



FINAL REPORT
REPORT NUMBER 322

ALLEGED SUBSIDISATION OF STEEL REINFORCING BAR

EXPORTED FROM

THE PEOPLE'S REPUBLIC OF CHINA

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1. SUMMARY AND RECOMMENDATIONS

1.1. INTRODUCTION

This Final Report (REP 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), has caused material injury to the Australian industry producing like goods and is subject to countervailable subsidies.

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) based his recommendation to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary).¹

1.2. THE COMMISSIONER'S RECOMMENDATION

The Commissioner recommends that the Parliamentary Secretary not declare that the goods be goods to which section 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) applies.

Accordingly, the Commissioner recommends that the Parliamentary Secretary not impose measures in the form of a countervailing duty notice and that he publish a notice under subsection 269TL(1) of the *Customs Act 1901*² (the Act).

1.3. AUTHORITY TO MAKE DECISIONS

Division 2 of Part XVB of the Act describes, 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 under subsection 269TB(1) for the purpose of making a report to the Parliamentary Secretary.

Section 269TDA provides for when the Commissioner must terminate an investigation.

1.4. APPLICATION

On 23 November 2015, OneSteel lodged an application requesting the publication of a countervailing duty notice in respect of rebar exported to Australia from China. On 23 December 2015, the Commissioner initiated this investigation (number 322).

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 Anti-Dumping Commission's (the Commission) website at www.adcommission.gov.au.

¹ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

² 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.

1.5. INVESTIGATION TIMELINE

The investigation period for the purpose of assessing the existence of countervailable subsidies 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.

1.6. THE GOODS AND LIKE GOODS

As set out in Chapter 3 of this report the Commission considers that locally produced rebar is 'like' to the imported goods the subject of the application and investigation 322.

1.7. AUSTRALIAN MARKET

There is an Australian industry producing like goods which are the subject of this investigation which comprises of one Australian producer being OneSteel.

The Australian rebar market is supplied by OneSteel and by imports from several countries including China.

1.8. PRELIMINARY AFFIRMATIVE DETERMINATION

The Commissioner did not make 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](#).

1.9. STATEMENT OF ESSENTIAL FACTS

The Statement of Essential Facts (SEF) for two investigations (SEF 322 and 331) was placed on the public record on 8 August 2016. In formulating the SEF, the Commissioner had regard to the application concerned, any submissions concerning publication of the notice that were received by the Commission within 37 days after the date of initiation of the investigation and any other matters considered relevant.

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

1.10. SUBMISSIONS TO SEF 322 AND 331

The Commission received six submissions in response to SEF 322 and 331 from the following interested parties:

- The Government of China;
- OneSteel Manufacturing Pty Ltd;
- Shandong Iron and Steel Company Limited, Laiwu Company;
- Shandong Shiheng Special Steel Co., Ltd;

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- Hunan Valin Xiangstan Iron and Steel Co., Ltd; and
- Jiangsu Yonggang Group Co. Ltd.

The public versions of these submissions are available on the [public record](#).

The Commission's consideration of these submissions is at Appendix 5.

1.11. SUBSIDISATION

In the SEF, the Commissioner published preliminary subsidy margins. The Commission has conducted further analysis and has determined the following subsidy margins:

Exporter	Countervailable Subsidy Margin
Shandong Iron and Steel Company Limited, Laiwu Company	22.96%
Shandong Shiheng Special Steel Co., Ltd	1.66%
Jiangsu Yonggang Group Co Ltd	0.26%
Hunan Valin Xiangtan Iron & Steel Co. Ltd	25.17%
Uncooperative and All Other Exporters	29.61%

Table1: Countervailable subsidy margins

The Commission's analysis of the Government of China's subsidy programs is described in Chapter 5 and Appendices 1 and 6 of this report.

1.12. ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

The Commissioner has found that OneSteel has experienced injury in the form of:

- loss of sales volumes;
- less than achievable market share;
- price depression;
- price suppression;
- less than achievable profits and profitability;
- reduced employment;
- less than full capacity utilisation;
- reduced value of assets employed in the production of rebar; and
- reduced value of capital investment in the production of rebar.

The Commission's injury analysis is described in Chapter 6 and Appendices 2 and 3 of this report.

1.13. CAUSATION ASSESSMENT

The Commissioner is unable to isolate the injury caused by the subsidisation of rebar from other possible causes that include the effect of rebar being dumped onto the Australian

market. As such, the Commissioner is not satisfied that the subsidisation, in and of itself, has caused material injury to the Australian industry.

1.14. TERMINATION

The subsidy margins for Jiangsu Yonggang Group Co Ltd (Yonggang) and Shandong Shiheng Special Steel Co., Ltd (Shiheng) were found to be negligible. Based on these subsidy margins, the Commissioner has terminated the investigation insofar as it relates to Yonggang and Shiheng.

1.15. THE COMMISSIONER'S RECOMMENDATIONS

The Commissioner recommends that the Parliamentary Secretary not declare that the goods be goods to which section 10 of the Dumping Duty Act applies.

Accordingly, the Commissioner recommends that the Parliamentary Secretary not impose countervailing duties and that the Parliamentary Secretary publish a notice under subsection 269TL(1). This notice would have no effect on the existing dumping duty notices published by the former Parliamentary Secretary.

2. BACKGROUND

2.1. INITIATION

On 23 November 2015, OneSteel lodged an application requesting a countervailing duty notice be published in respect of rebar exported to Australia from China.

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

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

OneSteel provided further information on 2 December 2015. The Commissioner decided not to reject the application and initiated an investigation on 23 December 2015 to determine whether a countervailing duty notice should be published.

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

2.2. PREVIOUS INVESTIGATIONS AND CURRENT MEASURES

On 13 April 2016, following the Commissioner's investigation into the alleged dumping of rebar exported to Australia from China (case 300), anti-dumping measures in the form of a dumping duty notice were imposed on rebar exported to Australia by all exporters from China.³

It should be noted that OneSteel is the same applicant as in the dumping investigation (case 300) and this countervailing investigation for rebar. Further, the investigation period and the injury analysis periods are the same in investigation 300 and this countervailing investigation.

During the investigation period for this investigation, rebar exported to Australia from the Republic of Korea (Korea), Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand (Thailand) and the Republic of Turkey (Turkey) was also the subject of a dumping investigation (case number 264). On 11 November 2015, following the Commissioner's

³ Refer [ADN no. 2016/39](#).

investigation, anti-dumping measures in the form of a dumping duty notice were imposed on rebar exported to Australia by all exporters from Korea, Singapore, Spain and Taiwan (with the exception of Power Steel Co. Ltd (Power Steel)).⁴

2.3. INVESTIGATION TIMELINE

The investigation period for the purpose of assessing the existence of countervailable subsidies 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.

2.4. PRELIMINARY AFFIRMATIVE DETERMINATION

The Commissioner has not made a 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](#).

2.5. STATEMENT OF ESSENTIAL FACTS

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)⁵ allows, place on the public record an SEF on which the Commissioner proposes to base the recommendations in relation to the application.

On 11 April 2016, the former Parliamentary Secretary, under section 269ZHI, extended the deadline for the publication of the rebar SEF to 6 June 2016.⁶ On 6 June 2016, the former Parliamentary Secretary, under section 269ZHI, extended the deadline for the publication of the SEF to 21 July 2016.⁷ On 21 July 2016, the former Parliamentary Secretary, under section 269ZHI, further extended the deadline for the publication of the SEF to 5 August 2016.⁸

On 8 August 2016, the Commissioner published an SEF in relation to two separate investigations (322 and 331).⁹ Both cases have the same investigation period and injury analysis period, they relate to the same country, relate to the same applicant, and share a number of subsidy programs.

In formulating the SEF, the Commissioner had regard to the application concerned, any submissions concerning publication of the notice that were received by the Commission

⁴ See [Public Record Case 264](#).

⁵ On 20 September 2015, the Prime Minister appointed the former Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

⁶ Refer [ADN no. 2016/35](#).

⁷ Refer [ADN no. 2016/59](#).

⁸ Refer [ADN no. 2016/70](#).

⁹ The SEF was completed on 5 August 2016 and was available on the public record on the next business day, 8 August 2016.

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within 37 days after the date of initiation of the investigation and any other matters considered relevant.

In the SEF, the Commissioner indicated that the Commission found that one exporter of rebar from China, Yonggang, has a negligible subsidy margin and that that would require the investigation to be terminated in so far as it related to that exporter.

In the SEF, the Commissioner indicated that notwithstanding a finding of injury caused by subsidised goods, the injury caused by subsidisation cannot be isolated, and when considered with injury caused by dumping of the goods, has been remedied by the publication of a dumping duty notice with respect to the goods. Accordingly, for all other exporters of rebar from China, in the SEF the Commissioner proposed to recommend that the Parliamentary Secretary not declare that the goods be goods to which section 10 of the Dumping Duty Act applies. This would be undertaken through the publication of a notice under section 269TL.

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

2.6. SUBMISSIONS

The Commission has received a number of submissions in relation to this investigation.

These submissions are discussed in more detail in Appendices 4 and 5.

2.7. PUBLIC RECORD

The [public record](#) contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available in hard copy by request in Melbourne or online on the [public record](#).

Documents on the [public record](#) should be read in conjunction with this report.

3. THE GOODS AND LIKE GOODS

3.1. LEGISLATIVE FRAMEWORK

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

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods. Subsection 269T(1) defines like goods as:

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

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

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

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

3.2. 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.

3.3. TARIFF CLASSIFICATION

After initiating the investigation and considering the goods description in the application the Commission identified the following tariff subheading classifications as set out 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.

The accurate identification of the tariff classifications assists the Commission in its collection and analysis of trade data for the goods. Additionally, if measures are imposed at the conclusion of the investigation, these tariff classes assist with the correct implementation of trade measures.

3.4. EXCLUSIONS

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

3.5. TARIFF CONCESSION ORDERS

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

3.6. AUSTRALIAN INDUSTRY

Under subsection 269T(2), goods are not to be taken to have been manufactured in Australia unless the goods were wholly or partly manufactured in Australia. Goods, under subsection 269T(3), shall not be taken to have been partly manufactured in Australia unless at least one process in the manufacture of the goods was carried out in Australia.

The Commission has visited OneSteel to examine its manufacturing processes and to verify its claims that it has produced rebar in Australia over the investigation period.

The Commission found that OneSteel undertakes at least one substantial process of manufacture in producing rebar in Australia and has concluded that there is an Australian industry producing like goods and in accordance with subsection 269TC(1).

Further information on OneSteel, its production process and its product range is available on the [public record](#).

3.7. THE COMMISSIONER'S ASSESSMENT OF 'LIKE GOODS'

As noted above in section 3.1 subsection 269T(1) defines like goods as:

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

The Commissioner has found that OneSteel produces goods that are 'like' to the goods under consideration for the following reasons:

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- the primary physical characteristics of the goods and the locally produced goods are similar, being rebar of minimum yield strength (grade 250N or 500N); diameter (between 10mm – 16mm for coils, and 12 mm – 50 mm for straights);
- the goods and the locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market as identified by several common customers for the same purpose, have a high degree of substitutability in sourcing arrangements, and there are few (if any) branding benefits associated with companies who are accredited;
- the goods and the locally produced goods are functionally alike as they have a similar range of end uses, being intermediate goods primarily used for reinforcing concrete; and
- the goods and the locally produced goods are manufactured in a similar manner having reviewed both domestic and international production facilities during verification visits.

The Commissioner is satisfied that the Australian industry produces 'like' goods to the goods the subject of the applications being considered in investigation 322, as defined in subsection 269T(1).

4. THE AUSTRALIAN MARKET

4.1. MARKET STRUCTURE AND DISTRIBUTION

The Australian market for rebar is well established and is supplied by both domestically produced goods and imported goods. Rebar is sold as an intermediate good for use in the construction industry.

The Australian rebar market comprises a single Australian producer and several importers and distributors (fabricators or processors) who process and sell rebar into the construction sector. Figure 1 illustrates the distribution of locally produced and imported rebar.

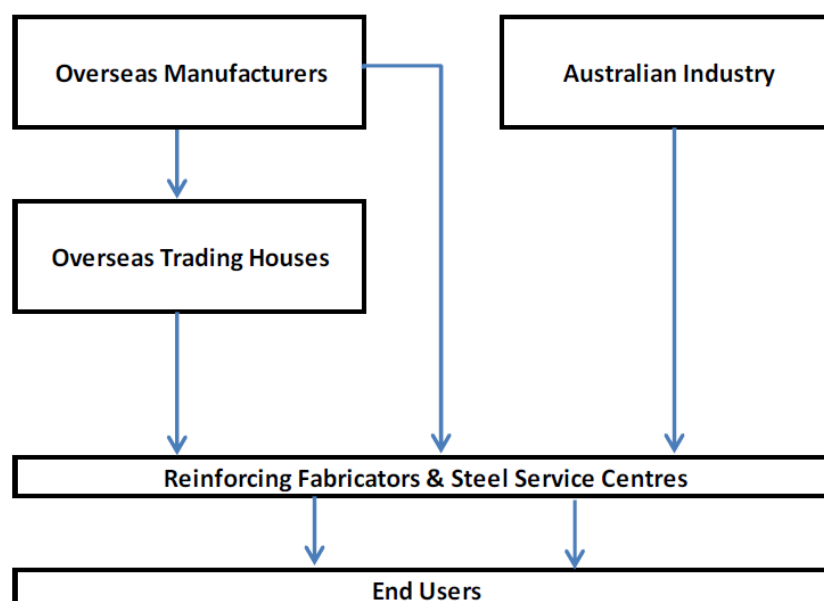


Figure 1 - Distribution Channels

As an intermediate good, the majority of the goods in this market are subject to further processing or transformation, such as conversion of rebar into reinforcing mesh, prior to being sold into the market place. As such, the end users of rebar are usually further processing facilities.

