



Australian Government
Anti-Dumping Review Panel

ADRP REPORT No. 39

Steel Reinforcing bar exported from the
People's Republic of China

November 2016

Review of a decision of the Parliamentary Secretary to the Minister for Industry, Innovation and Science to publish a dumping duty notice in relation to steel reinforcing bar exported to Australia from the People’s Republic of China.

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Abbreviations

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| ADA | World Trade Organization Anti-Dumping Agreement |
| ADC | Anti-Dumping Commission |
| ADN | Anti-Dumping Notice |
| Assistant Minister | Assistant Minister to the Minister for Industry, Innovation and Science |
| AUD | Australian dollar |
| China | The People's Republic of China |
| CIO Regulation | Customs (International Obligations) Regulation 2015 |
| Commissioner | The Commissioner of the Anti-Dumping Commission |
| CTMS | Cost to make and sell |
| FOB | Free on board |
| GAAP | Generally accepted accounting principles |
| GOC | Government of China |
| HK Lutai | Hong Kong Lutai |
| Hunan Valin | Hunan Valin Xiangtan Iron & Steel Co., Ltd |
| Manual | Dumping and Subsidy Manual November 2015 |
| Minister | Minister for Industry, Innovation and Science |
| OneSteel | OneSteel Manufacturing Pty Ltd |
| Parliamentary Secretary | Parliamentary Secretary to the Minister for Industry, Innovation and Science |
| Rebar | Steel reinforcing bar |
| REP 264 | Anti-Dumping Commission Report No 264 - Steel Reinforcing Bar exported from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand and the Republic of Turkey |
| REP 300 | Anti-Dumping Commission Report No 300 - Steel Reinforcing Bar exported from the People's Republic of China. |
| RIR 369 | Anti-Dumping Commission Re-investigation Report No 369 - Steel Reinforcing Bar exported from the People's Republic of China |
| Review Panel | Anti-Dumping Review Panel |
| Shandong Laiwu | Shandong Iron and Steel Company Limited Laiwu Company |
| Shiheng | Shandong Shiheng Special Steel Group Co., Ltd |
| SEF 300 | Statement of Essential Facts Report No 300 Steel Reinforcing Bar exported from the People's Republic of China |
| SG&A | Selling, general and administrative expenses |
| The Act | <i>Customs Act 1901</i> |
| WTO | World Trade Organization |
| Yonggang | Jiangsu Yonggang Group Co., Ltd |

Introduction

1. The following companies have applied pursuant to Section 269ZZC of the *Customs Act 1901* (the Act) for a review of a decision of the then Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Minister) to publish a dumping duty notice in respect of steel reinforcing bar (rebar) exported to Australia from the People's Republic of China (China):
 - OneSteel Manufacturing Pty Ltd (OneSteel);
 - Hunan Valin Xiangtan Iron & Steel Co., Ltd (Hunan Valin);
 - Jiangsu Yonggang Group Co., Ltd (Yonggang);
 - Shandong Shiheng Special Steel Group Co., Ltd (Shiheng).
2. The applications for review were accepted and notice of the proposed review as required by section 269ZZI was published on 15 June 2016. The acting Senior Member of the ADRP (Review Panel) has directed in writing pursuant to section 269ZYA of the Act that the Review Panel for the purpose of this review be constituted by me.

Background

3. On 14 May 2015 OneSteel lodged an application under section 269TB of the Act with the Commissioner of the Anti-Dumping Commission (the ADC) for the publication of a dumping duty notice in respect of rebar exported to Australia from China. The application by OneSteel was not rejected by the ADC, and on 1 July 2015, notice of the initiation of the anti-dumping investigation was published by the ADC.
4. The notice initiating the investigation stated that the investigation period would be 1 July 2014 - 30 June 2015. The injury analysis period was stated to be from 1 July 2011.
5. A Preliminary Affirmative Determination was made by the ADC on 21 December 2015 with securities being taken with respect to rebar exported from China on or after 21 December 2015. On 8 February 2016, the ADC published its Statement of Essential Facts (SEF 300).
6. The ADC made the final report on the Alleged Dumping of Steel Reinforcing Bar exported from the People's Republic of China (REP 300)¹ in March 2016 to the Parliamentary Secretary under section 269TEA. The ADC recommended that the

¹ ADC Report 300 - Alleged Dumping of Steel Reinforcing Bar exported from the People's Republic of China dated March 2016

Parliamentary Secretary determine that a dumping duty notice be published in respect of rebar exported to Australia from China.

7. On 12 April 2016, the then Parliamentary Secretary accepted the recommendations of the ADC and made declarations under section 269TG of the Act that section 8 of the Customs Tariff (Anti-Dumping) Act 1975 applied to exports of rebar from China. The decision of the Parliamentary Secretary was published on 13 April 2016.
8. The ADC had previously undertaken an investigation into the Alleged Dumping of Rebar exported to Australia from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand and the Republic of Turkey which is detailed in Report 264 (REP 264). The ADC recommended to the Parliamentary Secretary that a dumping duty notice be published in respect of rebar exported to Australia by all exporters from Korea, Singapore, Spain and Taiwan (with the exception of Power Steel Co.). The Parliamentary Secretary agreed to the recommendations and imposed measures on 19 November 2015.
9. The Review Panel, following applications, initiated a review of the Parliamentary Secretary's decision on rebar detailed in Report 264 on the 6 January 2016. The Parliamentary Secretary accepted the recommendations of the Review Panel in ADRP Report 34, and substituted another decision to publish a dumping duty notice in the same terms as that made on the 11 November 2015 but amended to exclude from the notice, exports of rebar from Spain by Nervacero S.A. This decision was published on 14 July 2016.
10. In addition, OneSteel sought a review by the Review Panel of the Commissioner's decision to terminate some parts of the above-mentioned investigation relating to exports from Malaysia, Turkey and Thailand by Power Steel Co. The Review Panel affirmed the Commissioner's decision which is detailed in ADRP Report No 30.

Conduct of the Review

11. In accordance with section 269ZZK(1) of the Act, the Review Panel must recommend that the Minister (in this case the Assistant Minister to the Minister for Industry, Innovation and Science) either affirm the decision under review, or revoke it and substitute a new specified decision. However, in a review of a decision under section 269TG, the Review Panel may only recommend that the reviewable decision be revoked and substituted with a new specified decision if the new decision is materially different to the reviewable decision.²

² Section 269ZZK(1A)

12. In undertaking the review, section 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 was the Minister having regard to the considerations to which the Minister would be required to have regard, if the Minister was determining the matter.
13. In carrying out its function the Review Panel is not to have regard to any information other than to “relevant information” as that expression is defined in section 269ZZK(6). For the purpose of this review, the relevant information is that to which the ADC had, or was required to have, regard when making the findings set out in the report to the Minister.³
14. In addition to relevant information, the Review Panel is only to have regard to conclusions based on relevant information that is contained in the application for review and any submissions received under section 269ZZJ.⁴
15. The Review Panel may, in making a recommendation under Section 269ZZK of the Act, also have regard to further information to the extent it relates to relevant information obtained at a conference held under section 269ZZHA(1) and to conclusions reached at such a conference based on that relevant information.⁵
16. On 15 June 2016, a request was made to the ADC to provide copies of confidential documents which were referenced in REP 300 and SEF 300 or were created during the investigation. This correspondence with the ADC was made publicly available. Copies of the documents provided by the ADC were not made publicly available as they dealt with confidential information.
17. Submissions were received within the 30 days required by section 269ZZJ of the Act from the following parties:
Hunan Valin⁶;
ADC⁷;
Yonggang⁸;
OneSteel⁹.
Non-confidential versions of the submissions were made publicly available on the Review Panel’s website.
18. Unless otherwise indicated, in conducting this review, I have had regard to the applications (including documents submitted with the applications or referenced in the applications) and the submissions received pursuant to section 269ZZJ,

³ Section 269ZZK(6)(a)

⁴ Section 269ZZK(4)(b)

⁵ Section 269ZZHA(2)

⁶ Letter from Moulis Legal dated 29 June 2016 on behalf of Hunan Valin

⁷ Submission from ADC dated 15 July 2016

⁸ Submission from J Bracic and Associates dated 15 July 2016 on behalf of Yonggang

⁹ Submission from OneSteel dated 15 July 2016

insofar as they contained conclusions based on relevant information. I have also had regard to the REP 300, and information relevant to the review which was referenced in REP 300 and to information created during the investigation, such as visit reports. This also included information contained in Statement of Essential Facts No 300 (SEF 300).

19. The letter from Hunan Valin (referred to in paragraph 17 above) dealt with issues associated with the conduct of the review. As is normal practice in the reports of the Review Panel, the conduct of the review is outlined in this section of the report.
20. On the 1 August 2016, I convened a conference with the ADC under section 269ZZHA of the Act to obtain additional information in relation to the review relevant to the calculation of the profit used in the construction of the normal value for Hunan Valin. This involved confidential information relating to co-operating exporters profit assessment. A non-confidential summary of the conference was placed on the public record.
21. On the 5 August 2016, I convened a conference with the ADC under section 269ZZHA of the Act to obtain additional information in relation to the review relevant to the calculation of the due allowance adjustments claimed by Shiheng and Yonggang in the construction of the respective normal values. This involved confidential information relating to co-operating exporters information. A non-confidential summary of the conference was placed on the public record.
22. On the 14 August 2016, I required the ADC undertake a re-investigation under section 269ZZL of the Act in relation to specific findings that formed the basis of the reviewable decision. I required that this re-investigation be completed and a report be provided to me by 12 October 2016.¹⁰ A copy of this request was placed on the public record. Further details of the aspects required to be re-investigated are outlined in the body of this report.
23. On 12 October 2016, the ADC provided its re-investigation report (RIR 369).¹¹ A copy of this report is attached. Pursuant to section 269ZZK(4A) of the Act, I have had regard to the re-investigation report.
24. I have had regard to the information referred to above, only to the extent that the ADC has identified information to which it had regard in making its recommendations to the Parliamentary Secretary and which it considered responsive to the claims made by the applicants.

¹⁰ Letter to the ADC dated 14 August 2016 requesting a re-investigation under Section 269ZZL.

¹¹ ADC Re-investigation Report 369 dated 12 October 2016.

