



Australian Government
Anti-Dumping Commission

Anti-Dumping Commission
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Ms Jaclyne Fisher
Member, Anti-Dumping Review Panel
c/- ADRP Secretariat
Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
10 Binara Street
Canberra ACT 2600

By e-mail: ADRP@industry.gov.au

Dear Ms Fisher,

**STEEL REINFORCING BAR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

I write with regard to the public notice published on 15 June 2016 advising your intention to review the decision by the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) to publish a notice under subsections 269TG(1) and s 269TG(2) of the *Customs Act 1901* (the Act) (the Reviewable Decision). The Reviewable Decision was published on the Anti-Dumping Commission (ADC) website on 13 April 2016 and related to steel reinforcing bar (rebar) exported from the People's Republic of China (China), referred to in Anti-Dumping Notice No. 2016/39.

I have considered the applications seeking a review of the Reviewable Decision and offer the following submission on the various grounds raised therein for your consideration.

I remain at your disposal to assist you in this matter, and would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely,

Dale Seymour
Commissioner
Anti-Dumping Commission

15 July 2016

I make the following submissions in response to the grounds set out in the Anti-Dumping Review Panel (ADRP) notice published on 15 June 2016, in respect of the Reviewable Decision of the Parliamentary Secretary and associated recommendations reported by me in REP 300.

I have interpreted the grounds in the ADRP notice as relating to three broad categories of claims. These relate to (i) the finding of a particular market situation, (ii) constructed normal value and (iii) the injury analysis. These broad categories are addressed in turn in this submission.

Categories of claims	Grounds raised in the ADRP notice
(i) Market Situation	Ground (d)
(ii) Constructed Normal Value	Reasonable reflection of competitive market costs (b) (g) (e)
	Benchmark Choice (a) (f) (p)
	Benchmark Adjustments (k) (q)
	Profit (c) (h)
	Adjustment (i) (j) (m) (n) (o)
(iii) Injury	Ground (l)

(i) Market Situation (ground (d))

(d) The ADC erred in finding that a particular market situation existed and that as a consequence, domestic sales of rebar were unsuitable for determining normal values

In my view upholding the above proposed ground of appeal will not lead to a correct or preferable decision. The following observations may assist you in assessing the merits of this ground.

In reviewing ground (d) and the supporting submissions I have taken this ground to relate to my decision to find a market situation for investigation 300.

As noted in REP 300 the Act does not provide any definition of particular circumstances or factors which would satisfy the Minister that a 'market situation' exists. The WTO Anti-Dumping Agreement is similarly silent in relation to the definition of the concept of a 'market situation' referred to within Article 2.2.

The ADC's Dumping and Subsidy Manual, does sets out a range of consideration the ADC has regard to in making a market situation findings.¹ I have considered these and other factors in the analysis contained in Appendix 1 of REP 300 prior to making my market situation findings.

¹ Anti-Dumping Commissions Dumping and Subsidy Manual pp 35-36

The analysis in REP 300 concludes that the Chinese Government materially influenced conditions within the Chinese rebar market during the investigation period. While the Chinese Government declined to respond to the ADC Government Questionnaire of 15 July 2015 for this investigation the ADC obtained information from a wide range of independent and reputable sources in preparing its analysis. Appendix 1 of REP 300 documents the range of factors ADC has had regard to in making its assessment and cites the information it has relied upon in making this assessment.

I consider that, in the context of particular market situation analysis, evidence of government policies and programs whereby benefits specifically or indirectly flow to Chinese iron and steel market, would have an effect on domestic commerce with respect to the goods. In my view this information is relevant to the analysis of whether factors exist which can be characterised as a 'market situation' for the purposes of subparagraph 269TAC(2)(a)(ii) of the Act.

The rebar market is a subset of the overall iron & steel market within China, and as such the distortions identified across the broader market are equally applicable to the Steel Reinforcing Bar market in China, and I consider that the influence causes both a distortion of costs and price within that market.