In general terms, the processors of rebar either source these goods from the Australian manufacturer or source imported goods either directly from an overseas manufacturer or indirectly via a trader.

OneSteel is related to parties in the further processing market and a significant portion of its sales of rebar are to these related entities, including the Australian Reinforcing Company and OneSteel Reinforcing. OneSteel's related entities source their entire supply of rebar from OneSteel. OneSteel also imports a small volume of rebar. The unrelated entities that purchase from OneSteel also compete in the same markets as OneSteel's related entities.

OneSteel provides the majority of volume for rebar in the Australian market at both the wholesale level, or to end users via its processors.

Processing businesses in Australia are subject to long delivery delays for imported products. This results in prices being set months in advance of the goods being received. The prices are normally set through negotiation between the processing business and its suppliers.

4.2. DEMAND VARIABILITY

Demand for rebar is primarily from the following market segments:

- residential construction;
- commercial construction; and
- engineering construction (including both mining and infrastructure).

4.3. MARKET SIZE

Based on information provided by the applicant and import data extracted from the Australian Border Force (ABF) database, the Commission has estimated that the size of the Australian market for rebar is approximately 900,000 tonnes per financial year.

The size of the Australian market for rebar for the years 2011/12 to 2014/15 is indicated in Figure 2.

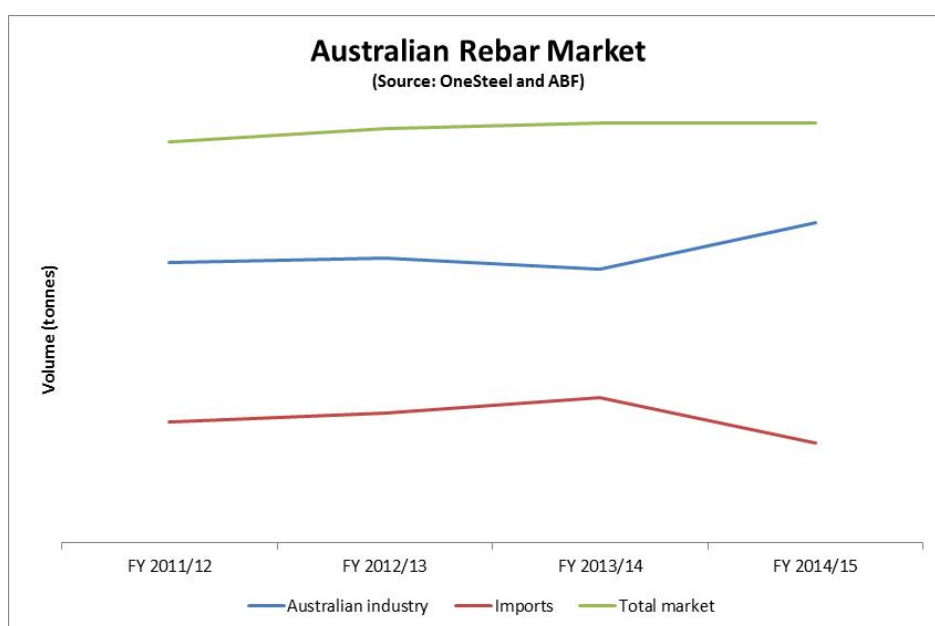


Figure 2 - Australian rebar Market

From 2011/12 to 2014/15, the size of the Australian market for rebar has steadily grown, but the rate of growth has declined over the injury analysis period.

This finding is supported by independent research compiled by IBISWorld.¹⁰ An IBISWorld report indicated that the market for iron and steel in Australia (which rebar is a subset of) is expected to grow on average by 1.1 per cent per year until 2021 due to continuing infrastructure investment.

¹⁰ IBISWorld Business Environment Report, F3325 - Domestic price of iron and steel, July 2015

Over the same period, the Australian industry's sales volumes have fluctuated. Sales volumes of rebar sold by Australian industry declined slightly from 2012/13 to 2013/14, before growing in the following financial year. As shown in Figure 2, this increase in Australian industry sales volumes occurring between 2013/14 and 2014/15 aligned with a corresponding decrease in import volume, rather than any substantial growth in the overall market.

4.4. MARKET CHARACTERISTICS

The Commissioner, in making these findings, has had regard to information verified at visits to OneSteel, importers and exporters and has found that.

- the Australian market for rebar is supplied by locally produced goods and imported goods from a range of countries including China;
- OneSteel supplies well over half of the rebar market in Australia;
- rebar is an intermediate good, and is purchased by fabricators to produce other products;
- there is minimal product or brand differentiation for rebar;
- rebar is generally 'homogenous' in nature;
- given the homogenous nature of rebar, the market is characterised by significant price sensitivity where price is the major criteria in customers' purchasing decisions;
- the standardised nature of the goods means that purchasers of rebar do not incur high costs switching suppliers;
- order prices are negotiated on an order by order basis subject to prevailing market conditions and offers;
- demand is mainly driven by construction and infrastructure projects as the goods are generally used in concrete for construction purposes, or further processed prior to end use; and
- the majority of OneSteel's sales were to related parties over the investigation period, though sales to both related and unrelated parties are based on market price movements.

5. SUBSIDY INVESTIGATION

5.1. INVESTIGATED PROGRAMS

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

The Commissioner 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.

5.2. SUBMISSIONS FOLLOWING PUBLICATION OF SEF 322 AND 331

The details of the submissions to SEF 322 and 331 that relate to the determination of subsidy margins for Shiheng and Yonggang are included in termination report number 322 (TER 322). For completeness, the Commission's consideration of those submissions is also captured in Appendix 5 of this report.

The applicant alleges that Chinese exporters of rebar benefited from 86 countervailable subsidies. These alleged subsidies related to programs for the provision of goods, grants, Value Added Tax (VAT) exemptions, preferential taxation schemes, equity programs and preferential loan schemes.

During examination of information provided in exporter questionnaire responses, and at verification visits with cooperating Chinese exporters of the goods, the Commission was provided with information that indicated benefits were received, or were able to be received, by exporters of the goods under several new subsidy programs that were not included in the 86 alleged programs already being examined by the Commission. Through this process, the Commission identified 91 additional subsidy programs that were not identified in the initial application. As such, a total of 177 programs have been investigated.

To assess these programs in relation to rebar exported to Australia, the Commission included questions relating to each program in a questionnaire sent to the Government of China (GOC) shortly after initiation of the investigation and in a follow up supplementary questionnaire sent following the exporter verification visits.

A public record version of the GOC's response is on the Commission's website.

5.3. THE COMMISSIONER'S FINDINGS

5.3.1. COOPERATIVE EXPORTERS

For each cooperative exporter, the weighted average quarterly export price per tonne in Renminbi (RMB) on free on board (FOB) terms has been calculated.

The amount of benefit received has been attributed to each unit of rebar (per tonne) using volume of sales of the goods by each cooperative exporter.

Exporter specific subsidy margins have been calculated and expressed as a percentage of the export price for each selected exporter with reference to the specific programs that conferred a benefit to that exporter.

Table 1 indicates the subsidy margin calculations for cooperative and uncooperative exporters of rebar:

Exporter	Countervailable Subsidy Margin
Shandong Iron and Steel Company Limited, Laiwu Company	22.96%
Shandong Shiheng Special Steel Co., Ltd	1.66%
Jiangsu Yonggang Group Co Ltd	0.26%
Hunan Valin Xiangtan Iron & Steel Co. Ltd	25.17%
Uncooperative and All Other Exporters	29.61%

Table 1 - rebar subsidy margins

The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Appendix 3**.

For goods exported by Jiangsu Yonggang Group Co Ltd (Yonggang) and Shandong Shiheng Special Steel Co., Ltd (Shiheng), the countervailable subsidisation was determined to be negligible. The Commissioner therefore must terminate the investigation in relation to Yonggang and Shiheng.

5.3.2. UNCOOPERATIVE EXPORTERS

For the uncooperative exporters the lowest export price of the cooperative exporters of rebar on a unit value per tonne in Renminbi (RMB) on FOB terms has been used to calculate the subsidy margin.

In accordance with section 269TAACA, in the absence of GOC advice regarding the individual enterprises that received financial contributions under each of the investigated subsidy programs, the Commissioner has had regard to the available relevant facts and determines that uncooperative exporters have received financial contributions that have conferred a benefit under 113 programs found to be countervailable in relation to rebar during the investigation period.

5.4. VOLUME OF SUBSIDISED IMPORTS

Pursuant to subsection 269TDA(7), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are subsidised is a negligible volume. Subsection 269TDA(8) defines a negligible volume as less than 3 per cent of the total volume of goods imported into Australia over the investigation period if subsections 269TDA(9), (10) and (11) do not apply.

Using the ABF import database and having regard to information collected and verified from the importers and exporters, the Commissioner determined the volume of imports in the

Australian market. The Commissioner has included the exports which received negligible levels of subsidy as part of this assessment as required by subsection 269TDA(12).

The Commissioner is satisfied that, when expressed as a percentage of the total imported volume of the goods, the volume of subsidised goods from China was greater than 3 per cent of the total import volume and is therefore not negligible.

Details of the Commissioner's assessment of the volume of subsidised imports are at **Confidential Appendix 3**.

5.5. THE COMMISSIONER'S ASSESSMENT

The Commissioner finds that during the investigation period all exporters (other than Yonggang and Shiheng) of rebar from China have received countervailable subsidies and that the subsidy margin was not negligible. The Commissioner also finds that the volume of subsidised goods exported to Australia during the investigation period from China was not negligible.

Yonggang and Shiheng's subsidy margins were found to be negligible, therefore the Commissioner must terminate the investigation in relation to Yonggang and Shiheng.

6. ECONOMIC CONDITION OF THE INDUSTRY

6.1. APPROACH TO INJURY ANALYSIS

When considering allegations of injury, the Commission first examined the economic condition of the Australian industry over the injury analysis period from 1 July 2011 to 30 June 2015. 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 from 1 July 2014 to 30 June 2015.

In conducting this analysis the Commission has relied upon OneSteel's verified production, cost and sales data for rebar on a quarterly and annual basis for the injury and investigation periods.

The Commission has also included data from the ABF import database in its analysis where necessary. Some aspects of the ABF import data were verified through visits to exporters and importers.

As noted in Chapter 2 of this report, the investigation and injury analysis periods for this countervailing investigation are the same as those in the dumping investigation into rebar exported into Australia from China (investigation number 300). Given that the investigation and injury analysis periods align in these two cases, and the applicant and the goods are identical, the injury discussed in this chapter is a summary of that described in the SEF and in the recent dumping investigation (Investigation 300).

6.2. THE COMMISSIONER'S FINDINGS

The injury findings summarised here are consistent with those described in the SEF and in dumping investigation 300 into rebar exported from China over the same investigation period.

In summary the Commissioner has found that OneSteel has experienced injury in the forms of:

- loss of sales volumes;
- less than achievable market share;
- price depression;
- price suppression;
- less than achievable profits and profitability;
- reduced employment;
- less than full capacity utilisation;
- reduced value of assets employed in the production of rebar; and
- reduced value of capital investment in the production of rebar.

Further details of the Commission's analysis of injury are at Appendix 2 and Appendix 3.

7. HAS SUBSIDISATION CAUSED MATERIAL INJURY?

7.1. APPROACH TO CAUSATION ANALYSIS

The Commissioner has had regard to the information verified at visits to OneSteel, the SEF and submissions made in response to the SEF. The Commissioner has also had regard to the matters discussed in the SEF and final report related to investigation 300. These reports are available on the [public record](#).

OneSteel lodged its application for the publication of a countervailing duty notice separately to its dumping application. Dumping investigation 300 for rebar was initiated on 1 July 2015 and subsidy investigation 322 was initiated on 23 December 2015. The former Parliamentary Secretary published a dumping duty notice with respect to rebar exported to Australia from China on 13 April 2016 following investigation 300.

Where the combined effects of dumping and countervailable subsidies cause material injury to an Australian industry producing like goods, section 269TJA allows the Parliamentary Secretary to publish either a dumping duty notice, a countervailing duty notice, or both dumping and countervailing duty notices at the same time.¹¹

In the SEF, the Commissioner noted that the dumping investigation had concluded and that a dumping duty notice in respect of these goods had already been published. As a result, the Parliamentary Secretary was not able to publish dumping and countervailing duty notices at the same time under section 269TJA. Accordingly, the Commissioner did not propose to recommend that the Parliamentary Secretary rely on section 269TJA as a basis for publishing countervailing duty notices with respect to the goods that are subject to this investigation.

