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16 May 2013

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By email

Dear Joanne

Alleged dumping and subsidisation of hot rolled plate steel Government of China – particular market situation and "public bodies"

As you know, we represent the Government of the People's Republic of China ("GOC") in this matter.

The GOC wishes to emphatically and unambiguously state that there is no particular market situation in the Chinese market for hot rolled steel plate ("plate steel"), and that such a situation cannot be found by the Australian Customs and Border Protection Service ("Customs") in this investigation.

The GOC notes that nothing beyond an initiation-level finding has been made that the application for this investigation contained reasonable evidence to support its allegations regarding the existence of a particular market situation in the Chinese market for plate steel. The GOC objected to that finding then, and continues to do so.

The GOC considers all "particular market situation" findings that have been made concerning Chinese steel and aluminium products in previous investigations conducted by Customs are incorrect and unlawful.

The GOC has made a number of submissions in the many recent investigations relating to the recurring assertions that such a situation exists in Chinese domestic markets for various steel products. Each of these submissions is equally applicable to this investigation because, as with this investigation, each investigation has been concluded by a report that echoes the findings on "particular market situation" made in *Report to the Minister No. 177 - Certain Hollow Structural Sections from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan and the Kingdom of Thailand* ("Report 177").

The finding made in Report 177, and the subsequent findings made on the same basis, are incorrect. In support of this submission, we now attach the GOC's submission in the coated steel investigation, dated 17 April 2013, in order that it can be considered as part of the record of this investigation as well.

This submission outlines the critical flaws that have afflicted the recurring "particular market situation" analysis, particularly:

- the application of the "particular market situation" provisions in a way that neither the Australian *Customs Act 1901* ("the Act") nor the WTO *Anti-Dumping Agreement* legally permit;

- the insufficiency of the evidence used to support the existence of any alleged "particular market situation";

- the continuing dismissal of the GOC's reasoned explanation of the evidence it has provided, where such dismissals do not support the existence of any alleged "particular market situation" and betray a flawed, misconstrued, or wilfully misinterpreted understanding of such evidence; and

- the use of reasoning and the drawing of conclusions that do not reflect accepted economic understandings.

The GOC considers that a conclusion that a "particular market situation" exists in the Chinese market for plate steel could only be made if the errors of the past consideration of the "particular market situation" issue were to be repeated. The GOC again submits that there is no "particular market situation" in the Chinese market for plate steel, and that there is no evidence that would support any alternative finding.

Lastly, the GOC notes, with great disappointment, the outcome of Customs' recent "reinvestigation" in the aluminium road wheels ("ARW") investigation concerning the alleged status of State-invested enterprises as public bodies. The GOC notes that the Trade Measures Review Officer ("TMRO") has never accepted the basis on which Customs has determined that Chinese State-invested enterprises are public bodies. He has rejected positions adopted by Customs on this issue on three successive occasions.

The continued refusal of Customs to respect and abide by the recommendations of the TMRO in our view mocks his purpose as a review body under Article 13 of the WTO *Anti-Dumping Agreement*.

The GOC intends to address the failings inherent in the report of that ARW reinvestigation in the context of this plate steel investigation in due course – because the GOC would suspect that Customs will be attempting to relate similar argumentation to the recommendations it has been tasked to make in this investigation.

The GOC reiterates that SIEs do not form part of the GOC and cannot be considered to exercise any form of governmental authority or control, nor do they provide any inputs to plate steel manufacture for less than adequate remuneration. None of the "less than adequate remuneration" subsidies claimed by the application for this investigation exist. Any final imposition of countervailing duties on the basis of such alleged subsidies would be unlawful and unsupported by evidence.

Yours sincerely

Daniel Moulis
Principal

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17 April 2013

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commercial+international

By email

Dear Sir

Certain coated steel - Statement of Essential Facts 190 Submission of the Government of the People's Republic of China

We write on behalf of the Ministry of Commerce of the People's Republic of China ("the GOC") in relation to Statement of Essential Facts 190, which was published on 18 March 2013 in this matter ("the SEF").

Particularly, the GOC wishes to voice its concerns regarding *Appendix 1 – Assessment of a Particular Market Situation*, which outlined the findings that have led the Australian Customs and Border Protection Service ("Customs") to conclude – for the purposes of the SEF - that a particular market situation ("PMS") existed in the Chinese markets for zinc galvanised and aluminium zinc coated steel (collectively "coated steel"), such that the sales in those markets were unsuitable for deriving a price for the purpose of comparison with export prices of Chinese exporters of coated steel.

The GOC is gravely disappointed with the SEF's conclusion regarding the existence of a PMS, and wishes to state categorically and without reservation that such a conclusion is both factually and legally incorrect. This submission explains the various legal, factual and economic shortcomings of that conclusion.

If the contents of this submission are fully understood, the GOC would anticipate Customs' acceptance of the fact that no PMS exists, and that Customs will reverse the SEF's contrary conclusion when issuing its final report to the Minister for Home Affairs ("the Minister") in these investigations.

