NON-CONFIDENTIAL VERSION

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

Comments on the Anti-Dumping Review Panel's Review Decision in the Matter of Hot Rolled Coil Steel from China — Baoshan Iron & Steel Co., Ltd.

(ADRP Case: Review of Ministerial Decision under ADN 2026/043)

1. Introduction

On behalf of The Ministry of Commerce of the People's Republic of China, we respectfully submit these written comments on the on the Anti-Dumping Review Panel's Review Decision in the Matter of Hot Rolled Coil Steel from China.

The Ministry of Commerce of the People's Republic of China ("China") has carefully reviewed the application for review filed by Baoshan Iron & Steel Co., Ltd. ("Baoshan") before the Anti-Dumping Review Panel ("ADRP") under Section 269ZZE of the Customs Act 1901 (Cth), and the underlying Report 658 ("REP 658") of the Anti-Dumping Commission ("ADC"). China respectfully submits the following comments on the legal and methodological issues raised therein, which are of systemic and fundamental concern to China's rights and obligations under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement" or "ADA").

China notes with grave concern that the issues raised in this review—particularly the interpretation and application of Article 2.2.1.1 of the ADA, the relationship between an erroneous "particular market situation" ("PMS") finding and cost construction, and the selection and adaptation of third-country benchmarks—have twice been the subject of WTO dispute settlement proceedings in which panels found Australia's anti-dumping methodologies inconsistent with Australia's obligations under the ADA, with conclusions adverse to Australia (WT/DS529/R; WT/DS603/R). China respectfully submits that the ADC's methodology in REP 658, as accepted by the Minister, raises serious and systemic

浩天律师事务所 HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5

Dongsanhuan Zhong Road,Chaoyang District, Beijing

Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

questions regarding Australia's compliance with its WTO obligations and risks fundamentally undermining the predictability, consistency, and integrity of the multilateral trading system.

2. The Interpretation and Application of Article 2.2.1.1 of the ADA

2.1 The Two Conditions in the First Sentence of Article 2.2.1.1 are Exhaustive and Cumulative

Article 2.2.1.1 of the ADA provides, in its first sentence:

> *"For the purposes of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration."*
>
> *Article 2.2.1.1, first sentence, ADA*

China respectfully submits, and emphatically asserts, that the two explicit conditions in the first sentence of Article 2.2.1.1—(i) GAAP compliance, and (ii) reasonable reflection of actual costs—are exhaustive and cumulative. This interpretation has been consistently, repeatedly, and authoritatively affirmed by the WTO Appellate Body and Panels across multiple disputes.

In European Union — Anti-Dumping Measures on Biodiesel from Argentina, WT/DS473/AB/R, para. 6.55, the Appellate Body held that:

> *"... we agree with the Panel that the EU authorities' determination that domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system was not, in itself, a sufficient basis for concluding that the producers' records did not reasonably reflect the costs of soybeans associated with the production and sale of biodiesel, or for disregarding the relevant costs in those records when constructing the normal value of biodiesel."*
>
> *WT/DS473/AB/R, para. 6.55*

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

In Australia — Anti-Dumping Measures on A4 Copy Paper, WT/DS529/R, para. 7.124, the Panel held that:

> *the ADC, in its analysis, did not give effect to the whole of the obligation in Article 2.2.1.1, first sentence, including the two explicit conditions. In light of our above reasoning regarding the operation of the first sentence of Article 2.2.1.1, first sentence, the ADC's reliance on the term "normally" was inconsistent with Australia's obligations under that provision. Accordingly, we find that the ADC acted inconsistently with Australia's obligations under Article 2.2.1.1 when it disregarded the recorded hardwood pulp costs of Indah Kiat and Pindo Deli in the A4 copy paper investigation.*

The Panel in European Union — Anti-Dumping Measures on Biodiesel from Argentina, WT/DS473/R, paras. 7.230-7.231, emphasized the deliberate textual choice of the drafters, stating:

> *... It is clear to us that "reasonably" is an adverb that modifies the verb "reflect", and not, as the European Union seems to suggest, the term "costs". Generally speaking, an adverb modifies the meaning of a verb, adjective or another adverb in terms of ideas such as time, place, degree or manner. In the context of the provision of Article 2.2.1.1, where the verb is to "reflect" the costs associated with production and sale of the product under consideration, it seems to us that the modification introduced by the adverb is with respect to the degree or manner of reflection of such costs in the records of the producer or exporter. In other words, the question before us concerns the manner or degree by which the records depict or capture the costs associated with production and sale of the product so to satisfy the condition that they "reasonably reflect" such costs.*
>
> *This brings us to the meaning of "reasonably" in the phrase "reasonably reflect the costs associated with the production and sale of the product". The adjective underlying the adverb "reasonably" is "reasonable". The word "reasonable" is given several definitions in dictionaries depending on the context in which it is used. In the context of Article 2.2.1.1, where the records must "reasonably reflect" the costs, together with the requirement that the same records must also be in accordance with generally accepted accounting principles, it seems to us that an*

> *appropriate ordinary meaning of the word "reasonable" is conveyed here by concepts such as "rational or sensible", "in accordance with reason", and "fair and acceptable in amount". Since it is the "records" that must "reflect reasonably" the costs of production and sale of the product for the purpose of the construction of the "normal value", and in the light of our understanding that "reflect" connotes the faithful and accurate depiction of information, we understand the term "reasonably reflect" in Article 2.2.1.1 to mean that the records of a producer/exporter must depict all the costs it has incurred in a manner that is – within acceptable limits – accurate and reliable.*

In Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China, WT/DS603/R, the Panel reached identical conclusions, again adverse to Australia, in a dispute concerning Chinese wind towers, railway wheels and stainless steel sinks. Addressing Australia's argument that a finding of "not normal" circumstances rendered further analysis of the two conditions redundant, the Panel stated (WT/DS603/R, paras 7.59–7.60): "While this argument does have some weight, we disagree… Thus, it could reasonably be expected that rejecting exporters' costs, even when both conditions are satisfied, would be accompanied by an explanation as to why such rejection is justified despite those conditions being satisfied. Thus, we consider that, in order for an investigating authority to rely on any flexibility to depart from using exporters' costs that may be provided by the word 'normally' in the first sentence of Article 2.2.1.1, the investigating authority must first make affirmative findings as to both the first condition and the second condition in the first sentence." The Panel accordingly found that "there was no basis for departure from using [the exporter's] record costs… in constructing normal value" and that the ADC acted inconsistently with Article 2.2.1.1 (WT/DS603/R, para. 7.80).

