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DUMPING INVESTIGATION NO. 300

STEEL REINFORCING BAR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA

APPLICATION FOR THE PUBLICATION OF A DUMPING DUTY NOTICE BY:

ONESTEEL MANUFACTURING PTY LTD

(Australian industry)

SUBMISSION OF THE AUSTRALIAN INDUSTRY: EXISTENCE OF A PARTICULAR MARKET SITUATION IN CHINESE STEEL MARKETS AND THE REASONABLENESS OF CHINESE STEEL INPUT COSTS

INTRODUCTION

The Australian industry acknowledges that China is treated as a market economy under Australia's Anti-Dumping provisions.

Australia's provisions are in accordance with the *World Trade Organisation* (**WTO**) Anti-dumping Agreement (**ADA**) and provide for the rejection of domestic selling prices where it can be established that a situation in the market for the goods in the exporting country renders domestic selling prices unsuitable for normal value purposes.

One of the exceptions to using domestic selling prices for determining normal values is set out in subparagraph 269TAC(2)(a)(ii) of the *Customs Act 1901*, which broadly provides that the domestic selling prices are not an appropriate basis for normal value if the Minister is satisfied that:

> *"…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 269TAC(1)]" (i.e. a 'particular market situation' exists).*

One of these situations may be where the domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values.

Further, for the purposes of assessing how to calculate the cost of manufacture of the goods and like goods in line with sub-regulation 43(2)(ii) of the *Customs (International Obligations) Regulation 2015*[1] (formerly sub-regulation 180(2) of the *Customs Regulations 1926*) when determining normal values, the Commissioner must also examine the reasonableness of the material costs incurred by Chinese exporters of the goods in purchasing inputs in China. Where raw material costs incurred by Chinese manufacturers of the investigated goods are not reasonably reflective of competitive market costs for the purposes of sub-regulation 43(2)(ii) the Commissioner may then make amendments to the costs incurred by Chinese exporters of the goods to reflect reasonably competitive market costs for those inputs.

[1] References hereinafter to a regulatory provision, shall be a reference to the *Customs (International Obligations) Regulation 2015*, unless otherwise specified,

PREVIOUS ASSESSMENTS OF MARKET SITUATION AND RAW MATERIALS COST REASONABLENESS – CHINESE STEEL PRODUCTS

Since 2012, the responsible Minister, has been satisfied on at least five separate occasions of the existence of a market situation in relation to certain Chinese steel based goods, as well as the assessment of the reasonableness of raw material costs in constructing normal value under paragraph 269TAC(2)(c) of the *Customs Act 1901*[2]. In summary:

- **June 2012 (*Dumping Investigation No. 177*)**
  - hot rolled coil steel;
  - hot rolled narrow strip steel;
  - hollow structural sections of steel (steel pipe and tube); and
  - upstream products and materials (namely coke and coking coal)[3],

- **April 2013 (Dumping Investigation No. 190)**
  - (galvanised and aluminium) coated steel;
  - hot rolled coil steel; and
  - upstream products and materials (namely, steel scrap, iron ore, coke and coking coal)[4],

- **September 2013 (Dumping Investigation No. 198)**
  - hot rolled plate steel;
  - slab steel;
  - hot rolled coil steel; and
  - upstream products and materials (namely, steel scrap, iron ore, coke and coking coal)[5],

- **March 2014 (Dumping Investigation No. 221)**
  - hot rolled plate steel;
  - slab steel;
  - hot rolled coil steel; and
  - upstream products and materials (namely, steel scrap, iron ore, coke and coking coal)[6]; and

- **February 2015 (Dumping Investigation No. 238)**
  - Cold rolled stainless steel[7].

[2] References hereinafter to a legislative provision shall be references to the *Customs Act 1901*, unless otherwise specified.
[3] REP 177, p. 166.
[4] REP 190A, p. 167.
[5] REP 198, p. 113 (Appendix 1, p. 22)
[6] REP 221, pp. 30-31.
[7] REP 238, p. 130

Although the above cases found a situation to exist in the Chinese steel 'flat' products sector, because the Commissioner's reasons for deciding related to more than just the investigated product but also the overarching Chinese iron and steel industry, the findings are equally pertinent to the Chinese steel 'long' products sector, which includes steel reinforcing bar (**rebar**) as the production methods and raw materials employed are substantially the same for the steel slabs used for steel flat products and the steel billets used for steel long products.

