



TERMINATION OF PART OF INVESTIGATION

**TERMINATION REPORT NO. 322**

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

19 SEPTEMBER 2016

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## **1. SUMMARY AND FINDINGS**

### **1.1. INTRODUCTION**

This Termination Report No. 322 (TER 322) has been prepared in response to an application for a countervailing duty notice lodged by OneSteel Manufacturing Pty Ltd (OneSteel).

OneSteel alleges that steel reinforcing bar (rebar) exported to Australia from the People's Republic of China (China) at subsidised prices has caused material injury to the Australian industry producing like goods.

This Termination Report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) based his decision to terminate this investigation so far as it relates to certain exporters.

### **1.2. FINDINGS**

In accordance with subsection 269TDA(2)(b)(ii) of the *Customs Act 1901*<sup>1</sup> (the Act), the Commissioner must terminate the investigation so far as it relates to an exporter or exporters if the countervailable subsidy received by that exporter or exporters in relation to the goods the subject of the application is negligible. The Commissioner is satisfied that countervailable subsidies have been received in respect of the goods exported by Jiangsu Yonggang Group Ltd (Yonggang) and Shandong Shiheng Special Steel Co., Ltd (Shiheng) during the investigation period but the amount of countervailable subsidy received by Yonggang and Shiheng has never exceeded the negligible level of countervailable subsidisation relevant to China of 2 per cent of the export price of the goods.<sup>2</sup>

Therefore, the Commissioner has decided to terminate, in accordance with subsection 269TDA(2)(b)(ii), the investigation in so far as it relates to Yonggang and Shiheng.

### **1.3. APPLICATION OF LAW TO FACTS**

#### **1.3.1. AUTHORITY TO MAKE DECISION**

Division 2 of Part XVB sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application. Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

#### **1.3.2. APPLICATION AND INITIATION**

On 23 November 2015, OneSteel lodged an application requesting that the then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science publish a countervailing duty notice in respect of rebar exported to Australia from China. On 23 December 2015, the Commissioner initiated this subsidy investigation (number 322).

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<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

<sup>2</sup> Subsection 269TDA(16)(b).

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Anti-Dumping Notice (ADN) No. 2015/152 provides further details relating to the initiation of the investigation and is available on the [public record](#) on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 1.4. STATEMENT OF ESSENTIAL FACTS

On 5 August 2016, the Commissioner published a Statement of Essential Facts (SEF) in relation to two separate investigations (SEF 322 and 331 for Rebar: Investigation 322 and Rod in Coils: Investigation 331).

SEF 322 and 331 should be read in conjunction with this report and is available on the [public record](#).

### 1.5. SUBMISSIONS TO SEF 322 AND 331

The Commission received three submissions in response to SEF322 and 331 from the following interested parties:

- OneSteel Manufacturing Pty Ltd;
- Shandong Shiheng Special Steel group Cp., Ltd;
- Jiangsu Yonggang Group Co. Ltd

The public version of these submissions can be found on the [public record](#).

The Commissioner's consideration of these submissions is at Appendix 3.

## **2. BACKGROUND**

### **2.1. INTRODUCTION**

On 23 November 2015, OneSteel lodged an application requesting that the then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science publish a countervailing duty notice in respect of rebar exported to Australia from China. On 23 December 2015, the Commissioner initiated this investigation (number 322).

OneSteel alleges that it has suffered material injury caused by exports of rebar to Australia from China at subsidised prices. Specifically, OneSteel alleged it has been injured through:

- price depression;
- price suppression;
- price undercutting;
- lost sales volume;
- lost market share;
- less than full capacity utilisation;
- loss of employment;
- loss of assets employed in the production of the like goods; and
- loss of capital investment in the production of the like goods.

Anti-Dumping Notice (ADN) No. 2015/152, Consideration Report CON 322 and the application all provide further details relating to the initiation of the investigation, and are available on the [public record](#).

### **2.2. INVESTIGATION DETAILS**

The investigation period is from 1 July 2014 to 30 June 2015.

The injury analysis period has been set from 1 July 2011. The purpose of the injury analysis period is to allow the Commission to identify and examine longer trends in the market for rebar which in turn assist the Commission in its examination of whether material injury has occurred over the investigation period.

### **2.3. PRELIMINARY AFFIRMATIVE DETERMINATION**

The Commissioner has not made a preliminary affirmative determination (PAD) under subsection 269TD(1) as the Commissioner was not satisfied that there was sufficient grounds for the publication of a countervailing duty notice. The Commissioner published a status report on 22 February 2016. The status report is available on the [public record](#).

### **2.4. STATEMENT OF ESSENTIAL FACTS**

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the relevant decision maker allows, place on the public record an SEF on

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which the Commissioner proposes to base the recommendations in relation to the application.

The initiation notice advised that the SEF would be placed on the public record by 11 April 2016, however, the Commissioner was satisfied that the prescribed 110 days to place the SEFs on the public record for the investigations was likely to be insufficient and requested that the then Parliamentary Secretary extend the timeframe to publish the SEF.

On 11 April 2016 the then Parliamentary Secretary, under subsection 269ZHI(3), extended the deadline for the publication of the rebar SEF to 6 June 2016 (ADN 2016/35 refers). On 6 June 2016 the then Parliamentary Secretary, under section 269ZHI, extended the deadline for the publication of the SEF to 21 July 2016 (ADN 2016/59 refers). On 21 July 2016, the former Parliamentary Secretary, under section 269ZHI, further extended the deadlines for the publication of the SEF to 5 August 2016 (ADN 2016/70 refers).

On 5 August 2016, the Commissioner published a Statement of Essential Facts (SEF) in relation to two separate investigations (Rebar: 322 and Rod in Coils: 331).

In formulating the SEF, the Commissioner had regard to the applications concerned, any submissions concerning publication of the notice that were received by the Commission within 37 days after the date of initiation of the investigations and any other matters considered relevant.

In the SEF, the Commissioner outlined his finding that one exporter of rebar from China, Yonggang, has a negligible subsidy margin and, as such, the Commissioner proposed to terminate the investigation in so far as it related to that exporter subject to any submissions received in the SEF.

In the SEF, the Commissioner also outlined his finding that the subsidy margin for Shiheng was 3.71 per cent.

### 2.4.1. SUBMISSION IN RESPONSE TO THE SEF

In response to the SEF, Shiheng provided a submission to the Commission. A non-confidential version of the submission is available on the [public record](#).

In its submission, Shiheng claims that regarding Program 177:

- there has been a flawed interpretation regarding the amount of ownership of an enterprise by government required to consider the enterprise to be a public body;
- there is a misunderstanding of statements made by Shiheng regarding the implications of the guarantees by other third parties and the impact of those statements on Shiheng's creditworthiness; and
- there is an incorrect calculation of the benefit.

Shiheng also claims that for Program 2, the benchmark should be adjusted to reflect different types of coking coal.

SEF 322 and 331 is available on the [public record](#) and should be read in conjunction with this report.

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### 2.4.1.1. PROGRAM 177

The Commission has considered the submission made by Shiheng in response to the SEF regarding program number 177. Program 177 provides loan assistance for businesses that are not creditworthy. Having regard to the Commission's *Dumping and Subsidy Manual*, the Commission has not found positive evidence that suggests that Shiheng is not creditworthy. The manual states:

*where a government makes loans to borrowers who are uncreditworthy - meaning that its financial position is so weak that it can be demonstrated from the evidence that it would not have obtained a commercial loan, the Commission will consider whether the entire loan should be treated as the equivalent of a grant. Claims by Australian industry that a company is uncreditworthy will need to be supported by information about the financial health of the company. Financial indicators include: the ability to meet costs and financial obligations from cash flow; and evidence concerning the enterprise's future financial position using market studies, and project and loan appraisals. The presence of long term loans without any government guarantee may be indicative that an enterprise is not creditworthy<sup>3</sup>.*

The Commission noted that approximately 25 per cent of the total loans provided to Shiheng were not guaranteed. Of the remaining 75 per cent (the guaranteed loans), only 25 per cent was guaranteed by a state invested enterprise while the remaining loans were guaranteed by other related and unrelated private entities. This suggests that Shiheng is able to obtain loans that are either not guaranteed or guaranteed by other private entities.

The Commission also examined the audited financial statements for the financial year ending 30 June 2015 and found that Shiheng has the ability to meet costs and financial obligations from cash flow. Shiheng's balance sheet indicates that the company is in a sound financial position.

### 2.4.1.2. COKING COAL

The Commission is aware that in INV 193, the GOC objected to the use of an Australian export price benchmark on the grounds that the quality of Australian coking coal is higher than that produced domestically in China, and would therefore be more expensive.

Based on the Commission's analysis of prices paid for coking coal in a recent investigation regarding grinding balls (Investigation 316 refers), the Commission found that Chinese exporters are not disadvantaged by the use of an Australian benchmark, even if the quality of Australian coking coal is superior to that available domestically in China. As such, the Commission considers no adjustment of coking coke price is warranted for this case. The Commission's assessment of benchmark for coking coal is at Appendix 4 of the SEF.

Taking the above into consideration, the Commission considers that Shiheng did not benefit from Program 177 for loans 4 and 12. The Commission then compared the interest rate for

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<sup>3</sup> *Dumping and Subsidy Manual*, page 91



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loans 4 and 12 with the benchmark rates and found that Shiheng benefitted from a lower interest rate for these loans, and received a benefit under Program 46.

As such, the Commission changed its position with regards to Programs 177 and 46 for Shiheng. The Commission removed the incorrectly assessed benefit under program 177 for loans 4 and 12, and updated the assessment for loans 4 and 12 against program 46 to countervail the interest rate differential identified. Shiheng's revised subsidy margin is 1.66 per cent.

### 2.5. RELEVANT LEGISLATION

Sub-section 269TDA(2) provides:

*If:*

- (a) application is made for a countervailing duty notice; and*
- (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
  - (i) no countervailable subsidy has been received in respect of any of those goods; or*
  - (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time after the start of the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);**

*the Commissioner must terminate the investigation so far as it relates to the exporter.*

Sub-section 269TDA(16) provides:

*For the purpose of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:*

- (a) the country of export is not a developing country and the subsidy when expressed as a percentage of the export price of the goods, is less than 1 per cent; or*
- (b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2 per cent; or*
- (c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3 per cent.*

### **3. THE GOODS UNDER CONSIDERATION**

#### **3.1. THE GOODS**

The imported goods are:

*Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.*

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

#### **3.2. TARIFF CLASSIFICATION FOR THE REBAR INVESTIGATION**

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

- 7213.10.00 with statistical code 42;
- 7214.20.00 with statistical code 47;
- 7227.90.10 with statistical code 69;
- 7227.90.90 with statistical codes 42 (as of 1 January 2015, statistical codes 01, 02 and 04);
- 7228.30.10 with statistical code 70;
- 7228.30.90 with statistical code 49 (as of 1 July 2015, statistical code 40);
- 7228.60.10 with statistical code 72.

#### **3.3. EXCLUSIONS**

The goods which are the subject of investigation 322 do not include plain round bar, stainless steel or reinforcing mesh.

#### **3.4. TARIFF CONCESSION ORDERS**

There is currently no tariff concession order (TCO) applicable to the goods which are the subject of investigation 322.

## **4. COUNTERVAILING INVESTIGATION**

### **4.1. COUNTERAVAILABLE PROGRAMS**

After assessing all relevant information available, the Commission found that there were a number of countervailable subsidy programs that were common to rebar and to rod in coils (rod in coils is subject to investigation 331). These common countervailable subsidies have been assessed collectively.

The Commission found that 113 countervailable subsidies were received by exporters of rebar from China.

The findings in relation each program investigated are outlined in Appendix 1.

