



***CUSTOMS ACT 1901 - PART XVB***

**REPORT NUMBER 198**

**DUMPING OF HOT ROLLED PLATE STEEL**

**EXPORTED FROM**

**THE PEOPLE'S REPUBLIC OF CHINA, REPUBLIC OF  
INDONESIA, JAPAN, THE REPUBLIC OF KOREA AND  
TAIWAN**

**AND SUBSIDISATION OF HOT ROLLED PLATE STEEL**

**EXPORTED FROM**

**THE PEOPLE'S REPUBLIC OF CHINA**

**16 September 2013**

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## **1 SUMMARY AND RECOMMENDATIONS**

This investigation is in response to an application by BlueScope Steel Limited (BlueScope) in relation to the allegation that dumped hot rolled plate steel (plate steel)<sup>1</sup> exported to Australia from the People's Republic of China (China), Republic of Indonesia (Indonesia), Japan, Taiwan and the Republic of Korea (Korea) and subsidised plate steel exported to Australia from China caused material injury to the Australian industry producing like goods.

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner's) recommendations to the Minister for Home Affairs (the Minister) in relation to the investigation.

### **1.1 Findings and recommendation**

The delegate of the Commissioner recommends the Minister publish a dumping duty notice in respect of plate steel exported to Australia from China, Korea, Indonesia and Japan by all exporters except for:

- Shandong Iron and Steel Company Limited, Jinan Company (JIGANG) (China);
- Hyundai Steel Company (Hyundai) (Korea); and
- POSCO (Korea).

The delegate of the Commissioner recommends the Minister publish a countervailing duty notice in respect of plate steel exported to Australia from China by all exporters.

If the Minister accepts these recommendations, to give effect to the decision, the Minister must sign the relevant notices and schedules, under s.269TG(1), s.269TG(2) and s.269TJ(2) of the *Customs Act 1901*<sup>2</sup> (the Act), and s.8 and s.10 of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act).

### **1.2 Application of law to facts**

#### **1.2.1 Authority to make decision**

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Minister.

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<sup>1</sup> Refer to the full description of the goods in section 3 of this report.

<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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The Commissioner's powers under this Division have been delegated to certain officers of the Commission.

### **1.2.2 Application**

On 21 December 2012, BlueScope lodged an application requesting that the Minister publish a dumping duty notice in respect of plate steel exported to Australia from China, Indonesia, Japan, Korea and Taiwan. The application also requested that the Minister publish a countervailing duty notice in respect of exports from China.

The CEO<sup>3</sup> of the Australian Customs and Border Protection Service (ACBPS) was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

### **1.2.3 Initiation of investigation**

After examining the application, the CEO was satisfied that:

- there was an Australian industry in respect of like goods; and
- there appeared to be reasonable grounds for the publication of dumping and countervailing duty notices in respect of goods the subject of the application.

The CEO decided not to reject the application and notice of the initiation of this investigation was published on 12 February 2013.

In respect of this investigation:

- the investigation period<sup>4</sup> for the purpose of assessing dumping and subsidisation is 1 January 2012 to 31 December 2012; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from 1 January 2008.

On 1 July 2013, the International Trade Remedies Branch (ITRB) of the ACBPS, previously responsible for anti-dumping matters, became the Anti-Dumping Commission (the Commission).

### **1.2.4 Preliminary Affirmative Determination**

The delegate of the Commissioner, after having regard to the application and submissions, was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of plate steel exported to Australia by certain exporters from China, Korea, Indonesia and Japan, and made a preliminary

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<sup>3</sup> From 1 July 2013, this role is being performed by the Commissioner

<sup>4</sup> As defined by section. 269T(1).

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affirmative determination (PAD)<sup>5</sup> to that effect on 19 July 2013. PAD 198 contains details of the decision and is available on the public record at <http://www.adcommission.gov.au/cases/EPR198.asp>

ACBPS decided to require and take securities<sup>6</sup> in respect of any interim dumping duty (IDD) that may become payable in respect of certain goods from China, Korea, Indonesia and Japan that were entered into home consumption on or after 19 July 2013.

### 1.2.5 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows, place on the public record a statement of the facts on which the Commissioner proposes to base a recommendation in relation to the application.

The Minister granted an extension to the date by which the statement of essential facts (SEF) had to be placed on the public record.

On 1 August 2013, the delegate of the Commissioner placed on the public record SEF198.

Interested parties were invited to lodge responses to SEF198 by no later than 21 August 2013. Non-confidential versions of all submissions considered are available on the public record for this investigation.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Canberra or online at <http://www.adcommission.gov.au/cases/EPR198.asp>

Documents on the public record should be read in conjunction with this report.

## 1.3 Terminations

The dumping investigation so far as it relates to Taiwan and exports by JIGANG (from China), Hyundai and POSCO (from Korea) was terminated on 10 September 2013 due to the delegate of the Commissioner being satisfied of:

- No dumping – Hyundai and POSCO (Korea), Shang Chen Steel Co., Ltd (Taiwan);
- Negligible dumping margin – JIGANG (China); and
- Negligible volumes of dumping (Taiwan).

Termination Report No. 198 (TER198) sets out the reasons for these terminations and is available on the public record.

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<sup>5</sup> Under section 269TD.

<sup>6</sup> Under section 42 of the Act

## **1.4 Report 198**

In formulating the final report the Commissioner must have regard to the application concerned, any submissions concerning the publication of the notice to which the delegate of the Commissioner has had regard to for the purpose of formulating SEF198, any submission in response to SEF198 received by the Commission within 20 days of the publication of the SEF, and any other matters considered relevant.<sup>7</sup>

## **1.5 Findings and conclusions**

The Commission has made the following findings and conclusions based on available information provided during the course of the investigation.

### **1.5.1 The goods and like goods (Chapter 3 of this report)**

Locally produced plate steel is like to the goods the subject of the application.

### **1.5.2 Australian industry (Chapter 4 of this report)**

There is an Australian industry producing like goods, comprising of one Australian producer of plate steel.

### **1.5.3 Market (Chapter 5 of this report)**

The Australian market for plate steel is predominately supplied by locally produced plate steel and imports from the nominated countries, with a small volume of imports from other countries.

### **1.5.4 Dumping (Chapter 6 of this report)**

The Commission has found in respect of plate steel that:

- a market situation existed in the domestic market for plate steel in China during the investigation period such that selling prices in that market are not suitable for normal value purposes;
- plate steel exported to Australia from China during the investigation period was dumped;
- plate steel exported to Australia from China by JIGANG during the investigation period was dumped by a negligible margin;
- plate steel exported to Australia from Indonesia and Japan during the investigation period was dumped;
- plate steel exported to Australia from Korea (except by POSCO and Hyundai), during the investigation period was dumped;

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<sup>7</sup> Subsection 269TEA(3)

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- plate steel exported to Australia from Korea by POSCO and Hyundai was not dumped; and
- the volume of dumped goods from China, Indonesia, Korea and Japan and the dumping margins (other than for exports by JIGANG, Hyundai and POSCO) were not negligible.

The Commission has found the following dumping margins:

Country	Manufacturer / exporter <sup>8</sup>	Dumping margin
China	JIGANG	<2%
	<i>All other exporters</i>	22.1%
Indonesia	PT Gunung Rajapaksi (Rajapaksi)	8.6%
	PT Krakatau Steel (Krakatau)	11.3%
	PT Gunawan Dianjaya Steel (Dianjaya)	11.3%
	<i>All other exporters</i>	19%
Japan	<i>All exporters</i>	14.3%
Taiwan	Shang Chen Steel Co., Ltd (Shang Chen)	<2%
	Chung Hung	5%
	China Steel Corporation and China Steel Global Trading	<2%
Korea	Hyundai Steel Company	<2%
	Dongkuk Steel Mill Co., Ltd (DSM)	18.4%
	POSCO	<2%
	<i>All other exporters</i>	20.6%

**Figure 1: Dumping margins**

The dumping investigation was terminated so far as it related to exports by POSCO, Hyundai, JIGANG and all exports from Taiwan on 10 September 2013.

### 1.5.5 Subsidisation (Chapter 7 of this report)

The Commission has found that plate steel exported to Australia from China was subsidised. The Commission has found the following subsidy margins:

Manufacturer / exporter	Subsidy margin
JIGANG	2.6%
<i>All other exporters</i>	36.9%

**Figure 2: Subsidisation margins**

<sup>8</sup> The manufacturers / exporters listed in figure 1 may supply the goods directly or indirectly through traders.



## **1.5.6 Injury Assessment (Chapter 8 of this report)**

The Commission is satisfied that the Australian industry suffered material injury in the form of:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenues;
- reduced return on investment; and
- loss of employment.

## **1.5.7 Has dumping and subsidisation caused material injury (Chapter 9 of this report)**

The Commission is satisfied that the Australian industry suffered material injury as a result of dumped imports from China (except by JIGANG), Indonesia, Japan and Korea (except by Hyundai and POSCO) and subsidised imports from China (except by JIGANG).

## **1.5.8 Will dumping and subsidisation and material injury continue? (Chapter 10 of this report)**

The Commission is satisfied that dumping and subsidisation and material injury will continue if measures are not imposed.

## **1.5.9 Non-injurious price (Chapter 11 of this report)**

The Commission consider that the non-injurious price (NIP) for all exports other than those by JIGANG can be determined by setting the unsuppressed selling price (USP) equal to the exporters' normal values, on the basis that the injury caused by dumping and subsidisation is due to BlueScope's matching of import prices.

In relation to JIGANG, the Commission considers the NIP can be set equal to the export price of those goods.

## **1.5.10 Proposed measures (Chapter 12 of this report)**

The Commission has derived NIPs at the level of normal values for respective exporters. This means that the lesser duty rule does not come into effect and the proposed measures are set at the full margin of dumping.

The Commission recommends the Minister determine the amount of interim dumping duty payable be worked out in accordance with the combination of fixed and variable duty method. The fixed duty should be measured as a proportion of the export price of the particular goods.

## **2 BACKGROUND**

### **2.1 Introduction**

On 21 December 2012, an application was lodged on behalf of BlueScope requesting that the Minister publish a dumping duty notice in respect of plate steel exported to Australia from China, Indonesia, Japan, Korea and Taiwan.

The application also requested that the Minister publish a countervailing duty notice in respect of exports from China.

On 12 February 2013, following consideration of the application, the CEO<sup>9</sup> of ACBPS decided not to reject the application and ACBPS initiated the dumping and countervailing investigation.

Public notification of initiation of the investigation was made in *The Australian* newspaper on 12 February 2013. Australian Customs Dumping Notice (ACDN) No. 2013/18 and ACDN 2013/20 provide further details of this investigation and is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The investigation period for the assessment of dumping and subsidisation is 1 January 2012 to 31 December 2012. The Commission examined the Australian market from 1 January 2008 for the purpose of analysing the condition of the Australian industry.

### **2.2 Responding to the SEF**

In formulating this report to the Minister, the Commissioner has had regard to:

- the application concerned;
- any submissions concerning publication of the notice to which the delegate of the Commissioner has had regard for the purpose of formulating SEF198;
- SEF 198;
- any submission in response to SEF198 received by the Commission within 20 days after the day that statement was placed on the Public Record; and
- any other matters considered relevant.

The Commission received the following submissions in response to SEF 198 and which were taken into account in preparing REP 198:

- Australian Steel Association – 21 August 2013
- Bisalloy Steels Pty Ltd – 21 August 2013
- BlueScope – 21 August 2013
- BlueScope – 30 August 2013
- Dianjaya – 21 August 2013

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<sup>9</sup> From 1 July 2013, this role is being performed by the Commissioner of the Anti-Dumping Commission.

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- DSM and GS Global Corporation – 5 August 2013
- Ministry of Commerce of the People's Republic of China – 23 August 2013
- JIGANG – 20 August 2013
- JIGANG – 3 September 2013
- Krakatau – 27 August 2013
- Krakatau – 29 August 2013
- Vulcan Steel Pty Ltd – 21 August 2013

In addition to the submissions listed above, in formulating the final report the Commissioner also had regard to the following submissions that were received prior to the SEF but that were not able to be addressed at that time:

- BlueScope – 31 July 2013
- JIGANG – 31 May 2013

The following submission was received 3 business days before this final report was due to the Minister and was not able to be considered as in the opinion of the Delegate, to do so would prevent the timely preparation of the report to the Minister.

- Bisalloy Steels Pty Ltd – 11 September 2013

The following submissions have been addressed in TER 198:

- Hyundai – 16 August 2013
- BlueScope – 4 July 2013, 31 July 2013, 20 August 2013, 30 August 2013
- JIGANG – 20 August 2013
- POSCO – 20 August 2013
- Bisalloy Steels Pty Ltd – 21 August 2013

### **3 THE GOODS AND LIKE GOODS**

#### **3.1 Findings**

The Commission considers that locally produced plate steel is like to the goods the subject of the application (the goods).

#### **3.2 Legislative framework**

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

*“Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.*

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commission assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

#### **3.3 The goods under investigation**

Following the initiation of the investigation, a number of interested parties sought clarification regarding goods that are subject to the investigation. After consultation with BlueScope, ACDN 2013/20<sup>10</sup> was issued to provide clarification regarding the goods that are covered by the investigation. The ACDN did not alter the description of the goods as described in the application. The following section outlines the goods under investigation.

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<sup>10</sup> ACDN 2012/62 is available on the Commission's website at [http://www.adcommission.gov.au/notices-reports/acdn/acdn\\_2013.asp](http://www.adcommission.gov.au/notices-reports/acdn/acdn_2013.asp)

### **3.3.1 Goods description**

Flat rolled products of:

- iron;
- non-alloy steel; or
- non-heat treated alloy steel of a kind commonly referred to as Quench and Tempered (Q&T) Green Feed

of a width greater than 600 millimetres (mm), with a thickness equal to or greater than 4.75mm, not further worked than hot rolled, not in coils, with or without patterns in relief.

Goods excluded from the investigation are:

- 250 megapascal (MPa) yield strength grades of plate steel with a thickness greater than 150mm;
- 350 megapascal (MPa) yield strength grades of plate steel with a thickness greater than 100mm;
- Q & T Green Feed grades of plate steel with a thickness greater than 105mm; and
- heat treated Q & T grades of plate steel.

### **3.3.2 Tariff classification**

The application states that plate steel is classified to the following tariff subheadings:

7208.40.00 statistical code 39;

- 7208.51.00 statistical code 40;
- 7208.52.00 statistical code 41;
- 7225.40.00 statistical codes 22 and 24.

For tariff subheadings:

- 7208.40.00 statistical code 39;
- 7208.51.00 statistical code 40; and
- 7208.52.00 statistical code 41:

the general rate of duty is currently 5 per cent for goods imported from Japan and free for imports from China, Indonesia, Korea and Taiwan.

For goods imported under the tariff subheading 7225.40.00 statistical codes 22 and 24, the general rate of duty for goods imported from Japan, Korea and Taiwan is 5 per cent and 4 per cent for imports from China and Indonesia.

### **3.3.3 Surface treatments and further working**

World Customs Organisation Harmonized Commodity Description and Coding System Explanatory Notes (HSEs) covering Tariff heading 7208, including subheadings 7208.40, 7208.51 and 7208.52, state that products of these

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subheadings may have been subjected to a variety of surface treatments a summary of which is below:

- Processes to remove oxide scale and crust;
- Coating to protect products from rust or other oxidation and to facilitate handling;
- Polishing, burnishing or similar treatments;
- Operations to increase resistance to rusting and processes which form a film of oxide on the surface of the product to improve its appearance.
- Surface treatments from immersing the product in a solution of metallic acid phosphates e.g. phosphatising, parkerising or bonderising, oxalating, borating etc;
- Chromating.

In addition, products of these subheadings may have been subjected to the following working or surface treatments:

- Heat treatments to improve the properties of the metal such as annealing, hardening or tempering;
- Descaling through a chemical or heat process or through mechanical descaling (including sandblasting).
- Skin or pinch passing, stamping, punching etc with simple inscriptions.

The full HSEs are available to customs brokers and contain additional detail.

### 3.3.4 Product standards

There are a number of relevant international standards for plate steel products that define specific grade designations, including the recommended or guaranteed properties of each of these product grades.

Q&T green feed products are often 'negotiated mill to customer' chemistry grades of plate steel.

The application contained the below table of relevant Australian standards matched with the comparable International standard.

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Australian and International Standards:- Structural Grades			
AS/NZS 3678	ASTM	JIS	China
Grade	Grade	Grade	Grade
<b>250</b>	A36	G3101-SS400	GB/T 700 - Q275
250L15			
250L20			
250Y20			
250L40			
250Y40			
<b>300</b>			
300L15			
300L20			
300Y20			
300L40			
300Y40			
<b>350</b>	A572 -345 (50)	G3101-SS490	GB/T 1591 - Q345
350L15			
350L20			
350Y20			
350L40			
350Y40			
<b>400</b>	A572 -415 (60)		GB/T 1591 - Q390
400L15			
400L20			
400Y20			
400L40			
400Y40			
<b>450</b>	A572 -450 (65)		GB/T 1591 - Q420
450L15			GB/T 1591 - Q460
450L20			
450Y20			
450L40			
450Y40			

Figure 3: Australian and International Standards – structural grades

Australian and International Standards:- Pressure Vessel and Boiler Grades	
AS 1548	ASTM
Grade	Grade
PT 430	A516 - 415 (60)
PT 460	A516 - 450 (65)
PT 490	A516 - 485 (70)
PT 490	A516 - 485 (70)
PT 490 N	A516 - 485 (70) N

Figure 4: Australian and International Standards – pressure vessel and boiler grades

### **3.4 Claims by interested parties**

A number of interested parties made submissions in relation to the determination of like goods as summarised below. Specifics of any non-confidential claims submitted, where not discussed below, are available in the respective submissions/reports available on the public record.

#### **3.4.1 Grade and size range of plate steel not produced by BlueScope**

The Commission has received correspondence from importers Adsteel Brokers Pty Ltd (Adsteel) and GS Global Australia (GSG) regarding the exemption of plate steel produced to grade K1042 or equivalent. Adsteel submit that BlueScope does not produce K1042 plate over 100mm and have enquired about options to have such plate steel exempt from any anti-dumping measures put in place by the Minister. GSG further submits that K1045 plate steel over 80mm thick is not produced in Australia and should not be part of the investigation.

Following publication of the SEF, the Commission has received an exemption request for plate steel produced to AS3678-K1042 or equivalent in thicknesses over 100mm.

The Commission determined that it would not have sufficient time to make a recommendation regarding this exemption request to the Minister at the time of preparing the final report. As such, the Commission will accept exemption requests after publication of the Minister's decision.

#### **3.4.2 Submission in response to SEF by Vulcan Steel Pty Ltd**

Vulcan Steel Pty Ltd (Vulcan) submitted<sup>11</sup> that if the final report recommends the publication of a dumping duty notice, the following recommendations for exemption be made to the Minister:

- 1) All imports by Vulcan on the grounds that BlueScope is not offering its product for sale to all purchasers on equal terms under like conditions; and
- 2) Imports of plate steel by Vulcan that are outside of BlueScope's manufacturing capability.