The nexus between individual Chinese steel product sectors, and the GOC's policies and influence in the Chinese iron and steel industry cannot be overstated. The Commissioner has previously closely examined the role of the GOC's *Development Policies for the Iron and Steel Industry* (***National Steel Policy***) in shaping the Chinese iron and steel industry.

The *National Steel Policy* is the key overarching policy document of the GOC, that includes clearly articulated policy aims for that industry. In previous investigations the Commissioner was able to link to several 'implementing measures' in the iron and steel industry to the National Steel Policy. Indeed, the definition of the Chinese iron and steel industry under the *National Steel Policy* is broad, and extends from raw material mining, all the way through to steel rollers and the production of steel products themselves.

The Commission has previously concluded that the GOC's policies and measures have impacted the Chinese iron and steel industry and relevant market conditions as follows:

> *"…Customs and Border Protection's analysis of the information available indicates that prices of HSS in the Chinese market are not substantially the same (likely to be artificially low), as they would have been without the GOC influence."*[8]

In *Dumping Investigation No. 190*, it was considered reasonable to find that GOC influences in the Chinese iron and steel industry identified during *Dumping Investigation No. 177* continued to exist throughout *Dumping Investigation 190's* investigation period.

> *"As was the case with REP177, REP190 found that these GOC influences had also impacted the reasonableness of certain costs incurred by aluminium zinc coated and galvanised steel in China such that they were no longer considered reasonably competitive market costs, and were replaced by a competitive market cost."*[9]

In *Dumping Investigation No. 198*, the Commissioner found:

> *"The Commission has determined that the GOC has exerted numerous influences on the Chinese iron and steel industry, which have substantially distorted competitive market conditions in the iron and steel industry in China.*
>
> *"In the current investigation, based on available information, the Commission determined that various GOC influences identified in INV 177 and again in INV 190 continued to apply in the Chinese iron and steel industry. These were in the form of broad, overarching GOC*

[8] REP 177
[9] REP 238, p. 221.

macroeconomic policies and plans that outline aims and objectives for the Chinese iron and steel industry and more specifically the 'implementing measures' that go towards actively executing the aims and objectives of these policies and plans.

*"**The impact of the GOC's numerous broad and extensive overarching macroeconomic policies and plans, outlining the aims and objectives for the Chinese iron and steel industry, have not been insignificant. The various countervailable subsidies provided by the GOC have also influenced the costs of production of plate steel in China. The various taxes, tariffs, export and import quotas have influenced the price of raw materials used in production of plate steel which has led to a distortion in the selling prices of the plate steel itself**.*

*"**The Commission's assessment and analysis of the available information indicates that prices of plate steel in the Chinese market are not substantially the same as they would have been without the influences by the GOC.** The Commissioner considers that GOC influences in the Chinese iron and steel industry have created a 'particular market situation' in the domestic plate steel markets such that sales of plate steel in China are not suitable for determining normal value under s.269TAC(1) of the Act."* [10]

In *Dumping Investigation No. 221*, the Commissioner found that, having regard to the findings of previous anti-dumping investigations where it was concluded that the GOC exerted significant influence on the Chinese iron and steel industry, sufficient evidence existed to find that the cost of plate steel (and flanges) reflected in the records of Chinese manufacturers did not reasonably reflect a competitive market cost for that input. This cost was subsequently substituted by a competitive market cost.

