Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

[1] By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 0, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: OneSteel Manufacturing Pty Ltd (Administrators Appointed)

Address: Level 6, 205 Pacific Highway, St Leonards NSW 2065

Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: [redacted]

Position: [redacted]

Email address: [redacted]

Telephone number: [redacted]

3. Set out the basis on which the applicant considers it is an interested party

The applicant for review was the applicant in relation to an application under section 269TB of the *Customs Act 1901* that led to the making of the reviewable decision – being the sole member of the Australian industry producing like goods.

4. Is the applicant represented?

~~Yes~~ No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

Not applicable.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☒ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods the subject of the reviewable decision were:

"Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.

"The goods covered by this application include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.

"Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh."

7. Provide the tariff classifications/statistical codes of the imported goods

The goods are classified to the tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* specified below:

- 7214.20.00 (statistical code 47);
- 7228.30.90 (statistical code 49 (as of 1 July 2015, statistical code 40));
- 7213.10.00 (statistical code 42);
- 7227.90.90 (statistical code 42 (as of 1 January 2015 statistical codes 01, 02 and 04)); 7227.90.10 (statistical code 69);
- 7228.30.10 (statistical code 70); and
- 7228.60.10 (statistical code 72).

8. **Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**
If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

Anti-Dumping Notice (**ADN**) No. 2016/39

9. **Provide the date the notice of the reviewable decision was published**

13 April 2016

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

A copy of the notice of the reviewable decision is attached as *Appendix A* to this application.

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☐

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

10.1 The Parliamentary Secretary, as the Minister's delegate[3], has failed to make necessary adjustments in accordance with subsection 269TAC(9) of the *Customs Act 1901*[4] to the normal value ascertained for the goods exported to Australia

In its submission in response to the SEF dated 26 February 2016, the applicant for review outlined the necessity for a physical upward adjustment to normal values as required under subsection 269TAC(9) in order to account for the exporters' practise of adding expensive alloys (vanadium is most commonly used) via a process known as "microalloying" to the *steel billet* used to produce *rebar* exported to Australia[5], but not to *steel billet* used to produce *rebar* for sale in the Chinese domestic market. This is largely driven by the Chinese VAT (value-added tax) rebate applicable to export of alloyed goods.

A minimum vanadium (chemical symbol: V) content of 0.1% vanadium in the *steel billet* is required for the steel to be classified as an "alloy steel" and it acts as a powerful strengthening agent when added to steel which is desirable when a minimum yield strength of 500MPa is required for rebar exports to Australia. Vanadium is added as a ferroalloy to the liquid steel during the final stages of steelmaking and is present in the *steel billet* that will form the input material to the *rebar* production process. 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 steelmaking 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

[3] The Minister for Industry, Innovation and Science has delegated responsibility with respect to operational anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker.
[4] References hereinafter to legislative provisions, shall be a reference to provisions of the *Customs Act 1901*, unless expressly otherwise stated.
[5] *EPR Folio No. 300/054*, pp. 10-11

(specifically, no export VAT rebate benefit), particularly for grades of rebar with minimum yield strength below 500MPa which appear to be most prevalent in the Chinese domestic market. 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.

The evidence before the Commissioner – as ascertained through verification visits, exporter questionnaire responses ("EQR's") and presented by the applicant for review to the Commission at the Exporter Briefing visit[6] - provided compelling evidence that microalloying of billet used in the production of rebar exported to Australia was a key physical difference between the goods exported to Australia and the normal value of goods ascertained in accordance with paragraph 269TAC(2)(c), and that the Minister must under subsection 269TAC(9) make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods. The sources of evidence supporting the applicant for review's position may be summarised as follows:

1. **Exporter verification report - Shandong Shiheng Special Steel Group Co. Ltd ("Shiheng")[7]:**
   "the visit team notes the critical difference between rebar exported to Australia and rebar sold domestically being the different microalloy contents"

2. **Exporter verification report - Shandong Iron and Steel Company Limited, Laiwu Company ("Laiwu")[8]:**
   "The main point of difference between the domestic rebar and the rebar exported to Australia is the amount of vanadium added…

   "The company said that while they were both [redacted] products, the Australian market product had a relatively significant amount of vanadium in order to achieve the desired strength, while the domestic product had no vanadium added…

   "The company advised that it produced the export goods as an alloyed product in order to qualify for a VAT rebate on export."

[6] Representatives of the applicant for review met with officers of the Anti-Dumping Commission on 8 October 2015
[7] EPR Folio No. 300/041 pg 13 refers
[8] EPR Folio No. 300/042 pg 14-15 refers

3. Jiangsu Yonggang Group Co. Ltd ("Yonggang"):

In Report 300, the Commission states[9] that:

"Yonggang submitted that it has provided evidence to the Commission to show that its exports of rebar to Australia were not micro-alloyed."

