



Australian Government
**Australian Customs and
Border Protection Service**

International Trade Remedies Branch

SUPPLEMENTARY 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

Received
03 April 2013

RESPONSE DUE BY: 22 MARCH 2013
EXTENDED TO 1 APRIL 2013

ADDRESS FOR RESPONSE: International Trade Remedies Branch
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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.

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

BACKGROUND AND GENERAL INSTRUCTIONS

1. Background

On 5 September 2012, following an application by BlueScope Steel Limited (BlueScope Steel), an Australian industry member, the Australian Customs and Border Protection Service (Customs and Border Protection and Border Protection) initiated investigations into allegations that certain zinc coated steel (galvanised steel) and aluminium zinc coated steel from the People's Republic of China (China), the Republic of Korea (Korea) and Taiwan have been exported to Australia at dumped prices, and because of that dumping, material injury has been caused to an Australian industry producing like goods.

BlueScope Steel alleged that there is a situation in the domestic Chinese galvanised steel and aluminium zinc coated steel markets that renders sales within those markets unsuitable for determining normal values under s.269TAC(1) of the *Customs Act 1901* (the Act) (i.e. that a 'particular market situation' exists in these markets).

Further details of the dumping investigations, including a description of the goods, are contained in Australian Customs Dumping Notice (ACDN) Nos. 2012/40 and ACDN 2012/62.

2. Purpose of this Supplementary questionnaire

Customs and Border Protection has considered the Government of China's (GOC's) response to the Government Questionnaire (GQ) submitted on 8 February 2013, in relation to galvanised steel and aluminium zinc coated steel. Customs and Border Protection seeks further clarification and information necessary for assessing 'Particular Market Situation' claims.

The GOC does not have to complete the supplementary questionnaire. However, if the GOC does not respond, Customs and Border Protection may be required to rely on information supplied earlier by GOC or supplied by other parties (including information supplied by the Australian industry – the applicant for the anti-dumping measures).

Therefore, it is considered to be in the GOC's interests and the interest of Chinese exporters of galvanised steel and/or aluminium zinc coated steel, to provide a complete response. These questions are to be read in conjunction with the initial Government Questionnaire and response provided by the GOC.

If the GOC chooses to respond to this questionnaire, the response is due by **COB 22 March 2013**.

3. If GOC decides to respond

Should the GOC choose to provide a response to this supplementary questionnaire, please note the following.

For official use only and public record

If the GOC chooses to respond to this questionnaire, you are required to lodge a "for official use only" and a "public record" version of your submission by the due date.

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In submitting these versions, please ensure that each page of the information you provide is clearly marked either “**FOR OFFICIAL USE ONLY**” or “**PUBLIC RECORD**” in the header and footer.

All information provided to Customs and Border Protection “for official use only” will be treated confidentially. The public record version of your submission will be placed on the public record, which all interested parties can access.

Your public record submission must contain sufficient detail to allow a reasonable understanding of the substance of the “for official use only” version. If, for some reason, you cannot produce a public record summary, contact the investigation case manager (see contact details on Page 1 of this questionnaire).

Declaration

You are required to make a declaration that the information contained in the GOC’s response is complete and correct. You must return the signed declaration of an authorised GOC official at the last section of this questionnaire with the GOC’s response.

Consultants/parties acting on your behalf

If you intend to have another party act on your behalf please advise Customs and Border Protection of the relevant details.

Customs and Border Protection will generally require a written authorisation from the GOC for any party acting on its behalf.

Provision of documents

When providing documents, please indicate whether the documents:

- are currently in force;
- were in force during the investigation period; or
- have been repealed, revised or superseded.

Responses to questions should:

- be accurate and complete, and attach all relevant supporting documents, even where not specifically requested in this questionnaire;
- be in English (with fully translated versions of all requested and other applicable documents submitted);
- list your source(s) of information for each question;
- identify all units of measurement used in any tables, lists and calculations; and
- show any amounts in the currency in which they were originally denominated.

Please note that answers such as: "Not Applicable" or an answer that only refers to an exhibit or an attachment may not be considered by Customs and Border Protection to be adequate. We therefore suggest that in answering

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the questions you outline the key elements of your response in the primary submission document, rather than merely pointing to supporting documents of varying degrees of relevance and reliability as your answer.

Lodgement

Lodgement by email is preferred. The email address for lodgement is shown on the front cover of this questionnaire. If you lodge by email, you are still required to provide a “for official use only” and “public record” versions of your submission by the due date.

You may also lodge your response by mailing it to the address shown on the front cover of this questionnaire. For questions requiring a response in a Microsoft Excel spreadsheet, please provide the spread sheets on a CD-ROM.

4. Future questions

Please note that after receiving the GOC response to this questionnaire, Customs and Border Protection may seek additional information from the GOC.

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The following questions relate to the allegations that ‘a particular market situation’ exists in China in galvanised steel and aluminium zinc coated steel industries.

Most of the questions below are leading questions from the responses to the GQ provided by the GOC on 8 February 2013. It is important to note that some of the responses provided were incomplete and not adequately answered. Some attachments provided were partially omitted and some were only partially translated in English. It has also been noted that in some parts of the questions where the GOC made certain claims it did not provide adequate supporting evidence and data. The following questions highlight these deficiencies seeking additional information.

The GOC continues to cooperate with these investigations by Australian Customs. Despite that, the GOC wishes it to be understood that it is completely at odds with Australian Customs in relation to its interpretation of the situation which is alleged to exist in the Chinese markets for the goods under consideration which is said to render the sales in those markets as being unsuitable to determine a price for comparison with the export price of the goods concerned (“particular market situation”).

The legal basis which Australian Customs has claimed justifies a finding of a particular market situation – in the Statement of Essential Facts in these investigations (“SEF 190”) and in the Statements of Essential Facts in the previous hollow structural sections and aluminium road wheels investigations – is incorrect. The facts do not support a particular market situation finding.

The GOC reiterates its previous protestations regarding the abuse of the “particular market situation” concept against Chinese exporters in these investigations.