Consideration of whether a situation exists in the Chinese iron and steel market is concerned with the operation of policies and regulations and their potential impact on the suitability of domestic selling prices for normal value purposes. Accordingly, the Commission considered that the questions to be answered were whether the relevant policies operated in a manner which:

- i. lead to a distortion of competitive market conditions in relation to the subject goods such that domestic sales are unsuitable for the purposes of determining normal value; and
- ii. affected the conditions of commerce related to the production or manufacture of like goods such that the records of exporters cannot be relied upon to reasonably reflect competitive market costs associated with production in accordance with the provisions of subsection 43(2) of Regulations.

In assessing the particular market situation claims, the Commission found that the Government of China (GOC) influence distorted Chinese iron and steel market by:

- GOC directives;
- subsidy programs;
- involvement in strategic enterprises; and
- taxation arrangements.

The findings and evidences relied on in reaching the conclusions are extensively discussed and explained in Appendix 1 of REP 300 and SEF 300.

(ii) Constructed Normal Value

Reasonable reflection of competitive market costs

(b) There was no evidence and improper consideration of whether Hunan costs reasonably reflected competitive market costs

(g) The ADC failed to undertake a proper examination and assessment of whether Yonggang's and Shiheng's records reasonably reflected competitive market costs

(e) The ADC erred by relying on its market situation assessment and findings to form the view that steel billet costs did not reasonably reflect competitive market costs

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

Response to (b), (g), and (e):

Noting the finding of a particular market situation, the ADC constructed normal values under subsection 269TAC(2)(c). Subsection 269TAC(2)(c) provides that normal value is the sum of (i) such amount that the Minister determines to be the cost of production and manufacture of the goods in the country of export and (ii) such amount as the Minister determines to be the SG&A costs associated with the sale in the ordinary course of trade and profit on that sale.

The determination of the cost of production, sales and general administrative costs (SG&A) and profit is determined in accordance with sections 43, 44, and 45 of the Customs (International Obligations) Regulation 2015 (Regulation).

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

The ADC undertook an assessment of the competitive market costs associated with the production of like goods for cooperating exporters in light of the significant distortions that in my view exist within the Chinese iron and steel market referred above.

This was completed by comparing the cost records for the cooperating exporters with a competitive market based value for billet.

As 80 to 85 per cent of all production costs are billet costs, the ADC conducted a comparison of steel billet costs in China with other comparable price indexes around the globe. As steel is a commodity product with converging prices an almost perfect correlation exists between different price indexes, I am of the view that it was open to make such a comparison. The comparison showed that the price of steel billet in China was significantly lower than global indices, and accordingly, the Chinese domestic price of steel billet did not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

The assessment was undertaken at the billet level as at that level the cost accounting records would capture any distortions to raw material inputs (which was outlined at 5.7.1 of REP 300) as well as capturing a substantial level of processing cost distortions through the relevant billet production facilities.

As outlined in REP 300 I was satisfied that the records of each Chinese exporter that cooperated with the investigation did not reasonably reflect competitive market costs after completing this assessment.

The ADC notes that, after having found that the costs and prices in domestic iron and steel industry and upstream input materials are distorted by the influence of GOC intervention, as per the ADC Manual, the accepted approach is for me to determine a substitute amount for the costs that are found to be influenced, having regard to all relevant information, irrespective of the actual cost incurred by the exporter or producer for that input.

Noting the above, I am of the view that it was open to the ADC to apply the methodology in REP 300 in relation to the assessment of the competitive market costs contained in the exporters' records. I consider this methodology to be reasonable in light of the circumstances of investigation 300, namely because of the market distortions highlighted above. This methodology is also consistent with the ADC's Dumping and Subsidy Manual, which explains that:

Where a finding has been made that a major cost input is supplied by a government-owned enterprise, or there are other forms of government influence, the normal value should be calculated as the sum of:

- *a determined (substitute) amount, having regard to all relevant information, for the value of the major cost input supplied by the government-owned enterprise (irrespective of the actual cost incurred by the exporter or producer for that input) [emphasis added]*²

The methodology that I applied has been previously accepted by the Federal Court.³

Selection of Appropriate Benchmark

(a) The ADC erred in substituted steel billet costs in Hunan costs of production with costs that were not in the country of export

(p) The Parliamentary Secretary erred in selecting prices based on export market conditions as an appropriate benchmark for competitive market costs

(f) The ADC erred in its interpretation of Regulation 43 of the Customs (International Obligation) Regulations 2015 by focusing on the costs themselves, rather than the records of Yonggang and Shiheng, in rejecting its steel billet production costs

² Page 44.

