



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**TERMINATION REPORT
NO. 416**

**ALLEGED DUMPING OF STEEL ROD IN COILS
EXPORTED TO AUSTRALIA FROM
THE REPUBLIC OF INDONESIA,
THE REPUBLIC OF KOREA AND
THE SOCIALIST REPUBLIC OF VIETNAM**

26 March 2018

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the Act	<i>Customs Act 1901</i>
the applicant	OneSteel Manufacturing Pty Ltd, now trading as Liberty OneSteel (OneSteel)
the Assistant Minister ¹	the Assistant Minister for Science, Jobs and Innovation
BOF	basic oxygen furnace
China	the People's Republic of China
CMC	Commercial Metals Pty Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
EAF	electric arc furnace
EPR	electronic public record
EQR	exporter questionnaire response
EVN	Vietnam Electricity
FIS	Free Into Store
FOB	Free on Board
GDP	gross domestic product
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Gol	Government of Indonesia
GoV	Government of Vietnam
Gunung	PT Gunung Raja Paksi
Hoa Phat	Hoa Phat One Member Company
IDD	interim dumping duty
the injury assessment period	from 1 January 2013
the investigation period	1 April 2016 to 31 March 2017
IPP	import parity price
Ispat	PT Ispat Indo
the Manual	<i>Dumping and Subsidy Manual</i>
Master Steel	PT The Master Steel Manufactory

¹ On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation.

PUBLIC RECORD

Material Injury Direction	<i>Ministerial Direction on Material Injury 2012</i>
mm	millimetres
NIP	non-injurious price
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 198	<i>Anti-Dumping Commission Report No. 198</i>
REP 240	<i>Anti-Dumping Commission Report No. 240</i>
REP 301	<i>Anti-Dumping Commission Report No. 301</i>
RIC	steel rod in coils
ROI	return on investment
Sanwa	Sanwa Pty Ltd
SEF	statement of essential facts
SEF 416	<i>Statement of Essential Facts No. 416</i>
Stemcor	Stemcor SEA Ltd
the subject countries	collectively, Indonesia, Korea and Vietnam
Turkey	the Republic of Turkey
undumped goods	goods that are not dumped, or are <i>de minimis</i> (i.e. dumped at a rate of less than 2 per cent)
USP	unsuppressed selling price

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report relates to the investigation by the Anti-Dumping Commission (the Commission) of the allegations made by OneSteel Manufacturing Pty Ltd, now trading as Liberty OneSteel (OneSteel)² that certain steel rod in coils (RIC, or the goods) exported to Australia from the Republic of Indonesia (Indonesia), the Republic of Korea (Korea) and the Socialist Republic of Vietnam (Vietnam) (collectively, the subject countries) at dumped prices has caused material injury to the Australian industry producing like goods.

1.2 Authority to make decision

1.2.1 General

Division 2 of Part XVB of the *Customs Act 1901* (the Act)³ describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner of the Anti-Dumping Commission (the Commissioner) in conducting investigations in relation to goods covered by an application under subsection 269TB(1) for the purpose of making a report to the Assistant Minister for Jobs, Science and Innovation (the Assistant Minister).

1.2.2 Preliminary affirmative determination

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

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made.⁴

On 7 August 2017, being 60 days after the initiation of the investigation,⁵ the Commissioner published a status report.⁶ As noted at section 1.2.2 of the statement of essential facts (SEF) and for the reasons set out in this report, no PAD was made during this investigation as the Commissioner was not satisfied that there appeared to be

² At the time of making its application, OneSteel Manufacturing Pty Ltd was subject to a deed of company arrangement. On 1 September 2017, OneSteel Manufacturing Pty Ltd was acquired by the GFG Alliance and rebranded as Liberty OneSteel, a division of the Liberty Steel Group.

³ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

⁴ The PAD Direction is available on the Federal Register of Legislation website at www.legislation.gov.au.

⁵ It is noted that day 60 in relation to this investigation was 6 August 2017, however as this day fell on a Sunday, the effective due date was the following business day.

⁶ Document No. 9 on the electronic public record (EPR).

sufficient grounds for the publication of a dumping duty notice in respect of RIC exported to Australia from the subject countries.

1.2.3 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation arising from an application under section 269TB, or such longer period as allowed under subsection 269ZHI(3),⁷ place on the public record, a SEF on which the Commissioner proposes to base a recommendation to the Assistant Minister in relation to the application.⁸

The SEF was originally due to be placed on the public record by 25 September 2017. An extension of time was granted until 27 October 2017.⁹ *Statement of Essential Facts No. 416* (SEF 416) was published on the Commission website on 27 October 2017.¹⁰

1.2.4 Final report

The Commissioner's final report and recommendations in relation to this investigation was originally due to be provided to the Assistant Minister on or before 9 November 2017.¹¹ As with the SEF, an extension of time was granted to complete the final report.¹² Further extensions of time were subsequently granted, with effect that the due date for the final report is 26 March 2018.¹³

1.3 Findings and conclusions

A summary of the Commissioner's findings and conclusions is provided below.

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that RIC produced in Australia (i.e. locally produced RIC) are like goods to the goods the subject of the application.

The Commissioner is satisfied that there is an Australian industry producing like goods consisting of OneSteel, and that RIC produced by OneSteel is wholly manufactured in Australia.

⁷ On 14 January 2017, the Assistant Minister delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to Anti-Dumping Notice (ADN) No. 2017/10 for further information.

⁸ Subsection 269TDAA(1).

⁹ Document No. 16 on the EPR refers.

¹⁰ Document No. 24 on the EPR refers

¹¹ Section 269TEA.

¹² Document No. 16 on the EPR refers.

¹³ Document Nos. 31, 35 and 36 on the EPR refer.

1.3.2 Australian market (Chapter 4)

The Australian market for RIC is supplied by OneSteel and imported goods, predominantly from the subject countries.

1.3.3 Particular market situation (Chapter 5)

The Commissioner is not satisfied that, as claimed by the applicant, a particular market situation exists such that domestic sales in Vietnam are not suitable for use in determining a price under subsection 269TAC(1).

1.3.4 Dumping (Chapter 6)

The Commissioner considers that:

- all RIC exported to Australia from Korea was at dumped prices during the period 1 April 2016 to 31 March 2017 (the investigation period);
- RIC exported by Hoa Phat One Member Company (Hoa Phat) from Vietnam was not at dumped prices;
- RIC exported to Australia by PT Ispat Indo (Ispat) from Indonesia was at dumped prices, however the margin of dumping was below 2 per cent and as such is *de minimis*;
- all other RIC exported from Indonesia was at dumped prices; and
- the volume of dumped goods from the subject countries was not negligible.

The Commission's assessment of the dumping margins for RIC exported to Australia from the subject countries is at Table 1, below:

Country	Exporter/Manufacturer	Dumping margin
Indonesia	Ispat	1.0%
	PT Gunung Raja Paksi (Gunung)	10.6%
	All other exporters	16.0%
Korea	All exporters	20.9%
Vietnam	Hoa Phat	-1.3%
	All other exporters	-1.3%

Table 1 - Dumping margin summary

1.3.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner considers that the Australian industry has experienced material injury in the forms of:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced sales revenue; and
- reduced return on investment (ROI).

1.3.6 Causation assessment (Chapter 8)

The Commissioner considers that the injury, if any, caused to the Australian industry by the dumped goods, was negligible.

1.3.7 Non-injurious price (Chapter 9)

The Commissioner considers that the non-injurious price (NIP) should be calculated for all exporters from the subject countries by reference to an unsuppressed selling price (USP) equal to the Australian industry's weighted average selling price in the investigation period, less any costs incurred in getting the goods to the Free on Board (FOB) point of export.

The Commissioner considers that due to the NIP being above the normal value calculated for all exporters, the Assistant Minister would not be required to have regard to the lesser duty rule.

1.4 Termination of the investigation

Section 269TDA outlines when the Commissioner must terminate an investigation.

The dumping margin for Hoa Phat, and for all other exporters from Vietnam, is negative (Chapter 6 refers). Accordingly, the Commissioner has terminated the investigation in accordance with subsection 269TDA(1)(b)(i) in so far as it relates to all exporters from Vietnam.

The dumping margin for RIC exported to Australia by Ispat was negligible (Chapter 6 refers). Accordingly, the Commissioner has terminated the investigation in accordance with subsection 269TDA(1)(b)(ii) in so far as it relates to that exporter.

Under subsection 269TDA(13), if the Commissioner is satisfied that the injury, if any, to the Australian industry caused by dumped goods is negligible, the Commissioner must terminate the investigation in so far as it relates to that country. The Commissioner is satisfied that the goods exported by all exporters (other than by Ispat and Hoa Phat) were dumped, and that the injury, if any, to the Australian industry caused by those dumped goods is negligible (Chapter 8 refers). On this basis, in accordance with subsection 269TDA(13), the Commissioner has terminated the investigation in respect of all remaining exporters.

2 BACKGROUND

2.1 Initiation

The Commissioner initiated this dumping investigation on 7 June 2017, following receipt of an application from OneSteel.

In accordance with subsection 269TC(1), the Commission examined the application and was satisfied that the application complied with the requirements of subsection 269TB(4), that there is an Australian industry producing like goods, and that there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

Details of the initiation decision made by the Commissioner are available in Anti-Dumping Notice (ADN) No. 2017/79¹⁴ and *Consideration Report 416*,¹⁵ which are available on the Commission website.¹⁶

The Commission has established an investigation period (1 April 2016 to 31 March 2017) for the purpose of examining whether the goods exported from the subject countries was at dumped prices. The Commission has also examined the period from 1 January 2013 (the injury assessment period) for the purpose of establishing trends in the market and considering whether the Australian industry has experienced material injury and whether it has been caused by the dumping of the goods.

2.2 Previous cases

2.2.1 Investigation 240

On 17 June 2015, anti-dumping measures were imposed on RIC exported to Australia from Indonesia for all exporters other than Ispat, and for all exporters from Taiwan.¹⁷ This followed the Commissioner's dumping investigation into RIC exported to Australia from Indonesia, Taiwan, and the Republic of Turkey (Turkey) as reported in *Anti-Dumping Commission Report No. 240* (REP 240).

On 14 May 2015, the Commissioner terminated the investigation in so far as it related to exports from Indonesia by Ispat and all exports from Turkey.¹⁸

2.2.2 Reinvestigation 318

On 16 October 2015, the Anti-Dumping Review Panel (ADRP) requested that the Commissioner re-investigate certain findings from REP 240. *Reinvestigation Report 318*

¹⁴ Document No. 3 on the EPR.

¹⁵ Document No. 4 on the EPR.

¹⁶ www.adcommission.gov.au, case record [No. 416](#).

¹⁷ ADN No. 2015/76 refers.

¹⁸ ADN No. 2015/59 refers.

found that the injury caused by goods dumped by Gunung were unable to positively be identified as causing injury to the Australian industry.¹⁹

On 22 August 2016, the relevant Minister revoked the original decision to impose dumping duties on the goods exported from Indonesia by all exporters other than Ispat.

2.2.3 Investigation 301

On 22 April 2016, anti-dumping measures were imposed on RIC exported to Australia from the People's Republic of China (China), following the investigation reported in *Anti-Dumping Commission Report No. 301* (REP 301).²⁰ Measures were imposed as it was found that during the relevant investigation period, RIC was exported from China at dumped prices which caused material injury to the Australian industry producing like goods.

2.2.4 Reinvestigation 361

On 22 August 2016, the ADRP requested that the Commissioner re-investigate certain findings from REP 301. The Commission's *Reinvestigation Report 361* found that the exporters had exported RIC to Australia at dumped prices, and that this dumping was injurious, but the calculated dumping margins were incorrect.

On 13 January 2017, the relevant Minister revoked the original decision and replaced it with a decision imposing anti-dumping measures based on the corrected variable factors.

2.3 Submissions from interested parties

The Commission has received several submissions during the investigation. The matters raised in submissions have been addressed throughout this report.

2.3.1 Submissions received prior to publication of the SEF

The following table lists the submissions received prior to the publication of the SEF.

¹⁹ The report can be found on the ADRP website, www.adreviewpanel.gov.au.

²⁰ ADN No. 2016/47 refers.

PUBLIC RECORD

Interested Party	Date Published	EPR Document No.
Government – Government of Indonesia	7 August 2017	8
Exporter – POSCO	14 August 2017	10
Australian industry (OneSteel)	8 September 2017	13
Australian industry (OneSteel)	28 September 2017	18
Australian industry (OneSteel)	11 October 2017	19
Government – Government of Vietnam	23 October 2017	21

Table 2: Summary of submissions received prior to publication of the SEF

In the Commissioner's opinion, only consideration of the submission from the Government of Vietnam (GoV) would have prevented the timely placement of the SEF on the public record (as per subsection 269ZHF(3)). Accordingly, all but the last of these submissions was considered in preparing the SEF.

2.3.2 Submissions received in response to the SEF

The following table lists the submissions received after the publication of the SEF.

Interested Party	Date Published	EPR Document No.
Australian industry (OneSteel)	27 November 2017	25
Exporter – POSCO	29 November 2017	28
Exporter – Hoa Phat	29 November 2017	29
Government – Government of Vietnam	29 November 2017	30
Australian industry (OneSteel)	2 January 2018	32
Exporter – Ispat	2 January 2018	33
Exporter – Hoa Phat	2 January 2018	34

Table 3: Summary of submissions received after publication of SEF

Interested parties were formally granted additional time to provide submissions in response to the SEF, following a request by OneSteel.²¹ None of the submissions received following the publication of the SEF have, in the Commissioner's opinion, prevented the timely completion of this report (as per subsection 269ZHF(3)).

All of the submissions listed in the above tables were considered in preparing this report.

²¹ Document Nos. 25 and 26 on the EPR refer.

2.4 Public Record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2409 to make an appointment), or online at www.adcommission.gov.au.

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

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that RIC manufactured by the Australian industry have characteristics closely resembling the goods under consideration, and are therefore like goods.

3.2 Legislative framework

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

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

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

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

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

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

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

3.3 The goods

The goods subject of the application are as follows:

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

The goods covered by this application include all steel rods meeting the above description of the goods 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.

OneSteel provided the following further information about the goods:

Rod in coils, also known as “wire rod” or “rod for mesh” is sold into the Australian market typically in a range of diameters from 5.5 mm to 18.5 mm. Whilst rod is typically circular in cross section, it can also be supplied in a range of non-circular shapes. This application only includes rods in coil with a cross section of less than 14 mm and excludes products 14 mm and above.

The rod in coils that are the subject of this application are sold in a range of grades that include low, medium and high carbon grades, whether or not containing alloys.

3.3.1 Tariff classification

The goods are subject to the following tariff classification, in accordance with schedule 3 of the *Customs Tariff Act 1995*.

Tariff code	Statistical code	Unit	Description	Duty rate
7213.91.00	44	tonne	Rod in coils – non alloy (≤14 mm in diameter)	Free
7227.90.90	02	tonne	Rod in coils – other alloy (≤14 mm in diameter)	Free
7227.90.90	04 ²²	tonne	Rod in coils – other alloy (other)	Free

Table 4 – Relevant tariff classifications

3.4 Like goods

The Commissioner’s assessment of whether locally produced RIC is identical to, or closely resembles, the goods the subject of the application is based on a comparison of the information provided by OneSteel in its application, the verification visits conducted to OneSteel, importers and exporters, and the Commission’s previous like goods assessment in Investigation 240.

3.4.1 Physical likeness

Based on the grade information containing detailed information on section diameter, chemical analysis and coil dimensions, the goods produced by OneSteel appear to be physically consistent with those examined during exporter verification. The billet grades used to produce locally made RIC and imported RIC are in accordance with Australian Standard AS1442:2007, and the domestic sales of the exporters are made to an international equivalent with a similar chemical composition and similar functional properties.

The Commission is satisfied that there is a physical likeness between the goods the subject of the application and locally produced RIC.

²² In OneSteel’s application, the statistical code was provided as 42. However, the Commission notes that statistical code 42 does not exist under 7227.90.90 and *Rod in coils – other alloy (other)* category is designated by statistical code 04.

3.4.2 Commercial likeness

The Commission observed during importer and exporter verification visits that close price competition exists in the market between the imports of RIC and locally produced goods. This indicates that there is low product differentiation and a high degree of substitutability.

The Commission found that imported RIC and locally produced RIC are sold in the same markets to common users.

The Commission is satisfied that there is a close commercial likeness between the domestically produced goods and the goods the subject of the application.

3.4.3 Functional likeness

The goods under consideration and locally produced RIC are both primarily drawn into wire and made into mesh, which is used to reinforce concrete products. Other uses include

- wire manufacturing;
- mine mesh manufacturing;
- general manufacturing; and
- reinforcing ligatures.

Based on verification visits conducted for this investigation, and information obtained in Investigation 240, the Commission is satisfied that imported RIC and locally produced RIC are both used for the same end uses. Further, the Commission has found that importers do not consider any alternative products to be a suitable substitute for RIC.

The Commission is satisfied that there is functional likeness between the goods and locally produced RIC.

3.4.4 Production likeness

The Commission has found that RIC produced in Australia and the goods under consideration were manufactured in a similar manner. All RIC is manufactured from steel billet. The Commission understands that there are two methods commonly used to produce steel billets: an electric arc furnace (EAF), and basic oxygen furnace (BOF). The major raw material input is consistent for the relevant steel production method, namely scrap steel for billet produced in an EAF, or iron ore for billet produced in a BOF.

The Commission therefore considers that there is a production likeness between the goods exported from the subject countries and locally produced RIC.

3.4.5 Finding

Based on the analysis above, the Commission considers that locally produced RIC closely resembles the goods the subject of the application and therefore are like goods.

3.5 The Australian industry

3.5.1 Legislative framework

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

3.5.2 OneSteel’s production process

OneSteel is the only manufacturer of RIC in Australia, and therefore is the Australian industry for the purposes of this investigation. The production process for RIC made by OneSteel is conducted at multiple sites:

- the production of steel billet at its steelworks in Whyalla, and steel making facilities in Laverton North and Rooty Hill; and
- the rolling of steel billet into rod at manufacturing plants in Newcastle and Laverton.

In addition to RIC, OneSteel produces a range of finished long products at its manufacturing facilities, including alloy round bar, reinforcing or deformed bar (rebar), hot rolled structural steel sections, merchant bar and rail products.

The Commission observed OneSteel’s production process of RIC and found it to be unchanged from its previous investigations. OneSteel produces steel billets through its BOF or EAF. Billets are then transported to OneSteel’s manufacturing facilities where they are reheated and passed through a series of rolling stands. Rolling stands reduce the cross sectional size of the billet, while changing the shape from a square section to a circular one. The rods are then formed into coils and cooled along a conveyor belt, compressed and tied.

3.5.3 Finding

The Commission considers that RIC produced by OneSteel is wholly manufactured in Australia.

4 AUSTRALIAN MARKET

4.1 Finding

The Commission finds that the Australian market for RIC is supplied on an ongoing basis by OneSteel and imports predominantly from Indonesia and Vietnam, with supply to a lesser extent from Korea, Malaysia, New Zealand, Spain and Turkey.

4.2 Introduction

RIC is an intermediary good that is further processed by cold drawing through a die to produce a wire. The predominant end use is reinforcing mesh which is used to reinforce concrete in the residential, commercial and engineering construction industries. Other market sectors include bedding and auto springs, rural and manufacturers' wires, rope and strand products, and special purpose wire.

OneSteel is the largest supplier of RIC by value and volume in the Australian market, and sells to related parties and unrelated customers. The Australian market is supplied by imports from the subject countries together with imports from Malaysia, New Zealand, Spain and Turkey.

As noted in Chapter 2, the Commission has previously found the existence of dumped goods in Australia. In REP 240 and *Reinvestigation Report 318* it was found that the goods imported from Taiwan were dumped and causing material injury to the Australian industry. REP 301 and *Reinvestigation Report 361* also found that goods imported from China were dumped and causing material injury to the Australian industry.

This report refers to imports from these countries (China and Taiwan), both prior and subsequent to the publication of the relevant dumping duty notices, as 'countries subject to measures'.

4.3 Pricing

OneSteel prices its goods to unrelated customers on the basis of an import parity price (IPP), with an additional premium. OneSteel provides a competitively priced offer to its related parties based on the prices agreed with its unrelated customers.

The Commission examined the nature of the relationship between OneSteel and its related party customers and the impact, if any, on sales of RIC in these circumstances. OneSteel's related party customers are located in a different division within the same corporate group of companies. OneSteel's related party customers compete against unrelated customers in the downstream market of processed RIC goods. Due to the nature of competition in the downstream market, OneSteel claims that prices to related parties are necessarily determined to allow those parties to be competitive, however remain at arms length.

