



International Trade Remedies Branch

GOVERNMENT QUESTIONNAIRE – THE PEOPLE’S REPUBLIC OF CHINA

PRODUCT CONCERNED: HOT ROLLED PLATE STEEL FROM THE
PEOPLE’S REPUBLIC OF CHINA, THE
REPUBLIC OF KOREA, JAPAN, INDONESIA
AND TAIWAN

INVESTIGATION PERIOD: 1 JANUARY TO 31 DECEMBER 2012

RESPONSE DUE BY: 1 APRIL 2013
EXTENDED TO 15 APRIL 2013

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Please note that a public file (non-confidential) version of the reply to this questionnaire must also be provided.

TABLE OF CONTENTS

TABLE OF CONTENTS 2

PART A: MARKET SITUATION 3

SECTION B: SUBSIDIES..... 37

DECLARATION 60

PART A: MARKET SITUATION

1. Provide a detailed description of the domestic Chinese hot rolled plate steel industry and the relevant upstream industries, including hot-rolled coil, steel slab, iron ore, coking coal, coke and scrap metal industries. The response should include details of:

At the outset, the Government of China ("GOC") wishes to comment on the approach to the issue of "particular market situation" which this questionnaire has chosen to adopt.

- (a) There is no single "market" in the Chinese economy consisting of the goods under consideration (being the hot rolled plate steel which is described as being the "like goods" in the application, and which we will refer to as the "GUC" in this response) and the upstream industries involved in the production of the GUC. The GOC therefore disputes the claimed ability on the part of Australian Customs to investigate the inputs used by upstream producers operating in different markets. These input materials – such as those used by steel mills - include iron ore, coking coal, coke and scrap metal (collectively, "input materials"). However the focus of any "particular market situation" inquiry must be on the market for the GUC itself. Iron ore, coking coal, coke and scrap metal are not "like goods" to the GUC within the meaning of either the WTO Anti-Dumping Agreement ("ADA") or Australian law.
- (b) Neither the applicant nor Australian Customs has articulated how an "impact" of one sort or other on the markets of one or other of the input materials will be transmitted to the markets for the GUC. And if it is said that there is a "transmitted impact", the only legally recognisable impact would be that of a subsidy which was shown to "pass through" to the finished product (ie to the GUC).
- (c) Both the international community and the Chinese statistical bureau regard the industrial sectors for the GUC and those for the input materials as being separate from each other. The GOC provides United Nations Statistics Division International Standard Industrial Classification ("ISIC") categorisations at **Attachment 1**, the product classification employed by China's National Bureau of Statistic at **Attachment 2**, the State Statistical Bureau's Classification of National Economy Industry in China ("CNEI") at **Attachment 3** for the relevant industries, as well as a table comparing the relevant products under CNEI and ISIC at **Attachment 4**.
- (d) Moreover, the input materials are only some of the materials used for the production of the GUC.
- (e) The GOC also wishes to indicate that "the domestic Chinese hot rolled plate steel industries" is not a well-defined "industry" in itself, let alone that of the GUC and its "upstream industries". The hot rolled plate steel industries have complicated and intertwining relationships with some of their neighbouring industrial sectors. Some producers of the GUC also produce non-GUC. Some even produce input materials.

PUBLIC RECORD VERSION

Therefore, there is no routine statistical data available purely and specifically for “the domestic Chinese hot rolled plate steel industries”.

- (f) Data that does exist for the “industries” which directly produce the GUC is not likely to relate only to the GUC - because enterprises will normally manufacture a broader range of products. Similarly, data relating to the industries producing the input materials will not relate to inputs which only go towards the production of the GUC, nor only to the input materials themselves. For example, please refer to the list of products produced by Shandong Iron and Steel Co., Ltd (also referred to as “Shandong Iron and Steel Jinan Company” by Australian Customs in this investigation, hereinafter “Shandong Steel”) under the category of “Hot-rolled plate steel” at **Attachment 5**.
- (g) The impacts of GOC policies and the laws which implement those policies are not qualified to be considered as factors rendering domestic sales as being non-comparable for the purposes of normal value determination. It is abundantly clear that the types of factors that could create such a situation must be of a disruptive severity such that domestic market sales do not allow for the discovery of a price on the market for the GUC which is comparative with the price of export sales of the GUC.
- (h) The GOC is not aware of any independent research institute in the world which has viewed GOC policies as preventing price formation or as being disruptive of domestic steel sales such that they are not comparable with export sales. The GOC’s policies in relation to the development of its economy, its industries and its markets are sovereign, developmental and supportive. The Chinese steel market is the biggest country market in the world, far eclipsing the size of any other country market. The major market factors of supply and demand are fully operational. These factors are shaped by conditions which will be familiar in any economy – product trends, customer needs, costs, inventories, changes in production capacities, temporary shutdowns, changes in production processes, emissions and emission control, amongst other stimuli. These are discussed in depth and in detail in many professional research studies.¹
- (i) The GOC has no incentive to enforce a package of policies designed to depress or suppress prices or to make them uncompetitive in “the domestic Chinese hot rolled plate steel industries and the relevant upstream industries, including iron ore, coking coal, coke and scrap metal industries”. For example, more than half of the iron ore consumed in China is imported from abroad. The GOC simply could not

¹ Please refer to the following attachments for examples of professional papers by unbiased and independent third parties in this regard: **Attachment 37** – China Steel Industry to Keep Stable Growth in the Next Five Years; **Attachment 38** – The iron and steel industry: a global market perspective; and **Attachment 39** – World steel market analysis.

and would not impose any measure on the iron ore market to keep iron ore prices at a low level, and has no incentive to do so. The GOC does not control or regulate the price of any of the input materials, and certainly does not control or regulate the price of the GUC. Price discovery at all levels – GUC and input materials – takes place under conditions of open and vigorous competition.

- (j) The GOC has noted a propensity on Australian Customs' part to make unfounded assumptions about price impacts on the GUC arising from equally unfounded assumptions about supply side impacts on input materials used in the production of GUC. However prices in any market are created by much more extensive interactions between both the demand and supply sides of all products in the chain of manufacturing and sale. Any reasonable and fair analysis of the situation pertaining to any market has to be done in a balanced manner by taking into account all relevant factors impinging on that situation. The demand side of the Chinese market for the GUC includes sectors such as the structural and construction industries; the shipbuilding and offshore equipment industries; boiler making and similar pressure vessel manufacturers; and the military. In an open market for any product, the profit maximisation tendencies of entrepreneurs will cause the price of the product to be "upped" to the extent that is permitted by the consumers of the product. The downstream industries that consume the GUC are very competitive in China. The demand side plays an effective role in pushing the development of the supply side, thus creating a price balance. Shifts in price then impact upstream as well. This interaction is going on at all levels of production.
- (k) The Chinese industries that manufacture the GUC and its input materials are fully marketised and highly dynamic. At the same time, the GOC has been encouraging a more "eco-friendly" steel industry through policies that encourage the dismantling of heavy-polluting or energy-inefficient production facilities and discourage the new building of such facilities. The GOC provides two sets of data – in **Attachments 6 and 7 [CONFIDENTIAL ATTACHMENTS]** – demonstrating the dynamics of these industries.
- (l) Industry policies adopted by the GOC are also adopted by other WTO members. Treating the market for the GUC in China as being "particular" simply because of the adoption of such policies is entirely unfair.

As noted above the GOC is of the opinion that there is no legal basis for either a particular market situation finding or for the application of Regulation 180(2). There is nothing in the market for the GUC that that would make domestic sales of the GUC unsuitable for price determination. Once again, the GOC considers that the recent findings of the Australian Trade Measures Review Officer ("TMRO") in relation to his review of the hollow structural sections ("HSS") investigation undertaken by Australian Customs has exposed the majority of the allegations made against it as being

unsupported by evidence or logic.

Despite the preceding observations, the GOC intends to maintain its policy of full cooperation and open communication with Australian Customs, to the extent of both its human and institutional abilities, and insofar as the information requested is relevant and available to it.

The GOC sincerely requests that Australian Customs undertake its investigations and determinations in a comprehensive, objective and reasonable way.

Before addressing Australian Customs specific questions, the GOC will provide some detail about each of the different “industries” identified.

Hot rolled plate steel and HRC

As noted above, the concept that there are separate and distinct hot rolled plate steel and HRC industries is inaccurate. As in Australia, Chinese steel manufacturers generally produce several different kinds of steel products. Furthermore, the GUC can be made from steel slab, or from coil – in each case as part of either a continuous process or a staged process. Only the lower range of thicknesses is made from coil. Accordingly, the need of any particular enterprise to buy-in slab or coil varies depending on the type of plate steel concerned and the production process employed by the enterprise.

Diversified production is a result of a competitive market. However, unlike Australia, the number of participants in the Chinese steel industry is far greater than one. This causes the GOC some difficulty, because it is hard to separately identify and categorise different steel industry participants on the basis of one or two of the products they produce.

Nevertheless, the GOC now does its best to provide the information requested by Australian Customs. According to the GOC’s research, in the year of 2012, the data available to the GOC indicates that [CONFIDENTIAL TEXT DELETED – number] tonnes of HRC and [CONFIDENTIAL TEXT DELETED – number] tonnes of steel plate were exported from China. In comparison, there were [CONFIDENTIAL TEXT DELETED – number] tonnes of HRC and [CONFIDENTIAL TEXT DELETED – number] tonnes of steel plate produced within China in 2012.

Generally speaking, steel products are used by a number of sectors. The major consumer of steel products is the construction sector. However, the domestic demand for steel is also driven by other consumers, including:

- nuclear power plants;
- wind farms;
- hydro-power facilities;
- ports;
- ships

- railways;
- automotive and transportation;
- mining machinery;
- medical equipment;
- construction machinery; and
- housing.²

The GUC is mainly used in the construction and mechanical structure industry; the shipbuilding industry; the industries that manufacture pressure vessels and boilers; and oil and gas pipelines, power plants and oil fields construction. These are the fastest developing industries in China in recent years. Currently the largest consumption of the GUC is by the shipbuilding industry, accounting for one third of the plate demand. Along with the rapid development of the shipbuilding industry, the manufacturing industry is also an important force driving plate steel consumption. The infrastructure and construction industries also cause there to be huge demand for the GUC. Those parts of the construction and manufacturing industries that are dedicated towards energy generation are also large consumers of the GUC. Due to China's energy crises in recent years, the large-scale expansion of power generation projects has stimulated the demand for the GUC. Meanwhile, Chinese enterprises are involved in large petroleum and natural gas long-distance pipeline construction projects, such as those for the West-East, China and Russia, and Kazakhstan oil and gas networks.

Accordingly, the markets for the GUC and for steel products more generally are incredibly competitive. There is strong domestic demand within China for these steel and steel products.

Coking coal and coke

Coking coal and coke producers operate under competitive market conditions in China. Domestically, there are [CONFIDENTIAL TEXT DELETED – number] coking coal producing entities which, in 2011, produced a total of 504 mega tonnes (“MGT”) of coking coal.³

Despite the large number of coking coal mines, the demand for coke within China is so high that coking coal still needs to be imported from other countries. For example, between July 2011 and June 2012, [CONFIDENTIAL TEXT DELETED – number] of coking coal was imported into China. This is an additional [CONFIDENTIAL TEXT

² China's 12th Five-Year Plan; Deutsche Bank, China Steel Sector, 20 January 2011 in “KPMG China's 12th Five-Year Plan: Iron and Steel, May 2011.

³ <http://www.worldcoal.org/resources/coal-statistics/>

DELETED – number] % over and above the domestically produced amount, and is the second largest volume of imports of coking coal by any country in that year.⁴ It is also an amount that is very significant to many economies around the world. For instance, in previous years 63% of the coal exported from Australia to China has been coking coal.⁵

The GOC's research indicates that there are currently about **[CONFIDENTIAL TEXT DELETED – number]** coke producers in China. Of course, coke is not only used for the production of steel products. It is also used for the following applications:

- the smelting of phosphate rock in the production of elemental phosphorus;
- the production of calcium carbide;
- ferrochrome production;
- the production of manganese alloys;
- the production of soda ash;
- the production of carbon electrodes; and
- domestic fuel.⁶

The high level of production of coking coal, mixed with China's obvious reliance on imports of coking coal to satisfy domestic demand, indicate that the price of coking coal will neither be inflated nor depressed by any policy measures in the domestic Chinese market.

Iron ore

The GOC's research has revealed that there are currently **[CONFIDENTIAL TEXT DELETED – number]** iron ore producing entities within China. In 2011, China produced **[CONFIDENTIAL TEXT DELETED – number]** MGT of iron ore.⁷ In addition to this massive production capacity, the volume of iron ore imported into China has been steadily increasing since 2005. In 2011, China imported some **[CONFIDENTIAL TEXT DELETED – number]** MGT of iron ore, including 70% of Australia's total iron ore exports.⁸ By 2012, China's demand accounted for 60% of global iron ore imports.⁹ This

⁴ The biggest importer of coking coal in 2011 was Japan, which imported 54 MGT (<http://www.worldcoal.org/resources/coal-statistics/>)

⁵ Kevin Jianjun Tu and S Johnson-Reiser *Understanding China's Rising Coal Imports*, Carnegie Endowment for International Peace – Policy Outlook, 16 February 2012. page 3.

⁶ *Response of the GOC to Further Questions of the Australian Customs and Border Protection Service*, 19 November 2012, page 3.