Grounds for Review

OneSteel

25. There are three grounds for review relied upon by OneSteel and all relate to the assessment of the normal value of rebar. These grounds are as follows:
- the Parliamentary Secretary has failed to make the necessary adjustments under section 269TAC(9) in order to account for the exporters practice of adding alloys to the steel billet used to produce rebar for export to Australia. Information provided in relation to exports from Shiheng, Shandong Iron and Steel Company Limited, Laiwu Company (Shandong Laiwu), Yonggang and Hunan Valin;
 - the Parliamentary Secretary erred in her selection of prices based on export market conditions as an appropriate benchmark for competitive market costs in the construction of the normal value under section 269TAC(2)(c); and
 - the Parliamentary Secretary erred in subtracting a rate of profit from the selected external benchmark used in the construction of the normal value under section 269TAC(2)(c).

Hunan Valin

26. There are three grounds of review relied upon by Hunan Valin, all relating to the assessment of the normal value as follows, the ADC erred:
- in the substituted steel billet costs in Hunan Valin's costs of production with costs that were not in the country of export;
 - in its consideration of whether Hunan Valin's costs reasonably reflected competitive market costs; and
 - in its calculation of the amount of profit.

Shiheng

27. There are eight grounds of review relied upon by Shiheng, the majority of which relate to the assessment of normal value and the remaining one dealing with the assessment of material injury, as follows:
- 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;
 - 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;
 - the ADC erred in its interpretation of Section 43 of the *Customs (International Obligation) Regulations 2015* by focusing on the costs themselves, rather than the records of Shiheng, in rejecting its steel billet production costs;

- the ADC failed to undertake a proper examination and assessment of whether Shiheng's records reasonably reflected competitive market costs;
- the ADC erred in making an adjustment to constructed normal values for the gross margin incurred by Shiheng's trading intermediary;
- the ADC erred by double counting an upward adjustment to constructed normal values for export bank charges;
- 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; and
- 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.

Yonggang

28. There are nine grounds of review relied upon by Yonggang, eight of which relate to the assessment of normal value, and the remaining one with the assessment of material injury, as follows:

- 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;
- 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;
- the ADC erred in its interpretation of Section 43 of the *Customs (International Obligation) Regulations 2015* by focusing on the costs themselves, rather than the records of Yonggang, in rejecting its steel billet production costs;
- the ADC failed to undertake a proper examination and assessment of whether Yonggang's records reasonably reflected competitive market costs;
- the ADC erred in calculating the profit relevant to the calculation of constructed normal values;
- the ADC erred by not making necessary due allowance for domestic bank charges that affected price comparability;
- the ADC erred by making due allowance for export credit terms that did not affect price comparability;
- 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; and
- 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.

Consideration and Assessment of Grounds

OneSteel

Normal Value - Adjustments under section 269TAC(9)

29. OneSteel submits that there should have been an adjustment to the normal value under section 269TAC(9) of the Act in order to account for the exporters practice of adding alloys to the steel billet used to produce rebar for export to Australia, whereas the steel billet used in the Chinese domestic sales of rebar did not include alloys. OneSteel contends that this physical difference requires an adjustment to ensure price comparability. OneSteel submits that the exporter verification reports and/or exporter questionnaires for Shiheng, Shandong Iron and Steel Company Limited, Laiwu Company (Shandong Laiwu), demonstrates that the difference between the rebar exported to Australia and that sold on the Chinese domestic market was the different micro-alloy contents. In relation to Yonggang, OneSteel contends that the Yonggang exports do contain micro-alloys and has provided this information to the ADC. OneSteel further states that Hunan Valin's Exporter Questionnaire Response indicated that the goods exported to Australia have alloys.
30. The ADC, in REP 300, dismisses the need for an adjustment under section 269TAC(9) of the Act. The ADC indicated it has evidence that cooperating Chinese exporters added different types of micro-alloys in varying percentages in their domestic and export products and in some cases used different production methods to achieve the minimum yield strength.¹² It states that it is possible to meet minimum yield strength using different production methods and micro-alloying is one method. The ADC also noted that the Australian standard AS 4671 does not set a requirement or minimum percentage in the steels chemical composition for micro-alloys.¹³ The ADC formed the view that an adjustment to the normal values is unnecessary.
31. The ADC submission to the Review Panel dated 15 July 2016¹⁴ indicated that contrary to OneSteel's claims, certain Chinese manufacturers do manufacture rebar using the water-quenching technique, and other exporters use cheaper alloys such as chromium in the micro-alloying process. Furthermore, there are significant volumes of rebar exported to Australia that are not micro-alloyed with vanadium, but manufactured using other methods that would not affect price comparability between the domestic and export markets. The ADC confirmed its

¹² REP 300 Section 5.9.2 page 23

¹³ REP 300 Section 5.9.2 page 23

¹⁴ ADC submission dated 15 July 2016 page 13

view that an upwards adjustment to the normal value for vanadium is not required for price comparability between export sales and domestic sales.

32. In Yonggang's submission it claims that OneSteel has misunderstood the information presented by Yonggang and that Yonggang's production method used to manufacture the exported goods [redacted] [confidential production information].¹⁵ Furthermore that the domestically produced goods are manufactured [redacted] [confidential production information]. Yonggang [redacted] [confidential cost information relating to production of domestically and exported rebar.]
33. Given the claims made by OneSteel, I paid particular attention to the evidence of the nominated exporters in relation to micro-alloys in the domestic and export sales and whether it was necessary to make a section 269TAC(9) adjustment for price comparability. I found no evidence that suggests a micro-alloying adjustment (vanadium) for costs difference is required in relation to domestic and export prices and am satisfied that the approach taken by the ADC is reasonable in the circumstances. For this reason, I do not consider the decision of the Parliamentary Secretary was not the correct or preferable one.

Normal Value - Selection of prices based on export market conditions as an appropriate benchmark for competitive market costs

34. OneSteel submits that the use of the Platts Latin American Billet export price (FOB level) for use in the construction of the normal value is incorrect. It argues this on the basis that it is not current ADC policy and practice and is inconsistent with WTO best practice.
35. It cites that WTO jurisprudence relating to the adequacy of a benchmark price selection, in the context of Article 14(d) of the *Subsidies and Countervailing Measures Agreement (SCM)*, currently supports the use of domestic market conditions for the establishment of a price benchmark. It cites the Appellate Body Report on the US-Softwood Lumber IV case,¹⁶ and other similar cases, as illustrative of the need to use a domestic price rather than an export price in establishing a suitable benchmark. It also notes that a number of earlier ADC reports have used domestic prices to establish a benchmark. It suggests that the use of an export price as a benchmark presents problems if adjustments are required and does not reflect domestic market conditions. OneSteel proposes that

¹⁵ Letter from J Bracic and Associates on behalf of Yonggang dated 15 July 2016 page 2

¹⁶ Appellate Body Report, United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R

the ADC should have used MEPS International Ltd published price information rather than the Platts Latin American export price for billet (FOB level).

36. SEF 300 and REP 300 outline, in some detail, that the ADC had formed the view that a particular market situation exists in China and that the Chinese domestic rebar prices are not suitable to determine normal value under section 269TAC(1) of the Act. It further notes that the Government of China (GOC) influence extends to parts of the industry upstream from rebar manufacture. It states that the steel billet costs comprise 80% to 85% of the cost to make and sell (CTMS) rebar¹⁷ and it proposed to substitute the steel billet as a benchmark in the normal value cost construction.
37. In SEF 300, the ADC considered that an appropriate benchmark for steel billets in China was the average monthly prices paid in the East Asia region for billet imports minus an average of the rates of domestic profit for co-operating exporters from sales of steel billets in the Chinese domestic market. A number of submissions were made outlining issues with this approach.¹⁸ The ADC noted these submissions and modified its approach in REP 300 to address some of the issues flagged. It formed the view that the most appropriate benchmark to be used, and in light of information from submissions, was the Platts Latin American steel billet export price (FOB level).¹⁹
38. Yonggang, in its submission to the Review Panel,²⁰ highlighted that the full text of the above mentioned Appellate Body Report cited by OneSteel, provides guidance of the factors to be considered in establishing an appropriate benchmark that is relevant to and connected with the prevailing market conditions in the country of provision. It claims that the Appellate Body makes no mention of whether domestic or export surrogate prices are preferred.
39. The ADC in its submission to the Review Panel,²¹ noted that as the GOC had significantly distorted prices and costs in the steel industry, this rendered domestic prices and costs of iron, steel and upstream raw materials inappropriate for the purpose of constructing a normal value. The ADC also expressed concern regarding the use of import prices of steel billet in the Chinese market as these too, would be influenced by a domestic market affected by GOC policies. The ADC states that it is open to determine an appropriate competitive market cost for steel billet to offset the government influence and that an internationally sourced billet price is appropriate depending on the circumstances of a particular case.

¹⁷ REP 300 Section 5.4 page14 and 15

¹⁸ REP 300 Section 5.8 pages 18- 20

¹⁹ REP 300 Section 5.9 page 21

²⁰ Letter from J Bracic and Associates on behalf of Yonggang dated 15 July 2016, page 3

²¹ Letter from the ADC dated 15 July 2016 pages 6 - 7

40. Section 269TAC(2)(c) of the Act provides that a normal value is constructed as follows:
- ‘... (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 ...’*
41. Sections 269TAC(5A) and (5B) direct that amounts determined in relation to Sections 269TAC(2)(c)(i) and 269TAC(2)(c)(ii) must be worked out ‘ in the manner, and taking into account such factors’ as the regulations provide. The relevant regulations are section 43 (determine a cost of production or manufacture), section 44 (determine the SG&A) and section 45 (determine a profit), respectively, of the Customs (International Obligations) Regulation 2015 (CIO Regulation).
42. In constructing the normal value, the Minister is required to determine the costs of production. Regard must be had to the relevant provisions of section 43 of the CIO Regulation. In the circumstances of this case, the ADC determined that the exporters records “do not reasonably reflect competitive market costs associated with the production or manufacture of like goods”. There is no other specific legislative guidance, as to what costs of production are required to be used to determine the cost of manufacture or production of like goods.
43. The Dumping and Subsidy Manual (the Manual) provides guidance on a range of methods that may be used to ascertain a major cost input. One of which is: ‘the price of goods that are like the major cost input manufactured and sold for export consumption in a surrogate country;’²²
44. The ADC has explained its rationale for sourcing an internationally based benchmark. The ADC has based the benchmark on what it considers reliable information and provided the reasons it adopted this approach to steel billet as follows:²³
- is a fair substitute in the cost of production of rebar;
 - has not been influenced by the Chinese domestic market costs for steel;
 - has not been influenced by the GOC;
 - equates to a competitive market cost; and

²² Dumping and Subsidy Manual November 2015, Section 9, page 46.