The Commission compared OneSteel's sales of RIC to related parties and unrelated customers. An analysis of the sales process during the verification visit confirmed that sales orders placed by the related parties are completed in the same manner as for unrelated customers; the net price to related parties is comparable to that of an unrelated

customer and they are subject to the same delivery terms and costs as unrelated customers.²³ Payment terms are also the same for related and unrelated customers and are accounted for as revenue in the sales management system. This comparison shows that the price to related parties is no more favourable than prices to unrelated customers. This is consistent with the Commission's findings in REP 240 and REP 301.

4.4 Market structure

4.4.1 Distribution channels

The Australian market for RIC is supplied by OneSteel, a number of importers and directly by some overseas manufacturers. The distribution channels for RIC are demonstrated in Figure 1 below:

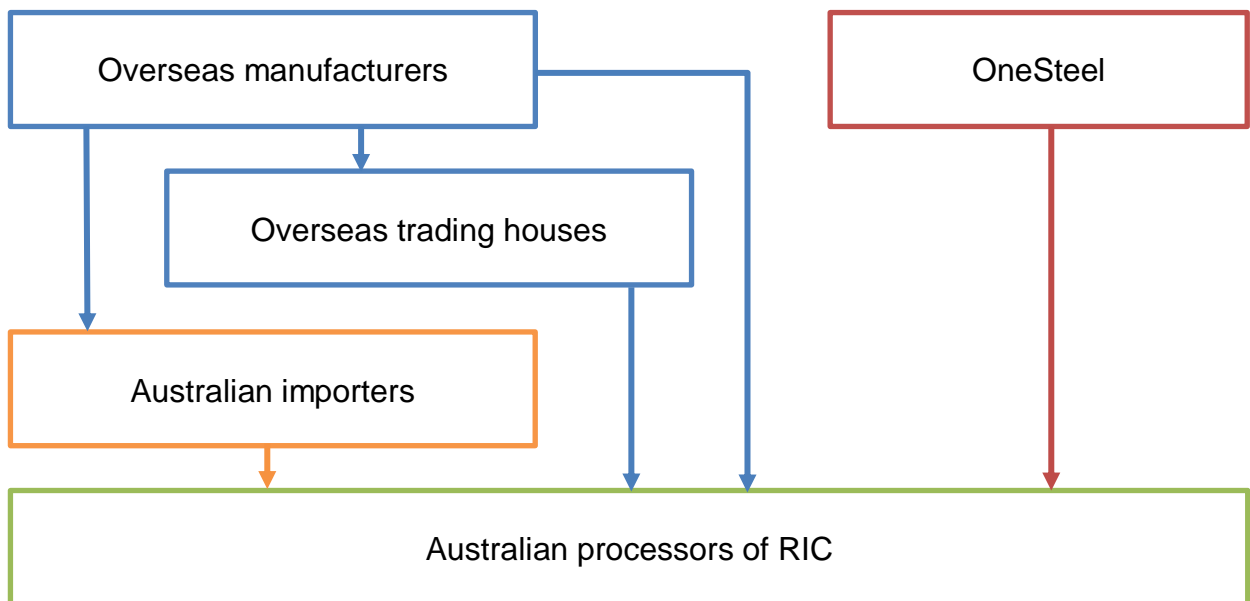


Figure 1 – Australian distribution channels

4.4.2 OneSteel

OneSteel competes with importers and overseas manufacturers of RIC to supply processors, predominantly of reinforcing mesh, which consumes the majority of RIC in the Australian market.

The Commission found that OneSteel supplies all major Australian processors of RIC. The Commission found that OneSteel's sales to all unrelated parties are of like goods from its own production. OneSteel made one sale of imported goods to a related party in the period under investigation, due to a forecast short-term demand surge which OneSteel was unable to supply. This importation was not found to be material, due to being less than one per cent of OneSteel's sales in the period.

²³ For further information refer to the OneSteel verification report (Document No. 12 on the EPR).

4.4.3 Importers

The Commission identified a number of importers of the goods from the subject countries during the consideration period. Each of these were sent an importer questionnaire for completion. In addition, Commercial Metals Pty Ltd (CMC) identified itself as an importer of the goods, as its imports had been incorrectly declared under a different tariff code.

Complete importer questionnaire responses were received from CMC, Stemcor SEA Ltd (Stemcor) and Sanwa Pty Ltd (Sanwa). Visits were conducted to each of these companies, where the data submitted was verified and found to be relevant, accurate and complete.²⁴

During the investigation, the Commission received two requests from OneSteel for further details regarding the verification reports for Sanwa²⁵ and CMC.²⁶ These are addressed as follows.

4.4.3.1 Sanwa

Reconciliation to the audited financial statements

OneSteel notes that the verification team was unable to verify the sales listing to the audited financial statements. The verification team has clarified that the team did not reconcile all sales to financial statements, as statements were not available for the full period under investigation at the time. This noted, the verification team did not find any issues with the verification of the completeness of the sales listing.

Completeness of import listing

OneSteel claims that the Commission has relied on the import listing as a full and complete record of the imports. The import listing was not used to request those sales from the importer, instead it provided a check as part of the verification process. The verification team did not find any evidence of missing transactions or that the goods had been declared incorrectly.

Verification to source documents

OneSteel requested information regarding the nexus between the importation of goods and the sales of those goods, as required by subsection 269TAB(1)(b)(iii). The Commission does not consider it necessary to address the requirements of subsection 269TAB(1)(b)(iii) in situations where the export price is established in accordance with subsection 269TAB(1)(a).

The verification team was provided documentary evidence linking the imports selected for verification with the relevant sales. The verification report did not state that a nexus was

²⁴ Document Nos. 14, 17 and 23 on the EPR.

²⁵ Document No. 18 on the EPR.

²⁶ Document No. 19 on the EPR.

demonstrated as there were no exceptions, and as such under ADN No. 2016/30 there is no requirement to report that an exception had been found.

Calculation of profit

OneSteel has requested further information regarding the verification team's satisfaction of the profitability of individual consignments of goods, and notes that the weighted average FOB export price by supplier was calculated in addition to the profit for the selected shipments.

The Commission has confirmed that the weighted average FOB price was calculated by supplier. However, in assessing whether Sanwa made a profit on the sale of goods it imported, the Commission chose to analyse twelve selected transactions. Each of the selected transactions was profitable. In making this assessment, the weighted average FOB price was not used. The verification team calculated the profitability of each of the selected transactions with regard to the specific purchase price of that import.

Satisfaction as importer

OneSteel has requested that the Commission specify how the verification team satisfied itself that Sanwa was the beneficial owner at the time of importation. The Commission has confirmed that the satisfaction of this requirement was done on the basis of documentary evidence provided as part of the verification process. The specific information used to establish this satisfaction is contained in Confidential Attachment 1 to the verification report.

4.4.3.2 CMC

Recoverability of sale

OneSteel has requested clarification on whether the sale of a shipment at a loss was recoverable in a reasonable period of time. OneSteel also requested if the Commission had considered the fully absorbed cost of the shipment when assessing recoverability.

The Commission has confirmed that the loss on the shipment was recoverable in a reasonable period of time, as the loss was more than compensated by the profits of the other 11 shipments, and that this assessment is based on the fully absorbed cost. Furthermore, CMC was profitable when considering all sales of RIC in the period, which included the shipment concerned.

On this basis, the Commission considered that points 3 and 4 of the submission were not relevant.

4.5 Market size

4.5.1 Demand variability

Noting that the main end use for RIC is in reinforcing concrete in the residential, commercial and engineering construction industries, the Commission has found that demand is in line with construction cycles. As such, there is an annual dip in the first quarter of each calendar year of the injury assessment period (coinciding with the

summer period, during which construction activity traditionally slows) while being fairly steady in the remaining quarters.

4.5.2 Annual consumption of RIC

The Commission's analysis shows that, for the investigation period, the Australian RIC market size was between 600,000 and 650,000 metric tonnes. This reflects growth of approximately 10 per cent from the total market in 2013.

Figure 2, below, depicts the RIC market size in Australia during the injury assessment period. This is based on the verified data from OneSteel, importers and exporters plus the Australian Border Force (ABF) import database (**Confidential Attachment 1** refers).

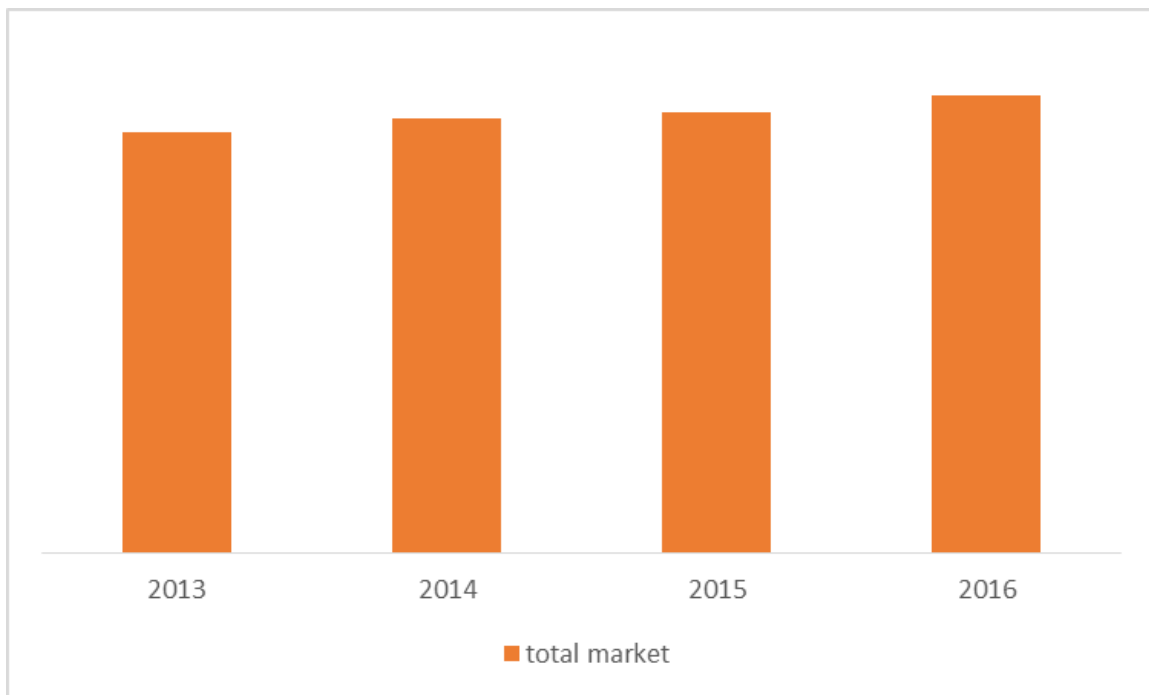


Figure 2 – Australian RIC market size

Figure 3 shows the composition of the market between the Australian supply, imports from the subject countries, imports from countries currently subject to measures and other countries.

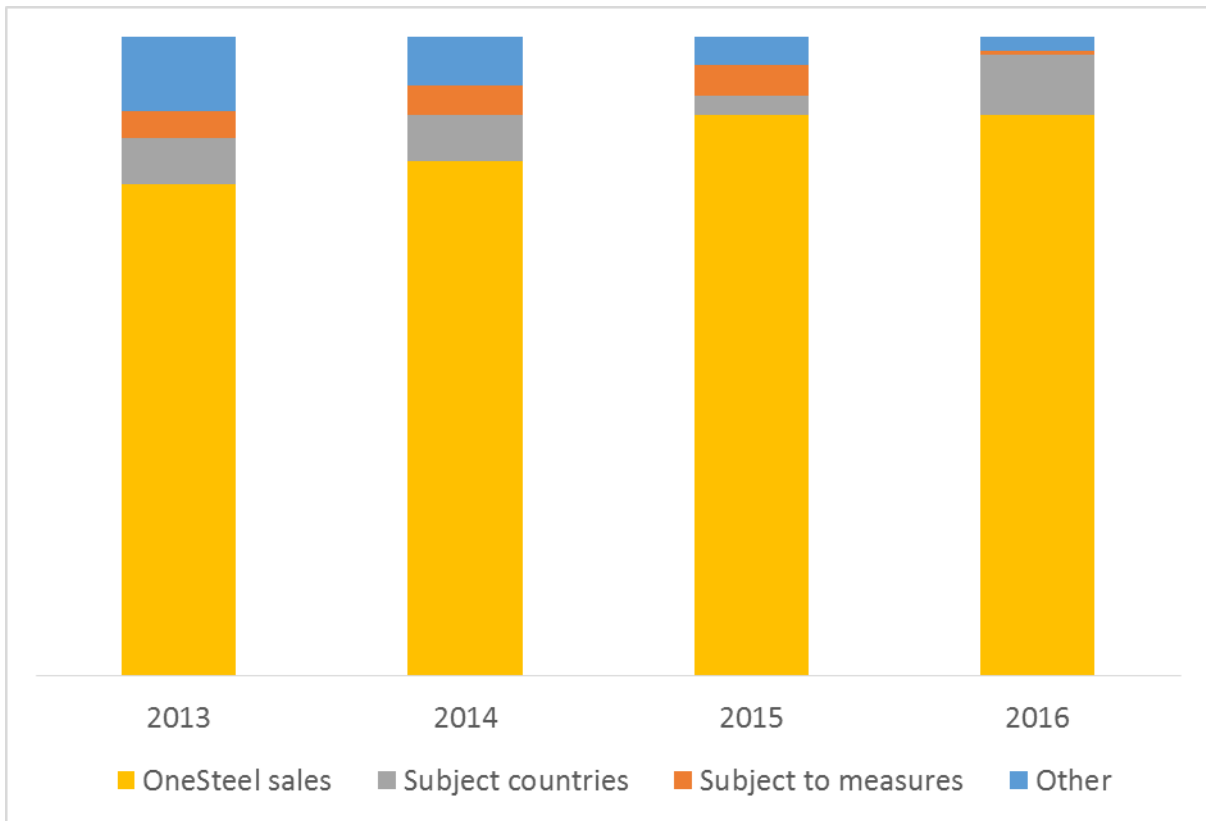


Figure 3 – Source of supply for RIC in Australia (per cent of market total)

4.5.3 Volume of imports

The Commission found that within the investigation period, Indonesia and Vietnam were responsible for supply of more than 88 per cent of imports from June 2016 to March 2017. As demonstrated in Figure 4, with the exception of July-September quarter of 2015, combined imports from Indonesia and Vietnam have been responsible for 23 per cent or more of total imports in every quarter of the injury assessment period.

PUBLIC RECORD

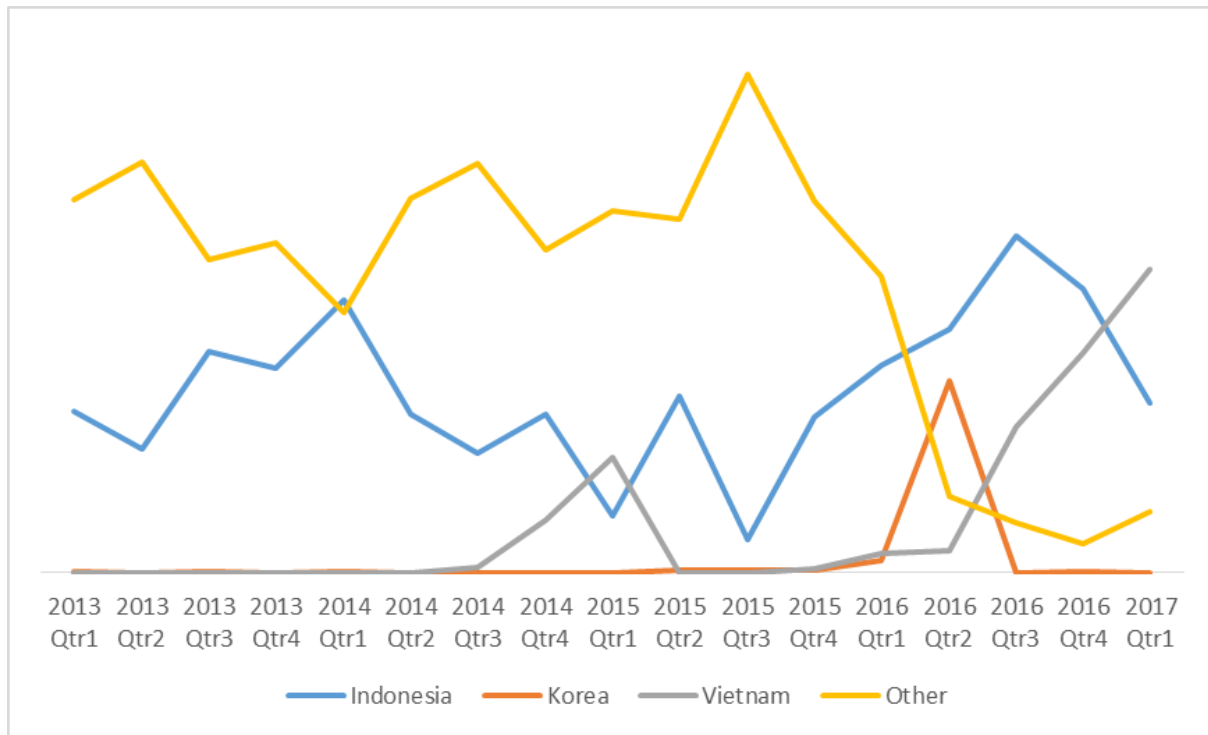


Figure 4 – Source of imports of RIC, expressed as a percentage of total import volume in the quarter, for the injury assessment period

The Commission notes that exports from Korea are infrequent, with a comparatively large volume in quarter 2 of 2016 and minimal to no activity in other quarters of the injury assessment and investigation periods.

Conversely, there have been sustained imports of the goods from Indonesia since 2013, despite the temporary imposition of measures²⁷ on all exporters (except Ispat) in 2015 and 2016. Similarly, there have been sustained imports of the goods from Vietnam since quarter 4, 2015 (which is when OneSteel allege that material injury commenced).²⁸ The high volume of exports from other countries declined after peaking in July-September 2015 following the initiation of Investigation 301.

²⁷ Measures were on exports from Indonesia to Australia except Ispat from 17 June 2015, until they were revoked on 22 August 2016 following the ADRP's consideration of *Reinvestigation Report No. 318*.

²⁸ For further information please see *Consideration Report 416*, Document No. 3 on the EPR.

5 PARTICULAR MARKET SITUATION

5.1 Finding

Based on available evidence, the Commissioner is not satisfied that, as claimed by the applicant, a particular market situation exists such that domestic sales in Vietnam are not suitable for use in determining a price under subsection 269TAC(1).

5.2 Commission's framework for assessing market situation claims

Subsection 269TAC(2)(a)(ii) provides for circumstances where the normal value of goods cannot be ascertained under subsection 269TAC(1) '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 269TAC(1)'. If there is a market situation, normal values may instead be constructed under subsection 269TAC(2)(c) or determined by reference to prices from a third country under subsection 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of market situation, however it is clear that a market situation will arise when there is some factor or factors impacting the relevant market in the country of export generally, with the effect that sales in that market are not suitable for use in determining normal value.

The Commission's *Dumping and Subsidy Manual* (the Manual) provides guidance on the circumstances in which the Commission will find that a market situation exists.²⁹ In considering whether, because of the situation in the market of the country of export, sales are not suitable for use in determining a normal value under subsection 269TAC(1), the Commission may have regard to factors such as:

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

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

In assessing whether a market situation exists due to government influence, the Commission will assess whether government involvement in the domestic market has materially distorted market conditions. If market conditions have been materially distorted then domestic prices may be artificially low or not substantially the same as they would be in a competitive market.

Prices may also be artificially low or lower than they would otherwise be due to government influence on the costs of inputs. The Commission looks at the effect of any such influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. Government influence on costs will disqualify the associated sales if those costs are shown to affect domestic prices.

²⁹ [Dumping and Subsidy Manual](#), pages 35-37 refer.

5.2.1 Evidentiary threshold

When relevant and reasonably reliable prima facie evidence supporting the proposition that there is a market situation is set out in the application, and an investigation is initiated, the Commission will:

- notify relevant governments and exporters of the claims and of the evidence provided and further information will be sought from such governments and exporters; and
- if the relevant government or exporters fail to respond, or do not provide probative evidence in response, all available evidence is weighed up, including prima facie evidence contained in the application.

5.2.2 Information relied upon to undertake the Commission's assessment

OneSteel cited the following information sources in its application in support of its claim of a particular market situation:

- Vietnam import and export legislation published online;
- research papers and newspaper articles; and
- market research into the Vietnam cost to make for steel.

