



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS
NO. 384a

ALLEGED DUMPING OF ALLOY ROUND BAR
EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA

13 November 2018

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ACCC	Australian Competition and Consumer Commission
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the ADRP revocation decision	the ADRP decision of 27 April 2018 revoking the Commissioner's termination decision of 25 January 2018
AIP	American Industrial Partners
Anti-Dumping Agreement	<i>Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994</i>
the applicant	OneSteel Manufacturing Pty Ltd (OneSteel) ¹
BPC	Business Planning and Consolidation
CFR	Cost and Freight
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	cost to make
CTMS	cost to make and sell
Daye	Daye Special Steel Co. Ltd
Donhad	Donhad Pty Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR 384	the electronic public record for this investigation
FOB	Free on Board
GOC	Government of China
the goods	the goods the subject of the application (also referred to as the goods under consideration or the imported goods)
the injury analysis period	from 1 July 2012
the Injury Direction	<i>Ministerial Direction on Material Injury 2012</i>

¹ At the time of the application, OneSteel Manufacturing Pty Ltd was subject to a deed of company arrangement. On 1 September 2017, GFG Alliance acquired the former Arrium businesses, including OneSteel Manufacturing Pty Ltd. OneSteel Manufacturing Pty Ltd is now trading as Liberty OneSteel, a division of the Liberty Steel Group. For the purposes of this report the Commission has referred to the applicant as "OneSteel".

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the investigation period	1 October 2015 to 30 September 2016
the Manual	<i>Dumping and Subsidy Manual</i>
Milltech	Milltech Pty Ltd
the Minister	the Minister for Industry, Science and Technology
mm	millimetres
Moly-Cop	Commonwealth Steel Company Pty Ltd trading as Moly-Cop
NIP	non-injurious price
OCOT	ordinary course of trade
PAD	preliminary affirmative determination
PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
<i>Portland Cement</i>	<i>Re Swan Portland Cement Limited and Cockburn Cement Limited v the Minister of Small Business and Customs and the Anti-Dumping Authority [1991] FCA 49</i>
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 316	<i>Anti-Dumping Commission Report 316</i>
SEF	statement of essential facts
SEF 384	<i>Statement of Essential Facts No. 384</i>
SG&A	selling, general and administrative
SIE	state invested enterprise
SOE	state owned enterprise
Stemcor	Stemcor S.E.A Ltd
Suzhou	Suzhou Suxin Special Steel Ct. Ltd
the Tariff	Chapter 72 under Schedule 3 of the <i>Customs Tariff Act 1995</i>
TER 384	<i>Termination Report No. 384</i>
TKM	Thyssen Krupp Mannex
USP	unsuppressed selling price
VAT	Value Added Tax
WIP	work in progress
WTO	World Trade Organization
Yonggang	Jiangsu Yonggang Group Co. Ltd

1 SUMMARY

1.1 Introduction

The present investigation was initiated on 10 January 2017 in response to an application by OneSteel Manufacturing Pty Ltd (OneSteel, or the applicant) for the publication of a dumping duty notice in respect of alloy round bar allegedly exported to Australia from the People's Republic of China (China) at dumped prices.²

On 27 October 2017, the Commissioner of the Anti-Dumping Commission (the Commissioner) terminated the investigation in so far as it related to a single exporter, Jiangsu Yonggang Group Co Ltd (Yonggang).³ On 25 January 2018, the Commissioner terminated the remainder of the investigation.⁴

OneSteel applied to the Anti-Dumping Review Panel (ADRP) for a review of both of the Commissioner's termination decisions. On 27 April 2018, the ADRP affirmed the Commissioner's decision to terminate the investigation into alloy round bar exported by Yonggang, but revoked the Commissioner's termination decision of 25 January 2018 in respect of the rest of the investigation (the ADRP revocation decision).⁵

Subsection 269ZZT(2) of the *Customs Act 1901* (the Act)⁶ states that, as soon as practicable after a reviewable decision has been revoked, the Commissioner must publish a statement of essential facts (SEF). Following the publication of the SEF, the investigation resumes.

This SEF has therefore been prepared following the ADRP revocation decision, in respect of alloy round bar exported to Australia by all exporters from China (except Yonggang). It sets out the facts on which the Commissioner proposes to base recommendations to the Minister for Industry, Science and Technology (the Minister) following the resumed investigation, unless the investigation is terminated earlier.

² Anti-Dumping Notice (ADN) No. 2017/02 refers, available on the electronic public record for this investigation (EPR 384) on the Anti-Dumping Commission [website](#).

³ ADN No. 2017/152 refers. The Commissioner terminated the investigation in respect of Yonggang because the Commissioner found that the goods were not exported at dumped prices.

⁴ ADN No. 2018/17 refers. The Commissioner terminated the remainder of the investigation because, although he found that the goods (other than exports by Yonggang) were dumped, he considered that the injury to the Australian industry caused by that dumping was negligible. Detailed reasons are available in [Termination Report No. 384](#) on EPR 384.

⁵ The ADRP's reasons for affirming the Commissioner's termination decision in respect of Yonggang are available in ADRP [Report No. 68](#). The ADRP's reasons for revoking the Commissioner's termination decision in respect of all other exporters are available in ADRP [Report No. 75](#).

⁶ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

1.1.1 Proposed recommendation

The Commissioner proposes to recommend to the Minister that a notice be published under subsection 269TL(1) in respect of alloy round bar exported to Australia from China, declaring that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) does not apply to those goods. The effect of this recommendation is that, if accepted, no anti-dumping measures would be imposed on alloy round bar exported to Australia from China.

1.2 Authority to make decision

Where the Commissioner has resumed a terminated investigation after a decision by the ADRP under subsection 269ZZT(1)(b) (i.e. revoking the Commissioner's decision to terminate an investigation), the Commissioner must conduct the investigation according to the normal procedures for conducting an investigation as provided under the Act.

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 Minister.

Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

1.3 Findings and conclusions

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that locally produced alloy round bar is “like” to the goods the subject of the application (the goods) and is satisfied that there is an Australian industry producing those like goods.

1.3.2 Australian industry (Chapter 4)

Based on the information available, the Commissioner has found that like goods are wholly or partly manufactured in Australia and the Australian industry producing like goods consists of OneSteel, Commonwealth Steel Company Pty Ltd trading as Moly-Cop (Moly-Cop) and Milltech Pty Ltd (Milltech).

1.3.3 Australian market (Chapter 5)

The Australian alloy round bar market is divided into market segments that are driven by different end uses. All segments are supplied by local production from Australian producers and by imports from several countries, the major exporting country being China.

1.3.4 Dumping (Chapter 6)

The Commission's assessment of dumping margins is set out in Table 1.

Country	Exporter	Dumping Margin
China	Suzhou Suxin Special Steel Ct. Ltd (Suzhou)	35.3%
	Daye Special Steel Co. Ltd (Daye)	21.9%
	Uncooperative and all other exporters	73.7%

Table 1: Dumping margins

1.3.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner considers that the Australian industry has experienced injury during the investigation period in the form of:

- reduced market share;
- loss of sales volume;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability; and
- the other injury factors as outlined in sections 7.6 and 7.7 of this report.

1.3.6 Causation assessment (Chapter 8)

The Commissioner is satisfied that injury to the Australian industry during the investigation period has been caused by the dumped goods from China.

1.3.7 Will dumping and material injury continue in the future (Chapter 9)

The Commissioner is not satisfied that material injury caused by the dumped goods from China will continue in the future.

1.3.8 Non-injurious price (Chapter 10)

The Commissioner considers that the findings in Chapter 6 concerning the existence of a particular market situation in China and the operation of Dumping Duty Act place no obligation on him to consider the lesser duty rule.

2 BACKGROUND

2.1 Initiation

On 15 November 2016, OneSteel lodged an application under subsection 269TB(1) for the publication of a dumping duty notice in respect of alloy round bar that has been imported into Australia from China. OneSteel alleged that the Australian industry producing alloy round bar has experienced material injury caused by alloy round bar being exported to Australia from China at dumped prices.

Having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of alloy round bar from China on 10 January 2017.⁷

In respect of the investigation:

- the period for the purpose of assessing dumping is 1 October 2015 to 30 September 2016 (the investigation period); and
- the period for the purpose of determining whether material injury to the Australian industry has been caused by dumping is from 1 July 2012 (the injury analysis period).

2.2 Previous cases

No previous cases regarding alloy round bar have been undertaken by the Anti-Dumping Commission (the Commission).

2.3 Key stages in the investigation

The *Statement of Essential Facts No. 384* (SEF 384) was placed on the EPR on 27 October 2017.⁸ The Commissioner indicated in that report that he had terminated the investigation in so far as it related to Yonggang (as the goods exported by Yonggang were not dumped), and that he proposed to terminate the investigation generally as the dumped goods caused negligible injury to the Australian industry.

After considering the submissions received in response to SEF 384, the Commissioner terminated the investigation on 25 January 2018 for the reasons set out in *Termination Report No. 384* (TER 384).⁹

Following the ADRP revocation decision, the Commissioner published ADN No. 2018/73 to advise interested parties that the investigation into the alleged dumping of alloy round bar exported from China (other than by Yonggang) would resume following publication of this SEF.¹⁰

⁷ [Consideration Report No. 384](#) and ADN No. 2017/02 refer.

⁸ [Document 47](#), EPR 384.

⁹ [Document 61](#), EPR 384.

¹⁰ [Document 63](#), EPR 384.

While the ADRP revocation decision only refers to certain matters, the Commissioner notes that, as this is now a resumed investigation and not a reinvestigation, the Commission is required to address all relevant matters as it would do in an investigation at first instance. The Commission has therefore re-examined all the findings and determinations made during the investigation to date. The Commission has reviewed, and, where warranted, amended the analysis on which the findings in TER 384 were based. The Commissioner's findings and conclusions are discussed throughout this report.

2.3.1 Information relied upon

In preparing this report, the Commissioner has considered:

- all submissions that were received prior to publication of TER 384;
- the ADRP revocation decision;
- all submissions and information received following the ADRP revocation decision; and the publication of ADN No. 2018/73; and
- all other relevant information.

2.4 Responding to this SEF

This SEF represents an important stage in the investigation. Following the ADRP revocation decision, it informs interested parties of the facts established and allows them to make submissions in response to the SEF. It is important to note that this SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final decision or recommendation to the Minister.

Responses to the SEF should be received by the Commissioner no later than **3 December 2018**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of any report to the Minister.

Unless terminated earlier, the Commissioner must report to the Minister by **28 December 2018**.¹¹

Submissions should preferably be emailed to investigations1@adcommission.gov.au. Alternatively they may be posted to:

¹¹ The Commission notes that this date falls in the usual shut down period between Christmas and New Year. The Commission considers it likely that an extension of time to complete the final report will be sought.

PUBLIC FILE

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Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the Commission website, www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2477 to make an appointment), or online at www.adcommission.gov.au.

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

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that the locally manufactured alloy round bar is a like good to the goods the subject of the application.

3.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods. In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” 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 the imported goods. The industry must, however, produce goods that are “like” 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:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

3.3 The goods

The goods the subject of the application are:

Hot-rolled solid sections of ‘alloy steel’, having round or near-round cross-sectional dimensions of not less than 9.5 millimetres (mm) and not greater than 98.5 mm, not in coil.

For the purpose of the description of the goods the subject of this application, ‘alloy steel’ here means steel containing a chemical composition that at least meets or exceeds the minimum chemical element proportions specified in Note (f) “Other alloy steel” to Chapter 72 under Schedule 3 of the *Customs Tariff Act 1995* (the Tariff) as appearing on the date of this application.

Commonly identified as ‘rod’, ‘round bar’, ‘engineering bar’, ‘spring steel’, ‘alloy bar’, ‘high alloy bar’, ‘silico-manganese bar’, ‘grinding rod’ or ‘bar used for the production of grinding media’, the goods covered by this application include all round or near-round hot-rolled solid sections of alloy steel bar meeting the above description of the goods regardless of the particular grade, coating, or minor modification of bar-end finish (including but not limited to, painting or chamfering).

Goods excluded from this application are:

- round or near-round hot rolled solid steel sections composed of:
 - stainless steel as defined under Note (e) “Stainless steel” to the Tariff; or
 - high-speed steel as defined under Note (d) “High speed steel” to the Tariff;
- steel reinforcing bar containing indentations, ribs, grooves or other deformations produced during the rolling process;
- steel rod in coil;
- chromium plated steel; and
- solid sections of steel which may be square, rectangular or hexagonal in cross-section.

The goods are generally, but not exclusively, classified to the following tariff classifications:

Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i>)			
Tariff code	Statistical code	Unit	Description
72282010	44	tonnes	Alloy bars, silico-manganese steel, flattened circles
72282090	47	tonnes	Other alloy bars, silico-manganese steel
72283010	70	tonnes	Alloy bars, high alloy steel, flattened circles
72283090 ¹²	41	tonnes	Other alloy bars
72286010	72	tonnes	Other alloy bars, high alloy, flattened circles
72286090	55	tonnes	Other alloy bar

Table 2: Tariff classification relevant to alloy round bar

3.4 Scope of the goods description

Following the initiation of the investigation, a number of interested parties made submissions on the scope of the goods description.

Donhad Pty Ltd (Donhad), an importer of alloy round bars, submitted that the goods description is very broad with significant differentiating characteristics between the various categories of goods, and grinding bar in particular. It contended there were grounds for the Commission to consider that OneSteel’s application covers more than one distinct goods. It stated that the Commission’s like goods assessment would have

¹² Operative since 1 July 2015.

important implications for the composition of the Australian industry producing like goods which would in turn impact on the Commission's material injury and causation determination.¹³

Thyssen Krupp Mannex (TKM), an importer of alloy round bars, claimed that OneSteel did not produce semi or finished peeled, peeled and polished or centreless ground alloy round bar or heat treated (quenched and tempered) alloy steel bars for certain grades. It noted that no local producer of heat treated alloy round bar had supported the application. It contended that the Commission could not broaden the scope of goods in this investigation to include imported goods that are clearly not like goods to the goods that the applicant actually produces.¹⁴

In response, OneSteel submitted that the goods description does include alloy steel bars which are semi or finished peeled, peeled and polished or centreless ground, as well as heat treated (quenched and tempered). It stated that the issue of whether the applicant produces in Australia like goods to the goods under consideration is a secondary matter. It noted that Milltech Pty Ltd (Milltech) is an Australian producer of goods that are "like" the goods described in the submission from TKM. It stated that the applicant is not precluded from identifying goods under consideration that cover multiple classes of goods, provided that there is a domestic industry producing like goods to the goods howsoever described.¹⁵

On 4 May 2017, the Commission published a position paper on the scope of the goods description.¹⁶ The paper summarised the submissions that had been received in relation to the goods description and set out the Commission's preliminary view that hot rolled alloy round bar means "as rolled", and the process of heat treatment of alloy round bar is a completely separate process to the production of alloy round bar.

In response to the position paper, OneSteel submitted that:

- the term "hot rolled" refers to working the steel above or at a specific temperature known as recrystallization temperature. It does not imply that the goods intended to be subject to the investigation are only "as rolled" but is intended to differentiate the bars that have been "cold rolled";
- it is incorrect for the Commission to conclude that the process of heat-treatment of the alloy round bar is completely separate to the production of alloy round bar. For some product types included in the application, the bars may be considered to have a heat treatment process applied that could not be considered to be a completely separate process to the production of alloy round bar;
- there is an Australian industry member Milltech that produces alloy round bar that has undergone heat and surface treatments; and

¹³ [Document 6](#) on EPR 384.

¹⁴ [Document 7](#) on EPR 384.

¹⁵ [Document 11](#) and [Document 12](#) on EPR 384.

¹⁶ [Document 19](#) on EPR 384.

- to the extent that the Commission may conclude that with respect to some categories of the goods the Australian industry does not produce like goods, then that is not cause to attempt to narrow the scope of the goods description (once the investigation has been initiated). Rather, if there is no Australian industry producing like goods, the import of this specific category of goods cannot count towards assessment of material injury suffered by Australian industry and a Ministerial Exemption may be warranted.¹⁷

In response to the position paper, Stemcor S.E.A Pte Ltd (Stemcor) agreed with OneSteel's interpretation that the domestic producer's production of like goods does not broaden or narrow the scope of the range of goods under investigation. It noted that the only required determination by the Commission is to establish whether the local industry manufactures like goods and to ensure that all such like goods are included in its assessment of material injury. Stemcor further stated that the Commission must define and determine like goods for material injury purposes to include all types of alloy round bar produced by OneSteel including steel reinforcing bars, rod in coils, chromium plated steel and solid sections of steel of non-circular shapes if they possess characteristics closely resembling the goods.¹⁸

Daye Special Steel Co. Ltd (Daye) supported the view taken by the Commission in its position paper that the process of heat treatment of the alloy round bar is a completely separate process to the production of alloy round bar and is considered to be significant. In relation to surface treatments, Daye noted that some treatments are substantial value adding processes while others (such as "machined" and "rough turned") are not. Daye suggested that certain alloy round bar like heat treated alloy round bar (quenched and tempered), and alloy round bar that had a substantial surface treatment applied (peeled and polished or "cold drawn"), be excluded from the scope of the goods under consideration.¹⁹

In response to the position paper, the Commission received a submission from Milltech, in which it identified itself as a producer of heat treated alloy round bar.²⁰

3.4.1 Commission's consideration

The Commission considers that the goods under consideration can include multiple classes of the goods. The Commission does not consider that the scope of the goods description is affected by whether or not the applicant produces like goods to the goods under consideration. Rather, the Commission must first clarify what are the goods that fall within the scope of the goods description, and then determine if the goods produced by the Australian industry are "like" to the imported goods.

¹⁷ [Document 22](#) on EPR 384

¹⁸ [Document 21](#) on EPR 384.

¹⁹ [Document 27](#) on EPR 384.

²⁰ [Document 25](#) on EPR 384.

After considering all the submissions received in relation to the scope of the goods description, including in relation to the Commission's position paper, the Commission determined that:

- the description of alloy round steel bar as “hot rolled” differentiates the bar from alloy round steel bar that is finished at lower temperatures than the process for hot rolling, commonly referred to as “cold rolled”, and
- besides the exclusions listed in the description, the goods description does not explicitly provide for whether the bar is in an interim or finished state, nor does it provide for only certain modifications or finishes. Accordingly, alloy round steel bar which has been subject to heat and/or surface treatment is not excluded from the goods description (except for the specific exclusions – for instance, chromium plated steel, which is specifically excluded from the goods description).

Interested parties were made aware of the Commission's views in a file note that was published by the Commission.²¹

At section 3.5 below and Chapter 4 of this report, the Commissioner has considered whether there is an Australian industry producing like goods to the goods under consideration.

3.4.2 Exemption request

TKM submitted that the Commission should consider excluding heat treated alloy steel bars that are imported under the tariff code 7228 60 90 from the investigation on the basis that OneSteel does not produce such goods and no Australian producer of heat treated alloy bars had supported the application.²²

The Commissioner notes that following the publication of its position paper on the scope of the goods description, Milltech identified itself as a producer of heat and surface treated alloy round bar and lodged information in support of OneSteel's application for the publication of a dumping duty notice. OneSteel's application for a dumping duty notice is therefore supported by an Australian producer of heat treated alloy round bar.

3.5 Like goods

Having clarified the scope of the goods description through the process described above, the Commission examined the domestically produced goods in order to assess whether they are like goods.

3.5.1 Claims made by OneSteel

In its application, OneSteel claimed that the alloy round bar manufactured locally is a like good to the goods under consideration. OneSteel stated that the locally manufactured alloy round bar is manufactured in accordance with the industry standards or the customer-specific requirements applicable to the different types of alloy round bar produced. OneSteel also stated that Moly-Cop produced one model of like goods to the imported alloy round bar, specifically grinding rods (which is grinding bar cut to lengths).

²¹ [Document 32](#) on EPR 384.

²² [Document 7](#) on EPR 384.

OneSteel claimed that the locally produced alloy round bar and the imported goods have the same primary physical characteristics, are commercially alike, directly competitive and are sold to common customers, have the same or a similar range of end uses and are manufactured in a similar manner to the imported goods.

3.5.2 Other claims

Donhad argued that, in addition to grinding rod, the grinding bar produced by Moly-Cop as an input to its own production of further grinding media (such as grinding balls) are also like goods.²³

As noted at section 3.4 of this report, the Commission also received information in support of OneSteel's application for the publication of a dumping duty notice from Milltech.²⁴ In its application, Milltech stated that it produces heat treated alloy bars with a "black" surface finish and peeled alloy bars at its factories located in Australia. Milltech claimed that the imported goods and the locally produced goods have the same technical and physical properties, are comparable in the market, directly substitutable, and are used in the same manner and applications with no modification. It noted that the imported goods may be produced using heat treatment processes that differ from those used by Milltech.

3.5.3 Verification of manufacturing activities

In the course of the investigation the Commission has gathered evidence from, and examined the goods produced by, OneSteel, Milltech and Moly-Cop, and compared this to the evidence obtained from importers and exporters.

OneSteel

The Commission verified the production processes undertaken by OneSteel during a visit to its South Australian production facilities at Whyalla.²⁵ The Commission observed that at OneSteel's facility, molten iron from the blast furnace undergoes a desulphurisation treatment in the charging ladle and is then used as the primary ferrous input to the Basic Oxygen Furnace. Scrap and fluxing agents constitute the balance of the input materials into the furnace. Following the reduction process through the high speed injection of pure oxygen, liquid steel is tapped into a ladle with the bulk of the required alloy additions being made during this tapping process.

Final alloy trimming additions and temperature corrections are made at the ladle furnace prior to casting. The liquid steel is continuously cast into square billets on a billet caster. Following the continuous casting process, based on the hydrogen level measured in the liquid steel during the billet casting process, the grade chemistry and the end use application for which the steel will be used, the most appropriate process option available is selected.

²³ [Document 6](#) on EPR 384.

²⁴ [Document 34](#) on EPR 384.

²⁵ [Document 20](#) on EPR 384 refers.

Depending on the final cross-section required for the round bar, the dimensional tolerance and surface finish required by the end-use application and the bar mill design capabilities, the billets will then be hot-rolled into round bar through bar mills. The rolling process involves charging the billets into a reheating furnace where the billets are heated to a temperature exceeding 1000°C. The hot billet is then fed through a series of rolling stands which effects a change in shape from square to circular while reducing the cross-sectional area. The alloy round bar produced through the rolling process is then cut to length and packed into bundles.

Milltech

Milltech is a manufacturer of processed alloy round bar, specifically engineering bar. The Commission visited Milltech to verify its production process.²⁶ Milltech purchases alloy round bar, sourced from domestic producers and imports. Milltech processes round bars in a number of different ways including drawing, peeling, polishing, precision grinding, quenching and tempering, induction hardening and chrome plating.

The Commission notes that for engineering bar which has been processed using imported round bar as feed material, these goods are not wholly manufactured in Australia. Heat treatment and peeling are significant and separate processes to the production of alloy round bar. “As rolled” alloy round bar requires further work by customers before use. Milltech can vary heat treatment to produce a range of mechanical strength properties to meet specific customer requirements. The peeling process produces a bar that has a surface free of defects and is more dimensionally accurate than an unpeeled bar and is a value adding process. The Commission therefore considers that the processes undertaken by Milltech to produce heat treated and peeled bar involve a substantial manufacturing process undertaken in Australia.

Moly-Cop

The Commission has previously verified the production processes undertaken by the company at its steel manufacturing facility at Waratah.²⁷ Moly-Cop produces liquid steel using an electric arc furnace, with purchased steel scrap as the primary raw material. Alloys are added to the liquid steel, before it is cast into billets. These billets are then hot rolled into alloy round steel bar used in the production of grinding media, referred to as grinding bar. The grinding bar is then used as feed material to produce grinding balls, either through a roll forming or upset forge process.

The Commission has confirmed that this process remained in operation during the investigation period.²⁸

²⁶ [Document 40](#) on EPR 384.

²⁷ [Document 14](#) on EPR 316.

²⁸ [Document 29](#) on EPR 384.

3.5.4 Like goods assessment

The Commission notes that the Australian market for alloy round bar is divided into four distinct market segments - grinding bar, engineering bar, spring and strata bar (or rockbolt). Alloy round bar is generally not substitutable between these various segments. However, within each segment, the locally produced goods and the imported goods are similarly positioned.

The Commission's assessment of the composition of the Australian industry producing like goods to the goods under consideration is discussed at Chapter 4 of this report. The different market segments are discussed further at section 5.2.1 of this report.

OneSteel

As a result of the verification described above and its observation of manufacturing processes during the course of the investigation, the Commission is satisfied that OneSteel's production process is very similar to that for alloy round bar manufactured in China. The same raw materials are used to form liquid steel, which is then used to create steel billets which are then hot-rolled into round bar. While there are subtle differences in certain steps of the process, the Commission considers the locally manufactured alloy round bar and the imported alloy round bar to be produced using similar production methods.