China notes with particular concern that the ADC in REP 658, at Appendix C (pp. 163–190), did not dispute that Baoshan's records are kept in accordance with GAAP and reasonably reflect the costs actually incurred by Baoshan, yet nevertheless arbitrarily and unjustifiably disregarded those records on the basis of a generalized and erroneous PMS

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

finding. This approach is fundamentally, manifestly, and irreconcilably inconsistent with the above-cited WTO jurisprudence.

2.2 The "Normally" Qualifier Does Not Permit Generalized PMS Findings to Override Verified Records

In Ukraine — Anti-Dumping Measures on Ammonium Nitrate, WT/DS493/AB/R, para. 6.87, the Appellate Body stated:

> *"Read in conjunction with the words 'provided that', which introduce the two conditions of the first sentence of Article 2.2.1.1, the word 'normally' indicates that when these two conditions are met, 'under normal or ordinary conditions' or 'as a rule', records shall be used."*
>
> *WT/DS493/AB/R, para. 6.87*

The Appellate Body further clarified (WT/DS493/AB/R, para. 6.88):

> *"There is no standard of reasonableness under that condition that governs the meaning of 'costs' itself, which would allow investigating authorities to disregard domestic input prices when such prices are lower than other prices internationally."*
>
> *WT/DS493/AB/R, para. 6.88*

In the same dispute, the Appellate Body upheld the Panel's finding that Ukraine had violated Article 2.2.1.1 precisely because generalized government regulation of gas prices was not a sufficient basis to reject the producers' recorded costs (WT/DS493/AB/R, para. 6.107).

China strongly submits that the ADC's reliance on erroneous and generalized findings on the so called PMS across the steel sector to reject Baoshan's verified, exporter-specific records—without any exporter-specific evidence that the records themselves failed to reasonably reflect actual costs—falls squarely and unmistakably within the prohibited approaches condemned, rejected, and explicitly prohibited by the Appellate Body and Panels in the above-cited disputes. China's submission proceeds at two independent and cumulative levels: first, the ADC's PMS finding itself is erroneous

浩天律师事务所
HYLANDS LAW FIRM
Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

and unsupported by positive, case-specific evidence (first level); and second, even if that erroneous PMS finding were accepted arguendo, it could not lawfully justify the rejection of Baoshan's cost records, still less their replacement with third-country benchmarks (second level).

The ADC's approach in section C.7.1.2 of REP 658 is circular, conclusory, and demonstrably inconsistent with binding WTO jurisprudence. It does not correct the errors identified by Baoshan; it merely restates them with greater emphasis. The ADC asserts that, although Baoshan's records satisfy the two explicit conditions, the GOC's influence renders the circumstances "not normal and ordinary," thereby permitting departure under the "normally" qualifier. This reasoning is defective for multiple independent and compounding reasons.

2.3 PMS Findings Under Article 2.2 Are Separate and Distinct from Cost Construction Under Article 2.2.1.1

China respectfully submits, and emphatically asserts, that the ADC's methodology in REP 658 conflates, collapses, and fundamentally confuses two distinct statutory inquiries: (i) the rejection of domestic selling prices under Article 2.2 due to a PMS, and (ii) the construction of normal value using the exporter's cost records under Article 2.2.1.1.

China's position on this issue has been consistent and longstanding. The GOC has consistently maintained—including in its submissions as a third party in European Union — Anti-Dumping Measures on Biodiesel from Argentina (WT/DS473/R, paras 7.204–7.206) and as complainant in DS603—that: (i) a PMS finding under Article 2.2, even where properly established, addresses only whether domestic selling prices may be used to determine normal value and has no bearing on the separate inquiry under Article 2.2.1.1; (ii) an exporter's cost records may be rejected only where, on exporter-specific evidence, they fail to reasonably reflect the costs actually incurred; and (iii) governmental factors exogenous to the producer cannot be attributed to the producer so as to reject its

浩天律师事务所
HYLANDS LAW FIRM
Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

records. Following the adoption of the DS603 panel report, China's Ministry of Commerce publicly welcomed the findings as confirming that Australia's discriminatory anti-dumping practices against Chinese enterprises were wrong, and called upon Australia to respect the findings, promptly correct its WTO-inconsistent practices, and strictly abide by WTO rules in all trade remedy measures.

At the first level, the ADC should not have found a PMS at all. The PMS finding in Appendix A of REP 658 is erroneous: it rests on generalized, sector-wide allegations of GOC influence drawn substantially from materials relating to the Chinese steel industry as a whole, without positive, case-specific evidence that the situation in the market for HRC rendered Baoshan's own domestic sales unsuitable for use in determining normal value. A PMS finding under Article 2.2 must be established on the basis of positive evidence pertinent to the market situation of the product under consideration; a boilerplate, sector-wide narrative transposed from one case to another does not meet that standard.

At the second level, even if the ADC's erroneous PMS finding were accepted arguendo for the limited purpose of setting aside domestic selling prices under Article 2.2, that finding could not justify the rejection of Baoshan's verified cost records under Article 2.2.1.1, still less their wholesale replacement with third-country benchmarks. The two inquiries are textually and functionally distinct, as the jurisprudence set out below confirms.