Additionally, the GOC does not accept the generalised criticism of its response to the Government Questionnaire in the above paragraph. First and foremost, the GOC has always acted to the best of its ability in responding to the questions asked of it. Secondly, the questions that are put to it must be relevant to the investigation which is being conducted. Too often the GOC finds that the questions put to it do not concern issues which could possibly relate to the conditions or circumstances which could create a “particular market situation”, or are not even related to the period of investigation. Thirdly, questions asked of the GOC frequently do not concern the operations of the Chinese government, but instead relate to information about the governance, financial and operational affairs of enterprises. Such information is not held by the GOC. It is usually considered to be commercially confidential so far as those enterprises are concerned. It is voluminous and widely dispersed, and when it can be obtained it is not usually provided on a consistent basis. This means that it cannot be grouped or totalled with information obtained from all enterprises for the purposes of statistical analysis – either readily or at all.

Australian Customs is asked to consider how it would approach demands by an investigating authority of another country to respond to a questionnaire in an anti-dumping investigation

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which asked how a large number of companies in Australia individually govern themselves; what it is that they produce, and in what quantities; who they might have merged with or acquired over a number of previous years; and who might or might not be represented on their shareholder register.

1. As part of its response to GQ A -1, GOC provided some statistics for the goods under consideration and upstream industries. This information forms part of the response to GQ A-6 in relation to coke, coking coal, iron ore and scrap metal. Please provide the following additional information regarding following:

- (i) At attachments 35,36, 37 and 39 of the GQ A-6, the GOC provided only the names of the entities producing and/or trading, coking coal, coke, iron ore and scrap metal (GOC did not answer GQ A-6 fully). Provide a complete response to GQ A-6 including the following details for coke, coking coal, iron ore and scrap metal:

The GOC notes that Australian Customs consented to a reduction of the requirements of this question to the top 15 entities by production volume of coke, coking coal, iron ore and scrap metal. The GOC has provided the requested information, to the best of its ability, for the top 15 entities producing and/or trading coke and iron ore. The GOC wishes to point out that it does not have official statistics for coking coal and scrap steel, and therefore cannot readily include any details about the enterprises in these industries.

- a. address of the business entity (including the city, province and region);

Please see **Attachments 74 and 75 [CONFIDENTIAL ATTACHMENTS]**.

- b. function of the business entity (e.g. manufacturer, trader, exporter);

Please see **Attachments 74 and 75 [CONFIDENTIAL ATTACHMENTS]**.

- c. type of entity (e.g. State invested enterprise (SIE), Foreign invested enterprise (FIE), private enterprise, joint venture or other (please specify));

Please see **Attachments 74 and 75 [CONFIDENTIAL ATTACHMENTS]**.

- d. if the business entity is not a SIE, whether it is otherwise associated with the GOC;

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The GOC does not understand what is meant by this question 1(i)(e). If an enterprise is not a SIE, it cannot be “otherwise associated” with the GOC. Moreover, under Chinese law, government agencies and civil servants working therein are prohibited from working for any business entities.

Please also refer to answers to the question 11 below.

- e. whether the GOC is a shareholder in the business, and if so the percentage of GOC holdings;

Please see **Attachments 74 and 75 [CONFIDENTIAL ATTACHMENTS]**.

Despite the complexity of shareholding relations in the businesses in the widely diversified and dynamic sectors in question, the GOC has been able to provide the percentage of GOC holdings in all SIE cases. The GOC believes that it has provided the requested information to the best of its ability, for the purposes of best cooperation and in accordance with the supplemental requests of Australian Customs.

- f. 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 see **Attachments 74 and 75 [CONFIDENTIAL ATTACHMENTS]**.

Given the complexity of shareholding relations and the huge number of persons who are members of boards of directors or are supervisors in the businesses in the widely diversified and dynamic sectors in question, the GOC is unable to provide the requested information. For the purposes of best cooperation, the GOC wishes to reiterate that any GOC representation on boards of State invested enterprises is for the purposes of representing the interests of the GOC as an investor in the entity concerned. Such representation must only take place in accordance with the SASAC requirements and regulations that have previously been explained to Australian Customs. Those requirements and regulations are directed towards the good governance of the entity. They expressly disallow any interference by the GOC in the affairs of the entity for non-commercial purposes.

Please provide the details in the attached spreadsheet (using Microsoft Excel format – A1 Attached)

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- (ii) At Attachments 16 and 17 (GQ A-2 (a) refers), the GOC provided quantity and price of coking coal and coke imported by China on a quarterly basis. Provide the name(s) of the exporting country (ies) (including quantity exported by each country) indicating the terms of trade (e.g. FOB price etc.). Please provide the details on a yearly basis for the injury analysis period (i.e. 2007 to 2011) and on a quarterly basis (for the investigation period) using Microsoft Excel format (refer to the excel spreadsheet Attachment – Tab A2).

Please see **Attachment 76 [CONFIDENTIAL ATTACHMENT]**, which provides the data requested for the POI.

2. In its response to GQ, A-1 (c), the GOC identified a number of changes in the galvanised steel and aluminium zinc coated steel industries over the last five years. Please provide further additional details;

- (i) Item (i) on page 19 GOC stated that *'on 16 January 2012 the China Iron Ore Spot Trading Platform was officially opened for trading'*.

- a. Identify the name of the regularity authority that supervises this trading platform.

There is no specific regulatory authority that supervises this trading platform.

- b. Provide the full address of China Iron Ore Spot Trading Platform (including the website address).

Floor 3, Fortune Times Building
11 Fenghuiyuan
Xicheng District
Beijing, China 100032
The website address is www.cbm.com.cn.

- c. Are there restrictions to trade on this trading platform (e.g. restricted to Chinese Nationals only etc.)?

No.

- d. Explain why there is a need for a separate trading platform specifically for iron ore spot trading.

The GOC understands that the platform provides trading organization/matching service by means of electronic information technology for traders in iron ore spot

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trading.

e. Provide a list of types of commodities and /or securities that are traded on this trading platform.

The only commodity traded on this platform is iron ore. Initially, trading covered 34 specifications, which increased to 42 after 30 June 2012. The types of iron ore traded can be divided into four main categories: fines, lump, pellet and concentrate. For the details of all these 42 types of iron ore, please refer to the list provided at **Attachment 77**.

No securities are traded on this trading platform.

f. Provide the name(s) of the owners and/or major shareholders of the 'China Iron Ore Spot Trading Platform' who have controlling interests. If it is owned by the GOC provide the name of the government body responsible for its operations. If it is owned by a private entity(ies), provide the name(s) and address(es) of this entity(ies).