⁷ Source: National Bureau of Statistics China

⁸ Source – *Reserve Bank of Australia* "Resource Exports in 2011" accessible here: <http://www.rba.gov.au/publications/smp/2012/may/html/box-c.html>

indicates that demand is the major determinant of the price of iron ore in China. The reliance on imports of iron ore indicates that demand for iron ore outstrips its supply within China. The fundamental laws of economics dictate that the price will be driven higher by this excess of demand.

Scrap steel

The GOC notes that the applicant in this matter (BlueScope Steel, or “the Applicant”) only made reference to scrap steel in China in the following paragraphs of the Application:¹⁰:

As indicated at B-3.1 above, BlueScope considers that domestic selling prices for plate steel in China are artificially low due to government influence on raw material prices (i.e. in particular, plate product produced from HRC, coking coal and/or coke and scrap steel) and that the selling prices for plate steel are therefore unsuitable for establishing normal values under s.269TAC(1) of the Customs Act.

And:

This application for countervailing duties identifies subsidies received by the Chinese plate steel producer/exporter that is likely an integrated producer and therefore receives benefits from subsidised raw material inputs including coke (or coking coal) and scrap steel in liquid steel manufacture that pass through to a benefit received in the production of the plate steel.

Despite what BlueScope “considered” in the first paragraph, it did not make any specific claims about steel scrap (contrary to what it says, it was not “*indicated in B3-1*”). Further, the “application for countervailing duties” – which we assume is referring reference to Part C of the application - does not “identify” any “subsidy” regarding scrap steel whatsoever.

The GOC therefore considers it strange that this “particular market situation” investigation would consider scrap steel. In any case, ferrous scrap is not a widely traded commodity. In 2011, there were only 74.6 million tonnes of ferrous scrap imported globally.¹¹ The GOC considers it likely that the majority of an economy’s scrap demand is fulfilled domestically, either by steel producers reusing scrap by-product from their production processes, or by purchasing scrap from scrap traders which has been recycled and sold. The GOC does not see it to be necessary to maintain data on such activities, and believes that information relating to scrap steel is just as irrelevant to your inquiries as much of the other information that has been requested.

⁹ The Economist, “Iron Ore: The Lore of Ore” 13 October 2012, accessible here: <http://www.economist.com/node/21564559>

¹⁰ Application, pages 43 and 58

¹¹ Source - <http://www.issb.co.uk/global.html>

(a) distribution channels

The GOC does not impose any special regulations on the distribution channels or commercial direction of manufacturers of the GUC, whether of steel, or of its input materials, or of other every-day products. In this regard we exclude consideration of regulations with regard to corporate registration and reporting, environmental controls (including land use/zoning) and safety requirements (occupational and transport-related). These are of a type that are customary in the economies of WTO members.

The GUC and the input materials are normally traded as and with other iron and steel-related goods, although traders or distributors may choose to focus on some or other of them as they may have company-specific resources from time to time. The manufacturers may distribute the relevant goods they produce via their own subsidiaries or by out-sourced channels (agents and buyers) in domestic or foreign markets as appropriate. Firms in China make their own choices on product portfolio and distribution channels. The GOC places no restriction on these choices and the activities which flow from them.

(b) any vertical integration

The GOC does not impose any special regulations on vertical integration in steel or its input materials, whether to force or prevent such integration. Nor does the GOC measure the instances of such integration.

Nonetheless, on the same basis as before, the GOC does intend to respond to this question as fully as it can.

The goods as referred to above do not have any independent vertical integration pattern. Instead, they are normally integrated as and with other iron and steel-related goods, although vertical integrations may be focused on some of the goods in question as they may be dependent on company-specific resources from time to time. The manufacturers may choose to integrate the relevant goods by establishing their own branch or subsidiaries or by using sales channels controlled by them, or operated jointly with or independently by others in the domestic or foreign market as appropriate. There is no restriction on the choice by enterprises of their business portfolio in accordance with their business registration. A firm can choose any kind of business portfolio as long as the business is not prohibited from operation.

(c) any changes over the last 5 years (such as mergers and acquisitions)

Regarding “mergers and acquisitions”, the GOC does not impose any special regulations on mergers and acquisitions in steel or its input materials, whether to force or prevent

such mergers and acquisitions.

There are many enterprises in the five identified industrial sectors. They include State-invested enterprises ("SIEs") and fully private-owned enterprises, of varying shareholdings. Enterprises – whether State-invested or not - can also be foreign invested, and some private enterprises are wholly foreign invested. Business activities like mergers and acquisitions are matters for the individual enterprises to consider and implement if and when it is deemed to be beneficial to their business. The GOC plays no part in the making of these decisions.

Regarding other "changes over the last 5 years":

- (a) On 26 July 2010, the state of Karnataka, which is in the southern part of India, started to prohibit the exports of iron ore from all of its 10 ports. Karnataka is the major iron ore production and export region in India. Its production of iron ore in the fiscal year 2009 was 45.94 million tons, which accounted for 21.4% of India's total production.
- (b) On 7 July 2010, a mineral rights joint venture was set up between Wuhan Iron and Steel (Group) Corp. ("WISCO") and the Australian company Centrex Metal Limited (CXM Ltd). The joint venture company is made up of WISCO with 60% of the shares and CXM Ltd. with 40% of the shares.
- (c) According to statistics issued by the World Steel Association in 2010, 1.8 tons of carbon-dioxide (CO₂) is emitted for each ton of crude steel produced. The global production of crude steel was estimated to be nearly 1.5 billion tons, resulting in an emission of around 2.7 billion tons of CO₂. China's National Steel Plan envisages that, by the year 2015, the CO₂ emission per unit of industrial added value will be 18% lower than that in 2010.
- (d) Flooding in Australia's Queensland at the end of 2010 and in early 2011 had a major effect on Australia's coal mining sector. The floods destroyed infrastructure and paralyzed coal mining and exports for an extended time. This led to a shortage in supply of coking coal in the global market. In the second quarter, coking coal prices soared to a record high of USD330 a tonne, an increase of 46% compared with the previous quarter. The heavy rainfall also led to a decline in Australia's iron ore production in the first quarter
- (e) In January 2011 Iran raised the export tariff of iron concentrate to 50% and that of iron pellets to 35%.
- (f) In May 2011, Vietnam announced that the export tariff of iron ore would be increased from 30% to 40% as of 2 July 2011.
- (g) The Australian parliament passed a carbon tax law on 8 November 2011. This legislation sets a fixed carbon tax of AUD23 a tonne on the top 500 polluters

from 1 July 2012.

- (h) From 30 December 2011, India increased its export tariff rates of iron ore from 20% to 30%;
- (i) On 16 January 2012 the China Iron Ore Spot Trading Platform officially opened for trading. The platform provides trading organization/matching service by means of electronic information technology for traders in iron ore spot trading. The only commodity traded on this platform is iron ore. Initially, trading covered 34 specifications, which increased to 42 after 30 June 2012. The types of iron ore traded can be divided into four main categories: fines, lump, pellet and concentrate. This trading platform operates on a membership basis. As at 15 March 2013, the platform had 200 members, including 3 overseas steel plants, 7 overseas mines, 34 overseas trading companies, 73 domestic trading companies and 83 domestic steel plants.
- (j) On 11 March 2012, a magnitude 9.0 earthquake struck off the northeast coast of Japan, triggering a tsunami and nuclear leakage. The damage to the nuclear power facilities led to a shortage in electricity supply and further affected steel production in Japan, in particular in electric furnace mills, many Japanese industries that use the GUC were forced to suspend production. This resulted in a significant decline in the number of purchase orders of steel products.
- (k) The Australian Government passed the *Minerals Resource Rent Tax Act 2012* (and the *Minerals Resource Rent Tax (Imposition -General) Act 2012*) on 19 March 2012. These required the payment of a Minerals Resource Rent Tax ("MRRT") by certain companies at a rate equivalent to 30% of their profits above a certain level.
- (l) On 22 March 2012 the China Securities Regulatory Commission approved the Dalian Commodity Exchange to conduct the trade of coke futures. Commodity futures contracts listed on the Dalian Commodity Exchange ("the Exchange") are settled through physical delivery. End-customers conduct physical deliveries through a member of the Exchange and process deliveries on the Exchange in the name of the member. Corporate legal persons or other business organizations registered in China with a certain level of capital and net assets can become members of the Exchange. Membership is not restricted to Chinese invested enterprises. End-buyers or end-customers are not only legal persons or other business organizations, but may also be natural persons.
- (m) The Ministry of Industry and Information Technology ("MIIT") of the GOC published the *Admittance Conditions of Scrap Steel Processing Industry* on 11 October 2012. Please see **Attachment 8**. These conditions require newly-established scrap steel processing and distributing enterprises to have the

ability to process in excess of 150,000 tons per year of scrap steel.

- (n) On 15 October 2012, the NYMEX trading platform under CME Group listed the contract of the Chinese Steel Rebar HRB 400 (Mysteel) Futures for trading.
- (o) In 2012 the State Council published the *12th Five Year Guideline of Energy Conservation and Emission Reduction*. This envisages that by the year 2015 the energy consumption for each ton of steel produced in China will be reduced to 580 kilograms of coal equivalent at best.
- (p) Also in 2012, China's Ministry of Industry and Information Technology published the *Standard Conditions of Production and Operation of the Iron and Steel Industry* (amended version of 2012) in order to further promote the structural adjustment and industrial upgrading of the iron and steel industry. Please see **Attachment 9**.
- (q) Over the past two years, the GOC has been considering formulating the framework of a carbon tax system as well. China, as one of the largest CO₂ emitters in the world, has announced that it will sign the agreement on CO₂ emission reduction, which is based on five preconditions and will be legally binding after 2020.

The Chinese iron and steel industry is part of the international economy. It is constantly being impacted by events such as these at both the domestic and international levels.

- (d) any changes to the government laws and regulations after 1 July 2011

The GOC clarifies that there are no special laws or regulations regarding the GUC or the input materials referred to by Australian Customs. In terms of general laws and regulations, the following are notable:

- (a) Amendments to the *Law of the People's Republic of China on Prevention and Control of Occupational Diseases* were adopted on 31 December 2011. Relevantly, Article 8 and Article 21 were amended. These Articles explicitly regard "equipment" as one of the objects among "technologies", "processes", and "materials" that may be "restricted in use or eliminated" where they are found to have caused serious occupational disease hazards. This further clarifies the legal basis of some industry guidance catalogues that require mandatory eliminations on particular types of "equipment" and/or "processes".
- (b) The *Law of the People's Republic of China on Promotion of Cleaner Production* came into effect on 1 July 2012. The law improves the "cleaner production examination" system and makes provisions regarding the system's compulsoriness and its specific implementation procedure. It explains the concept of "duty of control", that is, "enterprises discharging pollutants beyond the national or local

discharge limits shall control pollution in accordance with relevant laws regarding environmental protection" (Article 27, paragraph 3 of the new Law). In addition, the law further clarifies the legal basis of some industry guidance catalogues that require the prohibition on investment in, or elimination of, particular types of "equipment" and/or "processes".

- (c) The *Administrative Compulsion Law* (**Attachment 10**) came into force as of 1 January 2012. It provides that "administrative compulsion shall be set and implemented according to the statutory authority, extent, conditions and procedures" (see Article 4). It also provides that administrative compulsion without any basis in law or regulation cannot be implemented (and that having been implemented shall be corrected), and that the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law (see Article 61). This law make it clear that the "guiding" policies that are not laws or regulations do not have any administrative compulsory legal effect.

The GOC has presented this information in order to assist Australian Customs to understand the basis and the contents of implementation of certain recent aspects of the GOC's industrial policy.

In particular, the GOC does wish to point out the GOC's very great concern about the pollution caused by its industries, including the steel industry. The *Law of the People's Republic of China on Promotion of Cleaner Production* (mentioned above) is one emanation of this concern.

All of the products listed in question 2 below are created through emissions-intensive production. The more demand there is for these products from outside China, the more pollution occurs from within China. Exporting more goods produced by processes which are heavily polluting "relocates" those processes from foreign countries to China. This effectively involves China in "importing pollution" from abroad. Therefore, an environment-friendly policy cannot be effective without curtailing more exports of polluting goods. By qualifying the level of exports or imposing an additional cost on those exports, the GOC attempts to limit the environmental damage such production causes. This is permissible under Article XX(b) and XX(g) of the General Agreements on Tariff and Trade.

The GOC notes that environmental policies may inevitably cause an economic burden on businesses within China. This is no different to the situation anywhere else in the world. For example, recent media in Australia has highlighted the need for businesses to invest money in order to comply with environmental policies: Electrolux hopes to

PUBLIC RECORD VERSION

borrow AUD50 million from its parent company in order to comply with Australian energy efficiency standards.¹²

2. Provide quarterly data (using Microsoft Excel format) over the last 5 years of:

(a) import quantity (by volume and value) of

- (i) steel slab
- (ii) iron ore
- (iii) coking coal
- (iv) coke
- (v) HRC
- (vi) scrap metal
- (vii) hot rolled plate steel

The GOC would clarify that, except for iron ore, the import quantities for other goods in question are relatively low in comparison with the total supply/usage quantity in China. However, as discussed above in response to question 1, China's imports of some of these goods are, in global terms, significant.