Most recently in Dumping Investigation No. 238, the Commission concluded as follows on the question of the influence of the GOC's policies and measures on the Chinese iron and steel industry:

"The Commission has undertaken several recent investigations into the reasonableness of various steel raw material costs in relation to Chinese carbon steel and carbon steel-based products (including hollow structural sections (HSS), hot rolled plate steel, zinc coated steel, aluminium zinc coated steel and wind towers). In each case, the Commission found there were significant GOC interventions in the domestic steel market that rendered the steel raw material costs incurred by Chinese exporters of the subject goods not reasonably reflective of competitive market prices…

"Noting the above, the Commissioner considers that numerous GOC policies, plans and implementing measures examined by the Commission in its previous investigations into the existence of a particular market situation and the reasonableness of Chinese steel raw materials costs are likely to extend to manufacturers of 304 SS CRC, or to their upstream suppliers of steel and steel raw materials…

[10] REP 198 (Appendix 1, p. 22)

> *"The Commissioner determines that there is sufficient evidence to find that there continues to be significant GOC influence in the Chinese iron and steel industry that either directly or indirectly impacts on the domestic market for stainless steel.*
>
> *"In these circumstances, the Commissioner considers the costs incurred by deep drawn stainless steel sinks manufacturers in China for 304 SS CRC used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2)."*[11]

CURRENT INTERNATIONAL ANALYSIS OF COMPETITIVE MARKET CONDITIONS IN CHINESE STEEL PRODUCT SECTORS

AEGIS EUROPE Report (June 2015)[12]

Notwithstanding, any views that the Commissioner may have as to the currency of the evidence previously considered by it in relation to the GOC's influence in the iron and steel industry, the Australian industry notes the final report issued by AEGIS Europe in June 2015 of the independent study by THINK! DESK China Research & Consulting into the competitive and market conditions in the Chinese economy[13]. The report concluded:

> *"The **study has been able to identify a substantial number of mechanisms by which Chinese government interferes in the transmission of signals on economic strengths and competitiveness and also intervenes directly in the composition and intensity of cross border activities**. Ranging from distortions of the exchange rate to explicit subsidies to preferential tax arrangements these governmental interventions distort the sectoral pattern and product specific structure as well as absolute intensity of China's integration in the global division of labour. As a consequence, the role Chinese firms play in product specific global value chains are not compatible with any comparative advantages in China or and the individual firms' true competitive strengths. While this allows Chinese firms to gain unjustifiably large market shares and corresponding revenue income, other, actually more competitive firms are being crowded out and must leave the market."*[14] [**emphasis added**]

Most importantly, the AEGIS Report confirmed the currency and impact of the export-targeting policy measures identified by the Australian industry in its *Application for the publication of a Dumping Duty Notice* in relation to rebar exported from China.

The AEGIS Report concluded that in order to promote export activity as well as steer the composition of China's total export volumes, Chinese government agencies continue to employ a broad range of instruments and dedicated policy programmes. In summary:

[11] REP 238, pp. 135-136.
[12] Taube, Markus and Schmidkonz, Christian, 2015, *Assessment of the normative and policy framework governing the Chinese economy and its impact on international competition*, AEGIS Europe, Brussels (the **AEGIS Report**)
[13] A copy of the AEGIS Report forms NON-CONFIDENTIAL ATTACHMENT A
[14] *Ibid.,* pp. 25-26.

1. Export Constraints

The AEGIS Report concluded that export licenses, quotas, duties and other administrative instruments are regularly used by the Chinese authorities to direct export business according to policy priorities and macroeconomic situations. Research is cited that shows that export restrictions have been tightened as authorities have tried to curb the outflow of resource intensive and polluting products[15]. In a flexible reaction to changing circumstances, authorities relaxed – if not reversed – export restrictions during the economic downturn following the global financial crisis so as to accommodate ailing enterprises.[16]

2. Value Added Tax Rebates on Exported Goods

VAT (value added tax) rates vary depending on product category between five and 17 percent with steel products and most resources generally taxed at the full rate. While all imported goods are subjected to the tax, certain products are eligible for rebates upon export. These rebates do not apply uniformly to all goods but are administered on a product-specific basis to support Chinese industry policies. In order to adjust the VAT rebate scheme to changing macroeconomic environments and development priorities, tax and customs authorities revise the catalogue of products eligible for rebates and/or change product specific rebate rates several times per year. Operating such a flexible rebate system allows economic policy decision makers to align the volume and composition of exports with industrial policy strategies. Because of their immediate effect on companies' propensity to export, rebate rates have proven to be a very effective instrument of foreign trade policy.