1 Misapplication of "particular market situation" law

At the opening of its response to the Government Questionnaire ("GQ"), the GOC expressed the view that Customs' request for the GOC to respond to the GQ must have been based on a material misunderstanding of Australia's rights and obligations under Article 2.2 of the WTO *Anti-Dumping Agreement* ("ADA"). The GOC went on to explain the appropriate interpretation and application of Article 2.2 of the ADA. Despite the GOC's response to the GQ and to the Supplementary Government Questionnaire ("SGQ"), and despite its other submissions, the SEF construes and applies the PMS concept in a manner that is inconsistent with the ADA and Australian law.

To reiterate, Article 2.1 of the ADA provides that the existence of dumping must be determined on the basis of a comparison between home market and export prices. This is the primary rule, the only exceptions to which are contained under Article 2.2 of the ADA. Relevantly, Article 2.2 provides an exception to Article 2.1 where, because of the particular market situation in the domestic market of the exporting country, such sales do not permit a proper comparison with sales on the export market.

The important factor in this regard is not the existence of what could colloquially and broadly be referred to as any "particular situation in the market". Rather it is the existence of a particular situation in the domestic market, of the kind of severity that the relevant precedent concerning the concept requires, having an impact which does not permit a proper comparison of the sales on the domestic market with those on the export market. This interpretation is patently clear on the text of the ADA and is also supported by the extracts of the Panel's judgement from *EC — Imposition of anti-dumping duties on imports of cotton yarn from Brazil (*as set out in the GOC's response to the GQ).

This interpretation is reflected in the Australian implementation of Articles 2.1 and 2.2 of the ADA under Section 269TAC of the *Customs Act 1901* ("the Act"). Specifically Section 269TAC(2)(a)(ii) allows for the use of a constructed normal value where:

> *…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).*

Section 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.*

To activate Section 269TAC(2)(a)(ii), the situation in the market of the country of export must affect the sales in that market in such a way that the prices of the exporter in those sales can no longer be used as an appropriate comparator to the prices of the exporter in export sales. As an extension to this, it is clear that factors that affect both the domestic price and the export price cannot be considered to be such a situation, because they will cause no impediment to the price comparison. This is a distinct, and much narrower, consideration than would be required if the Sections called for a comparison of markets generally.

It is also clear from the text of Sections 269TAC(1) and 269TAC(2)(a)(ii) that the relevant market is the market from which the normal value would otherwise be derived under Section 269TAC(1): ie, the domestic market for like goods. This was made explicit at paragraph 28 of Hill J's judgement in *Re Hyster Australia Pty Limited and Hyster Europe Limited v the Anti-Dumping Authority; the Minister of Small Business, Construction and Customs and Clark Equipment Australia Pty Limited* ("Re Hyster").[1] At that paragraph the learned Judge said:

> *The question which is relevant, for the purposes of s.269TAC(2)(a)(ii), is whether, having regard to the situation in the relevant market, there is something about the sale prices obtained in that market which renders them "unsuitable" for use for the purpose of determining "normal value".* [underlining supplied]

Finally, it will not be any "situation" in the domestic market for like goods that triggers recourse to Section 269TAC(2)(a)(ii). The situation must render the sales of the exporter in that market unsuitable to derive a price for comparison with the exporter's export prices. According to Section 269TAC(2)(a)(ii) the situation in the domestic market for like goods must be such that it renders sales in that market unsuitable for use in determining the normal value under Section 269TAC(1). Unsuitability in this context is not intended to be easily or randomly achieved. For example, sales are routinely non-comparable by reason of factors which are accommodated – in the dumping determination - by adjustment under Section 269TAC(8) of the Act.[2] Market differences giving rise to such adjustments do not render the sales "unsuitable" for use in determining a normal value.

There has been judicial discussion of when a sale might be unsuitable, in terms of Section 269TAC(2)(a)(ii). That discussion has indicated that the hurdle required to establish "unsuitability" is very high indeed, and must be supported by strong evidence. For example, Hill J in Re Hyster explained that:

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1 [1993] FCA 36 (17 February 1993)

2 *Re Enichem Anic SRL and Enimont Australia Pty Ltd v the Anti-Dumping Authority and the Minister of Small Business and Customs* [1992] FCA 579, per Hill J at 37.