This trading platform has no "ownership" (or "shareholding"). It operates on a membership basis. As at 15 March 2013, the platform had 200 members, including 3 overseas steel plants, 7 overseas mines, 34 overseas trading companies, 73 domestic trading companies and 83 domestic steel plants.

(ii) In its response to GQ A-1 (c) (I), the GOC stated that on 22 March 2012, the China Securities Regulatory commission approved '*Dalian Commodity Exchange*' to conduct the trade of *Coke Futures*. Provide the following additional information:

a. Provide the quantity and price of coke futures (on a monthly basis from March 2012 to 30 June 2012) for all coke futures traded on the *Dalian Commodity Exchange*.

Quantity and Price of Coke Futures Traded on the Dalian Commodity Exchange
(March 2012 to June 2012)

	March	April	May	June
Quantity	58,200	53,938	138,852	233,412
Turnover	11,900.36	10,919.25	26,680.38	39,932.01
Weighted Average Settle	0.2045	0.2024	0.1921	0.1711

Notes:

- 1 Volume, OI (Open Interest) = contract (bilateral)
- 2 Turnover = RMB millions (bilateral)
- 3 Weighted Average Settle = Turnover/Volume

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- b. Identify all trading restrictions on Dalian Commodity Exchange (for example restricted to Chinese companies and/or individuals etc.).

Commodity futures contracts listed on the Dalian Commodity Exchange (“the Exchange”) are settled through physical delivery. End-customers conduct physical deliveries through a member of the Exchange and process deliveries on the Exchange in the name of the member. Corporate legal persons or other business organizations registered in China with a certain level of capital and net assets can become members of the Exchange. Membership is not restricted to Chinese invested enterprises. End-buyers or end-customers are not only legal persons or other business organizations, but may also be natural persons.

- (iii) GQ response to A-1 (c) (m) refers. The GOC stated that the Ministry of Industry and Information Technology (MIIT) of GOC published the “Admittance Conditions of Scrap Steel Processing Industry” on 11 October 2012.

Provide a copy of ‘Admittance Conditions of Scrap Steel Processing Industry’ translated in English (including the original Chinese version)

Please see **Attachment 78**.

- (iv) GQ response to A-1(c)(p) refers. The GOC stated that in 2012, the MIIT published the ‘standard Conditions of Production and Operations of the Iron and Steel Industry’ (amended version of 2012) in order to further promote structural adjustment and industrial upgrading of iron and steel industry.

Provide a copy of ‘standard Conditions of Production and Operations of the Iron and Steel Industry’ (translated and original version).

Please see **Attachment 79**.

- (v) The GOC did not fully answer GQ 1(e). Please answer this question fully by identifying the proportion of government ownership in the galvanised steel and aluminium zinc coated steel (including upstream industries - iron ore, coking coal, coke and scrap metal) industries.

The GOC notes that Australian Customs consented to a reduction of the requirements of this question, saying “*It would be useful to provide the*

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proportion in relation to both the number of entities in each segment and also in relation to the production output. For example, ‘the proportion of entities categorised as SIEs in the galvanised steel sector is 30%, which represents 45% of production’.

As at the end of 2011, the proportions that the GOC can advise to Australian Customs, after making due inquiry and to the best of its ability, are as follows:

	Total number of producers	Number of State majority-owned producers	Proportion of State majority-owned producers (%)
Galvanized steel	143	31	21.7
Coated steel	65	18	27.7
Coke	829	130	15.7
Iron ore	1,457	110	7.5
Total	2,494	289	11.6

3. In response to various parts of GQ A-2 numbers of attachments were provided. It has been noted that for some attachments, there were no data provided between July 2007 and December 2008. If data is not available or if there were no imports in this period, please specify. If there are other reasons, clearly state the reasons for not providing the data for this period.

This and other questions regarding data prior to the period of investigation are irrelevant to the investigation. The GOC assumes that the data is sought for the purpose of determining whether a “particular market situation” existed in either the galvanised steel market or the zinc aluminium coated steel market in China during the POI. This involves an evaluation of whether the sales in the Chinese markets concerned “permit a proper comparison” with the Chinese exports of the goods during the POI. For this purpose, whether or not sales of the goods in the Chinese domestic markets can be properly compared to the export sales of the goods by Chinese exporters during 2007 to 2008 is considered by the GOC to be an irrelevant consideration.

- (i) Response to GQ A- 2(a) refers. No data has been provided in Attachments 15, 17, 18, 19 and 20 for the periods July 2007 to December 2008.

Please refer to our response to the opening paragraph of this question 3.

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- (ii) QA- 2(b) refers. No data has been provided in Attachments 21, 22, 23,24,25,26 and 27 for the periods July 2007 to December 2008.

Please refer to our response to the opening paragraph of this question 3.

- (iii) QA-3(b) refers. Attachment 29 does not refer to import quotas. Please confirm whether there were any import quotas for the items during the period specified in the attachment and if so, provide complete details.

There were no import quotas applicable to the items during the period specified.

- (iv) QA-3(c) (i) Attachment 31 refers - Coking coal and coke have been subject to export quota controls from 2007 to 2012. Provide the following additional information.

- (i) value and volume (or percentage of production) of export quota applicable in each year from 2007 to 2012.

The GOC provides the volume quota for coke export applicable in 2011 and 2012 (as the POI comprises FY2012) in **Attachment 80**. No value-based quotas were applicable.

During 2011 and 2012, coking coal was not subject to any form of export quota.

- (ii) copy of legislation, policy, regulations (translated and original), that empowers the GOC (Ministry of Commerce) to implement and monitor the export quotas and ramifications for not complying with the law.

Please see the relevant documents applicable during the POI at **Attachments 81, 82, 83 and 84**.

- (iii) Requirements (terms and conditions) to issue export licenses for coke and coking coal effective in the investigation period.

Please refer to Articles 9 and 10 of the *Measures for Administration of Licence for Export of Goods* at **Attachment 83**.

4. GQA-3(b) Attachment 29 refers - It has been noted that GOC in its response to GQ for INV177 (response to GQ INV177 - Attachment 43 refers) provided that the import tariff rate for coking coal for 2007 and

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2008 was 3% . However, for this investigation, (Attachment 29 refers) the import tariff rate provided for the same period (2007 and 2008) is stated as 0%. Please clarify the correct tariff rates applicable in 2007 and 2008.

