

IN THE AUSTRALIAN ANTI-DUMPING COMMISSION
STEEL ROD IN COILS EXPORTED
FROM THE PEOPLE'S REPUBLIC OF CHINA

DUMPING INVESTIGATION NO. 301

ONESTEEL MANUFACTURING PTY LTD

Australian industry/Applicant

**SUBMISSION IN RESPONSE TO STATEMENT OF ESSENTIAL FACTS
REPORT NO. 301**

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TO: The Anti-Dumping Commissioner (**Commissioner**)
AND TO: The Director, Operations 1

EXECUTIVE SUMMARY

This submission is made on behalf of the industry producing steel rod in coils in Australia, specifically the applicant to *Dumping Investigation No. 301*.

The Australian industry makes this submission in response to *Statement of Essential Facts No. 301 (SEF)* placed on the public record of the Australian Anti-dumping Commission (**Commission**) on 15 February 2016.

In summary, the Australian industry is generally supportive of the Commission's assessments, save for the following matters of ongoing contention:

1. the Commission is relying on benchmark competitive market costs that contain Chinese prices and data;
2. the Commission has previously relied on benchmark market costs reflective of domestic market conditions. The use of export prices as benchmark competitive market costs is unsound;
3. a competitive cost benchmark should be selected by reference to domestic markets with limited exposure to Chinese alloyed square bar exports;

4. an (downward) adjustment to benchmark billet market costs for profit on Chinese domestic sales of billet are in error and should be reversed;
5. an (upward) adjustment for the well documented addition of alloys must be made to the non-alloy benchmark billet cost being used;
6. the benchmark cost of billet current at the date of sale should be taken for the purpose of normal value calculation, as the date of sale is the date of acceptance of purchase order by the exporter/producer;
7. the combination method of interim dumping duty calculation should be recommended, as it ensures that the measures are fully effective at addressing the punitive effects of dumping against the Australian industry.
8. a dumping duty notice is issued retrospectively for goods entered for home consumption up to 90 days prior to the taking of securities under section 42 of the *Customs Act* in accordance with subsection 269TN(3) of the *Customs Act*.

AUSTRALIAN INDUSTRY RESPONSE

References to paragraphs follow the paragraph numbering in the SEF.

6.6 Benchmarks for competitive market costs

The Commission considers that:

“an appropriate benchmark for steel billet costs in China is the average monthly prices paid in the East Asia region for billet imports. McGraw Hill Financial Service (Platts) publishes East Asian steel billet import prices at cost and freight (CFR) terms.”¹

In its application for the publication of a dumping duty notice, the Australian industry submitted:

“As China is the world’s largest producer of iron and steel products, it is clear that any Asian based benchmark of billet prices will be heavily influenced by Chinese pricing and supply behaviour. Indeed, it is submitted that other Asian domestic markets are directly impacted by the size of the Chinese market.”

Therefore, the Australian industry submits that the Commission’s decision to use East Asian steel billet import prices as a benchmark for steel billet costs in China is not appropriate. Specifically, the Australian industry notes that the Platts published East Asian steel billet import prices (Code: *Billet E Asia Imp CFR Wkly*) contains Chinese export price data.

¹ EPR 301/030 at p. 19.

It appears that the Commission has accepted a benchmark that itself is based on Chinese data. The *Billet E Asia Imp CFR Wkly* price contains Chinese export offers of billet into the East Asian market. This is evidenced by the following commentary published by *McGraw Hill Financial Service (Platts)* on their daily subscription steel industry information service, “SBB Daily Briefing”, refer CONFIDENTIAL ATTACHMENT A-1, relevant extracts of which are produced below from the copyrighted material:

“Chinese billet prices into East Asia remained flat in the week to Friday. Market participants were either on holiday or slow to resume business after the start of the Lunar New Year, trading sources said Friday.

“On Friday February 12, Platts East Asian 120/130mm billet assessment remained unchanged at \$█/mt CFR, still implying a midpoint of \$█/mt CFR -- the assessment has been static since January 15.

“Buyers know the Chinese are on vacation, they want to speak next week,” a Manila trader said Friday. “It is really, really quiet,” he added. Offers for 120/130mm Q235 billet from China were heard during February 5 week at \$█/mt CFR Manila and for same size Q275 billet at \$█/mt CFR. No deals were heard these past two weeks, especially during the past week.”

“Similarly in Thailand, there was no activity. “Buyers want to wait till China reopens before they make any decisions,” a Bangkok trader said. He said traders were giving offers at the previous week’s prices at \$█/mt CFR and \$█/mt CFR for 150mm and 130mm Q275 billet respectively.

...

“Traders said it was hard to predict how the billet market will move when China reopens this week. A Manila trader said much will depend on the Chinese domestic market -- he noted the stock market’s plunge late last week could influence the market...” [emphasis added]

CONFIDENTIAL ATTACHMENT A-2:

“Chinese billet offer prices jump in SE Asia

“Chinese suppliers raised their offer prices for billet into the Philippines this week after they reopened for business following the Lunar New Year holiday, trading sources said Tuesday. Buyers have yet to accept these higher prices but some traders said they expected prices to move up.

...

“Offer prices for Q275 billet for March/April shipment are prevailing this week at \$█/mt CFR. Previously, offers for 120/130mm Q275 billet from China were heard during February 5 week at \$█/mt CFR.

...

“On February 12, Platts maintained its East Asian 120/130mm billet weekly assessment at \$█/mt CFR. The assessment has been static since January 15.”