The WTO adjudicating bodies have addressed these two inquiries separately and have found Australia's conduct inconsistent at each stage. In Australia — Anti-Dumping Measures on A4 Copy Paper, WT/DS529/R, although the Panel upheld the ADC's "particular market situation" finding as such (para. 7.57), it found that Australia acted inconsistently with Article 2.2 because the ADC disregarded the exporters' domestic sales without properly determining that such sales did "not permit a proper comparison" (paras 7.74–7.90), and that Australia acted inconsistently with Article 2.2.1.1 because the ADC

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

rejected the exporters' recorded pulp costs without establishing the two explicit conditions of that provision (paras 7.106, 7.124). In Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China, WT/DS603/R, the ADC had made no PMS finding at all: in the wind towers proceeding it applied an extra-textual "relevance" test (paras 7.137–7.138), and in the railway wheels proceeding normal value was constructed because the sole investigated exporter did not sell like products domestically (para. 7.329). The Panel nonetheless found the rejection of the exporters' recorded costs inconsistent with Article 2.2.1.1 because the ADC's "competitive market costs" test never addressed whether the records reasonably reflected the costs associated with production (paras 7.75–7.76, 7.80, 7.309), and found the unadapted French surrogate costs inconsistent with Article 2.2 (paras 7.319–7.320). The "reasonably reflect" test is strictly and exclusively limited to whether the records faithfully reflect the costs actually incurred by the exporter; it is not a licence to impose an extra-statutory "competitive market costs" or "undistorted costs" standard.

The ADC's approach in REP 658—using its erroneous PMS finding to declare the Chinese steel market "abnormal," then using that abnormality to reject Baoshan's cost records, and then using the rejected (and inflated) records to construct an elevated normal value—constitutes circular reasoning that renders the entire analysis legally unsustainable. Article 2.2 and Article 2.2.1.1 are sequential, not interchangeable; distinct, not fungible.

The ADC's approach results in an substantial discriminatory treatment on the Chinese products since it has not assessed objectively all the evidence or factors demonstrating the situation concerned so as to preclude a "proper comparison" between export and domestic prices. In other words, an isolated and erroneous assessment of PMS, without considering its impact on the prices, leads to biased interpretation and arbitrary decisions.

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

Yet, on the core issue of "proper comparison", the ADC's assessment and findings are erroneous. The ADC assessed the issue of "proper comparison" in Appendix B of SEF No. 658. While the GOC welcomes this assessment, it has concerns about the ADC's approaches and findings. The ADC's general approach is worth reproducing:

> The relative effect of the particular market situation on domestic and export prices requires an assessment of the relationship between price and cost of HRC sold in the respective domestic and export markets. In relation to the domestic sales price, the relevant market is the domestic market of the exporting country (for this investigation, China). For the export price, the relevant market is that in the country into which the goods are being sold (Australia). In assessing the comparability of sales in each market, it is important to note that those sales are defined by the prevailing conditions of competition in each market. It is also important that the relevant factual circumstance of each price is considered within the proper context of the relevant market. (p. 153)

Following this approach, the ADC considered a number of factors, including "market structure", "market conditions" (i.e. demand and price drivers), "raw materials", "import penetration", and "relationship between price and cost". However, a major problem with this approach is that none of these factors are related to the findings of PMS. In other words, by assessing these factors, the ADC did not address the actual impact of the PMS on the domestic and export prices. The ADC's assessment could, at best, show that certain factors other than the PMS may have affected the price comparability. However, this assessment/conclusion is not sufficient to justify the ADC's recourse to the constructed normal value method, because Article 2.2 of the ADA explicitly requires that "because of the particular market situation … such sales do not permit a proper comparison" (emphasis added). This requirement means that the ADC must establish a

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

causal link between the PMS and its asymmetric impact on the prices, rather than simply assessing how PMS-unrelated factors might have affected the prices.

3. The Impermissible "Backdoor" Non-Market Economy Methodology

China strongly and categorically submits that the ADC's approach in REP 658 is functionally equivalent, in both intent and effect, to the exceptional non-market economy ("NME") methodologies that Australia is legally and permanently precluded from applying to China following its formal recognition of China as a market economy in April 2005 and the expiry of Section 15(a)(ii) of China's WTO Accession Protocol.

The second Ad Note to Article VI:1 of the GATT 1994 recognizes that special difficulties may exist "in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State," permitting importing Members to depart from a strict comparison with domestic prices. Section 15 of China's WTO Accession Protocol contained a similar, time-limited and now-expired derogation allowing Members to use methodologies "not based on a strict comparison with domestic prices or costs in China" where market economy conditions could not be shown.

For the avoidance of doubt, China notes that its WTO challenge to the European Union's price comparison methodologies (DS516) was suspended at China's request in June 2019 and the panel's authority subsequently lapsed, without any ruling on the interpretation of Section 15. No WTO adjudicator has ever held that NME-type methodologies may lawfully be applied to China following the expiry of Section 15(a)(ii) on 11 December 2016; and Australia's own recognition of China as a market economy in April 2005 in any event forecloses any such application by Australia.

The Panel in European Union — Anti-Dumping Measures on Biodiesel from Argentina, WT/DS473/R, para. 7.241, confirmed that the second Ad Note to Article VI:1 of the GATT 1994 (incorporated by reference into the Anti-Dumping Agreement through

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

Article 2.7) and the protocols of accession of certain Members are explicit derogations which their drafters considered necessary in order to allow the use of prices or costs other than those prevailing in the country of origin. This is also China's long-standing and consistent position: appearing as a third party in that dispute, China submitted that the authority to apply anti-dumping measures is limited to the pricing behaviour of the producer or exporter concerned, that recorded costs cannot be rejected on grounds exogenous to the producer, and that recorded costs cannot be assessed against hypothetical costs in a theoretical, distortion-free market (WT/DS473/R, paras 7.204–7.206).

If an erroneous, generalized and evidence-deficient PMS finding is sufficient to trigger the "normally" derogation under Article 2.2.1.1, then the ADC has created an automatic, self-executing switch that operates in every Chinese steel case without exception—precisely what Australia's recognition of China as a market economy in April 2005, and the expiry of Section 15(a)(ii) of China's WTO Accession Protocol on 11 December 2016, were expressly designed to prevent. The ADC cannot and must not achieve through the ordinary rules of Article 2.2.1.1 what it is legally precluded from doing through the exceptional NME provisions.

