OneSteel Manufacturing Pty Ltd
(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

29 August 2016

The Director
Operations 5
Anti-Dumping Commission
Level 10, Industry House
10 Binara Street
CANBERRA ACT 2600

BY EMAIL operations5@adcommission.gov.au

Dear Director,

Submission in response to *Statement of Essential Facts Nos. 322 & 331* concerning the alleged subsidisation of *steel reinforcing bar exported* and *steel rod in coil exported from the People's Republic of China*

The Australian industry refers to the combined *Statement of Essential Facts* (**SEF**) for *Subsidy Investigations Nos. 322 and. 331* placed on the electronic supplement to the statutory public record on 8 August 2016. The Australian industry makes this submission in response to the SEF and refers specifically to the preliminary findings of the Anti-dumping Commissioner[1] (**Commissioner**) contained therein.

SUMMARY

In summary:

- The Australian industry supports the Commissioner's findings in relation to the price, volume and profit effects of the subsidised imports for both the rebar and rod in coil domestic industries;
- However, the Australian industry considers the Commission's attempt to isolate and attribute injury to the subsidised imports, deficient and unconvincing;
- The Commission's reliance on price undercutting analysis as a means of isolating and attributing injury is misguided and inconclusive;
- The Australian industry believes that that the Commission has sufficient information to accurately assess the non-injurious prices (**NIP**) of the goods;
- In spite of some calculation errors in the NIP for rod in coil, following Dumping Investigation 301, the Australian industry supports the use of the industry's CTMS plus profit method of calculating the unsuppressed selling price (**USP**);
- By comparing the normal values ascertained during *Dumping Investigation Nos. 300 and 301* to their respective NIPs, the Commissioner is able to isolate injury caused by dumping, from injury caused by countervailable subsidies, and possibly 'other factors';
- The Australian industry considers that the Commissioner's assessment of the subsidy margins for Jiangsu Yonggang Group Co Ltd and Jiangsu Shagang Group are deficient and therefore in error;
- The Australian industry considers that the allegedly 'private' (Non-SIE) exporters are in fact State Invested Enterprises (**SIE**);

[1] References to the 'Commission' shall be references to the Australian Anti-dumping Commission, unless otherwise specifically stated.

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- In the event, those exporters identified as 'private entities' are not found to be SIEs, then the Commissioner has failed to consider whether they are "private bodies entrusted or directed by the government or a public body"; and
- The Commissioner has failed to properly consider whether Program 4 was a regionally specific subsidy and therefore countervailable.

A. HAVE SUBSIDIES CAUSED MATERIAL INJURY TO THE RESPECTIVE AUSTRALIAN INDUSTRIES FOR LIKE GOODS

The Commissioner specifically found (with respect to rebar) that:

- *"rebar exported by the remaining three Chinese exporters were subsidised at rates ranging between 3.71 per cent and to 31.92 per cent" "The two cooperating importers collectively account for approximately 89 per cent of all **subsidised** rebar imports from China" "that Chinese exports from these two cooperating importers were consistently lower than the other prices available within the Australian domestic market, including OneSteel's prices…"*
- *"The Commission found that over the investigation period that Chinese imports of rebar undercut OneSteel's prices by rates that range from between 2.5 per cent to 11.8 per cent"*

Further, the Commissioner specifically found (with respect to rod in coil) that:

- *"RIC exported from China was subsidised at rates ranging between from 1.60 per cent to 33.99 per cent"*
- *"The two cooperating importers collectively account for over 85 per cent of all identified RIC imports from China"*
- *"following the implementation of dumping duties after Investigation 240, prices of subsidised RIC exported from China undercut all other suppliers of RIC during the investigation period"*
- *"Chinese subsidised RIC price for free into store goods is lower for each period that imports occurred within the Australian market"*
- *"RIC exported from China at low prices impacted on prices across the market as a whole, as other exporters in the market are equally effected by the lower Chinese export prices, limiting their ability to increase price offers in the following month at the risk of traders sourcing goods from elsewhere"*

The Commissioner then performed the following analysis:

> *"[with respect to rebar] Specifically, the Commission has looked at the benefits the exporters received by way of the identified countervailing subsidy and removed this benefit from their selling price…*
>
> *"The analysis shows that when removing the amount of countervailable subsidies received from the price of rebar sold into the Australian market (the purple and green lines) these imports no longer undercut OneSteel's prices (shown in figure 11 as the red and blue line)."*

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> *"[with respect to rod in coil] Figure 41 indicates that in the investigation period, by adding the value of countervailable subsidies to the prices of imported RIC, the subsidised exporters would not be undercutting OneSteel's prices."*[2]

Separately, the Commissioner found the following injury effects caused by the subsidised imports:

(a) In relation to rebar (**emphasis added**):

> ***"7.1.4 Price depression***
>
> *"…The Commission considers that the requirement to compete with subsidised imports from China which have been shown to undercut OneSteel prices has had a significant impact on OneSteel's ability to increase its prices.*
>
> *"The Commission considers that* ***without the presence of subsidised exports from China, OneSteel's customers would reference prices from other countries during their negotiations which were higher during the investigation period****."*[3]
>
> ***"7.1.5 Price suppression***
>
> *"This analysis shows that while the gap between OneSteel's prices and costs have narrowed during the investigation period, this has not been because of OneSteel's ability to increase its prices to cover its costs but rather because OneSteel has embarked on a cost reduction exercise.*
>
> *"The Commission considers that,* ***'but for' subsidised goods, OneSteel would be in a position to obtain pricing at levels that are not suppressed. This price based effect would be possible without any change in OneSteel's cost structure, and as such would directly improve its unit profitability for rebar.****"*[4]
>
> ***"7.2 The impact of undercutting on volumes and market share***
>
> *"The Commission considers that the price sensitive nature of the market supports a conclusion that OneSteel would have been able to do better on sales volumes and market share if not for the subsidised goods.*
> …
> *"The Commission considers that,* ***but for the subsidised Chinese rebar, OneSteel would have had higher sales volumes and a greater market share****."*[5]

[2] EPR Folio No. 322/042 at p. 92.
[3] EPR Folio No. 322/042 at p. 62
[4] EPR Folio No. 322/042 at p. 63.
[5] EPR Folio No. 322/042 at p. 64.

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> ***"7.3 The impact of undercutting on profits***
>
> *"The Commission has found that improvements in profitability have been primarily driven by reductions in costs.* ***The removal of the price impacts of the subsidised imports would have generated a higher sales price for OneSteel's domestic sales****.*
>
> *"****An increase in revenue per tonne would have ultimately reflected positively on OneSteel's profits and profitability over the investigation period****. Therefore, the Commission considers that* ***OneSteel has suffered injury in the form of lower profits and profitability than it would have achieved but for subsidised rebar exported from China****."*[6]
>
> ***"7.4 Other relevant economic factors***
>
> *"The Commission considers that OneSteel has suffered injury in the form of reduced:*
> - *employment;*
> - *value of assets; and*
> - *value of capital investment*
>
> *related to the production of rebar and that this injury has been caused by for rebar exported from China at subsidised prices."*[7]

(b) Similarly, in relation to rod in coil, the Commissioner accepted the following injury effects of the subsidised imports (**emphasis added**):

- *"The Commissioner is satisfied that this evidence demonstrates that the market for RIC is price sensitive. Therefore the* ***prices of subsidised RIC exported from China at the lowest price in the market are having a depressing effect on overall prices in the market****."*[8]
- *"The Commission considers that OneSteel* ***may have been able to achieve better prices for sales in the market if it had not been affected by subsidised RIC exported from China****."*[9]
- *"…the Commissioner has found that the Australian industry has suffered injury in the forms of price depression and price suppression"*[10]
- *"Therefore, the Commissioner considers that the injury OneSteel has suffered in the forms of reduced profits and profitability and that injury was caused by sales of subsidised RIC exported from China"*[11]
- *The Commission considers that the link between subsidised RIC exported from China and injury suffered by OneSteel in the form of price and profit effects has had a negative impact on OneSteel's decisions in respect of other economic factors, including their willingness and ability to maintain staffing levels and invest in capital assets.*[12]

[6] EPR Folio No. 322/042 at p. 65.
[7] EPR Folio No. 322/042 at p. 65.
[8] EPR Folio No. 322/042 at p. 91.
[9] EPR Folio No. 322/042 at p. 92.
[10] EPR Folio No. 322/042 at p. 93.
[11] EPR Folio No. 322/042 at p. 93.
[12] EPR Folio No. 322/042 at p. 93.

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Notwithstanding the above analysis and conclusions, the reason expressed by the Commissioner for his recommendation to the Assistant Minister to not publish a notice under section 269TJ of the *Customs Act 1901*[13] is best summarised as follows:

> *"While the Commission's analysis in this Chapter has attempted to separate out the injury caused by the countervailing subsidies from that caused by the dumping of RIC onto the Australian market, isolating these individual effects has been difficult.*
>
> *"The Commission notes that when a good is subsidised and then dumped onto the Australian market it is likely to result in a single set of price and volumes effects. Similarly, these price and volumes effects are likely to have a uniform flow on effect on OneSteel's profit and profitability, market share, employment and assets utilisation. As such trying to apportion some of this injury to the subsidisation of RIC as compared to the dumping of it would require the Commission to make a great deal of assumptions that would be arbitrary and imprecise.*
>
> *"As such, the Commission cannot isolate the injury caused by the subsidisation of rebar from the effect of it been (sic) dumped onto the Australian market. Therefore the Commission concluded that* ***it cannot be satisfied that, in and of itself, the subsidisation is causing material injury to Australian industry****."*[14] (**emphasis added**)

The emphasised section of the above passage indicates that the Commission did eventually ask the right question[15] but the passage overall, considered together with other elements of the SEF (and extracted above), supports the view that the Commission formulated the wrong answer.

The Commission earlier asserts that it:

> *"…has attempted to isolate the injurious effects of the subsidisation from the effects of dumping…"*

and in section 11 of the SEF, for example, it has examined the degree to which six identified 'other factors' have contributed to material injury. In relation to five of those factors the Commission has concluded, without any apparent difficulty, that they had no injurious impact and in relation to the sixth factor – '*Unsubsidised exports from China'* – it has concluded, again without any apparent difficulty, that there was an injurious impact. No persuasive explanation is provided by the Commission as to how it was possible to identify the injurious effects of six factors but it was not possible to sufficiently isolate the injurious effects of subsidisation.

