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**FINAL REPORT**  
**REPORT NUMBER: 331**

ALLEGED SUBSIDISATION OF ROD IN COILS

EXPORTED FROM

THE PEOPLE'S REPUBLIC OF CHINA

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## 1. SUMMARY AND RECOMMENDATIONS

### 1.1. INTRODUCTION

This Final Report No. 331 (REP 331) has been prepared in response to an application for a countervailing duty notice lodged by OneSteel Manufacturing Pty Ltd (OneSteel).

OneSteel alleges that rod in coils (RIC) 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 Commissioner (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).<sup>1</sup>

### 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*<sup>2</sup> (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 15 January 2016, OneSteel lodged an application requesting the publication of a countervailing duty notice in respect of RIC exported to Australia from China. On 17 February 2016, the Commissioner initiated this investigation (number 331).

Anti-Dumping Notice No. 2016/14 provides further details relating to the initiation of this investigation and is available on the [public record](#) on the Anti-Dumping Commission's (the Commission) website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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<sup>1</sup> 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.

<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

### **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 RIC 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 RIC is 'like' to the imported goods, the subject of the application and investigation 331.

### **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 RIC 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 19 April 2016.

### **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 submissions in response to SEF 322 and 331 from the following interested parties:

- The Government of China;
- Hunan Valin Xiangtan Iron & Steel Co., Ltd;
- OneSteel Manufacturing Pty Ltd; and
- Jiangsu Shagang Group.

The Commission has considered each of the submissions and provides a summary of the grounds raised and the Commission's position in Appendix 5.

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

### **1.11. SUBSIDISATION**

In SEF 322 and 331, the Commissioner published preliminary subsidy margins. The Commission has conducted further analysis and has determined the following subsidy margins:

Exporter	Countervailable Subsidy Margin
Hunan Valin Xiangtan Iron & Steel Co. Ltd	26.40%
Jiangsu Shagang Group	1.60%
Uncooperative and All Other Exporters	31.93%

*Table1: Countervailable subsidy margins*

The Commission's analysis of the Government of China's subsidy programs is described in Chapter 5 and Appendix 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:

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

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 RIC from other possible causes that include the effect of RIC 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 margin for Jiangsu Shagang Group (Shagang) was found to be negligible. Therefore the Commissioner has terminated the subsidy investigation in relation to Shagang under subsection 269TDA(2).

### **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

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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 15 January 2016, OneSteel lodged an application requesting the publication of a countervailing duty notice in respect of RIC exported from China. On 17 February 2016, the Commissioner initiated this investigation (number 331).

OneSteel's application alleged that the Australian industry has suffered material injury caused by RIC exported to Australia from China at subsidised prices. Specifically, the applicant claims that the Australian industry had been injured through:

- price depression;
- price suppression;
- price undercutting;
- lost market share;
- lost sales volume;
- loss of revenue;
- loss of profits;
- loss of profitability;
- loss of employment;
- loss of capacity to produce the like goods; and
- loss of assets employed in the production of the like goods.

Anti-Dumping Notice No. 2016/14 provides further details relating to the initiation of this investigation and is available on the [public record](#).

### **2.2. PREVIOUS INVESTIGATIONS AND CURRENT MEASURES**

On 22 April 2016, following the Commissioner's investigation into the alleged dumping of RIC exported to Australia from China (case 301), anti-dumping measures in the form of a dumping duty notice were imposed on RIC exported to Australia by all exporters from China.<sup>3</sup>

The investigation period and the injury analysis periods are the same in the previous dumping investigation and this current countervailing investigation.

During the investigation period for this case, RIC exported to Australia from Indonesia, Taiwan and Turkey<sup>4</sup> was also the subject of a dumping investigation (case number 240). On 17 June 2015, anti-dumping measures in the form of a dumping duty notice were imposed on RIC exported to Australia from Indonesia other than by PT Ispat Indo and Taiwan.<sup>5</sup>

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<sup>3</sup> See [Public Record Case 301](#)

<sup>4</sup> On 14 May 2015, the Commissioner terminated part of Investigation 240, as it related to exports from Turkey.

<sup>5</sup> See [Public Record Case 240](#)

### **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 RIC 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 Parliamentary Secretary allows, place on the public record an SEF on which the Commissioner proposes to base the recommendations in relation to the application.

The initiation notice for RIC advised that the SEF would be placed on the public record by 6 June 2016. On 6 June 2016, the former Parliamentary Secretary under section 269ZHI extended the deadline for the publication of the SEF to 21 July 2016. 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.

On 8 August 2016, the Commissioner published an SEF in relation to two separate investigations (rebar: 322 and RIC: 331).<sup>6</sup> 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 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 had preliminarily found that one exporter of RIC from China, Jiangsu Shagang Group Ltd (Shagang), has a negligible subsidy margin and the investigation would be terminated in so far as it related to that exporter.

In the SEF, the Commissioner also indicated that notwithstanding a finding of injury caused by subsidised goods, the injury caused by subsidisation alone cannot be isolated, and when considered with injury caused by dumping of the goods, has been remedied by the

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<sup>6</sup> The SEF was completed on 5 August 2016 and was available on the public record on 8 August 2016, the next business day.

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publication of a dumping duty notice with respect to the goods. Accordingly, for all exporters of RIC from China other than Shagang, 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.

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 Appendix 4 and Appendix 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](#) on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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

### 3. THE GOODS UNDER CONSIDERATION

#### 3.1.LEGISLATIVE FRAMEWORK

Subsection 269TC(1) requires that the Commissioner to 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:

*Rod in coils, whether or not containing alloys, that have maximum cross sections of less than 14mm.*

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

#### 3.3.TARIFF CLASSIFICATION

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

- 7213.91.00 with statistical code 44;
- 7227.90.90 with statistical code 02.

The accurate identification of the tariff classifications assists the Commission in its collection and analysis of trade data for the good. 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 do not include hot-rolled deformed steel reinforcing bar in coil form, commonly identified as rebar or debar, and stainless steel in coils.

### 3.5.TARIFF CONCESSION ORDERS

There is currently no tariff concession order applicable to the goods which are the subject of investigation 331.

### 3.6.THE 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 RIC in Australia over the investigation period.

The Commission found that OneSteel undertakes at least one substantial process of manufacture in producing RIC 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 COMMISSION'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 Commission has found that OneSteel produces goods that are 'like' to the goods under consideration for the following reasons:

- the primary physical characteristics of the goods and the locally produced goods are similar, being round steel RIC in sizes up to 14mm;
- 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, exhibit a high degree of substitutability in sourcing arrangements and there are few (if any) branding benefits associated with the goods;
- the goods and the locally produced goods are functionally alike as they have a similar range of end uses, after being subjected to further processing, being primarily used for reinforcing concrete or being drawn to manufacture wire; and

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- 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 application being considered in investigation 331, as defined in subsection 269T(1).

## 4. THE AUSTRALIAN MARKET

### 4.1. MARKET STRUCTURE AND DISTRIBUTION

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

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

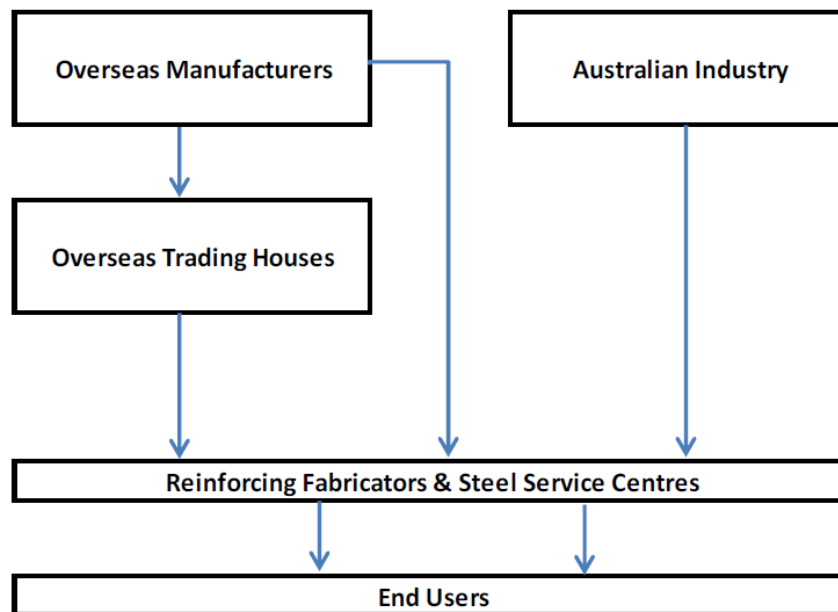


Figure 1 - Distribution Channels

The Commission has found that the key market segments for RIC are commercial and residential construction, wire, mining and resource construction, and, to a lesser degree, engineering fabrication and springs.

In its application OneSteel stated that RIC of less than 14mm diameter is a semi-finished intermediate feed material that is largely utilised by the wire manufacturing industry. Wire manufacturers subject the RIC product to cold drawing processes which produces wire for use in a variety of applications which include:

- Concrete reinforcing mesh manufacturing (Steel in Concrete);
- Wire manufacturing (wire rope, springs, nails, fencing);
- Mine mesh manufacturing;
- General manufacturing; and
- Reinforcing ligatures.

The Commission notes that low carbon content RIC may either have alloys added or undergo a separate process used to produce a special purpose RIC distinct from what would be

typically used in the mesh and wire sector. OneSteel also advised that most specialist grades, including spring grades, require a steel billet with lower levels of residual elements that is best produced through a blast furnace rather than an electric arc furnace process where higher residual element levels are likely due to the scrap input.

#### **4.2.DEMAND VARIABILITY**

Demand for RIC is primarily in the following markets:

- Residential Construction
- Commercial Construction
- 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 estimated that the size of the Australian market for RIC, supplied by the Australian industry and imports has been approximately 600,000 tonnes in each year of the injury analysis period. The size of the market for RIC is shown in Figure 2.

From 2011/12 to 2012/13, the size of the Australian market for RIC contracted slightly, before recovering in 2014/15 and growing slightly in the remaining period. The Commission has found that the market for RIC is currently growing despite a minor reduction in volume at the start of the injury analysis period.

This view is supported by independent research compiled by IBISWorld.<sup>7</sup> An IBISWorld report indicated that the market for iron and steel in Australia (which RIC is a subset of) is expected to grow on average by 1.1 per cent per year until 2021 due to continuing infrastructure investment.

Over the injury analysis period, the Australian industry's sales volume was generally consistent with the trend in the Australian RIC market as a whole. The slight contraction in 2012/13 was exacerbated by an increase in imports, though this was reversed by FY2014/15 where total market volumes exceeded 2011/12 tonnage and imports had fallen. This decrease in imports led to an increase in the Australian industry's market share for the year.

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<sup>7</sup> IBISWorld Business Environment Report, F3325 - Domestic price of iron and steel, July 2015



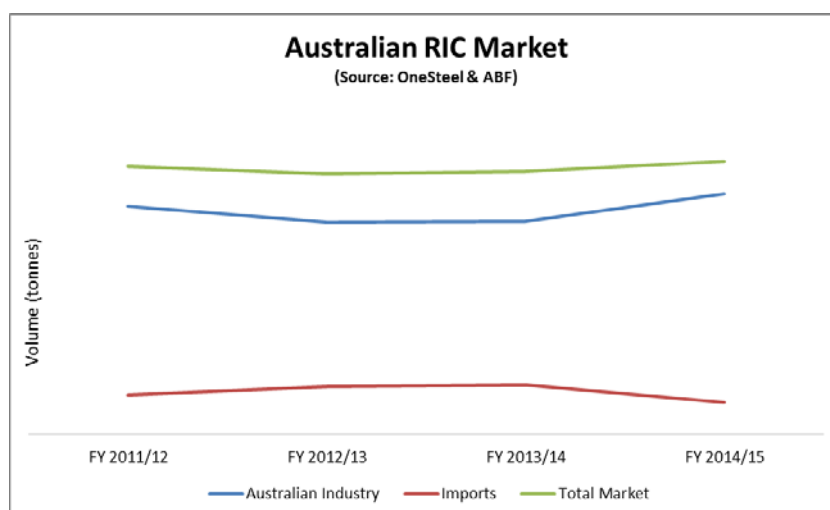


Figure 2 - Australian RIC Market

#### 4.4.MARKET CHARACTERISTICS

The Commissioner has found:

- the Australian market for RIC is supplied by locally produced goods and imported goods from a range of countries including China;
- OneSteel supplies well over half of the RIC market in Australia;
- RIC is an intermediate good, and is purchased by fabricators to produce other products;
- there is minimal product or brand differentiation for RIC;
- RIC is generally 'homogenous' in nature;
- given the homogenous nature of RIC, the market is characterised by significant price sensitivity where price is the major criteria in customers' purchasing decisions;
- the standardised nature of RIC means that purchasers of RIC 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 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.

The Commission, in making these findings has had regard to the information verified at the visit to OneSteel.

## 5. SUBSIDY INVESTIGATION

### 5.1. INVESTIGATED PROGRAMS

The Commissioner has found that 138 subsidy programs were received by exporters of RIC 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 Commission received submissions in response to SEF 322 and 331 from the following interested parties:

- The Government of China;
- Hunan Valin Xiangtan Iron & Steel Co., Ltd;
- OneSteel Manufacturing Pty Ltd; and
- Jiangsu Shagang Group.

The Commission has considered each of the submissions and provides a summary of the grounds raised and the Commission's position in Appendix 5. The public version of these submissions can be found on the [public record](#).

### 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 RIC (per tonne) using the volume of sales of the goods by each cooperative exporter. Exporter specific subsidy margins have been calculated and expressed as a percentage of export price for each selected exporter with reference to the specific programs that conferred a benefit to that exporter.

Export prices were established for each exporter consistently with the findings of investigation 301. Hunan Valin's export price was calculated under subsection 269TAB(1)(a), Shagang's export price was calculated under subsection 269TAB(1)(c) and the uncooperative and all other exporter export price was calculated under section 269TAB(3).