The Government of Vietnam (GoV) provided a response to the government questionnaire on 15 September 2017, regarding the particular market situation as it related to the differential in import and export taxes.³⁰ This response included:

- English translations of relevant Vietnam legislation;
- import and export statistics; and
- production statistics, supplied by the Vietnam Steel Association.

OneSteel made further submissions to the Commission on 6 September 2017 and 24 November 2017.³¹ These submissions expanded the scope of the claims regarding particular market situation to include allegations regarding the government control of electricity pricing. To support its arguments within these submissions, OneSteel referred to:

- newspaper articles and research papers on the Vietnam electricity market;
- theoretical costs of RIC manufacturing in Vietnam;
- EAF costs;
- Vietnam Ministry of Industry and Commerce Decision 2698;
- Hoa Phat's annual report for 2016;
- newspaper articles regarding wire rod imports into Vietnam;
- steel industry reports;
- Hoa Phat Group Joint Stock Company's prospectus from 2007;
- a presentation by International Cooperation Department of Ministry of Industry and Trade of Vietnam from 2012;

³⁰ Document No. 15 on the EPR.

³¹ Document Nos. 13 and 27 on the EPR.

- the Manual; and
- importer and exporter verification reports published by the Commission during this investigation.

The GoV provided submissions on 20 October 2017 and 16 November 2017 which further responded to the claims of the existence of a particular market situation in Vietnam.³²

These submissions included the following:

- comparison of RIC prices in Vietnam and other markets;
- table of import tariff schedules for coking coal and coke from the five largest supplier countries;
- comparative coal production and consumption figures;
- data on iron ore production and consumption for steel billet production in Vietnam;
- taxation data pertaining to raw materials and finished products;
- applicable tariff decided by the GoV during 2012-2015 in comparison with tariffs in Indonesia and Australia (Queensland);
- data in relation to the interaction of electricity tariffs and steel billet prices in Vietnam;
- comparison of steel billet prices in Vietnam with the prices in the Black Sea region;
- a list of RIC producers and their distributors in Vietnam;
- the English translation of “Law on Prices of Vietnam”; and
- reports on power generation and pricing.

In considering the allegation for existence of a particular market situation in Vietnam, the Commission had regard to all of the relevant submissions and the data provided in the submissions, the references within the submissions and the appendices and attachments to these submissions, as well as the data provided within OneSteel’s application and the GoV’s response to the government questionnaire.

5.3 OneSteel’s claims

5.3.1 Difference in import and export taxes

In its application, OneSteel claimed that the GoV has used policies of differentiating import and export taxes on certain raw materials to create an artificial oversupply in the domestic market. These materials are coking coal and coke, iron ore and scrap steel.

This taxation differential allegedly restricted the ability of Vietnamese producers to export these goods. This in turn created downward pressure on the price of these goods in the domestic market. OneSteel stated that a lower cost to purchase for raw materials would result in a distortion of prices downstream across the entire steel industry.

³² Document Nos. 21 and 30 on the EPR.

OneSteel provided evidence demonstrating the difference in import and export taxes, which is summarised in Table 5 below:

Raw material	Import tax ³³	Export tax	Difference
Coking coal	0%-5%	10%	5%-10%
Coke	0%-5%	10%	5%-10%
Iron ore	0%	40%	40%
Scrap metal	0%-5%	15%-17%	10%-17%

Table 5 - Differential of import and export taxes in Vietnam

OneSteel has relied on the findings in *Anti-Dumping Commission Report No. 198* (REP 198) to support its claims that a difference in taxation regimes results in a distortion in downstream prices.³⁴

5.3.2 Distortion of raw material prices in Vietnam

In further submissions, OneSteel alleged that RIC prices are “artificially low or lower than they would otherwise be in a competitive market” due to government influence and distortion of the costs of inputs, specifically:

- coking coal;
- coke;
- iron ore;
- scrap steel; and
- electricity.³⁵

In these submissions, OneSteel also asserted that the GoV influence on the costs of inputs (including electricity) affected the domestic prices for the like goods as these inputs represent 71 per cent of the cost of RIC production in Vietnam.

5.3.3 Flawed economic analysis used for refuting existence of particular market situation in Vietnam

In its submission regarding the findings of SEF 416, OneSteel argued that:

- the Commission had regard to an irrelevant consideration by relying on analysis of demand and supply in the finished goods market to invalidate the price effects of differential taxation in an upstream materials market;
- no analysis of price was made (in the SEF 416) and the assumptions were based on a supposition arising from the Commission’s understanding of the “*theory of the economics of supply*”;

³³ Where there is a range based on country, the range is provided between the lowest and highest tariff.

³⁴ See Document No. 179, [EPR 198](#). This report was published following the Commission’s investigation into alleged dumping and subsidisation of hot rolled plate steel exported from China, Indonesia, Japan, Korea and Taiwan.

³⁵ See Document Nos. 13 and 27 on the EPR.

- the evidence did not support the Commission's conclusions regarding the effect of the imposition of the safeguards in relation to RIC;
- the relevant tariff codes to which the Vietnam Ministry of Industry and Commerce (Safeguards) Decision 269810 omitted Harmonisation Standard (HS) code 7213.91.90, and this omission has created an avenue for circumvention of the safeguard duties by Vietnamese rod importers;
- the Commission appears to suggest that the supply-curve for the finished goods (RIC) are almost 'perfectly inelastic' and it is not reasonable or relevant for the Commission to refer to the sustained imports into the Vietnamese domestic market following the imposition of safeguards as indicative of 'perfect inelasticity' of supply by domestic producers;
- the Commission has unreasonably extrapolated Hoa Phat's near full capacity utilisation data to the entire Vietnamese industry.³⁶

5.3.4 Electricity pricing

OneSteel alleged that the particular market situation extended to government influence in the price of electricity. This is claimed to be a result of government control and regulation of electricity prices, and GoV ownership of the major power utility.³⁷

Electricity is a major cost component for the production of steel billet, the main input to RIC, particularly if the billet is produced using an EAF.

The evidence provided by OneSteel demonstrated that the prices being charged by the state-owned electricity utility, which is the major supplier of electricity across Vietnam, is subject to high levels of government regulation regarding the fixing of power prices. A news article showing that the utility was losing money in 2014 was provided, which demonstrated that the prices being charged were not high enough for the company to be profitable.

An article regarding a proposed independent power plant not going ahead was also provided.³⁸ The reasons stated were the current (low) price of electricity, as fixed by the GoV, plus the low likelihood of significant future price rises, being a significant deterrent to that investment.

In its submission regarding the findings of SEF 416, OneSteel concurred with the Commission's determination of substituting the electricity prices in Vietnam and claimed that the most appropriate price benchmark for electricity prices is from Philippines. In order to support its view, OneSteel referred to the World Bank's publication of *World Development Indicators* and opined that the Philippines' gross domestic product (GDP) and power generation mix are comparable to that of Vietnam.³⁹

³⁶ Document No. 27 on the EPR.

³⁷ Document No. 14 on the EPR.

³⁸ Attachment G to Document No. 13 on the EPR.

³⁹ Document No. 27 on the EPR.

5.3.5 OneSteel's proposal

Given the above, OneSteel argued that the Commission should find that domestic prices of RIC in Vietnam are unsuitable for the purpose of calculating normal value under subsection 269TAC(1) because of the degree of GoV intervention in the raw materials market. OneSteel proposed that the Commission should therefore construct a normal value under subsection 269TAC(2)(c).

In doing so, OneSteel argued that it was necessary to substitute the aggregate costs of production of steel billets in Vietnam with competitive market costs (within the meaning of subsection 43(2)(b)(ii) of the *Customs (International Obligations) Regulation 2015* (the Regulation)). The Commission ought to add the Vietnamese producers' actual conversion costs to convert the steel billet into the finished product in order to calculate the finished product's cost of production for the purposes of subsections 269TAC(4) and (5). OneSteel suggested that this substitution be done based on a verified cost of billet produced by a non-Vietnamese producer.

5.4 GoV submissions in response

The GoV provided two submissions in response to the allegations raised by OneSteel concerning the existence of a particular market situation for RIC in Vietnam.⁴⁰

5.4.1 Government Policies

The GoV indicated its view that its laws and policy did not intend to have or result in any distorting effects to the RIC market in Vietnam.

The GoV did not have any direct ownership of or representation in any RIC producers and there was no restriction on or control by the GoV over the number of producers, nor over the private or foreign ownership in this sector or over the quantity of production and sale in Vietnam and export markets. The local private sector and foreign-invested enterprises accounted for more than 75 per cent of the RIC industry; the five producers in which Vietnam Steel Corporation (a state-owned company) had equity interests accounted for less than 25 per cent of the industry, and never exported the RIC to Australia.

RIC is not subject to any price control measure taken by the GoV. Pursuant to Article 11 of the Law on Prices of Vietnam, enterprises had the right to self-determine the prices of goods or services which they manufacture or deliver except for certain products subject to price determination by the GoV. RIC, as well as all of the upstream raw materials including iron ore, coking coal, coke, scrap steel and square billets, were not included in that list. Prices for RIC in Vietnam were at a similar level or higher in comparison to those prices in other countries which demonstrated that RIC prices in Vietnam fluctuate according to the world market without any influence by the GoV.

The GoV fully cooperated with the Commission by providing requested information and data at its best capacity and that it has not implemented any policy to place a downward effect on the price of raw material inputs into the production of RIC including iron ore, coking coal, coke and scrap steel. The GoV requested that the Commission adopt the

⁴⁰ Document Nos. 21 and 30 on the EPR.

same findings as were reported in *Anti-Dumping Commission Report No. 370* (concerning zinc coated (galvanized) steel) as there were no changes in the GoV's policies.

5.4.2 Coal and coking coal

During 2012-2016, export tariffs imposed on coking coal and coke were gradually reduced from 20 per cent to 10 per cent. Coking coal and coke exports have not been subject to any export restrictions and are not subject to any value added tax.

Vietnam's coal and coking coal market prices follow developments on the world market, including any changes in supply and demand of coking coal and coke taking place in the global markets rather than in response to the import or export tariffs on these materials. There was no direct relationship between the export tariffs and the export volumes of coke or coking coal.

The tariff levels levied on imported coking coal and coke were subject to Vietnam's obligations under multilateral agreements or free trade agreements.

5.4.3 Iron ore and scrap steel

There were no export restrictions in the form of quotas or tariffs against iron ore or scrap steel. The export tariffs for these materials haven't changed during the investigation period. The increase of iron ore and scrap steel imports during 2015 - 2016 was not influenced by any change in import tariffs but are results of the capacity expansion of the steel billet manufacturing as a result of private or foreign investments.

5.4.4 Steel billet

The export tariff of steel billet was maintained at 0 per cent for 2012 - 2016 while import tariffs for steel billet were set at various levels between 0 per cent and 7 per cent. Steel billet was not otherwise subject to any import or export restrictions.

From 22 March 2016, the GoV levied a safeguard tax of 23 per cent on imported billet with a regular reduction of 2 per cent each year. As a result of the safeguard measures, Vietnamese producers of RIC incurred a higher cost of production.

In 2016, total domestic supply of billet was 7.8 million tonnes while the consumption quantity was more than 8.6 million tonnes, and therefore domestic production of billet did not satisfy the level of demand in the market.

5.4.5 Domestic market in Vietnam

The GoV submitted that the following conditions did not exist in Vietnam to render the domestic sales of RIC not suitable to be used in determining the normal value:

- differing patterns of demand in the Vietnamese domestic market and the sales to Australia;
- domestic sales through a single sales channel;
- unusual patterns of sales in the domestic market for the goods;
- a single sale to one customer that constitutes 5 per cent of the sales to Australia;
- significant level of barter trade; or
- non-commercial processing arrangements.

Long steel products including RIC were of high demand in the Vietnam market due to the significant development of infrastructure and housing construction. It was estimated by the Vietnam Steel Association that demand for RIC in the domestic market in 2016 was more than 3 million tonnes, whereas the total production in Vietnam was estimated at around 1.3 million tonnes. Out of the whole domestic RIC production, 75 per cent was consumed in the domestic market.

5.4.6 Electricity

The GoV argued that its influence over the domestic price of electricity is not sufficient to conclude that a market situation exists in the Vietnamese RIC market. The GoV noted that its regulation of electricity tariffs is a normal practice that is also adopted by a number of other countries including Indonesia and Australia.

The GoV considers that its influence on electricity costs does not affect selling prices of RIC. Fluctuations in electricity tariffs had no correlation with the prices of steel billets in Vietnam. Electricity costs account for on average 3 per cent to 10 per cent of the total steel billet manufacturing costs for BOF and EAF. When the cost of electricity consumed in rolling billet is added to typical electricity costs in the RIC production process, the total cost of electricity accounts for around 35 per cent of the total cost of production.

Vietnam's electricity tariff was around 14 per cent lower than the average of Thailand, Malaysia, Indonesia, and Australia in 2016, and 9 per cent lower than Indonesia. Accordingly, an uplift of 8 to 14 per cent to electricity costs, which is a cost that represents approximately 35 per cent of the total manufacturing cost of RIC, should not be considered significant enough to have created a market situation for RIC in Vietnam.

5.4.7 GoV's proposal

The GoV considers that none of its policies have distorted the market conditions for raw materials, that there was strong domestic demand for raw materials, and therefore no downward pressure on domestic prices of these raw materials in Vietnam during the investigation period. The GoV also highlighted that during the investigation period, raw material import volumes were significant and domestic prices of raw materials were at levels similar to that occurring in other countries.

However, if the Commission decides to construct the normal value of RIC, the GoV submitted that the Commission should implement Australia's obligation under Article 2 of the World Trade Organization *Anti-Dumping Agreement* by constructing the normal values based on Vietnamese producers' own costs of production, or export sales to third countries.

5.5 The Commission's assessment of market situation

When there is evidence indicating that the end product (in this case RIC) prices may have been affected by government intervention, the Commission undertakes further analysis of the government's influence on the upstream raw materials to establish the causal relationship between the government's intervention to the market at the upstream level and the corresponding end product prices. In doing so, the Commission may have regard to the government's policies, taxation regimes and control on market participants to gauge the extent of the government influence.

5.5.1 Economics of supply

The basic fundamentals of supply theory explain that increasing the supply of a commodity, given all other factors being equal, will lead to lower prices due to excess supply. Figure 5, below, illustrates that increasing the supply quantity, from Q_1 to Q_2 , exerts downward pressure on the prices, moving the prices from P_1 to P_2 . The equilibrium price (the intersection where supply equals demand), also moves down (from intersection of P_1Q_1 to P_2Q_2).

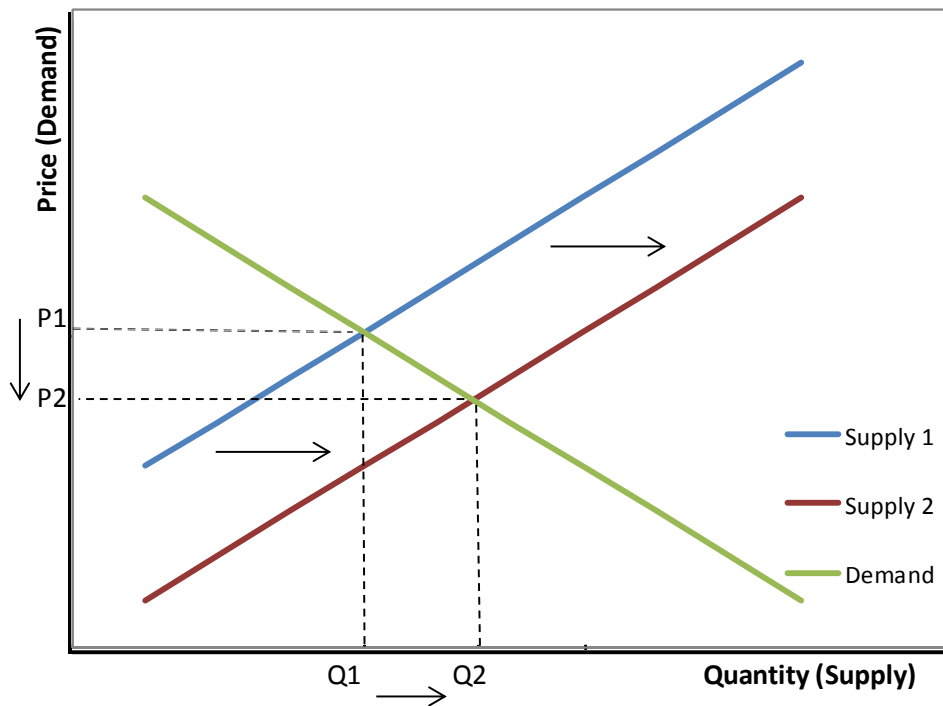


Figure 5 - Shift in supply under supply theory

Governments generally impose high export tax rates and export quotas to restrict the exports of a particular commodity that it considers scarce, and vice versa. Restricting exports leads to an increase in the supply of those goods in the domestic market. This eventually leads to over-supply, exerting a downward pressure on the prices of those goods. This intention is usually to make such goods easily accessible to the domestic consumers and at a lower price. Accordingly, government controlled measures such as the imposition of taxes and subsidies may have an effect on domestic supply, and therefore domestic prices.

5.5.2 Features of the Vietnam market for RIC

In considering whether there is a “particular market situation” the Commission must have regard to all relevant factors affecting that market. Typically, the Commission only finds the existence of a “market situation” where there is a collection of factors which, in their totality, affect the interactions between supply and demand to such a degree that prices cannot be viewed as having been established under normal market conditions. The assessment of whether a particular market situation exists, however, is a separate and distinct task from assessing whether the costs recorded by an exporter reasonably reflect

competitive market costs associated with the production or manufacture of like goods. The former assessment places an emphasis on conditions of supply and demand for the goods under consideration.

5.5.2.1 Supply and demand for RIC

The Commission has found that there has been a significant increase in demand for RIC in Vietnam over the injury period, as shown in Figure 6.

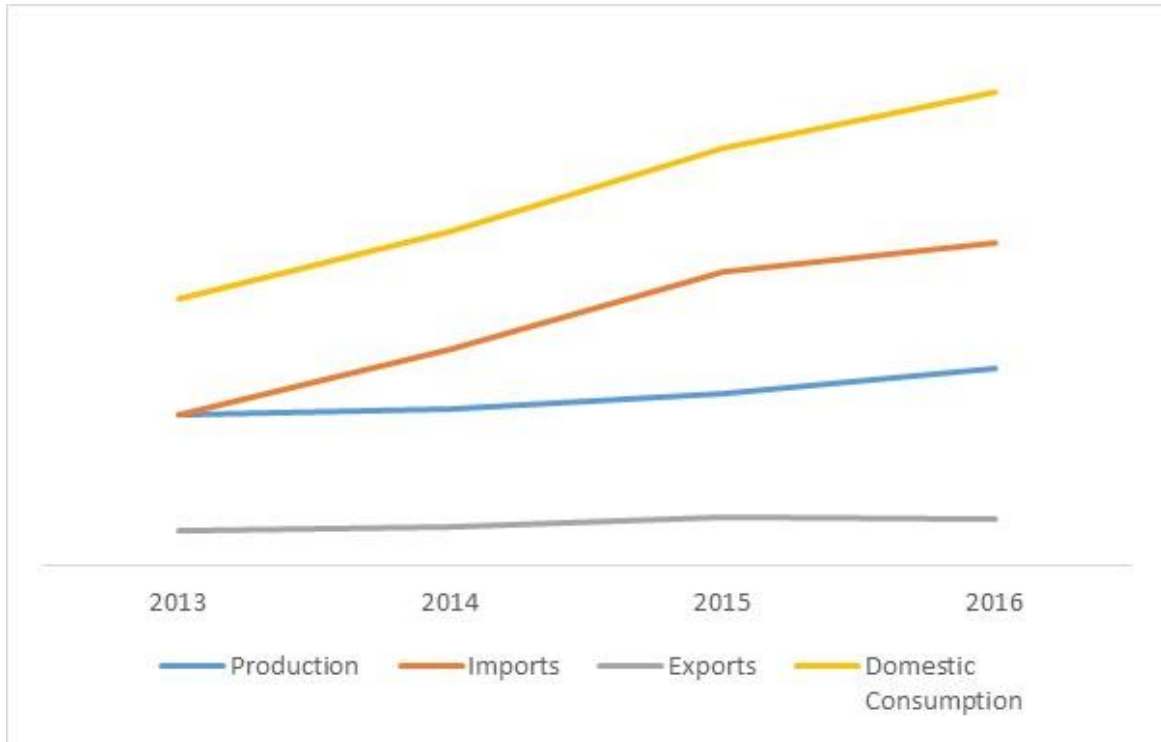


Figure 6 - RIC market in Vietnam, 2013-2016

Figure 6 shows that, from 2013 to 2016, Vietnamese manufacturers of RIC increased production by 30 per cent, with 80 per cent of this going to the domestic market. At the same time, import volumes have increased by over 100 per cent in line with demand.