The Commission determined that the alloy round bar produced by OneSteel and the imported alloy round bar meet the minimum requirements under Note (f) to the Tariff. The Commission confirmed that the locally produced alloy round bar and the imported alloy round bar share the same shape, are within the dimensional requirements of the goods description, and broadly share the same specifications and mechanical properties (albeit with subtle differences for the different segments of the alloy round bar market). This includes certain heat and/or surface treatments which may be applied to the bar. Given this, the Commission considers OneSteel's locally produced alloy round bar and the imported alloy round bar to be physically alike.

During the investigation the Commission established that, within each segment of the alloy round bar market, the imported alloy round bar has the same end use as the corresponding alloy round bar manufactured by OneSteel. OneSteel's locally produced alloy round bar and the imported alloy round bar are therefore considered to be functionally alike.

OneSteel's production of alloy round bar results in products which are ultimately sold across the four segments in the market. The Commission has found that the locally manufactured alloy round bar and the imported alloy round bar compete directly within each of the four segments, with evidence of customers using both imported and locally produced alloy round bar during the injury analysis period. The Commission therefore considers OneSteel's alloy round bar and the imported alloy round bar to be commercially alike.

As a result of this analysis, the Commission is satisfied that OneSteel produces like goods to the goods under consideration, and that the like goods produced by OneSteel are wholly manufactured in Australia.

Milltech

For the reasons already outlined above, the Commission considers that Milltech is a producer of engineering bar. Not all products produced by Milltech are like goods to the goods under consideration. Further, some goods produced by Milltech are specifically excluded by OneSteel in its application. For the purposes of this investigation, the Commission considers that the like goods produced by Milltech consist of heat treated and peeled alloy round bar. Milltech produces the like goods at two facilities in New South Wales, undertaking quenching and tempering at Tomago and peeling at Hexham, respectively.

As a result of the verification described above and its observation of manufacturing processes during the course of the investigation, the Commission is satisfied that Milltech's production process is similar to that for the equivalent alloy round bar products manufactured in China. While there are subtle differences in certain steps of the process, the Commission considers the locally manufactured alloy round bar and the imported alloy round bar to be produced using similar production methods.

The Commission determined that the alloy round bar produced by Milltech and the imported alloy round bar meet the minimum requirements under Note (f) to the Tariff. The Commission confirmed that the locally produced alloy round bar and the imported alloy round bar share the same shape, are within the dimensional requirements of the goods description, and broadly share the same specifications and mechanical properties. Given this, the Commission considers Milltech's locally produced alloy round bar and the imported alloy round bar to be physically alike.

During the investigation the Commission established that, within the relevant segment of the alloy round bar market, the imported alloy round bar has the same end use as the corresponding alloy round bar manufactured by Milltech. Milltech's locally produced alloy round bar and the imported alloy round bar are therefore considered to be functionally alike.

Milltech's production of alloy round bar results in products which are ultimately sold only in the engineering bar segment in the market. The Commission has found that the Milltech manufactured alloy round bar and the imported alloy round bar compete directly within this segment, with evidence of customers using alloy round bar from both sources during the injury analysis period. The Commission therefore considers Milltech's alloy round bar and the imported alloy round bar to be commercially alike.

As a result of this analysis, the Commission is satisfied that Milltech produces like goods to the goods under consideration, and that a substantial process of manufacture occurs in Australia.

Moly-Cop

Moly-Cop produces two forms of alloy round bar.

Grinding bar is an intermediate good that is manufactured for self-use from Moly-Cop's own production of billet and its own rolling processes. The grinding bar is converted by Moly-Cop into grinding media, comprising grinding balls (which does not meet the dimensional requirements of the goods description, and is not a like good) and grinding rod, which was identified in OneSteel's application as a like good; grinding rod is sold by Moly-Cop to end users.

Under a tolling arrangement with OneSteel, Moly-Cop also rolled certain alloy round bar on OneSteel's behalf which remained OneSteel's product to market and sell. Moly-Cop did not compete with OneSteel for customers of that product but did compete with OneSteel's customer (Donhad) in the downstream grinding balls market. At the time of its application OneSteel was a related party to Moly-Cop, but Moly-Cop was subsequently sold to a third party.²⁹

As a result of the verification described above and its observation of manufacturing processes during the course of the investigation, the Commission is satisfied that Moly-Cop's production process for grinding bar and grinding rod is similar to that for the equivalent forms of alloy round bar manufactured in China. The same raw materials are used to form liquid steel, which is then used to create steel billets which are then hot-rolled into round bar. While there are subtle differences in certain steps of the process, the Commission considers the Moly-Cop manufactured alloy round bar and the imported alloy round bar to be produced using similar production methods.

The Commission determined that the alloy round bar produced by Moly-Cop and the imported alloy round bar meet the minimum requirements under Note (f) to the Tariff. The Commission confirmed that the locally produced alloy round bar and the imported alloy round bar share the same shape, are within the dimensional requirements of the goods description, and broadly share the same specifications and mechanical properties. This includes certain heat and/or surface treatments which may be applied to the bar. Given this, the Commission considers Moly-Cop's locally produced alloy round bar and the imported alloy round bar to be physically alike.

During the investigation the Commission established that, within the grinding bar segment of the alloy round bar market, the imported alloy round bar has the same end use as the corresponding alloy round bar manufactured by Moly-Cop (i.e. further processing into other forms of grinding media). Although there may be different grade requirements which impact on the precise alloys found in the grinding bar (to achieve the desired properties of the downstream product), these products can be interchangeably used for the same purpose. The Commission therefore considers that Moly-Cop's locally produced alloy round bar and the imported alloy round bar are functionally alike.

With respect to grinding rod, the Commission has found that the alloy round bar produced by Moly-Cop directly competes with the imported alloy round bar, with evidence of customers using both imported and locally produced alloy round bar during the injury analysis period. The Commission therefore considers Moly-Cop's grinding rod and the imported grinding rod to be commercially alike.

²⁹ [Document 65](#) on EPR 384.

With respect to grinding bar, the Commission observes that while there was no direct competition between the imported goods and the goods produced by Moly-Cop in the market during the investigation period, the imported grinding bar and the grinding bar produced by Moly-Cop were subject to similar commercial considerations. These exist in the context of a broader, inter-connected supply chain that linked the production of steel billet, its conversion to grinding bar, its conversion from bar to rods / balls and its end use in the processing of mining ores. The Commission has observed that Moly-Cop and Donhad required different grades of grinding bar for further processing into grinding media (rods and balls) to meet the particular needs of their respective customers, for whom they were in direct competition during the investigation period, and that intellectual property was held tightly by both companies in respect of the alloys present in each of their grades.

The Commission notes that investment decisions, production planning / efficiencies and other commercial considerations (e.g. establishment and changing of business models to reflect market conditions) are interconnected. The Commission observes that, as has been demonstrated by the purchase of Donhad by Moly-Cop after the investigation period (as discussed in more detail in Chapter 9), market structures are dynamic and the assessment of whether locally produced goods and an imported good are commercially alike will fluctuate accordingly. The Commission therefore considers Moly-Cop's alloy round bar and the imported alloy round bar to be commercially alike.

The Commission is satisfied that, although there are differing commercial practices and considerations at play in respect of the grinding bar produced by Moly-Cop when compared to the imported grinding bar, on balance, Moly-Cop produces like goods to the goods under consideration, and that the like goods produced by Moly-Cop are wholly manufactured in Australia.

3.5.5 Other matters raised by interested parties

Producers of grinding bar

Several submissions claimed that OneSteel should not be considered to be a producer of grinding bar (the largest of the four Australian market segments in terms of production and sales). Donhad submitted that OneSteel has not produced grinding bar since the closure of its Mayfield mill. Donhad claimed that OneSteel's production is limited to production of steel billet and of other forms of alloy round bar, and the toll rolling arrangement between OneSteel and Moly-Cop for the conversion of OneSteel's billet into grinding bar by reheating and rolling at Moly-Cop's Newcastle rolling mill was previously confirmed by the Commission.³⁰

³⁰ [Document 6](#) on EPR 384 refers; Donhad is referring to previous findings of the Commission as reported in [Anti-Dumping Commission Report No. 316](#).

Stemcor submitted that the only manufacture undertaken by OneSteel is that of steel billet. Stemcor argued that OneSteel's substantial process of manufacturing (i.e. the production of the billet) does not attach the essential or vital quality or character to the finished product of like goods. Instead, Stemcor claims that the substantial process that transforms and adds the essential characteristic to the finished grinding bar is undertaken by Moly-Cop.³¹

The Commission observes that the Act does not define "production", nor what a "substantial" process of manufacturing is, and therefore the ordinary meaning of the words ought to be relied upon. When the Commission has previously encountered tolling arrangements the entity which is "the producer" of the product has been established by reference to the degree of control exercised over the production process.

Based on its production of billet (of itself, a substantial process of manufacture) and the arrangements that OneSteel had in place for toll rolling during the investigation period, the Commission remains satisfied that OneSteel was a producer of grinding bar during the investigation period. The Commission considers this approach reasonably reflects the nature of the activities actually undertaken by OneSteel, and the commercial risk borne by it.

3.5.6 Precision ground bars

During the verification visit to Milltech, the Commission identified a certain quantity of precision ground bars for which data was not provided. The visit team noted in its report that the case team would determine whether these bars are like goods.³²

On 15 September 2017, Milltech provided a submission in relation to these bars.³³ Milltech suggested that, in its view, the precision ground bars did not fit within the goods description due to differences in the physical qualities of the bars, and a lack of commercial, functional and production likeness.

Having considered the available information, the Commission notes that the goods description does not explicitly provide for whether the bar is in an interim or finished state (besides the exclusions listed), nor does it provide for only certain modifications or finishes. Having accepted that the scope of the goods description includes both heat-treated and surface-treated bars, the Commission considers it is inappropriate to then limit the description to bars that are treated only a certain number of times – a limitation which may have been included at the time of the application if it was intended.

The Commission understands that the alloy round bars produced for each of the different market segments (grinding bars, engineering bars, spring and strata bars) generally compete in distinct market segments and have subtle production differences and standards. This does not preclude each of these different bars from being part of the goods description. For these reasons, the Commission considers the precision ground bars produced by Milltech to be like goods.

³¹ [Document 21](#) on EPR 384.

³² [Document 40](#) on EPR 384.

³³ [Document 43](#) on EPR 384.

3.6 Conclusion

Based on the above, the Commissioner considers the various forms of alloy round bar described above and manufactured by OneSteel, Milltech and Moly-Cop are like goods to the imported alloy round bar.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commissioner finds that there is an Australian industry producing like goods to the imported alloy round bar.

The Commissioner finds that like goods are produced in Australia by OneSteel, Moly-Cop and Milltech, and that the Australian industry for like goods as a whole consists of OneSteel, Moly-Cop and Milltech.

The Commissioner finds that the Australian industry producing like goods consists of two distinct sectors – a sector that produces like goods for self-use in its manufacture of downstream products (this sector is referred to in this report as the captive sector), and a sector that produces like goods for sale into the Australian market (referred to in this report as the market sector).³⁴

4.2 Background

4.2.1 Legislative Framework

Subsection 269T(4) states that if there is a person or persons who produce like goods in Australia, there is an Australian industry in respect of those like goods. Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.2.2 Approach to defining the Australian industry in TER 384

In its application, OneSteel claimed that it is the largest producer in Australia of goods which are like to the goods under consideration. OneSteel's application noted that one type of like goods, specifically grinding rods (i.e. grinding bar cut to lengths), is produced by Moly-Cop.

Following the initiation of the investigation, the Commission received submissions that, while OneSteel's statement that it is the largest producer of like goods may be correct when assessed against the broad goods description, it was not correct when assessed against grinding bar only as Moly-Cop is a significant producer of such alloy round bar.³⁵

³⁴ The downstream products in this case have distinct characteristics to the goods under consideration and are not like goods to the goods under consideration. As discussed at section 3.5.4 of this report, during the investigation period, Moly-Cop produced grinding bar as an intermediate good for conversion into grinding balls which does not meet the dimensional requirements of the goods description and is not a "like" good.

³⁵ See, for example, the submission from Donhad (on the EPR).

As discussed at section 3.5.2 of this report, in the early stages of the investigation Milltech was also identified as a producer of alloy round bar. On the basis of the Commission's verification activities (described in Chapter 3) the Commissioner was satisfied that OneSteel, Moly-Cop and Milltech each produce like goods to the goods under consideration.

In TER 384, the Commission found that Moly-Cop is part of the Australian industry producing like goods, not only with respect to its production of grinding rod but also through its captive production of grinding bar.

4.3 Captive production and scope of the Australian industry

In its revocation decision, the ADRP stated that, to the extent that the alloy round bar produced by Moly-Cop is a step in its production of grinding media, Moly-Cop was part of the Australian industry producing grinding balls, not part of the Australian industry producing like goods to the goods the subject of the application.³⁶

Having considered the ADRP revocation decision, the Commission remains of the view that Moly-Cop is part of the Australian industry producing like goods, not just in relation to its production of grinding rods, but also in relation to its captive production of grinding bar.

As was noted in TER 384, while the Act does not define "Australian industry", the text of various provisions in the Act clearly supports an interpretation that the fundamental activity that defines the Australian industry in relation to goods of a particular kind is that of production. Subsection 269T(4) states that, in relation to goods of a particular kind, if there is a person or persons who *produce* like goods in Australia, there is an Australian industry in respect of those like goods and, subject to subsection 269T(4A), the industry consists of that person or persons. Subsection 269T(2) states only that the goods *produced* by the Australian industry must be wholly or partly *manufactured* in Australia. Consistent with domestic legislation, the Commission's *Dumping and Subsidy Manual* (the Manual) states that "[a]s production, not sales, defines an industry, market sectors, differing end use, and downstream market structure are irrelevant determinants of an industry as a whole".³⁷ In this respect, the Commission agrees with the ADRP's view that the product being produced determines whether a particular entity is part of the industry producing like goods.³⁸

³⁶ ADRP [Report No. 75](#), paragraph 30. The Commission observes that [OneSteel's application to the ADRP](#) for a review of the termination decision argued that Milltech could not be considered to be a producer of like goods as its manufacturing process was not 'a substantial process' in the manufacture of the goods (per subsection 269T(3)). The ADRP decided that it was not necessary to deal with this issue due to its findings concerning Moly-Cop's production. The Commission's view remains, as set out in Chapter 3, that the process undertaken by Milltech is a substantial process in the manufacture of the goods.

³⁷ [Dumping & Subsidy Manual](#), page 20.

³⁸ ADRP [Report No. 75](#), paragraph 21.

The ADRP revocation decision states:

when consideration is given to the context of section 269T(4) and to the analysis which the [Commission] has to conduct when considering whether imported goods are causing material injury to an Australian industry, it must surely be the end product of the manufacture or production which is relevant. **How otherwise would you be able to determine whether the imports are causing injury?**³⁹ [emphasis added]

And further:

Apart from the difficulty the [Commission's] approach caused in the context of the termination decision under s269TDA(1)...the above shows clearly why the [Commission's] inclusion of Moly-Cop on the basis of its captive production could not be what was intended by legislation. The [Commission] does not appear to have investigated injury to Moly-Cop... **It is difficult to see how the [Commission] could have examined the impact of captive production of Moly-Cop from dumped imports.** The captive production of round bar by Moly-Cop as a step in the production of grinding media was not exposed to any competition from dumped goods.⁴⁰ [emphasis added]

The Commission considers that these are separate (but related) questions. The Commission considers that the ADRP has potentially equated the threshold task of identification of the Australian industry with the later, practical task of assessing whether injury has been experienced by that Australian industry in respect of the like goods.

4.3.1 Are like goods being produced?

Whilst the commercial likeness of goods produced by the Australian industry may be more directly inferred where they compete directly in the market with the imported goods, the Commission considers that there are degrees of likeness and that the like goods assessment is a balance struck on the facts. As set out in Chapter 3, the Commission's like goods assessment demonstrates that the grinding bar (which is for its own use) and grinding rod (which is for sale to third parties) produced by Moly-Cop are both like to the imported goods.

4.3.2 What are the views of the interested parties?

OneSteel submitted that Moly-Cop does not trade or deal in the Australian domestic market for the sale of grinding bar, it is a producer of grinding balls and a relatively small volume of grinding rods, and anything upstream to these finished products is treated as work in progress by Moly-Cop.⁴¹

In response, Stemcor submitted that whether grinding bar produced by Moly-Cop is traded or sold on the Australian market is irrelevant to defining local production and assessing material injury to the Australian industry.⁴² Material injury analysis ought not to be confined to only sales which are directly sold onto the domestic market, but must also consider the effects of captive production.

³⁹ Ibid, paragraph 24.

⁴⁰ Ibid. paragraphs 28 and 29.

⁴¹ [Document 12](#) on EPR 384.

⁴² [Document 21](#) on EPR 384.

Stemcor noted that this is supported by the Commission's inclusion of captive production of like goods in defining the Australian industry in investigations involving clear float glass, quicklime and resealable can end closures. Stemcor also submitted that whether grinding bar is treated as work in progress or not is again irrelevant. Stemcor would expect that Moly-Cop's production and cost accounting systems would record the production volumes of grinding bar manufactured and attribute relevant costs of production to grinding bar. It considered that Moly-Cop's production volumes were directly relevant to establishing the scope of the Australian industry, whilst the allocated costs of grinding bar were directly relevant to the Commission's assessment of price and profit related injury indicators.

As noted previously, following the publication of the Commission's issues paper on the scope of the goods description, OneSteel identified Milltech as a producer of heat and/or surface treated round bar in Australia.⁴³ Milltech also identified itself as a producer of heat treated and/or surface peeled alloy round bar and provided information in support of OneSteel's application.⁴⁴

Moly-Cop itself has stated that it considers itself a producer of alloy round bar, including grinding bar and grinding rod, with "a small volume of grinding rod sold to external customers". It concurs with the Commission's assessment in TER 384 that it is a member of the Australian industry producing like goods.⁴⁵

4.3.3 Defining "the Australian industry"

The ADRP revocation decision states that neither the extract from the Manual nor the decision of Lockhart J in *Swan Portland Cement Limited and Cockburn Cement Limited v The Minister of Small Business and Customs and the Anti-Dumping Authority (Portland Cement)* are of assistance in resolving the preliminary issue of whether, and to what extent, Moly-Cop was part of the Australian industry producing like goods.⁴⁶

In *Portland Cement*, counsel for the applicants argued that, for the purposes of the legislation, the definition of industry must be congruent with the area (both economic and geographic) within which it is sensible to speak of a price, that is, a market. The applicants argued that it was necessary to interpret "Australian industry" in the way they suggested, for otherwise the purpose of the legislation, which is to ensure that industries in Australia are not damaged by competition from foreign exports at prices lower than those realised in their domestic market, would not be fulfilled. Relying on those arguments, the applicants submitted that as the Western Australian clinker market is essentially a discrete market due to its distance from the rest of Australia, it ought to be regarded as a separate Australian industry.

⁴³ [Document 22](#) on EPR 384.

⁴⁴ [Document 34](#) on EPR 384.

⁴⁵ [Document 65](#) on EPR 384.

⁴⁶ [ADRP Report No. 75](#), paragraphs 19-20.

Lockhart J comprehensively rejected that argument, stating:

The expression ‘Australian industry’ in the context of the anti-dumping legislation refers to an industry viewed throughout Australia as a whole and does not refer to part of that industry, whether the part be determined by geographic, market **or other criteria**.... ‘industry’ on its plain meaning does not have geographical connotations, **it certainly does not equate with the term ‘market’ ... industry, using its plain meaning is defined only by the product involved.** [emphasis added]⁴⁷

The Commission notes that the factual circumstances described in *Portland Cement* are that the applicant sought the imposition of dumping duties on an intermediate product (clinker) that it wholly used in its own production of a downstream product (cement). The absence of sales of clinker into the market by the applicant (and therefore whether this impacted on the scope of the Australian industry) was not explored by the court.

The Commission considers that, once it is established that the grinding bar produced by Moly-Cop is like to the imported goods, the decision in *Portland Cement* supports its view that the Australian industry producing like goods cannot simply be equated with a market for like goods.

Further, the Commission considers that the ADRP’s decision results in the scope of the Australian industry being determined by reference to the business model employed rather than the characteristics of the goods actually produced.⁴⁸ For instance, if Moly-Cop were to structure its business so that its grinding bar production facilities were owned by one entity, separate to the entity undertaking its production of grinding balls, the “sale” (or transfer) of grinding bar between the two entities would be the basis for finding the existence of an Australian industry producing like goods, notwithstanding that the act of producing the like goods remained unchanged.

Extending this reasoning, having regard to business models to determine the scope of the Australian industry would enable artificial distinctions (such as subsidiary arrangements) to dictate which entities are able to seek a remedy for injury caused by dumping. For example, consider a situation in which two domestic manufacturers produce their own intermediate product from raw materials in order to produce the same end product and compete directly in the same market. For the purposes of this example, the intermediate product has no other use. In this case, both entities can seek the publication of a dumping duty notice in respect of dumped exports that cause injury in the market for the same end product.

⁴⁷ Re Swan Portland Cement Limited and Cockburn Cement Limited v the Minister of Small Business and Customs and the Anti-Dumping Authority [1991] FCA 49, per Lockhart J at paragraphs 39, 42 and 43.

⁴⁸ The Federal Court has defined “like goods produced by an Australian industry” by reference to a product rather than a market (per *Portland Cement*), and the Court has stated that this interpretation reinforces a construction of “like goods” which focuses on a visual or physical comparison, not limited to their appearance and extends to: the composition of the goods, the materials used to manufacture them, their outward appearance and the uses for which they were suitable in a commercial and practical sense (see *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708, per Mortimer J at paragraphs 124, 132).

Conversely, consider the situation if one of the manufacturers decided to instead import its intermediate product at dumped prices, thereby gaining an advantage in the domestic market against its sole domestic rival. The importing manufacturer's advantage is only experienced in terms of the market for the end product (noting that the imported intermediate product otherwise has no market). The Commission's view is that the approach taken in the ADRP's revocation decision may provide no basis on which the integrated manufacturer could seek a remedy against the dumped goods.

4.3.4 Other considerations

Finally, the Commission notes that there have been World Trade Organization (WTO) cases where captive production and the scope of the domestic industry producing like goods have been relevant factual circumstances.⁴⁹ The Commission considers the following comments from the Report of the WTO Appellate Body regarding the *United States – Anti-Dumping measures on certain Hot-Rolled Steel Products from Japan* dispute appear to be consistent with the Commission's approach to Moly-Cop's production of grinding bar:

We recall first that the [Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)] provides that "injury" means "material injury to a *domestic industry*, threat of material injury to a *domestic industry* or material retardation of the establishment of *such an industry*". It emerges clearly from this definition that the focus of an injury determination is the state of the "domestic industry".

Article 4.1 of the *Anti-Dumping Agreement* defines the term "domestic industry" as the "domestic producers as a whole of the like products" or "[domestic producers] whose collective output of the products constitutes a major proportion of the total domestic production". It follows that an injury determination, under the *Anti-Dumping Agreement*, is a determination that the domestic producers "as a whole", or a "major proportion" of them, are "injured". This is borne out by the provisions of Articles 3.1, 3.4, 3.5, 3.6, and 3.7 of the Agreement, which impose certain requirements with respect to the investigation and examination leading to an injury determination. Investigating authorities are directed to investigate and examine imports in relation to the "domestic industry", the "domestic market for like products" and "domestic producers of [like] products". The investigation and examination must focus on the totality of the "domestic industry" and not simply on one part, sector or segment of the domestic industry.⁵⁰

[...]

Indeed, we believe that it may be highly pertinent for investigating authorities to evaluate the relevance of the fact that a significant proportion of the domestic production of the like product is shielded from direct competition with imports, and that the part of the domestic industry that is most likely to be affected by the imports is limited to the merchant market.⁵¹

⁴⁹ See for instance [Appellate Body Report](#), *United States – Anti-Dumping measures on certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, 23 August 2001.

⁵⁰ Ibid, from paragraph 189.

⁵¹ Ibid, at paragraph 198.

The WTO Appellate Body found that, in examining the merchant market (i.e. sales to third parties) without also objectively examining the captive market in like or comparable manner, the United States had acted inconsistently with Articles 3.1, 3.4 and 4.1 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement). The captive market in that case covered internal transfers of the like product which did not enter the merchant market, because the product was used by integrated producers to manufacture a downstream product.

4.3.5 What are the practical limitations on assessing injury?

The Commission notes that, while captive production may be shielded from direct import competition, it may still be exposed to indirect competition in the downstream market. More generally, an assessment of injury to the Australian industry in a downstream market is not beyond the bounds of possibility.

In its application to the ADRP, OneSteel provided examples of the type of information that could have been verified by the Commission to establish injury to Moly-Cop. For instance, OneSteel submitted that the decline in OneSteel's production volumes of alloy round bar in the investigation period "would have significantly impacted Moly-Cop's revenue and increased its production costs of alloy round bar." OneSteel also suggested that a substantial increase in dumped imports for use in Donhad's production of grinding balls would have impacted Moly-Cop's competitive position in that market, and would flow through to additional negative impacts on its production costs as well as impacting its revenue from grinding ball sales.⁵²

The Commission agrees with OneSteel's observations, in that the types of injury which Moly-Cop may have experienced may exist, and that it was open for Moly-Cop to present whatever evidence it had in its possession which would demonstrate that it had experienced injury (and that this was a result of the presence of dumped goods in the market). In this case, Moly-Cop did not provide the Commission with detailed information of its performance indicators to enable such an assessment.