The Commission's assessment of subsidy margins is set out in **Confidential Appendix 1 – Hunan Valin subsidy margin; Confidential Appendix 2 – Jiangsu Shagang Group subsidy margin; and Confidential Appendix 3 – Uncooperative and All Other Exporters' subsidy margin**. These appendices indicate the individual margins and the method of allocating subsidies received.

Table 1 indicates the subsidy margin calculations for cooperative and uncooperative exporters of RIC.

Exporter	Countervailable Subsidy Margin
Hunan Valin Xiangtan Iron & Steel Co. Ltd	26.40%
Jiangsu Shagang Group	1.60%
Uncooperative and All Other Exporters	31.93%

*Table2: Countervailable subsidy margins*

For goods exported by Jiangsu Shagang Group (Shagang), the countervailable subsidisation was determined to be negligible. The Commissioner therefore must terminate the investigation in relation to Shagang.

#### 5.3.2. UNCOOPERATIVE EXPORTERS

For the uncooperative exporters the lowest export price of the cooperative exporters of RIC 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 Government of China (GOC) advice regarding the individual enterprises that had 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 138 programs found to be countervailable in relation to RIC 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.

#### 5.5.THE COMMISSIONER'S ASSESSMENT

The Commissioner finds that during the investigation period all exporters of RIC from China have received countervailable subsidies and that the subsidy margin was not negligible for

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all exporters other than Shagang. The Commissioner also finds that the volume of subsidised goods exported to Australia during the investigation period from China was not negligible.

As described in TER 331, Shagang's subsidy margin was found to be negligible, therefore the Commissioner must terminate the subsidy investigation in relation to Shagang under subsection 269TDA(2).

## **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 1 July 2011 to 30 June 2015. The purpose of the injury period is to allow the Commission to identify and examine longer trends in the market for RIC which in turn assists 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 data, including data on production, cost and sales data for RIC 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.

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 RIC exported into Australian from China (investigation number 301). 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 301).

### **6.2. THE COMMISSIONER'S FINDINGS**

The injury findings summarised here are the same as those described in the SEF and in dumping investigation 301 into RIC exported from China over the same investigation period.

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

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

The Commissioner has found that the evidence does not support a finding that volume and market share injury are present in the RIC market.

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

## 7. HAVE SUBSIDIES CAUSED MATERIAL INJURY TO THE AUSTRALIAN INDUSTRY?

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 301. These reports are available on the [public record](#).

### 7.1. APPROACH TO CAUSATION ANALYSIS

OneSteel lodged its application for the publication of a countervailing duty notice separately to its dumping application. Dumping investigation 301 for RIC was initiated on 12 August 2015 and this subsidy investigation 331 was initiated on 17 February 2016. The former Parliamentary Secretary published a dumping duty notice with respect to RIC exported to Australia from China on 22 April 2016 following investigation 301.

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.<sup>8</sup>

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 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.

As indicated in Chapter 6 of this report and in the SEF, the Commissioner has found that the Australian industry has suffered injury in the form of:

- price depression;
- price suppression;

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<sup>8</sup> 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](http://www.austlii.edu.au/au/legis/cth/bill/em/clcaab1992637/memo_0.html).

- less than achievable profits and profitability;
- reduced employment; and
- reduced value of assets employed in the production of RIC.

The Commission has 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 including:

- the state of Australian domestic RIC market;
- the geographic size of the Australian market;
- the vertically integrated nature of Arrium Ltd;
- fluctuations in Australian dollar exchange rate;
- the cost of billet production; and
- the impact of unsubsidised goods from China.

In conducting its analysis, the Commission was mindful that purchasing decisions in the Australian RIC market are predominantly based on price and buyers can easily shift 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 Commissioner'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 RIC, 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 RIC 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 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 notes that in this case the NIP (whether it is calculated in a manner proposed by OneSteel, or in the manner carried out by the Commission) is less than the normal values for Hunan Valin.

### 7.4.THE COMMISSIONER'S ASSESSMENT

The Commissioner is unable to isolate the cause of the injury caused by the subsidisation of RIC from other possible causes that include the effect of RIC 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 301. 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	Subsidy margin	Subsidy Margin excluding programs 1 – 4
Hunan Valin Xiangtan Iron & Steel Co. Ltd	26.40%	0.58%
<i>Uncooperative and All Other Exporters</i>	31.93%	6.10%

*Table 1 - RIC 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 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.

## 10. APPENDICES AND ATTACHMENTS

<b>Appendix 1</b>	Summary of Countervailable Programs
<b>Appendix 2</b>	Economic Condition of the Industry
<b>Appendix 3</b>	Analysis of the cause of injury as described in SEF 322 and 331.
<b>Appendix 4</b>	Submissions received in relation to the investigation.
<b>Appendix 5</b>	Submissions received following the publication of the SEF.
<b>Appendix 6</b>	Assessment of adequate remuneration programs
<b>Confidential Appendix 1</b>	Hunan Valin subsidy margin
<b>Confidential Appendix 2</b>	Jiangsu Shagang Group subsidy margin
<b>Confidential Appendix 3</b>	Uncooperative and All Other Exporters subsidy margin.

## 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 138 countervailable subsidy programs were received by exporters of RIC from China.

The findings in relation each program investigated are outlined in the tables 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 China” and “Famous Brands of China”	Grant	Yes
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

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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)
15	Innovative Experimental Enterprise Grant	Grant	Yes
16	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
17	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
19	Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan	Grant	Yes
20	Water Conservancy Fund Deduction		Yes
21	Wuxing District Freight Assistance	Grant	Yes
22	Huzhou City Public Listing Grant	Grant	Yes
23	Huzhou City Quality Award	Grant	Yes
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
25	Wuxing District Public List Grant	Grant	Yes
26	Anti-dumping Respondent Assistance	Grant	Yes
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

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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)
37	Grant for elimination of out dated capacity	Grant	Yes
38	Grant from Technology Bureau	Grant	Yes
39	High and New technology Enterprise Grant	Grant	Yes
40	Independent Innovation and High Tech Industrialization Program	Grant	Yes
41	Environmental Prize	Grant	Yes
42	Jinzhou District Research and Development Assistance Program	Grant	Yes
43	Debt for equity swaps	Equity Program	No
44	Equity infusions	Equity Program	No
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 Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
109	239	Large heat input welding high strength bainite engineering machinery steel industrialization project assistance funds allocated by provincial department of finance	Grant	No
110	240	Develop offshore-flat structure steel awards allocated by municipality science and technology promotion funds	Grant	No
111	241	Government Grants	Grant	No

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Program number for rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
112	233	Industrial Waste Water Resources Recycling Project	Grant	Yes
113	242	Coke Dry Quenching Project	Grant	No
114	231	Sewage Treatment Project of the Whole Plant	Grant	Yes
115	234	2007 Energy Technology 11_3# Blast Furnace Top Gas Recovery Turbine Unit (TRT)	Grant	Yes
116	235	360 M2 Sintering Machine Flue Gas Desulfurization Project	Grant	Yes
117	236	Coking 300M3/h phenolic and cyanide waste water extension project	Grant	No
118	243	The Second Set of 75 Tons/h Coke Dry Quenching Construction Project	Grant	No
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

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Program number for rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
128	232	Secondary flue gas deducting of converter of No.2 steel mill	Grant	Yes
129	252	Adopt dry bag filter system to transform original wet dust extraction system; renovation of the coking phenol-cyanogen sewage treatment station, processing capacity is 300tons/h; new construction of sewage treatment plant of ironmaking hole and gongnong gate,processing capacity is 7700tons/h;	Grant	Yes
130	253	First sintering (360M2), second sintering (180m2), disposal of heavy metal of water treatment facility of nose flue gas purification system; 1# blast furnace wet dust extraction into dry dusting; comprehensive utilization of heavy metal pollution.	Grant	Yes
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



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Program number for rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
139	259	Wide and Heavy Plate Project	Grant	Yes
140	260	Energy-saving Technical Renovation Project of Replacing Old Boiler and Recycling Diffused Gas	Grant	No
141	262	Energy Saving and Emission Reduction & Technical Reform Project for Improving the Quality of the Products in Bar Mill Government Grants received from Xiangtan City Bureau of Finance (Tancaiqi NO.9, 2014)	Grant	Yes
142	263	Renovation of improving the quality of the bar product financial grant received from Xiangtan City Finance	Grant	Yes
143	264	Power demand side management project assistance funds of 2014 (Xiangcaiqizhi (2014) No.107)	Grant	Yes
144	265	Financial Grant of 2014	Grant	Yes
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

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Program number for rebar	Program number for Rod in coil	Common Program Name	Program Type	Countervailable In relation to the goods (Yes/No)
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*

**Table 3 – Programs specific to RIC**

Program Number for RIC	Program Name – RIC	Program Type	Countervailable In relation to the goods (Yes/No)
47	Energy Saving Grants	Grant	No
48	Technology Development Grants	Grant	Yes
49	Land Acquisition Compensation	Grant	No
50	Other Government Grants/Subsidies	Grant	No
51	Other rebates (Government Grants)	Grant	No
52	Interest (Financial) discount	Grant	Yes
53	The 43.3 thousand yuan investment in the Environmental Special Protection Fund	Grant	No
54	The 13.4 thousand yuan investment in the Environmental Special Protection Fund	Grant	No
55	The 62.28 million yuan investment in the Environmental Special Protection Fund	Grant	No
56	Saving technological transformation items (Head Subsidy)	Grant	No
57	Environmental Protection Project Grants	Grant	Yes
58	"Provincial key industrial restructuring and revitalization project special boot funds"	Grant	No
59	"Financial assistance"	Grant	No

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60	"Development of special guide funds"	Grant	No
61	"Investment cooperation agreement Award Jiangsu Huaian Qingpu Industrial Park"	Grant	No
62	Other Grants/Subsidies	Grant	No
63	Refund of Individual Income Tax	Grant	No
64	Supporting Fund for Separation of Non-core Business	Grant	No
65	Subsidy	Grant	Yes
66	Subsidy Granted by Development Bureau of Zhangjiagang	Grant	No
67	Supporting Fund Granted by Management Committee of Jiangsu Yangtze International Metallurgical Industrial Park	Grant	No
68	Subsidy for Transportation	Grant	No
69	Award Granted by Management Committee of Jiangsu Yangtze International Metallurgical Industrial Park	Grant	Yes
70	2009 Import Discount Interest for Supported Enterprises	Grant	No
71	Subsidy for Technology Innovation	Grant	No
72	Subsidy Granted by Jiangsu Zhangjiagang Economic Development Industrial Corporation	Grant	Yes
73	Award for Development Granted by Jiangsu Zhangjiagang Economic Development Industrial Corporation	Grant	Yes
74	2013 Award for Localization of Invoice of Transportation	Grant	Yes
75	Award for Effective Utilization of Electricity	Grant	Yes
76	Special Fund for Energy Conservation, Emission Reduction and Development of Recycling Economy	Grant	No
77	2008 Import Discount Interest for Supported Enterprises	Grant	No

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78	Award for Enterprises with Advanced Human Resource Work	Grant	No
79	Special Fund for Environment Protection	Grant	No
80	Subsidy for Patent Application	Grant	No
81	Subsidy for Invention Patent Licensing	Grant	Yes
82	Fund for Technological Development Plan	Grant	No
83	Fund for Recycling Economy Standardization	Grant	No
84	Subsidy for Investment Abroad	Grant	No
85	2007 Award for Technology Innovation	Grant	No
86	2010 Award for Technology Innovation	Grant	No
87	2009 Award for Technology Innovation	Grant	No
88	2010 Special Guiding Fund for Development of Modern Service Industry	Grant	No
89	Subsidy for Graduates' Interning	Grant	No
90	Subsidy for Patent Licensing	Grant	No
91	2010 Fund for Human Resource Work	Grant	No
92	Special Fund for Development of Recycling Economy	Grant	No
93	2010 Special Discount Interest of Technological Innovation	Grant	No
94	Subsidy 31880	Grant	No
95	Award for Bigger and Stronger Enterprises	Grant	No
96	2010 Special Fund for Environment Protection	Grant	No
97	Subsidy for Management of Floating CCP Members	Grant	No
98	Award for Model Enterprise of Guiding and Updating of Human Resources	Grant	No

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99	Award for Model Organization of CCP	Grant	No
100	Award for Excellent CCP Activity	Grant	No
101	National Award	Grant	No
102	2010 Provincial Award for Scientific and Technological Progress	Grant	No
103	2011 Subsidy for Patent Pending of First Group	Grant	No
104	2011 Subsidy for Patent Licensing of First Group	Grant	No
105	2011 Subsidy for Patent Approved of First Group	Grant	No
106	2009 and 2010 Award for Tax Collection	Grant	No
107	2011 Award for Participation in Power Conservation in Summer	Grant	No
108	Subsidy for Blast Furnace Dehumidifying Reform Program	Grant	No
109	Subsidy for Listed Enterprises	Grant	No
110	2011 Subsidy for Patent Pending of Second Group	Grant	No
111	2011 Subsidy for Patent Application of Second Group	Grant	No
112	Import Discount Interest for Supported Enterprises	Grant	No
113	2011 Special Fund for Science and Technology	Grant	No
114	Subsidy for Needy CCP Members	Grant	No
115	Subsidy for Market Certificate	Grant	No
116	Subsidy for 333 Project Program of Fourth Phase	Grant	No
117	Subsidy for Water Conservation and Pollution Prevention	Grant	No
118	Award for Scientific and Technological Progress	Grant	No
119	Award for Human Recourses Training	Grant	No
120	2011 Subsidy for Doctor Plan	Grant	No
121	Subsidy for Civilized Entity	Grant	No