CONFIDENTIAL ATTACHMENT A-3:

“Chinese billet prices rise in Southeast Asia

“Import prices of Chinese billet in Southeast Asia are creeping up – despite resistance from buyers, traders said Friday. Offers for 150mm Q235 billet from China for February/March shipment are prevailing at \$█/mt FOB. A Chinese trader said offers were at \$█/mt FOB two weeks ago.

“In Manila, certain suppliers raised offers for 120/130mm Q275 billet to \$█/mt CFR during the week although others were still offering material at \$█/mt CFR, traders said Friday. Some █ mt of 130mm Q275 billet for March shipment sold this week at \$█/mt CFR Manila, a trader said. Previous bookings were around \$█/mt CFR in mid-December.

“Another reported that 120mm Q235 billet was booked at \$█/mt CFR on Friday. While freight costs from China to the Philippines had fallen to \$█/mt from \$█/mt CFR previously, severe Manila port congestion – which created delays of up to 60 days – persisted, he said. He noted that many importers would rather wait and observe if Chinese prices would continue to firm in the next two to three weeks.

...

“ ‘The market is very mixed,’ a Thai trader said. He heard from customers of bookings of 130mm Q275 billet at \$█/mt CFR for February shipment, as well as 150mm Q235 billet for March shipment at \$█/mt CFR. Freight costs between China and Thailand are around \$█/mt.

“He thought that the deal price for Q275 130mm was too low and should have transacted at \$█/mt CFR because 130mm normally fetches a \$█/mt premium over 150mm and Q275 a \$█/mt premium over Q235 billet.

“On Friday January 15, Platts East Asian 120/130mm billet price assessment was raised to \$█/mt CFR, up from \$█/mt CFR on January 8.

CONFIDENTIAL ATTACHMENT A-4:

“East Asian billet prices dip amid export rebate suspense

“Uncertainties in Chinese billet exports amid falling spot iron ore prices continue to weigh on the import market for billet in East Asia, regional trading said Friday.

“Ongoing market chatter of possible changes in the export rebate for Chinese billet, declared as alloy bar, is causing uncertainties. Chinese billet suppliers are seeking provisions for importers to share the financial cost from any rebate changes to be written in contracts, regional trading sources said. But importers are unwilling to do so, they said.

...

“On Friday, Platts East Asian 120/130mm billet price assessment dipped to \$ [REDACTED] /mt CFR, from \$ [REDACTED] /mt CFR the week before. The implied midpoint of \$ [REDACTED] was \$ [REDACTED] /mt lower on week.”

Most recently, in *Dumping and Subsidy Investigation No. 238*, the Commission rejected the use of any benchmark that included Chinese data. In that case, in considering the MEPS Asian [Grade] 304 SS CRC [stainless steel cold-rolled coil] price, the Commission stated:

“...the MEPS Asian average price includes Chinese prices rendering a world average including this Asian average unsuitable; and

“Chinese 304 SS CRC is likely to have influenced other Asian market prices rendering them unsuitable for determining a benchmark... [i]t follows that the Commissioner does not consider the MEPS Asian average 304 SS CRC price on its own (as suggested by interested parties) should be used as the benchmark for 304 SS CRC in China are reasonable in the circumstances.”²

...

“The Commissioner therefore considers it likely that the domestic prices in other Asian markets (such as Korea, Taiwan and Japan, the markets available for a MEPS-based benchmark) have been influenced by this prevalent Chinese 304 SS CRC (having to compete with significant volumes of imports of Chinese product). As the Commissioner considers that this Chinese price is not reflective of adequate remuneration for 304 SS CRC, it is considered

² EPR 238/102 at pp. 212-213.

unreasonable to determine a benchmark based on Asian prices that are themselves likely to have been influenced by this Chinese price.

“The Commissioner therefore considers that a MEPS-based Asian 304 SS CRC price, even when calculated excluding Chinese prices, is not a reasonable benchmark for determining adequate remuneration for 304 SS CRC in China.”³ [emphasis added]

Applied here, the Commissioner has reached the preliminary conclusion for the purposes of the SEF that:

“...the Commission considers that the significant influence of the GOC has distorted prices in the steel industry and RIC market in China. The Commission also considers that various plans, policies and taxation regimes have also distorted the prices of production inputs including (but not limited to) the raw materials used to make steel in China and render them unsuitable for cost to make and sell (CTMS) calculations.

The Commission considers that direct and indirect influences of the GOC affect Chinese manufacturers’ costs to produce steel billet. The Commission has found that steel billet costs comprise 80 to 85% of RIC CTMS.

Accordingly, to account for the effects of the GOC’s influence, the Commission has replaced Chinese manufacturers’ steel billet costs with appropriate competitive market costs for steel billets.”⁴

Therefore, it seems counterintuitive that the Commission should in the course of attempting to “replace Chinese manufacturers’ steel billet costs with appropriate competitive market costs for steel billets”, inadvertently introduce Chinese steel prices into the Commission’s benchmark for competitive costs of production unaffected by the “GOC-driven market distortions [which] have resulted in artificially low prices for the key raw materials, and this includes the other inputs associated with the production of the steel billets”. Clearly, this approach is inconsistent with the Commission’s recent policy and practise in attempting to identify costs of production or manufacture of like goods in the country of export that “reasonably reflect competitive market costs associated with the production or manufacture of like goods” as required under sub-paragraph 43(2)(b)(ii) of the *Customs (International Obligations) Regulations 2015*.