Figure 7 shows the market share for the Vietnamese domestic market by source.



Figure 7 - Market share for Vietnam, 2013-2016

The verification of Hoa Phat demonstrated that the rolling mill, which makes RIC as well as other long products, was operating during the investigation period at 96 per cent of capacity. In the Commission's view, it is apparent that Vietnam producers of RIC have been unable to scale up sufficiently quickly to meet the increase in demand over the injury assessment period.

In its submission dated 24 November 2017, OneSteel objected to the Commission's analysis of the RIC demand in Vietnam and claimed that the Commission wrongly extrapolated Hoa Phat's data to all Vietnamese producers of RIC. OneSteel also argued that the Commission relied on Hoa Phat's high capacity utilisation to imply perfect inelasticity of supply, negating the price effects of export tax differentiation to material input markets on downstream finished goods production.⁴¹

The Commission considers that Hoa Phat's capacity utilisation data is merely one indicator that the domestic demand for RIC in Vietnam has surged in recent years, noting the increased volume of imports of RIC into Vietnam to meet increasing demand. The Commission's observations regarding the export tax differential is set out later in this chapter.

5.5.2.2 Application of safeguard measures

To provide relief to its domestic billet industry, in March 2016 the GoV introduced safeguard measures on both imported steel billet and imported RIC. The level of safeguards are shown below:⁴²

⁴¹ Document No. 27 on the EPR.

⁴² Data from the GoV questionnaire response and submission dated 20 October 2017.

Safeguard duty on steel billet (square billet)	Safeguard duty on long steel products (including RIC)	Period of application
23.3%	14.2%	22 March 2016 – 1 August 2016
23.3%	15.4%	1 August 2016 – 21 March 2017
21.3%	13.9%	22 March 2017 – 21 March 2018
19.3%	12.4%	22 March 2018 – 21 March 2019
17.3%	10.9%	22 March 2019 – 21 March 2020

Table 6 - Safeguards on steel products in Vietnam

The imposition of safeguards is likely to make imported RIC more expensive and thereby dampen demand for imported product. The Commission considers that such measures would also be expected to buttress (if not inflate) domestic RIC prices in the face of import competition. The GoV provided data in Exhibit 8 of its submission dated 20 October 2017 in relation to the effect of safeguard measures on domestic billet prices in Vietnam.⁴³

The Commission observed that, as expected, the imposition of safeguards increased the domestic prices of billet in Vietnam. The Commission notes that Exhibit 5 of the GoV's submission also shows that before the imposition of the safeguard measures, import volumes of steel billets in Vietnam had increased consistently since 2012.

The Commission observes that the imposition of safeguards has had an adverse effect on the volume of RIC imports and while the RIC demand increased, supply of RIC through imports contracted as international sources became less competitive. As demonstrated in Figure 8, the imposition of safeguards at the end of quarter 1, 2016 resulted in a clear reduction in the volume of imports of the goods.

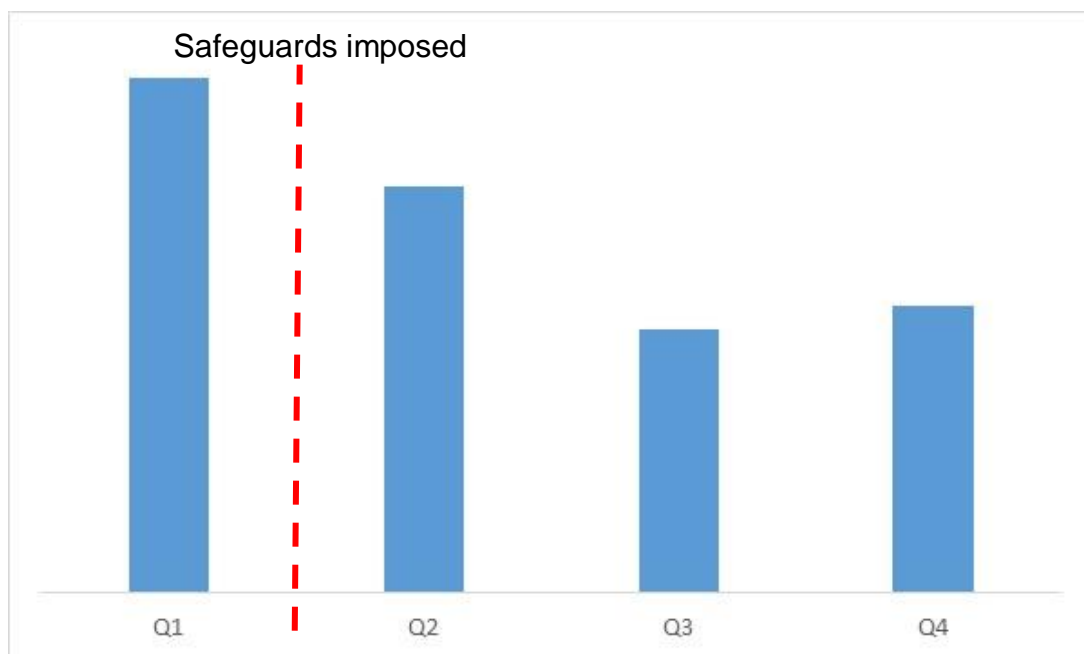


Figure 8 - imports of RIC to Vietnam in 2016

⁴³ Document No. 21 on the EPR.

Vietnam's domestic RIC market data which forms the basis of Figures 6, 7 and 8 is available in **Confidential Attachment 2**.

The Commission notes OneSteel's allegations in relation to a particular tariff code pertaining to wire rods (7213.91.90), not included in the safeguard measures, which created a loophole to import products under consideration by deliberately reporting the imported products as wire rods.

The Commission has found no evidence suggesting that the GoV has left the 7213.91.90 tariff code out of the safeguard measures deliberately to create an over-supply of wire rods in the domestic market. In addition, in the same source that OneSteel quoted in its submission, the paragraph following the sentence quoted by OneSteel states that, even if the safeguard measures were imposed on tariff code 7213.91.90, its effect would be minimal:

In the most positive scenario in which new safeguard tariff is officially imposed, we think that the impact should not as significant as Decision 2968 because the portion of this wire rod in producers' sale volume is not big.⁴⁴

The Commission considers that, as the overall import volume of RIC and steel billet into Vietnam has declined as a result of the safeguard measures, it appears highly unlikely that a diversion of goods to the unaffected tariff code (which is already a small part of the market) would result in any measureable reduction in the domestic price of RIC.

5.5.2.3 Vietnam RIC prices compared to other price indices

The Commission has compared Hoa Phat's verified domestic selling prices (converted to FOB) with international export prices from Turkey, China, Latin America and Black Sea region (also at FOB). This analysis is available in **Confidential Attachment 3**, and is presented in Figure 9, below.

⁴⁴ <https://www.vCBS.com.vn/en/Communication/GetReport?reportId=4812> (page 18).

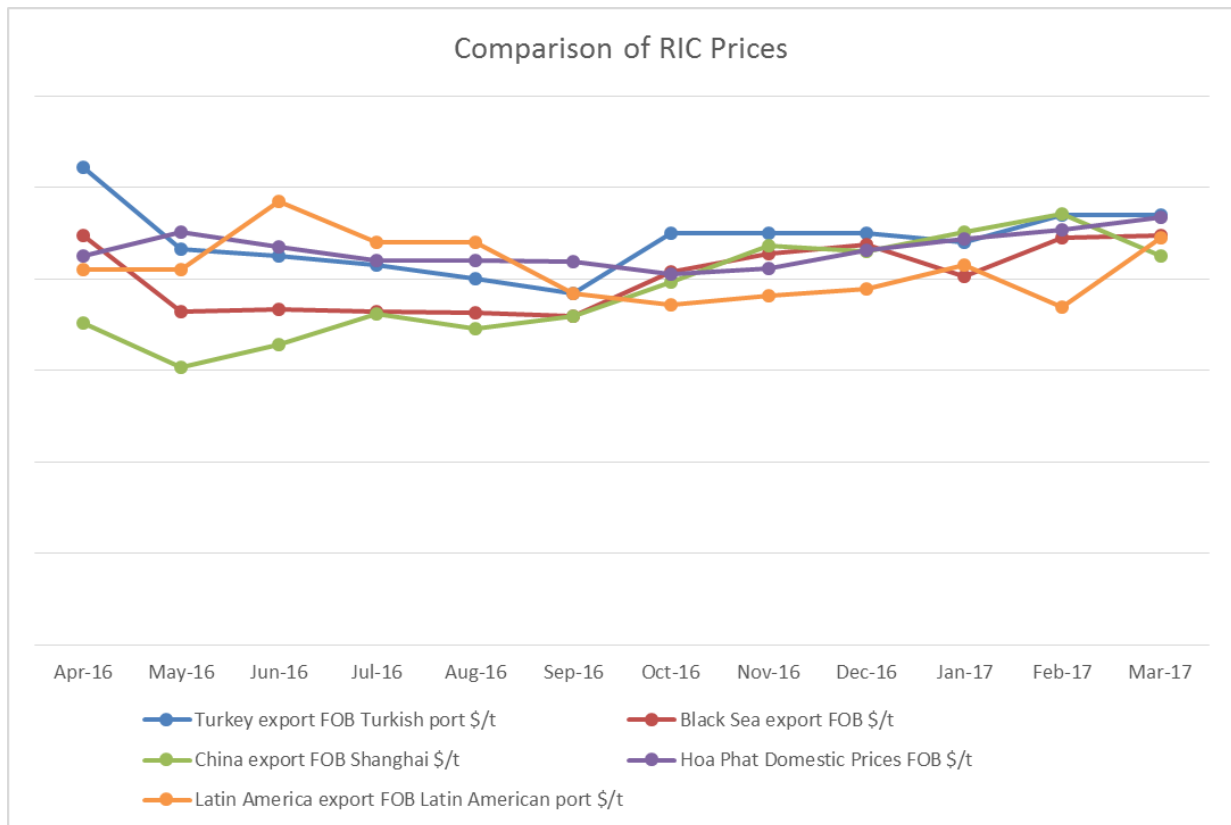


Figure 9 – Hoa Phat’s domestic RIC selling prices in comparison with international benchmarks

The Commission notes that Hoa Phat’s domestic selling prices are consistent with international price averages, and frequently higher than most of the benchmarks in the sample. Therefore, the Commission considers that Figure 9 supports the GoV claim that RIC prices in Vietnam are not suppressed.

5.5.2.4 Consideration of GoV influence on upstream raw materials

As outlined in the visit report, Hoa Phat operates both a BOF and EAF to manufacture steel billet used to produce RIC.⁴⁵ Typically a BOF will operate using iron ore and coal as raw material inputs, while an EAF uses scrap metal as the raw material input and is powered by electricity. Hoa Phat confirmed during the verification visit that it sources all of its coke and coking coal domestically. It purchases most of its iron ore and scrap metal domestically, with some supplementation from imports.

In its submission on 24 November 2017, OneSteel argued that even if the Commission’s consideration regarding the effect of the safeguard measures was true, supply-side economics would suggest that prices would have risen further if not for the export tax policies of the Vietnam government, which have allegedly shifted the supply curve for the finished goods to the right of the market-equilibrium graph.

⁴⁵ Document No. 21 on the EPR.

The Commission has examined the import and export tariffs applying to the key raw materials relevant to the production of billet and RIC.

Coking coal and coal

From the information provided in the GoV questionnaire response and the submission on 20 October 2017, the Commission has observed that the GoV reduced the export tariff on coking coal from 20 per cent in 2012 to 10 per cent in 2013. The data within the GoV submission also shows that coking coal export quantities have reduced consistently since 2012 (including in the investigation period) and therefore reacts independently of the tariff.⁴⁶

The Commission observed that the export tariff applicable to coke was reduced from 13 per cent in 2015 to 10 per cent in 2016. The export volume of coke from Vietnam increased substantially in 2016, apparently in response to this change.

The Commission also observed that the exportation of coke and coking coal was not subject to value-added tax or any quantity restrictions.

Vietnam's domestic production and importation volumes of coking coal and coal are available at **Confidential Attachment 2**.

Iron ore and scrap steel

The Commission notes that the GoV has not changed the export tariff for iron ore between 2012 and 2016, however the export volume of iron ore surged by more than 800 per cent in 2016.

Similarly, the Commission observes that the GoV has not changed the applicable tariff rates for scrap steel exports between 2012 and 2016 but the volume of scrap steel exported increased significantly in 2016.

Vietnam's import statistics for iron ore and scrap steel are available at **Confidential Attachment 2**.

Steel billet

The GoV stated in the government questionnaire response that the export tariff on steel billet was maintained at 0 per cent between 2012 and 2016 while import tariffs for the main foreign suppliers to Vietnam (such as Japan and China) were set at between 0 per cent and 7 per cent. In addition to that, effective from 22 March 2016, the GoV levied a safeguard tax of 23 per cent on imported billet. The Commission notes that, in parallel to the increase in demand for steel in Vietnam, domestic production of steel billet also increased significantly. The Commission calculated that the increase in steel billets manufactured by BOFs in Vietnam increased 66 per cent between 2015 and 2016. Vietnam's steel billet production and consumption data is available at **Confidential Attachment 2**.

⁴⁶ Chart 2 in Document No. 21 on the EPR refers.

Observations

The Commission reviewed the data provided by the GoV in relation to the export tariffs on steel raw materials and the export volumes of these commodities. The data shows that the volume of exports of these raw materials have not shown any correlation with the level of export tariffs, reflecting instead the international supply, demand and price movements for these commodities.

5.5.2.5 Consideration of GoV influence on electricity costs

The cost of electricity is significant to an EAF, with a material amount of the cost of making billet coming from the electricity cost. The verification visit undertaken to Hoa Phat confirmed that electricity is a significant cost component.

In its submission dated 6 September 2017, OneSteel argued that the electricity sector in Vietnam was controlled by a single state owned corporation, Vietnam Electricity (EVN). OneSteel stated that even though the GoV has taken steps to reform the electricity sector through tariffs, it still wielded power over the price of electricity. OneSteel further claimed that the GoV has continuously stopped EVN from raising its prices for electricity, and has fallen behind in the application of the 2004 Electricity Law. According to OneSteel, the reforms were seven years behind the planned schedule and there was an absence of a competitive market in the electricity sector due to the actions of the GoV, which has had the effect of suppressing electricity prices in Vietnam.

The evidence provided by OneSteel in Non-Confidential Attachment E to its submission stated that, not only was electricity in Vietnam among the cheapest in Asia, but the energy intensity (i.e. the energy required to produce a dollar's worth of goods or services) was among the highest in the world. The article also stated that the price of electricity had not been increased since March 2015, and that the Prime Minister of Vietnam had recently ordered the tariffs to stay the same.

The Commission reviewed the information provided in OneSteel's submission on this issue as well as the data available from reliable independent resources. The Commission notes that there has been a consensus in the available resources in relation to the GoV's control over electricity pricing in Vietnam and the current retail electricity tariffs being below the cost of supply. Two of the most prominent reports published on the electricity market outlook in Vietnam and which support this view are *Vietnam, Energy Sector Assessment, Strategy and Road Map* by the Asian Development Bank (**Non-Confidential Appendix 1**) and *A Financial Recovery Plan for Vietnam Electricity* by the World Bank Group (**Non-Confidential Appendix 2**).

The Commission is therefore of the view that the level of control exercised by the GoV on electricity prices has artificially suppressed the price of electricity in Vietnam.

5.5.3 Allegations of preferential taxation treatment

There are several legislative provisions relating to sectors of the steel industry which provide preferential tax treatment. Article 16 of *Decree 12/2015/ND-CP* gives a tax reduction to manufacturers of 'high quality steel'. The GoV has clarified that high quality steel refers to medium and high carbon steel governed by TCVN 1766-75 and TCVN

8996:2011. The relevant standard for RIC is TCVN 1561:2008, and is not eligible for the tax reduction.

In Exhibit 7 of the GoV submission it outlines the corporate tax rate for a variety of different manufacturers and traders of the goods under consideration, and of the raw materials alleged by the applicant to be subject to trade distortions.⁴⁷ In the investigation period, all companies were subject to a 20 per cent rate of income tax.

Under *Decree No 177/2013/ND-CP*, attached at Exhibit 10 of the GoV submission, manufacturers of constructional steel are required to declare the price at which they intend to sell to the Ministry of Finance.⁴⁸ There is the ability in this decree for the GoV to subject the industry to price regulation and stabilisation, as is the case with electricity pricing, but currently the decree is limited to price notification.

Law on Investment No 59/2005/QH11 provides investment incentives to certain categories of enterprises, as well as companies in specific regions. Producers of steel billet, which includes (but is not limited to) the steel billet used for RIC, are eligible for certain incentives under this law, however the GoV has stated that no manufacturer of RIC has claimed this discount.⁴⁹

Based on the evidence above, the Commission is of the view that the beneficial taxation arrangements in Vietnam would not apply to manufacturers of RIC.

5.5.4 Conclusion – market situation

The question before the Commission is whether there exists a particular market situation that renders the domestic selling prices of RIC in Vietnam not suitable for normal value calculations. While government influence over the raw material costs is a relevant consideration, more significant is whether those influences have been so great as to distort the prices achieved for the goods under consideration in the exporters' domestic market. Such an analysis needs to take into account the broader features of the market.

In REP 198, the Commission stated with regard to coke and coking coal:

The Commission considers that imposing a high export tax and no import tax on coke and coking coal in the period under examination indicates that the [Government of China] continued to restrict exportation of those raw materials from China while promoting importation.⁵⁰

Similar statements were made with regard to the other raw materials subject to differentials of import and export taxes in REP 198.

The Commission notes that the particular market situation finding in REP 198 was made in the context of measures which specifically differentiated the goods under consideration in that case from other steel products – namely, the absence of a VAT rebate. In addition,

⁴⁷ Document No. 21 on the EPR.

⁴⁸ Ibid.

⁴⁹ GoV Questionnaire response (Document No. 15 on the EPR), pages 28-29.

⁵⁰ REP 198, Appendix A refers.

there were significant investment programs funded by a number of Chinese government authorities. The cumulative effect of these additional market interventions was the targeted support of a particular product in an already heavily supported sector.

Conversely, the situation in Vietnam is that there is no particular industry support, nor are there any specific measures in place which are relevant to the goods under consideration. The Commission is of the view that the differences in the import and export taxes demonstrated by OneSteel may have the effect of restricting the exportation of the raw materials. This could have resulted in an artificially inflated supply of raw materials on the domestic market, which could decrease the cost of the raw materials used to make the goods under consideration. However, the Commission notes that the export statistics for the upstream raw materials from Vietnam does not support this assertion. Vietnam's export volumes of upstream raw materials between 2012 and 2016 and the corresponding export tariff rates are available at **Confidential Attachment 2**.

The Commission notes OneSteel's allegation that the influence of the GoV in electricity prices is profound, and noting that electricity is a significant cost component for both the production of steel billet and the production of RIC, this influence would distort the domestic selling prices of RIC in Vietnam. The Commission agrees that electricity prices are suppressed. The Commission does not agree with OneSteel's contention that the domestic *prices* of RIC are less than they otherwise would have been as a result.

The substantial volume of imported RIC in the domestic Vietnam market and the increasing gap between Vietnam production and Vietnam consumption of RIC indicate ongoing strong demand for RIC in the Vietnam market. The Commission's analysis demonstrates that Vietnam pricing is typical of that found in other regions. No reasonable evidence of any other distortionary features that were present in the market for RIC or any of the upstream raw materials (such as differences in value added tax (VAT) rebates, import or export quotas or export restrictions) was presented to the Commission.

When observed in the context of the safeguard measures (which have demonstrably increased prices for raw materials and RIC) and the absence of other forms of government intervention in a market which is characterised by predominantly private sector and foreign-invested participants, the Commission has concluded that Vietnam domestic RIC prices are being inflated. Accordingly, the Commission considers that the weight of the evidence indicates that domestic RIC prices in Vietnam are suitable for the purpose of calculating normal value under subsection 269TAC(1).