### **4.2. SUBMISSIONS FOLLOWING PUBLICATION OF SEF 322 AND 331**

In response to SEF 322 and 331, OneSteel submitted that it disagrees with the Commissioner's assessment of the subsidy margins and his proposal to terminate the investigation insofar as it relates to Shagang and Yonggang. OneSteel provided the following reasons for its disagreement:

- Yonggang and Shagang are related parties as Shagang holds a 25 per cent ownership of Yonggang;
- The Commission did not perform an 'on-the-spot', in-country verification of Yonggang;
- The Commissioner has ignored or overlooked that Shagang and, likely, Yonggang are operating within the Zhangjiang Free Trade Zone (ZJG FTZ) and, as such, are entitled to receive countervailable subsidies such as 'Preferential Tax Policies' (OneSteel Identified three preferential tax policies), 'Special Function Policies', 'Import tax reduction' (OneSteel identified three programs), 'Export Tax Rebate' (OneSteel identified five programs);
- In July 2015, immediately following the conclusion of the relevant investigation period, it was reported that "Eastern China's Jiangsu Yonggang, part of Jiangsu Shagang Group, says it has received CNY 2.07 million (\$340,000) in environmental subsidies from local authorities in Zhangjiang city.... Total environment subsidies received by Yonggang was CNY 42.51 million since 2007... CNY 1 million of funds were received for undertaking a flue gas waste heat recover project ... Yonggang says it invested CNY 1 billion on energy efficient and recycling projects in recent years etc";
- A proper amortisation of the benefits across the life cycle of the asset needs to be conducted and allocated in the investigation period;
- In light of Yonggang's failure or refusal to disclose the above to the Commissioner, then the Commissioner should have regard to the cooperative status of Yonggang; and

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- OneSteel provided an extract of a report from the ‘Steel Industry Coalition’ which identified amount of total government received by Shagang group between financial years 2005 to 2013.

In response to OneSteel’s claims, Yonggang submitted that OneSteel’s claims are baseless assertions and its arguments are flawed. Yonggang stated that it has not benefitted from preferential tax policies. Yonggang also claims that it is not located within Zhangjiagang Free Trade Zone. Yonggang submitted that it was subject to prevailing company tax rate in China and as such did not benefit from a reduced tax rate or preferential tax policies. Yonggang stated that it has truthfully responded to the Commission’s questionnaire and identified all benefits received under the alleged subsidy programs and self-reported numerous additional benefits received under other potential subsidy programs. Yonggang also stated that it is a private entity (and is not an SIE).

In response to OneSteel’s claims, Shagang stated that it has not benefitted from preferential tax policies or from a reduced tax rate or preferential tax policies. Shagang also stated that it has truthfully responded to the Commission’s questionnaire and identified all benefits received under the alleged subsidy programs and self-reported numerous additional benefits received under other potential subsidy programs.

### 4.3. THE COMMISSION’S ASSESSMENT

Having regard to OneSteel’s submission, information provided by Yonggang and Shagang and verified by the Commission, the Commission is satisfied that Yonggang and Shagang are private entities. While the Commission did not perform an ‘on-the-spot’ in-country verification of Yonggang, the Commission carried out remote verification by seeking selected source documents and additional information (and evidence) from Yonggang. As such the Commission is satisfied that the information provided by Yonggang in relation to the alleged subsidy programs (including self-reported subsidy programs) is reliable.

While the Commission acknowledges OneSteel’s efforts to identify possible additional subsidy programs, OneSteel did not provide any evidence that either Shagang or Yonggang have in fact been in receipt any of the alleged subsidy programs. Further, the Commission has found that most of the alleged programs in OneSteel’s submission are outside the investigation period.

The Commission confirms that for projects where the benefit for the alleged subsidy programs continued outside the investigation period, the Commission amortised those benefits across the life cycle<sup>4</sup> of the asset. This amortised amount was then allocated in the investigation period as appropriate.

From the examination of Shagang’s records during the ‘on-the-spot’ in-country verification, the Commission did not find any evidence that Shagang was in receipt of any other subsidy programs other than those disclosed in the visit report. Further, OneSteel did not allege the above possible subsidy programs in its application or during the course of the investigation.

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<sup>4</sup> The life cycles of an asset was determined using the audited life-cycle as per the audited reports.

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As no evidence of the program was uncovered during the verification activities, and the additional information provided by OneSteel relates to a payment outside the investigation period, the Commission does not consider that the issues that were raised have an impact on the assessment of the countervailing margin in relation to Shagang.

### 4.4. THE COMMISSION'S FINDINGS

#### 4.4.1. YONGGANG

Having regard to all relevant information, the Commission has found that Yonggang was in receipt of the following countervailable subsidy programs:

- Program 3 – Coke provided by government at less than adequate remuneration;
- Program 46 – Preferential loans; and
- Programs 56, 77, 83, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174 and 175 – Miscellaneous grants programs (refer to the tables in Appendix 1 of this report for the full name of each program).

The Commission has determined that the subsidy margin for Yonggang is **0.26 per cent**.

The calculation of Yonggang's subsidy margin is at **Confidential Attachment 1**.

#### 4.4.2. SHIHENG

Having regard to all relevant information, the Commission has found that Shiheng was in receipt of the following countervailable subsidy programs:

- Program numbers 2, 3, 46,87,89,90,93,96,97,98,99,100,102,102,103 and 106 (refer to the tables in Appendix 1 of this report for the full name of each program).

The Commission has determined that the subsidy margin for Shiheng is **1.66 per cent**.

The calculation of Shiheng's subsidy margin is at **Confidential Attachment 2**.

### 4.5. CONCLUSION

Under subsection 269TDA(2)(b)(ii), if the Commissioner is satisfied that the countervailable subsidy that has been received in respect of the goods the subject of the application is negligible in relation to a particular exporter, the Commissioner must terminate the investigation so far as it relates to that exporter. Subsection 269TDA(16) sets out the negligible level of countervailable subsidisation for goods exported from China as 2 per cent of the export price of the goods.

The Commissioner has determined the subsidy margin for Yonggang is 0.26 per cent. The Commissioner has determined that the subsidy margin for Shiheng is 1.66 per cent. Therefore, under subsection 269TDA(2)(b)(ii), the Commissioner must terminate the investigation so far as it relates to rebar exported from China by Yonggang and by Shiheng.

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### 5. ATTACHMENTS

<b>Confidential Attachment 1</b>	Confidential Attachment 1 – Rebar - Yonggang - subsidy benefit calculations
<b>Confidential Attachment 2</b>	Confidential Attachment 2 – Rebar - Shiheng - subsidy benefit calculations
<b>Appendix 1</b>	Countervailable Programs
<b>Appendix 2</b>	List of submissions received in Investigation 322
<b>Appendix 3</b>	Commissioner’s consideration of SEF submissions
<b>Appendix 4</b>	Assessment of adequate remuneration for billet n China

## 6. APPENDIX 1: COUNTERAVAILABLE PROGRAMS

After assessing all relevant information available, the Commission found that there were a number of countervailable subsidy programs that were common to rebar and rod in coils. These common countervailable subsidies have been assessed collectively.

The Commission found that 113 countervailable subsidies were received by exporters of rebar from China. The findings in relation each program investigated are outlined below.

**Table 1: Programs common to rebar and rod in coils with common program numbers**

Common Program number for rebar and rod in coils	Program Name – rebar and rod in coils	Program Type	Countervailable in relation to the Rebar and rod in coils (Yes/No)
1	Billet provided by the Government of China at less than adequate remuneration	Remuneration	Yes
2	Coking coal provided by the Government of China at less than adequate remuneration	Remuneration	Yes
3	Coke provided by the Government of China at less than adequate remuneration	Remuneration	Yes
4	Electricity provided by the Government of China at less than adequate remuneration	Remuneration	No
5	Preferential Tax Policies for High and New Technology Enterprises	Taxation	Yes
6	Preferential Tax Policies in the Western Regions	Taxation	Yes
7	Land Use Tax Deduction	Taxation	Yes
8	Tariff and VAT Exemptions on Imported Materials and Equipment	Taxation	Yes
9	VAT refund on comprehensive utilisation of resources	Taxation	Yes
10	One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” and “Famous Brands of China”	Grant	Yes

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Common Program number for rebar and rod in coils	Program Name – rebar and rod in coils	Program Type	Countervailable in relation to the Rebar and rod in coils (Yes/No)
11	Matching Funds for International Market Development for small and medium size enterprises (SMEs)	Grant	Yes
12	Superstar Enterprise Grant	Grant	Yes
13	Research and Development (R&D) Assistance Grant	Grant	Yes
14	Patent Award of Guangdong Province	Grant	Yes
15	Innovative Experimental Enterprise Grant	Grant	Yes
16	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
17	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
19	Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan	Grant	Yes
20	Water Conservancy Fund Deduction		Yes
21	Wuxing District Freight Assistance	Grant	Yes
22	Huzhou City Public Listing Grant	Grant	Yes
23	Huzhou City Quality Award	Grant	Yes
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
25	Wuxing District Public List Grant	Grant	Yes
26	Anti-dumping Respondent Assistance	Grant	Yes



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Common Program number for rebar and rod in coils	Program Name – rebar and rod in coils	Program Type	Countervailable in relation to the Rebar and rod in coils (Yes/No)
27	Technology Project Assistance	Grant	Yes
28	Transformation technique grant for rolling machine	Grant	Yes
29	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	Grant	Yes
30	Key industry revitalization infrastructure spending in 2010	Grant	Yes
31	Provincial emerging industry and key industry development special fund	Grant	Yes
32	Environmental protection grant	Grant	Yes
33	Environmental protection fund	Grant	Yes
34	Intellectual property licensing	Grant	Yes
35	Financial resources construction - special fund	Grant	Yes
36	Reducing pollution discharging and environment improvement assessment award	Grant	Yes
37	Grant for elimination of out dated capacity	Grant	Yes
38	Grant from Technology Bureau	Grant	Yes
39	High and New technology Enterprise Grant	Grant	Yes
40	Independent Innovation and High Tech Industrialization Program	Grant	Yes
41	Environmental Prize	Grant	Yes
42	Jinzhou District Research and Development Assistance Program	Grant	Yes
43	Debt for equity swaps	Equity Program	No
44	Equity infusions	Equity Program	No

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Common Program number for rebar and rod in coils	Program Name – rebar and rod in coils	Program Type	Countervailable in relation to the Rebar and rod in coils (Yes/No)
45	Unpaid dividends	Equity Program	No
46	Preferential loans and interest rates to producers/exporters of steel reinforcing bar and rod in coils	Loan	Yes

*Table 1 - Programs consistent between rebar and RIC*

**Table 2: Grants common to rebar and rod in coils but with different program numbers**

Program number for Rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
109	239	Large heat input welding high strength bainite engineering machinery steel industrialization project assistance funds allocated by provincial department of finance	Grant	No
110	240	Develop offshore-flat structure steel awards allocated by municipality science and technology promotion funds	Grant	No
111	241	Government Grants	Grant	No
112	233	Industrial Waste Water Resources Recycling Project	Grant	Yes
113	242	Coke Dry Quenching Project	Grant	No
114	231	Sewage Treatment Project of the Whole Plant	Grant	Yes
115	234	2007 Energy Technology 11_3# Blast Furnace Top Gas Recovery Turbine Unit (TRT)	Grant	Yes
116	235	360 M2 Sintering Machine Flue Gas Desulfurization Project	Grant	Yes
117	236	Coking 300M3/h phenolic and cyanide waste water extension project	Grant	No
118	243	The Second Set of 75 Tons/h Coke Dry Quenching Construction Project	Grant	No

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Program number for Rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
119	244	Coke Dry Quenching (CDQ) Power Generation Project (25MW)	Grant	Yes
120	245	Energy Management Information System	Grant	Yes
121	237	Coke Dry Quenching Project of 150 Tons	Grant	No
122	238	Automatic Control Technology Renovation Project of Clean Steel and Converter	Grant	Yes
123	246	Pressure Difference of Furnace Top Power Generation Project	Grant	Yes
124	247	Flue gas desulfurization treatment technology renovation project of sintering system (360M2)	Grant	Yes
125	248	Prevention and Control of Heavy Metals Pollution	Grant	Yes
126	249	Import discount interest assistance fund of 2011 allocated by provincial department of finance	Grant	No
127	250	Hunan Valin assistance funds allocated by SASAC	Grant	No
128	232	Secondary flue gas deducting of converter of No.2 steel mill	Grant	Yes
129	252	Adopt dry bag filter system to transform original wet dust extraction system; renovation of the coking phenol-cyanogen sewage treatment station, processing capacity is 300tons/h; new construction of sewage treatment plant of ironmaking hole and gongnong gate, processing capacity is 7700tons/h;	Grant	Yes
130	253	First sintering (360M2), second sintering (180m2), disposal of heavy metal of water treatment facility of nose flue gas purification system; 1# blast furnace wet dust extraction into dry dusting; comprehensive utilization of heavy metal pollution.	Grant	Yes