³ *Panasia Aluminium (China) Ltd v Attorney-General of the Commonwealth* (2013) 217 FCR 64 at para 91; *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 at paras. 36-42 [Dalian].

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

Response to (a), (p) and (f):

In its application, Hunan claims that the ADC should not have substituted Hunan's steel billet cost with a cost from outside the country of export (China). Yonggang and Shiheng's claims that the ADC's analysis incorrectly focuses on whether the exporters records reasonably reflect competitive market costs⁴, rather than the reasonableness of the exporter's records.

As noted above, and as explained in Appendix 1 of REP 300 and Section 5.5 of Statement of Essential Facts 300 (SEF 300), I considered that the significant influence of the GOC distorted prices and costs in the steel industry and rebar market as outlined in the response to (d) above in China. This, in turn rendered domestic prices and costs of iron, steel and upstream raw material prices in China inappropriate for the purpose of constructing a normal value.

I considered the most appropriate way to account for the production costs which did not reflect competitive market costs was through the replacement of Chinese manufacturers' steel billet costs with an appropriate competitive market cost for steel billet in order to offset this government influence. I consider that this approach was open to me under section 43(2) of the Regulation.⁵

The choice of an appropriate competitive market cost was determined having regard to the best available information and was consistent with the ADC's published policy.

I consider that domestic prices for billet within China are not suitable as these prices are distorted by GOC influence. This is likely to be the case regardless of the source of the billet, whether it be produced by a State Invested Enterprise (SIE), State Owned Enterprise (SOE), privately owned domestic producer, or from the import channel due to the homogenous nature of steel billet as an intermediate product. I consider that the identified substantial overcapacity within the Chinese steel industry is likely to distort prices for steel within the domestic Chinese market regardless of the production source.

I note that domestic prices of billets within China are not suitable as it is considered that these prices are affected by GOC influence. Similarly, import prices of billets into China do not constitute an appropriate benchmark to reflect competitive market prices due their pricing being referenced against domestically produced goods which are influenced by the GoC policies. As a result, consistent with the Manual, I consider that internationally sourced billet prices from a reliable source is the most appropriate benchmark for establishing the competitive market cost for steel billet production costs in China.

I note that in constructing the normal values, an adjustment was made to the external steel billet benchmark to align this amount with Chinese exporters' manufacturing costs of billets. This was required to align a price based index to

⁴ Section 43(2)(b)(ii) of *Custom (International Obligations) Regulation 2015*.

⁵ See also *Dalian* at para. 49.

a representative cost base value. Moreover, in calculating the normal values, the Commission had used Chinese exporters' own conversion costs, selling, general and administrative costs (SG&A) and domestic profit rates.

Through this process a competitive, distortion free cost was established within China for each cooperating exporter.

In my view the replacement of costs that are found to be distorted by GOC is consistent with the Regulations and the ADC's published policy for ensuring the purpose of subsection 269TAC(2)(c)(i) is met. The resulting constructed normal values reflect the 'normal' values in the absence of GOC influence in Chinese domestic market.

I note Hunan Valin's claim that 269TAC(2)(c)(i) requires that all components of the normal value should be derived from costs in the country of export. I am of the view that using a benchmark from outside the country of export to adjust an exporter's reported costs is necessary in certain circumstances in order to arrive at a true competitive cost of production and is consistent with ADC practice⁶. In addition, the *Dalian* decision of the Federal Court which considered the use of a cost benchmark which included information from outside the country of export, and accepted the approach.⁷

A discussion of the selected benchmark and the reasons for that selection, can be found in REP 300 at section 5.8.