In REP 658, Appendix A (pp. 116–152), the ADC's PMS findings are erroneous, unsupported by positive evidence, generalized, sector-wide, and entirely devoid of exporter-specific analysis. The ADC asserts that the significant influence of the GOC has distorted prices in the steel industry and, on that basis, declares in Appendix C (pp. 163–190) that Chinese exporters' records are unsuitable because they "do not reflect competitive market costs." This generic, boilerplate reasoning is functionally indistinguishable from the NME methodologies that Australia is prohibited from applying to China. By replicating, in substance, the very methodology twice found inconsistent with the ADA in dispute settlement proceedings to which Australia was the respondent

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

(WT/DS529/R; WT/DS603/R), the ADC's approach places Australia in breach of Australia's own obligations under the covered agreements.

4. The Treatment of Undistorted Input Costs: The Iron Ore Component

4.1 The Obligation to Preserve Undistorted Cost Components

China notes with serious and escalating concern that the ADC in REP 658 applied the full Brazilian slab benchmark uplift of approximately 37 per cent across the entire slab cost component, including the iron ore element, without any exporter-specific assessment of whether Baoshan's iron ore records satisfied the "reasonably reflect" condition.

Baoshan's verified records demonstrate that, during the investigation period, its iron ore requirements were sourced from unrelated international mining companies (including BHP, Rio Tinto and Vale) at prices formed on the global seaborne market. The ADC made no finding—and, on the record before it, could credibly make none—that these specific purchase transactions, or the prices actually paid under them, were distorted.

The Appellate Body in Ukraine — Anti-Dumping Measures on Ammonium Nitrate, WT/DS493/AB/R, paras 6.87–6.89 and 6.107, confirmed that where the two explicit conditions are satisfied the exporter's records shall, "as a rule", be used; that any departure from the records under the "normally" qualifier must be justified and remains subject to the disciplines of Article 2.2; and that generalized government regulation of input prices is not, in itself, an adequate basis under the second condition for rejecting recorded costs.

Utilising the ambiguity left by WTO panels on the meaning of “normally” under Article 2.2.1.1 of the ADA, the ADC held that given the perceived Chinese government intervention in the raw materials market,

浩天律师事务所 HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

> the circumstances in which the cost of steel slab has been formed are not normal and ordinary, resulting in the cooperating exporters' recorded production costs of steel slab reflecting an unreliable cost of production. This unreliability means that it is not appropriate to use the cooperating exporters' recorded cost of production of steel slab. (p. 166)

In selecting the external benchmark, the ADC aimed to identify "a cost that is free from the effects … of the GOC's influence on the raw material markets and steel slab costs" (p.173). The ADC then made some adjustment to the benchmark to accommodate differences in labour costs in the Brazilian and Chinese markets (pp.177-179). After the adjustment, the ADC was satisfied that it had established an undistorted, competitive cost benchmark for the determination of the constructed normal value. To the extent that the ADC used the benchmark to remove any perceived price distortions caused by alleged Chinese government intervention, it went against the Appellate Body ruling in EU – Biodiesel (DS473). In that case, the Appellate Body explicitly rejected a similar approach of adjustment adopted by the EU by holding that

> Other than pointing to the deduction of fobbing costs, the European Union has not asserted, either before the Panel or before us, that the EU authorities adapted, or even considered adapting, the information used in their calculation in order to ensure that it represented the cost of production in Argentina. *On the contrary, the EU authorities specifically selected the surrogate price for soybeans to remove the perceived distortion in the cost of soybeans in Argentina. As the Panel stated, the EU authorities selected and used this particular information precisely because it did not represent the cost of soybeans in Argentina.* Thus, we agree with the Panel that the surrogate price for soybeans used by the EU authorities did not represent the cost of soybeans in Argentina for producers or exporters of biodiesel (para. 6.81). (emphasis added)

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

This means that the ADC's adjustment aimed at removing the perceived distortion also failed to ensure that the adjusted benchmark represents the cost of production in the country of origin (i.e. China) under Article 2.2 of the ADA.

Finally, while the ADC used an undistorted benchmark to establish the production cost for determining the constructed normal value, it did not seek to remove the same or an equivalent level of distortion from the export price. Consequently, the constructed normal value was based on an inflated input cost while the export price remained based on the actual cost. The use of the external benchmark to remove the effects of alleged government influence on Chinese raw material prices, therefore, did not ensure a proper comparison. Instead, given the ADC's approach, the comparison between an undistorted normal value and a distorted export price is not "proper" within the meaning of Article 2.2 of the ADA.

4.2 The Approach of Other Investigating Authorities: the European ADC's Treatment of Iron Ore Costs in the Tinplate Investigation

In that investigation, the European ADC used the undistorted import prices paid by the sampled exporting producers, including those of the Baoshan Group, for iron ore sourced from countries without distortion allegations under Article 2(6a) of the EU Basic Regulation, rather than the Malaysian import-price benchmark otherwise applied (recital (45), referring to recital (203) of the provisional Regulation). Despite claims regarding potential influence on imported iron ore purchases (recitals (46)–(48)), the ADC concluded there was "insufficient evidence to corroborate" these allegations (recital (55)).

In that investigation, the ADC accordingly preserved the verified, undistorted components of the exporters' input costs instead of replacing the entire input cost with an external benchmark. No comparable component-specific assessment was undertaken by the ADC in REP 658.

China further notes that, under 19 C.F.R. § 351.408(c)(1), where a factor of production is purchased from market-economy suppliers and paid for in a market-

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

economy currency, the United States Department of Commerce ("USDOC") normally uses the actual price paid for that factor in its non-market-economy proceedings. Applying this rule in anti-dumping proceedings involving Chinese steel products, the USDOC has valued imported raw-material inputs purchased by Chinese producers from market-economy suppliers at the actual transaction prices paid, rather than replacing them with surrogate values.

While the USDOC's broader non-market-economy methodology has itself been the subject of WTO challenge, its treatment of internationally traded inputs purchased from market-economy suppliers is more granular than the blanket replacement adopted by the ADC in REP 658.

The ADC's approach in REP 658 is accordingly more aggressive than the approaches of the other major investigating authorities described above, and falls well below the standard of rigor, granularity, and evidence-based analysis required by the ADA.