The Commission has neglected to consider the evidence presented by the applicant for review to Commission officers during the exporter briefing visit on 8 October 2015. The evidence supplied to the Commission were test certificates issued by Yonggang showing that Yonggang supplied reinforcing bar made to AS/NZS 4671:2001 during the period of investigation with a deliberate microalloy addition of vanadium. The test certificates go on to indicate:

"Manufacturing processes" as "Microalloyed"

Therefore, the applicant for review considers that it was a substantive error of fact for the Commissioner to conclude that the exporter Yonggang did not microalloy the goods exported to Australia.

Copies of the confidential and public file versions of the exporter briefing materials form CONFIDENTIAL ATTACHMENT A and NON-CONFIDENTIAL ATTACHMENT B, hereto.

This evidence was again brought to the Commission's attention on two additional occasions:

Firstly, in response to a request from the Commission on 26 November 2015[10]; and

Secondly, as part of a submission dated 18 March 2016.[11]

The Commission appears to have ignored this evidence before them and accepted Yonggang's claims that they do not export microalloyed *rebar* to Australia.

Given the level of redaction applied (around grade selection) in the submission made on behalf of Yonggang following publication of PAD 300, it is not clear to the applicant what claims Yonggang were making around the Commission's selection of Yonggang billet grades applied for rebar production: [12]

> *"In its calculations, the Commission has also correctly identified the relevant billet to match to each of the identified models, being either **[redacted]** or **[redacted]**. However, in identifying the relevant surrogate billet, the Commission has correctly identified the relevant billet for **[redacted]** as **[redacted]**, whilst inexplicably identified **[redacted]** for **[redacted]**.*

[9] EPR Folio No. 300/063, pg 22 refers
[10] CONFIDENTIAL ATTACHMENT C
[11] EPR Folio No. 300/062
[12] EPR Folio No. 300/044, pages 8-9 refers

> *"This is plainly incorrect as the billet used to produce **[redacted]** are identical and of the same grade, being **[redacted]** or minimum yield strength **[redacted]** MPa. Billet classified as **[redacted]** is used to produce rebar meeting the minimum yield strength **[redacted]** MPa which were not exported to Australia but are instead mainly sold on the domestic market in China.*
> *"The only difference between the **[rest of sentence redacted]**."*

In the statement of essential facts (SEF 300) that followed, the Commission:

> *"revised Yonggang's calculations by matching sales of coiled rebar with domestic rebar straights of the same grade."*[13]

In Final Report 300, Yonggang appears to have provided additional information to the Commission by way of evidence that "*conversion costs for the products sold to Australia incurred slightly less conversion costs*"[14] than for products manufactured by Yonggang for the domestic market. The Commission goes on to explain:

> *"Therefore, in the light of the evidence provided by Yonggang, the Commission accepted Yonggang's explanation and calculated its conversion costs based on the conversion of HRB500 grade billets only."*

Based on all of the above, the applicant for review submits that the following incorrect conclusions have been drawn by the Commission, based on insufficient knowledge of the rebar manufacturing processes and the claims of an exporter that have misled and confused the Commission:

- **Firstly, it is incorrect for the Commissioner to conclude that "HRB500 grade billet" exists.**

  HRB500 is not a billet grade, it refers to a grade of reinforcing bar as defined by the Chinese Standard for reinforcing steels GB1499.2-2007 (the finished goods, not the materials, i.e. billet, used to produce them). Yonggang appears to have classified all billet to be used for 500MPa minimum yield strength rebar production in their production system as this grade, irrespective of whether it has had a microalloy addition or not and has managed to convince the Commission that they are all exactly the same.

- **It is incorrect for the Commissioner to conclude that rebar with a minimum yield strength of 500MPa produced off a rod mill does not need microalloying.**

[13] EPR Folio No. 300/045, pg 33 refers
[14] EPR Folio No. 300/063, pg 33 refers

This is not a typical scenario in the absence of further cold working processes being applied after the rolled coil has been produced. The billet feed into the rod mill must contain the microalloy to enable the coiled rebar strength to be achieved (via microstructural changes that occur during the rolling process). The water quenching equipment required to achieve the rebar strength via the thermomechanical treatment process is typically applied on a bar mill (used to produce rebar straights). Again, this error of fact needs to be reviewed and corrected.

- **It is incorrect for the Commissioner to conclude that conversion costs to produce 500N coiled rebar (for export to Australia) are less than to produce 500N straight rebar (for Chinese domestic sale) when the real difference lies in the input billet costs.**

  There may be a slight difference in conversion costs for a rod mill (used to make coiled rebar) compared to a bar mill (used to make rebar straights) but the input feed billet to the rod mill that has had an expensive microalloy addition will cost more than a feed billet to the bar mill that did not have a microalloy addition.
  Importantly, rebar straights produced for export to Australia are also very likely to have been produced using microalloyed billet (with the water quenching option not used) in order to qualify for the VAT export rebate for alloyed steel.

