



Australian Government

Australian Customs and
Border Protection Service

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International Trade Remedies Branch

GOVERNMENT QUESTIONNAIRE - CHINA

PRODUCT CONCERNED: ZINC COATED (GALVANISED) STEEL
AND ALUMINIUM ZINC COATED STEEL
FROM THE PEOPLE'S REPUBLIC OF
CHINA

INVESTIGATION PERIOD: 1 JULY 2011 TO 30 JUNE 2012

RESPONSE DUE BY: 23 JANUARY 2013
EXTENDED TO 8 FEBRUARY 2013

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Please note that a non-confidential version of the reply to this questionnaire must be provided at the same time the confidential version is provided.

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ABBREVIATIONS

the Act	the <i>Customs Act 1901</i>
China	the People's Republic of China
CISA	China Iron and Steel Association
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
EPZ	Export Processing Zones
FIE*	foreign invested enterprise
GOC*	Government of China
the goods	the goods the subject of the application (galvanised steel and aluminium zinc coated steel)
HRC	hot-rolled coil
the investigation period	1 July 2011 to 30 June 2012
BlueScope Steel	BlueScope Steel Limited
SASAC	the State-owned Assets Supervision and Administration Commission of the State Council
SEZ*	special economic zone
SIE*	state-invested enterprise

*Refer to this questionnaire's Glossary of Terms for a definition.

SECTION A: PARTICULAR MARKET SITUATION

Introduction

The Government of China ("GOC") is growing increasingly concerned with Australia's behaviour in relation to anti-dumping procedures initiated against the People's Republic of China ("China"). The GOC finds that the Australian Customs and Border Protection Service ("Australian Customs") is misusing Australian anti-dumping law and World Trade Organisation ("WTO") anti-dumping law, as well as the treaty obligations it has assumed in relation to China.

The GOC will continue to faithfully respond to questions asked of it by Australian Customs, including those in this questionnaire. However, in so doing the GOC does not concede that the content or direction of the questions is legally correct or appropriate.

Before addressing the information sought by Australian Customs, the GOC wishes specifically to define some of the concepts that Australian Customs continues to misinterpret and misapply against the interests of the GOC and of Chinese exporters.

Particular market situation

The GOC considers that the provision of this questionnaire is based on a material misunderstanding of Australia's rights and obligations under Article 2.2 of the WTO *Anti-Dumping Agreement* ("ADA"). The investigation should accordingly be terminated under Article 5.8 of the ADA.

The starting point for determining whether dumping has occurred is Article 2.1 of the ADA, which basically states that dumping must be determined on the basis of a comparison between home market and export prices. Relevantly, Article 2.2 provides the only exceptions to this general rule:

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. [footnote omitted]

The only form of "particular market situation" that allows the use of a constructed normal value is one that affects the domestic sales of the goods under consideration in such a way

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that it does not permit a proper comparison of those prices with export prices. This is very clear in the text of Article 2.2 of the ADA, and is supported by relevant jurisprudence.¹

Australia is a party to the ADA, and therefore has undertaken to carry out dumping determinations in accordance with Article 2.2 under international law. Australia has accepted the terms of Article 2.2, and has implemented them as part of Australian law under Section 269TAC(2)(a)(ii) of the *Customs Act 1901* ("the Act") which provides that a constructed normal value can be used:

because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)

Subsection 269TAC(1) provides:

the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

The Act provides no guidance as to when sales in the domestic market will not be suitable for use in determining the price under Subsection 269TAC(1). However when Section 269TAC(1) and Section 269TAC(2)(a)(ii) are read together it is clear that the situation must be such that it renders domestic prices unsuitable in comparison to export prices. If the situation effects both export and domestic prices, then it will not be a situation in the market of the country of export that renders "sales in that market as not suitable for use in determining the price" under Section 269TAC(1).²

For example, the Federal Court of Australia has previously considered a case in which the payment of a production aid distorted domestic selling prices to the extent that canned tomatoes had been consistently sold at prices less than the canning companies' costs of manufacturing and selling them. In that case, the provision of the production aid allowed for the domestic sale of canned tomatoes at prices which – but for the production aid – would have been at a loss. In this regard, the normal value, as calculated using domestic sales, could not be considered to be an appropriate comparator to the export sales. It was far more reasonable to compare the cost of production with the export sales to determine whether dumping had occurred.³

¹ See, for example, footnote 6.

² The GOC has made this point clearly in previous submissions concerning the interpretation and implementation of this aspect of Article 2.2 of the ADA.

³ *Minister of Small Business, Construction and Customs, Anti-Dumping Authority, Comptroller-General of Customs v La Doria Di Diodata Ferraiolli SPA* [1994] FCA 904 (10 February 1994) per Black CJ and Lockhart J at Paragraph 36.

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Government policy is a factor in every market world-wide. Unless it specifically targets sales in the domestic market, it cannot and will not create a particular market situation. Any contrary opinion held by Australian Customs is at odds with both the ADA and the Act.

Regulation 180(2) of the Customs Regulations

Recent investigations undertaken by Australian Customs have relied on Regulation 180(2) of the Customs Regulations in order to “substitute” the costs of various inputs into Chinese producers’ constructed normal values. This has resulted in punitively high dumping margins that are unreflective of the actual costs incurred by the relevant producers in the Chinese market.

Regulation 180(2) provides:

If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods,

the Minister must work out the amount by using the information set out in the records.

In previous investigations, Australian Customs has found that some input costs of Chinese producers do not reasonably reflect what Australian Customs considers to be a competitive market cost. This has resulted in the substitution of a so-called benchmark competitive cost (far more expensive than those costs actually are in China) into the constructed normal value. This routinely results in the finding that dumping has occurred at ridiculously inflated dumped margins, where no dumping has in reality occurred.

The use of the “competitive market cost” concept in this way represents a complete misreading and misuse of the words “reasonably reflect competitive market costs” in the subject Regulation. The Regulation is all about the recording of costs in the financial accounts of the exporter. If that recording actually reflects the cost derived from that market, and it is a competitive market, then the costs in those records must be used. In this circumstance the two conditions are met. First, an actual reflection of the cost cannot be anything other than “reasonable”. Secondly, if the cost was incurred in a competitive market setting it must be a competitive market cost.

Australian Customs’ dismissal of Chinese steel costs and aluminium costs in other cases on the basis that they are not generated in a competitive market is impossible to maintain. In this

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case there can be no doubt that Chinese hot-rolled coil costs are generated in a highly competitive market. The opinion of Australian Customs in previous cases that the prices have been too low (“artificially low”) is as legally irrelevant as it is baseless. Chinese hot-rolled coil costs are competitive market costs. Based on the text of Regulation 180(2) what is required is that costs are competitive market costs. It does not require that costs be derived from a market entirely free of government regulation or policy. There can be no denying that China’s steel markets (or related up-stream markets) are competitive markets, wherein the price of outputs is determined by the forces of supply and demand.

Regulation 180(2) can only be based upon Article 2.2.1.1 of the ADA, and must be read in that context. Article 2.2.1.1 reads, in part:

For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration [emphasis added].

Article 2.2.1.1 requires that an investigating authority consider whether a producer’s records accurately reflect the costs of production and sale actually incurred in the production and sale of the goods under consideration.

Therefore, the GOC considers Australian Customs’ use of Regulation 180(2) to be in breach of both that Regulation and also the ADA.

In previous investigations Regulation 180(2) has not been applied in a way which is consistent with Australian law. That application does not reflect the correct implementation of Australia’s WTO obligations. There is no evidence to support the allegation that the costs recorded by Chinese manufacturers of the subject goods are not competitive market costs or that the reflection of them in the financial records of the manufacturers is not reasonable.

Australia’s recognition of China’s full market economy status

The *Memorandum of Understanding between the Department of Foreign Affairs and Trade of Australia and the Ministry of Commerce of the People’s Republic of China on the Recognition of China’s Full Market Economy Status and the Commencement of Negotiations of a Free Trade Agreement Between Australia and the People’s Republic of China*⁴ recognises China as a full market economy. Specifically, paragraph 2 of the Memorandum provides:

Recognising that Australia and China should negotiate on an equal basis, Australia acknowledges China as an equal WTO trading partner by recognising China’s full market economy status by permanently not seeking recourse to sections 15 and 16 of

⁴ Done at Beijing, 18 April 2005.

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the Protocol of Accession of the People's Republic of China to the WTO and paragraph 242 of the WTO Report of the Working Party on the Accession of China

Article 15(a)(i) of the Accession Protocol, provides, in part, that Chinese producers must clearly show that “market economy conditions operate in the industry producing like goods” before “Chinese prices or costs for the industry under investigation [are used] in determining price comparability”. Where it cannot be shown that market conditions operate in the industry producing like goods, a WTO member may have recourse to other comparison methodologies under Article 15(a)(ii).