The submission did not nominate a size range for plate steel that is outside of BlueScope's manufacturing capability.

Where customers consider that BlueScope is unable to supply them with plate steel to specifications they require, the Commission invites parties to provide evidence that grounds exist to have certain goods exempt from duty.

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<sup>11</sup> Submission dated 21 August 2013



As stated above, the Commission will accept exemption requests after publication of the Minister's decision. The Commission's website <http://www.adcommission.gov.au> provides further information on exemption inquiries.

### 3.4.3 Q&T green feed and non-alloy plate steel

Bisalloy Steels Pty Ltd (Bisalloy) provided a submission seeking the redefinition of the goods description to reflect the separate markets that existed for Q&T green feed and non-alloy plate steel. The submission stated that the goods were not alike on several grounds including chemical and physical properties, downstream commercial use and further processing requirements.

BlueScope argued in a submission in response to Bisalloy that Bisalloy's customised imports of Q&T green feed plate steel competed directly with BlueScope manufactured plate steel. BlueScope further argued that chemical composition and technical specification alone were not sufficient to exclude Q&T green feed imports from the goods under consideration description.

In its reply to Bisalloy,<sup>12</sup> the Commission stated that there were no provisions in the Act to redefine a goods description or provision in the Act to terminate or withdraw in respect of particular subcategories of the goods under consideration.

## 3.5 The Commission's assessment

BlueScope alleged in its application that the industry produces like goods to the goods the subject of the application by addressing the factors in the like goods framework generally used by the Commission in making its assessment. Based on information gathered from BlueScope, importers and exporters during the investigation the Commission considers that the Australian industry produces like goods on the following grounds:

- *physical likeness* - the primary physical characteristics of imported and locally produced goods are similar (both are manufactured to achieve mechanical properties designated by Australian and international standards);
- *commercial likeness* - the imported and locally produced goods are commercially alike, directly competitive and are sold to common customers;
- *functional likeness* - the imported and locally produced goods are functionally alike as they have the same end-uses; and
- *production likeness* – based on visits to BlueScope and exporters of plate steel, the Commission has verified that the imported and locally produced goods are manufactured in a similar manner.

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<sup>12</sup> Letter Commission's letter to Bisalloy dated 1 May 2013, item no. 87 on the public record for this case.

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The Commission considers that BlueScope produces like goods that are identical to, or have characteristics closely resembling, the goods the subject of the application.

The Commission therefore considers that plate steel produced by the Australian industry is like to the goods exported from China, Indonesia, Japan, Korea and Taiwan.

## **4 AUSTRALIAN INDUSTRY**

### **4.1 Findings**

The Commission found that:

- there is an Australian industry producing like goods;
- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of BlueScope that produce like goods in Australia.

### **4.2 Legislative framework**

The Commission must be satisfied that the “like” goods are in fact produced in Australia. Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### **4.3 Production processes**

Plate steel can be produced through two methods: converting steel slab into plate steel through a Hot Strip Mill or producing plate steel from hot rolled coil (HRC).

The steel slab and HRC used to make the plate steel can be purchased by the plate steel manufacturer or, in the case of fully integrated steel manufacturers, produced in-house.

The Australian industry and some exporters are fully integrated and produce their own slab and HRC, utilised in the production of plate steel. Several exporters purchase steel slab and/or HRC to be used in the production of plate steel.

The Australian industry and several exporters manufacture plate steel from both HRC and steel slab. Certain exporters manufacture plate steel wholly from steel slab.

The first three stages of the production process for plate steel (iron making, steel making and casting) refer to the manufacture of the steel slab and HRC.

#### **4.3.1 Production process for steel slab and HRC for use in plate steel manufacture**

##### The iron making process

The main materials used in the production of iron are iron ore, coal and fluxes (limestone and dolomite). The raw materials are fed into the top of the blast furnace in predetermined proportions and sequences. Air, which is heated to about 1200°C, is blown into the blast furnace, causing the coke to burn, producing carbon monoxide which creates the required chemical reaction. The iron ore is reduced to molten iron

by removing the oxygen. Molten iron and slag is periodically drained from the blast furnace and the molten iron is transported to the steelmaking area.

### The steelmaking process

The basic oxygen steelmaking (BOS) process creates liquid steel from molten iron, scrap steel and alloying materials. The BOS vessel is charged and a lance that blows 99% pure oxygen onto the steel and iron causes the temperature to rise to about 1700°C. This melts the scrap, lowers the carbon content of the molten iron and helps remove unwanted elements. Samples are tested and computer analyses of the steel are done to ensure the desired chemistry is achieved. The steel can be further refined by adding alloying materials which give the steel special properties required by the customer. The liquid steel is cast into slabs of various dimensions so that it can be rolled.

### The casting process

Continuous casting machines mould the liquid steel into solidified blocks of steel called slabs. The liquid steel is continuously poured from the ladle into a mould at the same rate as continuous steel cast slabs are extracted. This continuous cast slab is cut to desired lengths and the slabs are then cooled.

#### **4.3.2 Hot rolled plate manufacturing process**

The section below details BlueScope's manufacturing process for plate steel from slab and HRC. This process was verified by the Commission by a visit to BlueScope's manufacturing premises.

##### Plate produced from steel slab

Slabs produced by the Port Kembla Steelworks' continuous caster for the Plate Mill are put through a 1,200°C reheat furnace and blasted with high pressure water to remove surface scale.

The slab undergoes a series of passes through a reversing mill during which the required plate width is obtained. The slab is then sent to a second reversing mill to complete the rolling process. A series of passes through the second reversing mill results in a 'rolled length' or 'pattern.' Following rolling, the plate passes through a hot leveller to ensure it meets the required flatness standards for XLERPLATE® steel.

After cooling, the 'pattern' or 'rolled length' is sent to the processing area, where it is cut to the required size. Cutting of test pieces and inspection of the plate is carried out at this stage as specified.

##### Plate produced from HRC

Slabs are heated up in the Hot Strip Mill's walking beam furnace and then scale (surface iron oxide) from the furnace is removed by high pressure water sprays.

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The next step is the reverse roughing mill in which the product passes through multiple times until it is reduced in thickness and lengthened considerably. The bar then travels to a coil box where it is rolled up to form a coil.

In the final stage of rolling the coil passes through rollers that gradually reduce the thickness of the strip. The strip is then cooled using water sprays and coiled into a strip.

Hot Rolled Coils are taken to a secondary processing facility. Here they are sheared to length and levelled flat to make XLERPLATE LITE® steel.

### **4.3.3 Australian industry production**

The Commission undertook a verification visit at BlueScope's Port Kembla Steelworks. BlueScope is an integrated steel maker producing steel through to final hot rolled products.

BlueScope uses two methods to produce plate steel; the Port Kembla Steelworks Plate Mill converts slab into XLERPLATE® plate steel; and the Port Kembla Hot Strip Mill produces XLERPLATE LITE® from hot rolled coil.

These production processes and costs were reviewed during this visit as detailed in the Australian industry visit report on the public record.

The Commission is satisfied that BlueScope undertakes more than one substantial process of plate steel manufacture at its Port Kembla Steelworks. The Commission has not identified any Australian manufacturers of plate steel other than BlueScope.

## **5 AUSTRALIAN MARKET**

### **5.1 Findings**

The Commission estimates that in 2012 the size of the Australian plate steel market was approximately 500,000 metric tonnes (MT). The Commission has established that plate steel is sold mainly into three market sectors:

- Mining;
- Engineering and construction (or infrastructure); and
- Transport and equipment manufacturing.

In addition, there are smaller market sectors for plate steel including non-residential construction, manufacturing and agriculture.

### **5.2 Market size**

The Commission has used information from the Australian industry, exporters, importers and the ACBPS import database to examine the Australian market for plate steel.

The following graph depicts the Commission's estimate of the Australian market size for plate steel. The Commission estimates that in 2012 the size of the Australian market for plate steel was approximately 500,000 tonnes. The chart shows that the Australian market for plate steel contracted in 2009 then steadily expanded over the remainder of the injury period.

In 2012 imports from all countries were found to account for approximately 40% of the Australian market, an increase of 50% from 2011. Import volumes are predominantly comprised of goods originating from the nominated countries.

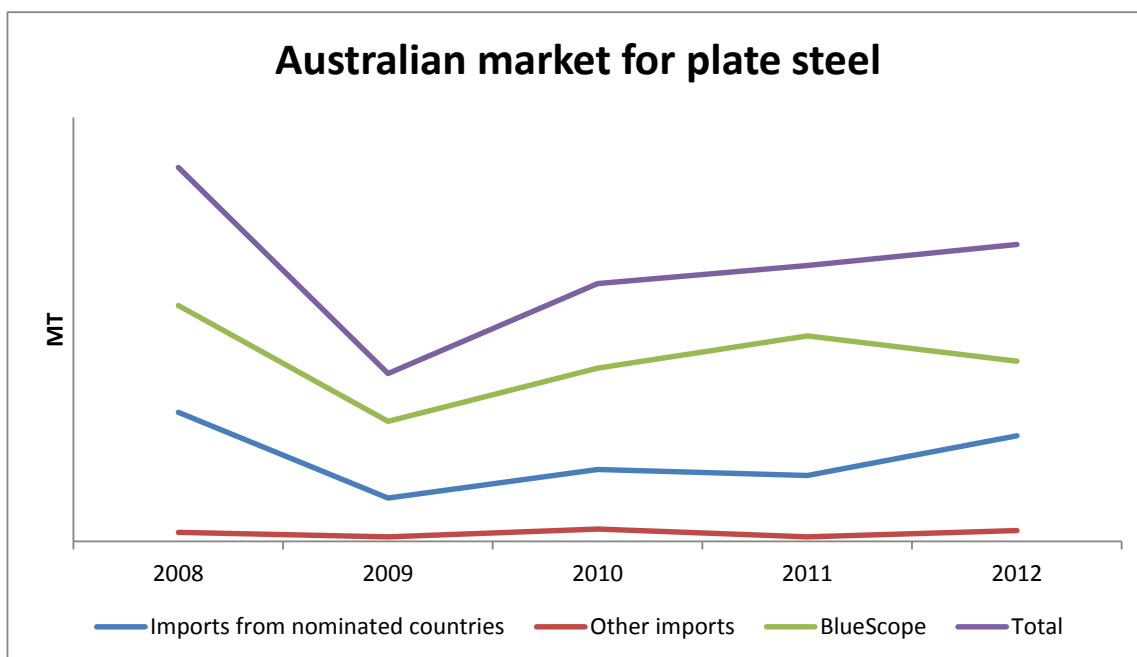


Figure 5: Australian market for plate steel - 2008 to 2012

### 5.3 Importers

The Commission performed a search of the ACBPS import database and identified importers of plate steel.

The Commission undertook visits to the following importers and prepared reports following the visits:

OneSteel Trading Limited;  
Vulcan Steel Limited;  
GS Global Australia Pty Ltd;  
CMC Australia Pty Ltd;  
Sanwa Pty Ltd;  
Mitsubishi Australia Pty Ltd; and  
Bisalloy.<sup>13</sup>

These visited importers account for approximately 65% of the volume of plate steel imported from the nominated countries in the investigation period.

Visit reports for the above importers can be found on the electronic public record available on the Commission website at <http://www.adcommission.gov.au/>

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<sup>13</sup> During the verification visit Bisalloy was found not to be an importer of the goods, and was treated as an end user.

## **5.4 Market supply and structure**

The Commission has established that the Australian market for plate steel is supplied through local production and imports from a number of source countries.

The Australian market for plate steel products is dominated by three main market sectors:

- mining;
- engineering and construction (or infrastructure); and transport and equipment manufacturing.

In addition there are smaller market sectors for plate steel including non-residential construction, manufacturing and agriculture.

Applications for plate steel in the mining sector include machinery and equipment as well as repairs and maintenance.

In the engineering and construction sector, plate steel is used in infrastructure such as roads, railways, bridges and ports as well as in energy generation, water transmission and other heavy industry.

Transport and equipment applications of plate steel include road, rail and marine freight as well as defence projects.

BlueScope stated that the end use application of each product varies within the primary market sectors. It claimed that locally produced and imported goods are used interchangeably across a variety of applications in the Australian market. The Commission has verified this statement via information gathered from importers and exporters.

The market for Q&T green feed is different to the market for non-alloyed plate steel sold by BlueScope. Q&T green feed is only sold to one customer in Australia. The Q&T green feed undergoes a quenching and tempering process by the customer who then sells the final Q&T plate steel.

A large proportion of non-alloyed plate steel is sold via distributors, many of whom offer a range of services such as smaller parcels of product, combining deliveries with other steel products along with credit facilities and further processing (such as cutting, drilling and shaping).

With the exception of BlueScope Distribution, all of BlueScope's distributor customers also source imported plate steel. BlueScope indicated that some large end-user customers directly import plate steel rather than purchasing through a distributor. BlueScope and importers of plate steel compete in all states and territories in Australia and across all market segments via the same distribution channels in order to sell product into the market.



## **5.5 Alternative products**

BlueScope stated that generally plate steel is not substitutable with any other product to any significant degree. Aluminium in some instances is substitutable but due to a quite different weight/cost proposition, generally these two products do not compete.

BlueScope was asked whether customers could buy imported HRC and have it cut into plate steel. BlueScope responded that this is not common given the additional costs of importing HRC and cutting it in Australia.

## 6 DUMPING INVESTIGATION

### 6.1 Findings

Dumping margins for the investigation period were calculated by comparing weighted average export prices with the corresponding weighted average normal values. Dumping margins are summarised in the following table:

Country	Manufacturer / exporter <sup>14</sup>	Dumping margin
China	JIGANG	<2%
	<i>All other exporters</i>	22.1%
Indonesia	Rajapaksi	8.6%
	Krakatau	11.3%
	Dianjaya	11.3%
	<i>All other exporters</i>	19%
Japan	<i>All exporters</i>	14.3%
Taiwan	Shang Chen	<2%
	Chung Hung	5%
	China Steel Corporation (CSC) and China Steel Global Trading (CSGT)	<2%
Korea	Hyundai Steel Company (Hyundai)	<2%
	DSM	18.4%
	POSCO	<2%
	<i>All other exporters</i>	20.6%

Figure 6: Dumping margins

The dumping investigation so far as it relates to Taiwan and exports by JIGANG (from China), Hyundai and POSCO (from Korea) was terminated on 10 September 2013 due to:

- no dumping – Hyundai and POSCO (Korea);
- negligible dumping margin – JIGANG (China); and
- negligible volumes of dumping (Taiwan).

### 6.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC of the Act respectively.

This chapter explains the results of investigations by the Commission into whether plate steel was exported from China, Japan, Indonesia and Korea at dumped prices during the investigation period.

<sup>14</sup> The manufacturers / exporters listed in figure 1 may supply the goods directly or indirectly through traders.

## **6.2.1 Exporters**

At the commencement of the investigation, a large number of potential exporters of plate steel from the nominated countries were identified. Questionnaires were forwarded to all known exporters from the nominated countries, with a view to investigating their exportations.

The Commission received questionnaire responses that were assessed by the Commission as being substantially complete from:

- JIGANG;
- Rajapaksi;
- Krakatau
- Dianjaya;
- Hyundai;
- DSM;
- GS Global (GSG);
- POSCO;
- Shang Chen;
- Chung Hung;
- CSC; and
- CSGT.

The Commission assessed the level of verification required for all exporters that satisfactorily completed the exporter questionnaire. Individual dumping margins for all known exporters have been calculated based on the verified information of each cooperating exporter.

GSG is an intermediary for goods manufactured by DSM. As the Commission determined DSM to be the exporter of these goods, the dumping margin has been determined for DSM rather than GSG.

The verification visit reports for each of the exporters are available at the Commission's website <http://www.adcommission.gov.au/> and provide additional detail to what is discussed below.

## **6.2.2 Exporters whose data was assessed without verification**

Verification visits were not undertaken in relation to the following exporters due to the relative low volume of their exports during the investigation period:

- Chung Hung;
- CSC; and
- CSGT.

The Commission calculated dumping margins after analysing the data submitted by these entities in the questionnaire responses.

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Due to the ownership structure of CSC and CSGT, these two exporters were grouped together for the purposes of calculating a single dumping margin. Further detail is contained in the Dumping Margin Calculation reports for CSC/CSGT available on the EPR at <http://www.adcommission.gov.au/cases/EPR198.asp>

### **6.2.3 Insufficient exporter questionnaire responses**

Exporter questionnaire responses were also submitted by:

- China - Jiangyin Xingcheng Special Steel Works Co. Ltd and Shanghai Tycoon Co. Ltd;
- Japan - JFE Shoji Trade Corporation (JFE) and Nippon Steel Trading Co. Ltd (NSSMC); and
- Taiwan -Pinwan Enterprise Co. Ltd.

Questionnaire responses submitted by these parties provided limited information required by the exporter questionnaire. The Commission considered the information provided in these questionnaire responses was not suitable for verification and it was unable to make a reasonable assessment of dumping. Each party was contacted by the Commission and informed of the deficiencies in its respective questionnaire response, and the Commission's finding that the response was not suitable for verification. These letters can be found on the public record for this case at <http://www.adcommission.gov.au/cases/EPR198.asp>. The Commission determined that these exporters have not cooperated with the investigation. The export price for exports by these parties was established under s.269TAB(3), having regard to all relevant information. The normal value for domestic sales by these parties was established under s.269TAC(6) , having regard to all relevant information. Exporter specific dumping margins for these exporters have not been assessed.

## **6.3 China**

### **6.3.1 JIGANG**

The dumping investigation was terminated on 10 September 2013 so far as it relates to exports by JIGANG. Details of the calculation of JIGANG's export price and normal value are set out in TER 198.

TER 198 sets out the Commission's finding that a market situation existed in relation to domestic sales of plate steel in China during the investigation period. For convenience, details of the Commission's assessment of market situation and the reasons for this conclusion are attached to this report at Appendix 1.

### **6.3.2 All other Chinese exporters (other than JIGANG)**

Export prices for exports by all other Chinese exporters were established in accordance with s.269TAB(3) of the Act, as sufficient information for these exporters has not been furnished, or is not available, to enable the export price of the goods to

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be ascertained under any other methodology. The export price has been determined having regard to all relevant information.

The Commission considered whether export prices from ACBPS' import database could be used. It was assessed that they could not be relied on because a number of the listed suppliers in the import database are not manufacturers of plate steel, rather they are trading companies. As such, the export price data entered at the level of the trader is not representative of the export price from the manufacturer, the point at which the Commission normally determines dumping.

The Commission considered the most reliable export price information was verified data obtained from the one cooperating exporter, JIGANG. Based on information gathered from importers and exporters the Commission considers it is reasonable to conclude that all other Chinese exporters would likely export the non-alloyed grades of plate steel, rather than Q&T green feed. This is because the Commission has only identified one Australian customer for Q&T green feed, being Bisalloy. The Commission has verified that Bisalloy only purchases its Q&T green feed from BlueScope, JIGANG and POSCO. The Commission used the annual weighted average export price for all non-alloyed grades of plate steel for the entire investigation period from JIGANG, excluding any part of that price that relates to post-exportation charges.

