



Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel Report No. 180

Hot Rolled Coil Steel exported from the People's
Republic of China

August 2026

<https://www.adreviewpanel.gov.au>

Contents

Abbreviations.....	3
Summary.....	6
Introduction	6
Background	7
Conduct of the Review	8
Grounds of Review	12
Consideration of Grounds.....	15
Overview.....	15
Ground 1 (all applicants).....	15
Ground 2 (all applicants).....	40
Ground 3 (All applicants).....	50
Recommendation	66
Appendix A: Conferences	67
Appendix B: Summary of ADC Findings.....	68
Appendix C: Relevant Legislative Provisions	79
Appendix D: Relevant Case Law.....	83

Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADC	Anti-Dumping Commission
AND	Anti-Dumping Notice
Appellate Body	Appellate Body of the World Trade Organization
Applicants	Baoshan, Zhanjiang and Meishan, the exporters and producers in China, the applicants in this review
Baoshan	Baoshan Iron & Steel Co Ltd, an exporter and producer of HRC
Baosteel	Baoshan Iron & Steel Co Ltd (Baoshan) and its subsidiaries that participated in this investigation, including representatives for these companies. The group of companies operating under the name 'Baosteel' or owned by companies operating under the name 'Baosteel'.
BlueScope	Collectively refers to the two BlueScope manufacturers of HRC: - BlueScope Steel Ltd (BSL) based in Port Kembla, New South Wales - BlueScope Steel (AIS) Pty Ltd (AIS) based in Western Port, Victoria.
Brazil	The Federative Republic of Brazil
China	The People's Republic of China
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
CMRG	China Mineral Resource Group, a SOE.
CTM	Cost to make or cost of production

PUBLIC

CTMS	Cost to make and sell
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic public record
EU	European Commission
FOB	Free on board
GAAP	Generally accepted accounting principles
GOC	Government of China
Goods	Hot rolled coil steel (including in sheet form), with or without patterns in relief (known as checker plate), whether or not containing alloys, not clad, plated or coated (other than oil coated). Referred to in this report as either HRC or the goods.
HRC	Hot rolled coil steel
Injury period	From 1 October 2020
Investigation period	The period of investigation: 1 October 2023 to 30 September 2024.
Korea	The Republic of Korea.
Manual	Dumping and Subsidy Manual November 2018
Meishan	Shanghai Meishan Iron & Steel, an exporter and producer in China
MEPS	MEPS International Ltd
Mines	Refers to the owners of the mines (miners) as referred to in the applications.
Minister	Minister for Industry and Innovation and Minister for Science
MOFCOM	Ministry of Commerce of the People's Republic of China
NME	Non market economy
REQ	Response to Exporter Questionnaire

REP 658	The report published by the ADC in relation to the alleged dumping and subsidisation of hot rolled coil steel exported from China and dated 2 April 2026
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The Minister's decision to publish a dumping duty notice pursuant to s 269TG(1) and (2) in respect of hot rolled coil steel exported from China (ADN 2026/043)
SCM	Agreement on Subsidies and Countervailing Measures
SEF 658	Statement of Essential Facts No 658
SIE	State Invested Enterprise
SOE	State Owned Enterprise
SG&A	Selling, general and administration expenses
WTO	The World Trade Organization
Zhanjiang	Baosteel Zhanjiang Iron & Steel Co Ltd, an exporter and producer in China

Summary

1. I have conducted a review of the decision of the Minister for Industry and Innovation and Minister for Science ('the Minister') to publish a dumping duty notice pursuant to s 269TG(1) and (2) of the *Customs Act 1901*¹ ('the Act') in respect of hot rolled coil steel ('the goods' also referred to as 'HRC') exported from the People's Republic of China ('China') ('Reviewable Decision').
2. Baoshan Iron and Steel Co., Ltd ('Baoshan'), Baosteel Zhanjiang Iron and Steel Co., Ltd ('Zhanjiang') and Shanghai Meishan Iron and Steel Co., Ltd ('Meishan') applied for this review.
3. The grounds of review for each of the applicants relates to the normal value of the goods exported to Australia.
4. For the reasons set out in this report, I recommend that the Minister affirm the Reviewable Decision.

Introduction

5. On 3 June 2026, Baoshan, Zhanjiang and Meishan applied under s 269ZZC of the Act for a review of the Reviewable Decision.²
6. On 9 June 2026, the Senior Member of the Anti-Dumping Review Panel ('Review Panel') directed in writing that the Review Panel be constituted by me in accordance with s 269ZYA of the Act.
7. The applications were accepted and notice of the proposed review, as required by s 269ZZI, was published on 24 June 2026.
8. The goods to which the applications relate are:

Hot rolled coil steel (including in sheet form), with or without patterns in relief (known as checker plate), whether or not containing alloys, not clad, plated or coated (other than oil coated).

¹ *Customs Act 1901* (Cth).

² In this report, Baoshan, Zhanjiang and Meishan are referred to either as the applicants or to Baosteel.

Background

9. On 15 November 2024, the Commissioner of the Anti-Dumping Commission ('the Commissioner') initiated an investigation into the alleged dumping and subsidisation of the goods exported from China, following an application by BlueScope Steel Limited ('BlueScope').³
10. The Commissioner established an investigation period of 1 October 2023 to 30 September 2024 ('the investigation period'). For the purposes of assessing injury, the Commissioner also set an injury analysis period from 1 October 2020 ('injury period').
11. On 23 December 2025, the Commissioner published a Statement of Essential Facts ('SEF 658').⁴ A Preliminary Affirmative Determination was also published on this date.⁵
12. On 2 April 2026, the Commissioner made a report to the Minister ('REP 658'). As a result of the investigation, the Commissioner found that:
 - a) exports of the goods from China, in respect of all exporters, were dumped during the investigation period and that the volume of dumped goods and dumping margins were not negligible;
 - b) exports of the goods from China, in respect of all exporters except Baoshan, Zhanjiang, Meishan and LY Steel, were subsidised during investigation period, and that the volume of subsidised goods and the margin of subsidisation were not negligible; and
 - c) dumped and subsidised exports of the goods from China caused material injury to the Australian industry producing like goods.⁶
13. REP 658 therefore recommended that the Minister issue:

³ ADN 2024/093.

⁴ SEF 658, 23 December 2025.

⁵ ADN 2025/133.

⁶ REP 658 [8-9].

- a) a dumping duty notice in respect of all exporters of the goods from China; and
 - b) a countervailing duty notice in respect of all other exporters of the goods from China, except Baoshan, Zhanjiang, Meishan and LY Steel.⁷
14. On 4 May 2026, the Minister accepted the Commissioner's recommendations in REP 658 and notice of the decisions were published on that date. The Minister's decision to publish a dumping duty notice is the subject of this review.

Conduct of the Review

15. Pursuant to s 269ZZK of the Act, a report must be provided no later than 60 days beginning on the day of the publication of the notice of review, unless a reinvestigation is required under s 269ZZL(1) of the Act.⁸ A reinvestigation was not required in this matter.
16. In accordance with s 269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision or revoke it and substitute a new specified decision. Section 269ZZK(1A) of the Act requires that the Review Panel may only make a recommendation to revoke and substitute a new specified decision if the new decision is materially different from the reviewable decision.
17. In undertaking the review s 269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
18. Subject to certain exceptions,⁹ the Review Panel is not to have regard to any information other than relevant information pursuant to s 269ZZK, i.e. information to which the Anti-Dumping Commission ('ADC') had regard or ought to have had regard when making its findings and recommendations to the Minister.
19. If a conference is held under s 269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it

⁷ REP 658 [9].

⁸ Pursuant to s 269ZZK(3) of the Act.

⁹ See s 269ZZK(4).

relates to the relevant information, and to conclusions reached at the conference based on that relevant information. A list of the conferences held during the course of this review is available at Appendix A. A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act.

20. The Review Panel received submissions from interested parties pursuant to s 269ZZJ of the Act from:

- a) BlueScope,
- b) Ministry of Commerce of the People's Republic of China ('MOFCOM'),
- c) Baosteel (referring to the applicants), and
- d) ADC.

21. In conducting this review, I have had regard to:

- a) Relevant information contained in the applications including documents submitted with the applications,
- b) Relevant information contained in submissions received pursuant to s 269ZZJ of the Act,
- c) REP 658 and SEF 658,
- d) Anti-Dumping Agreement¹⁰ Panel and Appellate Body reports cited by the applicants and the ADC,
- e) Further information to the extent that it relates to relevant information obtained at the conferences and conclusions based on that information,
- f) Relevant case law as described in this report,
- g) Certain publications as referenced in this report.

¹⁰ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 referred to as the Anti-Dumping Agreement

22. Australia's anti-dumping and countervailing system implements the following World Trade Organization ('WTO') agreements to which Australia is a party:
- a) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994¹¹ ('Anti-Dumping Agreement') – which prescribes rules for the conduct of anti-dumping investigations and the application of measures to address dumping, including how member countries may: initiate cases, calculate dumping margins, determine injury, enforce remedial measures and review past determinations; and
 - b) Agreement on Subsidies and Countervailing Measures¹² ('SCM Agreement') – which regulates measures designed to remedy material injury caused by subsidised imports, along similar lines to the Anti-Dumping Agreement.
23. The Act and the *Customs Tariff (Anti-Dumping) Act 1975*¹³ are the principal legislation relating to anti-dumping measures in Australia. The Review Panel will interpret and apply the legislation, as far as its language permits, so that it is in conformity, and not in conflict, with Australia's international obligations. In practice, this means where the legislation is ambiguous the Review Panel will favour a construction that is consistent with the Anti-Dumping Agreement and the SCM Agreement and the obligations which they impose (see *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* (2002) FCAFC 423 [25]-[27]).
24. Subsection 269ZZG(5) of the Act deals with what must occur if the Review Panel does not reject an application and is satisfied that one or more grounds contained in the application under s 269ZZE(2)(b) of the Act are reasonable grounds for the reviewable decision not being the correct or preferable decision. In that context, s 269ZZG(5)(c) of the Act provides that the Review Panel “*must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds*”.

¹¹ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*') ('Anti-Dumping Agreement').

¹² *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) ('*Agreement on Subsidies and Countervailing Measures*') ('SCM Agreement').

¹³ *Customs Tariff (Anti-Dumping) Act 1975* (Cth).

25. In *Yara AB v Minister for Industry, Science and Technology*,¹⁴ the Federal Court considered the operation of s 269ZZG(5)(c) of the Act. In the course of resolving Ground 5 of Yara AB's application, Wigney J observed that it was "clear", having regard to s 269ZZG(5)(a)-(c), that "the review is not a de novo review or a merits review which is entirely at large" and that "[t]he Review Panel must restrict itself to a consideration of the grounds that it accepted were reasonable grounds for the reviewable decision not being the correct or preferable decision".¹⁵
26. His Honour observed at [182] to [185]:

...the Review Panel's conduct of the review, including its consideration of whether the Minister's decision was the correct or preferable decision, is confined and constrained in certain respects. In particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds. It must also only have regard to certain information, that information essentially being the information that the Commission had regard to, or was required to have regard to, as well as any reinvestigation report. The Review Panel cannot conduct its own investigations or obtain and use further information.

The fact that the Review Panel is required to conduct the review only in relation to the reviewable grounds is particularly significant, especially given that the criterion for determining whether a ground is a "reviewable ground" is whether it is a "reasonable ground for the reviewable decision not being the correct or preferable decision". What that must mean is that the nature of the review undertaken by the Review Panel is to essentially determine whether the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds. It is only to that extent, and on those terms, that the Review Panel is required to consider and determine whether the reviewable decision is the correct or preferable decision.

If, on the one hand, the Review Panel, having conducted the review, is not satisfied that the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds, the Review

¹⁴ [2022] FCA 847.

¹⁵ *Ibid* at [172].

Panel would be entitled to find that the reviewable decision was the correct or preferable decision, and therefore entitled to recommend that the Minister affirm the reviewable decision. The Review Panel is not required – indeed, it is not permitted – to look beyond the reviewable grounds in order to satisfy itself that there is no other reason for finding that the Minister’s decision was not the correct or preferable decision. If, on the other hand, the Review Panel is satisfied that the reviewable decision is not the correct or preferable decision for one or more of the reasons articulated in the reviewable grounds, it would be entitled to recommend that the Minister revoke the reviewable decision and substitute a new decision.

What that means, as a practical matter, is that it might reasonably be expected that the Review Panel’s report, and the reasoning contained therein, will largely focus on the merits or otherwise of the reviewable grounds and the submissions advanced in support of those grounds...

Grounds of Review

27. The grounds of review relied upon by the applicants, which the Review Panel accepted as reviewable grounds, are as follows:

Baoshan

Ground 1: The Minister erred in law and fact by accepting the REP 658 recommendation to reject Baoshan’s verified GAAP-compliant steel slab cost records, and substitute with an inflated Brazilian benchmark, relying on a generalised particular market situation without any evidence that the records failed to reflect actual costs.

Ground 2: The Minister erred in law and fact by accepting the REP 658 recommendation to reject Baoshan’s verified GAAP-compliant iron ore costs, the single largest raw material component of slab, which is sourced at arms-length international spot prices from unrelated mines¹⁶ with no Government of China (‘GOC’) involvement, and include them in a Brazilian slab benchmark

¹⁶ Refers to owners of the mines throughout this report.

uplift, without any exporter-specific assessment of evidence that these records failed to reasonably reflect actual costs under Article 2.2.1.1.

Ground 3: The Minister erred in law and fact by accepting the REP 658 recommendation to use an unadapted Brazilian steel slab benchmark, selected on superficial metrics with only minimal labour adjustments, as the external proxy for Baoshan's slab costs, without exploring or explaining less distortive alternatives, and without adapting the benchmark to reflect the cost of production in China.

Zhanjiang

Ground 1: The Minister erred in law and fact by accepting the REP 658 recommendation to reject Zhanjiang's verified GAAP-compliant steel slab cost records, and substitute with an inflated Brazilian benchmark, relying on a generalised particular market situation without any evidence that the records failed to reflect actual costs.

Ground 2: The Minister erred in law and fact by accepting the REP 658 recommendation to reject Zhanjiang's verified GAAP-compliant iron ore costs, the single largest raw material component of slab, which is sourced at arms-length international spot prices from unrelated mines with no GOC involvement, and include them in a Brazilian slab benchmark uplift, without any exporter-specific assessment of evidence that these records failed to reasonably reflect actual costs under Article 2.2.1.1.

Ground 3: The Minister erred in law and fact by accepting the REP 658 recommendation to use an unadapted Brazilian steel slab benchmark, selected on superficial metrics with only minimal labour adjustments, as the external proxy for Zhanjiang's slab costs, without exploring or explaining less distortive alternatives, and without adapting the benchmark to reflect the cost of production in China.

Meishan

Ground 1: The Minister erred in law and fact by accepting the REP 658 recommendation to reject Meishan's verified GAAP-compliant steel slab cost records, and substitute with an inflated Brazilian benchmark, relying on a

generalised particular market situation without any evidence that the records failed to reflect actual costs.

Ground 2: The Minister erred in law and fact by accepting the REP 658 recommendation to reject Meishan's verified GAAP-compliant iron ore costs, the single largest raw material component of slab, which is sourced at arms-length international spot prices from unrelated mines with no GOC involvement, and include them in a Brazilian slab benchmark uplift, without any exporter-specific assessment of evidence that these records failed to reasonably reflect actual costs under Article 2.2.1.1.

Ground 3: The Minister erred in law and fact by accepting the REP 658 recommendation to use an unadapted Brazilian steel slab benchmark, selected on superficial metrics with only minimal labour adjustments, as the external proxy for Meishan's slab costs, without exploring or explaining less distortive alternatives, and without adapting the benchmark to reflect the cost of production in China.

28. It is noted that Baoshan, Zhanjiang and Meishan (referred to as the applicants or as Baosteel) are related parties and the substance of the grounds in each of the applications are identical, though the specifics costs (and normal values) of the individual exporters are different. The grounds will be dealt with together with differences, if necessary, identified in relation to the particular exporter. It is also noted that at times in this report, reference is made to Baosteel. Baosteel refers to the group of companies which includes the three applicants as identified in REP 658.
29. Each of the grounds relate to the Minister's determination of the cost of production in the normal value for the applicants.
30. A pre-initiation conference was held on 11 June 2026 to seek further information on certain aspects of the details of the grounds. The applications were amended to include the further information. The conference summary outlines the amendments and was published on the Review Panel's website.

Consideration of Grounds

Overview

31. The applicants' claim that the Minister's determination of the normal value is incorrect in each ground. Their claims have been dealt with together within the relevant ground. The order in which the grounds are presented reflects that if Ground one is established then Grounds two and three are redundant. This is because if it is established that the Minister should have used the applicants' actual costs rather than an adjusted steel slab amount, the normal value is incorrect. Grounds two and three propose alternatives to the calculation of the normal value methodology or the benchmark. If either of these is established the normal value is incorrect.
32. The grounds are inter-dependent as each relate to the ADC's findings regarding the determination of the normal value and the applicants' costs of production. A summary of the ADC's findings relevant to the applicants' claims have been outlined in Appendix B.

Ground 1 (all applicants)

The Minister erred in law and fact by accepting the REP 658 recommendation to reject Baoshan's (Zhanjiang's and Meishan's) verified GAAP-compliant steel slab cost records, and substitute with an inflated Brazilian benchmark, relying on a generalised particular market situation without any evidence that the records failed to reflect actual costs.

Claims

33. The applicants claim the normal value is incorrect because the ADC, and consequently the Minister, should have used their own steel slab cost records to construct the HRC normal values under s 269TAC(2)(c) of the Act. Steel slab comprises more than 90 per cent of the total production cost of HRC. They state that '... substituting an artificially inflated Brazilian market-index benchmark' is incorrect, as there was insufficient exporter-specific evidence that their records failed to reasonably reflect the actual costs incurred. They also claim the ADC misapplied Article 2.2.1.1, including through its interpretation of "normally", and

should have used their actual steel slab costs in constructing the cost to make and sell ('CTMS') for HRC normal value purposes.