²³ REP 300 pages 20,21 and 23-24

- reflects the fact that the co-operative exporters are integrated producers of rebar.

The ADC also noted in its submission to the Review Panel, that ‘through this process a competitive, distortion-free cost was established within China for each co-operating exporter.’²⁴

45. Firstly, I am not persuaded that the WTO jurisprudence cited by OneSteel indicates that an export based price is unacceptable. As noted by Yonggang, there is no mention of a preference for domestic or export surrogate prices in the Appellate Body Report on the US-Softwood Lumber IV case.²⁵ It is clear that the ADC in REP 300, has focused on including a benchmark that reflects a price in a competitive market, involves significant volumes and has not been influenced or distorted by the Chinese market. I also agree with the ADC submission that it is open for the Minister to determine an appropriate competitive market cost for steel billet to construct a cost of production or manufacture and that an internationally sourced billet price may be appropriate in certain circumstances. While the practice referred to paragraph 43 above, is not precisely the same as what has been used in this case, it is similar and is not inconsistent with the intent of the Manual.
46. In the context of the framework of establishing a benchmark, it is my opinion that it is open to the Minister to determine an appropriate cost of production having considered the available evidence and the approach taken by the ADC appears reasonable.
47. Therefore, I do not agree that it is incorrect to use the Platts Latin American Billet export price (FOB level) as a benchmark in the construction of the normal value under Section 269TAC(2)(c) of the Act. For these reasons, I do not consider the Parliamentary Secretary’s decision is not correct or preferable.

Normal Value - Subtraction of a rate of profit from the selected external benchmark

48. OneSteel submits that the reduction of the Platts Latin American steel billet export price by a profit rate relevant to Chinese producers of billet sold in the Chinese domestic market is flawed. It suggests that if any profit rate is to be deducted, it should be the verified profit of the non-Chinese seller of the billet the subject of the competitive benchmark.
49. OneSteel claims that WTO jurisprudence relating to the determination of profit under Article 2.2.2 of the *Anti-Dumping Agreement* (ADA) consistently requires ‘an

²⁴ ADC submission to the Review Panel dated 15 July 2016, page 7.

²⁵ Appellate Body Report, United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R

amount of profit based on actual data pertaining to production and sales of the like product'. OneSteel states that the ADC has used profit rates of the Chinese exporters, which it has also cited concerns about in relation to the evidence of costs obtained during the verification visits. OneSteel is also concerned that there is no evidence of verification activities of steel billet sales by the relevant Chinese exporters in REP 300 and questions whether the ADC has used unreliable or irrelevant information.

50. The ADC, in REP 300, indicates that the Platts Latin American steel billet price used as the benchmark reflects a sales price in a competitive market. The ADC considers it reasonable to deduct a profit to reflect a competitive market cost²⁶ rather than substitute at a price level. It has chosen to use the average profit rate of the Chinese co-operative exporters to make this calculation and notes that in constructing the normal value it used actual verified domestic profits from sales of the like goods. It claims this is a similar approach to what is undertaken when developing a profit rate for sales of like goods to be used in the normal value construction. Hence its view that this is an acceptable methodology. In its submission to the Review Panel, the ADC expanded on the methodology used to calculate the profit to be deducted from the Latin American export steel billet price, which was used subsequently in the steel billet cost in the construction of the normal value.²⁷
51. The ADC has some discretion to determine the appropriate benchmark and this includes making adjustments to establish the benchmark at the correct level. It is not making a due allowance adjustment for price comparability between the normal value and export price, rather, developing an appropriate cost element for use in the construction of a normal value in China. It is clear that the ADC should use information related to the intent of the particular provision, which as expressed in various judgements, is to approximate a domestic selling price. I have reviewed the information before the ADC and consider it reasonable to adjust the price to enable it to be suitable as a 'cost element' in the development of a cost to make rebar. I can find no limitation in the legislation which precludes this approach.
52. The second issue which then arises relates to the appropriate profit to be deducted from the price. OneSteel contends that a Latin American profit rate should have been used rather than that of the Chinese exporters, or there should have been no profit deducted at all. The ADC has used evidence obtained in the Chinese market to arrive at a suitable adjustment to the Latin American export price in order to obtain a suitable cost substitute. I note that OneSteel did not provide evidence of a suitable profit rate of a Latin American seller of billet. In the

²⁶ REP 300 Section 5.9.5 page 25

²⁷ Submission to the review by the ADC letter 15 July 2016, page 8.

circumstances of approximating the Chinese market, the ADC approach of using a profit rate of Chinese domestic sales of billet would appear not unreasonable or inappropriate. Again, I find no legal error in the approach adopted by the ADC. Rather, it is arguable that the use of the Chinese exporter's evidence more closely approximates the circumstances of that Chinese market.

53. In relation to the calculation of the profit, I have reviewed the confidential version of the calculations of the profit for steel billet. I consider the approach taken by the ADC to be reasonable and is based on reliable information. I would note that it relates to the steel billet profitability [REDACTED] [confidential profitability calculation information].
54. For this reason I do not agree that the ADC has used unreliable or irrelevant information in establishing the profit rate to be used and has not erred in this regard.
55. For the reasons above, I do not consider that OneSteel has demonstrated in relation to the three grounds raised, that the decision of the Parliamentary Secretary was not the correct or preferable one.

Hunan Valin

Normal Value - The steel billet costs substituted in Hunin Valin's costs of production were not in the country of export

56. Hunan Valin asserts that Section 269TAC(2)(c) of the Act requires that in constructing a normal value, the 'costs of production or manufacture' must be in the country of export, in other words, the benchmark steel billet cost is required to be from China. It states that the Latin American export billet price is not a cost of production in the country of export. It claims that none of the Regulations 'mandate or permit' the use of costs that do not exist in the country of export.
57. While it acknowledges that the ADC might consider that costs of steel billet in China do not reflect competitive market costs, it claims the legislation provides that the Minister must determine the costs in the country of export.
58. Hunan Valin cites the recent WTO Panel decision in European Union - Anti-Dumping Measures on Biodiesel from Argentina²⁸ which dealt with the construction of a normal value by the EU in relation to exports from Argentina as relevant and supportive of this ground. In this case, the EU substituted a FOB price based benchmark for soybean into the exporter's cost of production. The Panel found that the 'EU acted inconsistently with Article 2.2 of the ADA... by

²⁸ WTO Panel decision European Union - Anti-Dumping Measures on Biodiesel from Argentina, WT/DS473/R 29 March 2016, paras 7.256 - 7.260

using a “cost” that was not the cost prevailing in the “country of origin”, namely Argentina, in the construction of the normal value’.

59. The ADC in REP 300, indicated that it has substituted the co-operating exporter’s fully absorbed steel billet cost to make values, with the corresponding Platts Latin American steel billet export price for the month minus an average rate of profit for billet sales made in the Chinese domestic market. The Hunan Valin normal value was constructed using the adjusted benchmark steel billet price. Hunan Valin’s conversion cost from billet to rebar was replaced by the weighted average conversion cost of the co-operating exporters. Hunan Valin’s SG&A was then added on the basis that the goods instead of being exported were sold domestically and a profit was added using arm’s length sales of like goods in the ordinary course of trade as per sub-section 45(3)(b) of the Regulation.
60. In its submission to the Review Panel, the ADC re-iterated its reasons as to why the competitive market costs in China were unsuitable for use in constructing a normal value under section 269TAC(2)(c) and why it chose an international benchmark to be substituted in the CTMS.²⁹ The ADC also commented on Hunan Valin’s application in relation to whether all components of the normal value needed to be from the country of export. The ADC indicated 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 practice’.³⁰ It also highlighted the relevance of the recent Dalian decision in the Federal Court, which considered the use of a cost benchmark for the purpose of constructing a normal value, which included information from outside the country of export.³¹ In particular, Nicholas, J. found:

‘47. I do not think that Art 2.2.1.1 assists the applicants. It relevantly states that costs should normally be calculated on the basis of the records kept by the exporter, but this is subject to the same qualifications that are found in reg 180(2)(b). The balance of Art 2.2.1.1 is concerned with cost allocation... Article 2.2.1.1 has nothing to say about how the raw materials used in the production process are to be costed if the cost of raw materials, as shown in the exporter’s records, do not reasonably reflect the costs associated with the production and sale of the product under consideration.’

and

‘110. ...In the result, Art 14(d) as interpreted by the WTO Appellate Body, does not preclude the use by investigating authorities of what might be called a “non-country of provision” or “external” benchmark in an appropriate case.’

²⁹ Letter from ADC dated 15 July 2016 pages 6-7

³⁰ ADC submission to the ADRP dated 15 July 2016, page 7.

³¹ Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885 para 43 - 49 and para 101

61. OneSteel in its submission,³² indicated that section 269TAC(2)(c) of the Act provides that in constructing the normal value, the emphasis is on the Minister determining the amount. That is, it is not the exporter's cost of production in the country of export but rather an amount determined to be that amount. It also indicates that the approach by the Parliamentary Secretary (and her predecessors) to use an 'appropriate proxy' was supported in the PanAsia and Dalian Federal Court cases. OneSteel claims there are no implied restrictions in the legislation concerning the choice of substitute cost elements. OneSteel also notes that the recent decision of the WTO panel in EU - Anti-Dumping Measures on Biodiesel from Argentina on the use of a benchmark in the construction of a normal value is under appeal. Further, that Australian legal authority requires some ambiguity to be identified in the relevant provisions of the Act and Regulations to justify reference to external jurisprudence.
62. Of note, are the comments made by Moore, J. in the Metal Manufacturers judgement.³³ His Honour indicates that the preferred method in assessing a normal value is to use domestic selling prices in arms-length transactions in the ordinary course of trade. However, if these prices cannot be used, the intent of constructing a normal value is to develop a 'normal value' which approximates a competition-based price as closely as possible. His Honour also considered the issue of whether the actual costs of production or manufacture should be used as follows:
- 'However the amount arising from the operation of s269TAC(2)(c)(i) is "such amount as the Minister determines". S269TAC(2)(c) does not require the normal value to include the actual "cost of production or manufacture". The determination by the Minister, which for present purposes is the determination by the Authority, will necessarily involve matters for judgement. The exercise of that judgement permits of some approximation of the actual cost based on sufficient information.'*³⁴
63. In my view, the judgements in PanAsia, Dalian and Metal Manufacturers are supportive of the wide discretion that the Minister has to determine the costs of production under section 269TAC(2)(c) of the Act and does not limit such consideration to costs only in the country of export.
64. The emphasis of this provision, is to allow the Minister to determine the cost of production, not to limit the Minister discretion to only the country of export, which is consistent with the above mentioned court judgements. Therefore, in my opinion, it is open to the Minister to determine the cost of production, which includes the use of a benchmark. For these reasons, I do not support Hunan

³² Letter from OneSteel dated 15 July 2016, pages 1 - 4 and attached legal advice

³³ Metal Manufacturers Ltd (t/a MM Cables) v Comptroller-General of Customs - BC9507720 FCA, NG 665 of 1993 13 April 1995, para 11

³⁴ Metal Manufacturers vs Comptroller -General of Customs, BC 9507720 13 April 1995 unreported Moore, J. paras 36 - 38

Valin's argument in this ground and I consider the decision of the Parliamentary Secretary was the correct or preferable one.