Normal values for domestic sales by all non-cooperating Chinese exporters were established in accordance with s.269TAC(6) of the Act, as sufficient information for these exporters has not been furnished, or is not available, to enable the normal value of the goods to be ascertained under any other subsection. Specifically, the Commission used the annual weighted average normal value for all non-alloyed grades of plate steel for the entire investigation period from the cooperating exporter, JIGANG.

JIGANG's normal value was assessed after replacing the cost of coking coal in JIGANG's records because the Commission found that it did not reflect a competitive market cost. Details of the Commission's assessment of an appropriate benchmark are contained in Appendix 2.

The dumping margin for plate steel for non-cooperating Chinese exporters was established in accordance with s.269TACB(2)(a) of the Act, by comparing the annual weighted average of export prices over the whole of the investigation period with the annual weighted average of normal values over the whole of that period.

The dumping margin for non-cooperating Chinese exporters is **22.1%**.

### **Submissions received**

In response to SEF 198, the Government of China (GOC) submitted that the Commission's price analysis in relation to coking coal does not relate or only partly relates to the current investigation period. The GOC also claims that it is not clear whether the most relevant information provided by JIGANG was considered in the analysis in the SEF in relation to coking coal.

## The Commission's Assessment

The Commission used data provided by JIGANG to determine the actual price paid for coking coal in China during the investigation period. To determine the benchmark for coking coal the Commission used Chinese export prices relevant to the investigation period and provided by the GOC. No information from the aluminium zinc coated steel and galvanised steel cases was used to assess whether coking coal costs reflected competitive market costs for this investigation.

### 6.4 Korea

#### 6.4.1 DSM

##### Export Prices

Export prices for DSM were established under s.269TAB(1)(c) using the ex-works (EXW) export price from DSM to the intermediary. Inland freight costs incurred by DSM were deducted from DSM's export price.

##### Normal Values

Normal values for certain sales were determined under s. 269TAC(1) using the domestic selling price of like goods. In relation to some models of plate steel exported to Australia, there were no domestic sales at prices that were in the ordinary course of trade (OCOT). Therefore, the normal value was determined under s.269TAC(2)(c) by using the cost of production of the goods and the selling, general and administrative (SG&A) expenses these goods would incur if they were sold domestically. In addition a rate of profit was added being the profit of sales of like goods sold in OCOT over the investigation period, except where all domestic sales of a particular model were unprofitable, in which case no profit was added.

The following adjustments were made in accordance with s.269TAC(8):

- inland freight – a downwards adjustment was made for the actual cost of domestic inland freight as normal values and export prices were compared at the EXW level;
- SG&A – a downwards adjustment was made for SG&A expenses relevant to domestic sales and an upwards adjustment made for SG&A expenses relevant to export sales;
- credit terms – credit terms are provided for domestic sales but not for export sales and a downwards adjustment to the normal value was made accordingly;
- bank charges – an upwards adjustment was made to the normal value for the bank costs incurred by DSM in selling the goods to the intermediary for the export market;
- handling charges - an upwards adjustment was made for the handling charges incurred by DSM for export sales. This adjustment has been made on the basis of the actual handling charges incurred for each sale.

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The dumping margin for DSM is **18.4%**.

### **Submissions received**

#### *DSM and GSG regarding export price*

DSM and GSG's joint submission of 5 August 2013 rejected the Commission's finding in the DSM visit report that the export price of the goods is the EXW price charged by DSM to GSG. It submitted that the price paid by the importer be used as the export price in determining a dumping margin for the goods manufactured by DSM.

The submission refers to the JIGANG visit report where the export price is the invoice price from Jigang Hong Kong Holding Co. Ltd (Jigang HK) to the Australian importer.

The Commission clarifies that exports by JIGANG were through a legally related intermediary, Jigang HK, and that adjustments for Jigang HK's SG&A costs were made to the normal value. Neither DSM nor GSG have suggested that they are legally related entities, and as such, the approach taken for JIGANG is not appropriate in the case of DSM and GSG.

Other reasons for the Commission's determination of DSM as the exporter are detailed in the DSM visit report. Submissions by DSM and GSG in response to the SEF presented the same points that were considered in the visit report and in the SEF.

#### *DSM regarding level of trade adjustments - domestic sales to unaffiliated end users and unaffiliated distributors*

The 5 August 2013 submission also claimed that two level of trade adjustments must be made to ensure fair comparison between export price and normal value. Representatives of DSM and GSG met with the Commission on 26 August 2013 to discuss the submission. A record of meeting pertaining to this discussion is on the electronic public record for this case available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The first level of trade adjustment sought was to account for differences between DSM's distributor sales and end user sales on the domestic market.

DSM claimed that its sales prices to unaffiliated end-users in the Korean domestic market are a higher price than its sales prices to unaffiliated distributors in the Korean domestic market. DSM submitted that all of its export sales are at the distributor-equivalent level. DSM submitted that for normal values based on domestic selling prices, a downward adjustment should be applied to DSM's end-user sales to account for the difference in prices to these two levels of trade. The confidential version of the submission provided the percentage price difference on a quarterly basis.

The Commission examined DSM's domestic selling prices in the ordinary course of trade to unaffiliated distributors and unaffiliated end-users on a quarterly basis and



by grade and thickness. The data showed a minor price difference between sales to end users and distributors, with prices to end-users at times higher and at other times lower than sales prices to distributors. The Commission considers that it is appropriate to make the price comparison only on sales in the ordinary course of trade as it is only the domestic sales in the ordinary course of trade that are used for normal value purposes.

The Commission finds that a downwards adjustment to DSM's domestic selling prices to end-users is not warranted.

DSM also claimed that for normal values based on constructed costs an adjustment was required as it achieved a higher level of profit on domestic sales to end-users than on domestic sales to distributors. DSM requested that only the level of profit incurred on domestic sales to distributors be included in constructed normal value calculations.

The Commission has compared the level of profit on domestic sales in the ordinary course of trade to unaffiliated end-users versus unaffiliated distributors. The Commission finds that an amendment to the level of profit applied for constructed normal values is not supported by analysis of the data.

### Level of trade adjustment – to reflect different levels of trade for domestic and export sales

DSM claimed that its sales to GSG are at a different level of trade to its sales to domestic customers.

DSM reasoned that an adjustment for GSG's margin should be made to equate domestic sales with export sales. DSM argued that without such an adjustment the Commission's normal value calculation will be flawed. DSM submitted that a downwards adjustment should be made to normal values based on GSG's margin.

There is no evidence to show that DSM's selling prices to GSG or on the domestic market are influenced by DSM's consideration of GSG as an intermediary. Further, the Commission has considered GSG's margin and finds that there is no evidence that DSM took GSG's margin into consideration in its selling prices to GSG over the investigation period. The Commission has already made a downward adjustment to the normal value for the different selling costs incurred between sales to distributors on the domestic market and sales to GSG.

## **6.4.2 All other Korean exporters**

### **Export Prices**

Export prices for export sales by all non-cooperating Korean exporters were established in accordance with s.269TAB(3), as sufficient information for these exporters has not been furnished, or is not available, to enable the export price of the goods to be ascertained under any other methodology. The export price has been determined having regard to all relevant information.



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The Commission considered whether export prices from ACBPS' import database could be used. It was assessed that they could not be relied on because a number of the listed suppliers in the import database are not manufacturers of plate steel, rather trading companies. As such, the export price data entered at the level of the trader is not representative of the export price from the manufacturer, the point at which the Commission normally determines dumping.

The Commission used the lowest annual weighted average export price during the investigation period from the cooperating exporters, excluding any part of that price that relates to post-exportation charges.

### **Normal Values**

Normal values for domestic sales by all non-cooperating Korean exporters were established in accordance with s.269TAC(6), as sufficient information for these exporters has not been furnished, or is not available to enable the normal value of the goods to be ascertained under any other subsection. Specifically, the Commission used the highest annual weighted average normal value during the investigation period from the cooperating exporters, minus favourable adjustments.

The dumping margin for plate steel for non-cooperating Korean exporters was established in accordance with s.269TACB(2)(a), by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for non-cooperating Korean exporters is **20.6%**.

## **6.5 Indonesia**

### **6.5.1 Rajapaksi**

#### **Export Prices**

Export prices for sales to certain customers were established under s.269TAB(1)(a) and for other customers export prices were determined under s.269TAB(1)(c) by reference to free on board (FOB) invoice prices from Rajapaksi.

#### **Normal Values**

Normal values were determined under s.269TAC(1) using sales in the domestic market that were arm's length transactions and sold at prices that were in the ordinary course of trade. The following adjustments were made in accordance with s.269TAC(8):

- inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;
- bank charges – certain bank charges are incurred on export sales but not on domestic sales and an upwards adjustment to the normal value has been made accordingly;

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- specification differences - for one of the exported models of plate steel there were no comparable domestic sales of a similar thickness range. Therefore domestic selling prices of the next most like model (being high steel with a thickness up to 80mm) has been used. Given that plate steel of a thickness exceeding 80mm incurs an extra charge according to Rajapaksi's extras price list, an upward adjustment to the normal values has been made to reflect this difference; and
- timing difference – for two of the models exported to Australia, there were no domestic sales in the corresponding month for comparison purposes. Therefore OCOT domestic sales of the like models in the preceding month have been used; however given the fluctuation in Rajapaksi's production costs, it is considered appropriate to make adjustment to the normal values to account for the different months. The timing adjustment has been calculated using the percentage change in the cost to make between the relevant months.

The dumping margin for Rajapaksi is **8.6%**.

### 6.5.2 Krakatau

#### Export Prices

Export prices for Krakatau were established under s.269TAB(1)(a).

#### Normal Values

Normal values were determined under s.269TAC(1) using sales in the domestic market that were arm's length transactions and sold at prices that were in the ordinary course of trade. The following adjustments were made in accordance with s.269TAC(8):

- packaging – different packaging materials are used for domestic and export sales. A downward adjustment to the normal value was made for actual domestic packaging costs and an upward adjustment to the normal value was made for export packaging costs;
- inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port; and
- credit terms – credit terms are provided for domestic sales but not for export sales and a downwards adjustment to the normal value was made accordingly.

The dumping margin for Krakatau is **11.3%**.

**Submissions received**

**Krakatau regarding calculation of normal value when no domestic sales in OCOT**

Krakatau's submission of 21 August 2013 sought an amendment to the HA 250 normal value calculations for certain months due to perceived inconsistencies in the calculation methods.

The visit team calculated normal values for the months in question based on domestic sales prices from the preceding and/or succeeding months, adjusted for price movements in these preceding and/or succeeding months. The Commission finds that the normal value calculations for HA 250 for the months in question were calculated appropriately and that the calculations are without error.

Specifically, the visit team calculated the HA250 normal value for the first month in question using the average of the values from the preceding and succeeding months. The Commission confirms that the visit team considered the trend in domestic sales prices from the surrounding months in the normal value calculation.

For the second two months in question, the visit team calculated the HA250 normal values based on the domestic sales prices from the preceding month, adjusted for the average of price movements in preceding months.

Krakatau's submission also proposed an alternate method of calculation for the HA 350 normal value for circumstances where there were either no sales in the ordinary course of trade or insufficient volume of sales in the ordinary course of trade.

Normal values for Krakatau were established under s.269TAC(1) using sales in the domestic market that were arm's length transactions and sold at prices that were in OCOT.

Where there was an insufficient volume of domestic sales in the OCOT for particular models normal values were established under s.269TAC(1) based on domestic sales of similar models and an adjustment based on observed price differences.

Where there were no domestic sales in the month of export, normal values were established under s.269TAC(1) using a domestic price for that model from a different month and an adjustment for movements in price over the period.

**Krakatau submission dated 27 August 2013 regarding export price and normal value calculation**

Krakatau submitted that adjustments should be made to the export price to make it comparable to the normal value.

The Commission clarifies that the export price used in dumping calculations is the actual export price. Any adjustments for fair comparison are made to the normal value.

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In this case the export price that was verified consists of a free on carrier (FCA) price, which is the price delivered to the buyer's warehouse at port of exportation.

The normal values were adjusted to the same terms and conditions as the export price to make those sales comparable. To do this domestic inland freight and packaging is deducted and export inland freight and packaging is added.

Krakatau's submission also proposed an amendment to the index used to calculate the normal values for HA 350. The index was calculated using export prices comprising invoice value, packing and inland transport. The export prices thus consist of the verified invoice value plus the addition of amounts for packing and inland freight.

Adding the amounts suggested by Krakatau to the export price does not provide a proper comparison with the normal values. As noted above, the actual export price is used in dumping calculations with any adjustments made to the normal value to ensure fair comparison.

### 6.5.3 Dianjaya

#### Export Prices

Export prices for Dianjaya were established under s.269TAB(1)(a).

#### Normal Values

Normal values were determined under s.269TAC(1) using sales in the domestic market that were arm's length transactions and sold at prices that were in the ordinary course of trade. The following adjustments were made in accordance with s.269TAC(8):

- inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;
- commissions – Dianjaya incurred commission expenses on its domestic sales that it did not incur on its export sales and a downwards adjustment to the normal value has been made accordingly;
- bank charges - Dianjaya incurred bank charges on its domestic sales that it did not incur on its export sales and a downwards adjustment to the normal value has been made accordingly; and
- credit terms – credit terms are provided for domestic sales but not for export sales and a downwards adjustment to the normal value was made accordingly.

The dumping margin for Dianjaya is **11.3%**.

## Submissions received

Dianjaya's submission of 21 August 2013 highlighted the cost difference of steel slab used to produce grade 350 plate steel above steel slab used to produce grade 250 plate steel. It submitted that its domestic selling price of grade 350 plate more than compensated for the cost differential. The submission also noted the price premium for exports of grade 350 to Australia, which the Commission notes also more than compensated for the cost differential.

Dianjaya's visit report notes that the company put forward this argument during the verification visit. The visit report also notes that the Commission's visit team compared domestic sales to the most comparable customer to the Australian customer. Based on this analysis the Commission does not consider that a further adjustment is warranted. The Commission is satisfied that no amendments are required to the dumping margin calculations for Dianjaya.

Dianjaya also submitted that the Commission should only have regard to domestic sales of like goods to profitable third party customers most akin to the Australian customer. Dianjaya requests that the Commission consider applying an adjustment to Dianjaya's domestic sales to endusers to account for a price differential between domestic sales to end users and stockist-distributors.

The Commission's verification visit report for Dianjaya notes that the company's Australian customer operates at the wholesale level of trade where domestic customers are either stockists or end-users. The visit report states that:

*"Rather than make a level of trade adjustment, we have established normal values using domestic sales to the most comparable domestic customers."*

The Commission considers that the approach taken by the visit team in determining normal values addresses Dianjaya's concerns about different levels of trade on the domestic market and does not require amendment.

## 6.5.4 All other Indonesian exporters

### Export Prices

Export prices for export sales by all non-cooperating Indonesian exporters were established in accordance with s.269TAB(3) of the Act, as sufficient information for these exporters has not been furnished, or is not available, to enable the export price of the goods to be ascertained using any other methodology. Specifically, the Commission used the lowest annual weighted average export prices for the entire investigation period from the cooperating exporters, excluding any part of that price that relates to post-exportation charges.

### Normal Values

Normal values for domestic sales by all non-cooperating Indonesian exporters were established in accordance with s.269TAC(6) of the Act, as sufficient information for

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these exporters has not been furnished or is not available, to enable the export price of the goods to be ascertained using any other methodology. Specifically, the Commission used the highest annual weighted normal value for the entire investigation period from the cooperating exporters.

The dumping margin for plate steel for non-cooperating Indonesian exporters was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for non-cooperating Indonesian exporters is **19%**.

### **6.6 Japan**

#### **6.6.1 Non-cooperating exporters**

Two exporter questionnaires were received from Japanese exporters. The Commission considered that the responses were deficient to a material degree and therefore considers those exporters have not fully cooperated with the investigation. The limited information contained in the questionnaire responses was not verified.

#### **Export Prices**

Export prices for export sales by all Japanese exporters were established in accordance with s.269TAB(3) of the Act, as sufficient information for these exporters has not been furnished or is not available, to enable the export price of the goods to be ascertained using any other methodology. Specifically, the Commission used verified data obtained from importers during the course of the investigation, which was checked against unverified data provided by the Japanese exporters.

This information was determined by the Commission to be relevant and reliable for the calculation of export prices as it used verified data provided from the abovementioned importers and also reconciled to information submitted by the Japanese exporter in its incomplete questionnaire response.

#### **Normal Values**

As noted earlier, none of the Japanese exporters provided information to enable normal values to be based on domestic sales or constructed domestic selling prices. In the absence of sufficient information, normal values have been determined under s.269TAC(6) using all relevant information.

Specifically, the Commission used monthly Japanese plate steel prices from the Tex Report, a pricing publication provided by the applicant.

The publication data contained monthly Japanese plate steel prices, for several thickness sizes, at a base grade equivalent to 250MPa tensile strength. The publication also contained a list of extras for equivalents of 350MPa tensile strength plate. An average of the extras charged for equivalents of 350MPa plate was added to the base price for 250MPa plate to provide monthly prices for 350MPa plate.

The monthly price data for 250MPa and 350MPa plate was used to calculate quarterly normal values for 250MPa and 350MPa plate, for each thickness range.

The dumping margin for plate steel for all Japanese exporters was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for all Japanese exporters is **14.3%**.

### **6.7 Volume of dumped exports**

The Commission assessed that the volumes of plate steel exported from China, Indonesia, Korea and Japan that were dumped over the investigation period are each greater than 3% of the total import volume of plate steel over the investigation period and are therefore not negligible volumes.

Confidential Attachment 1 provides details of the dumping margin calculations.



## **7 SUBSIDY INVESTIGATION**

### **7.1 Finding**

The Commission has assessed that plate steel exported to Australia from China was subsidised during the investigation period. The subsidy margins determined for exporters are:

<b>Exporter</b>	<b>Subsidy Margin (% of Export Price)</b>
JIGANG	2.6%
All other exporters	36.9%

Source: Confidential Attachment 2

### **7.2 Investigated programs**

#### **7.2.1 Original 30 programs**

BlueScope submitted that Chinese producers of the goods have benefited from a range of countervailable subsidies during the investigation period.

Following consideration of BlueScope's claims, the Commission initiated investigations into 30 programs (Programs 1 – 30), for which it considered the application contained reasonable grounds for publication of a countervailing duty notice in relation to plate steel exported to Australia.

The Commission included questions relating to each program in the Government Questionnaire (GQ), which was forwarded to the GOC.

A response to the GQ was received from the GOC on 15 April 2013.

#### **7.2.2 Programs 31 – 42**

During the verification visit by the Commission to JIGANG, 12 other potentially countervailable subsidy programs were identified (Programs 31 – 42).

Based on its investigations with JIGANG, the Commission considered that the information available established reasonable grounds for the publication of a countervailing duty notice for these programs.

The Commission sent the GOC a Supplementary Government Questionnaire (SGQ) to pose questions and ask for documentation in relation to these new potential programs.

The GOC provided a response to the SGQ on 12 June 2013.