> *Suffice it to be said here that the mere fact that an oligopoly exists in the country of export, which has led to higher prices and higher profit margins, does not of itself make the prices prevailing in that country unsuitable for use in determining the normal value.*[3]

And:

> *The conclusion of the Authority that imperfect market conditions are of themselves insufficient grounds to ignore domestic prices is, in my view correct.*[4]

Similarly, in *La Doria Di Diodata Ferraioli SPA v David Peter Beddall, Minister of Small Business, Construction and Customs; Anti-Dumping Authority and Comptroller-General of Customs* ("La Doria"),[5] Lee J explained that:

> *Whether the domestic market in Italy is a market in the sense of a free trading market is not the question required to be addressed under sub-para.269TAC(2)(a)(ii). Depressing or inflating factors affecting the price of goods sold in that market will not in themselves establish that there is a situation in the market that makes prices obtained in the market unsuitable for use for the purpose of sub-s.269TAC(1).*[6]

The Australian jurisprudence correctly interprets the ADA requirements. There is a very high bar that needs to be satisfied to establish the existence of a market situation for the purpose of Section 269TAC(2)(a)(ii). This is understandable, in that the Section refers to "unsuitability", which carries with it an extreme and absolute literal sense. In context, it also suggests an "extremity" in the situation claimed to exist, because sales in one market are expected to be comparable to sales in other markets, regardless of the conditions in the markets themselves. Differences in prices caused by different market conditions are of course what dumping is all about, and an investigating authority cannot simply "dismiss" a domestic market because of its own particular attributes.

Where the issue has been raised before Australian Courts, the only occasion on which a Court has been satisfied that the situation claimed has caused the unsuitability required for recourse to be had to Section 269TAC(2)(a)(ii) was when the payment of production aid to Italian producers of canned tomatoes *"distorted domestic selling prices to the extent that canned tomatoes were being consistently sold at prices below the production and selling costs of the canners*."[7]

It is also clear that Section 269TAC(2)(a)(ii) must be read in line with, and applied in accordance with, Article 2.2 of the ADA. Article 2.2 only applies where the situation only affects the sales of the like goods in the domestic market. If the situation affects sales in both markets then there is no need to rely on a constructed normal value, because the situation will not have a deleterious effect on the comparison that is required to be made in working out whether there has been any dumping. Based on the text of Section 269TAC(2)(a)(ii), it is clear that it is to have the same role, because Section 269TAC(2)(a)(ii) is only concerned with situations that affect the suitability of the sales in the domestic market for determining the price of the like goods. A relevant situation must make such sales unsuitable for use as the normal value, or to put it another way, unsuitable for being used as a comparator against the export price in order to determine whether dumping has occurred. Again, a situation that affects both export prices and domestic prices will not allow reliance on Section 269TAC(2)(a)(ii).

Initially, without commenting on the shortcomings of the PMS analysis, the GOC wishes to emphasise the following points:

- The alleged GOC influences on the Chinese iron and steel industry that the SEF claims have created a PMS – "artificially low prices" - would have an equal effect on the exporter's export prices, in that goods sold domestically and those exported incur the same costs. Therefore, *prima facie,* they are not capable of rendering prices derived from the Chinese market for coated

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3 *Ibid*, at paragraph 29.
4 *Ibid*, at paragraph 33.
5 [1993] FCA 288 (11 June 1993)
6 *Ibid*, at paragraph 33.
7 *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) at paragraph 38.

steel unsuitable for determining normal values. Therefore, there is no relevant situation that would legally allow recourse to Section 269TAC(2)(a)(ii).

- The existence of the PMS is premised on the alleged distortion of competitive conditions in the Chinese iron and steel industry. The GOC rejects the opinion that the Chinese iron and steel "industry" is a "market". If this "industry" could be said to be a "market" - and the SEF implies that it is a "market" by determining that it has "competitive conditions" – it is not the relevant market for a PMS finding. As noted, the only market in which a relevant situation can exist is the domestic market for the goods under consideration.[8]
- In any case, a general finding that prices in the coated steel market are *"not substantially the same as they would have been without the influences by the GOC"* does not at all meet the standard of requisite "unsuitableness" as required by Australian Courts or by any of the opinions of WTO members that the GOC have previously brought to the attention of Customs.[9] As the above extract from La Doria indicates, depressing or inflating factors affecting the price of goods sold in a market will not in themselves establish that there is a situation in the market that makes sales obtained in the market unsuitable for use for the purpose of Section 269TAC(1). Moreover, as noted in Re Hyster, imperfect market conditions are insufficient reason to ignore prices derived from sales in a domestic market.

The GOC submits that the grounds under which the SEF asserts that prices derived in the Chinese market for coated steel are unsuitable for determining normal values falls far short of the recognized grounds under which such a finding could be made under the ADA or the Act. It is not legally correct to assert the existence of a PMS on the basis that prices may be different because of the existence of the GOC as a government which duly undertakes its economic, social and environmental responsibilities in a sovereign way.

But in any case – the GOC submits that there is no evidence to support the SEF's conclusion, as will now be discussed in the following sections.