5.6 The Commission's assessment of competitive market costs

Subsection 43(2) of the Regulation requires that, where an exporter or producer keeps records relating to the like goods and the records are in accordance with generally accepted accounting principles in the country of export and reasonably reflect competitive market costs associated with the production or manufacture of like goods, the Minister must work out the amount by using the information set out in the records. When considering whether the exporter or producer's records reasonably reflect competitive market costs, the Commission considers "reasonably reflect" to mean that:

- the cost to make items are supported by the books of account; and

- the costs themselves are “reasonable”, that is, the cost allocation methods used by the exporter in working out those costs are reasonable.⁵¹

Further to this, the explanatory statement to the originally enacted regulation, that is, subsection 180(2)(b)(ii) of the *Customs Regulations 1926*, noted that the inclusion of the words “reasonably reflect competitive market costs” was to ensure that the relevant records were only taken into account if those records reasonably reflect competitive market costs and not just actual costs.⁵² The Commission is of the view that the word “reasonable” in this instance be given its dictionary meaning, which includes “acceptable” or “based on or using good judgement and therefore fair and practical”.⁵³

As noted in section 5.3.5 of this report, OneSteel submits that the raw material costs of Hoa Phat are not competitive market costs as a result of GoV intervention in the market (as outlined earlier in this chapter). This view is contested by the GoV.

The Commission notes the difference between the import and export taxes for upstream raw materials, but found that this difference did not have a significant effect on the costs incurred by Hoa Phat. The Commission also notes the significant import penetration of upstream raw materials in Vietnam throughout the investigation period as demonstrated in **Confidential Attachment 2**. The Commission observes that the import trends of these upstream raw materials highly correlated with the increase in steel demand in Vietnam.

The Commission therefore considers that the prices of upstream raw materials (being coal, coking coal, iron ore and scrap steel) as recorded in Hoa Phat’s accounting records represent competitive market costs.

5.6.1 Electricity pricing

OneSteel proposed that the Commission should substitute the aggregate costs of production of steel billets in Vietnam with competitive market costs (derived from an international benchmark, based on a verified cost of billet produced by a non-Vietnamese producer) to remove any distortion on electricity prices at the billet level. OneSteel also proposed that the Commission should uplift Hoa Phat’s costs of electricity by reference to electricity prices in The Philippines, in OneSteel’s opinion a suitable analogue country for Vietnam.⁵⁴

The Commission identified two possible approaches:

- replace Vietnamese electricity costs with a suitable electricity tariff from a country that does not have government influence on its local electricity tariffs, that has a similar GDP and similar electricity generation mix with Vietnam; or

⁵¹ The Manual, page 44 refers.

⁵² <https://www.legislation.gov.au/Details/F2005L03528/Explanatory%20Statement/Text>.

⁵³ Cambridge dictionary: <http://dictionary.cambridge.org/dictionary/english/reasonable>.

⁵⁴ Document No. 27 on the EPR.

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- calculate a sustainable level of electricity tariff for the GoV-controlled EVN, and substitute the current electricity costs of Vietnamese manufacturers with that sustainable level of tariff.

The Commission's research indicated the following problems with finding an external benchmark for Vietnam's electricity tariff:

- in most of the countries in the region there is significant government influence, either in the form of control on electricity tariffs or the provision of subsidised coal, fuel and natural gas for power generation purposes;
- it is not possible to find an economy showing identical or comparable GDP, inflation, growth and infrastructure conditions;
- the power generation mix widely varies between different countries and it is not practical to adjust the generation cost to cater for these differences; and
- the geographic spread and specific power transmission characteristics of candidate countries are not comparable to circumstances in Vietnam.

As a result, the Commission considers that the most appropriate approach is to calculate a sustainable level of electricity tariff rate for EVN. In its research, the Commission identified the *A Financial Recovery Plan for Vietnam Electricity* report published by the World Bank Group. This report is available in Non-confidential Appendix 2. In this report, the World Bank Group assesses EVN's operations by comparing the operational and financial metrics of the company with international benchmark figures and concludes that the current electricity tariff rates would not allow EVN to operate sustainably.

Based on a comprehensive analysis of the key drivers of EVN's financial performance, with underlying assumptions on demand growth, investment expenditures, and scenarios of the trajectory of electricity prices to full cost recovery, the report makes the following key observations:

- an electricity tariff adjustment path to reach full cost recovery is critical for sustainable power supply in Vietnam;
- for Vietnam to be able to meet its future power needs reliably and efficiently, it is crucial that EVN's financial health be restored and sustained;
- the investment requirements of the power sector lie at the heart of these challenges. Electricity demand is expected to double between 2014 and 2020. The investment requirements of about US\$7.5 billion per year are far in excess of what has been achieved in the recent past; and
- EVN will have a substantial investment program, amounting to US\$28 billion up to 2020. Investment on this scale will be difficult to finance and will not be achievable without adequate tariffs.

The report concludes that a crucial determinant of EVN's financial weakness is the level of power sector tariffs, which is currently below cost. The report further recognises the need for a recovery strategy that includes both tariff and non-tariff measures to help restore and sustain EVN's financial health. The non-tariff measures should complement, not substitute tariff increases.

The authors of the World Bank Group's report recommend that the Vietnamese government adopt a clear tariff adjustment path towards full cost recovery within three to

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four years and comment that if tariffs are maintained at current levels in real terms - that is, adjusted at the rate of inflation (assumed at 7 per cent per annum) - EVN's financial position will deteriorate. The World Bank Group predicts that EVN will be barely able to cover operating costs over the 4 years to 2018. Under that scenario, EVN will be unable to contribute any funds from its internal resources to finance capital investment expenditures and its debt will become unsustainable.

The Commission considers that the calculations of this report, based on a comprehensive research of the current state of the infrastructure, debt levels, cost of maintaining debt, inflation levels, electricity generation cost drivers (such as prices of petroleum and gas) together with the demand drivers in Vietnam, provides a reasonable basis to calculate a sustainable electricity tariff rate for EVN. The Commission also considers that, given the undeniable dominance of EVN in Vietnam's power generation and transmission sectors by itself and through its subsidiaries, it is reasonable to accept that the sustainable tariff rate calculated by the World Bank Group for EVN is representative of a sustainable tariff rate for electricity in whole Vietnamese electricity sector.

6 DUMPING INVESTIGATION

6.1 Findings

The Commissioner's findings are that:

- exports by Ispat from Indonesia were dumped during the investigation period, but the dumping margin was negligible (less than 2 per cent);
- exports by Gunung from Indonesia were dumped during the investigation period, and the dumping margin was not negligible;
- exports by Hoa Phat and all other exporters from Vietnam were not dumped during the investigation period; and
- exports from uncooperative and all other exporters from Indonesia and Korea were dumped during the investigation period, and the dumping margins were not negligible.

6.2 Introduction and legislative framework

In order to determine whether the goods have been dumped, the export price and normal value of the goods must be compared.⁵⁵ Dumping occurs when goods from one country are exported to another country at an export price less than the normal value of such goods. The export price and normal value are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value determinations for this investigation are set out below.

6.3 Cooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'. At the commencement of the investigation, the Commission contacted known exporters of the goods and each identified supplier of the goods within the relevant tariff subheadings for RIC as identified in the ABF import database, and invited them to complete an exporter questionnaire.

The Commission received a completed exporter questionnaire response (EQR) from the following exporters:

- Ispat;
- Gunung; and
- Hoa Phat.

The Commission undertook a verification visit to Ispat and Hoa Phat, and conducted a desktop verification of Gunung.⁵⁶ These exporters are considered to be cooperative exporters.

⁵⁵ Subsection 269TACB(1) refers.

⁵⁶ Verification visit reports in respect of Ispat and Hoa Phat are included as Document Nos. 20 and 23 on the EPR.

6.4 Uncooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is an 'uncooperative exporter', where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The Commission received two further responses from relevant exporters:

- PT The Master Steel Manufactory (Master Steel) provided an incomplete EQR (as explained in section 6.8); and
- POSCO wrote to the Commission to declare that it would not be cooperating with the investigation through the provision of an EQR, but may make further submissions.

The Commission considers Master Steel, POSCO and those other exporters that did not provide EQRs to be uncooperative exporters, in that they did not give the Commissioner information considered to be relevant to the investigation.

6.5 Dumping assessment – Ispat (Indonesia)

6.5.1 Export price

In respect of Ispat's Australian export sales during the investigation period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the purchases of the goods by the importer were arms length transactions; and
- the goods have been purchased by the importer from the exporter.

Therefore export price has been determined under subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

6.5.2 Normal value

The Commission found a sufficient volume of domestic sales of RIC (for comparison with all models exported to Australia) that were arms length transactions and at prices that were within the ordinary course of trade (OCOT). The Commission is therefore satisfied that the prices paid in respect of domestic sales of RIC are suitable for assessing normal value under subsection 269TAC(1).

6.5.2.1 Adjustments to normal value

Freight

The Commission considers that a downward adjustment to the normal value for domestic freight and handling expenses is necessary to ensure a fair comparison to the FOB export

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price. The Commission has applied this adjustment based on the inland freight and handling costs listed for each domestic transaction.

The Commission also considers that an upward adjustment for export inland freight and handling expenses is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses in that quarter for the relevant model.

Bank charges

The Commission considers that a downward adjustment to the normal value for domestic bank charges is necessary to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the bank charges for each domestic transaction.

The Commission also considers that an upward adjustment for export bank charges is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses in that quarter for the relevant model.

Insurance

The Commission considers that a downward adjustment to the normal value for domestic insurance expenses is necessary to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the insurance expenses for each domestic transaction.

The Commission also considers that an upward adjustment for export insurance expenses is required, to ensure a fair comparison to the FOB export price. This is the component of the insurance cost which relates to insuring goods for export between the manufacturing plant and the port. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses in that quarter for the relevant model.

Summary

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Domestic inland freight	Deduct the cost of domestic freight
Domestic bank charges	Deduct the cost of domestic bank charges
Domestic insurance	Deduct the cost of domestic insurance
Export inland freight	Add the cost of export freight
Export bank charges	Add the cost of export bank charges.
Export insurance	Add the cost of export insurance

Table 7 – Adjustments to normal value for Ispat

6.5.3 Submissions received

OneSteel

In its submission dated 14 November 2017, OneSteel argued that the Commission erred in its calculation of the dumping margin with respect to Ispat, and that it would no longer constitute a *de minimis* rate if the errors claimed by Onesteel to have occurred relating to the date of sale, the inclusion and quantification of certain adjustments (timing adjustment, ocean freight, bank charges, domestic freight and containerisation) to the normal value, the model matching exercise and sufficiency of domestic sales were corrected.

Ispat

In responding to SEF 416, Ispat provided a submission on 1 January 2018 and stated the following in response to allegations in OneSteel's submission on 24 November 2017:

Timing adjustment: Although it believes that the normal value needs adjustment by drawing comparisons through domestic and export sales occurring simultaneously rather than using their comparison at invoiced dates, Ispat clarified the dumping margin calculated for it in SEF 416 was based on the date of sale (being the date on the invoice rather than the date of the sale contract).

Ocean freight: In its submission, Ispat clarifies that the reason why the ocean freight data was updated (at the verification visit) was because what was originally included in the exporter questionnaire were estimates from Ispat's logistics system; Ispat was later able to extract the exact costs it incurred from its accounts. As the verification report notes, there were minor variances between these costs and those that were recorded on the freight invoices, due to the differences in the exchange rate when the freight was calculated and when it was booked.

Model matching: Ispat stated that it considers it preferable to match exact models, as these most closely match pricing considerations on the Australian and domestic market. Ispat added that the use of non-identical models would require specification adjustments to ensure comparability.

Sufficiency: Ispat confirmed that the Commission did ascertain the sufficiency of the volume of domestic sales used to determine its normal values.

Bank charges: Ispat commented that the Commission has correctly accepted its bank charge claims.

Domestic freight: Ispat submitted that the Commission has correctly adjusted the actual freight costs incurred on domestic sales when adjusting the normal value.

Containerisation: Ispat confirmed that containerisation was included in the export handling fees adjustment.

6.5.3.1 The Commission's consideration

The Commission notes that the majority of OneSteel's concerns in relation to the Commission's treatment of certain adjustments in calculating Ispat's normal value and dumping margin are accurately explained in Ispat's submission. Namely, the Commission confirms that it:

- accepted the date of the invoice as the date of sale in its calculations;
- had regard to the verified and correct amount of ocean freight costs;
- undertook a thorough sufficiency test to satisfy itself about the sufficiency of Ispat's domestic sales volumes that are arms length and in OCOT; and
- was satisfied that containerisation costs were included in export handing costs.

In relation to the model matching exercise, the model matching was done on the basis of "grades" and exported goods were matched with products sold domestically having identical grades with the exported models. As the Commission found that price did not vary with dimension the Commission did not use dimension to establish different models.

Consequently, the Commission does not consider that it erred in calculating the normal value and dumping margin of Ispat.

6.5.4 Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(a), and has been calculated at FOB terms.

The dumping margin in respect of RIC exported to Australia by Ispat for the investigation period is **1.0 per cent**. The basis of this calculation is in **Confidential Attachment 4**.

6.6 Dumping assessment – Gunung (Indonesia)

6.6.1 Export price

In respect of Gunung's Australian export sales during the investigation period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the purchases of the goods by the importer were arms length transactions; and
- the goods have been purchased by the importer from the exporter.

Therefore export price has been determined under subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

6.6.2 Normal value

The Commission found a sufficient volume of domestic sales of RIC (for comparison with all models exported to Australia) that were arms length transactions and at prices that were within the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of RIC are suitable for assessing normal value under subsection 269TAC(1).

6.6.2.1 Adjustments to normal value

All of Gunung's domestic sales are at ex-works and cash terms. Accordingly, no downward adjustments are required.

Freight

As all domestic sales are ex-works, the Commission considers that an upward adjustment for export inland freight and handling expenses is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses over the investigation period.

Export handling

The Commission considers that an upward adjustment for export handling expenses is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses over the investigation period.

Adjustments summary

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Export inland freight	Add the cost of export freight
Export handling	Add the cost of export handling

Table 7 – Adjustments to normal value for Gunung

6.6.3 Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the investigation period, in accordance with subsection 269TACB(2)(a), and has been calculated at FOB terms.

The dumping margin in respect of RIC exported to Australia by Gunung for the investigation period is **10.6 per cent**. The basis of this calculation is in **Confidential Attachment 5**.

6.7 Dumping assessment – Hoa Phat (Vietnam)

6.7.1 Export price

In respect of Hoa Phat's Australian export sales during the investigation period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the purchases of the goods by the importer were arms length transactions; and
- the goods have been purchased by the importer from the exporter.

Therefore export price has been determined under subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

6.7.1.1 Submissions received in relation to export price

In its submission on 24 November 2017, OneSteel argued that the Commissioner has inadvertently collapsed the Hoa Phat entities by selecting Hoa Phat One Member Company Ltd as the exporter, even though Hoa Phat Joint Stock Company was identified as the producer of the goods.

In response to OneSteel, on 8 December 2017, Hoa Phat submitted that there was no confusion surrounding the exporter of the goods to Australia, as all export sales and the export functions relating to those sales, including negotiating with the Australian customer, receiving orders, raising production requests, invoicing, receiving payment and arranging delivery, are all performed by Hoa Phat One Member Company.

6.7.1.2 The Commission's consideration

The Commission verified at the verification visit and through the ABF import database that all sales to Australian customers were made by Hoa Phat One Member Company. Therefore, the Commission considers that there is no confusion nor an error in determining Hoa Phat One Member Company as the exporter of the goods to Australia.

6.7.2 Normal value

As explained in section 5.6.1 above, the Commission found that electricity prices in Vietnam (as recorded in Hoa Phat's accounting records) do not reasonably reflect competitive market costs.

The Commission therefore used the sustainable rate of electricity tariff the World Bank Group calculated for EVN as a benchmark to uplift the current electricity costs incurred by Vietnamese exporters. Although the sustainable rate of tariff was calculated to be achieved in 2018 by gradual increases, the Commission elected to adopt the sustainable tariff rate that is calculated to be achieved in 2018 to replace the costs for Vietnamese exporters during the investigation period. The Commission did not attempt to adjust the tariff rates so that it would align with the investigation period as the parameters of the variables that were relied on in the World Bank Group's economical model were not detailed in the report.

The Commission therefore accepted that the sustainable tariff rate for electricity for EVN was 2579 Vietnamese Dong (VDN) per megawatt hour (MWh). The Commission then uplifted the verified electricity costs incurred by Vietnamese exporters by the difference of the sustainable rate of tariff and the weighted average actual rate paid. That resulted in a 76 per cent uplift in Vietnamese exporters' electricity costs

Following the application of a 76 per cent uplift to Hoa Phat's electricity costs, the Commission conducted the OCOT test (based on the uplifted cost to make and sell (CTMS)) and found a sufficient volume of domestic sales of RIC (for comparison with all models exported to Australia) that were arms length transactions and at prices that were sold in OCOT. The Commission is therefore satisfied that the prices paid in respect of

domestic sales of RIC are suitable for assessing normal value under subsection 269TAC(1).

6.7.2.1 Submissions received in relation to normal value

In its submission dated 24 November 2017, OneSteel claimed that:

- the identity of the producer was unclear;
- it was not clear if the Commission properly assessed whether sufficient sales made in OCOT were tested both at the aggregate level and individually for each model of like goods in OCOT;
- it was not clear how the Commission satisfied itself with respect to the comparable physical characteristics of relevant identified models.

In responding to OneSteel's queries and claims, Hoa Phat submitted on 8 December 2017 that:

- the Commission undertook an exhaustive interrogation of Hoa Phat's costs submitted in the exporter questionnaire response and ensured that all relevant costs associated with the production and sale of the exported goods and domestic like goods were reported;
- transactions between the separate legal entities of Hoa Phat Joint Stock Company and Hoa Phat One Member Company were not transfer sales as OneSteel suggests, but instead were legitimate actual sales;
- the Commission was able to satisfy itself that the sales prices were significantly above the costs of production and incorporated a substantial profit margin;
- the Commission did undertake the sufficiency test at both the aggregate and model specific levels and as confirmed in the verification report;
- it provided the Commission with requested mill test certificates and mechanical/chemical tables for relevant standards and specifications of RIC.

6.7.2.2 The Commission's consideration

To respond to OneSteel's queries on whether or not the Commission undertook the proper verification processes to satisfy itself with the completeness, accuracy and relevance of the data Hoa Phat submitted in its questionnaire response, the Commission confirms that it:

- verified the CTMS data for both Hoa Phat Joint Stock Company and Hoa Phat One Member Company as both companies manufactured the products exported to Australia and sold domestically;
- verified the sales data and satisfied itself in relation to the nature of transactions between these two companies;
- in conducting the OCOT test, the correct CTMS data is used having regard to the company that manufactured the goods in each corresponding sale; and
- in matching models of exported RIC with domestically sold RIC, it had regard to mechanical, chemical and physical characteristics of the goods.

6.7.2.3 Adjustments to normal value

Warehouse rental

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On 24 November 2017, OneSteel submitted that it was not clear how warehouse expenses were unique to domestic sales and how it would affect price comparability between the domestic and export markets. OneSteel also stated that it was not clear if the Commission verified the proportion of space occupied by the GUC versus other goods or services within the warehouses.

In response to OneSteel, on 8 December 2017, Hoa Phat confirmed that its warehousing expenses were direct selling expenses which relate only to the sale of domestic like goods and were not incurred on export sales to Australia

The Commission verified Hoa Phat's warehousing expenses at the verification visit and was satisfied that Hoa Phat incurred warehousing expenses in the sale of goods in the domestic market, and that constituted a genuine cost difference between domestic and export sales which affects price comparability. The Commission therefore has applied a downward adjustment to the normal value for these costs.

Intra-company transport

Hoa Phat has claimed that the cost of moving product from its manufacturing warehouse to its domestic sales network should be a downward adjustment to normal value. After considering the data collected at the verification, the Commission has applied a downward adjustment to the normal value for these costs.

Export inland transport

OneSteel questioned in its submission of 24 November 2017 whether the upward adjustment to normal value for verified costs at port and general handling costs included costs for containerisation.

Hoa Phat responded in its submission of 8 December 2017, and confirmed that the submitted exportation expenses included containerisation charges, seal fee, documentation fees, customs fees and all miscellaneous charges incurred at the port of dispatch.

The Commission notes that all domestic sales are ex-works. After verifying the data submitted in Hoa Phat's exporter questionnaire, the Commission considers that an upward adjustment for export inland freight and handling expenses (including containerisation) is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses over the investigation period.

Export port costs

The Commission considers that an upward adjustment for export handling and handling expenses is required, to ensure a fair comparison to the FOB export price. The Commission has applied this adjustment based on the weighted average cost (per tonne) for those expenses over the investigation period.