4. Hunan Valin Xiangtan Iron & Steel Co. Ltd ("Hunan Valin")

Since Hunan Valin was not subject to a verification visit by the Commission during the investigation, the only reference provided in relation to microalloying is contained in the Hunan Valin's *Exporter Questionnaire Response*[15]:

> *"As indicated in the aforesaid list, the goods under product code of [number] sold by Valin in the domestic market are [status] to product [number] that exported to Australia, [content of alloy]";* and
>
> *"Please note, however, the difference in the steel type between [number] and [number] is resulted from the different alloy contents between the products, i.e. mainly the [Alloy]."*

Again there appears to have been microalloying employed by the exporter for rebar exports to Australia where the microalloy additions were not made for domestic rebar sales.

The independent *Metal Expert* pricing information presented to the Commission by OneSteel[16] shows that the Chinese August 2015 billet price offers to Taiwanese

[15] EPR Folio No. 300/020, pg 13 refers
[16] EPR Folio No. 300/054, pages 10-11

buyers for a Q235 grade billet (commercial quality minimum yield strength 235MPa) and an ASTM A615 gr 60 (minimum yield strength 420MPa) billet made with vanadium addition is $24/tonne, reflective of the higher yield strength and cost of vanadium addition. Based on a requirement for minimum yield strength of 500MPa for rebar exported to Australia, OneSteel estimated the total cost of vanadium addition to be in the order of $34/tonne. The *Platts* Latin American FOB export billet price selected by the Commission as its preferred benchmark is based on pricing of ASTM A36/A36M grade of billet (which is in fact equivalent to Q235 commercial grade billet). Therefore, the Commission has continued to labour under a substantive error of fact, resulting in a recommendation that does not support the correct and preferable decision.

In the Commission's consideration it outlines its thinking in deciding to dismiss an adjustment for microalloying as follows:[17]

- *"the Commission notes that it is possible to achieve the desired minimum yield strength using different production methods and microalloying is one of these methods."*
- *"the Commission is aware that the rebar exported from China to Australia should meet Chinese Government's chemical composition requirements for being eligible for VAT rebate for "alloyed" steel products."*
- *"AS 4671 does not set any requirement or minimum percentage in the steel's chemical composition for vanadium or any other microalloy 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.*
- *"The Commission has 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."*
- *"As a result, the Commission does not agree than an adjustment to the benchmark is required for the greater percentage of microalloys in the rebar sold to Australia."*

The Commission's rationale ignores the explicit evidence to the contrary that the goods under consideration were – as a matter of fact established by verification visits and exporters admissions – subject to microalloying, whereas the goods sold into the Chinese domestic market were predominantly not (instead utilising thermo-mechanical processes). Therefore, as a matter of law and policy, the Commissioner is compelled to apply an upward adjustment to the normal value in the order of $20-$30/tonne on account of microalloyed goods exported to Australia. The application of an upward adjustment to the normal value under subsection 269TAC(9), is therefore the correct and preferable decision.

[17] EPR Folio No. 300/063, pg 23 refers

10.2. The Parliamentary Secretary has erred in her selection of prices based on export market conditions as an appropriate benchmark for competitive market costs

The applicant for review stated in the submission dated 26 February 2016[18] that it was unable to reconcile the Commission's selection in SEF 300 of regional export market prices as a suitable benchmark for domestic Chinese costs. The Commission has since selected a different external benchmark for use in the construction of cooperating exporters' normal values and dumping margin calculations for Report 300. The selected benchmark is the *Platts Latin American Billet FOB export price.*

WTO jurisprudence currently supports the view that when comparing domestic prices to a price benchmark (in the context of the related matter of alternative benchmark selection to test adequacy of remuneration claims under Article 14(d) of the *Subsidies and Countervailing Measures Agreement*), then competitive price benchmark should be based on domestic market conditions.

Therefore in *US- Softwood Lumber IV*[19], the United States' approach in constructing an alternative benchmark based on prices of stumpage in bordering states of the northern United States, was not overturned. Similarly in *US – Anti-Dumping and Countervailing Duties (China)*[20], the United States' reference to published domestic price information for hot rolled structural steel inputs was not overturned. Similarly, the Commission's approach in recent matters concerning the selection of a suitable competitive external benchmark prices for steel inputs have been based on domestic values.