The ADRP revocation decision states that the Commission should have adopted the approach it took in the hot rolled coil (HRC) continuation inquiry (as reported in *Anti-Dumping Commission Report No. 400*) in the present case.⁵³ In that report, the Commission stated:

The Commission also notes that BlueScope [Steel Limited] is an integrated manufacturer which utilises a portion of the HRC produced as an input to the production of other steel products (such as zinc coated (galvanised) steel). As this HRC does not enter the market for HRC generally, the Commission has confined its analysis to HRC produced and sold by BlueScope in that form.⁵⁴

⁵² Paragraph 19 of [OneSteel's application to the ADRP](#) refers.

⁵³ ADRP [Report No. 75](#), paragraph 30.

⁵⁴ [Anti-Dumping Commission Report No. 400](#), page 21.

The Commission observes that its analysis of BlueScope Steel Limited's production of HRC in that inquiry was for the purpose of its injury analysis, not to assess whether it was part of the Australian industry producing like goods. That inquiry involved very different factual circumstances, where BlueScope Steel Limited is the only producer of HRC and zinc coated (galvanised) or aluminium zinc coated steels (both of which are produced using HRC as the chief raw material) in Australia. Further, that case was a continuation inquiry, which examined the longer term market trends for HRC to assess whether the relevant anti-dumping measures ought to be continued.

To the extent that downstream demand for HRC due to BlueScope Steel Limited's production of other products was a relevant other factor to consider, it was relevant in terms of the likelihood of future injury caused by dumped goods in the absence of the measures. Given the complex interactions that already occur in the HRC market (including between goods which are subject to measures and imported goods which are not), such an assessment of downstream demand for products which are also subject to anti-dumping measures would have added little, if anything, to the Commission's analysis in respect of HRC. Finally, an absence of detailed information concerning the downstream market for products derived from HRC did not prevent the Commission from making a positive finding in respect of future injury likely to be caused by dumping.

Stemcor suggested that the Commission has included the captive production of like goods in defining the Australian industry in other investigations (in relation to clear float glass, quicklime and resealable can end closures).⁵⁵

The factual circumstances in an investigation will dictate the extent to which captive production is relevant to defining the scope of the Australian industry producing like goods. In respect of each of HRC, clear float glass, quicklime and resealable can end closures, the producers of like goods (including those with captive production) were recognised as members of the Australian industry. However, the evidence before the Commission regarding the injury experienced by the Australian industry *as a whole*, and the materiality of that injury, could be assessed without having regard to anything other than the goods that entered the market.

For example, in respect of clear float glass, there has only ever been one member of the Australian industry producing like goods that has been examined by the Commission. The Australian industry member sold the like goods to both related and unrelated parties. The related party sales of clear float glass also did not "enter the market", in the sense that the related party would further process the clear float glass such that it became other products. The Commission's findings were primarily based on the evidence regarding sales to unrelated parties. An absence of detailed information concerning the downstream market for further worked glass products did not prevent the Commission from making a positive finding in respect of future injury likely to be caused by dumping. In that sense, the issue of captive production was of lesser significance than in the present case.⁵⁶

⁵⁵ [Document 21](#) on EPR 384.

⁵⁶ [Anti-Dumping Commission Report No. 335](#) refers.

4.3.6 Conclusion

Accordingly, the Commission's view is that the injury analysis, in this investigation, ought not to be confined to the like goods directly sold onto the domestic market, but must consider the broader factual circumstances, including any relevant impacts on captive production. But for the purposes of determining which entities comprise the Australian industry, whether the entity producing like goods uses the goods itself (i.e. as an intermediate product to produce a downstream product) or sells the goods into the market (as a final product), is irrelevant.

The Commission considers that, for the reasons outlined above, Moly-Cop is part of the Australian industry producing like goods in relation to its captive production of grinding bar *and* its production of grinding rods. The Commission also considers that both OneSteel and Milltech are also members of the Australian industry producing like goods in respect of the relevant alloy round bar that each produces (as set out in Chapter 3).

Having defined the scope of the Australian industry, the Commissioner must make a finding regarding injury to the Australian industry as a whole, including in relation to Moly-Cop. The Commission's injury assessment is discussed at Chapter 8 of this report.

4.4 Size of the Australian industry

Figure 1, below, depicts the share of the total volume of production during the investigation period held by OneSteel, Moly-Cop (including its captive production) and Milltech. In the depiction of relative production volumes below, sales by OneSteel to Milltech have been excluded from Milltech's production volumes to ensure there is no double counting. The supporting data for the analysis below and that contained in Chapter 5 of this report is at **Confidential Attachment 1**.

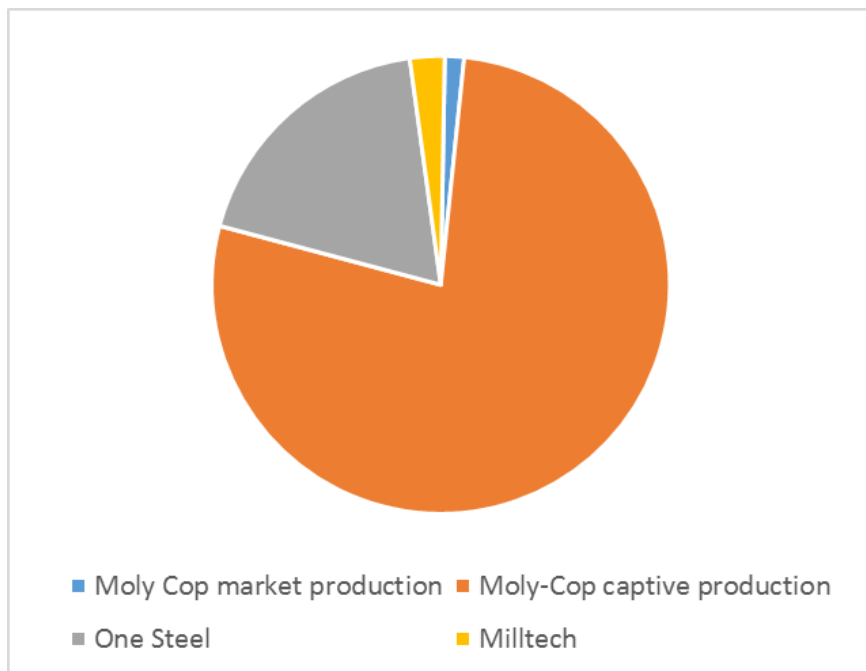


Figure 1: Share of alloy round bar production, 1 October 2015 to 30 September 2016

As a result of the views provided on the scope of the goods description, and the necessary revision of the parties that comprise the Australian industry, the Commission notes that OneSteel is not the largest volume producer amongst the Australian industry (as initially considered).

When these shares of production were made known, Donhad submitted that the Commission had ‘overlooked’ the second limb of the standing requirements set out in subsection 269TB(6) and that ‘immediate termination of the investigation is required’.⁵⁷ The Commission notes that Moly-Cop has not expressed a view on whether it supports or opposes the investigation, while Milltech supported OneSteel’s application after the position paper was published.

Following the initiation of an investigation, termination of the investigation as a result of insufficient standing is not an available ground under subsection 269TDA. The Commission has therefore not considered this point further.

4.5 Conclusion

The Commissioner is satisfied that there are like goods wholly, or partly, manufactured in Australia. The Commission considers that the Australian industry as a whole consists of OneSteel, Moly-Cop and Milltech.

⁵⁷ [Document 54](#) on EPR 384.

5 AUSTRALIAN MARKET

5.1 Introduction

The Commission distinguishes the *market sector* of the Australian industry producing like goods from the *captive sector* of the Australian industry producing like goods. These sectors are both relevant to the four distinct market *segments* (grinding bar, engineering steel, spring steel and strata bar or rockbolt).

The Australian industry members that sell in the direct market for like goods are OneSteel, Milltech and Moly-Cop (in relation to a small volume of grinding rods). The market sector of the Australian industry producing like goods is exposed to direct competition from the imported goods. Moly-Cop's captive production of alloy round bar does not enter the market for like goods and is shielded from direct competition with the imported goods (the goods under consideration).

The Commission considers that the Australian market for alloy round bar consists of open market sales from domestic production by OneSteel, Milltech, Moly-Cop and imports from various countries, with a majority of imported supply coming from China.

Based on verified production and sales data of the Australian industry members, together with verified import data, the Commission has estimated the size of the Australian market for alloy round bar during the investigation period was approximately 119,000 tonnes.

Note: All references to the market, market share and market size in the ensuing discussion exclude Moly-Cop's captive production of alloy round bar.

5.2 Market structure

As noted previously, the Australian market for alloy round bar is divided into four distinct market segments (grinding bar, engineering steel, spring steel and strata bar or rockbolt). The market segments are driven by different end uses depending on the grade of bar, and any heat or surface treatments applied. Due to the differences in end use determined by varying chemical and mechanical properties of alloy round bar and the resulting wide range of prices, alloy round bar is not substitutable between the different market segments.

OneSteel is the largest volume seller in the alloy round bar market. OneSteel's sales mix into the market segments in the market are illustrated in Figure 2 below.

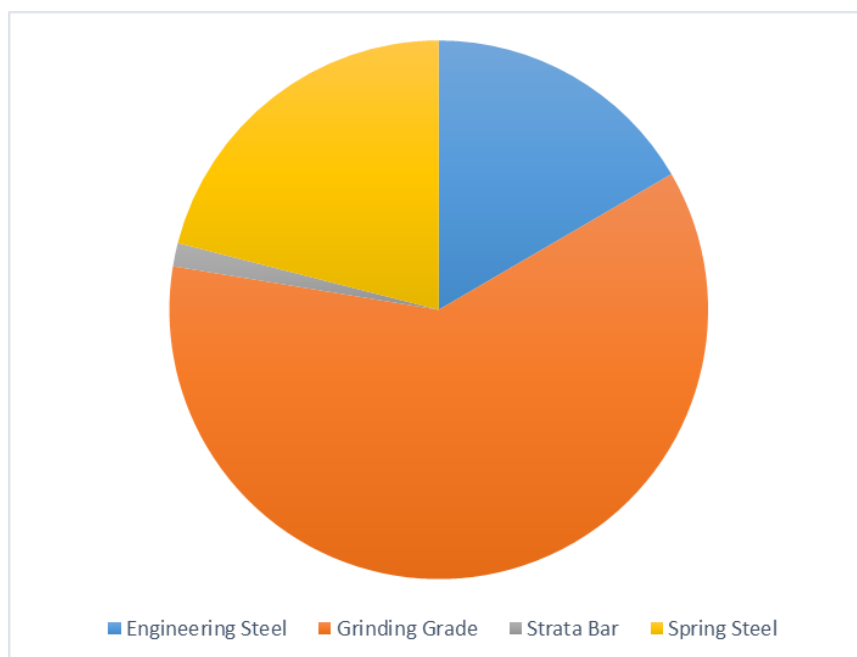


Figure 2: Sales by OneSteel into distinct segments of the alloy round bar market

In TER 384, the Commission stated that, based on the evidence obtained from Moly-Cop and Milltech, OneSteel's sales mix is indicative of the relative sizes of the segments of the market. However, the Commission has reconsidered this statement.

The Commission has found that over 95 per cent of all imported alloy round bar from China during the investigation period was grinding bar. This information was confirmed by the major importer of alloy round bar, Stemcor, which completed an importer questionnaire and was subsequently visited by the Commission. A record of this verification visit has been placed on the public record.⁵⁸

The relative size of the grinding bar segment of the market as compared to other segments of the market would therefore be larger than is depicted by OneSteel's sales into the market. This is because imports of alloy round bar are not equally distributed across market segments but concentrated primarily in the grinding bar segment of the market. To obtain an indication of the relative size of the market segments the Commission attributed 95 per cent of all imports from China to the grinding bar segment of the market, and has attributed the remainder of the imports from China equally to the remaining three market segments. The Commissioner considers the resulting depiction in Figure 3 below gives a more accurate indication of the relative size of the market segments.

⁵⁸ [Document 15](#), EPR 384.

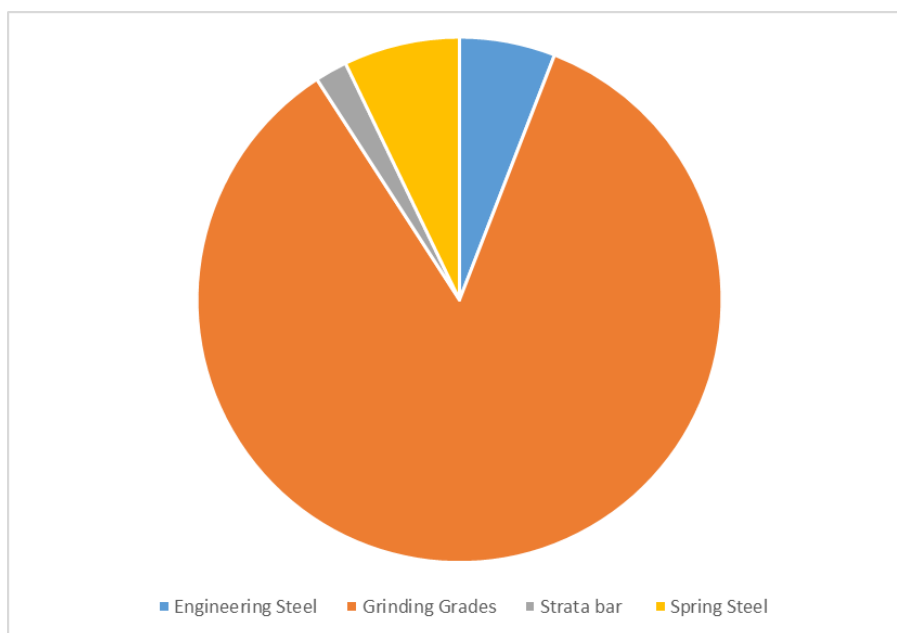


Figure 3: Relative size of market segments (in tonnes)

5.2.1 Market segments

Grinding bar

Grinding bar is used as a feedstock in the production of grinding media. Grinding media, which are typically steel balls or rods, are the consumable component used in a grinding mill to crush or grind mineral ore. Moly-Cop and Donhad are the only manufacturers of steel grinding media in Australia.⁵⁹

During the investigation period, OneSteel was the only Australian industry member supplying grinding bar to the direct market. Fluctuations in the mining sector drives demand for grinding bar. OneSteel claimed that strong demand in the first quarter of 2016 enabled prices to be slightly higher than normal. There can be minor fluctuations depending on new mine sites becoming operational.

OneSteel supplied a single customer (Donhad) in the grinding bar segment of the market throughout the injury analysis and investigation periods.⁶⁰ Grinding bar is manufactured to customer specific standards. Due to the requirement to meet customer specific standards in respect of the quality of grinding bar, the Commission has found that competition in the grinding bar market is on the basis of both price and quality. This is discussed further in Chapter 8, below.

Changes to the grinding bar segment of the market in the post investigation period are discussed at Chapter 9 of this report.

⁵⁹ [Anti-Dumping Commission Report No. 316](#) and [Document 54](#), EPR 384.

⁶⁰ [Document 65](#) on EPR 384.

Engineering bar

Both OneSteel and Milltech supply engineering bar to the direct market. OneSteel supplies engineering bar which is used as feedstock to be further processed. Milltech is a specialist engineering bar processor, using feedstock engineering bar as the raw material to produce other forms of engineering bar with heat and or surface treatments. Engineering bar is used in the manufacture and maintenance of equipment across a range of industries.

The Commission has found the size of the engineering bar market segment increased slightly over the injury analysis period. The Commission notes that imports of engineering bar includes imports from countries other than China. The Commission understands that OneSteel negotiates prices for feedstock engineering bar on longer cycles than the ad hoc negotiations for grinding bar, usually 3 to 6 months cycles.

Spring steel & Strata bar

OneSteel supplies alloy round bar to be used in the spring steel and strata bar market segments. Spring steel is commonly used in the manufacture of rail clips. Demand is dependent on specific projects. The Commission has found the size of the spring steel market segment remained consistent during the injury analysis period.

Strata bar is used in mining operations, particularly in the development stages. The Commission considers that the volumes of strata bar sold by the Australian industry, and imported into Australia, is immaterial in comparison to the market size. The Commission understands that prices for spring steel and strata bar are negotiated on 3 to 6 month cycles.

5.2.2 Market distribution

Alloy round bar is, with the exception of grinding rod, an intermediate good. OneSteel sells the majority of its alloy round bar directly to further processors. A small volume is sold to distributors. The Commission notes that approximately 1 per cent of OneSteel's sales volume of alloy round bar is to a related party customer. A majority of Milltech's sales are to distributors, who also purchase imported goods.

5.2.3 Market size and share

Figure 4 depicts the sales volumes of the Australian industry producing like goods compared to the volume of Chinese alloy round bar imports in the market. The Commission observes that the size of the Australian market for alloy round bar has increased over the injury analysis period.

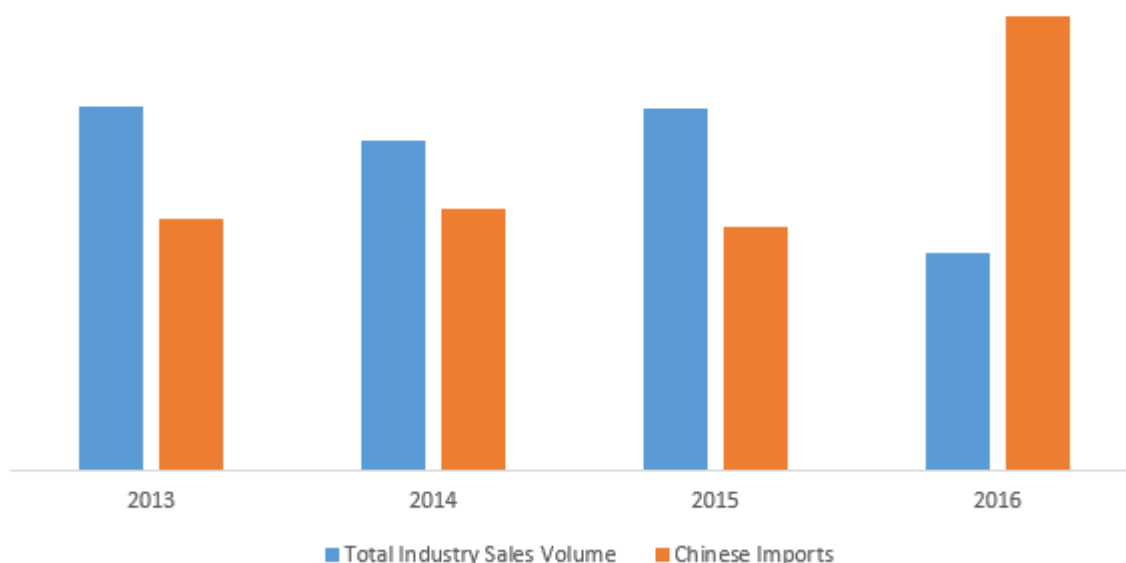


Figure 4: Total sales volume of Australian industry and volume of Chinese imports in tonnes

Based on verified sales data of the market sector of the Australian industry producing like goods and verified import data, the Commission has estimated the respective shares in the total market for alloy round bar in Figure 5, below. Figure 5 shows that OneSteel's market share has decreased significantly during the investigation period while Milltech's market share has remained stable. The analysis presented at Figure 5 does not include the volume of grinding rods sold by Moly-Cop during the initial three years of the injury analysis period.

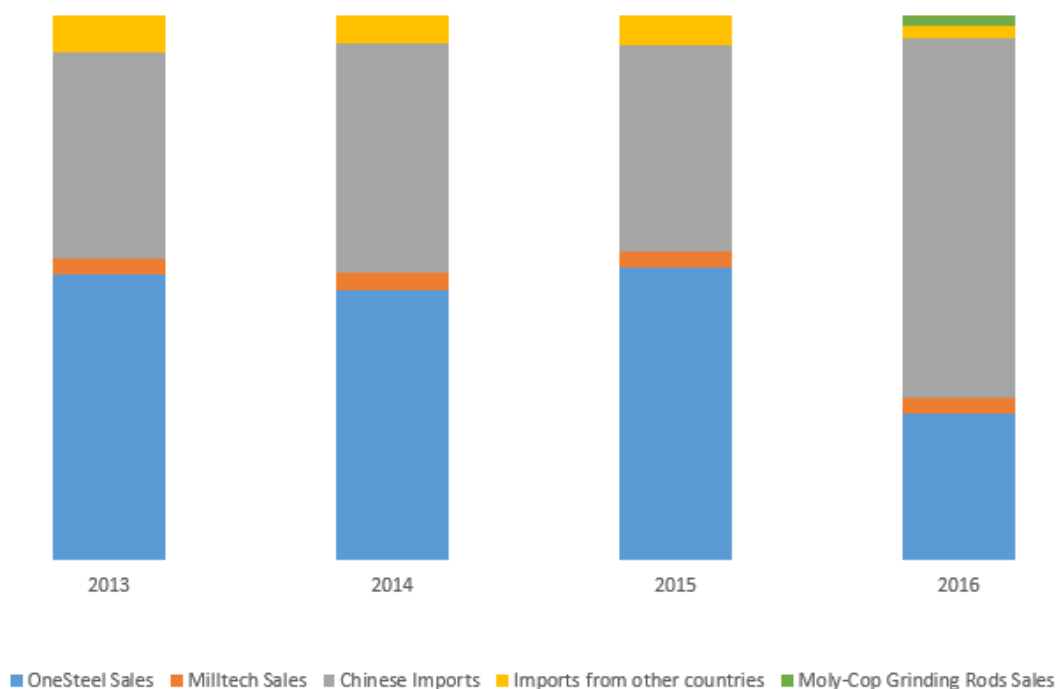


Figure 5: Share of alloy round bar market

In SEF 384, the Commission noted that the chart relating to the size and share of the market was materially different from the market share chart that was depicted in the verification visit report for OneSteel.⁶¹ During the course of the investigation the Commission noted some inconsistencies with the import data obtained from the Australian Border Force (ABF) during the first three years of the injury analysis period. To address these concerns, the Commission sought verified information from both the major importer of alloy round bar from China, and the major customer for alloy round bar in Australia. Having cross-checked this verified data, the Commission updated the import volumes for the first three years of the injury analysis period. The Commission notes that there were no concerns with the import data for the investigation period.

Note: In Figures 4 and 5, it was not possible to eliminate double counting of OneSteel's sales to Milltech. However, as these sales account for a negligible proportion of the overall market, their inclusion does not distort the indicative nature of the overall findings.

⁶¹ [Document 20](#) on EPR 384.

6 DUMPING INVESTIGATION

6.1 Finding

The Commissioner has found that:

- alloy round bar exported to Australia by Suzhou, Daye and uncooperative exporters during the investigation period was dumped; and
- the volume of dumped goods from China was not negligible.

The dumping margins are summarised in Table 2, below.⁶²

Country	Exporter	Dumping Margin
China	Suzhou Suxin Special Steel Ct. Ltd (Suzhou)	35.3%
	Daye Special Steel Co. Ltd (Daye)	21.9%
	Uncooperative and all other exporters	73.7%

Table 2: Dumping margins

6.2 Introduction and legislative framework

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB. For all dumping margins calculated, the Commission compared the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

6.3 Cooperative exporters

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

- Suzhou;
- Yonggang; and
- Daye.

⁶² As per ADN No. 2017/152, the investigation with respect to Yonggang was terminated.

The Commission verified the information provided by all three exporters. These exporter questionnaire responses were complete (noting the further data requested from Daye, as outlined below in section 6.8.1) and enabled the Commission to either conduct a verification visit or undertake desktop verification. These exporters are considered to be cooperative exporters.

6.4 Uncooperative exporters

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

The Commission considers those exporters that did not provide a response to the exporter questionnaire to be uncooperative in that they did not give the Commissioner information considered to be relevant to the investigation. For uncooperative and all other exporters, given that these exporters have not provided relevant information via a response to the exporter questionnaire, the Commissioner has used subsection 269TAB(3) and subsection 269TAC(6) to calculate dumping margins for those exporters, having regard to all relevant information and as required by subsection 269TACAB(1).

6.5 Market situation finding

In the application, it was submitted that a particular market situation exists in the Chinese alloy round bar market such that the domestic selling prices of alloy round bar in the Chinese domestic market are not suitable for establishing normal values under subsection 269TAC(1). The applicant alleges that alloy round bar prices in China are artificially lower, or not substantially the same as they would be if they were determined in a competitive market.

After having considered these allegations, the Commissioner has formed a view that normal values cannot be ascertained under subsection 269TAC(1) because there is a particular market situation in the Chinese domestic alloy round bar market such that sales in that market are not suitable to be used in determining a price under subsection 269TAC(1). The Commission's assessment of a particular market situation in China for alloy round bar is in **Appendix 1**.