Advertising

Hoa Phat has claimed that the cost of a marketing campaign aimed at giving its drawn wire product a higher profile should be a downward adjustment to normal value. Following

SEF 416, Hoa Phat submitted that the claimed (advertising) adjustment related to the associated costs of holding a marketing and sales conference aimed at developing and improving the wire rod drawing domestic market. Hoa Phat also stated that these advertising expenses did not relate to generic brand or company-wide promotions but instead, the conference arranged and hosted by Hoa Phat was particularly aimed at promoting drawing grade of RIC to its existing domestic customers. Hoa Phat later provided supporting evidence in the form of service contracts for the event and associated invoices.⁵⁷

The Commission notes that the Manual states that advertising expenses often relate more to the general cost of business and generally are not grounds for adjustment. However, where the connection to the sale is established and evidence is suitable, adjustment may be allowed in certain circumstances such as where:

- the exporter pays advertising costs on behalf of its customer;
- the exporter reimburses the importer for advertising cost;
- advertising and sales promotion expenses are exclusive to the goods in question.⁵⁸

After reviewing the evidence provided by Hoa Phat, the Commission maintains that the adjustment is requested for marketing costs for a product that is fabricated from RIC, and as such is not directly relevant, or exclusive, to the goods in question. On this basis, the requested adjustment has not been made.

Adjustments summary

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Intra-company transport	Deduct the cost of inland transport
Warehouse rental	Deduct the cost of warehouse rental
Export inland freight	Add the cost of export freight
Export port costs	Add the cost of port costs

Table 9 - Adjustments to Hoa Phat normal value

In addition to the adjustments summarised above, the Commission noted that, due to a lack of domestic sales in some quarters of the investigation period, some models did not have a corresponding normal value in that quarter. That is, there has not been a domestic sale (and a corresponding subsection 269TAC(1) normal value) in some quarters for the matched models which transferred to Hoa Phat's normal values table as gaps in some cells. In the dumping margin calculation of Hoa Phat for SEF 416, the Commission used

⁵⁷ Document Nos. 29 and 34 on the EPR.

⁵⁸ The Manual, page 75 refers.

one particular model's normal value to calculate the effect of timing of sale on normal values. The Commission then calculated the normal values that would correspond to the gaps in the normal value table by using the percentage change in that model's normal value over the quarters of the investigation period.

In calculating the dumping margin for this report, the Commission decided to follow a slightly different approach to calculate the effect of timing of sale on the normal values. Instead of calculating the effect of timing based on a single model only, the Commission calculated the weighted average effect of timing on sales of all like goods that were sold in every quarter, to make sure that too much emphasis is not given to a particular model's changes in domestic sales prices between different quarters. The Commission considers that by calculating the effect of timing of the sale based on a much larger sample size, normal values would follow the same pattern in terms of the effect of timing over the domestic sales prices of all like goods that were sold each quarter of the investigation period.

6.7.3 Dumping margin

The dumping margin has been assessed by comparing the normal value to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(aa), and has been calculated at FOB terms.

The dumping margin in respect of RIC exported to Australia by Hoa Phat for the investigation period is **-1.3 per cent**. The basis of this calculation is in **Confidential Attachment 6**.

6.8 Dumping assessment – Master Steel (Indonesia)

Following the initiation of the investigation, Master Steel sought a 60 day extension of time to prepare its EQR. On 10 July 2017, the Commission instead granted a 14 day extension to the date of submission of the EQR. The Commission received Master Steel's EQR within the deadline, however there were deficiencies in the response.

On 2 August 2017, Master Steel was provided with a list of those deficiencies and granted until the close of business on 4 August 2017 to address them. Additional information was lodged by Master Steel on 4 and 5 August 2017, however a number of major deficiencies outlined in the list had not been addressed. This rendered the information submitted in the EQR unreliable.

On 17 August 2017, the Commissioner wrote to Master Steel to advise that it had been deemed an uncooperative exporter for the purposes of this investigation. Master Steel's dumping margin has been calculated as a member of the Indonesian 'uncooperative and all other exporters' classification.

6.9 Uncooperative and all other exporters

The Commission has calculated all uncooperative and all other exporter rates with a normal value determined under subsection 269TAC(6) and an export price under subsection 269TAB(3), as required by subsection 269TACAB(1).

6.9.1 Indonesia

To determine the uncooperative normal value, the Commission has had regard to the highest weighted average normal value for a cooperating exporter in Indonesia, with no downward adjustments under subsection 269TAC(8). To determine the uncooperative export price, the Commission has had regard to the lowest weighted average export price of any exporter.

The dumping margin for uncooperative and all other exporters from Indonesia is **16.0 per cent**. This calculation is in **Confidential Attachment 7**.

6.9.2 Korea

On 14 August 2017, the Commission received a submission from POSCO stating that it would not be completing an EQR. As such, the Commissioner has deemed POSCO to be an uncooperative exporter under section 269T.

To determine the uncooperative normal value, the Commission has had regard to the benchmark prices provided with the application from OneSteel, which the Commission considers to be the most reliable evidence available to it. To determine the uncooperative export price, the Commission has had regard to the weighted average export price of exports from Korea in the investigation period, as reported in the ABF import database.

The dumping margin for uncooperative and all other exporters from Korea is **20.9 per cent**. This calculation is in **Confidential Attachment 7**.

6.9.3 Vietnam

The Commissioner notes that Hoa Phat's dumping margin is negative. As Hoa Phat is the only exporter from Vietnam in the investigation period, the Commission has had regard to the weighted average normal value, excluding all downward adjustments under subsection 269TAC(8), and the weighted average export price of this exporter.

The dumping margin for uncooperative and all other exporters from Vietnam is **-1.3 per cent**. The basis of this calculation is in **Confidential Attachment 7**.

6.10 Volume of dumped imports

Subsection 269TDA(3) provides that the Commissioner must terminate an investigation in so far as it relates to a country if he is satisfied that the volume of dumped goods subject to the investigation is negligible. Subsection 26TDA(4) provides that the volume of dumped goods is taken to be a negligible volume from a particular country if it is less than three per cent when expressed as a proportion of the total Australian import volume.

The Commissioner is satisfied that the volumes of dumped exports (including negligibly dumped goods) from each of the subject countries is above three per cent, when expressed as a proportion of the total Australian import volume (**Confidential Attachment 1** refers).

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Findings

Based on an analysis of information and evidence obtained and verified during this investigation, the Commissioner has found that during the investigation period the Australian industry experienced:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced sales revenue; and
- reduced ROI.

The Commissioner considers that the injury experienced by the Australian industry was material.

7.2 Approach to injury analysis

OneSteel claims that injury from dumped imports from the subject countries first commenced in October 2015, and that the impact of the dumping through loss of sales volume and reduced selling prices has caused material injury.⁵⁹

The Commission has focused its injury analysis in this chapter predominantly on the investigation period and has used data from 1 January 2013 (referred to as the injury assessment period) for the purpose of determining whether material injury has been caused to the Australian industry.⁶⁰

This chapter analyses the economic condition of the Australian industry as a whole and provides an assessment as to whether the Australian industry has experienced material injury. All figures below compare years ending 31 December, unless otherwise specified.

The Commission's injury analysis for the purposes of this report is based primarily on:

- OneSteel's verified costs, sales and other financial data;
- verified sales data of imported RIC from the subject countries; and
- ABF import data.

⁵⁹ Document No. 1 on the EPR refers.

⁶⁰ See subsection 269T(2AD). The Commission notes that subsection 269T(2AE) does not allow any determination that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

7.3 Background

7.3.1 Legislative framework

Under section 269TG, one of the matters the Assistant Minister must be satisfied of in order to publish a dumping duty notice is that the Australian industry producing like goods has experienced, or is experiencing, material injury caused by dumping of the goods.

The matters that may be considered in determining whether an Australian industry has experienced material injury are set out in section 269TAE.

7.3.1.1 Ministerial Direction on Material Injury

In assessing material injury, the Commission also has regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).⁶¹ The Material Injury Direction makes it clear that material injury from dumping can occur notwithstanding that there is also injury from other sources; or that the Australian industry remains profitable. In such circumstances the relevant comparison is between the condition of the Australian industry with dumping and the condition of the Australian industry without dumping.

The Commissioner has been directed to identify material injury on the basis of facts. It should be shown that the industry is experiencing injury and that injury caused by dumping is material in degree. The injury must also be greater than that likely to occur in the normal ebb and flow of business.

7.3.2 Injury claims in OneSteel's application

OneSteel alleges that it has experienced material injury caused by exports of RIC to Australia from the subject countries at dumped prices through:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced sales revenue;
- reduced capital investment;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment; and
- reduced productivity.

The Commission has assessed each of these claims, below.

⁶¹ The Material Injury Direction is available on the Federal Register of Legislation website at www.legislation.gov.au.

7.4 Volume injury

In its application, OneSteel claimed that it lost sales volume and market share due to the growth in the volume of imports of RIC from the subject countries.

7.4.1 Sales volume

Figure 10 illustrates OneSteel's sales volumes for RIC on the Australian market and the size of the total market for the period 2013-2016.

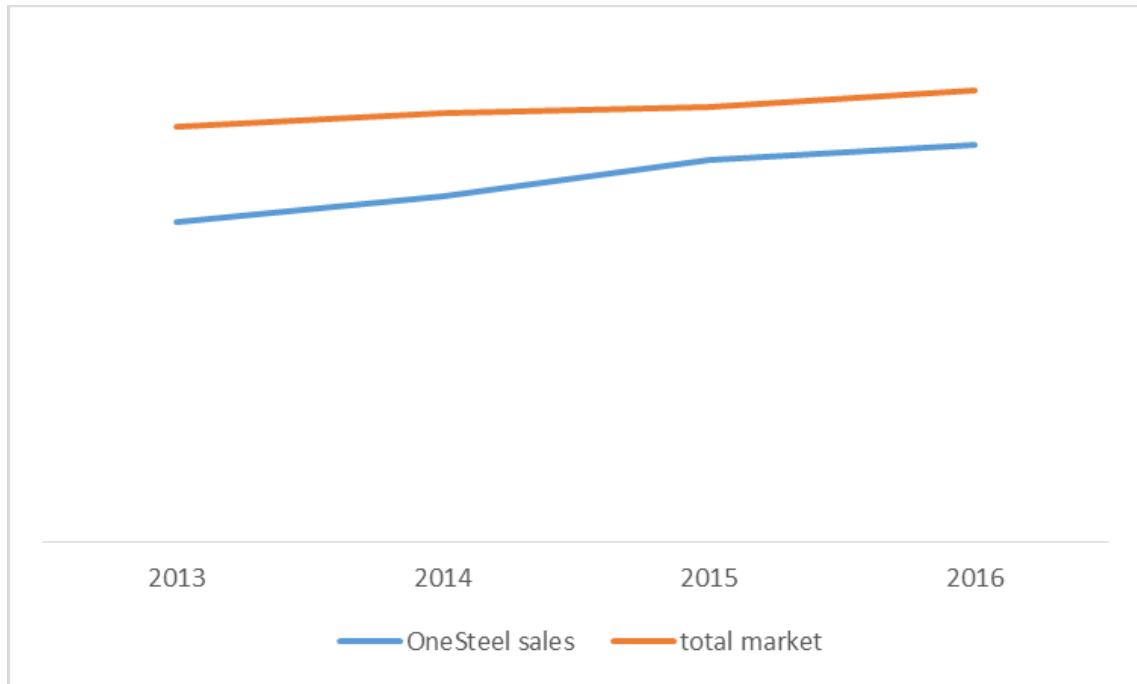


Figure 10 - OneSteel sales and total Australian market for RIC, 2013-2016

As demonstrated in Figure 1010, the Australian industry has gained a significant volume of sales since the start of the injury assessment period.

7.4.2 Market share

Figure 61 illustrates OneSteel's share of RIC sales in the Australian market for the period 2013-2016.

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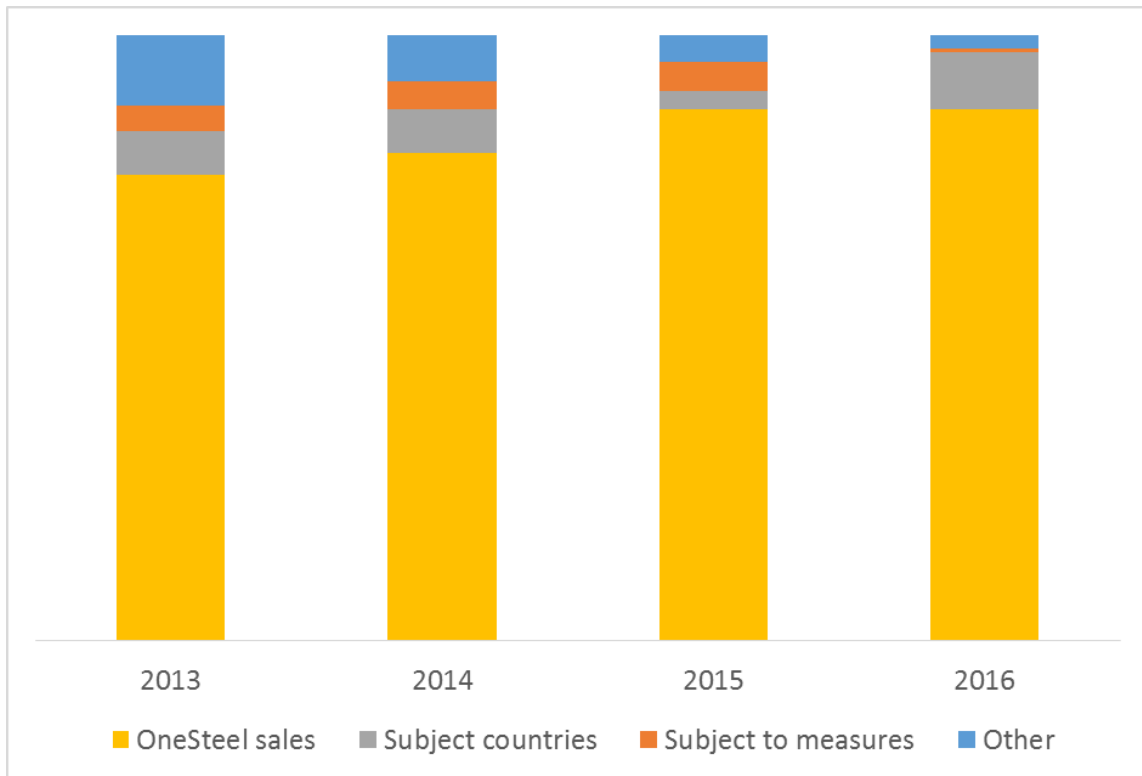


Figure 61 - OneSteel share of the total Australian market for RIC 2013-2016

Figure 72 demonstrates OneSteel's share of the Australian market by quarter for the investigation period.

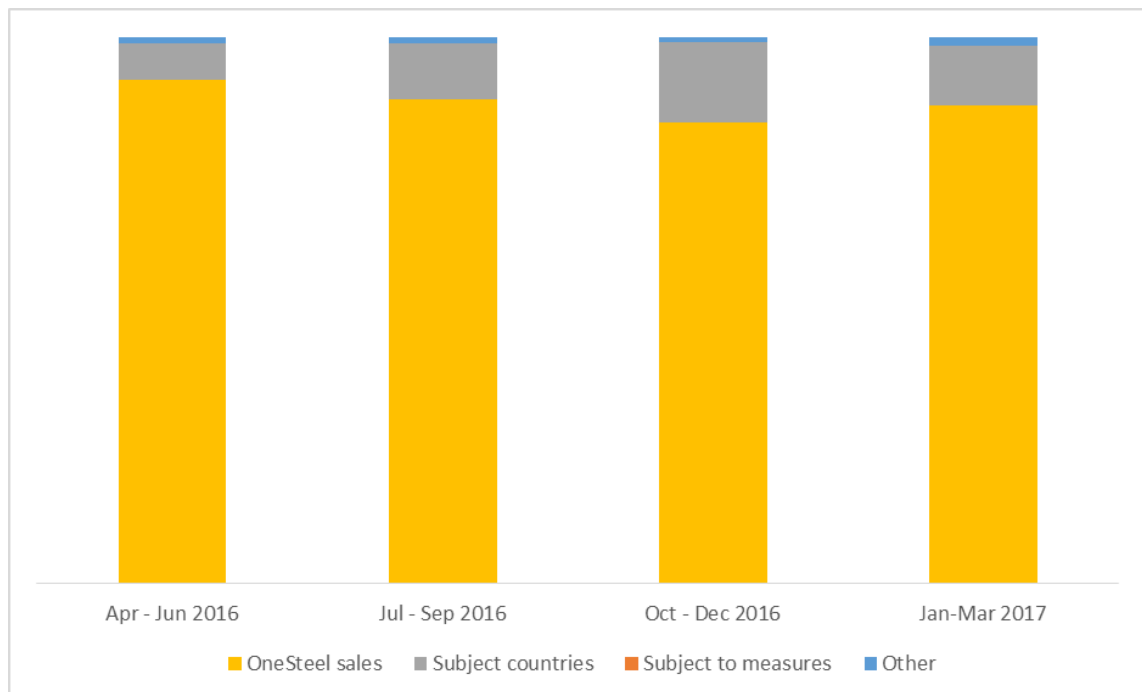


Figure 72 – OneSteel share of the total Australian market for RIC in the investigation period

OneSteel has gained significant market share since the start of the injury assessment period, although it has had a slight decline in market share during the investigation period.

The Commission considers that, during the investigation period, demand previously serviced by dumped Chinese exporters was instead serviced by sales from the subject countries, with OneSteel not gaining additional sales from this 'pool'. However, OneSteel has not lost sales volume to the imports, it has merely been unable to gain greater market share in the absence of exports from a formerly competing source.

7.4.3 OneSteel's proposed volume injury calculation

During the verification visit, OneSteel proposed a method for the Commission to assess volume injury. This relied on a correlation between OneSteel's sales of RIC to particular customers, and OneSteel's estimation of those companies' subsequent retail sales of mesh (a downstream product manufactured from RIC).

The Commission considers that assessing volume injury in this manner would be inaccurate. OneSteel's methodology requires a number of estimates and assumptions which cannot be substantiated based on the information available to the Commission, including downstream sales of RIC-fabricated products and intercompany transfers of RIC between OneSteel's customers at a wholesale level.

Without undertaking substantial verification of downstream sales of goods manufactured from RIC, the Commission considers that assessing volume injury using OneSteel's proposed methodology to be unreliable. Accordingly, the Commission has declined to use OneSteel's proposed method.

7.4.4 Submissions received in relation to volume injury

In its submission dated 24 November 2017, POSCO stated that it supported the conclusion (in SEF 416) that OneSteel has not suffered injury in the form of volume injury.⁶² POSCO submitted that it is evident that during the investigation period, the applicant's sales volumes were at a historical high. POSCO claimed that in these circumstances it was clear that no volume injury had been suffered by the applicant.

OneSteel responded to POSCO's comments in a submission dated 22 December 2017.⁶³ In this submission, OneSteel argued that the reasons why it has increased its volumes and market shares across the investigation period was that there were remedies in place against dumped imports and that OneSteel has expanded its customer base.

7.4.5 Conclusion – volume injury

Based on the available information, the Commission considers that there is no evidence to support OneSteel's claim that the Australian industry has experienced injury in the form of lost sales volume and market share.

Further analysis of the Commission's assessment of volume injury is contained in **Confidential Attachment 1**.

⁶² Document No. 28 on the EPR.

⁶³ Document No. 32 on the EPR.

7.5 Price injury

In its application, OneSteel alleged price injury in the form of price suppression and depression, lost profits and profitability, lost sales revenue and reduced ROI.

7.5.1 Price suppression and depression

OneSteel alleges that the presence of dumped goods prevented it from raising its prices in response to changes in the quarterly CTMS.

Noting the findings of dumping in this report, as well as in REP 240 and REP 301, the Commission observes that OneSteel has been operating in a market with ongoing dumping. Figure 83, below, demonstrates that, for most of the injury period, OneSteel has been unable to raise its unit price above the unit CTMS. This has been particularly pronounced during the investigation period, and after a period of relative parity.