- ***Hot rolled plate steel exported from China et Ors (REP 198)***: The Commission determined that an appropriate benchmark for HRC [hot rolled coil] costs in China is the weighted average domestic HRC price paid by cooperating exporters of galvanised steel and aluminium zinc coated steel from Korea and Taiwan, at comparable terms of trade and conditions of purchase to those observed in China.[21]

- ***Hollow structural sections exported from China et Ors (REP 177):***

    - the weighted average of verified domestic black HRC costs incurred by exporters cooperating with the investigation into HSS from Korea, Malaysia and Taiwan to arrive at a black HRC price; and

[18] EPR No. 300/054 pg 4 refers

[19] Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R,* adopted 19 January 2004

[20] Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R,* adopted 11 March 2011

[21] EPR Folio No. 198/179 at pg. 67

- the weighted average of verified data of domestic pre-galvanised HRC costs incurred by cooperating exporters from Korea and Taiwan to arrive at a pre-galvanised HRC price.[22]

- ***Zinc coated (Galvanised) steel and aluminium zinc coated steel exported from China et Ors (REP 190):***

  The benchmark for hot rolled coil was established by reference to domestic production costs of exporters from Korea and Taiwan.[23]

Therefore, the Australian industry submits that it is not consistent with WTO best-practice or even the Commission's policy and practice to base an external competitive benchmark for market costs on an export price index. Instead, the use of other country domestic price information as a suitable external benchmark is consistent with the principle of trying to achieve parity between the market conditions for the supply of goods to the producer in the country of export, with the other, benchmark country. This is not so easily achieved through an export price benchmark which reflects market conditions that cannot be accounted for through adjustments if required.

In the absence of verified, reliable domestic price information available concerning other countries, the applicant for review referred the Commission to the published price information available from MEPS (International) Ltd ("MEPS"). It was noted that the Commission considers MEPS "a reputable provider of steel price data"[24], having purchased MEPS data for use in *Dumping and Subsidy Investigation No. 177* and *Review of Anti-Dumping Measures No. 285*. MEPS publishes monthly domestic EXW billet prices, denominated in US$/tonne for standard commercial quality steel billet for a number of domestic markets. MEPS steel price data is endorsed on the Australian Steel Association's (ASA) website[25], a significant endorsement as the ASA is the peak membership association for steel trading companies and stockists/distributors of imported steel products. OneSteel urged the Commission to obtain a MEPS report prior to concluding the Final Report 300, as it has previously done for other competitive cost benchmarking studies.

In the submission dated 14 March 2016[26], OneSteel provided the Commission with domestic billet price data obtained through purchasing a subscription to MEPS *Semi-Finished Steel Review* for the period August 2014 to October 2015. The express written permission from the publisher for the information to be used was also included as a confidential attachment to the submission.

[22] EPR Folio No. 177/410 at pg. 258
[23] EPR Folio No. 190/142 at pg. 55
[24] EPR Folio No. 285/022 at p. 2
[25] Cited in EPR Folio No. 300/061 as http://www.steelaus.com.au/global-steel-prices/
[26] EPR Folio No. 300/061

Therefore, the Commissioner has committed an error of fact in relying on an external competitive price benchmark that was based on export market conditions. The correct and preferable decision would have been for the Commissioner to select a competitive price benchmark that was reflective of domestic market conditions.

10.3 The Parliamentary Secretary has further erred in subtracting a rate of profit from the selected external benchmark.

Report 300 states that the Commission substituted the cooperating exporters' fully absorbed steel billet CTM values with the corresponding *Latin American FOB level steel billet export price* from *Platts* for the month minus an average rate of profit for billet sales the Chinese exporters realized for the sale of billets in their domestic market. The Commission's reasoning is explained as follows:[27]

> *"The Commission considers it reasonable to take out the verified average profit rate realised by Chinese exporters from sales of steel billets in order to calculate the competitive market costs of steel billets. In response to OneSteel's criticism for usage of profit rates realised by Chinese exporters in a market that is affected by a particular market situation, the Commission notes that, actual verified domestic profits from the sales of like goods are utilised in constructing the normal values for the Chinese manufacturers in a similar fashion."*

The applicant for review considers the Commission's comparison completely flawed. Applying verified profit from Chinese domestic sales of like goods to the constructed normal value for Chinese exporters ought not to be considered equivalent to applying profit achieved for Chinese billet sales to Latin American export billet sales. If the Commission elects to apply an amount for profit, then it must be the actual data pertaining to profit within the benchmark market, assuming any profit is in fact earned on those sales. The Commission has not made any reference to an assessment of profit on export sales of billet from Latin America in Report 300.

In response to the downward adjustment made in SEF 300 for the average rate of profit for billet sales, OneSteel's submission outlined the reasons why a reversal of the adjustment was required and these reasons remain unchanged.

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. With respect, the rate of profit earned by Chinese producers of billet that is not the subject of the competitive benchmark is not the question. 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

[27] EPR Folio No. 300/063 at p. 25

benchmark. Otherwise, to follow the Commission's approach would be to apply a wholly irrelevant rate of profit applicable in one market (i.e. Chinese domestic market subject to a particular market situation) to a sale into a wholly unrelated market (i.e. domestic competitive markets, or the Commission's selected Latin American export market).