Accordingly, the Australian industry submits that in selecting an external benchmark for competitive costs, it must not contain Chinese data. Therefore, the Platt’s *Billet E*

³ EPR 238/102 at p. 215.

⁴ SEF 301 at p. 19.

Asia Imp CFR Wkly, is not suitable. Further, the Australian industry is unable to reconcile the Commission's selection of regional export market prices as a suitable benchmark for domestic Chinese costs, when international practice on the related matter of alternative benchmark selection to test adequacy of remuneration claims under Article 14(d) of the *Subsidies and Countervailing Measures Agreement*, is tested by the WTO Dispute Settlements process, there is endorsement for a comparison of domestic prices to a domestic price benchmark. Therefore in *US-Softwood Lumber IV*,⁵ the United States' approach in constructing an alternative benchmark based on prices of stumpage in bordering states of the northern United States, was not overturned. Similarly in *US – Anti-Dumping and Countervailing Duties (China)*⁶, the United States' reference to published domestic price information for hot rolled structural steel inputs was not overturned. Similarly, the Commission's approach in recent matters concerning the selection of a suitable competitive external benchmark prices for steel inputs have been based on domestic values.

- ***Hot rolled plate steel exported from China et Ors (REP 198):*** The Commission determined that an appropriate benchmark for HRC [hot rolled coil] costs in China is the weighted average domestic HRC price paid by cooperating exporters of galvanised steel and aluminium zinc coated steel from Korea and Taiwan, at comparable terms of trade and conditions of purchase to those observed in China.⁷
- ***Hollow structural sections exported from China et Ors (REP 177):***
 - the weighted average of verified domestic black HRC costs incurred by exporters cooperating with the investigation into HSS from Korea, Malaysia and Taiwan to arrive at a black HRC price; and
 - the weighted average of verified data of domestic pre-galvanised HRC costs incurred by cooperating exporters from Korea and Taiwan to arrive at a pre-galvanised HRC price.⁸
- ***Zinc coated (Galvanised) steel and aluminium zinc coated steel exported from China et Ors (REP 190):*** The benchmark for hot rolled coil was

⁵ Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 19 January 2004 (**US- Softwood Lumber IV**)

⁶ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011.

⁷ EPR Folio No. 198/179 at p. 67.

⁸ EPR Folio No. 177/410 at p. 258.

established by reference to domestic production costs of exporters from Korea and Taiwan.⁹

Therefore, the Australian industry submits that it is not consistent with the Commission's policy and practice to base an external competitive benchmark for market costs on an export price index. Instead, the use of other country domestic price information as a suitable external benchmark is consistent with the principle of trying to achieve parity between the market conditions for the supply of goods to the producer in the country of export, with the other, benchmark country. This is not so easily achieved through an export price benchmark which reflects market conditions that cannot be accounted for through adjustments if required.

Applied here, as there is no verified or reliable domestic price information available concerning other countries, the Australian industry refers the Commission to the published price information available from MEPS (International) Ltd ("MEPS"). It is noted that the Commission considers MEPS "a reputable provider of steel price data"¹⁰, having purchased MEPS data for use in *Dumping and Subsidy Investigation No. 177* and *Review of Anti-Dumping Measures No. 285*. Indeed, MEPS steel price data is also endorsed on the Australian Steel Association's (ASA) website¹¹. This is significant, as the ASA is the peak membership association for steel trading companies and stockists/distributors of imported steel products.

MEPS publishes monthly domestic EXW billet prices, denominated in US\$/tonne for standard commercial quality steel billet for a number of domestic markets. It is not clear to the Australian industry whether or not the Commission has commissioned a MEPS report for this investigation, as it has previously done for other competitive cost benchmarking studies. If not, then the Australian industry submits that the Commission should do so prior to concluding the *Final Report No. 301*¹².

When selecting an appropriate domestic market benchmark the Commission should have regard to the volume of Chinese steel billet exported into those domestic markets. A recent report published by Wood MacKenzie indicates that Chinese steel billet is exported into neighbouring Asian and Middle-Eastern markets as 'square bar':

⁹ EPR Folio No. 190/142 at p. 55.

¹⁰ EPR Folio No. 285/022 at p. 2.

¹¹ <http://www.steelaus.com.au/global-steel-prices/> Accessed on 3 March 2016 (extract reproduced as NON-CONFIDENTIAL ATTACHMENT 1).

¹² *Final Report No. 301* is due to the responsible Assistant Minister on or before 29 March 2016.

“Chinese exports: what and where to?”

“Chinese steel exports are quite well spread around the world, although naturally China's neighbouring countries including South Korea and Southeast Asia take approximately half the total volume. Exports to the EU and the US combined accounted for just 10% of total exports in 2015.

...

