



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

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***CUSTOMS ACT 1901 - PART XVB***

**STATEMENT OF ESSENTIAL FACTS**

**NO. 413 and 414**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO  
STEEL ROD IN COILS**

**EXPORTED FROM CHINA BY  
JIANGSU SHAGANG GROUP CO., LTD. AND  
HUNAN VALIN XIANGTAN IRON & STEEL CO., LTD.**

**October 2017**

**CONTENTS**

**CONTENTS.....2**

**ABBREVIATIONS .....3**

**1 SUMMARY .....4**

1.1 INTRODUCTION .....4

1.2 LEGISLATIVE BACKGROUND .....4

1.3 PRELIMINARY FINDINGS .....5

1.4 PROPOSED RECOMMENDATIONS .....5

**2 BACKGROUND .....6**

2.1 APPLICATIONS AND INITIATION.....6

2.2 THE CURRENT MEASURES .....6

2.3 REVIEW PROCESS .....6

2.4 RESPONDING TO THIS SEF .....8

**3 THE GOODS AND LIKE GOODS.....10**

3.1 THE GOODS SUBJECT TO THE ANTI-DUMPING MEASURES .....10

3.2 TARIFF CLASSIFICATION.....10

**4 EXPORT PRICE AND NORMAL VALUE .....11**

4.1 FINDINGS .....11

4.2 EXPORTER QUESTIONNAIRES AND VERIFICATION .....11

4.3 EXPORT PRICE.....11

4.4 NORMAL VALUE.....12

4.5 CONSTRUCTED NORMAL VALUE .....14

4.6 DETERMINATION OF CONSTRUCTED NORMAL VALUES .....15

**5 NON-INJURIOUS PRICE .....18**

5.1 INTRODUCTION .....18

5.2 COMMISSION’S ASSESSMENT .....18

**6 FINDINGS AND PROPOSED RECOMMENDATIONS .....19**

6.1 FINDINGS .....19

6.2 PROPOSED RECOMMENDATIONS .....19

6.3 PROPOSED FORM OF DUTY .....19

**7 LIST OF APPENDICES AND ATTACHMENTS .....20**

**ABBREVIATIONS**

<b>Abbreviation</b>	<b>Full title</b>
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
then Assistant Minister	then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
the goods	the goods the subject of the application
Hunan Valin	Hunan Valin Xiangtan Iron & Steel Co., Ltd.
Investigation 301 or 'original investigation'	Anti-Dumping Investigation No. 301
NIP	non-injurious price
OCOT	ordinary course of trade
OneSteel	Liberty OneSteel Pty Ltd
original investigation period	1 July 2014 to 30 June 2015
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
SEF	statement of essential facts
Shagang	Jiangsu Shagang Group Co., Ltd.

## 1 SUMMARY

### 1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>1</sup> in relation to these reviews of the anti-dumping measures applying to certain steel rod in coils (RIC) (also referred to as the goods)<sup>2</sup> exported to Australia from the People's Republic of China (China) by Jiangsu Shagang Group Co., Ltd. (Shagang) and Hunan Valin Xiangtan iron & Steel Co., Ltd. (Hunan Valin).

These reviews are in response to separate applications lodged by Shagang and Hunan Valin (together, the applicants).

Each application for review is based on a change in the variable factors<sup>3</sup> relevant to the taking of the anti-dumping measures in relation to the applicant. The variable factors in relation to each of the reviews are the export price, normal value and non-injurious price (NIP).

Due to the common review period,<sup>4</sup> and for administrative convenience, the SEFs for these two reviews are detailed in this one report.

### 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>5</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the anti-dumping measures covered by the application.<sup>6</sup>

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Parliamentary Secretary allows, place on the public record a statement of the essential facts (this SEF) on which the Commissioner proposes to

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<sup>1</sup> On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this decision the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

<sup>2</sup> Refer to section 3.3 of this report for a full description of the goods.

<sup>3</sup> Subsection 269T(4E) of the *Customs Act 1901*.

<sup>4</sup> The review period for each review is 1 April 2016 to 31 March 2017.

<sup>5</sup> All legislative references in this SEF are to the *Customs Act 1901*, unless otherwise specified.

<sup>6</sup> Subsection 269ZC(4).

base his recommendation to the Parliamentary Secretary in relation to the review of anti-dumping measures.<sup>7</sup>

### **1.3 Preliminary findings**

The Commissioner finds, in relation to exports of RIC to Australia from China by the applicants during the period 1 April 2016 to 31 March 2017 (the review period), that, for each review:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- due to the existence of a 'particular market situation' the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser rate of duty.

### **1.4 Proposed recommendations**

The Commissioner proposes to recommend to the Parliamentary Secretary that the notices in respect of RIC have effect as if different variable factors (being the export price and normal value) had been ascertained in respect of Shagang and Hunan Valin.

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<sup>7</sup> Subsection 269ZD(1).

## **2 BACKGROUND**

### **2.1 Applications and initiation**

On 24 May 2017, the Commissioner gave public notice in Anti-Dumping Notice (ADN) No. 2017/76 of his decision to initiate a review of anti-dumping measures with respect to RIC exported to Australia from China by Shagang and Hunan Valin. The background relating to the initiation of these reviews is contained in Consideration Report Nos. 413 and 414.<sup>8</sup>

#### **3.2.1 Previous investigations**

Since 2015, the Commission has conducted numerous investigations, reviews and inquiries relating to RIC. Full details can be found on the Commission’s electronic public record at [www.adcommission.gov.au](http://www.adcommission.gov.au). The matters relevant to the applications are summarised below.