Please refer to

- **Attachment 11 [CONFIDENTIAL ATTACHMENT]** - imports of iron ore;
- **Attachment 12 [CONFIDENTIAL ATTACHMENT]** - imports of coking coal;
- **Attachment 13 [CONFIDENTIAL ATTACHMENT]** - imports of coke;
- **Attachment 14 [CONFIDENTIAL ATTACHMENT]** - imports of HRC;
- **Attachment 15 [CONFIDENTIAL ATTACHMENT]** - imports of scrap metal;
- **Attachment 16 [CONFIDENTIAL ATTACHMENT]** - imports of hot rolled plate steel;

(b) export quantity (by volume and value) of

- (i) steel slab
- (ii) iron ore
- (iii) coking coal
- (iv) coke
- (v) HRC
- (vi) scrap metal
- (vii) hot rolled plate steel

The GOC would clarify that the export quantities for the goods in question are relatively low in comparison with the total supply/usage quantity in China:

¹² Peter Roberts "600 Jobs on the Line", *The Australian Financial Review* 8 February 2013, accessible here: http://www.afr.com/p/national/electrolux_seeks_from_parent_jobs_3JBU7O9OSqiE3jPDdxXCnl

PUBLIC RECORD VERSION

- **Attachment 17 [CONFIDENTIAL ATTACHMENT]** - exports of iron ore;
- **Attachment 18 [CONFIDENTIAL ATTACHMENT]** - exports of coking coal;
- **Attachment 19 [CONFIDENTIAL ATTACHMENT]** - exports of coke;
- **Attachment 20 [CONFIDENTIAL ATTACHMENT]** - exports of HRC;
- **Attachment 21 [CONFIDENTIAL ATTACHMENT]** - exports of scrap metal;
- **Attachment 22 [CONFIDENTIAL ATTACHMENT]** - exports of hot rolled plate steel.

3. Provide a schedule for the last 5 years of:

- (a) the corporate tax rate in relation to:
- (i) the iron ore, coke and coking coal miners/importers/traders
 - (ii) coke and HRC manufacturers/traders
 - (iii) scrap metal traders
 - (iv) hot rolled plate steel manufacturers/traders

The GOC respectfully reiterates that this is irrelevant to the existence of a “particular market situation”.

Nonetheless, on the same basis as before, the GOC does intend to respond to this question.

Please refer to **Attachment 23** for the required schedule.

- (b) import tariff rates and/or import quotas applicable to:
- (i) steel slab
 - (ii) iron ore
 - (iii) coking coal
 - (iv) coke
 - (v) HRC
 - (vi) scrap metal
 - (vii) hot rolled plate steel

Please refer to **Attachment 24** for a summary of the import tariff rates and/or import quotas. Moreover, the GOC would clarify that the import quantities for the goods in question other than iron ore are relatively low in comparison with the total supply/usage quantity in China.

- (c) export tariff rates and/or export quotas applicable to:
- (i) steel slab
 - (ii) iron ore
 - (iii) coking coal
 - (iv) coke
 - (v) HRC
 - (vi) scrap metal
 - (vii) hot rolled plate steel

Please refer to **Attachment 25** for a summary of the export tariff rates and **Attachment 26** for a summary of export quotas. Moreover, the GOC would clarify that the export quantities for the goods in question are relatively low in comparison with the total supply/usage quantity in China.

In relation to the implementation and monitoring of these export quotas, please refer to **Attachments 27, 28, 29 and 30**.

- (d) value added tax (VAT) export rebates applicable to exports of:
- (i) steel slab
 - (ii) iron ore
 - (iii) coke
 - (iv) coking coal
 - (v) HRC
 - (vi) scrap metal
 - (vii) hot rolled plate steel

Please refer to **Attachment 31** for a summary of the value added tax (VAT) export rebates. Moreover, the GOC would clarify that the export quantities for the goods in question are relatively low in comparison with the total supply/usage quantity in China.

4. Complete the attached spreadsheet (using Microsoft Excel format) listing all manufactures/traders of hot rolled plate steel in China including the following details:

- (i) name of the business entity
- (ii) location of the business entity
- (iii) function of the business (e.g. manufacturer, trader, exporter);
- (iv) type of business (e.g. State invested enterprise (SIE), Foreign invested enterprise (FIE), private enterprise or other (please specify))
- (v) whether the business also manufactures HRC and/or steel slab
- (vi) whether the business is also an iron ore and/or coking coal miner
- (vii) production quantity of hot rolled plate steel
- (viii) whether GOC is a shareholder in the business, and if so the percentage of GOC holdings
- (ix) whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and indicate any special rights provided to the representative (e.g. veto rights)

The GOC does not understand the relevance of this information to the “particular market situation” investigation on which Australian Customs has embarked. The level of government ownership in companies is wholly irrelevant to the comparability of export sales of the goods under consideration and domestic sales of like goods.

Similarly, given the findings of the Appellate Body in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (“DS379”), the GOC cannot see how this information would be relevant to the subsidy investigation. As was noted at paragraph 318 of that judgement:

PUBLIC RECORD VERSION

the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority

Nonetheless, on the same basis as before, the GOC does intend to respond to this question.

The only form of GOC representation in these entities applies to SIEs. By their very nature, an SIE has government representation, insofar as the GOC is a shareholder of that entity. The role of shareholder or “capital contributor” is undertaken by the State-owned Assets Supervision and Administration Commission (“SASAC”).

In this role SASAC’s functions are those of a shareholder in the normal sense of the term. As an institution (non-natural person) it cannot attend shareholders’ meeting or a general assembly of shareholders convened by a company (majority state-holding company or minority state-holding company). To efficiently perform its “contributors” functions, it must appoint a representative to attend these meetings. The specific role of these representatives is to put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and to report the performance of his duties and results thereof to the appointing body promptly.

SASAC is obliged to exercise its ownership rights in a manner as instructed or provided by the law, instead of by any part of the GOC. No other parts of the GOC have any authority to intervene other than in the manner as instructed by the law. Investors will always take into account commercial, legal, political (“sovereign”) and social risks in managing their investments, and SASAC is no different in this regard. In the cases of SASAC or agency representatives, simply taking a policy into account is not untoward, especially where the law is clear as to the primary or ruling considerations to be considered in asset management – namely, commercial operation and fair value. SASAC’s role is simply that of a shareholder.

For the purposes of full cooperation, GOC provides the information requested in relation to the top 50 manufacturers of the GUC as **Attachment 32 [CONFIDENTIAL ATTACHMENT]**.

For each business where the GOC is a shareholder and/or there is GOC representations in the business provide:

- (i) the complete organisational structure, including subsidiaries and associated businesses and
- (ii) copies of annual reports of the business for the last 2 years.

The GOC notes the request of Australian Customs. However, the GOC respectfully draws Australian Customs’ attention to Articles 7 and 10 of the *Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises*, which note the separation between the GOC and any entities in which it has an investment.

The GOC does not collect the information requested by Australian Customs, nor does the GOC consider that information to be relevant to the question of whether a situation exists in the market for the GUC that would render sales in that market unsuitable for determining dumping margins under Section 269TAC(1).

In total, based on the research of the GOC, there are [CONFIDENTIAL TEXT DELETED – number] large scale producers of medium plate steel and [CONFIDENTIAL TEXT DELETED – number] large scale producers of thick plate steel. “Large scale producers” are those whose main business revenues exceed RMB 20 million. Amongst the [CONFIDENTIAL TEXT DELETED – number] large scale producers of medium plate steel, it is understood that there are [CONFIDENTIAL TEXT DELETED – number] SIEs. Amongst the [CONFIDENTIAL TEXT DELETED – number] large scale producers of thick plate steel, there are [CONFIDENTIAL TEXT DELETED – number] SIEs. By combining the two product groups, and omitting enterprises mentioned in each group, the GOC understands there to be [CONFIDENTIAL TEXT DELETED – number] SIEs amongst the large scale producers of the GUC. In this same large scale group, there are also [CONFIDENTIAL TEXT DELETED – number] wholly privately-invested enterprises, and [CONFIDENTIAL TEXT DELETED – number] Hong Kong, Macao or Taiwan invested enterprises.

It is not clear to the GOC whether each and every one of these enterprises publishes an “annual report” for general circulation. The GOC expects that the cooperative respondents to this investigation have already provided the requested information.

5. The Government Questionnaire Response to INV 177, identified the China Iron and Steel Association (CISA) as the relevant industry association that represents HSS and HRC manufacturers. Does the CISA also represent any of the following sectors:
- (i) Hot rolled plate steel manufactures;
 - (ii) iron ore and coking coal, miners, importers and traders;
 - (iii) coke producers, importers and traders; and/or
 - (iv) scrap metal producers and /or traders.

If there are other industry associations that represent the above business types, provide names, address and contact details including their websites of the relevant industry association.

Once again, and with respect, the GOC does not understand the relevance of this information to the “particular market situation” investigation on which Australian Customs has embarked.

The laws of China confer no rights on the GOC to constitute, sponsor or administer industrial associations except for regular legal entity registration or regulation. CISA is an organisation that is independent of the GOC.

In order to cooperate with the investigation, the GOC clarifies that, to the best of its

PUBLIC RECORD VERSION

knowledge, besides the China Iron and Steel Association (CISA), there are other industry associations in China having some roles on behalf of the industries concerned and their members.

The GOC provides a list of relevant associations in **Attachment 33 [CONFIDENTIAL ATTACHMENT]**. For other information concerning relevant industry associations, please inquire of the respondent firms.

6. Has the GOC issued or participated in the issuance of any debt or equity instruments¹³ in any business entity associated with hot rolled plate steel (including steel slab, HRC, iron ore, coking coal and scrap metal) industries in the last 5 years? If so:
- (i) provide the names and address of the business entities
 - (ii) explain the reasons for using a particular financial instrument(s);
 - (iii) provide full details (such as number of shares and value of bonds), including the period of investments and the rate of return(s) (and/or expected yields)
 - (iv) are any of these instruments or securities listed in any securities exchange in China or overseas? If so:
 - (a) Provide the name(s) of the securities of exchange
 - (b) Identify any trading restrictions by the business entity and/or the securities exchange

China is a WTO Member. Australia has accepted that China is to be subject to, and benefitted by, the rules set out in the ADA without modification and without the intrusion of any contradictory rules. These kinds of questions were never asked in Australian anti-dumping investigations concerning Chinese exporters in the entire period from 1996 up until the recent investigations concerning hollow structural sections, aluminium road wheels, and coated steel. This was because they were clearly not relevant for the purposes of working out the normal value of products exported to Australia from China. They are as irrelevant to an anti-dumping investigation today as they have ever been.

Australia cemented its “market economy” treatment of Chinese exporters in 2005, fully eight years ago. The legal treatment of Chinese exporters must be in accordance with WTO rules. However the GOC finds that not to be the case. It is not difficult for the GOC to “draw the dots” between the protectionism that has been urged upon the present Australian Government by its trade union constituency, and the distorted reasoning and flawed judgement of the recent “particular market situation” and “public bodies” decisions that have been made by the Minister for Home Affairs.

The Minister has acknowledged that Australia has not had “*the same rights*” to impose dumping duties on Chinese exporters on any non-market economy basis since the time Australia legally accepted China as a fully-fledged WTO trade partner, with the same

¹³ Examples of such instruments include ordinary shares (including initial public offers), preferential shares, rights issue, bonds, quasi-government bonds warrants, debentures, sub-ordinate loans.

ADA rights as any other WTO Member. In an address to the National Press Club on 28 November 2011, on the topic of *Supporting Industry, Supporting Jobs – Streamlining Australia's Anti-Dumping System*, the Minister said the following:

One of the working groups I just mentioned is looking at the vexed issue of how to deal with situations of government interference in markets.

Many of the concerns of domestic industry on this issue stem from Australia's treatment of dumping allegations against Chinese companies. The Productivity Commission notes that while Australia and New Zealand treat China as a market economy, the United States, Canada, the European Union and India do not. The Howard Government agreed to treat China as a market economy for the purpose of anti-dumping in order to commence negotiations on a Free Trade Agreement with China. The Howard Government promised on numerous occasions and in a number of forums that Australian industry would continue to have the same rights to take anti-dumping action against China, as it had been able to.

This promise turned out to be patently untrue. The ability to use the domestic prices of another country instead of the domestic prices in China, referred to colloquially as the use of "surrogates", had been available to Customs in assessing anti-dumping claims against China prior to the Howard Government's changes. Now, that option is far more difficult to pursue. The reason some other countries can more easily resort to surrogacy in these types of cases is that they rely on the provisions of China's protocol of accession to the WTO, which the Howard Government gave up in Australia.

The GOC views the lines of inquiry in that this "particular market situation" questionnaire, and in the ones which have preceded it, as an elaborate attempt to wrap a mantle of thin credibility around an unlawful and factually deficient application of the "particular market situation" test.

The GOC encourages Australian Customs to think for itself. An anti-dumping investigation is an administrative process subject to legal rules. Australian Customs must apply the law, and must not act according to political directions which are inconsistent with law and fact.

The GOC submits that these questions are irrelevant to the existence of a "particular market situation". Moreover the GOC does not understand what is meant by the question in its use of the words "issued or participated in". If it is meant to ask whether the GOC has issued debt or equity instruments, the answer is "no" because such instruments are issued by companies and the GOC is not "the companies".

If it is meant to ask whether the GOC "participates" as a registration authority – such as through SAIC or through the China Securities Regulatory Commission – then the answer would be "yes". However this is not a participation in the business sense. It is simply the normal government functions of any registration authority.