34. The applicants submit that the ADC's finding of a 'particular market situation' arising from Government of China (GOC') influence in the Chinese steel industry did not permit the ADC to reject the exporters' records for constructing normal value.¹⁷ They say the ADC's approach to Regulation 43 of the *Customs (International Obligations) Regulations 2015* ('CIO Regs'), and its interpretation of Article 2.2.1.1, is equivalent to applying a 'backdoor non-market economy' ('NME') methodology to China. They claim this is 'inconsistent with Australia's recognition of China as a market economy', noting China was recognised as a market economy in 2005.
35. The applicants submit that the ADC's approach contravenes Article 2.2.1.1 of the WTO Anti-Dumping Agreement. They rely in this ground on the following Panel and Appellate Body reports:
 - a) *Australia – A4 Copy Paper (WT/DS529/R)*;
 - b) *Certain Products from China (WT/DS603/R)*;
 - c) *Appellate Body in EU – Biodiesel from Argentina (WT/DS473/AB/R)*; and
 - d) *Ukraine – Ammonium Nitrate (WT/DS493/AB/R)*.
36. In support of these claims, the applicants refer to:
 - a) 'Those rulings establish that the two explicit conditions in the first sentence of Article 2.2.1.1: GAAP compliance and reasonable reflection of actual costs are exhaustive'¹⁸ and '... must be assessed independently before any derogation under "normally" may be invoked'.¹⁹ They contend the Minister must use an exporter's records where those records are GAAP-compliant and record the actual costs incurred, and that circumstances where costs are 'not normal' are expected to be rare.

¹⁷ Applicant's submission, 3, expands on the finding of particular market situation and says it is directed at the suitability of domestic selling prices under Article 2.2. It states it does not provide a basis for rejecting exporter's costs records under Article 2.2.1.1.

¹⁸ Applicants Attachment B [two], 10.

¹⁹ Applicants Attachment B [two], 11.

- b) The ADC's comments in Section C 7.1.2 of REP 658. The applicants consider the ADC's response to Baoshan's submission is incorrect and inconsistent with WTO jurisprudence. They say the ADC acknowledged the exporters' records satisfied the two explicit conditions in Article 2.2.1.1 but nevertheless found that GOC influence in the steel sector made the circumstances relating to those cost records not 'normal and ordinary'. On that basis, the ADC relied on 'normally' in Article 2.2.1.1 to not use all of Baoshan's, and the other applicants', cost records in constructing the normal value under s 269TAC(2)(c) of the Act.
- c) The ADC's reliance on the Appellate Body's statement in *Ukraine – Anti-Dumping Measures on Ammonium Nitrate*²⁰ to depart from using the exporters' records on the basis that the circumstances were "not normal or ordinary". The applicants say a fuller reading of the report indicates '... the word "normally" indicates that where these conditions are met, "under normal or ordinary conditions" or "as a rule", records shall be used'.
- d) Their claim suggests that actual costs may be disregarded only in limited circumstances:
- there would only be '... narrow, exceptional cases...' and '... specific evidence demonstrating that the records themselves are unreliable for allocating costs to the production and sale of the products under consideration';
 - costs cannot be rejected merely because they are not competitive, distorted, or not established under normal market conditions. The applicants refer to the Appellate Body's comments that domestic input prices cannot be disregarded simply because they are lower than international prices;
 - the ADC failed to provide an adequate evidence-based explanation in relation to the records themselves and instead relied on broad GOC intervention findings in REP 658 Appendix A to conclude the market was not normal or ordinary. The applicants say Article 2.2.1.1 is focused on

²⁰ *Ukraine – Ammonium Nitrate (WT/DS493/AB/R)* as cited in the applications.

exporter costs, and that applying a “competitive market costs” standard is outside jurisdiction. They refer to the Appellate Body report in *European Union – Anti-Dumping Measures on Biodiesel from Argentina*²¹ in this regard;

- refers to Australia’s third-party position in the *EU – Biodiesel* dispute was that Article 2.2 addresses ‘... when normal value may be constructed, not how it must be constructed, and that explicit derogations (such as second Ad Note and accession protocols) are required to disregard domestic costs’.²²

ADC Findings

37. Appendix B to this report outlines the ADC’s findings in additional detail.²³ The following summarises how the normal value was determined. The ADC:

- a) found that there were industry wide distortions and such distortions translated to the individual exporters’ recorded cost of production of steel slab. During the investigation period, the Brazilian steel slab market index price was on average 37 per cent higher than the Chinese index price. The ADC considered this reflected GOC influence in China’s steel markets and the raw material inputs (including slab), and that the benchmark represented a cost of production for steel slab in China unaffected by that influence. It stated ‘... relying solely on the cooperating exporters’ recorded cost of production for steel slab to construct the normal value would undermine the very basis for having recourse to a constructed normal value in the first place.’²⁴
- b) considered that the circumstances in which the applicants’ costs were formed were not ‘normal and ordinary’, that those costs were not appropriate for constructing a normal value, and that the applicants’ steel slab production

²¹ *Appellate Body in EU – Biodiesel from Argentina (WT/DS473/AB/R)* as cited in the applications.

²² Applicants Appendix B paragraph 4, 14.

²³ Appendix B [1] to [4] overview, [5] cost of production, [12] to [15] normally and [16] to [22] benchmark.

²⁴ REP 658, 169 - 170 and 189.

records were not reliable for use for the Minister's determination of cost of production.

- c) used the applicant's recorded steel slab production costs, adjusted by reference to the '... proportional difference between the Brazilian and Chinese steel slab market price indices in USD per MT applied to the applicants' steel slab costs'.²⁵ It indicated that '... the GOC's influence on the Chinese market involves a wide variety of measures that interact with each other, which makes precise quantification of the combined effect of that influence on a particular exporter challenging. The commission is satisfied that the method it has used is sufficiently reliable means of approximating the combined effect of the GOC's influence'.²⁶
- d) used the same method to calculate each applicant's dumping margin. For each applicant, normal value was determined under s 269TAC(2)(c) of the Act using the sum of the:
- 'The cost of production determined using the exporters' recorded cost to make (CTM) with the steel slab costs adjusted using the proportional difference between the Brazilian and Chinese steel slab market prices indices, with the Brazilian index adapted for the differences in the countries' steel slab industries to reflect a cost for steel slab in China free of the effects of the abnormal circumstances (see Section 6.3.4 and Appendix C.7.2).
 - SG&A expenses calculated on the assumption that the goods, instead of being exported, were sold domestically in the ordinary course of trade in the country of export based on the company's records under section 44(2) of the Regulation.
 - An amount of profit based on data relating to the production and sale of like goods on the domestic market in the ordinary course of trade under section 45(2) of the Regulation.'²⁷

²⁵ REP 658, 189 to 190.

²⁶ REP 658, 190.

²⁷ REP 658 Section 6.4.6, 61 – 62.

Certain adjustments were made pursuant to s 269TAC(9) of the Act to ensure that the constructed normal value was comparable to the export price.

Submissions

BlueScope

38. BlueScope refers to its 16 January 2026 submission to the ADC, which it considers responds to the applicants' arguments. BlueScope supports the ADC's findings and the Minister's decision, submitting that the ADC built on its particular market situation findings in Appendix A and appropriately addressed the determination of the production costs used in the constructed normal value in Appendix C:

*The Commission's approach demonstrates application of the legislative framework while accounting for the distorted circumstances identified in Appendix A. BSL submits that the Commission's selection of the Brazilian benchmark is methodologically sound and appropriately justified.*²⁸

Baosteel: the applicants

39. The submission largely reiterates the arguments in the applications, but draws the following additional points to the Review Panel's attention:
- (a) The grounds concern a single methodological error: the rejection of the applicants' actual costs.
 - (b) The Review Panel's task is merits review, not judicial review. The applicants submit that '... 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...'.²⁹
 - (c) The applicants submit that the ADC's interpretation of Article 2.2.1.1 is flawed. They claim that rejecting GAAP-compliant records and using an unadapted third-country benchmark, based on particular market situation findings, is inconsistent with Australia's WTO obligations. They refer to the

²⁸ BlueScope's submission dated 20 July 2026, contained in its submission to the ADC, 5.

²⁹ Baosteel submission dated 20 July 2026, 2.

WTO panel reports in DS529 (*A4 Copy Paper*) and DS603 (*Certain Products from China*) and submit that reg 43(2)(ii) of the CIO Regulation and ‘competitive market costs’ do not permit the substitution adopted by the ADC, and

- (d) The applicants refer to the *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885* judgment and its discussion of the competitive market cost benchmark. They submit that the judgment does not assist the ADC in this case and that the Review Panel should ‘... prefer the construction that conforms to Australia’s international obligations, particularly where Australian has twice been found in breach’.³⁰

ADC

40. The ADC submits that the applicants may have misunderstood or misstated the basis of its findings. It says it did not reject the applicants’ steel slab records because of the particular market situation finding. Rather, it found that the normal value could not be ascertained pursuant to s 269TAC(1) of the Act because of the particular market situation and therefore considered s 269TAC(2)(c). The ADC states that, ‘... the Commissioner did not use the applicants’ recorded steel slab costs because “the circumstance in which these records are formed are **not normal and ordinary** for the purposes of Article 2.2.1.1” (emphasis added) by ADC). The circumstances referred to are those “involving the cost of production for steel slab **in the cooperating exporters’ records**. (emphasis added by ADC)’.³¹
41. The ADC noted that it considered the two conditions in Article 2.2.1.1 and complied with the ‘mandatory order of analysis’ and found that the records satisfied these two conditions. It then assessed ‘normally’.
42. The ADC questions the applicants’ reliance on the cited WTO Panel Reports (*Australia: A4 Copy Paper*, *European Union: Biodiesel* and *Ukraine Ammonium Nitrate* as they concern the term ‘reasonably reflects’. In relation to the interpretation of *Certain Products from China* (DS603), the ADC says it considered the first and second conditions in Article 2.2.1.1 before assessing ‘normally’. It also indicates the

³⁰ Ibid, 4.

³¹ ADC submission dated 17 July 2026, 6 – 8.

phrase, referenced by the applicants, ‘but only in rare scenarios beyond the two conditions such as evident misallocation, and not as a routine PMS exception’ does not appear anywhere in that decision’. The ADC notes, however, that ‘... the “normally” findings were not made as routine PMS exceptions’.³² The ADC considers that ‘normally’ must have some meaning in the context of its use prior to the first and second conditions in Article 2.2.1.1.

43. The ADC states it undertook exporter-specific consideration in Appendix C7 and does not accept that it relied on the particular market situation finding. It refers to REP 658 pages 167 – 171, where it addressed similar comments made by the applicants following SEF 658, and says it applied two distinct legal tests.
44. In response to the claimed NME treatment of China, the ADC indicated that s 269TAC(4) of the Act refers to ‘... would require the Commissioner to consider the extent of a government’s monopoly on trade or influence on domestic prices on goods’.³³ It also addresses the applicants’ claim that the Commission has created an automatic switch for steel cases involving China. It states that its finding on ‘normally’ did not rely on the particular market situation finding, and that it reviewed exporter-level information in reaching its finding on ‘normally’.

MOFCOM

45. MOFCOM’S submission raises concerns with the ADC’s approach.³⁴ To the extent those concerns relate directly to the reviewable grounds, they have been considered by the Review Panel. MOFCOM:
 - (a) submits that the ADC’s approach does not accord with China’s rights and obligations under the Anti-Dumping Agreement,
 - (b) refers to the ADC’s approach to the particular market situation finding in the steel market, cost construction, and the selection and adaptation of third-country benchmarks. It references and relies on WTO Panel Reports *A4 Copy Paper* (DS529) and *Certain Products from China* (DS603), and submits that those dispute settlement proceedings show Australia’s

³² ADC submission dated 17 July 2026, 8.

³³ ADC submission dated 17 July 2026, 9.

³⁴ MOFCOM submission dated 20 July 2026.

methodologies were inconsistent with its Anti-Dumping Agreement obligations,

- (c) refers to the interpretation of Article 2.2.1.1 and additional WTO Appellate Body and Panel reports concerning that Article, submitting that Australia's current approach is inconsistent with those reports,³⁵
- (d) submits that the 'normally' qualifier in Article 2.2.1.1 does not permit a generalised particular market situation finding to justify departing from a producer's actual costs, referring to WTO DS493 at [6.87]–[6.88] and [6.107]. MOFCOM claims Australia used its particular market situation finding in a way to disregard the applicants' actual costs, without exporter-specific analysis, in contravention of the Anti-Dumping Agreement. It considers the ADC's reasoning is defective.³⁶
- (e) considers the ADC has adopted a NME methodology in REP 658 and Australia is precluded from doing so:

*'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 operate in every Chinese steel case without exception...'*³⁷
- (f) considers that the ADC's finding in relation to the exporters' records being unsuitable because they 'do not reflect competitive market costs' referencing reg 43, is in contravention of the Australia's obligations under the Anti-Dumping Agreement.
- (g) submits that Australia cannot achieve through Article 2.2.1.1 what it is precluded from doing under the NME provisions, and outlines why it considers REP 658 breaches the Anti-Dumping Agreement, and

³⁵ The Review Panel notes that these WTO AB and Panel reports have been referred to by both the ADC and the applicants' and have not been repeated in this section.

³⁶ It refers to the GOC's position which has been consistent and longstanding and outlined, as a third party, in various WTO AB and Panel inquiries.

³⁷ MOFCOM submission dated 20 July 2026, 11.

- (h) similarly to Baosteel's submission, refers to the Review Panel's merits review function and its role in ensuring recommendations to the Minister comply with Australian legislation and international legal obligations. MOFCOM refers to the right of review and the principle of consistent interpretation under Australian administrative law: referring to certain High Court of Australia authorities. It submits that REP 658 and the ADC's approach to the normal value contain several errors, and that correctly determined normal values would result in negligible dumping margins for the applicants.

Legislation

46. Appendix C sets out the relevant legislative provisions for normal value determination and Appendix D includes case law related to this issue.³⁸

Analysis

47. This ground concerns whether the ADC, and consequently the Minister, incorrectly rejected the applicants' actual cost records in determining the cost of production for constructed normal value under s 269TAC(2)(c) of the Act. The central issue is the meaning of 'normally' in Article 2.2.1.1. of the Anti-Dumping Agreement, including whether the ADC relied on its particular market situation finding rather than an assessment of the applicants' records.
48. This ground also concerns the use of the Brazilian benchmark, including whether it was suitably adapted to reflect a cost of production in China. This aspect is also dealt with in Ground three.
49. The applicants and MOFCOM submit that the ADC's approach is inconsistent with Australia's obligations under the Anti-Dumping Agreement, relying on a number of WTO Appellate Body and Panel reports.

³⁸ *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 and *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2019] FCAFC 122.

50. Before addressing the claims, the Review Panel considers it useful to outline the relevant context for dumping and normal value determination under the Anti-Dumping Agreement and Australian legislation.

Context:

51. The Anti-Dumping Agreement concerns dumping, including the determination of normal value and export price. Dumping is not prohibited, but the Agreement permits anti-dumping measures to address unfair trade practices and 'levelling of the playing field' by the taking of anti-dumping measures.³⁹
52. Article 2 addresses the determination of dumping. It emphasises reliable, market-based prices, including prices in the ordinary course of trade, unaffected by relationships between parties or compensatory arrangements. It recognises that, in some circumstances, the domestic price may not produce an appropriate normal value for comparison with the export price.⁴⁰ It highlights that there are certain circumstances where the '... domestic price does not produce an appropriate 'normal value' for the purposes of the comparison with the export price'.⁴¹ In relation to export price it refers to associations between parties or compensatory arrangements affecting price and being able to use sales to independent third parties. There is a strong focus on market-based prices and the rejection of amounts that are not based on competitive market forces, ordinary course of trade transactions or based on arms length transactions.
53. The Anti-Dumping Agreement also recognises that domestic prices in the exporter's country may be unsuitable because of a particular market situation.⁴² In those circumstances, normal value may be determined by reference to third-country sales or by constructing the cost to make and sell (CTMS) and profit.
54. In summary, Article 2 emphasises prices for normal value purposes are generally those that are in the ordinary course of trade, recover costs within a reasonable period, are not influenced by relationships between parties, and are market driven

³⁹ The Law and Policy of the World Trade Organization, Peter Van den Bossche & Werner Zdouc (3rd ed) Cambridge University Press [2013] 674 to 675.

⁴⁰ Articles 2.2, 2.2.1, 2.2.1.1., and 2.3.

⁴¹ Ibid, 684 to 686.

⁴² Ibid, 686.

rather than affected by non-market factors. It also recognises that domestic prices may be unsuitable because of a particular market situation or for other reasons.

55. The Review Panel considers that the purpose of normal value determination is to identify market-based prices, subject to specific conditions, (or a notional approximate of such prices) in the country of export for comparison with export prices.
56. Australia's legislation implements the Anti-Dumping Agreement through the Act. As referred to in paragraph 23, the Review Panel will interpret and apply the legislation, as far as its language permits, consistently with the Anti-Dumping Agreement.⁴³

The circumstances:

57. As referred to above both the applicants and the ADC refer to the interpretation of Article 2.2.1.1 in the calculation of the cost of production of the normal value of HRC and the meaning of the word 'normally'. An extract of Article 2.2.1.1 follows:

*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 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 products under consideration.*
(my emphasis)

58. The applicants and the ADC rely on various WTO Appellate Body and Panel reports concerning Article 2.2.1.1. It is common ground that the applicants' records were GAAP-compliant and reflected the costs associated with production and sale of the goods. The applicants submit that those two conditions must be assessed before 'normally' is considered.
59. REP 658 shows that the ADC addressed both conditions before considering 'normally'.⁴⁴ To that extent, the Review Panel does not accept that the ADC failed to follow the order of analysis as outlined in certain of the above-mentioned Panel reports. This aspect of the applicants claim requires no further comment.

⁴³ *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* (2002) FCAFC 423 [25]-[27].

⁴⁴ REP 658, 6.3.4.2, 57 and its submission dated 17 July 2026, 6 – 8.

60. The applicants claim that the ADC, and consequently the Minister, erred by not using their actual costs to construct normal value. They state the benchmark adjustment for steel slab artificially inflated the normal value,⁴⁵ and that the ADC ‘... invoked the “normally” qualifier in the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement to depart from the Baoshan’s verified records’.⁴⁶ They say this was wrong because:
- a) it relied on a general particular market situation finding,
 - b) it is not Article 2.2.1.1 compliant and treated China as a NME,
 - c) the actual costs of the applicants were GAAP-compliant and its records were suitable for use,
 - d) it did not apply reg 43 (competitive market costs) in a manner aligned with Article 2.2.1.1.
 - e) they were not ‘abnormal’ and were ordinary costs in the cost of production of HRC,
 - f) that the ADC did not properly assess and analyse its actual costs, nor provide an adequate explanation of its decision, and
 - g) did not make appropriate adaptations to the benchmark applied.
61. MOFCOM and Baosteel emphasise the above-mentioned concerns in their submissions.⁴⁷ Both refer to the ADC’s assessment of reg 43(2) relating to competitive market costs. They question whether the ADC’s approach is consistent with Australia’s obligations under the Anti-Dumping Agreement.
62. REP 658 Appendix C outlines the ADC’s consideration of the cost of production in China. In relation to reg 43(2) of the CIO Regulation, the ADC found that the cost of production records was kept in accordance with GAAP in China but did not reasonably reflect ‘competitive market costs’ associated with the production or manufacture of like goods.