Since the VAT rebate program has the effect of influencing export incentives, it can be utilised to adjust the share of exports. For example, during global economic downturn, Chinese authorities may withdraw steel products from export markets and reroute them to the domestic market simply by lowering or eliminating pre-existing VAT rebates, for example, steel billet, where there is no VAT tax rebate available on export[17]. The opportunity to artificially increase or reduce the supply of certain goods on the home market also plays a significant role in Chinese industrial policy. By pushing up domestic supply, the government can intensify competitive pressures and drive down prices.

One of the most important reasons for Chinese authorities to resort to VAT rebate adjustments is to discourage the exportation of products commonly referred to as 'two high, one resource'. This term is used to characterise energy intensive, resource intensive and polluting products that are mostly located towards the low end of the market and have a low value added relative to inputs[18]. According to AEGIS Europe, Chinese policy documents state that it is in the national interest to

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[15] der Heiden, Peter and Markus Taube, 2011, China's Iron and Steel Industry at the Global Market Interface: Structural Developments and Industrial Policy Interventions, in The Copenhagen Journal of Asian Studies, Vol. 29, No. 2, p. 110-142.
[16] AEGIS Europe, p. 268.
[17] OneSteel Manufacturing Pty Ltd, Application for the publication of a dumping duty notice in relation to steel reinforcing bar exported from the PRC, p. 68.
[18] General Office of State Council, 2010, *Several opinions concerning further strengthening energy conservation and emissions reduction efforts and accelerating the structural adjustment of the iron and steel industry*, GuoBanFa No. 34 (in Chinese).

prevent the exportation of goods that put a large burden on the environment and resource use while yielding little in the way of profits or earning advantages for companies. This should also prevent China playing host to the dirtiest, least profitable low tech elements of the international value chain for steel. While this may be ostensibly justified on environmental grounds, there are also purely economic/market reasons shaping this approach as follows:

- Reductions and cancellations of VAT rebates on exports have led to sharp drops in export quantities of raw materials (if export volumes were not already limited by quotas), and

- A domestic price level which is lower than it should be under normal circumstances - examples cited by the Australian industry include coke, coking coal, iron ore and scrap metal[19].

- Limiting out-flows is pursued in line with China's industrial policy frameworks:

    - Firstly, downstream production processes can benefit from cheaper access to an important input, and
    - Secondly, market potential and profitability of upstream producers is largely reduced, paving the way for industry consolidation.

AEGIS Europe explains the recent manipulation of this policy setting to influence prices:

- In the years preceding the world financial crisis, the Chinese government undertook a series of VAT rebate cuts in order to put an end to soaring exports flows of raw materials and commodity grade products.
- Then when the world financial crisis hit Chinese producers, export volumes and prices plummeted.
- This caused diminished profit margins to further reduce outflows of commodities already subject to export constraints.
- Eventually, the State Council and the MOFCOM decided to rescue distressed industries by reinstating or re-raising VAT rebates on many products.
- In turn, the caused a rebound in export activity as commodities regained competitiveness in major export markets.
- Then, as China and the world economy gradually turned toward economic recovery, exports soared again, leading the government to once again terminate VAT rebates on polluting and low value added commodities from 2010.

According to AEGIS Europe, Chinese industrial policies for the steel industry establish a clear case for product-specific, technology-sensitive discretionary application of the VAT export rebate system. It has become clear, that the Chinese government considers VAT rebates a legitimate and effective

[19] OneSteel Manufacturing Pty Ltd, *Application for the publication of a Dumping Duty Notice: Steel reinforcing bar exported from the People's Republic of China*, p. 65-67.

tool to steer exports in ways conducive to its industrial policy framework. The real application of the program closely follows provisions cited in various policy documents.[20]

3. Export Duties

Duties take the form of *ad valorem* taxes levied on the price of certain goods upon exportation.

In many cases, such duties have been imposed in lieu with VAT rebate cancellation in order to amplify the trade constraining effect. According to Chinese Regulations on Import and Export Duties, duties shall be imposed on any good upon entering or leaving the country unless decided otherwise by the State Council. There are two government agencies trusted with administering import and export duties: the Customs Tariff Commission is mainly in charge of determining which goods are subjected to duties and adjusting relevant duty rates[21]. The Chinese General Administration of Customs is tasked with the actual supervision and control of goods entering or leaving the country. As such, it collects duties as well as other charges related to goods crossing the border into or out of China.