“Product wise, flat products and long products accounted for nearly 90% of total exports, with the rest being tubes and other products. It is worth highlighting that since late 2014, Chinese steel mills have been exporting billet (semi-finished steel) under the HS code of alloyed square bar (finished steel) in order to avoid paying export tax on semi-finished steel and to claim VAT refund. We estimate that out of ~50M[illion] t[onnes] of longs exports, around 18M[illion] t[onnes] were actually exports of billet which were mainly destined for Southeast Asia and Middle East. This had some big implications on those markets where some steel mills have been cutting melting output and re-rolling imported billet instead.”¹³

The impact of this practice of exporting alloyed square bar as a means of competing with neighbouring regional domestic billet markets was recently expressed as follows:

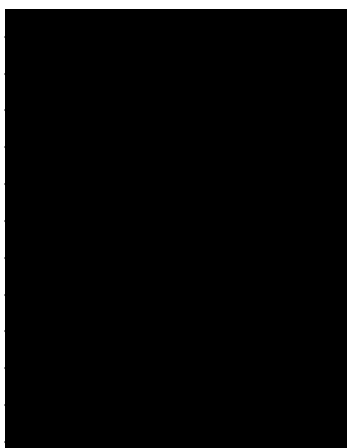
“During January, Taiwan imported 158,000 mt [metric tonnes] of China-origin billet – a large volume – at an average price equivalent to TWD ■■■ /mt. Much of the billet was delivered to re-rollers in Tainan, thus making the latter very competitive in rebar sales, the Feng Hsin [Feng Hsin Iron & Steel] official added. The rolling cost for converting billet to rebar in Taiwan is usually no more than TWD ■■■ /mt, according to Taiwan market sources.”¹⁴

Therefore, in selecting an appropriate competitive domestic benchmark market, regard should be had to the degree of penetration of the domestic market by Chinese steel billet, traded as alloyed square bar. According to the research of Wood Mackenzie cited above, South Korean, Southeast Asian and Middle Eastern Markets should be avoided as representative of competitive markets not affected by Chinese prices. Wood Mackenzie's conclusions are represented graphically below:

[The following graphic is CONFIDENTIAL for licensing and copyright reasons]

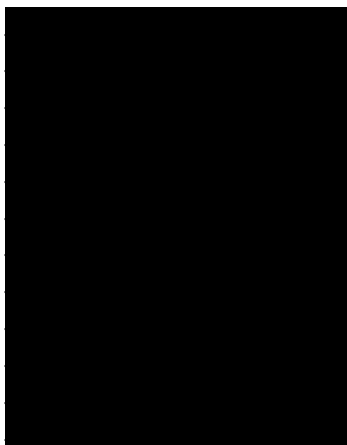
¹³ Wood Mackenzie: Insights, *Can trade cases constrain Chinese steel exports?* January 2016, pp. 2 – 3. Reproduced as CONFIDENTIAL ATTACHMENT B.

¹⁴ SBB Daily Briefing - 23 Feb 2016, 'Taiwan's Feng Hsin cuts rebar prices to combat Tainan rivals'. Reproduced as CONFIDENTIAL ATTACHMENT C.



Graphic 1: Chinese steel exports by product
(Source: CONFIDENTIAL ATTACHMENT B at p. 3)

[The following graphic is CONFIDENTIAL for licensing and copyright reasons]



Graphic 2: Chinese steel exports by destination
(Source: CONFIDENTIAL ATTACHMENT B at p. 3)

In summary, the Australian industry submits that a competitive cost benchmark should be selected by reference to domestic markets with limited exposure to Chinese alloyed square bar exports. Therefore, regard should be had for United States, European Union or African (in particular South African) domestic billet prices.

Indeed, if South African billet costs were to be selected as a competitive market benchmark cost, then it would address the Commission's objection to the use of a benchmark based on an Electric Arc Furnace ("EAF") steelmaking route¹⁵. Although this objection ignores the fact that regardless of the steelmaking route followed (Basic Oxygen Furnace ("BOF") or EAF), both compete in the same end-market, where competitive market conditions are present. In other words, in terms of commercial grade/quality billet, billet produced via the BOF route is completely substitutable with steel billet produced via the EAF process. Notwithstanding this reality, if the Commission is insistent that a domestic market demonstrating the same, or predominately similar, steel-making method must be applied as the competitive

¹⁵ SEF 301 at p. 20.

benchmark, then South Africa meets this requirement as it produces steel billet predominately via the BOF process.

Based on the 2008 review of steel manufacturers in South Africa¹⁶, it is best aligned with China in terms of the steel production capacity being predominantly Blast Furnace/BOF (68%) rather than EAF.

MEPS also references domestic billet pricing for India. However, the Australian industry cautions the Commission against consideration of Indian billet prices as a suitable benchmark since the European Union recently initiated a countervailing investigation in addition to the dumping investigation already in progress against tubes and pipes of ductile cast iron from India¹⁷. The alleged subsidies consist of: loans, loan guarantees and grants; exemption from certain taxes and duties; grants of mining rights and provision of land; as well as high-grade iron ore at sub-market prices. In light of the Indian subsidy allegations currently under investigation and their potential to artificially lower other iron/steel products' prices, including Indian billet, it is the Australian industry's view that Indian domestic billet is not a suitable benchmark option.

The Australian industry also notes the Commission's objection to the use of non-Asian market benchmarks on the basis that they do not reflect "a closer geographic match, delivery of raw materials and is a better match for substitution of costs".¹⁸ This statement, suggests that the Commission has assessed the comparative advantages of steel production in China, as against other Asian economies. The Australian industry suggests that the Commission has not done so, and any comparison appears to be based entirely on certain assumptions around geographic proximity. Indeed, the Appellate Body in *US – Softwood Lumber IV* reflected on the difficulties confronting Member-state administration when considering the selection of benchmarks other than private prices in the country of provision under Article 14(d) of the WTO Subsidies and Countervailing Measures Agreement:

"[W]hen choosing an alternative method for determining the adequacy of remuneration, it has to be kept in mind that prices in the market of a WTO Member would be expected to reflect prevailing market conditions in that Member; they are unlikely to reflect conditions prevailing in another Member. Therefore, it cannot be presumed that market conditions prevailing in one Member, for instance the United States, relate or refer to, or are connected with, market conditions prevailing in another Member, such as Canada for example. Indeed, it seems to us that it would be difficult, from a practical point of view, for investigating authorities to replicate reliably market conditions prevailing in one country on the basis of market conditions prevailing in another country. First, there are numerous factors to be taken into account in

¹⁶ NON-CONFIDENTIAL ATTACHMENT 3 at p. 7.