### 7.3 Summary of countervailable programs

After assessing all relevant information available, the Commission has found that countervailable subsidies have been received in respect of plate steel exported to Australia from China, under 42 subsidy programs.

The findings in relation each investigated program are outlined in the table below.

Program Number <sup>15</sup>	Program Name	Countervailable in respect of plate steel?
1	Hot rolled coil provided by government at less than adequate remuneration	Yes
2	Steel slab provided by government at less than adequate remuneration	No
3	Coking coal provided by government at less than adequate remuneration	Yes
4	Coke provided by government at less than adequate remuneration	Yes
5	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Yes
6	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Yes
7	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Yes
8	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Yes
9	Preferential Tax Policies in the Western Regions	Yes
10	Land Use Tax Deduction	Yes
11	Preferential Tax Policies for High and New Technology Enterprises	Yes
12	Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipments	Yes
13	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Yes

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<sup>15</sup> Refers to the program number that is used in this investigation

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Program Number <sup>15</sup>	Program Name	Countervailable in respect of plate steel?
14	Matching Funds for International Market Development for Small and Medium Enterprises	Yes
15	Superstar Enterprise Grant	Yes
16	Research & Development (R&D) Assistance Grant	Yes
17	Patent Award of Guangdong Province	Yes
18	Innovative Experimental Enterprise Grant	Yes
19	Special Support Fund for Non State-Owned Enterprises	Yes
20	Venture Investment Fund of Hi-Tech Industry	Yes
21	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Yes
22	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Yes
23	Water Conservancy Fund Deduction	Yes
24	Wuxing District Freight Assistance	Yes
25	Huzhou City Public Listing Grant	Yes
26	Huzhou City Quality Award	Yes
27	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Yes
28	Wuxing District Public List Grant	Yes
29	Anti-dumping Respondent Assistance	Yes
30	Technology Project Assistance	Yes
31	Technique transformation grant for rolling machine	Yes
32	Grant for Industrial enterprise energy management centre construction demonstration project Year 2009	Yes
33	Key industry revitalization infrastructure spending in budget Year 2010	Yes
34	Provincial emerging industry and key industry development special fund	Yes
35	Environmental protection fund	Yes
36	400 sintering desulfuration transformation fund	Yes
37	Intellectual property licensing	Yes
38	Financial resources construction special fund	Yes

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Program Number <sup>15</sup>	Program Name	Countervailable in respect of plate steel?
39	Reducing pollution discharging and environment improvement assessment award	Yes
40	Comprehensive utilization of resources - VAT refund upon collection	Yes
41	Grant of elimination of out dated capacity (350 blast furnace)	Yes
42	Grant from Technology Bureau (development and application of coke oven gas waste heat efficiency reuse technology)	Yes

### 7.4 Subsidy margins

#### 7.4.1 Cooperating exporters

Only one Chinese exporter of plate steel cooperated with the investigation, being JIGANG. The Commission has determined that JIGANG received financial contributions in respect of the goods that conferred a benefit under certain programs.

An exporter-specific subsidy margin has been calculated for JIGANG with reference to the specific programs that conferred a benefit.

#### 7.4.2 All other exporters

Within the GQ and SGQ, the Commission requested that the GOC list all Chinese plate steel producers and/or exporters that have produced and/or exported plate steel destined for Australia during the investigation period that applied for, accrued, or received benefits under Program 1 – 42.

In its responses to the GQ and SGQ, the GOC did not provide this information, limiting its response to JIGANG in the GQ and SGQ.

In the absence of relevant information to identify enterprises that had received financial contributions under each of the investigated subsidy programs, the Commission has had regard to the available relevant facts and determines that non-cooperating exporters have received financial contributions that have conferred a benefit under all programs found to be countervailable in relation to plate steel.

#### 7.4.3 Margins

The Commission has calculated the following subsidy margins for JIGANG and for all other exporters collectively:

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Exporter	Subsidy Margin (% of Export Price)
JIGANG	2.6%
All other exporters	36.9%

The Commission's findings in relation to each program investigated program are outlined in Appendix 2.

The calculation of the subsidy margin for JIGANG and all other non-cooperating exporters is at Confidential Attachment 2.

### 7.4.4 Submissions to SEF 198 and the Commissions' assessment

Submissions were received from the GOC, Bisalloy and JIGANG. The issues highlighted in these submissions and the Commission's responses are discussed below.

#### *Public Bodies*

In SEF 198 the Commission determined that state invested enterprises (SIE) that supplied HRC, steel slab, coking coal and coke in China are public bodies. The detailed discussion and public body determination is at Appendix 2.1.

The GOC stated that the public body finding by the Commission based on REP 203, REP 177 and SEF 193 is incorrect. The GOC referred to the detailed submission it made in response to SEF 193. The GOC stated that REP 203 contains major flaws of evidence and of logic in relation to the ultimate finding that SIEs are public bodies. The GOC also stated that the Commission did not correctly interpret the ruling by the WTO Appellate Body in relation to DS379.

Bisalloy claims that the Commission failed to consider the three alternative public body tests posited by the WTO Appellate Body in DS379 regarding the coking coal supplied by SIE's to JIGANG. These are:

- (i) is there a legal instrument expressly vesting government functions and authority in any Chinese producer of coking coal;
- (ii) do the SIE's that supply JIGANG with coking coal have the power to control, compel, direct or command JIGANG; and
- (iii) does the conduct of the SIEs that supply JIGANG with coking coal serve as evidence that they possess government authority and exercise that authority.

#### *Adequate remuneration and subsidy calculations for coking coal*

Bisalloy claims that the Commission ignored the terms of the legislation and the views of the Appellate Body and the Review Officer by conflating the issues of adequate remuneration, market situation and competitive market costs in its search for a 'benchmark'. Bisalloy also stated that there is no evidence of inadequate remuneration or of any benefit to JIGANG flowing from JIGANG's purchases of

coking coal from SIEs.

JIGANG claims that the export price of coking coal provided by the GOC was inclusive of export tax and was influenced by the quotas that were abolished with effect from 1 January 2013. As such JIGANG claims that the Commission should use “Chinese import price” for coking coal to establish an appropriate benchmark price. Another reason stated by JIGANG to use the Chinese import price is that JIGANG believes that Chinese import prices reflect “*actual global market*” prices.

JIGANG also claims that it uses a lower percentage of coking coal to produce a tonne of plate steel than that determined by the Commission. JIGANG stated that it uses a lesser amount of coking coal as it adds pulverised coal injection (PCI) coal in its production process. JIGANG claims that among other benefits such as prolonging the life of coal batteries, PCI also reduces the amount of coking coal used in the production of plate steel reducing the manufacturing costs.

### *Meaning of ‘Benefit’*

Bisalloy stated that the “*benefit*” in the ordinary meaning of the word must be understood as denoting an advantage to the recipient of the financial contribution. Bisalloy claims that it would only exist if the recipient is ‘left better-off’. Bisalloy also claims that JIGANG was not left better off by purchasing coking coal from SIEs than from other suppliers.

### *Calculation of subsidy*

The GOC submitted that the subsidy margin calculations in relation to subsidy programs 1, 3 and 4 are based on galvanised steel and aluminium zinc coated steel investigations, which cover only half the investigation period for the current case. As such the subsidy margin could only be established for half the investigation period for the current investigation.

## **The Commission’s Assessment**

### *Public Bodies*

The investigation relied on findings from REP 203 as it was appropriate to do so. Footnote 47 in REP 203 set out the following in relation to the scope of the terms ‘iron and steel industry’:

*‘The GOC’s NSP [National Steel Policy] defines the iron and steel industry as ‘the selection of iron mines, manganese mines and chromium mines and working techniques and relevant supporting techniques such as agglomeration, carbonization, iron alloy, carbon products, fire-resisting materials, iron smelting, steel rolling and metal products.’...in practice, the NSP and other GOC macroeconomic policies extend beyond those activities and products listed in the NSP definition to include further matters, including coking coal mining and coking...’*

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The above sets the context for the examination of the GOC's various policies and measures in relation to determining whether SIEs supplying coking coal, coke and other raw materials are public bodies. There is sufficient evidence to establish that these industries are considered part of the 'iron and steel industry' in China.

In examining the three indicia set out by the Appellate Body in DS379, REP 203 set out the following in relation to Indicia 2 (evidence that an entity is, in fact, exercising government function):

*'A number of GOC documents comprehensively outline the GOC's aims and objectives for the iron and steel industry in China...The overall aim of these policies, plans and measures is summarized in the National Steel Policy:*

*'...to elevate the whole technical level of the iron and steel industry, promote the structural adjustment, improve the industrial layout, develop a recycling economy, lower the consumption of materials and energy, pay attention to the environmental protection, enhance the comprehensive competitiveness of enterprises, realize the industrial upgrading and develop the iron and steel industry into an industry with international competitiveness that may basically satisfy the demand of the national economy and social development in terms of quantity, quality and varieties.'*

REP 203 concluded that the essential objective of the policies, plans and measures considered is to advance and improve the Chinese iron and steel industry demonstrating that it is a government mandate and function.

In relation to the role SIEs play in exercising this government function, REP 203 considered that the *Interim Measures for the Supervision and Administration of the Assets of State-Owned Enterprises* (the Interim Measures) indicates the integral role SIEs play. The purpose stated in the Interim Measures is:

*'to establish a State-owned assets supervision and management system that suits the needs of a socialist market economy, to better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realize the preservation of, and increase in value of State-owned assets.'*

Article 14 of the Interim Measures sets out one of SASAC's main obligations the responsibility to:

*'(2) maintain and improve the controlling power and competitive power of the State economy in areas which have a vital bearing on the lifeline of the national economy and State security, and improve the overall quality of the State economy.'*

The iron and steel industry is considered a pillar industry of the Chinese economy and it could be concluded that it has 'a vital bearing on the lifeline of the national economy'.

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In addition to the Interim Measures, there is the *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (SOA Law). This outlines the requirement for SIEs to comply with national industrial policies when making any investments.

A further document relied on to support the conclusion about the GOC's influence over SIEs is the *Guiding Opinions of the SASAC of the State Council about Promoting the Adjustment of State-owned Capital and the Reorganization of State-owned Enterprises* (the Guiding Opinion).

In the HSS investigation and reinvestigation the Anti-Dumping Commission formed the view that based on the Interim Measures, the SOA Law and other policy documents issued by the GOC the level of the GOC's control over SIEs was significant and that SIEs had an essential role in carrying out governmental functions.

The finding in the HSS investigation that SIEs were public bodies was the subject of a Federal Court judgment (*Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870). The Federal Court affirmed the CEO's finding that SIEs supplying HRC to HSS manufacturers were public bodies. In his judgment Nicholas J stated:

*'The CEO was of the view that the SASAC Guidelines [Interim Measures] suggested that the Chinese Government's level of control over the entities to which they applied was significant. When regard is had to the functions and responsibilities of SASAC...it is apparent this was a view open to the CEO.'*

While the GOC has submitted that the various guidelines issued by it should be given no weight because they are in the nature of 'aspirational' documents or research papers the Federal Court found no fault with the CEO not accepting these submissions and stated 'it was for the CEO to determine what weight should be given to the material before him.'

The current investigation relies on the settled position in REP 203 that based on the totality of the guidelines and measures issued by the GOC in relation to the function of SIEs and the GOC's view that the iron and steel industry is an industry of national importance, it can be concluded that SIEs exercise governmental functions and that the GOC exercises meaningful control over SIEs and their conduct.

### *Adequate remuneration for coking coal*

In accordance with s.269TACC(4) and s.269TACC(5) of the Act, "adequate remuneration" must be interpreted as adequate return on investment and more



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specifically, “a comparison between the cost to make and sell and the price of the sale of the goods”<sup>16</sup>.

The Agreement on Subsidies and Countervailing Measures (the SCM) outlines how the amount of a subsidy is calculated in terms of the benefit to the recipient in Article 14. This refers to the provision of goods for less than adequate remuneration and states under section (d) that:

*“For the purpose of Part V, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. Furthermore, any such method shall be consistent with the following guidelines....”*

(d) *“the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale)”.*

A detailed discussion of ‘adequate remuneration’ is at section 8.5 of REP 203.

The Commission used JIGANG’s verified purchase price of coking coal from SIEs and other suppliers in the investigation period (page 23 of the JIGANG exporter visit report refers).

After carefully considering the options to determine an appropriate benchmark as outlined by the WTO Appellate Body (i.e. private domestic prices, import prices and external benchmarks detailed in Appendix 2.3) the Commission considers that the Chinese export prices (based on the data provided by the GOC) are appropriate to establish a benchmark (adequate remuneration) price for coking coal in China.

During the galvanised steel and aluminium zinc coated steel investigations, the Commission inquired, and the GOC confirmed, that all coking coal export prices (and export prices of coke) provided by the GOC were exclusive of export tax.<sup>17</sup> The Commission also noted that the coking coal export data provided by the GOC was consistent with the data provided earlier for galvanised steel and aluminium zinc coated steel from January to June 2012.

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<sup>16</sup> REP 203, p60

<sup>17</sup> the Commission is aware that the GOC abolished export tax of 40% on coke with effect from 1 January 2013.



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The Commission compared JIGANG's purchase prices of coking coal with the benchmark price on a quarterly basis. The Commission found that JIGANG benefited from the purchase of coking coal from Chinese SIEs in the investigation period. Based on the total benefit calculated in the investigation period, the Commission calculated the subsidy margin and found it not to be negligible (confidential attachment 2 refers).

With regards to JIGANG's claim that it uses a lower percentage of coking coal to produce one tonne of plate steel (as opposed to the percentage determined by the Commission), JIGANG provided data for coking coal consumed in 2012, but did not provide the quantity of coking coal used to produce plate steel in that period. The Commission is aware that JIGANG manufactures products other than plate steel from coking coal. JIGANG also did not provide details or supporting evidence as to how it derived the percentage of coking coal used to manufacture one tonne of plate steel. On further inquiry regarding the details of the calculation and evidence, JIGANG reduced this percentage and attributed the downward revision to a 'rounding off' error in its earlier calculation. While JIGANG explained it calculated the percentage of coking coal used to produce a tonne of plate steel by dividing total coking coal consumed in 2012 by the total amount of plate steel produced in the same period, no supporting evidence was provided.

The Commission acknowledges that JIGANG uses PCI in its production of plate steel. In response to the Commission's earlier inquiry regarding PCI (confidential email response dated 26 June 2013 refers), JIGANG provided details on how it uses PCI in the production of plate steel.

Based on the information received from JIGANG the Commission considers that PCI is another form of coking coal used in the production of plate steel.

Based on the verified information provided by JIGANG, the Commission calculated the percentage of coking coal used in the production of one tonne of plate steel. The Commission noted that this amount was not dissimilar to the percentage determined by the Commission. Therefore, the Commission considers that the percentage of coking coal used in the production of one tonne of plate steel determined by the Commission is appropriate.

### *Meaning of 'Benefit'*

Bisalloy has incorrectly interpreted the meaning of the word "*benefit*" as its 'ordinary meaning'. Section 269TACC of the legislation contains the provisions relevant to working out whether a financial contribution confers a benefit in the context of a countervailing investigation:

- S.269TACC(1) states the question whether financial contribution or income or price support confers a 'benefit' is to be determined by the Minister having regard to all relevant information; and
- S.269TACC(3)(d) states that the provision of goods or services by a government or a body referred to in subsection(2), does not confer a benefit unless they are provided for less than adequate remuneration.

The use of the word 'unless' implies that if the 'less than adequate remuneration' test is positive then a benefit has been conferred.

Accordingly, the Commission has established adequate remuneration for HRC, coking coal and coke under s.269TACC(4) as detailed in Appendices A2.2, A2.3 and A2.4 of this report. These tests and calculations establish that the coking coal supplied by SIEs to JIGANG were at less than adequate remuneration and that JIGANG benefited from coking coal supplied by SIEs.

### *Calculation of subsidy*

For the purpose of assessing the subsidy related to coke, in the absence of full cooperation from Chinese exporters (other than JIGANG), the Commission had regard to all relevant information. In the coated steel cases it was found that one cooperating exporter purchased coke in the manufacture of coated steel. In the coated steel case the Commission worked out the benefit per tonne of coke used by using the cooperating exporter's purchase data and Chinese export prices provided by the GOC for that investigation period (1 July 2011 to 30 June 2012).

Given the lack of data available to it for actual purchase prices of coke during the current investigation period, which overlaps the coated steel investigation period by six months, the Commission considered the benefit per tonne of coke calculated for the cooperating exporter in the coated steel case was the most relevant information. This was apportioned over JIGANG's weighted average export price to determine the subsidy rate for all other exporters from China.

The Commission is aware that JIGANG did not use HRC to manufacture plate steel exported to Australia. The Commission has verified information that HRC is used in the manufacture of plate steel by cooperating exporters from other countries. At section 1.5 of Appendix 2 to this report, the Commission identified some manufacturers from other countries participating in this investigation that use HRC to manufacture plate steel exported to Australia in the investigation period. Those exporters are Shang Chen from Taiwan, Hyundai Steel from Korea and Rajapaksi from Indonesia.

In relation to HRC, in the absence of full cooperation from the Chinese exporters (other than JIGANG) and the GOC, the Commission used all relevant information, which included information from the recently completed galvanised steel and aluminium zinc coated steel investigations. In those investigations a number of cooperating exporters were found to have purchased HRC to manufacture coated steel. In the coated steel case the Commission worked out the benefit per tonne of coated steel by using the cooperating exporter's purchase data and purchase data from exporters from other countries subject to those investigations for that investigation period (1 July 2011 to 30 June 2012).

Given the lack of data available to it for actual purchase prices of HRC in China during the current investigation period, which overlaps the coated steel investigation period by six months, the Commission considered the benefits per tonne calculated

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for the cooperating exporters in the coated steel case was the most relevant information. In particular, the Commission used the highest benefit per tonne from any exporter given the lack of cooperation. This was apportioned over JIGANG's weighted average export price to determine the subsidy rate for all other exporters from China.

Due to the lack of cooperation from exporters from China, other than JIGANG, the Commission cannot be satisfied that no plate steel exported from China was manufactured from HRC. Furthermore, the Commission during the course of the current investigation identified that some manufacturers from Taiwan, Korea and Indonesia use HRC to manufacture plate steel exported to Australia.

## **8 INJURY ASSESSMENT**

### **8.1 Findings**

The Commission has assessed that, based on verified information and data, the Australian industry (BlueScope) appears to have experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenues;
- reduced return on investment; and
- loss of employment.

### **8.2 Injury claims**

BlueScope claimed that material injury in respect of plate steel commenced to impact profit and profitability in 2009/10. The application identified the injurious effects as:

- loss of sales volume;
- reduced market share;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment;
- reduced attractiveness for reinvestment in the plate steel business; and
- reduced employment.

### **8.3 Approach to assessing injury**

The injury analysis detailed in this section is based on the verified financial information submitted by BlueScope and import data from the ACBPS import database.

BlueScope provided production, cost and sales data for plate steel products at the aggregate level for Q&T green feed (alloyed plate) and non-alloyed plate of 250 MPa yield strength and 350 MPa yield strength, other plate products and for “total” plate steel products (as covered by the goods descriptions).

