

**APPLICATION FOR COUNTERVAILING DUTIES
AND ANTI-DUMPING DUTIES
ON PLATE STEEL FROM CHINA**

**CONSULTATIONS UNDER ARTICLE 13.1 OF THE
WTO AGREEMENT ON SUBSIDIES AND COUNTERVAILING
MEASURES**

January 9, 2013

POSITION PAPER OF THE GOVERNMENT OF CHINA

A INTRODUCTION

- 1 Under cover of a letter dated 24 December 2012, the Australian Customs and Border Protection Service (“Australian Customs”) provided the Government of China (“GOC”) with a hard copy of *Application for Anti-Dumping Duties Plate Steel exported from the People’s Republic of China, Indonesia, Japan, the Republic of Korea and Taiwan*¹ and *Application for Countervailing Duties Plate Steel exported from the People’s Republic of China* (“the Application”). The Application is dated 18 December 2012, and was said to have been received by Australian Customs on 21 December 2012.²
- 2 Under Article 5.5 of the WTO Anti-Dumping Agreement (“the AD Agreement”), the GOC has the right to be notified of the receipt of a properly documented application for an investigation to determine the existence, degree and effect of any alleged dumping.
- 3 Under Article 13.1 of the Subsidies and Countervailing Measures Agreement (“the SCM Agreement”), the GOC has the right to consultations on the acceptance of an application for an investigation to determine the existence,

¹ Under the framework of the WTO, the Region of Taiwan should be addressed as “Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”, or simply as “Chinese Taipei”.

² An electronic copy was requested by our Embassy, but was not provided until 2 January 2013.

degree and effect of any alleged subsidy, and before initiation of such an investigation.

4 Since the issuance of *Report to the Minister No. 177 – Certain Hollow Structural Sections Exported from the People’s Republic of China, the Republic of Korea, Malaysia, Taiwan and the Kingdom of Thailand – 7 June 2012* (“the HSS Report”) the GOC has been invited to participate in consultations in relation to applications related to certain coated steel products, as well as these consultations. Those applications have been based on the same findings reported in the HSS Report about the condition of China’s iron and steel industry and its markets. In summary, Australian Customs made findings in the HSS Report that:

- (a) State invested enterprises operating in the iron and steel industry in China were public bodies which granted subsidies in the form of sales of (in that case) hot-rolled coil (“HRC”) to downstream producers of hollow structural sections (“HSS”) at less than adequate remuneration; and
- (b) the financial accounts of HSS producers did not reasonably reflect competitive market costs in the case of HRC.

5 The present Application bases its complaints about the alleged dumping and subsidisation of plate steel on these findings, and extends its allegations about “subsidies” and “competitive market costs” to steel slab, coking coal and coke.

6 In the consultations for the applications relating to the coated steel applications, the GOC made its rejection of the findings in the HSS Report and of the new complaints levelled against the GOC and its exporters in those applications absolutely clear. The GOC remains implacably opposed to the thinking within Australian Customs that has contrived to create “subsidies” where none exist, and to ignore “costs” despite the competitive markets within which those costs have been generated.

7 In summary, we reiterate our previous denials of Australian Customs’ findings concerning HSS, and of the allegations made in the applications concerning coated steel products. We repeat all of those denials in the case of the present

Application concerning plate steel, and summarise them as follows:

- (a) State-invested enterprises (“SIEs”) which supply raw materials to steel producers are not public bodies;
- (b) SIEs do not make a financial contribution to HSS producers in the form of provision of goods that confers a benefit on those producers, because the provision is not made for less than adequate remuneration;
- (c) there is no particular market situation in any of the relevant markets – for HSS, coated steel, or plate steel - such that sales in those markets do not permit a proper comparison with export sales; and
- (b) the records of Chinese exporters of HSS, of coated steel and of plate steel absolutely and accurately record the costs of the purchased inputs for the production of those products, and there are no grounds whatsoever to substitute any other costs for them.

8 No degree of repetition of those findings by Australian Customs or by applicants such as BlueScope can “enhance” or “entrench” them. They are not supported by evidence, have no credibility, are unlawful under Australian law and do not comply with the applicable WTO Agreements. The GOC reiterates the protests it has documented at length in its previous submissions to Australian Customs in its HSS investigation and in the consultations concerning the coated steel investigations.³ On the grounds previously stated, and on the additional grounds we now state in this position paper, the GOC submits that Australian Customs cannot initiate investigations against Chinese exporters based on the Application, and requests Australian Customs not to do so, and to reject the Application.