Australia has stated that it will not have recourse to Article 15 of the WTO Accession Protocol. This is because Australia recognises China's full market economy status. There can be no inverse assumption about this status on behalf of Australian Customs.

The present Section of this questionnaire is headed “particular market situation”. This improperly seeks to apply that criterion to an investigation of whether goods are unfairly priced due to *government action*. The GOC perceives this to be an attempt to circumvent not only Australia's bilateral commitments to China regarding market economy status, but also the multilateral disciplines in the *WTO Agreement on Subsidies and Countervailing Measures* (“SCMA”).

The GOC observes that many questions in this Section of the questionnaire are not relevant to the existence of a “particular market situation” within the meaning of Article 2.2 of the ADA. Several questions are directed, in substance, to a determination similar to whether “*market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product*” within the meaning of paragraph 15(a)(ii) of China's Protocol of Accession to the WTO.⁵ That is not a relevant concept in this investigation. A “particular market situation” is unrelated to non-market economy (“NME”) conditions - if it was simply an approximation of NME, the inclusion of the specific NME provision in the Accession Protocol would have been redundant. Such a redundancy is inconsistent with the principle of effective treaty interpretation.

The issue of government influence on markets is relevant to price comparability under the ADA in situations where an exporting country has “*a complete or substantially complete monopoly of its trade*” and “*all domestic prices are fixed by the State*” within the meaning of the second *Ad note* to Article VI of GATT 1994, as reserved in Article 2.7 of the ADA. That has not been alleged in this case. If a “particular market situation” covered situations where prices are not comparable due to government influence, the *Ad note* and Article 2.7 would also be redundant, and would also be inconsistent with the principle of effective treaty interpretation. Otherwise, the subject of unfairly priced goods due to government action is

⁵ China is listed as a country to which Section 269TAC(5D) of the Act does not apply, under Schedule 1B of the Customs Regulations.

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governed by the SCMA, and not the ADA.

The GOC submits that WTO Members would not have negotiated rules on price controls in anti-dumping investigations, and detailed disciplines on subsidies (including any form of price support), if an investigating authority was free to make up its own test in these situations in the guise of a “particular market situation”. A “particular market situation” does not cover such situations.

Investigating authorities must use actual prices or costs for the industry under investigation in determining price comparability, except in the exceptional circumstances addressed in Article 2.2 of the ADA. These circumstances are clear enough where there are “no sales”. The treaty text provides a basic methodology for “low volume of the sales” but none for a “particular market situation”, which reflects the fact that it is particularly exceptional.

As the GOC has repeatedly submitted, a “particular market situation” is one that affects the sales themselves such that they cannot permit a proper comparison.⁶ For example, this might exist where there is a different pattern of demand in the exporting country, such as a preference for white meat over dark meat that creates a premium for white meat.⁷ It might

⁶ See the GATT Panel report in EC – Cotton Yarn from Brazil considering the corresponding provision of the Tokyo Round Anti-Dumping Code. The Panel consideration of this issue in its report is recorded as follows:

477. The first type of situation requiring that either constructed normal value or third country sales be used as the basis of normal value arose when there were no sales of the like product in the domestic market in the ordinary course of trade in the domestic market. In that first situation, the investigating authorities were only required to examine the domestic market in order to establish whether sales in the ordinary course of trade had taken place in the domestic market. The second type of situation contemplated by Article 2:4 was where sales had taken place in the domestic market in the ordinary course of trade, but, due to the prevailing particular market situation, the use of those sales would not permit a proper comparison.

478. The Panel noted that it was the second situation that was relevant for this claim. The Panel further noted that recourse to use of constructed value or third country sales in this latter situation was governed by whether or not the sales concerned would permit a proper comparison, due to the particular market situation. In the Panel's view, the wording of Article 2:4 made it clear that the test for having any such recourse was not whether or not a “particular market situation” existed per se. A “particular market situation” was only relevant insofar as it had the effect of rendering the sales themselves unfit to permit a proper comparison. In the Panel's view, therefore, Article 2:4 specified that there must be something intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison.

The single underlining is in the original text. The double underlining is our own. *EC – Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil* – Report of the Panel ADP/137, 4 July 1995.

⁷ The report of the South African investigating authority from which this example was drawn states as follows:

In the original investigation and the subsequent sunset review in 2006, the Commission made a determination that the USA domestic sales were not made in the ordinary course of trade because of the particular market situation. It was found that the Americans prefer white poultry meat over the dark meat. The dark meat is exported. Therefore, as a result of this preference, the white meat is sold in the USA at a significant premium above the price of the dark meat. The applicant indicated that this market situation still exists in the USA market... The Commission therefore decided... to construct the normal value.

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also exist where there is significant barter trade. It does not exist simply because government policy affects market signals.

In any event, government policy has no impact on the determination of prices and costs in the Chinese steel market to the extent that the sales cannot permit a proper comparison.

Domestic sales and export sales are fully and properly comparable.

The GOC again requests that Australian Customs interpret Section 269TAC of the Act in accordance with Australia's international obligations. It must use actual Chinese costs and prices, or find some reason to be concerned that domestic prices do not permit a proper comparison with export prices and then devise another questionnaire that poses questions directed to the existence of a true "particular market situation".

Trade Measures Review Officer report – hollow structural sections

The GOC is aware of the report of the Trade Measures Review Officer ("TMRO") regarding the Minister for Home Affairs' decision concerning hollow structural sections ("HSS") imported from China.

The GOC notes that, among other things, that the TMRO found:

- that there was not sufficient evidence supporting the particular market situation finding; and
- that there was no "Program 20" (which is synonymous with Program 1 in this investigation).

The GOC supports these outcomes.

Preliminary Affirmative Determinations

The GOC was surprised when Australian Customs announced - on 6 February 2013 - that it had made a preliminary affirmative determination ("PAD") in each of the anti-dumping investigations concerning the goods under consideration ("GUC"). This surprise was compounded by the fact that in making that PAD, Australian Customs assumed that:

- a particular market situation existed in the markets for the GUC; and
- that the costs of HRC recorded in Chinese manufacturers' accounts did not reasonably reflect competitive market costs.

These findings can be faulted for all of the reasons described above in relation to Australian Customs' usual practice regarding "particular market situation" and the application of Regulation 180(2).

Apart from that, it is apparent that these findings were not based on positive evidence. For

See *South Africa: Frozen Meat Sunset Review* ITAC Report No. 390 (2012), at section 4.1.1, page 9.

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instance, the particular market situation finding was made on the following basis:

...,galvanised steel and aluminium zinc coated steel producers form part of the iron and steel industry in China and HRC is the main raw material used in the production of those goods. Based on these facts and the findings in REP 177 Customs and Border Protection considers it reasonable at this stage of the investigation to consider that the GOC influences in the iron and steel industry identified in REP 177 continue to exist in the Chinese domestic market such that HRC selling prices do not reflect competitive market costs.

As noted above, the TMRO has found that Australian Customs was mistaken in its conclusion that a particular market situation existed in the Chinese “iron and steel” industry. Added to which, the TMRO noted that in undertaking the reinvestigation Australian Customs would not have new evidence to support the conclusion.⁸

Therefore, the GOC considers that the dumping margins imposed on Chinese exporters in the PAD are not based on either law or evidence. Those PADs appear to be protectionist and pre-emptive.

1. Provide a detailed description of the domestic Chinese galvanised steel and aluminium zinc coated steel industries and the relevant upstream industries, including iron ore, coking coal, coke and scrap metal industries. The response should include details of:

At the outset, the 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 coated 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

⁸ As per the TMRO:

As I had specifically invited Customs to provide me with all evidence that it had in relation to Government of China action to enforce its policies, it is unlikely that the CEO will now have other evidence sufficient in my view to sustain a market situation finding.

Decision of the Trade Measures Review Officer – Hollow Structural Sections (14 December 2012), at para 113.