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122	Special Supporting Fund	Grant	No
123	Award for Outstanding Achievement in Technological Standardization	Grant	No
124	Subsidy for Community Activity	Grant	No
125	Special Fund for Seagull Plan	Grant	No
126	2012 Subsidy for Patent Licensing	Grant	No
127	2012 Subsidy for Patent Application	Grant	No
128	2012 Award for Metallurgy Scientific and Technological Progress	Grant	No
129	Fund for Postdoctoral	Grant	No
130	Subsidy for Patent Approved of Second Group	Grant	No
131	Supporting Fund for National Key Technology Program	Grant	No
132	Special Fund for Six Human Resources Program	Grant	No
133	Subsidy for Short Process Production Line of High-end Special Steel	Grant	Yes
134	Subsidy for Resource Recycling	Grant	Yes
135	Award for Excellent Invention Patent	Grant	No
136	Award for Patent	Grant	No
137	Award for Independent Innovation Program	Grant	No
138	Subsidy for Leadership Program	Grant	No
139	2012 Special Fund for Energy Conservation and Development of Recycling Economy	Grant	No
140	2012 Special Fund for Energy Conservation and Development of Recycling Economy (Clean Production Program)	Grant	No
141	2012 Special Fund for Energy Conservation and Development of Recycling Economy (Energy Efficiency Star Program)	Grant	Yes
142	2012 Special Fund for Energy Conservation and Development of Recycling Economy (Energy Auditing Program)	Grant	No

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143	Subsidy for Resource Recycling (Special Supporting Fund for Enterprises)	Grant	No
144	Subsidy for Water Conservation and Pollution Prevention Program	Grant	No
145	2012 Subsidy for Patent Pending of Third Group	Grant	No
146	2012 Subsidy for Patent Licensing of Third Group	Grant	No
147	2012 Subsidy for Patent Approved of Third Group	Grant	No
148	Subsidy Granted by Department of Finance of Zhangjiagang 37427	Grant	No
149	Subsidy Granted by Department of Finance of Zhangjiagang 37426	Grant	No
150	Award for Model of Publicity Construction	Grant	No
151	Special Fund for Postdoctoral of Sixth Group	Grant	No
152	Award for Informatization	Grant	No
153	Award for Westernization Trial Entity	Grant	No
154	2012 Award for Separation of Non-core Business	Grant	No
155	Fund for Caring and Helping Needy People	Grant	No
156	2012 Award for Purchase of Local Raw Materials	Grant	No
157	2012 Award for Purchase of Local Equipments	Grant	No
158	2012 Award for Technological Innovation	Grant	No
159	National Award Granted by Department of Finance of Jiangsu Province	Grant	No
160	Award for Technological Standardization	Grant	Yes
161	Food Allowance in Summer	Grant	Yes

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162	Special Supporting Fund for Enterprises	Grant	Yes
163	Subsidy Granted by Department of Finance of Suzhou	Grant	No
164	Subsidy Granted by Department of Finance of Zhangjiagang 0057570	Grant	No
165	2013 Subsidy for Patent Approved of First Group	Grant	No
166	2013 Subsidy for Patent Pending of First Group	Grant	No
167	Award for High-tech	Grant	No
168	Subsidy for Patent	Grant	Yes
169	Subsidy for Supervisory Control and Recycling Use of Material Flow	Grant	Yes
170	Subsidy for Transportation Insurance	Grant	Yes
171	Special Discount Interest of Loan	Grant	No
172	Subsidy for International Fair Trade	Grant	Yes
173	Award for Excellent Export Enterprise	Grant	Yes
174	2012 Award for High Quality Enterprise	Grant	Yes
175	Subsidy for Management in Jiangsu Yangtze International Metallurgical Industrial Park	Grant	Yes
176	Award for Scientific and Technological Progress in Zhangjiagang	Grant	Yes
177	2013 Award for Suzhou Scientific and Technological Progress	Grant	Yes
178	Subsidy for leading personnel	Grant	Yes
179	2013 Subsidy for Patent	Grant	Yes
180	Special Fund for Technology Innovation	Grant	Yes
181	Subsidy for Technology Development	Grant	Yes
182	Removal Compensation	Grant	Yes



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183	Subsidy for Invention Patent Application	Grant	Yes
184	Special Fund for Enterprises	Grant	Yes
185	Special Fund for Combination of Informatization and Industrialization	Grant	Yes
186	2014 Import Discount Interest	Grant	Yes
187	2013 Subsidy for Environmental Project	Grant	Yes
188	Supporting Fund for Enterprises	Grant	Yes
189	Subsidy for Enterprises	Grant	Yes
190	Award for Technological Service	Grant	Yes
191	Special Subsidy for 5#6#7# Sintering Desulfurization Program	Grant	Yes
192	Award for Copyright	Grant	Yes
193	Subsidy for CCP Activities	Grant	Yes
194	Provincial Subsidy for Application and Utilization of Innovation	Grant	Yes
195	Subsidy for Anticorrosion Program	Grant	Yes
196	Award for High-end Steel	Grant	Yes
197	2014 Award for Scientific and Technological Progress	Grant	Yes
198	Subsidy for Birth Control Work	Grant	Yes
199	Subsidy for Training	Grant	Yes
200	Award for Water Conservation	Grant	Yes
201	2014 Subsidy for Market Certificate	Grant	Yes
202	Subsidy for Human Resources and Social Security Work	Grant	Yes
203	Award for Scientific and Technological Progress, Third Prize	Grant	Yes
204	Award for Science and Technology	Grant	Yes
205	Subsidy for Production of High-end Anticorrosion Steel Using for Exploitation and Storage of Oil and Gas	Grant	Yes
206	Special Supporting Fund for Enterprise	Grant	No

## PUBLIC RECORD

207	2009 Award for Enterprise with Brand	Grant	No
208	Fund for night landscape lighting	Grant	No
209	Supporting Fund for Enterprise	Grant	No
210	Award	Grant	No
211	Subsidy for Importation	Grant	No
212	Special Award	Grant	No
213	Award for Advanced Service Industry	Grant	No
214	2013 Import Discount Interest for Supported Enterprises	Grant	No
215	Subsidy for Exportation with Self-owned Brand	Grant	Yes
216	2013 Top 100 Service Industry	Grant	Yes
217	Award for Updating Brand in Service Industry	Grant	Yes
218	Award for Operating Contribution to Service Industry	Grant	Yes
219	2014 Provincial Import Discount Interest	Grant	Yes
220	Subsidy for Participation in the Survey of Exportation	Grant	Yes
221	2014 Award for Steady Increase of Exportation	Grant	Yes
222	2014 Award for Exportation with Shagang's Self-owned Brand	Grant	Yes
223	Award for Large Taxpayer	Grant	Yes
224	Award for Innovative Product	Grant	No
225	Award for Advanced Service Industry Granted by Government of Suzhou City	Grant	No
226	Top 100 Service Industry in Jiangsu Province	Grant	Yes
227	2012 Award for Advanced Service Industry	Grant	Yes
228	Subsidy Granted by Department of Finance of Zhangjiagang	Grant	No

## PUBLIC RECORD

229	Pipeline steel Research and Development (R&D) Project Assistance Funds issued by Provincial Finance	Grant	No
230	Carry forward the government grants of on-line monitoring system of sintering machine nose flue gas into the non-operating income	Grant	No

*Table 3 – programs specific to RIC*

## 12. APPENDIX 2: ECONOMIC CONDITION OF THE INDUSTRY

### 12.1. APPROACH TO INJURY ANALYSIS

In considering allegations of injury, the Commission first examined the economic condition of the Australian industry over the injury analysis period 1 July 2011 to 30 June 2015. The purpose of the injury period is to allow the Commission to identify and examine longer term trends in the market for RIC which in turn assists 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 data, including data on production, cost and sales data for RIC 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 RIC exported into Australian from China (investigation number 301). Given that the investigation and injury analysis periods align in these two cases, and the applicant and the goods are identical, the Commission notes that the injury findings here are the same as those in the final report for dumping investigation 301.

### 12.2. VOLUME EFFECTS

The Commission reviewed sales information provided by OneSteel during the verification process. This identified improving volume trends for the Australian industry over the investigation period.

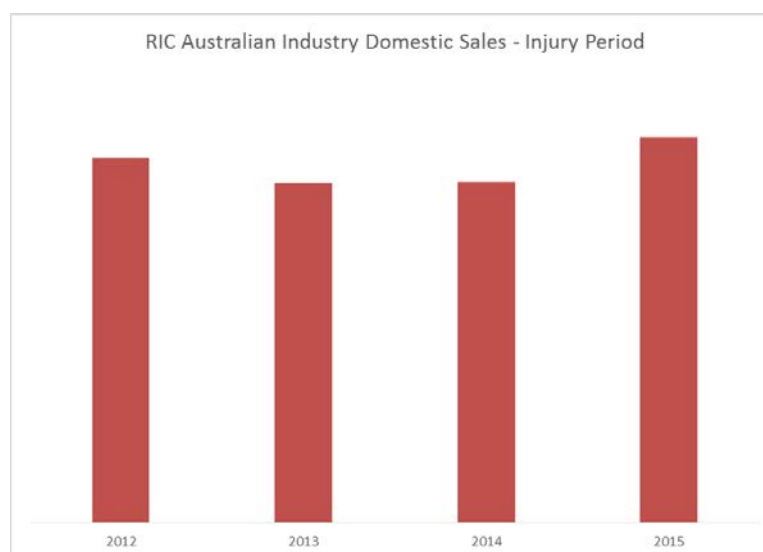
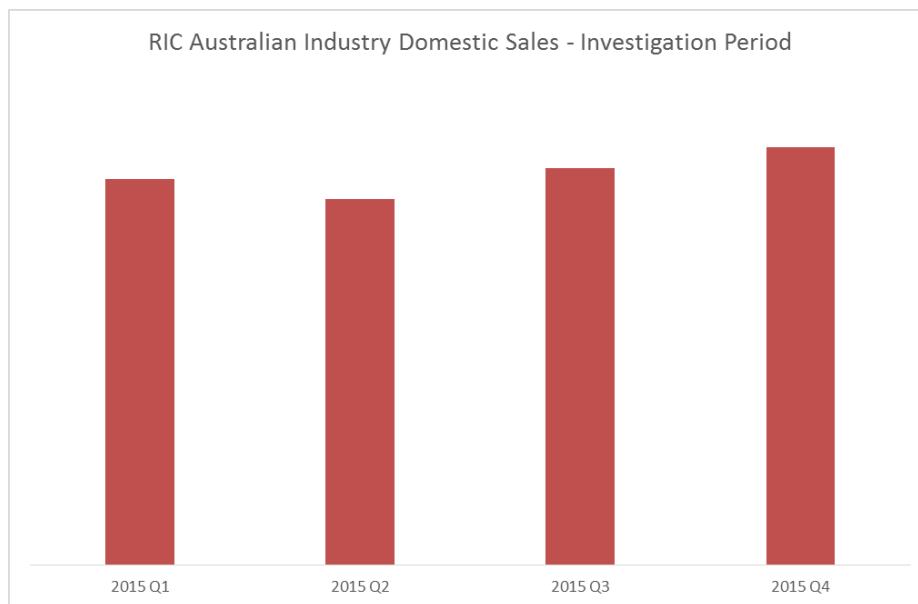


Figure 3 - Domestic RIC Sales - Injury Period

As demonstrated in Figure 3, over the injury period, RIC sales decreased in financial years 2013 and 2014, however recovered by financial year 2015. This is against a background of a steadily growing RIC market in Australia since financial year 2011/12 as demonstrated in Figure 2 in Chapter 4 of this report.



*Figure 4 - Domestic RIC Sales - Investigation Period*

Figure 4 indicates OneSteel's domestic sales volume of RIC during the investigation period. Specifically, it indicates that OneSteel's domestic sales volume of RIC decreased in Q2 2015, but more than recovered in Q3 and Q4 2015.

The Commission found during verification activities for Investigation 301, that several customers maintained a dual sourcing strategy for supply as a method of ensuring consistent supply of RIC.

The Commission has found that even with the dual sourcing strategies being maintained over the investigation period, OneSteel's sales volumes of RIC have increased over the timeframe in question.

### 12.3. MARKET SHARE

The Commission has found that imports of RIC made up less than 20 per cent of the Australian market over the injury inquiry period, and less than 12 per cent during the investigation period, and that the market grew over the investigation period.

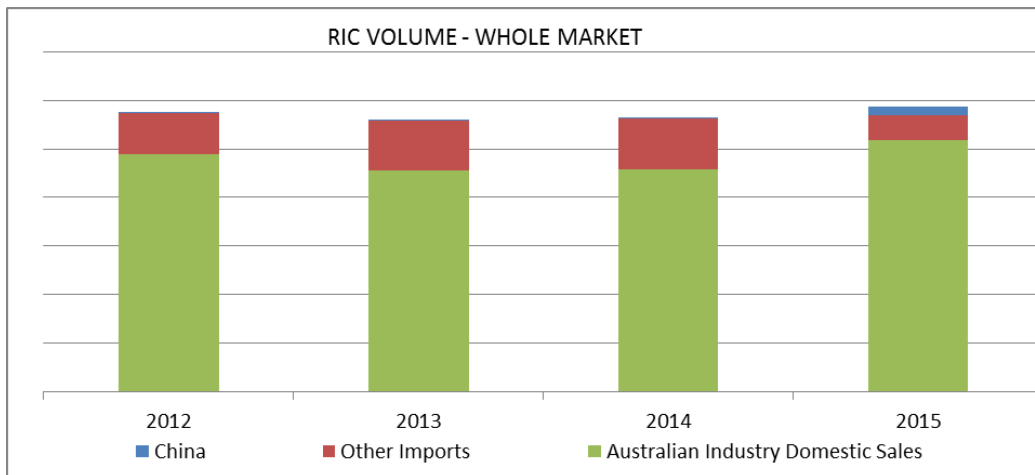


Figure 5 - Australian RIC Market

In addition, for the investigation period, the Commission has found that:

- China's share of the market grew by 25 times, driven by an increase in Chinese exports for RIC (14 per cent) and a decrease in other imports of RIC; and
- China became the third largest exporter of RIC to Australia, behind New Zealand and Indonesia. These three countries together accounted for over 80 per cent of imports of RIC during the investigation period.

The Commission has analysed the volumes of imports over the injury inquiry period and has found that Chinese RIC did not appear in the Australian market in substantial quantities until 2014. Figure 5 demonstrates that while there has been substantial increases in China's market share and the quantity of imports of RIC from China, the Commission notes that this still only represents a small proportion of the total market volume. Further, the information reviewed by the Commission indicates that while Chinese imports have grown, they have done so by partially replacing other imports of RIC, rather than eroding the market share of Australian industry.