³ The GOC recognises that the invitation of Australian Customs for these consultations is made under the SCM Agreement, and not the AD Agreement. Nonetheless, the GOC continues to voice its strongest objection to the misuse of the anti-dumping trade remedy as constituted by the fabrication of costs by using surrogate information in substitution for the costs actually incurred and actually recorded in the accounts of our producers and exporters.

B “SUFFICIENT EVIDENCE” OBLIGATION CANNOT BE FULFILLED

- 9 The GOC maintains that the “sufficient evidence” obligation of the SCM Agreement cannot be met in the case of the Application. Under Article 11.3 of the *SCM Agreement*, Customs has an obligation to determine whether there is “sufficient evidence” to justify initiation of an investigation. This must involve an assessment of the accuracy and adequacy of the evidence furnished.
- 10 Australian Customs invited the GOC to engage in these consultations by letter dated 24 December 2012. In Australia, this is the day known as Christmas Eve. In view of the seriousness and complexity of the matters raised; the length of the Application; the Christmas/New Year holiday period; the fact (no doubt) that many Australian Customs officers have been on leave and are still on leave, it is difficult for the GOC to comprehend that there is enough time for a decision to be made as to whether to initiate the Application by 10 January. The intervention of numerous public holidays and of weekends, and staff absences in this period, suggest that it is simply not possible for an unbiased and objective authority to review the accuracy and adequacy of evidence in support of the large number of alleged programs, and complex bases of alleged subsidisation in certain cases, in the allotted period of time. The result of an inadequate consideration time could only be that the evidence is *inadequate* to initiate an investigation.
- 11 In any event the Application itself does not include sufficient evidence. The Application purports to incorporate statements in the HSS Report “by reference”. This fails to fulfil the requirement in Article 11.1 of the SCM Agreement that an application “shall include sufficient evidence”. The Application does not even reference all the claimed relevant evidence, but only conclusions, notably as regards “public bodies”. Australian Customs must review the evidence “provided in the application” in accordance with Article 11.3 of the *SCM Agreement*. Each application must be able to stand on its own merits, because it is the adequacy or otherwise of the evidence that it contains that is the basis for the decision on initiation. One countervailing duty application cannot “piggyback” on another, particularly when it is filed later in time, regarding a different product, and where there is no evidence regarding

the alleged programs during the intervening period.

- 12 The lack of principle and legal reasoning that the applicant has directed towards its complaint is clearly evident in the frivolity of its allegations. The Application includes all alleged programs in the HSS Report on the grounds that an unknown exporter located in an unspecified province may have received a benefit from certain of them. The Application does not state which programs these are. This is an admission that the assertions regarding certain programs are unsubstantiated and included on a speculative basis in the hope that Australian Customs will complete the application on behalf of the domestic industry. The applicant (“BlueScope”) has identified who the exporters from China are, and has provided their addresses, but does not admit that the subsidies in other provinces could not possibly apply to them. This is inconsistent with Article 11.1 of the *SCM Agreement*.
- 13 Another example of the casual suspicions that the Application tries to elevate to the status of evidence are the distinctions allegedly mentioned on the website of Wuhan Iron and Steel Group.⁴ There is no evidence whatsoever in the application that they involved any financial contribution. Half of them are not even described as “awards”. The inclusion of this information is frivolous. The GOC notes that BlueScope’s own website contains references to numerous awards, including a statement that “*BlueScope Lysaght Indonesia has received the Indonesian Government's highest safety award after passing a major safety milestone*”.⁵ Would the Australian Government consider this to be “evidence” of a “subsidy” provided to BlueScope Steel that was sufficient to justify a countervailing investigation? We think not.
- 14 Moreover, the applicant BlueScope distances itself from certain key statements in the Application through use of the passive construction. The application states that “*it is considered*” that the subsidy margins are not negligible, that “*it is considered*” that impact of (sic) profit is material, etc. but it does not state who it is that considers this to be the case. In these instances there is no discernible assertion by the domestic industry in

⁴ Application, page 67.

⁵ <http://www.bluescopesteel.com/go/responsibilities/health-and-safety/awards-2003>

accordance with Article 11.1 of the *SCM Agreement*. Australian Customs is not authorized to imply those assertions on behalf of the domestic industry.