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- metal are not “like goods” to the GUC within the meaning of either the ADA or Australian law.
- (b) Neither the applicant nor 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 galvanised steel and aluminium zinc coated steel industries*” is not a well-defined “industry” in itself, let alone that of the GUC and its “upstream industries”. The coated 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. Therefore, there is no routine statistical data available purely and specifically for “*the domestic Chinese galvanised steel and aluminium zinc coated 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 Rizhao Steel under the category of “hot-rolled coil” 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 that domestic market sales do not allow for the discovery of a price on the market for the GUC which is comparative with the export price of the GUC.
 - (h) The GOC is not aware of any independent research institute in the world which has

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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.⁹

- (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 galvanised steel and aluminium zinc coated 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 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 auto-manufacturing, construction and home appliances. 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. In this regard, we refer to the descriptions of the auto manufacturing and construction industries which are downstream from the GUC in **Attachment 9**. The demand side plays an effective role in pushing the development of the supply side, thus creating a price

⁹ Please refer to the following attachments for examples of professional papers by unbiased and independent third parties in this regard: **Attachment 6** – China Steel Industry to Keep Stable Growth in the Next Five Years; **Attachment 7** – The iron and steel industry: a global market perspective; and **Attachment 8** – World steel market analysis.

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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 HRC, are fully marketised and highly dynamic. At the same time, the GOC has been encouraging a more “eco-friendly” steel industry through policies that require the dismantling of heavy-polluting or energy-inefficient production facilities and curtail the new building of such facilities. The GOC provides two sets of data – in **Attachments 10 and 11 [CONFIDENTIAL]** – demonstrating the dynamics of these industries.
- (l) Industry policies adopted by the GUC 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 the recent findings of the TMRO in relation to the HSS investigation has rendered the majority of the allegations made against it unsupported by evidence or logic. Despite this 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.

Aluminium zinc coated steel, galvanized steel and HRC

As noted above, the concept that there are separate and distinct galvanised steel, aluminium zinc coated steel and HRC industries is inaccurate. As in Australia, Chinese steel manufacturers generally produce several different kinds of steel products. 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, there are currently at least **[CONFIDENTIAL TEXT DELETED – figure]** producers of galvanised steel, **[CONFIDENTIAL TEXT DELETED – figure]** producers of aluminium zinc coated steel and **[CONFIDENTIAL TEXT DELETED – figure]** producers of HRC in China. Of these, **[CONFIDENTIAL TEXT DELETED – figure]**

producers manufacture both types of the goods under consideration, four produce both the goods under consideration and HRC and [CONFIDENTIAL TEXT DELETED – figure] produce one type of the goods under consideration and HRC.

Between July 2011 and June 2012, the data available to the GOC indicates that [CONFIDENTIAL TEXT DELETED – figure] tonnes of HRC, [CONFIDENTIAL TEXT DELETED – figure] tonnes of galvanised steel and [CONFIDENTIAL TEXT DELETED – figure] tonnes of aluminium zinc coated steel were exported from China. In comparison, there were [CONFIDENTIAL TEXT DELETED – figure] tonnes of HRC produced within China in 2011, and [CONFIDENTIAL TEXT DELETED – figure] tonnes of coated steel plate and strips (including the GUC) produced in the same period.

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;
- transportation;
- mining machinery;
- medical equipment;
- construction machinery; and
- housing.¹⁰

As this should indicate, the markets for the goods under consideration and for HRC are incredibly competitive, and there is strong demand domestically within China for these goods.

Coking coal and coke

Coking coal and coke producers operate under competitive market conditions in China. Domestically, there are [CONFIDENTIAL TEXT DELETED – figure] coking coal producing entities which, in 2011, produced a total of 504 mega tonnes (“MGT”) of coking coal.¹¹

¹⁰ 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.

¹¹ <http://www.worldcoal.org/resources/coal-statistics/>

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Despite the large number of coking coal mines, the demand for coking 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 – figure]** of coking coal was imported into China. While this may appear to be a small amount in comparison to the domestically produced amount, it is in fact very significant, being the second largest volume of imports by any country in that year.¹² 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.¹³

The GOC's research indicates that there are currently **[CONFIDENTIAL TEXT DELETED – figure]** 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.¹⁴

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 – figure]** iron ore producing entities within China. In 2011, China produced **[CONFIDENTIAL TEXT DELETED – figure]** of iron ore.¹⁵ In addition to this massive production capacity, the volume of iron ore imported into China has been steadily increasing since 2005. In 2011,

¹² The biggest importer of coking coal in 2011 was Japan, which imported 54 MGT (<http://www.worldcoal.org/resources/coal-statistics/>)

¹³ 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.

¹⁴ *Response of the GOC to Further Questions of the Australian Customs and Border Protection Service*, 19 November 2012, page 3.

¹⁵ Source: National Bureau of Statistics China

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China imported some [CONFIDENTIAL TEXT DELETED – figure] of iron ore, including 70% of Australia's total iron ore exports.¹⁶ By 2012, China's demand accounted for 60% of global iron ore imports.¹⁷ This 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, although the applicant in this matter (BlueScope Steel, or "the Applicant") alleged the existence of the "provision of scrap steel for less than adequate remuneration" subsidy in its application for the initiation of the countervailing investigation, it was not included in the actual investigation as initiated. This was because Australian Customs did not find that sufficient evidence of its existence had been provided, and that a *prima facie* case had not been made out to initiate an investigation into that allegation.

The GOC therefore considers it strange that the market situation investigation would consider scrap steel, because the application for dumping duties made no mention of any issue regarding the cost of scrap. Based on the "evidence" provided at page 59 of the application for the initiation of the countervailing investigation, it is apparent that Chinese scrap prices are at times higher than the price of scrap in the United States of America.

In any regard, ferrous scrap is not a widely traded commodity. In 2011, there were only 74.6 million tonnes of ferrous scrap imported globally.¹⁸ 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 from 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. The GOC reflects that such a market is unlikely to suffer from any "situation" which would be of concern within the meaning of Section 269TAC(1).

(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

¹⁶ Source – *Reserve Bank of Australia* "Resource Exports in 2011" accessible here: <http://www.rba.gov.au/publications/smp/2012/may/html/box-c.html>

¹⁷ The Economist "Iron Ore: The Lore of Ore" 13 October 2012, accessible here: <http://www.economist.com/node/21564559>

¹⁸ Source - <http://www.issb.co.uk/global.html>

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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 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 can make their own choices on product portfolio and distribution channels. The GOC place 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 controlled or sales channels jointly with others in 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.

As indicated above, there is some vertical integration between the producers of the goods under consideration and HRC producers. There is some vertical integration, if the term can be applied correctly, between these producers and producers of scrap steel. The GOC has identified **[CONFIDENTIAL TEXT DELETED – figure]** enterprises that produce at least one form of the GUC and sell scrap steel in a commercial manner.

(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 six identified industrial sectors. They include State-invested

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enterprises and private enterprises, of varying shareholdings. State-invested and private enterprises 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.

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- (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. The supply of automobile components was also disrupted by the earthquake. Japanese automobile producers - the main downstream users of the products of the steel industry - were forced to suspend production. This resulted in a significant decline in the number of purchase orders of automobile-use plate and special steel.
- (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.
- (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, 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 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.
- (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

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The GOC clarifies that there are no special laws or regulations regarding the GUC or the input materials. 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 12**) 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

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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 borrow AUD50 million from its parent company in order to comply with Australian energy efficiency standards.¹⁹

(e) degree or proportion of government ownership in the industry

The GOC respectfully reiterates that this is irrelevant to the existence of a “particular market situation”. The question is suggestive of inquiries directed towards non-market economy (“NME”) type propositions. As noted, this breaches Australia’s obligation not to make the improper claim that Article 15 of China’s WTO Accession Protocol can be used against Chinese exporters. These inquiries should have no place in this questionnaire.

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

The GOC has consistently adopted the policy that the State-owned shareholding of enterprises shall be gradually withdrawn from competitive industrial sectors. In recent years this has been achieved through divestment, share transfers or other forms of State-owned share trading (including public listings and sell-downs). Most of China’s industrial and economic sectors are fully open to private capital. The GOC encourages private capital to enter into steadily widening business areas by ensuring a fair-competition playing-field.

Importantly, the GOC has enacted laws to facilitate competitive market conditions. For example, the *Law of the People’s Republic of China Against Unfair Competition (Attachment 13)* has been enacted to guard against anti-competitive acts, such as bribery, false or misleading advertisements, predatory pricing and price collusion. Importantly Article 7 of that law prevents the GOC and subordinate departments from abusing administrative power by restricting the purchase of commodities to a certain business or businesses.

2. Provide quarterly data (using Microsoft Excel format) over the period 1 July 2007 to 30 June 2012 for:

¹⁹ 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

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- (a) import quantity (by volume and value) of
- (i) iron ore
 - (ii) coking coal
 - (iii) coke
 - (iv) HRC
 - (v) scrap metal
 - (vi) galvanised steel
 - (vii) aluminium zinc coated 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 these goods are, in global terms, significant.