⁴⁵ The applicants claim that steel slab represents approximately 90 per cent of the total CTM HRC.

⁴⁶ Baoshan’s application, 10 - 11.

⁴⁷ See MOFCOM submission dated 20 July 2026, and Baosteel submission dated 20 July 2026.

63. The ADC indicates that in circumstances where regulation 43(2)(b) of CIO Reg are not met, ‘... the Minister is neither required to, nor prohibited from, using an exporter’s records to determine the normal value under s 269TAC(2)(c)(i), however the Minister is to exercise their discretion in s 269TAC(2)(c)(i) in accordance with the requirements of the Anti-Dumping Agreement.’⁴⁸ The ADC also indicated ‘... Article 2.2.1.1. does not mandate the use of the information in an exporter’s records where those conditions are met in all circumstances. It only provides that where those conditions are met costs “shall normally” be calculated based on the exporter’s records.’⁴⁹
64. The Review Panel considers that the ADC’s finding in relation to reg 43(2) is consistent with Australia’s legislation and the case law referred to in Appendix D. The main focus of the applicants in this ground relates to the assessment of ‘normally’ in Article 2.2.1.1.
65. The ADC found that the circumstances in which the applicants’ HRC production costs were formed were not ‘normal and ordinary’ because:
- a) the GOC intervention in the steel market has led to lower prices of critical inputs,
 - b) The ADC considered these lower prices of inputs directly impacted the prices in the applicants’ cost of production of HRC, noting that approximately 90 per cent of the HRC cost is steel slab. It considers these costs are lower than they would have been but for the GOC influence,
 - c) Actual costs were distorted due to these factors and that such costs ‘are reflecting an unreliable cost of production’ for the Minister to use in the determination of the costs of production pursuant to s 269TAC(2)(c)(i) of the Act.⁵⁰
66. The ADC’s submission indicates that it did not reject the exporters’ steel slab records because of a generalised particular market situation finding. It states: ‘The finding of particular market situation was not the basis for the adjustment of the

⁴⁸ REP 658 Section C6, 165 - 166.

⁴⁹ REP 658 Section C6, 166.

⁵⁰ REP 658, 166 – 169: see also Appendix B.

recorded steel slab costs for the purpose of making that determination' and that the exporters' recorded slab costs were rejected because '... the circumstances in which these records are formed are not normal and ordinary for the purposes of Article 2.2.1.1 [emphasis added]'.⁵¹ The ADC submits that its 'normally' and particular market situation findings involved 'distinct' legal tests.

67. There is some common ground between the applicants and the ADC on the cited WTO reports. The dispute concerns:
- a) what would constitute the extraordinary circumstances that would activate the 'normally' derogation,
 - b) does it apply in relation to the ADC's assessment of the applicants' actual costs in this matter,
 - c) did the ADC rely solely on its particular market situation finding in its assessment of Article 2.2.1.1, and
 - d) whether an explanation was provided in REP 658 in relation to the approach adopted.
68. Prior to assessing the circumstances relating to the applicants' actual costs, it is worth noting that the choice of benchmark is an important part of assessing such costs. The applicants do not support Brazil as the benchmark, submitting that Brazil is not sufficiently comparable to China for steel production purposes.
69. Although the applicants' primary claim is that their actual costs should have been used, they also challenge the use of what they describe as an 'artificially inflated Brazilian market-index benchmark' for steel slab, with only minimal labour adjustments.
70. The applicants submit that steel slab comprises the majority of the CTMS HRC and question whether Brazil was a suitable surrogate, whether it is sufficiently similar to China's production and economic conditions, and whether the Brazilian benchmark was adequately adapted to reflect a cost of production in China.

⁵¹ ADC submission dated 17 July 2026, paragraphs 21 and 23.

71. They refer to WTO Appellate Body and Panel reports but do not identify specific comments in relation to the Brazilian market-index price in this particular ground.
72. There is certain degree of overlap between Grounds one and three with respect to the choice of the Brazilian benchmark and its adaptation. Because the focus of Ground one is on whether the applicants' actual costs should be used, rather than the choice of benchmark and its adaptation, there is further assessment of the choice of the Brazilian benchmark in Ground three: see [164] to [189]. However, for the purposes of the consideration in Ground one, Brazil is considered to be a suitable comparator.
73. The Review Panel considers it is first necessary to address the meaning of 'normally'.

'Normal and Ordinary'

74. It is acknowledged that the meaning of 'normally' is complex and requires assessment on a specific case basis.⁵²
75. The WTO Appellate Body and Panel reports cited by the applicants and the ADC do not provide a clear-cut answer on the meaning of 'normally' in Article 2.2.1.1.
76. The plain English dictionary's interpretation of 'normally' and 'ordinary' provides general guidance. 'Normally' may mean 'usually', 'in most cases' or 'under normal or usual conditions'. 'Ordinary' may mean 'not interesting, different, special or exceptional', and 'routine' or 'commonplace'.⁵³ These meanings suggest circumstances that are usual, routine or commonplace, rather than unusual or exceptional.
77. In the Review Panel's view, the placement of 'normally' in Article 2.2.1.1 indicates that there may be circumstances in which exporter records are not used, even where they are GAAP-compliant and reflect actual costs. However, departure from such records as referenced in the WTO Appellate Body and Panel reports requires a comprehensive explanation, based on the particular circumstances of the case, as to why use of the records is not justified.

⁵² See [77] and [80].

⁵³ Cambridge and Collins Dictionaries (online).

78. It is of interest that an academic article (unrelated to the current review) referred to ‘normally’ being one of three unresolved puzzles in current WTO jurisprudence with respect to Article 2 of the Anti-Dumping Agreement.⁵⁴ While this article is concerned with EU legislation it does explore the nuances associated with interpretation of Article 2.2.1.1. It also refers to the Appellate Body and Panel Reports cited by the applicants and the ADC. It poses the question ‘So the first puzzle is whether, and if so under what circumstances, the term ‘normally’ provides a separate basis for an investigating authority to disregard records by the exporter or producer, *even if the records satisfy the two explicit conditions*.’⁵⁵
79. The author’s focus in the article is on the EU’s legislation in relation to anti-dumping action in respect to China and refers to Appellate Body Report *Ukraine-Ammonium Nitrate* and, *EU – Cost Adjustments Methodologies II* Panel Report as follows: ‘Relying on the word “normally” in Article 2.2.1.1. of the ADA, the Appellate Body explicitly stated that it *does not exclude* that, even if the kept records are valid, there might be circumstances in which the obligation to base the calculation of costs on the kept records does not apply. In order to rely on the exception, the European Commission needs to provide a reasoned and adequate explanation as to why significant distortions constitute an abnormal circumstance that justifies the rejection of the recorded costs. To be sure, it remains unclear whether significant distortions constitute such an exception as it is a decision to be assessed on a case-by-case basis in light of the available evidence’. It concludes that a possibility exists in the interpretation of ‘normally’ in Article 2.2.1.1.⁵⁶ (emphasis added)
80. As referenced in [77], the Review Panel considers that Article 2.2.1.1 permits discretion in relation to ‘normally’. However, any exercise of that discretion, as cited in the Appellate Body Report *Ukraine-Ammonium Nitrate* requires an explanation of the circumstances relating to the exporter’s or producer’s records and why these were not normal or were ‘narrow, exceptional cases’ as proposed by the applicants.

⁵⁴ Yearbook of European Law, 2002, Vol 41, No. 1 From ‘Non-market economy’ to ‘Significant Market Distortions’: rethinking the EU anti-dumping regulation and China’s state interventionism, Ming Du, published by Oxford University Press, 337 – 338.

⁵⁵ Ibid, 337.

⁵⁶ Ibid, 340, citing AB Panel Report *Ukraine- Ammonium Nitrate* (n135) para 6.87 and Panel Report, *EU – Cost Adjustment Methodologies II (Russia)* para 7.106.

The Review Panel therefore accepts that actual costs need not be used in particular circumstances.

Circumstances relating to the Applicants' actual costs and the assessment of such costs:

81. The Review Panel assessed the evidence relied on by the ADC to support its finding that the circumstances in which the applicants' actual costs were formed were not normal or ordinary in terms of the applicants' specific claim and the issues raised in its submission as well as the MOFCOM submission. The Review Panel examined the ADC's findings in its REP 658, Section 6.4 and Appendix C as well as the Response to the Exporter Questionnaire (REQ) cost information, verification and confidential work program reports and considered the information in the following:
- a) Confidential Attachment 29: Chinese market assessment: Slab cost analysis,
 - b) Confidential Attachment 2: Benchmark Data,
 - c) Confidential Attachment 31: Raw material supplier analysis,
 - d) Confidential Attachment 6A: Baoshan Cost Replacement.⁵⁷
82. At the 6 July 2026 conference, the ADC provided further information about the data contained in the confidential spreadsheets, its provenance, and its connection to the cost of production analysis in REP 658.⁵⁸ The ADC provided specific information in relation to the benchmark data obtained, including steel slab prices in various countries, why steel slab was selected as the comparison point — the last 'major semi-finished raw material input in the production process' — and why Brazil was chosen as the benchmark country. It outlined the additional price indices reviewed and confirmed that it was unable to locate any reliable, publicly or privately available steel slab price information for Korea from either MEPS International Ltd ('MEPS') or Bloomberg.⁵⁹ It also explained its calculation of the proportional difference

⁵⁷ Confidential Attachment 6A relates to Baoshan, Confidential Attachments 8A and 10A relate to Zhanjiang and Meishan respectively.

⁵⁸ Conference with the ADC on 6 July 2026 3 - 8.

⁵⁹ ADC Submission [68].

between the Brazilian benchmark and Chinese steel slab market price indices (in USD) and its application of that difference to the applicants' steel slab costs.

83. In REP 658 Appendix C7, the ADC explained that it considered the raw material costs in the applicants' records were impacted by the GOC influence in the steel industry as the costs were lower than they otherwise would have been but for this influence. It referred to the prices of the critical inputs of iron ore, coal, steel scrap and electricity. It indicated that 'as these raw materials represent the majority of the cost to produce steel slab (the primary input for HRC), the effects on raw material pricing have also flowed through to the cooperating exporters' recorded costs of production.'⁶⁰
84. In REP 658 the ADC provided its explanation as to why it undertook its assessment of the applicants' records at the steel slab level through its comparison of these records with the Brazilian steel slab benchmark prices (as adjusted).⁶¹
85. The ADC found that the comparison of the Chinese index price was, on average, 37 per cent lower than the Brazilian benchmark. It considers the industry wide distortions translated to the exporters' recorded cost of steel slab.⁶² It compared the applicants' recorded cost to make steel slab to the benchmark.⁶³ It considers this has a significant impact given steel slab represents a large component (around 90 per cent) of the cost of production of HRC. It found the circumstances in which those costs were formed were not normal and that the costs of the exporters were not reliable for determining the HRC normal value.
86. The Review Panel also considered the ADC's findings regarding whether the circumstances in which the applicant's raw material and other costs were formed and the assessment of 'normal'. In particular:
- a) The role of the China Mineral Resource Group (CMRG)⁶⁴ in relation to iron ore procurement and potential effect on pricing,

⁶⁰ REP 658, 167 and referencing Appendix A.7. and Appendix C.7.

⁶¹ Rep 568, 171 – 172.

⁶² REP 658, 169 - 170.

⁶³ REP 658, 172.

⁶⁴ CMRG: a SOE established in 2022 to source and procure raw materials for use in production.

- b) The GOC influence on coal prices, through export licensing, production caps and subsidies and the impact this has on steel production,
- c) The high export duties on steel scrap and pig iron which is said to discourage exports and increase supply on the domestic market, and the consequential impact on raw material prices,
- d) The degree of regulation of the electricity market, and
- e) The supporting role of SOE's in this sector.⁶⁵

It is apparent that there are multiple GOC influences in operation in this sector that impact costs and prices of raw materials and other services in the production of HRC.

87. The Review Panel's analysis of REP 658 and the information referred to in the preceding paragraphs does not indicate that the ADC relied solely on its particular market situation finding in assessing whether the applicants' actual costs were 'normal and ordinary'. It is apparent that certain information considered for the particular market situation finding was also relevant to the assessment of the applicants' raw material costs of production. The Review Panel considers this information was relevant to the assessment of the applicants' actual costs and was considered as part of a separate analysis. REP 658 Confidential Appendix C directly addresses the applicants' cost of production.
88. The Review Panel examined the confidential attachments and other information considered by the ADC and considers the ADC did undertake an assessment of the applicants' actual costs in relation to the Brazilian benchmark, as well as in its assessment of whether the records reasonably reflect GAAP and the costs of production. As part of this analysis, consideration was also given the reasons why the ADC considered the applicants' costs did not meet the requirements of reg 43(2): see also Appendix B [5] to [7]. The ADC considered as outlined in REP 658 Appendix A: that '...the significant influence of the GOC had materially altered prices in the steel industry and HRC market in China' and '...because the costs are

⁶⁵ REP 658, 167 – 168 referring to information in Appendices A and C.

not the same as they would be if determined only supply and demand absent government intervention'.⁶⁶

89. The applicants consider their actual production costs are 'normal' and 'ordinary' in the context of the Chinese steel industry. The ADC found those costs were not 'normal and ordinary' and were distorted by GOC influence on factors affecting supply and demand for raw materials and other production costs.⁶⁷ There is analysis of the Brazilian steel slab price index with the applicants' steel slab costs and this supports the ADC's finding that the steel slab costs were consistently lower during the investigation period.⁶⁸
90. Having considered the confidential information, analysis and explanation provided by the ADC, the Review Panel is not persuaded that the ADC failed to consider the exporters' actual cost records in the assessment of the circumstances in which the costs were formed as outlined in [81] to [86]. The ADC also provided an explanation of its reasons for its findings in relation the application of Article 2.2.1.1. The applicants disagree with the information used and the findings reached, but that does not mean the process or rationale was unexplained.
91. The Review Panel does not consider the ADC conflated the issues. As referred to above, it is evident in REP 658 in Appendices A and C, that analyses were undertaken as separate processes and that certain information was relevant to both findings relating to the particular market situation, competitive market costs and the cost of production of the exporters, respectively.
92. The ADC first considered s 269TAC(1) and concluded that, because the particular market situation made domestic sales unsuitable for use under s 269TAC(2)(a)(ii), normal value should be determined pursuant to s 269TAC(2)(c). It then considered reg 43(2) of the CIO Regulation, found the applicants' costs were not 'competitive market costs' see [62] to [64] above,⁶⁹ and it then considered the application of Article 2.2.1.1.

⁶⁶ REP 658 C.5. 165.

⁶⁷ REP 658 166 and 169.

⁶⁸ See REP 658 Confidential Attachments 2, 6A, 8A 10A and 29.

⁶⁹ See REP C5 and C6.

93. MOFCOM's submission stated that reg 43(2) of the CIO Regulation and the provisions of Article 2.2.1.1 should be read consistently with Australia's Article 2 obligations.⁷⁰ The applicants referred to reg 43(2) in its submission to the Review Panel and referred to the *Dalian Steelforce* judgment regarding a market situation and the use of a competitive-market-cost benchmark.⁷¹ They proposed that this did not assist with the ADC's approach in this matter because the Court '... held only that the Commission's approach was open to it as a matter of the domestic statute's construction'.⁷² The applicants' focus is on whether the ADC complied with Australia's obligations to the Anti-Dumping Agreement in respect to Article 2.2.1.1.
94. The Review Panel reviewed the *Dalian Steelforce* and *Changshu Longte* judgments,⁷³ both of which are more recent judgments dealing with the interpretation of competitive market costs (reg 43). Relevant extracts of these judgments are at Appendix D. The ADC's findings in relation to reg 43(2) are aligned with the approach supported in these judgments. The Review Panel notes and agrees with the ADC's comments in its submission at [21] to [22] in this regard. Neither of these judgments refer to the interpretation of 'normally' in Article 2.2.1.1.
95. It is apparent that both judgments also consider the use of a foreign benchmark in the construction of the cost of production in the determination of the normal value and the requirements to consider adjustments to the benchmark.⁷⁴ The application of the WTO Appellate Body Report on *Biodiesel* is also referred to in this regard. Neither of these judgments assist the applicants' position. The Review Panel considers that the approaches adopted by the ADC with respect to 'competitive market costs', the use an out-of-country benchmark as well as whether adjustments to the benchmark adopted by the Minister are consistent with these judgments and meet the legislative requirements.
96. The Review Panel observes that the substantive issue in Ground 1 is whether Article 2.2.1.1 was correctly applied and whether the applicants' recorded actual

⁷⁰ MOFCOM submission dated 20 July 2026.

⁷¹ Applicant's submission dated 20 July 2026, citing *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885, [26], [29] to [30], [40] – [42] and [47]. 3 - 4.

⁷² *Ibid*, 4.

⁷³ *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 and *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2019] FCAFC 122.

⁷⁴ *Ibid*, *Dalian Steelforce* [118] to [124] and *Changshu Longte* [83] and [93] to [101].

costs should have been used. The Review Panel therefore does not address reg 43(2) further, noting its earlier comments in [62] to [64].

97. The Review Panel agrees with the applicants that 'normally' should not operate automatically and requires unusual circumstances supported by evidence and explanation.
98. In this case, the applicants' lower raw material and production costs were associated with GOC influence in the steel industry, as outlined in the reasons shown in [85] to [86]. The Review Panel is persuaded by the ADC's comments '... the circumstances in which the selected exporters' costs were formed are not normal and ordinary. Specifically, that the circumstances in which the cost of steel slab has been formed are not normal and ordinary, resulting in the recorded production costs of the selected exporters reflecting a distorted cost of production'.⁷⁵
99. The comparison of the applicants' steel slab costs with the Brazilian benchmark revealed a large difference in costs. The degree of difference also supports the ADC's finding that the circumstances of these costs are not normal or ordinary.
100. The Review Panel agrees that there is sufficient evidence to support the ADC's finding that the circumstances in which the applicants' cost records were formed were not normal for Article 2.2.1.1 purposes as they were materially lower than they otherwise would have been because of GOC influence in the steel industry.⁷⁶
101. The Review Panel does not accept the applicants' claims in Ground one and agrees with the ADC that the applicants' production cost records were not reliable for determining HRC cost of production for normal value purposes because of the circumstances in which the costs were established.
102. The Review Panel is not persuaded by the applicants' arguments on Article 2.2.1.1 in this matter.