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Program number for Rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
131	254	Comprehensive management and technical reform of heavy metal pollution in Xiangjiang Valley	Grant	Yes
132	255	Excellent demonstration enterprise award grants allocated by municipality economic and information commission (Tanjingxinfo NO.10,2013)	Grant	No
133	256	Government Grants received from Xiangtan City Finance	Grant	No
134	257	Financial Grant received from Xiangtan City Finance	Grant	No
135	258	Tiaozhengyin No.5013050048# Voucher, Provincial Science and Technology Key Project Assistance Funds received from Bureau of Finance [Xiangcaiqizhi No.155, 2012]	Grant	No
138	251	Flue gas desulfurization treatment technology renovation project of sintering system	Grant	Yes
139	259	Wide and Heavy Plate Project	Grant	Yes
140	260	Energy-saving Technical Renovation Project of Replacing Old Boiler and Recycling Diffused Gas	Grant	No
141	262	Energy Saving and Emission Reduction & Technical Reform Project for Improving the Quality of the Products in Bar Mill Government Grants received from Xiangtan City Bureau of Finance (Tancaiqi NO.9, 2014)	Grant	Yes
142	263	Renovation of improving the quality of the bar product financial grant received from Xiangtan City Finance	Grant	Yes
143	264	Power demand side management project assistance funds of 2014 (Xiangcaiqizhi (2014) No.107)	Grant	Yes
144	265	Financial Grant of 2014	Grant	Yes

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Program number for Rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
145	266	Technology ke25 project scientific research assistance of 2014 received from provincial science and technology development center	Grant	Yes
146	267	690MPa high-grade mine steel special assistance allocated by provincial department of finance	Grant	Yes
147	268	Carry forward the financial grant in previous years into the non-operating income	Grant	Yes
150	261	Third sintering of heavy metal (plumbum) and carbon dioxide comprehensive treatment funds	Grant	Yes
152	269	Key new materials products of 2014 special assistance allocated by provincial department of finance	Grant	Yes
154	270	Steelmaking converter exhaust gas pollution comprehensive treatment project	Grant	Yes
155	271	Dust removal renovation project of steel-making blending iron furnace	Grant	Yes
156	272	Energy saving and emission reduction & technical reform project for using of waste heat after steel	Grant	Yes
177	273	Loan Guarantee provided by the Government of China	Loan	No

*Table 2 - Combined rebar & RIC grant programs*

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**Table 3: Programs specific to rebar**

Program Number for Rebar	Program Name – Rebar	Program Type	Countervailable In relation to the goods (Yes/No)
47	"Project: Shortage of Coke oven gas heat efficient return Development and Application Technology"	Grant	No
48	"Project: Finance Bureau of Independent Innovative technology funds"	Grant	No
49	"Project: The first batch of industry and information technology development funds FY2014"	Grant	No
50	"Project: Second five special funds for national support program"	Grant	No
51	"Project: Major technical equipment special plate manufacturing support fund"	Grant	No
52	"Project: The second batch of key industrial adjustment and revitalisation and transformation funds FY2009"	Grant	No
53	"Project: Industrial enterprise energy management center demonstration project construction FY2009"	Grant	No
54	"Project: Coke ovens 1-5 Gas desulfurization renovation project"	Grant	No
55	"Project: Industrial park wastewater treatment and reuse project funding"	Grant	No
56	"Project: 2011 environmental protection special fund"	Grant	Yes
57	"Project: Special funds for energy conservation"	Grant	No

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58	"Project: Coke oven gas desulfurization improvement project"	Grant	Yes
59	"Project: Special promotion with steel caster reconstruction funds for support"	Grant	No
60	"Project: Water reuse project"	Grant	Yes
61	"Project: 2010 Key Industry revitalization and transformation"	Grant	No
62	"Project: Energy power plant waste heat heating reconstruction project grants"	Grant	Yes
63	"Project: 320 sintering flue gas desulfurization project environmental protection fund"	Grant	No
64	"Project: 400 sintering desulfurization funds"	Grant	No
65	"2012 annual special funds for energy"	Grant	No
66	"Coke oven No.1,2 & 5 tampers top-loading change project"	Grant	No
67	"Project: 2010 provincial emerging industries and key industries Development Special Fund Project"	Grant	No
68	"Regional Government economic incentives"	Grant	No
69	"Set aside safely production capital Jinan City Bureau of Finance"	Grant	No
70	"Nanshi Bureau of Water Resources water consumption units appraisal award funds"	Grant	No
71	"City key projects mentioned standard award"	Grant	No

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72	"E420 marine platform steel research and application projects"	Grant	No
73	"Xuejiadao financial and tax refund payments"	Grant	No
74	"Jinan City Bureau of Finance Cleaner Production special funds"	Grant	No
75	"Security special funds"	Grant	No
76	"Patent Development Grant funds"	Grant	Yes
77	"Shandong Huimin Technology Development Co. Ltd R&D Funding"	Grant	No
78	"National Pillar Program special funds"	Grant	Yes
79	"Government allocated Industry Enterprises Award"	Grant	No
80	"Enterprise workers vocational training allowance"	Grant	No
81	"Municipal Export trade and economic development guide funds"	Grant	No
82	"Income received from Commerce Bureau in 2012 to guide the development of foreign trade financing"	Grant	No
83	"2013 Annual export credit insurance subsidies 9.12"	Grant	Yes
84	"2013 Municipal foreign trade development guide funds"	Grant	No
85	"Two by one guarantee funds to support foreign trade "	Grant	No
86	"The financial return of funds"	Grant	No
87	Special Fund for Science and Technology Development	Grant	Yes
88		Grant	No



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	2009 Award for Energy Conservation of Taian City		
89	2010 Energy Conservation Project & Recycling Economy and Key Demonstrative Project of Resource Conservation and Key Project of Industry Pollution Treatment	Grant	Yes
90	Energy Conservation Utilization	Grant	Yes
91	Special Government Fund for Workers' Re-employment	Grant	No
92	Reduction and exemption on urban construction surcharge on power supply	Grant	No
93	2010 Provincial Special Fund for Environment Protection	Grant	Yes
94	2008 Special Support Fund for High-tech product	Grant	No
95	Land Expropriation and Demolition Compensation	Grant	No
96	Special Fund for New Products and High-tech Enterprises	Grant	Yes
97	Special Fund for Energy Conservation	Grant	Yes
98	2014 Prevention and Treatment Fund for Air Pollution	Grant	Yes
99	2014 Fund for Water Pollution Prevention of Huai River	Grant	Yes
100	2013 Supporting Fund for Information Industry Program (Municipal Level)	Grant	Yes
101	2013 Special "BO GAI JIE" Fund for Information Industry Program (Municipal Level)	Grant	Yes
102	2013 Central Government Budget Fund for Air Pollution Prevention	Grant	Yes
103	Additional Budget Fund for Urban Public Utility	Grant	Yes

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104	Special Fund for Reform of Production Line	Grant	No
105	Special Fund for Closing Down Outdated Iron & Steel Production Facilities (1st group)	Grant	No
106	Special Fund for Reform of Production Line	Grant	Yes
107	Special Fund for Closing Down Outdated Iron & Steel Production Facilities	Grant	No
108	Special Government Fund for Workers' Re-employment	Grant	No
157	Application for the invention patent to enter the substantive examination	Grant	Yes
158	Circular economy standard pilot	Grant	Yes
159	2013 year plan of Suzhou City, the project funding	Grant	Yes
160	Transformation and upgrading of special funds to guide the transformation of energy-saving projects	Grant	Yes
161	Flood control fund refund	Grant	Yes
162	Jiangsu science and technology support program funding	Grant	Yes
163	Finance Bureau of quality and strong city award funds	Grant	Yes
164	The quality of the province special funds	Grant	Yes
165	The quality of the province special funds, the provincial energy management	Grant	Yes
166	City Science and technology support projects funded three funds	Grant	Yes
167	Science and technology achievement transformation project subsidy funds	Grant	Yes

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168	Provincial high tech products award funds	Grant	Yes
169	Special funds to support enterprises	Grant	Yes
170	Excellent quality products in Jiangsu Province, the demonstration area of high quality products	Grant	Yes
171	Suzhou credit management model enterprise incentive funds	Grant	Yes
172	Steady growth in foreign trade in 2014 subsidies	Grant	Yes
173	Science and Technology Talent Award	Grant	Yes
174	Jiangsu provincial science and Technology Department of the 2014 annual National Award for National Awards	Grant	Yes
175	Other Grants	Grant	Yes
176	Infrastructure Development Grant	Grant	Yes

*Table 3 – Programs specific to rebar*

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**7. APPENDIX 2 - SUBMISSIONS RECEIVED IN RELATION TO INVESTIGATION 322**

EPR No.	Title	Date Loaded
51	<a href="#">Australian Industry - OneSteel Manufacturing Pty Ltd (PDF 405KB)</a>	07/09/2016
50	<a href="#">Exporter - Shandong Shiheng Special Steel Group Co. Ltd (PDF 365KB)</a>	02/09/2016
49	<a href="#">Foreign Government - Government of China (PDF 291KB)</a>	02/09/2016
48	<a href="#">Exporter - Jiangsu Yonggang Group Co. Ltd (PDF 410KB)</a>	02/09/2016
47	<a href="#">Australian Industry - OneSteel Manufacturing Pty Ltd (PDF 2.9MB)</a>	31/08/2016
46	<a href="#">Exporter - Hunan Valin Xiangstan Iron and Steel Co. Ltd (PDF 1.6MB)</a>	30/08/2016
45	<a href="#">Exporter - Shandong Shiheng Special Steel Group Co. Ltd (PDF 308KB)</a>	30/08/2016
43	<a href="#">Foreign Government - Government of China (PDF 76KB)</a>	03/08/2016
37	<a href="#">Foreign Government - Government of China (PDF 412KB)</a>	21/07/2016
32	<a href="#">Foreign Government - Government of China (PDF 236KB)</a>	11/05/2016
30	<a href="#">Importer - Whites Group (PDF 761KB)</a>	04/03/2016
29	<a href="#">Australian Industry - OneSteel Submission to Exemption Request (PDF 290KB)</a>	25/02/2016
26	<a href="#">Foreign Government - Government of China GQR - Public Version (PDF 2.1MB)</a>	23/02/2016
25	<a href="#">Exporter - Hunan Valin REQ Ex-7 Product Brochure (PDF 2.8MB)</a>	23/02/2016
24	<a href="#">Exporter - Hunan Valin REQ Ex 1 (PDF 690KB)</a>	23/02/2016
23	<a href="#">Exporter - Hunan Valin EQ Response (PDF 14.9MB)</a>	23/02/2016
21	<a href="#">Exporter - Jiangsu Yonggang Group Co., Ltd (PDF 1.7MB)</a>	11/02/2016
19	<a href="#">Exporter - Product Brochure - Shandong Iron and Steel Co. Laiwu Company (PDF 87KB)</a>	10/02/2016
18	<a href="#">Exporter - Product Brochure - Shandong Iron and Steel Co. Laiwu Company (PDF 8.3MB)</a>	10/02/2016
17	<a href="#">Exporter - Audit Report - Shandong Iron and Steel Co. Laiwu Company (PDF 928KB)</a>	10/02/2016
16	<a href="#">Exporter - Audit Report - Shandong Iron and Steel Co. Laiwu Company (PDF 35.8MB)</a>	10/02/2016
15	<a href="#">Exporter - Audit Report - Shandong Iron and Steel Co. Laiwu Company (PDF 1.1MB)</a>	10/02/2016
14	<a href="#">Exporter - Audit Report - Shandong Iron and Steel Co. Laiwu Company (PDF 5.2MB)</a>	10/02/2016

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12	<a href="#">Importer - Hickory Building (PDF 194KB)</a>	08/02/2016
11	<a href="#">Importer - Whites Group (PDF 766KB)</a>	08/02/2016
10	<a href="#">Importer - Vicmesh (PDF 193KB)</a>	05/02/2016
9	<a href="#">Ozpress Pty Ltd (PDF 125KB)</a>	22/01/2016
6	<a href="#">Government of China (PDF 47KB)</a>	

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### 8. APPENDIX 3 – SUBMISSIONS FOLLOWING THE SEF

#### 8.1. SUBMISSIONS RECEIVED BEFORE PUBLISHING THE SEF THAT WERE CONSIDERED IN THE SEF

For the purpose of the SEF, the Commission considered all submissions received before 1 July 2016. The following submissions were received after this date and were not considered as to do so would have, in the Commissioner’s opinion, prevented the timely placement of the SEF on the public record (as per subsection 269ZHF(3)).