2 SEF 190 does not establish the existence of a relevant market situation

The major finding of fact that led to the SEF's conclusion that a PMS existed in the market for coated steel was that:

> *Customs and Border Protection has determined that the GOC has exerted numerous influences on the Chinese iron and steel industry, which have substantially distorted competitive market conditions in the iron and steel industry in China. The impact of the GOC's numerous broad and extensive overarching macroeconomic policies and plans outlining the aims and objectives for the Chinese iron and steel industry have been significant. Furthermore, the various taxes, tariffs, export and import quotas have influenced the raw materials used in production of the goods, which based on fundamental economic theory would lead to a distortion in the selling prices of the goods themselves.*[10] [underlining supplied]

The *"numerous broad and extensive overarching macroeconomic policies and plans"* are discussed in 3 below.[11] At this juncture the GOC wishes to address what the SEF refers to as *"fundamental economic theory"* as also mentioned in the following quote:

> *…the various taxes, tariffs, export and import quotas* [that] *have influenced the raw materials used in production of the goods, the various taxes, tariffs, export and import quotas* [that] *have*

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[8] In any case, the GOC notes the conclusion of Public File document 206, that the *"Chinese steel industry, by all standard measures, is less concentrated and more competitive than most other major steel markets".*The GOC understands that this document, prepared by academics with strong background in economics and Asian studies, arose from communications initiated by Customs itself.

[9] See letter from MOFCOM to Customs dated 23 January 2009, entitled "*Draft revised Dumping manual and discussion paper regarding anti-dumping applications claiming existence of a particular market situation*".

[10] SEF, page 128.

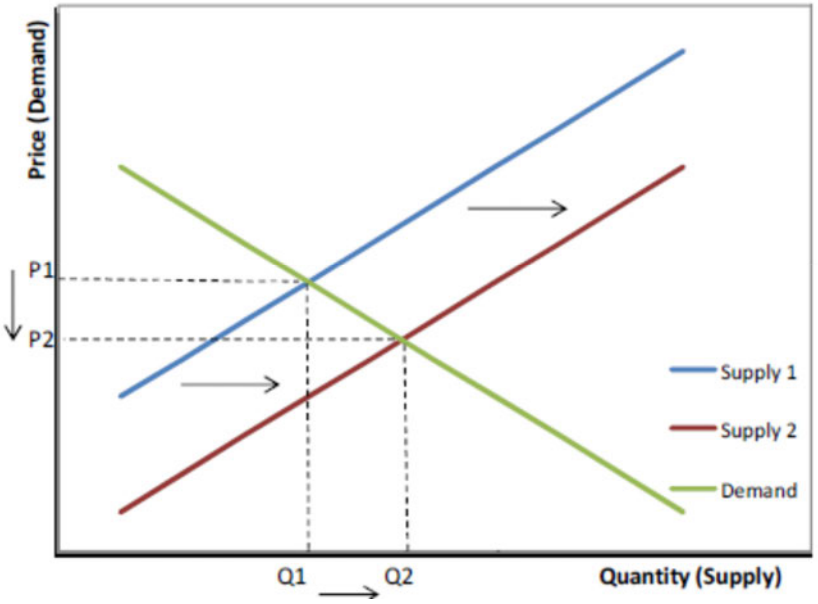
[11] The GOC notes that all countries have overriding macroeconomic policies and plans for their economic development, and that the numerousness and extent of these *"policies and plans"* is highly exaggerated by the SEF.

> *influenced the raw materials used in production of the goods, which based on fundamental economic theory would lead to a distortion in the selling prices of the goods themselves.*[12] [underlining supplied]

The relevance of these various measures to the market for coated steel is explained in the following extract from the SEF:

> *The most influencing factors identified were the 40% export tax on coke and scrap metal, 0% VAT rebates on HRC, coke, coking coal and iron ore. These factors have led to an increased supply of those goods moving the supply down (right) and artificially lowering the cost and selling price of these raw materials – a cost to downstream users that purchase them – used in the production of galvanised steel and aluminium zinc coated steel.*[13]

SEF 190 bases this conclusion on what it calls the *"economics of supply theory"*, which dictates that *"increasing the supply of a commodity, given all other factors being equal will lead to lower demand (price) due to excess supply"*. This is said by the SEF to be an *"artificially low price"*. The SEF attempts to graphically represent the implications of this *"economics of supply theory"* as shown below:



The GOC does not agree with the economic analysis which is offered by the SEF at all.

Firstly, the GOC would point out that, based on *"fundamental economic theory"*, there is nothing artificial about the price derived at the intersection of the Demand and Supply 2 curve, nor could it be concluded that the competitive market conditions (whatever the SEF means by that term) are distorted. To the contrary, where those two curves meet is an equilibrium which, according to (correct) fundamental economic theory, provides the market-clearing price/quantity combination from both the suppliers' and consumers' (demanders') perspective, and is the outcome of a competitive market. Economics is the study of the allocation of scarce resources in the face of unlimited potential uses. Efficiency, whereby those scarce resources can be used to satisfy more demand, is considered to be a very good thing indeed. Finding some issue with the price derived from a market which has achieved greater efficiency is an artificial and illogical concept that entirely misses the point of the market mechanism.

This confusion of *"fundamental economic theory"* may be a result of a misunderstanding or misapplication of other fundamental economic theory in the SEF.

