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20 July 2026

Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
Department of Industry, Science and Resources
GPO Box 2013
Canberra ACT 2601

ADRP Review No. 180 - Review of the Minister's decision in respect of hot rolled coil steel exported from the People's Republic of China

1. Introduction

This submission is made on behalf of Baoshan Iron and Steel Co., Ltd (Baoshan), Baosteel Zhanjiang Iron and Steel Co., Ltd (Zhanjiang) and Shanghai Meishan Iron and Steel Co., Ltd (Meishan) (together, the Baosteel applicants), each of which is a review applicant in ADRP Review No. 180 and an interested party to the reviewable decision. As the Review Panel recorded in its notice under s 269ZZI dated 19 June 2026 (the s 269ZZI notice), the three applications advance the same three grounds, differing only in the identity of the applicant. This submission is accordingly filed in respect of all three applications. The legal grounds are common to each, whereas the recalculation of normal values and dumping margins is to be made for each applicant on its own verified data.

The Review Panel initiated the review on 19 June 2026 on the following grounds, to which this submission is confined:

> **Ground 1:** that the Minister erred in law and fact by accepting the recommendation in REP 658 to reject each applicant's verified, GAAP-compliant steel slab cost records and to substitute an inflated Brazilian benchmark, in reliance on a generalised particular market situation (PMS) finding and without evidence that the records failed reasonably to reflect actual costs;
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> **Ground 2:** that the Minister erred in law and fact by accepting the recommendation to reject each applicant's verified iron ore costs (the single largest raw material component of slab, sourced at arm's length international spot prices from unrelated miners with no Government of China (GOC) involvement) and to fold them into the Brazilian slab benchmark uplift, without any exporter-specific assessment under Article 2.2.1.1 of the ADA; and
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> **Ground 3:** that the Minister erred in law and fact by accepting the recommendation to use an unadapted Brazilian steel slab benchmark, selected on superficial metrics and adjusted only for labour, as the proxy for each applicant's slab costs, without exploring less distortive alternatives and without adapting the benchmark to the cost of production in China.

The grounds are directed to a single methodological error being the rejection of verified cost records that satisfied the statutory conditions, and their replacement with an unadapted foreign benchmark, on the strength of a generalised market-distortion finding. Steel slab accounts for the overwhelming majority of the cost to make and sell HRC. The error therefore drove the constructed normal values and, in turn, the dumping margins and the duties imposed. For the reasons below, the reviewable decision is not the correct or preferable decision. The correct or preferable decision is that the applicants' verified records be used (Grounds 1 and 2) or, failing that, that any external benchmark be properly confined and adapted to the cost of production in China (Ground 3).

2. The review framework

The Review Panel's task is to determine whether the reviewable decision is the correct or preferable decision and, if it is not, to recommend the decision that is (s 269ZZK). This is a merits review on the record, not judicial review. That distinction matters to Ground 1 in particular, as a finding that the Commission's approach was legally open to it does not establish that it was the correct or preferable decision. The Review Panel is entitled and obliged to reach the preferable decision on the material before the Commissioner, even where the disputed approach would survive a challenge for jurisdictional error.

The domestic framework for constructing normal value is s.269TAC of the Act and the Regulation. Where domestic sales are unsuitable (relevantly, because of a market situation: s.269TAC(2)(a)(ii)), normal value may be constructed under s.269TAC(2)(c) from the cost of production or manufacture plus administrative, selling and general costs and profit. The cost of production is worked out under reg 43, which provides (reg 43(2)) that the Minister must use the exporter's or producer's records where they (i) accord with the generally accepted accounting principles ("GAAP") of the country of export and (ii) reasonably reflect competitive market costs of production. Regulation 43 is made to implement Article 2.2.1.1 of the ADA and tracks it closely.

Two points of construction frame all three grounds.