Date received	Interested Party	Subject of submission	EPR no.
05/07/2016	OneSteel	Oral submission – OneSteel’s views on the public body test, pass-through calculations and benchmark prices.	36
21/07/2016	Government of China	Response to Australian Industry Submission.	37
3/08/2016	Government of China	Letter to the Commissioner	43

This issues raised in the above submissions have been resubmitted again by the above interested parties following the publication of the SEF. Therefore, the Commissioner has considered the issues raised in the above submissions together with those submitted following the publication of the SEF.

#### 8.2. SUBMISSIONS RECEIVED FOLLOWING PUBLICATION OF THE SEF

The Commission has received the following submissions in relation to the joint rebar / RIC SEF.

Date received	Interested Party	Subject of submission	EPR no.
30/08/2016	Exporter – Shandong Shiheng Special Steel group Co., Ltd	<p><u>Program 177</u> –SIE that was found to be providing loan guarantee is not a public body;</p> <ul style="list-style-type: none"> <li>- Misunderstanding of statements made by Shiheng regarding the implications of the guarantees by other third parties; and</li> <li>- Incorrect calculation of the benefit.</li> </ul> <p><u>Program 2</u> – benchmark to be adjusted to reflect different types of coking coal</p>	45

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Date received	Interested Party	Subject of submission	EPR no.
30/08/2016	Exporter – Hunan Valin Xiangtan Iron and Steel Co., Ltd	<p><u>Program 1</u> – self-subsidisation of billets provided at LTAR;</p> <p><u>Public Body</u> – Hunan Valin claims that it is not a public Body;</p> <p><u>Program 46</u> – calculation error by ‘zeroing’</p>	46
31/08/2016	Australian Industry – OneSteel Manufacturing Pty Ltd	<ul style="list-style-type: none"> <li>- OneSteel supports Commission’s findings in relation to the price, volume and profit effects of the subsidised imports for rebar and RIC;</li> <li>-Commission’s attempt to isolate and attribute injury to the subsidised imports is deficient and unconvincing;</li> <li>-OneSteel claims that the Commission has sufficient information to accurately assess the NIP;</li> <li>- OneSteel supports the CTMS plus profit approach the Commission used to calculate NIP in dumping investigations for rebar and RIC INV 300 and INV 301.</li> <li>- OneSteel believes that Commission’s assessment of subsidy margin for Yonggang and Shagang are deficient;</li> <li>-OneSteel consider private entities (exporters) are SIEs;</li> <li>- Commission has failed to consider if the private entities are public bodies; and</li> <li>- Commissioner has failed to properly consider whether program 4 was regionally specific subsidy, therefore countervailable.</li> </ul>	47

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Date received	Interested Party	Subject of submission	EPR no.
02/09/2016	Exporter – Jiangsu Yonggang Group Co. Ltd	Submission in response to OneSteel’s submission.	48
02/09/2016	Government of China	<ul style="list-style-type: none"> <li>- The GOC supports the Commissioner’s proposed recommendation not to impose countervailing duties for rebar and RIC;</li> <li>- Integrated SIE of rebar and RIC in coil manufacturers cannot confer a benefit on themselves in the form of steel billet at LTAR;</li> <li>- Chinese SIEs are not vested with, nor do they exercise, government authority and therefore cannot be considered to be public bodies;</li> <li>- The Commission’s consideration of whether billet was provided for LTAR is flawed;</li> <li>- The Commission’s consideration of whether coking coal was provided for LTAR is flawed;</li> <li>- The Commission’s consideration of whether coke was provided for LTAR is flawed;</li> <li>- Chinese banks are not public bodies and do not provide alleged interest rate subsidies;</li> <li>- The Commission’s consideration of whether there is a loan guarantee subsidy is flawed, bot legally and factually; and</li> <li>- The Commission has no evidence for the existence of other alleged subsidy programs such as program nos. 48, 57, 60, 160 and 176.</li> </ul>	49



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Date received	Interested Party	Subject of submission	EPR no.
02/09/2016	Exporter – Shandong Shiheng Special Steel group Co., Ltd	Submission in response to OneSteel’s submission	50

### 8.3. PROGRAMS 177 AND 273

In SEF 322 and 331, the Commission preliminarily determined that one of the Cooperating exporters (Shiheng) may have benefitted from this program (program 177 and program 273) – Loan Guarantee provided by the Government of China.<sup>5</sup> These programs provide concessional loans to businesses which are not creditworthy. The Commission’s determination was based on the explanation provided by the cooperating exporter that it, may not have been able to obtain certain loans without ‘government guarantee’, and therefore it may be ‘uncreditworthy’.

In its response to SEF 322 and 331, Shiheng claims that the SIE that was found to be providing the loan guarantee is not a public body. Shiheng also claims that the Commission misunderstood statements made by Shiheng during the verification visit regarding the implications of the guarantees by other third parties. Additionally, Shiheng claims that there is an error in the calculation of the benefit.

The GOC in its submission to the SEF claims that the Commission’s consideration of whether there is a loan guarantee subsidy is flawed, both legally and factually.

#### 8.3.1. THE COMMISSION’S RESPONSE

The Commission has considered the submission made by Shiheng and by the GOC in response to the SEF regarding program number 177.

Having regard to the *Dumping and Subsidies Manual*, the Commission has not found positive evidence that suggests that Shiheng is not creditworthy, which impacts on the assessment of program 177. The manual states:

*where a government makes loans to borrowers who are uncreditworthy - meaning that its financial position is so weak that it can be demonstrated from the evidence that it would not have obtained a commercial loan, the Commission will consider whether the entire loan should be treated as the equivalent of a grant. Claims by Australian industry that a company is uncreditworthy will need to be supported by information about the financial health of the company. Financial indicators include; the ability to meet costs and financial obligations from cash flow; and evidence concerning the enterprise’s future financial position using market studies, and project and loan appraisals. The presence of long term loans without any government guarantee may be indicative that an enterprise is not creditworthy.*<sup>6</sup>

<sup>5</sup> These programs are identical and will be referred to as program 177 for the remainder of this report.

<sup>6</sup> *Dumping and Subsidy Manual*, page 91

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The Commission noted that approximately 25 per cent of the total loans provided to Shiheng were not guaranteed. Of the remaining 75 per cent (the guaranteed loans), only 25 per cent were guaranteed by a state owned enterprise (SIE) while the remaining loans were guaranteed by other related and unrelated private entities. This suggests that Shiheng is able to obtain loans that are either not guaranteed or guaranteed by other private entities.

The Commission also examined the audited financial statements for the financial year ending 30 June 2015 and found that Shiheng has the ability to meet costs and financial obligations from cash flow. *Prima facie*, Shiheng's balance sheet indicates that the company is in not in a financial position that would deem it to be *not creditworthy*.

The Commission considers that the evidence supports a finding that Shiheng is credit worthy, and would not require loan guarantees to access debt finance. The Commission has not identified evidence that any guarantees provided by the government confer a benefit within the meaning of subsection 269TACC(3)(c). This program will therefore not be countervailed in respect of rebar and RIC exported to Australia from China.

### 8.4. PROGRAM 46 – CALCULATION ERROR BY ‘ZEROING’

Hunan Valin claims that the Commission made a calculation error by ‘zeroing’ the benefits calculated for the loan programs. Hunan Valin also claims that the Commission has selected two types of benchmark rates ‘interest rates of peoples Bank of China’ (PBC) and ‘private interest rates’ and takes three scenarios in the benefit margin testing.

The GOC claims that Chinese banks are not public bodies and do not provide alleged interest rate subsidies.

#### 8.4.1. THE COMMISSION’S RESPONSE

The Commission has removed the ‘zeroing’ that was erroneously applied in the assessment of program 46 for Hunan Valin. The subsidy margin for Hunan Valin has been revised accordingly in the final report calculations (Confidential Appendix 1 refers).

The Commission considers that state owned banks are public bodies. Loan interest rates and terms have been compared to the PBC to determine whether any preferential loans have been provided by public bodies.<sup>7</sup>

The Commission calculated an alternative benchmark with information collected during the verification visits. However, after considering this option, the Commission decided that among the private banks identified all but one were for non-RMB loans. Additionally, the “Finance institution” that was providing funds and considered ‘private’ in this analysis, was not clearly private and was likely influenced by the PBC rate. Therefore, the Commission used only one benchmark (the PBC interest rate) as the benchmark for all loans.

### 8.5. ‘PUBLIC BODIES’ OR ‘PRIVATE BODIES’

#### 8.5.1. STATE INVESTED ENTERPRISES ARE ‘PUBLIC BODIES’

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<sup>7</sup> The Commission is aware that in August 2015 the China Iron & Steel Association noted that during the first half of 2015 Chinese banks had cut loans to steel makers by around USD 15 billion or by six per cent (on a year on year basis) and that the provision of funding by Chinese banks to the Chinese steel industry was increasingly being directed at state owned steel producers.

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In SEF 322 and 331, the Commission preliminarily determined that SIEs are ‘public bodies’. The Commission’s analysis is at Appendix 5 of the SEF.

In its submission to the SEF, the GOC claims that Chinese SIEs are not vested with, nor do they exercise, government authority and therefore cannot be considered to be public bodies. The GOC claims that the SEF contains no evidence that SIEs are meaningfully controlled such as would allow them to be found to be public bodies and that the Commission has failed to evaluate the core features of each entity that the Commission considers may be a public body, and its relationship to the government.

In response to the SEF, Hunan Valin which had been preliminarily determined to be an SIE, claims that it is not a public body.