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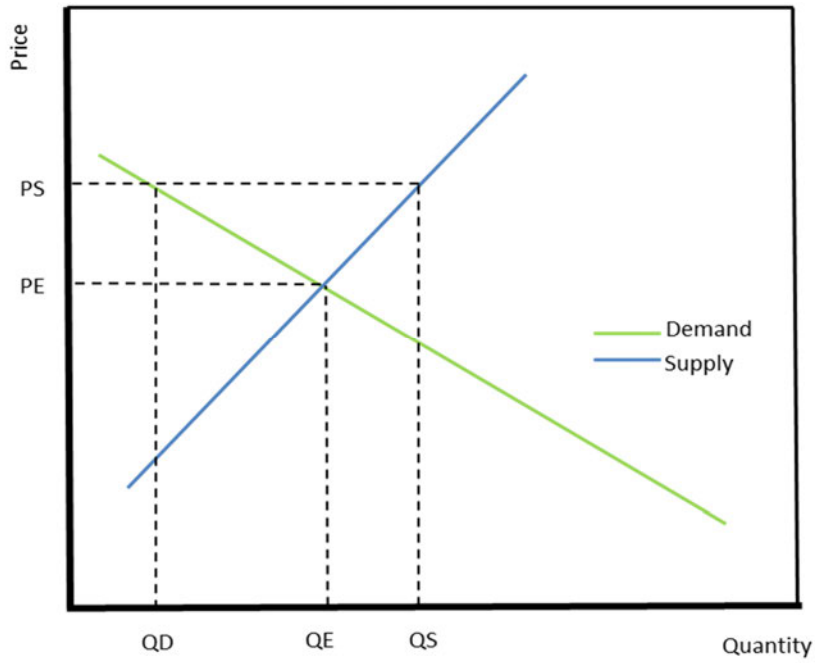
[12] SEF, page 128.
[13] *Ibid*, page 127.

For example, there is no such theory as the *"economics of supply theory"*. We consider it more likely that the SEF's intention, when referring to an economics of supply theory, was to introduce the *"law of supply"*. The law of supply provides that, all other things being equal, the quantity of the product offered by a supplier increases as the price of the product increases, and *vice versa*. This is to be contrasted with the *"law of demand"*, which provides that, as the price of a product increases, all else being equal, a lower quantity will be demanded, and *vice versa*. These are the two laws that dictate the shapes of the supply and demand curves in graphs such as that extracted above.

This fundamental confusion about what are considered to be basic economic principles is a major concern to the GOC, particularly as the confusion is being applied by an agency that implements a policy that is essentially economic in nature and application. This confusion continues throughout the analysis. For example, the axes on the graph are labelled to be *"Price (Demand)"* and *"Quantity (Supply)"*. This is incorrect. The axes represent only various volumes and prices. They do not represent supply and demand. It is the supply and demand curves that represent supply and demand. To put it another way:

- the supply curve represents the quantities that suppliers would be willing to offer their product at a given price;
- similarly, the demand curve represents quantities that consumers would be willing to purchase the product at a given price.

On this basis, it is important to note that an increase in the quantity of a product supplied to the market will not lead to a shift in the supply curve. Additionally, contrary to the stated economics of supply theory, all other factors being equal, increasing the quantity of a commodity will not lead to a lower demand or price, due to excess supply, nor will it lead to a shift in the supply curve. Rather the law of supply dictates that all things being equal, an increase in the quantity supplied will lead the supplier to seek a higher price for its product as, among other things, the greater cost of production needs to be satisfied by the market. In other words, if there is a higher quantity supplied to a market overall then suppliers have to extract a higher overall price to recover the costs of that supply to that market. This can be explained graphically, as we have done below:



Where QS is supplied, the supplier will seek to receive a price equal to PS, in accordance with the law of supply. As you will note, the PS/QS combination occurs outside of the market equilibrium (PE/QE), which means that the willingness of suppliers to supply a particular quantity of the product at a given price does

not match the ability of consumers to purchase that product at a given price. Instead, at a price PS, the consumer will only purchase a volume of the product equal to QD, as this is the particular price/quantity combination dictated by the demand curve. This means that the amount of product equal to QS minus QD will not be purchased.

This excess of supply is obviously in the short-term. In the long-term, suppliers will change their behaviour to get the market back into equilibrium (ie, they will provide a quantity of the product equal to QE), because they receive no benefit by continuing to produce the product at the higher volume, which led to the surplus in the quantity supplied. Because, if a supplier continues to make a product which it cannot sell at the price it desires, then why would it continue to make the product?

The underlying logical problem with the conclusion in the SEF is that it assumes that producers of the upstream products (the raw material inputs to coated steel) exist only to produce those products, and will continue to produce them to their own detriment. This is clearly a ridiculous position to adopt. If they produce the product to the point where they no longer receive a good price for that product, or start to make a loss, they will stop producing those volumes of the product. Supply will not continue to expand if it is not matched by demand, regardless of the particular taxes or other measures imposed on the particular products under consideration. Even if – hypothetically - the various measures had a significant effect along the lines of that attributed by the SEF, such an effect would only be a short-term issue, as the market participants would adjust their actions so that the market would return to equilibrium.