The requirement of a verified profit margin relevant to the underlying goods the subject of the sale is necessary as a result of the WTO jurisprudence concerning the related question of determination of an amount for profit under Article 2.2.2 of the *Anti-Dumping Agreement*. In that case, the WTO Disputes Settlements bodies have consistently interpreted the requirement of determining an amount for profit based on "actual data pertaining to production and sales of the like product when determining amounts for SG&A and profits"[28]. Applied here, the Commission's approach fails the most basic precept of this rule, insofar it seeks to apply completely irrelevant amount for profit to non-Chinese sales of steel billet.

Separately, even if it is accepted that the Commission's approach to calculating the amount for profit earned on Chinese sales of billet is a sound one (which is not accepted, but expressly refuted), then it has all but overlooked the concerns expressed by the Commission in relation to the accuracy of the so-called, "verified" cost to make information of the exporters in *Investigation No. 300.* For example, in the case of Shandong Iron and Steel Company Limited, Laiwu Company:

> *"The verification team explained that it was not comfortable with the calculated CTM spreadsheet and advised that it would use the cost of production and billet costs from the accounting system records in its calculations."*[29]

In relation to the profit margins determined during the verification visit for Laiwu:

> *"At the verification visit, the verification team noted that Laiwu's domestic CTMS in its exporter questionnaire response did not reconcile with Laiwu's accounting records. Consequently,* ***the Commission could not calculate Laiwu's domestic profit rate from the sale of like goods*** [emphasis added]. *Instead, the Commission added to the normal value a profit rate based on the weighted average of the actual amounts realised by other exporters from the sale of the goods in the domestic market in China as per Regulation 45(3)(b)."*

In the case of the other cooperating exporter for whom an in-country verification visit was conducted ie. Shandong Shiheng Special Steel Group:

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[28] Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil,* WT/DS219/AB/R, adopted on 22 July 2003 at [97], [98] and [101]
[29] EPR Folio 300/042 at p. 22

> *"Shiheng's cost of steel billet was found to not reasonably reflect a competitive market cost and a benchmark steel billet cost was used in the constructed normal value."*

Importantly, although Report 300 references a benchmark billet profit adjustment based on "verified average profit rate realised by Chinese exporters from sales of steel billets", neither of the verification visit reports published for Laiwu or Shiheng **contain any mention of verification being undertaken on billet sales for either of the exporters.** This is a fundamentally critical point to understanding the extent of the factual error to which the Commissioner's recommendation has been subjected – indeed, at best, the Commissioner has had regard to unreliable information, at worst (in a judicial review sense), the Commissioner has had regard to irrelevant information. The only OCOT tests and profit determinations referred to are in relation to sales of "like goods" ie. rebar. In light of this it is unclear whether profit levels determined from sales from rebar in the Chinese market have been assumed to be equivalent to profit realised on Chinese billet sales.

The applicant maintains the view that it is not open to the Commission to reduce the value of the benchmark steel billet by an amount for profit not relevant to those goods or the market from which those goods are supplied. If the Commission elects to apply an amount for profit, then it must be the actual data pertaining to profit realised for the given product within the benchmark market, assuming any profit is earned on those sales.

11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.

The correct and preferable decision would be for the Parliamentary Secretary:

11.1 ought to make further adjustment to maintain price comparability pursuant to subsection 269TAC(9) in terms of adding the costs of microalloying the goods exported to Australia with vanadium ferroalloy additions during the investigation period, to ensure the comparability of normal values to export prices, noting that normal values were ascertained under subsection 269TAC(2)(c);

11.2 in calculating normal values pursuant to subsection 269TAC(2)(c), ought to base constructed costs using benchmark steel billet prices indicative of domestic market sales conditions, specifically, Mexican, Canadian or United States domestic billet prices available from MEPS (International) Ltd; and

11.3 in calculating normal values pursuant to subsection 269TAC(2)(c) to base constructed costs using benchmark steel billet prices, ought not to make deduction for an unrelated rate of profit.

12 Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

The proposed decisions outlined in response to question 11, above, will materially alter the dumping margins for the cooperating Chinese exporters of rebar. In turn this will alter the dumping duty rates contained within the published *Dumping Duty Notice.*

To demonstrate the materiality of the changes, the applicant for review, has identified the impacts of the proposed decisions. For example, where it is proposed that the Parliamentary Secretary:

12.1 ought to make further adjustment to maintain price comparability pursuant to subsection 269TAC(9) in terms of adding the costs of microalloying the goods exported to Australia with vanadium ferroalloy additions during the investigation period

This will materially change the amount of the normal value, and will affect the dumping margin rates. If accepted, it will have the effect of increasing the normal values applicable to all exporters, and increasing their respective dumping margin rates.