The GOC clarifies that 3% is the MFN rate, whereas the “interim rate” of 0% is the actual rate imposed for the same years. The interim rate prevails over the MFN rate where there is a difference between the two.

5. The GOC stated that (GQ response to A-4 refers), as a result of number of measures (such as ‘restrictions on production of highly polluting enterprises’, ‘ensuring the compliance of old technologies with current standards’, ‘export quota restrictions on coke’ ‘restrictions on domestic capacity of coke production’, etc) a number of positive achievements such as significant improvements in air quality in Shanxi province have been ‘researched and documented’. Provide the following additional information:

- Production capacity and volume growth of the coke industry in China as a result of 40% increase of the export tax. Provide the data on an annual basis from 2008 to 2012.

The Chinese coke production and growth rate during 2011 and 2012 were as follows:

Year	Production Volume	Growth Rate (%)
2012	443.232	5.2
2011	427.789	11.8
2010	387.571	

Note: Unit = Million MT

The GOC notes that coke production in China is determined by coke producers, sellers and buyers in the coke market, and the various factors affecting the coke market. SEF 190 attempts to argue that an export tax is creative of a “particular market situation”. This is a barren argument, as the GOC will explain further in its response to SEF 190.

As indicated in the table above, total Chinese coke production volume has grown steadily during the POI even in the presence of an export tax. Strong domestic demand continues to be a driver of coke production decisions. Furthermore, coke is not a product that is heavily-traded across country borders in any case. In these circumstances any export tax has had a negligible influence on production and sale decisions of Chinese coke producers in the domestic market.

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The GOC does not have official statistics of capacity as the industry is a very diversified and dynamic one with more than 800 producers. It is estimated that about 200 producers occupy around 70% of total production.

- Translated (and original) copies of the researched documents referred above including the name of the researcher and/or institute that conducted this research.

Please see attached Asian Development Bank Report *“Performance Evaluation Report: People’s Republic of China: Shanxi Environment Improvement Project”* at **Attachment 85**.

The project involved three distinctive clean energy sub-projects that resulted in coal savings and reduced emissions of pollutants and greenhouse gases in three of the most polluted cities in China. The project also supported capacity building in the executing and implementing agencies.

The report states that the project was rated as *“effective in achieving the objectives, outputs, and outcomes”*. Further, in relation to environmental impacts, it was reported that in 2007 the SO₂ concentration levels in Yangquan (a city in Shanxi province) met Class II ambient air quality standards for more than 300 days for the first time and that Taiyuan and Datong achieved the same levels in 2008.

- Is the researcher and/or the institute associated with the GOC? If so explain how?

No. The Asian Development Bank (“ADB”) is an international organisation which comprises of 67 member countries, 48 from within the Asia and Pacific and 19 from outside those regions. The organisation aims for an Asian and Pacific area free from poverty. In 2011, ADB had \$21.72 billion in approved financing. ADB has more than 2,900 employees from 59 countries. ADB works in partnership with member governments, independent specialists and other financial institutions that create positive economic and development impacts.

For more information, please see: <http://www.adb.org/about/key-facts>.

- Has the GOC funded (either partially or fully) this research? If not, how was this research funded?

No. The report was prepared and published by the ADB as part of the overall project. The project cost was USD183 million. ADB approved a loan of USD102

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million to cover the entire foreign exchange costs. At appraisal, USD81 million was to be funded by way of commercial bank borrowings of USD23 million and by USD58 million of internal resources.

The GOC finds the questions comprised in this dot point and the preceding two dot points to be inexplicable. The implications that could be drawn from the questions:

- that the GOC's previous responses lacked evidentiary foundation;
- that if there was such a foundation, the opinion would have to be tested for its independence; and
- even if the foundation was an independent opinion, that the GOC might have influenced the outcomes by paying for all or part of the opinion,

are offensive to the GOC.

The GOC requests Australian Customs to reflect on these points, and to ask itself why these questions were necessary. What it is about these inquiries that could be said to have any relevance whatsoever to the consideration by Customs of whether the domestic and export prices of the coated steel products can be compared for margin calculation purposes? The GOC treats its environmental and social responsibilities very seriously. The distrustful nature of these questions and their lack of relevance to the questions at issue add to the GOC's strong sense of concern about the legitimacy of the "particular market situation" inquiry that Australian Customs has undertaken in this matter and in previous matters.

6. Customs and Border Protection has been informed by the Chinese Iron and Steel Industry (CISA) that with effect from January 2013, the export tax on coke has been abolished. Please explain the reason why the GOC abolished the 40% export tax on coke from 2013 (provide all documentary evidence (translated and original)).

The GOC does not see how a change in a tax rate which took place well after the period of investigation, in respect of a product which is not under investigation, can be relevant to an investigation which is purportedly directed towards deciding the comparability of domestic prices with export prices during the period of investigation.

7. Has the GOC introduced any other form of taxes and/or tariffs to replace the export tax on coke that was abolished in January 2013? If yes, provide the name, form and rates of the taxes and/or tariffs. Provide all documentary evidence (such as legislative changes, etc.) identifying the

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name of the government agency implementing and monitoring this new taxes and/or tariffs evidence (translated and original)).

Please refer to the GOC's response to question 6 above.

8. Reference is made to GQ A-5. The GOC did not answer this question fully. Please answer this question by completing the spreadsheet (using Microsoft Excel format – A3 Attached) 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:

The GOC notes that Australian Customs consented to a reduction of the requirements of this question to the top 15 entities by production volume.

The GOC provides, to the best of its ability, a listing of the top 15 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 at **Attachment 86 [CONFIDENTIAL ATTACHMENT]**.

The GOC also provides a list of producers of hot-rolled sheet, which is the input material for the production of the subject products, at **Attachment 87 [CONFIDENTIAL ATTACHMENT]**.

- a. Name of the business entity;
- b. Address of the business entity (including the city, province and region);
- c. Function of the business entity (e.g. manufacturer, trader, exporter);
- d. Type of business entity (e.g. State invested enterprise (SIE), Foreign invested enterprise (FIE), private enterprise, joint venture or other (please specify))
- e. if the entity is not a SIE, whether it is otherwise associated with the GOC;
- f. whether the business entity manufactures HRC;
- g. whether the business entity is also an iron ore and/or coking coal miner;
- h. production quantity of galvanised steel;
- i. production quantity of aluminium zinc coated steel;
- j. whether GOC is a shareholder in the business, and if so the percentage of GOC holdings; and
- k. whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority

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

9. In its response to GQ A- 5, GOC stated that there are 31 SIEs producing galvanised steel and aluminium zinc coated steel in China and it will provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years after completing its search on the publicly available documents.