As a result of information gathered during the investigation the Commission considers that imported Q&T green feed competes only with BlueScope’s domestically produced Q&T green feed. That is, the Commission does not consider the Q&T green feed substitutable for other types of plate steel.

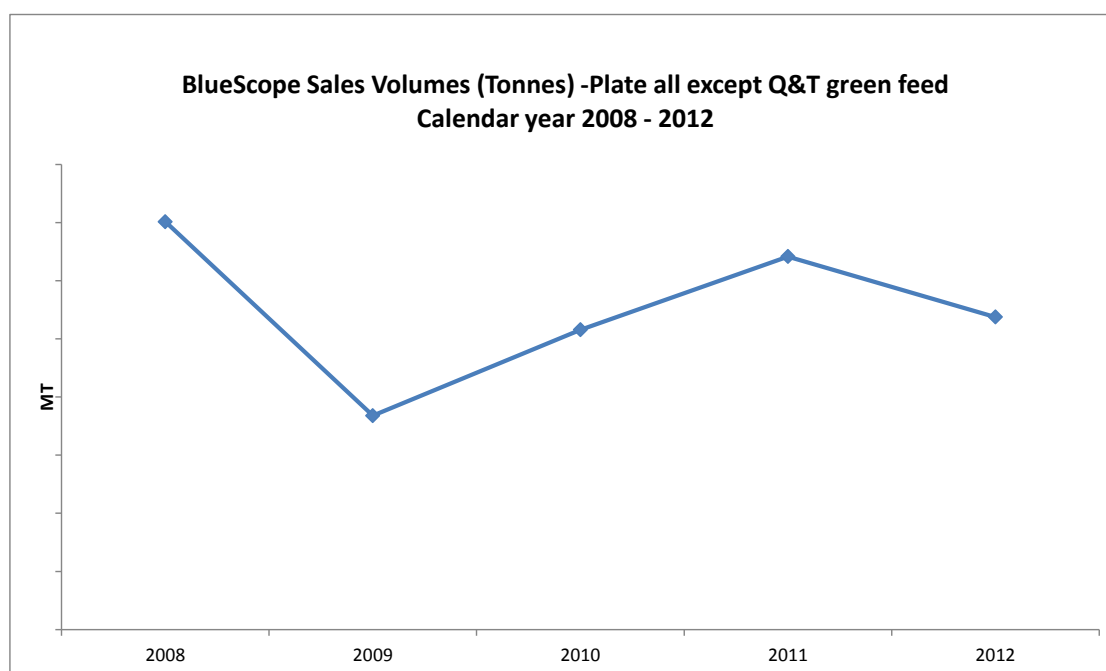
As such the injury analysis has been done separately for Q&T green feed and non-alloy plate steel.

The Commission's analysis of the economic condition of the industry and injury factors for plate steel is presented below.

## **8.4 Volume effects - non-alloy plate steel**

### **8.4.1 Sales volume**

It can be seen from the following graph that following a recovery in sales volumes from 2009 to 2011, BlueScope's domestic sales volume of plate steel decreased in 2012.

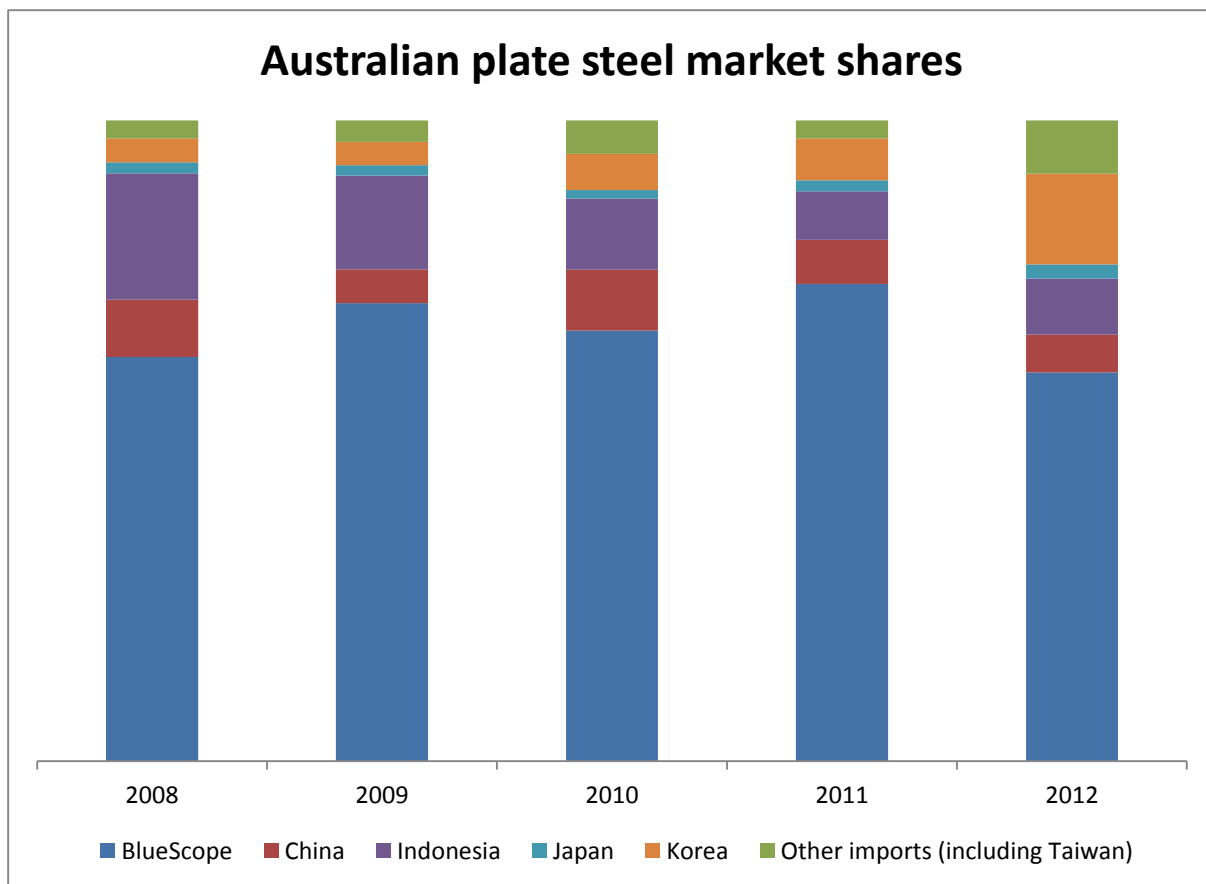


**Figure 7: BlueScope's sales volume (tonnes) – 2008 to 2012**

### **8.4.2 Market share**

The following graph shows movements in market shares, including BlueScope's market share, in the Australian market for plate steel from 2008 to 2012.

Imports from Taiwan have not been displayed separately but are included with other non-subject countries due to the Commission's finding that exports from Taiwan were not dumped, or dumped but at a negligible volume.



**Figure 8: Market shares – 2008 to 2012**

This graph shows that BlueScope's share of the Australian market for plate steel decreased in 2010, increased in 2011 and decreased in 2012.

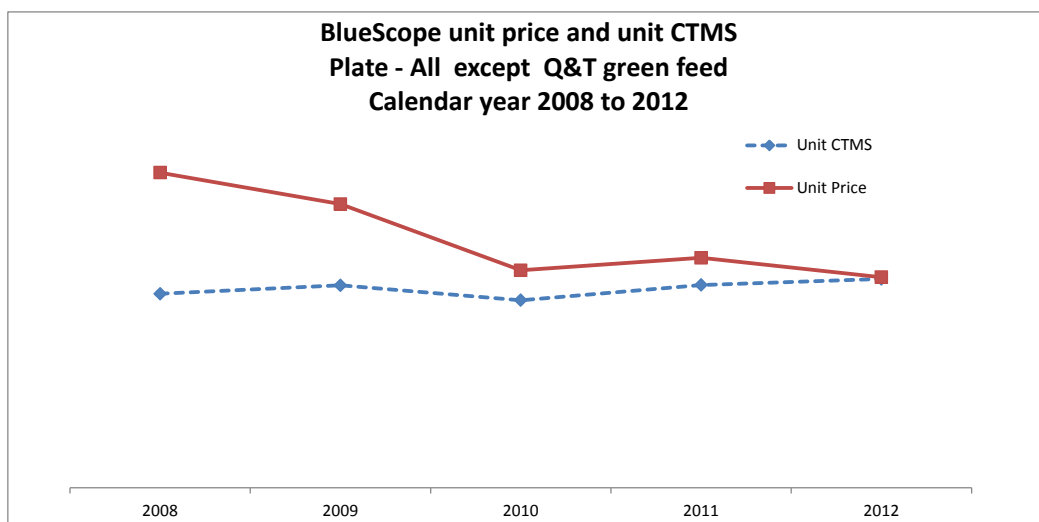
In 2010 and 2012, the market share of total imports from China, Indonesia, Japan and Korea increased.

## **8.5 Price effects - non-alloy plate steel**

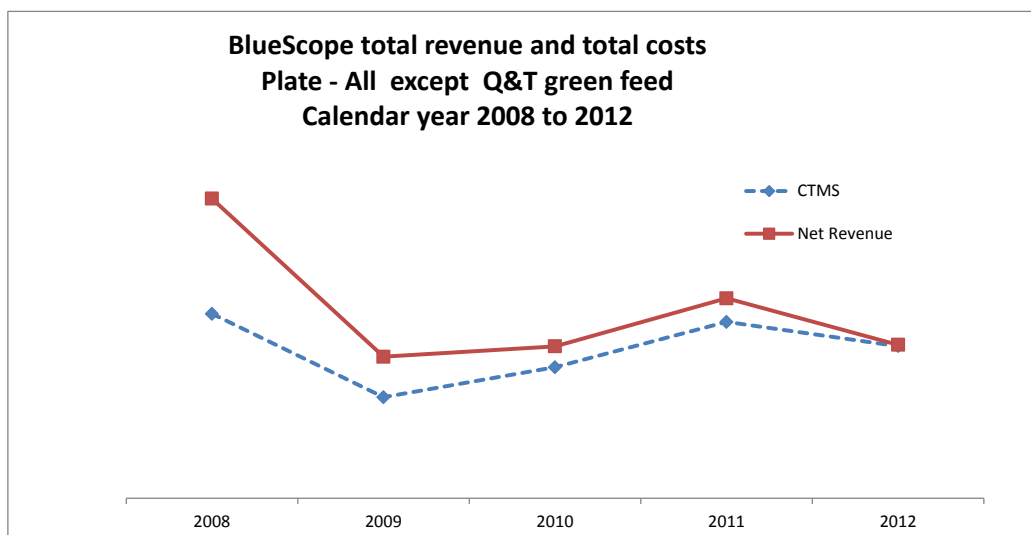
### **8.5.1 Price depression and price suppression**

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

The following graphs show movements in BlueScope's total and unit revenues and costs in respect of plate steel (excluding Q&T green feed) from 2008 to 2012.



**Figure 9: BlueScope's unit price and costs – 2008 to 2012**



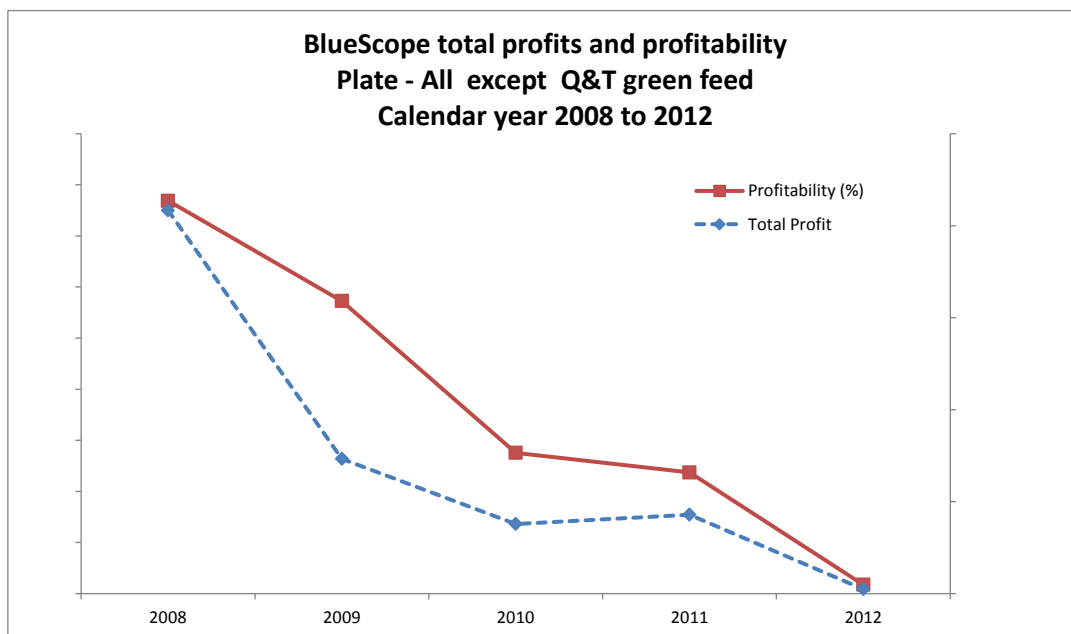
**Figure 10: BlueScope's total revenue and total costs – 2008 to 2012**

The graphs show:

- Unit costs were relatively stable throughout 2008–2012 whereas unit revenue displayed a downward trend throughout 2008-2012;
- The margin between unit costs and unit revenue steadily contracted throughout 2008-2012 to a point in 2012 where unit revenue was only marginally higher than unit costs; and
- The trend at the total revenue and costs level reflects the trends in volume shown at Figure 7. Revenue fell to a higher degree in 2012 than the corresponding decrease in total costs resulting in an almost negligible profit margin.

## **8.6 Profit effects - non-alloy plate steel**

The following graph shows movements in BlueScope's profit and profitability in respect of plate steel from 2008 to 2012.



**Figure 11: BlueScope's profit and profitability – plate steel – 2008 to 2012**

This graph shows a significant decrease in BlueScope's profit and profitability in respect of plate steel since 2008.

## **8.7 Summary of major injury indicators - non-alloy plate steel**

Based on the analysis detailed above, there appear to be reasonable grounds to support the claim that BlueScope has experienced injury (in respect of the major indicators) in the form of:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits; and
- reduced profitability.

## **8.8 Injury analysis – Q&T green feed**

The Commission acknowledges that there was no separate injury assessment specific to BlueScope's Q&T green feed market provided in SEF 198. The Commission has assessed injury factors specific to Q&T green feed regarding sales volume, market share and price and profit effects.



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While the Commission found no or negligible dumping for JIGANG, which predominantly exported Q&T green feed to Australia, JIGANG's subsidy margin and volume were not negligible and therefore potentially actionable.

Based on data from the ACBPS's import database, the total exports of Q&T green feed and other plate steel from China in the investigation period accounted for approximately 15% of the total imports of the goods to Australia. Q&T green feed from China made up approximately 8% of those imports. Based on information gathered from importers and exporters the Commission understands that all Q&T green feed exported in the investigation period was from JIGANG.

### 8.8.1 Sales Volume – Q&T green feed

Figure 15 compares the total volume of Q&T green feed sales in Australia by BlueScope to those exported from Korea and those exported from China at subsidised prices.

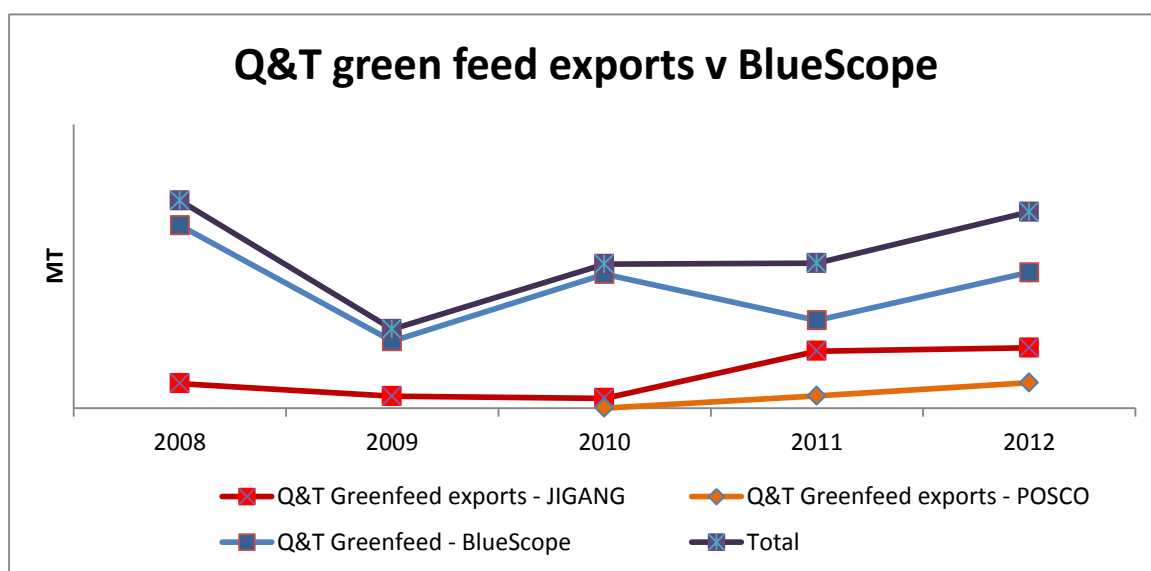


Figure 12: Q&T green feed sales volume - 2008 to 2012

It is evident from the graph above that Chinese export of Q&T green feed spiked in 2011 displacing BlueScope's sales volume and remained relatively stable in 2012. While BlueScope's sales volume sharply declined in 2011, it increased in 2012 to similar levels as 2010.

### 8.8.2 Market Share– Q&T green feed

Figure 16 below shows the movement of Australian market shares between 2008 and 2012.

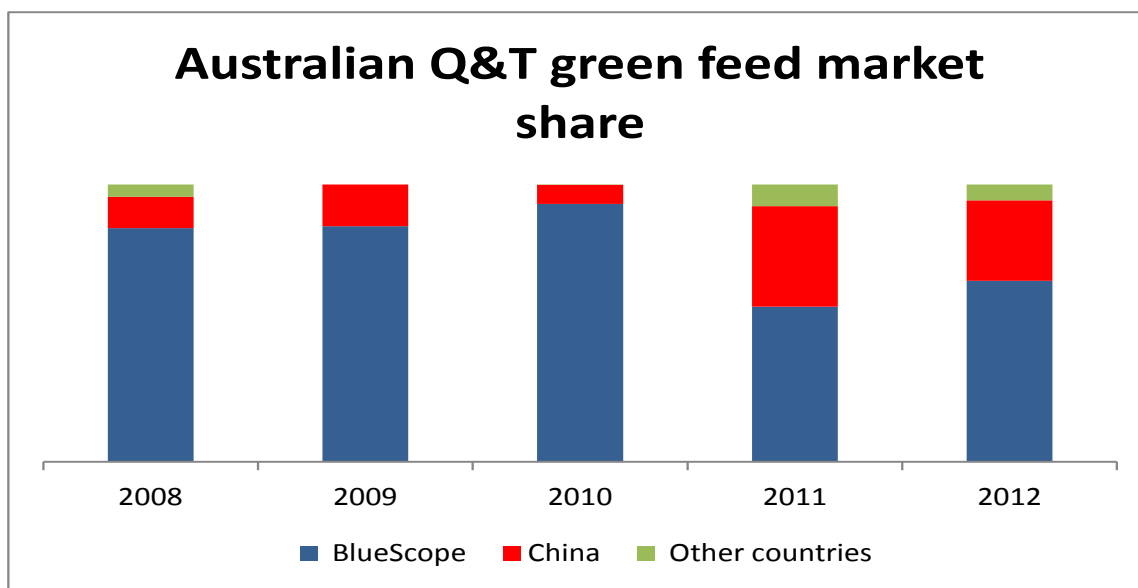


Figure 13: Q&T green feed Market shares - 2008 to 2012

The graph shows that BlueScope dominated the Australian market for Q&T green feed between 2008 and 2010, lost significant market share to Chinese exports in 2011 and recovered slightly in 2012.