Other issues:

103. The applicants and MOFCOM emphasise the distinction between merits review and judicial review, and the Review Panel's obligation to reach the correct or preferable

⁷⁵ REP 658, 57 and 170.

⁷⁶ REP 658, 170.

decision.⁷⁷ The Review Panel agrees. Merits review permits the facts and law to be reviewed in terms of the reviewable grounds. This review has been conducted in accordance with the Act and in accordance with the approach outlined in the 'Conduct of the Review' section above.

104. Both the applicants and MOFCOM, in their submissions, state that the ADC's approach is equivalent to applying NME methodologies to China, despite China being recognised as a market economy in 2005. They say the use of the Brazilian surrogate benchmark under s 269TAC(2)(c)(i) of the Act and reg 43(2) of the CIO Regulation may operate as an 'automatic switch' for Chinese steel products.⁷⁸
105. The Review Panel is not required to determine whether the ADC's approach is equivalent to applying NME methodologies, given there are no findings in relation this issue in respect of the reviewable grounds. This ground deals with whether there was an error in rejecting the applicants' actual costs of production in the determination of the normal value. The Review Panel has noted the ADC's comments in its submission at [33] to [35] as to the manner in which it conducted its inquiry.⁷⁹ As outlined above, the Review Panel has assessed the specific claims made in relation to the reviewable grounds, including the relevant legislative provisions and the findings made by the ADC in REP 658.
106. The Review Panel has considered 'normally' in the context of its view as to the purpose of Article 2, which is to determine a normal value reflecting ordinary course of trade conditions, unaffected by related party arrangements and based on market forces. In circumstances where domestic selling prices cannot be used, the intent is to develop a 'notional selling price' reflecting a market based selling price through other methods. The Review Panel agrees with the ADC's comment that it would be inconsistent with the purpose of the normal value legislation to reintroduce the factors that made domestic selling prices unsuitable under s 269TAC(1) of the Act in the construction of the normal value to approximate a domestic selling price.

⁷⁷ See submissions from the applicants and MOFCOM both dated 20 July 2026: see also [45e] above.

⁷⁸ See applications and submissions from the applicants and MOFCOM both dated 20 July 2026.

⁷⁹ ADC Submission dated 17 July 2026, 9.

107. There is overlap between the claims raised in Ground one with Grounds two and three and certain of the information considered in Ground one will be referred to in Grounds two and three.

Conclusion

108. The Review Panel rejects this ground of review because the ADC considered the applicants' actual costs and found that the circumstances in which they were formed were not normal and ordinary because such costs were substantially lower due to the GOC influence in the raw materials costs used in steel production. This was demonstrated by the degree to which they were below the benchmark. Such conditions are directly influenced by the involvement of the GOC as outlined in REP 658 pages 167 – 169. The Review Panel is satisfied that:

- a) the ADC correctly applied the relevant legislative provisions and Article 2.2.1.1, and found the applicants' actual costs were not normal and ordinary and were 'unreliable' for the Minister to determine the cost of production under s 269TAC(2)(c)(i) of the Act,
- b) the ADC did not rely solely on its particular market situation finding, but examined a range of sources concerning raw material costs and in its choice of the appropriate benchmark as well as cost of production level of steel slab for comparison with the applicants' actual costs,
- c) the ADC adjusted the applicants' costs based on the Brazilian benchmark and explained its rationale for adopting this approach in REP 658.

109. The Review Panel agrees with the Commissioner's findings on the rejection of the applicants' actual costs and the methodology outlined to construct the cost of production as outlined [37(d)]. This is based on the use of the adapted Brazilian benchmark applied to the applicants' cost of production element of the constructed normal values.

Ground 2 (all applicants)

The Minister erred in law and fact by accepting the REP 658 recommendation to reject Baoshan's (Zhanjiang's and Meishan's) verified GAAP-compliant iron ore costs, the single largest raw material component of slab, which is sourced at arms-length international spot prices from unrelated mines with no GOC involvement, and include them in a Brazilian slab benchmark uplift, without any exporter-specific assessment of evidence that these records failed to reasonably reflect actual costs under Article 2.2.1.1.

Claims

110. The applicants' claim that the ADC (and the Minister) incorrectly determined the normal value as the applicants' iron ore costs, the largest material component of the steel slab cost⁸⁰ were rejected. It suggests that the ADC did not undertake any specific assessment of whether the applicants' iron ore records 'reasonably reflect' the costs associated with the production of HRC as required by Article 2.2.1.1.
111. The applicants further claim that they source iron ore from unrelated international parties at prevailing prices on the global market. It suggests that such prices are not under the influence of the GOC or subject to any price distortion during the supply chain and as such are suitable for use in the cost of production determination.
112. Baoshan suggests that the ADC's decision '... to apply the full Brazilian slab uplift across the entire slab cost component (including the verifiably undistorted iron ore element) directly contradicts binding WTO jurisprudence'.⁸¹ Furthermore, the ADC should have isolated or preserved the undistorted iron ore component before applying the benchmark.
113. Baoshan claims that its iron ore costs (at international spot prices) should have been used without substitution (or uplift) in constructing the normal value for HRC. It

⁸⁰ Ground one indicates that steel slab comprised over 90% of the cost to make (CTM) HRC. Ground 2 relates to iron ore costs; it is stated that these are the largest single raw material cost of steel slab used in the production of HRC. The applicants calculated that the [REDACTED] (confidential cost of production information) Baoshan application, 16.

⁸¹ Baoshan application, 17 (the other applicants make the same claim). It refers to *DS493 (Ukraine)* paras 6.100 – 6.107: circumstances not to use actual records is narrow, *DS473 (EU Biodiesel)* para 7.2, and *DS529 A4 Copy Paper*: use of generalised particular market situation.

proposes that the iron ore component of the slab costs should have been isolated and an adjustment applied only to the remaining slab cost to address any perceived distortion. The ADC should have adopted the same methodology as that of the EU Commission in Implementing Regulation (EU) 2025/1042: flat rolled products of iron or non-alloy steel plated or coated products investigation. This entailed the use of Baoshan's iron ore imported prices rather than substituting a benchmark.

114. The applicants' claim that its proposed methodology of allowing its purchases of iron ore at international spot prices to be adjusted from the steel slab cost enables that '... the distorted elements (if any)' to be addressed in the constructed normal value and is '... reflective of "cost of production in the country of origin"'. It is claimed that iron-ore represents approximately [REDACTED] of slab costs and [REDACTED] of HRC production costs (confidential production cost information) and is a critical input in the overall cost to make HRC.⁸²

ADC Findings

115. Refer to Appendix B: [33] to [36] iron ore.

Submissions

The applicants'

116. The applicants' reiterate the arguments in its applications and emphasise that the ADC should have used its records of actual iron ore purchases given '... these were sourced from unrelated 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'.⁸³ It refers to the fact that the prices paid form part of the producers' actual costs and should not be disregarded due to the particular market situation findings of distortions in the Chinese steel market.⁸⁴

117. The applicants suggest there is no reason to disregard the iron ore costs in the applicants' records on either the basis of reg 43(2) or the ADC's interpretation of

⁸² Baoshan application, 20.

⁸³ Baosteel submission dated 20 July 2026, 4.

⁸⁴ Baosteel submission dated 20 July 2026, 3 - 5.

Article 2.2.1.1, or to refuse to make adjustments to the iron ore cost within the benchmark. It suggests that the test for reliability is whether the records reflect the costs actually incurred at arms length, not the comparison with a hypothetical benchmark. In this regard, it cites the WTO Panel Report, *United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea*, WT/DS488/r [7.197] to [7.198].

ADC

118. The ADC indicates:

- a. that the applicants' claim that their records relating to iron ore acquisitions during the investigation period were sourced from international mines at prevailing arms-length international prices. It notes that a submission was made to the ADC following SEF 658 that propose this same claim.
- b. its assessment of the applicants' records did not reveal that they sourced '... the entirety of their iron ore from unrelated miners'.⁸⁵ The raw material purchase listing revealed that the applicants' sourced iron ore through many State Invested Enterprises (SIE), some of whom were related parties. It stated that the detailed information on raw material costs is outlined in REP 658 Confidential Attachment 31.
- c. it was unable to verify the records (as referred to in REP 658 pages 186 – 187) for several reasons including:
 - The number of iron ore suppliers (some of whom are related parties) and intermediaries,
 - Inability to verify the upstream transactions of 'global' prices from mines to the original supplier to the applicants',
 - No information provided by the applicants regarding the price negotiation process or the company structures of its suppliers,

⁸⁵ ADC submission dated 17 July 2026, 10.

- Difficulties in establishing whether the transactions between the applicants' for the purchase of iron ore, and its suppliers were at arms length.
- d. it considered the steel slab level was an appropriate level to undertake the assessment of the benchmark and the reasons were outlined in REP 658 pages 171 – 173. It suggests that apart from the claims made regarding internationally sourced iron ore, the applicants have not suggested an error in using the steel slab.
- e. it did not reject the iron ore costs as not reflecting actual costs for the purposes of Article 2.2.1.1. Its finding was that the '... not normal and ordinary circumstances materially affect the applicants' costs of production' and its records did not establish that '... the iron ore costs were not affected by the not normal and ordinary circumstances', as their records did not support its claim that the iron ore was 'sourced entirely from unrelated suppliers in Australia...'.⁸⁶

119. In relation to the claim made by the applicants' regarding adopting the same approach as the European Commission in its investigation into flat-rolled steel products from China (in 2025/1042), the ADC expands on its concerns regarding relying on another jurisdiction's investigation of a different matter and not of the same investigation period. It indicates its reasons were outlined in REP 658.

120. The ADC refers to the role of the CMRG during the investigation period in REP 658 and notes that the CMRG was not fully operational during the case dealt with by the European Commission. Furthermore, the allegation regarding the role of CMRG in procurement of iron ore was raised late in the European Commission's investigation.⁸⁷

MOFCOM

121. MOFCOM refers to the applicants' claims that it sourced iron ore from unrelated international mining companies at prices formed on the international market. It considers that the applicants' iron ore records satisfy the 'reasonably reflect'

⁸⁶ ADC submission dated 17 July 2026, 12.

⁸⁷ Appendix B [11], ADC submission [54] and REP 658, 187.

condition in Article 2.2.1.1. It considers that these purchases were not distorted and therefore these costs should not have been rejected for use in the constructed normal value determined for HRC.

122. MOFCOM considers that the ADC's use of a benchmark is incorrect and inconsistent with WTO Appellate Body reports: '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)*'.⁸⁸ It suggests that the Appellate Body ruling in this case rejected a similar approach of adjustment by the EU as the surrogate benchmark did not represent the cost of soybeans in Argentina. It suggests that Australia has undertaken a similar approach in REP 658 by the ADC selecting an 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"'.⁸⁹
123. MOFCOM indicates that the ADC's adjustment aimed at removing perceived distortions also failed to ensure the adjusted benchmark reflects a cost of production in the country of origin (China) under Article 2.2.
124. MOFCOM considers that the ADC should have followed a similar approach to that of the European Union in its treatment of iron ore costs in its Tinplate investigation, that is, in the use of undistorted components of the exporters input costs rather than replacing the entire cost with a benchmark. It indicates the US has adopted a similar approach in the valuation of imported raw material costs used in further manufacture of goods. It considers the refusal to use the actual iron ore costs has inflated the normal value by 'smearing' the cost of the 'undistorted' iron ore within the steel slab benchmark.
125. MOFCOM also questions whether the ADC has interpreted a number of other legislative provisions correctly in its findings, including the interpretation of reg 43(2)(b)(ii) of the CIO Regulation: 'reasonably reflect competitive market costs associated with the production or manufacture of like goods' and s 269TAC(2(a)(ii): the application of particular market situation or the proper comparison of the normal

⁸⁸ MOFCOM submission dated 20 July 2026, 13.

⁸⁹ MOFCOM submission dated 20 July 2026, 13 - 14.

value and export price. It suggests the interpretation adopted is inconsistent with Australia's obligations under the Anti-Dumping Agreement.

Legislation

126. See Appendix C for the relevant legislation relating to normal value determination.

Analysis

127. This ground concerns whether the applicants' iron ore costs⁹⁰ should have been used in the cost of production determination of HRC as the iron ore is '... sourced at arms-length international spot prices from unrelated mines with no GOC involvement'. It states that the ADC failed to undertake an exporter-specific assessment as to whether its iron ore records reflected actual costs as required under Article 2.2.1.1.

128. The applicants' claim that the ADC should have used their recorded iron ore costs and applied any uplift only to the remaining slab costs or adjusted the Brazilian benchmark to remove the iron ore component: this is also referred to in Ground three. The applicants' provided the proposed methodology to apply an uplift to the non-iron-ore component of slab costs and refer to the European Commission's approach in flat-rolled steel products: see also [113]. It proposes that this adaptation aligns with WTO jurisprudence and would better reflect the cost of production in China.

129. In REP 658 Section 6.3.4.2⁹¹ (Consideration of article 2.2.1.1 of the ADA) dealing with the ADC's consideration of the applicants' records, it was stated:

For all selected exporters, the Commissioner has found for the cost of production:

- *The records of all selected exporters are consistent with generally accepted accounting principles of China.*

⁹⁰ Iron ore is the single largest raw material component of steel slab.

⁹¹ REP 658, 57.

- *The records of all selected exporters reasonably reflect the actual costs incurred in the production of the goods. (emphasis added)*
- *The circumstances in which the selected exporters' costs were formed are not normal and ordinary. Specifically, that the circumstances in which the cost of steel slab has been formed are not normal and ordinary, resulting in the recorded production costs of the selected exporters reflected a distorted cost of production.*

130. In its submission, the ADC stated that 'The commission did not make a finding that the applicants' records of iron ore costs did not reasonably reflect their actual costs. The commission expressly found that the applicants' "records relating to the cost of production of like goods...reasonably reflected the actual cost of production".⁹² It said the applicants' recorded costs were adjusted because '... the not normal and ordinary circumstances materially affect the applicants' costs of production of HRC' and 'the applicants' submission that their iron ore costs were not affected by the identified not normal and ordinary circumstances because they "were sourced entirely from unrelated suppliers in Australia at international market prices" was not established by the records submitted in support, for the reasons set out above'.⁹³

131. The first issue in Ground two relies on the proposition that the ADC failed to assess their records in relation to 'reasonably reflect'. As outlined above, the ADC stated that the applicants' records did reasonably reflect the cost of production. Therefore, the applicants' claim fails in this regard. The ADC did undertake this assessment and agreed that the records did reasonably reflect the cost of production. As dealt with in Ground one, the applicants' steel slab cost records (including the iron ore components) were not used for a different reason.

132. The substance of the remaining claims made in the body of the ground centre on whether the iron ore costs are not distorted by reason of being sourced at '... arm-length international spot prices from unrelated miners with no GOC involvement' and should be used in the cost of production of the normal value.

⁹² ADC submission dated 17 July 2026, [49] and citing REP 685 165.

⁹³ ADC submission dated 17 July 2026, [50] 12.

Iron Ore Costs

133. In its 19 January 2026 submission to the ADC, Baosteel said its iron ore was sourced from unrelated Australian suppliers at international market prices, similar to its claim in this ground. The ADC considered that claim and outlined its approach in REP 658.

134. The ADC found that the applicants' records showed iron ore was sourced through a range of SIEs, including related parties, and from a range of countries, including Australia. It considered Baosteel's iron ore purchase listing for one supplier and found Baosteel had not provided sufficient information to verify the 'original price' from the 'original source'. The ADC stated 'The commission therefore considers that it is unable to reliably determine if the iron ore costs incurred in the production of HRC by Baosteel necessarily reflect the price of the iron ore sold by the original producers'.⁹⁴ See also [118(c)].

135. The ADC did not consider it could rely on the 'iron ore costs incurred in the production of HRC by Baosteel'. The information about the applicants' iron ore suppliers is in Confidential Attachment 31 – Raw material supplier analysis and its reasons are outlined in C 7.2.3.5.1.2. A summary is in Appendix B [33] to [36].

136. At the 6 July 2026 conference, the Review Panel sought further information from the ADC on Confidential Attachment 31: Raw material supplier analysis.⁹⁵ The ADC explained in greater detail as to why the applicants' iron ore purchase information could not establish the price at which international mines sold to the domestic supplier in China.

137. The ADC advised that the applicants provided information from one related supplier showing the countries from which iron ore had been sourced. As that information was not verified, the ADC considered it could not '... be relied upon to make conclusions about the purchase prices of the raw material via other suppliers'.⁹⁶ It also indicated at conference that:

⁹⁴ REP 658, 187.

⁹⁵ Conference summary, 6 July 2026, 4 – 6.

⁹⁶ Ibid 5.

The ADC outlined the analysis undertaken of Baosteel's raw material supplies as detailed in this spreadsheet. It indicated that it had reviewed this information and identified that the applicants sourced iron ore entirely through a large number of SIEs including several related parties and was ultimately sourced from an extensive range of countries, including China, Australia and Brazil. The ADC explained that because all the iron ore was purchased domestically from SIEs, the ADC did not have any information from these listings that could be used to determine the price that the international mines sold to the domestic supplier that sold to the applicants. The ADC noted the exception to this is that the applicants provided an iron ore purchase listing from one of their related suppliers that showed it ultimately sourced iron ore from a range of countries, including Australia, Brazil and others. The ADC noted that this listing was received for only one of the many suppliers of raw materials to the applicants and was not verified and therefore the ADC did not consider it could be relied upon to make conclusions about the purchase prices of raw materials via other suppliers.

138. In its submission, the ADC indicated it could not verify each supplier's records, given the multitude of suppliers. Although it had 'one related supplier list', there was insufficient information to establish that those transactions were arms length. It also stated that, even if those transactions were arms length, this would not necessarily support a 'generalised inference' that all of the applicants' iron ore purchases were arms length.⁹⁷

139. The Review Panel has considered Confidential Attachment 31: Raw Material Analysis, Baoshan's verification and confidential work program reports on the applicants' iron ore purchases, the ADC's submission and the ADC's analysis of that information in REP 658 in the context of the applicants' claims and submission and MOFCOM's submission.