This is demonstrated in Figure 6 which indicates that while Chinese volumes and market share increased, the decrease in all other exports has generated a net increase to Australian both volumes and market share over the period.

While RIC from China has captured market share, this increased market share has primarily been at the expense of other importers rather than OneSteel. OneSteel made representations that the substitution of goods found to be dumped in Investigation 240<sup>9</sup> was replaced by goods dumped from China which would otherwise be supplied by OneSteel.

The Commission has considered this view but notes that dual sourcing strategies by some of OneSteel's customers support a view that other export sources are likely to be considered to replace subsidised exports.

<sup>9</sup> More details on Investigation 240 are available [here](#).

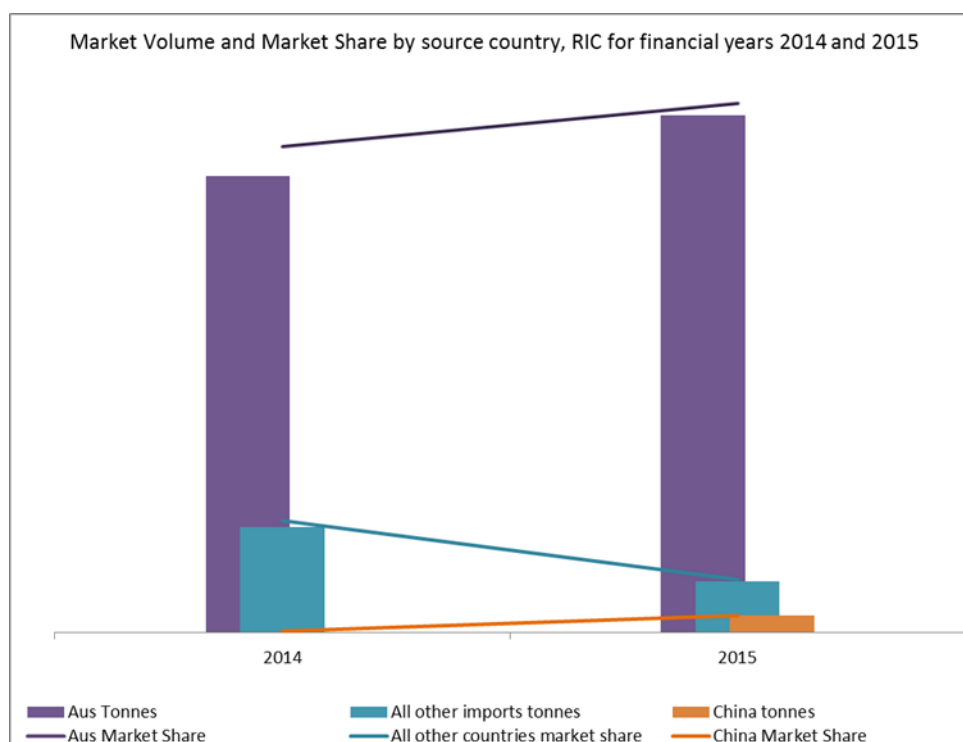


Figure 6 - RIC Volume & Market Share

## 12.4. PRICE EFFECTS

The Commission's analysis of price effects was conducted using verified sales data from OneSteel and cooperating exporters. The Commission did not include OneSteel's export sales. OneSteel has alleged that since entering the Australian market, RIC exported from China at a subsidised price has been sold at prices below other market participants.

The Commission has had a high level of cooperation in this investigation with the cooperating exporters whose sales represent 95 per cent of the import volume of RIC from China. The Commission considers that, as this sales data represents a significant majority of total imports from China for the investigation period, it allows a representative and accurate assessment of price effects on the Australian industry.

### 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 first needs to establish that the domestic price for RIC should have increased over the injury period. The Commission then examines whether that price increase has not occurred or whether the price increase is less than expected. One indicator of price suppression is the margin between revenues and costs.

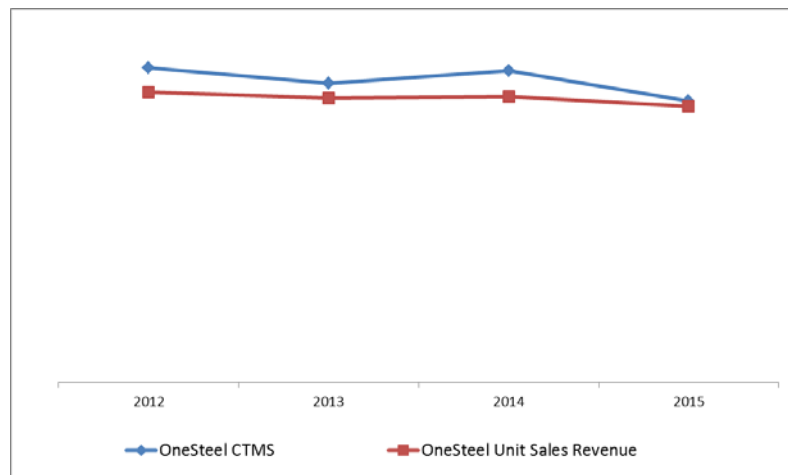
In determining whether price suppression has occurred the Commission may conduct<sup>10</sup>:

<sup>10</sup> Anti-Dumping Commission, *Dumping and Subsidy Manual* (November 2015), page 16

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- a comparison of prices with costs to assess whether over time (e.g. the injury analysis period) or within a specified period (e.g. the investigation period), prices have not increased at the same rate as cost increases; or
- an assessment as to whether the prices for the Australian industry's product are lower than prices that may have been achieved in the absence of the subsidised goods.

Figure 7 demonstrates movements in OneSteel's combined domestic weighted average unit costs and prices for RIC during the injury analysis period.



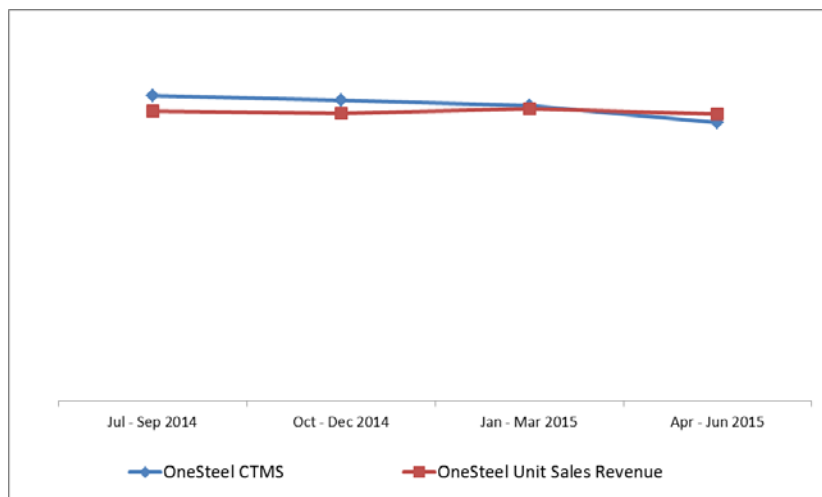
*Figure 7 - OneSteel RIC Profitability - injury period*

Figure 7 indicates that OneSteel's unit costs exceeded its unit prices from the 2011/12 financial year to the final quarter of 2014/15 financial year. As shown in Figure 7, the margin between costs and unit price narrowed in the last period, 2015, due entirely to a reduction in OneSteel's cost to make and sell RIC.

The Commission considers that over the investigation period, OneSteel would have aimed to be able to set prices that would have covered its fully absorbed cost to make and sell and also achieve a reasonable rate of return. OneSteel's ability to recover costs through increased revenues has previously been impacted by the existence of dumped goods from other jurisdictions.<sup>11</sup> Following investigation 240, measures were put in place and a price recovery was anticipated across the market due to the imposition of duties. Instead, following the imposition of securities and duties during Investigation 240 from March 2015 onwards, prices fell further as demonstrated in Figure 8.

<sup>11</sup> See investigation 240 [here](#).





*Figure 8 - OneSteel RIC Profitability - investigation period*

Figure 8 indicates product profitability over the investigation period, and indicates that OneSteel's unit sales prices were only profitable in quarter 4, 2014/15 and that the weighted average price per unit had trended downwards across the investigation period. This profitability was driven by a reduction in costs rather than any improvement in prices.

OneSteel's profit and profitability improved in the final quarter of 2014/15 which may indicate a reduction in price suppression or depression. OneSteel has indicated to the Commission that the improvement in its unit profits and profitability was due to:

- decreases in its costs as a result of falling input material prices, mainly iron ore and scrap steel, and cost cutting and efficiency programs improving unit margins; and
- reduction in import volumes of RIC from countries nominated in Investigation 240, generating increased volumes and reduced fixed costs per unit of production for OneSteel.

The Commission has verified OneSteel's cost to make and sell RIC and has found that OneSteel has achieved decreases in costs. The Commission has also examined imports of RIC using the ABF's import database and has found that there has been a reduction in import volumes of RIC from countries nominated in Investigation 240.

The Commission had specific regard to the verified revenue generated and verified cost to make and sell for the entire investigation period as outlined in Figure 8, with the view that a reasonable business would look to increase prices to, at a minimum, cover its cost to make, and attempt to maximise profits.

The Commission notes that OneSteel's prices historically have been influenced by dumped goods as identified in Investigation No. 240. As such, the Commission has identified that the Australian Bureau of Statistics (ABS) Producer Price Index<sup>12</sup> for manufacturing broadly reflects the price changes across the Australian manufacturing environment, and represents a reasonable basis for calculating the expected minimum inflationary price changes which should have been reflected within OneSteel's prices.

<sup>12</sup> ABS Publication number 6427.0

The Commission notes that within these statistics that there is a specific *Primary Metal And Metal Product Manufacturing Index*. However, as with RIC, both major producers of steel products in Australia (OneSteel and BlueScope) have had significant recent exposure to the impacts of competition from dumped and subsidised goods and using the *Primary Metal And Metal Product Manufacturing Index* is inappropriate. Instead, the Commission has compared the change in OneSteel's RIC prices to the overall *Australian Manufacturing Price Index*.

Figure 9 demonstrates that from November 2013 onwards the actual prices received per tonne by OneSteel are consistently less than the Commission's identified benchmark prices over the same period.

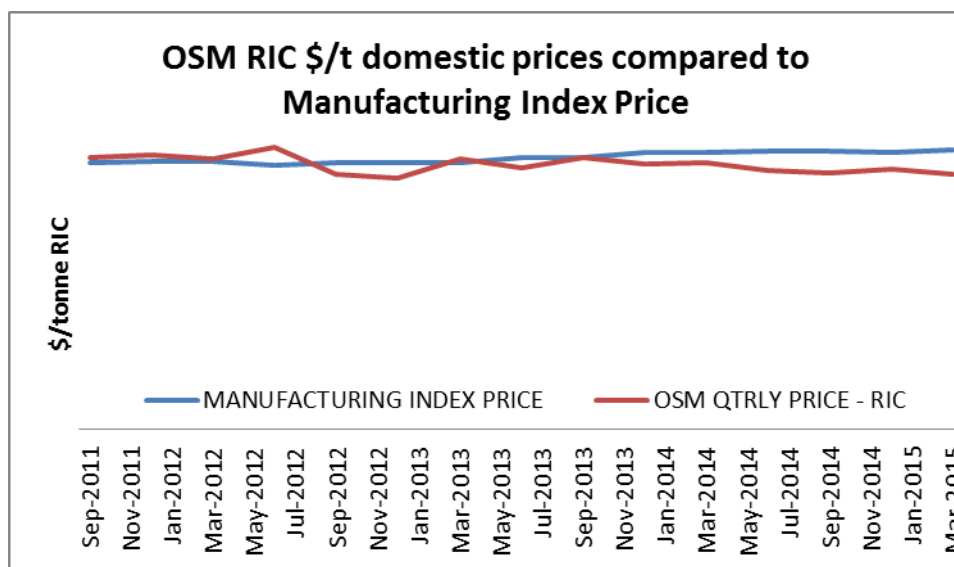


Figure 9 - RIC OneSteel prices compared to Manufacturing Index

Over the injury analysis period, OneSteel prices are an average of 2.6 per cent lower than that anticipated based on quarterly values. During the 2014/15 financial year (the investigation period), OneSteel prices are 8 per cent lower than expected.

#### 12.4.2. PRICE DEPRESSION

In considering price depression the Commission analysed changes in OneSteel's prices on a quarterly basis. Figure 10 demonstrates that since the start of the Q2 2014 the market has shown indications of significant price pressure at several times. The most recent price fall aligns with the commencement of Chinese imports from Q4 2014. The Commission notes there has been a sustained reduction in price relative to prior years.

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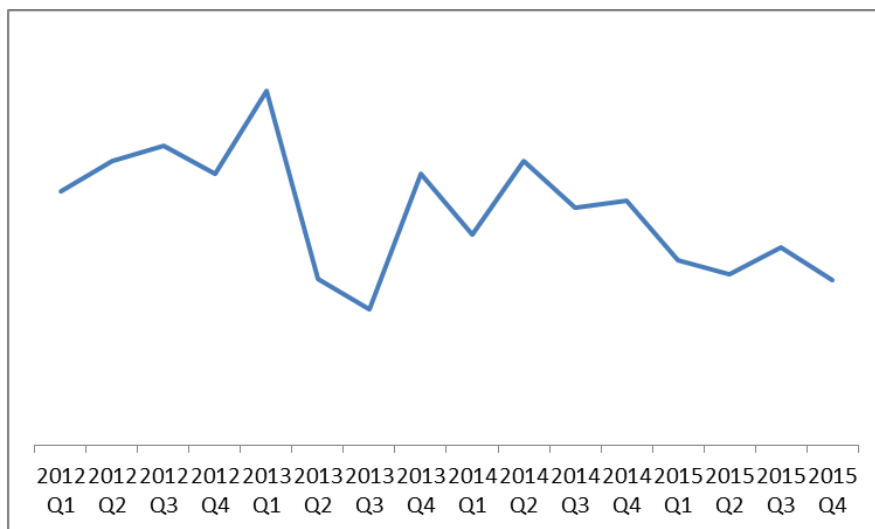


Figure 10 - Changes in OneSteel RIC Price

Figure 10 demonstrates that while prices have been volatile over the injury analysis period it has nevertheless followed a downward trend.