Adjustments to Benchmark Selected (grounds (k) and (q))

(k) The ADC erred by not making adjustment to the steel billet benchmark price to ensure normal values are properly compared to export price, for factors unrelated to the Government of China's policies and plans which were the basis for domestic sales and costs being rejected

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

It is my understanding that there are fundamentally two distinct production methods for steel billets, mainly blast furnace method and electric arc furnace method. Knowing that all cooperating Chinese exporters produce steel billets using blast furnaces, the ADC disagrees with exporters' claims that the by-products that are the result of molten iron and steel billet production are specific to Yonggang or Shiheng's production methods. As explained in REP 300, the evidence available to the investigation demonstrated that these by-products would result in any ordinary steel production operation and it is expected that every manufacturer would capture and account for the value of these by products as cost recoveries. **Confidential Attachment 5** shows a comparison of OneSteel' blast furnaces' and Shiheng's by product and cost recovery ratios.

⁶ For example, see page 10 of REP 263 – Aluminium Road Wheels - China

⁷ Dalian at paras 43 - 49.

It is observed that despite there being significant differences between these two manufacturers, their cost recovery ratios (expressed as a percentage of their total cost to make of billets) are quite similar.

Therefore, the Commission considers that any steel billet price, including the steel billet index that was used as a benchmark for billet costs in China in REP 300 would be adjusted for these cost recoveries.

(q) The Parliamentary Secretary erred in subtracting a rate of profit from the selected external benchmark.

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

Regarding the reduction of the Benchmark value for a rate of profit, I note that in its appeal to the ADRP, OneSteel states that:

OneSteel fails to understand why the Commissioner has reduced the non-Chinese (Latin American FOB export) benchmark competitive billet cost by an amount of profit relevant to Chinese producers of billet sold into the Chinese domestic market. [emphasis added]

In REP 300 the selected Latin American billet benchmark was the FOB level sales prices of steel billet collected, validated and published by Platts. The Commission considers that removing the verified profit from the sales of steel billet by Chinese exporters in the Chinese domestic market is the most accurate and reasonable approach to calculate the exporters' production costs of steel billets in the absence of particular market situation. The adjustment reflects the movement from a price based benchmark to a cost based benchmark for billet.

OneSteel contends that "*if a downward adjustment to the competitive benchmark billet cost is to be made, then it should be the verified profit of the non-Chinese seller of the billet the subject of the competitive benchmark*". It is my view that the selected profit rate is the most appropriate as it will provide a more accurate determination of the normal values. Any other profit rate, such as profit realised by an external, non-Chinese producer from the sale of Latin American steel billets in any other market than China are irrelevant to the calculation of the Chinese exporter's cost of production, particularly when data in relation to the profits realised by the Chinese exporters was available to the investigation.

OneSteel questions how the profits realised by the Chinese exporters were verified and calculated. The average profitability of steel billet sales were calculated based on [REDACTED]

-8

Consequently, I submit that the method of calculating the profits realised by Chinese exporters from the sale of steel billets in Chinese domestic market is the preferred method and it is reasonable to utilise this profit rate to adjust the

⁸ EPR 300/042

benchmark billet prices from Latin America and ensure they appropriately reflect a cost benchmark.

Appropriate rate of profit (grounds (c) and (h))

(c) The ADC erred in the calculating amount of profit

(h) The ADC erred in calculating the profit relevant to the calculation of constructed normal values

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

Response to (c):

I note that Hunan Valin did not provide a detailed calculation of its SG&A expenses or the allocation of these expenses to its domestic or Australian sales in its original exporter questionnaire response (EQR). However, as noted in section 5.9.4.1 of SEF 300, after having being provided the ADC's dumping margin calculations, and after all exporter visits were completed, Hunan Valin sought to amend its cost to make and sell (CTMS) data without providing an detailed explanation or supporting evidence for the miscalculation in its EQR. Nor did Hunan Valin provide a detailed worksheet showing the Commission how and where the errors were made. Because of this as well as insufficient time to adequately verify the new information, the ADC did not make use of this information to construct Hunan's normal value. I note that Hunan Valin sought to increase its selling costs for [REDACTED] model by 350 per cent, for [REDACTED] model by 277 per cent and for S [REDACTED] model by 414 per cent.