China is a major producer of both HRC and coke. There is sufficient domestic production to satisfy Chinese demand for these products.

Please refer to

- **Attachment 14 [CONFIDENTIAL]** - imports of iron ore;
- **Attachment 15 [CONFIDENTIAL]** - imports of coking coal;
- **Attachment 16 [CONFIDENTIAL]** - imports of coke;
- **Attachment 17 [CONFIDENTIAL]** - imports of HRC;
- **Attachment 18 [CONFIDENTIAL]** - imports of scrap metal;
- **Attachment 19 [CONFIDENTIAL]** - imports of galvanised steel; and
- **Attachment 20 [CONFIDENTIAL]** - imports of aluminium zinc coated steel.

- (b) export quantity (by volume and value) of
- (i) iron ore
 - (ii) coking coal
 - (iii) coke
 - (iv) HRC
 - (v) scrap metal
 - (vi) galvanised steel
 - (vii) aluminium zinc coated 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:

- **Attachment 21 [CONFIDENTIAL]** - exports of iron ore;
- **Attachment 22 [CONFIDENTIAL]** - exports of coking coal;

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- **Attachment 23 [CONFIDENTIAL]** - exports of coke;
- **Attachment 24 [CONFIDENTIAL]** - exports of HRC;
- **Attachment 25 [CONFIDENTIAL]** - exports of scrap metal;
- **Attachment 26 [CONFIDENTIAL]** - exports of galvanised steel; and
- **Attachment 27 [CONFIDENTIAL]** - exports of aluminium zinc coated steel.

3. Provide a schedule for the period 1 July 2007 to 30 June 2012 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) galvanised steel and aluminium zinc coated 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 28** for the required schedule.

- (b) import tariff rates and/or import quotas applicable to:
- (i) iron ore
 - (ii) coking coal
 - (iii) coke
 - (iv) HRC
 - (v) scrap metal
 - (vi) galvanised steel
 - (vii) aluminium zinc coated steel

Please refer to **Attachment 29** 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) iron ore
 - (ii) coking coal
 - (iii) coke
 - (iv) HRC
 - (v) scrap metal
 - (vi) galvanised steel
 - (vii) aluminium zinc coated steel

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Please refer to **Attachment 30** for a summary of the export tariff rates and **Attachment 31** 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.

- (d) value added tax (VAT) export rebates applicable to exports of:
- (i) iron ore
 - (ii) coke
 - (iii) coking coal
 - (iv) HRC
 - (v) scrap metal
 - (vi) galvanised steel
 - (vii) aluminium zinc coated steel

Please refer to **Attachment 32** 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. If export quotas applied to any of the items at Question 3(c) above, identify which agency of the GOC legislates and monitors the quotas.

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.

The Ministry of Commerce is responsible for legislating and monitoring the quotas. For all the items listed at question 3(c), only coking coal and coke are subject to export quota control

Coke is typically a highly polluting (high emission) and high-energy consuming product.

Countries all over the world, in particular the European countries and the United States, have strengthened their corresponding environment protection legislation to reduce coke output.

In recent years, China has also imposed restrictions on production of highly polluting enterprises. Efforts have been made to ensure that the compliance of old technologies are checked against current standards, and that if they do not meet these standards they can no longer be operational and therefore must be decommissioned. On this basis, the GOC imposes export quota restrictions on coke in accordance with WTO rules and relevant domestic laws and regulations. Domestically, the total capacity of coke producers is restricted because of these environmental constraints.

Enterprises failing to conform to environment protection standards, or to honour common practices in promoting social responsibilities, may be denied export quotas.

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Over the years, the above management approach has resulted in a number of positive achievements: the growth of coke industry investment and production has slowed down, and the industry has reduced its backward capacity and achieved upgrading of its investment and industrial structure.

In terms of environmental improvement, the effects have been obvious. In Shanxi province, the dominant province of coke export and production, significant air quality improvements have been researched and documented.

5. Complete the attached spread sheet (using Microsoft Excel format) listing all Chinese galvanised steel and aluminium zinc coated steel producers and/or exporters that have produced and/or exported those goods destined for Australia during the investigation period, including the following details:
- (i) name of the business
 - (ii) address of the business (including the city, province and region)
 - (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, joint venture or other (please specify))
 - (v) if the business is not a SIE, whether it is otherwise associated with the GOC
 - (vi) whether the business also manufactures HRC
 - (vii) whether the business is also an iron ore and/or coking coal miner
 - (viii) production quantity of galvanised steel
 - (ix) production quantity of aluminium zinc coated steel
 - (x) whether GOC is a shareholder in the business, and if so the percentage of GOC holdings

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:

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.

- (xi) 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,

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and indicate any special rights provided to the representative (e.g. veto rights)

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.

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, the GOC is aware of 31 SIEs producing the GUC in China. It is not clear to the GOC whether each and every one of them publishes an “annual report” for general circulation. The

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GOC expects that respondents to these investigations have already provided the requested information. The GOC will continue to search for any publicly available documents issued by other enterprises that may have exported the GUC to Australia in order to provide them to Australian Customs in due course.

Your response to this question will be referred to as ‘**your response to question A-4**’ throughout the remainder of the questionnaire.

Please see the below summary of the requested information. Given the large number of the producers and/or exporters that have produced and/or exported those goods destined for Australia during the investigation period, the GOC is unable to provide all the detailed information as required in the spread sheet. Please refer to the following attachments for more information:

- **Attachment 33 [CONFIDENTIAL]** - manufacturers and traders of galvanised steel; and
- **Attachment 34 [CONFIDENTIAL]** - manufacturers and traders of aluminium zinc coated steel.²⁰

Product	Number of enterprises	Number of provinces	Number of cities	A-share listed	Listed abroad
Galvanised steel	[CONFIDENTIAL TEXT DELETED – details of producers of goods under investigation]				
Aluminium zinc coated steel					

6. Complete the attached spread sheet (using Microsoft Excel format) listing all manufacturers/traders of iron ore, coking coal, coke, HRC and scrap steel in China including the following details:
- (i) name of the business
 - (ii) address of the business (including the city, province and region)
 - (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, joint venture or other (please specify))
 - (v) if the business is not a SIE, whether it is otherwise associated with the GOC
 - (vi) production quantity of coking coal, coke or scrap steel

²⁰ Please note, as explained in response to question 1, the National Bureau of Statistics does not specifically identify producers and traders of the GUC. To circumvent this issue the GOC has researched data from many sources both official and unofficial. The producers listed may include subsidiaries, even branches of some producers; there may be some overlap among them. The GOC has prepared these lists to the best of its capacity.

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- (vii) whether the GOC is a shareholder in the business, and if so the percentage of GOC holdings.

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 producing the raw materials required to produce the goods under consideration 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 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.

- (viii) 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)

Please refer to the answer above, in response to question 5(xi) above.

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 notes 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, the GOC is aware of [CONFIDENTIAL INFORMATION DELETED - figure] SIEs producing the GUC in China. It is not feasible for the GOC to search for these publicly available documents and provide them to Australian Customs in a timely manner. The GOC

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will continue its search for this information.

The GOC would refer Australian Customs to its response to question B1-2 where it has provided business registration forms for several HRC and coke producers. This information includes the organization structure of these companies.

Your response to this question will be referred to as **'your response to question A5'** throughout the remainder of the questionnaire

Given the large number of the producers and/or exporters that have produced and/or exported those goods destined for Australia during the investigation period, the GOC is unable to provide all the detailed information as required in the spread sheet. Please refer to the following Attachments for the further information:

- **Attachment 35 [CONFIDENTIAL]**- manufacturers and traders of iron ore,
- **Attachment 36 [CONFIDENTIAL]** - manufacturers and traders of coking coal,
- **Attachment 37 [CONFIDENTIAL]** - manufacturers and traders of coke,
- **Attachment 38 [CONFIDENTIAL]** - manufacturers and traders of HRC; and
- **Attachment 39 [CONFIDENTIAL]** - manufacturers and traders of scrap steel.

In any event, as discussed above, the price of the competitively traded raw material inputs is irrelevant to the particular market situation investigation.

Product	Number of enterprises	Number of provinces	Number of cities	A-share listed	Listed abroad
Iron ore	[CONFIDENTIAL TEXT DELETED – details of producers of inputs of the goods under consideration]				
Coking coal					
Coke					
HRC					
Scrap steel					

7. 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. Indicate whether the CISA also represent any of the following sectors:
- (i) galvanised steel and aluminium zinc coated 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.

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If there are other industry associations that represent the above business types, provide names, address and contact details including the 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 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 40 [CONFIDENTIAL]**. For other information concerning relevant industry associations, please inquire of the respondent firms.