6.6 Benchmarks for competitive market costs for alloy round bar

As the Commissioner considers that there is a particular market situation in China, normal values may be determined on the basis of a cost construction⁶³ or third country sales.⁶⁴ Normal values were constructed under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation).

⁶³ Subsection 269TAC(2)(c).

⁶⁴ Subsection 269TAC(2)(d).

Subsection 43(2) of the Regulation requires that, if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production must be worked out using the exporter's records.

As discussed in Appendix 1, the Commission considers that the significant influence of the Government of China (GOC) has distorted prices in the iron and steel industry and alloy round bar market in China. The Commission also considers that various plans, policies and taxation regimes have also distorted the prices of production inputs including (but not limited to) raw materials used to make alloy round bar in China and render those costs unsuitable for cost to make and sell (CTMS) calculations.

The Commission considers that direct and indirect influences of the GOC in the iron and steel industry is most pronounced in the part of that industry that might be described as upstream from alloy round bar production. In particular, the GOC affects Chinese manufacturers' costs to produce steel billet which in turn is used to produce alloy round bar.

Accordingly, to account for the effects of the GOC's influence, the Commission has replaced Chinese manufacturers' steel billet costs with appropriate competitive market costs for steel billet. The order of preference to do so below is in accordance with the Commission's policy which has regard to the principles established in WTO Appellate Body findings as follows:

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

6.6.1 Private domestic prices

The Commission considers that private domestic prices of steel billet may be equally affected by GOC influence and therefore not suitable for benchmarking the exporter's CTMS. Privately-owned entities did not participate in the investigation and provide data relating to their sales of alloy round bar, thus the Commission was not able to assess whether there were differences between steel billet prices from state invested enterprises (SIE) and private suppliers. Therefore, the Commission considers that private domestic prices of steel billet in China are not suitable for determining a competitive market cost.

6.6.2 Import prices

Based on the data supplied by cooperating exporters and gathered by the Commission, the Commission considers that prices of imported steel billet sold in China are not suitable as a benchmark to reflect competitive market prices due to the lack of import penetration of steel billet and the likelihood that import prices were equally affected by government influences on domestic prices.

6.6.3 External benchmarks

The Commission has considered an external benchmark in constructing the cost of the steel billet based on the inputs of the steel billet itself together with ferro-alloys. The methodology for the Commission's proposed benchmark construction of this cost is outlined at section 6.7.3.

6.6.4 OneSteel submission

In the SEF the Commission considered the views expressed by OneSteel regarding the selection of a comparable cost benchmark. OneSteel referred to other investigations that were on foot with the Commission at that time (investigations 416⁶⁵ and 418⁶⁶) and submitted that the Commission should utilise comparable, domestic-based prices which are capable of adaption from those investigations. In the SEF, the Commission noted that it could not establish a reasonable method by which to extrapolate the data for the entire investigation period, and that this was important given fluctuations in steel prices from quarter to quarter.

In its submission, OneSteel referred to a previous example where the Commission had indexed a benchmark price to extrapolate future price movements.⁶⁷ OneSteel proposed that the Commission apply scrap price movements from one quarter of the investigation period from investigations 416 and 418 as the base for the index, and then adjust the benchmark costs by the average quarterly movements in the scrap price for the other quarters of the investigation period. OneSteel states in its submission that the steelmaking production process for Suzhou, the biggest exporter of alloy round bar during the investigation period, involves the use of scrap, and that scrap represents a significant certain percentage of the total CTMS.

The Commission revisited the verification of Suzhou and the cost data presented. The verified cost data indicated that the percentage of scrap utilised as a raw material in the process was not a significant part of the total CTMS. Rather, other raw materials including various types of ore formed the bulk of the cost of raw materials. The Commission did not consider OneSteel's proposed approach to be reasonable in these circumstances.

The Commission considered other alternative means by which to index the proposed benchmark. However, given the number of models produced by Suzhou and the variance in raw material inputs, the Commission considers that it is more appropriate to rely on the benchmark as outlined in section 6.7.3.

6.7 Dumping assessment – Suzhou

6.7.1 Verification

The Commission conducted an in-country visit to Suzhou's facility in China to verify the information disclosed in its response to the exporter questionnaire. A more detailed assessment of the verification process is contained in the verification report published on the public record.⁶⁸

⁶⁵ Investigation 416 into steel rod in coil allegedly dumped from the Republic of Indonesia, the Republic of Korea and the Socialist Republic of Vietnam.

⁶⁶ Investigation 418 into the alleged dumping of steel reinforcing bar from Greece, the Republic of Indonesia, Spain (Nervacero S.A), Taiwan (Power Steel Co. Ltd) and the Kingdom of Thailand.

⁶⁷ [Document 41](#) on EPR 384.

⁶⁸ [Document 31](#) on EPR 384.

6.7.2 Export price

As noted in the verification visit report for Suzhou, the Commissioner is satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. Therefore, the export price for Suzhou was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.7.3 Normal value

As detailed in section 6.5 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic alloy round bar prices are not suitable to be used for establishing normal values under subsection 269TAC(1). As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values. The Commission has constructed Suzhou's normal values as follows:

Component	Commission Approach
Raw materials	Platts monthly Latin American Free on Board (FOB) steel billet prices, uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of alloy round bar exported to Australia.
Conversion costs	Suzhou's actual verified costs to convert billet to alloy round bar.
SG&A expenses	Suzhou's actual verified selling, general and administrative (SG&A) costs.
Profit	Suzhou's profit on domestic sales which met the original ordinary course of trade (OCOT) test based on Suzhou's verified CTMS.

Table 3: Suzhou's normal value construction

The normal value construction for Suzhou is attached under **Confidential Attachment 2**.

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(9)⁶⁹ as follows:

Adjustment Type	Deduction/addition
Export handling and other charges	Add export handling and other expenses.
Export credit term expenses	Add export credit term expenses.
Value Added Tax (VAT)	Add an amount for non-refundable VAT.

Table 4: Adjustments to Suzhou's normal value for alloy round bar

6.7.4 Dumping margin

The Commission has calculated the dumping margin for Suzhou as **35.3 per cent**.

⁶⁹ For all exporters, where normal value was calculated under subsection 269TAC(2)(c), to ensure the comparability of normal values to export prices, the Commissioner considers that adjustments are required pursuant to subsection 269TAC(9).

6.8 Dumping assessment – Daye Special Steel

6.8.1 Verification

Daye provided a completed response to the Commission's exporter questionnaire, although ultimately the Commission requested further information regarding certain cost data. The Commission has tested the data for relevance and reliability by performing a desktop verification. Details regarding this process are contained in the verification report published on the public record.⁷⁰

At the time of publishing SEF 384, the Commission calculated a dumping margin for Daye of 11.3 per cent. However, the Commission noted that the verification of Daye was still on foot.

On 28 November 2017, having considered the further information and evidence provided, the Commission published a verification report for Daye and calculated a dumping margin of 33.0 per cent. Daye provided a submission in response to this verification report, the analysis of which is below.

6.8.2 Export price

The Commissioner is satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. Therefore, the export price for Daye was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.8.3 Normal value

As detailed in section 6.5 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic alloy round bar prices are not suitable to be used for establishing normal values under subsection 269TAC(1). As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values. The Commission has constructed Daye's normal value as follows:

Component	Commission Approach
Raw materials	Platts monthly Latin American FOB steel billet prices, uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of alloy round bar exported to Australia.
Conversion costs	Daye's actual verified costs to convert billet to alloy round bar.
SG&A expenses	Daye's actual verified SG&A costs (inclusive of transport and credit/bank costs).
Profit	Daye's profit on domestic sales which met the original OCOT test based on Daye's verified CTMS.

Table 5: Daye's normal value construction

The normal value construction for Daye is attached under **Confidential Attachment 3**.

⁷⁰ [Document 55](#) on EPR 384.

6.8.3.1 Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(9)⁷¹ as follows:

Adjustment Type	Deduction/addition
Domestic inland transport and handling charges	Subtract domestic inland transport and handling charges
Domestic credit costs	Subtract domestic credit costs
Export inland transport and handling charges	Add export inland transport and handling charges
Export bank charges	Add export bank charges
Value Added Tax	Add an amount for non-refundable VAT

Table 6: Adjustments to Daye's normal value for alloy round bar

6.8.4 Daye submission

Daye raised a number of points in response to the Commission's verification and dumping margin calculations.⁷² These are considered below.

Daye states that some models of the goods sold in the domestic market are high value due to particular authentications and customer approvals. It claims there are sufficient differences in these goods to exclude them from consideration as like goods. Daye stated that the domestic market segments for Daye are much more complex and sophisticated, and cannot be limited to the market segments defined in the Australian market.

In support of this claim, Daye provided information and evidence regarding certain steel grades which had attained authentication and certification by a range of different bodies. Daye concludes that the profit determined by the Commission in the construction of the normal value should be limited to a certain subset of the goods in the domestic market with certain standards, and excluding all others.

Notwithstanding the above point, Daye claims that as a result of benchmarking the cost of billet and alloys (due to the market situation finding), the CTMS has been uplifted. Daye claims that the profit added to the constructed normal value should be adjusted downwards by the same percentage that the CTMS has increased. Daye refers to a previous investigation where this argument was made and which resulted in a downwards adjustment in the profit.⁷³

⁷¹ For all exporters, where normal value was calculated under subsection 269TAC(2)(c), to ensure the comparability of normal values to export prices, the Commissioner considers that adjustments are required pursuant to subsection 269TAC(9).

⁷² [Document 56](#) on EPR 384.

⁷³ Investigation 238 into the alleged dumping of deep drawn stainless steel sinks exporter from China.

Finally, Daye states that there has been an error in the calculation of the conversion cost as part of the normal value. Daye notes that its production process consists of two methods – integrated and non-integrated – and that a portion of the labour and overhead costs must be attributed to the integrated part of its production. If accepted, this would result in a reduction of the conversion cost.

6.8.5 Commission's Response

The Commission understands that within the scope of alloy round bar there are many subsets and end uses. This is apparent both within the Australian market and in the Chinese domestic market. However, although certain grades may be subject to certain certification and authentication procedures, the goods are still classified as alloy round bar. Goods that attain separate certification or authentication are predominantly still produced in the same manner (with subtle alterations depending on the end use or classification), share a functional likeness with other alloy round bar grades, and are physically similar. The Commission acknowledges that Daye has a significant number of domestic models of the goods, and that certain models may receive additional treatment resulting in receiving certain classification or certification, or being priced at a much higher point than other models. However, the Commission determines that these treatments and certifications do not detract from the goods accurately being described as alloy round bar.

The Commission has considered the point regarding the calculation of profit for the purposes of subsection 269TAC(2)(c)(ii). The Commission is satisfied that the methodology employed in the verification report for Daye is consistent with subsection 45(2) of the Regulation which states that, in relation to the determination of profit:

the Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

With respect to the previous investigation referred to by Daye, deep drawn stainless steel sinks, the Commission has examined the dumping margin calculations for the cooperating exporters in that investigation. The Commission did not find a downwards adjustment to have been made to the profit determination. Accordingly, the Commission has made no change to the amount of profit included in the constructed normal value.

The Commission accepts Daye's argument that the conversion costs need to be revised. Daye has provided further evidence to the Commission regarding the overhead and labour costs, and the Commission requested and received further evidence to confirm and verify how these costs should be divided between integrated and non-integrated production processes. As a result, the conversion percentage has been reduced.

6.8.6 Dumping margin

The Commission has calculated the dumping margin for Daye as **21.9 per cent**.

6.9 Uncooperative and all other exporter dumping margins

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission has used the lowest of the weighted average export prices of those that were established for cooperating exporters in the investigation period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the highest of the weighted average normal values of those that were established for the cooperating exporters in the investigation period.

This dumping margin for uncooperative and all other exporters of alloy round bar from China is **73.7 per cent**.

6.10 Volume of dumped imports

Pursuant to subsection 269TDA(3), 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 dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period if subsection 269TDA(5) does not apply. The Commission confirmed that subsection 269TDA(5), relating to aggregation of volumes of dumped goods, does not apply.

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from China was greater than three per cent of the total import volume and is therefore not negligible. Accordingly, the Commissioner does not propose to terminate this investigation under subsection 269TDA(3) in respect of China.

6.11 Conclusion

The Commissioner has found that:

- alloy round bar exported to Australia by Suzhou, Daye and uncooperative exporters during the investigation period was dumped; and
- the volumes of dumped goods from China were not negligible.

Dumping margins are summarised in table 7, below.

Country	Exporter	Dumping Margin
China	Suzhou Suxin Special Steel Ct. Ltd (Suzhou)	35.3%
	Daye Special Steel Co. Ltd (Daye)	21.9%
	Uncooperative and all other exporters	73.7%

Table 7: Dumping margins

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Finding

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

- loss of sales volume;
- reduced market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability; and
- the other injury factors noted in section 7.6.

The Commissioner further considers that Milltech has experienced injury in the form of:

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

Moly-Cop has not claimed that it experienced injury during the investigation period.⁷⁴

7.2 Introduction

This chapter looks at injury effects as the initial step to the main assessment of whether the Australian industry has experienced material injury caused by dumping. The matters that may be considered in determining whether the industry has experienced material injury are set out in section 269TAE.

The Commission has examined the Australian market and the economic condition of the Australian industry from 1 July 2012 for the purposes of injury analysis. Where necessary, and for the purposes of this chapter, the Commission has consolidated data from Australian industry members.

The following analysis relies on publically available information, data from the ABF import database and verified sales and cost data provided by OneSteel, Milltech, importers and exporters.

The supporting data with regard to the below analysis is contained in **Confidential Attachment 4 – Injury**.

7.2.1 OneSteel's injury claims

In its application, OneSteel claimed that the Australian industry has experienced material injury caused by alloy round bar being exported to Australia from China at dumped prices. OneSteel claimed that the injurious effects of dumping have been:

⁷⁴ [Document 42](#), [Document 51](#), [Document 64](#), [Document 65](#), [Document 68](#) and [Document 73](#) on EPR 384.

- lost sales volume;
- reduced market share;
- price depression;
- price suppression;
- reduced profit;
- reduced profitability;
- reduced capital investment;
- reduced asset utilisation;
- reduced return on investment;
- reduced capacity;
- reduced revenue; and
- reduced wages and employment.

OneSteel claimed that material injury from dumped imports commenced in January 2013 following the decision of a customer to purchase allegedly dumped goods exported from China.

7.2.2 Milltech's injury claims

Following initiation of the investigation and in accordance with the Commission's position regarding the scope of the goods description as set out in the File Note published on 7 June 2017,⁷⁵ the Commission requested sales and cost data from other members of the Australian industry producing like goods. Milltech subsequently provided information (together with supporting appendices) claiming that it had experienced injury as follows:

- price depression;
- price suppression;
- reduced profits;
- reduced sales volume; and
- loss of manufacturing capacity.

7.2.3 Moly-Cop's injury claims

The Commission sought information from Moly-Cop regarding any impact that Moly-Cop may have experienced as a result of the dumping of the goods from China. Moly-Cop received two extensions of time to provide the relevant information to the Commission but did not provide any evidence of injury.⁷⁶

7.3 Volume effects

7.3.1 Sales Volume - OneSteel

Figure 6 indicates the trend of OneSteel's domestic sales over the injury analysis period.

⁷⁵ [Document 32](#), EPR 384.

⁷⁶ [Document 42](#) and [Document 51](#), EPR 384.

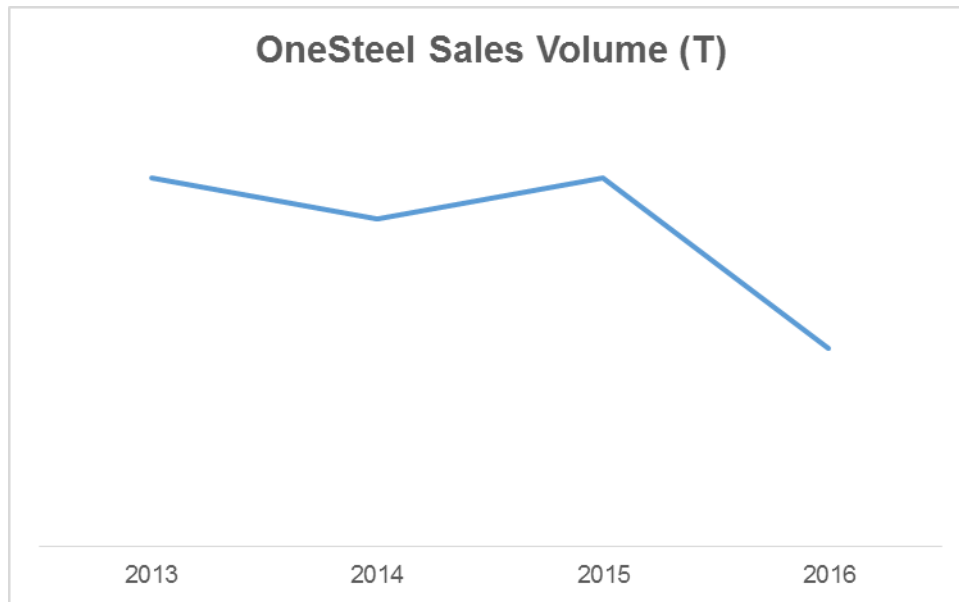


Figure 6: OneSteel domestic sales volume of alloy round bar

Based on Figure 6, the Commission observes that while the sales volume remained relatively consistent over the first three years of the injury analysis period, there was a sharp decline during the investigation period. The decline in volume coincides with an increase in imports of the goods from China.

The Commission's analysis indicates that the decline in OneSteel's sales volume was due to the decline in sales of grinding bar during the investigation period with OneSteel's sales in other market segments remaining steady or showing an increase.

Confidential Attachment 4 depicts the trends in OneSteel's sales into the engineering bars, spring and strata bar segments of the market over the injury analysis period.

7.3.2 Sales volume - Milltech

Figure 7 indicates the trend of Milltech's domestic sales over the injury analysis period.

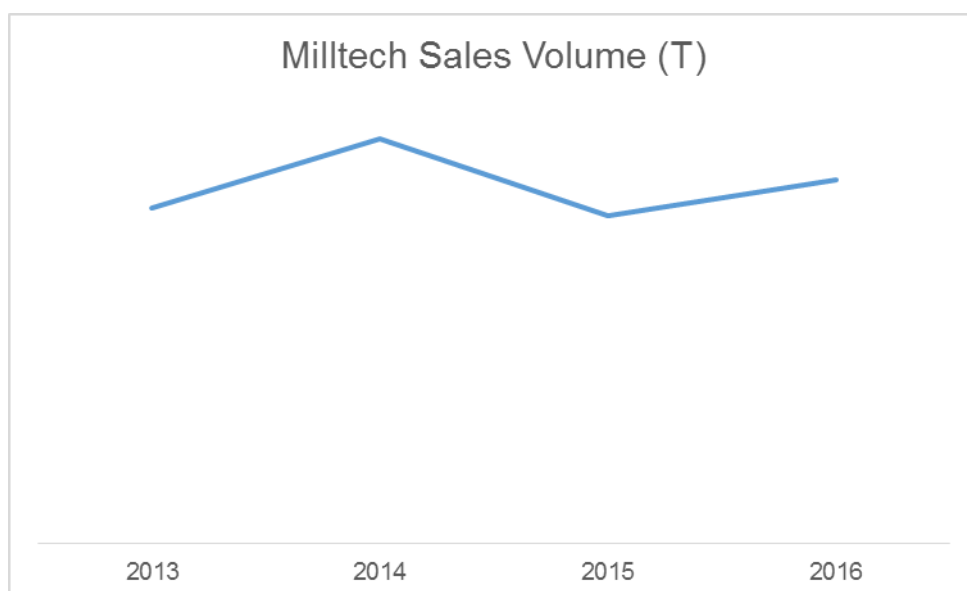


Figure 7: Milltech domestic sales volume of alloy round bar (engineering bar only)

Based on Figure 7, the Commissioner observes that although there have been fluctuations in Milltech's domestic sales volume, the sales volumes remained relatively consistent over the injury analysis period with a slight increase during the investigation period.

7.3.3 Market Size & Share

The Commission considered the market size and respective market shares of the Australian alloy round bar market, based on sales within the market sector of the Australian industry producing like goods. This was discussed above at section 5.2.3 of this report.

The Commission notes that during the investigation period there was an increase in the volume of Chinese exports sold in Australia, which coincided with a decrease in OneSteel's market share. The market share of Milltech, and the level of imports from other countries (besides China) has remained consistent.

7.3.4 Commission's consideration – volume effects

Based on the above analysis, the Commission considers that OneSteel has experienced injury in terms of lost sales volume and lost market share. There is no evidence of volume injury to Milltech.

7.4 Price suppression and depression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Figure 8 charts the unit price and unit CTMS for alloy round bar sold by OneSteel over the course of the injury analysis period.

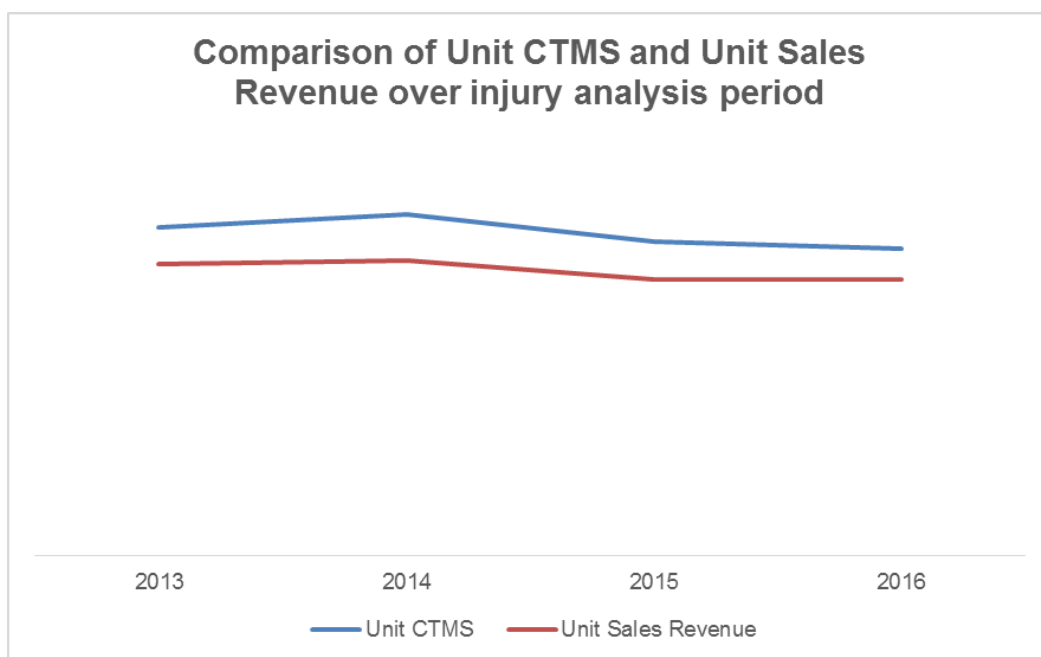


Figure 8: OneSteel unit selling price and unit cost to make and sell for alloy round bar

Figure 8 shows that OneSteel's unit selling price has remained relatively consistent with a slight downward trend over the injury analysis period. This decline in the unit selling price supports OneSteel's claims of price depression.

Figure 8 shows that OneSteel's unit selling prices did not exceed the unit CTMS for any year in the injury analysis period. The analysis is based on the aggregated cost and sales data for all market segments of alloy round bar produced by OneSteel. As depicted in Figures 2 and 3 of this report, the grinding bar segment is the largest segment of the Australian market sector for like goods.

While acknowledging that the margin between unit CTMS and unit price has reduced during the injury analysis period and OneSteel has improved profitability, the above chart supports the claim that OneSteel faced price pressure which did not allow its unit selling prices to exceed unit CTMS or allow OneSteel to increase its prices generally. For this reason, the Commission concludes that OneSteel appears to have experienced injury in the form of price suppression.

Figures 9 and 10, below, chart the unit price and unit CTMS for the two types of alloy round bar sold by Milltech over the course of the injury analysis period.