The ADC proceeded to apply section 45 of the Regulation on the basis of Hunan Valin's verified data, and I am satisfied that this was the correct approach.

Response to (h):

Yonggang in its application to the ADRP claims that the Commission's method of calculating its unit cost to make and sell figures using the volume of billet inputs is incorrect. On 18 November 2015, the Commission sent a number of questions to Yonggang to address certain issues identified in Yonggang's EQR. The Commission observed that in many occasions, Yonggang's reported production quantities were much larger than the steel billet quantities used for the production of that batch (see 'Yield Check' column in CTMS-Export tab of **Confidential Attachment 1**). Question 5 of the letter sent to Yonggang on 18 November 2015 was enquiring about these discrepancies observed. In its, response (**Confidential Attachment 2**) Yonggang explained that:

[REDACTED]

[REDACTED]

The investigation considered that based on the responses outlined above, Yonggang's production volumes do not reflect the actual amount of production. However, it is also understood that the billet quantities in the same spreadsheet reflect the actual amount of consumption of steel billets and based on the ADC's comparisons, provides a more accurate account of the production of volume.

In my view, the ADC's approach in identifying the actual production volumes by using the actual billet consumption figures (and not the [REDACTED] as reported) is the preferable approach given that the production volumes as reported by Yonggang in its EQR showed significant (up to [REDACTED]) variation.

In my view, ADC's was appropriate to use steel billet volumes in calculating Yonggang's unit CTMS values and to identify profitable sales. Similarly this also means that how I calculated the rate of profit for Yonggang remains appropriate.

In relation to Yonggang's claims about conducting the ordinary course of trade (OCOT) test on a quarterly base, the Commission notes that the scenario which Yonggang suggests in its appeal can only take place when there are significant fluctuations between monthly sales volumes within the period analysed. The Commission notes that Yonggang's domestic sales volumes had been quite stable during the investigation period.

Conducting the OCOT test therefore did not affect Yonggang's domestic profit rates.

Claims relating to adjustments (grounds (i), (j), (m), (n), and (o))

(i) The ADC erred by not making necessary due allowance for domestic bank charges that affected price comparability

(n) The ADC erred by making double counting an upward adjustment to constructed normal values for export bank charges;

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

Response to (i) and (n):

In their applications to the ADRP, Yonggang and Shiheng claim that the ADC double counted the export bank charges. My examination of Yonggang's

records suggest that in calculating and allocating SG&A to its domestic sales and Australian sales, Yonggang identified and deducted all the expenses that are directly related to its Australian sales and did not include these in its SG&A calculations. The Commission notes that in its SG&A calculation workbooks (available in **Confidential Attachment 3**), Yonggang identified the expenses directly related to its Australian sales and did not include these in its domestic SG&A calculation.

In its application, Shiheng claims that the bank charges in its SG&A workbook (also available in Confidential Attachment 3) includes charges for both its export and domestic sales.

It is notable that both Yonggang's and Shiheng's domestic sales are made on [REDACTED] terms. In my view Yonggang and Shiheng would not have incurred bank charges for the domestic sales of like goods that they [REDACTED]. Therefore, a downwards adjustment in the normal value for bank charges was not warranted.

I note that both of these exporters' export sales terms attract bank charges. Therefore, the ADC considers that upwards adjustments for the bank charges reflecting the different payment or collection terms incurred in export sales transactions are required to ensure price comparability of export sales prices and the corresponding normal values for these exporters.

(j) The ADC erred by making due allowance for export credit terms that did not affect price comparability

Response to (j):

In its application, Yonggang claims that the period that forms the basis of export credit terms adjustment in the ADC's calculations "*simply reflects the number of days between invoicing and receipt of payment*". In REP 300 I considered that, notwithstanding the face-value of the sales terms in the transaction, if there are quantifiable and significant periods between the invoice date and the date of receipt of funds, this would affect the price comparability of domestic sales and export sales.