12 August 2015	The Commission initiated an investigation into the alleged dumping of RIC exported to Australia from China following an application by OneSteel Manufacturing Pty Ltd (Anti-Dumping Investigation No. 300).
22 April 2016	The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (then Assistant Minister) published a dumping duty notice applying to RIC exported to Australia from China – <i>Anti-Dumping Commission Report No. 301</i> refers.  The dumping margin found for Hunan Valin was 44.1% and the dumping margin found for Shagang was 37.4%.
19 December 2016	Following a review of the then Assistant Minister’s decision by the Anti-Dumping Review Panel, the then Assistant Minister revoked his previous decision and substituted a new decision in the same terms except with different normal values in respect of Hunan Valin, Shagang, and uncooperative exporters, resulting in a dumping margin for Hunan Valin of 40.2% and a dumping margin for Shagang of 36.1% and a dumping margin for uncooperative exporters of 49%.

### **2.2 The current measures**

The current anti-dumping measures applying to the applicants are in the form of ad valorem duties, with the rates of 36.1 per cent applying to Shagang and 40.2 per cent applying to Hunan Valin.

### **2.3 Review process**

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those anti-dumping measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may

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<sup>8</sup> CON 413 & 414 - [Public Record](#)

## PUBLIC RECORD

apply for,<sup>9</sup> or the Parliamentary Secretary may request that the Commissioner conduct,<sup>10</sup> a review of those anti-dumping measures if one or more of the variable factors has changed.

The Parliamentary Secretary may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the notice imposing the original anti-dumping measures or the publication of a notice declaring the outcome of the last review of the notice imposing the original anti-dumping measures.<sup>11</sup>

If an application for a review of anti-dumping measures is received and not rejected, within 110 days of the initiation of a review, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.<sup>12</sup> The Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the anti-dumping measures.<sup>13</sup>

As noted in ADN No. 2017/123, an extension of time was granted for 41 days on 30 August 2017, for the publication of this SEF and the Final Report. Following this extension of time, two further notices, ADN No. 2017/148 and ADN No. 2017/151, relating to two further extensions of time were published on the Commission's website. The second extension of time related to the complexity associated with the construction of an appropriate raw materials benchmark, while the third extension of time related to recent legislative amendments.

The *Customs Amendment (Anti-Dumping Measures) Act 2017*, which came into force on 31 October 2017, amended the Act, specifically the provisions concerning the determination of export prices in a review of anti-dumping measures under Division 5 of Part XVB of the Act. Under item 4 of Schedule 1 to the *Customs Amendment (Anti-Dumping Measures) Act 2017*, these amendments apply to current reviews, that is, reviews under Division 5 that were being undertaken immediately before the commencement of the Schedule but for which a declaration in accordance with subsection 269ZDB(1) of the Act had not been made at that time. The Commission therefore must consider the new provisions in the context of these reviews of measures (see section 4.3).

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<sup>9</sup> Subsection 269ZA(1).

<sup>10</sup> Subsection 269ZA(3).

<sup>11</sup> Subsection 269ZA(2)(a). At the time that the applications for review were made, the most recent notice declaring the outcome of a review of the dumping duty notice was published on 3 August 2015 (following REP 272 and 273).

<sup>12</sup> Subsection 269ZD(1).

<sup>13</sup> Subsection 269ZDA(1).

## PUBLIC RECORD

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in these reviews are a reference to:

- the ascertained export price;
- the ascertained normal value; and
- the NIP.

For each review, in making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:<sup>14</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter the Commissioner considered to be relevant to the review.<sup>15</sup>

In his final report the Commissioner must make a recommendation to the Parliamentary Secretary that the notice:<sup>16</sup>

- remains unaltered; or
- has effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

The Parliamentary Secretary must make a declaration within 30 days of receiving the report or, if the Parliamentary Secretary considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Parliamentary Secretary considers appropriate<sup>17</sup> that the notice:<sup>18</sup>

- remains unaltered; or
- has effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Parliamentary Secretary must give notice of the decision.<sup>19</sup>

### **2.4 Responding to this SEF**

This SEF sets out the essential facts on which the Commissioner proposes to base his recommendations to the Parliamentary Secretary. The SEF represents an

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<sup>14</sup> Subsection 269ZDA(3)(a).

<sup>15</sup> Subsection 269ZDA(3)(b).

<sup>16</sup> Subsection 269ZDA(1)(a).

<sup>17</sup> Subsection 269ZDB(1A).

<sup>18</sup> Subsection 269ZDB(1)(a).

<sup>19</sup> Subsection 269ZDB(1).



## PUBLIC RECORD

important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the notices should be varied, and the extent of any interim duties that are, or should be, payable.

Interested parties are invited to lodge written submissions in response to this SEF no later than the close of business on **10 January 2018**. 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 Parliamentary Secretary.<sup>20</sup>

The Commissioner must report to the Parliamentary Secretary on or before **4 February 2018**.<sup>21</sup>

Submissions should preferably be emailed to [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au).

Alternatively, submissions may be posted to:

The Director – Investigations 2  
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 on the Commission website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification reports and other publicly available documents. The public record can be viewed [online](#).

Documents on the public record should be read in conjunction with this SEF.

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<sup>20</sup> Subsection 269ZDA(4).

<sup>21</sup> As 4 February 2018 falls on a Sunday, the effective date is the following business day, Monday 5 February 2018.