As the Commissioner is not able to make a recommendation under section 269TJA, the Commissioner has considered the legislative test for publishing a countervailing duty notice under section 269TJ without reference to section 269TJA. Section 269TJ requires (in relevant part) that the Parliamentary Secretary to be satisfied that a countervailable subsidy has been received in respect of the goods and because of that has caused material injury to the Australian industry has been or is being caused in order to publish a countervailing duty notice.

Section 269TAE outlines the factors that the Parliamentary Secretary may take into account in determining whether, for the purpose of publishing a countervailing notice under section 269TJ, material injury to an Australian industry has been caused by the subsidised goods.

The Commissioner has found that the Australian industry has suffered injury in the form of:

- loss of sales volumes;
- less than achievable market share
- price depression

¹¹ Refer to the explanatory memorandum to the *Customs Legislation (Tariff and Anti-Dumping) Amendment Bill 1992*, which inserted section 269TJA into the *Customs Act 1901*. A copy of the explanatory memorandum is available on the Austlii website: http://www.austlii.edu.au/au/legis/cth/bill/em/clcaab1992637/memo_0.html.

- price suppression;
- less than achievable profits and profitability;
- reduced employment;
- less than full capacity utilisation;
- reduced value of assets employed in the production of rebar; and
- reduced value of capital investment in the production of rebar.

The Commission analysed the following factors in assessing the causal link between the subsidised imports from China and the price injury of the Australian industry:

- size of the subsidy margins;
- price undercutting;
- the impact of increased prices on volumes; and
- price suppression and depression.

The Commission has considered the following other possible causes of injury including:

- the state of Australian domestic rebar market;
- the geographic size of Australia;
- the vertically integrated nature of Arrium
- fluctuations in Australian dollar exchange rate;
- the cost of billet production; and
- unsubsidised exports from China.

In conducting this analysis, the Commission was mindful of its finding that purchasing decisions in the Australian rebar market are predominantly based on price and buyers can easily switch their purchases to suppliers that offer lower prices. The Commission was also mindful that dumping duties have recently been imposed on the same goods, which were investigated over the same injury analysis and investigation periods.

Further details of the Commission's analysis of causation are at Appendix 3.

7.2. ISOLATING THE CAUSE OF INJURY

The Commissioner has attempted to isolate the cause of the injury caused by the subsidisation from the effect of dumping. In the SEF, the Commissioner indicated that isolating the respective causes of injury was difficult. This was so because both subsidisation and dumping are likely to result in a single set of price and volume effects in the marketplace for the goods. These price and volume effects are likely to have a uniform flow on effect on OneSteel's profit and profitability, market share, employment and asset utilisation.

Trying to apportion some of the cause of this injury to the subsidisation of rebar, and some to dumping, would require the Commissioner to make a great deal of assumptions that would be arbitrary and imprecise. As such, the Commissioner is not able to isolate the injury

caused by the subsidisation of rebar from the effect of it being dumped onto the Australian market, nor from the effects of other possible causes.

The Commissioner has concluded that he cannot be satisfied, and therefore does not recommend that the Parliamentary Secretary ought to be satisfied, that the subsidisation, in and of itself, has caused injury to the Australian industry, and whether the injury, if any, is material.

As indicated in the SEF:

- The Commissioner recommends that the Parliamentary Secretary not declare that the goods be goods to which section 10 of the Dumping Duty Act applies.
- The Commissioner recommends that the Parliamentary Secretary not impose measures and that he publish a notice under subsection 269TL(1).
- This notice would have no effect on the existing dumping duty notices published by the former Parliamentary Secretary.

7.3. SUBMISSIONS FOLLOWING PUBLICATION OF SEF 322 AND 331

OneSteel has submitted that comparing the non-injurious price (NIP) to the normal value would allow the Commissioner to isolate the respective causes of injury. OneSteel submitted in an example that where the NIP is greater than the ascertained normal value for an exporter:

...permits a further attribution of injury to the countervailable subsidies...

OneSteel has submitted that if the normal value of the goods in the dumping investigations were less than the non-injurious price (NIP) of the goods, there is a strong *prima facie* case that subsidisation has caused material injury. OneSteel also submitted that where the NIP is less than the ascertained normal value for an exporter:

...the injury suffered by the Australian industry (expressed by the NIP) is completely attributable to the dumping (as expressed by the ANV [ascertained normal value]), with no injury attributable to the subsidisation.

The Commission has considered OneSteel's submission made in response to the SEF and has conducted further analysis after the publication of the SEF. The Commission considers that OneSteel's submission appears to be predicated on an assumption that the remaining price effect on the Australian industry's goods (that is, the amount between the normal value and the NIP) is caused solely by subsidised goods and that the price effect is material. The Commission is of the view that comparing the NIP to the normal value does not necessarily provide any quantifiable indication of the extent to which injury, if any, has been caused by subsidisation or by other factors.

Nonetheless, leaving aside the merits of OneSteel's proposed approach, the Commission has found that the NIP as calculated by the Commission is greater than the normal value for Hunan Valin as established in Investigation 300. However, the Commission notes that Hunan Valin represents the smallest volume of exports of the co-operating exporters, which is

equivalent to less than 0.1 per cent of OneSteel's sales volume. The Commission also notes that the NIP is less than the normal values of Laiwu and the uncooperative and all other exporters that have been calculated in Investigation 300. The Commission also notes that the subsidy investigation in respect of the remaining exporters named on the relevant dumping duty notice has been terminated.

7.4. THE COMMISSIONER'S ASSESSMENT

The Commissioner is unable to isolate the cause of the injury caused by the subsidisation of rebar from other possible causes that include the effect of rebar being dumped onto the Australian market. As such, the Commissioner is not satisfied, and therefore does not recommend that the Parliamentary Secretary ought to be satisfied, that the subsidisation, in and of itself, has caused injury to the Australian industry, and whether the injury, if any, is material.

8. DOUBLE COUNTING ADJUSTMENT

The Commissioner's role differs between dumping investigations and subsidy investigations insofar as the 'rates' of dumping or subsidisation are calculated with reference to different information. However, this can lead to a circumstance where the effect of certain types of countervailable subsidies may have also been addressed through the construction of the normal value for the purposes of calculating a dumping margin.

The *Less Than Adequate Remuneration* (LTAR) programs (programs 1 – 4) are an example of this. Due to the existence of a market situation, the Commission substituted an external, competitive billet cost when constructing the normal value for the purposes of the dumping investigation. Because of this, the effects of receiving inputs for less than adequate remuneration were offset by the dumping margins calculated in investigation 300. It is the Commission's practice not to offset the effect of these programs twice. While the Commission typically makes this double-count adjustment to the dumping margin, it is not possible to do so in this investigation because a dumping duty notice has already been published. As such, the double-count adjustment has been made to the amount of countervailable subsidy received. Once the effect of the LTAR programs is removed from the amount of countervailable subsidy received, the amount of countervailing duty imposed for each cooperating exporter would be as follows:

Exporter	Countervailable Subsidy Margin	Countervailable Subsidy Margin Excluding Programs 1 - 4
Shandong Iron and Steel Company Limited, Laiwu Company	22.96%	0.03%
Hunan Valin Xiangtan Iron & Steel Co. Ltd	25.17%	0.57%
Uncooperative and All Other Exporters	29.61%	5.01%

Table 2 - Rebar subsidy rates reflecting double counting adjustment

Although the Commissioner is proposing to recommend that the Parliamentary Secretary not impose countervailing duty on the goods in this case, the Commission notes that if duty were imposed, these would be the rates that the Commissioner would recommend.

9. THE COMMISSIONER'S RECOMMENDATION

The Commission recommends that the Parliamentary Secretary not declare that the goods be goods to which section 10 of the Dumping Duty Act applies.

Accordingly, the Commissioner recommends that the Parliamentary Secretary not impose countervailing duties and that the Parliamentary Secretary publish a notice under subsection 269TL(1). This notice would have no effect on the existing dumping duty notices published by the former Parliamentary Secretary.

10. LIST OF APPENDICES AND ATTACHMENTS

Appendix 1	Countervailable Programs
Appendix 2	Economic Condition of the Industry
Appendix 3	Analysis of the Cause of Injury
Appendix 4	Submissions received in relation to Investigation 322
Appendix 5	Submissions following the SEF
Appendix 6	Assessment of adequate remuneration programs
Confidential Appendix 1	Shandong Iron and Steel Company Limited, Laiwu Company's subsidy margin calculations
Confidential Appendix 2	Hunan Valin Xiangtan Iron & Steel Co. Ltd's subsidy margin calculations
Confidential Appendix 3	Assessment of subsidised export volumes
Confidential Appendix 4	Uncooperative and All Other Exporters subsidy margin calculations

11. 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 RIC. 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 RIC with common program numbers

Common Program number for rebar and RIC	Program Name – rebar and RIC	Program Type	Countervailable in relation to the rebar and RIC (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	Grant	Yes

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Common Program number for rebar and RIC	Program Name – rebar and RIC	Program Type	Countervailable in relation to the rebar and RIC (Yes/No)
	China” and “Famous Brands of China”		
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

PUBLIC RECORD

Common Program number for rebar and RIC	Program Name – rebar and RIC	Program Type	Countervailable in relation to the rebar and RIC (Yes/No)
26	Anti-dumping Respondent Assistance	Grant	Yes
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

PUBLIC RECORD

Common Program number for rebar and RIC	Program Name – rebar and RIC	Program Type	Countervailable in relation to the rebar and RIC (Yes/No)
43	Debt for equity swaps	Equity Program	No
44	Equity infusions	Equity Program	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 RIC but with different program numbers

Program number for rebar	Program number for RIC	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

PUBLIC RECORD

Program number for rebar	Program number for RIC	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
118	243	The Second Set of 75 Tons/h Coke Dry Quenching Construction Project	Grant	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;	Grant	Yes

PUBLIC RECORD

Program number for rebar	Program number for RIC	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
		comprehensive utilization of heavy metal pollution.		
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 (Tanjingxinf 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

PUBLIC RECORD

Program number for rebar	Program number for RIC	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
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
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

PUBLIC RECORD

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

PUBLIC RECORD

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

PUBLIC RECORD

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

PUBLIC RECORD

	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

PUBLIC RECORD

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

12. APPENDIX 2 – ECONOMIC CONDITION OF THE INDUSTRY

12.1. APPROACH TO INJURY ANALYSIS

When considering allegations of injury, the Commission first examined the economic condition of the Australian industry over the injury analysis period from 1 July 2011 to 30 June 2015. The purpose of the injury analysis period is to allow the Commission to identify and examine longer term 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 from 1 July 2014 to 30 June 2015.

In conducting this analysis the Commission has relied upon OneSteel's verified production, cost and sales data for rebar on a quarterly and annual basis for the injury and investigation periods.

The Commission has also included data from the ABF import database in its analysis where necessary. Some aspects of the ABF import data were verified through visits to exporters and importers.

As noted in Chapter 2 of this report, the investigation and injury analysis periods for this countervailing investigation are the same as those in the Commissioner's dumping investigation into rebar exported into Australia from China (investigation number 300). Given that the investigation and injury analysis periods align in these two cases, and the applicant and the goods are identical, the injury findings here are the same as those in the SEF and in the recent dumping investigation (Investigation 300).

12.2. VOLUME EFFECTS

In its application, OneSteel submitted that it has suffered material injury in the form of lost sales volumes of rebar due to increased volumes of imports at subsidised prices from China.

As shown in the Figure 3 OneSteel's domestic sales of rebar over the injury analysis period have fluctuated slightly between FY2011/12 and FY2013/14 but have increased in the last period FY2014/15—this being the investigation period.

Despite this increase in domestic sales volumes during the investigation period, OneSteel alleged it has suffered material injury. Specifically, OneSteel claimed that if it were not for the subsidised goods entering the Australian market it would have achieved an even greater number of domestic sales during the investigation period.

At the verification visit, OneSteel claimed that the increase in domestic sales in FY2014/15 was due to the imposition of measures on rebar imported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey (case number 264). According to OneSteel, these measures levelled the playing field allowing it to win back market share from imports which were found to have been dumped from these countries. Importantly, OneSteel alleges that it was not able to fully recover the market share held by importers in case 264 because at the same time as those measures were put in place, Chinese imports entered the market, selling rebar at a price significantly below that sold by importers in case 264.

This fluctuation in OneSteel's domestic sales needs to be considered in light of the Commission's findings in Chapter 4 of this report that the overall market for rebar in Australia has been growing slowly since the FY2011/12.