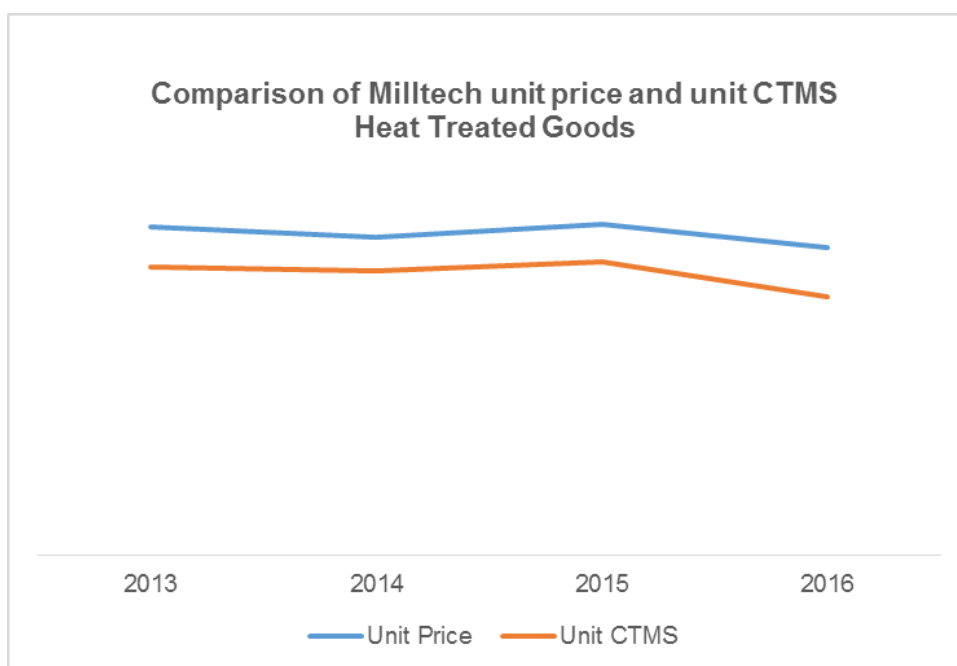


Figure 9: Milltech unit selling price and unit cost to make and sell for heat treated goods

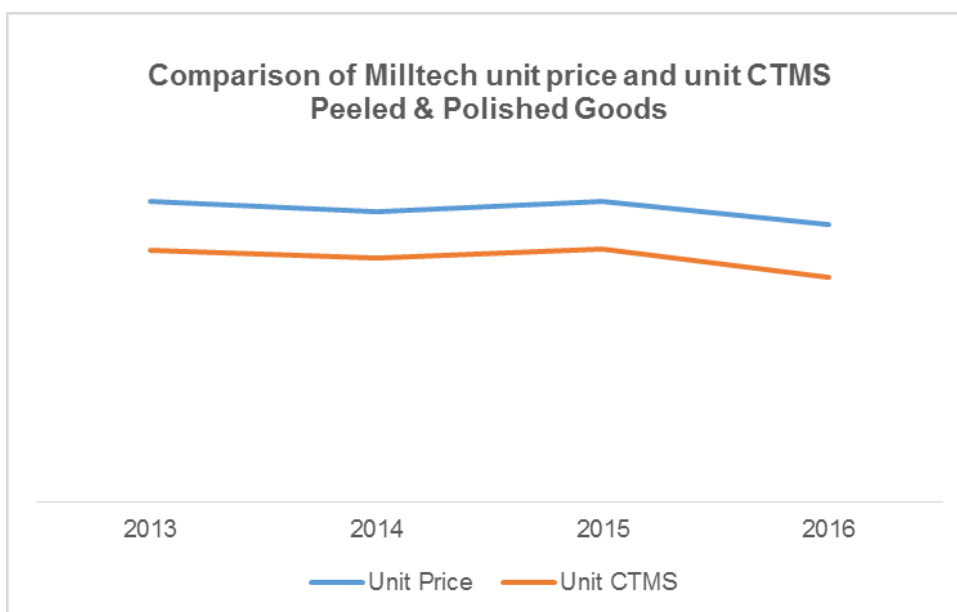


Figure 10: Milltech unit selling price and unit cost to make and sell for peeled & polished goods

Figures 9 and 10 show that Milltech's unit selling price has declined over the investigation period. The decline in unit selling price over the injury analysis period is supportive of Milltech's claims of price suppression and depression which are discussed in greater detail at section 8.5.4 of this report. The Commission notes that Milltech's CTMS has declined to a greater extent in the investigation period compared to unit sales revenue.

7.4.1 Commission's consideration – price effects

Based on the analysis above, the Commission is satisfied that OneSteel and Milltech have experienced injury in the form of price depression and price suppression.

7.5 Profits and profitability

Subsection 269TAE(3)(e) refers to the level of profits earned in an industry as a relevant economic factor that may be considered in assessing material injury.

OneSteel claimed that it has not made a profit on the sale of alloy round bar during the injury analysis period.

Figure 11 below, highlights the level of profit that OneSteel made on the sale of its alloy round bar, together with profitability.

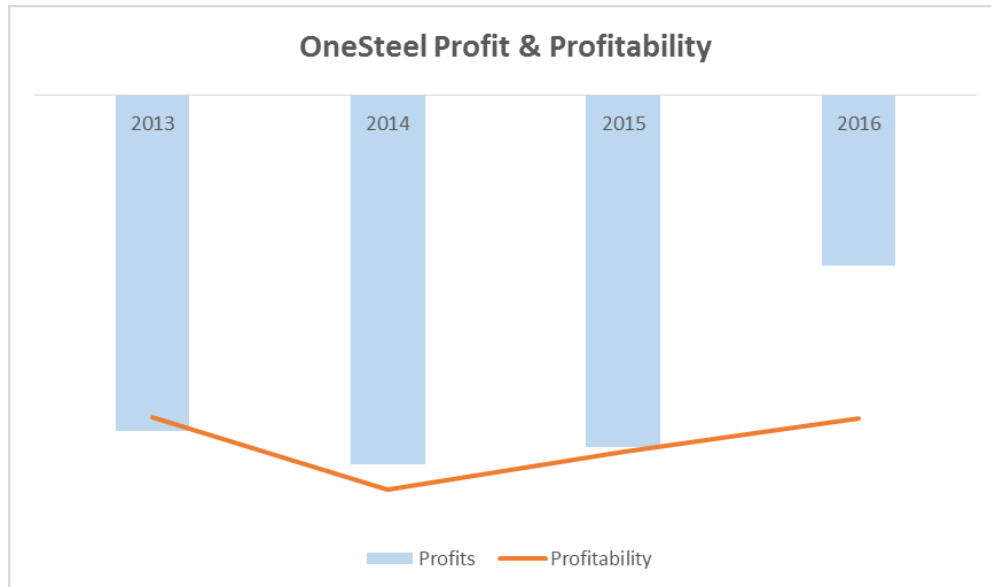


Figure 11: OneSteel profit & profitability over the injury analysis period

Figure 11 demonstrates that OneSteel remained unprofitable throughout the injury analysis period, although the level of loss and profitability improved during the investigation period. The Commission notes that the improved profitability achieved by OneSteel in the investigation period is due in part to its cost reduction initiatives.

Figure 12, below, highlights the level of profit that Milltech has made on the sale of its alloy round bar goods, together with profitability.

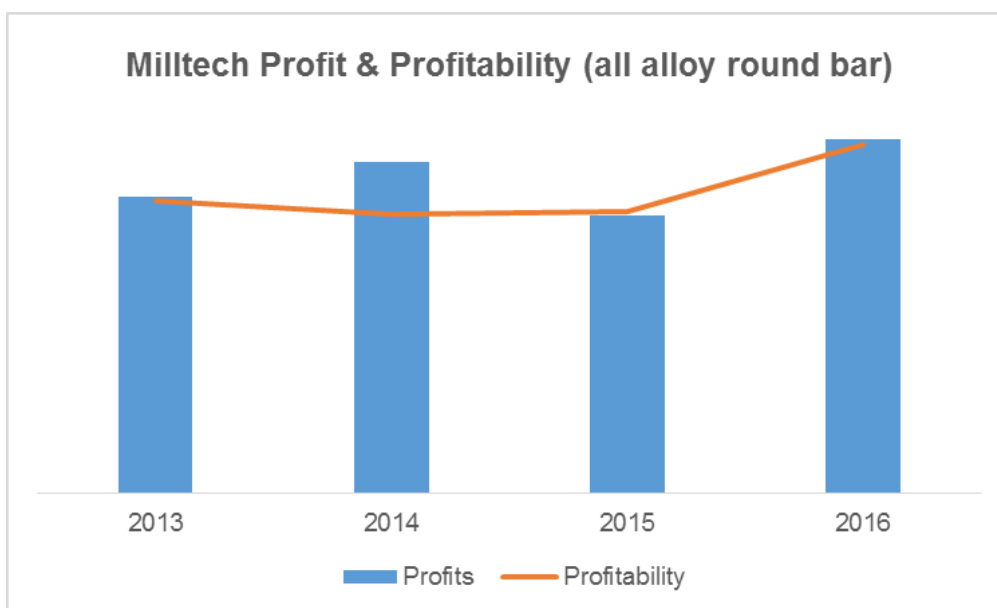


Figure 12: Milltech profit & profitability over the injury analysis period

Figure 12 demonstrates that Milltech was profitable throughout the injury analysis period and that during the investigation period its profits and profitability improved. However, Milltech provided evidence of cost reduction programs it had undertaken as well as the closure of a competitor, both of which (it submitted) would have led to greater profits during the investigation period were it not for other factors – primarily, the impact of the dumped alloy round bar. The verification team confirmed that the cost reduction programs had begun to take effect prior to the investigation period, and to support the claims of Milltech the CTMS for the two types of alloy round bar produced by Milltech were compared to the unit profit for each. While the unit profit increased during the investigation period, it did not increase at the same rate at which Milltech was able to reduce its CTMS. This further supports the claim that Milltech has experienced injury in the form of lost profits.

7.5.1 Commission's consideration - profits and profitability

The Commission is satisfied that OneSteel and Milltech have experienced injury in the form of loss of profit and reduced profitability due to depressed and suppressed sales prices in the investigation period.

7.6 Other economic factors - OneSteel

OneSteel completed Confidential Appendix A7 for the injury analysis period to support its claims in terms of certain other injury factors. The Commission provides the following observations in relation to other injury factors.

7.6.1 Employment numbers

OneSteel reported a decline in its employment numbers across the injury analysis period, noting that from 2015 to 2016 the level remained consistent. OneSteel acknowledged that the employment numbers were not specific to alloy round bar, however, as OneSteel employees produce different goods. It is therefore difficult for the Commission to determine that there has been injury specific to employment numbers for alloy round bar.

7.6.2 Reduced Capital Investment

OneSteel provided data from its Business Planning and Consolidation (BPC) system, highlighting a reduction in its capital and investment expenditure over the course of the injury analysis period. The Commission noted that following allocation of this total expenditure amount to the production of like goods, there had been a considerable decline in capital investment, particularly over the investigation period.

7.6.3 Reduced Asset Utilisation

OneSteel provided data highlighting its property, plant and equipment asset total from its BPC system. When allocated to the production of like goods the Commission noted a decline in asset utilisation over the injury analysis period, with a sharper drop during the investigation period.

7.6.4 Return on investment

OneSteel provided two calculation methods to demonstrate its claim of reduced return on investment. One method took into account cost movements (taking into account cost reductions including variable costs per tonne, fixed costs and selling and administration costs) while the other method did not. The Commission considers the calculation method including cost movements to be a more accurate assessment. For both methods, OneSteel divided its net gain or loss by the “like goods” asset (which had been calculated by taking the total Rod & Bar asset amount and allocating it to like goods based on production volume). The Commission identified that over the injury analysis period the return on investment had reduced overall, with an improvement in 2015 before regressing during the investigation period.

7.6.5 Reduced capacity and capacity utilisation

OneSteel presented three scenarios to demonstrate the reduced capacity in production of alloy round bar over the injury analysis period. The first scenario is where the capacity of like goods is equal to the capacity of the Sydney and Laverton rolling mills. The second scenario is where the capacity of like goods is equal to the period where the highest tonnes of alloy round bar were produced – the 2012 calendar year. The third scenario is where the capacity of like goods is equal to the billet capacity of Whyalla. The Commission noted that in utilising each method, the production total of alloy round bar was significantly lower than the capacity, particularly during the investigation period.

7.6.6 Commission’s consideration - OneSteel

The Commission has considered the other injury factors outlined above and there appear to be reasonable grounds to support the claim that OneSteel has experienced injury with respect to:

- reduced capital investment;
- reduced asset utilisation;
- reduced return on investment; and
- reduced capacity and capacity utilisation.

7.7 Other economic factors - Milltech

As noted in the verification report for Milltech, Milltech completed Confidential Appendix A7 in relation to certain other economic factors, but did not claim injury for these factors other than a loss of manufacturing capacity (claimed on behalf of a domestic competitor that had ceased production in 2015). The verification team noted that this factor was not able to be considered for further verification as the closed domestic competitor did not participate in the investigation.

7.8 Conclusion

The Commissioner has assessed the information before the Commission in relation to the injury experienced by the Australian industry producing like goods. As Moly-Cop did not provide the Commission with relevant information relating to any injury (or lack of injury) it may be experiencing, the Commissioner was unable to ascertain whether it experienced injury during the investigation period. The Commissioner will now consider whether the injury effects it has observed have been caused by the dumped goods and whether the injury caused by dumping to the Australian industry as a whole is material.

8 HAS DUMPING CAUSED MATERIAL INJURY?

8.1 Finding

As discussed at Chapter 6 of this report, the Commissioner has found that certain exports of alloy round bar from China were dumped.

The Commissioner finds that during the investigation period, the dumped goods caused injury to the Australian industry producing like goods, and that the injury was material.

8.2 Legislative framework

In any report to the Minister under subsection 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG. Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors that the Minister may take into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened. The Commission has also had regard to the *Ministerial Direction on Material Injury 2012* (the Injury Direction).⁷⁷

8.3 The ADRP revocation decision

As discussed at Chapter 4 of this report, the Commission considers that the Australian industry producing like goods consists of OneSteel, Moly-Cop (including in relation to its captive production of alloy round bar) and Milltech.

In its revocation decision, the ADRP noted that Moly-Cop does not have any market share for its production of alloy round bar. The ADRP further noted that, as the Commission found that the Australian industry consists of Milltech, OneSteel and Moly-Cop, the Commission was required to consider whether these industry members had been injured as a whole. While the Commission had found injury to OneSteel and Milltech, the ADRP concluded that the Commission did not appear to have investigated injury to Moly-Cop. The ADRP found that in the absence of a finding of the impact of the dumped goods on Moly-Cop, the Commissioner could not have been satisfied that injury to the Australian industry that may have been caused by the dumped goods is negligible.

The Commission accepts that, upon finding that the Australian industry producing like goods consists of Milltech, OneSteel and Moly-Cop, the Commissioner is required to consider whether the Australian industry as whole (i.e. consisting of all these industry members) has been injured. Ideally, the Commission would have been able to base its injury assessment on relevant information in relation to all three Australian industry members.

⁷⁷ *Ministerial Direction on Material Injury 2012* (27 April 2012), available at www.adcomission.gov.au.

However, the Commission did not receive information regarding relevant economic factors and indices from Moly-Cop. While the Commission was able to verify Moly-Cop's production volumes, that information by itself does not enable the Commission to draw conclusions about injury to Moly-Cop.

As noted in the ADRP revocation decision, in TER 384 the Commission identified the revenue and volume lost by OneSteel and Milltech caused by the dumped goods and expressed this injury as a proportion of the total Australian industry (that is, weighted by reference to their respective shares of production volume, including the captive production by Moly-Cop).⁷⁸

The Commission has now reconsidered the approach it took to injury quantification in TER 384.

The Commission's view is that while it has to make a finding regarding injury to the Australian industry as a whole, this does not require in all cases a finding that material injury has been or is being caused to each individual member of Australian industry producing like goods. Where a market sector has a particular susceptibility to dumped imports and the resultant injury is focused, acute and not negligible, that injury can nevertheless constitute injury to the Australian industry as a whole. The Commission considers that this approach is supported by domestic jurisprudence.⁷⁹

As noted in Chapter 4, the Commission has observed that the Australian industry producing like goods comprises of two distinct sectors. The captive sector of the Australian industry (Moly-Cop's production of grinding bar) produces goods for internal self-consumption in the manufacture of downstream items, while the market sector (comprising Milltech, OneSteel and Moly-Cop in relation to its insignificant volume of sales of grinding rod) produces goods for sale into the Australian alloy round bar market. Production in the captive sector does not enter the Australian market for alloy round bar and is therefore not exposed to direct competition from the dumped Chinese goods. The market sector, on the other hand, is exposed to direct import competition.

Based on the evidence available to it, the Commission has quantified the injury that has been experienced by the Australian industry members that operated in the market sector during the investigation period. In using this method, the Commission has excluded Moly-Cop's captive production in quantifying the injury experienced in the market sector. This approach ensures that the injurious effects of dumped imports are not obscured through the use of aggregate data.

The Commission's assessment of the quantum of injury to the market sector of Australian industry producing like goods is discussed further at section 8.8 of this report.

Having considered the information and evidence verified during the investigation, submissions from interested parties and the ADRP revocation decision, the Commission has re-assessed its injury and causation analysis. The Commission's findings are discussed in greater detail further below.

⁷⁸ ADRP [Report No. 75](#), paragraph 33.

⁷⁹ *Re Swan Portland Cement Limited and Cockburn Cement Limited v the Minister of Small Business and Customs and the Anti-Dumping Authority* [1991] FCA 49.

8.4 Size of the dumping margin

Subsection 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins worked out in respect of goods of that kind that have been exported to Australia.

The dumping margins set out in chapter 6 are 35.3 per cent for Suzhou, 21.9 per cent for Daye and 73.7 per cent for uncooperative and all other exporters. The Commission considers the magnitude of the dumping has provided the importers of the dumped goods with the ability to offer the goods to customers in Australia at prices significantly lower than would otherwise have been the case.

8.5 Price effects

8.5.1 Price undercutting - OneSteel

Price undercutting occurs when an imported product is sold at a price below that of the Australian industry. In its application, OneSteel claimed that it has experienced price undercutting by dumped imports of alloy round bar from China both at a customer level and on an aggregated basis.

In relation to its claims regarding undercutting at a customer level, OneSteel provided evidence of a number of specific examples where it claimed, during a process of negotiation, its selling prices had been undercut due to dumped imports from China. This evidence is at **Confidential Attachment 5**. The undercutting in these examples ranged from 1 per cent up to approximately 6 per cent, noting that this is on the price quoted by OneSteel and not using the prices from the price model it generally sought to utilise (the price model is discussed further below). Had the full value of the price model been achieved, the levels of undercutting would have been greater. The Commission does note that in the evidence provided by OneSteel, there were certain examples where the customer had referred to the volumes that were being provided, and that this had an impact on the price fluctuations.

For the purposes of considering price undercutting at an aggregated level, the Commission considered the weighted average selling prices of alloy round bar at Free Into Store (FIS) terms into the grinding media segment of the market. The Commission focussed its aggregated price undercutting analysis in relation to OneSteel on the grinding bar segment of the market for the following reasons:

- due to the cost differences associated with different segments of the alloy round bar market, the Commission considered that an aggregated analysis of all segments of the alloy round bar market would not provide a conclusive illustration of potential undercutting;
- as discussed at section 5.2 of this report, the Commission identified that alloy round bar imported for the grinding media segment of the market accounts for over 95 per cent of the total volume of alloy round bar imported and the grinding bar segment forms a majority of the market;
- the Commission had regard to confidential information provided by OneSteel regarding the materiality of injury in different segments of the market to its injury claims; and

- Figure 3 of this report illustrates the significance of the grinding bar segment of the market to any assessment of injury.

The Commission verified sales data over the investigation period for OneSteel as well as for the major importer, Stemcor. The Commission established a delivered weighted average price for OneSteel for the investigation period. The Commission also calculated the comparable weighted average sales price for Stemcor based on verified data.

The Commission's comparison of OneSteel's prices and selling prices in the grinding bar segment of the market is illustrated in Figure 13, with detailed analysis contained in **Confidential Attachment 6 – Price Undercutting**.

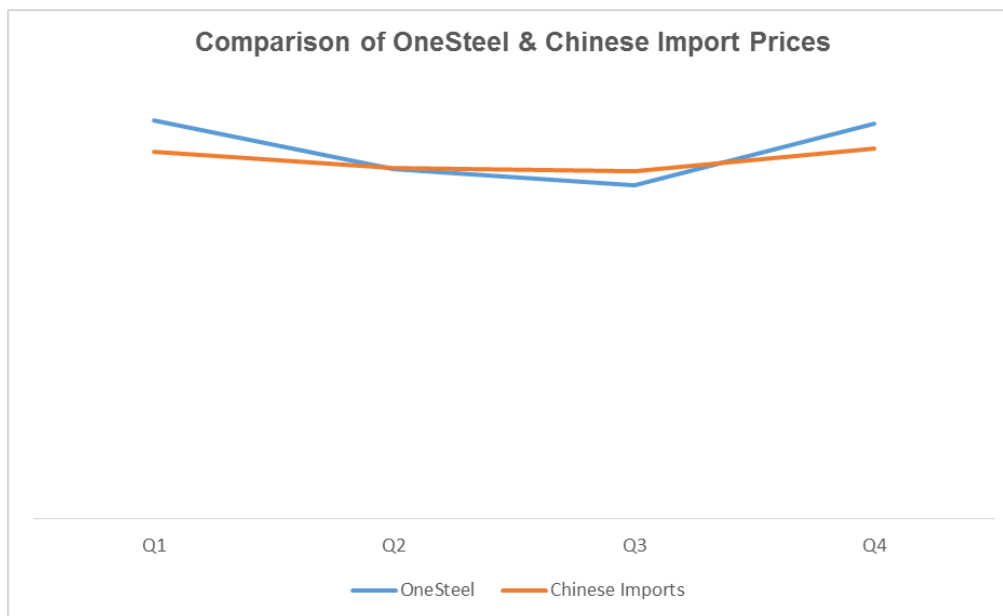


Figure 13: Comparison of OneSteel and Chinese Import Prices

Based on its analysis the Commission has found that, on an aggregate level, for two quarters the price of the imported alloy round bar from China had undercut OneSteel's prices (as shown in Figure 13) during the investigation period. Over the course of the investigation period, the prices of imported alloy round bar undercut OneSteel's prices by approximately 7 per cent. Further, the evidence provided by OneSteel indicates that on numerous occasions during the investigation period it had sought to increase certain prices, which had been refused by its customers due to the imported alloy round bar being offered at a cheaper price.

The Commission notes that there are other causation factors also present (discussed from section 8.7.6 onwards), which impact on the materiality of the price injury, if any, caused by the dumped goods.

8.5.2 Price undercutting - Milltech

Milltech provided examples where its selling prices had been undercut by dumped imports from China along with additional evidence in the form of email correspondence with customers, documents outlining cancellation of orders, as well as diary notes. This further evidence is contained in **Confidential Attachment 7 – Price Undercutting examples (Milltech)**. The Commission considers that the evidence provided by Milltech corroborates its claims of price undercutting by dumped imports from China.

8.5.3 Price depression and suppression - OneSteel

OneSteel provided a number of specific examples to illustrate how it had experienced injury in the form of price depression and suppression due to the dumped imports of alloy round bar from China. Evidence in relation to these examples is contained in **Confidential Attachment 8 – Price depression and suppression**.

In its submission of 24 November 2017, OneSteel sought to quantify the injury impact of the price depression and price suppression.⁸⁰ The Commission notes that the information presented by OneSteel is based on the assumption that OneSteel would have been able to raise its prices in the grinding bar market by the full margin of dumping found for its chief competitor in that market, being the 35.3 per cent dumping margin for Suzhou.

In its submission, OneSteel does not provide an explanation or rationale for why it would have being able to raise its prices by 35.3 per cent. In its application, OneSteel stated that it has sought to maintain a price model based on an index - see **Confidential Attachment 9 – OneSteel pricing model**. After analysing the prices generated by the price model, the Commission considers that the prices generated by this index are unaffected by the actual prices of imports of alloy round bar in Australia and that the index is therefore not affected by the dumping of the goods.

The Commission considered the actual selling prices of OneSteel for sales of alloy round bar to Donhad in Newcastle. As a result of negotiation between the parties, actual selling prices achieved were at a discount of between 6 to 10 per cent on the prices generated by the pricing model and sought by OneSteel. OneSteel argues that the final (reduced) price has been influenced by the competing prices of dumped goods. The Commission notes that the model price does not recover OneSteel's CTMS in any month of the period examined and that increasing selling prices by 35.3 per cent takes the proposed OneSteel selling price to well above the maximum price generated by the pricing model for the period from January to September 2016 (i.e. 9 months of the investigation period). The Commissioner therefore does not consider it reasonable to uplift prices by 35.3 per cent (as proposed by OneSteel).

To assess the price injury experienced by OneSteel, the Commission has instead taken the period in which the model prices have been undercut the most and established a percentage difference between the model price and actual selling prices of 10.1 per cent. The Commission considers that, in the absence of dumping, OneSteel would have continued to seek the prices which were generated by the model. Accordingly, the Commission then increased OneSteel's selling prices of grinding bar by this percentage for the investigation period to estimate the injury value of these lower sales prices.

⁸⁰ [Document 53](#) on EPR 384.

Using this methodology, the total value of revenue lost by OneSteel as a percentage of its sales revenue in the grinding bar segment of the market during the investigation period was determined. The analysis regarding this issue is contained in **Confidential Attachment 10 – injury value**.