The second underlying illogicality with the analysis in the SEF is that it does not consider the effect of demand on the market. Each of the raw products that the SEF assumes has a distorted price is sold to a large number of consumers. In the GQ the GOC was able to identify [CONFIDENTIAL TEXT DELETED – number] iron ore producers, [CONFIDENTIAL TEXT DELETED – number] coking coal producers, [CONFIDENTIAL TEXT DELETED – number] coke producers and [CONFIDENTIAL TEXT DELETED – number] HRC producers, as well as what could be considered to be globally significant volumes of imports for each of these goods. In addition to this, the GOC was able to identify that each of these raw materials were also sold to other entities for the production of other goods. Steel consumption in China has accelerated in line with the country's rapid development and rising living standards. The demand for these goods has been absolutely massive, and it continues to grow on a yearly basis Yet the SEF treats demand as if it is just a static (*"all things being equal"*) and inconsequential consideration.

Although an alleged increase in the quantity of raw materials supplied is at the heart of the reasoning in the SEF, the SEF also notes that *"lower costs of production, changes in production technology, government taxes and subsidies* and *the number of producers in the market"* will cause an *"increase of supply in an economy".*[14] Again, there is absolutely no evidence that this has occurred for any of the raw materials that are used in the production of the subject goods, and it is safe to say that these assumptions are not evidence that it has occurred. For example, changes in production technology are obviously quite costly for a producer to implement, and therefore may increase the price charged for the final product. In addition to which, there is no guarantee those changes will drive efficiency and lead to a lower production cost. Where technology is changed to prevent the environmentally damaging effects of a production process, there may be no net efficiency gain. In fact, it may be more costly to produce the final product. Again, the findings that these particular factors (a) have occurred and (b) have had the net effect of decreasing the price for coated steel are simplistic and unsupported by any evidence.

Ultimately, the GOC would note that the SEF's reliance on basic models of economics – whether those models are applied in a correct way or not - as a fundamental part of its reasoning is in itself troubling. Economic models are simply an abstraction that are used to simplify the relationship between two variables in what could rightly be considered a chaos system. The simple fact is that the law of supply and the law of demand, as well as the SEF's own *"economics of supply"* theory, all explain the likely outcome of the change in one variable in a market, when all other factors are static (the term used in economic literature is *ceteris paribus*, meaning "all other things being held constant"). However, in reality a market is a very complex system with manifold variables. There is absolutely no guarantee that a

[14] Again, the GOC notes the misguided focus on its *economy*, when the PMS concept relates to a situation in the *market* for the goods under consideration.

predicted outcome from a model will be replicated in a market. As with all markets in all countries, the Chinese markets for coke, coking coal, iron ore, hot rolled coil ("HRC") and scrap metal are far more complex than the situation that the standard model of supply and demand represents. Applying basic economic principles in a way that is entirely unrelated to the actual situation in the markets they attempt to describe does not prove what has happened in the market. It shows what theory predicts might happen, but it is not evidence of the situation in the market, nor should it be taken to be.[15] Even if the economic theorising attempted by the SEF was correct, which the foregoing should establish it is not, any conclusion based on that theory is not evidence of what has actually occurred in the market.

Essentially, the finding that a PMS exists in the Chinese market for coated steel is based on a chain of assumptions. Firstly, the SEF assumes that the various GOC measures have had a net effect of reducing the price of the input materials of coated steel. Secondly, it is assumed that these reduced costs are passed on, up the chain of production, to ultimately infect the markets for coated steel and create some vaguely defined distortion in those markets. Finally, it is assumed that this distortion is significant enough to render sales in the markets for coated steel unsuitable for use in determining the normal value of Chinese producers. These linked-assumptions are simply that - assumptions which do not prove what has actually taken place in the markets themselves.

In conclusion, the GOC sees no evidence for the proposition that *"the various taxes, tariffs, export and import quotas have influenced the raw materials used in production of the goods"* and have led to *"substantially distorted competitive market conditions"* in the Chinese iron and steel industry and *"a distortion in the selling prices of the goods themselves".* There is nothing that supports the conclusion that prices in either the raw material markets or the coated steel markets are artificial or distorted. Furthermore, even if the SEF had applied *"fundamental economic theory"* correctly, any conclusions based on that theory could not be considered evidence that proves the existence of a situation in the market, and therefore cannot form a factual basis for reliance on Section 269TAC(2)(a)(ii) to exclude the calculation of the normal values of Chinese exporters of coated steel on the basis of their prices in domestic sales.

3 Evidence before Customs when making the PMS finding

The GOC notes the comments made in the SEF regarding the level and quality of information provided by the GOC in response to the GQ. As noted in the SEF, the PMS analysis was made without the benefit of the GOC's response to the SGQ. The SGQ was provided to the GOC as a means to remedy what Customs considered to be the deficiencies in the GOC's GQ response. After the provision of the SGQ, the GOC and Customs discussed the information that the GOC was reasonably able to provide in response to the SGQ. The GOC's final submission in response to the SGQ reflected the outcome of those discussions. Having noted this, the GOC would now like to address the information used in the SEF in support of its PMS finding.