65. Each of the review applicants have referred to the Panel Report on EU - Biodiesel from Argentina and some had noted that it was subject to an appeal. During the review the Appellate Body published a decision on the EU Anti-Dumping Measures on Biodiesel from Argentina.³⁵

For the purpose of this review I have not sought to rely on the Appellate Body's decision to come to the above decision. For the reasons provided above the Minister's discretion is not limited to the consideration to costs only in the country of export.

I note though paragraph 7.1.2.2³⁶ of Appellate Body's Report states-

"We consider that the phrases 'cost of production in the country of origin' in Article 2.2 of the Anti-Dumping Agreement and 'cost of production ... in the country of origin' in Article VI:1(b)(ii) of the GATT 1994 do not limit the sources of information or evidence that may be used in establishing the cost of production in the country of origin to sources inside the country of origin. When relying on any out-of-country to determine the 'cost of production in the country of origin' an investigating authority has to ensure that such information is used to arrive at the 'cost of production in the country of origin' and this may require the investigating authority to adapt that information."

Normal Value - No evidence and improper consideration of whether Hunan Valin's costs reasonably reflected competitive market costs

66. Hunan Valin submits that the ADC did not properly consider the competitive market costs of the raw materials used in the manufacture of rebar by Hunan Valin but rather made a broad statement of the GOC influence in the iron and steel industry as sufficient evidence of the influence on competitive market costs.
67. Hunan Valin submits that as it is an integrated manufacturer, it did not purchase steel billet. It claims that the ADC must first determine that the exporter's costs were not a competitive market cost. Hunan Valin states that 'in a market, the cost of a manufacturer in acquiring an input for production is the price of the party that supplied the input to the manufacturer. If there is no price, ..., then there can be no determination made as to whether the cost for that input reasonably or unreasonably reflected competitive market costs'.³⁷

³⁵ Appellate Body Report EU - Anti-Dumping Measures on Biodiesel from Argentina WT/DS473/AB/R 6 October 2016.

³⁶ Appellate Body Report EU - Anti-Dumping Measures on Biodiesel from Argentina WT/DS473/AB/R 6 October 2016 pages 97 and 99.

³⁷ Hunan Valin application for review, p12

68. Further, it claims that the ADC focus on costs, should be on the costs of the raw materials in the exporter's records so that it can make a determination about the alleged effects of GOC influence on the prices of raw materials. It states that these raw materials should be those where the substitution of a benchmark occurs, if appropriate, rather than on a product it manufactures (steel billet) as part of the production process. Hunan Valin suggests that the ADC has no basis to find that its costs of production of rebar did not reasonably reflect competitive market costs or to ignore the costs Hunan Valin did incur on raw materials. It claims that the ADC made a blanket decision applicable to all exporters rather than the specific circumstances of the individual exporter's records.
69. The relevant provision dealing with competitive market costs is section 43(2) of the CIO Regulation as follows:
- If:*
- (a) an exporter or producer of like goods keep 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.*
70. The ADC, in REP 300, outlines in some detail its assessment of the particular market situation in China for rebar³⁸ and determines that the Chinese domestic rebar prices are not suitable to establish a normal value. It considers that the GOC has significantly influenced prices in the steel industry including the rebar market and has also distorted prices of production inputs to manufacture steel. The ADC has assessed that the key raw material prices are artificially low as are other inputs in the production process.³⁹ It considers that the direct and indirect influences of the GOC have affected Chinese manufacturer's costs to produce steel billet and Chinese exporter's records do not reflect competitive market costs.
71. The ADC also asserts that the GOC-driven market distortions are impacting the key raw materials and other inputs with production.⁴⁰ The ADC formed the view that the most appropriate level to assess the impact of competitive market costs was at the steel billet level. It provides an explanation of some of the challenges in assessing the competitive market costs for all the raw materials and hence its

³⁸ REP 300 Section 5.4 and Appendix 1

³⁹ REP 300 Section 5.6 page 15

⁴⁰ REP 300 Section 5.7.1 pages 17 - 18

decision to undertake analysis at the steel billet level, noting this reflects between 80%-85% of the CTMS of rebar.

72. The ADC undertook analysis on a monthly basis of the individual exporter's billet fully absorbed CTMS with the selected benchmark billet prices (based on Platts Latin America export prices) and found that these were lower in the same month.⁴¹ The ADC concluded that the direct and indirect influences of the GOC had impacted on the Chinese exporters costs to produce steel billet.
73. The ADC uses the above mentioned rationale in relation to steel billet to assess under section 43(2) of the CIO Regulation whether 'the records reasonably reflect competitive market costs associated with the production or manufacture of like goods' and concluded that the costs were not competitive market costs.
74. I also note that Hunan Valin made a submission to the ADC following SEF 300, along similar lines to that made in its application to the Review Panel, which was taken into account in the ADC final report to the Parliamentary Secretary.
75. The ADC submission to the Review Panel,⁴² indicated that it assessed the competitive market costs of each of the exporters in relation to the manufacture of rebar, in light of its findings of significant distortion within the Chinese iron and steel industry. It chose to do this at the steel billet level, given it would in the ADC's view, capture any distortions to raw material inputs as well as capturing processing cost distortions. It further stated that this is consistent with the Manual⁴³ and the earlier mentioned judgements in PanAsia and Dalian.
76. OneSteel, in its submission to the review,⁴⁴ highlighted the explanatory statement amending the legislation in relation to the use of the records relating to the goods if they "reasonably reflect competitive market costs". OneSteel also stated that the application of this Regulation was considered in the PanAsia judgement as follows:⁴⁵

'In the present case the question is not whether any particular market participant exercises a particular degree of market power, nor whether there is competition in any market for primary aluminium in China. Rather, the questions which required to be answered for the purposes of reg 180 is whether the relevant records reasonably reflect competitive market costs associated with the manufacture or production of the relevant goods. Implicit in the CEO's finding is an approach to reg 180(2) which recognises that the implementation of government policy may drive down particular costs associated with the manufacture or supply of goods such that the

⁴¹ REP 300 Section 5.9.3 pages 23 - 24, note incorrectly referred to on page 18 as section 8.9.3

⁴² Submission of the ADC dated 15 July 2016 pages 4 - 5

⁴³ Dumping and Subsidy Manual November 2015 pages 44-45

⁴⁴ Letter from OneSteel dated 15 July 2016, page 4 - 6

⁴⁵ PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870 para 42

costs might not only reflect the ordinary effects of supply and demand but also reflect the impact of government policy aimed at increasing or reducing supply or demand’.

77. The first issue relates to whether, as Hunan Valin claims, there should not be an assessment of costs at the steel billet level given Hunan Valin does not purchase steel billet. In other words a competitive market cost assessment must only be on the goods purchased by the manufacturer. I do not agree with Hunan Valin that price comparison is the only method to assess whether costs are competitive market costs. It is one method, but not the only method and the approach adopted by the ADC would seem reasonable in the circumstances of an integrated producer.
78. The second issue is whether there was an appropriate assessment of Hunan Valin’s costs in relation to whether they were competitive market costs. The ADC undertook analysis of the specific circumstances of the rebar manufacturing process, noting it was a fully integrated manufacturing process, and used its analysis of the steel billet as the point of comparison in relation to competitive market costs of the exporter’s records. It found that the co-operating exporter’s monthly steel billet costs when compared to the benchmark were lower. The ADC concluded that this demonstrated that the GOC influences in the iron and steel industry had affected the competitive market supply of raw material inputs into steel billet as well as other production inputs.⁴⁶ On this basis, the ADC concluded that the records did not reflect competitive market costs of the raw material costs used in rebar production.
79. I have considered the analysis undertaken by the ADC and in the circumstances that steel billet represents between 80% -85% of the rebar cost, I consider it is a reasonable approach to undertake this assessment of competitive market costs at the steel billet level, given the exporters were integrated manufacturers. I also note that the ADC undertook this analysis for each of the co-operating exporters in order to make a decision in relation to section 43 of the CIO Regulation. I do not agree with Hunan Valin’s claim that it was a blanket decision. For the reasons mentioned above, I do not consider the Parliamentary Secretary’s decision was not correct or preferable.

Normal Value - The amount of profit was calculated incorrectly and unlawfully

80. Hunan Valin submits that the amount of profit used in the calculation of the normal value should have been in accordance with section 45(2) rather than under section 45(3) of the CIO Regulation.