The questions ask the GOC to advise whether it has directed money to, or accepted equity in, any of thousands of enterprises over a five year period, presumably to work out whether the GOC has supported them from going out of business or otherwise acted in a non-commercial way. Australian Customs has no evidence of such practices – whether widespread or isolated – and our review of the application finds no evidence

there either.

The GOC again expresses its concern about the claimed legitimacy of questions such as this for the purposes of an anti-dumping investigation. If it is claimed that subsidies have been provided to the Chinese exporters – and it has been so claimed – then a countervailing investigation should be conducted to consider that claim. There is such an investigation underway. If the claim included an allegation that subsidies had been provided to upstream industries – those producing HRC, iron ore, coking coal, coke and scrap metal – then we assume Australian Customs would give consideration to those subsidies in the context of a “pass through” analysis, again within the context of a countervailing investigation. However these inquiries are not relevant to an anti-dumping investigation which relates to the comparison of prices in sales during a confined 12 month period.

The GOC does not intend to engage in the irrelevant exercise of searching for a subsidy “needle” in a huge economic “haystack” over a five year period. What the GOC can say is that it does not choose to “support” entire industry sectors or major enterprises by handing out “free” money or by “forgiving” any debt which may be owed to it (quite apart from the fact that the GOC is not a direct financier of such enterprises).

The markets for plate steel are fully functioning commercial markets populated by commercial enterprises who transact business as private buyers and sellers in a commercial way in accordance with the rules of commercial law in China.

Accordingly, the GOC rejects the need to respond to this question.

The GOC would clarify that it does not collect or keep information about all share/equity transactions or debt securitisation of SIEs in its ordinary course of supervision of those State-owned assets. More specifically, there are a great number of steel enterprises in China. The ownerships of most enterprises are very complicated and they are usually diversified in mixed operations. The GOC does not collect the information about the issuance of such securities and instruments based on different industries or different ownership structures. There are no limits for the issuance of securities and stocks which are tailored especially for SIEs or for the steel industry. All enterprises – whether State-invested or not – are subject to the same rules about equity transactions, share allotments, and issuance of debt instruments. Please refer to Chapter 3 of the Security Law (**Attachment 34**) for the general limits for security transactions.

Therefore, the GOC responds by saying that it does not itself participate in the issuance of any debt or equity instruments in any business entity associated with hot rolled plate steel industries. As noted above, the only form of GOC representation in such businesses arises as a result of the GOC’s investment in SIEs.

The GOC would further clarify that Chinese law prohibits any government agencies which have the responsibility for the administration of industry or social affairs to

participate in or represent any enterprise for business activities, including issuing of securities, share certificate or other relevant instruments. The SASAC at various levels represents the central and local government to hold the shareholder rights within SIEs, but the SIEs independently issue such securities and instruments in accordance with laws and regulations. Please refer to Articles 30 and 54 of the *Law on State-Owned Assets of Enterprises* (**Attachment 35**).

SASAC is limited to operating as the capital contributor. “Capital contributor” is equivalent to the term “shareholder” of a company as used in the Company Law. Therefore “capital contributor” is a legal notion that indicates the shareholding body comprising the State. As such, the power of a “capital contributor” varies depending upon its degree of shareholding in a company. A capital contributor does not enjoy more rights than a normal shareholder.

The “capital contributor” as a government special entity must not carry out any administrative and public function embedded in other policy or regulatory government entities when performing its contributor’s function. The State as capital contributor is prohibited from interfering with the business operations of SIEs other than as a shareholder in the performance of its legitimate contributor’s functions,

According to Article 6 of the *Law on State Owned Assets*, the contributor’s function must be carried out:

...based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

The separation of ownership from management is further emphasized in Article 15, which requires the capital contributor to act in the interest of the business as a market participant:

Bodies performing the contributor’s functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor’s functions.

The GOC representation on boards of State invested enterprises is for the purposes of representing the interests of the GOC as an investor in the entity concerned. Such representation must only take place in accordance with the SASAC requirements and regulations that have previously been explained to Australian Customs. Those requirements and regulations are directed towards the good governance of the entity. They expressly disallow any interference by the GOC in the affairs of the entity for non-commercial purposes.

Further, here GOC wants to clarify the process as to how the SIEs independently issue securities and use financial instruments to raise capital.

In China, the incorporation of a company limited by shares is covered by the *Company*

Law of the People's Republic of China. The following conditions are relevant to the incorporation and share capital raising of an enterprise:

Article 77:

The following conditions shall be met if a company limited by shares is to be incorporated:

- 1) The number of promoters conforms to the statutory number;*
- 2) The share capital subscribed for and raised by promoters reaches the statutory minimum amount of capital;*
- 3) The issue of shares and the preparations made for incorporation conform to the provisions of law;*
- 4) The company's articles of association are formulated by the promoters, and such articles of association of a company incorporated by means of share offer are adopted at the inaugural meeting;*
- 5) The company has its name, and its organizational structure conforms to the requirements for a company limited by shares; and*
- 6) The company has its domicile.*

Article 78

A company limited by shares may be incorporated by means of promotion or by means of share offer.

A company incorporated by means of promotion is one incorporated by the promoters subscribing for all the shares to be issued by the company.

A company incorporated by means of share offer is one incorporated by the promoters subscribing for a portion of the shares to be issued by the company, with the rest offered to the general public or to specific quarters.

Article 134

Where a company issues new shares, a resolution on the following matters shall be adopted by the shareholders general assembly:

- 1) the class and number of the new shares;*
- 2) the issue price of the new shares;*
- 3) the opening and closing dates for the issue of the new shares; and*
- 4) the class and number of the new shares issued to the existing shareholders.*

Article 88

Where promoters offer shares to the general public, the shares shall be underwritten by the securities company established according to law, and an underwriting agreement shall be concluded.

Article 89

Where promoters offer shares to the general public, they shall enter into an agreement with a bank on the collection of subscription moneys on their behalf.

The bank entrusted with collecting the subscription moneys shall, in accordance with the agreement, collect and keep the said moneys, issue receipts to the subscribers for their payments, and bear the obligation to issue certificates of receipt of moneys to relevant departments.

Article 135

When a company publicly issues new shares upon verification and approval by the securities regulatory authority under the State Council, it shall announce its prospectus on the new share offer and its financial reports, and shall prepare subscription application forms.

Article 136

Where a company issues new shares, it may, on the basis of its operational and financial conditions, decide on a proposal on the price of the new shares.

Article 137

Where the new shares issued by a company are fully subscribed for, the company shall apply to the company registration authority for the registration of modification in its capital and shall make an announcement thereafter.

As provided in the Articles set out above, should an enterprise wish to become a company limited by shares (ie, issue shares), the company itself formulates the articles of association and adopts these at the inaugural meeting. When a company issues new shares, this is by resolution at the company's General Meeting. The share price will be determined on the basis of the company's "operational and financial conditions".

In China, securities are governed by the *Security Law of the People's Republic of China*. The China Securities Regulatory Commission ("CSRC") is the regulatory body supervising the Security Law. The Security Law governs the issuing and trading of shares, corporate bonds, government bonds, units of securities investments funds and such other securities that may be so described by the State Council pursuant to law. These laws apply to all companies – both private and state-invested-enterprises.

The follow articles of the Securities Law provides the relevant "steps" that a company must take in order to issue securities:

Issuing Securities – Article 10

The conditions set forth by laws or administrative regulations must be satisfied in the public issuance of securities, and such issuance must, pursuant to law, be submitted to the securities regulatory authority under the State Council or the departments authorized by the State Council for examination and approval. Without such examination and approval no entities shall issue securities publicly.

Anyone of the following shall constitute a public issuance:

- 1) *issuing securities to non-specific persons;*
- 2) *issuing securities to more than 200 specific persons in the aggregate; and*
- 3) *such other issuing activities as may be so prescribed by laws or administrative regulations.*

Where securities are issued in non-public manners, no advertising, public solicitation or any other covert ways in disguised form shall be employed.

Conditions for issuing shares – Article 13

Where a company makes a public issuance of new shares, it shall meet the following conditions:

- 1) *having a sound and well-functioning organizational structure;*
- 2) *having sustainable profitability and being financially sound;*

PUBLIC RECORD VERSION

- 3) *having had no false entries in its financial and accounting documents for three years immediately preceding the application, and no other major illegal activities attributable to it; and*
- 4) *such other conditions as may be so prescribed by the securities regulatory authority under the State Council and so approved by the State Council.*

Where a listed company is to make a non-public issuance of new shares, it shall meet the conditions as prescribed by the securities regulatory authority under the State Council and so approved by the State Council and it shall submit an application there for to the securities regulatory authority under the State Council for examination and approval.

Issuing shares – Article14

Where a company is to make a public issuance of new shares, it shall submit an application for share offering and the following documents to the securities regulatory authority under the State Council:

- 1) *the business license of the company;*
- 2) *the articles of association of the company;*
- 3) *the resolution of the shareholders general assembly;*
- 4) *the prospectus;*
- 5) *the financial statements;*
- 6) *the name and address of the agent bank for subscription funds; and*
- 7) *the name of underwriting institution and relevant agreements.*

Where a sponsor is engaged in accordance with the provisions of this Law, the instrument of sponsorship for issuance produced by such sponsor shall also be furnished.

Issuing bonds – Article17

To apply for public issuance of corporate bonds, a company shall submit the following documents to the department authorized by the State Council or the securities regulatory authority under the State Council:

- 1) *the business license of the company;*
- 2) *the articles of association of the company;*
- 3) *the method for raising funds through issuance of corporate bonds;*
- 4) *the reports of asset valuation and investment verification; and*
- 5) *such other documents as may be so prescribed by the department authorized by the State Council or the securities regulatory authority under the State Council*

Where a company engages a sponsor in accordance with the provisions of this Law, it shall also submit the instrument of sponsorship for issuance produced by such sponsor.

Further, CSRC is empowered to establish an issuance examinations commission which examines applications for share issuance. This commission is comprised of professionals from securities regulatory authority under the State Council and specialists engaged from outside who decide by vote on an application for share issuance and offer their opinions after examination (Article 22). The persons involved in the examination and approval process must not have any conflict of interest, must not directly or indirectly accept any gifts from the applicants, must not hold any shares

PUBLIC RECORD VERSION

issued by the applicants and must not have any contact with the applicants in private (Article 23). The CSRC will then, within three months from the date of acceptance of the application documents, decide whether or not to grant approval (Article 24). Once an application is approved the issuer shall, in accordance with the laws and regulations, release the documents of public offering and solicitation prior to effecting the public issuance of the securities, and place documents at the designated places for public information (Article 25).

7. Provide details (quantify the value) of any government guarantee provided for any commercial loans by a business entity associated with hot rolled plate steel (including steel slab, HRC, Iron ore, coke, coking coal and scrap metal) industries in the last 5 years.

These questions are irrelevant to the existence of a “particular market situation”. This question also appears to relate to issues which could only validly be raised in a properly constituted countervailing duty investigation.

Chinese law prohibits any government agencies which have the responsibility for the administration of industry or social affairs to guarantee the commercial loans for any enterprises. Please refer to Article 8 of the Guarantee Law (**Attachment 36**). Therefore, this question is not applicable.

8. Have there been any changes to the following policies/catalogue/plans since INV 177, and if so provide details and copies of the amended documents:

- National Steel Policy
- A Blueprint for Steel Industry Adjustment and Revitalization
- Directory Catalogue on Readjustment of Industrial Structure
- 11th and 12th Five year plan for the Iron and Steel Industry

The GOC clarifies there is no “11th Five year plan for the Iron and Steel Industry” in China.

None of the remaining above-mentioned policies/catalogue/plans have been changed since the period of investigation (“POI”) for the HSS investigation (ie, Australian Customs’ investigation number 177). However some documents are premised on a specific planning period. For example, the period covered by *A Blueprint for Steel Industry Adjustment and Revitalization* was from 2009 to 2011.

In Australian Customs’ report in the HSS investigation, the GOC noted some scepticism about the explanations it provided regarding these documents. The GOC does not understand why this was the case. Like the TMRO, the GOC disagreed with the conclusions reached by Australian Customs about the reason and effect of the GOC’s

policies.

For the sake of clarity, the GOC will now reiterate the advice it has previously provided.

The National Steel Policy

The National Steel Policy is an aspirational document, not a legal document. It sets out the means by which the steel industry can modernize its operation and remain competitive and efficient in the future.

The National Steel Policy was drafted to discuss ways to elevate the levels of technology used in the iron and steel industry; to promote structural adjustment; to improve the industry layout; to promote recycling and to minimize the industry's environmental impact; and generally to guide the sound development of the iron and steel industry.

In any event, the GOC considers there is nothing unusual about a government creating such an industry plan. For example, the Government of India has its own National Steel Policy, last released in 2005. The focus of the policy is explained to be:

The focus of the policy would therefore be to achieve global competitiveness not only in terms of cost, quality and product-mix but also in terms of global benchmarks of efficiency and productivity. This will require indigenous production of over 100 million tonnes (mT) per annum by 2019-20 from the 2004-05 level of 38 mT. This implies a compounded annual growth of 7.3 percent per annum.¹⁴

Australia itself has its own national steel policy, in the Australia Steel Transformation Plan 2012 ("the AST"). The AST provides for the payment of substantial amounts of money (totalling \$300 million) to Australia's two biggest steel manufacturers, to:

...help OneSteel and BlueScope to adapt and modify their business models to ensure their long term sustainability in a low carbon economy¹⁵

However, in contrast to the National Steel Plan – which has no force at law - the AST is a legislative instrument that was created under the *Steel Transformation Act 2011*. For BlueScope (and another company, "OneSteel") to receive the payments under the Plan, they must submit an application, which includes a "business plan". The business plan must detail, among other things, business strategies, operational plans and details as to how the applicant will "encourage investment, innovation and competitiveness in the Australian steel manufacturing industry" which are the objectives of the *Steel Transformation Act 2011*.