Although the Commission's regard to the injury effects of price undercutting are understandable in terms of the consideration of *"whether there has been a significant price undercutting by the subsidized imports"* under Article 15.2 of the *SCM Agreement* (when having regard to the effect of subsidised imports on prices), the existence or otherwise of price undercutting is not, however, absolute or conclusive of the overall materiality or otherwise of injury. And yet, in *Investigation Nos. 321 & 331*, the Commission appears to have elevated the existence or otherwise of an 'undercutting margin' to an 'injury margin'. The difficulties in considering the

[13] Reference to any statutory provision are references to provisions of the *Customs Act 1901*, unless otherwise specifically stated.
[14] EPR Folio No. 322/042 at p. 96 (and p. 68 in the case of rebar).
[15] *Re ICI Australia Operations Pty Ltd* [1992] FCA 120 [25]

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presence or otherwise of price undercutting are well summarised by the WTO Panel in *EC – Tube or Pipe Fittings*[16]:

> *"One purpose of a price undercutting analysis is to assist an investigating authority in determining whether dumped imports have, through the effects of dumping, caused material injury to a domestic industry. In this part of an anti-dumping investigation, an investigating authority is trying to discern whether the prices of dumped imports have had an impact on the domestic industry. The interaction of two variables would essentially determine the extent of impact of price undercutting on the domestic industry: the quantity of sales at undercutting prices; and the margin of undercutting of such sales.* ***Sales at undercutting prices could have an impact on the domestic industry (for example, in terms of lost sales) irrespective of whether other sales might be made at prices above those charged by the domestic industry. The fact that certain sales may have occurred at 'non-underselling prices' does not eradicate the effects in the importing market of sales that were made at underselling prices****. Thus,* ***a requirement that an investigating authority must base its price undercutting analysis on a methodology that offset undercutting prices with 'overcutting' prices would have the result of requiring the investigating authority to conclude that no price undercutting existed when, in fact, there might be a considerable number of sales at undercutting prices which might have had an adverse effect on the domestic industry.****"*[17] (**emphasis added**)

And yet, the Commission's conclusions concerning the price effects of the subsidised imports , specifically price suppression, were positively found by the Commissioner.[18] Indeed, for this reason, the Commission's conclusion concerning the causative impact of unsubsidised goods, possibly undercutting the Australian industry's, otherwise depressed domestic prices, is flawed and inconclusive:

> *"the existence of unsubsidised Chinese RIC at prices which undercut OneSteel's prices is another factor which indicates the difficulties faced in there being sufficient evidence in finding that subsidisation of itself is sufficiently causally linked to the material injury identified"*[19]

Fortunately for the Commissioner, the information capable of assisting him in reaching an informed conclusion on the injurious impact of subsidisation can be determined. The relevant information is the non-injurious price (**NIP**) of the goods. Regardless of whether or not the Minister is required to have regard to the desirability of specifying a method such that the sum of the interim duty payable does not exceed the NIP, it remains a variable factor that should be an integral part of any causation analysis and is obviously a potentially decisive factor in assessing, in the present matter, the effect of subsidisation on the Australian industry's economic performance.

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[16] Panel Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/R, 7 March 2003.
[17] Panel Report, *EC — Tube or Pipe Fittings*, at [7.277]
[18] Refer EPR Folio No. 322/042 at pp. 62 and 92.
[19] EPR Folio No. 322/042 at p. 96.

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Therefore, if the normal values of the goods in the earlier dumping investigations were less than the properly calculated NIPs, then there is a strong *prima facie* case that subsidisation has caused material injury and that the Assistant Minister should publish a countervailing duty notice under section 269TJ.

Deriving the NIP

It is observed that Commissioner in *Dumping Investigation No. 301*, did attempt to derive the NIP based on an Unsuppressed Selling Price (USP) calculated according to the weighted average of the most recent verified industry cost to make and sell (CTMS) values and a reasonable amount for profit, specifically:

> *"The Commissioner therefore calculated the non-injurious price (NIP) based the on the July 2015 quarter CTMS, plus a profit. The July quarter was utilised as it reflects the most recent verified CTMS data. The Commission then added a sustainable rate of return for the Australian industry in line with recent borrowing activity which Onesteel's head company, Arrium Ltd has entered into. This rate has been calculated at 8.2245 per cent based on the lowest rate disclosed within the financing agreement."*[20]

At the outset, although the Australian industry supports this approach for the calculation of the USP, there are however, in this instance, two errors in the manner of calculation applied by the Commission when using this method. Firstly, it is (as the Commissioner acknowledged in an original footnote) in breach of the Commission's preference for a one year minimum of weighted average CTMS values.[21] Furthermore, the rate of profit calculated does not reflect the actual required return on investment necessary to attract the additional capital to the Australian industry. The Commissioner has misinterpreted a coupon rate with a seven month maturity period, for the actual cost (comparison rate) of the debt facility. Therefore, the Australian industry refers to the profit survey conducted by McKinsey & Co. (NON-CONFIDENTIAL ATTACHMENT A), which calculates the EBITDA target rate of at least 16% to be economically sustainable in the long term.

However, if the Commissioner is insistent on reference to the most recently calculated cost of capital negotiated by the Australian industry, then the Commissioner cannot ignore the entire weighted average cost of the facility by reference to its comparison rate. A calculation is extracted below:

Commitment (USD, Million)	Base Rate	USD LIBOR	Coupon Rate	Establishment Fee	Maturity (months)	Comparison Rate
140	7.0000%	1.2245%	8.2245%	4.0%	7	15.08%
665	11.0000%	1.2245%	12.2245%	3.0%	72	12.72%
805					**WAV**	**13.13%**

Source: *Arrium Ltd, ASX Release: Recapitalisation Plan (22 February 2016)*[22]

[20] EPR Folio No. 301/038 at [10.2]
[21] Anti-Dumping Commission, *Dumping and Subsidy Manual* (November 2015) at p. 130.
[22] http://www.arrium.com/investor-centre/shareholder-information/~/media/Arrium%20Mining%20and%20Materials/Files/ASX%20Announcements/FY2016/Recapitalisation%20Plan%2022%20Feb%202016.pdf (accessed 26/08/2016)

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In terms of the reasonableness of this approach, the Australian industry observes that this rate of return is proportionate to the internal rate of return prescribed by the Government of China, National Development and Reform Commission (NDRC) *Economic Assessment method and parameters for Capital and Construction Projects* (NON-CONFIDENTIAL ATTACHMENT B), which in the case of steelmaking is 13.00%.

For the purpose of calculating a NIP in order to isolate injury caused by dumped and subsidised imports, the Australian industry supports the determination of the USP using a similar approach to that applied in rod in coil in the case of rebar.

The Australian industry affirms the Commission's reasons for overlooking the first approach in calculating the USP (Australian industry's weighted average selling price calculated for a period unaffected by dumping) is not appropriate in these cases, given the long history of dumping[23].

Methods to isolate injury

As observed earlier in this submission, the Commissioner is insistent that he *"cannot isolate the injury caused by the subsidization of [the goods] from the effect of it been dumped onto the Australian market."*[24]

However, to demonstrate the interaction between the known (and verified) variable factors and the attribution and isolation of injury between the effects of dumped imports, and separately, subsidised imports, the following examples are proposed.

Example 1 – NIP *greater than* Ascertained Normal Value (ANV) for named exporter

Assuming NIP = $100/tonne
ANV = $80/tonne
AEP = $70/tonne (dumping margin equivalent, 14.29%)
CVD = $15/tonne (21.43% equivalent)

In this example, the injury suffered by the Australian industry (expressed by the NIP) is only partly attributable to dumping (as expressed by the ANV), with at least $20/tonne of injury still being attributable to subsidization and other factors. In this example, the presence of a verified subsidy margin of $15/tonne, permits a further attribution of injury to the countervailable subsidies, leaving $5/tonne attributable to 'other factors'.

Example 2 – NIP *less than* Ascertained Normal Value (ANV) for named exporter

Assuming NIP = $80/tonne
ANV = $100/tonne
AEP = $70/tonne (dumping margin equivalent, 42.86%)
CVD = $15/tonne (21.43% equivalent)

In this example, the injury suffered by the Australian industry (expressed by the NIP) is completely attributable to the dumping (as expressed by the ANV), with no injury attributable to the subsidisation.

[23] Dumping Investigations No. 240 and 264.
[24] EPR Folio No. 322/042 at p. 68.

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By performing the above analysis, the Commissioner is able to isolate and attribute injury caused by dumping, subsidization and (potentially) other factors.

B. THE COMMISSION'S SUBSIDISATION FINDINGS

The Australian industry notes that the Commission has allocated the quantum of benefit from the countervailable subsidies as follows:

> **"5.4.1.2 Subsidy** *[with respect to rebar]*
>
> "The amount of benefit received has been attributed to each unit of rebar (per tonne) using volume of sales of the goods by each cooperative exporter.
>
> "Exporter specific subsidy margins have been calculated and expressed as a percentage of export price for each selected exporter with reference to the specific programs that conferred a benefit to that exporter."
>
> …
>
> **"5.4.3.2 Subsidy** *[with respect to rod in coils]*
>
> "The amount of benefit received has been attributed to each unit of rod in coils (per tonne) using volume of sales of the goods by each cooperative exporter.
>
> "Exporter specific subsidy margins have been calculated and expressed as a percentage of export price for each selected exporter with reference to the specific programs that conferred a benefit to that exporter."

What is not clear from the first sentence in each of the above extracts is whether the entire quantum of benefit was divided across the entire production volumes, regardless of whether or not the subsidy program was confined to the production of goods exported. The second sentence in the above extracts does not clarify this position, as it merely explains the methodology applied to the calculation of the subsidy margins for those subsidies specific (unique) to a named exporter. Again, what is not answered is whether or not the quantum of the subsidy is allocated across the entire production volume, or only the volume of goods exported, where the subsidy was contingent upon the export of the goods, i.e. export tax rebates. The effect of the Commission taking the primary approach is that it significantly dilutes the amount of subsidy benefit calculated on a per unit tonne basis.

"1.6.3 Subsidisation" findings"

The Australian industry observes the Commission's analysis of the Chinese Government's subsidy programs for the goods, and specifically the determination of the negligible subsidy margin for Jiangsu Yonggang Group Co Ltd (**Yonggang**) (0.26%) and Jiangsu Shagang Group (**Shagang**) (1.60%), and the Commission's preliminary recommendation to terminate the investigation (insofar as it relates to these exporters). The Australian industry notes that

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Yonggang and Shagang are related parties insofar as Shagang holds a 25% ownership share over Yonggang.[25]

At the outset the Australian industry observes that the Commission did not perform an 'on-the-spot' in-country verification of Yonggang.[26] However, the Commission nevertheless concluded in its *Subsidy Margin Calculation Report*[27] that the exporter did not benefit from programs 5,6,7,8 and 9 (the alleged *Preferential Tax Policies* programs). So too, in the case of Shagang, the Commission concluded that it also did not benefit from these named subsidy programs.[28]

With respect, the Australian industry disagrees with the Commission's assessment and believes that the Commissioner has completely ignored or overlooked the fact that Shagang, and likely Yonggang,[29] operates within the *Zhangjiagang Free Trade Zone* (ZJG FTZ)[30], and as such is entitled to the following "*Preferential tax policies*":

> *"Tax Preference:*
>
> *"(1) Manufacturing machines, equipments, parts and quick-wear parts, which are used for the projects encouraged by the State, imported in the Zone for their own use are duty free and value-added tax free; the value-added tax of the equipment purchased domestically by foreign investment enterprises can be refunded.*
>
> *"(2) The income tax of foreign-funded manufacturing enterprises is 25%; the enterprises, which are regarded as high and new tech enterprises, can enjoy 15% income tax rate.*
>
> *"(3) The value-added tax*
>
> *The value-added tax rate is 17%. The Park will refund 9%~11% of the value-added tax payed by enterprises in the name of "construction subsidy"…"*[31]

Further, the Australian industry refers to the following "Special Function Policies" that have not been disclosed to the Commission by Shagang and Yonggang:

> *"Special Function Policies"*
>
> *"Import tax reduction*
>
> *"1. Equipment used for project construction inside the ZJG FTZ, and the construction materials for building workshops and storage facilities are duty free;*

[25] http://www.reuters.com/article/china-steel-shagang-idUSPEK1509020080103 (accessed 26/08/2016)
[26] It is further noted that Yonggang was not subjected to on-the-spot, in-country verification in the course of *Dumping Investigation No. 300*.
[27] EPR Folio No. 322/042 at p. 7.
[28] EPR Folio No. 331/047 at p. 9.
[29] Noting that the area of the ZJG FTZ has expanded from 4.1 km^2 (since establishment in 1992) to 147 km^2 (late-2010) with any 'accessory zone' being entitled to the same preferential policies as the Free Trade Zone. Source: http://www.zjgftz.gov.cn/zjgftzen/free.html (accessed 26/08/2016)
[30] http://www.zjgftz.gov.cn/zjgftzen/explore.html (accessed 26/08/2016)
[31] http://www.zjgftz.gov.cn/zjgftzen/incentives.html (accessed 26/08/2016)

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> *"2. Machines, equipment, molds and related auxiliary maintenance parts for companies self usage are duty free;*
>
> *"3. Rational amount of office supplies for companies and administrative institutes usage are duty free.*
>
> *"Export tax rebate*
>
> *"Domestic cargos are regarded as export to gain export tax refund.*
>
> *"Regional flow of cargos*
>
> *"Cargos transfer inside the area is free, customs archival filing is required.*
>
> *"Port function*
>
> *"Port function works. The customs will supervise the cargos import and export via the area pursuant to related import and export regulations. Local regular fee is exempted."*[32]

Of most concern is the disclosure above that:

> *"Domestic cargos are regarded as export to gain export tax refund."*

This revelation causes the Australian industry grave concerns around the accuracy of the production/sales/export volumes over which the benefit is attributed.

In light of the above, the Australian industry submits that the Commissioner's preliminary findings concerning Shagang and Yonggang are inaccurate and deficient. It appears that these two exporters have not given the Commissioner information the Commissioner ought to consider to be relevant to the investigation, and/or have significantly impeded the investigation by giving the Commissioner, false and misleading information designed to impede the investigation. Therefore, the Commissioner ought properly recommend to the Assistant Minister of his power under subsection 269TAACA(1) to determine whether the countervailable subsidies have been received by both Shagang and Yonggang in respect of the goods, and to determine the amount of the countervailable subsidies in respect of the goods by reference to all the facts available to the Commissioner and make such assumptions as the Commissioner or the Assistant Minister consider reasonable.

Further, the Australian industry observes that in the Commission's *Subsidy Margin Calculation Report*[33], it is suggested that Yonggang did not benefit from any of the financial grants alleged in the application, specifically programs 10 – 42. Again, this conclusion, based on an unverified response from the exporter, ignores published information concerning Yonggang's prolific use and reliance on environmental subsidies from the local authorities in Zhangjiagang City. These were identified in the original application as programs 32, 33, 36, 41. Further, program 93 was identified as a miscellaneous grant.

[32] http://www.zjgftz.gov.cn/zjgftzen/favourable.html (accessed 26/08/2016)
[33] EPR Folio No. 322/042 at p. 7.

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Specifically, in July 2015, immediately following the conclusion of the relevant investigation period, the following was reported:

> *"Eastern China's Jiangsu Yonggang, part of Jiangsu Shagang Group, says it has received another CNY 2.07 million ($340,000) in environmental subsidies from the local authorities in Zhangjiagang city for its energy efficiency investments. The funds bring the total environmental subsides received by Yonggang to CNY 42.51 million since 2007, it adds.*
>
> *"CNY 1 million of the funds were received for undertaking a flue gas wasteheat recovery project, Kallanish notes. Yonggang says it has invested over CNY 1 billion on energy efficiency and recycling projects in recent years, including waste gas recovery at its blast furnaces, water treatment facilities, and projects at its sintering and pelletising plants."*[34]

It is important to observe that when the Commission considers the benefit received from the above subsidies that it is not confined to the benefits directly received in the investigation period (FY 2015) alone. Benefits received in earlier periods also need to be attributed to the investigation period, especially where the financial contributions were related to capital investments, as appears to be the case here. A proper amortisation of the benefit across the life-cycle of the asset needs to be conducted and allocated to the investigation period.

Again, in light of Yonggang's failure or refusal to disclose the above to the Commissioner, then the Commissioner ought properly make such recommendations to the Assistant Minister under subsection 269TAACA(1) as are necessary to permit the Minister to have regard to the benefit received under this subsidy and the amount of such benefit so received. In support of such a calculation of benefit received by the Shagang Group companies (which includes Shagang and Yonggang), the Australian industry attaches the recently concluded report of the United States' *Steel Industry Coalition* which identifies the following:

> *"Shagang Group reported that it has received total government subsidies in the amount of RMB 204,258,877, [fn 205] RMB; 154,962,870 in 2013, [fn 206] and RMB 517,960,069 in 2012; [fn 207] the company also reported receiving total government subsidies in the amount of RMB 529,166,102 in 2011, [fn 208] RMB 539,506,268 in 2010 [fn 209] and RMB 129,960,609 in 2009 [fn 210]"*[35]

C. THE COMMISSION'S ASSESSMENT OF SUBSIDY PROGRAMS 1 – 4

The Australian industry observes the Commissioner's assessment of subsidy programs 1 to 4 identified with respect to exporters of both rebar and rod in coil. There are two issues warranting further consideration by the Commissioner with respect to these programs:

1. *Was the financial contribution provided by a 'public body' or a 'private body'?*

[34] https://www.kallanish.com/en/articles/articles_details/Yonggang-receives-further-environmental-subsidies-0715/ (accessed 11/08/2016)
[35] http://www.steel.org/~/media/Files/AISI/Reports/Steel-Industry-Coaliton-Full-Final-Report-06302016 (accessed 26/08/2016) at p. 44.

OneSteel Manufacturing Pty Ltd
(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

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2. *Was a program regionally specific?*

1. Was the financial contribution provided by a 'public body' or a 'private body'?

In establishing whether a financial contribution by a government exists, the Commissioner has asked the correct question, with respect to whom may the financial contribution be attributable, namely:

> "- any 'public body' within the country of export or origin of the goods; and
> "- any 'private body' entrusted or directed by the government to carry out a financial contribution as defined…"[36]

Unfortunately, in answering this question, the Commissioner has only done so with respect to the existence of a 'public body' and in that context in relation only to whether or not a *State Invested Enterprise* (**SIE**) constitutes a 'public body'. We agree with the Commissioner's conclusion that an SIE is in fact a 'public body' in the context of these cases. The Australian industry further agrees with the Commissioner's categorisation of the following exporters as SIEs, and in these case by virtue of the factual circumstances supporting the conclusion, 'public bodies':

- Shandong Iron and Steel Company Limited, Laiwu Company; and
- Hunan Valin Xiangtan Iron & Steel Co. Ltd.

However, the Australian industry submits that the Commissioner ought properly have found that the following exporter/manufacturers were also, SIEs:

- Yonggang (Jiangsu Yonggang Group Co Ltd);
- Jiangsu Shagang Group; and
- Shandong Shiheng Special Steel Co., Ltd;

<u>Jiangsu Yonggang Group Co Ltd and Jiangsu Shagang Group</u>

With respect to Jiangsu Yonggang Group Co Ltd and Jiangsu Shagang Group (which belong to the Shagang Group), the Australian industry repeats and refers to evidence it presented in its original application to the Commissioner:

> *"The Shagang Group comprises:*
> - *Jiangsu Shagang Group Co., Ltd;*
> - *Jiangsu Shagang Co., Ltd;*
> - *Huaigang Special Steel Co., Ltd of Jiangsu Shagang Group;*
> - *Anyang Yongxing Iron & Steel Co., Ltd. of Jiangsu Shagang Group;*
> - *Xixing Special Steel Co., Ltd. of Jiangsu Shagang Group;*
> - *Jiangsu Shagang International Trade Co., Ltd; and*
> - *Jiangsu Yonggang Group Co. Ltd."*[37]
>
> *"Significant Chinese government ownership is also present in Jiangsu Shagang Group, which is billed as the largest private steel enterprise in China and the country's fourth largest steel producer.*

[36] SEF Nos. 322 and 331, Attachment 5 at [A5.1]
[37] EPR Folio No. 301/015

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(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

"The firm was formed in 1975 as a village enterprise, and changed its name to Jiangsu Shagang Group in 1995. The firm's ownership status changed in 2001, during a period of asset stripping management buyouts in the Chinese steel industry.

"Approximately 17 percent of the firm was purchased by the plant general manager and 25 percent of the firm was sold to the Jiangsu SASAC. An additional 23 percent went to the company's labor union, which is controlled by the Chinese Communist Party, and almost 35 percent went to the "employees of Shagang."

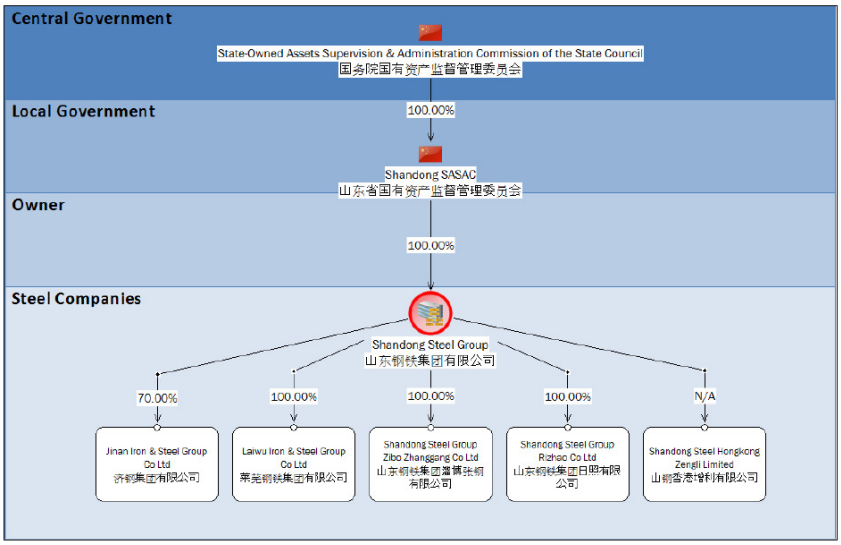
"In 2006, it acquired Huaigang, a specialty steel producer whose ownership has at various times included the municipal government of Huai'an, the provincial government of Jiangsu, and the Nanjing Iron & Steel Group, which is owned by the Jiangsu Province SASAC.