140. The Review Panel is not persuaded that the applicants' iron ore records can be relied on more generally as reflecting 'arms length international spot prices from unrelated mines'. The information before the ADC, and in the applications to the Review Panel, is insufficient to establish that those records reflect arms length

⁹⁷ ADC submission dated 17 July 2026, [43], 11.

international spot prices. Nor is it apparent that the applicants provided information that establishes that the iron ore costs were ‘... not under the influence of the GOC or subject to any price distortion during the supply chain’. The Review Panel considers this precludes the use of the iron ore costs in the manner proposed by the applicants.

Use of the Iron Ore component.

141. The applicants submit that the ADC should have isolated the claimed ‘undistorted’ iron ore cost and adjusted only the remaining slab benchmark to determine the cost of production in China. They also advance a related Ground three claim that the benchmark should be adapted to address ‘undistorted costs’. Both aspects of this claim rely on their view that the iron ore cost was ‘... purchased at competitive international prices free of any government influence’.⁹⁸ The applicants’ submission reiterates its view that it sources iron ore in arms length dealings with unrelated parties.⁹⁹

142. MOFCOM in its submission also relies on its view that the iron ore should be used in the cost of production determination as it is sourced from unrelated parties on the international spot market.

143. This fails as the applicants have not established that their iron ore costs were purchased at competitive international prices free of any government influence as they were sourced from SIEs in China. For the reasons outlined in [134] to [138], the Review Panel is not persuaded, on the information before the ADC and the Review Panel, that the applicants’ iron ore costs have the claimed evidentiary reliability for use in the determination of the cost of production either in its own right as a cost or to undertake an adjustment to the Brazilian benchmark.

144. Furthermore, as the Review Panel does not consider the iron ore costs have sufficient reliability for use, it also means that such costs cannot be relied in the manner suggested by the applicants with respect to the approach adopted by the European Commission: see [113].

⁹⁸ Applications [1] 18.

⁹⁹ Baosteel’s submission dated 20 July 2026, 5.

145. The Review Panel therefore considers that the applicants have not established that their iron ore cost records can be relied upon in Minister's determination of the cost of production under s 269TAC(2)(c)(i) of the Act: see also the Review Panel's finding in Ground one, or as an adjustment to the Brazilian benchmark: see also Ground three.

Conclusion

146. The Review Panel rejects this ground of review because the applicants have not established:

- a) that the ADC failed to undertake an 'exporter-specific assessment' of evidence that these records failed to reasonably reflect actual costs under Article 2.2.1.1 as the ADC stated the applicants' records did reasonably reflect actual costs, and
- b) that their iron ore costs reflected 'arms-length international spot prices from unrelated mines with no GOC involvement', and that those costs could be used in the cost of production calculation or provide a proper basis to adjust the benchmark.

147. The Review Panel agrees with the Commissioner's findings on the Minister's determination of the cost of production with respect to the claims made in this ground.

Ground 3 (All applicants)

The Minister erred in law and fact by accepting the REP 658 recommendation to use an unadapted Brazilian steel slab benchmark, selected on superficial metrics with only minimal labour adjustments, as the external proxy for Baoshan's (Zhanjiang's and Meishan's) slab costs, without exploring or explaining less distortive alternatives, and without adapting the benchmark to reflect the cost of production in China.

Claims

148. The applicants' claim that the use of the Brazilian steel slab market indices (via MEPS data) as the benchmark in determining the cost of production of steel slab

used in constructing the normal value is incorrect. They propose for a range of reasons that Brazil is not a suitable surrogate for China. The applicants' indicate that on average the uplift applied to the steel slab was 37 per cent, with no recognition of the 'undistorted' iron-ore component.¹⁰⁰

149. The applicants' state that the ADC selected Brazil as a surrogate based on superficial similarities and applied minimal adjustments to labour costs and did not make adaptations for China's economies of scale as well as other features of China's production advantages.

150. The applicants cite particular WTO Appellate Body and Panel reports proposing that the ADC's approach is in contravention of certain WTO Anti-Dumping Agreement jurisprudence as follows:

- a) It claims the circumstances in this review are similar to those found in the WTO *A4 Copy Paper* Panel Report (DS529). It states 'The Panel assessed whether the ADC had acted in violation of Article 2.2 by replacing the pulp costs of exporters with a benchmark based on third-country exports, instead of replacing the costs of woodchips (the direct input into the production of pulp). The Panel found that, pursuant to the obligation under Article 2.2 to use the "cost of production in the country of origin", the investigating authority was obliged to explore alternative methods enabling it to arrive at "the cost of production in the country of origin" by utilizing components of the producer's costs unaffected by a distortion'.¹⁰¹
- b) The applicants' propose that there is clear WTO jurisprudence that when using third country information, it must be adapted to reflect the conditions in the exporting country: it refers AB in *European Union - Anti-Dumping Measures on Biodiesel from Argentina*.¹⁰²

¹⁰⁰ The 'undistorted' iron ore claim is dealt with in Ground two.

¹⁰¹ The applications Appendix B, page 2, citing WT/DS529/R, *Australia - Anti-Dumping Measures on A4 Copy Paper*, para 7.32 – 7.34 and 7.58 – 7.62.

¹⁰² WT/DS473/AB/R *European Union - Anti-Dumping Measures on Biodiesel from Argentina*, para 6.280.

- c) The applicants' refer to other WTO Panel reports involving Australia¹⁰³ and note that '... the authority must consider available alternatives that preserve undistorted components of the producer's costs, must not rely on superficial similarities without rigorous adjustment for scale, input costs and market structure, and must explain its choice of benchmark in light of less distortive options.'¹⁰⁴ It claims that the ADC (and Minister) have not properly addressed this aspect of the normal value in its decision to use Brazilian steel slab and did not make adaptations to address the differences between China's and Brazilian steel slab.

151. The applicants claim that its submission to the ADC proposing that '... verified slab costs from POSCO Korea (a far more comparable North-Asian blast furnace-based producer with materially similar iron-ore sourcing conditions)¹⁰⁵ as a superior alternative...' ¹⁰⁶ should have been used. It suggests that the ADC did not provide an adequate explanation of its dismissal of Korean steel slab domestic prices as an alternate benchmark.

152. The applicants' compare the MEPS data for May 2024 which indicates a Brazilian domestic slab price of [REDACTED] whereas the domestic Korean HRC price was [REDACTED] (Confidential price information), to indicate that Brazil's slab costs (an earlier production stage of HRC) are higher than the Korean HRC price. It proposes Korea would be a more suitable and preferable benchmark source than Brazil.¹⁰⁷ It refers to Korea being a large steel-producing nation, mainly using blast furnace-basic oxygen furnace production (similar to China's production method) and is located in the same region as China, thereby facing similar competitive market forces and logistic considerations in sourcing raw materials. It lists the similarities of Korean steel production and contrasts the differences to Brazilian steel production. It considers the ADC's review of the information supplied on Korea was ' cursory' and suggests that the ADC failed to

¹⁰³ *Australia – Anti-Dumping Measures on A4 Copy Paper* (paras 7.32 to 7.34) and *Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China* (paras 7.75 to 7.80 and 7.85 to 7.87).

¹⁰⁴ All applications, 19 - 20.

¹⁰⁵ ADC REV 688: Hot Rolled Steel Plate: a concurrent case being considered by the ADC involving Korean exports that contains information relating to the cost of production of steel slab.

¹⁰⁶ The applications Appendix B, 20.

¹⁰⁷ Applications, 23.

investigate Korea as an alternative to Brazil, particularly in relation to the sourcing of iron ore purchase prices and slab production costs.

153. The applicants' noted that while the ADC referred in REP 658 Appendix C, to Baoshan's submissions regarding the use of Brazil as a surrogate, it claims that the refusal to change or adjust the benchmark, means that the ADC did not conduct a proper or objective examination of these issues. It claims this inconsistent with Australia's obligations under Article 2 of the Anti-Dumping Agreement.

154. The applicants consider the ADC (and Minister) has used an inappropriate surrogate benchmark and has not constructed a normal value that reflects 'the cost of production in the country of origin'.

ADC Findings

155. Refer to Appendix B: Benchmark [16] to [22], Alternative Benchmark [30] to [32] 'and Brazil [23] to [29].

Submissions

The applicants

156. Baosteel (the applicants) reiterates its arguments in its applications concerning:

- a) the choice and use of the Brazilian benchmark,
- b) its view the ADC should have used its records of actual iron ore costs in the cost of production determination of HRC,
- c) the ADC should have isolated the 'undistorted' costs for adjustment of the benchmark, and
- d) the rejection of using the 'actually distorted input costs' rather than the 'whole next-stage cost' (steel slab) for the benchmark comparison purposes.

157. Baosteel also emphasises its concern with the reasons provided by the ADC in refusing to use the Korean POSCO's steel slab costs information. It considers such

reasons are inadequate and do not meet the standard of an investigating authority required under Australia's obligations under the Anti-Dumping Agreement.¹⁰⁸

ADC

158. The ADC refers to its findings in REP 658 concerning why Brazilian steel slab prices were selected for the benchmark and its analysis of appropriate adjustments made, or not, to the benchmark, in order to determine the cost of production for steel slab in China. It does not consider Brazil was selected on the basis of 'superficial similarities'. It referred to its analysis in Confidential Attachment 2 regarding socioeconomic metrics, common use of blast furnaces to produce steel, Brazil's relatively high total annual steel production and in the context of the other available alternatives considered.¹⁰⁹

159. The ADC outlined its analysis and reasons associated with adjustments it considered. These include:

- a) Labour adjustments,
- b) Economies of Scale,
- c) Utility rates,
- d) Technological efficiencies,
- e) Brazilian trade remedies,
- f) Alloy input prices, and
- g) Brazilian iron ore premium.

160. The ADC also referred to the reasons it formed the view in its consideration that Korea was not a suitable choice given certain data limitation as outlined in REP 658 C.7.2.3.4.6.

¹⁰⁸ Baosteel submission dated 20 July 2026, 5 - 6.

¹⁰⁹ ADC submission dated 17 July 2026, 13 – 16.

MOFCOM

161. MOFCOM's comments outlined in Grounds 1 and 2 also apply to this Ground.

MOFCOM refers to:

- a) certain WTO Appellate Body and Panel Reports relating to the need for adaptation to ensure that a benchmark reflects the cost of production in the country of export as well as (a) Panel Report *A4 Copy Paper* (DS529), and (b) *Australia - Certain Products from China* (DS603). It considers the approach in REP 658 contains similar incorrect approaches as to that shown in the above-mentioned reports.
- b) its view that the approach adopted by the ADC 'used the benchmark to remove any perceived price distortions caused by alleged Chinese Government intervention, is contrary to the Appellate Body ruling in *EU – Biodiesel* (DS473)'.¹¹⁰
- c) the Brazilian benchmark based on MEPS price index was not adapted to reflect Chinese production conditions, nor was the choice of Brazil compared sufficiently with what it claims are 'less distortive alternatives (such as POSCO Korea)'.¹¹¹

Legislation

162. See Appendix C.

Analysis

163. This ground suggests that the ADC (and Minister) erred in relation to three issues:

- a. the choice of an unadapted Brazilian steel slab benchmark based on superficial metrics with only minimal adjustments to reflect the costs of production in China,¹¹²

¹¹⁰ MOFCOM submission dated 20 July 2026, 13.

¹¹¹ MOFCOM submission dated 20 July 2026, 23.

¹¹² The Review Panel notes that the applicants' use of the word 'unadapted' and its later reference to minimal adjustments are inconsistent. The Brazilian benchmark used by the ADC and referred to in REP 658 Table 33 outlines the consideration of adjustments to the benchmark.

- b. failure to undertake sufficient adaptation of the Brazilian benchmark to ensure that the Article 2 requirements are met and to ensure that the normal value reflects a cost of production in the country of origin, citing the *A4 Copy Paper* Panel report as well as other Panel reports, and
- c. did not undertake sufficient exploration or explanation of the alternatives considered in its decision of Brazil as the benchmark, citing the *Biodiesel* Appellate Body report in this regard. It considers in particular that insufficient explanation was provided of why Korean information (POSCO's data) was unsuitable.

Choice of Benchmark

164. In relation to issues (a) and (b) above, the Review Panel referred to the following information outlined in REP 658:¹¹³

- a) the explanation of why Brazil was chosen (REP 658 C.7.2.2. 173),
- b) the information in Confidential Attachment 2: Benchmark data and Confidential Attachment 29: Slab cost analysis, and
- c) the adaptations applied to the Brazilian benchmark as outlined in REP 658 Table 33.

165. At the 6 July 2026 conference, the ADC provided further information in relation the information considered in the choice of Brazil as the steel slab benchmark and the adjustment calculation undertaken, that were relevant to:

- a) to its consideration of market price indices,
- b) the limitations regarding market price data on steel slab as well as the other market price information reviewed in relation to global iron ore and HRC prices,
- c) the limited public information available on steel slab, and

¹¹³ In addition, the information in Grounds one and two was also considered given the close connection to each of these grounds.

- d) the range of factors it considered in deciding that Brazil constituted a suitable surrogate for steel slab.¹¹⁴

166. The Review Panel considered information concerning the choice of Brazil as well the applicants' claims and the comments in the submissions received. It is apparent that a range of countries were considered in the ADC's analysis and the reasons why Brazil was considered most appropriate are outlined in REP 658: see Appendix B for a summary of the ADC findings in this regard [23] to [29] and supporting information in Confidential Attachment 2: Benchmark data.

167. The ADC's analysis suggests there was limited information available on the steel slab prices of other countries. The Review Panel has considered the available information outlined in REP 658 Confidential Attachment 2, including the steel slab prices information for different countries and as well as the elements assessed by the ADC regarding the similarities or otherwise between China and other countries, including Brazil's steel production.

168. The ADC conducted analysis of the Top 10 World Steel Producers in its assessment of suitable benchmarks. This included the following metrics (with source details:

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]
- d) [REDACTED]
- e) [REDACTED]
- f) [REDACTED]
- g) [REDACTED]
- h) [REDACTED]

¹¹⁴ Conference summary, 6 July 2026, 3 - 4.

i) [REDACTED] (Confidential Measures information of Steel Producing Countries).

169. The Review Panel also had regard to the specific issues raised in the claims as well as the submissions of the applicants' and MOFCOM. It is apparent that the ADC did consider other benchmark country options but decided that Brazil had greater similarities with China than the others for which steel slab price information was available. The consideration of Korea is dealt with further at [190].

170. At the 6 July 2026 conference, the ADC indicated that it considered both MEPS International data and Bloomberg price data. It referred specifically to the applicants' proposal regarding its consideration of Korea and its reasons for not adopting this approach.¹¹⁵

171. The ADC also provided the following further information at conference relating to its use of the steel slab level for the assessment of a benchmark given the impact this had on the choice of benchmark:

The ADC also highlighted that there are a range of grades of iron ore, different quality, different iron composition, wet/dry weight, moisture content, delivery terms (for imported iron ore) as well as different types used in the production process that made it difficult to align spot price data for use as a benchmark. It indicated that different producers used various blends of raw materials, including steel scrap, coke and iron ore. Such factors presented difficulties in the use of an iron ore price index in terms of consideration as a potential surrogate level. There were different data sources available, but it considered it difficult to match the types of iron ore within the price indices in the varying production blends between different producers. The ADC also noted that it had asked exporters to provide information on raw materials that represented over 10 per cent of the production cost and it was apparent that there were a range of subtypes of the raw material inputs that met this threshold within the production process of HRC (see discussion on subtypes in REP 658 page 172). The ADC also considered there were raw material costs individually comprising less than 10 per cent of the production cost. This was one reason as to why the choice was made to use steel slab as the

¹¹⁵ Conference summary, 6 July 2026, 3.

*surrogate level, rather than navigating the range of raw materials used upstream in the production process. The steel slab cost, being the latest major semi-finished raw material input in the production process, captures any effect of the circumstances on the raw material inputs that may not otherwise be accounted for if assessing each raw material individually (see REP 658, page 172).*¹¹⁶

The decision to use the steel slab level impacted the choice of information sources available with respect to the benchmark.

172. The Review Panel considered the reasons why steel slab was an appropriate level for the comparison, this included reference to MEPS data on HRC prices to which the applicants refer. The Review Panel also considered:

- a) the information regarding the choice of the most appropriate country on which to base the benchmark see also [168] for the measures used by the ADC to undertake this assessment, and
- b) the additional assessment stage included reference to the countries to which steel slab market prices were available.

173. The Review Panel considers that on the basis of the information referred to above, Brazil is an appropriate choice as a benchmark for steel slab. While there are certain differences particularly relating to China's capacity, there are other measures considered that reveal sufficient similarities between China and Brazil in terms of steel production and other factors.

174. The Review Panel is not persuaded by the applicants' claim that the metrics considered in its decision to use Brazil as the benchmark country for steel slab were superficial. The metrics outlined in [168] appear relevant and appropriate. There were several factors considered and relative to the countries for which steel slab price information was available, the Review Panel considers Brazil was an appropriate choice in the circumstances of the available information.

¹¹⁶ Conference summary, 6 July 2026, 5.

Adjustments to Benchmark

175. The next aspect of this ground relates to whether the adaptation made by the ADC was correct and whether additional adaptations should have been made. The Review Panel considered the adjustments referred to in REP 658 Section C.7.2.3 and Table 33 which outlined the rationale for adjustments to the Brazilian benchmark for the cost items in steel slab production ‘... to ensure it is an appropriate comparator to determine a cost of production for steel slab in China’.¹¹⁷ The particular focus of the applicants’ is whether the benchmark should have been adapted for certain raw material costs, particularly the claimed ‘undistorted’ iron ore costs (see Ground two) as well as the scale of economy adjustment.
176. The Review Panel considered the labour adjustment calculation made to the Brazilian benchmark (as contained in Confidential Attachments 2 and 29 to deal with labour cost differences between China and Brazil), no error was apparent in this calculation.
177. The main adjustment claimed by the applicants’ (as well as in MOFCOM’s submission) in Ground three relates to whether an adjustment should be made to the Brazilian benchmark to deal with the iron ore cost. Its claims are framed about the need to preserve the undistorted iron-ore component¹¹⁸ and the responsibility of the investigating authority ‘... to ensure that the surrogate information was properly adapted to reflect the cost of production in China’.¹¹⁹
178. Both the applicants’ and MOFCOM cite the Appellate Body Report on *Biodiesel* (DS473) which indicates that an investigating authority must consider adaptations in order to represent the cost of production in the country of export and provide an explanation of the reasons it made adaptations or otherwise.¹²⁰ Both the applicants’ and MOFCOM disagree that the ADC has undertaken this task in a manner that aligns with the *Biodiesel* Report.
179. The Review Panel observes that the ADC considered and provided an explanation of adaptations it applied to the benchmark to represent the cost of production in

¹¹⁷ REP 658 177 – 178.