4.3 The "Smearing" Effect: An Arbitrary and Disproportionate Inflation

The ADC's application of the 37 per cent uplift to the entire slab cost component, including the verifiably undistorted iron ore element, produces a "smearing" effect that arbitrarily and disproportionately inflates the constructed normal value. Iron ore constitutes the single largest component of steel slab costs. Applying the full Brazilian uplift to this entirely undistorted, internationally-priced cost component artificially inflates normal value by a substantial and unjustified quantum.

The wholesale substitution of an entire input cost, without any serious attempt to retain undistorted components of the exporter's own recorded costs, was squarely condemned by the Panel in Australia — Anti-Dumping Measures on A4 Copy Paper, WT/DS529/R, paras 7.155–7.169, where the Panel held that a reasoned and adequate explanation was required as to why the investigating authority did not use substitute input (woodchip) costs in conjunction with the producer's other recorded costs that were

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

unaffected by the market situation, instead of substituting the entire cost of the input (see in particular paras 7.162–7.163 and 7.169).

5. Analysis of the Australian Customs Act 1901: Systemic Non-Compliance with Domestic and International Legal Obligations

China respectfully submits that the ADC's methodology in REP 658, and the Minister's acceptance thereof, is not only inconsistent with Australia's WTO obligations under the ADA but also raises serious questions regarding compliance with the domestic legal framework established by the Customs Act 1901 (Cth) and associated regulations. The following analysis examines the specific statutory provisions implicated by the ADC's approach.

5.1 Section 269TAC(2)(c): The Statutory Presumption in Favour of Exporter Records

Section 269TAC(2)(c) of the Customs Act 1901 provides that, where the normal value of goods cannot be ascertained under subsection (1), the normal value of the goods is, except where paragraph (d) applies, the sum of:

> *"(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale."*
>
> *Section 269TAC(2)(c), Customs Act 1901 (Cth)*

Amounts determined under Section 269TAC(2)(c)(i) must be worked out in such manner, and taking account of such factors, as the regulations provide (Section 269TAC(5A)). Section 43(2) of the Customs (International Obligations) Regulation 2015 (Cth) accordingly requires the Minister to work out the cost of production or manufacture using the information set out in the exporter's or producer's records if those records are

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

kept in accordance with the GAAP of the country of export (s 43(2)(b)(i)) and "reasonably reflect competitive market costs associated with the production or manufacture of like goods" (s 43(2)(b)(ii)). Properly construed in accordance with Australia's obligations under Article 2.2.1.1 of the ADA, the "reasonably reflect" condition concerns whether the records reasonably reflect the costs actually incurred by the exporter; it does not authorize a free-standing "competitive market costs" test of the kind found inconsistent with the ADA in DS529 and DS603.

The ADC's decision to reject Baoshan's verified, GAAP-compliant cost records—despite their satisfaction of both explicit conditions under Article 2.2.1.1—constitutes a direct contravention of the statutory presumption embodied in Section 269TAC(2)(c)(i) and Regulation 43. The "normally" qualifier in Article 2.2.1.1, as authoritatively interpreted by the WTO Appellate Body and Panels, does not permit the ADC to disregard verified records on the basis of its generalized and erroneous PMS findings without exporter-specific evidence of record unreliability.

In REP 658, the ADC does not dispute that Baoshan's records are kept in accordance with GAAP and reasonably reflect the costs actually incurred by Baoshan, yet it proceeds to reject those records on the basis of the erroneous PMS finding in Appendix A, applying an extra-statutory "competitive market costs" test. This approach effectively nullifies the statutory presumption and substitutes a test that has no basis in the text of Section 269TAC(2)(c)(i), properly construed in accordance with the ADA.

5.2 Section 269TAC(2)(a)(ii): The Particular Market Situation Provision and Its Proper Scope

Section 269TAC(2)(a)(ii) of the Customs Act 1901 provides that the normal value of goods cannot be ascertained under subsection (1) where the Minister is satisfied that:

> *"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 (1);"*

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

Section 269TAC(2)(a)(ii), Customs Act 1901 (Cth)

This provision is the domestic statutory equivalent of the "particular market situation" limb of Article 2.2 of the ADA. The ADC's erroneous PMS finding under this provision—documented in REP 658, Appendix A (pp. 116–152)—was directed exclusively at the question of whether domestic sales of HRC in China were suitable for use in determining normal value. China's challenge is again twofold: first, the PMS finding itself is erroneous and unsupported by positive, exporter-specific evidence; second, even if accepted arguendo, it cannot justify the rejection of Baoshan's cost records under Section 269TAC(2)(c)(i).

China respectfully submits that this erroneous PMS finding, even if accepted arguendo for the limited purpose of rejecting domestic selling prices under Section 269TAC(2)(a)(ii), has no automatic or logical extension to the cost construction methodology under Section 269TAC(2)(c)(i). The two provisions address distinct questions: Section 269TAC(2)(a)(ii) concerns the suitability of domestic prices; Section 269TAC(2)(c)(i) concerns the construction of normal value using the exporter's cost records. The ADC's conflation of these two provisions in REP 658—using the PMS finding under (a) to override the statutory presumption under (c)(i)—is not supported by the text, structure, or purpose of the Customs Act 1901.

Furthermore, the ADC's erroneous PMS finding itself is subject to serious challenge. The finding is based on generalized, sector-wide allegations of GOC influence without adequate exporter-specific analysis. Section 269TAC(2)(a)(ii) requires a determination that, because of the situation in the market of the country of export, domestic sales are not suitable for use in determining normal value; this determination must be based on evidence specific to the exporter under investigation, not merely generalized market conditions. The ADC's failure to conduct such exporter-specific analysis in respect of Baoshan's domestic sales undermines the legal foundation of the entire investigation.