"In short, even China's largest privately owned producer is substantially state-owned, and appears to have received capital inflows from the state in the same year it doubled its capacity."[38]

Shandong Shiheng Special Steel Co., Ltd

Shandong Shiheng Special Steel Co., Ltd., it is in fact a subsidiary of Jinan Iron and Steel Group Corporation,[39] which in turn is a subsidiary of Shandong Iron and Steel Group Co Ltd (**Shangang**).[40]

The Shandong Provincial Government incorporated the Shandong Iron and Steel Group Co Ltd as a State-owned platform (in 2008) to consolidate the local steel industry. Below is an organisation chart demonstrating the subsidiary ownership structure:



Source: Steel Industry Coalition, *Report on Market Research into the People's Republic of China Steel Industry - Part 2, Final Report* (30 June 2016)[41] at [9.2]

[38] EPR Folio No. 322/004 refer NON-CONFIDENTIAL ATTACHMENT C-1.1.9
[39] http://www.jigang.com.cn/abroad/group_jg.htm (accessed 26/08/2016)
[40] http://www.chinadaily.com.cn/cndy/2010-02/25/content_9499811.htm (accessed 26/08/2016)
[41] http://www.steel.org/~/media/Files/AISI/Reports/Steel-Industry-Coaliton-Full-Final-Report-06302016 (accessed 26/08/2016)

OneSteel Manufacturing Pty Ltd
(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

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‘Public bodies’ or ‘private bodies’

In the event, the Assistant Minister is not satisfied that the above exporter/manufacturers are not SIEs, and are therefore not ‘public bodies’, the Commissioner remains bound to advise the assistant minister on whether or not the above named exporters are in fact ‘private bodies’ “entrusted or directed by the government to carry out a financial contribution as defined”.

The issue of entrust or direction of private bodies reflects the Article 1.1(a)(1)(iv) of the SCM and has been examined in detail by the WTO Appellate Body in *US — Softwood Lumber IV*, *US — Countervailing Duty Investigation on DRAMs* and *US — Anti-Dumping and Countervailing Duties (China)*.

In *US — Anti-Dumping and Countervailing Duties (China)*, the Appellate Body acknowledged that whether or not an entity constitutes a ‘government body’ or ‘public body’ does not preclude ‘private entities’ from the ambit of the SCM Agreement:

> *“A finding that a particular entity does not constitute a public body does not, without more, exclude that entity’s conduct from the scope of the SCM Agreement. Such measures may still be attributed to a government and thus fall within the ambit of the SCM Agreement pursuant to Article 1.1(a)(1)(iv) if the entity is a private entity entrusted or directed by a government or by a public body.”*[42]

The Appellate Body in that case then address the meaning of the term “private body”:

> “[…] The meaning of the term “private body” may be helpful in illuminating the essential characteristics of public bodies, because the term “private body” describes something that is not “a government or any public body”. The panel in *US — Export Restraints* made a similar point when it observed that the term “private body” is used in Article 1.1(a)(1)(iv) as a counterpoint to government or any public body, that is, any entity that is neither a government in the narrow sense nor a public body would be a private body.
>
> “The definition of the word “private” **includes “of a service, business, etc: provided or owned by an individual rather than the state or a public body” and “of a person: not holding public office or an official position”**. We note that both the definition of “public” and of “private” encompass notions of authority as well as of control. The definitions differ, most notably, with regard to the subject exercising authority or control.
>
> “We also consider that, because the word “government” in Article 1.1(a)(1)(iv) is used in the sense of the collective term “government”, that provision covers financial contributions provided by a government or any public body where “a government or any public body” entrusts or directs a private body to carry out one or more of the type of functions or conduct illustrated in subparagraphs (i)–(iii). **Accordingly, subparagraph (iv) envisages that a public body may “entrust” or “direct” a private body to carry out the type of functions or conduct illustrated in subparagraphs (i)–(iii)**.
>
> “The verb “direct” is defined as to give authoritative instructions to, to order the performance of something, to command, to control, or to govern an action. **The verb**

[42] Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, at [302].

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(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

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> **"entrust" means giving a person responsibility for a task**. The Appellate Body has interpreted "direction" as referring to situations where a government exercises its authority, including some degree of compulsion, over a private body, and **"entrustment" as referring to situations in which a government gives responsibility to a private body**. Thus, pursuant to subparagraph (iv), **a public body may exercise its authority in order to compel or command a private body, or govern a private body's actions (direction), and may be responsible for certain tasks to a private body (entrustment)**. As we see it, for a public body to be able to exercise its authority over a private body (direction), a public body must itself possess such authority, or ability to compel or command. Similarly, in order to be able to give responsibility to a private body (entrustment), it must itself be vested with such responsibility. If a public body did not itself dispose of the relevant authority or responsibility, it could not effectively control or govern the actions of a private body or delegate such responsibility to a private body. This, in turn, suggests that the requisite attributes to be able to entrust or direct a private body, namely, authority in the case of direction and responsibility in the case of entrustment, are common characteristics of both government in the narrow sense and a public body."[43]

Therefore, the essence of Article 1.1(a)(1)(iv) covers those situations in which a private body is being used as a "proxy" by the government or the public body through a process of "entrustment" or "direction":

> "The term 'entrusts' connotes the action of giving responsibility to someone for a task or an object. … Delegation is usually achieved by formal means, but delegation also could be informal … Therefore, an interpretation of the term "entrusts" that is limited to acts of "delegation" is too narrow.
>
> "As for the term 'directs' … in our view, that the private body under paragraph (iv) is directed 'to carry out' a function underscores the notion of authority that is included in some of the definitions of the term 'direct' … A 'command' (the word used by the Panel) is certainly one way in which a government can exercise authority over a private body in the sense foreseen by Article 1.1(a)(1)(iv), but governments are likely to have other means at their disposal to exercise authority over a private body. Some of these means may be more subtle than a 'command' or may not involve the same degree of compulsion. Thus, an interpretation of the term 'directs' that is limited to acts of 'command' is also too narrow.
>
> "In most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement, which could, in turn, serve as evidence of entrustment or direction."[44]

In *US — Countervailing Duty Investigation on DRAMs*, the Appellate Body gave an example of how a financial contribution provided by a government or public body, may otherwise be provide by a "private body":

> "Paragraphs (i) through (iv) of Article 1.1(a)(1) set forth the situations where there is a financial contribution by a government or public body. The situations listed in paragraphs (i) through (iii) refer to a financial contribution that is provided directly by the government through the direct transfer of funds, the foregoing of revenue, the provision of goods or services, or the purchase of goods. **By virtue of paragraph (iv),**

[43] *Appellate Body Report, US — Anti-Dumping and Countervailing Duties (China)*, at [290]–[294]
[44] Appellate Body Report, *US — Countervailing Duty Investigation on DRAMS*, at [108], [110], [111] and [116].

OneSteel Manufacturing Pty Ltd
(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

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> **a financial contribution may also be provided indirectly by a government where it 'makes payments to a funding mechanism', or, as alleged in this case, where a government 'entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii)** … which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments'.
>
> "Thus, paragraphs (i) through (iii) **identify the types of actions that, when taken by private bodies that have been so "entrusted" or "directed" by the government, fall within the scope of paragraph (iv)**. In other words, **paragraph (iv) covers situations where a private body is being used as a proxy by the government to carry out one of the types of functions listed in paragraphs (i) through (iii)**.
>
> Seen in this light, **the terms "entrusts" and "directs" in paragraph (iv) identify the instances where seemingly private conduct may be attributable to a government for purposes of determining whether there has been a financial contribution within the meaning of the SCM Agreement**."[45]

Therefore, the question arises whether the "private" exporters were in fact entrusted or directed by the GOC or a public body? The Commissioner has failed to answer this question, even though there is significant evidence contained in Dumping Investigations No. 300 and 301 in relation to his assessment and determination of a 'particular market situation' in relation to the goods in China during the investigation period. Specifically, the Commissioner there found the following "entrustment" and "direction" of exporters and manufacturers of the goods, whether 'public' or 'private' bodies:

> "The Commission holds that the Chinese Government maintained a central role in the development of the Chinese steel industry and by virtue, materially contributed to its rapid expansion and the chronic oversupply during the investigation period.
>
> "The significance of this role was articulated by a recent CBSA investigation into the dumping and countervailing of 'certain concrete reinforced bar' originating from the People's Republic of China.[fn 57] The CBSA's 'Statement of Reasons' report released in December 2014 notes that the Chinese Government classifies the 'Iron and Steel Industry' as a 'fundamental or pillar' industry. The CBSA's report also noted that as a 'fundamental or pillar' industry the Chinese Government maintains a degree of control over the industry, through a minimum of 50% equity in the principle enterprises. The significance of the Chinese Government's role in the Chinese steel industry is also reflected in the National Development Reform Commission's (NDRC's) responsibility for approving all large steel projects.[fn 58]
>
> "The Commission holds that the central role of the Chinese Government in the Chinese steel industry is also reflected through the numerous planning documents and directives issued by the Chinese Government regarding the structure and composition of Chinese steel industry. As such, in assessing the existence of a 'market situation' in the Chinese steel industry and consequently the Chinese RIC market, the Commission reviewed a number of Chinese Government planning documents and directives. These documents and directives are listed below.
>
> • National Steel Industry Development Policy (2005).

[45] Appellate Body Report, *US — Countervailing Duty Investigation on DRAMS*, at [108]

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Level 6, 205 Pacific Highway, St Leonards
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F 02 8224 9885

- Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009).
- 2011-2015 Development Plan for the Steel Industry (2011).
- Steel Industry Adjustment Policy (2015 Revision).

"In addition to the Chinese Government planning documents and directives listed above, the need for restructuring and reorganisation of the Chinese steel industry, including the elimination of backward capacity, was also addressed in the documents listed below.

"While these planning directives cover a broad range of industries, the inclusion of the steel industry reinforces its central role within the Chinese economy and hence high levels of Chinese Government intervention.

- Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009).
    - Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013).
    - Directory Catalogue on Readjustment of Industrial Structure (Version 11) (2013 Amendment)."[46]

In light of the above directives, the Commissioner concluded the influence of the Government of China on exporters of the goods as follows:

"The Commission notes that the emphasis of these individual planning documents and directives is on promoting the orderly restructuring and reorganisation of the Chinese steel industry to better manage the issue of chronic oversupply. However, these planning documents and directives also demonstrate the extent of the Chinese Government's interventions within the Chinese steel industry.

"The degree to which plans and directives issued at the central government level are integrated at the provincial level is reflected by the Shandong Province Development and Reform Commission's 'The opinions on the implementation of the structural adjustment of the steel industry in Shandong Province pilot program' (2012). The 'Opinions' notes that since 2006, the Shandong Provincial Government had issued a number of plans and measures to control the development of the iron and steel industry, eliminate backward production capacity, and accelerate the pace of mergers and restructuring work in the province's steel industry. Examples of these plans included the 'Guiding Opinions on accelerating the restructuring of the steel industry within the Shandong Province' and the 'Shandong Province Iron and Steel Industry Revitalisation Plan'.

"The 'Shandong Provincial People's Government Notice of Revitalisation Plan' (2009) also demonstrates the linkages between plans issued by the Central Chinese Government and those issued at the provincial government level. The Commission holds that the consistency between planning documents and directives at the central and provincial government level further reinforce the high level of government intervention in the Chinese steel industry. For example, following from the Chinese Government's 'Blueprint for the Adjustment and Revitalisation of the Steel Industry' (2009), the 'Shandong Province Iron and Steel Industry Revitalisation Plan' identified the following areas where policy measures were to be applied:

[46] EPR Folio No. 301/038 at pp. 59-60.