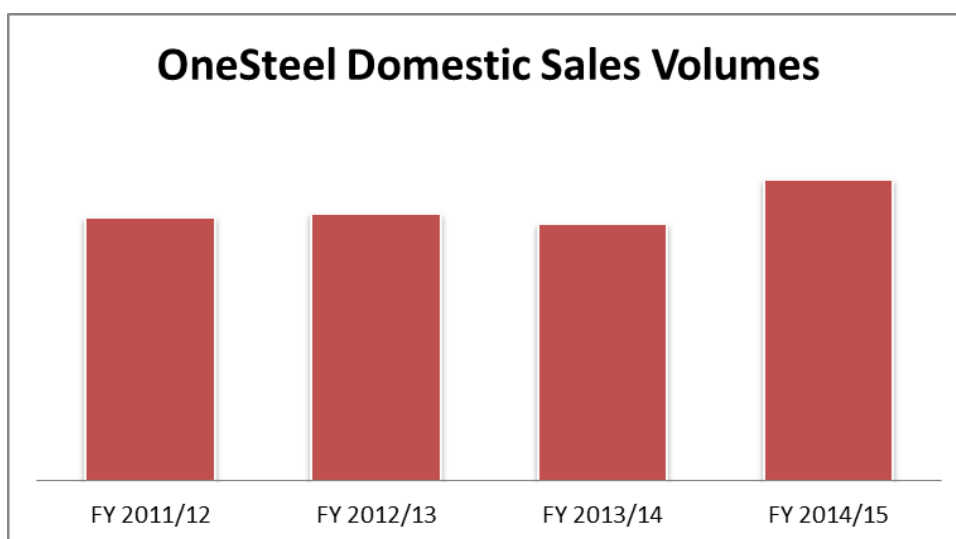


Figure 3 - Rebar sales volumes, injury period

The Commission has found that OneSteel's sales volumes of rebar have increased in the investigation period relative to the injury period.

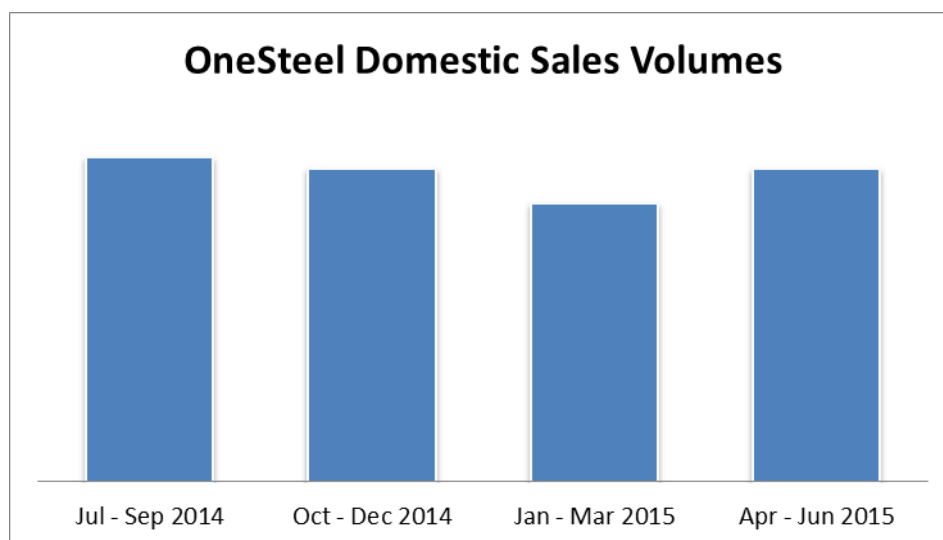


Figure 4 - Rebar sales volumes, investigation period

Figure 4 indicates OneSteel's domestic sales volume of rebar during the investigation period. Specifically, Figure 4 indicates that OneSteel's domestic sales volume of rebar decreased from July 2014 to March 2015 before increasing in April – June 2015 quarter.

12.3. MARKET SHARE

The rise in Chinese rebar in the Australian market in 2014/15 can be clearly seen in Figure 5. The Commission notes that Chinese rebar exports to Australia gained a significant share of the market in a short period of time, following the reduction of exports from importers subject to investigation number 264.

Figure 5 is based on the Commission’s assessment of OneSteel’s domestic sales data and data obtained from the ABF import database. The figure demonstrates the movements in market share for rebar by financial year over the injury analysis period.

Figure 5 indicates that:

- OneSteel’s market share for rebar declined by 2.3 per cent in 2012/13 and by 4.1 per cent in 2013/14. Following the initiation of Investigation No. 264, OneSteel’s market share recovered in 2014/15, growing by 11.0 per cent;
- prior to 2014/15, rebar exports from China to Australia were insignificant in terms of market share;
- in 2014/15, China gained a substantial share of the market—replacing imports from other countries;
- imports from the countries under investigation in Investigation No. 264 declined significantly in 2014/15; and,
- prior to the investigation period, the market share of rebar imported from other countries not subject to dumping investigation 264 were steady, however this market share declined 4 per cent during the investigation period 2014/15.

These findings need to be considered in light of the Commission’s findings in Chapter 4 of this report which found that the overall market for rebar in Australia grew slowly from FY2011/12; albeit at a declining rate.

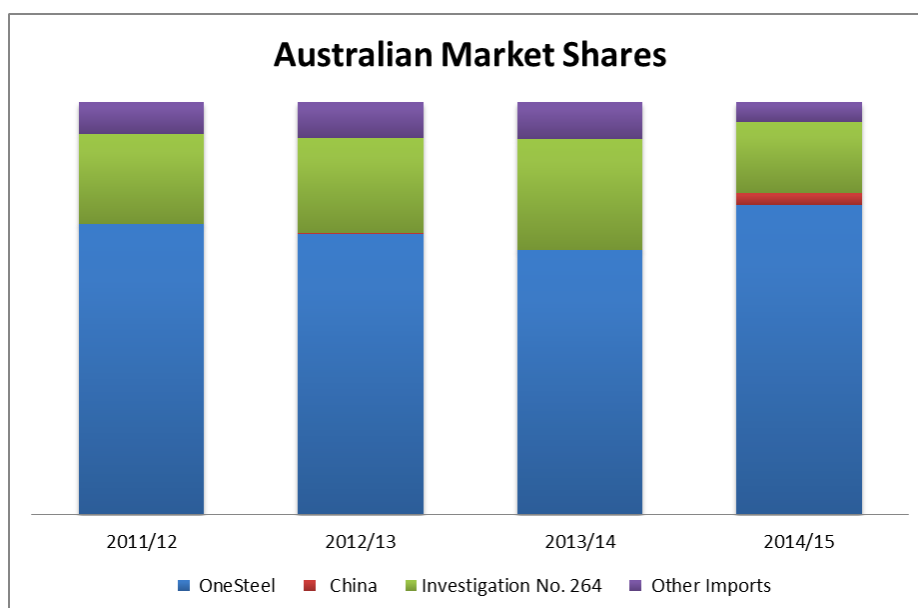


Figure 5 - Rebar Market Share

The Commission has found that OneSteel gained market share during the investigation period FY2014/15.

12.4. PRICE EFFECTS

OneSteel has alleged that since entering the Australian market in 2014/15, rebar exported from China at subsidised prices has been sold at prices significantly below rebar sold by OneSteel and importers previously found to be dumping in investigation number 264.

Moreover, OneSteel has suggested that the prices of Chinese rebar in Australia have allowed China to increase volume and market share.

More specifically, OneSteel in its application has claimed that it has suffered material injury in the form of price depression and price suppression.

The Commission's analysis of price effects is conducted using verified sales data from OneSteel. The Commission did not include OneSteel export sales, sales of rebar imported by OneSteel or sales of rebar imported from other countries other than China.

12.4.1. PRICE SUPPRESSION

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. In establishing whether price suppression has occurred, the Commission must first establish whether the domestic price for rebar should have increased over the injury analysis period. The Commission will then determine whether any price increase at all has occurred, or whether the magnitude of any price increase is less than what could reasonably have been expected.

One indicator of price suppression is a comparison between prices and costs.

In determining whether price suppression has occurred the Commission may conduct:¹²

- a comparison of prices to costs to assess whether over time (e.g. the injury analysis period) or within a specified period (e.g. the investigation period), prices have increased at the same rate as cost increases; or
- an assessment of whether the Australian industry's prices are lower than prices that may have been achieved in the absence of the subsidised goods.

The Commission considers that a business will, at a minimum, seek to set prices at a point which will cover their cost to make and sell. The Commission notes that over a short timeframe, promotional sales, or significant cost increases may mean this is not possible. Over a longer term however, continued sales at a price point less than cost to make and sell will indicate price suppression.

Figure 6 compares movements in OneSteel domestic weighted average unit costs and domestic prices for rebar straights and coils during the injury analysis period.

¹² Anti-Dumping Commission, Dumping and Subsidy Manual (November 2015), page 16

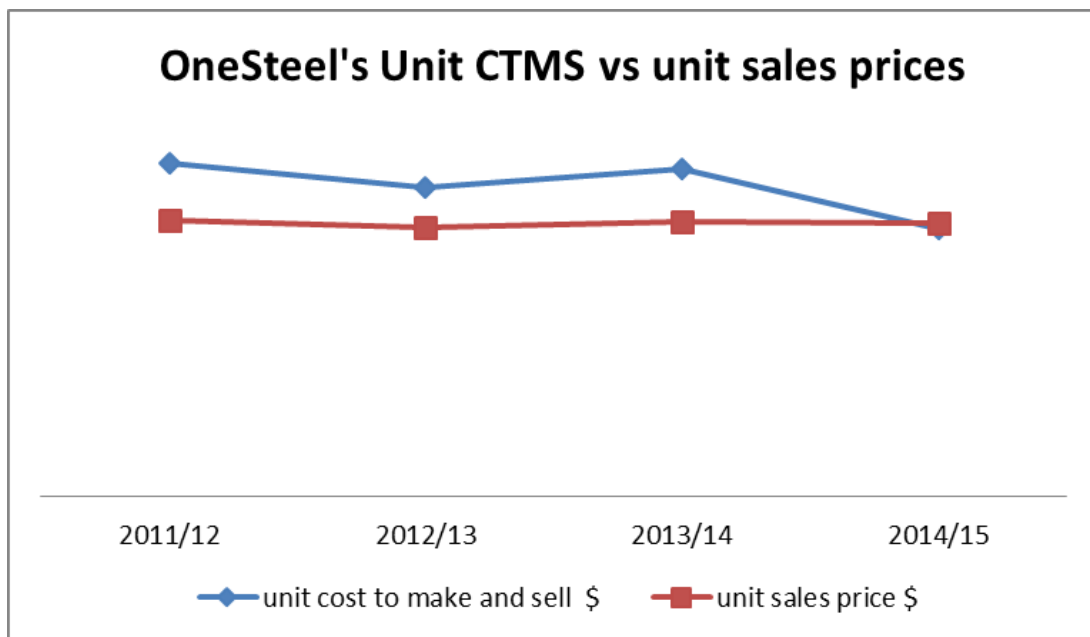


Figure 6 - CTMS v Revenue, injury period

Figure 6 indicates that OneSteel unit costs have exceeded its unit prices from 2011/12 to the third quarter of 2014/15. Over the same period, prices declined slightly then recovered.

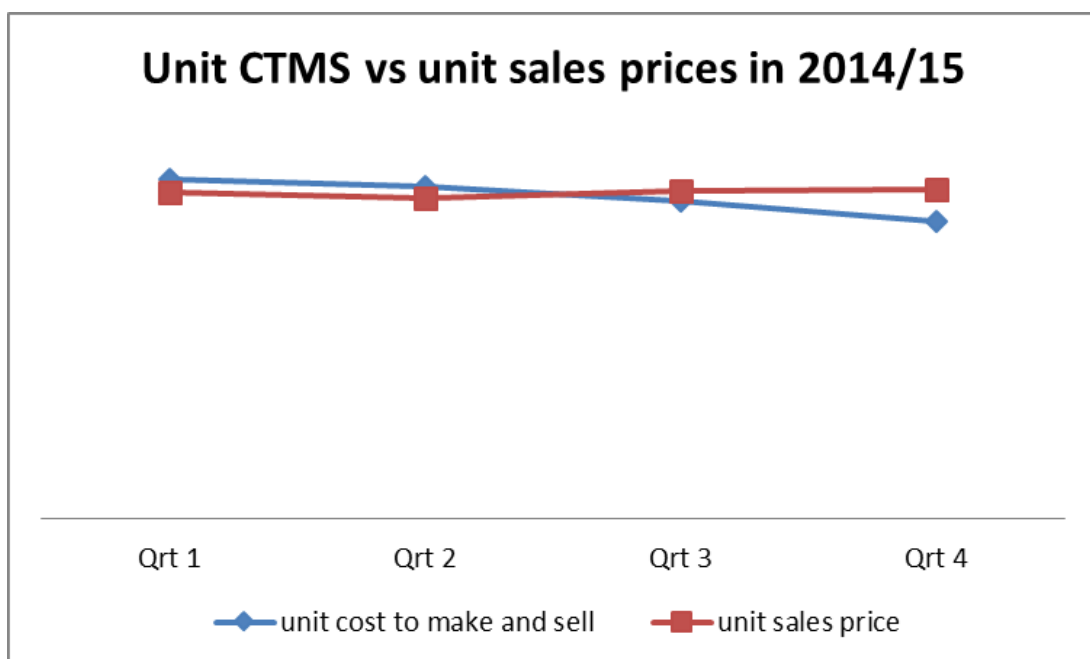


Figure 7- CTMS v Revenue, investigation period

Figure 7 indicates that during the investigation period, OneSteel's unit sales prices were greater than its unit CTMS for the second half of 2014/15. Improvements in the last two quarters of the investigation period are primarily the result of reducing unit costs rather than increasing unit prices of rebar.