12.2 ought to base constructed costs using benchmark steel billet prices indicative of domestic market sales conditions, specifically, Mexican, Canadian or United States domestic billet prices available from MEPS (International) Ltd

This will materially change the amount of the normal value, and will affect the dumping margin rates. If accepted, it will have the effect of increasing the normal values applicable to all exporters, and increasing their respective dumping margin rates.

12.3 ought not to make deduction to the benchmark steel billet prices for an unrelated rate of profit

This will materially change the amount of the normal value, and will affect the dumping margin rates. If accepted, it will have the effect of increasing the normal values applicable to all exporters, and increasing their respective dumping margin rates.

PART D: DECLARATION

The applicant/the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995.*

Signature:..........[redacted].......................

Name: [redacted]

Position: [redacted]

Organisation: OneSteel Manufacturing Pty Ltd (Administrators appointed)

Date: 12 May 2016

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative:

Organisation:

Address:

Email address:

Telephone number:

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:...

(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /


FOR PUBLIC FILE
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Reinforcing bar
Anti-dumping Investigation 300
Exporter briefing for China – 8 October 2015

China

ACRS Accreditation Status - Rebar

Mill	Rebar Straights (mm) Grade 500N	Rebar Coil (mm) Grade 500N	First certified	Current Status
Shandong Iron and Steel Co Ltd **Laiwu** Company	12, 16, 20, 24, 28, 32, 36		Nov 2014	ACRS accredited
NatSteel (Xiamen) Ltd	10, 12, 16, 20, 24, 28, 32, 36	10, 12, 16	Nov 2014	ACRS accredited
Shandong **Shiheng** Special Steel Co Ltd	12, 16, 20, 24, 28, 32, 36	12, 16	Feb 2015	ACRS accredited
Jiangsu **Yonggang** Group Co., Ltd. (Zhangjiagang)	12, 16, 20, 24, 28, 32, 36	8, 10, 12, 16	May 2015	ACRS accredited
Hebei **Jingye** Iron and Steel Co Ltd (Shijiazhuang)	12, 16, 20, 24, 28, 32, 36	12	Aug 2015	ACRS accredited
Hunan Valin				

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Standards Comparison

COUNTRY		Australia	China
STANDARD		AS 4671	GB 1499.2
GRADE		**500N** Note - grades 500E and 250N also covered	**HRB500** Note - grades HRB335, HRB400, HRBF335, HRBF400 and HRBF500 also covered. The three HRBF grades are fine grained steels.
CHEMICAL COMPOSITION	Carbon equivalent (weldability)	0.44 max	0.55 max
MECHANICAL PROPERTIES	Yield Stress	**500 MPa** Lower Cv 650 MPa Upper Cv	**500 MPa min**
DIMENSIONAL REQUIREMENTS	Preferred bar sizes, in mm	12, 16, 20, 24, 28, 32 & 36	6, 8, 10, **12**, 14, **16**, 18, **20**, 22, 25, **28, 32, 36**, 40 & 50.
	Mass per metre tolerance	Plus or minus 4.5%	**6-12mm : ±7%** 14-20mm : ±5% 22 - 50mm : ±4%

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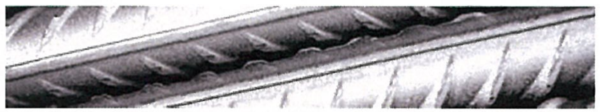
Basis for sale : Theoretical or actual weight

[Spreadsheet comparing theoretical to actual basis for sales]

** Likely rolling target:

- Assumes typical safety margin aimed for by rolling mills when rolling light within allowed standard tolerances.
- Mills will roll as close to allowed tolerance limits as they are able to consistently achieve (don't want to go too close to limit & risk scrap).
- Standards require mass per meter tolerance checks during rolling (one per batch)
- [description of verification process to assess rolling tolerance].

Theoretical versus actual adjustment is critical for comparison of 12mm rebar sales.



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Rebar production methods

	Production Method	Treatment	Benefit / Downside
1	Micro-alloying	Addition of small amounts of alloys (vanadium or niobium typically) at steelmaking stage. Strength achieved chemically via changes to steel microstructure.	• Most expensive due to price of alloy • Delivers consistent outcome across range of rebar diameters
2	Quench & Self-Temper (also called Tempcore or water-quench or thermo-mechanical treatment TMT)	During final stages of rolling, bar passes through water sprays which rapid quench the outer surface (makes it strong but brittle). The core heat retained in the bar then radiates out towards the surface during cooling which tempers the bar making it ductile while retaining strength.	• Cost effective (no alloy addition) • Requires good control of water spray system • Can deliver inconsistent results especially on larger diameter rebar
3	Cold work hardening by stretching or twisting (OneSteel's xxxxxxxxxxxx is an example)	Rolled ribbed bar is cold-worked to increase strength	• Saving on alloy but requires additional handling & processing • Delivers consistent result • Allows for larger coil weight

Microalloying for Australia

[Test certificate extracts showing vanadium microalloy additions for Shandong Laiwu and Jiangsu Yonggang for rebar exports to Australia]

- Vanadium >0.1% indicates a deliberate (microalloying) addition to achieve yield strength.

