed by Decree 218/2013/ND-CP. ²⁹⁷	Various preferential policies on corporate income tax are included in the 2020 Vietnam Subsidy Notice.	Income tax preferences were only available to certain sectors and geographical areas.	The Commission is satisfied this program is no longer in force and has been replaced by Decree 218/2013/ND-CP, which is discussed under Program 18. No exporters were identified as having received benefits under this program. In light of the evidence before it, the Commission is not satisfied any

²⁹⁵ EPR 550, Item 36, GOV REQ, Exhibit 7

²⁹⁶ EPR 550, Item 36, GOV REQ, Exhibit 32

²⁹⁷ EPR 550, Item 36, GOV REQ, Exhibits 2, 9 and 32

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>(e) Income Tax Preferences under Chapter V of Decree 24</p> <p>(f) Income Tax Preferences under Chapter IV of Decree 124</p> <p>(g) Tax Exemptions and Reductions for Foreign-Invested Enterprises.</p> <p>In its investigations, the CBSA combined these programs into one, on the basis they were very similar.</p> <p>The GOV advised in its RGQ that it has addressed:</p> <ul style="list-style-type: none"> • sub-program (a) under Program 18; • sub-program (b) under Program 29; • sub-program (c) under Programs 18, 32, 42 and 44; • sub-program (d) under Programs 28, 31 and 41; and • sub-program (g) under Program 38. <p>Accordingly, its response for Program 30 has been limited to sub-programs (e) and (f).</p>				<p>Vietnamese exporter received a financial benefit in connection with this program.</p>
33	Exemptions/reductions of Land Rent, Tax, and Levies (consisting of five separate programs)	<p>The existence of the five separate programs below was alleged in four separate investigations by the CBSA: the CBSA COR case, the CBSA Cold-rolled steel case, the</p>	<p>This program is governed by the following legislation:</p> <ul style="list-style-type: none"> • Decree 46/2014/ND-CP 	None	<p>Appendices I and II of Decree No. 118/2015/ND-CP defines eligible sectors and regions.</p> <p>Articles 19 and 20 of Decree 46 provides</p>	<p>The GOV advised that no exporter of the goods was in receipt of any benefit under this program.</p> <p>The Commission did not find any evidence</p>

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		<p>CBSA Copper Pipe case and the CBSA Oil Tubes case:</p> <ul style="list-style-type: none"> (a) Land rent reduction/exemption for exporters and land use fees or leases exemptions/reductions (b) Land-use levy exemption/reduction (c) Land-rent exemption/reduction (d) Land use tax exemptions/reductions (e) Preferences related to land use tax, land use levy, land rent and water surface rent. <p>In its investigation the CBSA combined these programs into one, on the basis they were very similar.</p> <p>The GOV advised in its RGQ that it has addressed:</p> <ul style="list-style-type: none"> • sub-program (a) under Program 3; • sub-program (b) under Program 34; and • sub-program (d) under Program 19. <p>Accordingly, its response for Program 30 has been limited to sub-programs (c) and (e).</p>	<p>dated 15 May 2014²⁹⁸</p> <ul style="list-style-type: none"> • Decree 135/2016/ND-CP dated 9 September 2016²⁹⁹ • Decree 35/2017/ND-CP dated 3 April 2017³⁰⁰ 		<p>further eligibility criteria in addition to Appendices I and II of Decree 118. Those relevant to the goods are region specific, including industrial zones.</p>	<p>during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>

²⁹⁸ EPR 550, Item 36, GOV REQ, Exhibit 35

²⁹⁹ EPR 550, Item 36, GOV REQ, Exhibit 35

³⁰⁰ Ibid.

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Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		This program provides for rent exemptions and reductions for various periods, depending on what eligibility criteria have been satisfied.				
34	Land-Use Levy Exemptions/ Reductions	<p>It is alleged that under this program, exemptions or reductions from payment of the land use levy are provided in certain circumstances.</p> <p>The existence of this program was first alleged in the CBSA Copper Pipe case and later combined with other similar programs in the CBSA COR case.</p> <p>The Commission has combined sub-program (b) from Program 33 into its analysis of this program.</p>	This program is governed by Decree 45/2014/ND-CP dated 15 May 2014. ³⁰¹	None	<p>Exemptions to the land-use levy is available for various residential land and land used for constructions of social housing.</p> <p>Reductions in the levy is available for residential land owned by ethnic minorities or poor households, or to people with meritorious service to revolution.</p>	<p>The GOV advised that no exporter of the goods was in receipt of any benefit under this program.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
36	Preferential Provisions for Carry-forward of Losses	It is alleged that under this program preferential treatment is available in connection with the carrying forward of losses into future years for the determination of assessable taxable income.	The carrying forward of losses is permitted pursuant to Law 32/2013/QH13 of 19 June 2013. ³⁰²	None	Available to all enterprises in all sectors and all locations who have incurred a loss in the previous five years.	While utilised by many exporters of the goods, the Commission considers that this program is not specific and is therefore not countervailable.

³⁰¹ EPR 550, Item 36, GOV REQ, Exhibit 36.

³⁰² EPR 550, Item 36, GOV RGQ, Exhibit 33.

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		<p>The existence of this program was alleged in the CBSA Oil Tubes case, which was conducted in 2015. During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters in that case was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.</p>				
38	Tax Exemptions and Reductions for Foreign-Invested Enterprises	<p>It is alleged that under this program, income tax preference were provided to enterprises with foreign investment.</p> <p>The existence of this program was alleged in the CBSA Copper Pipe case and the CBSA Oil Tubes case.</p>	<p>The program was established under Decree 24/2000/ND-CP dated 31 July 2000³⁰³ and was later terminated under Decree 164/2003/ND-CP dated 22 December 2003.³⁰⁴</p>	None	<p>A range of projects and geographical areas are set out in the appendices to Decree 24/2000/ND-CP where investment is encouraged.</p>	<p>The Commission is satisfied that this program ceased in 2004.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>

³⁰³ EPR 550, Item 36, GOV RGQ, Exhibit 34

³⁰⁴ EPR 550, Item 36, GOV RGQ, Exhibit 7

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