### 8.5.2. THE COMMISSION’S RESPONSE

In its response to the SEF, the GOC has not provided any evidence that suggests that SIEs are not public bodies. In addition to the discussion in Appendix 5 of the SEF, the Commission has considered the following which further suggests that SIEs are public bodies:

*Indicia 1: a statute or other legal instrument expressly vests government authority in the entity concerned;*

- a. SASAC is the state-owned assets supervision and administration commission of the People’s Republic of China.
- b. The *Decree of the State Council of the People’s Republic of China No. 378* (the Decree) vests statutory authority in SASAC to establish a supervision and management systems that suits the needs of socialist market economy, better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realize the preservation of and increase in the value of State-owned assets.
- c. For purposes of these Regulations, the term “State-owned assets of enterprises” refers to all forms of State investments in enterprises and the equities generated therefrom, as well as other equities which are legally determined to be owned by the State.
- d. Article 14 of the Decree states that the main obligations of SASAC are:
  - i. promote the reasonable flow and optimized allocation of State-owned assets, and propel the adjustment of the layout and structure of the State economy. [emphasis added]
  - ii. maintain and improve the controlling power and competitive power of the State economy in areas which have a vital bearing on the lifeline of the national economy and State security, and improve the overall quality of the State economy. [emphasis added]
  - iii. guide and promote the establishment of modern enterprise system in State-owned enterprises and State-owned holding enterprises, improve

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corporate governance, and advance the modernization of management.  
[emphasis added]

- e. Article 12 of the Decree states that:
  - i. The State-owned assets supervision and administration authority of the State Council is a specially established authority directly subordinated to the State Council which, on behalf of the State Council, performs the responsibilities of investor, supervises and manages State-owned assets of enterprises. [emphasis added]

*Indicia 2: evidence exists that an entity is exercising de facto governmental functions.*

*Indicia 3: evidence exists that a government exercises meaningful control over an entity*

- a. In the United Nations - System of National Accounts 1993 (SNA),<sup>8</sup> a government controls a corporation if it has the ability to determine the general corporate policy. In the International Public Sector Accounting Standards (IPSASs) issued by the International Federation of Accountants International Public Sector Accounting Standards Board, a government controls a corporation if it has the power to govern its financial and operating policies so as to benefit from its activities. [emphasis added]
- b. Article 6 of the Decree states that the role of SASAC inter alia is to
  - i. ...supervise and administer State-owned assets of enterprises according to law. [emphasis added]
- c. Article 11 of the Decree states that the role of SASAC is to:
  - i. ...make efforts to increase economic efficiency and bear the responsibility of preserving and increasing the value of State-owned assets operated and managed by them. [emphasis added]
- d. Article 12 of the Decree states that:
  - i. The State-owned assets supervision and administration authority of the State Council is a specially established authority directly subordinated to the State Council which, on behalf of the State Council, performs the responsibilities of investor, supervises and manages State-owned assets of enterprises. [emphasis added]
- e. Article 13 of the Decree states that the main responsibilities of SASAC is:
  - i. guide and push forward the reform and restructuring of State-owned enterprises and State-owned holding enterprises. [emphasis added]
  - ii. dispatch supervisory panels to the invested enterprises pursuant to the relevant regulations. [emphasis added]

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<sup>8</sup> Taskforce on harmonization of public sector accounting "Government/ Public Sector / Private Sector delineation issues (AEG 36)" <http://unstats.un.org/unsd/nationalaccount/AEG/papers/m4Delineation.pdf>

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- iii. appoint or remove the responsible persons of the invested enterprises and evaluate their performance in accordance with the statutory procedures, and grant rewards or impose punishments based on the evaluation results. [emphasis added]
- f. Article 16 of the Decree states that:
  - i. The State-owned assets supervision and administration authority shall establish and improve the mechanism for selecting and appointing the responsible persons of enterprises and the mechanism of incentives and restraints that meet the requirements of modern enterprise system. [emphasis added]
- g. Article 19 of the Decree states that:
  - i. The State-owned assets supervision and administration authority shall, in accordance with the relevant provisions, determine the remuneration of the responsible persons of wholly State-owned enterprises and wholly State-owned companies among the invested enterprises, and grant rewards to or impose punishments upon the responsible persons of the invested enterprises based on the evaluation results. [emphasis added]

In addition to the role of SASAC, the Commission is of the view that the central role of the Chinese Government in the current restructuring of the Chinese steel industry is consistent with its role throughout the development of the industry, including its significant expansion over the past decade which resulted in the excess supply and suppressed prices experienced during the investigation period.

Therefore, the Commission holds that the Chinese Government (including central, provincial and local governments) materially contributed to the excess supply of RIC and rebar in the domestic Chinese market and hence significantly influenced domestic price for Chinese RIC and rebar during the investigation period. This influence has occurred through the following mechanisms.

- ii. Chinese Government directives, subsidy programs and involvement in strategic enterprises.
- iii. Taxation arrangements, including value add taxes and export rebates.

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 of steel products 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.<sup>9</sup> 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

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<sup>9</sup> CBSA, 2014, p14

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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 per cent 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.<sup>10</sup>

### 8.5.3. ARE 'PRIVATE ENTITIES' 'PUBLIC BODIES'?

In response to the SEF 322 and 331, OneSteel submitted that private entities (non-SIEs) are in fact SIEs. Further, OneSteel submitted that the Commission has failed to consider if the private entities have been entrusted or directed by a government or by a public body to carry out a government function.

One Steel submits in that "...the Commissioner ought to 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.

What follows at pages 15, 16, and 17 of the submission are some selected extracts from parts of some WTO reports pertaining to private bodies, entrustment and direction.

At page 17 OneSteel states:

*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...*

### 8.5.4. THE COMMISSION'S RESPONSE

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.

'A particular market situation' for the goods in China concerns the question whether a price is suitable for normal value purposes. This has been made clear in the manual which states for example:

*In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:*

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<sup>10</sup> CBSA, 2014, p17

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

*Government influence on prices or costs could be one cause of “artificially low pricing”. Government influence means influence from any level of government.*

*In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government’s involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.*

What is evident in all of the WTO subsidy panels concerning subsidy is that determinations of whether an entity is a public or private body, or whether as a private body there is entrustment or direction, and whether a financial contribution has been made is usually a complex exercise where evidence must be carefully evaluated.

Concerning a private entity, a finding of entrustment or direction by a government or public body requires the government to give responsibility to a private body or exercise its authority over a private body in order to bring about a financial contribution.

The term ‘entrusts’ has been said to connote ‘the action of giving responsibility to someone for a task or an object’. Therefore the responsibility the government has given the entity to ‘carry out’ any of the functions that are listed in paragraphs (i) to (iii) of Article 1.1(a)(1) of the *Agreement on Subsidies and Countervailing Measures* (SCM) must be examined. These functions are, in summary:

a government practice that involves a direct transfer of funds;

government revenue that is forgone or not collected; and

a government providing goods or services other than general infrastructure, or purchases goods.

In this process inquiry would be made whether this responsibility was achieved by formal or informal means.

A private body may have been directed to ‘carry out’ a function if there is some authority exercised over it by a government or public body. A command is one such means, but there can be means other than a command by which governments can exercise authority over a private body.

WTO reports explain that entrustment or direction of a private body would normally entail some form of threat or inducement which could serve as relevant evidence. Entrustment or direction does not include policy pronouncements alone, and mere acts of encouragement do not suffice. The entrustment or direction cannot be inadvertent, or a by-product of the government regulation. There must be a demonstrable link between the government and the private entities behaviour.

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As part of this, it is also necessary of course to examine whether the entrustment or direction of the private body has resulted in a financial contribution. That responsibility so entrusted or directed must be shown to have been carried out and if this has not happened as a matter of fact there cannot be a financial contribution.

It is clear that in this case, specific analysis as set out above as being a necessary part of the private body analysis is different to the broader interventions of a government in the market and its likely effects on price which is the subject of a particular market situation finding in the related dumping cases. A market situation finding has a different focus in that it is examining suitability of price for normal value purposes.

It is possible of course that some information from the particular market situation analysis could be found to be relevant to the analysis regarding the entrustment or direction of a private body. But this would be part of the totality of evidence that would have to be considered when deciding if there had been entrustment or direction of the private body, and if there had been any resulting financial contribution.

OneSteel did not claim that a private body was entrusted or directed by a government or public body in its application. Accordingly, the questions in the questionnaires provided to the GOC and the exporters were not directed towards this matter. As such the issues raised by OneSteel have not been the subject of any verification.

A more detailed and case specific inquiry is needed in order to evaluate any entrustment or direction of a private body by a government or public body, as well as any resulting financial contribution.

The Commission has decided that there is insufficient evidence to reach a conclusion on this matter, and the evidence provided is not sufficient to warrant further lines of inquiry.

### 8.6. PROGRAM 1 – SELF-SUBSIDISATION OF BILLETS PROVIDED AT LTAR

In SEF 322 and 331, the Commission preliminarily determined that SIEs are ‘public bodies’. Fully integrated steel manufacturers who are SIEs (and therefore public bodies) self-produced/supplied billets during the investigation period and those billets may have generated a benefit under Program 1.

In response to the SEF, Hunan Valin submitted that none of the cooperative exporters of rebar and RIC had purchases steel billet during the investigation period. Hunan Valin claims that this information is conclusive evidence which demonstrates that there is no steel billet externally purchased at all by the cooperative exporters. Hunan Valin claims that the Commission’s approach has totally ignored its actual raw materials purchases (iron ore, coke and coking coal) or explain how, in a fully integrated steel making process, an exporter could nonetheless give itself a financial contribution by way of the production of steel billet as part of that process.

The GOC in its submission stated that in order to establish that Program 1 exists, the SEF needed to establish that the ‘government’ or a ‘public body’ was providing steel billet to



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produce RIC or rebar for LTAR. The GOC states that the idea that a fully integrated entity would be subsidising itself is contradictory.

### 8.6.1. THE COMMISSION'S RESPONSE

The Commission considers that exporters that produce their own billet can receive a benefit, if the billet is produced and supplied by a public body (that is, if they themselves are a public body). In the current cases, the Commission has found that the billet has been supplied (including self-supplying) by an SIE resulting in a benefit.

The Commission has considered the following factors while assessing the benefit:

- a. The cooperating SIEs were found to be public bodies.
- b. The SIE has purchased coking coal at LTAR from another SIE. That coking coal was used to produce coke to use in the production of billet.
- c. The SIE also purchased coke from another SIE for LTAR, for the production of billet.
- d. The benefit of the purchase of raw materials from an SIE at LTAR is specific to the production of the billet.
- e. The billet supplied by the SIE to itself is a benefit from a public body. The benefit arises from the SIEs ability to produce the billet with raw material inputs purchased from other SIEs at LTAR, and those raw materials being further processed to billet which was used in the production of inter alia RIC and rebar for LTAR based on benchmark prices.
- f. The Commission has determined that the benefit conferred on the SIE extends to the production of billet rather than just the purchase of the raw materials to make the billet, as the SIE itself receives additional government support to produce the billet. This support is for the increase in steelmaking capacity through increasing blast furnace capacity. This is specific to the iron and steel industries as well as to RIC and rebar manufacturers and integrated producers specifically.
- g. If the SIE was to sell the billet to another entity, the Commission would consider this to be a countervailable subsidy at the billet level rather than the raw material input. As such, the Commission considers that the supply of the billet at LTAR by the SIE to itself is also a countervailable subsidy for the purpose of calculating a subsidy margin.
- h. If the integrated producer was a private entity, the purchase of the raw materials at LTAR from a public body would confer the benefit, rather than the supply of billet by the private body back to itself. This is due to the fact that the production of the billet is not supported by a public body, just the raw material inputs.

### 8.6.2. BENCHMARK

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In the SEF, the Commission selected Latin American export billet prices as the adequate remuneration for the Benchmark price for the billet. The Commission's assessment is at Appendix 2 of the SEF.

In its submission to the SEF, the GOC states that the benchmark selected on the SEF has no connection to prevailing market conditions for billet in China. The GOC claims that the Commission's selection of the Latin American export billet prices was to find a benchmark that did not reflect prevailing market conditions in China in any way, shape or form.

### 8.6.3. THE COMMISSION'S RESPONSE

In a related dumping investigations INV 300 and INV 301, the Commission found that a particular market situation exists in the steel industry in China. As such, normal value was determined pursuant to subsections 269TAC(4)(c) to (f).

As stated in the SEF, the Commission's determination not to use other South East Asian countries as a billet benchmark was based on the fact that the economies in that region are influenced by the billet prices in China which are subject to subsidisation and government influence. Therefore, it would not reflect a competitive market price in other South East Asian countries. This is consistent with the Commission's findings in REP 300, 301, and SEF 316.

The Commission notes that steel billet is a commodity product and due to highly competitive nature of world steel markets, usually the import prices, export prices and domestic prices of steel billet (and most other steel commodity products) converge in a certain price point making it impossible to profit from arbitrage trading. The Commission observes that only when the domestic market is protected by high import duties, import restrictions, safeguard measures or other means of non-tariff barriers, a significant variation between domestic prices and import/export prices exists.

Based on the trade defence measures in place in USA, Canada, Mexico and South Africa, the Commission holds that the domestic prices of steel billets in these markets do not constitute appropriate benchmarks. In addition, the Commission further holds that except from the USA market which is highly protected with trade defence measures, the other aforementioned domestic markets, with respect to trading volumes of steel billets, are relatively shallow and may not show the same competitive characteristics with a price index having a larger geographical base.