8.5.4 Price depression and suppression - Milltech

As noted above in section 7.5, Milltech provided evidence of cost reduction programs it had undertaken which would have led to greater profits during the investigation period were it not for the impact of the dumped alloy round bar. The Commission considered the level of cost reduction made by Milltech during the investigation period, based on its verified CTMS figures for both heat-treated and peeled and polished goods. The Commission then calculated the level of profit that would have been made if the selling prices of the goods had, in the absence of dumping, remained at the average level of the first three years of the injury analysis period (noting that the selling prices remained consistent during these years before declining during the investigation period).

Using this methodology, the total value of revenue lost by Milltech as a percentage of its total revenue for all sales of alloy round bar during the investigation period was determined. Note that in undertaking this analysis, the Commission also included the specific examples of lost sales provided by Milltech, and the additional revenue this would have generated. The analysis regarding this issue is contained in **Confidential Attachment 10 - Injury Value**.

8.5.5 Conclusion – price effects – Australian industry

The Commission considers that the market sector of the Australian industry producing like goods has experienced price suppression and price depression due to the dumped imports of alloy round bar from China. Using the methodologies described above, the Commission calculated the revenue lost by OneSteel and Milltech due to the price effects of the dumped goods as a proportion of the market sector of Australian industry. When assessed in this manner, the resulting price injury is not insignificant or negligible.

As noted previously, the Commission considers that the effect of the dumped imports would be more acutely experienced by the market sector of the Australian industry producing like goods. In assessing the materiality of the injury to Australian industry producing like goods as a whole the Commission considers that the injury to the market sector of Australian industry producing like goods cannot be discounted or ignored even if there is no information that enables an assessment of injury to Moly-Cop. The determination of injury is not a simple algebraic sum where the profits or losses in one sector cancel out the profits or losses in another sector of the Australian industry. The Injury Direction provides that identifying material injury will depend on the circumstances in each case and material injury is injury that is not immaterial, insubstantial or insignificant.

The analysis regarding this issue is contained in **Confidential Attachment 11 – cumulative injury value**.

8.6 Volume effects

As discussed in section 7.3.1 above, OneSteel experienced a decline in sales volume over the injury analysis period, with the reduction specifically felt during the investigation period. The Commission's analysis indicates that the decline was primarily due to the decline in OneSteel's sales in the grinding bar segment of the market. The Commission did not find that Milltech had experienced injury in the form of lost sales volume.

The Commission's analysis based on verified exporter and importer data identified that during the investigation period:

- the dumped imports of alloy round bar represented 49 per cent of the total Australian market for alloy round bar; and
- the volume of imports from China increased from the 12 months prior to the investigation period by 86 per cent.

8.6.1 Lost sales - OneSteel

In its application, OneSteel noted a number of occasions where it had lost sales due to Chinese imports during the investigation period in a particular segment of the market. OneSteel also provided evidence in support of its claims.

Submissions received by the Commission claimed that factors other than dumping had contributed to OneSteel's lost sales. The Commission's consideration of the claims made by OneSteel and other interested parties on this issue is discussed in greater detail in sections 8.7.6 to 8.7.8 of this report.

8.7 Injury caused by factors other than dumping

Subsection 269TAE(2A) requires the Minister to consider whether injury to an industry is being caused or threatened by factors other than the exportation of the dumped goods. This provision contains a list of factors that the Minister may have regard to when considering whether injury is being caused by factors other than exportation of the dumped goods, but it is not an exhaustive list.

The Commission notes that the Injury Direction provides that dumping (or subsidisation) need not be the sole cause of injury to the Australian industry. It must, however, not be insignificant or immaterial. In accordance with subsection 269TAE(2A), the Commission must examine other factors to ensure that injury from factors other than the dumped imports is not attributed incorrectly.

In its application, OneSteel raised as possibilities and then discounted the following factors as having caused injury to the Australian industry:

- effect of imports from countries other than China;
- declining demand from downstream domestic customers affected by dumped and subsidised finished products produced from alloy round bar;
- outstanding warranty claims against the applicant; and
- OneSteel's pricing model.

These factors have been considered by the Commission below. The Commission has also considered the following factors in the course of the investigation:

- undumped alloy round bar from China;
- quality issues with OneSteel's product; and
- the value proposition put forward by OneSteel.

8.7.1 Effect of imports from countries other than China

In its application, OneSteel noted that a considerable percentage of the imported alloy round bar came from China during the investigation period. OneSteel outlined its understanding that the FOB export prices from other countries (besides China) was above the FOB price of the goods from China, and noted that the volumes of alloy round bar imported from countries other than China had declined. OneSteel further explained that it had not received evidence of lower price offerings from other countries (besides China) during the course of the investigation period. As a result, OneSteel concluded that goods exported from countries other than China have not materially contributed to the Australian industry's injury.

The Commission analysed import data from the ABF and confirmed that during the injury analysis period, the volume of imports of the goods from countries other than China had declined. During the investigation period, imports of alloy round bar from countries other than China represented just 2 per cent of the total Australian market for alloy round bar. Given the presence of the dumped goods from China and the price of those goods, the Commission concludes that the volume of imports from countries other than China is insufficient to have caused injury to the Australian industry.

8.7.2 Declining demand from downstream domestic customers

In its application OneSteel referred to its customer for alloy round bar in the grinding media market segment, Donhad, and noted that Donhad was previously an applicant in an investigation concerning grinding balls exported from China (as reported in *Anti-Dumping Commission Report No. 316* (REP 316)). OneSteel noted the Commission's finding in that investigation that there had not been injury in the form of reduced sales volume, and stated this was indicative of there being no decline in demand for alloy round bar used specifically for the grinding media market.

During the course of the present investigation the Commission met with both Donhad and Moly-Cop, both of whom compete in the industry for grinding media (both balls and rods), a downstream product of alloy round bar. The Commission verified production volumes of alloy round bar from Moly-Cop, and both production and sales volumes from Donhad.⁸¹ Neither entity referred to a declining demand in the downstream domestic market as a potential cause of injury. As noted above, the Commission requested that Moly-Cop provide information and evidence regarding potential injury in the downstream markets. This information has not been provided.

8.7.3 Confidential matter relating to goods outside scope of application

In its application, OneSteel raised an issue relating to goods outside the scope of the application. The Commission notes that this issue relates to goods that are not like goods, and has not considered this as an 'other injury factor'.

⁸¹ [Document 14](#) and [Document 28](#), EPR 316.

8.7.4 OneSteel's pricing model

In its application, OneSteel noted that other interested parties may claim the way in which it constructs its pricing model led to the injury it has experienced. Interested parties did not make this claim. Rather, interested parties raised a point regarding the value proposition put forward by OneSteel in its sales offers. This is discussed at section 8.7.7, below. The Commission does not consider that the pricing model utilised by OneSteel (and its associated methodology) has contributed to the injury experienced by OneSteel.

8.7.5 Undumped goods from China

During the course of the investigation the Commission found that Yonggang had not dumped the goods into Australia during the investigation period. The Commission then considered whether these undumped goods had been a factor in causing injury to members of the Australian industry. Verification of Yonggang and analysis of the data obtained from the ABF import database established that Yonggang's total export volume of alloy round bar to Australia represented less than 2 per cent of the total volume of alloy round bar exported from China to Australia.

Based on the low volume of imports from Yonggang as a proportion of total imports of alloy round bar from China during the investigation period, the Commission considers that it is the dumped goods that have had a significant effect on the prices, market share and profits and profitability of the Australian industry.

8.7.6 Quality Issues

Donhad submitted that as grinding bar is manufactured to meet specified customer requirements, where OneSteel is unable to meet and comply with Donhad's very detailed grade and technical requirements, the resulting loss in potential sales and potential profits cannot be attributed to the imported goods but must be attributed to OneSteel's inability to comply with Donhad's technical specifications and quality and testing requirements.⁸² Donhad provided the Commission with a summary of the various grades of grinding bar sold by OneSteel and an assessment of whether they comply with Donhad's technical specifications and identified issues preventing compliance with Donhad's quality and testing requirements.

In summary, Donhad made the following claims:

- the manufacturing of grinding balls requires special bar quality steel with tight control of steel cleanliness and segregation of the bar. One of the steps in the production of steel billet is vacuum degassing which removes dissolved gases, including hydrogen and nitrogen from the liquid steel. The presence of these gases in the steel can lead to imperfections and impact on the integrity of the steel. OneSteel does not have the capability to perform vacuum degassing during its billet production, while its Chinese suppliers are able to perform this step;

⁸² [Document 6](#), EPR 384.

- the reduction ratio for certain grades of OneSteel's billet product is not large enough to suit Donhad's requirements.⁸³ Donhad claimed that the reduction ratio for the Chinese product it has imported is considerably higher than the product OneSteel can offer for certain grades of its product, leading to greater confidence in the imported Chinese bar. Donhad provided the Commission with details regarding the reduction ratio for each of the suppliers; and
- the alloy round bar provided by OneSteel does not have in-line ultrasonic testing performed.⁸⁴ Donhad claimed that all of the product it imported from China has had this testing performed, and provided a specification sheet for the imported product to confirm this.

Donhad detailed a number of incidents over several years in relation to a specific diameter product provided by OneSteel as follows:

- the breakage/explosion of a grinding ball at one of its customer's operations. Donhad claimed that this particular grade of grinding ball is considered a very robust product which has not had any previous failures. OneSteel performed an investigation into the failure of the product and the report referred to confidential details regarding quality issues;
- during the grinding ball production process, Donhad identified "pinging" during the induction heating process, which is indicative of stress in the steel product. Donhad stated that when these bars are rolled they produce deformed balls with holes throughout, an issue known as "piping"; and
- the explosion of a grinding ball at a customer's operations. This raised safety concerns as the explosion of a grinding ball may result in shrapnel being thrown in the vicinity of manufacturing equipment and personnel.

Donhad claimed that following the incidents outlined above and due to the differences in the production process for the Australian industry and the Chinese product, Donhad performed its own drop tests to compare the impact toughness of the grinding balls. Donhad provided the Commission with the raw data results, together with a table outlining the final results. As a result of the incidents explained above and the drop test results, Donhad claimed that it decided to cease purchasing the alloy round bar in this specific diameter from OneSteel. Donhad claims that the incidents and issues arise as a result of the limitations on the reduction ratio of OneSteel during its production process as well as the lack of controls on the cleanliness of the billet.

⁸³ It is the Commission's understanding that during the hot rolling process, the grains within the steel billet will undergo a process of elongation and recrystallisation. The higher the reduction ratio, the finer the grain size in the final alloy round bar product, leading to greater strength in the bar.

⁸⁴ The Commission understands that this test is an additional measure performed to check the internal integrity of the bar.

Donhad further claimed that early in the 2016 calendar year, together with OneSteel, efforts were made to resolve the issues with the alloy round bar of the diameter in question. A trial charter was agreed between the parties with OneSteel undertaking a number of steps in its billet production process to improve the impact toughness of the final grinding ball product. Following the trial process, drop tests were undertaken on the grinding balls produced from the OneSteel alloy round bar and Donhad claimed the results did not meet the agreed criterion for approval.

In response to Donhad's claims OneSteel claimed that:

- over the investigation period, Donhad had not raised the quality concerns with certain diameter alloy round bars. Instead, negotiation for certain orders had been based on price only. OneSteel provided evidence in the form of emails and other file notes in support of its claims; and
- it has been a supplier of grinding bar to Donhad for over 20 years, that Donhad has continued to purchase the goods from OneSteel before and after the investigation period and if the sole cause of the lost sales and potential profits was OneSteel's inability to comply with Donhad's technical specifications and testing requirements, then it would logically be expected that Donhad would cease all purchases of the [goods under consideration] from OneSteel.

In response to this, Donhad stated that there were a number of grades manufactured by OneSteel that met Donhad's specification and testing requirements and, as such, Donhad continued to purchase those grades from OneSteel during and following the investigation period.

In response to Donhad's specific claims on quality, OneSteel submitted:

- although OneSteel does not operate a vacuum degassing plant, it utilises an alternative hydrogen diffusion process that has been tested and is proven to lower hydrogen in the finished steel product. The quality of the steel is not a function of the dissolved gases in the liquid steel, but rather several different processes and steps. Donhad has exaggerated the importance of vacuum degassing in its decision to purchase the Chinese product;
- the importance of the reduction ratio issue has been exaggerated, and represents an overly simplistic view of steel manufacturing and steel quality. Control of grain size is an important aspect of steel manufacturing, but is one aspect that is to be considered with many other factors and processing steps (including also the timing of those steps);
- in-line ultrasonic testing provides no guarantee of steel integrity, is not required for grinding bar (given it is not intended for aerospace or automotive applications) and is not benchmark practice. Donhad has exaggerated the importance of this process in its decision to purchase the Chinese product; and
- induction heating operations can cause stresses in the steel when grinding bars are reheated, an issue which is not limited to OneSteel alone.

8.7.6.1 Commission's consideration – quality issues

The Commission has considered the claims made by Donhad and the submissions from interested parties. While acknowledging that Donhad continued to negotiate on the basis of price, and that the email correspondence from OneSteel confirms this, verified information confirms that Donhad ceased purchasing certain grades (or diameters) of alloy round bar from partway through the investigation period. Donhad provided substantial evidence of the nature of the quality issues it experienced, how these had been addressed with OneSteel (including provision of analysis reports conducted by OneSteel) and comparative tests it had performed on OneSteel's product and the imported product.

The Commission acknowledges the concerns raised by OneSteel, namely that certain factors have been exaggerated by Donhad. The Commission has been presented with contrasting opinions regarding the importance of certain production processes and steps, and the effect they have on the quality of the final alloy round bar product. Both Donhad and OneSteel have provided reasoning in support of their claims, noting the differences in production processes and the supposed importance of these differences.

The Commission notes, however, that OneSteel's submission does not address the following quality concerns raised by Donhad:

- the multiple incidents in which there were breakages/explosions of the grinding balls manufactured from the OneSteel product; and
- the drop tests performed by Donhad comparing the performance of grinding balls manufactured from the OneSteel product with grinding balls manufactured from the imported product.

The Commission considers that these specific incidents and the results of the tests performed were the key driver in Donhad's decision to import the Chinese product as a replacement for the specific grade previously supplied by OneSteel and for which the quality incidents had occurred.

Donhad stated that it made the decision to cease purchasing this grade from OneSteel in late November 2015, and the Commission confirmed from OneSteel's sales data that this diameter of alloy round bar was not sold to Donhad after December 2015. The lost sales volume experienced by OneSteel during the investigation period relating to this particular grade / diameter represented over 60 per cent of its total lost sales volume when comparing sales during the investigation period to sales during the preceding 12 months. The Commission considers the loss of this volume to have been caused by the quality issues rather than the dumped goods.

8.7.6.2 Procedural fairness

OneSteel claimed that it was denied procedural fairness and natural justice with regard to Donhad's claims in respect of the quality issues outlined above.⁸⁵ It requested further confidential and limited disclosure of evidence which is not confidential between Donhad and OneSteel.

⁸⁵ [Document 59](#), EPR 384.

The Commission notes that:

- for the aspects of its submissions that were confidential, Donhad provided a non-confidential summary of the information. As required by subsection 269ZJ(2), this summary contained sufficient detail to allow a reasonable understanding of the substance of the information without breaching confidentiality and was included in the public record;
- further information was gathered during a verification visit to Donhad's premises, including verbal information. A record of the visit, as well as the additional verbal information provided by Donhad (to the extent that the information was not confidential), was made in a file note that was published on the public record, as required by subsection 269ZJ(4); and
- some of the information that Donhad claimed to be confidential was confidential because it contained information that was proprietary to OneSteel. This was explained to OneSteel by the Commission via email on 8 May 2017. In addition to the information already publicly available, this explanation provided further detail to enable OneSteel to understand the substance of the information.

The Commission is satisfied that the requirements of section 269ZJ have been met.

8.7.7 Value Proposition

During the investigation Donhad made submissions about OneSteel's value proposition, and that this contributed to the injury it may have experienced. Donhad explained that, during the negotiation process, OneSteel requests that Donhad commit to certain volume hurdles. As an example, Donhad provided copies of correspondence between the parties. The Commission observed that in setting out terms for offer, OneSteel required minimum volume thresholds to be met, with no apparent room for negotiation. While acknowledging that there is some need for OneSteel to have certainty of volumes for its own production purposes, Donhad explained that it is not able to pass on the risk to its own customers, who do not commit to volume hurdles and who can generally terminate contracts on 12 weeks' notice. In support of its claim, Donhad provided evidence of a standard contract with its customers which detailed such a termination clause.

Donhad explained that in purchasing the imported product from its importer, it does not need to commit to volume hurdles and that this is a key consideration as part of its business strategy. OneSteel states that if there is no evidence that Donhad placed, and Stemcor accepted, consistently smaller orders than those placed on OneSteel, this is another example of Donhad exaggerating the impact of a factor other than price causing Donhad to consider other sources of supply.

OneSteel further states that there is nothing unreasonable or uncommercial in requiring a minimum order volume when making specialised single customer steel grades, and is a requirement due to certain constraints placed on steelmakers when making high quality special steels. OneSteel states that it would expect the supply of a customer specific grade from China to be subject to similar logistical and economic constraints.

The Commission accepts that it is typical practice for OneSteel, and other steel manufacturers, to consider their production processes and how to optimise efficiency. Part of this may include the volumes ordered by customers and how to best meet orders while maintaining the efficiency of their operations. However, the evidence presented by Donhad indicates that during the course of negotiations with OneSteel, commitments to minimum volumes were requested by OneSteel. Whether these commitments were entered into or not does not detract from them being part of the negotiations between the parties.

Donhad claimed that in its negotiation for purchases of the imported alloy round bar from China, a commitment to minimum volumes was not required. The Commission confirmed this point with the major importer of alloy round bar for the grinding media market, Stemcor. The Commission is of the view that this issue of a commitment to volume thresholds is a factor that Donhad would have considered in its decision making when purchasing the goods.

8.7.8 Development of New Grade

Donhad claimed that in the past several years it had invested time in developing a new grade of grinding ball with superior properties that was designed to supersede an existing grade of grinding balls. Donhad advised that in the 2016 calendar year it commenced transitioning customers to the new grade. It provided the Commission with detailed information regarding the grade. Donhad explained that there is a greater risk of the new grinding ball being of a lower quality where the reduction ratio is low.⁸⁶ For this reason, Donhad claimed it has only been able to produce this particular grade of grinding ball using alloy round bar that is sourced from China, and from only one exporter in China that has the capacity to roll the round bar required for this grade. Donhad provided correspondence confirming that certain manufacturers of alloy round bar in China had been considered and excluded as potential suppliers.

At the time of publishing SEF 384 the Commission was of the view that Donhad had engaged with OneSteel to supply a trial quantity of this product, which OneSteel was unable to do. For this reason, Donhad continued to source the alloy round bar for this new grade from China.

OneSteel provided evidence that it was only approached by Donhad regarding this new grade in a meeting on 16 March 2017 (i.e. following the investigation period). OneSteel claimed that on 23 March 2017 it had suggested amendments to the chemical composition, which Donhad stated it could not accept. On 3 April 2017, Donhad then approached OneSteel with a revised specification and queried whether these specifications could be met. After confirmation that these specifications could be met, Donhad sent OneSteel a trial charter (on 18 April 2017) to which OneSteel responded on 10 August 2017 with further questions. OneSteel claims that no further work or agreement regarding this trial charter has taken place.

In its submission OneSteel notes the following three points:

⁸⁶ See discussion at section 8.7.6 in relation to the impact of a lower reduction ratio.

- that the Commission appears to be suggesting an exception to the conclusion that “the locally produced alloy round bar to be like to the imported alloy round bar” as noted earlier in the SEF;
- that even if the Commission accepted the new grade theory, the Commissioner was attributing conditions in the market from outside the investigation period to the causation analysis during the investigation period; and
- a finding that the new grade was the sole cause of injury would place the Commission in breach of the Injury Direction, which provides that dumping need not be the sole cause of injury to the industry.

Donhad has provided evidence that the development of this grade commenced as far back as 2009 and 2010, with orders for the first iteration of the new grade placed with Chinese suppliers around that time.

Donhad explained that it did not approach OneSteel during the development phase for this grade due to the commercial relationship between OneSteel and Moly-Cop, the latter being one of the key competitors of Donhad in the grinding media market. However, following the difficulties experienced with Chinese suppliers manufacturing the product and the risk of supply for this grade not being diversified, Donhad elected to approach OneSteel to gauge its ability to manufacture this product.

8.7.8.1 Commission’s consideration – development of a new grade

The Commission has considered the points raised and evidence provided by interested parties. Both Donhad and OneSteel agree that OneSteel was only approached regarding this new grade after the conclusion of the investigation period.

The Commission’s understanding of the facts from March 2017 aligns with the views of both parties – that OneSteel was not able to meet the original Donhad specification, but with certain amendments to the chemical composition OneSteel stated that it could manufacture the product. The trial process discussed between the parties did not take place.

The Commissioner considers that the volume of sales lost during the investigation period in relation to this specific grade was due to Donhad’s decision to develop this grade with Chinese suppliers. The Commission considers that the primary consideration of Donhad in making this decision was the commercial relationship between other members of the Australian industry, and the need for Donhad to protect its proprietary information.

OneSteel noted that its sales of the existing grade have increased since the conclusion of the investigation period, and claims that this supports a conclusion that the existence of the new grade is not the determinative factor in Donhad’s decision to purchase Chinese imports but rather that it is price. Donhad has explained that due to supply difficulties from its overseas suppliers, it has had to revert to obtaining some supply from OneSteel following the investigation period in purchasing the existing grade. The Commission accepts the commercial rationale for these decisions. Donhad has explained the need to diversify its supply source and minimise the risk of a supply shortage. In those limited circumstances it has reverted back to OneSteel and the original grade in order to meet the demand of its own customers.

To address the three specific points raised by OneSteel, the Commission notes that:

- i. it is not suggesting an exception to the goods analysis;
- ii. the Commission has not applied information from beyond the investigation period to the causative analysis during the investigation period; and
- iii. the Commission has considered the consequential impact of the dumped goods on those sales of the existing grade to Donhad during the investigation period, as part of the discussion regarding price effects in section 8.5.5, above.

Approximately 30 per cent of the lost sales volume experienced by OneSteel during the investigation period was in relation to the grade that Donhad has sought to replace with its new product. Accordingly, the Commissioner has concluded that these lost sales were a result of factors which were not connected with dumping.

The analysis regarding the lost sales volume claimed by OneSteel and Milltech is contained in **Confidential Attachment 12 – lost sales and causation**.

8.8 Conclusion

The Commissioner has found that the dumped goods have caused price and volume injury to OneSteel and price injury to Milltech.

A significant portion of the injury experienced by OneSteel in the direct market is as a result of changes in the purchasing behaviour of its key customer, Donhad, in response to quality concerns and normal commercial behaviours. This injury has not been caused by the dumped goods.

As noted at section 8.3 of this report, the Commission considers that where a sector of the Australian industry producing like goods has a particular susceptibility to dumped imports and resultant injury is focused, acute and not negligible, that injury can constitute injury to the Australian industry as a whole.

The Commission has quantified the injury that was experienced by the market sector of the Australian industry producing like goods (that is, OneSteel and Milltech) as described at sections 8.5.5, 8.7.6, 8.7.7 and 8.7.8 of this report. In doing so the Commission has taken care to ensure that the injury due to factors other than dumping are not attributed to the injury caused by the dumped goods.

When considering the price and volume injury to OneSteel, and the price injury to Milltech, together with the other forms of injury found in Chapter 7, the Commission concludes that the injury that has been caused by dumped goods to Australian industry as a whole during the investigation period is greater than that is likely to have occurred in the normal ebb and flow of business uninfluenced by dumping, and is material.

9 WILL DUMPING AND MATERIAL INJURY CONTINUE?

9.1 Finding

The Commissioner notes that there have been significant changes to the structure of the Australian market for alloy round bar in the post investigation period. These changes impact the relevance of the Commissioner's injury findings in the investigation period as a basis for deciding whether injury will continue to occur.

The Commissioner is not satisfied that material injury is currently being caused, or is threatened in the future, to the Australian industry producing like goods by the dumped goods.

9.2 Introduction

Given the prospective nature of measures, where the Commission finds that injury due to dumped goods has been caused to Australian industry producing like goods during the investigation period, it is the Commission's practice to consider whether injury from dumping is being caused and will continue into the future.

The retrospective nature of the investigation period means that a finding regarding injury and causation in the present or in the future, is necessarily based on the situation that prevailed in the past. To some extent, the determination of present or future injury is thus based on assumptions. However, in order to support a recommendation to impose measures, these assumptions must be derived from a credible basis of facts established during the investigation period and that remain relevant in the post investigation period.

9.3 Likelihood that dumping may continue

The Commission's analysis of ABF data in the post investigation period indicates that imports of alloy round bar from China continue to constitute the vast majority of the imports of the goods into Australia, though the overall volumes have reduced as compared to during the investigation period. The Commission has found in the preceding chapters of the report that exports of alloy round bar from China were at dumped prices during the investigation period. Without the imposition of measures there is no reason to believe that the exporters that were found to be dumping will change their behaviour. The Commission therefore considers that the exports of alloy round bar at dumped prices from the exporters found to be dumping in this investigation is likely to continue.