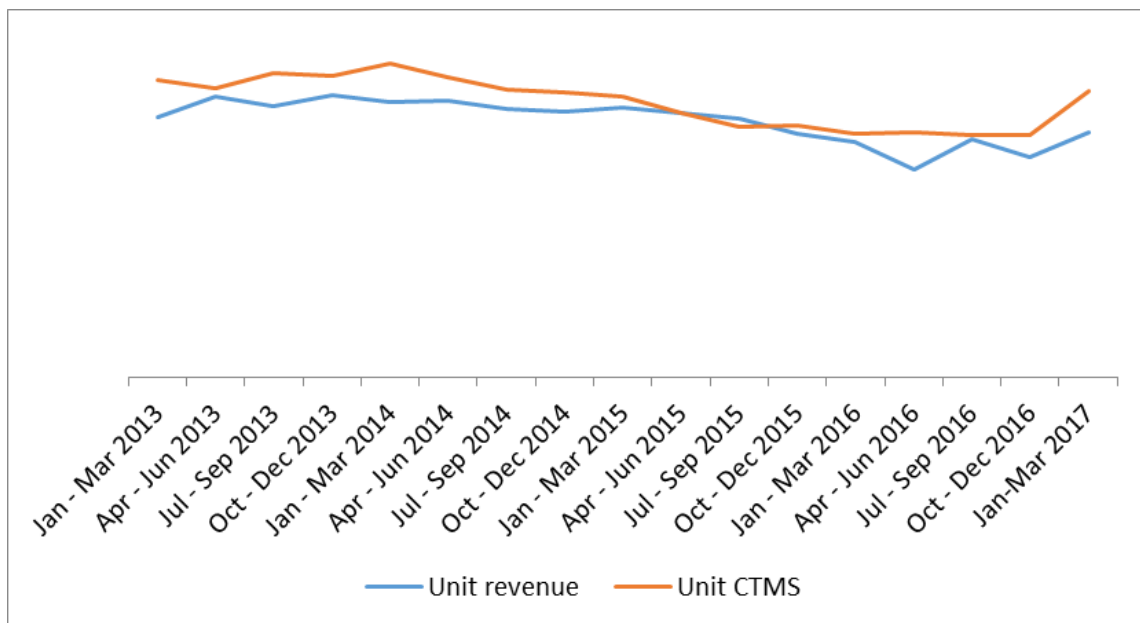


Figure 83 - OneSteel unit revenue and unit CTMS for the injury period

As outlined in Chapter 4, OneSteel sets its prices for RIC to unrelated parties using an IPP plus an amount for a local premium, which is negotiated individually. The IPP price in turn determines the price to OneSteel's related party customers. Due to the nature of these transactions and the direct relationship with the IPP, the Commission considers that OneSteel's sales to related party customers are reliable for the purpose of assessing price injury. This is consistent with the Commission's approach in REP 240 and REP 301.

During the period under consideration, the IPP was almost exclusively developed using quotes from the subject countries, which implies that quotes from these countries had the lowest prices and the broadest reach across OneSteel's customers.

Due to the commodity nature of RIC, the high degree of substitutability between the goods and like goods and the ease with which customers purchase from interchangeable suppliers, it is not feasible for OneSteel to raise its prices independent of the market generally without suffering lost sales, and thereby lost revenue.

Based on the available information, the Commissioner considers that OneSteel has experienced injury in the form of price depression and price suppression. The Commission's analysis is contained in **Confidential Attachment 1**.

7.5.2 Profits and profitability

OneSteel claims that, as a consequence of lost sales, price suppression and price depression due to dumped imports from the subject countries, it has experienced injury through loss of sales revenue. This lesser revenue has resulted in lost profits and reduced profitability. Furthermore, this lost profit has resulted in reduced ROI.

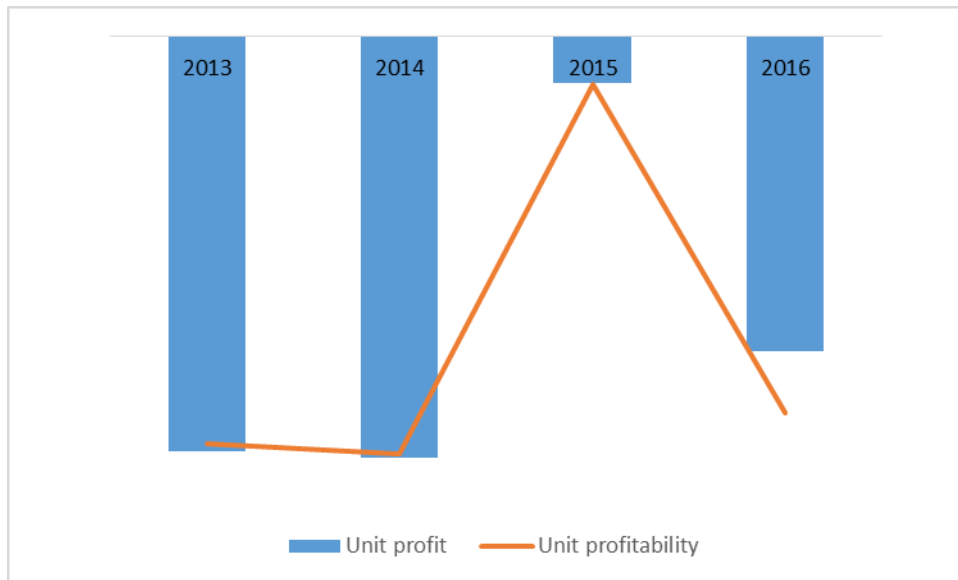


Figure 94 - OneSteel profit and profitability

As demonstrated in Figure 9, OneSteel has been unprofitable for sales of RIC across the entire investigation period. OneSteel has claimed that, to maintain sales volume it has had to compete on price, and that the prices are suppressed accordingly. The combination of lower prices than otherwise would be in the market and OneSteel's flat market share in the investigation period (see Figure 71) has resulted in a total revenue that is lower than it would have been, but for the above factors.

7.5.3 Submissions received in relation to price and profitability injury

In its submission dated 24 November 2017, POSCO re-iterated its submission of 14 August 2017 and claimed that OneSteel's price and profit information was not indicative of material injury caused by dumping. POSCO argued that it was highly unusual for an entity to be consistently unprofitable over such a long period of time particularly in circumstances where it was clearly and indisputably the dominant player in the market. POSCO argued that this was a result of the flow-on effects of OneSteel's approach to pricing between itself and its related entities. POSCO submitted that the related party sales reflect the majority of the applicant's sales, and it does not believe injury can be found to have occurred in circumstances where the price depression or suppression benefits the applicant's related entities by providing them with major material inputs for less than adequate remuneration.

OneSteel responded to POSCO's claims in its submission on 22 December 2017. OneSteel submitted that POSCO's claim that Liberty OneSteel has not suffered price injury was unsubstantiated and illogical. OneSteel argued that the fact that it sells to both related and unrelated customers at a price competitive with dumped imports only ensures that related and unrelated customers are competitive against parties sourcing dumped products.

7.5.4 Conclusion – price and profit injury

As explained in the Australian industry verification report, the Commission confirmed that sales orders placed by the related downstream processing businesses were completed in the same manner as for unrelated customers, the net price was similar to that of an unrelated customer, and those sales were subject to the same delivery terms and costs as unrelated customers. The Commission also confirmed that payment terms were also the same for related and unrelated customers and were accounted for as revenue in the sales management system. As a result, the Commission assessed these sales as arms length transactions.

While the Commission has not accepted that OneSteel experienced volume injury, the Commission considers that lower prices across the same volume of sales has resulted in lower sales revenue. On this basis, the Commission considers that OneSteel has experienced injury in the form of lost sales revenue, lost profit and profitability, and reduced ROI.

7.5.5 Materiality of price injury

The Commission has assessed price injury with regard to OneSteel's sales to all parties by calculating the revenue difference between actual sales price and OneSteel's CTMS in that quarter. Based on this analysis, the Commission considers that the injury experienced is material.

7.6 Other economic factors

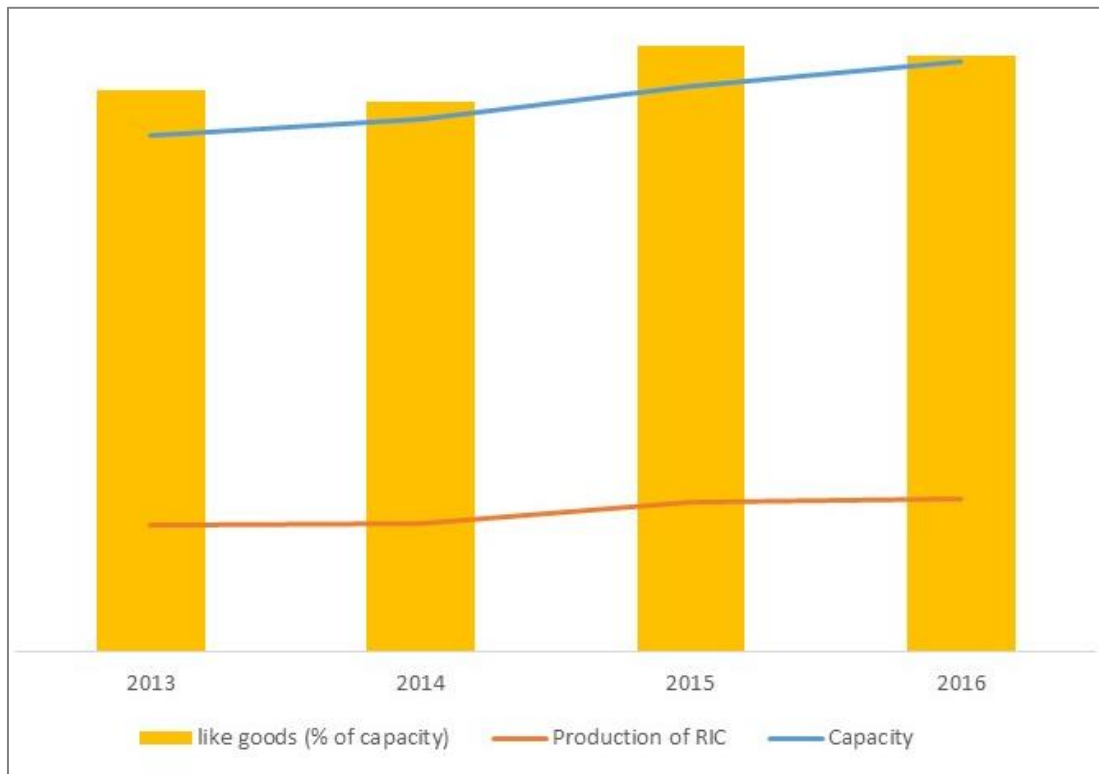
7.6.1 Reduced capital investment

In its application, OneSteel claimed that capital investment declined over the investigation period, and therefore it has been injured in the form of reduced capital investment. The reduction in capital investment was apparent across the injury period.

OneSteel has not elaborated on what capital investments have not been undertaken as a result of the dumped goods from the subject countries. A mere reduction in capital investment does not necessarily equate to injury. Accordingly, the Commission does not consider that there is evidence OneSteel has experienced injury in the form of reduced capital investment.

7.6.2 Reduced capacity utilisation

OneSteel claimed that due to lost sales there has been declining capacity utilisation, and that it has been injured in the form of reduced capacity utilisation.



Figure

105 - Capacity utilisation for OneSteel

Figure 105 demonstrates that OneSteel has increased the percentage of its capacity that is utilised for the production of RIC over the investigation period, while also increasing the total capacity (measured as optimal output over the actual shifts in the periods). OneSteel has also increased its sales over the injury assessment period.

Accordingly, the Commission does not consider that OneSteel has experienced injury in the form of reduced capacity utilisation.

7.6.3 Reduced employment and reduced productivity

OneSteel claims that due to lost sales, it has experienced injury in the form of reduced employment and reduced productivity.

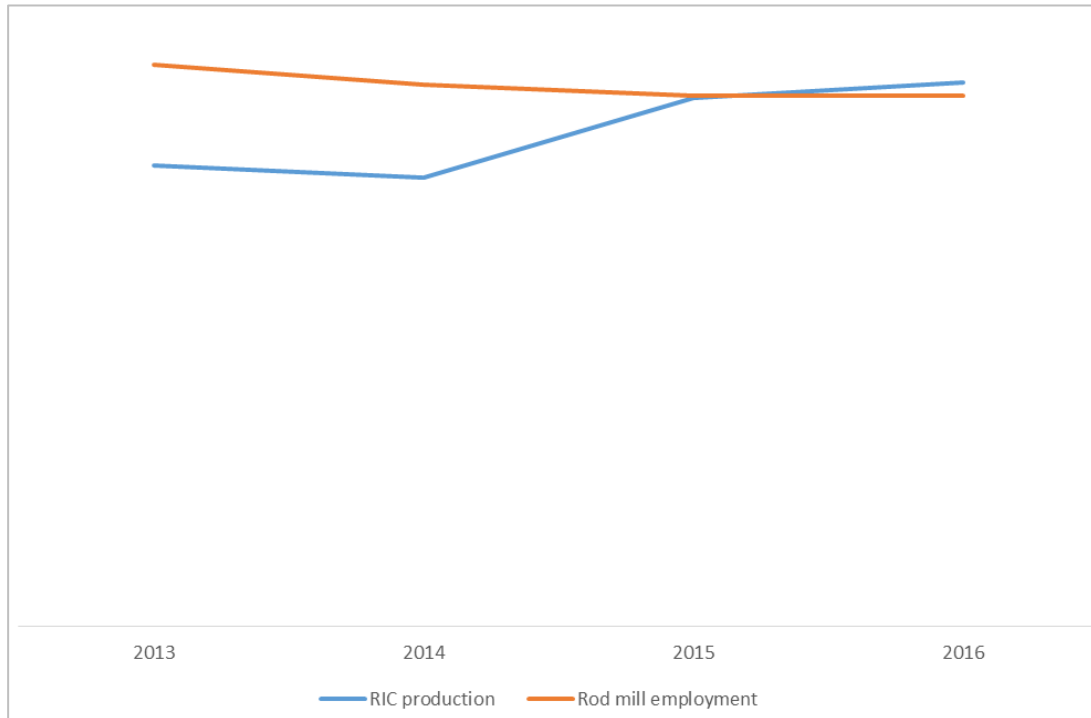


Figure 116 - OneSteel employment vs RIC production

Figure 16 demonstrates that OneSteel reduced employment while significantly increasing output of the goods over the course of the investigation period. This indicates that OneSteel has improved productivity, and as such has not been injured in the form of reduced productivity.

8 HAS DUMPING CAUSED MATERIAL INJURY?

8.1 Findings

In accordance with section 269TAE, the Commissioner has determined, for the purposes of section 269TG, that the injury, if any, to the Australian industry caused by the dumped goods during the investigation period was negligible.

8.2 Cumulative effects of exportations

Before considering whether injury to OneSteel has been caused by dumping, the Commission has first considered whether this analysis should be undertaken on a cumulative basis. Subsection 269TAE(2C) sets out the requirements for assessing the cumulative effects of goods exported to Australia from different countries.

Where exports from more than one country are the subject of investigations resulting from applications under section 269TB that were lodged on the same day (as is the case in this investigation) the cumulative effects of imports may be assessed if:

- the margin of dumping established for exporters in each country is not negligible (per subsection 269TAE(2C)(c));
- the volume of imports from each country is not negligible (per subsection 269TAE(2C)(d)); and
- cumulative assessment is appropriate having regard to the conditions of competition in the Australian market between the imported goods and between the imported goods and like goods that are domestically produced (per subsection 269TAE(2C)(e)).

8.2.1 Dumping margins

As outlined in Chapter 6, the Commission has found that the margins of dumping for all exporters from Korea, and all exporters from Indonesia excluding Ispat, are not negligible.

8.2.2 Import volumes

As outlined in section 6.10, the Commission is satisfied that the volume of dumped goods from Indonesia (excluding Ispat) and Korea was not negligible.

8.2.3 Conditions of competition

The Commission has considered whether the conditions of competition in the Australian market between RIC imported from the subject countries, and domestically produced RIC and imported RIC, are similar.

As discussed in Chapter 3, the Commission considers that the physical characteristics of imported RIC and domestically produced RIC are similar. The imported goods and locally produced RIC are made to the same diameters and grades. The Commission observed that importers purchase RIC from both OneSteel and the exporters in the subject countries. The Commission also notes that the imported goods and locally produced RIC are sold into the same markets and are highly substitutable products. Further, importers

have demonstrated a willingness to purchase RIC from different exporters. This includes the purchase of RIC from countries that are not the subject countries.

RIC is a highly commoditised product which competes mainly on price. The Commission considers that, due to the high degree of price sensitivity in the market, price competition is a major condition of competition between the imported goods, and between locally produced RIC and imported goods.

8.2.4 The Commission's assessment

The Commission considers that the requirements of subsection 269TAE(2C) are satisfied and that it is appropriate to consider the cumulative effect of the dumped exports from Korea and Indonesia.

8.3 Price undercutting

OneSteel alleges that its prices are being undercut by the dumped goods. Price undercutting occurs when imported goods are sold at a price below that of the Australian produced like goods.

OneSteel states that it sets its prices to unrelated customers based on the IPP, plus a premium which reflects the shorter turnaround, local production and additional guarantees it offers. The IPP is also based on what evidence OneSteel is able to gather concerning price offers in the market, and for that reason relies on incomplete information.

To calculate the prices for the purposes of an undercutting analysis, all values have been converted to Free Into Store (FIS) terms. To do so, the Commission has taken the price at FOB for all exporters and added the verified ocean freight for Cost, Insurance and Freight (CIF) / Cost and Freight (CFR) sales, or the weighted average ocean freight for FOB sales, and the lowest average post-exportation costs for any verified importer. In Figure 17, these prices for the dumped goods have been compared to the weighted average FIS prices for OneSteel in sales to unrelated parties over the investigation period.

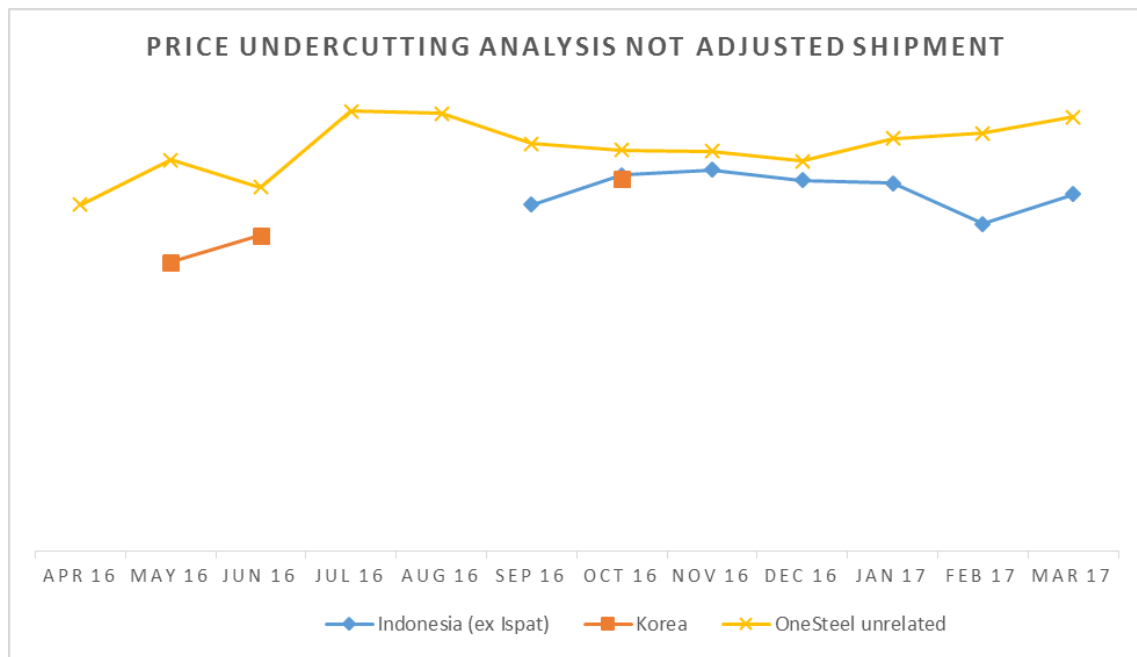


Figure 127 - comparison of FIS prices in the investigation period

OneSteel's prices in Figure 127, above, include the premium. Undercutting is likely to be unavoidable in these circumstances, however trends should be apparent where upwards movements in the price of the dumped goods results in an upward movement for OneSteel, and vice versa. It is clear that there is little correlation between movements in the OneSteel price and the prices of dumped goods in the above figure, with OneSteel's prices often rising when the export price is declining or vice versa.

In its submission dated 24 November 2017, OneSteel criticised the Commission's approach to the price undercutting analysis and stated that the analysis was based on values at time of exportation, not the time when the customer receives the goods in Australia. OneSteel also added that this approach was not consistent with the Commission's usual approach for price undercutting.