⁴⁶ REP 300 Section 5.9.3 pages 23-34

81. Hunan Valin submits that it provided, on the 8 January 2016, updated CTMS information for domestic sales which modified its selling expenses allocation to that which had been provided in the exporter questionnaire. It claimed that the original information included the selling expenses for both domestic and export sales. Hunan Valin claims that this updated CTMS revealed that the Hunan Valin domestic sales had been made in the ordinary course of trade and hence should be used in the normal value construction.
82. Hunan Valin indicates that the ADC refused to accept this information on the basis that it had been provided after the Preliminary Affirmative Determination and could not be verified, and hence relied upon. Hunan Valin claims this is not a valid reason to reject the information, noting that the SEF was not made until 8 February 2016 and the final report in March 2016.
83. Hunan Valin also suggests that the amount of profit has not been worked out in accordance with section 45(3)(b) of the CIO Regulation. Hunan Valin indicates that the ADC in REP 300, states that the rate of profit added relates to data of arms-length sales of like goods in the ordinary course of trade by other exporters of the goods. Section 45(3)(b) of the CIO Regulation provides:
- (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:*
- ...
- (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.*
84. The ADC in REP 300, states that it has calculated the Hunan Valin normal value pursuant to Section 269TAC(2)(c) of the Act using the benchmark steel billet prices plus SG&A on the assumption that the goods, instead of being exported, were sold domestically. It also used a weighted average conversion cost of the co-operating exporters rather than Hunan Valin's conversion cost. The rate of profit used was based on data related to arm's length sales of like goods in the ordinary course of trade and stated to be in accordance with section 45(3)(b) of the CIO Regulation.⁴⁷
85. In relation to the first issue raised, the ADC in its submission to the Review Panel, indicated that a detailed calculation of its SG&A expenses, or their allocation, was not provided in the Hunan Valin original exporter questionnaire. However, it sought to modify this after the Preliminary Affirmative Determination (PAD). The

⁴⁷ REP 300 page 37

ADC explained in SEF 300⁴⁸ that it did not propose to use this new information to construct Hunan Valin's normal value. It stated:

- “it did not consider that the reasons put forward by Hunan Valin for seeking to amend its CTMS spreadsheets were compelling;
- the new set of CTMS data was provided after the PAD was published and would not be able to be verified;
- all exporter visits were completed;
- given it was not possible to verify the information in the new spreadsheets, the ADC did not consider it could rely on the new information to calculate the Hunan Valin normal values.”

I note that other elements of the Hunan Valin 8 January submission were used by the ADC to address miscalculations or double counting.

86. Provision exists under Section 269TAC(7) of the Act to disregard for the purposes of assessment of the normal value any information that is considered unreliable. I also note that there are prescribed, well-established timeframes under Section 269TC which are publicly notified, which indicates to exporters (and other interested parties), when submissions must be made.
87. It was open to the ADC to decide that for the purposes of not unduly delaying the investigation that it would not be able to use information that it could not verify and considered that it could not rely on. I find this approach by the ADC reasonable in the circumstances of this case.
88. In relation to the second issue of the profit rate used to construct the normal value, Hunan Valin states that the description of the rate of profit used in the construction of the normal value is not in accordance with section 45(3)(b) of the CIO Regulation.
89. I reviewed the confidential spreadsheets of the exporters concerned, which were used to calculate the Hunan Valin profit rate, and agreed with Hunan Valin that this profit rate has not been established in accordance with section 45(3)(b) of the CIO Regulation. I convened a conference with the ADC on the 1 August 2016 under Section 269ZZHA of the Act to clarify the information regarding the calculation of the profit rate including which exporters it had been based on.
90. Subsequently, I referred this issue to the ADC for re-investigation under section 269ZZL of the Act.⁴⁹

⁴⁸ SEF 300 Section 5.9.4.2 page 37

⁴⁹ Letter dated 14 August 2016 to the ADC requesting a re-investigation

91. The ADC provided its re-investigation report no 369 (RIR 369) on the 12 October 2016.⁵⁰ A copy of RIR 369 is attached to this report. It re-calculated the profit rate in accordance with section 45(3)(b) of the CIO Regulation. The ADC also noted that the SG&A and profitability information from other exporters was used in the assessment of the Hunan Valin normal value, and these other exporters were also the subject to re-investigation under section 269ZZL of the Act. As a result there were additional consequential amendments to the normal value calculations due to changes in the other exporter's information. Together, these changes led to the dumping margin being re-calculated. The re-calculated dumping margin is 12.3%.
92. For the reasons mentioned above, I consider the Parliamentary Secretary's decision was not the correct or preferable decision in relation to the calculation of the profit rate and that the normal value and dumping margin will require re-determination.

Shiheng and Yonggang

93. As many of the grounds submitted by Shiheng and Yonggang are similar, I have chosen to group those below. The grounds which are different have been dealt with separately under the respective applicants' name.

Normal Value - Particular market situation existed and that as a consequence, domestic sales of rebar were unsuitable for determining normal values.

94. Shiheng and Yonggang assert that the ADC has not undertaken sufficient analysis of the rebar market to determine whether a particular market situation exists, but rather mirrors previous ADC assessments. Both suggest that the existence of broad policies and guidelines directed at the steel industry do not render domestic sales unsuitable. They quote the Trade Measures Review Officer comments in the December 2012 Hollow Structural Section report as relevant in this regard. In particular, Shiheng and Yonggang, rely on the comments regarding 'suspicion of active government intervention' is not adequate and there must be 'concrete evidence of the implementation of government policies and their effect in the market' as the standard to be met when assessing the suitability of the market situation.
95. Shiheng and Yonggang also claim that there has been insufficient evidence outlined by the ADC in REP 300 to determine that the rebar market is affected by GOC intervention. Shiheng and Yonggang highlight that they are both fully integrated manufacturers and claim they have not benefited from the provision of materials at less than adequate remuneration.

⁵⁰ ADC Re-investigation report No 369 Steel Reinforcing Bar exported from the People's Republic of China dated 12 October 2016

96. Both question the reliance placed by the ADC, on the findings made in the Canadian Border Services Agency 2014 Dumping and Subsidy investigation in relation to concrete steel reinforcing bars. Shiheng and Yonggang, indicate that there are key differences in the assessment of domestic market sales within the two systems and the Australian legislation has a higher evidentiary threshold for determining that a market situation exists.
97. In its submission to the Review Panel,⁵¹ the ADC indicates that the Manual sets out a range of factors which should be considered when assessing whether a market situation exists.⁵² The ADC re-iterated that Appendix 1 of REP 300 outlines the analysis that it undertook in forming the view that the GOC ‘materially influenced conditions within the Chinese rebar market during the investigation period’. It states that the rebar market is a subset of the iron and steel market and the distortions across the broader market are also applicable to the rebar market.
98. I have reviewed the information in Section 5.4 in REP 300 and supported in more detail in Appendix 1⁵³ used by the ADC to assess the market situation.
99. While I understand that Shiheng and Yonggang consider the analysis undertaken by the ADC is quite broad, there are sufficient linkages drawn as to why this flows through to the rebar industry, to in my view, discount the concerns flagged. I note that in the Dalian judgement, that Nicholas, J. dealt with the issue of decision making in relation to market situation as follows:
- ‘Rather, Customs finding on this issue was in my view the result of a considered assessment of a factual question requiring a “broad judgement” namely, whether the impact of the various GOC influences on the Chinese iron and steel market rendered domestic sales of HSS “not suitable” for use in determining normal value under section 269TAC(1) of the Act.’⁵⁴*
100. I consider there is a satisfactory description and rationale provided by the ADC, to form the view that a particular market situation exists in the rebar market in China which rendered domestic sales as unsuitable for assessment of the normal value of rebar. I have also referred to this aspect in paragraph 70 above. On balance, I consider there is sufficient information and evidence outlined in REP 300 to support the conclusion that a particular market situation existed in relation to domestic rebar sales in China.

⁵¹ Letter from ADC dated 15 July 2016 pages 2-3

⁵² ADC Dumping and Subsidy Manual November 2015 pages35-36

⁵³ REP 300 page 14 and Appendix One

⁵⁴ Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885 paragraphs 25 - 26

101. For these reasons, I do not agree that the ADC has erred in forming the view that a particular market situation exists in relation to the Chinese rebar market. Accordingly, I do not consider the Parliamentary Secretary's decision was not the correct or preferable one.

Normal Value –

- Market situation assessment and findings to form the view that steel billet costs did not reasonably reflect competitive market costs;
- Interpretation of Section 43 of the *Customs (International Obligation) Regulations 2015* by focusing on the costs themselves, rather than the records of Shiheng and Yonggang, respectively, in rejecting its steel billet production costs; and
- Proper examination and assessment of whether Shiheng and Yonggang records reasonably reflected competitive market costs.

102. There are three grounds submitted by Shiheng and Yonggang that are in my view very similar and I have decided to deal with them together. They relate to the ADC's consideration of section 43 of the CIO Regulation, regarding whether Shiheng and Yonggang costs, should have been used in the cost of manufacture in the construction of the normal value of rebar. In particular, whether the ADC:

- analysis of the records of the respective exporter's 'reasonably reflect competitive market costs associated with the production or manufacture of like goods';
- has incorrectly interpreted section 43(2)(b) of the CIO Regulation in deciding not to use Shiheng and Yonggang records to establish the normal value; and
- is under an obligation to examine and analyse every particular costs element in forming a view that these costs do not reflect competitive market costs.

I note that these grounds are similar to the Hunan Valin's ground two which is discussed in paragraphs 66 - 78 above. I do not propose to repeat all of the commentary from these paragraphs as it applies equally to Shiheng and Yonggang.

103. Both exporters assert that the 'market situation' analysis is different to the 'competitive market costs' assessment and that the ADC has failed to conduct this analysis separately. It is claimed that the ADC has also not met the requirements of the ADA Article 2.2.1.1 due to the approach it has taken. Shiheng and Yonggang review applications also outline the concern that if the market situation

assessment based on government influence in the domestic market is always used to assess whether the exporters costs are competitive market costs then it will always lead to exporter's costs being rejected. It states that this is not the intent of China's WTO Accession Protocols and the second *Ad Note* to Article VI:1 of the GATT 1994.