### 3 THE GOODS AND LIKE GOODS

#### 3.1 The goods subject to the anti-dumping measures

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

*Hot rolled rods in coils of steel, whether or not containing alloys, that have maximum cross sections that are less than 14mm.*

*The goods covered by this application include all steel rods meeting the above description regardless of the particular grade or alloy content.*

*Goods excluded from this application include hot-rolled deformed steel reinforcing bar in coil form, commonly identified as rebar or debar, and stainless steel in coils.*

#### 3.2 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- 7213.91.00 (statistical code 44);
- 7227.90.90 (statistical code 02); and
- 7227.90.90 (statistical code 42).

## 4 EXPORT PRICE AND NORMAL VALUE

### 4.1 Findings

The Commission has found, in respect of exports of RIC to Australia from China by the applicants, that:

- the ascertained export price has changed; and
- the ascertained normal value has changed.

### 4.2 Exporter questionnaires and verification

For each review, the Commission provided the applicant with an exporter questionnaire to complete. Each applicant provided detailed information and data in its response to the exporter questionnaire (REQ), including data relating to domestic sales and details of the cost to make and sell (CTMS). Each applicant provided additional information when requested by the Commission.

The Commission conducted an on-site verification of the information provided in Shagang's and Hunan Valin's REQs. Verification reports are available on the Commission's website.

The Commission is satisfied as to the accuracy, relevance and completeness of the information provided by the applicants.

### 4.3 Export price

#### 3.2.1 Applicable legislation

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA. The *Customs Amendment (Anti-Dumping Measures) Act 2017* amended section 269TAB to introduce specific provisions for exporters with zero or low volumes of exports. The following sections will discuss how the new legislation applies to the exporters in this review of measures.

#### 4.3.1 Shagang

It is the Commission's view that the application of subsection 269TAB(1) would require Shagang to have exported the goods to Australia. As the Commission has found that Shagang did not export the goods to Australia during the review period, the Commission has considered whether the requirements of subsection 269TAB(2A) have been met, and therefore whether Shagang's export price is to be determined under 269TAB(2B).

For Shagang to be considered a 'low volume exporter' in accordance with subsection 269TAB(2A), the Minister must have regard to (i) previous volumes of exports by that exporter, (ii) patterns of trade for like goods, and (iii) factors affecting patterns of trade

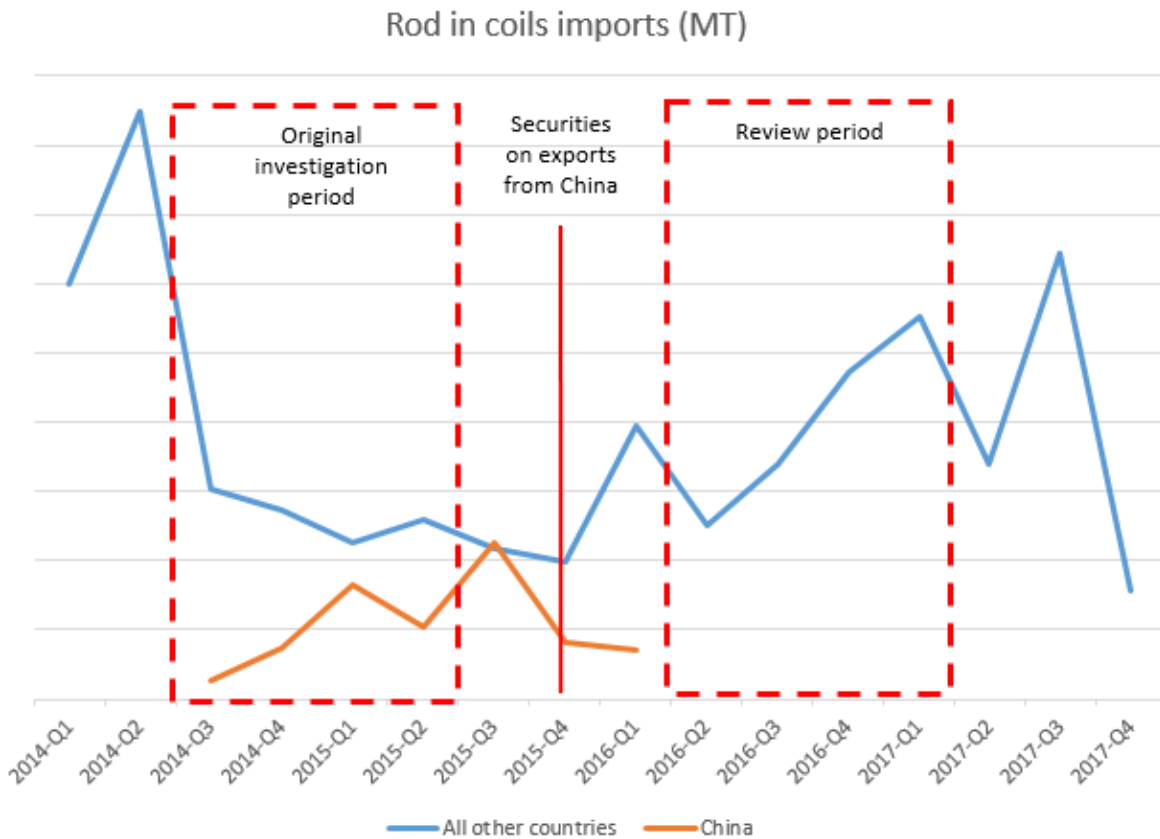
for like goods that are not within the control of the exporter.<sup>22</sup> The Commission has considered these elements as follows.