This is especially notable when all the domestic sales are sold on ~~advanced payment~~ terms. The period of time between the invoice date and date of receipt of payment for each export sales transaction is available under the credit terms column of **Confidential Attachment 4**.

As it can be observed from Confidential Attachment 4, the periods between the date of invoice and the date payments are received are materially different between export and domestic sales.

In investigation 300 there was evidence that such delays happened in each export sales transaction (the number of days between the invoice date and the date of receipt of payments were provided by the exporters) and I considered it is reasonable to expect the exporters, as commercially driven, cost sensitive business entities, to factor in the cost of financing the sales for such periods.

(m) The ADC erred in making an adjustment to constructed normal values for the gross margin incurred by Shiheng's trading intermediary;

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

Shiheng in its application to the ADRP claims that the ADC erred by making an adjustment for the profit realised by its fully owned subsidiary, Hong Kong Lutai (HK Lutai) for the sales that it made through that subsidiary. In support of its claims, Shiheng argues that the ADC's decision was not consistent with its own policy as stated in the Manual. The Manual explains the ADC's policy around the sales made in the exporters' domestic market through their subsidiaries when the sales between the exporter and the subsidiary are not in arms length.

However, the relationship between Shiheng and HK Lutai is materially different. HK Lutai do not sell Shiheng's products in the Chinese domestic market, instead, HK Lutai acts as an intermediary between certain rebar sales to Australia. The confidential version of Shiheng's verification visit report explains the relationship between Shiheng and HL Lutai as:

Exported goods are sold by the company directly, and also via an affiliated trading company, Hong Kong Lutai Trading Co., Ltd. (HK Lutai).

[Redacted text block]

[Operations of

HK Lutai]

The same verification report explained the sales process when the goods exported by HK Lutai as:

Sales process – goods exported via HK Lutai	
1	[Redacted]
2	[Redacted]
3	[Redacted]
4	[Redacted]
5	[Redacted]
6	[Redacted]
7	[Redacted]
8	[Redacted]
9	[Redacted]
10	[Redacted]

When the sales are made through HK Lutai, it is verified that HK Lutai adds a margin on top of the price it buys from Shiheng. The verification team explained and recommended in the visit report that:

As certain export sales were made through HK Lutai, the visit team considers an upwards adjustment to the normal value for HK Lutai's

trading margin for those sales is necessary to ensure a fair comparison to the export price. The visit team assessed that HK Lutai's SG&A over the investigation period was less than the trading margin. As HK Lutai's trading margin was sufficient to cover its SG&A expenses, the visit team considers that an upwards adjustment based on the HK Lutai's margin for each export transaction is appropriate.

The normal values are constructed in accordance with subsection 269TAC(2)(c), and it is known that all the goods are produced by Shiheng. It is further verified and explained in the verification visit report that all export sales via HK Lutai are [REDACTED].

Therefore, I consider that an upwards adjustment to normal value for the mark-up charged on HK Lutai is necessary to make the normal values of the goods that are exported via HK Lutai comparable with the export prices of these sales.

For the quantification and operation of the upwards adjustment for the mark-up charged by HK Lutai, please see column BJ of the **Confidential Attachment 6**.

(o) The Parliamentary Secretary failed to make necessary adjustments in accordance with subsection 269TAC(9) of the Act to the normal value ascertained for the goods exported to Australia;

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

In its appeal to the ADRP, OneSteel claims that the ADC failed to adjust the normal values to reflect the physical differences between the domestically sold like goods and goods exported to Australia. In doing so, OneSteel claims that the billets used to produce rebar exported to Australia are microalloyed with vanadium whereas steel billets used to produce rebar for sale in the Chinese domestic market are not. As seen on the 'production method' and 'alloy' columns of the export sales in **Confidential Attachment 7**, the information available from exporters do not support OneSteel's claim that all rebar exported to Australia were micro alloyed with Vanadium.