¹⁷ <http://www.livemint.com/Industry/d1mjG0ZXmCWZGBTq44RXzJ/EU-launches-subsidy-probe-over-Indian-iron-pipes.html> (Accessed 3 March 2016)

¹⁸ SEF 301 at p. 20.

making adjustments to market conditions prevailing in one country so as to replicate those prevailing in another country; secondly, it would be difficult to ensure that all necessary adjustments are made to prices in one country in order to develop a benchmark that relates or refers to, or is connected with, prevailing market conditions in another country, so as to reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale in that other country.

*“It is clear, in the abstract, that different factors can result in one country having a comparative advantage over another with respect to the production of certain goods. In any event, any comparative advantage would be reflected in the market conditions prevailing in the country of provision and, therefore, would have to be taken into account and reflected in the adjustments made to any method used for the determination of adequacy of remuneration, if it is to relate or refer to, or be connected with, prevailing market conditions in the market of provision.”¹⁹ [*emphasis added*]*

Acknowledging this difficulty facing the Commission, the Australian industry submits that the better approach is to ensure that the competitive market benchmark selected by the Commission is not affected, either directly or indirectly, by the market distortions present in Chinese billet prices. Therefore, the Commission’s concern around the so-called “geographic” comparative advantage allegedly said to exist between Asian steel producers should be secondary to the primary issue of selecting, to the extent possible, a competitive price benchmark. The Australian industry has suggested South African domestic billet prices as a suitable alternative benchmark. However, if the Commission does nevertheless consider itself compelled to apply a competitive benchmark that is also reflected of comparative advantages in steel production, then the Australian industry suggests that it need go no further than United States domestic billet prices, which are reflective of the “strong comparative advantage” the US has in steel production, following recent analysis:²⁰

“The main cost components of steel are capital, raw materials, energy, and labor.¹² The U.S. steel industry possesses distinct advantages with respect to each of these factors:

- *Over 60 percent of the steel made in the United States is produced in electric arc furnaces (“EAFs”), using scrap as the main raw material. Capital costs to build an EAF steel mill are only about one-third of the cost to build an integrated steel mill that produces steel from iron ore and coke.*
- *The United States is largely self-sufficient in all of the major raw materials for steelmaking, including iron ore, coal, and, especially, steel scrap.¹³*
- *Energy prices in the United States are generally lower than those in other countries.¹⁴ Moreover, EAFs use less than half the energy required to make steel from iron ore and coke.¹⁵*

¹⁹ Appellate Body Report, *US – Softwood Lumber – IV* at [108] & [109.]

²⁰ NON-CONFIDENTIAL ATTACHMENT 4, at pp. 3 -4.

- *Because U.S. labor is so efficient, labor accounts for less than 10 percent of the cost of producing steel.*¹⁶
- *The United States has the largest capital market, in terms of debt and equity outstanding, of any country in the world.*¹⁷

...

“[fn]12 For a typical cost model for steel production, see *Steel on the Net, Blast Furnace Route Steelmaking Costs 2013*, <http://www.steelonthenet.com/cost-bof.html> (cost model for basic oxygen furnace); *Steel on the Net, Electric Arc Furnace Steelmaking Costs 2013*, <http://www.steelonthenet.com/cost-eaf.html> (cost model for electric arc furnace).

“[fn]13 See U.S. Geological Survey, *Mineral Commodity Summaries 80 (steel scrap), 84 (iron ore) (2013)* (“*Mineral Commodity Summaries 2013*”); U.S. Energy Information Administration, *Quarterly Coal Report April – June 2013 at 2* (Oct. 2013).

“[fn]14 See U.S. Energy Information Administration, *Electricity Prices for Industry in Selected Countries*, http://www.eia.gov/countries/prices/electricity_industry.cfm; U.S. Energy Information Administration, *Natural Gas Prices for Industry for Selected Countries*, http://www.eia.gov/countries/prices/natgasprice_industry.cfm

“[fn]15 See Laplace Conseil, *The Future of Steel: How Will the Industry Evolve?*, OECD Directorate for Science, Technology, and Industry – Steel Committee, DSTI/SU/SC(2012)21, at 13 (Nov. 21, 2012) (“*The Future of Steel*”).

“[fn]16 See, e.g., *Steel Manufacturers Association, 2011 – 2012 Policy Statement 7* (Aug. 2011) (“*2011 – 2012 Policy Statement*”).

“[fn]17 Charles Roxburgh et al., *McKinsey Global Institute, Mapping Global Capital Markets 2011 25* (2011).