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

5.3 Section 269TDA: The Negligible Margin Threshold and Its Material Significance

Section 269TDA(1) of the Customs Act 1901 requires the ADCer to terminate an investigation, so far as it relates to an exporter, if satisfied that there has been no dumping by that exporter or that the exporter's margin of dumping is less than 2 per cent. This threshold implements the de minimis standard in Article 5.8 of the ADA, which provides:

> *"There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis… The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price."*
>
> *Article 5.8, ADA; Section 269TDA(1), Customs Act 1901 (Cth)*

The 2 per cent threshold in Section 269TDA(1), expressed as a percentage of the export price, mirrors the de minimis standard of Article 5.8 of the ADA and is of direct and material significance to the present review.

China respectfully submits that the ADC's erroneous cost-replacement methodology was the dominant driver of the positive dumping findings and the substantial duty rates ultimately imposed. Steel slab constitutes the single largest component of the cost to make HRC. The ADC's average 37 per cent uplift to that single cost element produced a correspondingly large increase in constructed normal value. When compared against the verified export prices, this inflation generated the reported dumping margins that resulted in the combination-method duty of 59.1 per cent for Baoshan.

Absent the uplift, normal values would be dramatically lower. The resulting margins would be expected to be negligible within the meaning of Section 269TDA of the Act. A negligible margin precludes the publication of a dumping duty notice or requires a duty rate of zero. The ADC's failure to properly apply the cost construction methodology under Section 269TAC(2)(c)(i) and Regulation 43 therefore has direct and material consequences for the operation of Section 269TDA, potentially resulting in the imposition of duties where none should lawfully exist.

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

The Minister's acceptance of the ADC's recommendation in REP 658, and the resulting imposition of a 59.1 per cent duty under ADN 2026/043, is therefore not merely a methodological error but a substantive legal error that affects the Minister's jurisdiction to impose duties at all. If the correct methodology had been applied—preserving Baoshan's verified records or properly adapting any third-country benchmark—the resulting margin would likely have been below the negligible threshold, and the Minister would have been legally precluded from publishing the dumping duty notice.

5.4 Section 269ZZE: The ADRP Review Function and the Standard of Review

Section 269ZZE of the Customs Act 1901 establishes the Anti-Dumping Review Panel and provides for review of Ministerial decisions. The standard of review is whether the Ministerial decision is the "correct or preferable decision." This standard requires the ADRP to undertake a substantive, merits-based review of the decision, not merely a procedural or jurisdictional review.

In conducting this review, the ADRP must have regard to Australia's international obligations under the ADA, which are incorporated into domestic law through Section 269TAC and Regulation 43. The ADRP is not bound by the ADC's findings of fact or its legal interpretations; it must form its own independent view on whether the Ministerial decision is correct or preferable.

China respectfully submits that the ADRP's review function under Section 269ZZE is of critical importance in this case. The ADC's methodology in REP 658 represents a systemic departure from established WTO jurisprudence that has been repeatedly affirmed in disputes involving Australia as respondent. The ADRP has both the authority and the obligation to correct this departure and to ensure that the Ministerial decision complies with Australia's domestic statutory framework and international legal obligations.

The ADRP's review under Section 269ZZE must also have regard to the principle of legality, which requires that statutory powers be exercised within their proper scope

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

and for their proper purpose. The ADC's use of the "normally" qualifier in Article 2.2.1.1 to override verified records on the basis of generalized PMS findings—without exporter-specific evidence—exceeds the proper scope of the cost construction power under Section 269TAC(2)(c)(i) and Regulation 43. It amounts to an exercise of power for an improper purpose: the reintroduction of NME methodologies through the "backdoor" of the ordinary cost construction rules.

5.5 Section 269T(1): The Definition of "Interested Party" and the Right to Review

Section 269T(1) of the Customs Act 1901 defines "interested party" for the purposes of Part XVB of the Act to include, inter alia, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application, and any person directly concerned with the production or manufacture of those goods. Baoshan, as the producer and exporter of the subject goods, is indisputably an interested party within the meaning of this provision. The definition is broad and inclusive, reflecting the legislative intention that those directly affected by anti-dumping measures have access to review mechanisms.

China notes that the right of review under Section 269ZZE is a fundamental procedural safeguard that ensures the accountability and legality of anti-dumping decisions. The ADRP's review function is not merely administrative; it is a mechanism for ensuring that Australia's trade remedy regime operates within the bounds of domestic law and international obligation. The systemic issues raised in Baoshan's application—and in these comments—are precisely the type of issues that the ADRP review mechanism is designed to address.

5.6 Regulation 43 of the Customs (International Obligations) Regulation 2015: The Specific Methodology for Cost Construction

Regulation 43 of the Customs (International Obligations) Regulation 2015 provides the detailed methodology for determining the cost of production under Section 269TAC(2)(c)(i). The regulation specifies that:

浩天律师事务所 HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

> *"...the Minister must work out the cost of production or manufacture using the information set out in the exporter's or producer's records if: (i) the exporter or producer keeps records relating to the goods that are in accordance with generally accepted accounting principles in the country of export; and (ii) those records reasonably reflect competitive market costs associated with the production or manufacture of like goods."*
>
> *Regulation 43(2), Customs (International Obligations) Regulation 2015 (Cth)*

This provision is the domestic implementation of Article 2.2.1.1 of the ADA. Properly construed in accordance with Australia's WTO obligations, the requirement that records "reasonably reflect competitive market costs" must be assessed, first and foremost, by reference to whether the records reasonably reflect the costs actually incurred by the exporter; it does not authorize the rejection, by reference to a free-standing "competitive market costs" test, of records that satisfy both conditions of Article 2.2.1.1—precisely the approach found inconsistent with the ADA in DS529 and DS603. The regulation embodies the presumption that the exporter's records shall be used when the prescribed conditions are satisfied.

The ADC's decision in REP 658 to reject Baoshan's records—despite their satisfaction of both conditions of Article 2.2.1.1—is therefore a direct contravention of Regulation 43(2) of the Customs (International Obligations) Regulation 2015 (Cth), properly construed in accordance with the ADA. The ADC's reliance on the "normally" qualifier to justify departure from the records, based solely on generalized and erroneous PMS findings, is inconsistent with the Appellate Body's interpretation in Ukraine — Ammonium Nitrate (WT/DS493/AB/R, paras 6.87–6.88) and the Panels' interpretations in Australia — A4 Copy Paper (WT/DS529/R, paras 7.106, 7.124) and Australia — Certain Products from China (WT/DS603/R, paras 7.58–7.60, 7.80).