8. Has the GOC issued or participated in the issuance of any debt or equity instruments²¹ in any business entity associated with galvanised steel and/or aluminium zinc coated steel (including HRC, iron ore, coke, 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

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

²¹ Examples of such instruments include ordinary shares (including initial public offers), preferential shares, rights issue, bonds, quasi-government bonds warrants, debentures, sub-ordinate loans.

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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.

We expect it is directed towards the question of whether the GOC has been involved in “supporting” the enterprises concerned by engaging in debt-to-equity “swaps” whereby debt owed to the GOC by an enterprise would be converted into shares. If that is so, then the GOC can also answer that question by saying “no”. In any case, such a question could only validly be asked in a properly constituted countervailing duty investigation.

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 41**) 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 galvanised steel and/or aluminium zinc coated 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 42**).

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

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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.

9. Provide details (quantify the value) of any government guarantee provided for any commercial loans by a business entity associated with galvanised steel and/or aluminium zinc coated steel (including 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 43). Therefore, this question is not applicable.

10. Describe and explain whether the national, provincial or local governments (including ministries or offices of those governments, or any quasi-governmental organisation identified) explicitly or implicitly recognises the industry that produces galvanised steel and/or aluminium zinc coated steel as a national, provincial and/or local development objective, or otherwise directs the development of that industry.

These questions are irrelevant to the existence of a "particular market situation"

The GOC and the governments of Jiangsu and Liaoning Province (where the responding exporters are located) do not explicitly or implicitly recognise the industry that produces

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galvanised steel and/or aluminium zinc coated steel as being a “development objective”. None of those governments direct the development of that industry. For more details in this regard, please refer to the answer to questions 14 and 15 below.

11. Provide a list and copies of any specific laws, decrees, rules, promulgations, edicts, opinions, measures, regulations and directives regarding:

- (a) The regulation of the price of galvanised steel, aluminium zinc coated steel, or any of the raw materials used to manufacture those products; and

The GOC clarifies it does not control or guide the prices of galvanised steel, aluminium zinc coated steel or any of the raw materials used to manufacture those products (hot-rolled steel, iron ore, coking coal, coke and scrap steel). Therefore, this question is not applicable.

- (b) Investment in projects related to galvanised steel, aluminium zinc coated steel, or any of the raw materials used to manufacture those products

The GOC would clarify that, from an individual business point of view, an “investment” can be made either in the form of:

- a “greenfield” investment;
- through the purchase of some existing facilities/assets (or their expansion/s);
- through acquiring equity in an enterprise already possessing such facilities.

As shown in the documents listed in response to the questions 14 and 15, and further below, the GOC’s policy towards the industrial sectors in question in the terms of “investment” are to set up a package of higher threshold (more efficient and less polluting equipment) for new entries into the industry, and to phase out those facilities that do not meet those thresholds.

The GOC provides admittance requirements for the subject products and the raw materials used to manufacture those products (hot-rolled steel, iron ore, coking coal, coke and scrap steel). Please refer to:

- **Attachment 44** – Steel Standard Conditions; and
- **Attachment 45** - Coking Admittance Conditions.

These admittance requirements are the guideline documents for the investment activities of the enterprises.

12. Identify the specific government department or institution responsible for the above-mentioned laws and regulations in Question 10 above.

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The State and local investment competent departments are responsible for the formulation and implementation of the laws and regulations concerning investment projects in the steel industry and the raw materials used to manufacture the subject products (hot-rolled steel, iron ore, coking coal, coke and scrap steel) for approval and review.

13. Have there been any changes to the following policies/catalogue/plans since the GOC responses provided in 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 investigation 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

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*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.*²²

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 economy,*²³

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 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 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.

²² <http://steel.nic.in/nspolicy2005.pdf>

²³ Per The Hon Greg Combet, Minister for Industry and Innovation, at: <http://minister.innovation.gov.au/gregcombet/MediaReleases/Pages/64MILLIONINCOMPETITIVENESSASSISTANCEFORONESTEEL.aspx>

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.²⁴

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.

- 14.** Identify any new GOC initiatives and/or policies that came into effect following INV177 that affect galvanised steel, aluminium zinc coated steel and/or 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 6, 7 and 8**. 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”.

²⁴ <http://www.innovation.gov.au/Industry/Manufacturing/Taskforce/Documents/SmarterManufacturing.pdf>

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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 6, 7 and 8** for the market report 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.
- (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 – figure]** in 2006, but it dropped to **[CONFIDENTIAL TEXT DELETED – figure]** in 2011, 54% less than in 2006. By contrast, the number of private enterprises was **[CONFIDENTIAL TEXT DELETED – figure]** in 2006 and increased to **[CONFIDENTIAL TEXT DELETED – figure]** in 2011, an increase of 20% over that time.
- (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 46**), 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 47**), 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

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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 48**) 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 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 49**) 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.

15. 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 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

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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 50** - 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 44**. The GOC notes that Section 274 of the *Work Health and Safety Act 2011* 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 45**.

(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

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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

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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
- (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 658,283,100 MT, increasing by 99.35%. The total production of coated plate/sheet in China increased by 261.87% from 8,778,800 MT to 31,767,800 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 POI (2011) Unit: Ton	Data change from 2005 to 2011 Unit: Ton	Ratio of data change to total production of crude steel/HRS
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
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

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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 coated plate/sheet: *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 POI (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

BlueScope Steel alleges that producers of galvanised steel and aluminium zinc coated steel in China have benefited from a number of subsidies granted by the GOC, and that these subsidies are countervailable.

INVESTIGATED PROGRAMS

Table 1 below lists all the alleged countervailable subsidy programs that are being investigated for galvanised steel and aluminium zinc coated steel. With the exception of programs 2 and 3, all other subsidy programs were investigated during INV 177 and countervailing duties have been imposed by Customs and Border Protection. Table 1 provides the corresponding program number that was used for INV177.

Note: the 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. Consequently, the above titles may not exactly reflect any official titles that the GOC has in place.

The GOC is required 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 galvanised steel and/or aluminium zinc coated steel during the investigation period.

Table 1: alleged countervailable subsidies being investigated

Program Number ²⁵	Program Name	Program Type	Case 177 Program Number
1	Hot rolled steel provided by government at less than fair market value	Remuneration	20
2	Coking coal provided by government at less than adequate remuneration	Remuneration	N/A
3	Coke provided by government at less than adequate remuneration	Remuneration	N/A
4	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Income Tax	1
5	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Income Tax	10

²⁵ Refers to the program number that will be used in this investigation.

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Program Number²⁵	Program Name	Program Type	Case 177 Program Number
6	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Income Tax	11
7	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Income Tax	12
8	Preferential Tax Policies in the Western Regions	Income Tax	13
9	Land Use Tax Deduction	Income Tax	29
10	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	35
11	Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipments	Tariff & VAT	14
12	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	2
13	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	5
14	Superstar Enterprise Grant	Grant	6
15	Research & Development (R&D) Assistance Grant	Grant	7
16	Patent Award of Guangdong Province	Grant	8
17	Innovative Experimental Enterprise Grant	Grant	15
18	Special Support Fund for Non State-Owned Enterprises	Grant	16
19	Venture Investment Fund of Hi-Tech Industry	Grant	17
20	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Grant	18
21	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	19
22	Water Conservancy Fund Deduction	Grant	21
23	Wuxing District Freight Assistance	Grant	22
24	Huzhou City Public Listing Grant	Grant	23
25	Huzhou City Quality Award	Grant	27
26	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	28
27	Wuxing District Public List Grant	Grant	30
28	Anti-dumping Respondent Assistance	Grant	31
29	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

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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.

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 listed above (including market development assistance programs or any domestic support programs related to the manufacture of the goods) to manufacturers of galvanised steel and aluminium zinc coated steel in China, identify these programs in Part B-2 of the questionnaire. Such assistance programs are those that constitute a subsidy as defined in the attached Glossary of Terms.

PART B-1 PROGRAMS INVESTIGATED IN INV 177

1. For **all programs investigated** during INV 177 (i.e. Program 1 and Programs 4 to 29 listed in Table 1 above), provide any amendments to laws, regulations or policy that evidence that a particular program is not relevant 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.

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.

1. Identify which of the companies in your response to question A-4 applied for, accrued or received benefits under Program 1 and Programs 4 to 29 for the following periods:
 - (a) Programs 1, 4-10, 12-14, 21-28 – the investigation period;
 - (b) Programs 11, 15-20 and 29 – the period 1 July 2002 to 30 June 2012.