Customs and Border Protection would like to emphasise that it will only be able to consider any such information submitted to it within a reasonable time frame. Please forward all such documents to Customs and Border Protection by COB **22 March 2013**.

There are two publicly-listed companies among the SIEs referred to in the GQ response. They are Baosteel and Maanshan Steel. Therefore, some of the information requested by Australian Customs is publicly available in respect of these companies.

Please see the organisational structures of Baosteel and Maanshan Steel as set out in **Attachments 88 and 89**. The GOC provides the requested information, to the best of its capacity.

10. As part of its response to GQ A- 8, GOC stated that it does not understand what was meant by the question in its use of the words “*issued or participated*”. GOC further stated that based on its understanding, it responded to this question and provided copies of *Security Law* (Attachment 41 refers) and *Law on State-Owned Assets of Enterprises* (Attachments 42 refers). GOC also stated that the State-owned Assets Supervision and Administration Commission of the State Council (SASAC), at various levels represent the central and local government to hold the shareholders rights within SIE’s but the SIE’s ‘*independently*’ issue securities and financial instruments in accordance with laws and regulations.

Please provide responses to the following additional questions:

- (a) Has the GOC in the last 5 years provided any form of capital assistance to any business entity (SIE, Private, FIE etc.) associated with galvanised steel and/or aluminium zinc coated steel (including HRC, iron ore, coking coal, coke and scrap metal)? Examples of capital assistance can be (but not limited to) cash contribution, equity contribution, conversion of any debt-to-equity etc.

China is a WTO Member. Australia has accepted that China is to be subject to, and benefitted by, the rules set out in the Anti-Dumping Agreement without modification and without the intrusion of any contradictory rules. These kinds of

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questions were never asked in Australian anti-dumping investigations concerning Chinese exporters in the entire period from 1996 up until the recent investigations concerning hollow structural sections, aluminium road wheels, and now coated steel. This was because they were clearly not relevant for the purposes of working out the normal value of products exported to Australia from China. They are as irrelevant to an anti-dumping investigation today as they have ever been.

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

The Minister has acknowledged that Australia has not had “*the same rights*” to impose dumping duties on Chinese exporters on any non-market economy basis since the time Australia legally accepted China as a fully-fledged WTO trade partner, with the same Anti-Dumping Agreement rights as any other WTO Member. In an address to the National Press Club on 28 November 2011, on the topic of *Supporting Industry, Supporting Jobs – Streamlining Australia’s Anti-Dumping System*, the Minister said the following:

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

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

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

The GOC views the lines of inquiry in that this “particular market situation”

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questionnaire, and in the ones which have preceded it, as an elaborate attempt to wrap a mantle of thin credibility around an unlawful and factually deficient application of the “particular market situation” test.

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

The questions ask the GOC to advise whether it has directed money to, or accepted equity in, any of thousands of enterprises over a five year period, to support them from going out of business. Australian Customs has no evidence of such practices – whether widespread or isolated – and our review of the application finds no evidence there either.

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

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

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

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

- (b) Explain the process (step by step methodology) as to how the SIEs ‘independently’ issue securities and use financial instruments to

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raise capital. Who makes such '*independent decisions*' (e.g. special committee appointed by SASAC etc.)?

In China, the incorporation of a company limited by shares is covered by the *Company Law of the People's Republic of China*. The following conditions are relevant to the incorporation and share capital raising of an enterprise:

Article 77:

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

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

Article 78

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

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

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

Article 134

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

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

Article 88

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

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Article 89

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

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

Article 135

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

Article 136

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

Article 137

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

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

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

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

Issuing Securities – Article 10

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

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entities shall issue securities publicly.

Anyone of the following shall constitute a public issuance:

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

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

Conditions for issuing shares – Article 13

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

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

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

Issuing shares – Article 14

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

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

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

Issuing bonds – Article 17

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

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

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

Further, CSRC will establish an issuance examinations commission which examines the applications for share issuance. This commission is comprised of professionals from securities regulatory authority under the State Council and specialists engaged from outside who decide by vote on an application for share issuance and offer their opinions after examination (Article 22). The persons involved in the examination and approval process must not have any conflict of interest, must not directly or indirectly accept any gifts from the applicants, must not hold any shares issued by the applicants and must not have any contact with the applicants in private (Article 23). The CSRC will then, within three months from the date of acceptance of the application documents, decide whether or not to grant approval (Article 24). Once an application is approved the issuer shall, in accordance with the laws and regulations, release the documents of public offering and solicitation prior to effecting the public issuance of the securities, and place documents at the designated places for public information (Article 25).

- (d) The GOC stated that (GQ A-8 refers) it does not itself participate in the issuance of any debt or equity instruments in any business associated with galvanised steel and/or aluminium zinc coated steel industries. Provide the name(s), address and business type of the entities that represent GOC in such activities.

The GOC is not sure of the meaning of this question. If this question is in relation to what organization “represents” GOC in the examination and approval of issuance of securities, CSRC is such entity, being a regulatory body itself.

If the emphasis on the word “itself” by way of the underlining of that word is meant to suggest that the GOC was in some way being disingenuous in answering the question, could Australian Customs please explain what the “disingenuity” could possibly relate to?

- (e) GOC in its response to GQ A-1 (e) (page 22 refers) stated that “*the GOC has consistently adopted the policy that the State-owned*”

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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". Please answer the following additional questions:

- Provide a copy of the 'policy document(s)' adopted by the GOC to gradually withdraw from the competitive industrial sectors (provide translated and original copies).

Please see **Attachment 90**.

- Explain the processes/methodology/criterion that GOC uses to identify "Competitive industrial sectors" mentioned above.

The GOC clarifies that the industrial sectors of galvanised steel and/or aluminium zinc coated steel (including HRC, iron ore, coking coal, coke and scrap metal) are highly competitive in China. Whether or not an industry is competitive is a matter of fact. The GOC does not consider that the processes/methodology/criterion that has been used to identify "Competitive industrial sectors" is relevant to this investigation.