The Act and the Regulation give domestic effect to Australia's obligations under the ADA. Where the statutory language permits, the correct or preferable decision is the one that complies with those obligations rather than one that places Australia in breach. That consideration has particular force in this review. The methodology under challenge is the rejection of GAAP-compliant records, and resort to an unadapted third-country benchmark, on the strength of a generalised market-situation finding. That methodology has twice been held WTO-inconsistent in complaints against Australia on materially indistinguishable facts.[1]

'Competitive market costs' in reg 43(2)(ii) does not license the substitution made here. The Commission treats those words as authority to reject records whenever prevailing input prices are said to be affected by distortion. That reading cannot be sustained. It collapses the two conditions of reg 43(2) into a single 'undistorted cost' test and is contrary to the ADA provision the Regulation implements. The Appellate Body has confirmed that there is no standard of reasonableness governing the meaning of 'costs' itself that would allow an authority to disregard domestic input prices merely because they are lower than international prices.[2] At most, reg 43(2)(ii) directs attention to whether the records reflect the costs

[1] Panel Report, *Australia – A4 Copy Paper from Indonesia*, WT/DS529/R, paras 7.119–7.124; Panel Report, *Australia – Certain Products from China*, WT/DS603/R, paras 7.72–7.80.

[2] Appellate Body Report, *Ukraine – Ammonium Nitrate*, WT/DS493/AB/R, para 6.88.

actually and competitively incurred by the producer. The applicants' records satisfy that test, most obviously for iron ore, which is bought at competitive international spot prices (Ground 2).

3. Ground 1 — Rejection of the verified steel slab cost records

3.1 The error in rejecting the slab cost records

The Commission accepted (in Statement of Essential Facts No. 658 and again in Appendix C to REP 658) that the applicants' records were kept in accordance with Chinese GAAP and reasonably reflected the actual costs associated with the production and sale of HRC. That is, that both express conditions in the first sentence of Article 2.2.1.1 (and correspondingly reg 43(2)) were satisfied. Notwithstanding that acceptance, the Commission rejected the records for the steel slab component, which comprises more than 90% of the cost to make HRC, and substituted an inflated Brazilian market-index benchmark, solely on the basis of a generalised PMS arising from broad GOC influence across the steel sector.

That methodology is contrary to Article 2.2.1.1 as authoritatively interpreted. The phrase "reasonably reflect the costs" is directed to whether the records suitably and sufficiently correspond to, or reproduce, the costs actually incurred by the producer that have a genuine relationship with the production and sale of the goods. It does not permit the Commission to test the recorded costs against a benchmark unrelated to the cost of production in the country of origin, nor to reject records because the underlying costs are thought not to be "competitive" or "undistorted"[3]. There is no reasonableness standard governing "costs" itself[4].

A PMS finding, which is directed to the suitability of domestic selling prices under Article 2.2, does not supply a basis for rejecting the exporter's cost records under Article 2.2.1.1. The two inquiries are sequential and distinct. This was the precise holding against Australia in *A4 Copy Paper* and *Certain Products from China,* that a market-situation finding sufficient to set aside domestic sales does not, without more, justify disregarding GAAP-compliant records that reasonably reflect the costs actually incurred[5]. The Commission's contrary reasoning in section C.7.1.2 of REP 658 conflates the two inquiries and is circular. It uses the PMS finding to declare the market "abnormal", uses that abnormality to reject the records, and then uses the substituted (inflated) figures to construct an inflated normal value.

3.2 The domestic authorities relied on by the Commission

The applicants anticipate that the Commission will rely on reg 43(2)(ii)'s reference to "competitive market costs" and on *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 ("Dalian Steelforce"), in which Nicholas J upheld the Commission's market-situation finding and its use of a competitive-market-cost benchmark, and rejected the

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[3] Appellate Body Report, *European Union – Biodiesel from Argentina*, WT/DS473/AB/R, paras 6.37, 6.56; Panel Report, WT/DS473/R, paras 7.242, 7.248.

[4] *EU – Biodiesel (Argentina)*, WT/DS473/AB/R, para 6.37; *Ukraine – Ammonium Nitrate*, WT/DS493/AB/R, para 6.88.

[5] *A4 Copy Paper*, WT/DS529/R; *Certain Products from China*, WT/DS603/R, paras 7.119–7.124.

argument that domestic sales can be "not suitable" only where the market situation prevents a proper comparison with export prices[6].

Dalian Steelforce does not assist the Commission on this review.

First, Dalian Steelforce was judicial review for legal or jurisdictional error, not merits review. Nicholas J held only that the Commission's approach was open to it as a matter of the domestic statute's construction. His Honour did not decide, and was not asked to decide, that it was the correct or preferable decision. On the present merits review, the applicants contend that the Review Panel ought to prefer a different decision on the same facts.