Furthermore, selection of a competitive cost benchmark based on United States domestic prices also has the advantage of not being exposed to significant volumes of Chinese steel exports – in 2014, only 5.1 million tonnes of steel were exported from China to NAFTA (North American Free Trade Agreement) countries²¹, compared to 52.8 million tonnes to Asian countries.²²

5.5.3 Determination of competitive market costs for billets

(a) Physical adjustments for alloy additions

The Commissioner has calculated the constructed normal value by substituting “the cooperating exporters’ fully absorbed steel billet CTM [cost to make] with the corresponding East Asia CFR import billet price for the month, minus a verified average amount of profit that Chinese billet manufacturers earn on their billet sales based on the best available information, which is verified weighted average profit figure from billet sales in China over the investigation period as found in case 300.”²³.

²¹ Comprising the United States, Canada and Mexico.

²² <https://www.worldsteel.org/dms/internetDocumentList/bookshop/2015/World-Steel-in-Figures-2015/document/World%20Steel%20in%20Figures%202015.pdf> (accessed 4 March 2015) at p. 27.

²³ SEF 301 at p. 21.

Notwithstanding the Australian industry's objection to an export price benchmark, it is noted the billets are non-alloy "SD290, Q235 or equivalent quality billets delivered to a main Asian port"²⁴. However, the evidence before the Commission is that the goods exported to Australia were alloyed. Unfortunately, no adjustment has been made to the billet for the addition of alloy.

During the verification of the exporter, Hunan Valin Xiangtan Iron & Steel Group Co.,Ltd (**Hunan Valin**), it was confirmed by the Commission that physical adjustments were considered necessary:

*"The visit team consider that an upwards adjustment for differences in alloy contents, namely boron and titanium, is required to ensure fair comparison to the export price. The visit team applied a weighted average over the investigation period adjustment to specific models for boron and titanium based on verified actual alloy costs observed in the CTMS data."*²⁵

However, no such adjustment was made for Hunan Valin in the SEF. No explanation for this omission has been advanced in the SEF.

In the case of Jiangsu Shagang Group Ltd (**Shagang**), the Commission appears to have completely overlooked the issue of whether not physical adjustments to the constructed normal value are required given the addition of alloy to the GUC. This matter should be clearly known to the Commission, and may be implied from the following commentary in the verification visit report for Shagang:

"Furthermore, Shagang stated that for the model [redacted] that is exported to Australia, [redacted] which is generally not used in domestic like goods."

However, the following independent third-party evidence clearly points to the addition chrome to exports of Shagang's rod in coils product:

*"BEIJING Asian Metal 4 Jun 15 - Jiangsu Province-based Shagang Group Co., Ltd Shagang Steel is one of Chinese long steel manufacturers. The mill currently holds wire rod export price unchanged and has no plan to overhaul its production lines in the near future. A source from Shagang Steel's **export** department reports that the **current offer for chrome added low-carbon wire rod SAE1008 Φ6.5mm is USD...**"*²⁶

Furthermore, the practice of adding alloys to exported steel goods by Chinese exporters in order to receive the substantial VAT rebates that apply for exports of alloyed products is well understood by the Commission²⁷. Therefore, the Australian

²⁴ SEF 301 at p. 19.

²⁵ EPR Folio No. 301/025 at p. 35.

²⁶ NON-CONFIDENTIAL ATTACHMENT 2.

²⁷ EPR Folio No. 300/048.

industry would think it highly unlikely in this instance, for two Chinese exporters with considerable export volumes to not be seeking the compensation available for export of alloyed goods.

Given that the Commission has formed a view in relation to the upward adjustment on account of alloy additions to the GUC, then the Australian industry asserts that these upward adjustments to the constructed normal value should now again be made.

(b) (Downward) adjustment for the average rate of profit for billet sales must be reversed

The Australian industry fails to understand why the Commissioner has reduced the non-Chinese (East Asian) benchmark competitive billet cost by an amount of profit relevant to Chinese producers of billet sold into the Chinese domestic market. With respect, the rate of profit earned by Chinese producers of billet that is not the subject of the competitive benchmark is not the question. If a downward adjustment to the competitive benchmark billet cost is to be made, then it should be the verified profit of the non-Chinese seller of the billet the subject of the competitive benchmark. Otherwise, to follow the Commission's approach would be to apply a wholly irrelevant rate of profit applicable in one market (i.e. Chinese domestic market subject to a particular market situation) to a sale into a wholly unrelated market (i.e. domestic competitive markets, or the Commission's proposed East Asia export market).

The requirement of a verified profit margin relevant to the underlying goods the subject of the sale is necessary as a result of the WTO jurisprudence concerning the related question of determination of an amount for profit under Article 2.2.2 of the *Anti-Dumping Agreement*. In that case, the WTO Disputes Settlements bodies have consistently interpreted the requirement of determining an amount for profit based on "actual data pertaining to production and sales of the like product when determining amounts for SG&A and profits"²⁸. Applied here, the Commission's approach fails the most basic precept of this rule, insofar it seeks to apply completely irrelevant amount for profit to non-Chinese sales of steel billet.

Separately, even if it is accepted that the Commission's approach to calculating the amount for profit earned on Chinese sales of billet is a sound one (which is not accepted, but expressly refuted), then it has all but overlooked the concerns expressed by the Commission in relation to the accuracy of the so-called, "verified" cost to make information of the exporters in the case of *Investigation No. 300* who also sold steel billet into the Chinese domestic market. For example in the case of Shandong Iron and Steel Company Limited, Laiwu Company:

"The verification team explained that it was not comfortable with the calculated CTM spreadsheet and advised that it would use the cost of production and billet costs from the accounting system records in its

²⁸ Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted on 22 July 2003 at [97], [98] and [101]

*calculations...*²⁹

Therefore, it is not open to the Commission to reduce the value of the non-benchmark steel billet by an amount for profit not relevant to those goods or the market from which those goods are supplied. If the Commission elects to apply an amount for profit, then it must be the actual data pertaining to profit within the benchmark market, assuming any profit is earned on those sales.