The business plan is integral to an applicant's access to payments. Article 2.2(2) of the AST provides that an application cannot be registered (which is required before an

¹⁴ <http://steel.nic.in/nspolicy2005.pdf>

¹⁵ Per The Hon Greg Combet, Minister for Industry and Innovation, at: <http://minister.innovation.gov.au/gregcombet/MediaReleases/Pages/64MILLIONINCOMPETITIVENESSASSISTANCEFORONESTEEL.aspx>

entity becomes eligible for the payment) unless the Secretary is satisfied that the applicant would further the objects of the *Steel Transformation Act 2011*. If at any point it is determined that the applicant will not further the objects of the *Steel Transformation Act 2011* they will be deregistered from the AST.

The Australian example is informative. It involves the payment of money to entities (which according to the relevant Minister's own statement are limited to BlueScope and OneSteel) on the condition that those entities carry out the Australian Government's expressed policy objectives as may be reflected in the business plan which must first be approved by the Minister. In contrast, China's National Steel Policy is not a legal document. It has no impact on the Chinese steel markets. There is no requirement that Chinese steel producers follow it, nor is there any government subsidisation provided if they do.

Australian Customs use of China's National Steel Policy document to support its particular market situation finding in previous investigations is factually, legally and logically incorrect. In light of the requirements of the AST, which we would assume Australia would claim does not create a "particular market situation", the GOC finds the attitudes of Australian Customs also to be hypocritical.

A Blueprint for the Steel Industry Adjustment and Revitalization

The purpose of "*A Blueprint for Steel Industry Adjustment and Revitalization*" was to discuss methods to stabilize the steel industry following the fallout from the global financial crisis.

The GOC notes that it is not uncommon for WTO members to publish such documents in relation to unprecedented economic conditions. For example, the Australian Government recently published the *Smarter Manufacturing for a Smarter Australia* report, in response to various economic pressures, such as the fall-out from the global financial crisis and the high Australian dollar.¹⁶

Directory Catalogue on Readjustment of Industrial Structure

The *Directory Catalogue on Readjustment of Industrial Structure* ("Directory Catalogue") is part of the same policy as the *Interim Provisions on Promoting Structure Adjustments* ("the Interim Provisions"). The Interim Provisions sets out the criteria under which certain production processes may be classified as "encouraged", "restricted", or "eliminated", and how GOC agencies may deal with such processes. The Directory Catalogue identifies what production processes actually fall within these categories.

¹⁶ http://www.innovation.gov.au/Industry/Manufacturing/Taskforce/Documents/Smarter_Manufacturing.pdf

9. Identify any new GOC initiatives and/or policies that came into effect following INV177 that affects hot rolled plate steel and/or steel slab, HRC, including raw materials such as coke, scrap metal, coking coal and iron ore. Provide all documentary evidence.

This question potentially has an incredibly wide scope. Initiatives or policies that “affect” an economy generally may “affect” the industries and markets in that economy. The GOC can at least say that the GOC has not engaged in any price control or price manipulation in the markets for the products to which the question refers, nor has it directed enterprises in those industries to behave in a particular way.

Other answers to questions in this questionnaire address particular impacts on market conditions and changes to laws in a general sense. However no GOC initiatives or policies have been introduced to direct or control price or price behaviour by enterprises in the markets concerned.

To assist Australian Customs to better understand the “market situation”, the GOC submits some market analysis reports in **Attachments 37, 38 and 39**. The views and comments in these documents do not represent the views of the GOC. The mainstream opinion of the steel industry is that there is a very close link between the Chinese market and other markets. The Chinese market is an important and integral part of the overall world steel “market”.

Market demand and inventory – and business decisions about production – are directly responsible for fluctuation in futures prices and spot prices of steel products. Indirect effects are multitudinous. Please refer to **Attachments 37, 38 and 39** for market reports to show changes in steel futures transactions.

To further assist Australian Customs to understand the situation in China and to try to respond to the concerns underpinning this question, the GOC also points out that:

- (a) The Chinese central government and local government issued some opinions on strengthening the building of the government under the rule of law in 2010. These documents indicate the legal basis and standard practices for the formulation and implementation of industry regulation and industry policy of GOC. As an example the GOC provides the two documents issued by relevant central Government authority at **Attachments 40 and 41**.
- (b) The Chinese central government and local government also issued a series of policies and measures to further promote the development of private enterprises in the economy during 2010 to 2012. These policies have continued and accelerated the pace of change in the Chinese industrial structure. For instance, the number of SIEs was **[CONFIDENTIAL TEXT DELETED – number]** in 2006, but it dropped to **[CONFIDENTIAL TEXT DELETED – number]** in 2011, **[CONFIDENTIAL TEXT DELETED – number]**% less than in 2006. By contrast, the number of private enterprises was **[CONFIDENTIAL TEXT DELETED – number]** in 2006 and

increased to [CONFIDENTIAL TEXT DELETED – number] in 2011, an increase of 20% over that time. As an example, the GOC provides two documents issued by the relevant central government authorities at **Attachments 42, and 43**.

- (c) The State Council has further reduced the number of items subject to administrative review and approval, and has also abolished and amended a large number of administrative regulations that no longer meet the new requirements of economic development in China. This has been done to deepen the reform of the administrative approval system in China, and to promote healthy government-enterprise relationship and harmonious government-society relationship. These administrative approval reforms have contributed to increased market liberalisation in China. By cutting red tape, the GOC has ensured easier market entry for start-up businesses. This in turn has increased competition overall.
- Specifically, in July, 2010, according to Decision GUOFA [2010] No.21 (**Attachment 44**), the State Council cancelled administrative review and approval for 113 items and delegated administrative review and approval for 71 items to authorities of a lower level.
 - In September, 2012, according to Decision GUOFA [2012] No. 52 (**Attachment 45**), the State Council cancelled administrative review and approval for another 171 items and adjusted administrative review and approval for 143 items. For example, as provided in Decision GUOFA [2012] No. 52, the automatic import licensing for certain copper and steel as required by Regulation on the Administration of the Import and Export of Goods (Order of the State Council No. 332) was cancelled.
 - In January, 2011, the State Council issued the *Decision on Abolishing and Amending Some Administrative Regulations* (Order of the State Council No. 588) (**Attachment 46**) to adapt to the new situations and meet new requirements of the economic and social developments and that of deepening reform. As required by this decision, seven administrative regulations including the *Regulations on Foreign Exchange Administration of Overseas Investment* (1989) were abolished and some of the Articles of 107 other administrative regulations have been amended to further liberalize the market in China.
- (d) Finally, the GOC wishes to bring to Australian Customs' attention the *Anti-Monopoly Law of the People's Republic of China* (**Attachment 47**) which prevents businesses with market dominance from abusing their market power. In particular, Article 17(2) prevents the sale of products below cost, without any justification.

10. Have there been any changes to GOC policies since INV 177 that support the view that the factors leading to Customs and Border Protection's finding in INV 177 of a particular

market situation in the Chinese steel industry as outlined in REP 177 no longer exists. If so, provide details and relevant evidence.

The GOC submits that Australian Customs' findings in the HSS case ("INV 177") as to the existence of a "particular market situation" in the Chinese steel industry were totally wrong. More specifically, Australian Customs' interpretation of the "influence" of China's policies was wrong and economically unsound. The conclusion that a particular market situation existed in the Chinese steel market was both legally and evidentially incorrect.

As required by Australian Customs, the GOC now provides the below explanation regarding any changes which may have occurred in the various policies discussed in the report issued at the conclusion of INV 177 ("REP 177"). In providing these explanations and clarifications, the GOC expressly asserts that it does not accept that the policies can be creative of a "particular market situation" as a matter of law, and does not accept the interpretation of the effect of these policies as was adopted by Australian Customs' in REP 177.

"Macroeconomic policies"

- (a) The *National Steel Policy* – this policy was promulgated in 2005 and is still a valid policy during the POI.
- (b) Central and Local Five-Year Plans - as clearly prescribed in these plans, both the central and local eleventh five-year plans were only applicable to the period from 2006 to 2010. Various twelfth five year plans are still valid. These plans must be read in conjunction with the documents referred to above in the response to question 1(d) and question 14 above.
- (c) *Blueprint for Steel Industry Adjustment and Revitalization* - as clearly prescribed in the document, the *Blueprint for Steel Industry Adjustment and Revitalization* was only applicable to the period from 2009 to 2011.

"Implementation of GOC macroeconomic policies"

- (a) "Measures to eliminate backwards production capacity":
 - *Interim Provisions on Promoting Structure Adjustments* (GUOFA [2005] No.40) ("Interim Provisions") and *Directory Catalogue on Readjustment of Industrial Structures* ("Directory Catalogue") – these Interim Provisions remains valid today. However, the GOC promulgated a Directory Catalogue (2011 version) in March 2011, which came into force as of 1 June 2011. At the same time, the 2005 version of the Directory Catalogue was repealed and replaced.
 - *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities* (GUOFA [2010] No.7) - this notice was promulgated in February 2010 and remains valid today.
 - *Guiding Catalogue for Some Industries to Eliminate Backward Production*

Processes and Equipment and Products (2010 version) at **Attachment 48** - this catalogue was promulgated in October 2010 and remains valid today.

- *Standard Conditions of Production and Operation of the Iron and Steel Industry* ("the Steel Standard Conditions") - the Steel Standard Conditions was promulgated in June 2010 and remained valid during the POI. However, MIIT amended the Steel Standard Conditions in June 2012. Compared with the 2010 version, the amended version makes some adjustments in relation to the requirements and procedures for environmental review, restrictions on certain environmental indicators, feasibility of standard conditions, etc. The GOC provides the Steel Standard Conditions (as amended in 2012) at **Attachment 9**. The GOC notes that Section 274 of the *Work Health and Safety Act 2011* (Cth) allows the relevant Minister to publish codes of practice regarding occupational health and safety issues, for various forms of work, The Steel Standard Conditions is analogous to this.
- *Admittance Conditions for the Coking Industry* ("the Coking Admittance Conditions") - the GOC provided the Coking Admittance Conditions (2004 version) as Attachment 159 of the SGQ in INV 177. The Coking Admittance Conditions (2004 version) was promulgated in December 2004 and was amended by MIIT in December 2008. Compared with the 2004 version, the 2008 version adds one new section relating to technology advancement, and places more emphasis on environment protection and technology advancement. The Coking Admittance Conditions (2008 version) was valid during the POI. The GOC provides the Coking Admittance Conditions (2008 version) at **Attachment 49**.

(b) "Measures to Curb Production Capacity Redundancy"

- *Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy* (GUOFA [2006] No. 11) ("the Redundancy Circular") - the Redundancy Circular remained valid during the POI.
- *Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of Iron and Steel Industry* (FAGAIGONGYE [2006] No. 1084) ("the Steel Industry Capacity Circular") - the Steel Industry Capacity Circular has not been explicitly declared invalid. However, the GOC promulgated the *Notice of the State Council on Ratifying and Forwarding the Several Opinions of the National Development and Reform Commission and Other Departments on Curbing Overcapacity and Redundant Construction in Some Industries and Guiding the Sound Development of Industries* (GUOFA [2009] No. 38) ("the 2009 Overcapacity Notice"). The 2009 Overcapacity Notice does not supersede the Steel Industry Capacity Circular in

legal sense but it has updated the document in essence and it reflected more precisely the then current condition of China's steel industry.

- The 2009 Overcapacity Notice - the 2009 Overcapacity Notice was valid during the POI.

(c) "Guiding Industry Mergers and Restructuring"

- Evidence of restructuring - business restructures are determined by the market players themselves. They are not directed by regulation. Therefore, the GOC is not in a position to provide answers in this regard.
- Types of merged enterprises - types of merged enterprises are also determined by market players themselves. Therefore, the GOC is not in a position to provide answers in this regard.

"Export measures on coke"

(a) Export Tariff - please refer to the response to question A.3.

(b) Export Quota and License - please refer to the response to question A.3.

"Export measures on coking coal"

(a) Import and Export of Coke and Coking Coal - please refer to the response to question A.3.

"Subsidies in the iron and steel industry"

- (a) Subsidies to HSS producers - in INV 177, Australian Customs found 28 programs countervailable, including eight tax programs, 19 grant programs and one "LTAR" program (ie, "Program 20"). None of the non-LTAR programs are "directly" related to the steel industry. Among the four cooperating HSS exporters whose subsidy margins in INV 177 were more than 0%, there were two HSS exporters whose subsidy margins were wholly attributed to "Program 20" (because it was the only alleged countervailable program they used. Specifically, for "Hengshui Jinghua", the subsidy margin of Program 20 was 4.6%, and for "Tai Feng Qiao", it was 7.9%. In contrast, for "Zhejiang Kingland", which Australian Customs claimed had used 14 countervailable programs, the total subsidy margin was merely 2.2%. Considering that, it is clear that the alleged "Program 20" contributed to the largest proportion of the alleged subsidy margin for the HSS exporters in INV 177.
- (b) As noted above, the TMRO found that there was no "Program 20" ("Program 1" in this investigation) in his review of INV 177. This decision was welcomed by the GOC, because it has long argued that no such program exists or operates in China. Australian Customs' reticence to accept this fact – and tenacious desire to assert its existence despite an absolute lack of evidence – is a continuing source of concern to the GOC

PUBLIC RECORD VERSION

(c) "Upstream" subsidies - the GOC is not aware of any "upstream" subsidies finally found in the INV177. No such subsidies were actually identified in REP177.