Shandong Laiwu (Laigang)

- Owned by Shandong Iron and Steel Group (Shangang).
- Laigang is a SOE – state owned enterprise.
- Production costs for GUC are recorded by product specification. Does cost to produce 500N (likely microalloyed) exceed cost to produce HRB 500? Or HRB 400?
- SG&A allocated based on sales turnover for each grade.
- No interaction with GOC – provision of loans, grants, awards or other funds
- Business licence issued by Administration for Industry & Commerce of Laiwu – restrictions imposed on effective period of operation of electricity generation, heat & water supply.

Domestic Sales	Export Sales (to Australia)
Grades: HRB335, HRB400, HRB500 and PSB785/830	Grade : 500N
No credit cost, no transportation cost, no handling cost, no packing cost, no commission, no warranties or guarantees. **No adjustment to normal values should be made for any of these.**	Inland transportation, handling & bank charges incurred. No commissions or packing costs.
	FOB terms to Australia
	Only exported rebar straights
Related companies (17) involved in sales of rebar in domestic market	Exports handled by related agency LSIC
Rebates apply to domestic sales	

Shandong Laiwu (Laigang)

- No Provincial/City Five Year Plans found.
- No knowledge of how the Shandong province plans have been enforced, compliance measurement etc. Laigang has never been impacted/has no information.
- No licence requirements, quotas or taxes on export of iron or steel products during POI. Purchase of raw materials is subject to 17% VAT.
- Laigang does not import coking coal, coke and scrap steel.
- Laigang does not benefit from any concession on purchase of any utility.
- No parts of Laigang's production of iron and steel products subject to national or regional industrial policy or guidance.
- Laigang has a "Marketing Management Committee" meeting monthly to discuss selling prices of the goods.

EQR Shortcomings:

- No detail provided around the sales process – nothing on order process, terms of sales, distribution channel, based on theoretical or actual weight, delivery costs included etc. Information all stated as "sensitive business".
- EQR at G1 refers to NON-Confidential Exhibit G-1 for the production process – why not provided on EPR?
- No disclosure of domestic grades/models considered 'like goods' for comparison with exports to Australia.
- G-5.1 states "the cost difference between goods sold to the domestic market and those sold for export to Australia is due to grade difference." What does this mean?

Shandong Shiheng

- No information around ownership/shareholding disclosed in EQR. A "wholly private company".
- Exports through affiliated trading company HK Lutai – re-invoices & collects payment. No commissions paid in this process. HK Lutai has own mark-up in the resales.
- Export selling prices don't vary according to the distribution channel.
- Domestic selling prices don't vary according to the distribution channel.
- Company directly delivers the goods to Australian ports designated by the customers.

Domestic Sales	Export Sales (to Australia)
Grades: ?? Nothing in EQR	Grade : 500N
No discounts, rebates, allowances offered. No credit notes issued directly or indirectly. No commission paid.	Bank charges incurred. No discounts, rebates, allowances offered and no credit notes issued.
Sales mostly on EXW basis, small amount delivered (prices include freight)	Company delivers to Australian port
Inland transport costs in domestic sales includes "all-in" handling, loading, ancillary expenses. Unit inland freight paid multiplied by the invoice quantity.	Inland transport costs in Australian sales includes "all-in" handling, loading, ancillary expenses from factory gate to export port (collected by logistic company). Unit rate applied to invoice weight.
Domestic packaging = export packaging	Export packaging = domestic packaging
Sales to traders and end users. No agency or distributor agreements	Exports handled by affiliated trader HK Lutai or direct sales by Shiheng to Australian importer
Rebates apply to domestic sales	

Shandong Shiheng

- Integrated production process – from iron ore to finished goods.
- Management accounting system used is "UFIDA" system.
- Accounting system based on standard costs. Variances allocated to goods by monthly output tonnes.
- From cost centres, appear to have:
  - 3x blast furnaces (with sintering & pelletising operations)
  - 3x Basic Oxygen Furnaces & casters producing billets
  - 3x Bar Mills (rebar straights) and 1x Rod Mill (rebar in coil).
- Major raw materials given as iron ore and coke. Basis of valuing these is market price.
- The coke is produced by an affiliated company of Shiheng Steel – "affiliated transaction price is reasonable and at arm's length"
- Company does not receive any grants, awards or other funds from the GOC.
- No GOC interference in decision-making processes regarding manufacturing, marketing and sale of steel products.
- Shiheng has "no awareness of such GOC opinions, directives, decrees, promulgations, measures, etc. concerning the iron and steel industry/sector that were put in place or operating during the POI"
- Shiheng has "no awareness of such government bodies that administer the subsidies provided to producers in the iron and steel industry"