OneSteel Manufacturing Pty Ltd
(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

• implementation of the national steel industry adjustment and revitalisation plan;
• acceleration of corporate mergers and acquisitions;
• technological transformation and technological innovation;
• development of domestic markets and stabilisation of position in export markets;
• improving resource security through 'going out' strategy;
• broaden financing channels for enterprises;
• increase the fiscal tax policy support; and
• give full play to the role of industry associations in planning, standards and policies."[47]

The named 'private' exporters have acknowledged their legal obligation to comply with the Government of China's directives:

> *"In the future, the status of the steel industry will be in "New Normal", and **Shagang Group will be guided by the spirit of the 18th Congress of the Chinese Communist Party**. In so-doing**, it will earnestly implement the national iron and steel industry development policy**; retain the concept of "Transformation, Innovation and Upgrading" as a command; with "Quality, Efficiency and Benefit" as the pursuit. Also, "Carry out Innovation, Brand Building, and Technology Improvements", to achieve development on multiple fronts, finer management and constantly enhance the enterprise's integrated competition strength. These factors will lay a solid base to build a "Centennial Enterprise" and make an ever greater contribution to build iron and steel power around the world."*[48]

The Australian industry requires the Commissioner to fully assess the status of the above named 'private' exporters as 'private bodies' acting under the entrustment or direction of the government or a public body, in light of its recent assessment in relation to the existence of a market situation for the goods in China.

2. Was a program regionally specific?

In dismissing 'Program 4' (Electricity provided by the Government at less than adequate remuneration) as a countervailable subsidy, the Commissioner found:

> *"Provincial electricity tariff data was obtained for both the Jiangsu and Shangdong provinces, the provinces in which the Cooperative exporters are located, for both 2014 and 2015. The Commission compared the tariff data with the information supplied by each exporter and established that each exporter was subject to the tariff applicable to large industry. The tariff data indicated that certain industries were subject to preferential pricing, including the agricultural sector. The **tariff data did not indicate that the rebar and rod in coils industries were subject to specific or preferential electricity tariff rates**."*
> *[emphasis added]*

With respect, the Commissioner has erred in his interpretation of section 269TAAC, and the determination of whether or not a subsidy is "specific" and therefore "countervailable".

[47] EPR Folio No. 301/038 at pp. 61-62.
[48] http://eng.shasteel.cn/jtgk/jtjj/index.shtml (accessed 26/08/2016)

OneSteel Manufacturing Pty Ltd
(Administrators Appointed)
ABN 42 004 651 325

Level 6, 205 Pacific Highway, St Leonards
NSW 2065
Locked bag 3050 NSW 1570, Australia

P 02 8424 9800
F 02 8224 9885

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The Commission has tested the specificity of 'Program 4' as it relates to a subset of enterprises within the region, **but not** whether the countervailable subsidy was regionally specific. This approach is clearly at odds with WTO jurisprudence on this issue.

> "In *EC and certain member States — Large Civil Aircraft*, the Panel concluded that Article 2.2 of the *SCM Agreement* provides that a subsidy available in a designated region within the territory of the granting authority is specific, even if it is available to all enterprises in that designated region:
>
> > *'… when the text [of Article 2.2] is considered in its context and in light of its object and purpose, it is clear to us that Article 2.2 is properly understood to provide that a subsidy available in a designated region within the territory of the granting authority is specific, even if it is available to all enterprises in that designated region.'*[4950]
>
> "Further, the Panel in *US — Anti-Dumping and Countervailing Duties (China)* also addressed the question whether a '*designated geographical region'* in the sense of Article 2.2 must necessarily have some sort of formal administrative or economic identity, or whether any identified tract of land within the territory of a granting authority can be a '*designated geographical region'* for the purposes of a specificity finding pursuant to Article 2.2. The Panel concluded that a '*designated geographic region'* in the sense of Article 2.2,
>
> > *'can encompass any identified tract of land within the jurisdiction of a granting authority'*[51]

The Australian industry submitted evidence in support of the regional nature of this program in its original applications to the Commissioner. The Commissioner has cited no reasons under subsection 269TAAC(3) that would invalidate the conclusion that the regional subsidy was specific.

CONCLUSION

In light of the above, the Australian industry submits that:

- The Commissioner ought to recommend to the Assistant Minister that a notice under section 269TJ be published in respect of each of the goods and like goods; and
- The Commissioner ought to find non-negligible subsidy margins with respect to Yonggang and Shagang, and accordingly not terminate the respective investigations insofar as they relate to these two exporters.

---

[49] Panel Report, *European Communities and certain Member States – Measures affecting trade in large civil aircraft*, WT/DS316/R, adopted 30 June 2010 (***EC and certain member States — Large Civil Aircraft***), at [7.1223]

[50] Upheld in Panel Report, *United States– Definitive anti-dumping and countervailing duties on certain products from China*, WT/DS379/R, adopted 22 October 2010 (***US — Anti-Dumping and Countervailing Duties (China)***), at [9.135].

[51] *US — Anti-Dumping and Countervailing Duties (China)* at [9.144]

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Laying the foundations for a financially sound industry

Steel Committee meeting
Paris, December 5th, 2013

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Contents

- **The global steel industry is not financially sustainable**
- The outlook remains challenging
- Long term financial health might be elusive without significant restructuring

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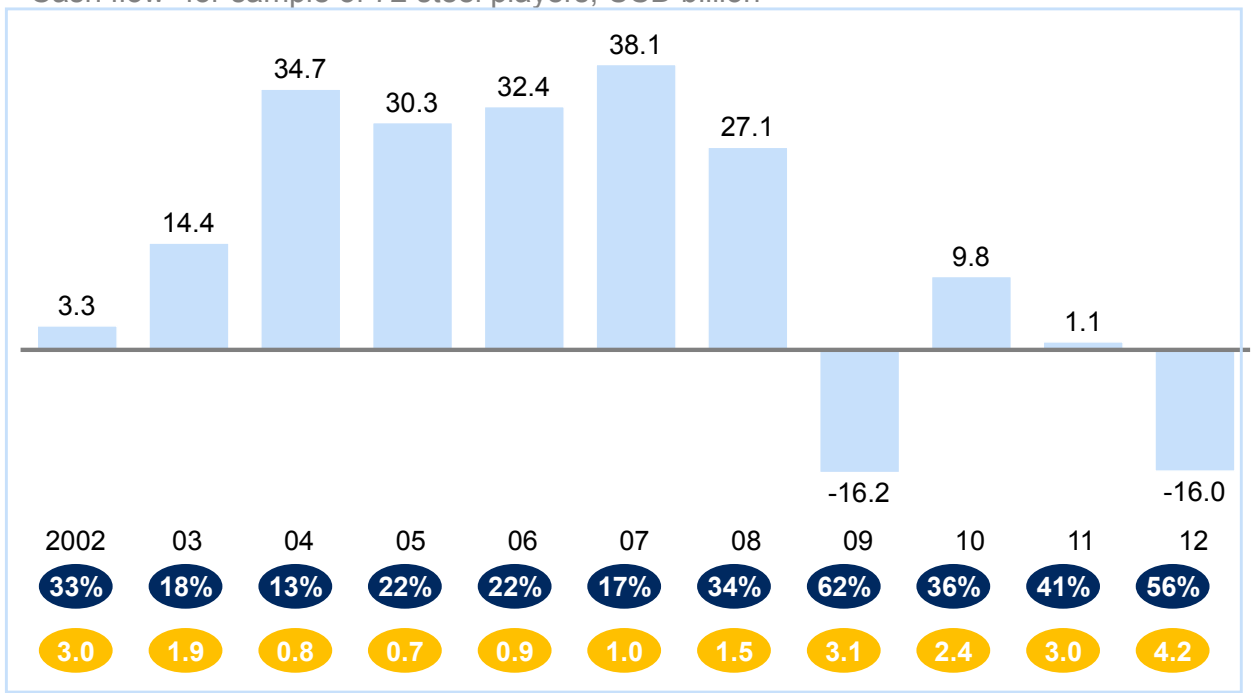
A large portion of the steel industry has operated with negative cash flows even in benign conditions

Average net debt to EBITDA ratio

% players with negative cash flow

Cash flow[1] for sample of 72 steel players, USD billion



1 Total operating cash flow minus capital expenditures minus interest expenses

SOURCE: S&P Capital IQ

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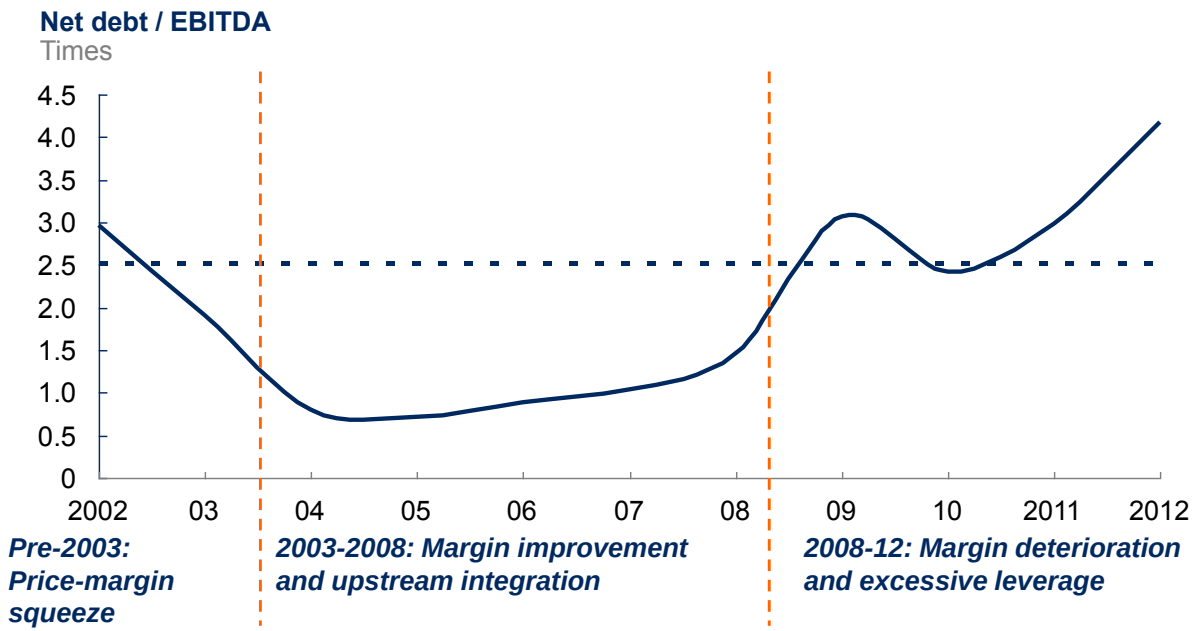
The leverage level of the steel industry is increasing