Nonetheless, the GOC provides listings of producers for the galvanised steel and/or aluminium zinc coated steel sector as well as the hot-rolled sheet, coke and iron ore with information regarding their ownership and production volume rankings respectively at **Attachments 91, 92, 93, 94 and 95 [CONFIDENTIAL ATTACHMENTS]**. In addition, the GOC would note that the ownership information on these listings has been double-checked and confirmed on a randomly selected basis by business registration information obtained from the State Administration of Industry and Commerce ("SAIC"). These listings clearly show the more competitive market structure of these industrial sectors concerned in China (high numbers of market participants), compared with their counterparts in Australia and elsewhere in the world where sizable iron and steel industries exist.

- Provide the name and business address of all SIEs associated with galvanised steel and/or aluminium zinc coated steel (including HRC, iron ore, coking coal, coke and scrap metal), where state-owned shareholding has been withdrawn (partially or fully) in the last 5 years. Please include the following information for each such SIE:
 - (i) Method of state withdrawal (sell downs) (e.g. share transfers, public offers etc.) used by GOC.

The GOC does not collect the requested data as the industrial sectors are not industries that are “regulated” by the GOC in terms of their day-to-day business. These are very diversified and dynamic industry sectors, as shown in **Attachments 91 to 95 [CONFIDENTIAL ATTACHMENTS]**.

The GOC again submits that the question about whether State-owned shareholding has been withdrawn in the last five years is irrelevant to the current investigation. Only factors impacting on the period of investigation could be relevant, if at all, to the investigation. The GOC denies its relevance in that context as well.

However the GOC does wish to indicate to Customs that there can be no question that *“the policy that the State-owned shareholding of enterprises shall be gradually withdrawn from competitive industrial sectors”* has been in place and that the State-owned shareholding has been subject to consistent reduction, for valuable consideration, for decades.

In the GOC’s response to question 5, Australian Customs’ attention was drawn to the Asian Development Bank Report *“Performance Evaluation Report: People’s Republic of China: Shanxi Environment Improvement Project”* (see **Attachment 85**). The report mentions the capital raising processes and corporate structures adopted by Taiyuan Coal Gasification Group (“TCGG”). This provides an example of the process of commercialisation and corporatisation of Chinese enterprises.

In summary, it states that the original enterprise was formed in 1981 as a limited liability State-owned enterprise, and that TCGG is now a large, well-diversified multi-business entity engaged comprehensively in the coal chain, including coal mining, washing, coking, coal gas, coal chemical products, coal gangue power generation, heating, pipelines, and city gas distribution. All TCGG activities are in Shanxi province and are concentrated largely in the Taiyuan city area.

A group restructuring exercise that began in 1998 carved out some group companies to create the Shanxi Shenzhou Coking Co., Ltd (“SSCCL”). SSCCL was listed on the Shenzhen Stock Exchange in 2000. SSCCL raised equity through the public listing of its shares (40%). The ADB report states that this helped to address the local funding issue for one of the sub-projects which is the subject of that report. According to the report, the funds raised from the capital markets enabled it to avoid incurring high-cost debt from a local bank to execute the sub-project.

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- (ii) Type(s) of restrictions placed on such transfers (e.g. trading restrictions, only Chinese nationals / companies could buy such shares etc.).
- (iii) Name(s) and address(es) of the issuer / manager / sponsor / undertaker who managed the state withdrawal process.
- (iv) Provide a copy of all prospectus and/or offer documents used to 'sell down' off load government shares.
- (v) Provide the names and proportion of shares held by each shareholder of the top 20 shareholders as at 30 June 2012 of all SIE's associated with galvanised steel and/or aluminium zinc coated steel (including HRC, Iron ore, coking coal, coke and scrap metal). If listed on a stock exchange, provide the name(s) of the Stock Exchange (s)).

In relation to each of these questions (ii) to (v), please see the GOC's response to question (i) above.

Nonetheless, the GOC provides the following further information.

According to the *China Corporate Governance Survey* published by the Centre for Financial Market Integrity (2007), a key component of China's corporate governance reform is the privatization of SOEs whereby SOEs have been transformed into corporate entities under the Company Law to facilitate stock exchange listing. As at the date of that report, more than 1,200 enterprises had raised funds through initial public offerings (IPOs) and sought subsequent listing on one of China's two stock exchanges – the Shanghai Stock Exchange and the Shenzhen Stock Exchange.

In the transformation of SOEs to private enterprises, there have been a number of governance challenges. Nonetheless, this teething process has allowed China to develop and adopt good corporate governance practices and has been said to be one of the more successful vehicles for China's SOE reform.

Examples of reform include the 2005 *Administrative Measures on the Split Share Structure Reform of Listed Companies*. This was an initiative announced by the CSRC to convert non-tradable A-class shares into freely tradable shares. Many investors viewed this, coupled with another government regulation eliminating non-tradable shares in all future IPOs, as a significant reform that would continue to shift the balance of share ownership from government ownership to public ownership by minority shareholders.

Further, it has been reported that one of CSRC's key agenda items for the reform and development of China's capital market is to expand the institutional

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investor base. The capital markets have seen the emergence of institutional investors, with securities investment funds contributing the largest share of turnover, followed by Social Security Funds, insurance firms, corporate annuity programs, qualified foreign institutional investors (QFIIs) and securities firms (including proprietary funds and pooled funds) as supplements.

Some recent examples of IPOs by SIEs include:

- 1 People's Insurance Company (Group) of China - this was a \$3.1 billion IPO which took place in December 2012. PICC Group hired a record number of underwriters and secured \$1.82 billion in commitments from cornerstone investors to help ensure a smooth IPO. China International Capital Corp (CICC), Credit Suisse Group AG, Goldman Sachs Group Inc and HSBC Holdings Plc acted as sponsors of the IPO. A group of 17 banks helped underwrite the deal. These included Bank of America, Merrill Lynch, Morgan Stanley and UBS AG, as well as Chinese firms such as ABC International and BOC International.
- 2 Citic Heavy Industries - this IPO raised \$507 million in June this year. It was underwritten by Zhong De Securities (<http://english.caixin.com/2012-06-26/100404303.html>) a Chinese joint venture of Deutsche Bank and CITIC Securities.