In its letter to ADRP, OneSteel goes on to explain that "*an alternative to 'microalloying' with vanadium to produce straight lengths of rebar to the required strength, is to 'water quench' steel billet that has not been microalloyed with vanadium during the steel making process. This is likely to be the predominant method of rebar straights manufacture for domestic Chinese sales as the expensive vanadium addition is not required... For coiled rebar, the water quenching option is typically not feasible and a microalloyed steel billet is required as input feed material to produce minimum yield strength 500MPa rebar in coil for export to Australia.*" [emphasis added]

I note that despite OneSteel's claims, certain Chinese exporters do manufacture coiled rebar using a water-quenching technique. In addition to that, product descriptions in **Confidential Attachment 7** show that some exporters also use cheaper alloys such as chromium in microalloying processes. Further, the test certificates in **Confidential Attachment 8** also reveals that despite OneSteel's claims, there are significant volumes of rebar exported to Australia that are not

microalloyed by vanadium but manufactured using other methods that would not affect price comparability to the rebar sold in Chinese domestic market.

I understand that the Australian Standard for steel reinforcing materials, AS4671, requires that the steel reinforcing bar be deemed to be weldable under the conditions specified for each class in AS 1554.3. However AS 4671 does not set any minimum percentage requirement in the steel's chemical composition for vanadium or any other microalloying elements. It follows that, in order to be compliant with the AS 4671 standard, Chinese exporters do not need to add any certain percentage of vanadium (or any other microalloys) to their products. In investigation 300 there was evidence showing that cooperating Chinese exporters added different types of microalloys in varying percentages in their products and in some cases Chinese exporters utilised other methods like thermo-mechanical processes to achieve the required minimum yield strength.

Consequently, the Commission does not consider that application of a blanket upwards adjustment to normal values is required for price comparability of export sales and domestic sales.

(iii) Injury

(I) The ADC erred in determining material injury on the basis of a 'but-for' methodology which as a result incorrectly found that the applicant suffered material injury attributable to the subject goods;

I recognise the applicants concerns as reflected in this ground being considered by the ADRP. The following observations may assist when considering the ground under review.

In their applications both Yonggang and Shiheng claim that the use of words like 'may' and 'could' in REP 300 indicates that material injury was assessed using a lower evidentiary standard of mere possibility.

I consider that the 'but for' method of analysis used was appropriate having considered the facts and the circumstances of this investigation. Those particular circumstances relate to the performance the Australian industry can reasonably be expected to have achieved in the absence of sales of rebar exported from China at dumped prices.

I note that a number of my findings in relation to material injury, such as price suppression, price undercutting, reduced employment, reduced value of assets employed in the production of rebar, and reduced value of capital investment in the production of rebar did not rely on a 'but for' analysis. In REP 300 I found that there was evidence that these forms of injury had been experienced by the Australian industry.

Furthermore, I note that the Ministerial Direction on Material Injury 2012 (Ministerial Direction) also contemplates a finding were an Australian industry would be better off if not for the presence of the dumped or subsidised good. The Ministerial Direction directs me to be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline. It also directs that it is possible to find material injury where

an industry suffers a loss of market share in a growing market without a decline in profit.

In addition, the Manual explains that the ADC can use one of three approaches to determine causation: the coincidence analysis, a point in time approach, or the 'but for approach'. The Manual, goes on to note that:

Where no coincidence has been found, or a 'coincidence analysis' has not been possible, the Commission may accept an alternate analytical method - such as a 'but for' analysis - when examining causation.⁹

The Manual notes that

Under a 'but for' analytical method it may be possible to compare the current state of the industry to the state the industry would likely have been in if there had been no dumping.¹⁰

The nature of the 'but for' method means that, in my view, it was open for me to make the recommendations on material injury which I did.

Both the material injury to the Australian industry and the causation analyses were conducted on the basis of positive evidence in the form of facts and data that the ADC collected and verified during the course of the investigation.

⁹ Anti-Dumping Commissions Dumping and Subsidy Manual p 124.

¹⁰ Anti-Dumping Commissions Dumping and Subsidy Manual p 124.