The Commission considers this improvement in costs was been driven by two factors, the first being an increase in market size driving an increase in OneSteel's overall production

volume which in turn reduced fixed costs per unit of production, and the second being reductions in costs including strategies put in place by OneSteel to improve its efficiency.

The Commission notes that OneSteel's prices historically have been influenced by dumped goods as identified in Investigation No. 264. This has made a comparison of OneSteel prices and costs for the purpose of identifying price suppression challenging. Given the market dynamics the Commission has identified an appropriate benchmark to assist with its analysis of price suppression.

The Commission considers the Australian Bureau of Statistics (ABS) *Producer Price Indexes*¹³ for manufacturing is an appropriate benchmark as it appropriately reflects relative price changes across the Australian manufacturing environment. As such, this represents a reasonable basis for calculating the inflationary price changes which should have been reflected in OneSteel price decisions.

The Commission notes that within these statistics there is a specific *Primary Metal and Metal Product Manufacturing Index*. However, the Commission considers that this is not an appropriate measure because there are only two major producers of steel products in Australia (OneSteel and BlueScope), and both producers have had significant recent exposure to the impacts of competition from dumped and subsidised goods. The Commission has therefore compared the change in OneSteel's rebar prices to the overall Australian manufacturing price index.

Figure 8 indicates that from July 2013 onwards the changes in actual prices received per tonne by OneSteel are consistently less than the Commission's identified benchmark changes.

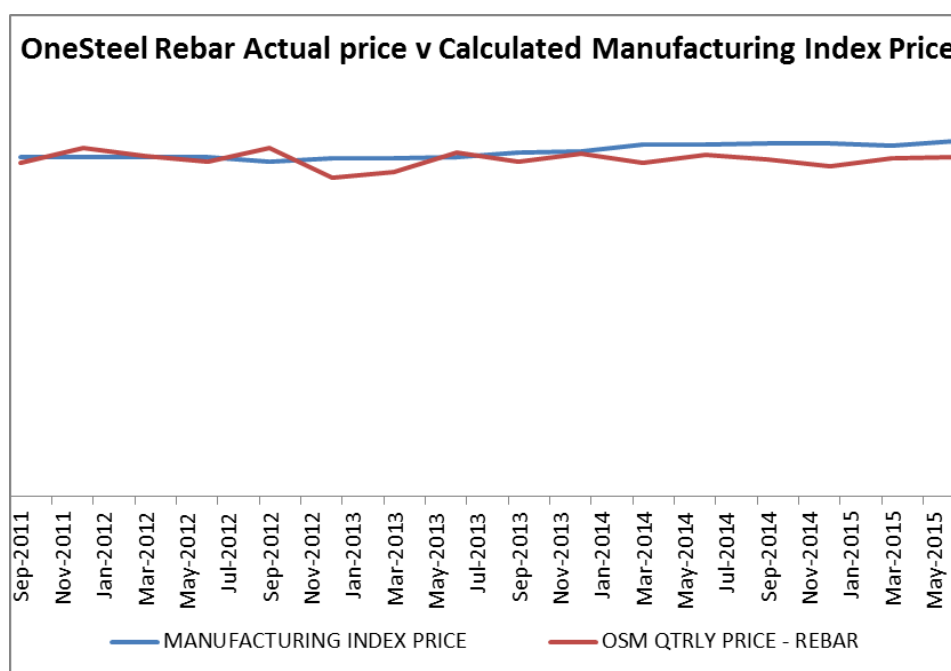


Figure 8 - Quarterly Price v Manufacturing Index

¹³ ABS Publication number 6427.0

Over the injury analysis period, OneSteel prices are an average of 2.3 per cent lower than anticipated based on quarterly values. More importantly, during the 2014/15 financial year (the investigation period), the Commission has found that OneSteel prices are 5.0 per cent lower than expected, using this benchmark.

12.4.2. PRICE DEPRESSION

Price depression occurs when the Australian industry is forced to reduce prices to compete with the imported goods.

During the Australian industry verification visit to OneSteel, the Commission verified that OneSteel's pricing decisions are heavily influenced by the import offers in the market. The Commission has analysed OneSteel's prices by comparing them with prices of rebar imported from China. This analysis indicates that Australian industry's prices were undercut and that it would have achieved higher prices in the absence of sales of subsidised rebar exported from China.

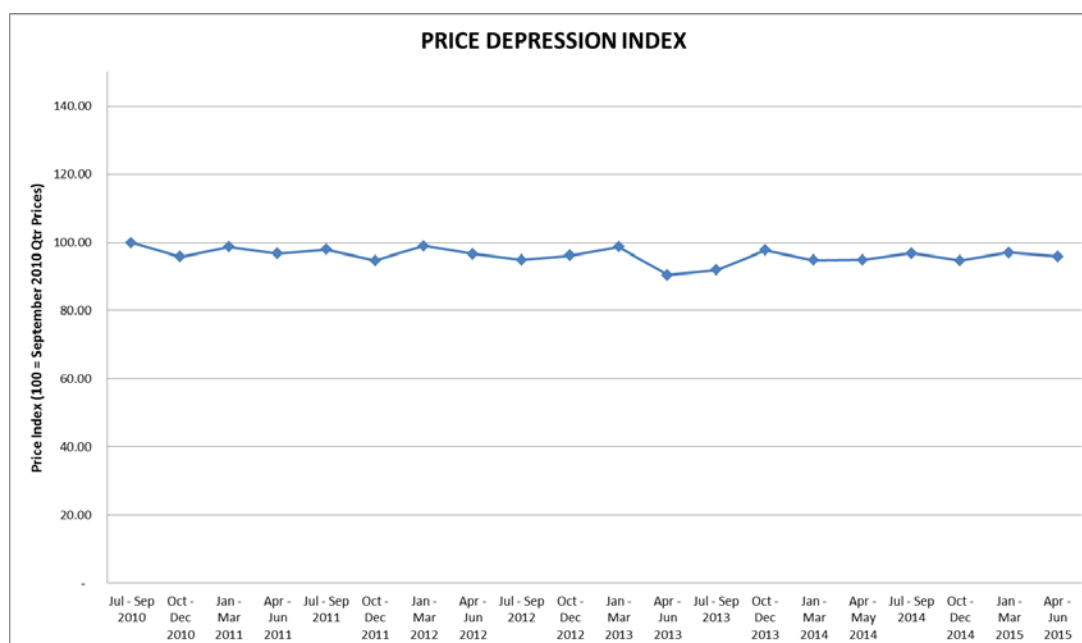


Figure 9 - Price Depression Index

Figure 9 indicates that over the injury analysis period, prices have been consistently lower than they were at the commencement of the injury analysis timeframe, with prices never exceeding the benchmark set at the start of the period.

The level of price depression relative to the September 2010 quarter varies between 1.1 per cent and 9.5 per cent and remains positive (indicating price depression) over the entire period.

The Commission considers that this demonstrates that the Australian industry suffered injury in the form of price depression.

12.5. THE COMMISSION'S CONCLUSIONS ON PRICE EFFECTS

The Commission considers that OneSteel's prices:

- were insufficient to cover the cost to make and sell rebar for at least half of the investigation period;
- showed signs of price depression; and
- compared to the projected price based on the ABS Manufacturing Producer Price index are consistently lower across the investigation period, indicating that prices were suppressed.

The Commission considers that the Australian industry has suffered injury in the form of price suppression and price depression.

12.6. PROFITS AND PROFITABILITY

In its application, OneSteel claimed that it was suffering injury in the form of reduced profit and profitability. Figure 10 indicates that OneSteel's profit and profitability for rebar increased during the investigation period.

Despite this increase profit and profitability during the investigation period, OneSteel has claimed that if it were not for the subsidised goods entering the Australian market, it would have been able to achieve an even greater level of profit and profitability.

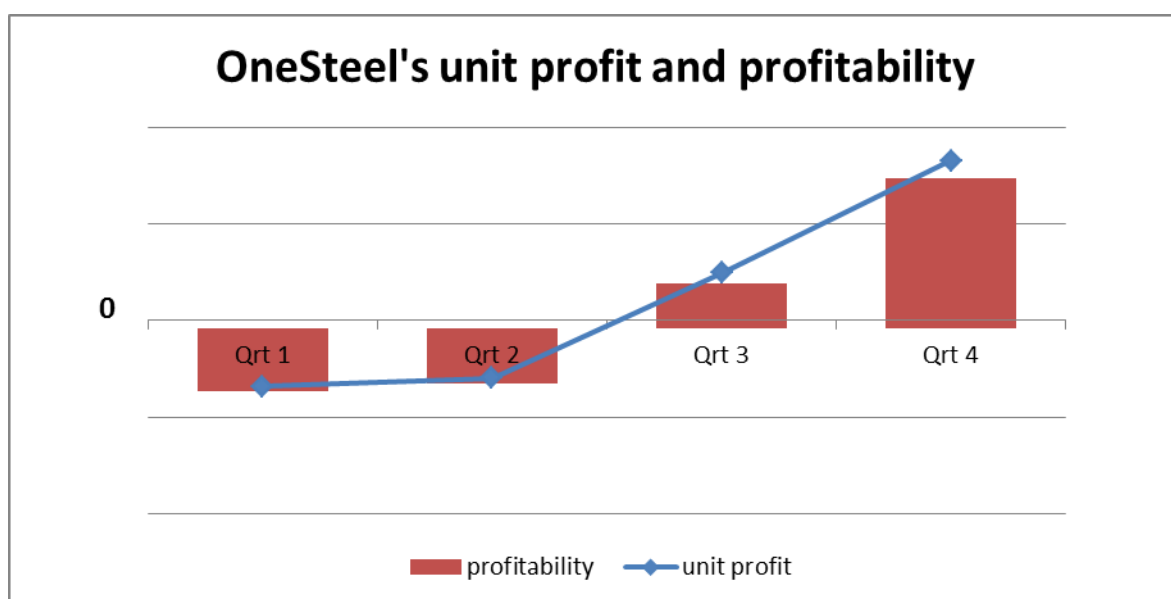


Figure 10 - OneSteel profit and profitability - investigation period

Figure 10 indicates that OneSteel's profit and profitability improved from the second quarter of the 2014/15 financial year. OneSteel has indicated improvements in per unit profits and overall profitability were due to the following reasons:

- decreases in its costs as a result of falling input material prices, mainly iron ore and scrap steel, and cost cutting and efficiency programs; and
- reduction in import volumes of rebar from countries nominated in Investigation No. 264 which lead to a partial recovery of sales volumes.

The Commission has verified OneSteel's cost to make and sell rebar and has found that OneSteel has achieved decreases in its costs. The Commission has also examined imports of rebar using the ABF's import database and, as found in the section above on volumes; there has been a reduction in import volumes of rebar from countries nominated in investigation No. 264 and an increase in domestic sales of rebar by OneSteel.

While OneSteel domestic sales of rebar increased over the investigation period, the effects of this increase has not been great enough to compensate for the injury suffered in the form of price suppression and price depression as identified above. As such the Commission considers that the injurious price effects have had a similar deleterious impact on profit and profitability.

The Commission's investigation considers that the profit results of OneSteel would have changed as follows based on the investigation:

- Profit and profitability would have improved if OneSteel had not been suffering injury in the form of price suppression and depression as prices would have been higher than those actually received without any adverse effect on their cost structure or demand.
- OneSteel's profit and profitability have also been impacted negatively by lost sales volume and lower than expected market share. Larger production levels would have spread the businesses fixed manufacturing and selling and general administration costs across a larger output, lowering unit costs. Increased sales volume and market share would also improve cash flow within the business reducing finance and inventory holding costs.



Figure 11 - OneSteel rebar profit and profitability

Figure 11 indicates that OneSteel's profit and profitability improved in the 2014/15 financial year. This is consistent with the Commission's findings described above.

The Commission notes that for the majority of the injury analysis period, rebar did not generate a profit. The Commission considers that in light of the combination of the cost

reduction strategies put in place by OneSteel, and the previous anti-dumping findings made in regard to rebar, some level of improvement is expected to be recognised.

The Commission has found that the improvement in profit and profitability have not been driven by any increase in prices over the injury analysis period.

The Commission therefore concludes that OneSteel has suffered injury in the form of less than achievable profit and profitability when compared to what would have occurred in normal market conditions if the identified price and volume injuries had not occurred.