¹¹⁸ Applicants’ Attachment B, 20.

¹¹⁹ Applicants’ Attachment B, 22.

¹²⁰ REP 658, 56.

China. This is summarised in REP 658 Table 33. This is aligned with the requirement outlined in the *Biodiesel* Appellate Report and is also consistent with the approaches considered in the *Dalian Steelforce* and *Changshu Longte* judgments: see also Ground one.

180. As dealt with in Ground Two in paragraphs [133] to [145], the Review Panel considers there is insufficient evidence available to support the claim that the iron ore costs are ‘undistorted’ and should have been used in the cost of production calculation. For this reason, the Review Panel does not agree that it would be appropriate to either adapt the benchmark for the iron ore cost element or remove this element from the cost construction and use the applicants’ records of iron ore. Accordingly, the applicants’ claim for an iron ore adjustment is not agreed with by the Review Panel.
181. The other adjustment that the applicants’ and MOFCOM questioned relates to the ADC’s decision to not grant an economy of scale adjustment. The Review Panel considered the information in Confidential Attachment 29: Chinese Market Assessment: Slab cost analysis as well as the analysis undertaken in REP 658 C.7.2.3.4.2. This included the ADC’s assessment of World Steel Association data on the production of crude steel with an assessment of price data (from MEPS International). This analysis did not identify a clear correlation between higher production volumes and lower slab prices (and presumably lower slab costs) which the ADC indicated would support the need to make such an adjustment.
182. The ADC noted that while the exporter’s had supported an economy of scale adjustment, no amount or methodology was proposed to the ADC. Similarly, the applicants’ have referred to ‘scale disparity’ but not proposed a manner to deal with this other than proposing that Korea be considered as an alternative.¹²¹ The ADC did not make an adjustment on the economy-of-scale adjustment based on its findings.
183. The Review Panel examined the assessment of the economy-of- scale analysis information undertaken by the ADC. There does not appear to be any information presented by the applicants to the ADC, or to the Review Panel, as to:

¹²¹ Applicants’ Attachment B, 22.

- a) whether there is a correlation between higher production volumes in total and lower prices of steel to challenge the ADC's analysis in this regard. The applicants' state that as China is the largest producer in the world, it must achieve an economy of scale advantage but outlines no particular method of quantifying the advantage or the required adjustment.
- b) suggest that the individual producers in Brazil produce different quantities and do not accrue an economy of scale as compared to the individual producers in China.

184. The Review Panel has noted the research undertaken by the ADC and its comment that it had not been able to ascertain a methodology to calculate an economy of scale adjustment. Neither have the applicants proposed evidence of the scale difference between the manufacturers or a method to quantify such an adjustment. On this basis, the Review Panel agrees with the ADC that the need for an economy of scale adjustment has not been established.

185. The Review Panel has considered the reasons provided by the ADC regarding the assessment of the other adjustments referred to by exporters. The adjustments considered are outlined at [159] above.¹²²

186. The Review Panel has reviewed the ADC's analysis as outlined in REP 658 C7.2.3 [175] to [184]. On the basis of the information before the Commissioner as well as the applicants' claims and the submissions from MOFCOM and the applicants, the Review Panel does not consider the ADC failed to consider and apply appropriate adjustments to the Brazilian benchmark.

187. The applicants' refer to what it considers are the similarity of circumstances in this matter with that of the *WTO A4 Copy Paper* Panel Report. It considers the ADC did not investigate or consider '... less distortive alternatives that preserved the undistorted components of the producer's costs and to explain why it chose the more distortive option.'¹²³

188. The Review Panel has considered its claim as to whether the circumstances in *A4 Copy Paper* report are similar to the circumstances in REP 658. It is not apparent

¹²² REP 658 Table 33.

¹²³ Applicants' Attachment B, paragraph 3, 23.

that the circumstances are similar. In REP 658, the ADC considered that the applicants costs of production records could not be used, and the Review Panel has dealt with this finding in Ground one. The ADC's finding is that there was insufficient evidence regarding whether the applicants' iron ore costs were 'arms length international spot prices from unrelated miners with no GOC involvement'. The applicants' claims relating to 'undistorted components of the producer's costs' are referred to in Ground two and it was not established that the iron ore costs are 'undistorted components'.

189. The Review Panel does not consider the circumstances in *A4 Copy Paper* are the same as to the findings in this matter. The ADC considered the applicants' actual costs could not be used and also assessed the iron ore costs. It was not established there were undistorted components in the applicants' costs that could be used. The ADC provided a detailed analysis of its approach to the cost of production assessment in REP 658 Appendix C. On this basis it is not a similar scenario to that outlined in the *A4 Copy Paper Panel Report* and the Review Panel considers the circumstances are different.

Alternative Benchmarks

190. The Review Panel also considered the applicants' claim as to whether the ADC conducted sufficient analysis of alternative benchmarks to Brazil. As outlined in [168] above, other countries were considered by the ADC. It is apparent from the analysis outlined in REP 658 Sections C.7.2.2.4 and C.7.2.3.4.6 and from the further information obtained in the 6 July 2026 conference that the ADC did consider alternative countries for the purposes of determining the most appropriate benchmark.¹²⁴

191. The applicants' claim that Korea would be a more appropriate benchmark alternative given it has more similarities to China in relation to its steel industry, is located within the same region and is subject to similar competitive market forces in sourcing iron ore. It refers to the information available to the Commissioner in ADC inquiry No 688 in this regard.¹²⁵

¹²⁴ Conference summary dated 6 July 2026, 3- 4: see also [82].

¹²⁵ Certain flat-rolled steel products from China and Korea Investigation No 688 currently being conducted.

192. The Review Panel notes that the ADC provided an explanation of why it did not consider the Korean information was suitable for use in this matter in REP 658 C.7.2.3.4.6. It indicated that the information in that case had not at that time been verified and there was limited overlap in the investigation periods being considered. For this reason, it considered it could not use this information. At conference, the ADC also advised that there was no publicly available steel slab price information for the Korean market.¹²⁶

193. The Review Panel has considered the reasons provided by the ADC and agrees that the use of unverified exporter's information with only one quarter of the investigation period in common would present additional risks in the calculation of the cost of production in the normal value. The Review Panel agrees that this information is not suitable for use for this reason.

194. The Review Panel has considered the applicants' specific claims in the context of the information contained in REP 658 and its confidential attachments that underpins the information outlined in Appendix C. It is not apparent that the applicants' claims have been substantiated. It was open to the Commissioner to assess that:

- a) Brazil was sufficiently similar to provide a suitable benchmark for China in relation to steel slab – see [164] to [174].
- b) An adjustment was undertaken to ensure the Brazilian steel slab benchmark reflected the costs of production in China and an explanation provided as to why other adjustments as summarised in REP 658 Table 33 were not made. This is not inconsistent with the WTO Panel Reports cited by the applicants' – see [175] to [189].
- c) There was insufficient information to establish that the applicants' iron ore costs were based on arms length international spot prices on the global market that would support an adjustment based on the information: see Ground two [133] to [145].

¹²⁶ 6 July 2026 Conference, 3.

- d) The Korean information was not suitable as evidence in this matter for normal value purposes – see [190] to [193].

Conclusion

195. The Review Panel rejects this ground of review because it considers:

- a) the ADC did undertake analysis of alternate countries in its decision to use Brazil as the benchmark and provided an explanation as to why Brazil was preferred. It also made an adaptation to reflect costs of production in China and provided reasons as to why other adjustments were not suitable,
- b) there were sufficient similarities between Brazil and China to use Brazil as a surrogate, and
- c) that the Korean information was not suitable for use in the determination of the normal value.

196. On this basis, the Review Panel agrees with the Commissioner's findings in this regard.

Summary of Normal Value findings in relation to the three grounds

197. The Review Panel considers that the applicants' have not established that:

- a) the ADC (and Minister) was precluded from using the Brazilian benchmark as adjusted, in the determination of the cost of production pursuant to s 269TAC(2)(c)(i) of the Act. Nor was the Minister required to use the applicants' actual costs where it was considered such costs had been formed in circumstances that were not normal or ordinary.
- b) there was an error in relation to not using the applicants' iron ore costs in the manner proposed by the applicants in Ground two. The Review Panel found there was insufficient evidence to support the applicants' claims that the iron ore costs were based on arms length international spot prices given their purchases were from SIEs and not with the international miners.
- c) there was an error in the decision to use the Brazilian steel slab benchmark or that the ADC failed to make adjustments to the Brazilian steel slab

benchmark to enable its use as a comparator. The Review Panel agrees with the explanation and analysis of the reasons provided by the ADC as to why it made one adjustment and not others.

- d) the ADC failed to consider other alternatives for benchmark purposes as well as the applicants' proposed Korean option. The Review Panel considers that it was appropriate to not use the Korean information for the reasons outlined in REP 658.

198. In summary, the Review Panel agrees with the Commissioner's findings in relation to the cost of production element in the constructed normal value for HRC outlined in REP 658. That is, that the Brazilian benchmark as adapted be used in the cost of production calculation in the construction of the normal value determined pursuant to s 269TAC(2)(c)(i) of the Act. The ADC has provided a detailed analysis supported with fact-based well-reasoned arguments in relation to its assessment of normal value.

Recommendation

199. Pursuant to s 269ZZK(1) of the Act and for the reasons given above, I consider that the Reviewable Decision was the correct or preferable decision.

200. For the reasons set out in this report, I recommend that the Minister pursuant to s 269ZZM(1)(a) of the Act affirm the Reviewable Decision.



Jaclyne Fisher OAM
Panel Member
Anti-Dumping Review Panel
17 August 2026

Appendix A: Conferences

Date of conference	Participants	Purpose of conference
11 June 2026	Applicants and ADC	To seek further information on certain aspects of the applications.
6 July 2026	ADC and applicants (attended for certain segments of the conference)	To seek further information in relation to certain confidential attachments relating to the benchmark, price index information, cost of production, cost replacement steel slab assessment, iron ore/raw material prices, CTMS.

Appendix B: Summary of ADC Findings

1. The ADC found that the GOC's actions, policies and practices have distorted conditions in the Chinese steel market. This is detailed in REP 658 Appendix A: Particular Market Assessment. It considers these distortions have created a particular market situation in China for HRC. The ADC, in Appendix B, considered whether the sales of HRC in the domestic market are suitable for determining a normal value pursuant to s 269TAC(1). This required consideration of whether the particular market situation permitted a proper comparison of domestic selling prices with the export prices. The ADC found that a proper comparison was not possible and for these reasons the normal value could not be determined pursuant to s 269TAC(1) of the Act.¹²⁷
2. The ADC indicates that s 269TAC(2)(c) of the Act provides that the normal value can be constructed by the sum of the:
 - a. amount that the Minister determines to be cost of production or manufacture of the goods in the country of export, plus
 - b. on the assumption that the goods had been sold for home consumption in the ordinary course of trade in the country of export, instead of being exported, amounts determined to be the selling, general and administrative costs (SG&A) associated with the sale and the profit on that sale.
3. Section 269TAC(2)(c) is to be read in conjunction with the *Customs (International Obligations) Regulation 2015* (CIO Regulation) which details the methodology to be used to determine these amounts.
4. The calculation methodology of the cost of production used by the ADC (and the Minister) was:

'The cost of production determined using the exporters' recorded CTM with the steel slab costs adjusted using the proportional difference between the Brazilian and Chinese steel slab market prices indices, with the Brazilian index adapted for the differences in the countries' steel slab industries to

¹²⁷ The specific legislative provisions relating to s 269TAC and determination of the normal value, if s 269TAC(1) is not available, are outlined in Appendix B of this report.

reflect a cost for steel slab in China free of the effects of the abnormal circumstances (see chapter 6.3.4 and Appendix C, chapter 7.2).¹²⁸

Applicants' Cost of Production

5. REP 658 Appendix C outlines the ADC's consideration of the cost of production in China. In relation to reg 43 of the CIO Regulation, the ADC found that the cost of production records was kept in accordance with GAAP in China but did not reasonably reflect 'competitive market costs' associated with the production or manufacture of like goods.
6. The ADC indicates that in circumstances where regulation 43(2)(b) of CIO Reg are not met, '... the Minister is neither required to, nor prohibited from, using an exporter's records to determine the normal value under s 269TAC(2)(c)(i), however the Minister is to exercise their discretion in s 269TAC(2)(c)(i) in accordance with the requirements of the Anti-Dumping Agreement.'¹²⁹ The ADC also indicated '... Article 2.2.1.1. does not mandate the use of the information in an exporter's records where those conditions are met in all circumstances. It only provides that where those conditions are met costs "shall normally" be calculated based on the exporter's records.'¹³⁰
7. The ADC in considering the particular market situation found that the GOC had exerted significant influence on prices in the steel industry.¹³¹ It also found for the purposes of reg 43(2) of the CIO Regulation that '... the exporters' recorded costs do not reflect competitive market costs'¹³² for the cost to produce steel slab' and that steel slab represents over 90 per cent of the CTMS HRC. It considered that '... the records do not reflect competitive market costs because the costs are not the same as they be if determined only by supply and demand absent government intervention'.
8. The ADC considered Article 2.2.1.1. of the Anti-Dumping Agreement (the text of this Article is outlined in [57]) and found '... it is not appropriate to use the selected exporters' unadjusted records to construct the normal value' as:
 - a. while the records are consistent with GAAP in China and reasonably reflect the actual costs incurred in the production of the goods;

¹²⁸ REP 658 Section 6.4.6, 61 – 62.

¹²⁹ REP 658 Section C6, 165 - 166.

¹³⁰ REP 658 Section C6, 166.

¹³¹ REP 658 165.

¹³² REP 658 165.

- b. 'the circumstances in which the selected exporters' costs were formed are not normal or ordinary. Specifically, that the circumstances in which the cost of steel slab has been formed are not normal or ordinary, resulting in the recorded production costs of the applicants' reflecting a distorted cost of production.'¹³³

9. The ADC indicated that it used the cost of production for HRC and made adjustments

'... recorded cost of production adjusted to reflect a cost free of the effects of the abnormal circumstances. The Commissioner has relied on the proportional difference between the Brazilian and Chinese steel slab market price indices in USD per metric tonne (MT), applied to the selected exporters' steel slab costs. The Commissioner has adjusted this proportional difference in market price indices for differences in the Brazilian and Chinese markets for steel slab and the countries' steel industries to reach a cost in China, where the commission considers an adjustment is appropriate and reliable information is available to do so.'¹³⁴

10. The ADC addressed comments by Baosteel in its submissions relating to the approach it adopted. It commented that it performed '... two distinct legal tests... ' and 'The two conclusions reached, being that there is a situation in the market that prevents the normal value from being determined under section 269TAC(1) and determining that the exporters raw material cost should not be used to determine the cost of production, do rely on some common factual findings. Those factual findings are in fact relevant to both tests, and do not reflect any misunderstanding of the legal requirements of each'.¹³⁵

11. The ADC indicated that it considered if it relied on the applicants' cost of production it would '... undermine the very basis for having recourse to a constructed normal value in the first place'¹³⁶ and that it had '... determined a cost of production for HRC in China to reflect a "market-oriented price" and that did not re-introduce the factors that had led to a constructed normal value being required'.¹³⁷

'Normal and ordinary'

¹³³ REP 658 Section 6.3.4.2, 57.

¹³⁴ REP 658 Section 6.3.4.3, 57

¹³⁵ REP 658 171.

¹³⁶ REP 658,189

¹³⁷ REP 658,184

12. The ADC outlined its assessment of the WTO Panel reports cited by the applicants and the GOC in submissions following SEF 658. It indicates it does not agree with the interpretations presented regarding the meaning of 'normally' in Article 2.2.1.1. nor the circumstances that would justify departure from the use of the exporter's records.¹³⁸
13. In REP 658 Section C7 'Are circumstances 'normal and ordinary' the ADC outlined its findings:
- a. The steel industry and market are subject to GOC intervention which has resulted in lower prices of critical inputs: iron ore, coal, steel scrap and electricity than would otherwise been apparent in the absence of GOC influence (this relies on information in Appendix A),
 - b. These raw materials used by the applicants comprise the majority of the cost to produce steel slab, which represents over 90 per cent of the CTM HRC. The ADC considers the impact of these prices has flowed through to the applicants costs of production (refer also to REP 658 Appendix A chapter A.7). It noted that the applicants purchased its raw materials from suppliers based in China, some of whom are related parties. It also refers to the role of the China Minerals Resources Group (CMRG), a SOE with the role of securing raw material supplies for industries including for steel.
 - c. The ADC considers that the 'costs' used in the applicants' CTM were not 'normal or ordinary' and 'reflect an unreliable cost of production' for use by the Minister in determining the constructed normal value under s 269TAC(2)(c) of the Act. 'The commission identified industry wide distortions and has also found that those distortions affected each individual exporter in a manner that rendered their records unsuitable for use for the purposes of Article 2.
14. The ADC noted that the applicants, LY Steel (another exporter) and the GOC made submissions addressing the ADC's approach to the issue of 'normal'. These submissions referred to certain WTO Panel reports and proposed that '... there is a strong presumption in favour of verified exporter data, permitting deviations only in exceptional, well-justified circumstances tied directly to the records' reliability for cost allocation' and

¹³⁸ REP 658 169 – 171.

*‘... exporter-specific evidence of extraordinary conditions rendering the records unreliable for cost allocation’.*¹³⁹

15. In REP 658 the ADC indicated that the Anti-Dumping Agreement does not provide any guidance on when ‘normally’ may apply except that there should be reasons that justify the derogation and that there must be a satisfactory explanation of why the exporter’s records should not be used.¹⁴⁰ The ADC acknowledges that it:

- a. Must have a proper basis supported with evidence and be fact specific to the particular circumstances of the matter under consideration; and
- b. the industry wide distortions translated into distortions in the individual exporters’ records that made them unreliable in relation to the ‘recorded cost of steel slab’. It found that the Brazilian market index price of steel slab was on average 37 per cent higher than the Chinese index price. In relation to the each of the applicants it compared the records of CTM steel slab to a benchmark. This information is based on information in REP 658 Confidential Attachment 2 Benchmark analysis and Confidential Attachment 31 Raw material supplier analysis and shown in Confidential Attachments 6A, 8A and 10A.