Shandong Shiheng

- National Steel Policy: The company does not have to take any action in relation to the policy. Such policy doesn't have compulsory or binding forces in our legal system, and it is more or less a guidance to all the enterprises in the steel industry. Not aware of any mechanism used to measure compliance.
- VAT rebates applicable : rebar in coil = 9% and rebar straights = 13%
- No export licences needed for iron & steel products, no quotas for export during POI and no export taxes.
- VAT for iron ore = 17%
- No benefit from any concession on utilities purchased.
- Shiheng import iron ore from suppliers outside China – import duty for iron ore is 0%.

<u>EQR Shortcomings:</u>

- No disclosure of domestic grades/models considered 'like goods' for comparison with exports to Australia.

Jiangsu Yonggang (& Jiangsu Lianfeng)

- Private company – apart from filing tax returns and an annual business licence review, it has no interaction with the GOC.
- GOC's National Steel Policy has no binding force to the companies. It is just a guide at macro-economic level.
- Yonggang does not have full knowledge of the VAT rebate system applying to GUC (system is "complicated and has remote impact".
- Yonggang purchased coking coal and coke domestically.
- Yonggang produces according to production order provided by Australian customers.
- No physical characteristic adjustment claimed for domestic sales.

EQR Shortcomings:

- No disclosure of domestic grades/models considered 'like goods' for comparison with exports to Australia.
- Heavily redacted in all areas of questionnaire – all information considered confidential

Domestic Sales	Export Sales (to Australia)
No discounts or rebates	No discounts or rebates, no credit notes issued
No difference in sale price based on "class of customer"	No difference in sale price based on "class of customer"
Cost of credit calculated	Cost of credit calculated
Selling expenses includes handling, loading & ancillary expenses along with inland transport	Selling expenses includes inland freight & handling from factory to port
No packing expenses, no commission, no warranties, no guarantees or after sales service	No packing expenses, no commission, no warranties, no guarantees or after sales service
	Bank charges have been incurred

Hunan Valin

- Joint venture ownership with Arcellor-Mittal (30%) since 2005. Hunan Valin group owns 40% share and rest is free-float shares on stock exchange.

Average Growth Rates Hunan Valin Steel Co. Ltd.

Past Five Years
Ending 12/31/2014 (Fiscal Year)

Revenue -1.61%	Net Income -20.56%	Earnings Per Share -20.51%
Capital Spending -11.06%	Gross Margin +9.04%	Cash Flow -27.26%

Source : Wall Street Journal

Hunan Valin

- Integrated production facility – iron & coke-making through to GUC
- Reference made to differences in alloy costs between goods produced for domestic sales and goods produced for export to Australia. Actual grade details used for model matching are not disclosed. Suspect exports (500N) have microalloy addition while domestic grades don't.
- VAT rebate for rebar in coil = 9% and rebar straights = 13%
- **Valin received "some [grants] in the period of investigation". Appear to be related to the National Steel Policy that "encourages technology innovation and energy-saving for the steel enterprises".**
- "No GOC involvement in our decision-making process about our manufacture, marketing & sale of steel products"
- Provincial/City 5-year plans : "We don't have such Plans and have no idea about the Plans"

EQR Shortcomings:

- No disclosure of details of domestic grades/models considered 'like goods' for comparison with exports to Australia.

Domestic Sales	Export Sales (to Australia)
	No discount, rebate, allowance offered. No warranties, guarantees, and after sales service charges
	No credit notes issued
Sales direct to customer – no agency/distributor	Sales direct to customer – no agency/distributor
Sales on actual weight basis	
No delivery cost included	Inland transportation & handling costs paid to "forwarder" to complete customs declaration
Domestic packaging = export packaging	Export packaging = domestic packaging
No credit provided on domestic sales	Cost of credit included – average interest rates of short term loan in foreign currency outstanding has been applied

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Comparison

	Laiwu	Shiheng	Yonggang	Hunan Valin
Ownership	SOE	Private company	Private company	Private company
Export sales terms	FOB	Delivered to Australian port		Appears to be FOB?
Exports processed by	Related agency LSIC	Affiliated trading company HK Lutai or direct to Australian importer		Direct between Valin & customer
Pricing committee	Marketing Management Committee meets monthly to assess pricing	No pricing committee. Sales price based on cost of production & market situation	The market situation decides the selling price – Sales Manager authorises sales terms & price	No pricing committee. Head of Sales Department authorises sales terms prices etc.
Memberships	A member of CISA	Not a member of CISA or regional iron & steel industry associations	A member of CISA	Not a member of CISA but parent company Valin Iron & Steel is a member of CISA