5.9 Dumping margin calculations

It is noted that under footnote 8 of the *Anti-Dumping Agreement*, the date of sale is interpreted to mean:

“Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.”

Unfortunately, the Commission has expressed in the *Dumping and Subsidy Manual* (December 2013) an interpretation of “date of sale” that suggests that any element of variation from the original purchase order date suggests “continuing negotiation” or “an element of informality continuing”³⁰.

In international trade, the placement and acceptance of a purchase order marks the date of sale. The general terms and conditions of such sale, typically allow the seller some flexibility (within an acceptable variance) in relation to the delivered volume and delivery date. Therefore, for the purpose of identifying the date of sale, it should properly be the date of acceptance of the purchase order by the importer (or trader) placed on the producer or exporter. The relevance of this earlier date, when compared to the Commission’s approach of treating the invoice date as the date of sale, is that the purchase order date is reflective of the producer’s costs at the time the price offer was made. Given the well documented volatility in steel input costs across the investigation period, this is critical to a proper alignment of the costs (and therefore, constructed normal values) applicable at the date of sale.

Indeed, the evidence from the two verified exporters appears to suggest that there is no departure whatsoever from the terms of sale established at the date of acceptance of the purchase order.

As matters currently stand in the SEF, unless the normal values applicable at the time of the purchase order for the GUC are determined, then the resulting dumping margins are understated.

²⁹ EPR 300/042 at p. 22.

³⁰ Anti-Dumping Commission, *Dumping and Subsidy Manual*, December 2013 at p. 60.

11 Proposed measures

The Australian industry observes that the Commission proposes to recommend that interim dumping duties (IDD) be calculated using the *ad valorem* duty method at the level of the full dumping margins calculated.

The Australian industry notes that the Commissioner is free to recommend to the Assistant Minister, within the limits prescribed by the *Customs Tariff (Anti-Dumping) Regulation 2013 (the Dumping Duty Act)*, the different types of duty. There is nothing in the WTO *Anti-Dumping Agreement* that explicitly identifies the form that the IDD must take, and there is nothing that explicitly prohibits the use of variable anti-dumping duties³¹.

The Australian industry submitted at the verification visit that the Commission should apply the combination of fixed and variable duty method. The Australian industry now points to the following facts verified in the course of the investigation that support the calculation of interim dumping duties using this method:

- (a) there is only one model or type of the goods;
- (b) there are exceedingly complex company structures with related parties in the case of both verified exporters – with particular concerns relevant to the accuracy of the information of exporters’ related trading entities;
- (c) there is a real advantage to downstream users in setting the IDD by reference to a minimum price (the variable component) in that it tends to stabilise prices quickly following the publication of the *Dumping Duty Notice* at the levels required to eliminate dumping and material injury to the Australian industry. The fixed and variable method of IDD calculation provides certainty to market participants when factoring in price revisions to the Australian market both in the short and medium terms. Indeed, the European Commission recently recognised this advantage in *European Union - Definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China et Ors*:

“...On the basis of the specific facts of the case, the Commission considered that a variable duty under the form of a minimum import price (MIP) duty would be the most appropriate form of measures in this case. On the one hand, such MIP would allow the Union producers to recover from the effects of injurious dumping. It would be a safety net to enable them to return to a sustainable profitability and incentivise them to make the necessary investments to produce proportionally more of the high-permeability product types of the like product. On the other hand, such MIP should also prevent any adverse effect of undue price increases after the investigation period which could have a significant negative impact on the users' business...”³²

³¹ Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WT/DS241/R, 22 April 2003 at [7.355]

³² Commission Regulation (EU) No 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of imports of certain grain-oriented flat-rolled products of silicon-electrical steel

Indeed, from the downstream users' perspective, as the goods are a commodity product, undumped goods from non-subject sources are available via established distribution channels. Therefore, it cannot be argued that the imposition of measures (whether calculated by the combination method, or otherwise) are punitive to downstream users. In fact, because the combination method achieves greater stabilisation of market prices following the imposition of measures, the impact is less "punitive" (if at all) on downstream users via the combination method.

- (d) although the "effective rate of duty" will fluctuate as the actual/dumping export price changes over time following implementation of measures, the *ad valorem* method cannot guarantee the effectiveness of the implemented measures in a falling market. This is because under a final duty assessment, the total unpaid duty in excess of the interim duty already paid must be waived.³³ As such, the *ad valorem* method is punitive to the Australian industry, as the measures have failed (to borrow from the language of the European Commission referred to above), "*to allow the [Australian] producers to recover from the effects of injurious dumping*"³⁴. On the other hand, the combination method of IDD calculation ensures that the measures are fully and effectively administered, with no risk of under-collection of IDD at the time of final duty assessment. The suggestion that the combination method has the risk of being punitive to the importer, ignores the role of the final duty assessment process, which ensures that the total interim duty overpaid in respect of all consignments to which the duty assessment relates, is repaid. Therefore, whereas the combination method cannot be punitive to either the Australian industry or importers, the *ad valorem* method can be punitive to the Australian industry in a falling market. This issue is explored further below.
- (e) given that there is no capacity to collect a short-fall in the effective rate of duty – thereby compounding injury to the Australian industry, and rendering the imposition of the duties ineffective – the fixed and variable method of calculating IDD ensures that there is symmetry within the administration between the economic interests of the domestic industry and exporters/importers of dumped goods; and
- (f) should the ascertained export price (AEP), comprising the variable component of the IDD calculation model, become out-of-date, then it would only be in the context of a falling market, in which case, exporter/importer interests may apply for a variable factors review to address the medium-term impacts (noting that importers have the option of applying for final duty assessments to address undumped transactions in the short-term, something that is not open to the Australian industry where insufficient duty has been collected).