Previous volumes of exports by Shagang – subsection 269TAB(2A)(b)(i)

Shagang has previously exported the goods prior to the review period, during both the original investigation period (1 July 2014 to 30 June 2015) and subsequently. Shagang has not exported the goods to Australia since the March 2016 quarter.

Patterns of trade for like goods – subsection 269TAB(2A)(b)(ii)

As shown below in Figure 1, while exports from China to Australia declined markedly around the time securities were implemented on exports of the goods from China, exports from all other countries have continued at a similar level. The Commission interprets these results as the general market for the goods remaining persistent and that Shagang’s absence of exports during the review period does not pertain to a general lack of exports or low volumes of exports to Australia.



**Figure 1**

Factors affecting patterns of trade – subsection 269TAB(2A)(b)(iii)

The Commission does not have any information regarding factors outside the exporters’ control. Further, no relevant information has been made available by the exporters during verification visits or by submission. Also, the last SEF extension

<sup>22</sup> Subsection 269TAB(2A)(b)

## PUBLIC RECORD

ADN No. 2017/151 published on 27 October 2017 advised that the reason for the extension was the amendments to the Act and the requirement for the Commission to consider if the changes will affect the determination of export prices for exporters subject to these reviews. No submissions from the exporters or any other interested parties have been received.

### Commission's consideration – subsection 269TAB(2A)

Having regard to the above, the Commission considers Shagang, under subsection 269TAB(2A), to be a 'low volume exporter' due to insufficient information to ascertain export prices under subsection 269TAB(1). Shagang previously exported the goods to Australia, and despite the reduction in exports to Australia from China, imports of RIC overall have remained steady and, the Commission is not aware of any factors affecting the patterns of trade that are beyond Shagang's control.

The Commission therefore considers it appropriate to ascertain export prices under subsection 269TAB(2B). Under that subsection the Commission is able to determine an export price having regard to any of the following:

- a previous export price for the goods exported to Australia by Shagang established in accordance with subsection 269TAB(1) for a decision of a kind mentioned in subsection 269TAB(2D);<sup>23</sup>
- the price paid or payable for like goods sold by Shagang in arms length transactions for exportation from China to a third country determined by the Minister to be an appropriate third country;<sup>24</sup>
- an export price for like goods exported to Australia from China by another exporter or exporters established in accordance with subsection 269TAB(1) for a decision mentioned in subsection 269TAB(2D).<sup>25</sup>

### Previous export price – subsection 269TAB(2B)(a)

Shagang is listed on the notice pertaining to the original investigation and the Minister determined Shagang's export price under subsection 269TAB(1) for the purposes of publishing the notice under subsection 269TG(2). This is Shagang's current export price. The decision to publish a notice under subsection 269TG(2) is a decision mentioned in subsection 269TAB(2D). Notice of the decision under subsection 269TG(2) was published on 22 April 2016, which is within two years before the notice of this review under subsection 269ZC(4) was published, which occurred on 24 May 2017.<sup>26</sup> Therefore subsection 269TAB(2B)(a) is available for determining the export price.

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<sup>23</sup> Subsection 269TAB(2B)(a)

<sup>24</sup> Subsection 269TAB(2B)(b)

<sup>25</sup> Subsection 269TAB(2B)(c)

<sup>26</sup> Per subsection 269TAB(2E)

## PUBLIC RECORD

### Third country export price – subsection 269TAB(2B)(b)

Shagang exported the goods to a number of third countries during the review period, therefore subsection 269TAB(2B)(b) is available for determining the export price.

### Another exporter's export price – subsection 269TAB(2B)(c)

Another exporter (Hunan Valin) is listed on the notice pertaining to the original investigation for which the Minister determined an export price under subsection 269TAB(1) for the purposes of publishing the notice under subsection 269TG(2). The decision to publish a notice under subsection 269TG(2) is a decision mentioned in subsection 269TAB(2D), therefore subsection 269TAB(2B)(c) is also available for determining the export price.

### Commission's consideration – subsection 269TAB(2B)

All three options under subsection 269TAB(2B) are available for determining Shagang's export price and there is no hierarchy in the Act.

The Commission has considered all three options and finds that Shagang's current export price established in accordance with subsection 268TAB(1) is the most appropriate as it reflects actual prices received by the particular exporter for the specific grades of the goods sold in the Australian market.

An export price based on Shagang's third country sales would require the Minister to determine an appropriate third country from a large number of possible countries and make specification adjustments due to differences in grades and standards between that country and Australia.

### Adjustments to the export price – subsection 269TAB(2G)

Subsection 269TAB(2G) allows the Minister to make adjustments to the export price ascertained under subsection 269TAB(2B) to reflect what the export price would have been had there not been an absence of exports by Shagang. Such adjustments may include:

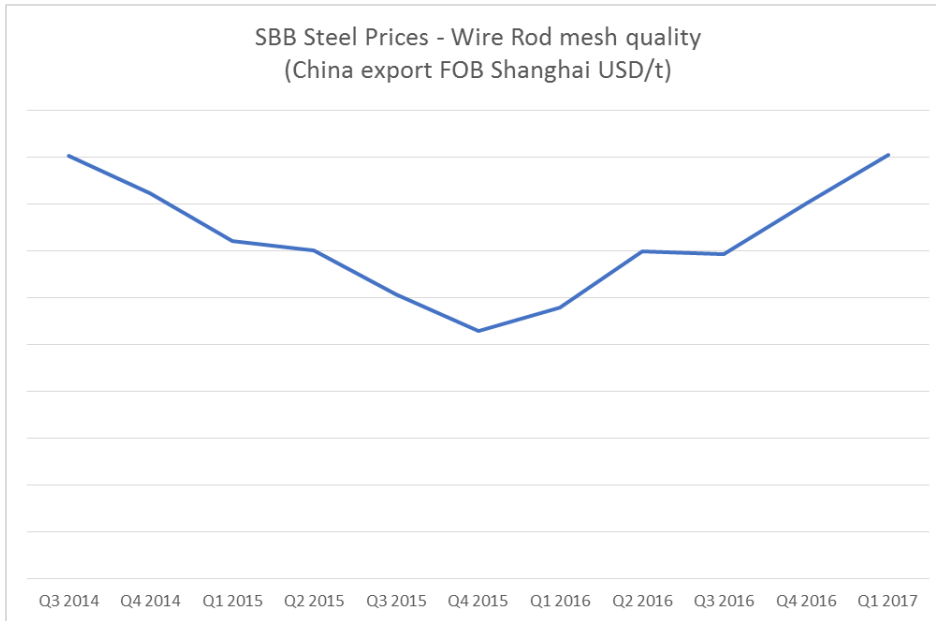
- adjustments due to exports relating to earlier times (timing adjustment);<sup>27</sup>
- adjustments due to exports relating to not identical goods (specification adjustment);<sup>28</sup>

Shagang's current export price is based on exports to Australia during the original investigation period 1 July 2014 to 30 June 2015. The Commission notes that global steel prices have moved since that time.

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<sup>27</sup> Subsection 269TAB(2G)(a)

<sup>28</sup> Subsection 269TAB(2G)(b)



**Figure 2**

The Commission therefore considers that a timing adjustment is required to reflect what Shagang’s export price would have been during the review period had there not been an absence or low volume of exports. The Commission has used published steel pricing data from Platts, specifically the average price of RIC exported from China for the original investigation period compared to the average price of the same for the review period. The Commission notes that the average price for the review period is 1.6% lower than for the original investigation period. Accordingly, the Commission has adjusted the export price determined during the original investigation by decreasing it by 1.6% to reflect the lower prices for rebar during the review period.

As a result, the ascertained export price for Shagang’s exports of the goods has changed.

**4.3.2 Hunan Valin**

It is the Commission’s view that the application of subsection 269TAB(1) would require Hunan Valin to have exported the goods to Australia. As the Commission has found that Hunan Valin did not export the goods to Australia during the review period, the Commission has considered whether the requirements of subsection 269TAB(2A) have been met, and therefore whether Hunan Valin’s export price is to be determined under 269TAB(2B).

For Hunan Valin to be considered a ‘low volume exporter’ in accordance with subsection 269TAB(2A), the Minister must have regard to (i) previous volumes of exports by that exporter, (ii) patterns of trade for like goods, and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.<sup>29</sup> The Commission has considered these elements as follows.

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<sup>29</sup> Subsection 269TAB(2A)(b)

## PUBLIC RECORD

### Previous volumes of exports by Hunan Valin – subsection 269TAB(2A)(b)(i)

Hunan Valin has previously exported the goods prior to the review period, during both the original investigation period and up until the beginning of the review period. Hunan Valin has not exported the goods to Australia since the March 2016 quarter.

### Patterns of trade for like goods – subsection 269TAB(2A)(b)(ii)

As shown above in Figure 1, while exports from China to Australia declined markedly around the time securities were implemented on exports of the goods from China, exports from all other countries increased substantially. The Commission interprets these results as the general market for the goods remaining persistent and that Hunan Valin's lack of exports during the review period does not pertain to a general lack of exports or low volumes of exports to Australia.

### Factors affecting patterns of trade – subsection 269TAB(2A)(b)(iii)

The Commission does not have any information regarding factors outside the exporters' control. Further, no relevant information has been made available by the exporters during verification visits or by submission. Also, the last SEF extension ADN No. 2017/151 published on 27 October 2017 advised that the reason for the extension was the amendments to the Act and the requirement for the Commission to consider if the changes will affect the determination of export prices for exporters subject to these reviews. No submissions from the exporters or any other interested parties have been received.

### Commission's consideration – subsection 269TAB(2A)

Having regard to the above, the Commission considers Hunan Valin, under subsection 269TAB(2A), to be a 'low volume exporter'. Hunan Valin previously exported the goods to Australia, despite the reduction in exports to Australia from China imports of RIC overall have remained steady and, apart from the imposition of the anti-dumping measures on exports from China, the Commission is not aware of any factors affecting the patterns of trade that are beyond Hunan Valin's control.

The Commission therefore considers it appropriate to ascertain export prices under subsection 269TAB(2B). Under that subsection the Commission is able to determine an export price having regard to any of the following:

- a previous export price for the goods exported to Australia by Hunan Valin established in accordance with subsection 269TAB(1) for a decision of a kind mentioned in subsection 269TAB(2D);<sup>30</sup>
- the price paid or payable for like goods sold by Hunan Valin in arms length transactions for exportation from China to a third country determined by the Minister to be an appropriate third country;<sup>31</sup>

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<sup>30</sup> Subsection 269TAB(2B)(a)

<sup>31</sup> Subsection 269TAB(2B)(b)



## PUBLIC RECORD

- an export price for like goods exported to Australia from China by another exporter or exporters established in accordance with subsection 269TAB(1) for a decision mentioned in subsection 269TAB(2D).<sup>32</sup>

### Previous export price – subsection 269TAB(2B)(a)

Hunan Valin is listed on the notice pertaining to the original investigation and the Minister determined Hunan Valin's export price under subsection 269TAB(1) for the purposes of publishing the notice under subsection 269TG(2). This is Hunan Valin's current export price. The decision to publish a notice under subsection 269TG(2) is a decision mentioned in subsection 269TAB(2D). Notice of the decision under subsection 269TG(2) was published on 22 April 2016, which is within two years before the notice of this review under subsection 269ZC(4) was published, which occurred on 24 May 2017.<sup>33</sup> Therefore subsection 269TAB(2B)(a) is available for determining the export price.