Given that the Commission adjusted the Latin American steel billet export price benchmark for domestic profitability of Latin American manufacturers and inland transportation costs, the Commission is of the view that the Latin American steel billet export prices constitute the best available information for establishing the competitive market costs for steel billets after adjustments for exporters' profits and inland transportation costs.

## **8.7. PROGRAM 2 – COKING COAL PROVIDED BY THE GOVT AT LESS THAN ADEQUATE REMUNERATION**

In SEF 322 and 331, the Commission preliminarily determined that SIEs are ‘public bodies’. Therefore, the fully integrated entities who purchased coking coal from SIEs to produce rebar or RIC benefitted from Program 2.

The Commission used the benchmark as the adequate remuneration determined in Appendix 3 of the SEF and also attached within Appendix 4 of this report.

In response to the SEF, the GOC submitted that SIEs are not public bodies. Further, the GOC submitted that it does not agree with the benchmark prices used by the Commission. The GOC claims that the benchmark selected by the Commission has no connection to the prevailing market conditions for coking coal in China.

The GOC also correctly noted that the benchmark price used in investigation 193 (INV193) was the export price of coking coal from China.

### **8.7.1. THE COMMISSION’S RESPONSE**

In its response to the SEF, the GOC has not provided any evidence that suggests that SIEs are not ‘public bodies’. In addition to the Commission has included further analysis at appendices 3 and 4 of this report.

### **8.7.2. BENCHMARK**

The Commission is aware that China has been identified as the major producer and consumer of coking coal. Having found that domestic prices of coking coal in China are being influenced and distorted by the GOC, the Commission has determined that it is not appropriate to use private enterprise coking coal prices and as such, pursuant to subsection 269TACC(4), a benchmark price has been established.

The Commission holds that the price weakness in the domestic Chinese steel markets contributed to the significant increase in the level of Chinese steel exports in recent years as steel producers attempted to improve cash flow and profitability. As such, the Commission is of the view that the export price of coking coal from China would not reflect competitive market prices for the purpose of benchmarking.

INV193 relates to 2011. Between 2011 and 2014, it is estimated that the proportion of Chinese steel mills making a loss increased from around 10 per cent to 50 per cent. While lower input cost resulted in a reduction in the number of loss making mills from the beginning of 2014, the proportion remained significant throughout the investigation period.

While the Commission notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commission holds that both types of producers have received significant assistance from the Chinese Government, particularly at the provincial and local government level.

## **8.8. PROGRAM 3 – COKE PROVIDED BY THE GOVT AT LESS THAN ADEQUATE REMUNERATION**

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In SEF 322 and 331, the Commissioner has preliminarily determined that state invested enterprises (SIEs) are 'public body'. Therefore, the fully integrated entities who purchased coking coal from SIEs to produce rebar or RIC benefitted from Program 3.

The Commission used the benchmark as the adequate remuneration determined in Appendix 4 of the SEF and also attached as Appendix 4 of this report.

In response to the SEF, the GOC submitted that SIEs are not public bodies. Further, the GOC submitted that does not agree with the benchmark prices used by the Commission. The GOC claims that the benchmark selected by the Commission has no connection to the prevailing market conditions for coking coal in China.

### 8.8.1. THE COMMISSION'S RESPONSE

In its response to the SEF, the GOC has not provided any evidence that suggests that SIEs are not 'public bodies'. The Commission has included further analysis in appendices 3 and 4 of this report.

### 8.8.2. BENCHMARK

The Commission is aware that China has been identified as the major producer and consumer of coke. Having found that domestic prices of coke in China are being influenced and distorted by the GOC, the Commission has determined that it is not appropriate to use Private enterprise coking coal prices and as such, pursuant to s.269TACC(4) a benchmark price has been established.

The GOC did not provide any evidence why the Indian coke prices are not an appropriate benchmark.

INV193 relates to 2011. Between 2011 and 2014, it is estimated that the proportion of Chinese steel mills making a loss increased from around 10 per cent to 50 per cent. While lower input cost resulted in a reduction in the number of loss making mills from the beginning of 2014, the proportion remained significant throughout the investigation period.

While the Commission notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commission holds that both types of producers have received significant assistance from the Chinese Government, particularly at the provincial and local government level.

The Commission's assessment of the adequate remuneration for coke is at Appendix 4 of this report.

## 8.9. PROGRAM 4 - ELECTRICITY AS A REGIONALLY SPECIFIC SUBSIDY

In SEF 322 and 331, the Commissioner has preliminarily determined that the Chinese manufacturers of RIC and rebar did not benefit from Program 4 – Electricity provided by the Government at less than adequate remuneration.

In response to the SEF, OneSteel submitted that the Commissioner has erred in his interpretation of section 269TAAC, and the determination of whether or not a subsidy is 'specific' and there 'countervailable'.

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OneSteel submitted that 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.

### 8.9.1. THE COMMISSION'S RESPONSE

The Commission has sought information from the GOC and from the cooperating exporters. Selected exporters data and information provided was verified by the Commission.

Provincial electricity tariff data was obtained for both the Jiangsu and Shandong 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 RIC industries were subject to specific or preferential electricity tariff rates.

Based on the evidence available, the Commission is not satisfied that the requirements of subsection 269TACC(3)(d) are met. This program will therefore not be countervailed in respect of rebar and RIC exported to Australia from China.

### 8.10. PROGRAMS 48, 57, 60, 160 AND 176

In SEF 322 and 331, the Commission has preliminarily determined that the programs numbered 48, 57, 60, 160 and 176 are countervailable.

The GOC claims that the Commission has no evidence for the existence of other alleged subsidy programs such as programs numbered 48, 57, 60, 160 and 176.

#### 8.10.1. THE COMMISSION'S RESPONSE

The Commission has determined that a zero subsidy rate will be applicable to the cooperative exporters as no evidence was found to indicate that Cooperative exporters benefitted under programs numbered 48, 57, 60, 160 and 176.

However, for uncooperative exporters, in the absence of any relevant information in the current investigations, the Commission considers it is likely that uncooperative exporters have accessed this program, and therefore received a financial contribution under this program where these programs were found to be countervailable programs in other investigations.

### 8.11. PROGRAM 1 – SELF-SUBSIDISATION OF BILLETS PROVIDED AT LESS THAN ADEQUATE REMUNERATION

In SEF 322 and 331, the Commissioner has preliminarily determined that SIEs are 'public bodies'. Therefore, the fully integrated entities who self-produced and self-supplied billets benefitted from Program 1.

In response to the SEF, Hunan Valin submitted that none of the cooperative exporters of rebar and RIC had purchases steel billet during the investigation period. Hunan Valin claims that under such a circumstance that a conclusive evidence has been demonstrated that

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there is no steel billet externally purchased at all by the cooperative exporters. Hunan Valin claims that the Commission's approach has totally ignored its actual raw materials purchase (iron ore, coke and coking coal) in a fully integrated steel making process could nonetheless give itself a financial contribution by way of the production of steel billet as part of that process.

The GOC in its submission stated that in order to establish that Program 1 exists, the SEF needed to establish that the 'government' or a 'public body' was providing steel billet to produce RIC or rebar for less than adequate remuneration (LTAR). The GOC states that it the idea that a fully integrated entity would be subsidising itself is contradictory.

### 8.11.1. THE COMMISSIONER'S RESPONSE

The Commission considers that self-produced billet can confer a benefit, if produced and supplied by a public body. In the current cases, the Commissioner has found that the billet has been supplied (including self-supplying) by an SIE at less than adequate remuneration resulting (LTAR) in a benefit.

The Commission has considered the following factors while assessing the benefit:

- a. The cooperating SIEs were found to be public bodies.
- b. The SIE has purchased coking coal at LTAR from another SIE. That coking coal was used to produce Coke to use in the production of billet.
- c. The SIE also purchased coke from another SIE for LTAR, for the production of billet.
- d. The benefit of the purchase of raw materials from an SIE at LTAR is specific to the production of the billet.
- e. The billet supplied by the SIE to itself is a benefit from a public body. The benefit arises from the SIEs ability to produce the billet with raw material inputs from other SIEs at LTAR, and those raw materials being further processed to billet which was used in the production of inter alia RIC and Rebar for LTAR based on benchmark prices.
- f. The Commission has determined that the benefit conferred on the SIE extends to the production of billet rather than just the purchase of the raw materials to make the billet, as the SIE itself receives government support to produce the billet. This support is for the increase in steelmaking capacity through increasing blast furnace capacity. This is specific to the Iron and Steel industries as well as to RIC and Rebar manufacturers and integrated producers specifically.
- g. If the SIE was to sell the billet to another entity, the Commission would consider this to be a countervailable subsidy at the billet level rather than the raw material input. As such, the Commission considers that the self-supply of the billet by the SIE is also a countervailable subsidy for the purpose of calculating a subsidy margin.

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- h. If the self-producing company was a private entity, the purchase of the raw materials at LTAR from a public body would confer the benefit, rather than the supply of billet by the private body back to itself. This is due to the fact that the production of the billet is not supported by a public body, just the raw material inputs.

### 8.11.2. BENCHMARK

In the SEF, the Commission selected Latin American export billet prices as the adequate remuneration for the Benchmark price for the billet. The Commission's assessment is at Appendix 4 of the SEF.

In its submission to the SEF, the GOC states that the benchmark selected on the SEF has no connection to prevailing market conditions for billet in China. The GOC claims that the Commission's selection of the Latin American export billet prices was to find a benchmark that did not reflect prevailing market conditions in China in any way, shape or form.

### 8.11.3. THE COMMISSIONER'S RESPONSE

In a related dumping investigations INV 300 and INV 301, the Commission found that a particular market situation exists in the steel industry in China. As such, normal value was determined pursuant to subsections 269TAC(4)(c) to (f).

As stated in the SEF, the Commission's determination not to use other South East Asian countries as a billet benchmark was based on the fact that the economies in that region are influenced by the billet prices in China which are subject to subsidisation and government influence. Therefore, it would not reflect a competitive market price in other South East Asian countries. This is consistent with the Commission's findings in REP 300, 301, and SEF 316.

The Commission notes that steel billet is a commodity product and due to highly competitive nature of world steel markets, usually the import prices, export prices and domestic prices of steel billet (and most other steel commodity products) converge in a certain price point making it impossible to profit from arbitrage trading. The Commission observes that only when the domestic market is protected by high import duties, import restrictions, safeguard measures or other means of non-tariff barriers, a significant variation between domestic prices and import/export prices exists.

Based on the trade defence measures in place in USA, Canada, Mexico and South Africa, the Commission holds that the domestic prices of steel billets in these markets do not constitute appropriate benchmarks. In addition, the Commission further holds that except from the USA market which is highly protected with trade defence measures, the other aforementioned domestic markets, with respect to trading volumes of steel billets, are relatively shallow and may not show the same competitive characteristics with a price index having a larger geographical base.

Given that the Commission adjusted the Latin American steel billet export price benchmark for domestic profitability of Latin American manufacturers and inland transportation costs, the Commission is of the view that the Latin American steel billet export prices constitute

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the best available information for establishing the competitive market costs for steel billets after adjustments for exporters' profits and inland transportation costs.

### 8.12. PROGRAM 2 – COKING COAL PROVIDED AT LESS THAN ADEQUATE REMUNERATION

In SEF 322 and 331, the Commissioner has preliminarily determined that SIEs are 'public bodies'. Therefore, the fully integrated entities who purchased coking coal from SIEs and to produce rebar or RIC benefitted from Program 2.

The Commission used the benchmark as the adequate remuneration determined in Appendix 3 of the SEF and also attached as Appendix 4 of this report.

In response to the SEF, the GOC submitted that SIEs are not public bodies. Further, the GOC submitted that it does not agree with the benchmark prices used by the Commission. The GOC claims that the benchmark selected by the Commission has no connection to the prevailing market conditions for coking coal in China.

The GOC also correctly noted that the benchmark price used in investigation 193 (INV193) was the export price of coking coal from China.