Net debt/EBITDA

Net debt / EBITDA margin for selected 72 companies

%, 2002-2012



SOURCE: S&P Capital IQ

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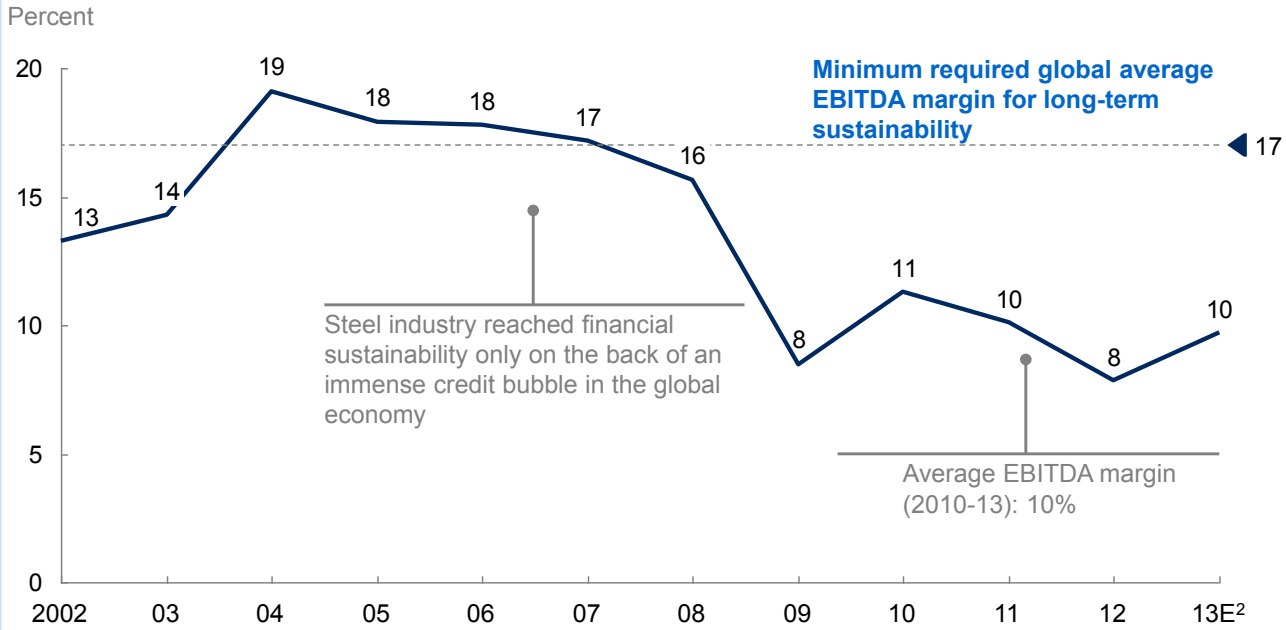
EBITDA margins have deteriorated

PRELIMINARY

Average EBITDA margin in the steel industry[1]



1 Considering sample of 65 companies
2 Consensus forecast

SOURCE: Bloomberg

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EBITDA must cover all stakeholder obligations

PRELIMINARY

EBITDA must cover all stakeholder costs

	Measurement used
Net earnings (after stakeholders costs)	
Investment / reinvestment into the business	▪ CAPEX (during period of low investment, i.e. mostly main-tenance CAPEX occurring)
Interest payment to debt holder	▪ Average cost of debt
Tax to government	▪ Effective tax rate
Unfunded liabilities (e.g., pension funds, …)	▪ Unfunded liabilities, gap to be closed in medium term
Return to shareholders	▪ Average cost of equity

SOURCE: McKinsey

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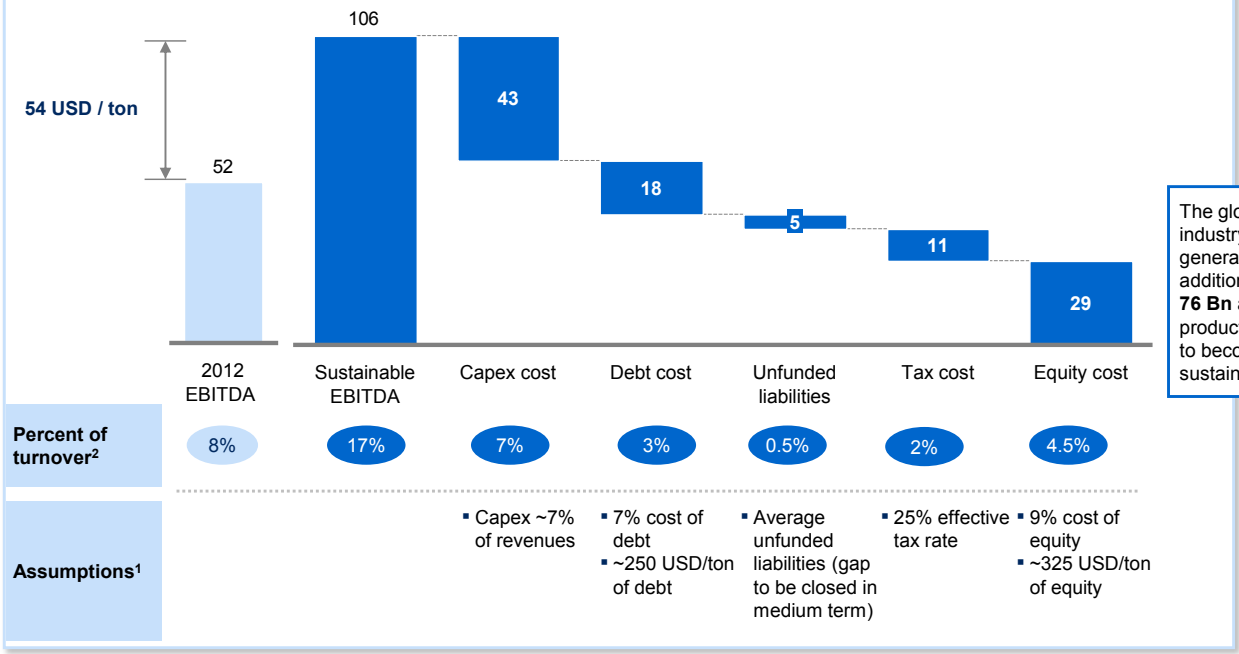
Meeting current stakeholder obligations requires a 17% global average EBITDA margin

Required EBITDA for long term sustainability (global average)[1]
USD / ton, Hot rolled 2012

GLOBAL AVERAGE



The global steel industry must generate additional **USD 76 Bn** at current production level to become sustainable

1 Considering sample of 83 companies
2 Assumes a price of 634 USD/ton in 2012 for hot rolled

SOURCE: McKinsey analysis; Bloomberg; MEPS

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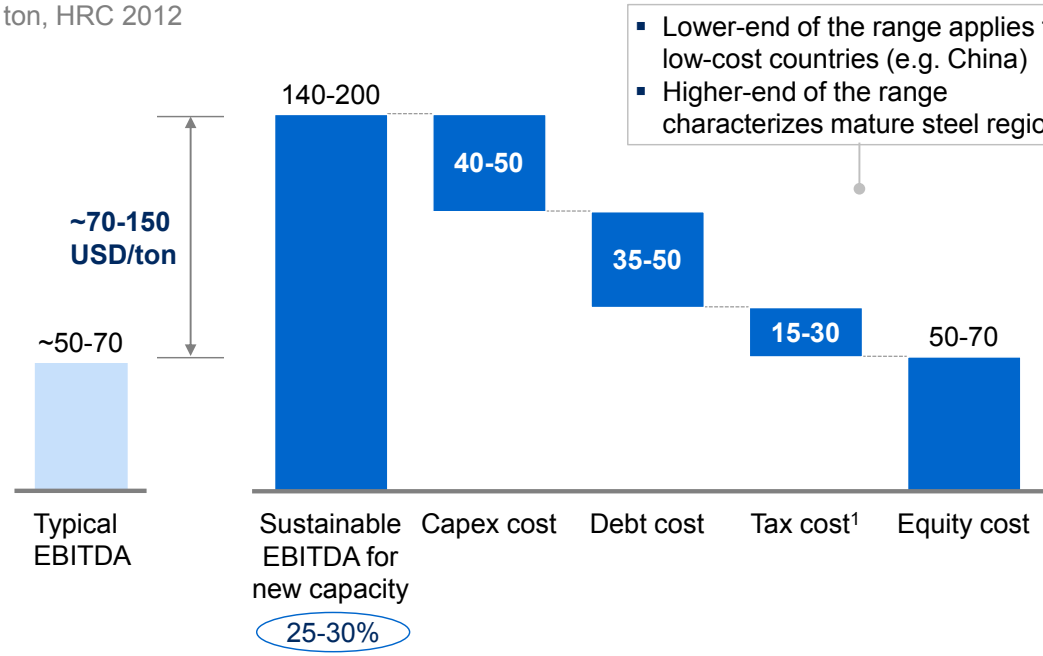
Note: Document subsequently made public

For any greenfield capacity expansion, the sustainable EBITDA margin is even higher

(xx) EBITDA margin

Required EBITDA for new greenfield capacity

USD / ton, HRC 2012



SOURCE: McKinsey analysis

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Contents

- The global steel industry is not financially sustainable
- **The outlook remains challenging**
- Long term financial health might be elusive without significant restructuring

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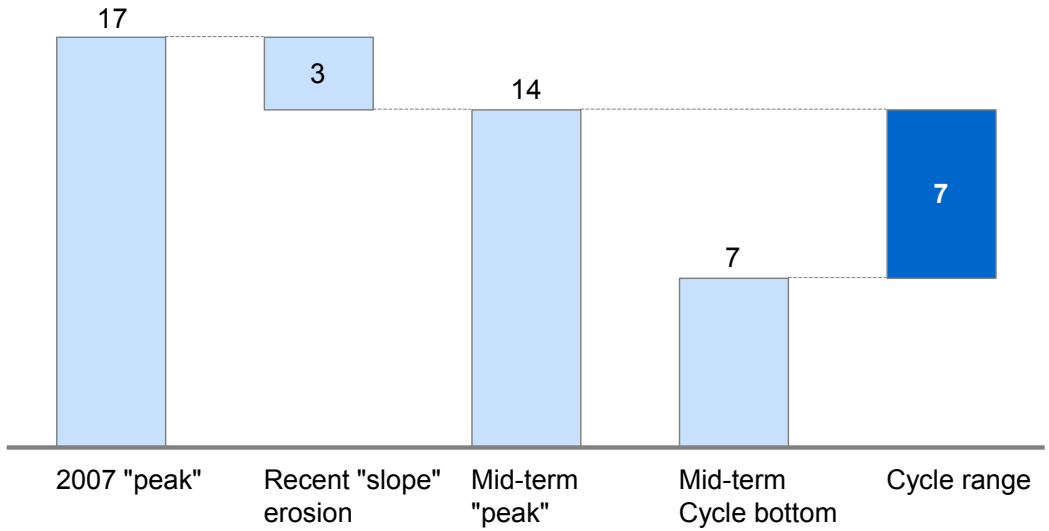
EBITDA margin range expected to be lower than in the past

ROUNDED NUMBERS

POSSIBLE MARGIN RANGE "New Normal" (2013-2018)
EBITDA %



1 Overcapacity defined as (crude steel capacity) - (crude steel equivalent of finished steel apparent steel demand)

SOURCE: McKinsey Analysis

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Contents

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Note: Document subsequently made public

The size of the EBITDA pool in any industry is driven by 3 factors

EBITDA pool simulation logic

EBITDA pool

Drivers

Capacity utilization

$CU = \frac{Demand}{Capacity}$

- Supply-demand evolution
- Incidents/Revamps
- Ramp-up curves

Slope of the cost curve

$Slope = \frac{C_{90}}{C_{10}}$

- Input cost factors (e.g., raw materials)
- Macroeconomic factors affecting the cost curve (e.g., exchange rate)