('GOES') originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation ('Russia') and the United States of America (OJ L 284/109, 30.10.2015, at 284/131).

³³ Subsection 269Y(1), *Customs Act 1901*

³⁴ Refer fn 32.

The Australian industry notes the Commission’s *Guidelines on the Application of Forms of Dumping Duty* (November 2013) observes that a potential disadvantage of the *ad valorem* duty method is:

“*export prices might be lowered to avoid the effects of this duty*”³⁵

The Australian industry submits that this risk is particularly amplified in the case of a particular market situation finding, where the producer/exporter’s variable material costs are not reflective of market conditions and the capacity to drive down price to maintain market share is not confined by the commercial realities of market prices for input costs. Although the Australian industry observes some commentary that this may constitute a circumvention activity, the Australian industry does not consider it good policy for the Commission to knowingly apply ineffective measures with a caveat that a hitherto, materially injured Australian industry can separately, and at its own expense make application for redress. The asymmetrical burden placed on the Australian industry in such circumstances is further compounded by the timeframes for making such application for redress under the domestic legislation.

Further, shortly after the imposition of securities, the Australian industry alerted the Commission to attempts at circumvention.³⁶

Given the propensity of the verified exporters to lower the export price, the impact on the effectiveness of such action under the *ad valorem* method is demonstrated via the following model:

Ascertained normal value (ANV), \$/tonne		\$ 100	
Ascertained export price (AEP), \$/tonne		\$ 80	
	Year 1	Lowered price *	Increased Price *
Actual Export Price (DXP), \$/tonne	80	70	90
Combination duty method			
-Fixed Amount (<i>ad valorem</i>) 25%	\$ 20	\$ 20	\$ 23
-Variable amount (where DXP < AEP) AEP-DXP	\$ -	\$ 10	\$ -
IDD calculated using "combination" method	\$ 20	\$ 30	\$ 23
Final duty payable, \$/tonne ANV-DXP	\$ 20	\$ 30	\$ 10
less refund	\$ -	\$ -	\$ 13
Total Final Duty Liability	\$ 20	\$ 30	\$ 10
Effectiveness of measures	100%	100%	100%

Ascertained normal value (ANV), \$/tonne		\$ 100	
Ascertained export price (AEP), \$/tonne		\$ 80	
	Year 1	Lowered price *	Increased Price *
Actual Export Price (DXP), \$/tonne	80	70	90
Ad valorem method			
<i>ad valorem</i> rate 25%	20	17.5	22.5
IDD calculated using "ad valorem" method	20	17.5	22.5
Final duty payable, \$/tonne ANV-DXP	20	30	10
less refund	0	0	12.5
Total Final Duty Liability	20	17.5	10
Effectiveness of measures	100%	58%	100%

Notes: * Assume no change in normal values

Notes: * Assume no change in normal values

Clearly, the combination method achieves the most effective outcomes from the anti-dumping system, scoring perfect alignment between the calculation of IDD and final duty liability. In an environment of lowering prices, the *ad valorem* method achieves a 42% loss in effectiveness, resulting in an under-collection of duty which comes at the expense of the Australian industry’s ability to recover from injurious dumping.

It is for these reasons that the Australian industry has consistently advocated for the calculation of IDD according to the fixed and variable method, in cases such as this, for commodity-type goods.

³⁵ Anti-Dumping Commission, *Guidelines on the Application of Forms of Dumping Duty* (November 2013) at p. 11.

³⁶ EPR 301/020.

11.2 Imposition of dumping duties retrospectively

The Australian industry disagrees with the Commission's assessment that there has not been "sufficient evidence ... uncovered to support the application of retrospective dumping duties" under subsection 269TN(3) of the *Customs Act*.

The Australian industry observes that the verified exporters in this case have been the subject of dumping investigations for similar goods by overseas administrations. Specifically, as indicated in the Australian industry's original application, the United States Department of Commerce International Trade Administration determined that the verified exporters had dumped into the United States market, similar goods. The dumping margins for Hunan Valin and Jiangsu Shagang in that case were found to be 106.19%.³⁷ The date of the determination occurred during the current investigation period (19 November 2014).

Therefore, in this case, the Australian industry fails to see how importers may reasonably assert that as and from the 23 September 2015³⁸, they did not know, or could not have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry. In this case, the importers' *mala fides* in relation to dumped imports during the retrospective publication period are difficult to deny in circumstances where in the initiation of the investigation was published on 1 July 2015.

Date 7 March 2016

SIGNED

OneSteel Manufacturing Pty Ltd

For the Australian industry.

³⁷ NON-CONFIDENTIAL ATTACHMENT 5.

³⁸ By notice published on 21 December 2015, securities were taken from 22 December 2015.