### 8.8.3 Price effects– Q&T green feed

Figures 14 and 15 show movements of BlueScope's total and unit revenues and costs in respect to Q&T green feed from 2008 to 2012. It is evident from the graphs below that BlueScope suffered injury in the form of price depression. As discussed in section 9.6.1 of this report, BlueScope is likely to have experienced some injury from undumped and unsubsidised imports from POSCO.

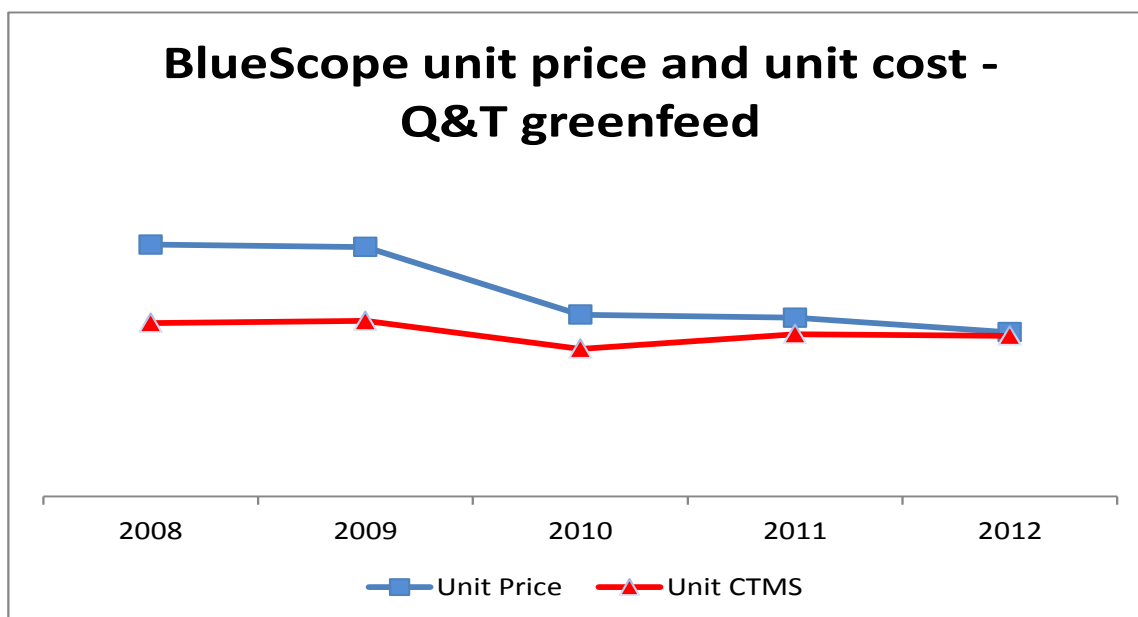


Figure 14: Q&T green feed unit price and cost - 2008 to 2012

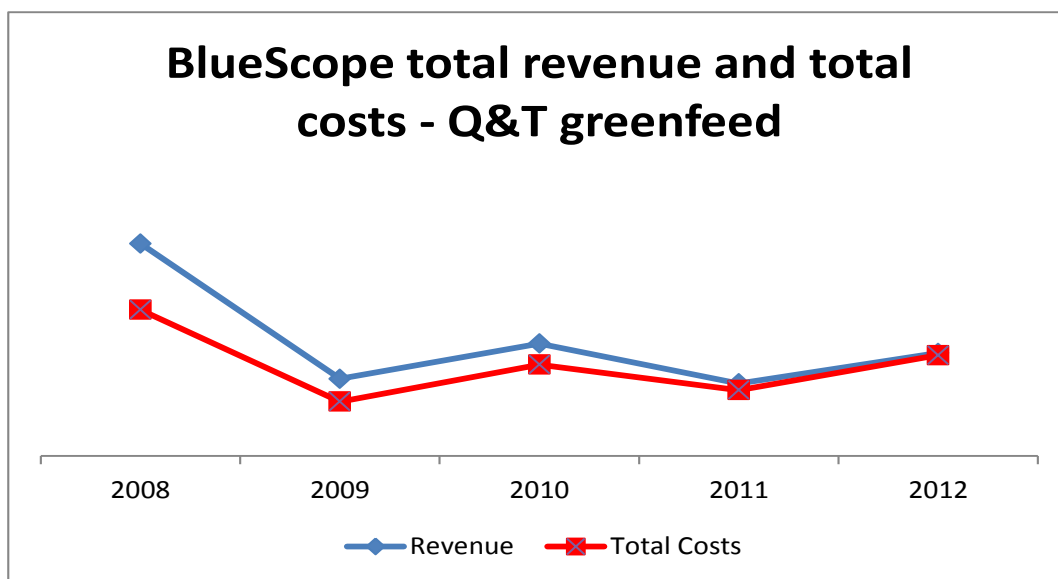


Figure 15: Q&T green feed total revenue and total cost - 2008 to 2012

The graphs show that:

- unit costs were relatively stable between 2008 and 2012 while the unit prices displayed a downward trend in the same period reducing the margin between the unit cost and revenue to almost a breakeven point in 2012; and
- after sharply declining in 2009, total costs increased gradually between 2009 to 2012. While the total revenue followed a similar trend from 2008 to 2010, it declined more than total costs in 2011 to almost a breakeven point and remained at that point between 2011 and 2012 indicating an almost breakeven result.

#### 8.8.4 Profit and Profitability– Q&T green feed

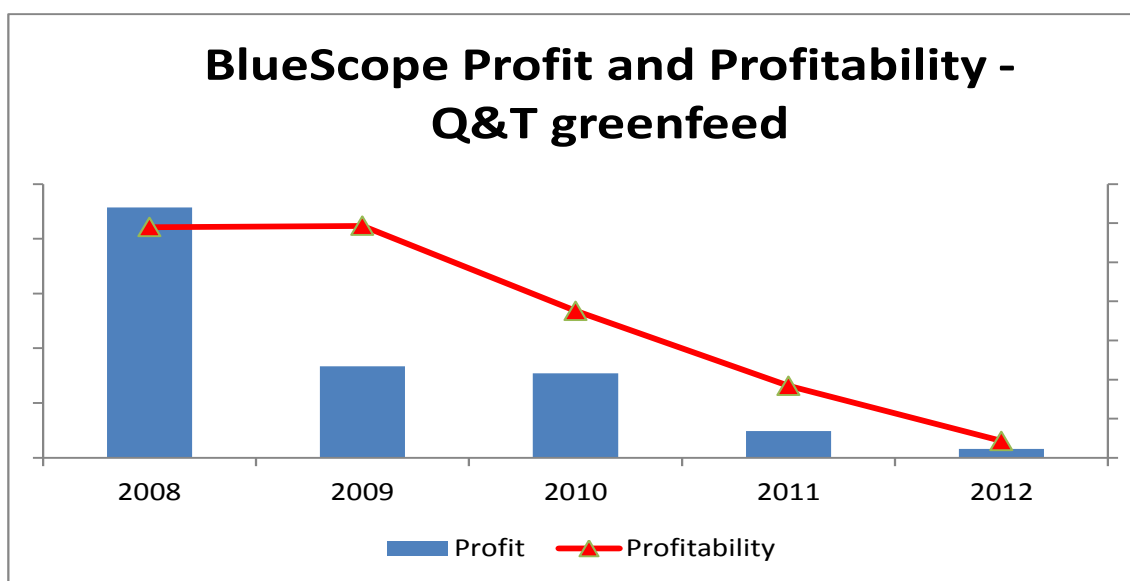


Figure 16: Q&T green feed profit and profitability - 2008 to 2012

Figure 19 above shows a significant decline in profit in 2009. Profit remained low in 2010 and declined further in 2011 and 2012. The profitability was relatively stable between 2008 and 2009 but declined continuously between 2010 and 2012.

### **8.8.5 Summary of major injury indicators– Q&T green feed**

Based on the above analysis, there appear to be reasonable grounds to support the claim that BlueScope has experienced injury in the Q&T green feed market in the form of:

- loss of market share;
- price depression;
- price suppression;
- reduced profits; and
- reduced profitability.

## **8.9 Other injury factors**

BlueScope completed an Appendix A7 for plate steel from financial years 2009 to 2012. BlueScope claims that it has experienced injury in respect of other economic/injury factors. The Commission has reviewed Confidential Appendix A7 and identified the following trends for other injury factors in respect of sales of plate steel.

### **Assets**

The value of assets in the production of plate steel increased each financial year from 2009-2012. There appears to be no injury to BlueScope in the form of a reduction in the value of assets used in the production of plate steel.

### **Capital investment**

Capital investment in plate steel increased significantly in FY2010 before decreasing in FY2011. There was a minor increase in capital investment for plate steel in FY 2012. Based on the available figures the Commission is unable to draw any meaningful conclusions about capital investment.

### **Research and development (R&D) expenditure**

R&D expenditure for plate steel decreased in FY2010, increased in FY2011 before decreasing again in FY2012. There is no evidence of injury to BlueScope in the form of decreased R&D expenditure for plate steel.

### **Revenue**

Revenue from plate steel fell in FY2010, increased in FY2011 before decreasing slightly in 2012.

### **Return on income**

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Return on income for plate steel decreased consistently and significantly for each financial year from FY2009 to FY2012.

### Capacity

Capacity in relation to plate steel fell in FY2010 and increased in FY2011. In FY2012 capacity decreased significantly due to BlueScope's restructure of business operations to significantly reduce capacity for export.

### Capacity utilisation

Capacity utilisation increased each financial year from FY2010 to FY2012.

### Employment

Over the five year period from FY2009 to FY2012 employment in the production of plate steel decreased.

### Productivity

Productivity in relation to plate steel increased steadily each financial year from FY2009 to FY2012.

### Wages

The wage bill for plate steel increased in FY2010 and 2011 before falling slightly in FY2012. **Conclusion – other injury factors**

In terms of other injury factors, the data indicates that BlueScope suffered injury through:

- reduced revenue;
- reduced return on income; and
- loss of employment.

The Commission's assessment of the economic condition of the Australian industry in respect of plate steel is at Confidential Attachment 3.

## **9 CAUSATION ASSESSMENT**

### **9.1 Assessment**

The Commission assesses that plate steel exported to Australia from China (except by JIGANG), Indonesia, Korea (except by Hyundai and POSCO) and Japan at dumped prices, and from China at subsidised prices, has caused material injury to the Australian industry producing like goods.

The Commission finds that BlueScope has suffered injury caused by dumping and/or subsidisation in the form of:

- loss of sales volume;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on income; and
- loss of employment,

and this injury is material.

### **9.2 Approach to assessing material injury**

In the case of concurrent dumping and subsidisation, where it is established that the exported goods are both dumped and subsidised, there is no need to quantify separately how much of the injury being suffered is the result of dumping or subsidisation. The Commission has examined whether the exports of plate steel from China to Australia, at dumped and subsidised prices, and from other nominated countries at dumped prices, have caused material injury to the Australian industry producing like goods.

Subsection 269TAE(2C) of the Act sets out the requirements for assessing the cumulative material injury effects of exports of goods to Australia from different countries. Where exports from more than one country are simultaneously the subject of an anti-dumping investigation, the Minister may cumulatively assess the effects of such imports if:

- the margin of dumping and/or subsidisation established for each country is not negligible; and
- the volume of imports from each country is not negligible; and
- cumulative assessment is appropriate in light of the conditions of competition between the imported goods and the like domestic goods.

The information contained in ACBPS' import database identified that several importers of plate steel imported from a number of the nominated countries (which

was confirmed during visits to importers). The Commission considers that this indicates that the products are used by the same or similar customers.

As discussed at section 6.1, the Commission has assessed that for plate steel and the respective imported goods that the goods are alike, have similar specifications, have similar end-uses, and compete in the same primary market segments.

The Commission has assessed material injury and considered cumulatively the injurious effects of dumping and subsidisation from the nominated countries. The conditions of competition are such that it is appropriate to consider the cumulative injurious effect of the dumped imports from China, Indonesia, Korea and Japan and subsidised imports from China to the Australian industry.

### **9.3 BlueScope's claims**

BlueScope claims that its domestic sales volume of plate steel declined in 2011-12 as imports from the nominated countries increased. BlueScope's domestic sales had improved in successive years following the global financial crisis (GFC) of 2008-09.

BlueScope claims that the growth of imports and the undercutting from the dumped and subsidised imports stalled BlueScope's recovery from the GFC. BlueScope claimed that due to this increased price competition from the dumped and subsidised imports from FY2012, domestic sales revenue reflected a larger decline than experienced for sales quantities.

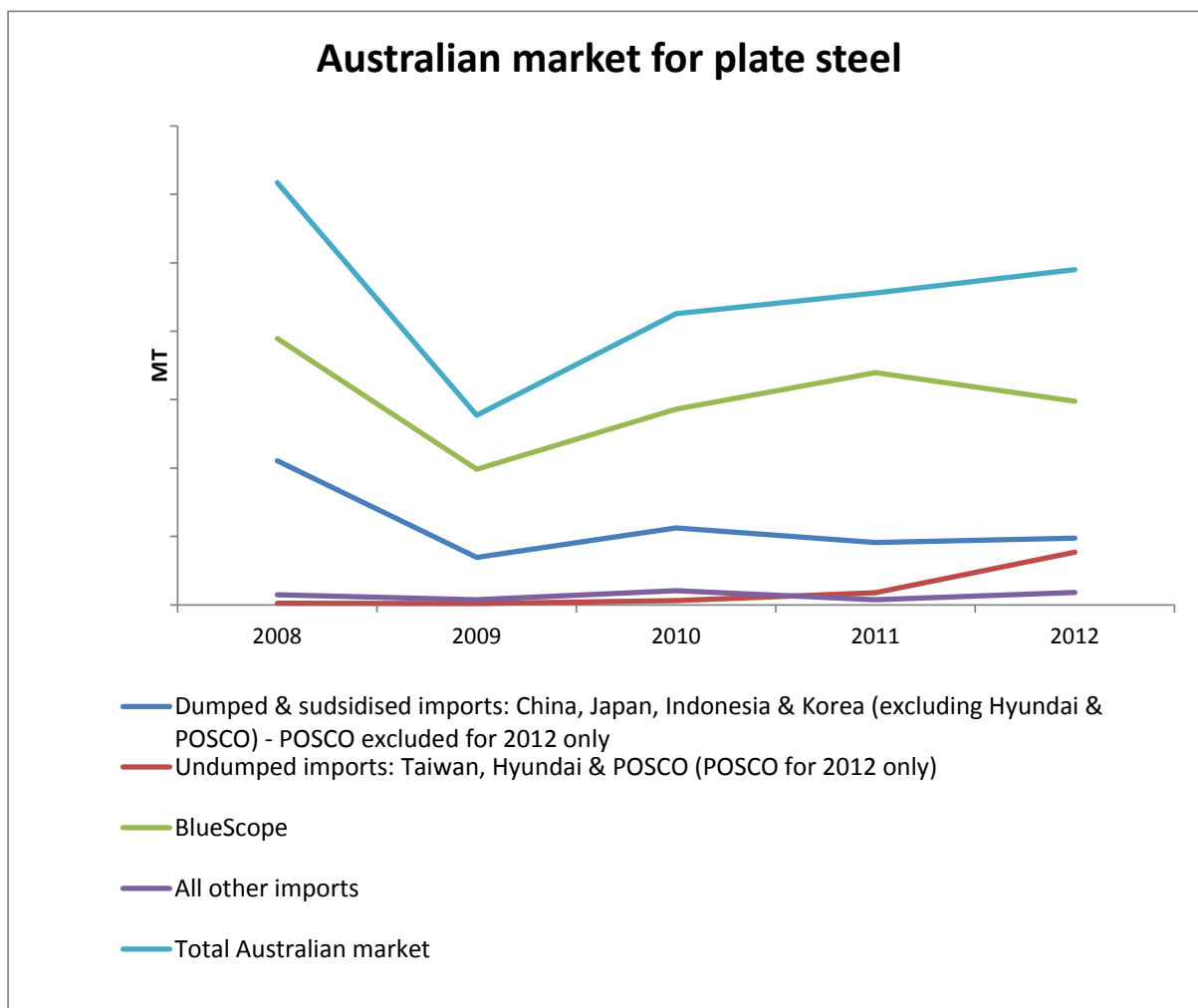
BlueScope stated that dumped and subsidised imports undercut its prices and it was accordingly forced to reduce prices to maintain sales volume and market share. These price reductions resulted in price depression, as well as price suppression as it has been unable to increase prices to recover increased costs, resulting in lost revenue, profits and profitability. BlueScope claims that its selling prices declined at a greater rate than costs in 2009-10 with further erosion of the margin in 2010-11 and 2011-12.

BlueScope also argues that injury was also suffered in regards to reduced employment, reduced return on investment and reduced attractiveness for reinvestment in the plate steel business.

Further detail of BlueScope's claims in relation to injurious effects of the dumped and subsidised imports of plate steel from the nominated countries is detailed in Consideration Report No. 198 (CON 198) and the BlueScope Visit Report.