12.7. OTHER ECONOMIC FACTORS

OneSteel has claimed that it has experienced injury in respect of the following other economic factors:

- less than full capacity utilisation;
- loss of employment;
- reduction of assets employed in the production of the like goods; and
- reduction of capital investment in the production of the like goods.

The other relevant economic factors analysed below relate to the production of like goods and are based on verified data provided by OneSteel on a 1 July to 30 June yearly basis.

12.7.1. CAPACITY UTILISATION

Figure 12 indicates that OneSteel's capacity utilisation related to the production of rebar increased in 2014/15 and has increased since 2011/12. The Commission noted during the verification activity that OneSteel increased their capacity utilisation for rebar. This improvement in capacity utilisation over the investigation period is consistent with the domestic sales volumes trends. While capacity utilisation has improved, it remains lower than the maximum available capacity.

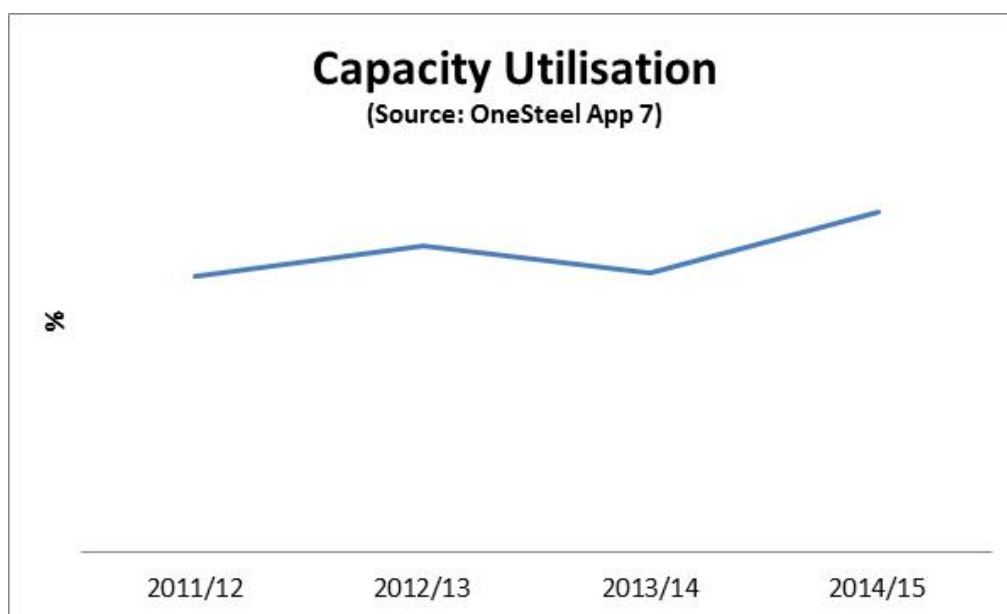


Figure 12 - Rebar Capacity Utilisation

12.7.2. EMPLOYMENT

Figure 13 indicates that OneSteel's employment relating to the production of rebar has declined over the injury analysis period. This aligns with the expectation that reduced profit and profitability leads to a reduction in staffing levels for the rebar industry. Further, falling employment levels are consistent with the Commission's findings that despite capacity utilisation improving in recent years, it remains below maximum available capacity.

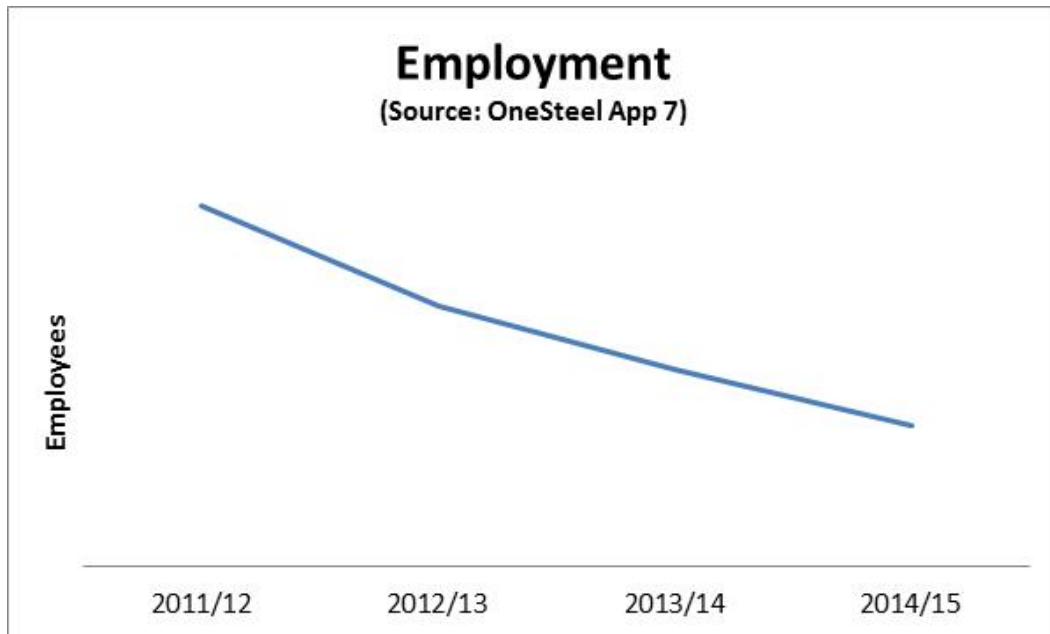


Figure 13 - Rebar Employment

12.7.3. ASSETS

Figure 14 indicates that the value of OneSteel's assets employed in the production of rebar maintained a pattern of decline in 2014/15.

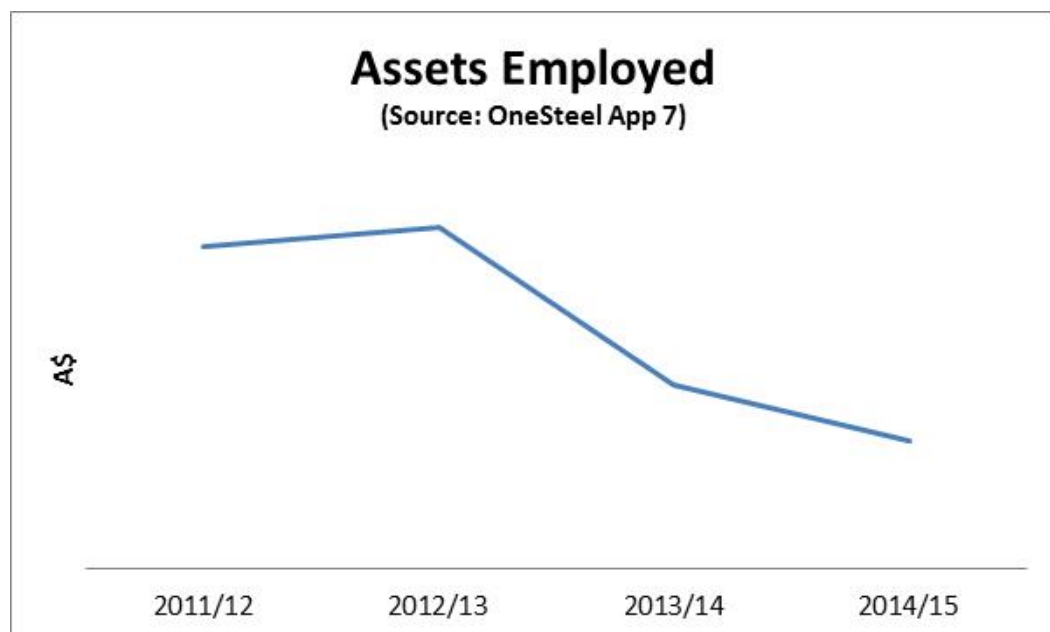


Figure 14 - Rebar Assets Employed

12.7.4. CAPITAL INVESTMENT

Figure 15 indicates that the value of OneSteel's capital investment related to the production of rebar has declined in 2014/15 but has increased overall since 2011/12. During discussions with the Commission, OneSteel identified several projects which were not undertaken due to the pressure on the industry.

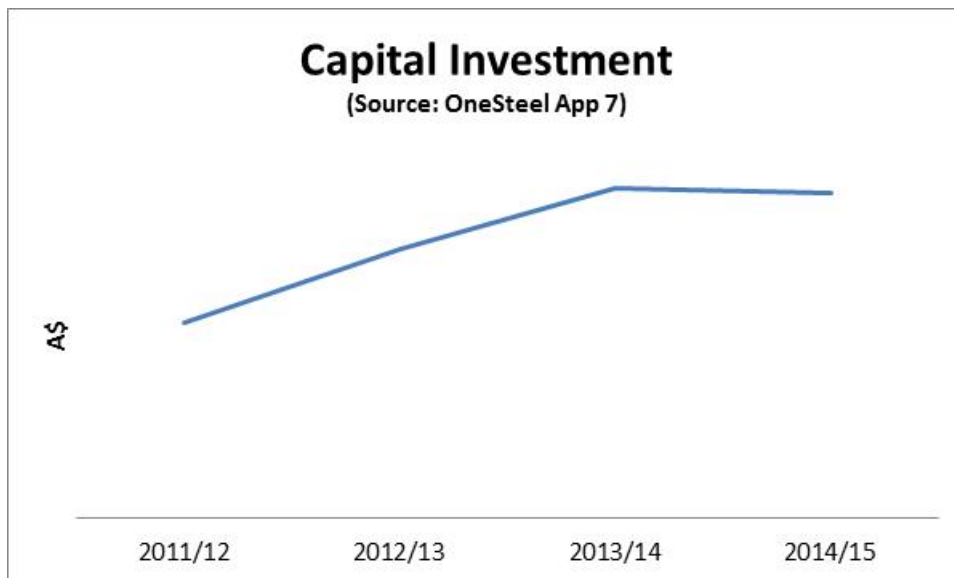


Figure 15 - Capital Investment

Based on the information outlined above, the Commission has found that the Australian industry has experienced injury in the form of reduced:

- employment; and
- value of assets related to the production of rebar;

The Commission also considers that OneSteel is suffering from injury in the form of less than potential capacity utilisation.

12.8. THE COMMISSION'S ASSESSMENT

The Commission has found that during the investigation period OneSteel has suffered price suppression and price depression.

Further, the Commission has found that an inability for OneSteel to raise its prices has translated into less than achievable profit and profitability of OneSteel over the investigation period.

The Commission has found that there has been a reduction in the value of assets employed in the production of rebar, and reduced employment in the production of rebar which is consistent with expected business operations during times of suppressed or depressed prices and less than achievable profit or profitability.

In summary the Commission has found that OneSteel has experienced injury in the forms of:

- price depression;
- price suppression;

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- less than achievable profits and profitability;
- reduced employment;
- less than full capacity utilisation; and
- reduced value of assets employed in the production of rebar.

The Commission notes that this injury finding is consistent with dumping Investigation 300 into rebar exported from China over the same investigation period. The Commission's further consideration of injury factors and whether subsidisation has caused material injury is described in Appendix 3.

13. APPENDIX 3: ANALYSIS OF THE CAUSE OF INJURY

The Commissioner has found that during the investigation period, exports of rebar from China were subsidised and that the Australian industry suffered material injury. The Commissioner has terminated the investigation in relation to Yonggang and Shiheng. As such, this chapter will examine whether exports of the remaining exporters of subsidised rebar into Australia from China have caused material injury to the Australian industry producing like goods.

13.1. APPROACH TO CAUSATION ANALYSIS

The Commission notes that OneSteel lodged its application for the publication of a countervailing duty notice separately to its application for the publication of a dumping duty notice. Dumping investigation 301 for RIC was initiated on 12 August 2015 and subsidy investigation 331 was initiated on 17 February 2016.

The former Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (former Parliamentary Secretary) has published a dumping duty notice with respect to rebar exported to Australia from China on 13 April 2016 following investigation 300.

Where the combined effects of the dumping margin and the countervailable subsidy cause material injury to an Australian industry producing like goods, section 269TJA allows the Parliamentary Secretary to publish either a dumping duty notice, a countervailing duty notice, or both dumping and countervailing duty notices at the same time.¹⁴

Noting that the dumping investigation has concluded and that a dumping duty notice has already been published with respect to these goods due to the injurious effect of dumped goods on the Australian industry in the same investigation period, the Parliamentary Secretary will not be able to publish dumping and countervailing duty notices at the same time. Accordingly, the Commissioner does not recommend that the Parliamentary Secretary rely on section 269TJA as a basis for publishing countervailing duty notices with respect to the goods that are subject to this investigation.

As such, the Commission is unable to rely on section 269TJA to consider the combined effects of dumping and subsidisation for the purposes of being satisfied that material injury has been or is being caused to the Australian industry for this investigation. Instead, when considering if subsidies have caused material injury to the Rebar industry, the Commission has considered the legislative test for publishing a countervailing duty notice under subsection 269TJ without reference to section 269TJA, and in the injury analysis that follows has attempted to isolate the injurious effects of the subsidisation from the effects of dumping.