"Implementation by SIEs"

The Annual Reports of Baosteel for the years 2006, 2008 and 2010, as quoted by Australian Customs in REP 177 were only applicable to those years and were not applicable to the POI.

"Impact of GOC macroeconomic policies"

As stated above, the National Steel Policy was promulgated in 2005. In the past seven years, tremendous changes have taken place in the Chinese steel industry. Specifically, from 2005 to 2011, the total production of crude steel in China increased from 343,751,900 MT to 685,283,100 MT, increasing by 99.35%. The total production of plate steel (including the GUC) in China increased by 225.86% from 11,547,500 MT to 26,081,500 MT.

To ensure that Australian Customs can objectively evaluate the alleged impact of GOC macroeconomic policies, the GOC provides the following data:

Factors considered to be influenced by GOC policies as analysed in REP 177	Data for 2005 Unit: Ton	Data for 2011 Unit: Ton	Data change 2005 to 2011 Unit: Ton	Ratio of change to production of crude steel/HRS
Total production of plate steel (including the GUC)	11,547,500	26,081,500	14,534,000	225.86%
Total production of crude steel	343,751,900	685,283,100	341,531,200	99.35%
Import volume of steel*	25,820,000	26,776,784	956,784	0.11%
Export volume of steel*	20,520,000	39,623,585	19,103,585	2.29%
Total capacity/production concerned in mergers in crude steel/HRS industry	Not available	Not available	Not available	Not available

PUBLIC RECORD VERSION

Total backward capacity eliminated in steel smelting industry	14,448,000 ⁺	28,460,000	14,012,000	1.68%
Total capacity restricted in crude steel/HRS industry	Not available	Not available	Not available	Not available

Notes

* (Under the two-digit HS category 72)

+ Data is for 2006. Data for 2005 for this factor is not publicly available.

Source

- 1 Total production of plate steel: 2006 China Statistical Yearbook and 2012 China Statistical Yearbook
- 2 Total production of crude steel: 2006 China Statistical Yearbook and 2012 China Statistical Yearbook
- 3 Import and export volume of steel for year 2011: Customs Information Website (<http://www.haiguan.info/>); Import and export volume of steel for year 2005: Statistics Section of MOFCOM Website (<http://zhs.mofcom.gov.cn/tongji.shtml>); CN code for "steel": 72.
- 4 Total backward capacity eliminated in steel smelting industry for year 2011 sourced from *Table of the National Completion Status of Target Tasks for the Elimination of Backward Production Capacity for Year 2011* (Announcement No.62 of 2012) jointly announced by MIIT and National Energy Administration. As disclosed in 12th Five-Year Plan for Steel and Iron Industry, during the 11th five-year period (2006-2010), the total backward production capacity of steel smelting eliminated in China was 72,240,000 MT. Calculated by using the simple average method, the backward capacity eliminated for year 2006 was about 14,480,000 MT. In the year of 2011, 3.35% of production exited the industry because of inability to comply with environmental regulations. New capacity added, in order to keep up with demand, exceeded this percentage.

SECTION B: SUBSIDIES

The applicant alleges that producers of hot rolled plate steel in China have benefited from a number of subsidies granted by the GOC, and that these subsidies are countervailable.

In the recent anti-dumping and countervailing investigation into certain hollow structural sections (HSS) exported to Australia from China, Korea, Malaysia, Taiwan and Thailand investigation number 177 (INV 177), the Minister for Home Affairs accepted Customs and Border Protection's findings (in report REP 177) that the Government of China (GOC) has provided numerous countervailable subsidies to the Chinese iron and steel industry that are likely to have affected the supply of, hot rolled coil (HRC) and other upstream products and materials.

Given the commonality in the raw materials used in the manufacture of both HSS and the goods the subject of the current investigation, in assessing whether there is a countervailable subsidy for this investigation, Customs and Border Protection will have regard to the evidence and findings of INV 177. More specifically, based on the information available to Customs and Border Protection at this stage of the investigation and the evidence gathered during INV 177, it is reasonable to consider that the subsidies also exists in relation to the Chinese domestic market for hot rolled plate steel.

INVESTIGATED PROGRAMS

The table 1 below lists all the alleged countervailable subsidy programs for hot rolled plate steel (and raw materials) that are being investigated. Many of the subsidy programs provided by GOC have been investigated during INV 177 and countervailing duties have been imposed by the Customs and Border Protection. Table 1 column heading 'case 177 program number' provides the relative program number that has been used for INV177.

Note: the below titles of programs are to the best of Customs and Border Protection's knowledge and in some cases may simply be descriptions of the program. The program numbers used for HSS do not correspond to same program numbers for this investigation. Consequently, the below titles may not exactly reflect any official titles that the GOC has in place.

GOC is requested to provide information on each program, regardless of the year the benefit was granted by the GOC or the year that the benefit was received by the recipient company, as well as those further identified by the GOC, where the program benefits impact on the production and sale of hot rolled plate steel, steel slab, HRC, Coking coal, Coke and Scrap Steel during the investigation period.

Table 1: countervailable subsidies provided by GOC

Program Number	Program Name	Program type	Case 177 Program Number
1	Hot rolled coil provided by government at less than fair market value/ adequate remuneration	Remuneration	20
2	Steel slab provided by government at less than adequate remuneration	Remuneration	N/A
3	Coking coal provided by government at less than adequate remuneration	Remuneration	N/A
4	Coke provided by government at less than adequate remuneration	Remuneration	N/A
5	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Income Tax	1
6	Preferential Tax Policies for Foreign Invested Enterprises (FIEs) – Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years	Income Tax	10
7	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Income Tax	11
8	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Income Tax	12
9	Preferential Tax Policies in the Western Regions	Income Tax	13
10	Land Use Tax Deduction	Income Tax	29
11	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	35
12	Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipment	Tariff & VAT	14

PUBLIC RECORD VERSION

13	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	2
14	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	5
15	Superstar Enterprise Grant	Grant	6
16	Research & Development (R&D) Assistance Grant	Grant	7
17	Patent Award of Guangdong Province	Grant	8
18	Innovative Experimental Enterprise Grant	Grant	15
19	Special Support Fund for Non State-Owned Enterprises	Grant	16
20	Venture Investment Fund of Hi-Tech Industry	Grant	17
21	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	18
22	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	19
23	Water Conservancy Fund Deduction	Grant	21
24	Wuxing District Freight Assistance	Grant	22
25	Huzhou City Public Listing Grant	Grant	23
26	Huzhou City Quality Award	Grant	27
27	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	28
28	Wuxing District Public List Grant	Grant	30
29	Anti-dumping Respondent Assistance	Grant	31
30	Technology Project Assistance	Grant	32

In responding to this questionnaire, if the GOC is unfamiliar with the title given to a program, but is aware of the existence of a similar program or one that it appears is being referred to, please identify this (including providing the official title of any such program) and respond to the questionnaire in relation to that program.

PUBLIC RECORD VERSION**ANY OTHER PROGRAM NOT PREVIOUSLY ADDRESSED**

If the GOC, any of its agencies, or any other authorised non-governmental body provides any other assistance programs not previously addressed (including market development assistance programs or any domestic support programs related to the manufacture of subject goods) to manufacturers of hot rolled plate steel in China, identify these program(s). Such assistance programs are those that constitute a subsidy as defined in the attached Glossary of Terms.

GOC is requested to provide the information requested for each of the additional programs identified above and any additional programs GOC has identified. In addition, please respond to the program-specific information requested.

The GOC will answer the questions below with regard to the responding companies in this investigation, namely[**CONFIDENTIAL TEXT DELETED – names of respondents**]. Collectively, they are referred to as “the Respondents”.

The GOC notes that the questions in this “Section B” start at “2”.

2. For **all programs investigated** during the INV 177, provide any amendments to law, regulations or policy that makes a particular program redundant for this investigation. Provide all documentary evidence.

The GOC reiterates that the “Program 1” listed in the Table above, which was subject to investigation during INV177 as “Program 20”, does not exist. There are no laws, regulations or policies which support the legal existence of “Program 1”. There is no evidence that would satisfy those legal tests. Therefore, the GOC submits that “Program 1” is not relevant to this investigation.

In relation to Programs 2, 3 and 4, the GOC advises that there are no such programs. This is because the GOC does not itself provide steel slab, coking coal or coke to any enterprises.

The Chinese SIEs or non-SIEs who do provide those goods are not public bodies. The GOC expects that all arms-length transactions relating to those inputs take place at adequate remuneration as governed by the operation of the market.

Further, the GOC notes that its position is supported by the latest findings of the TMRO, following his review of Australian Customs findings in INV 177. In its report to the Minister, the TMRO found that HRC suppliers were not public bodies and that there was no evidence that their sale prices led to less than adequate remuneration.

The TMRO recommended that the Minister direct the CEO of Customs to re-investigate the finding about “Program 1” (called “Program 20” in INV 177). The Minister accepted the TMRO’s recommendation.

The following questions relate to Programs 5 - 30 identified above.

PUBLIC RECORD VERSION**3. Provide full details of the program including the following.**

- (a) policy objective and/or purpose of the program.
- (b) legislation under which the subsidy is granted.
- (c) nature or form of the subsidy.
- (d) when the program was established.
- (e) duration of the program.
- (f) how the program is administered and explain how it operates.
- (g) to whom and how is the program provided.
- (h) the GOC department or agency administering the program.
- (i) the eligibility criteria in order to receive benefits under the program.

The GOC understands that the alleged programs 5 to 30 were the subject of the countervailing investigation in the HSS matter, and are presently under consideration in the investigation concerning galvanised steel and aluminium zinc coated steel. The GOC has already provided its response to the above question in those investigations. Accordingly, the GOC respectfully requests that Australian Customs refer to the GOC's response to the above questions in relation to each of the programs in its responses in those investigations.

3. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

Please see response to question 2 above.

5. Identify and explain the types of records maintained by the relevant government or governments (e.g accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

Please see response to question 2 above.

6. Identify all companies that accrued or received benefits under the programs during the investigation period include the following details (provide your answers using Microsoft excel if possible);

- (i) the business' address (including the city, province and region);
- (ii) the ownership structure of the business, including indirect ownership through associated companies (i.e. SOE, private, co-operative, FIE or joint venture);
- (iii) if the business is not an SOE, whether it is otherwise associated with the GOC;
- (iv) whether the entity produces HRC, Steel Slab, Coking Coal or Coke, Scrap Steel, hot rolled plate steel or all products

PUBLIC RECORD VERSION

Provide on an annual basis by the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

The GOC understands that in the context of this Government Questionnaire, “all companies” referred to in the question means the entities that manufacture the GUC in China that was exported to Australia during the period of investigation.

The GOC advises that neither of the Respondents accrued or received benefits under programs 5 to 30.

Regarding question (ii) and (iii), the GOC does not understand the relevance of these questions to the program 5 to 30 subsidy investigation. Given the findings of the Appellate Body in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (“DS379”), the GOC cannot see how this information would be relevant to the subsidy investigation. As was noted at paragraph 318 of that judgement:

the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority

7. Outline how each of the following is determined for the entities identified in question 6 above;

- suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials);
- purchase prices of raw material inputs;
- allocation of inputs into production process, including raw materials and labour costs;
- quality by volume and value;
- selling prices;
- customers (including restrictions on entities that can purchase goods produced from the enterprise);
- production output (detail any restrictions on production output);
- Safety standards; and
- Energy costs.

As stated above, the GOC advises that neither of the Respondents received or accrued benefits under Programs 5 to 30. Even if the Respondents had benefited from certain subsidies under Programs 5 to 30, the GOC does not understand how the above questions can have any relevance to those programs. These questions are all closely related to the business activities and operations of individual enterprises. Therefore, the GOC is not in position to answer any of these questions. With respect, Customs is requested to contact the exporter for more detailed factual information

regarding questions such as this. If these questions are in relation to the alleged “particular market situation”, please refer to the GOC’s response to the questions at Part A of this questionnaire.

Nonetheless, for the purpose of full cooperation, the GOC provides the following answers based on the information provided by the respondents with our general comments.

Suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials)

[CONFIDENTIAL TEXT DELETED – details of raw material purchase practice of Respondent/s].

From a legal point of view, the enterprises are permitted and allowed to choose their suppliers of raw materials. There is no law or government policy on how enterprises in the plate steel industry, hot rolled steel industry, iron ore industry, coking coal industry, coke making industry and the scrap steel industry should determine their suppliers of raw material inputs. There are no restrictions on the acquisition or supply of the GUC or the raw material inputs concerned under the laws of China. Enterprises are entitled to independently determine their suppliers or acquirers, as well as the specifications, quantities and prices thereof, in doing their business. According to Article 4 of the Contract Law of the People's Republic of China:

...parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.

Please refer to **Attachment 50- Contract Law of the People's Republic of China**.

Therefore, enterprises choose their suppliers of raw material inputs independently and without any interference from the GOC, whether they are SIEs or not.

Purchase prices of raw material inputs

The Respondents advise that their purchase prices are based on commercial negotiation and open tendering.