11. In its response to GQ A-9, the GOC referred to Article 8 of Guarantee Law (Attachment 43 refers), and claims that 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.

However, Article 8 of *Chinese Guarantee Law states that "any state Organ **may** not act as a guarantor....."* [Emphasis added]

The use of the word "**may**" in article 8 does not strictly prohibit the state organ to act as a guarantor. As such, Customs and Border Protection would like to clarify if the GOC has guaranteed any form of loans or advances to any business entity associated with galvanised steel and / or aluminium zinc coated steel (including raw material HRC, iron ore, coke, coking coal and scrap metal) industries in the last 5 years. If so, please provide details of such government guarantee including the date (Month and year), value of guarantee provided and if such guarantee was secured or unsecured.

The GOC clarifies that the use of word "**may not**" in the context of this legislation clearly means "**shall not**" or "**must not**". The word used in the Chinese text of the law is "不得" ("bu de") which means "**must not**" or "**prohibited**".

Further, the GOC does not consider there is any ambiguity in the English usage

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of the word “*may not*” in this context, either at law or colloquially.

The word “may”, when used alone, indicates:

- discretion to do a particular act or thing;¹
- to authorise or permit and is generally a “permissive or facultative expression”.²

According to the *Macquarie Dictionary*, the word “not” is defined as expressing negation, denial, refusal or prohibition.

Further, “not” is defined in the *Oxford English Dictionary* as:

- an adverb used with an auxiliary verb to form the negative;
- used as a short substitute for a negative clause;
- used to express the negative of other words;
- used in understatements to suggest that the opposite of a following word or phrase is true.

Accordingly, the word “not” is accompanied by a verb (such as “may”) to express negation/prohibition/denial of the relevant verb it is associated with.

Therefore, the term “*may not*” logically achieves the same effect as “shall not” as the word “not” effectively deprives the relevant party of authority/discretion/power to take a given action.

To isolate the word “may” from the word “not” is to veer away from the commonly accepted rules of statutory interpretation widely relied upon in Australia. One of these principles is *noscitur a sociis* (“a word is known by the company it keeps”). This principle mandates that the words of an Act take their meaning from the other words in the same section or sub-section. As Justice Stamp said in the English case of *Bourne v Norwich Crematorium Ltd*:

English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back again into the sentence with the meaning which you have assigned to them as separate words, so as to give the sentence or phrase and meaning which as a sentence or phrase it cannot bear without distortion of the English language.

¹ *Acts Interpretation Act 1901* (Cth) s 33; *Acts Interpretation Act 1915* (SA) s 34; *Interpretation Act 1984* (WA) s 56; *Acts Interpretation Act 1954* (Qld) s 32CA; *Interpretation of Legislation Act 1984* (Vic) s 45; *Legislation Act 2001* (ACT) s 146; *Interpretation Act 1987* (NSW) s 9. Also see *Thomas v Mowbray* [2007] HCA 33 [57].

² *Malika Holdings Pty Ltd v Stretton* [2001] HCA 14 [33].

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In conclusion, whilst it is possible to interpret the word “may” (by itself) as conferring discretion, it would contradict all accepted notions of statutory interpretation to isolate the word from the word “not” which accompanies it. Therefore “may not” is synonymous with “shall not” in that it prohibits/negates a body from exercising a certain power/function/ or discretion. We submit that the plain English meaning of the words “may not” preclude the concept of “may”.

Given the above analysis, the GOC expresses its serious concern about the thinking that has motivated this question.

- 12.** If your answer to question 12 above is yes, provide the name of business entities for which guarantee was provided. Also identify the amount of loan guaranteed, the purpose of the loan/advance and type of business (SIE, FIE, private company etc.).

Not applicable.

- 13.** The GOC did not adequately respond to GQ A-10. The GOC refers to only ‘*responding exporters*’³. Please provide a full response to this question including all entities producing raw materials (HRC, iron-ore, coking coal, coke and scrap metal) who exported galvanised steel and/or aluminium zinc coated steel to Australia during the investigation period.

The GOC considers that only the provinces in which the responding exporters are located are relevant to the investigation. Accordingly, only the policy documents of those provinces may provide relevant reference for the purpose of the particular market situation investigation.

- 14.** Reference is made to GQ A-12. GOC did not identify the names of government department(s) or institution(s) responsible for the formulation and implementation of the laws and regulations of the price of galvanised steel, aluminium zinc coated steel and any of the raw materials used in the manufacture of these products. It only referred to them as “*Competent departments*”

Provide names of all “*competent departments*” responsible for formulation and implementation of laws and regulations concerning steel industry, galvanised steel, aluminium zinc coated steel and raw materials (HRC, coking coal, coke, iron ore and scrap metal).

³ GOC refers to Chinese exporters who are cooperating with the current investigations into alleged dumping and /or subsidisation of galvanised steel and aluminium zinc coated steel exported from China.

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As advised in the GQ response, neither the goods under consideration nor those raw materials as identified above were subject to any State pricing or price guidance. The prices of these products are determined by the relevant markets in China, which are all very competitive. There is no government department(s) or institution(s) responsible for the formulation and implementation of the laws and regulations of the price of galvanised steel, aluminium zinc coated steel and any of the raw materials used in the manufacture of these products.

15. In response to GQ A-14 – the GOC identified a number of new GOC policies and initiatives that came into effect following INV177. GOC provided a list with its intention to further assist Customs and Border Protection understand ‘Particular Market Situation’ claims in the iron and steel Industry in China. Provide further additional information regarding the following;

i. GQ A-14 (a) refers – In its response GOC stated that there have been ‘some opinions’ issued by Chinese central and local Government on strengthening the building of the government under the rule of law in 2010.

Provide copies of all such ‘opinions’ issued by the central and local Chinese Government (including translated and original documents).

The GOC provides the requested documents by relevant central and local Government authorities at **Attachments 96, 97, 98 and 99**.

ii. GQA- 14 (b) refers – GOC stated that Chinese central 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.

Provide copies of all such ‘policies and measures’ issued by central and local Chinese Government. (Provide translated and original documents).

The GOC provides the requested documents by relevant central and local government authorities at **Attachments 100 and 101**.

iii. Explain how the opinions policies and measures mentioned above have changed Chinese industrial structure. Provide details of all changes in iron and steel industry by province and region as a result of these ‘opinions, policies and measures’.