Figure 11 indicates (in red) the periods during which prices showed signs of depression relative to the injury analysis period.

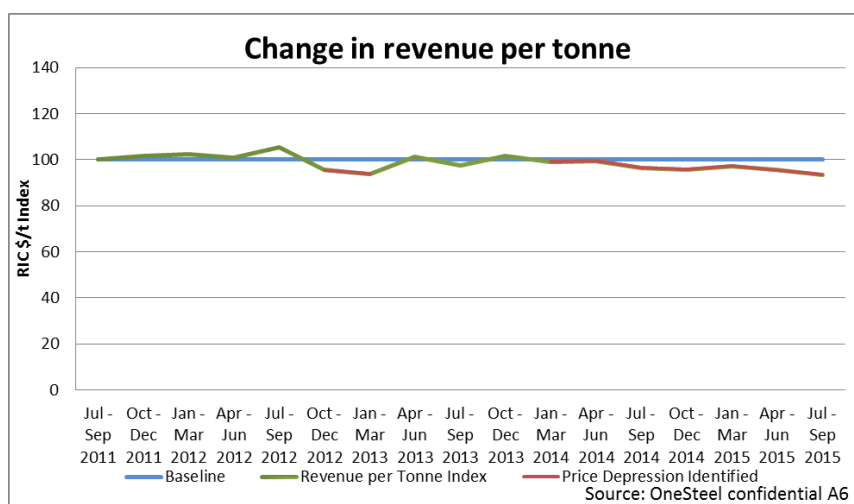


Figure 11 - Changes in RIC Revenue per tonne

The Commission was able to identify price depression for all quarters from March 2014 through to September 2015 as indicated by the red line on Figure 11.

### 12.5. PROFITS AND PROFITABILITY

OneSteel claimed injury in the form of reduced profit and profitability. Profits can be impacted by several things, including price, sales volumes, or costs.

Figure 12 indicates that OneSteel's profit and profitability for RIC increased during the investigation period.

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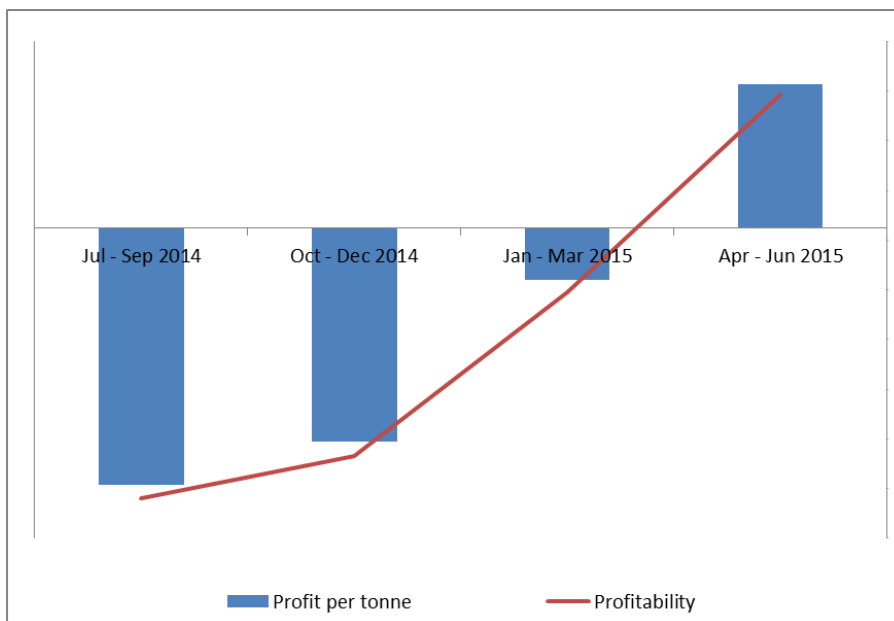


Figure 12 - RIC Profit and Profitability - investigation period

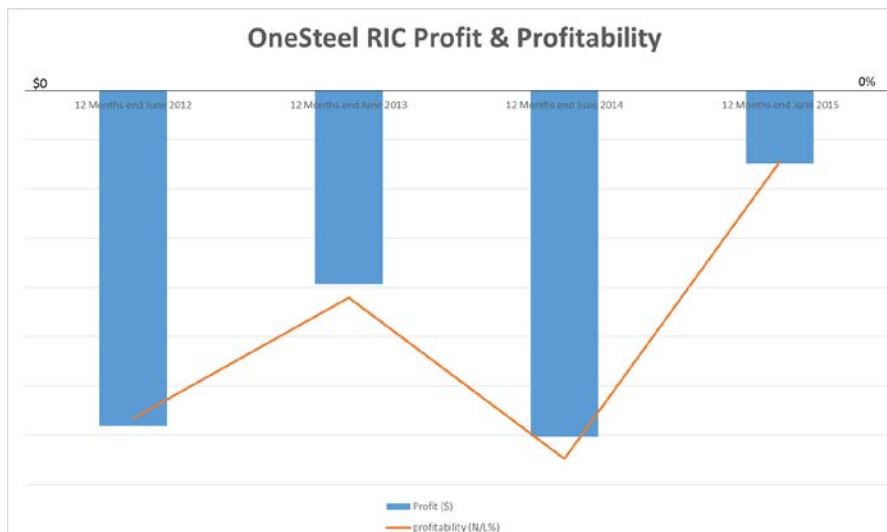


Figure 13 - RIC Profit and Profitability - injury period

The Commission considered the overall profitability on an annual basis for OneSteel's RIC production. As can be seen from Figure 13 that the improvement in the April – June quarter 2015 was not sufficient to make RIC profitable for OneSteel over the year.

OneSteel has indicated that improvements in per unit profits and overall profitability were due to the following reasons:

- decreases in 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 RIC from countries nominated in Investigation No. 240 which led to a partial recovery of sales volumes.

The Commission has verified OneSteel's cost to make and sell RIC and has found that OneSteel has indeed achieved decreases in its costs. The Commission has also examined

imports of RIC using the ABF's import database and, as found in the section above on volumes; there has been a reduction in import volumes of RIC from countries nominated in investigation No. 240 and an increase in domestic sales of RIC by OneSteel.

While OneSteel's domestic sales of RIC increased over the investigation period the effects of this increase have 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 considers profit and profitability would have improved if OneSteel had not been suffering injury in the form of price suppression and price depression as prices would have been higher than those actually received without any adverse effect on their cost structure or demand.

#### 12.5.1. CHANGES IN COSTS

OneSteel pointed to the cost improvement initiatives that it has implemented over the injury analysis period and said that without those initiatives, profits and profitability would have been significantly worse. The information provided to the Commission supports a finding of a falling CTMS per tonne based on cost reduction, in turn leading to improvements in profits and profitability.

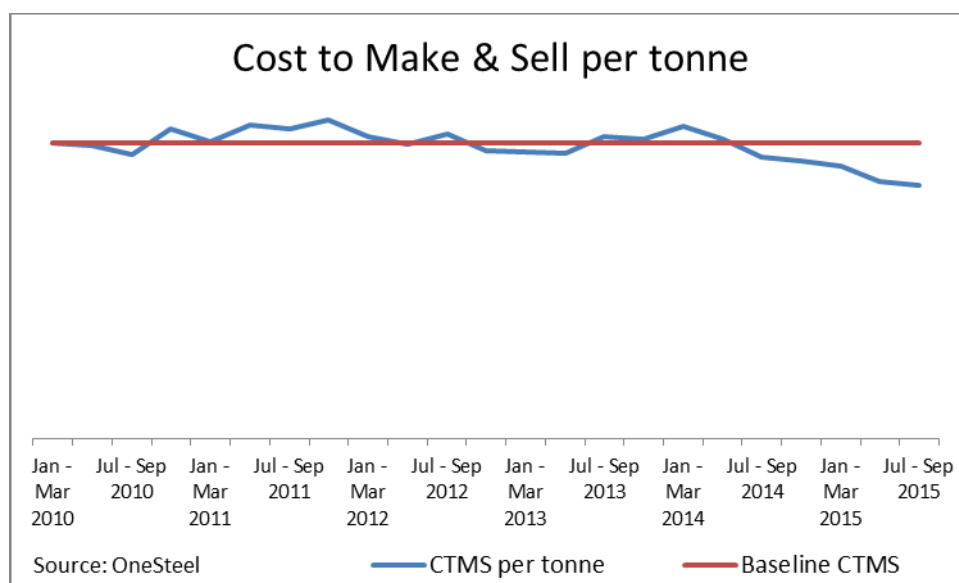


Figure 14 - RIC CTMS per tonne

#### 12.5.2. CHANGES IN VOLUMES

OneSteel has stated that it competes on price and must do so to maintain production volume. This position was verified through analysis of OneSteel's pricing mechanism and its effectiveness at maintaining market share.

The Commission notes that OneSteel has increased the volume of RIC sold during the investigation period and captured a greater market share, and as such, volume based negative impacts on profit and profitability are not supported for RIC.

### 12.5.3. CHANGES IN PRICES

The Commission has found that OneSteel's attempts to maintain volume have had an impact on profits and profitability as OneSteel has reduced prices to remain competitive.

OneSteel has suffered from price suppression and price depression, which have resulted in revenue per tonne for RIC being lower for the same level of production than it would be otherwise. This has a negative impact on profitability.

### 12.5.4. OVERALL PROFIT AND PROFITABILITY

The Commission analysed OneSteel's financial reporting segments, which are separated into three divisions. OneSteel's RIC is produced and sold by, and the financial results are captured within, the steel division.

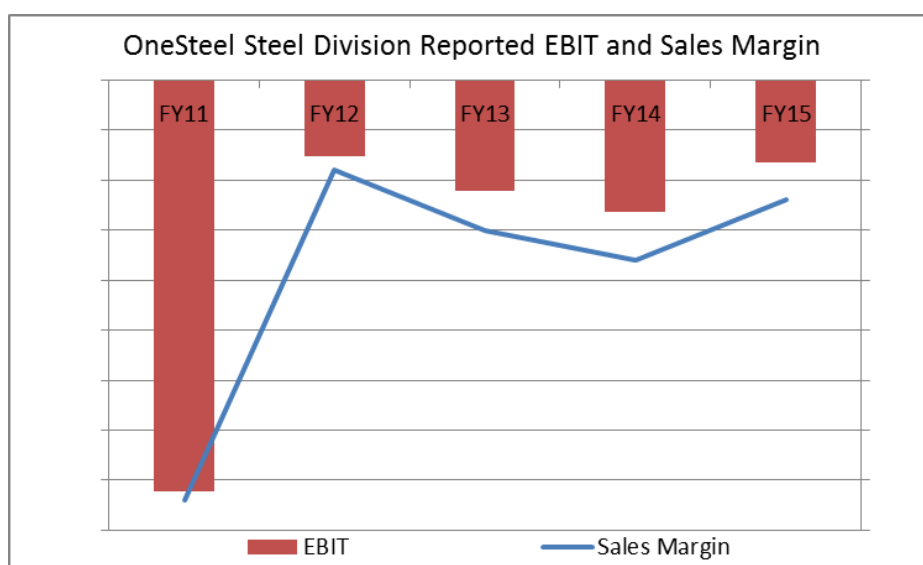
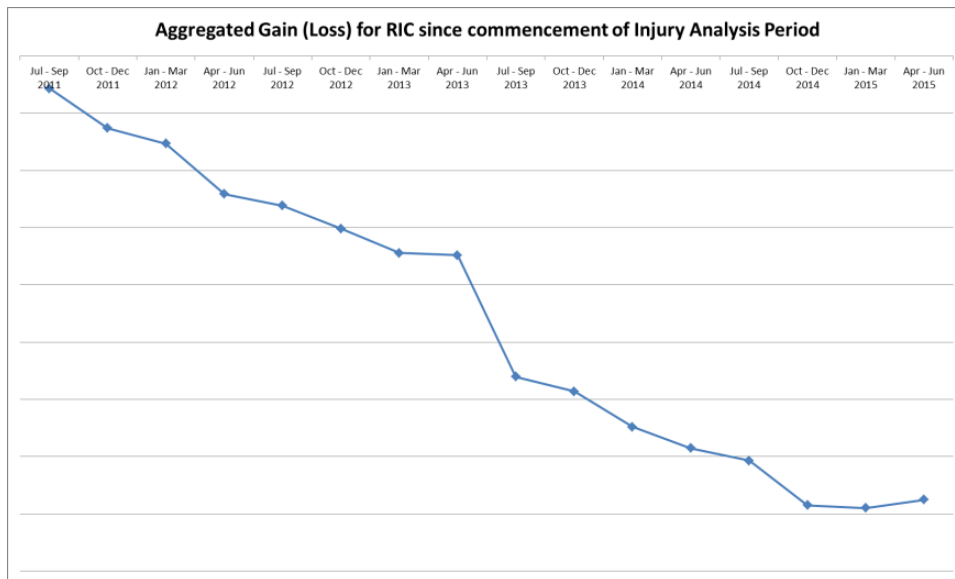


Figure 15 - OneSteel Steel Division results<sup>13</sup>

As can be seen for the injury period, the steel division has not reported a positive sales margin or positive earnings before interest and tax (EBIT) for the division. The price depression and suppression have directly impacted on net revenue, and total profit generated. The impact of the price effects has directly led to continued reduction in profits for the division.

<sup>13</sup> Sourced from Arrium 2015 Financial Report, page 31.



*Figure 16 - OneSteel Aggregate Profit (loss) for RIC during injury analysis period*

When profitability is restricted to the goods under consideration, the aggregated loss is demonstrated above. Despite the recent improvement in profitability, the losses are compounding, and over the financial year 2014/15 a net loss was recognised for RIC.

In the final quarter of financial year 2015 there has been a slight improvement in performance for RIC leading to a quarter where costs were covered. However, during that period, the profit generated was not sufficient to be sustainable.<sup>14</sup> As noted above, this performance improvement was primarily driven by cost saving measures undertaken by OneSteel, rather than significant improvements in prices.