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

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In relation to “Program 1” – the GOC confirms that there is no such program.

In relation to the other programs mentioned above:

(a) “Program 11 - Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipments”

The GOC confirms that [CONFIDENTIAL TEXT DELETED – name/s of company/ies]:

[CONFIDENTIAL TEXT DELETED – name/s of company/ies]

have received benefits from this program at some time during the period from 1 July 2002 to 30 June 2012. The GOC understands that each of these companies reported detailed information about the value of the benefits obtained in their response to the respective Exporter Questionnaires issued by Australian Custom’.

(b) “Program 5 - Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years” AND “Program 10 Preferential Tax Policies for High and New Technology Enterprises”

The GOC confirms that [CONFIDENTIAL TEXT DELETED – name/s of company/ies] received benefits under Program 5 and Program 10 during the investigation period.

(c) Other programs

The GOC preliminarily confirms that none of the five respondents received any benefits under any other investigated programs for the period mentioned in this question.

PART B-2 NEW PROGRAMS

As a general comment in relation to the “new programs”, namely Programs 2 and 3, the GOC makes the following comments.

The GOC objected to the allegations made by the Applicant in relation to Programs 1, 2 and 3 during the consultations which took place between the GOC and Australian Customs. During those consultations, the GOC pointed out the insufficiency and inaccuracy of the “evidence” provided by the Applicant in its application for investigation.

Two of the key issues regarding such programs are:

- whether the goods were provided by government or a public body;
- whether the goods were provided at less than adequate remuneration.

In this regard, the “evidence” offered by the application is:

- an assertion that *“The Chinese coking coal industry is dominated by State Invested*

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Enterprises”;

- a graph allegedly showing that the Chinese Shanxi premium coking coal price was lower than the Australian annual/quarterly contract C&F China price for hard coking coal;
- a confidential graph that is said to “*demonstrate the price differential between Chinese domestic coke price and the world global price over recent times*”.

During the consultations, the GOC noted the Applicant’s failure to identify the entities which it alleged to be the “governments” or the “public bodies” that provide coking coal or coke. Further, the GOC pointed out that the approach taken by the Applicant - of labelling enterprises in China as “public bodies” without any evidence other than to say that they are State-invested enterprises or operate in an industry “*dominated by SIEs*” - has been consistently rejected by the WTO at the international level and by the TMRO in Australia.

Further, the GOC submitted that the graphs regarding the price differential between Chinese domestic coking coal and coke prices and the “world prices” provided by the Applicant were misleading and, further, that they did not establish the proposition to which they were directed.

In Consideration Report 193a/b, Australian Customs stated in relation to Program 2, that:

The information provided by the GOC during consultations is relevant and casts some doubt on the applicant’s claims in relation to lower Chinese prices.

and in relation to Program 3:

BlueScope has not provided any evidence of the significance of SIE suppliers of coke in China”

and:

Customs and Border Protection notes that the extract from the World Steel Dynamics report provided with the application does not state the source of the world export price” depicted in the graph.

The GOC is concerned to note that there has been no apparent action taken by the Applicant to rectify these evidentiary shortfalls. The GOC does not see any evidence on the public record of these investigations that would resolve the concerns that Australian Customs itself expressed in its Consideration Report.

Further, the relevant findings and the approach taken by Australian Customs towards the determination of the “public bodies” and “less than adequate remuneration” issues contained in Report No 177, which were heavily relied upon by the Applicant, have now been rejected by the TMRO. The Minister has required Australian Customs to re-investigate those issues. In the TMRO’s opinion:

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- the evidence failed to establish that SIEs that produce or supply HRC and/or narrow strip to HSS producers are “public bodies” for the purposes of the definition of “subsidy” in Section 269T of the Customs Act;
- the WTO materials to which Australian Customs referred in Report No 177 did not provide support for Custom's interpretation of the phrase "adequate remuneration"; and
- Australian Customs did not have correct or sufficient evidence to reach any conclusion about the adequacy of remuneration of HRC producers.

The GOC reiterates its concerns and requests that Australian Customs immediately terminate investigations into alleged “programs” which did not and still do not warrant the initiation of an investigation under either Australian law or the SCMA.

2. The following questions relate to Programs 2 and 3 identified in table 1 above and any other programs not listed in table 1 above.

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 eligibility criteria in order to receive benefits under the program

There are no such programs. The GOC reserves the right to further comment on these “program” allegations and clarify its position if and when legal propositions or evidence of any such “programs” are advanced to Australian Customs by the Applicant.

Generally, please refer to the GOC’s comments regarding the “new programs” above.

Further, the GOC is not aware of the existence of “any other programs not listed in table 1 above” in relation the coated steel industry.

3. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports published since 1 July 2011 pertaining to Programs 2 and 3 and any other programs not listed in table 1 above.

There are no decrees, laws or regulations relating to any such programs as no program can

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be identified. Please see the GOC's comment regarding the "new programs" above.

Further, the GOC notes that the Applicant has not identified any decrees, laws, regulations or indeed any legal basis which may be said to be "pertaining to Program 2 and 3" in either its application or any other subsequent submissions it has made so far.

China has a very large body of law directed towards achieving and fostering the precisely opposite outcome to that of supplying any goods "at less than fair market value". They include laws on companies, partnerships, sole proprietorship, Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, wholly foreign-owned enterprises, private enterprises, state-owned enterprises, contract, UN convention on sales contract, general principles of commercial contracts, general principle of civil procedure, prices, anti unfair competition, anti-monopoly, futures market regulation, foreign trade, securities and investment, banking, insurance, maritime matters, taxation, property, bankruptcy, arbitration, litigation, administrative, environmental, civil procedure and their associated regulations, amongst others.

Some Chinese laws actively prohibit below cost selling behaviour – conduct which is referred to as "predatory pricing" in some jurisdictions. For example, Article 14 of the Price Law prohibits business operators from engaging in the making of sales (except the cases of sales of fresh and live merchandises, seasonal merchandises and stockpiled merchandises at discount) at below cost prices in order to obtain an upper hand over rivals or to dominate the market and disrupt normal production and market operation. Please refer to **Attachment 51** – Price Law of the People's Republic of China.

4. Identify the GOC department or agency administering the programs.

There are no such programs. Therefore, there is no GOC department or agency that administers the "programs".

Please see the GOC's other comment regarding the "new programs" above.

Nonetheless, as already mentioned in the comments above, raw material suppliers of coking coal, coke and HRC for the respondents are a mix of SIEs and non-SIEs, including private-owned enterprises and foreign-invested enterprises.

The GOC now provides some further information about example non-SIEs in the coking coal and coke sector:

- **[CONFIDENTIAL TEXT DELETED- name of company]**, an enterprise owned by five natural persons;
- **[CONFIDENTIAL TEXT DELETED - name of company]** has two natural person shareholders;

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- [CONFIDENTIAL TEXT DELETED - name of company] is wholly owned by three natural persons;
- [CONFIDENTIAL TEXT DELETED – name/s of company/ies] are foreign-funded enterprises without State-ownership;
- [CONFIDENTIAL TEXT DELETED- name of company] is a company limited by shares; and
- [CONFIDENTIAL TEXT DELETED- name of company] has only one natural-person shareholder.

Further, please see **Attachment 52 [CONFIDENTIAL]** which contains sample business certificates and corporate documents for other non-SIEs in the hot rolled coil, coking coal and coke sectors.

Without detracting from the GOC's consistent position that there are no such programs such as the alleged "Program 1, 2 and 3" and that Chinese SIEs in the markets concerned are not "public bodies", the GOC is confident that if it were necessary for Australian Customs to undertake a "less than adequate remuneration" analysis it would be found that the goods provided by those SIEs are not at "less than adequate remuneration". This proposition rests on two bases:

- the prices charged by SIEs are set in the same competitive market as the prices charged by other types of companies - the fact that private and foreign invested companies compete with the SIEs in the same markets demonstrate that the price on those markets in China, which is the second largest economy in the world, are competitive prices;
- the remuneration received is adequate to sustain SIEs at a level which is adequate, in "rate of return" terms – to survive, compete, obtain finance and profit in those markets.

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 programs.

There are no such programs. Please see the GOC's comment regarding the "new programs" above.

As a general comment, we note that according to the Company Law, listed companies must submit certain documents for listing and de-listing, and non-listed companies must submit certain documents for annual check and registration. Pursuant to the Tax Law, companies must also submit tax registration documents to relevant tax authorities.

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6. Identify which of the companies in your response to Question A-4 applied for, accrued or received benefits under programs 2 and 3 and any other programs not listed in table 1 above during the investigation period.