As of 1 January 2015, the export duty for coking coal remains at 3%, the export duty for iron ore remains at 10%, and scrap metal at 40%.

CANADA BORDER SERVICES AGENCY, STATEMENT OF REASONS CONCERNING THE FINAL DETERMINATIONS WITH RESPECT TO THE DUMPING OF CERTAIN CONCRETE REINFORCING BAR EXPORTED FROM CHINA (December 2014)[22]

Similar to Australia's approach where it is alleged that domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values, and the need to examine the reasonableness of the material costs incurred by exporters of the goods, so too may the Canadian anti-dumping authority assess whether or not certain conditions prevail in the domestic market of the exporting country under section 20 of the *Special Import Measures Act* (**SIMA**).

In the case of a prescribed country under paragraph 20(1)(a) of SIMA[23], section 20 of SIMA is applied if, and only if, it is found that domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. This is very similar to the approach applied by the Commissioner when assessing whether or not a particular market situation exists under sub-paragraph 269TAC(2)(a)(ii), specifically:

- whether a market situation exists due to government influence;

[20] *AEGIS Europe*, p. 269.
[21] State Council, 2003b., *Provisions for Import and Export Duties of the People's Republic of China*, Order of the State Council 2003, No. 392 (in Chinese).
[22] A copy of which forms NON-CONFIDENTIAL ATTACHMENT B.
[23] China is a prescribed country under section 17.1 of the *Special Import Measures Regulations*

- whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions; and
- whether domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.[24]

The CBSA concluded that:

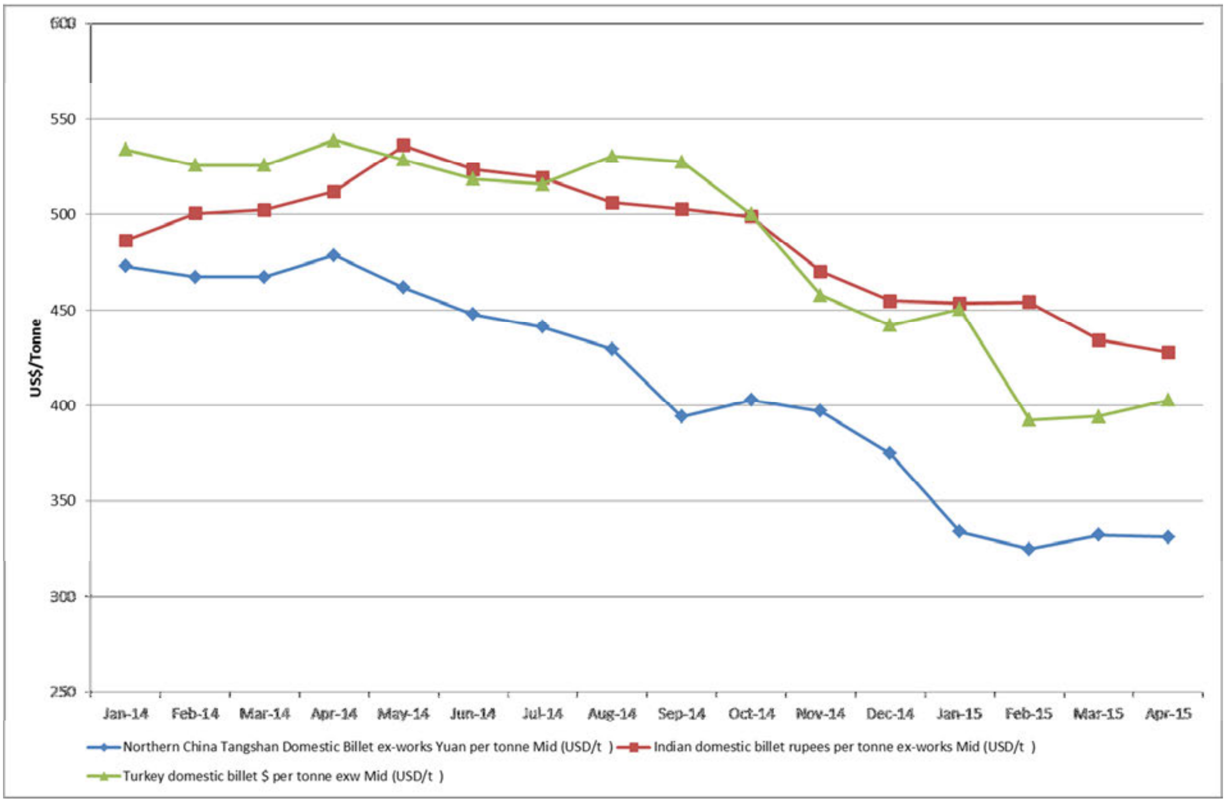
> *"The wide range and material nature of the GOC measures have resulted in significant influence on the Chinese steel industry including the long products steel sector, which includes concrete reinforcing bar. Based on the preceding, the President is of the opinion that:*
>
> - *domestic prices are substantially determined by the GOC; and*
> - *there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market."*[25]

