

中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA
2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

Mr Dale Seymour
Commissioner
Anti-Dumping Commission
55 Collins Street
Melbourne
VICTORIA 3000
Australia

August 1st, 2016

Dear Mr Seymour,

The Chinese side is deeply concerned by the misinformed allegations being made by Australian industries against China and Chinese exporters in anti-dumping ("AD") and countervailing ("CV") applications, and by the consideration that has been given to those applications by the Anti-Dumping Commission ("Commission") in successive investigations.

In relation to CV matters in particular, we would like to express our concerns about the following:

- 1 The repeated failure on the part of applicants and the Commission to justify the accusation that Chinese State-invested enterprises possess, exercise or are vested with government authority.
- 2 The failure of the Commission to recognise repeated findings of the Anti-Dumping Review Panel ("ADRP") where State-invested enterprises have not been found to be "public bodies".
- 3 The emerging – and absolutely incorrect - concept that a company can grant a financial contribution to itself, and therefore subsidise itself.
- 4 The search for and utilisation of so-called benchmark values, for the purposes of benefit analysis, from countries and regions that have no relationship or connection with the Chinese economy or its market conditions.

Specifically, reference is made to the present investigations into the alleged subsidisation of steel reinforcing bar (investigation 322) and rod in coil (investigation 331), and to the *Australian Industry – Minutes of Meeting* document on the public record of each of those investigations.¹ The Chinese side presented a more detailed rebuttal of that document, raising each of these concerns, by way of letter sent on behalf of the Chinese government to the Commission on 20 July 2016 (copy attached).

The purpose of this letter is to ensure our concerns are brought directly to your attention.

¹ EPR 322, Doc No 036; EPR 331, Doc No 043.

The Australian industry continues to make incorrect and misleading accusations that Chinese State-invested enterprises are public bodies. *This is despite the clarity of recent WTO Appellate Body pronouncements on this subject, and despite findings by the ADRP, in every case in which it has had to adjudicate the matter, that Chinese State-invested enterprises are not public bodies.* The arguments that have been put before the Commission by applicants, and which the Commission, regrettably, has accepted are based on flawed reasoning without proper analysis, understanding or consideration of the relevant WTO Appellate Body decisions on the matter. The favourable consideration that has been given by the Commission to these harmful and improper accusations is incorrect and at odds with WTO requirements.

Further, the Chinese side now understands that consideration may be given by the Commission to the idea that a State-invested enterprise producing an intermediate product in the course of producing a final product can be found to have made a financial contribution to itself in the form of the provision of the intermediate product at “less than adequate remuneration”. The Chinese side rejects this idea outright. *A company cannot give itself a subsidy, and any findings as such by the Commission would be a significant breach of China’s WTO rights.*

We noted that the Commission’s use of out-of-country benchmark values for the purposes of determining the adequacy of remuneration of an alleged provision of goods by a public body in China. Even if the Commission persists with this methodology, and with the incorrect thinking mentioned above, the Commission must accept that any benchmark value has to relate or refer to, or be connected with, prevailing market conditions in China. *To do otherwise is in conflict with the self-same WTO Appellate Body rulings on the matter that the Commission would of necessity rely in adopting an out-of-country benchmark in the first place.*

Therefore, we hold these practices might be in breach of WTO requirements, and will bring negative affect to the bilateral trade cooperation between our two countries. Thus the Commission is kindly requested to cease these practices forthwith.

The Commission and my bureau have kept smooth cooperation and communication for a long time. I myself extend warm welcome to you and your esteemed colleagues to China this year for our bilateral trade remedy mechanism meeting, at which we two investigating authorities will conduct detailed exchanges regarding trade remedy issues.

Your continued cooperation and assistance shall be highly appreciated.

Yours sincerely



Liu Danyang
Deputy Director General
Trade Remedy & Investigation Bureau
Ministry of Commerce
The People’s Republic of China