Provide, on an annual basis, the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under programs 2 and 3 and any other programs not listed in table 1 above.

There are no such programs. Please see the GOC's comment regarding the "new programs" above. Further, we understand that amongst the respondent companies, **[CONFIDENTIAL TEXT DELETED – name/s of company/ies]** purchased coking coal and coke during the investigation period.

PART B-3 GENERAL QUESTIONS

7. Has the GOC, since 1 January 1997, notified the World Trade Organization Committee on Subsidies and Countervailing Measures of any subsidy program as provided for in Articles 8.3 and 25.2 of the Agreement on Subsidies and Countervailing Measures? If such notification has been made, please provide copies of the full notification and any updating notification, or their WTO document distribution number.

This question is irrelevant to the investigation.

The GOC notes that any documents notified to the WTO are freely available to Australian Customs without having to request them from the GOC. Nonetheless, the GOC advises that it has made two notifications to the WTO, in April 2006 and October 2011 respectively (G/SCM/N/123/CHN; G/SCM/N/155/CHN).

China became a WTO member at the end of 2001. During 1997 to 2001, China had no obligation to make notifications to WTO.

8. In INV 177, Customs and Border Protection was provided with a copy of the '*Law of the People's Republic of China on State-Owned Assets of Enterprises*'.

Confirm whether this law is current and has not been superseded or supplemented by other laws.

The GOC advises that the Standing Committee of the National People's Congress and the State-owned Assets Supervision and Administration Commission have not made any amendments or revisions to the *Law of the People's Republic of China on State-Owned*

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Assets of Enterprises.

The GOC notes that in INV177, Article 36 of this law was misinterpreted by Australian Customs as evidence that the GOC directs SIEs to carry out a government function.

The GOC disagrees with such interpretation and treatment of this law. As the TMRO pointed out in its review of Australian Customs finding in INV177:

Customs substantially relied on s 36 of the Company Law, which requires SIEs making investments to comply with National Industrial Policies. But in my view this section requires no more than compliance with the policies of the Government of China. It falls short of establishing that State-Invested HRC producers are invested with the power to control, compel, direct or command private bodies and persons.

Further, as it is discussed below in more detail, the GOC advises that compliance with governmental policies by enterprises does not equate to the exercise of government function or authority.

The GOC would also like to point out that the scope of Article 36 is limited. It only relates to the making of certain investments, and does not relate to the purchase or sales of goods or raw materials concerned in this investigation. Further, Article 36, if read in the context, mainly regards the security of State assets. It does not suggest any government intervention in the business affairs of the enterprises concerned. This context is more apparent when Article 36 is to be read as a whole. The second half of the provision states:

...and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

9. For each entity identified in your response to question A-4 and your response to question A-5, outline how each of the following is determined:

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

The GOC assumes that this question relates to the programs concerning “raw materials provided by government at less than adequate remuneration”. If this is the case, please refer to the GOC’s comments concerning such “programs” at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns 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 in a position to answer questions which seek information that is closely related to the business activities of individual enterprises. With respect, Customs is requested to contact the respondents for more detailed factual information regarding questions such as this.

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Nonetheless, for the purpose of cooperation, the GOC would make the following observations:

- (a) 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 coated 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 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 53** - *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.

- (b) From a factual point of view, the enterprises determine their raw material suppliers, in accordance with market principles. This involves inquiry, bid-invitation, price research, negotiation, tendering and the like, leading to long-term commercial purchase agreements or spot market transactions.

The GOC provides supporting evidence in the form of a news report relating to the purchase of raw materials by Jinxi Iron and Steel Company Limited ("Jinxi Steel"). This demonstrates – if it needed to be demonstrated – that enterprises choose their suppliers freely by making commercial agreements with suppliers – see **Attachment 54**. As the news report states, in order to rationalise its raw material purchasing structure and to maintain stable supply, Jinxi Steel entered into a long term agreement for the purchase of coal and coking coal. Jinxi also entered into a purchasing agreement with a large resource company that was able to supply Jinxi with a high quality and cost efficient coal.

- purchase prices of raw material inputs;

The GOC assumes that this question is in relation to the programs concerning "raw materials provided by government at less than adequate remuneration". If this is the case, please refer to the GOC's comments concerning such "programs" at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question is concerning the alleged "particular market situation", please refer to the GOC's response to the questions at Part A of this

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questionnaire.

Further, the GOC is not in a position to answer questions that seek information which is closely-related to the business activities of the enterprises concerned. With respect, Australian Customs is requested to contact the respondents for more detailed factual information regarding this question.

Nonetheless, for the purpose of the fullest cooperation, the GOC now wishes to provide the following information:

- (a) 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, 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 55**. 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 and INV180.

- (b) From a factual perspective, the GOC would like to provide a news article relating to the purchase of coking coal and supply of coke by Jiangsu Shagang Group Co., Ltd (“Shagang”) as an example that Chinese enterprises independently and innovatively manage their purchases of raw materials according to market principles to suit their own demands and goals. Please see **Attachment 56**.

As the news report indicates, Shagang successfully reduced its costs of raw materials by carefully making a purchase plan and by developing strategies according to the market conditions. Further, the article states that, in light of a highly competitive market, and in order to maximise profit and minimize costs related to coke-making, Shagang experimented with a new coking coal blending method, which increased the proportion of lower priced coal and reduced the proportion of higher priced “fat coking coal” used in coke making. This method allowed Shagang to reduce the costs of coking coal input by using cheaper coal, which eventually reduced the cost of coke produced by Shagang.

The GOC considers that this article reflects the fact that the Chinese coke and steel

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markets are highly competitive, and that producers and manufacturers are driven by commercial and market principles to be innovative in order to compete effectively.

- allocation of inputs into production process, including raw materials and labour costs;

The GOC assumes that this question is in relation to the programs concerning “raw materials provided by government at less than adequate remuneration”. If this is the case, please refer to the GOC’s comments concerning such “programs” at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns the alleged particular market situation, please refer to the GOC’s response to questions at Part A of this questionnaire.

Further, the GOC is not in a position to answer questions which are closely-related to the business activities of enterprises. With respect, Australian Customs is requested to contact the respondents for more detailed factual information regarding this question.

Nonetheless, for the purpose of the fullest cooperation, the GOC now wishes to provide the following information:

- (a) 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 57** *Company Law of the People’s Republic of China*.
- (b) As an example of how enterprises concerned manage their input and production process, please refer to **Attachment 58**. This is a 2011 Press Release of New Product by Jinxi Steel. According to the press release by Jinxi Steel, one of its rolling mills successfully rolled a new kind of steel product developed for use in infrastructure construction. If there is sound market demand in China, it will be put it into general production. This introduction of a new process and a new product shows the allocation of inputs into production process, including raw materials and labour costs, in response to market demand as an independent business decision by a producer.

- quantity of sales by volume and value;

The GOC assumes that this question is in relation to the programs concerning “raw materials

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provided by government at less than adequate remuneration". If this is the case, please refer to the GOC's comments concerning such "programs" at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns the alleged particular market situation, please refer to the GOC's response to questions at Part A of this questionnaire.

For the purpose of cooperation, the GOC provides the following observations:

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 53** *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.

The GOC is not involved in the collection of detailed information about the determination of quantity of sales by individual enterprises.

- selling prices;

The GOC assumes that this question is in relation to the programs concerning "raw materials provided by government at less than adequate remuneration". If this is the case, please refer to the GOC's comments concerning such "programs" at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns the alleged particular market situation, please refer to the GOC's response to questions at Part A of this questionnaire.

The GOC's position on the prices of merchandise in the Chinese market economy is already

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stated above in response to the question about “purchase prices of raw material inputs”.

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 coated steel, hot rolled coil steel, 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 GOC assumes that this question is in relation to the programs concerning “raw materials provided by government at less than adequate remuneration”. If this is the case, please refer to the GOC’s comment concerning such “programs” at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns the alleged particular market situation, please refer to the GOC’s response to questions at Part A of this questionnaire.

For the purposes of the fullest cooperation, the GOC provides the following observations:

- (a) 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 53** *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

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consider those to be relevant for this investigation.

(b) From a practice perspective, the GOC understands that Chinese enterprises approach their customer in many different ways. For example, an enterprise may approach potential customers by cooperating with mercantile exchange organizations and by listing their products in the exchange. In this regard we provide two pieces of information:

- The first is a news report on a “strategic partnership cooperation agreement” concluded by Jinxi Group and one of its customers, demonstrating – if it needed to be demonstrated - that enterprises can choose their customers independently by concluding agreements (see **Attachment 59**).
- The second is a news report of Delong Steel Limited, which states that after positive communication with Tianjin United Mercantile Exchanges (“TUME”) a special sales event in the exchange occurred to encourage customers to buy its products. For more details, please refer to **Attachment 60 - 2012 Sales in TUME by Delong Steel**.