9.4 Material injury due to dumping in the present and in the future

Having made a finding that dumping is likely to continue in the future, the question that next presents itself for consideration by the Commission is whether the factual circumstances established during the investigation period remain relevant in the post investigation period, such that the Commission can make credible assumptions about present or future injury caused by dumping based on those facts.

In the preceding chapters, this report has discussed the Commission's findings regarding the structure of the Australian industry producing like goods and the market segments of the Australian alloy round bar market. It is useful to summarise those findings again here.

The Commission has made the following findings (which are discussed at Chapter 5 of this report) regarding the Australian market for alloy round bar during the investigation period:

- that the Australian market is divided into four distinct market segments (grinding bar, engineering bar, spring steel and strata bar or rockbolt);
- alloy round bar is generally not substitutable between the different market segments;
- over 95 per cent of imported alloy round bar from China during the investigation period was grinding bar;
- the volume of strata bar sold in the market is insignificant (less than 2 per cent of the market); and
- the size of the spring steel market segment remained consistent during the investigation period, while the size of the engineering bar segment of the market increased slightly over the investigation period.

Figures 2 and 3 of this report demonstrate the significance of injury in the grinding bar segment of the market to the market sector of the Australian industry producing like goods and to the Australian industry producing like goods a whole.

As discussed at Chapter 8 of this report, the Commission has found that a significant portion of the injury experienced by OneSteel in the grinding media segment of the market during the investigation period was as a result of changes in the purchasing behaviour of its only customer for grinding bar, Donhad, that was impacted by a range of commercial considerations. While the Commission found that the injury experienced by OneSteel was material, the Commission notes that only a proportion of the lost volume of sales claimed by OneSteel during the investigation period could be attributed to the dumped imports of alloy round bar from China.

9.5 Changes in the post investigation period

There have been a number of structural changes to the Australian industry producing like goods in the post investigation period. These changes are summarised below:

- During the investigation period, Moly-Cop and OneSteel were both wholly owned subsidiaries of Arrium. Moly-Cop produced alloy round bar, though most of its production did not enter the Australian market. Under an arrangement with OneSteel, Moly-Cop also rolled OneSteel's billet into grinding bar (and other alloy round bar).⁸⁷
- OneSteel was the largest supplier of grinding bar into the grinding bar segment of the Australian market for alloy round bar during the investigation period. Moly-Cop and Donhad competed in the downstream market for grinding balls. Donhad maintained diversified supply arrangements and purchased alloy round bar from both OneSteel and overseas suppliers. Donhad was wholly owned by Valmont Industries Inc, a public company based in the USA.⁸⁸

⁸⁷ [Document 65](#), EPR 384.

⁸⁸ [Document 65](#), EPR 384.

- In 2016, Arrium, the parent company that owned both OneSteel and Moly-Cop, was placed into voluntary administration. On 3 January 2017, Moly-Cop was acquired by American Industrial Partners (AIP) from Arrium's administrators. Moly-Cop and OneSteel are thus no longer related entities.⁸⁹
- In August 2017, AIP and Valmont Industries, Inc agreed to the sale of Donhad to Moly-Cop.⁹⁰
- The Australian Competition and Consumer Commission (ACCC) raised preliminary competition concerns about the proposed acquisition of Donhad by Moly-Cop, as Moly-Cop would emerge as the only domestic supplier of grinding media with a market share of well over 50 per cent. After conducting an inquiry, on 29 March 2018 the ACCC announced that it would not oppose Moly-Cop's proposed acquisition of Donhad. The acquisition of Donhad by Moly-Cop was completed in April 2018.

9.5.1 Submissions

The Commission received submissions from OneSteel and Moly-Cop following the publication of ADN No. 2018/73. These submissions made a series of claims and cross claims.

Moly-Cop stated that:

- following the acquisition of Moly-Cop by AIP, Moly-Cop's manufacturing assets were removed from the Arrium portfolio;
- following the sale of Donhad to Moly-Cop in August 2017, OneSteel is left with no Australian customer for grinding bar. Donhad's grinding media requirements will be mostly manufactured by Moly-Cop at its Waratah facility;
- it is not commercially plausible for OneSteel to invest capital in a process for which there is no end customer. Nor is it plausible for Moly-Cop to sell toll rolled grinding bar to OneSteel, only to buy back the grinding bar for its own business, Donhad;
- the most likely scenario is that OneSteel does not participate in the grinding bar market. It does not have the plant and equipment to produce grinding bar. To invest capital it requires a return on investment and it does not have a customer in the foreseeable future to secure that return;
- Moly-Cop's acquisition of Donhad removes a significant transaction from the grinding bar segment of the alloy round bar market. OneSteel's involvement in the market is significantly smaller in 2018 than it was in the investigation period;
- during the investigation period approximately two thirds of the sales of alloy round bar into the Australian market was of grinding bar with the remaining one third comprised of the other market segments. During the investigation period, OneSteel supplied billet to Moly-Cop for alloy round bar production. Following the structural changes of 2017, Moly-Cop will divert its production capacities to grinding bar production for internal use (i.e. for its own and Donhad's production facilities). OneSteel will therefore be limited in its ability to supply the remaining alloy round bar market with its requirements; and

⁸⁹ [Document 65](#), EPR 384.

⁹⁰ [Document 65](#), EPR 384

- OneSteel currently does not possess the production capacity to supply the alloy round bar (excluding grinding bar) requirements. OneSteel's ability to source alloy round bar from Moly-Cop is now significantly reduced and will necessitate the need for import volumes.⁹¹

In response to Moly-Cop's submission, OneSteel submitted that:

- OneSteel is an ongoing participant in Australia's grinding bar segment of the market;
- since August 2017, there have been requests from Donhad seeking delivery of grinding bar which resulted in a sale of (confidential) tonnes of Donhad's requirement. Overall, OneSteel has quoted to supply Donhad a total of (confidential) tonnes of grinding bar. The acceptance of the offer of (confidential) tonnes in 2017 corresponds with a period of increasing export prices from China, suggesting that Donhad is prepared to continue to purchase grinding bar from OneSteel during periods of rising prices or where there are delays in shipments;
- Moly-Cop has continued to toll roll (confidential) tonnes of alloy round bar for OneSteel. Over that period, OneSteel has rolled (confidential) tonnes of alloy round bar within its own facilities;
- since August 2017, OneSteel has increased the production of alloy round bar at its Sydney Rolling Mill;
- even if OneSteel were to cease production of grinding bar, the exporters verified to be dumping by margins of between 21.9 and 73.3 per cent will continue to cause material injury to OneSteel's range of alloy round bar. Two of the exporters found to be dumping are considered special steel producers and as such are capable of producing alloy round bar across the range covered by the goods description. The recurrence of dumping by these exporters presents a real and imminent threat of future injury to OneSteel across its non-grinding bar range of alloy round bar.⁹²

In response, Moly-Cop submitted that:

- the examples quoted by OneSteel in its submission related to the period until 30 April 2018, at which time Moly-Cop and Donhad were still competing;
- the ACCC's investigation resulting in its decision not to oppose the acquisition was not until 29 March 2018. The formal acquisition was not completed until 30 April 2018. The businesses remained separate and complete individually up until the completion of acquisition on 30 April 2018;
- following the acquisition, Donhad and Moly-Cop commenced an integration plan. The integration plan involved the qualifying of Moly-Cop's Waratah steel-making capacity for the manufacture of Donhad's grinding bar. This process has commenced and is continuing;
- during the integration phase, Moly-Cop and Donhad assessed all options for short term steel procurement but this does not extend to any medium to long term arrangements outside of Moly-Cop's internal supply;

⁹¹ [Document 65](#), EPR 384.

⁹² [Document 67](#), EPR 384.

- in the short term, OneSteel provided Donhad with an unsolicited offer to supply grinding bar. Donhad inquired as to supply and pricing options however did not proceed with the order. The communications with OneSteel is not indicative of any commitment to purchase from OneSteel. Moly-Cop and Donhad have been examining options for supply during the transition period;
- it cannot be interpreted that Donhad has been seeking supply since August 2017 – this is not the case as evidenced by the cessation of typical orders prior to August 2017.⁹³

In response to Moly-Cop's submission, OneSteel submitted that:

- its offer to Donhad was not unsolicited;
- even if OneSteel had initiated the enquiry, if Donhad were genuinely not interested in further supply from OneSteel it would not have proceeded to write to OneSteel in terms seeking confirmation of price, quantity and delivery offer details of the grinding bar;
- the question for the Commission is not whether there is no longer a grinding bar customer for OneSteel but whether OneSteel will lose sales volume to Donhad's purchases of imported, dumped grinding bar; and
- Moly-Cop's assurances that Donhad's options for steel procurement does not extend to any medium to long-term arrangements outside of Moly-Cop's internal supply are mere assertions and conjecture.⁹⁴

On 4 September 2018, the Commission requested specific additional information from both OneSteel and Moly-Cop regarding:

- alloy round bar rolling arrangements between Moly-Cop and OneSteel;
- the supply of alloy round bar by OneSteel to Donhad; and
- the supply of alloy round bar by Moly-Cop to Donhad.⁹⁵

OneSteel submitted that the Commission needed to make additional enquiries of Moly-Cop and Donhad regarding the volume and value of imported grinding bar consumed by Moly-Cop and/or Donhad since the conclusion of their merger on 30 April 2018, and of forward orders for grinding bar from imported sources. In OneSteel's opinion, if either Donhad or Moly-Cop have placed orders for imported product that are subject to the investigation post their merger on the 30 April 2018, then it would invalidate Moly-Cop's claims and would demonstrate that material injury as a result of dumping is continuing to occur.⁹⁶

OneSteel and Moly-Cop provided the Commission with their responses to the Commission's request for additional information by the date requested.⁹⁷

⁹³ [Document 68](#) on EPR 384.

⁹⁴ [Document 69](#) on EPR 384.

⁹⁵ [Document 70](#) on EPR 384.

⁹⁶ [Document 71](#) on EPR 384.

⁹⁷ [Document 72](#) and [Document 73](#), EPR 384.

In its response, Moly-Cop stated that, following ACCC approval of the merger between Donhad and Moly-Cop, Donhad undertook a trialling process to ensure that the grinding bar specifications it required could be manufactured at Moly-Cop's Waratah mill. This process resulted in small quantities being ordered and delivered. The typical lead time between orders and receipts is about 2 to 4 months. As the grades have been accepted as suitable for supply from Moly-Cop, orders have been placed by Donhad with Moly-Cop. The terms of supply are arms length, based on global indices and include a margin.⁹⁸

In response, OneSteel submitted that:

- while a limited trial period is a reasonable course of action, there is no evidence before the Commission that even if all the trials are successful that all of Donhad's processing plants will transition from imported sources to their own production;
- presupposing that Donhad's east coast facilities (i.e. Newcastle and Townsville) were to fully transition to the alloy round bar sections produced by Moly-Cop's Waratah mill, it is entirely foreseeable that Donhad's west coast facility (i.e. Bassendean) will continue to source dumped Chinese alloy round bar. This is the logical explanation for Moly-Cop's late opposition to OneSteel's application for the publication of a dumping duty notice the subject of this investigation;
- the ongoing importation of the goods known to be dumped since 30 April 2018 clearly satisfies the condition of subsection 269TG(2)(b) with respect to five months of ongoing and future injury. The Commissioner cannot simply accept the promise of Moly-Cop and/or Donhad, that at some time, in the not too distant future, they will cease all importation of the goods from dumped sources across all or part (i.e. East coast, but not West coast businesses); and
- irrespective of the exact proportion of the former Donhad requirements that will be supplied by Moly-Cop, it is important for the Commission to consider the impact of the diminishing grinding bar segment on the total of the makeup of the broader Australian alloy round bar market. As a large proportion of the alloy round bar market transitions to work in progress for the grinding media market, the effect of this is to increase the materiality of the injury suffered by both OneSteel and Milltech in the other alloy round bar segments, i.e. the engineering, spring and strata bar markets.⁹⁹

9.6 Commission's consideration – grinding bar market segment

For the purposes of assessing the existence of a causal relationship between dumping and injury, the Commission must not attribute to dumped imports the injury caused by other, non-dumping factors.

Moly-Cop has raised two critical issues in its submissions:

- that OneSteel lacks the ability to supply grinding bar without recourse to a commercial rolling arrangement with Moly-Cop; and

⁹⁸ [Document 73](#) on EPR 384.

⁹⁹ [Document 74](#) on EPR 384.

- that it is commercially implausible for Moly-Cop to roll grinding bar for OneSteel under commercial terms only to buy back the grinding bar for Donhad.¹⁰⁰

The evidence indicates (as submitted by Moly-Cop) that there has been a change in the ownership of grinding bar producing assets during the post investigation period. There is no evidence to support a finding that OneSteel currently has the capability to roll grinding bar without recourse to the arrangement that it has with Moly-Cop. OneSteel itself has not addressed this issue in its submissions.

The basis for the Commission's findings regarding injury to OneSteel in the grinding bar segment of the market during the investigation period were:

- OneSteel was a producer of grinding bar through its arrangement with its related party Moly-Cop; and
- OneSteel had a single customer in the grinding bar segment of the market, Donhad, which purchased either from OneSteel or from imports.

These factual circumstances have significantly shifted following the investigation period. It is possible that Moly-Cop will continue to roll grinding bar for OneSteel that Donhad could then purchase from OneSteel. However, that arrangement (a prerequisite if OneSteel is to supply Donhad) is no longer a commercially stable arrangement between related entities, and is subject to the broader corporate goals of Moly-Cop and Donhad operating as related parties. OneSteel's ability to supply the grinding bar segment of the market is therefore considerably less certain than it was during the investigation period.

OneSteel has submitted that "there are clear price negotiation motivations for Moly-Cop (and by extension Donhad) to defeat the resumed investigation by suggesting that the toll rolling arrangement and ongoing supply by OneSteel to Donhad has come to an end, when the evidence suggests otherwise and the imminence of that outcome cannot be guaranteed".¹⁰¹

The Commission has considered the information provided by OneSteel of quotes for grinding bar supply to Donhad and its actual sales volumes to Donhad since late 2017. It has also considered Moly-Cop's statements that it intends to supply Donhad's grinding bar requirements in the future. The Commission has not treated these statements of intent (or quotes) as determinative of what might happen in the future; however, these statements, together with the information provided by OneSteel, support a view that OneSteel no longer has a stable customer base in the grinding bar segment of the market, regardless of whether dumping continues.

The structural changes to the grinding bar segment of the market are clearly relevant to the Commission's causation analysis. In the Commission's view, the weight of the available evidence supports a view that the injury experienced by OneSteel in this market segment since the conclusion of the investigation period is attributable to factors other than the ongoing presence of dumped goods. The Commission considers that the facts available provide no positive evidence on which to conclude that future injury will likely be caused by dumped goods in the grinding bar segment of the market.

¹⁰⁰ [Document 65](#) on EPR 384.

¹⁰¹ [Document 67](#) on EPR 384.

9.7 Commission's consideration – other market segments

The application from OneSteel included a broad category of goods. As described at Chapter 3 of this report, after considering submissions from the Australian industry producing like goods and other interested stakeholders, the Commissioner formed a view that while grinding bar, engineering bar, spring steel and strata bar have subtle production differences and standards, compete in separate market segments and are not generally interchangeable within those segments, this did not preclude each of those types of alloy round bar from being part of the goods description. The investigation is therefore in relation to this broad category of goods.

The Commission's injury findings during the investigation period were based on its analysis of the impacts of the dumped goods in the market sector. The market sector of Australian industry producing like goods comprised of goods sold by Milltech, OneSteel and Moly-Cop (in relation to a small volume of grinding rods) into all four segments of the market. During the investigation period, the grinding bar segment constituted the majority of the sales made into the alloy round bar market.

OneSteel submits that "it is important for the Commission to consider the impact of the diminishing grinding bar segment on the total of the makeup of the broader Australian alloy round bar market. As a large proportion of the alloy round bar market transitions to work in progress for the grinding media market, the effect of this is to increase the materiality of the injury suffered by both OneSteel and Milltech in the other alloy round bar segments, i.e. the engineering, spring and strata bar markets".¹⁰²

However, the information before the Commission does not lend itself to an unquestioning assumption that the grinding bar segment of the Australian alloy round bar market is transitioning to work in progress and that its size has therefore diminished as a proportion of the broader market. Moly-Cop has advised that it is currently supplying Donhad's grinding bar requirements on arms length terms, based on global indices and including a margin.¹⁰³ The Commission notes that integrated steel manufacturers in Australia make sales to related party entities and, provided these sales can be comparably benchmarked to their sales to unrelated party entities, the Commission generally treats these transactions as sales that enter the relevant market.¹⁰⁴ Further, the Commission's analysis of ABF data in the post investigation period on a monthly basis indicates that grinding bar continues to constitute the majority of alloy round bar imports from China into Australia. Based on the volume of imports, the Commissioner considers that it would be conjecture on the part of the Commission to assume that grinding bar segment no longer accounts for a majority of sales in the Australian alloy round bar market.

¹⁰² [Document 74](#) on EPR 384.

¹⁰³ [Document 73](#) on EPR 384.

¹⁰⁴ See for instance section 8.4.1 in [REP 418](#) (Document 68, EPR 418).

Moreover, the Commission's material injury findings in relation to OneSteel during the investigation period were based on injury experienced by it in the grinding bar segment of the market. Even if the Commission were to assume that the basis for its material injury findings to Milltech during the investigation period continues to exist during the post investigation period, injury to a very small segment of the market (see Figure 3 for relative size of the market segments during the investigation period) is not considered to be material to the Australian industry as a whole in this case.

9.7.1 Threat of injury

Moly-Cop submitted that during the investigation period, OneSteel supplied billet to it for alloy round bar production, but following the structural changes in the market (as discussed above) Moly-Cop will divert its production capacities for internal use (i.e. for its own production and for Donhad's production facilities). It stated that OneSteel will therefore be limited in its ability to supply the remaining alloy round bar market, and suggested that OneSteel does not possess the ability to roll those other forms of alloy round bar in the absence of the tolling arrangement.¹⁰⁵

In response, OneSteel has submitted that it has increased its production of alloy round bar at its Sydney Rolling Mill. It notes that in assessing the likelihood of future dumping, the exporters that have been found to have been dumping are capable of producing alloy round bar across the range covered by the goods description i.e. beyond grinding bar, and that the recurrence of dumping by these exporters presents a real and imminent threat of future injury to OneSteel across its non-grinding bar range.¹⁰⁶

Subsection 269TAE(2B) states that, in determining whether or not material injury is threatened, "the Minister must take account only of such changes in circumstances [...] as would make that injury foreseeable and imminent unless dumping [...] measures were imposed. The Manual outlines the Commission's approach to assessing whether there is a threat of injury. In considering whether a threat of material injury is "foreseeable and imminent" the Commission has regard to Article 3.7 of the Anti-Dumping Agreement, which sets out relevant non-exhaustive factors to be considered in a determination of threat of material injury:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the market, taking into account the availability of any other export markets to absorb any additional exports;
- whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- inventories of the product being investigated.¹⁰⁷

¹⁰⁵ [Document 65](#), EPR 384.

¹⁰⁶ [Document 67](#), EPR 384.

¹⁰⁷ The Manual, page 23.

With respect to cases where injury is threatened by dumped imports, the application of measures shall be considered and decided with special care. A determination of threat of material injury is thus subject to stringent tests. A totality of factors must lead to the conclusion that dumped exports are imminent, and that, unless action is taken, material injury would occur.

The Commission notes that there is no evidence of significantly increased rate of dumped imports in the market; the overall volume of imports of alloy round bar from China has decreased. The analysis supporting this finding is at **Confidential Attachment 13**. There is also no evidence that excess capacity held by exporters found to be dumping during the investigation period is likely to lead to substantially increased dumped exports to the market. No exporter has been observed to take advantage of the previous decision to terminate the investigation. Further, there is no evidence before the Commission that the imports are entering at prices which have a significant effect on domestic prices, and no evidence that inventories for non-grinding forms of alloy round bar have materially changed.

The Commission finds that there is no persuasive evidence before it which suggests that it is necessary to impose anti-dumping measures on alloy round bar in order to prevent a foreseeable and imminent injury to the Australian industry producing like goods.

9.8 Conclusion

The purpose of imposing anti-dumping measures under domestic legislation is to prevent material injury being caused, threatened to be caused, by dumped goods to the Australian industry producing like goods. The evidence before the Commissioner does not support a view that the imposition of measures in this case would have that effect.

10 NON-INJURIOUS PRICE

10.1 The Commission's assessment

Should anti-dumping measures be imposed by the Minister, the level of interim dumping duty cannot exceed the margin of dumping. The Minister must have regard to the desirability of fixing a lesser amount of duty if the non-injurious price (NIP) is less than the normal value of the goods. This requirement is commonly referred to as the 'lesser duty rule'.

The Commission generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This is referred to as the unsuppressed selling price (USP).

In the SEF 384, the Commission proposed determining the NIP by first calculating a USP based on the selling prices of the Australian industry members for the period from 1 October 2012 to 30 September 2013. The Commission then deducted verified importation costs to calculate the NIP on a FOB basis.

OneSteel submitted that it does not support the proposed approach to calculating the NIP, stating any reduction in the dumping duty rates by any amount less than the full rate of dumping will continue to impact the Australian industry and exporters of un-dumped goods. OneSteel stated that the methodology used by the Commission in the proposed NIP is incorrect and that the Commission should recommend to the Minister that it is not desirable to fix a lesser rate of interim dumping duty.¹⁰⁸

As per Chapter 9, the Commission has found that the imposition of measures will not prevent injury caused by dumped goods. There is therefore no basis on which to impose anti-dumping measures under subsections 269TG(1) or (2). For these reasons, the Commission has not considered the selection of an appropriate USP and NIP in further detail.

In any event, the Commission notes that, pursuant to subsection 8(5BAA) of the *Customs Tariff (Anti-Dumping) Act 1975*, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. Those circumstances includes where the normal value was not able to be ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii). As noted above in section 6.5, the Commission has identified a market situation in China such that sales in that market are not suitable for use in determining the normal value. The Commission considers that there is no obligation on the Minister to consider the lesser duty rule.

¹⁰⁸ [Document 53](#) on EPR 384.

11 CONCLUSION

11.1 Introduction

At Chapter 8 of this report, the Commissioner found that during the investigation period, the dumped goods caused injury to the Australian industry producing like goods as a whole, and that the injury was material.

At Chapter 9 of this report, the Commissioner noted that he cannot be satisfied that material injury, is being caused, or is being threatened, to the Australian industry producing like goods due to the dumped goods.

11.1.1 Preliminary Affirmative Determination

In accordance with subsection 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD) if he is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, or if it appears that there will be sufficient grounds subsequent to the importation of the goods into Australia. Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made.

A status report in relation to this investigation was published on 15 March 2017.¹⁰⁹ Pursuant to the PAD Direction, if the Commissioner has published a status report, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the SEF.

The Commissioner has made a finding that injury due to the dumped goods has been caused to the Australian industry producing like goods during the investigation period (as set out at Chapter 8 of this report). However, as set out in Chapter 9, the Commissioner is not satisfied that material injury to the Australian industry in the present and in the future is being caused, or is threatened, due to the dumped goods. Even if the Commissioner makes a PAD in this case, it is not open for the Commonwealth to take securities to prevent material injury to the Australian industry while the investigation continues (per subsection 269TD(4)) given those findings.

Whilst the conditions for the making of a PAD have been established, in the absence of also taking securities there is no practical benefit to the Australian industry in doing so. Accordingly, the Commissioner has decided not to make a PAD.

11.2 Basis for publishing a notice

In the absence of a PAD, there is limited utility in recommending that the Minister publish a notice under subsection 269TG(1).

¹⁰⁹ [Document 9](#), EPR 384.

As indicated in Chapter 9, there have been significant changes to the structure of the Australian market for alloy round bar in the post investigation period. These changes impact the relevance of the Commissioner's injury findings in the investigation period as a basis for deciding whether injury will continue to occur. As a result, the Commissioner is not satisfied that material injury is currently being caused, or is threatened in the future, to the Australian industry producing like goods by the dumped goods.

The purpose of imposing anti-dumping measures under domestic legislation is to prevent material injury being caused or threatened to be caused, by dumped goods to the Australian industry producing like goods. The evidence before the Commissioner does not support a view that the imposition of measures in this case would have that effect.

For these reasons, the Commissioner does not recommend that the Minister publish a notice under either of subsection 269TG(1) or (2).

11.3 Conclusion

The Commissioner therefore proposes to recommend to the Minister that a notice be published under subsection 269TL(1) in respect of alloy round bar exported to Australia from China, declaring that section 8 of the Dumping Duty Act does not apply to those goods.

The Commissioner does not propose to recommend to the Minister that a dumping duty notice be published under subsections 269TG(1) or (2) in respect of alloy round bar exported to Australia from China.