Where section 43(2) is not satisfied, neither the Act nor the Regulation prescribes the method, or limits the data, that the Minister may use to determine the cost of production. That discretion is nevertheless constrained by Australia's obligations under

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

the ADA: whatever information is used, the investigating authority must ensure that it is used to arrive at the "cost of production… in the country of origin", which may require the authority to adapt the information it collects (Ukraine — Ammonium Nitrate, WT/DS493/AB/R, para. 6.83). The ADC's selection of the Brazilian MEPS-based benchmark is subject to serious challenge: it was not adapted to reflect Chinese production conditions, was not adequately compared against less distortive alternatives (such as POSCO Korea), and was applied in a manner that "smeared" the approximately 37 per cent uplift across verifiably undistorted cost components (iron ore). This approach falls well below the standard of rigor required by the ADA.

5.7 The Interaction Between Domestic Law and International Obligation: The Principle of Consistent Interpretation

Australia's domestic anti-dumping legislation, including the Customs Act 1901 and the Customs (International Obligations) Regulation 2015, must be interpreted consistently with Australia's international obligations under the ADA. This principle of consistent interpretation is well-established in Australian administrative law and has been affirmed by the High Court of Australia in cases such as Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273 and Pape v ADCer of Taxation (2009) 238 CLR 1.

In the context of anti-dumping law, this principle requires that the provisions of the Customs Act 1901 and associated regulations be interpreted in a manner that gives effect to Australia's WTO obligations. Where a statutory provision is ambiguous or capable of more than one interpretation, the interpretation that is consistent with international obligation is to be preferred.

The ADC's interpretation of Section 269TAC(2)(c)(i) and Regulation 43 in REP 658 is not merely inconsistent with WTO jurisprudence; it is inconsistent with the most natural and purposive reading of the domestic statutory text itself. The "normally" qualifier in Regulation 43(1) does not, on its ordinary meaning, permit the rejection of

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

verified records on the basis of generalized market findings. The two conditions (GAAP compliance and reasonable reflection) are expressed as the basis for using the records; the "normally" qualifier is properly understood as addressing rare and exceptional cases of evident misallocation or record unreliability, not as a licence to impose a "competitive market costs" test.

The ADRP, in exercising its review function under Section 269ZZE, must apply this principle of consistent interpretation. It must interpret the domestic statutory provisions in a manner that aligns with Australia's WTO obligations, as authoritatively interpreted by the WTO Appellate Body and Panels. To do otherwise would be to sanction a domestic legal interpretation that places Australia in breach of its international obligations and undermines the integrity of the multilateral trading system.

6. Systemic Concerns and Conclusion

China respectfully submits, and emphatically asserts, that the methodological approach adopted by the ADC in REP 658, and accepted by the Minister, raises systemic concerns of the highest order that extend far beyond the individual interests of Baoshan. The conflation of the erroneous PMS finding with cost construction under Article 2.2.1.1, the disregard for verified exporter records that satisfy the two explicit statutory conditions, the failure to preserve undistorted input costs, and the inadequate selection and adaptation of third-country benchmarks, collectively and cumulatively risk fundamentally undermining the predictability, consistency, and integrity of Australia's trade remedy regime and its compliance with WTO obligations.

China notes with profound concern that Australia has already been found to have acted inconsistently with Article 2.2.1.1 of the ADA in two separate disputes—Australia — Anti-Dumping Measures on A4 Copy Paper (WT/DS529/R) and Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China (WT/DS603/R)—on grounds directly analogous to those raised in the present review. The

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

continued application of methodologies that have been authoritatively condemned by WTO Panels and the Appellate Body suggests a systemic and persistent issue that requires urgent and comprehensive scrutiny by the ADRP.

China further notes that the domestic legal framework—including Section 269TAC(2)(c)(i), Section 269TDA, Section 269ZZE, and Regulation 43 of the Customs (International Obligations) Regulation 2015—provides the ADRP with ample authority and obligation to correct the ADC's methodological errors. The principle of consistent interpretation requires that these provisions be applied in a manner that gives effect to Australia's WTO obligations, as authoritatively interpreted by the WTO dispute settlement system.

China strongly urges the ADRP to:

(1) Give full, careful, and rigorous consideration to the legal and evidentiary issues raised by Baoshan in its application for review;

(2) Ensure that Australia's anti-dumping measures are applied in a manner fully consistent with its WTO obligations under the ADA and its domestic statutory framework under the Customs Act 1901 and associated regulations;

(3) Reject the ADC's impermissible conflation of the erroneous PMS finding under Section 269TAC(2)(a)(ii) with cost construction under Section 269TAC(2)(c)(i) and Regulation 43;

(4) Require the ADC to preserve undistorted input costs (including iron ore) and adequately adapt any third-country benchmarks to reflect the cost of production in China;

(5) Ensure that the "normally" qualifier in Article 2.2.1.1 and the "competitive market costs" test under Regulation 43(2) are not used as a backdoor mechanism to reintroduce NME methodologies that Australia is legally precluded from applying to China;

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

(6) Give effect to the statutory presumption in favour of verified exporter records under Section 269TAC(2)(c)(i) and Regulation 43, consistent with the Appellate Body's interpretation in Ukraine — Ammonium Nitrate (WT/DS493/AB/R) and the Panels' interpretations in Australia — A4 Copy Paper (WT/DS529/R) and Australia — Certain Products from China (WT/DS603/R); and

(7) Consider the material impact of the correct methodology on the negligible margin threshold under Section 269TDA, and the Minister's jurisdiction to impose duties at all.

China reserves all its rights under the WTO Dispute Settlement Understanding, including the right to request consultations and establish a panel should the ADRP's review decision fail to address the systemic WTO compliance issues identified herein. China remains fully committed to the rules-based multilateral trading system and expects all WTO Members, including Australia, to fulfil their obligations in good faith.