## 9.4 Causation factors

### 9.4.1 Sales volume



**Figure 17: Australian Market for plate steel – 2008 to 2012<sup>18</sup>**

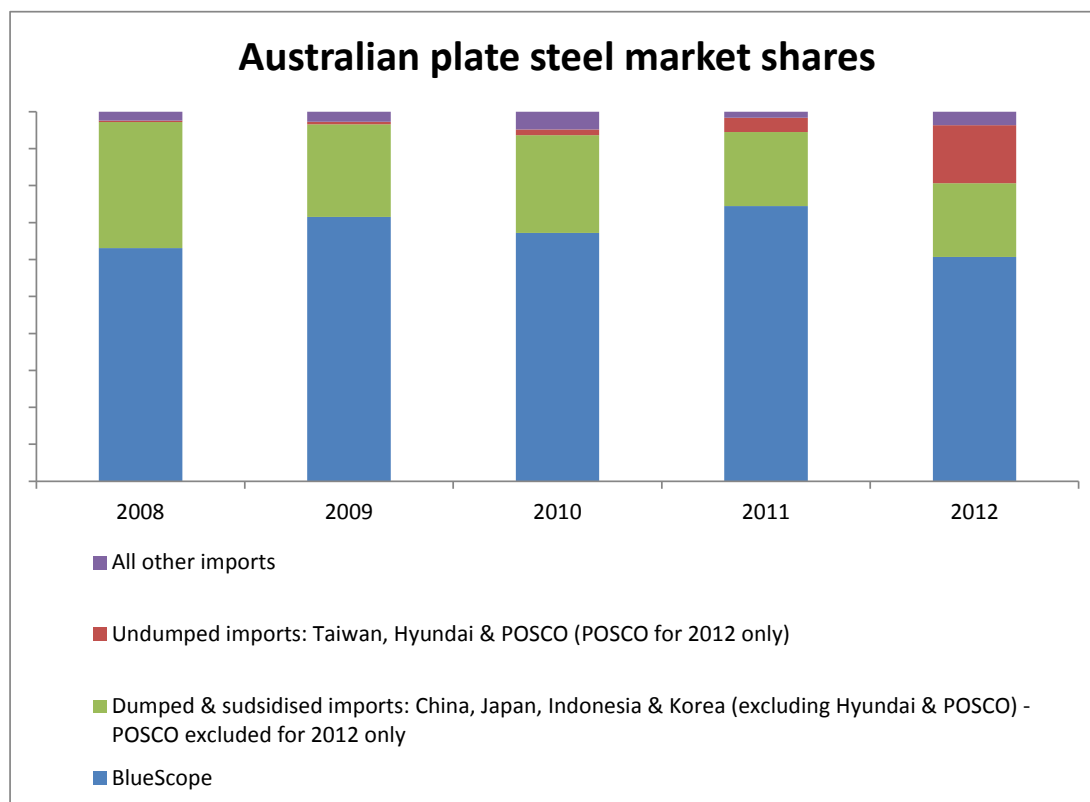
The Commission's analysis shows that the dumped and subsidised imports represent around 50% of total imports of plate steel to Australia in 2012 and around 20% of the total Australian market for plate steel in 2012. Between 2010 and 2011 the volume of imports from dumped and subsidised sources decreased while BlueScope's sales volume and market share and the Australian market as a whole increased. However in 2012 the volume of imports from the dumped and subsidised sources and the Australian market grew in size, but BlueScope lost sales volume.

<sup>18</sup> Reliable data for imports by POSCO is not available for previous years. In any event, the relative volume of POSCO's imports is such that it is considered not to have a major impact on market shares.



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The Commission acknowledges that exports from Taiwan and by Korean exporters found not to be dumping also increased in 2012 and this may have contributed to BlueScope's loss of volume, however, the Commission does not consider this displaces a finding that the increase in the combined volume of dumped and subsidised imports of plate steel from China, Indonesia, Korea and Japan in 2012 also caused a reduction in BlueScope's sales volume in 2012.



**Figure 18: Australian plate steel market shares – 2008 to 2012<sup>19</sup>**

Analysis of market shares in the Australian plate steel market indicates that in 2012 the market share of BlueScope contracted while the market share of dumped and subsidised imports remained relatively stable. The market share of undumped imports and imports from countries not nominated in the investigation both expanded.

The Commission considers that the reduction in BlueScope's market share in 2012 is more accurately attributed to an increase in market share of both undumped imports and imports from countries not the subject of the investigation.

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<sup>19</sup> Reliable data for imports by POSCO is not available for previous years. In any event, the relative volume of POSCO's imports is such that it is considered not to have a major impact on market shares.

## **9.5 Price effects**

### **9.5.1 Import Parity Pricing**

BlueScope stated that its pricing strategy for plate steel is based on import parity pricing (IPP) and therefore, the price of imports is a key determinant of its selling price and directly causes price injury resulting in lost revenue and profits.

IPP has become the reference point for BlueScope's domestic pricing with pattern plate (plate made from steel slab) and coil plate (plate made from HRC) priced on an IPP basis for the past 7 to 9 years.

IPP takes into consideration the market price of the goods using contemporary price information for equivalent imported products. BlueScope uses prices gathered from the import market (including from the countries the subject of the application) to determine the selling price of its goods, with the view to selling at prices considered competitive with imports.

BlueScope explained that the price of imported plate steel was generally released into the market three months before the date by which the purchased goods would eventually arrive in Australia. BlueScope gathers information regarding the current market price offers through market intelligence and subsequently consolidates these offers to determine a benchmark IPP. BlueScope bases its price on the benchmark and attempts to achieve a local price premium above import offers due to being able to offer shorter lead times.

BlueScope stated that it matches IPP prices from mills where plate steel has been tested and proven to be fit for purpose. BlueScope consider that plate steel from all of the nominated countries is fit for purpose. BlueScope explained that it would not necessarily match the price of imported plate from India, for example, particularly if the product was untested.

BlueScope submitted that Australian customers view plate steel as largely commoditised, particularly in the Grade 250 and 350 product ranges due to the high supply availability and price focus. It stated that whilst customers often want to have a number of sources of supply, price is still the main determinant.

BlueScope stated that factors other than import prices are taken into consideration when determining price, for example manufacturing costs and margins, however maintaining market share and volume is the key determinant.

The Commission was provided with BlueScope's IPP data for the investigation period and evidence of market offers of imported plate steel from exporters from the nominated countries to support the IPP data.

### **9.5.2 Price undercutting**

BlueScope submitted that in order to maintain domestic volumes it has been required to match import prices of the dumped and/or subsidised plate steel, through

its IPP and that this directly caused price injury resulting in reduced revenues and profits.

As part of the investigation, the Commission collected and verified sales data from the largest importers of plate steel from the nominated countries. Using this sales data, a price undercutting assessment was carried out.

In conducting this assessment, price undercutting has been assessed by comparing the price of imported and locally produced plate steel at the grade specific product level and within several thickness ranges. The analysis concentrated on the 250MPa and 350MPa grades of plate steel as these contribute to approximately two-thirds of the Applicant's sales into the Australian plate steel market.

The undercutting analysis identified that during the investigation period, BlueScope's domestic sales prices were consistently undercut by dumped imports from Indonesia, Korea and Japan and dumped and subsidised imports from China. The undercutting was present for both 250 and 350 grades of plate steel, in all thickness ranges examined. BlueScope's prices were undercut by as much as 27% during the investigation period with an average undercutting percentage of 11%.

A micro-level undercutting analysis compared BlueScope's domestic sales prices to sales prices of imported plate steel from the nominated countries to several key customers who purchase imported and Australian produced plate steel. This analysis confirmed the macro-level undercutting finding of BlueScope's selling prices being undercut. There were some instances where BlueScope was unable to achieve a local price premium above imports and some instances of BlueScope having to reduce its selling price below the imported price to achieve the sale.

### **9.5.3 Impacts on profits and profitability**

The Commission's analysis shows that dumped imports have caused a reduction in BlueScope's profit and profitability. This assessment is supported by the finding that BlueScope experienced loss of sales volume, price depression and price suppression in respect of plate steel in 2012.

## **9.6 Other causes of injury**

The Commission found that there are a range of reasons other than price that influence customers' decisions to purchase imported plate steel, including:

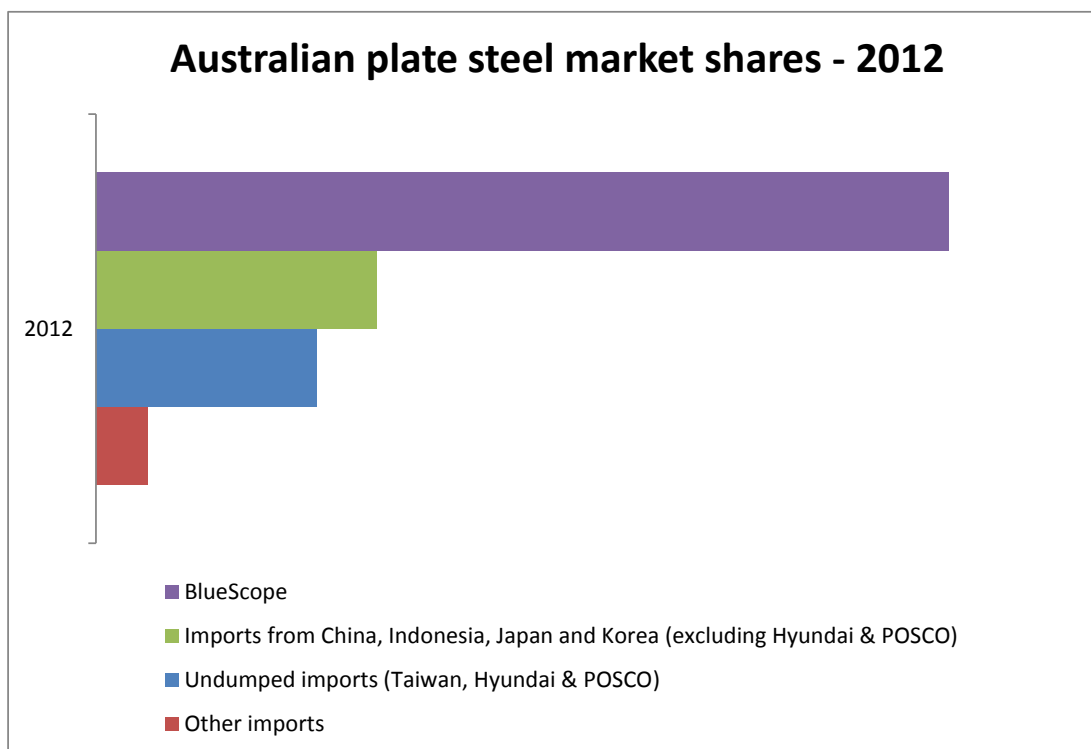
- BlueScope's inability to supply plate steel to the specifications they require, be it grade, width, thickness or quality; and
- to ensure security of supply by having more than one source for plate steel.

The Commission has found that purchases of dumped and subsidised plate steel for these reasons contribute to the low priced imports that BlueScope benchmarks against however this does not displace the finding that dumped imports, in and of themselves, have caused material injury to BlueScope.

### 9.6.1 Injury from undumped and unsubsidised imports

The Commission considered the relative volume of imports that have been found by the Commission to be undumped and unsubsidised.

The following chart displays the market share in 2012 for the Australian industry, imports from China, Indonesia, Japan and Korea (excluding Hyundai and POSCO), imports from countries and exporters that have been found by the Commission to be undumped and imports from other countries.



**Figure 19: Australian market share showing dumped and undumped imports - 2012**

The Commission notes that in 2012 the market share held by imports found to be undumped is not insignificant. The Commission has compared the export prices of the undumped imports to those of the dumped imports and found that the dumped imports are undercutting the prices of the undumped imports.

Given the volume of undumped and unsubsidised imports has increased from 2011 to 2012, and the relativity of average undumped unit prices to dumped unit prices in 2012, it is not unreasonable to assume that this increase in market share has been gained through the exporters of the undumped imports decreasing prices to compete against dumped and subsidised imports in an attempt to increase sales volume and market share.

All things being equal, a marked increase from 2011 to 2012 in the market share of undumped imports would not occur but for a shift in the demand curve or a reduction in the price of undumped imports. If a shift in the demand curve was to have occurred, this would have affected the market share of imports from both dumped and undumped sources due to the homogenous nature of the goods and substitutability between plate steel from different countries.

It is therefore reasonable to conclude that the marked increase in the market share of the undumped goods has occurred due to a reduction in their prices, in an effort to position their goods more competitively against the dumped goods. In the absence of dumped imports, it is likely that imports from undumped sources would not have been required to lower their prices to increase market share. It is therefore reasonable to assume that the reduction in the price of undumped imports from 2011 to 2012 has been at least partially due to the presence of dumped imports in the Australian plate steel market.

Notwithstanding that BlueScope is likely to have experienced some injury from undumped and unsubsidised imports, the Commission considers that dumped and subsidised imports are causing injury to the Australian industry directly through price undercutting and indirectly through the downwards pressure placed on the prices of undumped imports entering the Australian market.

### **9.7 Submissions from interested parties**

#### **9.7.1 Submission by JFE Steel Corporation, Kobe Steel Ltd, Nippon Steel & Sumitomo Metal Corporation and Nisshin Steel Co., Ltd.**

In relation to exports from Japan, it was submitted that injury caused by dumped goods from Japan was negligible in volume and value terms. In the context of Japanese exports in relation to exports from countries other than those nominated (i.e. China, Indonesia, Korea and Taiwan) the Japanese exporters claimed their export volumes over the injury period were significantly less. The submission argued that injury should be assessed not only in relation to the nominated countries but to all exports during the injury period.

#### **Commission response**

None of the Japanese exporters submitted a complete response to the exporter questionnaire providing the Commission with verifiable normal value and export price data to establish exporter specific dumping margins. The Commission has determined a country wide dumping margin for Japan based on the best available data and the magnitude of the dumping margin is not immaterial.

Based on a cumulation of the effects of dumped imports on the Australian industry, as allowed by the Act, the Commission has found that dumped imports caused injury to the Australian industry that is not negligible. During the investigation period, the volume of exports from Japan was higher than the volume of all other exports from countries not included in the application (with the exception of New Zealand). The nature of the goods exported from Japan is similar to goods exported from other countries subject to the investigation and the Japanese export prices are not dissimilar to dumped prices from other countries. Japanese exports are sold into the same market and to often similar customers. Based on these facts, the delegate of the Commissioner is not satisfied that the injury caused by dumped exports from Japan is negligible and therefore there are no grounds for termination under s.269TDA(13).

### **9.7.2 Submissions in relation to injury from other factors**

Submissions were received from several interested parties including the Australian Steel Association (ASA), JFE Steel Corporation, Kobe Steel Ltd, Nippon Steel & Sumitomo Metal Corporation and Nisshin Steel Co., Ltd. and POSCO. These submissions include allegations that injury to BlueScope in relation to plate steel can be attributed to the following factors:

- BlueScope's operational decision to close its Western Port hot rolled production facility;
- exports from countries not included in BlueScope's application;
- other factors in the macroeconomic environment such as low steel prices, high raw material costs (iron ore and coking coal), the relatively high value of the Australian dollar and low domestic steel demand (which the ASA submits is attributable to imports of pre-fabricated and fully fabricated products).

The submissions suggested that the above factors should be included in the Commission's injury analysis.

The ASA's submission of 21 August 2013 reiterated that any loss of market share or sales volume by BlueScope was due to the market finding alternative sources of supply in response to BlueScope's reduction in plate steel production capacity. It also reiterated requests for the Commission to consider effects of the fluctuating Australian dollar for the purposes of injury analysis.

The ASA notes the Commission's comments in the SEF under figure 14 (also in 9.6.1 in this report):

*Given the volume of undumped and unsubsidised imports has increased from 2011 to 2012, and the relativity of average undumped unit prices to dumped unit prices in 2012, it is not unreasonable to assume that this increase in market share has been gained through the exporters of the undumped imports decreasing prices to compete against dumped and subsidised imports in an attempt to increase sales volume and market share.*

The ASA appears to misunderstand the Commission's discussion with its submission stating:

*"If the assumption is that the alleged dumped goods decreased prices to increase sales volume and market share it is reasonable to expect that this would have resulted in a significant increase in the market share of the dumped goods during the period of investigation."*

The Commission clarifies that it concludes that it is likely that undumped goods have decreased prices to compete against dumped imports and attempt to increase sales volume and market share.

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Dianjaya's submission of 21 August 2013 submitted that the 18% depreciation of the Australian currency against the US currency was the most relevant factor to causation of injury to BlueScope. Dianjaya also submitted that "*year 2008 was simply an exception unlikely to be ever repeated*".<sup>20</sup> It submitted that any reference to the year 2008 for comparisons on market and pricing conditions was irrelevant. This point was also submitted by the ASA in its submission of 21 August 2013.

The ASA submitted that the major change (gain) in market share during the investigation period was from countries not the subject of the investigation and from Korea, where key exporters had been found by the Commission not to be dumping.

The submission noted that the market share of dumped goods has not changed markedly during the investigation period. It further submitted that any loss of market share or sales volume is solely attributable to an increase in imports from undumped sources and sources not the subject of the investigation.

The ASA also questioned whether the Commission had attributed injury caused by other factors to the dumping and subsidisation.

Minter Ellison submitted an application on 21 August 2013 on behalf of JFE Steel Corporation, Kobe Steel Ltd, Nippon Steel & Sumitomo Metal Corporation and Nisshin Steel Co. Ltd (the Japanese exporters). The submission questioned how the Commission could find injury in the form of lost sales volumes as a result of dumped and subsidised imports when it had found that any injury to BlueScope's market share was more accurately attributed to undumped imports and imports from other sources.

The submission further claims that in the absence of a finding of lost sales volume or market share due to dumped and subsidised imports, the Commission cannot conclude that BlueScope's reduced revenues and other injury factors are a result of dumped and subsidised imports.

The Japanese exporters submit that apart from the market share finding the injury and causation analysis fails to satisfy the non-attribution requirements of Article 3.5 of the Anti-Dumping Agreement. It points out the increase of undumped imports in 2012 compared to the static pace of volume change for dumped imports.

It is also submitted that the Commission's comment in the SEF about export prices from dumped sources undercutting the price of undumped imports by up to 15% may only refer to the comparison of one dumped price to one undumped price.

The Commission has provided further detail on the undercutting analysis between the dumped and undumped imports at section 9.8 of this report.

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<sup>20</sup> Staughton's submission for PT Gunawan Dianjaya Steel dated 21 August 2013, page 4



## **The Commission's response**

In 2011 BlueScope restructured its business to significantly reduce the Australian export business. This involved the closure of one blast furnace and one hot strip mill and associated plant related to the production of goods for sale on the export market.

The BlueScope visit report details when the restructuring costs were finalised and notes that the plate steel case was not affected by the restructuring costs.

The Commission considers as a result of BlueScope's operational restructuring, some customers may have purchased imported plate steel to ensure security of supply by having more than one source for plate steel.

The Commission has found that purchases of dumped plate steel for these reasons contribute to the low priced imports that BlueScope benchmarks against.

The Commission considers that dumped imports directly led to BlueScope's prices being suppressed. Given BlueScope's approach to setting an import parity price plus a premium above imports, it is reasonable to expect that but for the dumped imports, BlueScope's prices on some occasions would have been higher by at least the margin of dumping. Therefore, the Commission considers that industry has suffered injury as a result of dumped imports.

In regards to exchange rate fluctuations and the impact of the relatively high Australian dollar, the Commission has isolated the effects of currency fluctuations by basing its unsuppressed selling price (USP) on normal values denominated in the home currency and then converted to the applicable Australian dollar exchange rate.

The Commission clarifies that whilst the injury analysis period covers the year 2008, any injury caused to BlueScope prior to the investigation period has not been attributed to dumping or subsidisation.

Exports from other countries not subject of the application, as well as those exporters and countries that have been found not to be dumping during the investigation,<sup>21</sup> have been considered by the Commission in its assessment of causal link between the dumped and subsidised imports and the injury suffered by BlueScope. Section 9.6.1 of this report refers.