12 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Production and market share analysis
Confidential Attachment 2	Suzhou – constructed normal value
Confidential Attachment 3	Daye – constructed normal value
Confidential Attachment 4	Injury analysis
Confidential Attachment 5	Price undercutting examples - OneSteel
Confidential Attachment 6	Price undercutting - OneSteel
Confidential Attachment 7	Price undercutting examples - Milltech
Confidential Attachment 8	Price depression & suppression
Confidential Attachment 9	OneSteel – pricing model
Confidential Attachment 10	Injury value – Milltech and OneSteel
Confidential Attachment 11	Cumulative injury value
Confidential Attachment 12	Lost sales and causation
Confidential Attachment 13	Import volume analysis
Appendix 1	Particular Market Situation Finding

APPENDIX 1 – MARKET SITUATION ASSESSMENT

A1 Introduction, applicants' claims and Commission's finding

A1.1 Introduction

This appendix sets out the Commission's assessment of the applicant's claims that there was a situation in the Chinese alloy round steel bar (round bar) market during the inquiry period such that sales in this market were not suitable for determining normal values under subsection 269TAC(1).

A1.2 Applicants' claims

The applicants claim that during the investigation period, a particular market situation (market situation) in the Chinese round bar market made sales in that market unsuitable for determining normal values under subsection 269TAC(1). In support of this view, the applicant cited the interventions made by the Government of China (GOC) within the Chinese iron and steel market including through its policies and plans along with its VAT arrangements.

A1.3 Commission's finding

The Commission has found that there is a market situation within the Chinese round bar market during the investigation period, with the effect that sales from this market are not suitable for use in determining normal values under subsection 269TAC(1).

A2 Assessment framework and information relied upon

A2.1 Commission's framework for assessing market situation claims

Subsection 269TAC(2) provides for circumstances where the normal value of goods cannot be ascertained under subsection 269TAC(1) "because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1)".¹¹⁰ If there is a market situation then normal values may instead be constructed under subsection 269TAC(2)(c) or determined by reference to prices from a third country under subsection 269TAC(2)(d).

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

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

¹¹⁰ Section 269TAC(2)(a)(ii) is Australia's implementation of Article 2.2 of the WTO *Anti-Dumping Agreement*.

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

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

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

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

The Manual provides further guidance on the circumstances in which the Commission will find that a market situation exists.¹¹¹

A2.2 Evidentiary threshold

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

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

A2.3 Information relied upon to undertake the Commission's assessment

The applicants cited the following information sources in support of their claim:

- the Commission's previous market situation assessments concerning the Chinese grinding balls, rod in coil and rebar markets;
- the Commission's Analysis of Steel and Aluminium Report to the Commissioner of the Anti-Dumping Commission; and
- confidential pricing information demonstrating the suppressed domestic price for billet and hot rolled bar within China compared to other regional steel producers and consumers, namely Japan, Korea and Taiwan.

In undertaking this assessment, the Commission also considered the following:

¹¹¹ See for example chapter 7 of the Manual.

- responses to the exporter questionnaire by selected exporters; and
- desktop research, including information obtained from departmental resources and third party information providers.

The Commission did not receive a response to the government questionnaire from the Government of China (GOC) for this inquiry. This impeded the Commission's ability to undertake its assessment.

In line with its legislative requirements, the Commission's market situation assessments are undertaken at the level of the goods being investigated. When undertaking its assessment, the Commission has also given consideration to conditions within the broader Chinese steel industry. This approach was adopted because of the lack of available information concerning certain aspects of the Chinese billet and alloy bar markets, which was in part due to the GOC's decision not to provide the Commission with a response to its government questionnaire.

In this assessment, GOC refers to all levels of the Chinese Government unless specified otherwise. Similarly, the Commission has referred to Chinese State Owned Enterprises and State Invested Enterprise collectively as SOEs. The Commission has adopted this approach as it considers the GOC has the ability to directly influence decision making within these two types of entities in a similar fashion.

A3 Conditions in the Chinese round bar market

The Commission was unable to directly assess conditions within the Chinese alloy bar market because of its inability to obtain consumption, production or pricing data. This was in part due to the decision by the GOC not to respond to the Commission's government questionnaire. Instead, the Commission has undertaken analysis of the Chinese rebar, rod-in-coil and hot bar markets as a guide to conditions within the alloy bar market. The Commission considers this approach appropriate as these product markets are closely related to the Chinese round bar market, including through their use of steel billets as their primary input, and hence are a satisfactory indication of market conditions within it. As all these products share a common primary input, conditions within the considered markets will significantly impact upon the billet prices within China and hence on the conditions within the Chinese alloy bar market.

Between 2010 and 2016 billet, rebar and wire coil prices all declined by approximately 50%, 40% and 40% respectively. While price declines within these Chinese product markets was broadly consistent with pricing trends in non-Chinese regions, the relative decline in Chinese prices were typically greater in China compared to other countries within Asia and other regions more broadly. In contrast to the trends in declining absolute and relative prices for these product categories, Chinese production of hot rolled long products, including rebar, wire coil and hot rolled bar continued to grow. Between 2010 and 2015 Chinese production of hot rolled long products increased by around 35% with rebar, wire rod and hot rolled bar increasing by around 45%, 40% and 10% respectively. The relatively strong growth in production of these products, despite weakened absolute and relative pricing, is also reflected in China's share of total world production of hot rolled long products increase from around 55% in 2010 to 62% in 2015.

It is the Commission's view that the continued growth in Chinese production of these products, despite a significant and sustained weakening in prices, when compared to other steel producing regions reflects the structural nature of imbalances between capacity, production and consumption within Chinese steel market, including within the Chinese alloy bar market.

Regarding the sustained growth in steel production despite weakened pricing between 2010 and 2015, the Commission considers that while it is not unreasonable for capital intensive industries to display a degree of production rigidity in the face of price and profit volatility over the short term, this should not persist over the medium to long term. In terms of capacity utilisation, industry sources indicate that during the investigation period utilisation rates across the broader Chinese steel industry averaged around 70%, significantly below more normal levels of between 85% and 90%.¹¹² In regards to profitability, the China Iron and Steel Association (CISA) estimated in late 2015, around 48% of the Chinese steel industry was unprofitable, with total losses for its members reaching RMB 65 billion in 2015.¹¹³ ¹¹⁴ Other sources losses at around RMB 100 billion, making 2015 the worst year on record.¹¹⁵ Notable Chinese steel producers to record losses during the inquiry period include Baosteel, Wuhan Iron and Steel and Anshan Iron and Steel.¹¹⁶

A4 Factors contributing to imbalances in Chinese steel markets

The Commission considers the GOC's involvement within and influence over the steel industry to be a primary cause of the prevailing structural imbalances both within the broader steel industry, semi-finished product markets such as steel billet and finished steel product markets such as alloy bar markets. This involvement includes the issuing of planning guidelines and directives along with provision of direct and indirect financial support.¹¹⁷ ¹¹⁸ The ongoing nature of the GOC's involvement within and distortion of billet and rolled product markets is also reflected by the Commission's numerous market situation findings, concerning these products, as listed below.

- Investigation (No. 300) (2016) Steel reinforcing bar.

¹¹² OECD, 2017, Steel market developments, Q2 2017, p 8. OECD, 2016. Recent market developments in the global steel industry, p6. CEPII, 2016, China's 13th Five Year Plan: In Pursuit of a Moderately Prosperous Society, CEPII Policy Brief No. 12 September 2016, p3. Duke Centre on Globalisation, Governance & Competitiveness, 2016. Overcapacity in Steel: China's role in a global problem. September 2016, p24.

¹¹³ Liu. H & Song. L, 2016. Issues and Prospects for the Restructuring of China's Steel Industry. China's New Sources of Economic Growth. Vol.1. Reform, Resources and Climate Change, p343 & 346.

¹¹⁴ Platts, 2015. Global Market Outlook, Steel Business Briefing. November 2015, p2.

¹¹⁵ Ministry of Industry and Information Technology, 2016. '2015 Non-ferrous Metals Industry Operations and 2016 Outlook', <http://www.miit.gov.cn/n1146285/n1146352/n3054355/n3057569/n3057572/c4636604/content.html>

¹¹⁶ Platts, 2015. Global Market Outlook, Steel Business Briefing. November 2015, p2 & 6.

¹¹⁷ Support measures include stimulus programs, land and energy subsidies and soft lending policies.

¹¹⁸ Duke, 2016, p 24 & 34.

- Investigation (No. 301) (2016) Rod in coil.
- Investigation (No. 316) (2016) Grinding balls.

In drawing these conclusions regarding the GOC's involvement in the distortion of Chinese steel markets, the Commission also recognises the GOC's recent attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. While noting these efforts are targeted at correcting current imbalances and resulting distortions, the Commission considers them to be further evidence of the extent of distortions and GOC's involvement within and influence over the broader steel industry during the investigation period. Examples of these capacity management measures announced during the investigation period include tighten bank lending to smaller mills; industry consolidation through mergers and acquisitions; and use of stricter environmental requirements to forcible shut down capacity.¹¹⁹

Specific initiatives announced in 2015 and 2016 to address these imbalances include the Central Government's 'supply-side reform' initiative, '*Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry*'; and '*The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry*'. The '*Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry*', proposes that SOE capacity be reduced by 100 to 150 million tonnes by 2020, via the banning of new steel projects and elimination of 'zombie mills'.¹²⁰ The central government has also pledged a RMB 100 billion fund for employee compensation, social security payments, and plant closure incentives in the coal and steel sectors.¹²¹ The '*Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry*' strictly forbids the registration of new production capacity in any form and demands that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline.¹²²

Examples of industry's response to these directives is reflected in the recently announced restructuring of Baosteel Group and Wuhan Iron and Steel Group, two large centrally controlled SOEs whose merger is expected to result in the removal of 60 million tonnes of capacity by 2020. Industry sources suggest that the planned merger between Baosteel and Wuhan represents the first move towards the GOC's goal of raising the SOE's share of Chinese steel production from around 40% to 60% reinforcing the Commission's view regarding the GOC's influence over the structure of the domestic steel industry. Hebei Iron and Steel, another major Chinese steel producer also indicated that it plans to shut its eight million tonnes Xuanhua Iron and Steel facility, consolidate capacity at its

¹¹⁹ Platts, 2016. Global Market Outlook, Steel Business Briefing. January 2016 p14.

¹²⁰ Liu. H & Song. L, 2016, pp338-339. AME Group, 2016. Steel 2016: June Quarter, Strategic Market Study. 2016, Q2. p9.

¹²¹ Duke, 2016, p29.

¹²² KPMG, 2016. The 13th 5 Year Plan: China's Transformation and Integration with the World Economy, p29. Sourced from 'State Council Guiding Opinions on Reducing Overcapacity in the Iron and Steel Industry', State Council, 4 February 2016.

Tangshan and Chengde plants, and relocate capacity by building a new plant under the GOC's 'reduced capacity swap' principle.¹²³

In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commission's view that to date these attempts to address existing structural imbalances have had limited success. Constraints on the effectiveness of these initiatives not only relate to the extent of the imbalances but also the difficulties in coordinating activities between central, provincial and local levels of government. The resistance of provincial and local governments to closing down mills relates to their role as major employers, sources of tax revenue and providers social services within their respective regions.¹²⁴ Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and GDP oriented performance measures which encourage over investment.¹²⁵

The effectiveness of the GOC's attempts to address overcapacity have also been constrained by its desire to promote the replacement of older mills with new larger and more efficient mills. While likely to improve the industry's structure over the longer term, its current impact, including throughout the inquiry period, has been to increase production and exacerbate the existing structural imbalances. Industry sources note that the extent of this issue is reflected in existing plans to bring a further 65 million tonnes of capacity on line by 2018.¹²⁶

The difficulties faced by the GOC in achieving these objectives is also reflected in the reality that many smaller mills need to be shut down to offset the commissioning of new larger mills and the difficulties in ensuring that once mills are closed, they are not brought back on line when market conditions improve.¹²⁷ An example of this issue can be seen in recent announcements by Baosteel which while indicating that it would mothball 2.5 million tonnes of capacity as part of its plan to address overcapacity, also commissioned nine million tonnes of new capacity at its Zhanjiang facility.¹²⁸ The GOC's attempts to remove unprofitable capacity from the industry have also been constrained by the significant presence of 'zombie mills' which under normal competitive market conditions would be shut down due to either poor profitability or insolvency. The inability of the GOC to permanently remove capacity and address the imbalances was demonstrated in early 2016 when in response to improved market conditions domestic supply rapidly expanded. As noted by the CISA, stronger prices allowed suspended and closed mills to resume production to recover their losses. By the end of March 2016, crude steel output had climbed to more than 70 million tonnes, the highest monthly level in the preceding year.¹²⁹ The challenges posed by these issues is also evident in commentary by the CISA which

¹²³ AME Group, 2016. Steel 2016: June Quarter, Strategic Market Study. 2016, Q2. p9 & 19.

¹²⁴ Platts, 2016. Global Market Outlook, Steel Business Briefing. April 2016 p16.

¹²⁵ Duke, 2016, p38.

¹²⁶ Platts, 2016. Global Market Outlook, Steel Business Briefing. January 2016 p14.

¹²⁷ Liu. H & Song. L, 2016, p357.

¹²⁸ Platts, 2016. Global Market Outlook, Steel Business Briefing. June 2016 p11.

¹²⁹ Platts, 2016. Global Market Outlook, Steel Business Briefing. May 2016 p13.

expects the ‘shake out’ of the industry to take at least a decade and that Chinese mills were in no hurry to consolidate despite the government’s attempts to encourage mergers and acquisitions.¹³⁰

A5 GOC influence in the Chinese steel markets

Key mechanisms through which the Commission considers that the GOC has distorted conditions within the Chinese steel industry, along with the steel billet (including alloy billet) and alloy bar markets during the inquiry period are listed below.

- Role and operation of SOEs.
- Industry planning guidelines and directives.
- Provision of direct and indirect financial support.
- Taxation and tariff policies.

A5.1 Role and operation of SOEs

Between 2010 and 2015, Chinese SOEs accounted for around 40% of total Chinese steel production and for eight of the 10 largest Chinese steel producers.¹³¹ ¹³² Some estimates are that SOE production account for as high as 60% of total steel production.¹³³ It is the Commission’s understanding that this level of GOC involvement within the broader Chinese steel industry has persisted during 2016. While the Commission does not consider the presence of these entities alone causes markets to be distorted, it does mean that there is a higher likelihood that the GOC’s plans and directives will be adhered to. It is also the Commission’s view that steel producing SOEs have and continue to receive significant direct and indirect financial support from central, provincial and local levels of government as means to increase tax revenues, expand employment and maintain social stability. Examples of these support mechanisms include: government subsidies; support from associated enterprises (through direct subsidy, interest-free loans or provision of loan guarantees); and loans from state-owned banks.¹³⁴

The Commission considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated orders by the central government to reduce the scale of steel production. It is also the Commission’s view that these support mechanisms have created rigidities in the way recipient firms respond to price and profit signals and hence have significantly contributed to the excessive investment in capacity, excess steel production and distorted prices. These distortions are

¹³⁰ Platts, 2016. Global Market Outlook, Steel Business Briefing. March 2016 p15.

¹³¹ Liu. H & Song. L, 2016, p349. Estimates for the Chinese HRC and HSS markets could not be developed due to a lack of available information, including the GOC’s decision not to respond to the government questionnaire.

¹³² Estimates based on production data sourced World Steel Association (2015). Hesteel Group; Baosteel Group; Ansteel Group; Shougang Group; Wuhan Steel Group; Shandong Steel Group; Maanshan Steel; and Tianjin Bohai Steel.

¹³³ Platts, 2016. Global Market Outlook, Steel Business Briefing. January 2016 p14.

¹³⁴ Liu. H & Song. L, 2016, p348.

also reflected in that out of the 10 largest losses amongst steel producing firms within China in 2015, nine were SOEs.¹³⁵

The significance of SOEs to the broader Chinese economy, including the steel industry, is also reflected in the State Council of China's recent '*Guidance on the promotion of central enterprises restructuring and reorganisation*'. In introducing this guidance, the State Council notes the important role of 'central enterprises' in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The guidance also indicates that the State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation include the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures more generally.

A5.2 Industry planning guidelines and directives

The Commission considers that the GOC's involvement within the Chinese steel industry, through its planning guidelines and directives also materially contributed to its overcapacity, oversupply and distorted structure during the inquiry period. The extent of this involvement is reflected through the numerous planning guidelines and directives regarding the industry's structure and composition, listed below. In noting that some of the listed documents are now dated, the Commission considers that this further demonstrates long term involvement of the GOC within the Chinese steel industry and hence it's central role in contributing to the structural imbalances and distorted prices during the inquiry period.

- National Steel Industry Development Policy (2005).
- Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009).
- 2011-2015 Development Plan for the Steel Industry (2011).
- Steel Industry Adjustment Policy (2015 Revision).
- Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry (2016).
- The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry to Gain Profits and Development (2016).

In addition to the planning guidelines and directives listed above, the GOC's involvement within the steel industry is also demonstrated through broader industrial restructuring and reorganising directives listed below.¹³⁶

- Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009).
- Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013).
- Guiding opinions on Resolving Serious Excess Capacity Contradictions (2013).

¹³⁵ Liu. H & Song. L, 2016, p339 & 352.

¹³⁶ These directives are targeted at multiple industries including the Chinese steel industry.

- Directory Catalogue on Readjustment of Industrial Structure (2013 Amendment).
- Guidance on the promotion of central enterprises restructuring and reorganisation (2016).

12.1.1 A5.2.1 Relevance and enforceability of planning guidelines and directives

In assessing the relevance of these planning guidelines and directives, the Commission also notes the importance of the GOC's national five year plans which provide the overarching framework for the industry and local government plans. Regarding industry specific planning guidelines and directives, the Commission notes, but does not agree with the GOC's view that they are for guidance and are not enforceable.

Mechanisms through which the Commission considers the GOC is able to enforce these guidelines and directives include the presence and role of SOE's within the broader steel industry, the role the National Development and Reform Commission (NDRC) and explicit enforcement mechanisms. In regards to SOEs, their significant share of total Chinese steel production and propensity to follow government guidance and directives ensures the GOC is able to influence broader trends in industry capacity and steel production. Similarly, the NDRC through its dual role of developing planning guidelines and directives and approving large scale investment projects, has the capacity to ensure that the broader objectives of the central government are implemented. Explicit enforcement mechanisms detailed within directives, such as the State Council notice on *Further Strengthening the Elimination of Backward Production Capabilities and Guidelines*, includes: revoking of pollutant discharge permits; restrictions on the provision of new credit support; restrictions on the approval of new investment projects; restrictions on the issuing of new and cancelling of existing production licenses.

12.1.2 A5.2.2 Summary of themes, objectives and implementation

Key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry are listed below.

National Steel Industry Development Policy (2005)

- Structural adjustment of the Chinese steel industry.
- Industry consolidations through mergers and acquisitions.
- Regulation of technological upgrading to new standards.
- Government supervision and management.

Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009)

- Maintaining stability within the domestic market.
- Controlling total steel production output and eliminating of backward capacity.
- Enterprise reorganisation and industrial concentration.
- Technical transformation and technical progress.
- Steel industry layout and development.
- Steel product mix and product quality.
- Maintain stable import of iron ore resources and rectify the market order.
- Development of domestic and overseas resources and guarantee the safety of the industry.

2011-2015 Development Plan for the Steel Industry (2011)

- Increased mergers and acquisitions to create larger, more efficient steel companies.
- Chinese Government restrictions of steel capacity expansions.
- Upgrading steel industry technology.
- Greater emphasis on high-end steel products.
- Relocation of iron and steel companies to coastal areas.
- Minimum capacity requirements to reduce the number of small steel producers.
- Increased controls on the expansion of steel production capacity.
- Accelerating the development of higher value steel products.

*Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013)*¹³⁷

- Top ten companies accounting for 60% of production.
- Three to five major steel corporations with core competency and international impact.
- Six to seven steel corporations with regional influence.
- Encouraging steel corporations to participate in foreign steel companies' M&A.

Steel Industry Adjustment Policy (2015 Revision)

- Upgrading product mix.
- Rationalising steel production capacity.
- Adjustments to improving organisational structures.
- Energy conservation, emission reductions, environmental protection.
- Production Distribution.
- Supervision and administration.
- Guiding market exit.
- Methods of, orientation and oversight of mergers and reorganisations.
- Consolidate number of steel companies.
- Lift capacity utilisation rates to 80% by 2017.

Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy

- Promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion.
- Intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.

State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation

- SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach.
- State-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position.

¹³⁷ <http://rhg.com/notes/beijings-2015-industry-consolidation-targets-problem-or-solution>

- Related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, nonferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

A5.3 Direct and indirect financial support

Examples of specific support programs provided to Chinese steel producers by the GOC, as identified by the American Iron and Steel Institute and the Steel Manufacturers Association, include: preferential loans and directed credit; equity infusions and /or debt-to equity swaps; access to land at little or no cost; government mandated mergers, permitting acquisition at little or no cost; and direct cash grants for specific steel construction projects.¹³⁸ Similar programs previously identified by the Commission's countervailing investigations concerning the Chinese steel industry are listed below.¹³⁹

While these investigations do not correspond with the current inquiry period, it is the Commission's view that these programs have directly contributed to conditions within the Chinese steel industry, along with the steel billet (including alloyed billet) and alloyed bar markets during this period by providing direct financial support to recipient steel producers. This type of financial support not only inflates the profitability of recipient firms encouraging an expansion of supply but also support otherwise unprofitable producers, delaying their timely exit from the industry.

- Preferential Tax Policies in the Western Regions
- Preferential Tax Policies for High and New Technology Enterprises
- Tariff and VAT Exemptions on Imported Materials and Equipment
- Superstar Enterprise Grant
- Innovative Experimental Enterprise Grant
- Special Support Fund for Non-State Owned Enterprises
- Venture Investment Fund of Hi-Tech Industry
- Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- Water Conservancy Fund Deduction
- Anti-Dumping Respondent Assistance
- Environmental Protection Grant
- High and New Technology Enterprise Grant
- Independent Innovation and High-Tech Industrialisation Program
- Environmental Prize
- Provincial Emerging Industry and Key Industry Development Special Fund
- Environmental Protection Fund
- Intellectual Property licensing
- Financial Resources Construction Special Fund
- Reducing pollution discharging and environmental improvement assessment award
- Comprehensive utilisation of resources – VAT refund upon collection

¹³⁸ Duke, 2016, p26.

¹³⁹ Relevant investigations include REP 316 (2016), REP 331 (2016), REP 322 (2016) and REP 193 (2015).

- Grant of elimination of out dated capacity
- Grant from Technology Bureau
- Transformation technique grant for rolling machine
- Preferential loans and interest rates
- International trade increase project fund
- Industrial economy reform and development fund
- Tax contribution award
- National controlled essential pollutant source supervision system third party operation and maintenance subsidy program
- Scientific program awards in high and new scientific zone

A5.4 Taxation arrangements

The GOC has traditionally operated a VAT rebate and export tax system for certain exports. Under the Chinese VAT system, a 17% tax is paid on consumption of goods, including the inputs used in the production of steel. For goods produced and sold within China, the tax is ultimately paid by the final consumers of the particular good. Because it is difficult for exporters to pass these taxes on, some steel exporters have traditionally been compensated for VAT paid during the production process through VAT rebates. Through altering the VAT rebates and export taxes applied to steel exports, the GOC is able to alter the relative profitability of different types of steel exports and of exports compared to domestic sales. For example, by either reducing VAT rebates or increasing export taxes on steel exports, the GOC is able to reduce the relative profitability of exports to domestic sales and hence provide significant incentives for traditional exporters to redirect their product into the domestic Chinese market. By using these mechanisms to alter the relative supply of particular steel products in the domestic market, the GOC is also able to influence the domestic price for those products.

It is the Commission's understanding that export taxes and VAT rebates for exports of steel products containing alloys such as chromium were in place during the investigation period. The Commission sought clarification on these tax arrangements from the GOC, however the GOC declined to response to the government questionnaire. It is the Commission understanding that during the investigation period exports of semi-finished products including billet attracted export taxes of around 25%, while export taxes on alloyed products including square and round bar were around 9% to 13%.¹⁴⁰ Based on the information provided by the applicant and other information available to the Commission, it is likely that export tax and VAT rebate arrangements had contributed to the distortion of the Chinese alloy bar market during the investigation period.

A6 Assessment of particular market situation

Based on the proceeding analysis, the Commission has concluded that the GOC materially influenced conditions within the Chinese alloyed billet and alloyed bar markets during the inquiry period. The GOC was able to exert this influence through its directives and oversight, subsidy programs, taxation arrangements and the significant number of SOEs.

¹⁴⁰ Platts, 2015. Global Market Outlook, Steel Business Briefing. November 2015 p13. Platts, 2016. World Steel Review, Steel Business Briefing. 27 January 2016 p16.

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The Commission also concludes that because of the significance of this influence over the Chinese alloyed billet and alloyed bar market, the domestic price for Chinese alloyed bar was substantially different to what it would have been in the absence of these interventions. Based on this analysis, the Commission has determined that during the inquiry period the domestic price for Chinese alloyed bar was influenced by the GOC to a degree which makes domestic sales of HSS unsuitable for use in determining normal values under subsection 269TAC(1) of the Act.