Firstly, the GOC is concerned that the PMS finding was largely based upon the findings from Investigation 177. The PMS finding in that investigation is currently under reinvestigation. Despite this, the SEF supported its reliance on that investigation as follows:

> *The Review Officer concluded that the evidence available to him in his view failed to sufficiently establish that policies and plans of the GOC were being implemented and enforced in a manner as would support a particular market situation finding. The Review Officer further stated that he did not wish for his conclusion to be read as positively finding that there is definitely no market situation in the Chinese domestic iron and steel industry… His view was that the available evidence in HSS Report number 177 (Rep 177) was not adequate to definitively establish a 'particular market situation finding'.*[16]

This is an incorrect interpretation of the views expressed by the Trade Measures Review Officer ("TMRO") in his review of the report emanating from Investigation 177 ("REP 177"). The TMRO premised his

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[15] The GOC wishes to emphasise that it is the very purposes of a market to deal with "situations", and to create a new equilibrium in response to the situation concerned.

[16] SEF, page 110.

recommendation that the PMS finding be reinvestigated on the basis that there was not sufficient evidence in REP 177 to support such a conclusion. That is clear on the basis of his following statements:

> *Having regard to the totality of the evidence and submissions made, I consider that the evidence currently available to me fails to sufficiently establish that the policies and plans of the Government of China are being implemented and enforced in such a manner as would support the market situation finding. In saying this I do not wish to be read as positively finding that there is definitely no market situation in the Chinese domestic HSS market. I do not know whether or not that is the case, in part because the Government of China did not provide all the factual material sought from it by Customs. I simply say that the currently available evidence is not adequate to definitively establish a market situation finding.*
>
> *At the same time, I am mindful that my recommendation to re-investigate this finding is unlikely to deliver the necessary evidence. This is because s 269ZZL(2) of the Customs Act requires the CEO of Customs to have regard only to the information and conclusions to which I was permitted to have regard under s 269ZZK, and that in turn is confined to the material that was before the CEO when he made his Report. That is, Customs is not authorised to collect new information in the course of a re-investigation. 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.*[17] [underlining supplied]

This is a strong condemnation of the evidence relied upon in REP177 to establish the existence of a PMS in the market which was there under consideration. The TMRO considered that there was not sufficient evidence to support the allegations that a market situation existed in the Chinese market for HRC (as was alleged in that matter). We therefore question the rationality the continued reliance on the analysis in REP 177 to arrive at unfavourable conclusions against Chinese producers in these continuing investigations.

In any regard, there would appear to be no additional evidence in the SEF that would alter the view of the TMRO. Rather the SEF simply attacks the GOC's explanations surrounding the various "plans" and "policies" to which it refers. For example, the SEF notes the GOC's explanation that the National Steel Plan ("NSP") is an aspirational document, however it goes on to note that the GOC *"did not explain and or/provide any evidence to differentiate the difference between an 'aspirational' document and a 'legal' document"*.[18] The GOC considers this to be a strange sentiment. How is the GOC meant to prove that something is aspirational, other than to reiterate that it is not a law and has no legal force? There is no dedicated process for producing non-legally binding documents. There are no requirements to be met, other than the fact that it is not a law. Having noted that, the GOC would point out that under the Chinese Constitution, only the National People's Congress and the Standing Committee of the National People's Congress have the power to enact national-level legislation. Similarly, the State Council is able to make legally binding administrative regulations pursuant to the Law of Legislation, which is clearly not the case with the NSP.

The SEF does not take into account the responses of Chinese coated steel producers to the *Supplementary Exporter Questionnaires – Particular Market Situation* in this regard. Question 7(c) requested that each responding exporter detail how the NSP has impacted its business, and how that exporter ensures compliance with the NSP. In every case, the exporter explained that the NSP does not impact the operation of its business, is not binding on companies, and does not affect their business decisions. This is positive evidence from participants in the domestic market for the goods under consideration as to the lack of impact of the NSP. Even if Customs continues its perplexing reticence to accept the GOC's explanation of the nature of the NSP, the evidence before it from other sources must lead to the conclusion that the NSP has no effect on the Chinese market for coated steel, nor indeed on

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[17] *Decision of the Trade Measures Review Officer – Review of Decisions to Publish a Dumping Notice and Countervailing Duty Notice Concerning Certain Hollow Structural Sections Exported from Australia to the People's Republic of China, the Republic of Korea, Malaysia and Taiwan* (14 December 2012), paragraphs 111-112 (hereinafter "TMRO Report")

[18] SEF, page 111.

the "steel and iron market" as a whole.[19]

Otherwise, no additional comment is provided in the SEF on the "plans" and "policies" that allegedly lead to the PMS finding. The SEF seems to consider that the analysis of these documents in REP 177 is sufficient grounds on which to found the PMS finding, despite the TMRO's strong opinion as to the lack of probative evidence of these documents, the different time periods of the respective investigations, and the different products concerned. On this basis, the GOC does not understand how the SEF could conclude that a PMS exists in the Chinese market for coated steel, nor that such a situation would allow recourse to Section 269TAC(2)(a)(ii).