Benchmark

16. The ADC considers it was appropriate to use the steel slab level for its assessment of the effect of the GOC’s influence on prices, as production at this level represents on average about 90 per cent of the CTM the HRC. It notes that the applicants’ (and the other cooperating exporter) are integrated producers and include a variety of raw materials in the production of steel slab. It considered the steel slab level provides an appropriate level as the next stage in the production process is the hot rolling mill.¹⁴¹ It outlines its reasons for considering that the steel slab level provided a suitable assessment point. These include the need to:

- a. address complexities associated with some exporters purchasing different types of ore and raw materials,

¹³⁹ REP 658 Section C7.1.1 citing various submissions, 168.

¹⁴⁰ REP 658 Section C7.1.2 168 – 169.

¹⁴¹ REP 658, 171.

- b. different production arrangements associated with purchasing externally produced inputs at times,
- c. different levels of details available with respect to raw material production costs,
- d. in an integrated production process steel slab presented a reliable stage to assess benchmark prices.

17. It considers the slab level provided a 'reasonable and meaningful approach' to assess the effect of whether the costs were abnormal, whereas earlier stages had more challenges in being a reliable and standard assessment point against price indices.¹⁴² Additional detail of the decision is contained in REP 658 pages 186 – 187 and the related confidential attachments.

18. The ADC states that an '... appropriate benchmark represents a cost of production in China that is free from the effects of the 'not normal and ordinary circumstances.'¹⁴³ It suggests that a 'benchmark is an appropriate measure of the effect of the circumstances on the cooperating exporters' cost of production for steel slab'. It provides a mechanism to compare the exporters costs to a comparative cost free from the effects of the circumstances in China.

19. The ADC outlined the three alternate approaches it considered in its decision to use prices or costs for steel slab from an 'other' country. Its reasons for not using private domestic prices or costs in China is outlined in Section C.7.2.2.1. Its reasons for not using import prices into China is outlined in Section C.7.2.2.2.

20. The ADC considered its preferred option (as outlined in Section C 7.2.2.3) minimised the opportunities for 'inaccuracies' and dealt with the effects of the GOC's influence in the steel industry related to the consideration of prices and costs from countries other than China.

21. The ADC considered that it was appropriate to '... calculate the difference between the Chinese and third country market indices to estimate price differences between the markets' and 'calculate the difference the Chinese market index steel slab price and the cooperative exporters' steel slab input costs' and 'apportion the difference between the

¹⁴² REP 658, 172.

¹⁴³ REP 658, 173.

Chinese and third country market indices to the cooperative exporters' steel slab input costs, adjusted for the difference between the Chinese market index price and the exporters' steel slab input costs.¹⁴⁴ The supporting confidential information for this analysis is in Confidential Attachment 31.

22. The third country financial data options for steel slab market index prices were also assessed by the ADC. The ADC noted that there were 'fewer commercially available market index datasets for steel slab' than for other steel products: see also Confidential Attachment 2: Benchmark data.

Brazil

23. The ADC outlined its reasons for its choice of Brazil as the benchmark country as compared to the other country data sets it assessed.¹⁴⁵ Its reasons include:
- a. Both China and Brazil largely use blast furnaces to produce steel,
 - b. Brazil is the 10th largest steel producer globally: China is the largest,
 - c. There were no apparent steel market interventions in the Brazilian market, and no SOE's were identified,
 - d. Broadly similar socioeconomic metrics.
24. The ADC provided its analysis of why other countries price information (in the price indices) was less suitable than Brazil.
25. The ADC indicated that following the SEF 658, submissions were received from the cooperating exporters' as well as the GOC. These submissions refer to the use of the Brazilian benchmark for steel slab being inconsistent with Article 2.2.1.1. of the Anti-Dumping Agreement. Other issues associated with the lack of adaptation of the benchmark to address Chinese-specific factors were identified as well as the differences between the scale of Brazil's steel industry as compared to the Chinese steel industry. Baosteel referred to its sourcing of Australian iron-ore, purchased at international market

¹⁴⁴ See REP 658, 175 to 176.

¹⁴⁵ See REP 658, 176 - 177.

prices, noting that this is a major input cost and this input is 'undistorted'. It noted that there is a premium of approximately 13 per cent for Brazilian ore over Australian iron ore.

26. The ADC considered whether adjustments were required to the Brazilian prices (for use as a benchmark for China) to ensure it was an appropriate comparator for cost of production purposes in China. Its consideration of the various costs items and reasons for making an adjustment or not, are outlined in REP 658 Table 33. It made an adjustment for labour but did consider other items. Its calculations are detailed in Confidential Attachment 2: Benchmark data. It obtained information relation to Chinese SOE manufacturing sector wages and Brazilian steel making wages (converted to Chinese yuan). It was based on the proportion of labour in the cost of production up to the steel slab stage. It then adjusted the Brazilian benchmark for the labour component: it was stated to be between 6 per cent and 19 per cent depending on the quarter.
27. Other adjustments to the benchmark included an 'economies of scale' adjustment, it considered the 'World Steel Association volume data and compared it to MEPS pricing data to determine whether higher steel production quantities are generally correlated with lower steel slab production costs'.¹⁴⁶ It found no clear correlation and conducted additional research and analysis as outlined in Section C 7.2.3.4.2. It also noted that 'Therefore, to the extent an 'economies of scale' benefit is claimed to exist, the commission considers that GOC influence in the steel industry is a key reasons for both the large production volumes of the Chinese industry as a whole, and the predominance of consolidated large volume producers'.¹⁴⁷ It found that it could not find a clear correlation of production volume and low cost and therefore could not undertake an 'economies of scale' adjustment and did not make an adjustment.
28. Production cost adjustments considered by the ADC included: lower utility rates, efficiencies from blast furnace operations, impact of trade protections in the Brazilian market and 'other production costs': see sections C 7.2.3.4.3, C 7.2.3.4.4, C 7.2.3.4.5 and C 7.2.3.4.7 in relation to the ADC's consideration of these issues.
29. This is outlined in Section 7.2.3.3. The ADC did not consider any additional adjustment to the benchmark was substantiated.

¹⁴⁶ REP 658, 181.

¹⁴⁷ REP 658, 182.

Alternative Benchmark

30. REP 658 notes that it dealt with alternative benchmark options in SEF 658 C 7.2.2 this was incorporated in its findings.
31. In REP 658 the ADC outlined its further consideration in the context of submissions received following SEF 658, and in particular, to the proposed use of Korean slab costs from POSCO, a different inquiry relating to 'Certain Flat Rolled Steel products from China and Korea in investigation 688. The applicants' proposed that the ADC use data obtained from this inquiry.
32. The ADC considered this issue and noted the information had not yet been verified, related to only one quarter in common between the investigation periods and was considered not sufficiently reliable for use as a benchmark. The ADC commented that the applicants, GOC and the other cooperating exporter '... do not provide evidence to support their claim that the Brazilian benchmark is not apt of yielding a cost of production in China, absent the distortions identified in Appendix A' and 'The commission has determined a cost of production in China via a third country costs that has been adapted to reflect a market-oriented price of HRC in China but does not reintroduce the factors that warranted recourse to a constructed normal value in the first place.'¹⁴⁸

Iron Ore

33. The ADC indicated that Baosteel's 19 January 2026 submission indicated that its iron ore is sourced from unrelated suppliers in Australia at international market prices. The ADC considered the purchase listing provided by Baosteel (relating to the three applicants). The ADC stated that this revealed that iron ore was sourced through a range of State Invested Enterprises (SIE) (including from related parties) and from a range of countries including Australia. It considered Baosteel had not provided sufficient information to verify the 'original price' from the 'original source'. It referred to the ADC's review of the suppliers at Confidential Attachment 31 – Raw material supplier analysis. It did not consider it could rely on the 'iron ore costs incurred in the production of HRC by Baosteel'. Its reasons are outlined in Appendix C 7.2.3.5.1.2.
34. The ADC referred to other issues identified by Baosteel in relation to iron ore costs and the differences between iron ore sourced from Brazil versus Australia. It indicated there

¹⁴⁸ REP 658, 184.

was insufficient information to establish that iron ore from Brazil is more expensive than Australia given the evidence supplied did not deal with differences in freight costs and the type of iron ore.

35. The ADC indicated that Baosteel claims its iron ore prices purchased from Australia are undistorted and that the ADC should adopt the same approach as the European Union (EU) in EU2025/1042 (European Union, Commission implementing Regulation (EU) 2025/1042, EU website, 28 May 2025, accessed 2 April 2026). The ADC stated it considered insufficient evidence was supplied to support its claim. The ADC noted:¹⁴⁹

- a. No evidence was supplied ‘... to refute the preliminary finding that the China Minerals Resources Group Limited (CMRG)¹⁵⁰ influenced imported iron ore prices (see REP 658 Appendix A Section 6.2.2)
- b. There were factual differences between the EU case and this matter relating to the CMRG being not fully operational in the investigation period of that case (1 April 2023 to 31 March 2024) and while there was some evidence of CMRG involvement in iron ore procurement between exporters and third country suppliers, the late claim of the CMRG’s influence impacted the EU’s ability to fully investigate the claim.¹⁵¹

36. The ADC considered that the EU’s findings in 2025/1042 did not support Baosteel’s claims that ‘iron ore purchases are undistorted’ and ‘should be isolated from the benchmark calculation’.

Other issues:

37. The ADC noted that Baosteel made other claims regarding procedural fairness associated with the use of MEPS data given its confidentiality as a purchased data source which cannot be disclosed to parties, except by a purchased subscription.

38. A verification visit was undertaken with Baosteel (April 2025), and the verification report was published on 15 December 2025. Baosteel made a number of submissions to the ADC prior to and following SEF 658. The ADC noted that Baosteel provided revised

¹⁴⁹ REP 658 187 and 185

¹⁵⁰ CMRG is a SOE established in 2022 and according to China Minerals website is ‘dedicated to delivering secure, sustainable raw material supply services and tailored solutions for industries such as steel. See REP 658 A.6.6.2 for a description of the role CMRG is playing in sourcing iron ore.

¹⁵¹ REP 658, 187.

CTM data on 17 December 2025 which was not reflected in SEF 658 but was used in its final report.

Appendix C: Relevant Legislative Provisions

Section 269TAC(1) of the Act provides that:

(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Sections 269TAC(2)(a), (b) and (c) of the Act state:

(2) Subject to this section, where the Minister:

(a) is satisfied that:

(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or

(ii) 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);

the normal value of goods exported to Australia cannot be ascertained under subsection (1); or

(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

(c) 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; or...

Regulation 43 of the CIO Regulation requires:

Determination of cost of production or manufacture

(1) For subsection 269TAAD(5) of the Act, this section sets out:

*(a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the **amount**) to be the cost of production or manufacture of like goods in a country of export; and*

(b) factors that the Minister must take account of for that purpose.

(2) If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.

Regulation 44 of the CIO Regulation provides that:

Determination of administrative, selling and general costs

(1) For subsection 269TAAD(5) of the Act, this section sets out:

*(a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the **amount**) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and*

(b) factors that the Minister must take account of for that purpose.

(2) If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;

the Minister must work out the amount by using the information set out in the records.

(3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

(d) the information mentioned in subsection (4) does not identify the circumstance.

Regulation 45 of the CIO Regulation states:

Determination of profit

(1) For subsection 269TAC(5B) of the Act, this section sets out:

*(a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the **amount**) to be the profit on the sale of goods; and*

(b) factors that the Minister must take account of for that purpose.

(2) 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.

(3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

Appendix D: Relevant Case Law

***Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 [108-126]:**

- 108 The Commissioner was satisfied, however, that the prices of HRC recorded in Dalian's records did not, for the reasons just given, 'reflect competitive market costs'. Consequently, that methodology could not be applied. He nevertheless determined to press on and to calculate the cost of production for the purposes of s 269TAC(2)(c)(i). An argument was faintly pressed in this Court that once he had found that reg 43 did not permit Dalian's records to be used to assess the costs of production, he could not thereafter determine the cost of production under s 269TAC(2)(c)(i) and was required instead to use the methodology in s 269TAC(6). I do not accept that that is so. The methodology in reg 43 does not purport to be an exhaustive statement on the topic of how production costs are to be determined. It deals with just one situation, viz, that obtaining when, compendiously speaking, the producer's records are adequate for task. Outside that situation, reg 43 is otherwise silent and s 269TAC(2)(c)(i) remains applicable on its own terms.
- 109 The methodology the Commissioner then utilised was hybrid in nature. The first step was that he accepted that Dalian's records should, in general, be used to determine the normal value but with one exception. This was that he excluded from the expenses revealed in Dalian's records the amounts it had paid for HRC. This he did because of his views on the distorted nature of the domestic HRC market in China arising from Program 20. He then decided that he would determine a price for HRC free from the blandishments of Program 20. He would take Dalian as having paid that artificially generated price in lieu of the price Dalian had actually paid for its HRC.
- 110 The Commissioner called this hypothetical price the 'benchmark'. The second step was that the benchmark was to be calculated by taking the weighted average cost of HRC in Korea, Malaysia and Taiwan. A limitation existed in that approach which the Commissioner freely acknowledged. It did not bring to account any comparative advantages that Chinese producers of HRC may have enjoyed over their rivals in Korea, Malaysia and Taiwan. For example, the application of the weighted average would put at nought any advantages Chinese producers of HRC had by way of lower labour costs or lower costs of capital.

- 111 The Commissioner was alive to this issue. Indeed, he accepted in principle that the weighted average should be adjusted to take account of comparative differences between the positions of the producers in China and those in Korea, Malaysia and Taiwan. He felt, however, that he was unable to assess them accurately. This was so because he also accepted that a significant comparative advantage that producers of HRC in China had was access to cheap steel as a result of Program 20 but he did not think that prices affected in that way should be utilised in determining a constructed normal value. The correctness of that view was not an issue before the Full Court although it seems to have been at the heart of the debate resolved by the Appellate Body of the World Trade Organization in Appellate Body Report, *European Union – Anti-Dumping Measures on Biodiesel from Argentina*, WTO Doc WT/DS473/AB/R (6 October 2016) (*'Biodiesel'*).
- 112 The Commissioner's ultimate position was that it was not possible to disentangle the comparative advantages enjoyed by the Chinese producers of HRC from the advantage they enjoyed of access to less expensive (subsidised) steel. Accordingly, whilst certainly turning his mind to the question of whether his weighted average should be adjusted to reflect any comparative advantages enjoyed by Chinese producers of HRC, he concluded that he would not so adjust it because it was not feasible to do so. He proceeded to determine the cost of production by substituting for the prices Dalian had paid for HRC the weighted average price of HRC in Korea, Malaysia and Taiwan. He did this in terms which made clear that he was applying s 269TAC(2)(c)(i) of the Act.
- 113 The Appellant had three contentions about this:
- (a) what was to be determined under s 269TAC(2)(c)(i) was the cost of production in the country of export. This did not permit the use of prices paid in other countries;
 - (b) if such foreign pricing information could be used under s 269TAC(2)(c)(i) then the words 'cost of production... in the country of export' required that the comparative advantages enjoyed by the local manufacturers be brought to account by adjusting the benchmark; and
 - (c) even if (a) and (b) were incorrect, because the Commissioner could not determine the extent of the comparative advantages, this meant that he could not determine a

cost of manufacture under s 269TAC(2)(c)(i) at all. He should, therefore, have applied the methodology in s 269TAC(6).

- 114 The first two arguments were encompassed in Ground 5 of the Further Amended Notice of Appeal but the third, which was advanced in the Appellants' written submissions and orally, was not. No objection was taken by the Respondents to it being raised and, indeed, their counsel responded to it.
- 115 It is useful to deal with the arguments in the above order.
- 116 As to (a): The primary judge was unpersuaded that any such prohibition could be found in s 269TAC(2)(c)(i) preventing the use of foreign pricing information. In his Honour's view, so long as the exercise being embarked upon was in substance the calculation of the cost of production in China, the provision was not offended. I agree. There may be circumstances where it is impossible to determine a cost of production using local pricing. For example, it may simply not be available. So long as the task being performed, however, remains in fact the determination of the cost of production in the country of origin it is not necessarily objectionable that foreign pricing information is being used. Like the primary judge, I am able to infer the absence of any such prohibition from the wording of s 269TAC(2)(c)(i), itself. I would note for completeness that the Appellate Body has reached the same conclusion about the corresponding provisions in the Anti-Dumping Agreement: see Art 2 of the Anti-Dumping Agreement and the *Biodiesel* decision at 6.73.
- 117 As to (b), it is not entirely obvious that this argument was pursued before the primary judge. But it is the subject of Ground 5(b) and was pursued in the Appellants' written submission at [39]. It is not totally clear that it was pressed orally although at T-45-46 it was certainly touched upon, if only glancingly. But in any event, the argument was met by the Respondents orally at T-64. In those circumstances, and in the absence of any procedural objection by the Respondents, it seems appropriate to consider the argument.
- 118 The words 'cost of production...in the country of export' in s 269TAC(2)(c)(i) direct attention to the determination of an amount. The amount must have two qualities. It must be for production of the goods and it must be assessed on the basis that the goods have been produced in the country of export. Where a decision is made to seek to determine this amount using foreign pricing information it is necessary for the

Commissioner to take into consideration any comparative advantages or disadvantages that the producers in the country of export have over the producers from whose activities the foreign pricing information has been collected. This is an implication from s 269TAC(2)(c)(i) itself and it means that when foreign pricing information is used to determine a normal price under s 269TAC(2)(c)(i) then the comparative advantages (and disadvantages) enjoyed by domestic producers are mandatory relevant considerations in the sense that expression is used in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1986) 162 CLR 24 at 39-41.

119 But this weak form of the Appellants' argument is not sufficient for their purposes. As the Respondents correctly submitted, there can be no doubt in this case that the Commissioner closely considered the issue of comparative advantage. He accepted that it was a matter that needed to be examined. He accepted that it was likely that the Chinese producers of HRC probably did enjoy some comparative advantages over their Korean, Malaysian and Taiwanese rivals. But he concluded that he could not distinguish the effects of those comparative advantages from the advantage domestic HRC producers also enjoyed in the form of subsidised steel. Because of that he decided he would not adjust the benchmark for the comparative advantages of the Chinese producers of HRC essentially on the basis that such an enterprise was not possible. This process of reasoning does not involve a failure to take account of a mandatory relevant consideration: 'neither does a decision-maker fail to take into account a relevant matter which, after appropriate consideration, it has decided should be given no weight' (*Commissioner of Taxation v Primary Health Care Limited* [2017] FCAFC 131 at [21]).

120 Accordingly, the Appellants require a stronger form of the argument in which comparative advantage is more than just a mandatory relevant consideration. The Appellants must go so far as to submit that it is mandatory in determining the cost of production in the country of export in cases involving foreign pricing information to do so actually adjusting for comparative advantages. Another way of putting this is to say that where comparative advantage is apposite (as it was here), a failure to assess it results in a determination of an amount which, however useful, is not 'the cost of production... in the country of export'.