¹⁴ Refer to the explanatory memorandum to the *Customs Legislation (Tariff and Anti-Dumping) Amendment Bill 1992*, which inserted section 269TJA into the *Customs Act 1901*. A copy of the explanatory memorandum is available on the Austlii website: http://www.austlii.edu.au/au/legis/cth/bill/em/clcaab1992637/memo_0.html.

Section 269TAE outlines the factors that the Parliamentary Secretary may take into account in determining whether, for the purposes of section 269TJ (publishing a countervailing duty notice), material injury to an Australian industry has been caused by the subsidised goods.

In Appendix 2 of this report it was indicated that the Commission has found that the Australian industry has suffered injury in the form of:

- price depression;
- price suppression;
- less than achievable profits and profitability;
- reduced employment;
- less than full capacity utilisation; and
- reduced value of assets employed in the production of rebar.

However, in its consideration of whether the Australian industry would have performed better if not for the subsidised goods, the Commission has also found that the Australian industry has suffered injury in the form of:

- loss of sales volumes;
- less than achievable market share; and
- reduced value of capital investment in the production of rebar.

In testing these allegations and considering whether the injury observed is material and has been caused by exports of rebar from China, the Commission has adopted a ‘but for’ analytical approach.¹⁵ Under a ‘but for’ analytical method it may be possible to compare the current state of the industry, to the state the industry would likely have been in, had the exported goods not been subsidised. However the Commission notes that in accordance with its *Anti-Dumping Policy Manual* there must be a compelling explanation as to why causation exists in the absence of any coincidence.¹⁶

The Commission analysed the following factors in assessing the causal link between the subsidised imports from China and the price injury of the Australian industry:

- size of the subsidy margins;
- price undercutting;
- the impact of increased prices on volumes; and
- price suppression and depression.

The Commission has also considered other possible causes of injury.

In conducting this analysis, the Commission was mindful of its finding that purchasing decisions in the Australian rebar market are predominantly based on price and buyers can easily switch their purchases to suppliers that offer lower prices.

13.2. SIZE OF THE SUBSIDY MARGINS

¹⁵ Anti-Dumping Commission, *Dumping and Subsidy Manual* (November 2015), pp 121-124

¹⁶ Anti-Dumping Commission, *Dumping and Subsidy Manual* (November 2015), p 124

The Commission has found that rebar exported by the remaining two Chinese exporters were subsidised at rates ranging between 22.96 per cent and to 25.17 per cent, which are above negligible levels (of two per cent). The uncooperative and all other exporter rate was calculated at 29.61 per cent.

13.3. PRICE UNDERCUTTING

Price undercutting occurs when imported goods are sold at a price below that of the Australian produced like goods. The Commission has conducted an analysis of price undercutting based on verified sales and pricing data sourced from two cooperating importers and OneSteel. The two cooperating importers collectively account for approximately 89 per cent of all subsidised rebar imports from China.

The Commission has compared the weighted average selling prices of subsidised rebar (in straight lengths and coils) imported by the two cooperating importers with OneSteel's weighted average prices over the investigation period. The comparison was done on a free into store basis.

The Commission found that Chinese exports from these two cooperating importers were consistently lower than the other prices available within the Australian domestic market, including OneSteel's prices and the price of rebar imported from other countries.

The Commission found that over the investigation period that Chinese imports of rebar undercut OneSteel's prices by rates that range from between 2.5 per cent to 11.8 per cent.

The Commission has also done further undercutting analysis to focus on the effects of the countervailing subsidies. Specifically, the Commission has looked at the benefits the exporters received by way of the identified countervailing subsidy and removed this benefit from their selling price.

Figure 16 indicates that when removing the amount of countervailable subsidies received from the price of rebar sold into the Australian market (the purple and green lines) these imports no longer undercut OneSteel's prices (shown in figure 16 as the red and blue lines).

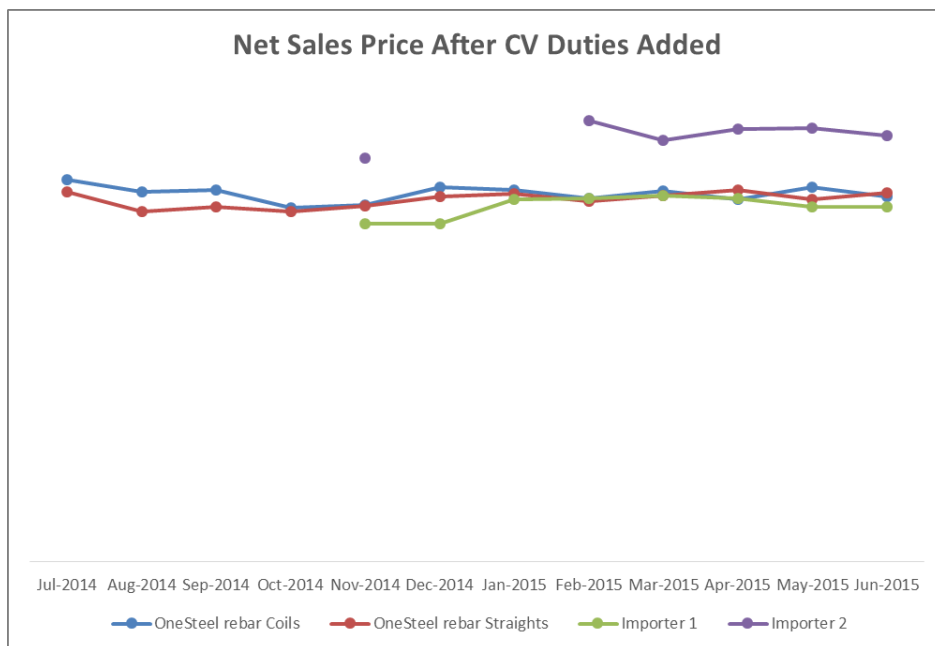


Figure 16 - Price Undercutting with the Effects of the Subsidies Removed

13.4. PRICE DEPRESSION

Price depression occurs when there is a reduction in prices for the Australian industry's products.

The Commission noted in Chapter 6 that prices have been depressed and OneSteel was not able to increase its prices in line with broad market prices as demonstrated by in the Manufacturing Price Index shown in Figure 8.

The Commission has found that import offers and movements in the price of imported rebar are leveraged by customers in their negotiations with OneSteel. In order to remain competitive, OneSteel must respond to the price of imported products by reducing its price offers.

At the Australian industry verification visit, OneSteel provided evidence to the Commission of its price setting practices. This evidence indicates that it constantly monitors price offerings in the market and that a key determinant for its prices to external customers was the price of imports.

The Commission considers that the requirement to compete with subsidised imports from China has had a significant impact on OneSteel's ability to increase its prices.

The Commission considers that without the presence of subsidised exports from China, OneSteel's customers may reference prices from other countries during their negotiations which were higher during the investigation period.

13.5. PRICE SUPPRESSION

The Commission considers that an indicator of price suppression is when Australian industry is unable to set prices at a point which cover costs. As indicated in Figure 17, OneSteel's unit

costs exceeded its unit prices for the first two quarters of 2014/15, and unit prices were above unit costs for the last two quarters of the financial year.

The Commission considers that OneSteel's recovery in the last two quarters of 2014/15 is attributed to a decrease in costs rather than an increase in prices. OneSteel's profitability only recovered following a sharp reduction in costs, while over the entire injury analysis period prices remained lower than they were at the start of the injury analysis period.

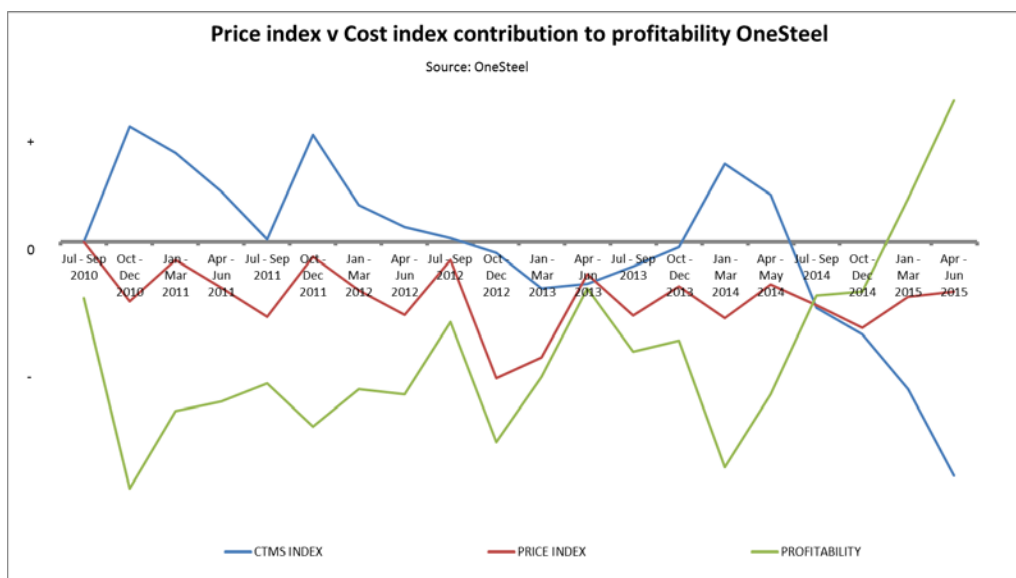


Figure 17 - Contribution to Profitability (Cost v Price)

This analysis shows that while the gap between OneSteel's prices and costs have narrowed during the investigation period, this has not been because of OneSteel's ability to increase its prices to cover its costs but rather because OneSteel has embarked on a cost reduction exercise.

The Commission considers that, 'but for' subsidised goods, OneSteel may have been in a better position to achieve pricing at levels that are not suppressed.

13.6. THE IMPACT OF UNDERCUTTING ON VOLUMES AND MARKET SHARE

The Commission has observed that OneSteel's volumes and market share improved over the investigation period.

The Commission notes that there has been a low rate of growth in the rebar market. The Commission understands that rebar demand is mainly driven by the building and construction industry and that there is no commercially viable substitute product for rebar.

The Commission considers that the increase in Chinese exports has been at the expense of other importing countries rather than OneSteel's sales as indicated in Figure 18 which demonstrates that China has increased its volume of exports to Australia in the investigation period while Investigation 264 countries volumes have declined. This is supported by the growth in OneSteel's sales volume and market share.

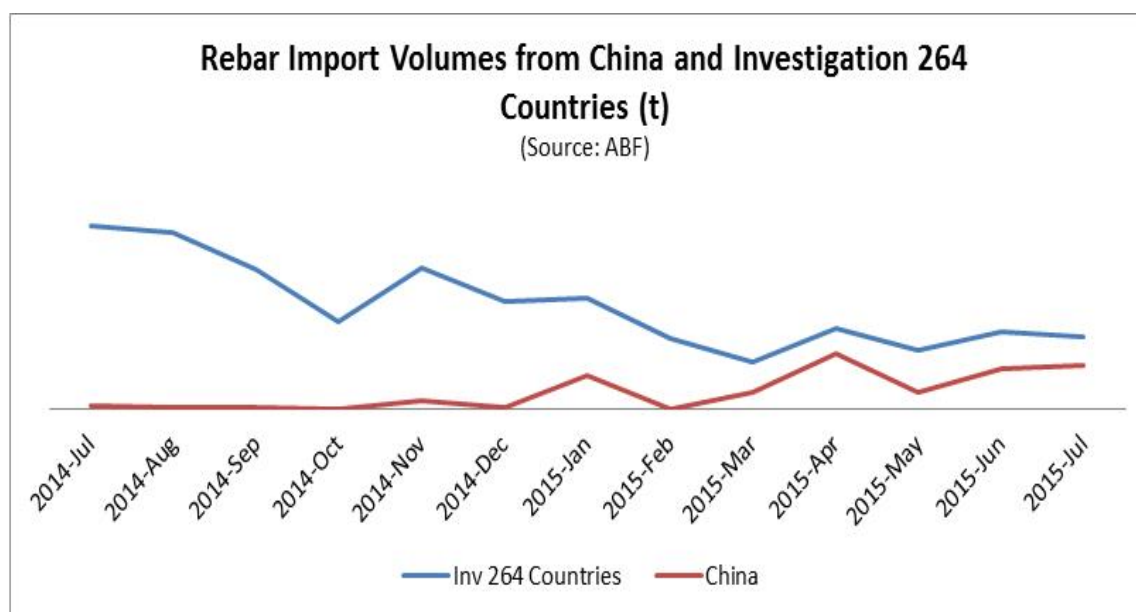


Figure 18 - Import Volumes of Inv. 264 Countries v China

Figure 18 demonstrate that the increase in volumes from China is not due to a significant increase in the size of the market, but to a change in purchasing decisions. Chinese exporters have captured volume at a time when overall import levels of rebar are falling in Australia.

The Commission observed that exports of subsidised rebar have undercut, and gained a price advantage over OneSteel.

The Commission considers that the price sensitive nature of the market would support a conclusion that OneSteel may have been able to do better on sales volumes and market share if not for the subsidised goods.