Second, the very "proper comparison" proposition that Nicholas J rejected as a matter of domestic construction was subsequently upheld at the WTO in *A4 Copy Paper* and *Certain Products from China,* decisions in complaints against Australia that post-date Dalian Steelforce and address the same methodology. To the extent the Review Panel is choosing the preferable decision, it should prefer the construction that conforms to Australia's international obligations, particularly where Australia has twice been found in breach.

Third, and in any event, Dalian Steelforce concerned the initial market-situation question (whether domestic *sales* were unsuitable). It is not authority for the distinct proposition that, once sales are set aside, the producer's GAAP-compliant cost records may be discarded on the strength of the same generalised finding. That further step is governed by reg 43(2) and Article 2.2.1.1, and is precisely what *A4 Copy Paper* and *Certain Products from China* held impermissible.

3.3 <u>The correct or preferable decision (Ground 1)</u>

The correct or preferable decision is that the Minister ought to have determined that each applicant's verified steel slab cost records (and the other elements of the cost to make and sell HRC) reasonably reflect the actual costs of production in China, used them without substitution or uplift in constructing normal value under s.269TAC(2)(c)(i), and recalculated the normal values and dumping margins accordingly. On that basis, the margins would be negative, zero or negligible within the meaning of s 269TDA, requiring that no dumping duty notice be published in respect of the applicants, or a duty rate of zero.

4. Ground 2 — Rejection of the verified iron ore costs

4.1 <u>Why the reviewable decision is not the correct or preferable decision</u>

Iron ore is the single largest raw-material component of steel slab. Each applicant's verified records establish that its iron ore requirements during the investigation period were sourced from unrelated international miners (including BHP, Rio Tinto and Vale) at prevailing arm's-length international spot prices on the global seaborne market, in USD-denominated transactions, with no GOC involvement or price distortion at any point in the supply chain. The Commission nonetheless applied the full Brazilian slab-benchmark uplift across the entire slab cost component, including this verifiably undistorted iron ore element, without any

[6] *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885,* [26], [29]–[30], [40]–[42] and [47].

exporter-specific assessment of whether the iron ore records satisfied the "reasonably reflect" condition.

Prices paid to unrelated suppliers form part of the costs that the producer actually incurs, and cannot be disregarded merely because of generalised allegations of sector distortion[7]. Generalised findings of distortion in the Chinese steel sector are manifestly insufficient to reject records where the dominant input is demonstrably purchased at competitive international prices free of governmental influence. The Appellate Body in *EU – Biodiesel (Argentina)* held that government-induced price effects do not, by themselves, justify disregarding GAAP-compliant records that reasonably reflect the costs actually incurred[8].

Any legitimate reliability inquiry is directed to the costs actually incurred at arm's length, not to a hypothetical benchmark. To the extent the Commission suggests that input costs may be tested for reliability, the permissible inquiry is whether the records reflect the costs actually incurred at arm's length, not whether those costs match a hypothetical benchmark[9]. The applicants' iron ore transactions are the standard of arm's-length dealing with unrelated parties, pass any legitimate reliability test and must be retained.

Even on the domestic "competitive market costs" test, the iron ore records must be accepted. Ground 2 does not depend on the applicants prevailing on the construction of reg 43(2)(ii). Even if (contrary to Ground 1 and 2.3.2 above) reg 43(2)(ii) directs attention to whether costs are "competitive", the iron ore cost plainly *is* competitive, as it is set on the global seaborne spot market by transparent international benchmarks, not by any domestic distortion. There is therefore no basis, on either the ADA "costs actually incurred" standard or the Regulation's "competitive market costs" standard, to uplift the iron ore component.

4.2 <u>The correct or preferable decision (Ground 2)</u>

The correct or preferable decision is that the Minister ought to have determined that each applicant's verified iron ore costs reasonably reflect the actual (and competitive) costs of production in China and used them without substitution or uplift. Or at the very least, isolated the iron ore component of slab costs and applied any adjustment only to genuinely distorted elements (if any), and recalculated normal values and dumping margins accordingly, producing a materially lower dumping margin.