Beyond the REP177 factors, the SEF identifies recent European Commission ("EC") investigations that are considered to have "some relevance" to the coated steel investigations. The GOC has addressed the lack of relevance of the EC investigations in its submission dated 11 March 2013. The GOC will not reiterate its opinion in this current submission. It suffices for it to say that the EC analysis was not a PMS analysis, and that to persist with a contrary view simple defies Australian legislation, the ADA and China's WTO Accession Protocol. In any regard, even if the EC investigations were based on sound logic and similar law to that which has led to the SEF, the conclusion that a PMS exists in the SEF is factually, legally and economically without virtue. No credibility can be provided to that conclusion by reference to the EC investigations.

Finally, the SEF refers to the 29 alleged subsidies under investigation in the currently running countervailing investigation as being relevant to the PMS finding. The SEF explains that 27 of the 29 alleged subsides were found to exist in the HSS Investigation, as discussed in Rep177, and that these 27 programs *"will have also impacted on the costs of factors of production of galvanised steel and aluminium zinc steel in China"*.[20] Once again, the logic here is muddled. Firstly, the major subsidy "found" to exist in that investigation was Program 20, relating to an alleged program for the provision of HRC by State-invested enterprises ("SIEs") at less than adequate remuneration. Again, as noted in the GOC's submission of 11 March 2013, the existence of this subsidy was flatly rejected by the TMRO. He found, firstly that SIEs were not public bodies, and secondly that there was no evidence that SIEs had provided HRC for less than adequate remuneration.[21] On that basis, no such program could be found to exist. In the absence of Program 20, the other 26 programs were of very little effect. Any impact of these programs on the factors of production of galvanised steel will be objectively, and without question, miniscule.

Even where an enterprise has received what might appear to be a "large" subsidy - for example, for environmental improvements - Customs ought to compare the amount with the total production of the enterprise concerned. Many Chinese enterprises operate at an absolutely massive scale. In any case, the prospect that an anti-dumping investigation is in some way able to address subsidisation concerns is not accepted by the GOC. Insofar as the 27 subsidies may have affected the price of coated steel, that will be remedied by the application of countervailing duties. Any subsidies that might be validly identified are wholly irrelevant to an anti-dumping investigation such as this.

There is no evidence to support the finding that sales derived from the Chinese market for coated steel are not suitable for determining the normal value under Section 269TAC(1). As the TMRO noted in relation to the PMS finding in REP177:

> *Effectively, Customs' finding amounts to no more than observation of the fact that HRC prices in China are lower than in other countries. But without any evidence that this result has been caused by government action, that observation by itself cannot in my view justify a 'market situation' finding. There may be multiple explanations for such an outcome that may be equally consistent with the operation of an undistorted market economy. The fact that the Government of China has invested in and may even wholly own HRC suppliers does not demonstrate government market distortion in the absence of evidence that, for example, those HRC suppliers are selling at a less than commercial rate of return by government direction or are being*

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19 We note similar comments attributed to Angang Steel Company Limited in its verification visit report, regarding the GOC's 12th Five-Year Plan.

20 SEF, page 128.

21 TMRO Report, paragraph 276.

subsidised by the Government to do so. [22]

The GOC considers that this comment is particularly apt in light of the *Comparative analysis of HRC costs* mentioned on page 128 of the SEF. Prices of HRC are lower in the domestic market because China is a low cost producer, which gives it a comparative advantage in the production of steel products. There is no evidence that the price of HRC or other raw materials used in the production of coated steel has been distorted or lowered through the actions of the GOC.

In conclusion, the GOC emphasises that none of the factors discussed in the PMS analysis evidence the existence of a situation in the Chinese market for coated steel that would render prices derived from that market unsuitable for determining the normal value. This is the only factor that allows recourse to Section 269TAC(2)(b)(ii). In its absence normal values must be calculated under Section 269TAC(1).

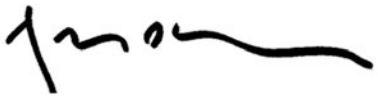
4 Requests

As discussed throughout this submission, the conclusion that a PMS exists in the Chinese markets for coated steel is:

- not based on positive evidence; and
- not based on a correct application of the ADA and Australian law.

Consequently, the GOC requests that Customs accept that prices in domestic market sales made by Chinese exporters of coated steel are not unsuitable for normal value determination. Additionally, any other decisions made throughout the investigation that are contingent on the existence of a "particular market situation" should be abandoned.

Yours sincerely



Daniel Moulis
Principal

[22] TMRO Report, para 102.