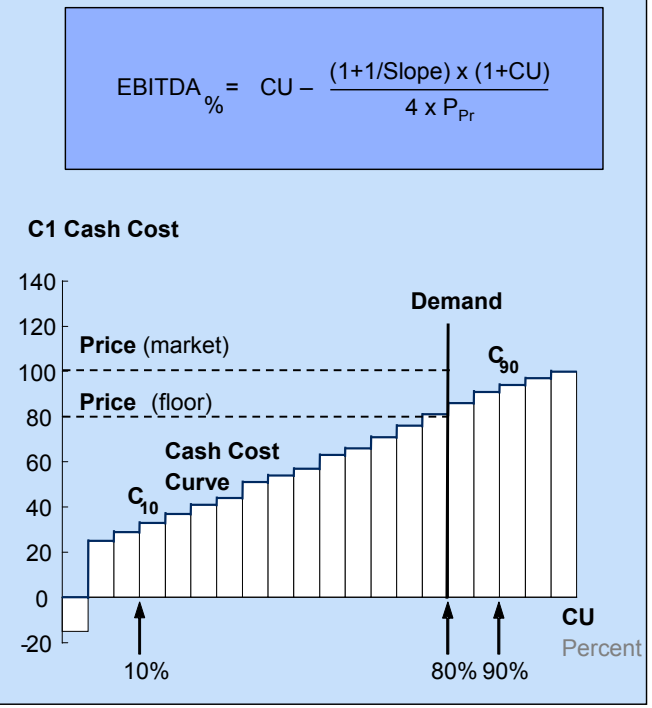
Margin over marginal cost

$P_{Pr} = \frac{Price}{C_{90}}$

- Lead time for capacity additions
- Perception of shortage
- Role of traders
- …

EBITDA pool simulation

$EBITDA_{\%} = CU - \frac{(1+1/Slope) \times (1+CU)}{4 \times P_{Pr}}$



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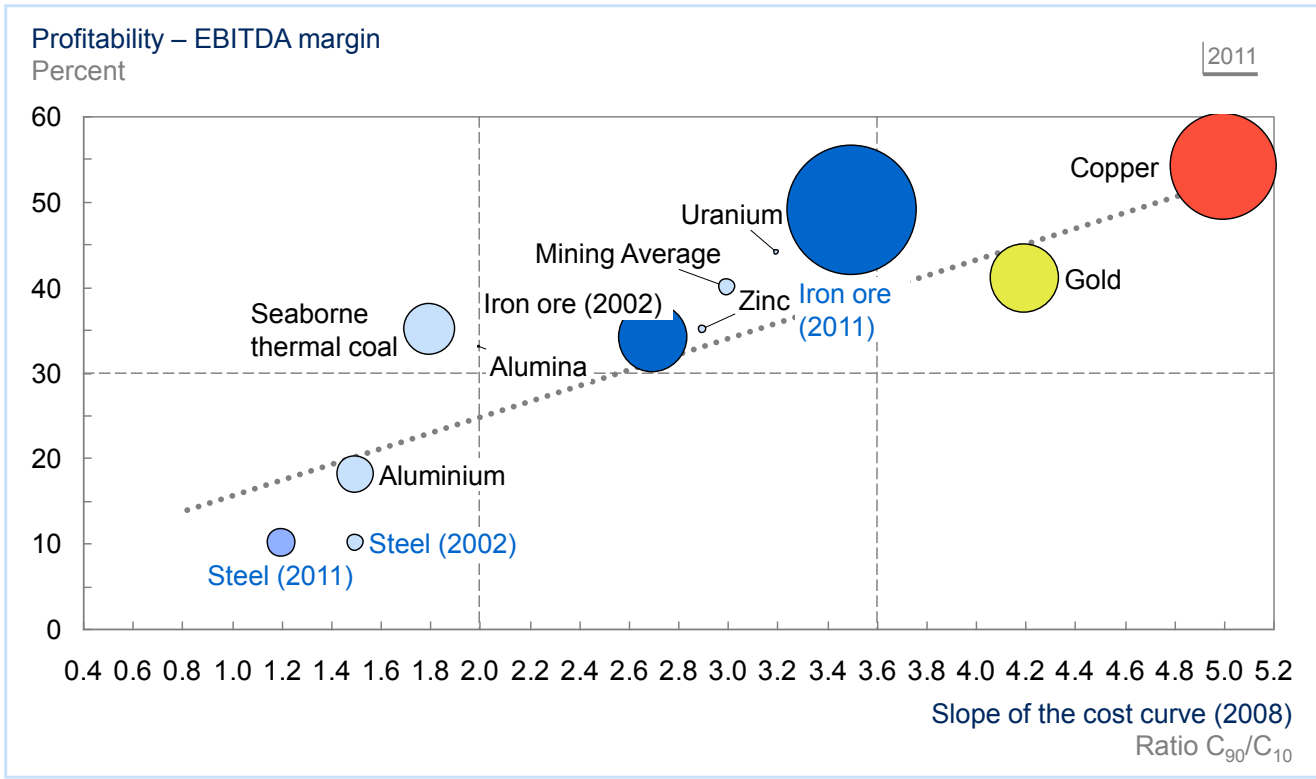
The average commodity attractiveness is "structurally" underpinned by the slope of its cost curve



1 Rich ore equivalent

SOURCE: Raw Materials Group database; McKinsey analysis

McKinsey & Company | 13

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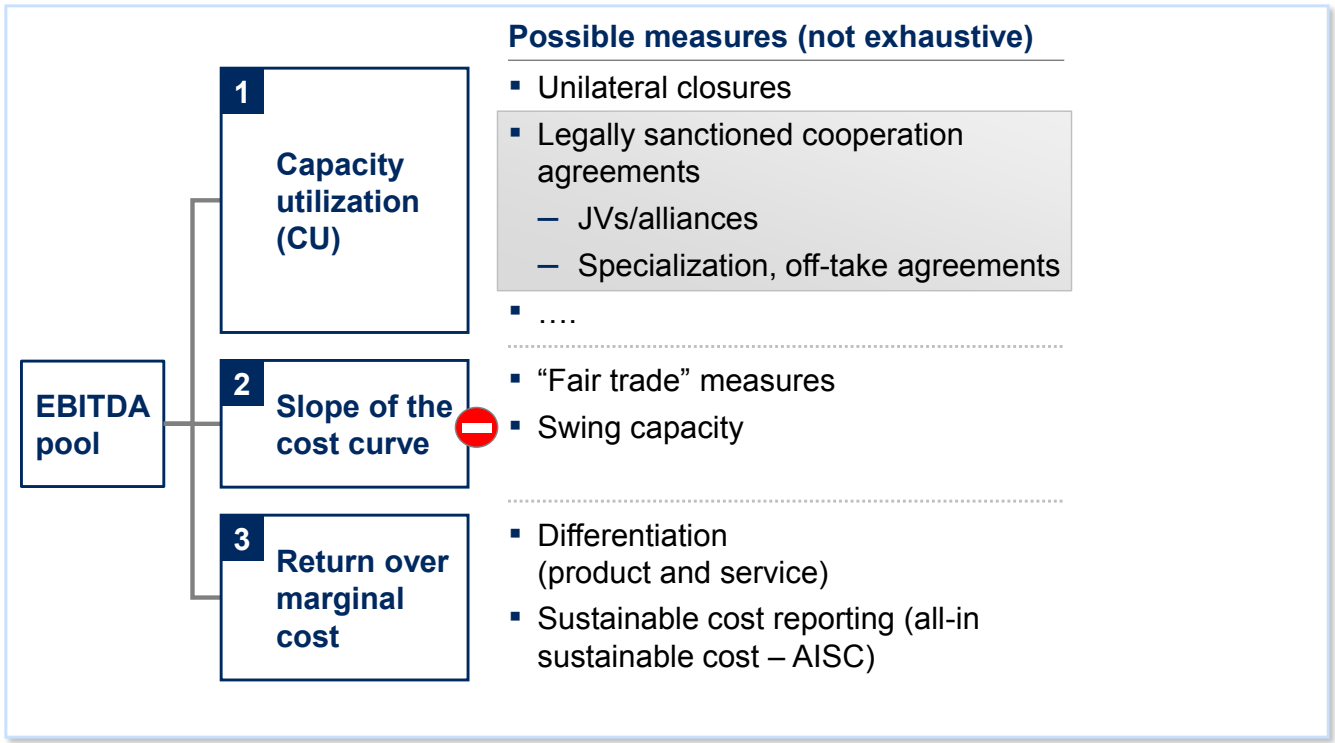
Focus of this presentation



SOURCE: McKinsey (originally presented during OECD steel committee meeting, July 2013)

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Note: Document subsequently made public

Bridging the ~50 USD/ton margin gap to reach a sustainable EBITDA margin would require closing ~300m tons of global capacity

EBITDA pool simulation logic

EBITDA pool

Capacity utilization

$$CU = \frac{Demand}{Capacity}$$

Slope of the cost curve

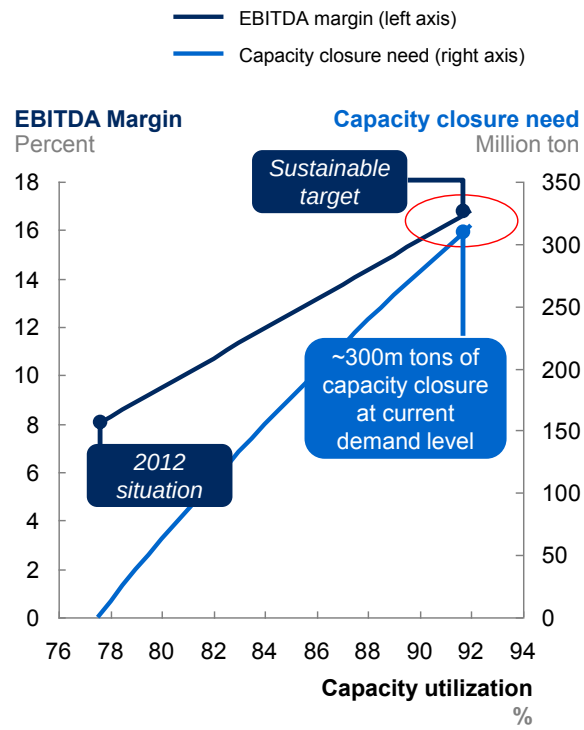
$$Slope = \frac{C_{90}}{C_{10}}$$

Return over marginal cost

$$RMC = \frac{Price}{C_{90}}$$

EBITDA margin formula

$$EBITDA_{\%} = CU - \frac{(1+1/Slope) \times (1+CU)}{4 \times RMC}$$



SOURCE: McKinsey analysis

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Beyond unilateral closures , several restructuring options have been mentioned

	Description	What is shared: Sourc.	Prod.	Com.	Log.
1 Unilateral closures	▪ Players unilaterally and independently reduce excess capacity according to their own timetable	✗	✗	✗	✗
2 Unilateral closures and off-take agreement	▪ Some players close all or majority of production and negotiate agreement to source needed steel from remaining players, potentially at preferential rates	✗	✓	✗	✓
3 Unilateral closures and leasing	▪ Closures same as above. In addition, players negotiate a lease of capacity, potentially at preferential rates	✗	✓	✗	✓
4 Combined upstream steel utility	▪ Upstream capacity is pooled into a subset of entities with joint ownership	✓	✓	✗	✗
5 Asset specialization with off-take agreement	▪ Two or more payers agree to specialize in certain products and either exit noncore areas or swap assets	✗	✗	✗	✗
6 Alliances or "code sharing"	▪ Players agree to partner in certain areas and reduce/ eliminate production where one partner is stronger and relies on the other for future production needs	✗	✓	✗	✓

Require upfront anti-trust review

Likely the basis of ongoing dialogue with OECD and regional authorities

SOURCE: McKinsey analysis

McKinsey & Company | 16

Note: Document subsequently made public

IABr CONFERENCE: Ebitda margin needs to be 16% to sustain steel industry

The steel industry requires an Ebitda margin of "at least" 16% to be economically sustainable in the long term, an industry expert said on Thursday May 9.