- production output (detail any restrictions on production output);

The GOC assumes that this question is in relation to the programs concerning “raw materials provided by government at less than adequate remuneration”. If this is the case, please refer to the GOC’s comments concerning such “programs” at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns the alleged particular market situation, please refer to the GOC’s response to questions at Part A of this questionnaire.

Nonetheless for the purpose of cooperation, the GOC provides the following information:

(a) 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 57 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.

(b) As an example of how enterprises concerned independently handles its production output, please see **Attachment 61 - 2012 News on Production of Jinxi Group**.

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- safety standards; and

The GOC assumes that this question is in relation to the programs concerning “raw materials provided by government at less than adequate remuneration”. If this is the case, please refer to the GOC’s comment concerning such “programs” at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns the alleged particular market situation, please refer to the GOC’s response to questions at Part A of this questionnaire.

Nonetheless for the purpose of cooperation, the GOC provides the following information:

- (a) 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

Please see **Attachment 62**.

- (b) In practice, individual enterprises may, in consideration of their specific production process and business, make stricter internal safety regulations or more detailed safety standards than those required by law, in order to reduce and prevent safety incidents and losses. As an example, we provide a news report showing how a steel company can formulate its own safety standards and take measures to ensure safer production. Please see **Attachment 63 - Jinxi Steel's Press Release regarding Safety Production in 2011**. As indicated in this press release, Jinxi Steel formed its own safety control regulations and workplace alcohol ban, as well as implementing special safety control measures for public holiday periods.

- energy costs.

The GOC assumes that this question is in relation to the programs concerning “raw materials provided by government at less than adequate remuneration”. If this is the case, please refer to the GOC’s comments concerning such “programs” at the beginning of Part B-1 and Part B-2. In short, there are no such programs. If this question concerns the alleged particular market situation, please refer to the GOC’s response to questions at Part A of this questionnaire.

Nonetheless for the purpose of cooperation, the GOC provides the following information:

The GOC understands that the cost of electricity and the cost of burning coal may be

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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;*
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 51** *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 55 - 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.

In relation to coal, the GOC again refers to the news article about the coal purchasing of Jiangsu Shagang at **Attachment 56**. As the article indicates, Shagang reduced its cost of coke-making by participating in procurement tenders for domestic as well as imported coal supply. Further, Shagang undertook research in relation to the characteristics of various types of imported and domestic coal in order improve its mixing technology with a view towards reducing the cost while still maintaining proper standards of performance.

10. For each entity identified in your response to question A-4 and your response to question A-5 that is an SIE, answer the following questions regarding its performance and profits.

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

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As stated above, 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.

As an example of how an enterprise handles its own funding needs, please see **Attachment 64 2012 Circular on Proposed Issuance of Bonds by Maanshan Iron**. As this document states, for the purpose of improving the debt structure and reducing financing costs, Maanshan Iron & Steel Company Limited proposed to issue not more than RMB10 billion short-term financing bonds on the interbank market in July 2012.

- (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 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.

In addition, the GOC would like to emphasize that the question is totally beyond its capacity, for the following reasons.

First, the range of "other liabilities" mentioned in this question is too broad and too complex. Commercial banks can carry out various kinds of commercial activities which may give rise to a variety of "liabilities" with the relevant enterprises.

For example, from a legal perspective, a commercial bank may have the following businesses in part or in whole:

- Absorbing public deposits;
- Offering short-term, medium-term and long-term loans;
- Arranging settlement of both domestic and overseas accounts;

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- Handling acceptance and discount of negotiable instruments;
- Issuing financial bonds;
- Issuing, cashing and undertaking the sale of government bonds as agents;
- Buying and selling government bonds or financial bonds;
- Undertaking inter-bank borrowing or lending;
- Buying and selling foreign exchange by itself or as agents;
- Engaging in bank card business;
- Offering L/C services and guarantee;
- Handling receipts and payments and insurance business as agents;
- Providing safe boxes services; and
- Other businesses as approved by the banking regulatory organ of the State Council.

Secondly, the scope of the word "interest" mentioned in the question is also very ambiguous. To the GOC's knowledge, holding shares in a company may be considered as holding an interest, but other conduct that may give rise to a legal or equitable claim in a company may also be deemed as "holding an interest".

Thirdly, the scope of the "GOC" mentioned in the question is also very complicated, as there are five levels of governments in China. Apart from the central government, each of the other level contains a large number of governments. Although the central government does not directly hold interests in a bank, it is possible that governments at other levels may hold an interest in the form of a shareholding in a bank or by investing by other means.

According to the statistics published by the China Banking Regulatory Commission, at the end of 2011 there were 3,800 banking institutions in China. Most of these can offer loans and carry out other kinds of financial business according to law. It is impossible for the GOC to check out whether any of the SIEs have a loan or loans from any of the 3,800 banks or financial institutions where a government of China may or may not hold an interest.

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 is not authorised under the laws to govern or interfere with the

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business operations of enterprises, whether with 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 the individual companies directly to acquire such information if it is considered necessary. Further, for enterprises which are publicly listed companies, such information is available from filings with the relevant stock exchange.

Further, the GOC notes that the method of measuring an enterprise's performance 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 57** *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.

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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.

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 65**.

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 42** *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.

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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 the Hong Kong Exchange listing rules, in particular, Appendix 14, Code on Corporate Governance (**Attachment 66**) and the Guidelines of the Shanghai Stock Exchange for the Internal Control of Listed Companies (**Attachment 67**).

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 57** *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 42**)

- (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).

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.

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

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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?

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 Maanshan Iron & Steel Company Limited*. As the Notice suggests, the profit distribution plan for 2010 was approved by shareholder resolution. Please see **Attachment 68**.

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

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

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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 69** *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.

The GOC does not know how it can answer such a broad question, and objects to such questions which are not supported by any *prima facie* evidence or direction. For some relevant information, please refer to the GOC's answers to questions under section B-1 above.

- (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.

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Please refer to the answer to the question 10(i) above.

11. For each entity identified in your response to question A-4 and your response to question A-5 answer the following questions regarding its functions:

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

The GOC does not understand what information is required by this question.

As indicated in the above responses to questions A5 and A6, there are more than 1,264 enterprises involved in the industries identified by this questionnaire. The GOC is not responsible or authorised to hold and provide such information for each of the 1,264 plus enterprises. Nor is it possible for the GOC to collect and provide such information to Australian Customs in the time and form available.

In any event, the GOC can advise that it has not allocated any special or governmental function to any of the 1,264 plus enterprises whether they are enterprises with State investment or not. Government powers are not shared or bestowed or vested on or in commercial entities.

For the purpose of responding to this question, the GOC understands that the enterprises identified in response to questions A5 and A6 participate in a variety of commercial activities for which the GOC cannot provide an exhaustive list.

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 42** *Law of the People's Republic of China on the State-Owned Assets of Enterprises*.

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(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 decision 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 conform with such a policy as it is also a sensible commercial decision.

As an example, please see news report regarding Delong Steel at **Attachment 70**. Delong Steel, a Singapore listed HRC producer, is spending RMB65 million on the construction of a co-generation power plant in a bid to reduce its carbon emissions. It is said that the plant will reduce Delong's total coal usage by about 36,000 MT a year, thereby reducing total production costs by RMB40 million a year and reducing carbon emission by about 98,000 MT a year. This is a business decision made at Delong Steel's own initiative, as it was "*in line with the company's environmental commitments*". However, the GOC considers that this is also in line with its policy on environmental protection and climate change, being a policy which is also supported by environmental protection laws.

Further, we note that in Report 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 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.

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- (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.

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

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.

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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.

As an example, we refer to the news article about Delong Steel as mentioned above at response to question B3-11(b).

Further, performing social responsibilities by the enterprises 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 71 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)?

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

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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 57** - *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 a news article about the engagement of Xuan Hua Iron & Steel Co., Ltd ("Xuan Steel") in corporate social responsibility commitments. Please see **Attachment 72**.

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.

As an example, we refer to a news article about Jiangsu Shagang, a private company, being recognised for its commitment to social responsibility and charitable actions. Please see **Attachment 73**.

SECTION C: 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.

08/02/2013
Date

Shuguang Tian
Signature of authorised official

Shuguang Tian
Name of authorised official

Deputy Director, BOFT, MOFCOM
Title of authorised official