- 15 There are a number of examples of unsubstantiated assertions in the Application, relating to its key assertions. The Application refers to and relies upon the findings arrived at in relation to Program 20 in the HSS Report. The raw material input which was there under consideration was HRC and narrow strip for the production of HSS. BlueScope seems to think that Australian Customs will simply “transfer” those findings to HRC and steel slab used for the purposes of making plate steel. The GOC rejects the findings of the HSS Report – however that is not the issue here. The issue is that the findings concerning the alleged subsidisation of HSS related to different raw material products.
- 16 This Application relies on a simple assertion that whatever it is that is used to make plate steel is predominantly produced and supplied by SIEs in China and sold by them at less than adequate remuneration. This is unsubstantiated by relevant evidence at all. At least the allegations related to coking coal and coke have “evidence” directed towards one element of the countervailable subsidy definition attached to them – in the form of some price graphs.⁶ The GOC rejects these allegations but notes – at least – that a quantification of the amount of the benefit alleged is attempted by BlueScope. For HRC and steel slab, however, it seems that Australian Customs should just “make it up”. Thus, in this very important aspect, the Application completely fails to provide any relevant evidence at all.
- 17 The Application repeats the allegations - first levelled against the GOC by BlueScope in its applications concerning coated steel – of a new alleged program of public bodies selling coking coal for less than adequate remuneration. The existence of this alleged subsidy is based on a complex

⁶ Certain coke price information is mentioned at page 71 of the Application, but has not been provided to the GOC. In an email from Joanne Reid of Australian Customs dated 9 November 2012, in relation to the consultations held in relation to certain coated steel, this was said: *“Please note that the applicant considers the graph referred to at p57 of each application confidential, and has therefore not included it in the public file version of the application. However, noting that it is a key factor in the applicant’s claim in relation to the claimed subsidy program the applicant has agreed for us to provide the Government of China only with a copy of the graph and the relevant data, which is also attached to this email.”* The GOC requests to be provided with the information on this occasion as well.

economic premise that export taxes influence domestic prices and further implies the controversial legal assertion that export taxes are capable of constituting a subsidy within the meaning of the *SCM Agreement*. Yet the application simply asserts the existence of the alleged program, unsubstantiated by all of the relevant evidence that should be required. It does not identify either a financial contribution, or a benefit, as required to demonstrate the existence of a subsidy within the meaning of Article 1 of the *SCM Agreement*. The evidence only aims to show that Chinese prices are in fact lower than the Australian export price, not that they are less than adequate. There is no statement as to what “adequate” remuneration might be. If it is assumed that the Australian export price is the lower limit of what is “adequate”, that assumption is not substantiated. Nor is there any evidence that the changes in Chinese domestic prices correlate to changes in levels of export tax.

- 18 The Application also refers to the newly alleged program of coke sold by public bodies for less than adequate remuneration. However, evidence for these claims is also lacking. Firstly, no State invested enterprises are identified at all, and the mysterious process by which either BlueScope or Australian Customs could transform them into public bodies – and the evidence for that – is not mentioned. BlueScope asserts that the existence of this alleged subsidy depends, first, on the existence of export measures.
- 19 In any case, the applicant’s reference to the WTO dispute in *China – Raw Materials* is evidence *against* the initiation of this investigation, not in support. None of the three complainants in the WTO dispute (the European Union, the United States and Mexico) claimed that the export measures constituted subsidies. Given the large number of claims in that dispute, it can be inferred that the claimants did not consider it plausible to assert that export quotas and taxes could constitute “subsidies” under the *SCM Agreement* or, if they did, they lacked evidence to make a prima facie case. But unlike those parties, BlueScope Steel has made this bold assertion, without relevant or adequate evidence, either as regards coking coal or coke. The assertions regarding both these alleged programs are therefore unsubstantiated.

- 20 The Application also relies on a statement in the HSS Report regarding the lack of an export VAT rebate, without addressing whether a domestic sale of the same product was VAT exempt. Hence, this statement cannot substantiate any assertion of potential net impact on domestic supply and price.