#### 8.12.1. THE COMMISSIONER'S RESPONSE

In its response to the SEF, the GOC has not provided any evidence that suggests that SIEs are not 'public bodies'. In addition to Appendix 5 of the SEF the Commission has included further analysis at appendices 3 and 4 of this report.

#### 8.12.2. BENCHMARK

The Commission is aware that China has been identified as the major producer and consumer of coking coal. Having found that domestic prices of coking coal in China are being influenced and distorted by the GOC, the Commission has determined that it is not appropriate to use private enterprise coking coal prices and as such, pursuant to subsection 269TACC(4), a benchmark price has been established.

The Commission holds that the price weakness in the domestic Chinese steel markets contributed to the significant increase in the level of Chinese steel exports in recent years as steel producers attempted to improve cash flow and profitability. As such, the Commission is of the view that the export price of coking coal from China would not reflect competitive market prices for the purpose of benchmarking.

INV193 relates to 2011. Between 2011 and 2014, it is estimated that the proportion of Chinese steel mills making a loss increased from around 10 per cent to 50 per cent. While lower input cost resulted in a reduction in the number of loss making mills from the beginning of 2014, the proportion remained significant throughout the investigation period.

While the Commission notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commission holds that both types of producers have received significant assistance from the Chinese Government, particularly at the provincial and local government level.



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The Commission's assessment of the adequate remuneration for coking coal is at Appendix 3 of this report.

### 8.13. PROGRAM 3 – COKE PROVIDED AT LESS THAN ADEQUATE REMUNERATION

In SEF 322 and 331, the Commissioner has preliminary determined that state invested enterprises (SIEs) are 'public body'. Therefore, the fully integrated entities who purchased coking coal from SIEs and to produce rebar or RIC benefitted from Program 3.

The Commission used the benchmark as the adequate remuneration determined in Appendix 4 of the SEF and also attached as Appendix 4 of this report.

In Response to the SEF, the GOC submitted that SIEs are not public bodies. Furthermore the GOC submitted that does not agree with the benchmark prices used by the Commission. The GOC claims that the benchmark selected by the Commission has no connection to the prevailing market conditions for coking coal in China.

#### 8.13.1. THE COMMISSIONER'S RESPONSE

In its response to the SEF, the GOC has not provided any evidence that suggests that SIEs are not 'public bodies'. In addition to Appendix 5 of this report the Commission has included further analysis at section 7.5 of this appendix.

#### 8.13.2. BENCHMARK

The Commission is aware that China has been identified as the major producer and consumer of coke. Having found that domestic prices of coke in China are being influenced and distorted by the GOC, the Commission has determined that it is not appropriate to use Private enterprise coking coal prices and as such, pursuant to s.269TACC(4) a benchmark price has been established.

The GOC did not provide any evidence why the Indian coke prices are not an appropriate benchmark.

INV193 relates to 2011. Between 2011 and 2014, it is estimated that the proportion of Chinese steel mills making a loss increased from around 10 per cent to 50 per cent. While lower input cost resulted in a reduction in the number of loss making mills from the beginning of 2014, the proportion remained significant throughout the investigation period.

While the Commission notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commission holds that both types of producers have received significant assistance from the Chinese Government, particularly at the provincial and local government level.

The Commission's assessment of the adequate remuneration for coke is at Appendix 4 of this report.

### 8.14. PROGRAM 4 - ELECTRICITY WAS REGIONALLY SPECIFIC SUBSIDY, THEREFORE COUNTERAVAILABLE

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In SEF 322 and 331, the Commissioner has preliminarily determined that the Chinese manufacturers of RIC and Rebar did not benefit from Program 4 – Electricity provided by the Government at less than adequate remuneration.

In response to the SEF, OneSteel submitted that the Commissioner has erred in his interpretation of section 269TAAC, and the determination of whether or not a subsidy is 'specific' and there 'countervailable'.

OneSteel submitted that 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.

### 8.14.1. THE COMMISSIONER'S RESPONSE

The Commission has sought information from the GOC and from the cooperating exporters. Selected exporters data and information provided was verified by the Commission.

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.

Based on the evidence available, the Commission is not satisfied that the requirements of subsection paragraph 269TACC(3)(d) are met. This program will therefore not be countervailed in respect of rebar and rod in coils exported to Australia from China.

### 8.15. PROGRAMS 48, 57, 60, 160 AND 176

In SEF 322 and 331, the Commissioner has preliminarily determined that the programs numbered 48, 57, 60, 160 and 176 are countervailable.

The GOC claims that the Commission has no evidence for the existence of other alleged subsidy programs such as programs numbered 48, 57, 60, 160 and 176.

### 8.15.1. THE COMMISSIONER'S RESPONSE

The Commission has determined that a zero subsidy rate will be applicable to the cooperative exporters as no evidence was found to indicate that Cooperative exporters benefited under programs numbered 48, 57, 60, 160 and 176.

However, for uncooperative exporters, in the absence of any relevant information in the current investigations, the Commission considers it is likely that uncooperative exporters have accessed this program, and therefore received a financial contribution under this program where these programs were found to be countervailable programs in other investigations.

## 9. APPENDIX 4: ASSESSMENT OF ADEQUATE REMUNERATION

### 9.1. ADEQUATE REMUNERATION FOR BILLET IN CHINA

Having determined that SIEs who supplied billets in China are ‘public bodies<sup>11</sup>’ for the purposes of the Act, the Commission sought to determine a benchmark cost that represents adequate remuneration for billets in China to determine a competitive market cost for billets in accordance with subsection 45(2) of the Regulations. The Commission then calculated the benefit received under Program 1- *Purchases of billets from the government at less than adequate remuneration*.

In REP 300 and REP 301, the Commission established a benchmark cost for billets in the investigation period using Latin American Billet FOB export prices from Platts.<sup>12</sup>

The Commission notes that in the current investigation, the GOC in its repose to the government questionnaire (GQ) stated that ‘...the GOC is neither responsible nor authorised to hold and provide such detailed information about individual enterprises...’

The GOC in its response to the GQ also stated that ‘...as far as Chinese rebar and rod in coils manufacturers are concerned, the quality, quantity, volume, value of its products are entirely determined by the enterprises themselves...’

Therefore, the Commission could not reliably ascertain the volume and value of production of billets in China, the volume and value of imports of billet into China, and the volume and value of exports of billet from China. However, the Commission noted that all cooperating exporters of rebar and RIC are vertically integrated and produce their own billets.

In light of these considerations, in establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for billets, the Commission has relied upon information contained in the application, information contained in REP 300 and REP 301.

### 9.2. ADEQUATE REMUNERATION FOR BILLET

Having found that domestic prices of billets in China are being influenced and distorted by the GOC, a benchmark price has been established. The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

- i. private domestic prices;
- ii. import prices; and
- iii. external benchmarks.

#### *i. PRIVATE DOMESTIC PRICES*

The Commission notes that all Chinese exporters cooperating with INV 322 and INV 331 are fully integrated manufacturers of steel products, including rebar and RIC. As such, the

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<sup>11</sup> Assessment of SIEs to be Public Bodies is at Appendix 5 of this report

<sup>12</sup> Investigation period for INV 300, INV 301, INV 322 and INV 331 is same (from 1 July 2014 to 30 June 2015)

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Commission acknowledges that these exporters (other than one exporter who purchased small volume of billets from a private entity) do not purchase billet, but manufacture it themselves from raw materials including iron ore, coke or coking coal and scrap steel.

However, as noted in REP 300 and REP 301, the Commission considers that the GOC influences in the iron and steel industry are wide ranging and affect competitive market supply.

In REP 300 and REP 301, the Commission has found that private prices of billets are affected by government influence and are therefore not suitable of production inputs including (but not limited to) raw material inputs for billet. (i.e the Commission found that a *particular market situation* exists in Rebar and RIC domestic markets in China)

The Commission considers that private domestic prices of billets in China are not suitable for determining a competitive market price free from government influences.

### *ii. IMPORT PRICES*

The Commission considers that import prices are not suitable for determining a competitive market price of billets in the investigation period.

### *iii. EXTERNAL BENCHMARKS*

Having eliminated the first two options discussed above, the Commission considered other options to establish a benchmark price for billet.

Based on the findings in REP 300 and REP 301, the Commission considers that Latin American steel billet export prices at FOB level constitute the best available information for the competitive market costs of steel billets. This benchmark is expressed in FOB terms. The detailed analysis of establishing this benchmark is in REP 300.

## 9.3. ASSESSMENT OF ADEQUATE REMUNERATION FOR COKING COAL IN CHINA

### 9.3.1. INTRODUCTION

After determining that SIEs that supplied coking coal in China are 'public bodies' for the purposes of the Act,<sup>13</sup> the Commission sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal in accordance with subsection 45(2) of the Regulations. The Commission then calculated the benefit received under subsidy Program 2 (purchases of coking coal from SIEs at less than adequate remuneration).

In SEF 316, the Commission established a benchmark price for coking coal using Platts Australian low volume premium HCC FOB export price of coking coal in the investigation period.<sup>14</sup>

The Commission is not aware of an internationally accepted benchmark price for coking coal. From its previous investigations of steel products, the Commission is aware that China

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<sup>13</sup> Assessment of SIEs to be Public Bodies is at Appendix 5

<sup>14</sup> SEF 316 – Grinding Balls from China was published on 21 April 2016. As of the date of publication of the SEF, the Final Report for grinding balls (REP 316) has not been published.

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has been identified as the major producer and consumer of coking coal. China also restricts the trade of coking coal to the international market by levying high export taxes and restrictions. As such, the market for coking coal is highly concentrated in China. In light of these considerations, in establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for coking coal, the Commission has relied upon information contained in the application, information supplied by an independent provider of trade statistics and measures, and other publicly available data.

### 9.3.2. ADEQUATE REMUNERATION FOR COKING COAL

Having found that domestic prices of coking coal in China are being influenced and distorted by the GOC, a benchmark price has been established. The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

- i. private domestic prices;
- ii. import prices; and
- iii. external benchmarks.

### 9.3.3. PRIVATE DOMESTIC PRICES

In REP 300 and REP 301, the Commission found that domestic prices of upstream raw materials (including coking coal) are influenced by GOC and therefore not suitable. The Commission has not received any evidence to establish that this assessment of the private prices of coking coal in China has changed.

In the absence of detailed information from the GOC in relation to the domestic market for coking coal, the Commission considers that private domestic prices of coking coal in China are not suitable for determining a competitive market price free from government influences.

### 9.3.4. IMPORT PRICES

The Commission found that import prices were not suitable as a benchmark due to the lack of import penetration of coking coal and the likelihood that import prices were equally affected by the government influences on domestic prices. The Commission has not received any evidence to establish that this assessment of the private prices of coking coal in China has changed.

In the absence of a detailed response by the GOC in relation to imports of coking coal the Commission does not have sufficient information available to it to make an assessment in regard to import prices. As such, the Commission considers that import prices are not suitable for determining a competitive market price of coking coal in the investigation period.

### 9.3.5. EXTERNAL BENCHMARKS

Having eliminated the first two options discussed above, the Commission considered other options to establish a benchmark price for coking coal.

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As discussed in SEF 316 the Commission established a benchmark for coking coal using the Platts Australian low volume premium HCC FOB export price. The Commission is satisfied that this is an appropriate benchmark for the following reasons:

- Australia is a major producer of coking coal and is a significant supplier to China; and
- The Commission was able to cross reference the Platts data against Australian government data to ensure the Platts data being used was reliable.

Based on the above analysis and given that the three quarters of the investigation period for INV 316 overlaps with the investigation period of rebar and RIC, the Commission considers it appropriate to use the benchmark established in INV 316 for coking coal in the current investigations.

### 9.4. ASSESSMENT OF ADEQUATE REMUNERATION FOR COKE IN CHINA

#### 9.4.1. INTRODUCTION

Having determined that SIEs that supplied coke in China are ‘public bodies’ for the purposes of the Act, the Commission sought to determine a benchmark cost that represents adequate remuneration for coke in China to determine a competitive market cost for coke in accordance with subsection 45(2) of the Regulations. The Commission then calculated the benefit received under subsidy Program 3 (purchases of coke from SIEs at less than adequate remuneration).