104. Shiheng and Yonggang also suggest that Article 2.2.1.1 of the ADA requires the investigating authority to construct a normal value by using the costs of the records of the exporter, where those records are kept in accordance with generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with the production and sales of the product under consideration. Shiheng and Yonggang claim that Australia's legislation includes the additional words 'competitive market' and that the ADC place emphasis and importance on these words. Further, that the ADC holds the view that these words mean that the assessment relates to the actual costs rather than the records. Shiheng and Yonggang had previously raised these points with the ADC, as noted in Section 5.7 of REP 300.⁵⁵
105. Yonggang in its submission to the Review Panel, restated its concern with the rejection of its costs due to the ADC's approach to section 43(2)(b) of the CIO Regulation.⁵⁶ Shiheng and Yonggang also cite the recent Panel Report on EU - Biodiesel⁵⁷ which deals with the inclusion of a substitute cost for soybean used in the construction of a normal value for Biodiesel because the costs of soybean were artificially lower than international prices due to the distortion created by the Argentine export tax system. The Panel found that '*...the object of the comparison is to establish whether the records reasonably reflect the costs actually incurred, and not whether they reasonably reflect some hypothetical costs that might have been incurred under a different set of conditions or circumstances and which the investigation authority considers more reasonable than the costs actually incurred.*'⁵⁸
106. OneSteel in its submission to the Review Panel, ⁵⁹ indicated that the application of section 43 of the CIO Regulation (formerly regulation 180(2)(b)(ii) of the Customs Regulations 1926) was considered in the PanAsia judgement by Nicholas, J., regarding whether the Minister's finding that the cost of primary aluminium in China used in the manufacture of extrusions was not a competitive market cost⁶⁰:

⁵⁵ REP 300 5.7 page 16

⁵⁶ Letter from J Bracic and Associates on behalf of Yonggang dated 15 July 2016 page 4

⁵⁷ Panel Report EU - biodiesel, WT/DS473/R, para 7.202, page 74

⁵⁸ Panel Report EU - biodiesel, WT/DS473/R, para 7.242, page 83

⁵⁹ Letter from OneSteel dated 15 July 2016, pages 4 - 7 and attached legal advice

⁶⁰ PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870 para 91

'...Rather, the question which is required to be answered for the purposes of Reg 180 is whether the relevant records reasonably reflect competitive market costs associated with the manufacture or production of the relevant goods. Implicit in the CEO's finding is an approach to reg 180(2) which recognises that the implementation of government policy may drive down particular costs associated with the manufacture or supply of goods such that the costs might not only reflect the ordinary effects of supply and demand but also reflect the impact of government policy aimed at increasing or reducing supply or demand...In particular, it was open to the CEO to conclude that in the circumstances which he found to exist, the cost of primary aluminium did not reasonably reflect "competitive market costs"...'

107. OneSteel submission to the Review Panel also noted that in the PanAsia judgement, Nicholas, J. also dealt with when regard should be had to international agreements, as follows:

*'The provisions of Pt XVB are technical and complex. They must be interpreted in accordance with the settled principles of statutory construction. As always the interpretative task begins with a consideration of the terms of the relevant legislation (Australian Finance Direct Limited v Director of Consumer Affairs Victoria (2007) 234 CLR 96 at [34] per Kirby J). Recourse to the international agreements will only be of assistance in resolving the questions of construction in this case where the relevant provisions are ambiguous, and where the international agreements may assist in resolving the ambiguity...'*⁶¹

108. The OneSteel submission to the Review Panel also notes that the recent decision of the WTO panel in EU - Anti-Dumping Measures on Biodiesel from Argentina on the use of a benchmark in the construction of a normal value is under appeal. It further states that 'Australian legal authority requires some ambiguity to be identified in the relevant provisions of the Act and Regulation to justify reference to external jurisprudence'.⁶²

Market Situation and Competitive Market Costs

109. I agree with the statement by Shiheng and Yonggang that the market situation analysis is different to the assessment of competitive market costs. However, I do not agree that the ADC has failed to undertake a separate analysis. There is a description of the separate analyses undertaken by the ADC as I have outlined in paragraphs 66-79 above.

110. The ADC compared the cost to make of the steel billet of each of the integrated rebar manufacturers, with the Platts Latin American export price of steel billet, and found that the exporter's costs were lower in all months. It chose to do this at the

⁶¹ PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870 para 9

⁶² OneSteel submission dated 15 July Legal advice page 5

steel billet level as it considered this the 'most reasonable and meaningful approach for the assessment of the costs in Chinese exporter's records'.⁶³ The ADC formed the judgement that these costs did not reflect competitive market costs. This is quite separate to its analysis of the market situation for rebar. However, the ADC did draw linkages between its findings in relation to the Chinese iron and steel market in China, in drawing conclusions regarding the impact on other raw material costs in justifying its decision to perform analysis at the steel billet level.

111. This appears a reasonable approach in my view given the nature of the raw materials used in rebar manufacture. Accordingly, I consider the ADC did undertake a separate analysis of the market situation and the competitive market costs.

Competitive Market Costs and Costs

112. Shiheng and Yonggang claim that the ADC has placed weight on the words competitive market costs rather than the words used in Article 2.2.1.1 of the ADA, that is, the costs in the records of the exporter.
113. The ADC is required in my view, to apply Australia's legislation and in this case it entails assessing whether the costs in the exporter's records reflect competitive market costs as required in section 43(2)(b)(ii) of the CIO Regulation. This is supported in the Dalian judgement by Nicholas, J. which indicates that even when the exporter's records are in accordance with GAAP, the second test requires that the costs must still reflect competitive market costs.⁶⁴
114. I do not consider it is the role of the Review Panel to comment on the perceived differences between Australia's legislation and the ADA, rather the Review Panel must apply Australia's legislation. Regard may be had to extrinsic material in certain circumstances, as outlined in the above mentioned judgement, which do not appear to exist in the interpretation of this provision relative to this investigation.
115. I do not consider the Panel Report on EU - Biodiesel⁶⁵ assists Shiheng and Yonggang in this ground given the different wording in Australia's legislation. Given section 43(2) of the CIO Regulation does not seem ambiguous, it is unnecessary to have regard to the WTO jurisprudence. Additionally, previous consideration of this issue before the Federal Court provides useful guidance as to the considerations to be applied in the interpretation of this regulation. The issue in my view, is whether the ADC has undertaken sufficient analysis of the

⁶³ REP 300 Sections 5.7.1 page 18

⁶⁴ Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885 paragraphs 39 - 42

⁶⁵ Panel Report EU - biodiesel, WT/DS473/R, para 7.202, page 74

'competitive market costs' as required by section 43(2)(b)(ii) of the CIO Regulation in order to explain why it has not used the exporter's records. As outlined in paragraphs earlier in this report, it is my view, that the ADC has met this requirement.

Proper Assessment and Analysis

116. This ground is essentially the same as the preceding one. Accordingly, for the reasons outlined in the above paragraphs, I consider the ADC did assess section 43(2)(b) in an appropriate manner and did correctly assess whether the costs reflected competitive market costs.

117. I do not agree that the Parliamentary Secretary has erred in relation to rejecting the use of the records of Shiheng and Yonggang.

118. For the above mentioned reasons, I do not agree with the Shiheng and Yonggang grounds that the Parliamentary Secretary has not made the correct or preferable decision in relation to the decision on competitive market costs in respect of section 43 of the CIO Regulation.

Normal Value - 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.

119. Shiheng and Yonggang claim that the ADC should have made an adjustment to the steel billet benchmark price used to construct the normal value to take into account the revenue generated on the sales of by-products as part of the production process of steel billet. It claims that manufacturers have different production methods which are unique and generate different by-products, thus generating different revenues. It claims such differences should be taken into account for individual Chinese exporter's costs.

120. Shiheng and Yonggang indicate that the ADC in REP 300 dismissed this claim on the basis that the Latin American exporters would have similar amounts of by-products and would have established the prices of steel billet taking this into account. Shiheng and Yonggang disagree with this approach and consider there should have been an adjustment under Section 269TAC(9) of the Act to ensure price comparability.

121. Shiheng and Yonggang cites the finding of the Appellate Body in EC - Steel Fasteners as being relevant⁶⁶ and claims that the ADC needs to ensure proper price comparability. The relevant passage is as follows:

⁶⁶ Appellate body Report, EC-Steel Fasteners, WT/DS397/AB/RW para 5.207, page 66

‘...Accordingly, an investigating authority has to “take steps to achieve clarity as to the adjustment claimed” and determine whether, on its merits, the adjustment is warranted because it reflects a difference affecting price comparability or whether it would lead to adjusting back to costs or prices that were found to be distorted in the exporting country”.

122. Section 269TAC(9) of the Act provides that where a normal value has been constructed based on costs, then adjustments should be made to ensure it is properly comparable with the export price.
123. The ADC in its submission to the Review Panel, provide additional commentary on why an adjustment is unnecessary. It claims that all manufacturers would capture and account for the value of these by-products as cost recoveries and reflect these in the price.⁶⁷ The ADC undertook analysis between OneSteel and Shiheng’s by-product and cost recovery ratios and found both of these, when expressed as a percentage of cost to make and sell, to be similar, notwithstanding different production methods. The ADC concluded that any steel billet price would be adjusted for these cost recoveries and would not require an adjustment between the normal value and export price.
124. I have reviewed the information outlined and support the reasoning outlined by the ADC that competitive steel billet market prices used in the Platts Latin American prices would have been established recognising the revenues generated from by-products. In my opinion, this would be a normal business practice in a competitive market situation. I consider the approach by the ADC is consistent with the Appellate Body Report mentioned above. I do not find Shiheng’s and Yonggang’s evidence compelling in this regard. For this reason, I consider the Parliamentary Secretary’s decision is the correct or preferable one.

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.

125. Shiheng and Yonggang both claim that the material injury assessment undertaken by the ADC is based on a ‘but-for’ analytical method, rather than the ‘coincidence analysis’ which is stated as the preferred and primary method in the Manual. Relevant provisions of the Act, the WTO ADA provisions relating to the need to ensure that material injury assessment is ‘based on facts and not merely on allegations, conjecture or remote possibilities’, and relevant WTO Appellate Body Reports are cited which reinforce the importance of positive evidence in assessing material injury.

⁶⁷ ADC letter dated 15 July 2016 page 7

126. Shiheng and Yonggang considers that the ADC has not:
- met the required evidentiary standard in its REP 300;
 - questioned the reliability of the injury assessment due to earlier calculation errors in the preliminary dumping calculations which would impact the final dumping margins, as well as its 'speculative assessment of the applicant's prices, volumes, market share and profits' and 'any such assessment of the materiality of the injury attributable to the subject imports';
 - established that the applicant's sales would have replaced the subject imports in its entirety, rather than other import sources; and
 - established through its assessment of the injury indicators (price suppression, sales volumes, market share and profits) that the applicant had suffered material injury.
127. The ADC in REP 300, indicated it focused on data during the investigation period from October 2014 to June 2015 and noted that the market had been affected by dumping immediately prior to the investigation period. It stated that in REP 264, OneSteel was found to be injured by dumped exports of rebar from Korea, Singapore, Spain and Taiwan (with the exception of one exporter).⁶⁸
128. The ADC in REP 300⁶⁹ found that:
- dumping margins ranged from 11.7% to 30% and that dumping has enabled importers to offer rebar at lower prices than otherwise would have been the case;
 - the prices of two importers (of Chinese exports) were below those of OneSteel in every month of the investigation period;
 - when the dumping margin was added to the price of rebar exported to Australia, the price of Chinese rebar would not have undercut OneSteel's prices; and
 - OneSteel would have been in a position to increase its prices in the absence of dumping.