C UNSAFE INFORMATION SHOULD NOT BE ACCEPTED BY CUSTOMS

- 21 The GOC believes that it is an applicant's obligation – when claiming that countervailable subsidies exist and should be investigated - to provide truthful and reliable information, with clearly identified sources. The GOC urges Australian Customs not to accept unsafe or unreliable evidence for the purpose of initiating an investigation.
- 22 In relation to the alleged “subsidy program” constituted by the so-called provision of coking coal at less than adequate remuneration, the applicant purports to support its claim by providing a price comparison chart.⁷ This chart - “Graph C-1.1” - shows what is said to be a “*Domestic China*” price, allegedly the price of “*Shangxi (sic) premium coking coal price (exclusive of VAT)*”, and a price said to be the “*World Contract HCC*” price, being the “*Australian Quarterly Contract Price for Hard Coking Coal US\$/MT, C&F China*” during the period from October 2011 to September 2012. The GOC notes that Graph C-1.1 is in an identical format, and has the same descriptions, as the coking coal price comparison graph contained in the applicant's previous application for an investigation concerning the alleged subsidisation of certain coated steel from China (albeit covering a slightly different period).
- 23 The GOC has some pertinent comments about this graph and the information contained in it.
- (a) Previously, the applicant nominated SBB as the data source for the graph. However, in the current Application, the data source of the graph is unidentified – stated as “*Confidential independent third party source*”.

⁷ Application, Graph C-1.1 at page 69.

- (b) The GOC notes that, whilst the lines in Graph C-1.1 closely resemble the price lines in the graph in the coated steel application for the overlapping periods, there are still some discrepancies between the two graphs.
 - (c) If the data contained in Graph C-1.1 is also sourced from SBB, then we assume that the data contained in the two graphs should have been identical for prices in the same period of time. Discrepancies in supposedly the same data from the same source can only indicate either an error in one or other of the graphs, or manipulation of the information in one or other of them.
 - (d) Further, if Graph C-1.1 is not sourced from SBB, then the applicant must disclose that source and explain why a different source has been used for the same claim within such a short period.
- 24 Whatever may be the case, it appears that the applicant is now asking Australian Customs to initiate an investigation based on different information for the same prices. This means that either the coated steel investigation was initiated improperly, or that this one will be initiated improperly (if it is indeed initiated).
- 25 The GOC has already disputed the legitimacy of the claim regarding coking coal and the accuracy of the evidence provided by the applicant during the course of consultation with Australian Customs in relation to the coated steel application. The points made and information provided by the GOC in that consultation also apply to the current Application, given the similarity of the claims and information provided.
- 26 Further, in relation to this claim, we note that Australian Customs stated in its “*Consideration Report 193a/b*” that:

The information provided by the GOC during consultations is relevant and casts some doubt on the applicant’s claims in relation to lower Chinese prices. Customs and Border Protection requested, and the Government of China provided, further information in support of its statement on 21 November 2012. Given the limited time available

between this date and the date by which the delegate must make a decision, Customs and Border Protection has not had sufficient time to fully investigate the new information...

27 Australian Customs should now have had “sufficient time” to consider the information provided by the GOC. This was information that Australian Customs agreed “*cast[] some doubt*” on the applicant’s claims. That doubt remains, and should by now have been dispelled by Australian Customs further consideration of our protests. Australian Customs should not continue to accept doubtful evidence for the purpose of initiation of investigations, especially when such evidence is the only evidence provided by the applicant in support of its claim.

28 The claims made – and the evidence provided - in the Application regarding the alleged subsidy program of “coke provided at less than adequate remuneration” seems to be the same as that contained in the previous application concerning coated steel. The Application claims that “Graph C-1.2.5” demonstrates that the Chinese domestic coke price is lower than the “global price” and that this “*confirm[s] the impact of the 40 per cent export tax on the oversupply position on the Chinese domestic market*”. However this graph is not shown to the GOC at all.

29 Further, as Customs commented in its Consideration Report 193a/b regarding the same evidence provided in the coated steel application:

BlueScope has provided a graph from a report from World Steel Dynamics as primary support for its claim that coke is supplied in China at less than adequate remuneration. The graph shows that the Chinese domestic price is well below the ‘world export price’ throughout the twelve month period ended June 2012. Customs and Border Protection notes that the extract from the World Steel Dynamics report provided with the application does not state the source of the ‘world export price’ depicted in the graph...

30 The GOC is not able to comment on the accuracy of this evidence as it is not disclosed to the GOC whatsoever. We also do not know if the applicant has

now identified the source of that information. However, this graph is obviously regarded as important evidence, and indeed is the only information offered to support the claim that coke is provided at less than adequate remuneration. The GOC is concerned to ensure that Australian Customs not base its decision on information from unidentified sources, and that the GOC should have a fair opportunity to address the claims which have been made against it. If the GOC cannot see what is being alleged against it, then it does not have that opportunity.