Respectfully submitted,

Shen Qian

For and on behalf of The Ministry of Commerce of the People's Republic of China
Hylands Law Firm
19 July 2026

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

Annex A: List of Cited WTO Dispute Settlement Reports

No.	Case Title	Citation	Key Relevance
1	European Union — Anti-Dumping Measures on Biodiesel from Argentina — Panel Report	WT/DS473/R	Panel findings that NME methodologies require explicit derogations (para 7.241)
2	Australia — Anti-Dumping Measures on A4 Copy Paper — Panel Report	WT/DS529/R	"Reasonably reflect" test; PMS does not justify cost rejection; less distortive alternatives obligation
3	Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China — Panel Report	WT/DS603/R	Identical conclusions on Chinese steel; superficial similarities insufficient; adaptation required
4	Ukraine — Anti-Dumping Measures on Ammonium Nitrate — Appellate Body Report	WT/DS493/AB/R	"Normally" qualifier narrowly construed; strong presumption for records; no "competitive market costs" test
5	US — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China — Appellate Body Report	WT/DS379/AB/R	"Double Remedies" issue in NME context; concurrent application of countervailing duties and anti-dumping duties

浩天律师事务所
HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

Annex B: List of Cited Domestic and Regional Measures

No.	Measure	Citation	Key Relevance
1	Customs Act 1901 — Section 269TAC(2)(a)	Cth, s 269TAC(2)(a)	Domestic selling price and PMS determination; ordinary course of trade requirement
2	Customs Act 1901 — Section 269TAC(2)(c)(i)	Cth, s 269TAC(2)(c)(i)	Cost of production construction; statutory presumption for exporter records
3	Customs Act 1901 — Section 269TDA	Cth, s 269TDA	Negligible margin threshold (2%); prohibition on duty publication for negligible margins
4	Customs Act 1901 — s 269ZX + s 269ZZC	Cth, s 269T(1)	Definition of "interested party"; Baoshan's standing to seek review
5	Customs Act 1901 — Section 269ZZE	Cth, s 269ZZE	ADRP establishment and review function; "correct or preferable decision" standard
6	Customs (International Obligations) Regulation 2015 — Regulation 43	SLI 2015 No. [32], Reg 43	Detailed cost construction methodology; conditions for use of exporter records (Regulation 43(2)); "competitive market costs" test
7	ADC Implementing Regulation (EU) 2025/1042 — EU flat-rolled steel investigation	OJ L 2025/1042	Use of actual undistorted import prices paid for iron ore from countries without distortion allegations (recital (45)); related allegations found insufficiently evidenced (recital (55))

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

8	REP 658 — Anti-Dumping ADC Final Report	REP 658 — ADC, 2 April 2026	PMS findings (Appendix A, pp. 116–152); cost analysis (Appendix C, pp. 163–190); benchmark selection (Appendix C, pp. 189–190)
9	ADN 2026/043 — Anti-Dumping Notice	Australian Government, 4 May 2026	Ministerial decision imposing 59.1% interim dumping duty on Baoshan

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

Annex C: Detailed Cross-Reference of Domestic Statutory Provisions and WTO Obligations

The following table provides a detailed cross-reference of the relevant provisions of the Australian Customs Act 1901 and associated regulations with the corresponding WTO obligations under the Anti-Dumping Agreement, illustrating the points of non-compliance identified in these comments.

Australian Domestic Provision	WTO ADA Equivalent	ADC's Approach in REP 658	Required Approach under WTO Jurisprudence	Identified Non-Compliance
Section 269TAC(2)(a)(ii) + erroneous PMS finding	Article 2.2 ADA	Generalized, erroneous PMS finding based on sector-wide GOC influence; no exporter-specific analysis of Baoshan's domestic sales	PMS must be established by exporter-specific evidence; market-wide findings insufficient without individual assessment	Failure to conduct exporter-specific PMS analysis; conflation of sector-wide and exporter-specific conditions
Section 269TAC(2)(c)(i) + Regulation 43(2)	Article 2.2.1.1, first sentence ADA	Rejected verified records despite satisfaction of both GAAP and "reasonably reflect" conditions; applied 37% Brazilian uplift	Records satisfying both conditions must, "as a rule", be used; departure under "normally" requires record-specific justification	Direct contravention of statutory presumption; impermissible "backdoor" NME methodology
Section 269TAC(2)(c) constructed value; selection of benchmark information	Article 2.2.1.1, second sentence ADA; Annex II ADA	Selected unadapted Brazilian MEPS benchmark without comparative analysis of alternatives (e.g., POSCO Korea)	Authority must consider less distortive alternatives; must adapt surrogate data to reflect country-of-origin conditions	Failure to consider alternatives; inadequate adaptation; superficial selection criteria (GDP, population)
Section 269TDA — Negligible margin threshold	Article 5.8 ADA	Imposed 59.1% duty without considering impact of correct methodology on margin calculation	If correct methodology produces margin below 2%, investigation must be terminated and duties cannot be imposed	Potential jurisdictional error: Minister may lack authority to impose duties if correct margin is negligible
Section 269ZZE — ADRP review function	Article 13 ADA (Judicial Review)	N/A — subject to ADRP review	ADRP must conduct independent, merits-based review; not	ADRP has authority and obligation to correct systemic

浩天律师事务所 HYLANDS LAW FIRM

Add.:3/11/12,Fortune Financial Center,No.5
Dongsanhuan Zhong Road,Chaoyang District, Beijing
Fax:+86 10 65028866/8877 Web:www.hylandslaw.com

			bound by ADC findings; must ensure WTO consistency	methodological errors
Section 269T(1) — "Interested party" definition	Article 5.4 ADA; Annex I ADA	Baoshan accepted as interested party	Producer/exporter has full standing to participate and seek review; rights include access to non-confidential information	No issue identified; Baoshan's standing is clear
General principle of consistent interpretation	Article XVI:4 WTO Agreement; Vienna Convention on the Law of Treaties, Arts 31-33	ADC interpreted domestic law in manner inconsistent with WTO obligations	Domestic law must be interpreted consistently with international obligations; ambiguous provisions construed in favour of compliance	ADC's interpretation creates conflict between domestic law and international obligation; requires correction by ADRP