### Third country export price – subsection 269TAB(2B)(b)

Hunan Valin exported RIC to a number of third countries during the review period, therefore subsection 269TAB(2B)(b) is available for determining the export price.

### Another exporter's export price – subsection 269TAB(2B)(c)

Another exporter (Shagang) is listed on the notice pertaining to the original investigation for which the Minister determined an export price under subsection 269TAB(1) for the purposes of publishing the notice under subsection 269TG(2). The decision to publish a notice under subsection 269TG(2) is a decision mentioned in subsection 269TAB(2D), therefore subsection 269TAB(2B)(c) is also available for determining the export price.

### Commission's consideration – subsection 269TAB(2B)

All three options under subsection 269TAB(2B) are available for determining Hunan Valin's export price and there is no hierarchy in the Act.

The Commission has considered all three options and finds that Hunan Valin's current export price established in accordance with subsection 268TAB(1) is the most appropriate as it reflects actual prices received by the particular exporter for the specific grades of the goods sold in the Australian market.

An export price based on Hunan Valin's third country sales would require the Minister to determine an appropriate third country from a large number of possible countries and make specification adjustments due to differences in grades and standards between that country and Australia.

### Adjustments to the export price – subsection 269TAB(2G)

Subsection 269TAB(2G) allows the Minister to make adjustments to the export price ascertained under subsection 269TAB(2B) to reflect what the export price would have

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<sup>32</sup> Subsection 269TAB(2B)(c)

<sup>33</sup> Per subsection 269TAB(2E)

been had there not been an absence of exports by Hunan Valin. Such adjustments may include:

- adjustments due to exports relating to earlier times (timing adjustment);<sup>34</sup>
- adjustments due to exports relating to not identical goods (specification adjustment);<sup>35</sup>

Hunan Valin's current export price is based on exports to Australia during the original investigation period 1 July 2014 to 30 June 2015. The Commission notes that global steel prices have moved since that time as depicted in Figure 2, above.

The Commission therefore considers that a timing adjustment is required to reflect what Hunan Valin's export price would have been during the review period had there not been an absence or low volume of exports. The Commission has used published steel pricing data from Platts, specifically the average price of RIC exported from China for the original investigation period compared to the average price of the same for the review period. The Commission notes that the average price for the review period is 1.6% lower than for the original investigation period. Accordingly, the Commission has adjusted the export price determined during the original investigation by decreasing it by 1.6% to reflect the lower prices for rebar during the review period.

As a result, the ascertained export price for Hunan Valin's exports of the goods has changed.

## **4.4 Normal value**

### **4.4.1 Applicable legislation**

Subsection 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 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.

However, subsection 269TAC(2)(a)(ii) provides that, where the Parliamentary Secretary is satisfied that:

*...because 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 subsection (1),*

the normal value of the goods exported to Australia cannot be ascertained under subsection 269TAC(1).

Where such a 'particular market situation' exists, the normal value can be determined on the basis of a cost construction (subsection 269TAC(2)(c)), or third country sales (subsection 269TAC(2)(d)).

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<sup>34</sup> Subsection 269TAB(2G)(a)

<sup>35</sup> Subsection 269TAB(2G)(b)

#### **4.4.2 Particular market situation**

Investigation 301 established that, in accordance with subsection 269TAC(2)(a)(ii), a situation exists in the domestic Chinese market that renders domestic selling prices of RIC as being unsuitable for the purposes of determining normal values for RIC under subsection 269TAC(1), i.e. a particular market situation.

Accordingly, normal values for cooperating exporters were constructed pursuant to subsection 269TAC(2)(c). Subsection 269TAC(2)(c) provides that, where the normal value cannot be ascertained under subsection 269TAC(1), the normal value of the goods is to be calculated as:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, the selling, general and administrative costs associated with such a sale and the profit on that sale.

During Investigation 301, it was found that, in determining the cost of manufacture of the goods, the records of Chinese exporters of RIC did not reasonably reflect competitive market costs associated with the production and manufacture of those goods, for the purposes of section 43 of the *Customs (International Obligations) Regulation 2015*.

Specifically, the Commission then indicated that:

*The Commission considers that direct and indirect influences of the Government of China affect Chinese manufacturers' costs to produce steel billet.*

Because steel billet costs represent a significant proportion of the cost to manufacture RIC, Investigation 301 replaced the steel billet costs recorded in the exporters' records in order to reflect a competitive market cost for steel billet when constructing normal values.

In the applicants' original applications, no claims were made regarding the particular market situation found in Investigation 301. Additionally, no submissions were made during or after the verification visits regarding the particular market situation found in Investigation 301.

After the Commission initiated the current reviews, a questionnaire was sent to the Government of China (GOC) to ascertain whether the market situation found in Investigation 301 had changed. The GOC, however, did not provide a response to the questionnaire.