As indicated in Chapter 6 of this report, the Australian rebar market has grown since 2011/12 and has been stable between 2013/14 and 2014/15. The Commission considers that sales of rebar exported from China have replaced falling sales of rebar from Investigation 264 countries and has prevented OneSteel from achieving further growth in sales volume and market share. In part, this may be due to price competitiveness relative to rebar from Investigation 264 countries.

The Commission considers that, but for the subsidised Chinese rebar, OneSteel may have had higher sales volumes and a greater market share.

13.7. THE IMPACT OF UNDERCUTTING ON PROFITS

The Commission considers that OneSteel may have been able to increase its sales volumes and may have achieved better prices in a market not affected by subsidised rebar exported from China.

The Commission has found that improvements in profitability have been primarily driven by reductions in costs.

An increase in price would have ultimately reflected positively on OneSteel's profits and profitability over the investigation period. Therefore, the Commission considers that

OneSteel may have suffered injury in the form of lower profits and profitability but for subsidised rebar exported from China.

13.8. OTHER RELEVANT ECONOMIC FACTORS

The Commission considers that the link between subsidised rebar exported from China and injury suffered by OneSteel in the form of price, profit and volume effects may have had a negative impact on OneSteel's decisions in respect of other economic factors, including its willingness and ability to maintain staffing levels, maintain investment in fixed assets, and the valuation of fixed assets used to produce rebar.

The Commission considers that OneSteel has suffered injury in the form of reduced:

- employment;
- reduced value of assets employed in the production of rebar; and
- reduced value of capital investment in the production of rebar

related to the production of rebar and that this injury may have been caused by rebar exported from China at subsidised prices.

The Commission considers that the reduced profit and profitability which has occurred due to reduced prices and lower volumes (with the associated increase in fixed costs) has limited its ability to achieve an acceptable rate of return from its production facilities. This in turn has limited the ability and willingness of OneSteel to invest in capacity expansion and has resulted in limited employment opportunities.

The Commission considers that the subsidised rebar from China may have impacted on profitability, which would have indirectly impacted on employment, asset valuations, and capital investment decisions.

13.9. INJURY CAUSED BY FACTORS OTHER THAN SUBSIDISATION

The Commission has considered the following other possible causes of injury including:

- the state of Australian domestic rebar market;
- the geographic size of Australia;
- the vertically integrated nature of Arrium
- fluctuations in Australian dollar exchange rate;
- the cost of billet production; and
- unsubsidised exports from China.

13.10. STATE OF AUSTRALIAN DOMESTIC REBAR MARKET

Based on the analysis of OneSteel's sales data and ABF import data, there was growth in the Australian market from 2010/11 to 2013/14. From 2012/13 to 2013/14 the growth rate declined to 1 per cent compared to 4 per cent and 10 per cent in the two prior years. The Commission calculated that the Australian rebar market volume did not change significantly between 2013/14 and 2014/15.

The Commission considers that the rebar market has been stable and there is no evidence suggesting that any factor in the Australian rebar market would have caused material injury to Australian industry.

13.11. GEOGRAPHIC SIZE OF THE AUSTRALIAN MARKET

The costs generated by the size of Australia have been considered, and the analysis has demonstrated that the imported goods are not necessarily sold to customers who are a significant distance from OneSteel production facilities. The Commission has found that several customers operate close to OneSteel's facilities and that this demonstrates consistent trends with those found across the market, mitigating the concerns regarding the geographic size of the market. This comparison has been taken on a free-into-store basis to ensure that the potential distortions are recognised. The Commission has not identified any injury based on costs incurred due to the size of Australia

13.12. VERTICALLY INTEGRATED NATURE OF ARRIUM LTD

The Commission considers that the finance costs incurred provide a reasonable assessment of the major costs associated with the integrated nature of Arrium Ltd where debts of the broader business must be carried by OneSteel. The Commission found that finance costs accounted for less than 1 per cent of the total CTMS. The Commission also reviewed the internal transfer pricing process, and found that the cost methodology utilised by OneSteel reflected Australian accounting standards whereby transfer prices internally are recognised at the lower of cost or market price.

The Commission therefore considers that the assertion that the vertical integration of the Arrium business leads to inefficiency causing injury is not supported.

13.13. FLUCTUATIONS IN THE EXCHANGE RATE

The Commission understands that exchange rate is a key factor that affects locally produced goods' competitiveness against imports.

The Commission's analysis has found that the Australian dollar depreciated during the investigation period. During the investigation period Australian dollar exchange rate fell approximately 17 per cent against the US dollar. The Commission is of the view that the decline in the Australia dollar during the investigation period is likely to have resulted in upward pressure on the price of imported rebar and caused prices of rebar in the Australian market to increase and thereby reduced any potential adverse impact of competition from imported rebar.

13.14. COST OF BILLET PRODUCTION

The Commission undertook an analysis of OneSteel's billet costs, including analysis of the source of the billet. This analysis indicated that the source of billet, whilst fluctuating for operational reasons, was predominately sourced via the electric arc furnace and that billet costs had reduced between 2013/14 and 2014/15 in a similar pattern with the international billet prices.

13.15. THE IMPACT OF UNSUBSIDISED GOODS

The Commission notes that the investigation of subsidisation in so far as it concerns Jiangsu Yonggang Group Co Ltd is recommended to be terminated based on negligible rates of subsidisation.

The Commission has undertaken further undercutting analysis to consider the impact of unsubsidised goods from Yonggang.

The Commission found that the unsubsidised Chinese rebar was sourced through a single importer and that these goods undercut OneSteel's prices during the investigation period.

13.16. THE COMMISSION'S CONSIDERATION OF OTHER POTENTIAL CAUSES OF INJURY

Based on the analysis completed, the Commission considers that:

- the state of Australian domestic rebar market;
- the geographic size of Australia;
- the vertically integrated nature of Arrium
- fluctuations in Australian dollar exchange rate; and
- the cost of billet production.

have not caused material injury to the Australian industry producing like goods.

The Commission has found that unsubsidised, or negligibly subsidised, rebar has undercut OneSteel's pricing and may be contributing to the injury suffered by OneSteel.

13.17. THE COMMISSION'S ASSESSMENT

The Commission has found that during the investigation period, exports of subsidised rebar from China have caused the Australian industry to suffer injury in the forms of:

- loss of sales volumes;
- less than achievable market share;
- price depression;
- price suppression;
- less than achievable profits and profitability;
- reduced employment;
- less than full capacity utilisation;
- reduced value of assets employed in the production of rebar; and
- reduced value of capital investment in the production of rebar.

The Commission considers that during the investigation period, the subsidised rebar exported from China has caused the Australian industry to suffer material injury. However, the Commissioner notes that to publish a notice under section 269TJ, the Parliamentary Secretary must be satisfied that material injury was caused by the subsidisation. As noted

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above, dumping duties have recently been imposed on the same goods, which were investigated over the same periods.

It was indicated in the SEF that while the Commission's analysis has attempted to separate out the injury caused by the countervailable subsidies from that caused by the dumping of rebar onto the Australian market, isolating these individual effects has been difficult.

The Commission notes that when a good is subsidised, and then dumped, onto the Australian market, it is likely to result in a single set of price and volume effects. Similarly, these price and volumes effects are likely to have a uniform flow on effect on OneSteel's profit and profitability, market share, employment and assets utilisation. As such trying to apportion some of this injury to the subsidisation of rebar as compared to the dumping of it would require the Commission to make a great deal of assumptions that would be arbitrary and imprecise.

As such, the Commission cannot isolate the injury caused by the subsidisation of rebar from the effect of it been dumped onto the Australian market. Therefore the Commission cannot be satisfied that, in and of itself, the subsidisation is causing material injury to Australian industry.

14. APPENDIX 4 - SUBMISSIONS RECEIVED IN RELATION TO INVESTIGATION 322

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

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

15. APPENDIX 5 – SUBMISSIONS FOLLOWING THE SEF

15.1. 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.

15.2. 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"> - Misunderstanding of statements made by Shiheng regarding the implications of the guarantees by other third parties; and - Incorrect calculation of the benefit. <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"> - OneSteel supports Commission’s findings in relation to the price, volume and profit effects of the subsidised imports for rebar and RIC; -Commission’s attempt to isolate and attribute injury to the subsidised imports is deficient and unconvincing; -OneSteel claims that the Commission has sufficient information to accurately assess the NIP; - 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. - OneSteel believes that Commission’s assessment of subsidy margin for Yonggang and Shagang are deficient; -OneSteel consider private entities (exporters) are SIEs; - Commission has failed to consider if the private entities are public bodies; and - Commissioner has failed to properly consider whether program 4 was regionally specific subsidy, therefore countervailable. 	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"> - The GOC supports the Commissioner’s proposed recommendation not to impose countervailing duties for rebar and RIC; - Integrated SIE of rebar and RIC manufacturers cannot confer a benefit on themselves in the form of steel billet at LTAR; - Chinese SIEs are not vested with, nor do they exercise, government authority and therefore cannot be considered to be public bodies; - The Commission’s consideration of whether billet was provided for LTAR is flawed; - The Commission’s consideration of whether coking coal was provided for LTAR is flawed; - The Commission’s consideration of whether coke was provided for LTAR is flawed; - Chinese banks are not public bodies and do not provide alleged interest rate subsidies; - The Commission’s consideration of whether there is a loan guarantee subsidy is flawed, bot legally and factually; and - The Commission has no evidence for the existence of other alleged subsidy programs such as program nos. 48, 57, 60, 160 and 176. 	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

15.3. 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.¹⁷ 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.

15.3.1. 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.*¹⁸

¹⁷ These programs are identical and will be referred to as program 177 for the remainder of this report.

¹⁸ *Dumping and Subsidy Manual*, page 91

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.

15.4. 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.

15.4.1. 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.¹⁹

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.

15.5. ‘PUBLIC BODIES’ OR ‘PRIVATE BODIES’

15.5.1. STATE INVESTED ENTERPRISES ARE ‘PUBLIC BODIES’

¹⁹ 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.

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.

15.5.2. 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

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),²⁰ 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]

²⁰ 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>

- 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.²¹ 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

²¹ CBSA, 2014, p14

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.²²

15.5.3. ARE 'PRIVATE ENTITIES' 'PUBLIC BODIES'?

In response to 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...

15.5.4. 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:

²² 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.

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.

15.6. 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 purchased 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.

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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 LTAR. The GOC states that it the idea that a fully integrated entity would be subsidising itself is contradictory.

15.6.1. 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 re 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.

15.6.2. 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 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.

15.6.3. THE COMMISSION'S RESPONSE

In 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.

15.7. 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 as Appendix 3 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.

15.7.1. 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 Appendix 5 of this report the Commission has included further analysis at section 5 of this appendix.

15.7.2. 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.

15.8. PROGRAM 3 – COKE PROVIDED BY THE GOVT AT LESS THAN ADEQUATE REMUNERATION

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.

15.8.1. 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’. In addition to Appendix 5 of this report the Commission has included further analysis at section 7.5 of this appendix.

15.8.2. 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.

15.9. 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'.

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.

15.9.1. 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 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 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.

15.10. 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.

15.10.1. 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 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.

16. APPENDIX 6: ASSESSMENT OF ADEQUATE REMUNERATION

16.1. ASSESSMENT OF ADEQUATE REMUNERATION FOR BILLET IN CHINA

Having determined that SIEs who supplied billets in China are ‘public bodies²³’ 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.²⁴

The Commission notes that in the current investigation, the GOC in its response 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.

16.2. 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

²³ Assessment of SIEs to be Public Bodies is at Appendix 5 of this report

²⁴ Investigation period for INV 300, INV 301, INV 322 and INV 331 is same (from 1 July 2014 to 30 June 2015)

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 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.

16.3. ASSESSMENT OF ADEQUATE REMUNERATION FOR COKING COAL IN CHINA

16.3.1. INTRODUCTION

After determining that SIEs that supplied coking coal in China are ‘public bodies’ for the purposes of the Act,²⁵ 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.²⁶

²⁵ Assessment of SIEs to be Public Bodies is at Appendix 5

²⁶ 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.

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 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.

16.3.2. 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.

16.3.3. 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.

16.3.4. 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.

16.3.5. EXTERNAL BENCHMARKS

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

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.

16.4. ASSESSMENT OF ADEQUATE REMUNERATION FOR COKE IN CHINA

16.4.1. 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 193,²⁷ 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

²⁷ Galvanised steel and aluminium zinc coated steel

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

16.4.2. 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.

Following the initiation of the rebar investigation on 23 December 2015 and following the initiation of the rod in coils investigation on 17 February 2016, the Commission provided two separate 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 Commission's website.

In the absence of any other information available, the information provided by the GOC could not be compared with any other major supplier of 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 price 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.

16.5. ASSESSMENT OF WHETHER STATE INVESTED ENTERPRISES ARE PUBLIC BODIES

16.5.1. 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).*

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)²⁸, where the Appellate

²⁸ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011.

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)*²⁹, 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.

16.5.2. 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;

²⁹ 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.

- 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):³⁰

- **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

³⁰ Appellate Body report DS379 at [318]

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.

16.5.3. 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

- 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.

16.6. 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

- ‘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) ³¹ 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);

³¹ 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.