In its analysis, the CBSA referred to all the programs and policies of the GOC directed towards the Chinese iron and steel industry cited in the Australian industry's application, and to the various preceding decisions of the Minister related to Chinese steel based goods. Further, the CBSA disclosed its reasons for concluding that the domestic prices of Chinese concrete reinforcing bar were not substantially the same as they would be in a competitive market:

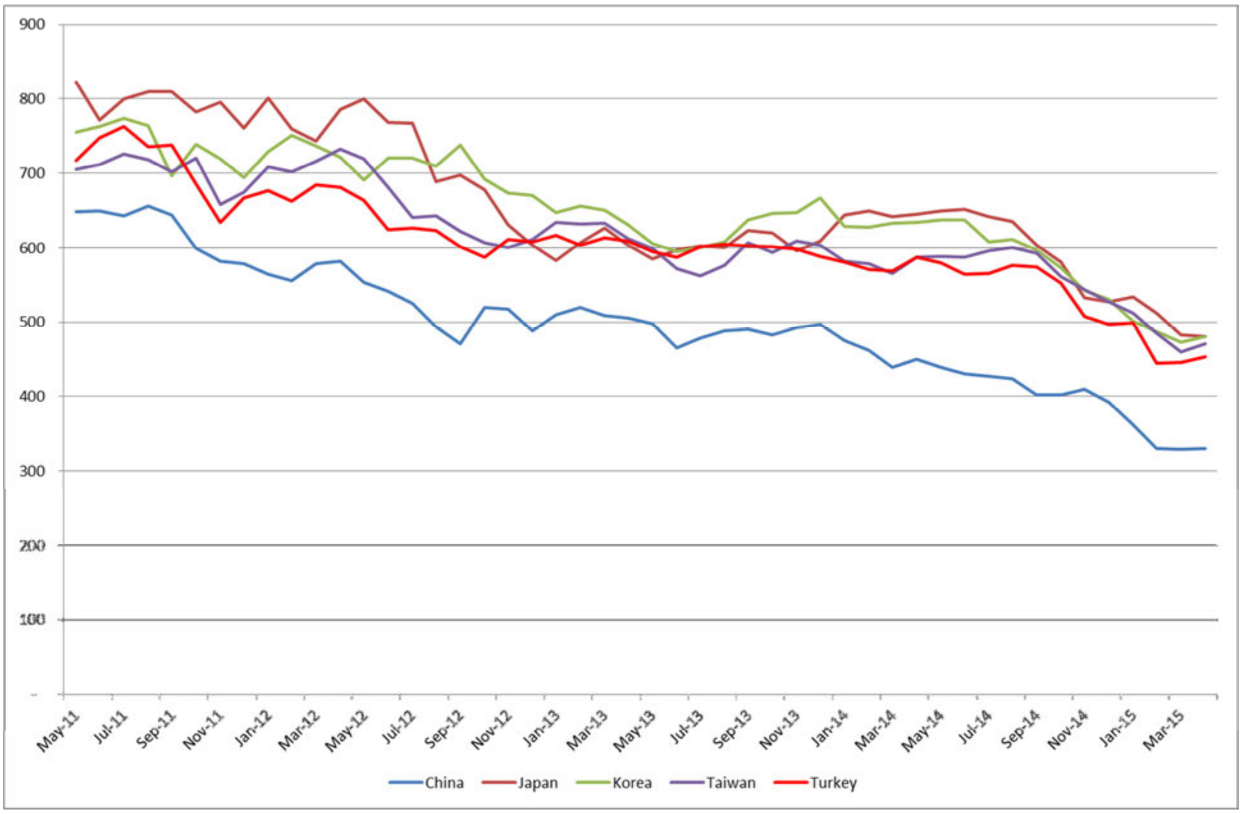
> "*The CBSA conducted a price analysis on domestic prices of concrete reinforcing bar. Although domestic price data for concrete reinforcing bar is not publicly available, since this case involves multiple countries, the CBSA was able to obtain domestic sales information from all three subject countries. The analysis shows that prices of concrete reinforcing bar during the POI were significantly lower in China than in the other two subject countries.*
>
> *"Given that concrete reinforcing bar is a commodity product freely traded on the world market, this price discrepancy further indicates that domestic prices of concrete reinforcing bar in China are not the same as they would be if they were determined under competitive market conditions."*[26]