From a legal point of view, the GOC does not control or interfere with purchase prices of these raw materials. The prices are determined by individual companies in their negotiations with prospective customers. An enterprise has the right to negotiate prices of its raw material inputs independently with the other party to the transaction based on market conditions under various laws.

The GOC advises that there are no specific laws or regulations (regardless of nomenclature) in China relating to the pricing of the raw material inputs concerned, ie. iron ore, coke, coking coal, steel slab, hot-rolled coils and scrap metal). These raw materials are not subject to any price controls.

Please refer to the *Catalogue of Price Regulated by the State Development Planning*

Commission and Other Department under the State Council in Attachment 51. As can be seen from this official instrument, none of the raw material inputs concerned are subject to any price controls or guidelines. The GOC notes that it has already provided this explanation and the Catalogue in its response to the Government Questionnaire in INV177, INV180, INV190 and INV193.

Allocation of inputs into production process, including raw materials and labour costs

[CONFIDENTIAL TEXT DELETED – details of cost allocation of the Respondent/s].

The GOC advises that there are no laws or regulations that explicitly specify any conditions or requirements as to how the enterprises shall allocate inputs into their production processes. Enterprises independently determine the allocation of inputs for their production. Chinese enterprises independently make decisions to establish their own internal business administration organization. Article 47 of the Company Law provides that the board of directors shall exercise the functions of making decisions on the establishment of the company's internal management departments. Such decisions may be deemed as an indirect "allocation of inputs into production process". Please refer to **Attachment 52** *Company Law of the People's Republic of China*.

Quality by volume and value

The GOC assumes that this question relates to the "quantity" rather than "quality".

The Respondents advise that sales are based on the requirements of the customer and open negotiation, taking into account usual commercial market factors such as availability, competitive pricing, type of product, volume, costs, and credit and trading terms.

From a legal point of view, Chinese enterprises have the right to determine the quantity of sales in negotiation with the other party to the transactions. There is no law restricting or specifying the quantity of sales an enterprise can make.

Article 12 of the Contract Law of the People's Republic of China provides:

The contents of a contract shall be agreed upon by the parties, and shall generally contain the following clauses:

- (1) titles or names and domiciles of the parties;*
- (2) subject matter;*
- (3) quantity;*
- (4) quality;*
- (5) price or remuneration;*
- (6) time limit, place and method of performance;*
- (7) liability for breach of contract; and*
- (8) method to settle disputes.*

Please refer to **Attachment 50** *Contract Law of the People's Republic of China*.

In other words, sales quantities are determined by parties involved in the relevant transactions according to their own situation and the market condition.

Selling prices

[CONFIDENTIAL TEXT DELTED – details of pricing policy of Respondent/s]

The GOC advises again that it does not participate in the setting, controlling or guiding of selling prices of the raw materials concerned, so far as the goods are not listed in the *Catalogue of Price Regulated by the State Development Planning Commission and Other Department under the State Council*.

To the GOC's knowledge, the market in which the entities concerned belong in the ordinary course of trade, namely the markets for plate steel, hot rolled coil steel, steel slab, iron ore, coking coal, coke and scrap steel, are all competitive markets within China's market economy. The GOC therefore states that the selling prices are determined by the enterprises concerned according to their own business decisions based on market principles

Customers (including restrictions on entities that can purchase goods produced from the enterprise)

The Respondents advise that all qualified producers and operators - meaning entities which have a business license, tax registration and an enterprise code – are able to become their "customers". These conditions dictate the ability of any enterprise in China to issue a VAT tax invoice.

From a legal point of view, Chinese enterprises are free to choose their customers under various laws. According to Article 4 of the *Contract Law of the People's Republic of China*:

The parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.

Please refer to **Attachment 50** *Contract Law of the People's Republic of China*.

Therefore, the enterprises can choose customers independently without any interference from the GOC or any other parties.

In relation to "including restrictions on entities that can purchase goods produced from the enterprise", the GOC is not sure what information is required for this part of the question. The GOC advises that for the enterprises and the goods concerned in this investigation, there are no laws, regulations or policies which impose restrictions on what enterprises can purchase the goods sold by other enterprises, or what enterprises from whom an enterprise must make its purchase. Of course there are laws which impose restrictions on transactions relating to dangerous articles, such as guns, ammunition, explosives and smuggled goods, However the GOC does not

consider those to be relevant for this investigation.

Production output (detail any restrictions on production output)

[CONFIDENTIAL TEXT DELETED – details of production policy of Respondent/s].

From a legal point of view, enterprises are responsible for determining their production output both from their own commercial perspective and under various laws. Pursuant to Article 47 of the *Company Law of the People's Republic of China*, the board of directors shall be responsible for the shareholders' meeting and determine the company's business and investment plans. Please refer to **Attachment 52** *Company Law of the People's Republic of China*. Production output is determined by the board of directors of the enterprise, according to the market demand, market prices, capacity and other market factors. The GOC does not impose any restrictions on their production output

Safety standards

The Respondents have advised the GOC that they draft their safety standards according to the requirements of the relevant laws and their actual situation.

The safety standards of enterprises in China are subject to various legal requirements under relevant laws. For example, the safety standards of enterprises must conform to the *Production Safety Law of the People's Republic of China*. Pursuant to Article 4 of the law:

The production and business operation entities shall observe the present law and other relevant laws, regulations concerning the production safety, strengthen the administration of production safety, establish and perfect the system of responsibility for production safety, perfect the conditions for safe production, and ensure the safety in production

Energy costs

The Respondents advise the GOC that that their cost of energy is determined according to their actual usage.

The GOC understands that the cost of electricity and the cost of burning coal may be considered as “energy costs” for the enterprises concerned.

As already mentioned above, only the prices of certain goods or services are subject to legal requirements under the laws of China.

According to Article 18 of the *Price Law of China*:

The government shall issue government-set or guided prices for the following merchandises and services if necessary:

1. *The few merchandises that are of great importance to development of the national economy and the people's livelihood;*

PUBLIC RECORD VERSION

2. *The few merchandises that are in shortage of resources;*
3. *Merchandises of monopoly in nature;*
4. *Important public utilities;*
5. *Important services of public welfare in nature.*

Please see **Attachment 53** *Price Law of the People's Republic of China*.

Electricity is an important public utility and has a significant influence on national welfare and the people's livelihood. Electricity rates are subject to government price settings. For more details, please refer to **Attachment 51 - Catalogue of Regulated Prices**. However, electricity prices for the industries concerned are the same as that applicable to other large industries. In addition, electricity price regulation is not relevant to controlling or guiding prices of the GUC and the raw material inputs in the sectors concerned by any level of government. As advised, selling prices in the industries concerned, whether raw material inputs or finished goods, are not subject to any government control or guidance.

The price of coal is not subject to government price guidance or controls. Coal prices are negotiated by the enterprises and energy suppliers based on market principles

8. For each entity identified in your response to Question 6 that is an SOE, answer the following questions regarding their performance and profits.

(a) How are the operations of the enterprise funded?

As stated above, the GOC advises that none of the Respondents received or accrued benefits under Programs 5 to 30. Even if they had benefited from certain subsidies under Programs 5 to 30, the GOC does not understand how the above questions can have any relevance to those programs. These questions are all closely related to the business activities and operations of individual enterprises. Therefore, the GOC is not in position to answer any of these questions. With respect, Customs is requested to contact the exporter for more detailed factual information regarding questions such as this. If these questions are in relation to the alleged "particular market situation", please refer to the GOC's response to the questions at Part A of this questionnaire.

Further, the GOC is not authorised to govern or interfere with the business operations of enterprises, whether with State investment or not. Therefore, the GOC is not in a position to advise "*how... the operations of the enterprise [are] funded*". Further, each enterprise will have different funding mechanisms and structures. Australian Customs is requested to contact the individual companies directly to acquire such information if it is considered necessary.

From a legal perspective, an enterprise can be funded by way of commercial loans, issuance of shares, bonds, notes and so on.

PUBLIC RECORD VERSION

As an example of how an enterprise handles its own funding needs, please see **Attachment 54** *2012 Interest-bearing Announcement of Laigang Bonds by Shandong Iron And Steel Company Ltd.* As this document states, Shandong Steel paid interest bonds it issued in 2008.

- (b) Provide details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest.

As stated above, the GOC advises that neither of the Respondents received or accrued benefits under Programs 5 to 30. Even if they had benefited from certain subsidies under Programs 5 to 30, the GOC does not understand how the above questions can have any relevance to those programs.

Further, the GOC is not authorised under the laws to govern or interfere with the business operations of enterprises, whether having State investment or not. Therefore, the GOC is not in a position to advise the *“details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest”*.

Australian Customs is requested to contact each of the individual companies directly to acquire such information if it is considered necessary. Further, for enterprises which are publicly listed companies, such information can be accessed from the relevant information filed with the stock exchange.

The GOC advises that matters of debt management and other liabilities are entirely within the operational control and discretion of the enterprises. The GOC trusts that the respondents to this investigation will provide the relevant information. The GOC can provide further clarification assistance on specific matters if it is needed by Australian Customs.

- (c) How is the performance of the enterprise measured? For example, profitability, employment, output, social wellbeing, etc.

As stated above, the GOC advises that neither of the Respondents received or accrued benefits under Programs 5 to 30. Even if they had benefited from certain subsidies under Programs 5 to 30, the GOC does not understand how the above questions can have any relevance to those programs. Further, the GOC is not authorised under the laws to govern or interfere with the business operations of enterprises, whether with State investment or not.

[CONFIDENTIAL TEXT DELTED – details of performance measurement policy of Respondent/s]

Further, the GOC notes that the method of measuring an enterprise's performance in

PUBLIC RECORD VERSION

China varies according to the purpose of measurement and the perspective of the person or organisation making the measurement.

As stated above, the relationship between the GOC and State-invested enterprises is that of a shareholder and the company in which it holds a share. The GOC considers that for a shareholder, profitability is generally the principal measurement for the performance of enterprises.

From a legal perspective, according to Article 3 of the *Company Law*:

A company is an enterprise legal person, which has independent legal person property and enjoys the right to legal person property. It shall bear the liabilities for its debts with all its property. For a limited liability company, a shareholder shall be liable for the company to the extent of the capital contributions it has paid. For a joint stock limited company, a shareholder shall be liable for the company to the extent of the shares it has subscribed to.

From this it can be inferred that an enterprise measures its performance by the amount of "legal person property" it owns.

According to Article 4 of the *Company Law*:

The shareholders of a company shall be entitled to enjoy the capital proceeds, participate in making important decisions, choose managers and enjoy other rights.

Therefore, it can also be inferred that the shareholders measure the performance of the enterprise by the amount of "capital proceeds" they can receive.

For more details, please refer to **Attachment 52** *Company Law of the People's Republic of China*.

(d) Provide details and explain how SASAC or any other government entity inspects or evaluates enterprise performance, including:

- output and quality performance;
- performance of employees/directors/managers; and
- financial performance.

First, the GOC considers that the question is a little confusing, as the scope of the "other government entity" is ambiguous. If it refers to the government entities that perform the contributor's functions as SASAC does, then the GOC confirms that only SASAC performs that function. No "other government entity" other than SASAC is responsible for inspecting or evaluating enterprise performance.

Second, the GOC considers that the "output and quality performance", the "performance of employees / directors / managers" and the "financial performance" are correlated for the purpose of enterprise performance evaluation. Therefore the GOC will address this question as a whole as follows.

As stated above (and as qualified below) the role of SASAC in a State invested

enterprises is the same as that of a shareholder of a company. Therefore, SASAC may evaluate the performance of an SIE as a shareholder would, as discussed in the response to other questions above. In essence, SASAC will assess the performance of an enterprise with State investment based on its commercial and financial performance. The performance of the enterprise is assessed based on the key finance data and indices, such as total profit, sales value, main product quantity etc.

There is no essential difference between the methods which SASAC adopts to inspect and evaluate enterprise performance and those adopted by other shareholders to inspect and evaluate business performance of private enterprises.

The performance of managers of State-invested enterprises is evaluated according to the *Law on State Owned Assets* and more specifically, *the Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises* which provides the evaluation method guideline. Please see **Attachment 55**. The performance of the management is also assessed based on the key finance data and indices, such as total profit, sales value, increase margin and net asset profitability etc.

Lastly, we do wish to point out that SASAC must have certain specific considerations in mind when exercising its shareholders' rights, which may not be shared by some ordinary private shareholders. However, these features do not change the nature of the SASAC as a shareholder to the enterprise. From the legal perspective, SASAC is required to perform its contributor's function consistently with Article 14 of the *Law of the People's Republic of China on the State-Owned Assets of Enterprises*:

Bodies performing the contributor's functions shall perform the contributor's functions according to laws, administrative regulations and enterprise bylaws, safeguard the contributor's rights and interests, and prevent the loss of state-owned assets.

Please refer to **Attachment 35** *Law of the People's Republic of China on the State-Owned Assets of Enterprises*.

(e) Provide details of any official reporting mechanisms that the enterprise must comply with.

As stated above, the GOC advises that neither of the Respondents received or accrued benefits under Programs 5 to 30. Nonetheless, there is no substantial difference between the reporting mechanisms for a non-State invested enterprise on the Chinese market and that for a State-invested enterprise.

The difference is more dependent upon whether the company is publicly listed.

For example, please see *HKEX Code on Corporate Governance* (**Attachment 56**) and the *Guidelines of the Shanghai Stock Exchange for the Internal Control of Listed Companies* (**Attachment 57**).