121 As a matter of ordinary language, I am unable to extract such a strict requirement from the words of s 269TAC(2)(c)(i). However, the Appellants submitted that s

269TAC(2)(c)(i) implemented Art 2.2 of the Anti-Dumping Agreement which had been interpreted by the Appellate Body to require such a matter to be taken into account under Art 2.2: *Biodiesel* at 6.73.

122 I propose to assume in the Appellants' favour the following matters:

(a) s 269TAC(2)(c)(i) is a faithful implementation of Art 2.2;

(b) the Appellate Body's decision in *Biodiesel* is a legitimate material with which to interpret Art 2.2 of the Anti-Dumping Agreement under Arts 31 or 32 of the *Vienna Convention on the Law of Treaties*. Opened for signature 23 May 1969. 1155 UNTS 331. (entered into force 27 January 1980); and

(c) that it would breach Australia's obligations under Art 2.2 of the Anti-Dumping Agreement to construe s 269TAC(2)(c)(i) as having an operation contrary to that determined by the Appellate Body in the *Biodiesel* decision.

123 Without in any way deciding these matters, I do not think that any of them are straightforward. But even assuming all of them in the Appellants' favour, I do not think that the *Biodiesel* decision has the effect for which they contend. The relevant passage is at 6.73:

'Indeed, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 make clear that the determination is of the "cost of production [...] in the country of origin". Thus, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin". Compliance with this obligation **may** require the investigating authority to adapt the information that it collects. It is in this sense that we understand the Panel to have stated that Article 2.2 of the Anti-Dumping Agreement and Article VI: 1(b)(ii) of the GATT 1994 "require that the costs of production established by the authority reflect conditions prevailing in the country of origin.'

[emphasis added]

124 I do not read the Appellate Body as saying that adaption of the foreign pricing information is mandatory. The word it used was 'may'. This connotes to my mind that in some cases adaption may not be necessary. I would accept that the passage at

6.73 requires an investigating body to consider the topic of adjustment and this accords with my own view that adjustment in cases involving foreign price information is a mandatory relevant consideration. But further than this I do not think it goes.

125 Turning then to proposition (c), it is true that the Commissioner adopted the reasoning in previous Investigation 177 and this included a conclusion that an adjustment to the benchmark 'is neither practicable, responsible or warranted in this case'. The Appellants' submission is that once that conclusion had been reached it was not possible to determine the costs of production in the country of export. Accordingly, the methodology in s 269TAC(2)(c)(i) was not available and the Commissioner ought then to have applied the methodology in s 269TAC(6). However, that does not follow. In light of the conclusion I have just reached about proposition (b), the assessment of the costs of production under s 269TAC(2)(c)(i) did not inevitably require the application of an adjustment. In any event, there is no evidence that the Commissioner ever formed the opinion referred to in s 269TAC(6) which is set out above at [10]. Indeed, it is plain that the Commissioner has not yet formed the view that 'sufficient information has not been furnished or is not available to enable' the normal value to be calculated under s 269TAC(2).

126 In those circumstances, Ground 5 fails.

Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2019] FCAFC 122 [83-101]:

83 The appellant ran its case on the basis that the Minister failed to consider at all "any comparative advantages or disadvantages that the producers in the country of export have over the producers from whose activities the foreign pricing information has been collected", rather than on the basis that there was a particular advantage or disadvantage which was not, but had to be taken into account as a mandatory relevant consideration.

84 The argument revolved around paragraphs [118] and [124] of the decision of Perram J in *Steelforce Trading Ply Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 (Perram, Pagone and Bromwich JJ). In that case, the appellant had relevantly raised two contentions:

(1) first, s 269TAC(2)(c)(i) required determination of the cost of production and this did not permit the use of prices paid in other countries; and

(2) secondly, if — contrary to the first contention — foreign pricing information could be used under s 269TAC(2)(c)(i), then the words "cost of production ... in the country of export" required that the comparative advantages enjoyed by local manufacturers be brought to account by adjusting the benchmark.

85 Perram J (with whose conclusion Pagone and Bromwich JJ agreed) rejected the first contention and held that s 269TAC(2)(c)(i) did not prevent the use of foreign pricing information: at [116]. So long as the exercise undertaken was in substance the calculation of the cost of production in the relevant country (also the PRC in that case), the provision was not offended. His Honour stated at [116]:

... There may be circumstances where it is impossible to determine a cost of production using local pricing. For example, it may simply not be available. So long as the task being performed, however, remains in fact the determination of the cost of production in the country of origin it is not necessarily objectionable that foreign pricing information is being used.

86 His Honour also noted at [116] that the Appellate Body of the World Trade Organization in Appellate Body Report, *European Union — Anti-Dumping Measures on Biodiesel from Argentina*, WTO Doc WT/D5473/AB/R (6 October 2016) "reached the same conclusion about the corresponding provisions in the Anti-Dumping Agreement: see Art 2 of the Anti-Dumping Agreement and the *Biodiesel* decision at 6.73".

87 As to the second contention, Perram J stated at [118]:

The words 'cost of production...in the country of export' in s 269TAC(2)(c)(i) direct attention to the determination of an amount. The amount must have two qualities. It must be for production of the goods and it must be assessed on the basis that the goods have been produced in the country of export. Where a decision is made to seek to determine this amount using foreign pricing information it is necessary for the Commissioner to take into consideration any comparative advantages or disadvantages that the producers in the country of export have over the producers from whose activities the foreign

pricing information has been collected. This is an implication from s 269TAC(2)(c)(i) itself and it means that when foreign pricing information is used to determine a normal price under s 269TAC(2)(c)(i) then the comparative advantages (and disadvantages) enjoyed by domestic producers are mandatory relevant considerations in the sense that expression is used in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1986) 162 CLR 24 at 39–41.

- 88 His Honour then described this as the "weak form" of the appellant's argument. He explained that there was no doubt that the Commissioner had closely considered the issue of comparative advantage. His Honour said at [119]:

... [The Commissioner] accepted that [comparative advantage] was a matter that needed to be examined. He accepted that it was likely that the Chinese producers of HRC probably did enjoy some comparative advantages over their Korean, Malaysian and Taiwanese rivals. But he concluded that he could not distinguish the effects of those comparative advantages from the advantage domestic HRC producers also enjoyed in the form of subsidised steel. Because of that he decided he would not adjust the benchmark for the comparative advantages of the Chinese producers of HRC essentially on the basis that such an enterprise was not possible. This process of reasoning does not involve a failure to take account of a mandatory relevant consideration: 'neither does a decision-maker fail to take into account a relevant matter which, after appropriate consideration, it has decided should be given no weight' (*Commissioner of Taxation v Primary Health Care Limited* [2017] FCAFC 131 at [21]).

- 89 His Honour noted that the appellant in the case before him needed to establish, in order to succeed, that it was mandatory to make the adjustment. His Honour said at [120]:

... [T]he Appellants require a stronger form of the argument in which comparative advantage is more than just a mandatory relevant consideration. The Appellants must go so far as to submit that it is mandatory in determining the cost of production in the country of export in cases involving foreign pricing information to do so actually adjusting for comparative advantages.

Another way of putting this is to say that where comparative advantage is apposite (as it was here), a failure to assess it results in a determination of an amount which, however useful, is not 'the cost of production... in the country of export'.

- 90 At [123], his Honour referred to a passage in *Biodiesel* at 6.73, which stated (Perram J's emphasis):

Indeed, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 make clear that the determination is of the "cost of production [...] in the country of origin". Thus, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin". Compliance with this obligation may require the investigating authority to adapt the information that it collects. It is in this sense that we understand the Panel to have stated that Article 2.2 of the Anti-Dumping Agreement and Article VI: 1(b)(ii) of the GATT 1994 "require that the costs of production established by the authority reflect conditions prevailing in the country of origin."

- 91 And at [124], his Honour stated:

I do not read the Appellate Body as saying that adaption of the foreign pricing information is mandatory. The word it used was 'may'. This connotes to my mind that in some cases adaption may not be necessary. I would accept that the passage at 6.73 requires an investigating body to consider the topic of adjustment and this accords with my own view that adjustment in cases involving foreign price information is a mandatory relevant consideration. But further than this I do not think it goes.

- 92 All members of the Court in *Steelforce* rejected the ground of appeal (ground 5) to which these passages of Perram J's reasons related. However, neither Pagone J nor Bromwich J adopted or endorsed Perram J's reasoning on ground 5. Justice Pagone dealt with ground 5 by adopting part of the reasoning of the primary judge (Robertson J): at [135]. His Honour did not address the scope of any duty to consider adjustments. Justice Bromwich reasoned that the Commissioner was not required to discount the benchmark data for comparative advantage if the possibility of doing so was considered and evaluated but not able to be given effect: at [137(5)].

93 The analysis we prefer is as follows:

(1) Section 269TAC(2)(c) only becomes relevant once the Minister has reached a state of satisfaction:

(a) under s 269TAC(2)(a), that the "normal value" of goods exported to Australia could not be ascertained under s 269TAC(1) because:

(i) of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or

(ii) 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); or

(b) under s 269TAC(2)(b), that — in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter — it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under s 269TAC(1).

(2) If the Minister reaches one of the three states of satisfaction referred to in ss 269TAC(2)(a) and (b), then the "normal value" is what the Minister determines it to be in accordance with s 269TAC(2)(c), unless the Minister directs that s 269TAC(2)(d) applies.

(3) In determining the "normal value" in accordance with s 269TAC(2)(c), para (i) requires the decision-maker to determine "the cost of production or manufacture of the goods in the country of export". It is plain from the foregoing statutory context (and it was uncontroversial between the parties) that foreign pricing information might be relevant to the task of determining the "cost of production ... in the country of export". The "cost of production or manufacture of the goods in the country of export" is one of three integers which must be ascertained in determining the "normal value" of the relevant goods. The other two integers are 'SG&A costs' and 'profit' (defined above).

(4) Section 269TAC(2)(c)(i) requires the decision-maker to undertake the statutory task of determining the "cost of production ... in the country of export" and the

decision-maker must undertake that task in a way authorised by the statute. In that respect:

(a) If a decision-maker uses pricing information from some other country or market to determine the cost of production in the country of export without:

(i) turning his or her mind to the question whether that foreign pricing information was relevant and appropriate to a determination of the "the cost of production ... in the country of export"; or

(ii) giving genuine consideration (as to which see *Carrascalao v Minister for Immigration and Border Protection* (2017) 252 FCR 352 at [31] to [34]) to that issue,

then the decision-maker might be shown not to have undertaken the task contemplated by the statute or to have done it an unauthorised way.

(b) Whether there was, and the extent of any, consideration of:

(i) comparative advantages and disadvantages that producers in the country of export have vis-à-vis those producers in respect of whom the foreign pricing information was derived;

(ii) whether some adjustment of the foreign pricing information might be appropriate for the information better to inform the cost of production in the country of export,

will inform — together with all the other particular facts and circumstances of the case — the answer as to whether the decision-maker carried out the statutory task and did so in an authorised way.

(c) The judicial review applicant bears the onus of establishing a failure to perform the statutory task or that the task was performed in a way which was not authorised.

(d) On the facts of this case, the task required by s 269TAC(2)(c)(i) would not have been performed if the Minister had not given any or genuine consideration to whether the Latin American benchmark was appropriate to determining the cost of production in the PRC or whether it could be improved by some adjustment.

The statutory task of determining the "cost of production ... in" the PRC would not have been performed if the decision-maker simply used pricing information from Latin America without turning his mind to the relevance and appropriateness of that pricing information to the Chinese market. As explained below, the Minister did this, and did so in a manner which was not shown to be unauthorised.

(5) As to the question of mandatory relevant considerations:

(a) Comparative advantages and disadvantages generally, or the question whether an adjustment should be made to the selected benchmark, are not mandatory relevant considerations in the sense described in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24. Even if they were, the Minister in fact took those matters into account.

(b) It necessarily follows from the previous conclusion (about comparative advantages and disadvantages generally) that specific advantages and disadvantages (whether or not raised by any interested party) are also not mandatory relevant considerations. Such an implication does not arise naturally from the statutory language or its object, scope and purpose, and is expressed at too great a level of particularity — cf: *Foster v Minister for Customs and Justice* (2000) 200 CLR 442 at [22] to [23] (Gleeson CJ and McHugh J). Even if the general subject matter of advantages and disadvantages had been a mandatory relevant consideration (and we prefer the view that it was not), it is one thing for a statute to imply that regard must be had to a particular subject matter; it is quite another for it to imply that regard must be had to *all* matters which fall within that subject matter.

(6) It is possible that there may be a case in which foreign pricing information is used where a specific comparative advantage or disadvantage is so obvious and material to the statutory task raised by s 269TAC(2)(c)(i) that a failure to consider it, or whether an adjustment should therefore be made, despite neither matter specifically being raised by any interested party, would:

(a) be legally unreasonable in the sense of giving rise to an arbitrary or capricious decision; or

(b) result in error because the Minister did not sufficiently undertake the task entrusted to him by the statute.

- 94 Attention was given in making the relevant decisions to whether the Latin American benchmark was probative of the production costs in China and the conclusion was reached that it was. Report 316 included:

5.7 Benchmark for grinding bar costs

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The Commission considers that the Latin American export billet prices at FOB level published by McGraw Hill Financial Services (Platts), forms an independent and reliable basis for the steel billet input component.

World Steel Association's statistics shows that in excess of 63 million tonnes of crude steel was produced in the Latin American region in 2014. The Latin America region includes two of the top 13 countries, Brazil and Mexico, based on crude steel production volumes. Consequently, the Commission considers that the Latin America region has sufficient volume to reflect competitive market conditions. In addition, the Commission notes there are significant reserves of iron ore within the Latin America region which are mined and exported in large volumes. Of the iron ore exported from Central and Southern America, over half was directed to China, and the amount directed to China was greater than the amount consumed regionally. The Commission considers that this reflects a consistent cost point for a significant raw material that is included in the cost of steel billet.

Based on the depth of the market, and the geographic distance from China minimising the potential distortions of GOC influenced billet prices impacting on the Latin American billet export prices, the Commission considers that the Latin American export billet prices in FOB terms represent the best available information for competitive market costs of steel billets. This is consistent with the Commission's approach in the most recently completed steel investigations INV 300 and 301. The Commission notes that the Latin American billet is of grade ASTM A36/A36-08. Monthly ferroalloy prices for the investigation period were obtained from Metal Bulletin. The total cost of ferroalloys applied to the steel billet was determined using a model developed by the Australian industry that allowed the Commission to replicate the

chemical composition of each grade of exported grinding ball using the most cost effective combination of ferroalloys.

95 Report 47 stated at [45] (footnotes omitted, emphasis added):

The task of the Minister under Regulation 43 is to determine the costs of production, in China, of the goods under consideration in the Investigation. That task was carried out in the context that the Commission had determined that:

- (a) there was a market situation in relation to domestic sales of grinding balls; and
- (b) the producers' records did not reflect competitive market costs.

In determining the cost of production in China under Regulation 43, the Minister is entitled to take into account evidence about the cost of production in other places. The use of evidence about costs of production in other jurisdictions is consistent with the approach taken under s 269TAC(2)(d) of the Act. The use of information about the costs of production in countries other than China is also consistent with the remarks of the Appellate Body in *EU-Biodiesel* at 6.73 which contemplates the use of "out of country" evidence. *The Commission took steps to adjust the benchmark so that it reflected conditions in China.* In effect, the Commission used the Benchmark (and other information) to ascertain what competitive market costs for grinding bar would have been but for the market situation.

96 An example of the Minister's consideration of whether the benchmark should be adjusted is provided in Report 316. One exporter submitted (footnote omitted):

[T]he steel billet used to manufacture grinding balls was mostly produced in-house on a net cost basis, whereas the monthly Latin American export billet price in FOB terms contains a reasonable profit of the billet and necessary cost to move the goods from factory to port. Xingcheng argued that an adjustment for profit and transport is needed to bring the billet price used by the Commission to a net cost at factory level.

97 The Minister stated in Report 316:

In relation to the claim that the Latin American billet benchmark needs to be adjusted to reflect a level of profit contained therein, the Commission notes that such an adjustment was only made possible in INV 300 and INV 301 based on the average verified level of profit achieved by the cooperating Chinese exporters on their own sales of steel billet. The Commission does not have similar information in relation to the sales of billet used in grinding balls. In the absence of that information, and noting the widely reported weakness in global steel markets, the Commission considers it unreasonable to assume that a profit is necessary and has not adjusted the Latin American billet price for a profit component.

Similarly, the Commission does not have in its possession the inland transport costs required to transport steel billet from the factory to the port of shipment in relation to the Latin American billet. On this basis, the Commission considers it reasonable to leave the Latin American steel billet benchmark unadjusted for inland transportation, noting that no upward adjustment has been made to reflect the fact that the Chinese manufacturers of grinding balls would incur inland transportation costs moving the billet from its place of manufacture to the place of manufacture of grinding balls.

98 It was submitted that these examples reflected consideration of whether the benchmark should be adjusted to reflect the position of specific exporters, rather than the comparative advantages and disadvantages of the different markets. However, whilst it is true that Report 316 did address the question of whether the benchmark should be adjusted in the context of submissions made by specific interested parties, the better reading of the report is that the Minister considered whether an adjustment to the benchmark was appropriate to better reflect the circumstances in the Chinese market. This is particularly apparent, for example, in the two paragraphs extracted immediately above.

99 To the extent the appellant raised specific issues, they were considered. Thus, Report 47 stated at [47] (footnote omitted):

[The appellant] argued that, if a foreign benchmark was to be used, then a South American benchmark was inappropriate because it did not relate to what it described as the largest and most competitive steel market in the

world (ie the South East Asian market). In the Report the Commission indicated that it had selected the South American benchmark because the South American market was a substantial market, including two of the top 13 iron and steel countries based on crude steel production, and that the balance of export and domestic consumption meant that the Benchmark represented a consistent cost point. The geographic distance from China minimized the effect on the Benchmark of the distortions which the Commission found existed in the Chinese market. This is a reasonable approach.

- 100 Ground 3 was advanced on the basis that there was a complete failure to consider comparative advantages and disadvantages between the relevant markets or whether an adjustment was appropriate.
- 101 The Minister considered whether the foreign pricing information was relevant and appropriate to determining the "cost of production ... in the country of export" and considered whether it could be improved, having regard to the comparative advantages and disadvantages, through an adjustment. Ground 3 is not made out.