In its application, the Australian industry not only looked at the mere existence of any government influence on the costs of inputs, but also the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. As such, the Australian industry contends that the government influence on costs disqualify the domestic sales of the Chinese goods because those costs can be shown to be affecting the domestic prices. This is demonstrated in the following two graphs showing the impact of GOC influence on costs (*Graph 1*, domestic steel billet prices), and downstream on the domestic market for the investigated goods (*Graph 2*, domestic rebar prices).

[24] Anti-dumping Commission, *Dumping and Subsidy Manual* (December 2013 edn), p. 34.
[25] Canada Border Services Agency (**CBSA**), *Statement of Reasons* (4214-42 AD/1403), OTTAWA, December 23, 2014, p. 20.
[26] CBSA (4214-42 AD/1403), pp. 18 – 19.



Graph 1: Ex-Works Domestic Billet Price : Northern China, India and Turkey



Graph 2: Domestic steel reinforcing bar prices (US$/tonne)

In both the material inputs, and investigated goods markets, the Chinese domestic market trades at a substantial discount to other domestic markets.

<u>CONCLUSIONS</u>

The Commissioner has issued, and the Minister accepted, opinions in respect of the following steel sectors in China that domestic prices are substantially influenced by the GOC and that they are not substantially the same as they would be if they were determined in a competitive market:

- hot rolled coil steel;
- hot rolled narrow strip steel;
- hollow structural sections of steel (steel pipe and tube);
- upstream products and materials (namely coke and coking coal);
- (galvanised and aluminium) coated steel;
- hot rolled plate steel;
- slab steel; and
- cold rolled stainless steel.

These numerous opinions indicate that the GOC exerts control over the Chinese steel industry, which encompasses the long products steel sector, including the rebar industry. Although the Commissioner has not previously found that costs incurred by Chinese exporters of the goods in utilising billet in China do not reasonably reflect competitive market costs, the Australian industry submits that this conclusion is inescapable due to the numerous identified influences of the GOC in the domestic iron and steel industry.

Accordingly, the Commissioner can safely conclude on the basis of the materials provided in the Australian industry's application that a particular market situation does exist in relation the Chinese steel long products sector, which includes rebar. This conclusion is soundly supported by leading international analysis of the Chinese iron and steel industry.

However, even if the Commissioner is unable to reach this conclusion, the Australian industry submits that on the basis of the Commissioner's precedent decisions on this issue, the Commissioner must reasonably conclude that steel billet prices in China are affected by GOC influences in the iron and steel industry, and hence do not reasonably reflect competitive market costs within the meaning of sub-regulation 43(2)(ii). Such a conclusion is consistent with the approach applied in *Dumping Investigation No. 221* and *Dumping Investigation No. 238*.

Dated: 23 October 2015

FOR THE AUSTRALIAN INDUSTRY APPLICANT