In REP 193,<sup>15</sup> the Commission established a benchmark price for coke using GOC supplied data for the Chinese export price of coke in the investigation period.

The Commission notes that in the current investigation, the GOC in its repose to the government questionnaire (GQ) stated that ‘...the GOC is neither responsible nor authorised to hold and provide such detailed information about individual enterprises...’ the GOC in its response to the GQ also stated that ‘...as far as Chinese rebar and rod in coils manufacturers are concerned, the quality, quantity, volume, value of its products are entirely determined by the enterprises themselves...’

Therefore, the Commission could not reliably ascertain the volume and value of production of coke in China, the volume and value of imports of coke into China, and the volume and value of exports of coke from China.

The Commission is not aware of an internationally accepted benchmark price for coke. In REP 193, the Commission noted that China has been identified as the major producer and consumer of coke. China also restricts the trade of coke to the international market by levying high export taxes and restrictions. As such, the market for coke is highly concentrated in China.

In light of these considerations, in establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for coke, the Commission

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<sup>15</sup> Galvanised steel and aluminium zinc coated steel

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has relied upon information contained in the application, information supplied by an independent provider of trade statistics and measures, and other publicly available information.

### 9.4.2. ADEQUATE REMUNERATION FOR COKE

As the Commission has found that domestic prices of coke in China are being influenced and distorted by the GOC, a benchmark price has been established.

The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

- i. private domestic prices;
- ii. import prices; and
- iii. external benchmarks.

#### *i. PRIVATE DOMESTIC PRICES*

In REP 300 and REP 301, the Commission found that private prices of coke are affected by government influence and are therefore not suitable. No further information has been provided during this investigation that suggests otherwise.

As such, in the absence of detailed information from the GOC in relation to the domestic market for coke, the Commission considers that private domestic prices of coke in China are not suitable for determining a competitive market price free from government influences.

#### *ii. IMPORT PRICES*

The Commission found that import prices were not suitable as a benchmark due to the lack of import penetration of coke and the likelihood that import prices were equally affected by the government influences on domestic prices.

In the absence of a detailed response by the GOC in relation to imports of coke the Commission does not have sufficient information available to it to make an assessment in regard to import prices.

#### *iii. EXTERNAL BENCHMARKS*

Having eliminated the first two options discussed above, the Commission considered other options to establish a benchmark price for coke.

As stated in INV 193 the Commission used the Chinese export price in the investigation period to establish the benchmark price for coke. In assessing the data collated from various sources in INV 193, the Commission found there to be a variety of factors affecting the quality and forms of coke produced, imported and/or exported by each of the top five countries trading in these commodities. The coke exported from China was considered to be the most comparable to the coke purchased domestically by the cooperating Chinese exporters, and the export data provided by the GOC was considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration.

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Following the initiation of Rebar investigation on 23 December 2015 and following the initiation of rod in coils investigation on 17 February 2016, the Commission provided two separate the government questionnaires to the GOC seeking detailed information such as total production and consumption (value and volume) of coke, total value and volume of export of coke and total value and volume of coke importation during the investigation period. Public Record versions of the responses to the GQ are at the Commissions website.

In absence of any other information available, the information provided by the GOC could not be compared with any other major supplier of the coke in the international market. Therefore, the Commission did not use the information provided by the GOC in relation to coke to establish an appropriate benchmark for coke.

The applicant proposed that the benefit obtained by exporters of rebar and rod in coils be calculated based on the difference between the Platts daily metallurgical coke and the domestic price of the coke supplied by SIEs.

Based on the best information available at the time of publishing the SEF, the Commission considers Platts daily metallurgical CFR Indian prices as a benchmark price for coke in the investigation period. The Commission is satisfied that this is an appropriate benchmark as the Commission was able to cross reference the Platts data against Australian government data to ensure the Platts data being used was reliable.

### 9.5. ASSESSMENT OF WHETHER STATE INVESTED ENTERPRISES ARE PUBLIC BODIES

#### 9.5.1. BACKGROUND

Pursuant to section 269TACC, the determination as to whether a financial contribution or income or price support confers a benefit is to be determined by the Minister having regard to all relevant information.

Article 1 of the Agreement on Subsidies and Countervailing Measures (SCM) provides that a subsidy exists where two distinct elements are present: there must be a financial contribution by a government, or income or price support; and this must confer a benefit.

The Commission's dumping and subsidy manual states:

*A financial contribution is a transaction through which something of economic value is transferred by the government – this may include for example money, goods, and services. The government's actions are the focus when examining whether there has been a financial contribution.*

*In establishing whether a financial contribution by a government exists, an important question is how broad is the concept of 'government'? It includes not only the 'government' per se, but also:*

- *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 (in defining a subsidy, section 269T seeks to incorporate the above provision).*



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The definition of a subsidy in section 269T of the Act refers to a 'government' and to a 'public body'. The term 'government' is taken to include government at all different levels – national and sub-national. The definition also refers to a 'private body' which the government or a public body entrust or directs to carry out a governmental function.

Section 269 TACC (2) states that if the program was a direct financial payment the direct financial payment was received from:

- (a) a government of a country;
- (b) a public body of a country;
- (c) a public body of which a government of a country is a member; or
- (d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

Further, subsection 269 TACC(3) states that in determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:

- the provision of equity capital from a government or body referred to in subsection (2) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;
- the making of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain;
- the guarantee of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the enterprise receiving the guarantee is required to repay on the loan a lesser amount than would be required for a comparable commercial loan without that guarantee;
- the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;
- the purchase of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the purchase is made for more than adequate remuneration.

The applicant has asserted that SIEs are public bodies (for the purposes of section 269T), relying upon:

- the Appellate Body Report in United States – *Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)*<sup>16</sup>, where the Appellate

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<sup>16</sup> Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011.

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Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority;

- the Appellate Body Report in United States – *Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*<sup>17</sup>, where guiding principles were stated as regards the meaning of “meaningful control”;
- a 2014 World Steel Association report which detailed that nine of the top ten steel companies in China, in terms of total crude steel production were SIEs, all of which are either wholly or partly owned by the SASAC, and all of which produce steel billet and/or rebar and/or rod in coils, themselves or through their subsidiaries;
- the *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) which set out the functions and obligations of a state-owned assets supervision and administration authority; and
- examples of SASAC’s current and ongoing direct control and responsibility for the appointment and removal of personnel from SIEs.

The applicants relied upon this information to assert that the functions of SASAC, such as the power to appoint persons to key management positions, evidence a greater role in the management of enterprises than mere shareholder status. The applicant further asserts that this serves as evidence that the GOC exercises meaningful control over those SIEs that produce steel billet and/or rebar and/or rod in coils, themselves or through their subsidiaries, and as such these entities possess governmental authority and are public bodies.

### 9.5.2. PREVIOUS CONSIDERATION

The term ‘public body’ is not defined in the legislation or the SCM Agreement. However, it has been considered by the Commission in previous investigations and has been the subject of a number of WTO Appellate Body findings. To inform the Commission’s assessment of this issue in the present investigation, the following decisions are considered to be relevant:

- INV 177 – the Commission’s finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- INV 203 – the Commission’s reinvestigation of certain findings in INV 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- INV 193 – the Commission’s findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively ‘coated steel’) exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;

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<sup>17</sup> Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014.

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- INV 237 – the Commission’s finding in relation to the subsidisation of silicon metal exported from China;
- INV 238 – the Commission’s finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- Anti-Dumping Review Panel (ADRP) Report (15 November 2013) in relation to INV 193 – the ADRP disagreed with the Commission’s finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP’s finding in relation to this issue;
- DS 379 – this Appellate Body finding considered the meaning of ‘public body’ in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- DS 436 – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- United States – *Countervailing Measures (China) (DS 437)* – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to DS 437, while this decision is recent the Commission considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS 437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC.

The Commission agrees with the views of the Panel in this dispute, and the Appellate Body in DS 379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commission does not advocate such an approach in the present investigation.

In DS 379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):<sup>18</sup>

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that

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<sup>18</sup> Appellate Body report DS379 at [318]

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the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commission, and more recently the ADRP, have used these indicia as the basis for its approach to determining whether entities subject to dumping and countervailing investigations should be considered to be public bodies.

### 9.5.3. PRIOR DECISIONS OF THE COMMISSION

In INV 177, the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met, however evidence existed to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence ‘show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.’

The Commission’s finding in INV 177 was appealed to the Trade Measures Review Officer (TMRO), who directed the Commission to conduct a reinvestigation of the public body finding. The Commission’s reinvestigation report, INV 203, affirmed the findings in INV 177. It considered that “SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.”

In INV 193, relating to coated steel, the Commission relied on its findings in INV 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the Commission’s finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;
- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;
- Article 14 of the Interim Measures, which vests SASAC with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;
- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and

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- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.

### 9.6. THE COMMISSION'S CONSIDERATION

The Commission considers that the ADRP's decision to direct a reinvestigation of the findings in INV 177 was, to a large extent, premised on the TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS 379, 'that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The WTO Review Panel considered this issue in DS 437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain' the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS 379. It stated that:

*In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".*

The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS 436, also released after the ADRP's findings, the WTO Dispute Settlement Body further considered the issue of whether a government exercises 'meaningful control' over an entity. The Panel stated that 'to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is "meaningful".'

The Dispute Settlement Body stated that, in its view:

- 'government involvement in the appointment of an entity's directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government';
- 'while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or "meaningful", in nature'; and

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- ‘in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the “meaningful” control of the government.’

The Interim Regulations on Supervision and Management of State-owned Assets of Enterprises (Interim Regulations) <sup>19</sup> set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to ‘appoint or remove the responsible persons of the invested enterprise’;
- Article 16 states that a state-owned assets supervision and administration authority ‘shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises’;
- Article 17 describes the positions presumably considered to be ‘responsible persons’, which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
- Article 17 also states that where the State Council or any level of government ‘provide otherwise’ in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commission asked the GOC to provide evidence as to whether SASAC has appointed directors or other key management positions to any of the suppliers of steel billet, electricity, coke, coking coal, rebar and rod in coils identified within the exporter questionnaire responses submitted. Additionally, as part of the government questionnaire, the GOC was requested to respond to a number of questions concerning entities that produce rebar and rod in coils and upstream raw material, including:

- a list of all manufacturers of rebar and rod in coils and upstream raw materials suppliers and the percentage of GOC ownership in each (A4);
- whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and an indication of any special rights provided to the representative (e.g. veto rights) (A4);

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<sup>19</sup> These Regulations are formulated to establish a State-owned assets supervision and management system that suits the needs of socialist market economy, better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realize the preservation of and increase in the value of State-owned assets.

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- for each business where the GOC is a shareholder and/or there is GOC representations in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A4);
- confirm whether the ‘Law of the People’s Republic of China on State-Owned Assets of Enterprises’ is current and has not been superseded or supplemented by other laws and if so provide any superseding or supplementary laws (C2).

In its response to the GQ, the GOC failed to respond directly to these questions. The Commission noted that the current law, as outlined in Article 7 of the Interim Regulations, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

*People’s governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.*

*The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.*

The Commission does not consider this Article to conflict with a finding that SIEs are public bodies. The Appellate Body in DS 379 stated that an entity may possess certain features suggesting it is a public body and others that suggest that it is a private body. In DS 436 the Government of India argued that the National Mineral Development Corporation enjoyed a significant amount of autonomy from it, which was granted “to make the public sector more efficient and competitive”. These are similar sentiments to those expressed by the GOC in the Commission’s previous considerations of public bodies. The Dispute Settlement Body in DS 436 stated that ‘(s)o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies’.

On balance, the information collected as part of this investigation in addition to the prior rulings on this issue and the absence of detailed information from the GOC in relation to its role in the operation of SIEs, the Commission considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that produce and supply raw materials to manufacturers of rebar and rod in coils are public bodies.