D VIEWS OF EXPERTS ON CHINA'S COMPETITIVE STEEL MARKETS

31 It must be accepted that China's steel markets are intensely competitive. This is a well-recognised fact within the industry itself. It is also acknowledged by leading experts in the field of economic analysis. We refer you to a letter submitted to Australian Customs in the course of its coated steel investigations, dated 16 November 2012, prepared by three economists from the Australian National University, including Professor Peter Drysdale.⁸ The letter appears in the public record in relation to the coated steel anti-dumping investigation.

32 Some of the main points made in the letter include these:

- *The Chinese steel industry, by all standard measures, is less concentrated and more competitive than most other major steel markets.*
- *The Chinese steel domestic and export product prices appear to behave in a pro-competitive way.*
- *That there is no evidence of unusual divergence between China's steel export prices and those of other competitors in recent years. Rather, steel*

⁸ The GOC notes that Professor Drysdale is a well-regarded expert in Australia on China and Asia related economic issues, and has been actively engaged by the Australian Government as an expert advisor in these areas of his expertise. Professor Drysdale has been appointed by the Australian Government – indeed directly by your Prime Minister - to the high-level Advisory Panel of six experts who were commissioned to prepare the recently published *White Paper on Australia in the Asian Century*.

prices have been generally subject to downward pressure in all markets because of weak demand in relation to capacity

- *The ownership structures of China's steel producers are diverse, and there is significant competition among individual SOEs, as well as between the SOEs and the private sector. Competition has been the most powerful driving force of the behaviour of Chinese steel producers, more than any governmental edict. Furthermore, the SOE steel producers are strongly motivated by profit, therefore it is not in the interest of SOEs to price below costs.*

33 This letter - a letter co-written and endorsed by an advisor to the Australian Government itself – states that the Chinese steel market is a competitive market, and that prices and costs in the market are competitive market costs, in economic terms and in comparison to other steel markets. The GOC maintains that these independent expert opinions – unsolicited by any interested party - deny the possibility of any finding of a “particular market situation” as alleged by the applicant in the Application. Sales of steel in China are entirely suitable for price determination.

34 The GOC continues to reject the unusual and unprincipled attitudes evinced by Australian Customs in the HSS Report towards price and cost discovery in China's steel markets, under the guise of “particular market situation” and the substitution of other “competitive market costs”. We request that the Australian side now cease and desist from practising this blatant discrimination against China's economic development.

E CHINA'S PLATE STEEL EXPORTS IN A COMPARATIVE SENSE

35 The GOC points out that, according to the Application:

- (a) its exporters have not been the major exporters to Australia;⁹
- (b) its exporters were never the lowest priced exporters to Australia;¹⁰

⁹ Application, page 39.

¹⁰ Application, page 55.

(c) if the lowest normal values of other, more expensive, exporters are compared with China's export prices, there was no dumping from China over the 12 months ended 30 September 2012.¹¹

36 The GOC continues to deny that Australian Customs can use any cost or price information other than that derived from the financial records of the exporters and from China in working out normal values for Chinese exporters. It also denies the fallacies that have led Australian Customs to arrive at the strange and contorted findings about public bodies and benefit in the HSS Report. Regardless of those rejections, and in light of the facts set out above, it will be readily apparent that Chinese exporters cannot be found to have engaged in dumping, and that any alleged subsidies cannot have caused any injury to the Australian industry.

37 We say this because it is simply not possible – even on the far-fetched assumption that cost substitution is permitted under Australian Customs' previous "particular market situation" views – for the substitution of an out-of-country cost to increase China's normal values above those of its competitors. And if it is neither the largest nor the lowest priced exporter, then any alleged subsidies cannot have caused any claimed injury.

F CONCLUSION

38 The Applications do not achieve the evidentiary standard which is required for an initiation. The claims are unsubstantiated, in material respects.

39 The GOC views the continuation of this trend of AD/CVD applications based on the HSS Report with great concern. The HSS Report is discriminatory and backward-looking.¹² Chinese prices and costs cannot be put aside in normal value determination. They are entirely valid market-based prices and costs. Subsidies cannot be "invented" in the way this has been attempted in the HSS Report. The HSS Report is not compliant with WTO norms. The GOC

¹¹ *Ibid.*

¹² And also in the similar and recent *Report to the Minister No. 181 Aluminium road wheels exported from the People's Republic of China*.

requests the Australian side to show good faith, and to apply the rule of law and not be swayed by protectionist claims such as those advanced by BlueScope in the present Application and in its other recent applications.

- 40 For all of the above reasons, the GOC submits that the Application should be rejected by Australian Customs.