In this instance, instead of using the verified FIS prices realised by the importers, the Commission utilised the approach explained above in order to be able to assess the effects of the export sales from countries where no verified sales data were available through importer verifications. In order to address OneSteel's concerns in relation to the timing of the sale, the Commission also assessed the price undercutting with the assumption that shipment of the goods to the customers would take a month. That is, the Commission undertook the price undercutting analysis assuming that the goods have been delivered to Australian customers one month after the day of importation. In addition to that, Figure 18 below also contains weighted average FIS prices from Hoa Phat and Ispat.

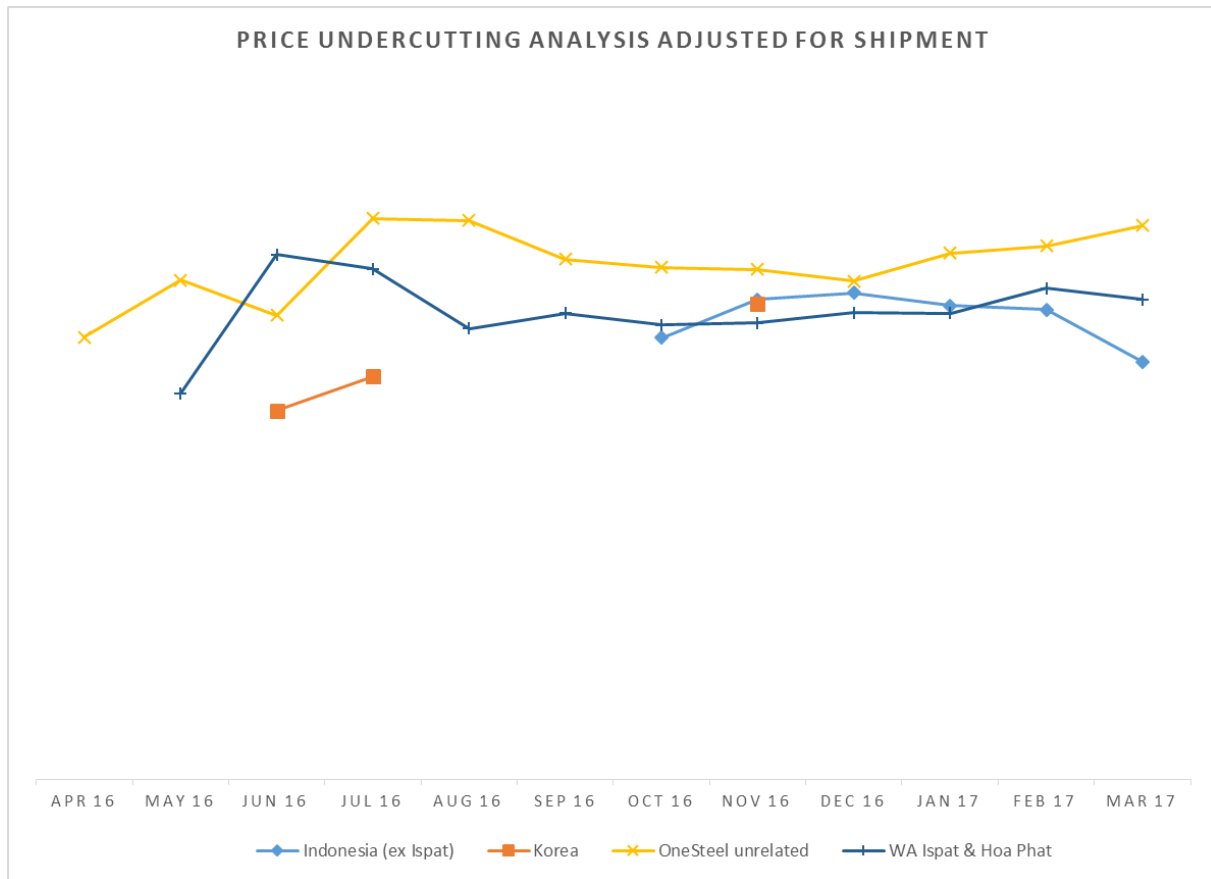


Figure 138 - comparison of FIS prices in the investigation period with timing adjustment for shipment

The Commission notes that both Figures 17 and 18 support the Commission's findings in relation to price undercutting that there is little correlation between movements in the OneSteel price and the prices of dumped goods in the above figures. The Commission notes that OneSteel's prices often rise when the export price is declining, or vice versa. The Commission also notes that in all but one month of the investigation period, both dumped and undumped imports undercut OneSteel's prices.

The Commission's price undercutting analysis is available at **Confidential Attachment 8**.

8.4 Price effects

As demonstrated in Chapter 7, the prices of the Australian industry are led by the import pricing offers received by importers and end users. These offers can then be lowered in response to the Australian industry's pricing.

During the verification of the Australian Industry, detailed evidence was provided with regard to the offers guiding the IPP. A sample for approximately 50 sales was provided, which covered exports from Korea, Vietnam and Indonesia generally, as well as specific offers for Master Steel and Ispat. The data that forms the basis of OneSteel's IPP model is in **Confidential Attachment 9**.

The full set of price offers across the investigation period has also been charted in **Confidential Attachment 9**. Offers and goods from Vietnam, Ispat and countries not

subject to this investigation relate to undumped goods, and as such cannot be considered to be causative. Similarly, the offers from 'Indonesia' and 'Asia' (as opposed to a specific exporter) may have equally related to exports from undumped sources (such as Ispat) and as such cannot be considered to be positive evidence of a causal link.

The analysis in **Confidential Attachment 9** demonstrates that, during the investigation period, there were no dumped goods in the market for three of the twelve months, and no offers from dumped sources in five of the twelve months. In addition to this, for ten of the twelve months of the investigation period, the offers from undumped sources were either the same price as, or cheaper than, the offers from dumped sources. It was only in two months of the investigation period that there were dumped goods in the market at prices which undercut OneSteel and all undumped offers.

8.5 Volume effects

OneSteel has claimed that sales of dumped goods have resulted in volume injury through the loss of sales.

Noting the analysis already undertaken in Chapter 7, the claim of lost volume being caused by dumped goods can be assessed by breaking the sales from subject countries into dumped and undumped goods, as determined in Chapter 6.

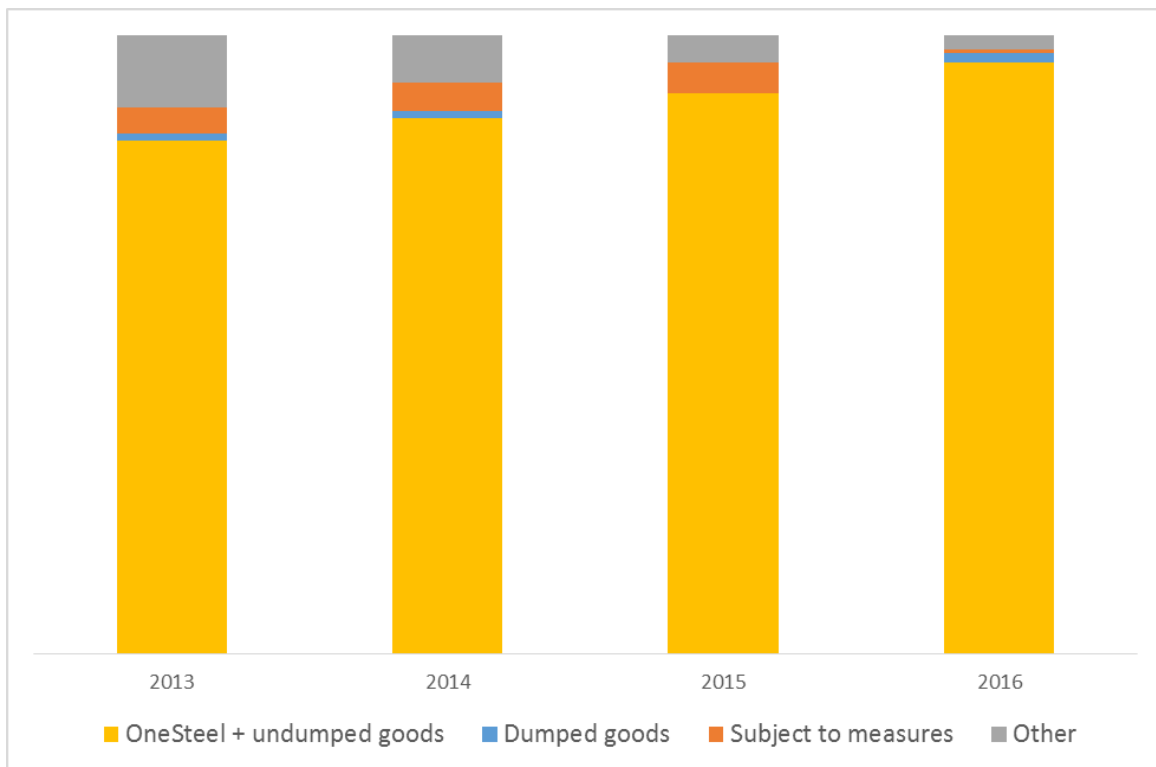


Figure 149 - Australian market share by source

Figure 149 demonstrates that the market is now almost exclusively serviced by the Australian industry and undumped goods. In 2016 the volume of goods sourced from dumped sources is less than that from countries not subject to this application, and is less than 2 per cent of the total Australian market.

8.6 Injury caused by factors other than dumping

The following factors have been raised in submissions as factors other than dumping:

- self-inflicted injury through importation of dumped goods;
- injury due to the falling price of iron ore;
- deliberate related party pricing to remain unprofitable; and / or
- there being no link between dumped goods and OneSteel's profitability.

The Commission has also considered injury caused by undumped goods. Submissions addressing the applicant's claimed loss of sales have not been addressed here, as the Commission has not found that the applicant experienced injury through loss of sales.

8.6.1 Self-inflicted injury through importation of dumped goods

The submission from the Government of Indonesia (GoI)⁶⁴ notes that OneSteel imported the goods under consideration from Indonesia, and as such benefitted from the imports which were allegedly at dumped prices.

As noted in Chapter 4, this was because of a forecast short term demand spike which OneSteel chose to address by importing the goods, rather than adding additional shifts or employing more staff. Furthermore, the import was not of a material amount, representing less than 1 per cent of OneSteel's sales.

8.6.2 Injury due to falling price of iron ore

The submission from the GoI also alleges that price reductions due to the falling price of iron ore has materially contributed to the injury experienced by the Australian industry.

Figure 20 compares movements in unit raw material costs and unit revenue.

⁶⁴ Document No. 8 on the EPR.

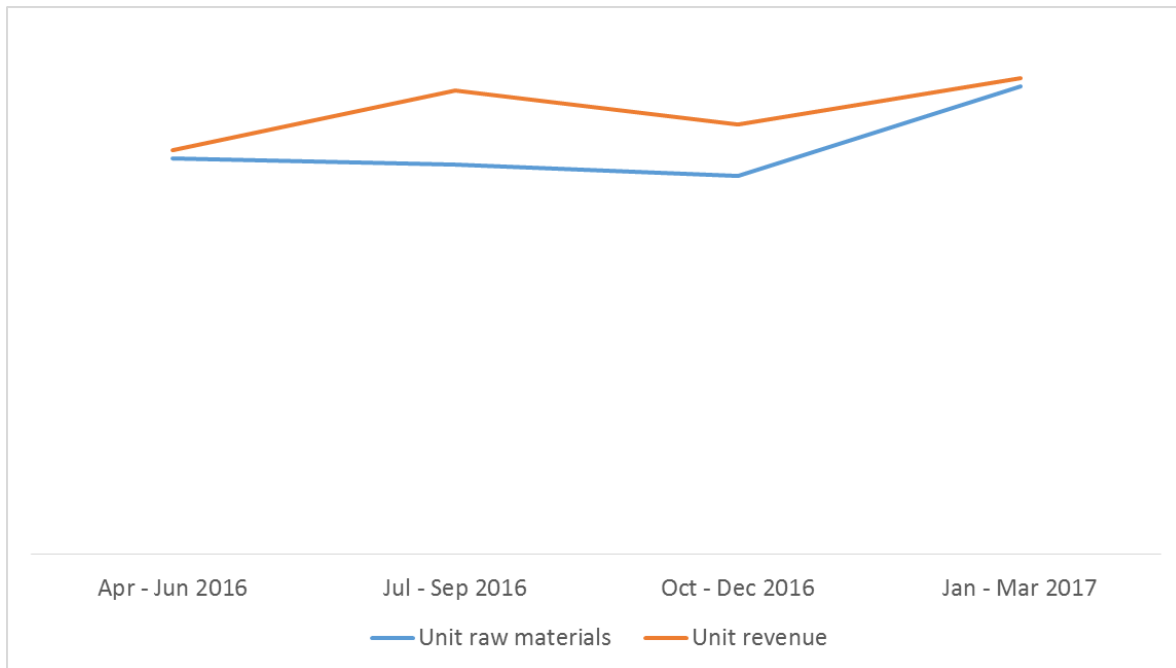


Figure 20 - OneSteel unit raw materials vs unit revenue

The above figure demonstrates that pricing is generally influenced by the price of OneSteel's own unit raw material costs, but that it is not guaranteed that a movement in raw input prices will be reflected in the price in that period. This is most noticeable in the second quarter, where unit revenue increases while raw material costs decline.

It is worth noting that the Australian industry's raw material costs and unit revenues both rose over the investigation period. As such, the Gol's premise that revenue has fallen is incorrect.

8.6.3 Deliberate related party pricing to remain unprofitable

In its submission dated 14 August 2017, POSCO claimed that:

[T]he Applicant and its related entities have been maintaining the operations of an internationally inefficient steelmaking operation by pricing steel between themselves in a way which enhances the ability of the Applicant's related entities to compete against unrelated entities for the business of end user customers that compete in markets for downstream goods.⁶⁵

POSCO further claimed that injury should be assessed to include downstream profitability when considering sales to related parties.

As indicated in POSCO's submission, the Commission has found in both REP 240 and REP 301 that the sales to related parties are on an arms length basis. The Commission's analysis of pricing to related parties in this investigation found that related party customers are treated no more favourably than unrelated customers (section 4.3 and

⁶⁵ Document No. 10 on the EPR.

7.5.4 refer). As such, the Commission is of the view that the sales to related parties continue to represent arms length transactions.

The Commission has not had regard to downstream profitability, as downstream products are not commercially competitive with the goods under consideration. Furthermore, a highly profitable downstream company would likely be indicative of a profitable industry as a whole, as OneSteel supplies most of the RIC in the market and all suppliers purchasing from OneSteel are receiving their major input on similar terms at similar pricing.

8.6.4 No link between dumping of goods and OneSteel's profitability

POSCO, in its submission on 14 August 2017 also claimed that there was no relationship between the dumped goods and OneSteel's levels of profit and profitability, and stated that:

over the seven years between 2010 and the [investigation period], the Applicant's RIC was at its least unprofitable and had the lowest level of unprofitability between 1 July 2014 and 30 June 2015, which is the only period in which injurious dumping has been found to have occurred.⁶⁶

Firstly, this claim does not recognise that injurious dumping was found to have occurred in REP 240. The Commission has also found there to be injurious dumping in the period 1 January 2013 to 31 December 2013. The Commission notes that dumping has been found to have occurred in that period, in 1 July 2014 to 30 June 2015 (as set out in REP 301) and now in the period from 1 April 2016 to 31 March 2017.

Secondly, it implies that being marginally unprofitable (or barely profitable) means that the Australian industry is not experiencing injury. As the Commission has found the Australian industry to be experiencing material injury in the form of price suppression and price depression in both REP 240 and REP 301, the Commission does not agree with POSCO's claim.

8.7 Conclusion

Whilst the Commissioner is satisfied that OneSteel has experienced material price injury, the weight of the evidence (particularly Figure 18) indicates that OneSteel's prices have been set by reference to mostly undumped goods from Ispat and Hoa Phat, which collectively accounted for the majority of imports. In the two months where RIC was exported from Korea in any significant volume at dumped prices, although these may be said to be sales lost to dumped goods, the injury in this instance (in the context of the market overall) was negligible.

Given the role of price in the other forms of injury found in Chapter 7, the Commissioner considers that there is no causal link between the dumped goods and any other form of injury experienced by the Australian industry. Accordingly, the Commissioner is satisfied that the injury, if any, caused to the Australian industry by the dumped goods, was negligible.

⁶⁶ *ibid.*

9 NON-INJURIOUS PRICE

9.1 Introduction

Interim dumping duty (IDD) may be applied where it is established that dumped imports have caused or threatened to cause material injury to the Australian industry producing like goods. The level of IDD imposed by the Assistant Minister cannot exceed the margin of dumping. Further, the Assistant Minister must have regard to the desirability of fixing a lesser amount of IDD if the NIP is less than the normal value of the goods.⁶⁷ This requirement is commonly referred to as the 'lesser duty rule'.

The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping.⁶⁸

Anti-dumping measures are generally based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms to compare to the country of export. To arrive at a NIP, the Commission first establishes a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commission's preferred approach to establishing the USP observes the following hierarchy:

- market approach: using the Australian industry's weighted average selling price at a time when the Australian market was unaffected by dumping;
- construction approach: using the Australian industry's CTMS, plus where applicable, a reasonable rate of profit; or
- selling prices of un-dumped imports in the Australian market.⁶⁹

Having established the USP, the Commission then calculates the NIP by deducting costs necessarily incurred in getting the goods to the FOB point at export. The deductions normally include overseas freight, duty, insurance, into store costs and amounts for importer expenses and profit.

9.2 Discussion

With regard to the hierarchy above, the Commission is of the view that prices in the current market are unaffected by dumping. This is demonstrated by the minimal volume of dumped goods in the market (less than 2 per cent of the total), and the fact that OneSteel's pricing is predominantly driven by undumped goods (as shown in Chapter 8).

As such, the Commission has had regard to the Australian industry's weighted average selling price as the USP. The Commission has calculated the NIP by deducting the lowest sum of costs incurred by any verified importer to deliver the goods from FOB.

⁶⁷ Subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*.

⁶⁸ The relevant NIP for this investigation is defined in subsection 269TACA(a).

⁶⁹ The Manual, Chapter 23 refers.

9.3 Lesser Duty Rule

The Assistant Minister is not required to have mandatory consideration of the lesser duty rule where the Assistant Minister is satisfied that certain circumstances exist. However, if considered appropriate, the Assistant Minister is not prevented from considering and applying the lesser duty rule where these circumstances exist. These circumstances are where:

- the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii) (a particular market situation in the country of export);
- the Australian industry in respect of like goods consists of at least two small-medium enterprises; or
- the country in relation to which the subsidy has been provided has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* for the compliance period.

None of these circumstances are present in the current case.

9.4 Conclusion

The NIP has been calculated based on the above, and has been determined to be higher than the ascertained normal value for the co-operating exporters, and for all other exporters from the subject countries.

The Commission's NIP calculations are at **Confidential Attachment 10**.

10 CONCLUSION

Under subsection 269TDA(1), if the Commissioner is satisfied that there has been no dumping by the exporter of any of those goods, the Commissioner must terminate the investigation in so far as it relates to that exporter. Negligible dumping is defined in the same section as being less than 2 per cent.

Based on the findings outlined in this report, the Commissioner has determined that the dumping margins of Ispat from Indonesia and all exporters from Vietnam were less than 2 per cent.

Under subsection 269TDA(13), if the Commissioner is satisfied that the injury, if any, to the Australian industry caused by dumped goods is negligible, the Commissioner must terminate the investigation in so far as it relates to that country.

The Commissioner has therefore terminated the investigation for the following reasons:

- with respect to Hoa Phat and all other exporters from Vietnam, the goods are found not to be dumped as per subsection 269TDA(1)(b)(i);
- with respect to Ispat, the dumping margin is *de minimis* as per subsection 269TDA(1)(b)(ii); and
- with respect to all remaining exporters, the dumped goods have caused no or negligible injury to the Australian industry producing like goods, in accordance with subsection 269TDA(13).

11 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	General analysis of Australian RIC market
Confidential Attachment 2	Vietnam's RIC market data
Confidential Attachment 3	Comparison of Vietnamese domestic RIC prices vs international indices
Confidential Attachment 4	Dumping margin calculations - Ispat
Confidential Attachment 5	Dumping margin calculations - Gunung
Confidential Attachment 6	Dumping margin calculations - Hoa Phat
Confidential Attachment 7	Dumping margin calculations – Uncooperative and all other exporters
Confidential Attachment 8	Price undercutting analysis
Confidential Attachment 9	OneSteel's IPP model
Confidential Attachment 10	NIP calculations
Non-Confidential Appendix 1	Vietnam, Energy Sector Assessment, Strategy and Road Map by Asian Development Bank
Non-Confidential Appendix 2	A Financial Recovery Plan for Vietnam Electricity by the World Bank Group