"However, Ebitda (earnings before interest, taxes, depreciation and amortisation) margins [in the global steel industry will] only reach 13% in 2015," Sigurd Mareels, director at management consulting firm McKinsey & Co, told delegates at the 24th Brazilian Steel Congress, organised by the country's steel institute, IABr, in Rio de Janeiro.

For 2013 and 2014, steelmakers' average Ebitda margin is expected to come to 10% and 12%, respectively, compared with only 9% last year, he said.

A 9% margin is feasible in the short term, and 13% is feasible in the medium term, "but, in the long term, it must be 16%", Mareels said.

No self-help

Given the expected speed of margin recovery, the capital required to improve the financial position of the steel industry would have to flow in from outside investors, according to the expert.

"No self-help is possible as companies need to restore [the] main fundamentals," he said.

Average free cashflow has been negative in the industry for the past five years, which is "not sustainable", Mareels said.

And the amount of money required to "reconfigure" the global steel industry is huge.

"We would need much more than $100 billion, probably $150 billion," Mareels warned.

Difficult options

To improve their margins, steel producers have, therefore, three different options, he said.

The first would be a significant cut in production, so that utilisation rates would increase in the whole industry.

"It would need to be 100 steel plants with a minimum of 3 million tpy capacity each.

"That's mission impossible," he said, mentioning the difficult political implications of closing a mill.

Another solution would be reducing raw materials costs, he said, which is also difficult since most of the supplies do not come from the steel industry.

Finally, steelmakers could increase their steel sales prices to be sustainable.

"[There is] no easy way out," Mareels added.

Brazilian mills

In Brazil, steelmakers have been facing low Ebitda margins too.

Flat steel and iron ore producer Usiminas has been working to increase its margin, which reached 9.3% in the first quarter of 2013, up from 6.7% in the same period last year and 6.9% in the fourth quarter of 2012.

This positive result was mainly due to improved operational performance and greater efficiency in the industrial sites, according to Usiminas.

Long steel producer Gerdau, in turn, saw its Ebitda margin decline to 9% between January and March, compared with 11% a year ago and 10% in the fourth quarter of 2012.

The reduction was due to a fall in its consolidated gross profit, it said.

CSN, meanwhile, has high levels of Ebtida margins as it is self-sufficient in iron ore, which significantly reduces its raw materials costs.

The steelmaker's Ebitda margin was 27% in 2012, down from 39% a year earler.

CSN is yet to publish its first-quarter 2013 financial results.

By Ana Paula Camargo

São Paulo 10 May 2013 18:12

COMPANY PROFILES

- Usiminas - Usinas Siderurgicas de Minas Gerais SA
- Gerdau

http://jpkc.scude.cn/zwebfiles/website/20121217025146/downloads/jsxmjjpjff.pdf

The Economic Assessment Method and Parameters for Capital Construction Project (Version 3)

建设项目经济评价方法与参数

第三版

中国计划出版社

国家发展改革委、建设部关于印发建设项目经济评价方法与参数的通知

发改投资〔2006〕1325号

国务院有关部门、直属机构，各省、自治区、直辖市及计划单列市、副省级省会城市发展改革委、经委（经贸委）、建设厅（建委），新疆生产建设兵团发展改革委，各中央管理企业：

现将修改后的《关于建设项目经济评价工作的若干规定》、《建设项目经济评价方法》和《建设项目经济评价参数》印发给你们，请在开展投资项目经济评价工作时借鉴和使用，并将使用中的问题和建议随时告国家发展改革委投资司和建设部标准定额司。

自本通知发布之日起，1993年国家计委、建设部《关于印发建设项目经济评价方法和参数的通知》（计投资〔1993〕530号）所发布的《关于建设项目经济评价工作的若干规定》、《建设项目经济评价方法》、《建设项目经济评价参数》和《中外合资经营项目经济评价方法》等文件停止使用。

附件：一、《关于建设项目经济评价工作的若干规定》

二、《建设项目经济评价方法》

三、《建设项目经济评价参数》

国家发展改革委　　建　设　部

二〇〇六年七月三日

Issued by National Development and Reform Commission (Construction Department), 3rd July 2006

The Economic Assessment Method and Parameters for Capital and Construction Project
1. General Rules

1.2 "The Economic Assessment Method and Parameters for Capital Construction Project" applies to pre-project study (incl. planning, opportunity study, project proposal, feasibility study), project interim assessment and post-project assessment works of all kinds of capital construction projects

附件二

建设项目经济评价方法

1 总　　则

1.1　为适应社会主义市场经济发展的需要，规范建设项目经济评价工作，保证经济评价的质量，提高项目决策的科学化水平，引导和促进各类资源的合理有效配置，充分发挥投资效益，制定本建设项目经济评价方法。

1.2　建设项目经济评价方法适用于各类建设项目前期研究工作（包括规划、机会研究、项目建议书、可行性研究阶段），项目中间评价和后评价可参照使用。

1.3　建设项目经济评价是项目前期研究工作的重要内容，应根据国民经济与社会发展以及行业、地区发展规划的要求，在项目初步方案的基础上，采用科学、规范的分析方法，对拟建项目的财务可行性和经济合理性进行分析论证，做出全面评价，为项目的科学决策提供经济方面的依据。

1.4　建设项目可从不同的角度进行分类。按项目的目标，分为经营性项目和非经营性项目；按项目的产出属性（产品或服务），分为公共项目和非公共项目；按项目的投资管理形式，分为政府投资项目和企业投资项目；按项目与企业原有资产的关系，分为新建项目和改扩建项目；按项目的融资主体，分为新设法人项目和既有法人项目。

1.5　建设项目经济评价的内容及侧重点，应根据项目性质、项目目标、项目投资者、项目财务主体以及项目对经济与社会的影响程度等具体情况选择确定（见附录 A）。

1.6　建设项目经济评价的深度，应根据项目决策工作不同阶段的要求确定。建设项目可行性研究阶段的经济评价，应系统分析、计算项目的效益和费用，通过多方案经济比选推荐最佳方案，对项目建设的必要性、财务可行性、经济合理性、投资风险等进行全面的评价。项目规划、机会研究、项目建议书阶段的经济评价可适当简化。

1.7　建设项目经济评价必须保证评价的客观性、科学性、公正性，通过“有无

Table 2.13-1
Benchmark IRR for Capital Construction Projects

拟法测算使用的价格水平是2003年底价格水平。考虑到近五年价格水平波动不大，在测算中未扣除通货膨胀的影响。

4. 参数的审查协调。以行业参数测算结果为基础，结合网上专家调查的结果，修订组组织了多次参数协调会议和专家审查会议，在力求体现国家政策并保持参数体系的协调性与完整性的原则下，综合考虑各方面的意见和实际情况后，确定了正式发布的各行业建设项目财务评价参数。

5. 列入说明部分的参数（见表2.13－1、表2.13－2）是除正式发布的各行业建设项目财务评价参数外，还有其他本次参数测算中实际工作过程的成果，反映了各行业的情况和各方面专家的判断，对项目评价人员具有一定的参考价值。

表2.13－1　部分行业建设项目财务基准收益率测算与协调

序号	行业名称	财务基准收益率（融资前税前指标）			财务基准收益率（项目资本金税后指标）		
		专家调查结果	行业测算结果	协调结果	专家调查结果	行业测算结果	协调结果
01	**农业**						
011	种植业	8～12	6	6	8～12	—	6
012	畜牧业	10～12	7	7	12～15	—	9
013	渔业	10～12	7	7	12～14	—	8
014	农副食品加工	10～12	8	8	12～15	—	8
02	**林业**						
021	林产加工	12	11	11	11	—	－1
022	森林工业	12	12.5	12	15	12.4	13
023	林纸林化	13	12	12	15	12	12
024	营造林	10	6～8	8	12	7～9	9
03	**建材**						
031	水泥制造业	12	11	11	13	12	12
032	玻璃制造业	12	13	13	13	14	14
04	**石油**						
041	陆上油田开采	13	13	13	15	—	15
042	陆上气田开采	13	12	12	15	—	15
043	国家原油存储设施	8	—		8	—	
044	长距离输油管道	12	12	12	13	—	13
045	长距离输气管道	12	12	12	13	—	13
046	海上原油开采	13	—		15	—	
05	**石化**						
051	原油加工及石油制品制造	12	12	12	13	16	13
052	初级形态的塑料及合成树脂制造	12	13	13	13	18	15

续表

序号	行业名称	财务基准收益率（融资前税前指标）			财务基准收益率（项目资本金税后指标）		
		专家调查结果	行业测算结果	协调结果	专家调查结果	行业测算结果	协调结果
0822	联网工程	7	7	7	7	13	10
0823	城网工程	7	7	7	7	10	10
0824	农网工		6	6	7	9	9
0825	区内或省内电网工程	7		7	7	9	9
09	**水利**						
091	水库发电工程	8	6～8	7	10	—	
092	调水、供水工程	6	2～4	4	6	—	
10	**铁路**						
101	铁路网既有线改造	—	—	—	—	6	6
102	铁路网新线建设	—	—	—	—	2.5	3
11	**民航**						
111	大中型（干线）机场建设	7	5	5	8	4	4
112	小型（支线）机场建设	—	1	1	—	—	—
12	**煤炭**						
121	煤炭采选	13	—		15	—	
122	煤气生产				13	—	
13	**黑色金属**						
131	铁矿采选	13	—		15	—	
132	钢铁冶炼	12	—		13	—	
133	钢压延加工	12	—		13	—	
134	炼焦	12	—		13	—	
14	**有色金属**						
141	有色金属矿采选	13	—		15	—	
142	有色金属冶炼	12	—		13	—	
143	有色金属压延加工	12	—		13	—	
15	**轻工**						
151	卷烟制造	16	—		18	—	
152	纸浆及纸制品制造	13	—		15	—	
153	变性燃料乙醇	13	—		15	—	
154	制盐	10	—		12	—	
155	家电制造	12	—		13	—	
156	家具制造	13	—		15	—	
157	塑料制品制造	13	—		15	—	
158	日用化学品制造	13	—		15	—	

Industry

Benchmark IRR Before Tax

Benchmark IRR After Tax

Expert judgement

Industry custom

Coordinated result

Benchmark IRR for ferrous industry

131 - Iron Ore
132 - Steelmaking
133 - Rolling