PUBLIC RECORD VERSION

SASAC must perform its contributor's functions according to the *Company Law*. According to Article 38 of the *Company Law*, examples of official reporting mechanisms by the enterprises to shareholders may include reporting during the course of shareholders' meetings, putting forward reports orally or in writing. For details, please refer to **Attachment 52** *Company Law of the People's Republic of China*.

The GOC clarifies that State-invested enterprises – like other companies – do not report every matter relating to their daily operation to their shareholder SASAC. They do not need to do that and are not compelled to do that.

Further, amongst SIEs, the reporting requirement may be different according to the type of enterprise and the level of State investment, as well as whether the company is publicly listed. For example, see Articles 32, 33, 34 of the *Law on State Owned Assets of Enterprises* (**Attachment 35**).

- (f) Provide an explanation of the systems that exist for assessing the performance of administrators of SOEs. Provide examples of recent appraisals of SOE administrators of the enterprise (reference is made to Article 27 of the Law on State Owned Assets).

As stated above, the GOC advises that neither of the Respondents received or accrued benefits under Programs 5 to 30.

Nonetheless, the GOC notes that not all administrators of State-invested enterprises are assessed according to the *Law on State Owned Assets of Enterprises*, which provides the basic principles for such assessment (at Chapter IV). Only the administrators of a wholly State-owned enterprise, or of an enterprise with majority State-holding, are subject to the performance assessment of the body performing the capital contributor's function.

The method of evaluation is solely related to the commercial and financial performance of the enterprise. The performance of the enterprise is linked with the wage and bonus of the management.

According to Article 27 of the *Law on State-owned Assets of Enterprises*, business management performance is an important factor in the assessment of administrators of the SIEs to which the law applies. This is also in accordance with Article 3 and Article 4 of the *Company Law* of China. As already mentioned above, profitability of a company is generally considered as a principal measurement of an enterprise's performance, so is the performance of its administrator.

The GOC does not have record of any recent appraisals of SOE administrators of the enterprises concerned.

(g) How are profits of the enterprise distributed and to whom?

As stated above, the GOC advises that neither of the Respondents received or accrued benefits under Programs 5 to 30.

Further, the GOC is not authorised by law to govern or interfere with the business operations of enterprises, whether with State investment or not. The opposite is true – the GOC is positively excluded from doing so. Therefore, the GOC is not in a position to advise the “*details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest*”.

Australian Customs is advised to reach the individual companies directly to acquire such information if it is considered necessary. Further, for enterprises which are publicly listed companies, such information is likely to be publicly available from the relevant stock exchange.

In general, profits of enterprises are distributed in light of its Articles of Association and Part VIII of the Company Law. There are no special rules on how a SIE is to distribute its profit.

Pursuant to Article 4 of the Company Law of China:

The shareholders of a company shall be entitled to enjoy the capital proceeds...

Therefore, shareholders are entitled to receive profits made by the enterprises.

Pursuant to Article 38 and Article 47 of the Law, in the case of a limited liability company, the board of directors is responsible for working out the company's profit distribution plans, and the shareholders' meeting enjoys the right of deliberating and approving those plans. In case of a joint stock limited company, the by-laws thereof are required to specify the method for profit distribution, pursuant to Article 82. Therefore, profit distribution plans are decided by shareholder's meetings.

For an example of profits distribution by an SIE, please refer to the *2011 Notice of Annual General Meeting of Shandong Iron and Steel Company Ltd.* As the Notice suggests, the profit distribution plan for 2010 was approved by shareholder resolution. Please see **Attachment 58**.

(h) Outline what action, if any, is taken by SASAC or any other government entity if the enterprises makes a loss or under-performs.

As stated above, the GOC advises that neither of the Respondents received or accrued benefits under Programs 5 to 30. Even if they had benefited from certain subsidies under Programs 5 to 30, the GOC does not understand how the above questions can have any relevance to those programs.

PUBLIC RECORD VERSION

Nonetheless, the GOC considers that performance of an enterprise is a critical aspect of its existence and of the directors, managers and employees of the enterprise.

Therefore performance is taken into account by any shareholders - including that of the State via SASAC - in participating in decision making about the company or in making proposals regarding the future management of the enterprise.

The GOC advises that the *Law of the People's Republic of China on the State-Owned Assets of Enterprises* does not direct any specific action that SASAC must take if an enterprise makes a loss or under-performs.

However, as a shareholder to the company, pursuant to Article 151 of the *Company Law of China*, SASAC has these rights in common with other shareholders:

If the shareholder's meeting or shareholders' assembly demands a director, supervisor or senior manager to attend the meeting as a non-voting representative, he shall do so and shall answer the shareholders' inquiries.

Further, according to Article 55

The supervisors may attend the meetings of the board of directors as non-voting attendees, and may raise questions or suggestions about the meeting agenda discussed by the board of directors.

For details about supervision through the board of supervisors by SASAC, please refer to **Attachment 59** *Interim Regulation on the Board of Supervisors of State-owned Enterprises*.

(i) Over the past 10 years, has the GOC provided any payment or made any injection of funds to the enterprise, including but not limited to:

- grants;
- prizes;
- awards;
- stimulus payments and rescue type payments;
- injected capital funds;
- purchasing of shares.

As stated above, neither of the Respondents received or accrued benefits under Programs 5 to 30.

(j) If so, provide details, indicating the amount, circumstance, and purpose of any such payment or injection of funds, as well as whether they were tied to any past or future performance, direction or action of the enterprise.

9. For each entity identified in question 6 answer the following questions regarding enterprise functions:

(a) Provide a list of functions the enterprise performs.

As stated above, neither of the Respondents received or accrued benefits under Programs 5 to 30. Even if a Chinese plate steel exporter had benefited from certain subsidies under Programs 5 to 30, the GOC does not understand how the above question can have any relevance to those programs.

Further, the GOC does not understand what information is required by this question. The GOC understands that a Chinese plate steel exporter may perform a number of functions, ranging from production of the goods to trading the goods.

In any event, the GOC can advise that it has not allocated any special or governmental function to any enterprises whether they are enterprises with State investment or not. Government powers are not shared or bestowed or vested on or in commercial entities.

Further, according to the laws of China, government function must be separated from that of enterprises. As Article 6 of *Law of the People's Republic of China on the State-Owned Assets of Enterprises* provides:

The State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

Further, Article 14 of the law provides

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

Please see **Attachment 35** *Law of the People's Republic of China on the State-Owned Assets of Enterprises*.

(b) Provide details of any government policies the enterprise administers or carries out on behalf of the GOC.

The GOC would like to clarify that governmental policies are not legal instruments. They are not enforceable, and are aspirational in nature.

The GOC confirms that no government policies are administered or carried out on behalf of the GOC by any of the enterprises concerned. The *Law on State Owned Assets* explicitly requires a strict separation of government function from the operation of business.

However, enterprises may carry out business decisions which reflect or are in line with governmental policies. For example it is a governmental policy of China to encourage enterprises to reduce their energy use and carbon emission. This policy is not mandatory, however enterprises may act in conformity with such a policy as it is also a

PUBLIC RECORD VERSION

sensible commercial decision. Regulations about energy use and emissions emanate from such policies, requiring compliance with standards as a matter of law.

We note that in REP 177, Australian Customs seem to have considered that compliance with government policy by enterprises was evidence to establish that SIEs are public bodies. The GOC rejects such findings and reasoning. As the TMRO review report pointed out:

active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority. It does not evidence the essential element of exercising a power of government over third persons.

The GOC considers that this statement will also be readily accepted by most governments as well as by policy supporting/compliant enterprises in the real world.

- (c) Indicate whether any of the enterprise's functions are considered to be governmental in nature.

Please refer to above response at (a) and (b) above. No enterprise functions are considered to be governmental in nature.

- (d) Indicate whether the enterprise has been trusted, tasked, vested with any government authority. Provide details of this authority including how it is exercised or administered, as well as copies of relevant statutes or other legal instruments that vest this authority.

No enterprise has been so "trusted", "tasked" or "vested".

- (e) Indicate whether the enterprise has the authority or power to entrust or direct a private body to undertake responsibilities or functions.

The GOC is not sure about what information is required by this question.

As already answered above, the GOC advises that none of the enterprise concerned has been trusted, tasked, vested with governmental authority, and no enterprises are considered to be carrying out any governmental function. Therefore no enterprise can have the authority or power to entrust or direct another body, private or not, to undertake any governmental function.

On the other hand, an enterprise, as a legal person, may entrust or direct another entity, to undertake certain non-governmental "responsibilities or functions" according to the relevant civil law or contract law principles.

PUBLIC RECORD VERSION

- (f) Explain whether the enterprise is in pursuit of, or required to support governmental policies or interests.

As stated above, neither of the Respondents received or accrued benefits under Programs 5 to 30.

Chinese enterprises are not required or expected to support governmental policies or interests.

The GOC cannot comment on behalf of any enterprises in terms of whether they develop business plans which reflect governmental policies or interests, or whether they take a contrary view. This is a matter of individual business operation and choice.

However, we note that the notion of “governmental interests” is very broad – for example, it is almost every government’s interest to have a crime-free society and that persons and companies are certainly required to not commit a crime. It is also a governmental interest to increase revenue by collecting income taxes, and every enterprise is required to pay tax according to tax laws.

Further, the GOC is also not in the position to advise whether enterprises are “*in pursuit of*” governmental policies or interests. This is because that the GOC cannot and does not interfere with the every-day business operation of enterprises, due to the fact that is simply not the GOC’s interest or desire, as reflected in the legal principle which requires the separation of government and enterprises.

However, it is possible that what an enterprise is “*in pursuit of*” will coincide with certain governmental interests. For example, it is an interest of most governments in the world to ensure that the people of their country have a better living standard, and to create the conditions in which the enterprises of their country can prosper and can be of benefit to the country itself. Commercial companies that maximise their profits and pay more income tax are pursuing their own commercial interest in doing so - but that commercial interest coincides with broad governmental interests. Likewise, every single economic entity in China makes a contribution to the broad governmental policy of developing the Chinese market economy, whether as a natural person or as a business, by participating in that economy. However, those entities do not become “public bodies” simply because they supported such government policies or acted in a way which serves a governmental interest. Plainly, development is a recognised right of a nation and its people.

The GOC considers that if some government policies are formulated in accordance with the interests of its citizens or the economy in general, including that of the resident enterprises as legal persons, the enterprises may pursue or support the policy actively. However, they are not compelled to pursue or support such policy.

For example, to follow policies on environmental protection and energy conservation may also help increase productivity and profits of the enterprises. The fact that law

permits enterprises to support some governmental policies does not mean that the enterprises must pursue or are compelled to support governmental policies. Voluntary behaviours are ultimately driven by commercial interest.

The GOC understands that for certain traditionally high pollution output industry, undertaking measures to improve its environmental standard can be very costly and capital intensive. Therefore, Central and local levels of government will provide assistance, special funds or incentives to support the efforts of an enterprise in improving its environmental standards. These measures of assistance are generally minor compared to the costs incurred by the relevant enterprises and their overall turnover.

Further, the performance of social responsibilities by an enterprise may also be in line with government policies or interests. Nowadays, social responsibilities of enterprises are well recognised as a key element of corporate management. For example, please refer to **Attachment 60 OECD Guidelines for Multinational Enterprises**. The GOC notes that more and more enterprises in China are willing to undertake social responsibilities as an act of goodwill and to "give back" to the society in which they operate and prosper.

- (g) Provide examples of any 'social responsibilities' the enterprise undertakes or is involved in (reference is made to Article 17 of the Law on State Owned Assets)?

As stated above, neither of the Respondents received or accrued benefits under Programs 5 to 30.

The GOC reiterates its comments on "social responsibilities" in the answer to question B3-11(f) above.

From the legal point of view, the *Company Law* encourages all Chinese companies to undertake social responsibilities. In other words, all enterprises are encouraged to engage in community acts.

In particular, Article 5 of the *Company Law* provides that:

when conducting business operations, a company shall comply with the laws and administrative regulations, social morality, and business morality. It shall act in good faith, abide the supervision of the government and general public, and bear social responsibilities.

Please refer to **Attachment 52 - Company Law of the People's Republic of China**.

However, these are aspirational provisions and are not enforceable. Chinese companies are free to choose to undertake any type of social responsibility as part of their social participation as a legal person.

As an example, we provide the social responsibility report of Shandong Steel of 2011.

PUBLIC RECORD VERSION

As a listed company, Shandong Steel needs to prepare and announce such report annually. Please see **Attachment 61**.

Further, the GOC advises that the reference to “social responsibility” provided in the *Law on State Owned Assets of Enterprises* is no more than a recognition and encouragement of best practice. As already mentioned above, social responsibility is a well-recognized element in corporate management – not just for SIEs.

10. Describe the application process (including any application fees charged by the government agency or authority) for the program.

After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

Please see response to Question 2 above.

11. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

(a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

(b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

(c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

(d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

(e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

Please see response to Question 2 above.

12. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2008 to 31 December 2012.

As stated above, neither of the Respondents received or accrued benefit under

Programs 5 to 30.

13. For all programs listed in table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

Please see response to Question 1 and 2 above.

In relation to Programs 1 to 4 listed in "Table 1", the GOC reiterates that there are no such programs.

DECLARATION**DECLARATION**

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

12/04/2013
Date

TZAN Shuguang
Signature of authorised official

TIAN SHUGUANG
Name of authorised official

Deputy Division Director, MOFCA
Title of authorised official