As a result it concluded that OneSteel had experienced material injury in relation to the following indicators:

- loss of sales volumes;
- price suppression;
- less than achievable profits and profitability;
- reduced employment;
- reduced value of assets employed in the production of rebar; and
- reduced value of capital investment in the production of rebar.

⁶⁸ Report 264 - Alleged dumping of rebar exported to Australia from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand and the Republic of Turkey

⁶⁹ REP 300, page 67

129. I have reviewed the material injury analysis undertaken by the ADC in Sections 6 and 7 of REP 300.⁷⁰ The ADC noted that OneSteel did have improvement in profit and profitability from the second quarter of 2014/15 and that sales volumes marginally increased in 2014/2015. The ADC made it clear that it conducted a 'but-for' analysis in order to compare the current state of the industry to the state the industry would likely have been in had there been no dumping. It also noted the price sensitivity of the market.
130. It is accepted that there are particular challenges in analysing sales and volume information in a market already impacted by dumped exports from other sources. While the 'but-for' analysis is not the most common approach utilised by the ADC as noted in the Manual, there are circumstances where it is appropriate, with the proviso that the evidence being relied upon is outlined.⁷¹
131. I have reviewed the analysis undertaken by the ADC, paying particular attention to the pricing analysis given the comments made in relation to modified dumping margins, and consider it reasonable and convincing. It does not appear to be speculative, but rather based on likely scenarios given the information before the ADC. In my view, it has made valid and reasonable conclusions on the information it has derived, against the background of the earlier dumping finding in Investigation 264. I also noted the mention of the substantial increase in Chinese exports during the investigation period, albeit from a low base and consider this particularly relevant in the ADC's finding.
132. For these reasons, I do not consider that the Parliamentary Secretary's decision was not the correct or preferable one.

Shiheng

Adjustment to constructed normal values for the gross margin incurred by Shiheng's trading intermediary

133. In REP 300, the ADC made an upward adjustment under Section 269TAC(9) of the Act to the constructed normal value to reflect Hong Kong Lutai's (HK Lutai) verified profits for exports to Australia. Shiheng claims that the adjustment was made as the difference between HK Lutai's purchase price of rebar and its selling price, which is the full gross margin on the sales to Australia, being all SG&A plus profit. Shiheng claims that the ADC should not have adjusted for the full gross margin but rather only the SG&A incurred by the trading intermediary. It states that this is the existing policy and practice as outlined in the Manual⁷² and that a number of recent ADC findings had followed this approach.

⁷⁰ REP 300 pages 41 - 66

⁷¹ Dumping and Subsidy Manual November 2015 page 124

⁷² Dumping and Subsidy Manual November 2015 pages 67-68

134. The ADC in REP 300, stated that Shiheng, in its exporter questionnaire, indicated that it also exported to Australia through a related trading entity HK Lutai. These goods are manufactured by Shiheng and despatched from the Shiheng's premises in China. The ADC treated Shiheng and HK Lutai as one entity and for the purposes of its investigation treated the exports as being from Shiheng.⁷³ It then indicated that it had made an upward adjustment under Section 269TAC(9) for HK Lutai's verified profit for exports to Australia through that company.
135. The ADC in its submission to the Review Panel, claims that Shiheng have quoted the policy about sales made in the exporter's domestic market through subsidiaries rather than in export sales and hence questions the relevance to this case. It claims that the situation between Shiheng and HK Lutai is quite different. When sales are made through HK Lutai, a margin is added on top of the price it buys from Shiheng. It also stated that the HK Lutai's [REDACTED] [REDACTED] [confidential pricing information]. For this reason it considers that in order to make the export price and normal value comparable there is a need to add an adjustment to the normal value for the HK Lutai margin.⁷⁴
136. OneSteel also made a submission stating that it considered it appropriate to make this adjustment on the basis of the different sales circumstances between the constructed normal value and the export price.⁷⁵
137. There was limited information in REP 300 regarding the rationale of the adjustment and its calculation, and for this reason I sought additional information from the ADC through a conference under section 269ZZHA of the Act. The ADC explained the information it had derived from the exporter verification report and the different selling channels. It outlined why this had necessitated an adjustment under section 269TAC(9) of the Act to enable a proper comparison of the normal value and export price.⁷⁶
138. I have reviewed the exporter verification report and information from the conference with the ADC, and agree that it is appropriate to make this adjustment and there is no error in the application of the policy or the ADC calculation of the adjustment. Accordingly, I do not consider the Parliamentary Secretary's decision was not the correct or preferable one in relation to this ground.

⁷³ REP 300 Section 5.13.1 p 27

⁷⁴ ADC Submission to the Review Panel dated 15 July 2016 page 13

⁷⁵ Letter from OneSteel dated 15 July 2016 page 12

⁷⁶ Conference summary with the ADC on 5 August 2016 pages 1 - 2

Double-counting an upward adjustment to constructed normal values for export bank charges

139. The ADC in REP 300 made an upward adjustment to include bank charges incurred by Shiheng and HK Lutai. Shiheng's application contends that a separate adjustment for bank charges is unnecessary as such charges have already been included in Shiheng's SG&A expenses and HK Lutai's gross margin. Shiheng claims that it made a submission following the SEF 300 claiming that its bank charges were already included within the financial expenses in the SG&A in the constructed normal value and this appears to have been misunderstood by the ADC.
140. The ADC indicated that any charges that are directly related to export sales should not be included in the calculation of domestic SG&A and had concluded that double-counting has not occurred.
141. Shiheng indicates that the ADC has misunderstood the circumstances of the bank charges figure shown its exporter submission as this included the total financial expenses figure in the general ledger which represented both export and domestic bank charges. In the export sales listing (at Exhibit B-4 in Shiheng's exporter questionnaire), it showed the actual bank charges incurred on the relevant export transactions. It claims that by adding the actual bank charges for each transaction as well as a financial expense included in the SG&A (for both domestic and export sales) the ADC has double counted the bank charges and then again added the financial expenses in the gross margin figure for HK Lutai. Shiheng is not claiming that there should not be an adjustment but rather there has been an inadvertent double-counting
142. The ADC in its submission to the Review Panel dated 15 July 2016 indicated that an upward adjustment for export bank charges is required to reflect the different payment or collection terms incurred in export sales transactions.⁷⁷
143. OneSteel in its submission claims that the ADC has undertaken the correct adjustment for bank charges given these were verified in the Shiheng exporter verification visit report.⁷⁸
144. I reviewed the confidential exporter's questionnaire and agree with the concern that Shiheng has identified. I held a conference with the ADC on the 5 August 2016 under section 269ZZHA of the Act to seek additional information on whether there had been double-counting of the bank charges.⁷⁹ The ADC agreed that it appeared that double-counting of the bank charges had occurred. As a result I

⁷⁷ ADC Submission dated 15 July 2016, page 11

⁷⁸ Letter from OneSteel dated 15 July 2016 page 13

⁷⁹ Conference summary with the ADC on 5 August 2016 pages 2

required the ADC to re-investigate this issue to ensure that any double-counting of the bank charges was removed from the domestic SG&A included in the calculation of the normal value.⁸⁰

145. The ADC in RIR 369, removed the export bank charges from the domestic SG&A and in addition, as a result of the reduction of the domestic SG&A, identified a need to re-calculate the profitability.⁸¹ Following these re-calculations, the ADC found that the normal value was unchanged and accordingly, there was no impact on the dumping margin. I have reviewed the revised confidential spreadsheets and agree with the ADC's revised calculations.

146. Therefore while this ground was shown to be correct in that double counting of the bank charges had occurred, its removal did not ultimately impact on the normal value, or the reviewable decision. In these circumstances, the Parliamentary Secretary's decision remains unchanged.

Yonggang

Profit relevant to the calculation of constructed normal value

147. Yonggang claims the ADC made the following calculation errors in constructing the normal value:

- (a) The unit CTMS was calculated using the volume of steel billet used in production rather than the amount of rebar produced. Yonggang submits that the rebar volume should have been used whereas the monthly CTMS uses the volume of rebar. It claims that it has incorrectly picked up the wrong volume in some of the spreadsheet calculations.
- (b) Due to the above mentioned error, there is a consequential impact on the comparison of whether individual domestic sales are profitable, as they are compared with an incorrect quarterly CTMS. This is also said to impact on the final calculations.
- (c) A consequential calculation in the rate of profit used in the constructed normal value due to the above mentioned unit CTMS and profit calculations. Ordinary course of trade tests were undertaken using quarterly comparisons whereas Yonggang submits that monthly comparisons should be undertaken when there are significant cost or price movements in the investigation period. Yonggang asserts that the ADC correctly summarised this issue at page 32 of its REP 300 but has not understood the implications in terms of whether certain transactions which should be in the assessment of being in the ordinary course of

⁸⁰ Letter to the ADC dated 14 August 2016 requiring a re-investigation under section 269ZZL of the Act

⁸¹ RIR 369 ADC re-investigation report dated 12 October 2016 page 9

trade, have been excluded. It notes that the Manual (at page 31) suggests that monthly comparisons may be appropriate where there are significant variations in raw material costs.

- (d) Yonggang's profit was determined using grade 500 products and Yonggang submits that grades 335 and 400 should also have been included. Yonggang considers that grade 500 products is a subset of the like goods which should be used.