The Commission notes that, if price depression and suppression factors did not exist and everything else was equal, profitability would be improved.

The Commission has found that cost factors have improved (that is to say, reduced) over the investigation period. The Commission has also found that OneSteel's RIC price has been subject to depression and suppression. Therefore, the continued poor performance of profit for OneSteel's RIC, and the effect on OneSteel's Steel Division results provides sufficient evidence to support a finding by the Commission that the Australian industry has suffered injury in the forms of less than achievable profits and profitability.

<sup>14</sup> Sustainable profit levels for the Australian industry have been considered in line with recent borrowing attempts which OneSteel's head company, Arrium Ltd has entered into. OneSteel were willing to accept debt with an interest rate of 8.2245% based on the lowest rate disclosed (USD LIBOR + 7%, or 8.2245% at 17 March 2016), page 10 of the *Arrium Recapitalisation Plan* release 22 February 2016. Thus OneSteel considered this rate of return was attainable.

## 12.6. OTHER ECONOMIC INDICATORS OF INJURY

The Commission also considered the following economic indicators of injury.

### 12.6.1. ASSETS

Figure 17 indicates that the value of OneSteel's assets employed in the production of RIC maintained a pattern of decline in 2014/15.

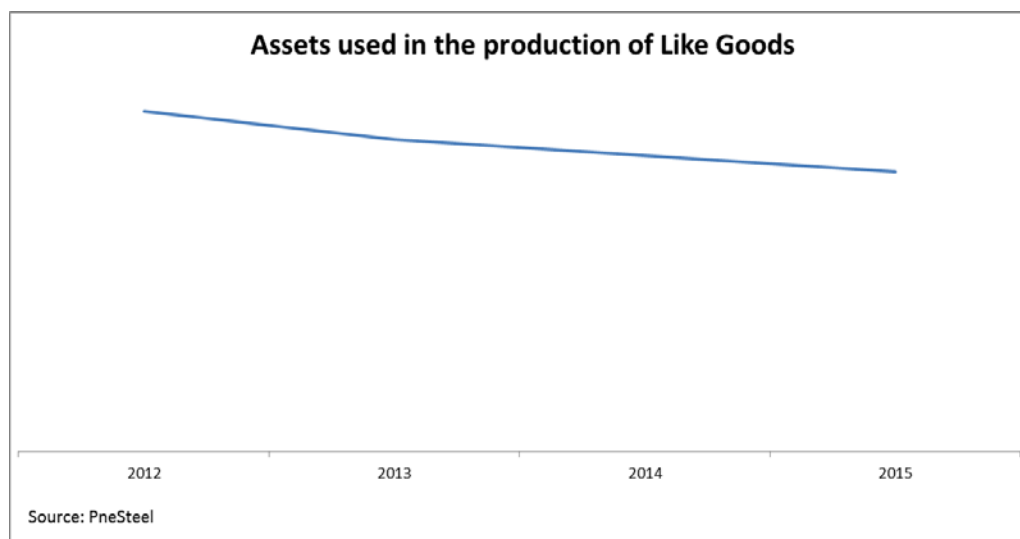


Figure 17 - RIC Asset values per year

### 12.6.2. CAPITAL INVESTMENT

The RIC production assets form part of the Total Rod and Bar division.

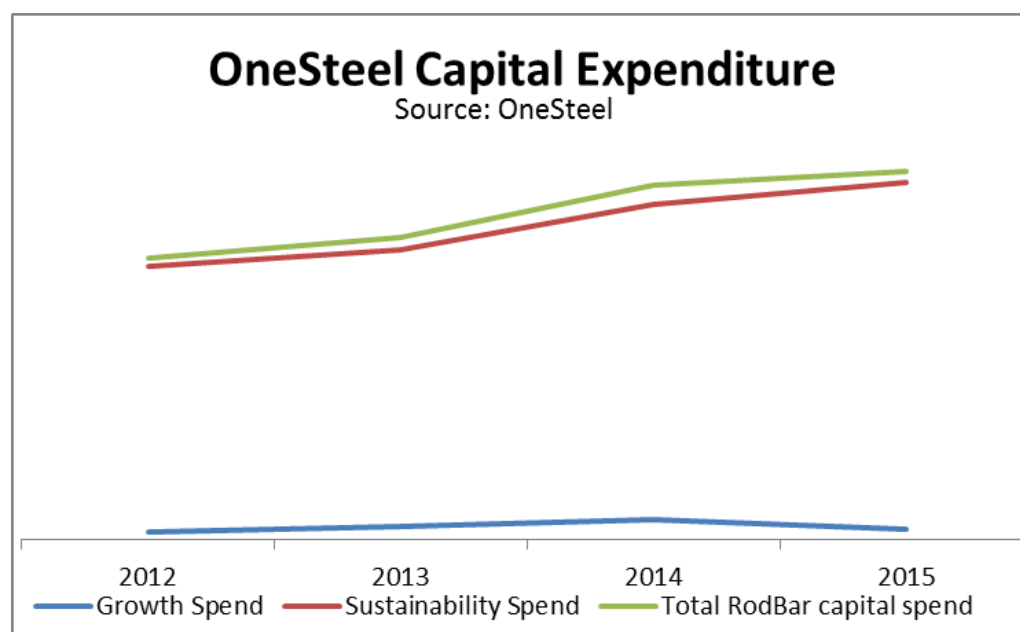


Figure 18 - RIC OneSteel Capital Expenditure

Total Rod and Bar capital spending has been focused on sustainability of current equipment, with limited funds utilised for growth expenditure due to the pressure on the business. There has been an increase in capital investment from 2012 to 2015 however the increased expenditure is offset by increased depreciation and impairment of assets within the Rod and



Bar division. This increase in spending has been targeted at sustainability, rather than expansion in capital equipment.

#### 12.6.3. CAPACITY AND CAPACITY UTILISATION

Capacity has fallen over the period due to a reduction in rostered shifts.

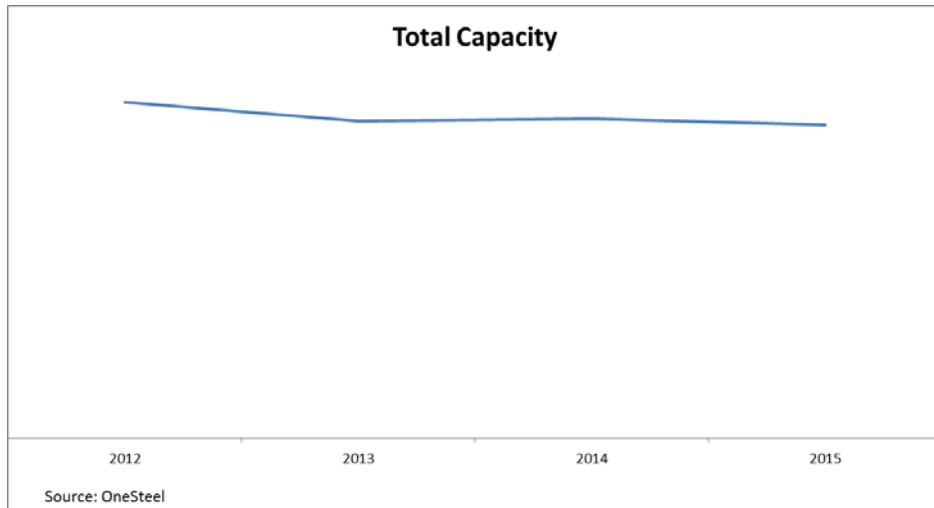


Figure 19 - Total RIC Capacity

Capacity utilisation has stayed relatively stable over the period 2012 to 2015, with like goods accounting for between 30 per cent and 35 per cent of capacity utilisation and other goods taking total capacity utilisation of assets to between 87 per cent and 92 per cent. The Commission noted that following the reduction in rostered shifts and employment, while capacity utilisation remained stable for assets the total production was reduced.

#### 12.6.4. EMPLOYMENT

Employee numbers have reduced from 329 staff in 2014 to 294 staff in 2015 for the rod mills. This is reflected in the capacity utilisation rates described above. The reduction in staffing numbers has lowered production capacity.

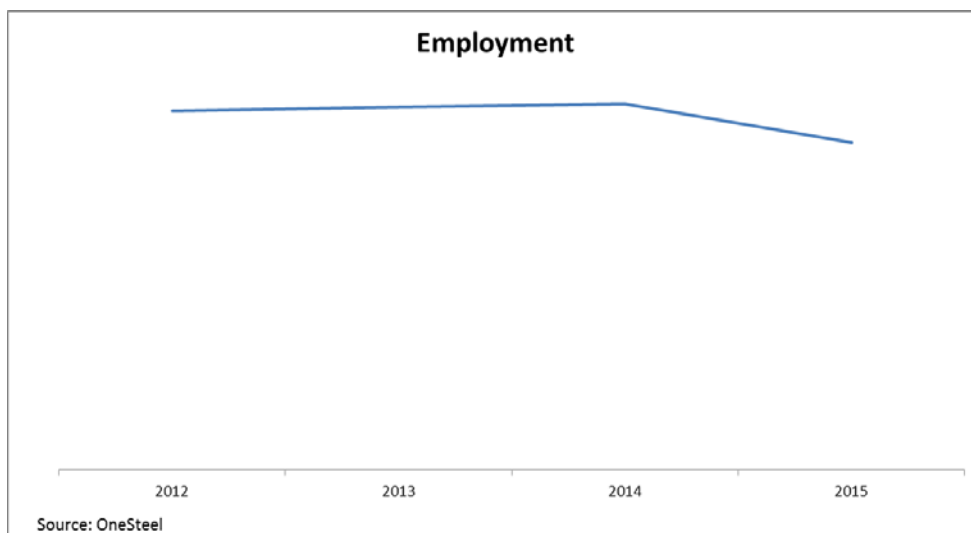


Figure 20 - Annual Employment Levels

**12.6.5. PRODUCTIVITY**

Productivity, measured as tonnes per shift, has improved from 1,803 tonnes in 2012 to 1,923 tonnes in 2015.

**12.6.6. STOCK HELD**

Stocks of RIC held have decreased over the period from financial year (FY) 2012 to FY 2015. This suggests a reduced level of holding costs for OneSteel as inventory and demand management has improved. The Commission does not consider this data reflects injury.

**12.7. OTHER RELEVANT ECONOMIC FACTORS - CONCLUSION**

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

- employment; and
- value of assets used in the production of RIC.

The Commission notes that while capacity utilisation appears to have improved, this improvement is the result of an adjusted shift structure which operates at a level substantially below potential full capacity.

**12.8. THE COMMISSIONER'S FINDINGS**

The Commissioner has found that since Chinese RIC entered the Australian market, OneSteel has suffered price depression and price suppression.

Further, the Commissioner has found that an inability of OneSteel to raise its prices have resulted in reduced profit and profitability of OneSteel over the investigation period.

The Commissioner has found that the evidence does not support a finding that volume and market share injury are present in the RIC market.

The Commissioner has found that there has been a reduction in the value of assets, and reduced employment which is consistent with expected business operations during times of falling prices and profitability.

In summary, the Commissioner has found that OneSteel has experienced injury in the RIC market in the form of:

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

The Commissioner notes that this injury identified is the same as the injury found in the recent dumping investigation (Investigation 301) into RIC exported from China over the same investigation period.

### 13. APPENDIX 3: ANALYSIS OF THE CAUSE OF INJURY

The Commissioner has found that during the investigation period, exports of RIC from China were subsidised and that the Australian industry suffered material injury. The Commissioner has terminated the investigation in relation to Shagang, as it has found its countervailing subsidy margins to be negligible. As such, this chapter will examine whether exports of the remaining exporter of subsidised RIC 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. The dumping investigation for RIC was initiated on 12 August 2015 and the subsidy investigation 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 RIC exported to Australia from China on 22 April 2016 following investigation 301.

Where the combined effects of the dumping margin and the countervailable subsidy cause material injury to an Australian industry producing like goods, section 269TJA permits 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<sup>15</sup>.

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 RIC 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.

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<sup>15</sup> 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](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.

As described in Appendix 2, the Commission has found that OneSteel has suffered injury in the form of:

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

The Commission has also found improvements in OneSteel's performance for the following indicators:

- volumes
- market share.

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 RIC market are predominantly based on price and buyers can easily shift their purchases to suppliers that offer lower prices.

### **13.2. SIZE OF THE SUBSIDY MARGINS**

The Commission has found that RIC exported from China was subsidised at rates ranging between from 26.40 per cent to 31.93 per cent which includes rates above negligible levels (two per cent).

### **13.3. THE IMPACTS OF 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 Commission compared the weighted average selling prices of subsidised goods imported by the two cooperating importers (referred to in the charts below as 1 and 2

respectively) with OneSteel's weighted average prices for RIC over the investigation period. The two cooperating importers collectively account for over 85 per cent of all identified RIC imports from China. The comparison was done on a free into store basis.

Based on the verified exporter data, applicant information and CRE data, the Commission has found that over the investigation period:

- Chinese RIC has been imported at the lowest price per tonne;
- Chinese RIC offers have been recorded at price points which are below other export country offers;
- Chinese RIC has taken a significant share of the import market;
- OneSteel revenue generated per tonne over the period has reduced; and
- exporters of Chinese RIC have acknowledged that prices are set based on marginal costing domestically, and export prices are based upon the domestic prices.