Furthermore, the Commission considers that since the final report for Investigation 301 was published on 22 April 2016, it is unlikely the market situation found then has changed significantly. Additionally, both Hunan Valin and Shagang were cooperating exporters during the original investigation, and the Commission considers those companies are likely to be operating under similar conditions to that found in the original investigation. The Commission also notes that the GOC's 13<sup>th</sup> Five Year

Economic Development Plan referenced in the market situation assessment for Investigation 301 is still current.<sup>36</sup>

In the absence of any information to indicate that the particular market situation found in Investigation 301 has changed, the Commission considers that the GOC continues to exert numerous influences on the Chinese iron and steel industry, which has substantially distorted competitive market conditions in the RIC industry in China.

The Commission therefore considers that a particular market situation for RIC exists, and that the normal values for the applicants cannot be ascertained under subsection 269TAC(1). The Commission has therefore ascertained the normal values for Shagang and Hunan Valin under subsection 269TAC(2)(c).

#### **4.5 Constructed normal value**

Subsection 269TAC(2)(c) provides that, where the normal value cannot be ascertained under subsection 269TAC(1), the normal value of the goods is to be calculated as:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods had been sold for home consumption in the ordinary course of trade in the country of export, the administrative, selling and general costs associated with such a sale and the profit on that sale.

##### **4.5.1 Cost of production**

As noted above, subsection 269TAC(2)(c) requires that the cost of production or manufacture of the goods be used in determining constructed normal values. As required by subsection 269TAC(5A)(a), the cost of production or manufacture must be worked out in accordance with section 43 of the Regulation.

To determine the cost of production or manufacture, subsection 43(2) requires that if:

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

the Parliamentary Secretary must work out the cost of production or manufacture using information set out in the exporter or producer's records.

It is the Commission's policy and practice that, where the conditions of subsection 43(2) of the Regulation are not met, the cost records kept by that exporter are not required to be used in working out their costs, and the Commission may resort to other information to calculate these costs.

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<sup>36</sup> *Anti-Dumping Commission Report No. 301*, p. 58

Given the significant distortions in the steel market in China outlined in section 4.4.2 of this report, the Commission considers applicant's recorded costs of steel billet do not reflect competitive market costs.

Approach to replacing steel billet costs in Investigation 301

In Investigation 301, the Commission substituted the cooperating exporters' fully absorbed steel billet CTM values with the corresponding Latin American FOB level steel billet export price from Platts for the month minus an average rate of profit that the Chinese exporters realised for the sale of billets in their domestic market.

Approach to replacing HRC costs in current reviews

For the purpose of these reviews, the Commission has available to it verified steel billet costs obtained from cooperating exporters and manufacturers in Investigations 416 and 418. The Commission considers that in the current case these verified costs most accurately reflect the cost of production of steel billet relevant to the manufacture of the goods exported to Australia during the review period.

Given that the applicants are fully-integrated manufacturers of the goods, and given the availability of verified and relevant information from Investigations 416 and 418, the Commission considers that it is appropriate to use verified costs of steel billet manufacturers (at comparable terms) in Indonesia, Korea, Spain, Taiwan, Thailand, and Vietnam for the purpose of replacing the applicants' steel billet costs.

The Commission has verified cost data, relating to steel billet costs for the period 1 April 2016 to 31 March 2017, encompassing all four quarters of the review period.

Details of the competitive market cost benchmark calculation is at **Confidential Appendix 1 – Steel billet benchmark**.

## **4.6 Determination of constructed normal values**

### **4.6.1 Shagang**

As outlined in section 4.4.2 of this report, the Commission considers the steel billet costs provided by Shagang do not reasonably reflect competitive market costs. Therefore, the Commission has replaced Shagang's steel billet costs with a competitive market cost benchmark.

As required by subsection 269TAC(5A)(b), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the selling, general and administrative costs for Shagang have been determined in accordance with subsection 44(2) of the Regulation.

In addition, as required by subsection 269TAC(5B), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation. Subsection 45(2) of the Regulation requires that, where reasonably practicable, profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

## PUBLIC RECORD

Accordingly, the Commission has calculated a profit margin for like goods. The calculation of this profit margin was based on domestic sales of like goods in the ordinary course of trade, the selling prices of which were compared to Shagang's actual cost to make and sell of those goods (i.e. prior to replacing Shagang's recorded steel billet costs as discussed above).

In order to ensure the normal value is properly comparable with the export price of the goods, the Commission adjusted Shagang's normal value in accordance with subsection 269TAC(9). The normal value for Shagang has been calculated at the FOB level, cash terms. The below table summarises the adjustments made to Shagang's normal value.

Adjustment Type	Deduction/addition
Export inland freight, handling and port charges	<b>Add</b> the cost of inland freight, handling and port charges
Non-refundable VAT	<b>Add</b> the portion of non-refundable VAT, on the assumption that the goods, instead of being sold domestically, were to have been exported.

The resulting ascertained normal value for Shagang in respect of RIC has changed since Investigation 301.

Details of the preliminary normal value calculations for Shagang are at **Review 413 - Confidential Appendices 1 to 3**.

### 4.6.2 Hunan Valin

As outlined in section 4.4.2 of this report, the Commission considers the steel billet costs provided by Hunan Valin do not reasonably reflect competitive market costs. Therefore, the Commission has replaced Hunan Valin's steel billet costs with a competitive market cost benchmark.

As required by subsection 269TAC(5A)(b), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the selling, general and administrative costs for Hunan Valin have been determined in accordance with subsection 44(2) of the Regulation.

In addition, as required by subsection 269TAC(5B), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation. Subsection 45(2) of the Regulation requires that, where reasonably practicable, profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

Accordingly, the Commission has calculated a profit margin for like goods. The calculation of this profit margin was based on domestic sales of like goods in the ordinary course of trade, the selling prices of which were compared to Hunan Valin's actual cost to make and sell of those goods (i.e. prior to replacing Hunan Valin's recorded steel billet costs as discussed above).