As the GOC pointed out in the response to the GQ, any changes in the

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“Chinese industrial structure” in general, and in the iron and steel industry, have resulted from a great variety of factors. Opinions, policies and measures mentioned above play only a very limited role, if any role, in the process. These legal facilities by the GOC have narrowed the scope of administrative power, liberalized business activities by both State-invested and private enterprises to a larger and deeper extent, and put the administration under stricter rule of law. The GOC is simply not in a position to manipulate or distort any market in China, including that of coated steel products.

The GOC maintains that it is strange and unreasonable for Australian Customs to continue insisting on the presumption that the trade and industrial measures, as well as other public policies, as questioned in this and the last questionnaire have profound or even distorting impacts on business behaviours in terms of the production, pricing and costing of the subject products which might thereby make them unsuitable for comparison with export prices for the purposes of an anti-dumping investigation.

The Customs’ approach is particularly unreasonable because:

- at law, the costs allegedly affected are no different in the case of domestic sales as compared to export sales, meaning that the question of GOC regulation is an irrelevant consideration in any case;
- most of the “implementation measures” that are relied upon by Australian Customs in its consideration of the “GOC’s influence” relate to the curtailment of production capacity, which is a long-run factor according to standard industrial analysis;
- the one year period of the POI is by no means a “long-run” and, as is known to Australian Customs, the production volume or actual production capacity in China has continued to grow and not to reduce;
- the “import and export measure on coke” as noted by Australian Customs has had no effect on the development and behaviour of the market, as witnessed by the data provided in response to question 5 above;
- “subsidies in the iron and steel industries” have proven to be trivial in amount and thereby in effect in comparison to the production volume of the iron and steel industry in China.⁴

⁴ The GOC draws the attention of Australian Customs to comments made by Mr Phil Jobe, Chief Executive of Capral Aluminium, as reported in the Australian Financial Review on 20 February 2013:

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The GOC requests that Australian Customs cease its unprincipled and unsupported approach towards ascertaining a “particular market situation” against Chinese exporters.

- iv. The GOC in its response to GQ A-14 (pg 38 refers) stated that the number of SIE’s operating in 2011 were 54% less than in 2006 and that the private enterprises increased by 20% over the same period. What percentage of SIE and private sector stated above relate to the iron and steel industry?

The GOC’s best information is that, by the end of 2011, there were 10,224 business entities in the iron and steel industry, including iron ore mining, mills and processing plants, of which 454 were State majority owned enterprises or were the controlled subsidiaries of State majority owned enterprises.

	Total number of enterprises	Number of State majority-invested enterprises	FIEs, private enterprise	Other non-SIE
Iron and steel manufacturing	6,742	312	4,767	1,663
Iron ore mining	3,482	142	2,573	767
Total	10,224	454	7,340	2,430

- v. Explain how the new structures mentioned in part (iv) above were independent from government controls and interferences.

Please refer to the GOC’s response to question (iii) above.

- vi. GQ A-14 (c) refers – GOC stated that ‘the State Council has further reduced the ‘number of items subject to administrative to review and approval....’

“But interestingly enough, in recent times those subsidies have fallen away to be not much at all... The question is why those products are still coming into Australia relentlessly... at so low a price, causing so much damage to the Australian economy. My hypothesis is that the Chinese currency manipulation is now doing the heavy lifting that the subsidies used to do.”

Capral is an Australian manufacturer that has complained of alleged dumping and subsidisation from China in the past. It is represented on the “International Trade Remedies Forum” convened by Australian Customs as an advisory body for the Minister. Here we have a senior representative of a company that is privy to information from Australian Customs through his company’s representation on the Forum, and is a party to discussions within that Forum, admitting that there is no such thing as large scale subsidisation by the GOC of Chinese industries, and searching for a new excuse to “demonise” the GOC and Chinese exporters. The truth of the matter is that Chinese industries enjoy very strong cost and price competitiveness, because of the comparative advantages of operating in the Chinese economy in this dynamic stage of the country’s economic development.

NON - CONFIDENTIAL VERSION

- Provide a fully translated copy of “Decision on GUOFA [2010] No.21 (attachment 46 refers). The current attachment provides only part of the documents translated in English.

The GOC provides the requested document at **Attachment 102**.

- Provide a fully translated copy of “Decision on GUOFA [2012] No.52 (attachment 47 refers). The current attachment only provided part of the document in English.

The GOC provides the requested document at **Attachment 103**.

- Provide copies of all Administrative Regulations prior to the amendments (mentioned in Attachment 48) that were affected by “Order of state Council No. 588” (provide translated and original copies)) that have implications in iron and steel industry.

The GOC does not think there is any document of this description having direct and specific implications to the iron and steel industry.

The GOC can identify a few documents that may have indirect implications therein, and accordingly provides the documents which can be identified at **Attachments 104, 105, 106, 107 and 108**.

- Explain how the amended regulations (107 amended administrative regulations identified in the ‘ order of state council no.588’) will impact or have impacted on the iron and steel industries (including specific references to the goods under investigation and their upstream industries) in China.

The GOC is of the view that any impact would only be perceptible in the long-run, and that the impact could not be measured in a quantitative way. The GOC would advise that, by the end of 2011, the iron and steel industries (including specific references to the goods under investigation and their upstream industries) in China are a very large and diversified group of industries, of which the following data may reflect a rough picture:

	Number of enterprises	Total output (100 million CNY)	Number of employees (in 10,000 persons)
Coal	7,695	28,919.81	520.98
Iron and steel manufacturing	6,742	64,066.98	65.2
Iron ore mining	3,482	7,904.3	339.92

NON-CONFIDENTIAL VERSION

Therefore, no meaningful implications can be reasonably expected to flow directly from these documents in the short-run. Please also refer to the GOC's answer to question (iii) above.

- 16.** Reference is made to GQ A-15 – the GOC stated that it promulgated a '*Directory Catalogue (2011 version)*' in March 2011, that came into force as of 1 June 2011. At the same time, the 2005 version of the Directory Catalogue was repealed and replaced.

Provide a copy of *Directory Catalogue (2011 version)*. (Provide translated and original copies).

The GOC provides the requested document at **Attachment 109**.

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.

01/04/2013
Date

TIAN Shuguang
Signature of authorised official

Tian Shuguang
Name of authorised official

Deputy Division Director, MOFCOM
Title of authorised official