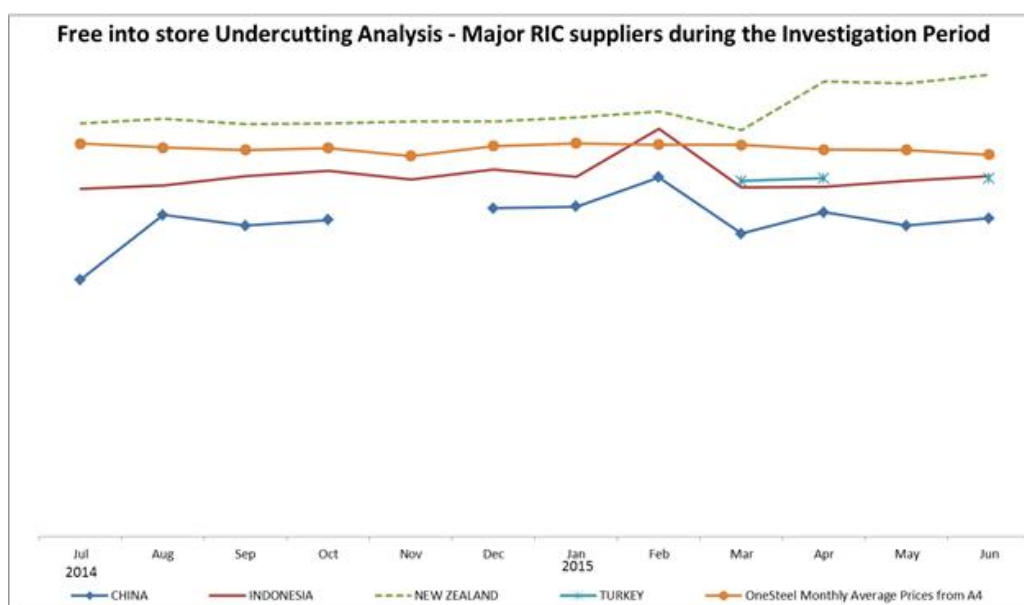
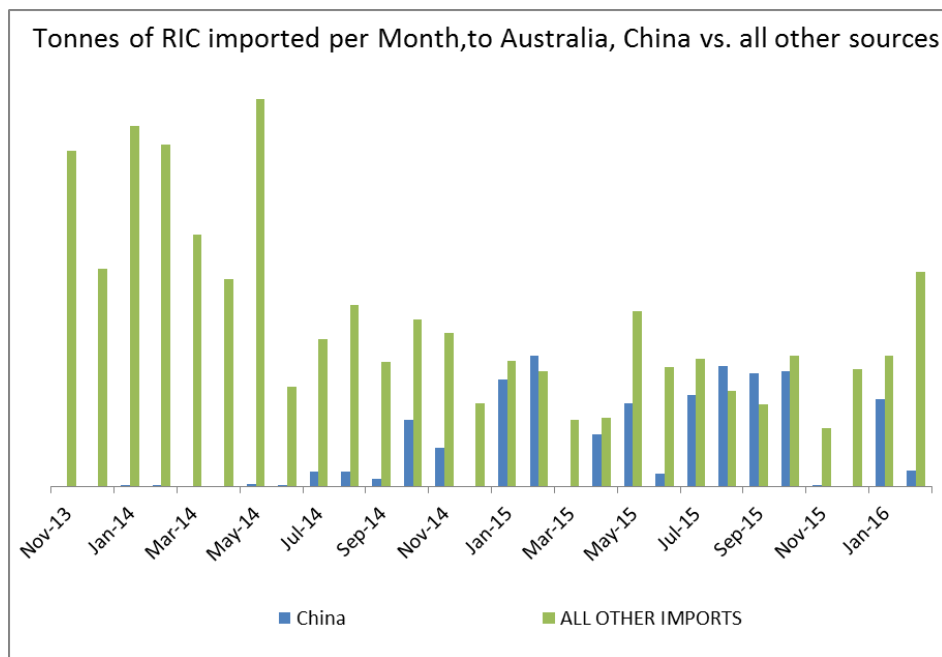


Figure 21 - Undercutting Analysis, RIC

Figure 21 indicates that, following the implementation of dumping duties after Investigation 240, prices of subsidised RIC exported from China undercut all other suppliers of RIC during the investigation period. The Chinese subsidised RIC price for free into store goods is lower for each period that imports occurred within the Australian market.

The impact of the price undercutting is further demonstrated by the increase in the import market share which China has captured from other importers from the commencement of imports from China and the imposition of securities by the Commission through PAD 301 and SEF 301.



*Figure 22 - Tonnes of RIC imported per Month*

Figure 22 demonstrates that from July 2014, China has gained a significant volume of RIC imported into Australia. In several quarters Chinese RIC equated for more than 50 per cent of the total import volume of the goods. The Commission notes that the volume of all other imports includes RIC which was found to be dumped in Investigation 240.

The Commission considers that RIC exported from China at low prices impacted on prices across the market as a whole, as other exporters in the market are equally affected by the lower Chinese export prices, limiting their ability to increase price offers in the following month at the risk of traders sourcing goods from elsewhere.

The Commission considers that, the existence of unsubsidised goods should be considered during an undercutting analysis. As such the Commission has calculated adjusted export prices reflecting the subsidy amounts for each RIC exporter to ensure test that, but for the subsidisation, the exports would continue undercutting prices.

#### 13.4. PRICE EFFECTS OF UNDERCUTTING

OneSteel has provided evidence to the Commissioner of its price setting practices. This evidence indicates that it constantly monitors price offerings in the market and that a key determinant of its prices to external customers was the price of imports.

The Commission has found that RIC prices are typically negotiated monthly. Evidence provided by OneSteel indicates that its customers compare OneSteel's offers with free into store price offers for the imported products in the month that the imports are due to arrive at the customer's facility. This can lead to OneSteel setting prices in advance in some circumstances.

The Commission has also found that import offers and movements in the price of imported RIC are used as leverage by customers in negotiations with OneSteel over price. In order to

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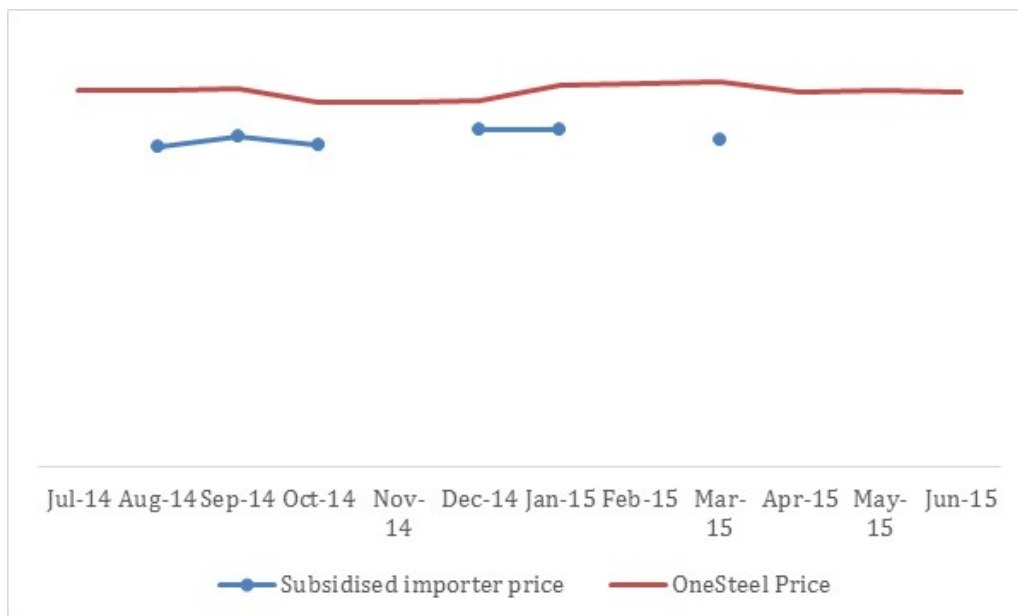
remain competitive, OneSteel must respond to the price of imported products by reducing its price offer to the market.

The Commission is satisfied that this evidence demonstrates that the market for RIC is price sensitive. Therefore the prices of subsidised RIC exported from China at the lowest price in the market are having a depressing effect on overall prices in the market.

In order to assess what prices the Australian industry could expect to achieve in the absence of subsidised imports from China, the Commission had regard to the weighted average import duty and countervailing duty inclusive delivered into store prices of RIC from China as well as the countries that were subject to Investigation 240. This allows the Commissioner to consider what effect the subsidised of goods from China has had on the Australian market for RIC.

Measures resulting from Investigation 240 were imposed on 17 June 2015.

Figure 23 indicates that in the investigation period, sales prices of RIC imports from China were lower than OneSteel's prices on a monthly basis.



*Figure 23 - Verified Import and Domestic FIS Prices*

Figure 24 indicates that in the investigation period, by adding the value of countervailable subsidies to the prices of imported RIC, the subsidised exporters would not be undercutting OneSteel's prices.

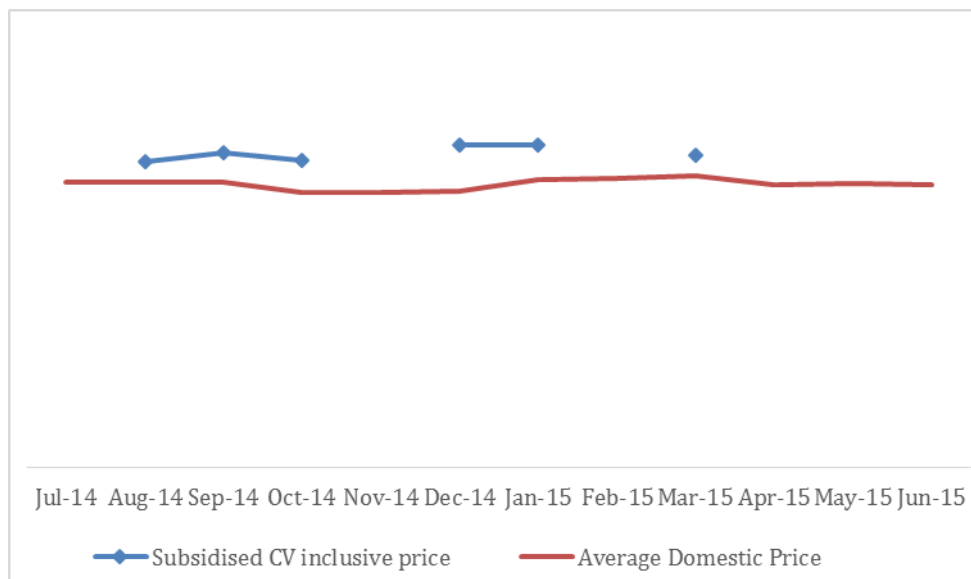


Figure 24 - Countervailing duty adjusted FIS prices

Given the price sensitivity in the Australian RIC market, the Commission considers that OneSteel's RIC prices were affected by competition from subsidised exports from China and that there is a direct link between the undercutting of OneSteel's prices and the subsidisation of goods from China.

The Commission considers that OneSteel may have been able to achieve better prices for sales in the market if it had not been affected by subsidised RIC exported from China.

### 13.5. PROFIT EFFECTS

As explained in Appendix 2 the Commission has found that the Australian industry has suffered injury in the forms of price depression and price suppression. This in turn has impacted negatively on OneSteel's profits and profitability over the investigation period.

The Commission considers that OneSteel's unit revenue would have improved if the price suppression and depression were not occurring. The Commission considers that the injury OneSteel has suffered in the forms of reduced profits and profitability may have been caused by sales of subsidised RIC exported from China.

### 13.6. VOLUME EFFECTS

As explained in Appendix 2, the Commission found that market share, and total quantity sold by OneSteel showed improving trends over the injury period, and that OneSteel is the major supplier of RIC to the Australian market. As such, the Commission does not consider that subsidised RIC exported from China has caused injury to the Australian industry in the form of volume effects.

The Commission considers that based on the analysis, Chinese RIC has displaced other import sources of RIC.

### 13.7. OTHER RELEVANT ECONOMIC FACTORS

The Commission considers that the link between subsidised RIC exported from China and injury suffered by OneSteel in the form of price and profit effects has had a negative impact



on OneSteel's decisions in respect of other economic factors, including their willingness and ability to maintain staffing levels and invest in capital assets. This can be seen in Appendix 2 where the Commission found that OneSteel has suffered injury in the form of reduced:

- employment; and
- value of assets;

related to the production of RIC.

### **13.8. INJURY CAUSED BY FACTORS OTHER THAN SUBSIDISATION**

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

- the state of Australian domestic RIC market;
- the geographic size of the Australian market;
- the vertically integrated nature of Arrium Ltd;
- fluctuations in Australian dollar exchange rate;
- the cost of billet production; and
- the impact of unsubsidised goods from China.

#### **13.8.1. STATE OF AUSTRALIAN DOMESTIC RIC MARKET**

Based on the analysis of OneSteel's sales data and DIBP import data, there was a minor decline in the Australian market from 2010/11 to 2012/13. From 2012/13 to 2014/15 the market grew slowly (less than 5 per cent per annum) and has not yet recovered to the 2010/11 volumes.

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

#### **13.8.2. 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

#### **13.8.3. 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 considers that the assertion that the vertical integration of the Arrium business leads to inefficiency causing injury is not supported.

### 13.8.4. FLUCTUATIONS IN THE EXCHANGE RATE

The Commission understands that exchange rate is a key factor that affects locally produced goods' competitiveness against imports. Figure 25 indicates the exchange rates against the US dollar in the investigation period obtained from the Reserve Bank of Australia.<sup>16</sup>

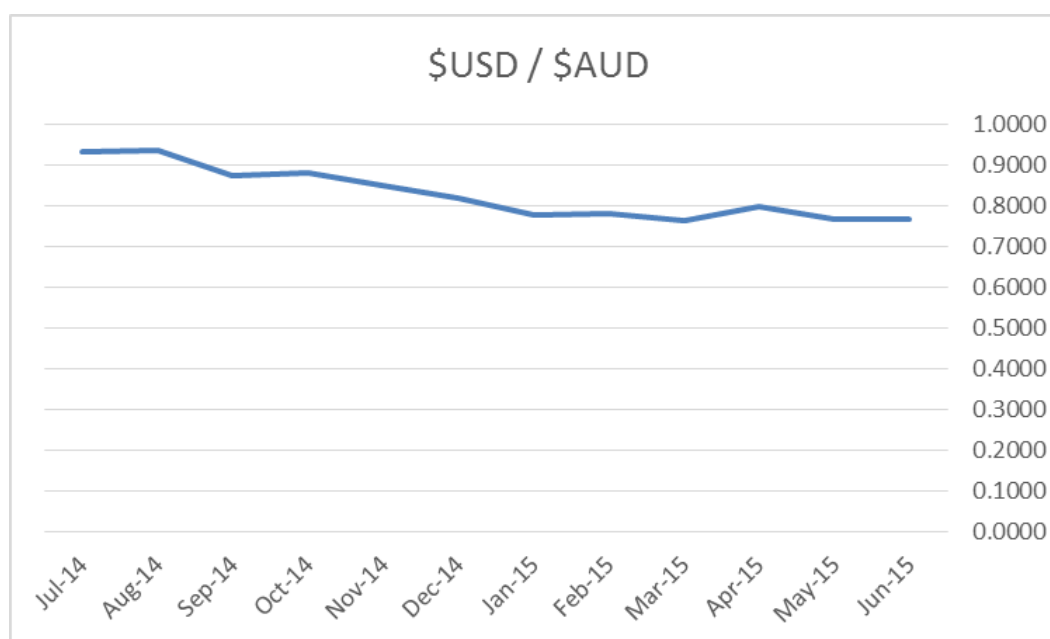


Figure 25 - USD AUD Exchange Rates

The Commission's analysis has found that the Australian dollar depreciated during the investigation period. Figure 25 shows that during the investigation period, the value of the Australian dollar 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 RIC and caused prices of RIC in the Australian market to increase and thereby reduced any potential adverse impact of competition from imported RIC.