**PUBLIC RECORD**

In order to ensure the normal value is properly comparable with the export price of the goods, the Commission adjusted Hunan Valin's normal value in accordance with subsection 269TAC(9). The normal value for Hunan Valin has been calculated at the FOB level, cash terms. The below table summarises the adjustments made to Hunan Valin's normal value.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Export inland freight, handling and port charges	<b>Add</b> the cost of inland freight, handling and port charges
Non-refundable VAT	<b>Add</b> the portion of non-refundable VAT, on the assumption that the goods, instead of being sold domestically, were to have been exported.

The resulting ascertained normal value for Hunan Valin in respect of RIC has changed since Investigation 301.

Details of the preliminary normal value calculations for Hunan Valin are at **Review 414 - Confidential Appendices 1 to 3**.

**4.7 Dumping margins**

The Commission has determined dumping margins for Hunan Valin and Shagang under subsection 269TACB(2)(a) by comparing the weighted average of export prices over the review period with the weighted average of corresponding normal values over that period. The resulting dumping margins are detailed below.

<b>Hunan Valin</b>	<b>Shagang</b>
14.7 per cent	10.8 per cent

## 5 NON-INJURIOUS PRICE

### 5.1 Introduction

Dumping duties<sup>37</sup> may be imposed where the Parliamentary Secretary is satisfied that dumped exports of the goods to Australia have caused or threatened to cause material injury to the Australian industry producing like goods. Under subsection 269TACA(a) of the Act, the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry by dumped goods.

Pursuant to subsection 8(5BAA) of the *Customs Tariff (Anti-Dumping) Act 1975*, the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser amount of duty if he is satisfied that either or both of the following apply in relation to the goods the subject of the notice:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) 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.

### 5.2 Commission's assessment

The Commission has found that, in accordance with subsection 269TAC(2)(a)(ii), the normal value of RIC exported to Australia from China cannot be ascertained under subsection 269TAC(1) because the situation in the Chinese market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1). As such, the Commission notes that the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser rate of duty and the duty must be calculated and taken at full dumping margins in relation to RIC imported from China.

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<sup>37</sup> In the form of a dumping duty notice under subsection 269TG(1) or (2) of the Act.



## 6 FINDINGS AND PROPOSED RECOMMENDATIONS

### 6.1 Findings

The Commissioner has found, in respect of exports of RIC to Australia from China by the applicants, that:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- due to the existence of a 'particular market situation' the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser rate of duty.

### 6.2 Proposed recommendations

The Commissioner proposes to recommend to the Parliamentary Secretary that the notices in respect of exports of RIC to Australia from China have effect in relation to the applicants as if different variable factors had been ascertained.

### 6.3 Proposed form of duty

The current anti-dumping measures are in the form of *ad valorem* duty, i.e. a proportion of the export price equivalent to the dumping margin.<sup>38</sup>

In Anti-Dumping Commission Report No. 301 the Commission stated the reasons for recommending *ad valorem* measures as follows:

- the high dumping margins reduce the likelihood for significant reduction in export prices to avoid the intended effect of the duties;
- the measures will better reflect changes in the market (raw material prices can fluctuate dramatically, reducing the effectiveness of floor prices);
- *ad valorem* measures remove significant variability in the effective rate of duty;
- the *ad valorem* method does not need to be reviewed as often as other duty methods; and
- the measures will be effective in mitigating the injury by preventing the continuation of significant price undercutting.

The Commission notes that as a result of this review, the dumping margins applicable to Hunan Valin and Shagang will reduce from greater than 37 per cent, to less than 15 per cent. The Commission considers that in these circumstances *ad valorem* measures would not be as effective in mitigating the injury that the measures were intended to prevent.

Therefore the Commissioner proposes to recommend to the Parliamentary Secretary that the form of measures applicable to Hunan Valin and Shagang be changed to the

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<sup>38</sup> Per subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

**PUBLIC RECORD**

combination duty method, i.e. a combination of fixed and variable duty.<sup>39</sup> The fixed component will be an amount calculated at the dumping margins shown in section 4.7 and the variable component will be applicable where the actual export price is below the ascertained export price.

A summary of the variable factors as they apply to each applicant is at **Confidential Appendix 2 - Summary of variable factors**.

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<sup>39</sup> Per subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

**7 LIST OF APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	Steel billet benchmark
<b>Confidential Appendix 2</b>	Summary of variable factors
<b>Review 413 - Confidential Appendix 1</b>	Cost to make and sell - Shagang
<b>Review 413 - Confidential Appendix 2</b>	Domestic sales and profit - Shagang
<b>Review 413 - Confidential Appendix 3</b>	Domestic sales and profit - Shagang
<b>Review 413 – Confidential Appendix 4</b>	Normal value - Shagang
<b>Review 413 – Confidential Appendix 5</b>	Dumping Margin - Shagang
<b>Review 414 - Confidential Appendix 1</b>	Cost to make and sell – Hunan Valin
<b>Review 414 - Confidential Appendix 2</b>	Domestic sales and profit - Hunan Valin
<b>Review 414 - Confidential Appendix 3</b>	Domestic sales and profit - Hunan Valin
<b>Review 414 – Confidential Appendix 4</b>	Normal value - Hunan Valin
<b>Review 414 – Confidential Appendix 5</b>	Dumping Margin - Hunan Valin