5. Ground 3 — The unadapted Brazilian benchmark

5.1 <u>Why the reviewable decision is not the correct or preferable decision</u>

Ground 3 is advanced in the alternative and does not concede Grounds 1 and 2. Even assuming (which the applicants deny) that rejection of the verified records was permissible, Article 2.2 (and s.269TAC(2)(c)/reg 43) require the constructed normal value to be based on

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[7] Panel Report, *Ukraine – Ammonium Nitrate*, WT/DS493/R, paras 7.90–7.91; noted by the Appellate Body at WT/DS493/AB/R, para 6.104.

[8] *EU – Biodiesel (Argentina)*, WT/DS473/AB/R, para 6.55; Panel Report, WT/DS473/R, para 7.248.

[9] *Panel Report, United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea,* WT/DS488/R, paras 7.197–7.198.

"the cost of production in the country of origin". Where an authority resorts to out-of-country information, it may do so, but it must adapt that information so that the result genuinely reflects the cost of production in the exporting country. It may not simply substitute an external figure[10].

The Commission did the opposite. It selected Brazil on superficial metrics (population, GDP and urbanisation), applied only minimal and selective labour adjustments, and made no adjustment for the profound structural differences between the Chinese and Brazilian steel sectors, including China's vastly greater scale, lower utility rates, technological efficiencies, differing alloy input prices, and the documented iron-ore price premium embedded in Brazilian slab prices. It then applied the resulting average 37% uplift across the entire slab cost, including the undistorted iron ore component.

Where an authority replaces a recorded cost, it must consider available alternatives that reflect the cost of production in the country of origin, in particular, replacing the cost at the level of the actually-distorted input, in combination with the producer's own unaffected costs. Replacing the cost at the level of the actually distorted input, in combination with the producer's own unaffected costs, is to be preferred to discarding the whole next-stage cost. The Commission must explain its choice against that alternative. Here, the Commission replaced the entire slab cost rather than isolating any genuinely distorted element and preserving the applicants' verified iron ore and other unaffected costs.

The applicants placed before the Commission a specific, evidence-based alternative, being verified slab costs from POSCO (Korea), a North Asian, blast-furnace/basic-oxygen producer with materially similar iron-ore sourcing conditions, drawn from the concurrent hot rolled plate investigation (Case 688), together with MEPS International data showing the illogical result that Brazilian slab prices exceeded contemporaneous Korean HRC prices.

The Commission's response that it had "considered" the Korean proposal but the Brazilian benchmark "remains the most appropriate" was conclusory. An authority is obliged to consider available, less distortive alternatives and to explain its choice of benchmark in light of them. A simple assertion that contrary evidence is "insufficient" or "not material" does not discharge that obligation[11], and impermissibly reverses the onus that rests on the investigating authority.

5.2 <u>The correct or preferable decision (Ground 3)</u>

If any external benchmark is to be used at all, the correct or preferable decision is that the Minister ought to have rejected Brazil as an appropriate surrogate for Chinese slab production costs, and either reverted to the applicants' verified slab costs, or derived any uplift from a properly comparable market-economy producer (such as POSCO (Korea) in Case 688) with

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[10] *EU – Biodiesel (Argentina)*, WT/DS473/AB/R, paras 6.70–6.73 and 6.81; Panel Report, *Ukraine – Ammonium Nitrate*, WT/DS493/R, para 7.99; Panel Report, *Certain Products from China*, WT/DS603/R, paras 7.98–7.99.

[11] Panel Report, *Certain Products from China*, WT/DS603/R, para 7.99, finding the ADC acted inconsistently with the practice of an unbiased and objective investigating authority by applying uplifted costs 'without a reasoned and adequate explanation' as to why they represented a cost of production in China.

adaptation to Chinese conditions. At the very least, the Minister ought to have isolated the iron ore component and applied any uplift only to the non-iron-ore portion.

6. Conclusion

For the reasons above, the reviewable decision is not the correct or preferable decision. The correct or preferable decision is that the Minister ought to have accepted each Baosteel applicant's verified cost records (including its iron ore costs) as reasonably reflecting the actual costs of production in China, used them without substitution or uplift in constructing normal value under s.269TAC(2)(c)(i), and, failing that, confined and adapted any external benchmark to the cost of production in China, and recalculated the normal values and dumping margins.

The Baosteel applicants respectfully request that the Review Panel recommend to the Minister that the reviewable decision be revoked or varied so as to give effect to that outcome in respect of each applicant.