### 13.8.5. 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 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 consistent with the pattern demonstrated by the international billet prices.

<sup>16</sup> All Chinese RIC exporters price their products in US dollars.

**13.8.6. THE IMPACT OF UNSUBSIDISED GOODS FROM CHINA**

The Commission notes that the investigation of subsidisation in so far as it concerns Shagang has been terminated based on negligible rates of subsidisation. The Commission has undertaken further undercutting analysis to consider the impact of negligibly and unsubsidised goods from China.

The unsubsidised goods were sourced through a single importer, and based on the analysis undertaken, these goods undercut OneSteel's prices during the investigation period.

The Commission recognises that there is potential for the subsidised Chinese RIC to distort the price for unsubsidised Chinese RIC. Sufficient evidence has not been found in this case to support this assertion. The presence of unsubsidised Chinese RIC at prices which undercut OneSteel's prices further limits the possibility of achieving satisfaction that subsidisation of itself is sufficiently causally linked to the material injury identified.

The Commission considers that:

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

have not caused material injury to the Australian industry producing like goods, however, the Commission recognises that the existence of unsubsidised or negligibly subsidised RIC undercutting may be contributing the injury suffered by OneSteel.

**13.9. THE COMMISSION'S ASSESSMENT**

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

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

The Commission considers that during the investigation period the subsidised RIC exported from China has caused the Australian industry to suffer material injury. However, the Commission 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 above, dumping duties have recently been imposed on the same goods, which were investigated over the same periods.

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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 RIC onto the Australian market, isolating these individual effects has been difficult.

The Commission notes that when a good is subsidised, and then dumped, onto the Australian market, it is likely to result in a single set of price and 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 RIC as compared to the dumping of it would require the Commission to make a great deal of assumptions that would be arbitrary and imprecise.

As such, the Commission cannot isolate the injury caused by the subsidisation of RIC from the effect of it being 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 THE INVESTIGATION

EPR No.	Title	Date
53	<a href="#">Exporter - Jiangsu Shagang (PDF 181KB)</a>	08/09/2016
52	<a href="#">Foreign Government - Government of China (PDF 291KB)</a>	02/09/2016
51	<a href="#">Australian Industry - OneSteel Manufacturing Pty Ltd (PDF 2.9MB)</a>	31/08/2016
50	<a href="#">Exporter - Hunan Valin Xiangtan Iron and Steel Co. Ltd (PDF 1.6MB)</a>	30/08/2016
48	<a href="#">Foreign Government - Government of China (PDF 76KB)</a>	03/08/2016
44	<a href="#">Foreign Government - Government of China (PDF 412KB)</a>	21/07/2016
38	<a href="#">Foreign Government - Questionnaire Response - Attachments 29-39 (PDF 1.4MB)</a>	15/04/2016
37	<a href="#">Foreign Government - Questionnaire Response Attachments 19-29 (PDF 2.7MB)</a>	15/04/2016
36	<a href="#">Foreign Government - Questionnaire Response - Attachments 1-6-7-8-9-10--14-15-16-18 (PDF 3.5MB)</a>	15/04/2016
35	<a href="#">Foreign Government - Questionnaire Response (PDF 2.4MB)</a>	15/04/2016
34	<a href="#">Exporter - Hunan Valin Iron &amp; Steel (PDF 15.6MB)</a>	7/04/2016
33	<a href="#">Exporter - Jiangsu Shagang (PDF 869KB)</a>	5/04/2016
32	<a href="#">Exporter - Hunan Valin Iron &amp; Steel - Product Brochure (PDF 11.0MB)</a>	5/04/2016
31	<a href="#">Exporter - Hunan Valin Iron &amp; Steel - Licence of Valin (PDF 686KB)</a>	05/04/2016
30	<a href="#">Importer - OzPress (PDF 918KB)</a>	25/02/2016
29	<a href="#">Foreign Government - Government of China (PDF 164KB)</a>	17/02/2016

## 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.	43
21/07/2016	Government of China	Response to Australian Industry Submission.	44
3/08/2016	Government of China	Letter to the Commissioner	48

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> <p>- Misunderstanding of statements made by Shiheng regarding the implications of the guarantees by other third parties; and</p> <p>- Incorrect calculation of the benefit.</p> <p><u>Program 2</u> – benchmark to be adjusted to reflect different types of coking coal</p>	45 (EPR 322)

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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>	50
31/08/2016	Australian Industry – OneSteel Manufacturing Pty Ltd	<ul style="list-style-type: none"> <li>- OneSteel supports Commission’s findings in relation to the price, volume and profit effects of the subsidised imports for rebar and RIC;</li> <li>-Commission’s attempt to isolate and attribute injury to the subsidised imports is deficient and unconvincing;</li> <li>-OneSteel claims that the Commission has sufficient information to accurately assess the NIP;</li> <li>- OneSteel supports the CTMS plus profit approach the Commission used to calculate NIP in dumping investigations for rebar and RIC INV 300 and INV 301.</li> <li>- OneSteel believes that Commission’s assessment of subsidy margin for Yonggang and Shagang are deficient;</li> <li>-OneSteel consider private entities (exporters) are SIEs;</li> <li>- Commission has failed to consider if the private entities are public bodies; and</li> <li>- Commissioner has failed to properly consider whether program 4 was regionally specific subsidy, therefore countervailable.</li> </ul>	51

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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 (EPR 322)
02/09/2016	Government of China	<ul style="list-style-type: none"> <li>- The GOC supports the Commissioner’s proposed recommendation not to impose countervailing duties for rebar and RIC;</li> <li>- Integrated SIE of rebar and RIC in coil manufacturers cannot confer a benefit on themselves in the form of steel billet at LTAR;</li> <li>- Chinese SIEs are not vested with, nor do they exercise, government authority and therefore cannot be considered to be public bodies;</li> <li>- The Commission’s consideration of whether billet was provided for LTAR is flawed;</li> <li>- The Commission’s consideration of whether coking coal was provided for LTAR is flawed;</li> <li>- The Commission’s consideration of whether coke was provided for LTAR is flawed;</li> <li>- Chinese banks are not public bodies and do not provide alleged interest rate subsidies;</li> <li>- The Commission’s consideration of whether there is a loan guarantee subsidy is flawed, bot legally and factually; and</li> <li>- The Commission has no evidence for the existence of other alleged subsidy programs such as program nos. 48, 57, 60, 160 and 176.</li> </ul>	52



## PUBLIC RECORD

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 (EPR 322)

### 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.<sup>17</sup> These programs provide concessional loans to businesses which are not creditworthy. The Commission's determination was based on the explanation provided by the cooperating exporter that it, may not have been able to obtain certain loans without 'government guarantee', and therefore it may be 'uncreditworthy'.

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

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

#### 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.*<sup>18</sup>

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

<sup>18</sup> *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.<sup>19</sup>

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

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<sup>19</sup> The Commission is aware that in August 2015 the China Iron & Steel Association noted that during the first half of 2015 Chinese banks had cut loans to steel makers by around USD 15 billion or by six per cent (on a year on year basis) and that the provision of funding by Chinese banks to the Chinese steel industry was increasingly being directed at state owned steel producers.

## 15.5. 'PUBLIC BODIES' OR 'PRIVATE BODIES'

### 15.5.1. STATE INVESTED ENTERPRISES ARE 'PUBLIC BODIES'

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 and further considered by Appendices 5 and 6 of this report.

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]

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- 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),<sup>20</sup> a government controls a corporation if it has the ability to determine the general corporate policy. In the International Public Sector Accounting Standards (IPSASs) issued by the International Federation of Accountants International Public Sector Accounting Standards Board, a government controls a corporation if it has the power to govern its financial and operating policies so as to benefit from its activities. [emphasis added]
- b. Article 6 of the Decree states that the role of SASAC inter alia is to
  - i. ...supervise and administer State-owned assets of enterprises according to law. [emphasis added]
- c. Article 11 of the Decree states that the role of SASAC is to:
  - i. ...make efforts to increase economic efficiency and bear the responsibility of preserving and increasing the value of State-owned assets operated and managed by them. [emphasis added]
- d. Article 12 of the Decree states that:
  - i. The State-owned assets supervision and administration authority of the State Council is a specially established authority directly subordinated to the State Council which, on behalf of the State Council, performs the responsibilities of investor, supervises and manages State-owned assets of enterprises. [emphasis added]
- e. Article 13 of the Decree states that the main responsibilities of SASAC is:
  - i. guide and push forward the reform and restructuring of State-owned enterprises and State-owned holding enterprises. [emphasis added]

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<sup>20</sup> Taskforce on harmonization of public sector accounting "Government/ Public Sector / Private Sector delineation issues (AEG 36)" <http://unstats.un.org/unsd/nationalaccount/AEG/papers/m4Delineation.pdf>

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

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

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

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

The Commission holds that the Chinese Government maintained a central role in the development of the Chinese steel industry and by virtue, materially contributed to its rapid expansion and the chronic oversupply of steel products during the investigation period.

The significance of this role was articulated by a recent CBSA investigation into the dumping and countervailing of ‘certain concrete reinforced bar’ originating from the People’s

Republic of China.<sup>21</sup> The CBSA's *Statement of Reasons* report released in December 2014 notes that the Chinese Government classifies the 'Iron and Steel Industry' as a 'fundamental or pillar' industry. The CBSA's report also noted that as a 'fundamental or pillar' industry the Chinese Government maintains a degree of control over the industry, through a minimum of 50 per cent equity in the principle enterprises. The significance of the Chinese Government's role in the Chinese steel industry is also reflected in the National Development Reform Commission's (NDRC's) responsibility for approving all large steel projects.<sup>22</sup>

#### 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:

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<sup>21</sup> CBSA, 2014, p14

<sup>22</sup> CBSA, 2014, p17

## PUBLIC RECORD

*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:*

- *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.

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 are a public body). In the current cases, the Commission has found that the billet has been supplied (including self-supplying) by an SIE resulting in a benefit.

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

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

that the production of the billet is not supported by a public body, just the raw material inputs.

**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 6 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 (INV 193) 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 the SEF, the Commission has included further analysis in Appendices 5 and 6 of this report.

### **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.

INV 193 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 6 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 the SEF, the Commission has included further analysis in Appendices 5 and 6 of this report.

#### **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.

INV 193 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 within Appendix 6 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 bodies<sup>23</sup>’ for the purposes of the Act, the Commission sought to determine a benchmark cost that represents adequate remuneration for billets in China to determine a competitive market cost for billets in accordance with subsection 45(2) of the Regulations. The Commission then calculated the benefit received under Program 1- *Purchases of billets from the government at less than adequate remuneration*.

In REP 300 and REP 301, the Commission established a benchmark cost for billets in the investigation period using Latin American Billet FOB export prices from Platts.<sup>24</sup>

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.

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<sup>23</sup> Assessment of SIEs to be Public Bodies is within Appendix 5 of this report

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

*i. PRIVATE DOMESTIC PRICES*

The Commission notes that all Chinese exporters cooperating with INV 322 and INV 331 are fully integrated manufacturers of steel products, including rebar and RIC. As such, the 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,<sup>25</sup> the Commission sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal in accordance with subsection 45(2) of the Regulations. The Commission then calculated the benefit received under subsidy Program 2 (purchases of coking coal from SIEs at less than adequate remuneration).

In SEF 316, the Commission established a benchmark price for coking coal using Platts Australian low volume premium HCC FOB export price of coking coal in the investigation

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<sup>25</sup> Assessment of SIEs to be Public Bodies is within Appendix 5

period.<sup>26</sup>

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

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<sup>26</sup> SEF 316 – Grinding Balls from China was published on 21 April 2016. As of the date of publication of the SEF, the Final Report for grinding balls (REP 316) has not been published.



#### 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,<sup>27</sup> the Commission established a benchmark price for coke using GOC supplied data for the Chinese export price of coke in the investigation period.

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

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<sup>27</sup> Galvanised steel and aluminium zinc coated steel

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 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 Commissions 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:*

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- 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)*<sup>28</sup>, where the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority;
- the Appellate Body Report in United States – *Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*<sup>29</sup>, where guiding principles were stated as regards the meaning of “meaningful control”;
- a 2014 World Steel Association report which detailed that nine of the top ten steel companies in China, in terms of total crude steel production were SIEs, all of which are either wholly or partly owned by the SASAC, and all of which produce steel billet and/or rebar and/or rod in coils, themselves or through their subsidiaries;
- the *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) which set out the functions and obligations of a state-owned assets supervision and administration authority; and
- examples of SASAC’s current and ongoing direct control and responsibility for the appointment and removal of personnel from SIEs.

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

#### 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

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

<sup>29</sup> Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014.

China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;

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

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

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

In DS 379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):<sup>30</sup>

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

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<sup>30</sup> Appellate Body report DS379 at [318]

- **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 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) <sup>31</sup> set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

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

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

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

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<sup>31</sup> These Regulations are formulated to establish a State-owned assets supervision and management system that suits the needs of socialist market economy, better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realize the preservation of and increase in the value of State-owned assets.

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

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

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

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

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

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