148. In relation to (a) - (b) above, the ADC in its submission to the Review Panel indicated that it sought additional information from Yonggang to explain why Yonggang's reported production quantities were larger than the steel billet quantities used in production.⁸² The ADC formed the view that Yonggang's production volumes do not reflect the actual rebar volumes. For this reason it considered the steel billet quantities a more accurate reflection of production volumes to be used in the calculations.
149. OneSteel in its submission to the Review Panel claims that it is physically impossible scenario to have the mass of rebar output exceed the mass of steel billet inputs and considered the ADC had been generous in accepting the Yonggang financial information.⁸³
150. I held a conference with the ADC on the 5 August 2016 under section 269ZZHA of the Act to seek additional information on the findings associated with Yonggang's rebar production volumes.⁸⁴ The ADC outlined its reasons for using the steel billet consumption volumes to undertake the calculation of unit CTMS etc. I have considered the reasons why the ADC adopted this approach and it seems reasonable in the circumstances. In my view, this approach has not disadvantaged Yonggang given the circumstances presented to the ADC and the unit information calculations have been based on the Yonggang's information.
151. In relation to (c) above, the ADC stated the scenarios that Yonggang suggest only become relevant when there are significant fluctuations in monthly volumes and volumes remained stable during the investigation period.⁸⁵ I do not follow the logic of the ADC in this regard as the issue being flagged is whether there have been significant fluctuations in the unit costs and this is affected by cost variations during the period, not just by volumes. I sought information on this issue from the ADC at the conference held under section 269ZZHA on the 5 August 2016. The ADC explained its approach and still considered that it would have no impact on the assessment of the ordinary course of trade test and profit rates.⁸⁶

⁸² Submission from the ADC dated 15 July 2016 pages 9 - 10

⁸³ Submission from OneSteel dated 15 July 2016 pages 9 -10

⁸⁴ Conference summary with the ADC on 5 August 2016 pages 2

⁸⁵ Submission from the ADC dated 15 July 2016 page 10

⁸⁶ Conference summary with the ADC on 5 August 2016 pages 2

152. OneSteel commented in its submission to the Review Panel that when performing the ordinary course of trade test it does not matter if a monthly or quarterly base is used as it is assessed over a 12 months period.⁸⁷
153. I required the ADC to re-investigate this issue in my letter dated 14 August 2016, as I agree with Yonggang, that where there are significant cost variations during a period, it is more appropriate to undertake monthly rather than quarterly calculations as undertaken in relation to other calculations. The ADC advised in RIR 369 that the re-calculation of the ordinary course of trade test based on the monthly CTMS values led to a minor adjustment of the profit rate for like goods.⁸⁸ The ADC provided the re-calculated Yonggang normal value and dumping margin using these figures.
154. In relation to (d) above, the ADC in REP 300 considered Yonggang's issue regarding whether there was a broader category of like goods in the domestic market that should have been included in the assessment of normal value.⁸⁹
155. OneSteel expressed concern that Yonggang is seeking to challenge the identification of like goods through its suggestion that additional grades in the domestic market should be considered like goods to those exported to Australia.⁹⁰
156. I requested that the ADC provide further information at the conference held under section 269ZZHA of the Act on the 5 August 2016,⁹¹ on its assessment of like goods. The ADC explained the reasons why it had used Grade 500 in the ordinary course of trade and profitability tests as it said that these goods were the equivalent goods to those exported to Australia. There appears no reason to expand the ordinary course of trade and profitability assessment to include other grades that were not exported to Australia. For this reason, I do not agree that there is an error of law in adopting the approach taken by the ADC.
157. There were four elements outlined in this ground, three of which in my view have been correctly determined by the Parliamentary Secretary. The remaining element which dealt with the use of the monthly rather quarterly costs in the calculation of the ordinary course of trade test, and related profitability calculation, was not the correct or preferable decision. This would necessitate a re-calculation of the normal value and dumping margin. The Parliamentary Secretary's decision was not the correct or preferable decision in relation to one aspect in this ground.

⁸⁷ Submission from OneSteel dated 15 July 2016 page 9

⁸⁸ ADC Re-investigation report 369 dated 12 October 2016 page 10

⁸⁹ REP 300 section 5.13.3.2 (3) page 33

⁹⁰ Submission from OneSteel dated 15 July 2016 page 10

⁹¹ Conference summary with the ADC on 5 August 2016 page 2

Due allowance for domestic bank charges that affected price comparability.

158. Yonggang submits that the ADC made an upward adjustment for export bank charges but made no adjustment for the bank charges made on domestic sales. It states that the SG&A used in the construction of the normal value included export bank charges. Accordingly, for price comparability purposes, it would be necessary to exclude the export bank charges in the domestic SG&A or alternatively make a downward adjustment for the domestic bank charges and an upwards adjustment for the export bank charges.
159. Yonggang notes that the Manual makes it very clear that ‘adjustments may be based upon the actual costs incurred, or selling prices achieved, for the sales transactions under examination. Where based on costs it is subject to the principle that adjustments will be made only where evidence indicates that price comparability has been affected.’⁹²
160. The ADC in its submission to the Review Panel, indicated that it understood that Yonggang, in calculating and allocating SG&A expenses to its domestic sales and export sales to Australia, had deducted all the expenses that are directly related to the Australian sales and had not included these in the domestic SG&A calculation. The ADC formed the view that Yonggang would not incur bank charges for the domestic sales of like goods and therefore a downwards adjustment was unnecessary.⁹³ However, the export sales terms do attract bank charges and therefore and upwards adjustment is necessary to ensure price comparability or export sales prices and the corresponding normal values.
161. OneSteel in its submission to the Review Panel indicates that this issue was reasonably dealt with by the ADC.⁹⁴
162. I reviewed the confidential spreadsheets and was unable to assess the veracity of Yonggang’s claim. I held a conference with the ADC on the 5 August 2016 under section 269ZZHA of the Act to seek additional information on whether there had been double-counting of the bank charges.⁹⁵ Subsequently, I required the ADC to re-investigate this issue in my letter dated 14 August 2016.⁹⁶ The ADC in RIR 369, removed the export bank charges from the domestic SG&A used in the construction of the normal value and noted that this had a consequential minor impact on the profit rate. Yonggang’s normal value was subsequently re-calculated in view of this change.

⁹² Dumping and Subsidy Manual November 2015 page 59

⁹³ Submission from the ADC dated 15 July 2016 page 11

⁹⁴ Submission from OneSteel dated 15 July 2016 page 11

⁹⁵ Conference summary with the ADC on 5 August 2016 pages 2 - 3

⁹⁶ Letter to the ADC dated 14 August 2016 requiring a re-investigation under section 269ZZL of the Act

163. This ground was shown to be correct and accordingly the Parliamentary Secretary's decision was not the correct or preferable decision.

Due allowance for export credit terms that did not affect price comparability.

164. Yonggang indicated that the ADC made an export credit adjustment to take account of the 'weighted average cost of capital for the duration between the shipment of goods and receipt of funds by Yonggang for its export sales'. Yonggang claims that it does not provide credit to Australian customers as payment terms to customers are letter of credit at sight. It states that even though there may have been a period between the time of sale and time of receipt, this is unrelated to the export credit terms and rather reflects clearance days between the buyers and sellers financial institutions. Yonggang claims that the export sale price is based on zero day credit terms as is its domestic sale price. Furthermore that the ADC has made an adjustment on the basis of the cost of capital and Yonggang submits that it incurs no such actual cost.

165. The ADC in its submission to the Review Panel indicated that what it reflected in REP 300 was the 'quantifiable and significant periods between the invoice date and the date of receipt of funds' and this would affect the price comparability. This suggested to the ADC that there was a cost of financing the sales for such long periods.⁹⁷

166. OneSteel in its submission to the Review Panel agrees with the approach adopted by the ADC.⁹⁸

167. I sought additional information from the ADC on the nature of the time difference adjustment and its calculation at the conference held under section 269ZZHA of the Act on the 5 August 2016.⁹⁹ The ADC indicated that it had calculated this from information derived from the Yonggang exporter questionnaire. I required the ADC to re-investigate the nature of this adjustment to ensure that the normal value is properly comparable with the export price as required under section 269TAC(9) of the Act.¹⁰⁰ The ADC in RIR 369, indicated that it had removed the export credit terms adjustment from Yonggang's normal value calculations.¹⁰¹ This led to an amendment to the normal value and dumping margin.

168. Given this adjustment, this ground was shown to be correct and the Parliamentary Secretary's decision was not the correct or preferable decision one.

⁹⁷ Submission from the ADC dated 15 July 2016 page 11

⁹⁸ Submission from OneSteel dated 15 July 2016 page 11

⁹⁹ Conference summary with the ADC on 5 August 2016 page 3

¹⁰⁰ Letter to the ADC dated 14 August 2016 requiring a re-investigation under section 269ZZL of the Act

¹⁰¹ ADC Re-investigation report 369 dated 12 October 2016 pages 10 - 11

169. There were three areas where the Parliamentary Secretary's decision in the relation to the determination of Yonggang's normal value was not correct or preferable and required an adjustment to the normal value and subsequently the dumping margin, namely:
- Profit relevant to the calculation of constructed normal values;
 - Due allowance for domestic bank charges that affected price comparability; and
 - Due allowance for export credit terms that did not affect price comparability.

Conclusion/Recommendations

170. For the above reasons, the decision of the then Parliamentary Secretary was the correct or preferable decision, except in relation to the:
- (a) Hunan Valin normal value which was incorrect and led to an incorrect dumping margin being determined in relation to the dumping duty notice. The reviewable decision for Hunan Valin was materially different as the normal value for Hunan Valin was incorrect and as a result the dumping margin changed from 15.2% to 12.3%; and
- (b) Yonggang normal value was incorrect which led to an incorrect dumping margin being determined in relation to the dumping duty notice. The reviewable decision for Yonggang was different, as the normal value for Yonggang was incorrect and as a result the dumping margin changed from 11.7% to 11.5%. In a review of a decision under section 269TG, the Review Panel may only recommend that the reviewable decision be revoked and substituted with a new specified decision if the new decision is materially different to the reviewable decision.¹⁰² While it could be argued that 0.2% difference in a dumping margin is not material, it can become material in terms of dumping duty imposed when it relates to large volumes of imports. For this reason, I consider it preferable for this difference to be considered material and the reviewable decision re-determined by the Minister as a result of this review.
171. While there were calculation changes to the elements to the normal value of Shiheng, these did not lead to a change to the dumping margin and did not lead to a material difference in the reviewable decision. Accordingly, there is no recommendation to change the dumping duty notice for Shiheng.
172. Accordingly, pursuant to Section 269ZZK(1) I recommend to the Parliamentary Secretary that he revoke the reviewable decision and substitute another decision, namely to issue a dumping duty notice in the same terms as that issued on the 12

¹⁰² Section 269ZZK(1A)

April 2016 but amended to reflect new normal values and dumping margins for Hunan Valin and Yonggang.

A handwritten signature in black ink, appearing to read 'Jaclyne Fisher', written in a cursive style.

Jaclyne Fisher
Member
Anti-Dumping Review Panel
11 November 2016