The Commission recognises that BlueScope has lost market share to undumped imports and imports from other countries and has not attributed this lost market

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<sup>21</sup> The investigation has been terminated in so far as it relates to exports from JIGANG (dumping only), Hyundai, POSCO, and Taiwan.



## PUBLIC FILE

share to dumped and subsidised imports. Whilst the market share of undumped imports and imports from other sources has increased in the investigation period, this does not alter the fact that dumped and subsidised plate steel was exported to Australia during the investigation period. Injury from undumped imports and injury from dumped imports are not mutually exclusive. The fact that injury has been caused to BlueScope by undumped and unsubsidised imports does not overrule the fact that injury has also been caused by dumped and subsidised imports.

### Impact of currency fluctuations

Interested parties have submitted that the increased value of the Australian dollar has made imports less expensive, impacting BlueScope's ability to recover its costs and detracting from its profitability. They argue that these exchange rate movements have caused injury to the Australian industry rather than the dumped imports.

It is reasonable to expect that the increased value of the Australian dollar has contributed to cheaper into-store Australia dollar import prices (all other factors being equal). However, given the basis on which BlueScope establishes its selling prices into the market, the strength of the Australian dollar does not weaken the assessment that BlueScope's prices are lower than what they otherwise would have been had plate steel not been exported at dumped prices.

### Impact of increased raw material costs

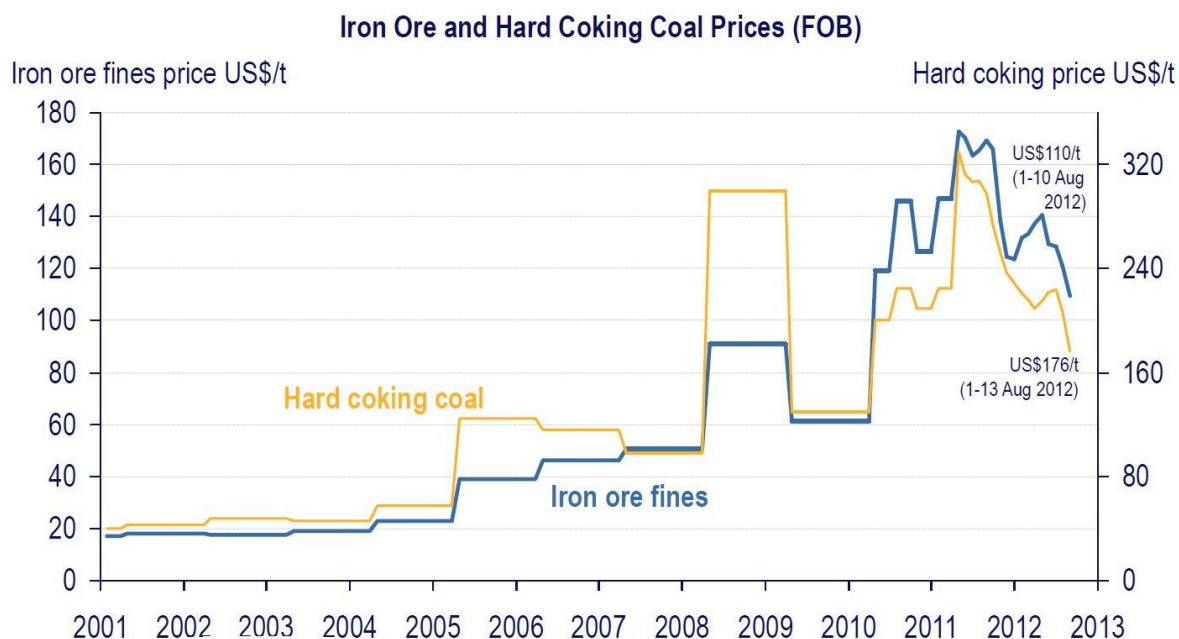
Interested parties have submitted that BlueScope has been injured by high raw material prices and that any resulting injury should not be attributed to injury from dumped and subsidised goods.

To demonstrate the effects of changes in raw material prices, BlueScope included the following chart in its 2012 full year results presentation.<sup>22</sup> The figures included in this chart are based on indicative or benchmark pricing, rather than BlueScope's actual purchases.

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<sup>22</sup> FY2012 Financial Results Presentation, pg 31.

## PUBLIC FILE



This chart clearly shows an increase in raw material pricing in 2008 followed by a drop in 2009. In 2010 prices again increased and peaked in 2011. Prices started to trend downwards in 2012, at levels comparable to 2010 prices, yet still higher than historical prices.

It is reasonable to expect that the higher raw material prices during the investigation period would have contributed to BlueScope's weaker performance during that same period. Whilst BlueScope's costs may have been directly impacted by the higher raw material prices, the Commission does not consider that this detracts from the assessment that dumped imports directly impacted on BlueScope's prices and revenue over the investigation period.

### Impact of low steel prices

Interested parties have claimed that low steel prices have contributed to injury to the Australian Industry. It has been submitted that these rises and falls in steel prices are part of the normal ebb and flow of business and injury from such factors should not be attributed to dumping or subsidisation.

Any weaker demand for steel is not just confined to Australia, but being felt worldwide in the wake of the global financial crisis. The Australian industry must compete with imports that are affected by internationally depressed steel prices and as the Australian industry bases its prices on import parity prices, global steel prices undoubtedly influence the Australian market. These circumstances make the Australian industry more susceptible to the effects of dumped imports.

The Commission has found that BlueScope sets its prices according to import parity pricing. Therefore while steel prices have been depressed globally, the presence of dumped imports in the market has further suppressed BlueScope's prices and made it unable to increase its prices to the extent it would have when competing with

undumped prices. This has particularly impacted BlueScope due to the high raw material prices.

### *Increase in importation of finished products*

Interested parties submitted that demand in the Australian market for plate steel has been negatively impacted by the increasing importation of fully fabricated goods. It is submitted that the growth of these imports is reducing the total Australian plate steel market.

The Commission refers to section 9.4.1 of this report and its findings that the total Australian market for plate steel expanded between 2010 and 2012.

While it is reasonable to expect that price pressure has been put on manufacturers due to competition from imports of fully fabricated goods, the Commission has found that the price of imported fully fabricated goods was not the basis of BlueScope's pricing decisions. Rather BlueScope sets its price in this market sector by taking into account the import price of plate steel.

### **9.7.3 Submission from JIGANG regarding BlueScope's receipt of payments under the Steel Transformation Plan**

JIGANG's submission of 31 May 2013 drew attention to the \$100 million BlueScope received from the Australian Federal Government in January 2012 under the Steel Transformation Plan. JIGANG submitted that any injury incurred by BlueScope is due to reasons other than import competition, evidenced by the need for BlueScope to be significantly subsidised to restructure its operations.

### **Commission response**

The Commission draws attention to the report of its verification visit to BlueScope, contained on the public record for this case, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Section 3.3 of the BlueScope visit report discusses the competitiveness assistance advance of \$100 million received by BlueScope under the Federal Government's Steel Transformation Plan (STP).

BlueScope explained the details it had to include in its application for the competitiveness assistance advance including details of the expenditure items the business would be incurring including research and development, environmental improvement projects, restructuring expenditure and repairs and maintenance.

The following information regarding the Australian Government's provision of a competitiveness assistance advance is available on the website of the Australian Government Department of Industry, Innovation, Science, Research and Tertiary Education:

*On 21 December 2011, the Government announced that it would provide BlueScope Steel with a competitiveness assistance advance of \$100 million under the STP*

*Payment of the competitiveness assistance advance to BlueScope Steel was made on 18 January 2012.*

*Under the agreement, BlueScope will use the advance to build competitiveness by investing in research and development; undertaking a number of environmental improvement projects; maintaining equipment to ensure optimum performance, and operations restructure.*

The Commission considers the payment to BlueScope under the STP is intended to improve the environmental performance of the company and does not consider this payment evidence of injury to BlueScope from sources other than dumped and subsidised goods.

### **9.8 The Commission's assessment**

The injury caused by dumping and subsidisation is considered to be material. In 2012 BlueScope's sales volumes decreased and the margin between costs and revenue contracted to a point where revenue was only marginally higher than costs.

BlueScope's inability to increase prices, as it competed with imports with dumping margins between 5% and 22.1%, resulted in significant losses in profits and profitability during the 2012 investigation period.

BlueScope has demonstrated that its prices (with the exception of a small segment of sales in the Q&T green feed market) are based on IPP. BlueScope sets its prices after it has gathered market intelligence on the current import offers in the market.

Some of the imports against which BlueScope set its prices during the investigation period have been found to be dumped, and in the case of China also subsidised, and as a result BlueScope was required to set lower prices than it would have otherwise or risk losing market share.

In order to differentiate the effects of dumping from the effects of other factors, including undumped and unsubsidised imports, the Commission has examined what effect dumping has specifically had on price. The Commission has found that BlueScope sets its price using a benchmark based on import parity prices plus a margin to reflect a premium for sourcing from a local producer. In the investigation period, this benchmark was sometimes based on dumped and subsidised prices, which accordingly lowered the level at which industry could set its prices. Given this method of pricing, the Commission considers that the minimum amount of injury suffered by BlueScope that can directly be attributed to dumped and subsidised imports is reflective of the individual dumping and subsidisation margins at least up to the level of undumped sources of supply, although it is likely that the undumped prices were also influenced by the prices of dumped imports in 2012.

The Commission analysed the dumped and undumped export prices for grades 250 and 350 (separately), for each thickness measurement, on a quarterly basis.

The Commission's analysis shows that export prices from the dumped sources undercut undumped export prices by a range of 2% to -15%. That is, the dumped imports undercut the prices of the undumped imports by up to 15% and were no more than 2% higher than the prices of undumped imports. On average, the dumped prices undercut the undumped prices by 7%.

Any price reductions and/or profit reductions or losses that have occurred in excess of those attributed to dumping and/or subsidisation are considered to have been the result of factors other than dumping.

### **9.9 Submissions regarding Q&T green feed**

#### **9.9.1 Submission from Bisalloy regarding injury from subsidised Q&T green feed**

In SEF 198 the Commission determined that plate steel exported to Australia from China was subsidised and that the subsidy margin was not negligible.

In its submission to the SEF Bisalloy claims that there is no evidence to support the findings that the alleged subsidised consignments of Q&T green feed<sup>23</sup> exported to Australia during the investigation period have caused material injury to BlueScope. Bisalloy claims that the Commission did not separately assess that Q&T green feed caused material injury to BlueScope.

Furthermore, Bisalloy claims that any injury to BlueScope caused by the imports of Q&T green feed from China that allegedly benefited from JIGANG's 2.6% subsidy margin<sup>24</sup> cannot be regarded as material. Bisalloy claims that the Q&T green feed amounts are less than 5% of BlueScope's annual plate steel production. As such the impact on the volume and value of Q&T green feed will have minimal impact on BlueScope and therefore there are no grounds for the Commission to recommend the Minister publish countervailing notices.

#### **9.9.2 Has subsidised Q&T green feed exported from China caused material injury to BlueScope?**

In SEF 198 the Commission did not separately assess the material injury caused by Q&T green feed. The Commission, in accordance with s.269TAE(2C), assessed the cumulative material injury effects of dumped and subsidised exports of the goods to Australia from the nominated countries. The Commission's approach to material injury is contained in section 9.2 of this report.

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<sup>23</sup> Q&T Green feed is separate from the market for non-alloyed steel plate.

<sup>24</sup> JIGANG only supplies Bisalloy with Q&T green feed plate steel

Bisalloy is the only Australian customer that purchased Q&T green feed. It was supplied by BlueScope, JIGANG (China) and POSCO (Korea) in the investigation period.

The Commission found that Bisalloy's purchases of Q&T green feed from BlueScope were mostly tender prices based on import parity price (IPP).<sup>25</sup> Other purchases were based on the list price. The list price is a fixed published price while the IPP tender price is a negotiated price. The IPP tender price undercut BlueScope's list price by approximately 28%. Bisalloy claims that it only buys Q&T green feed from BlueScope at list price when it runs out of stock and needs to supply its customers the final product at short notice.

Using the IPP weighted average price, the Commission calculated the potential loss of Q&T green feed revenue using JIGANG's subsidy margin rate of 2.6%. The Commission found that the potential loss of revenue was less than 2% of total Q&T green feed revenue in the investigation period.

The Commission also calculated the potential loss of revenue to BlueScope as a proportion of the total revenue of the goods using JIGANG's subsidy margin and also found it to be less than 1%.

Furthermore, the Commission compared POSCO's undumped and unsubsidised export price of Q&T green feed in the investigation period to JIGANG's export price in the same period and found them to be relatively similar. As such JIGANG's subsidised Q&T green feed prices do not support a finding that they have caused material injury to BlueScope's Q&T green feed market.

Based on the above considerations and analysis, the Commission considers that any injury to BlueScope in the Q&T green feed market was not caused by JIGANG's subsidised exports of those goods in that market.

### **9.9.3 Has subsidisation of other plate steel exported from China caused material injury to BlueScope?**

Having found that Q&T green feed exported by JIGANG did not cause material injury to BlueScope, the Commission considered if the remaining plate steel exported from China at subsidised prices caused material injury to BlueScope.

As discussed earlier, the remaining plate steel exported from China by non-cooperating Chinese exporters makes up approximately 50% of the exports from China. This equates to approximately 8% of the total imports of plate steel into Australia. Therefore, in accordance with s.269TDA(8) and s.269TDA(16), the exports from non-cooperators were of sufficient volume and subsidisation so as to cause injury that was not negligible.

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<sup>25</sup> IPP is discussed in some detail section 9.5.1 of this report



The cumulative effect of dumped and subsidised plate steel from the nominated countries in the current investigation is discussed in section 9 of this report.

### 9.9.4 Imposition of Countervailing Duty

Bisalloy claims that the Q&T green feed exported by JIGANG has not caused any material injury to BlueScope and as such there are no grounds for the Commission to recommend the Minister publish a countervailing duty notice in respect of those exports.

After having assessed that JIGANG's subsidised Q&T green feed exports have not caused material injury to BlueScope, the Commission found that subsidised goods exported by non-cooperating exporters from China caused material injury to the Australian industry.

Bisalloy's claim that there are no grounds to impose a countervailing duty notice in respect of JIGANG's exports overlooks that s.269TDA(14) of the Act requires the investigation be terminated when 'goods the subject of the application' have not caused injury to the Australian industry. Section 269TDA(14) relates to the termination of an investigation as it relates to a country if subsidised exports from that country are found to have caused negligible injury. There is no provision to terminate a dumping or countervailing investigation in relation to a particular exporter due to a finding of negligible injury caused by dumping/subsidisation.

In the current investigation the goods are plate steel and while exports of Q&T green feed plate from JIGANG may not have caused injury, the Act requires that an assessment be made on the goods as a whole. The Commission has found that subsidised plate steel exported by non-cooperators from China has caused injury to the Australian industry that is not negligible.

## **10 WILL DUMPING AND SUBSIDISATION AND MATERIAL INJURY CONTINUE**

### **10.1 Findings**

The Commission finds that exports of plate steel from China, Indonesia, Japan and Korea in the future may be at dumped prices, and exports from China may be at subsidised prices, and that continued dumping and subsidisation may cause further material injury to the Australian industry.

### **10.2 Introduction**

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping and/or subsidisation, anti-dumping measures may be imposed on future exports of like goods if the Minister is satisfied that the dumping and/or subsidisation and material injury may continue.

### **10.3 The Commission's assessment**

#### **10.3.1 Will dumping continue?**

The Commission's dumping analysis found that plate steel exported from China (other than JIGANG), Indonesia, Japan and Korea (other than Hyundai and POSCO) during the investigation period was found to be at dumped prices, with dumping margins between 8.6% and 22.1%.

The Commission notes that forward orders exist for exports from the nominated countries and that the plate steel exported from these countries have a significant share and influence in the Australian market.

The Commission considers that dumping will continue if anti-dumping measures are not imposed.

#### **10.3.2 Will subsidisation continue?**

The Commission's subsidy analysis found that exporters from China were in receipt of a number of subsidies from the Chinese government. In view of the nature of the primary subsidies, being raw materials supplied by the government at less than adequate remuneration, and the nature of manufacture of the goods the Commission considers that subsidisation will continue in the absence of anti-dumping measures.

#### **10.3.3 Will material injury continue?**

The Commission has reviewed the Australian industry's performance over the injury analysis period and has found that plate steel exported at dumped and subsidised prices from China, Indonesia, Japan and Korea has caused material injury to the Australian industry.

The Commission considers that the continuation of price competition from dumped and subsidised imports from these countries is likely to have a continuing adverse impact on the Australian industry. The Commission considers that this impact may be particularly evident in:



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- Loss of sales volume;
- Reduced revenues;
- Price depression and suppression;
- Reduced profits and profitability;
- Reduced return on income; and
- Loss of employment.

Based on the available evidence, the Commission has found that exports of plate steel from China, Indonesia, Japan and Korea (other than Hyundai and POSCO) in the future may be at dumped and/or subsidised prices and that continued dumping and subsidisation may cause further material injury to the Australian industry.

## **11 NON INJURIOUS PRICE**

### **11.1 Findings**

The Commission has assessed that the non-injurious price (NIP) for all exports other than those by JIGANG can be determined by setting the unsuppressed selling price (USP) equal to the exporters' normal values, on the basis that the injury caused by dumping and subsidisation is due to BlueScope's matching of import prices. The lesser duty rule does not come into effect and duties should be imposed at the full margin of dumping and countervailing.

In relation to JIGANG, given the finding that subsidisation of those exports did not cause injury to BlueScope, the Commission considers the NIP can be set equal to the export price of those goods.

### **11.2 Introduction**

Dumping and countervailing duties may be applied where it is established that dumped and/or subsidised imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping or countervailing duty cannot exceed the margin of dumping or subsidisation, but a lesser duty may be applied if it is sufficient to remove the injury. This lesser duty provision is contained in the World Trade Organization Anti-Dumping Agreement and the Tariff Act.<sup>26</sup>

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping and subsidisation.<sup>27</sup>

Anti-dumping measures are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

### **11.3 Unsuppressed selling price**

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commission's preferred approach to establishing the USP observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry prices – industry CTMS plus profit; or

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<sup>26</sup> Subsection 8(5A) of the Tariff Act

<sup>27</sup> The non-injurious price is defined in section 269TACA

3. selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

## **11.4 Australian industry**

BlueScope submitted that is not appropriate to base a USP on selling prices in the Australian market in the year prior to the investigation period as the period was affected by dumped import prices.

BlueScope also submitted that is not appropriate to use prices from the calendar year 2010 because the cost base for the Australian industry was significantly different to its cost base in 2012.

BlueScope did not consider that the export prices from countries not included in the application are in sufficient volume to demonstrate an ongoing impact on prices, as Australian industry prices are established against dumped import prices.

BlueScope therefore submitted that the most appropriate method for determining the USP was BlueScope's cost to make and sell (CTM&S) for 2012 plus a level of profit from 2010.

BlueScope included in its confidential submission a proposed USP on the basis of the formula outlined above.

## **11.5 Submission from Dianjaya regarding the NIP**

The submission from Dianjaya, dated 21 August 2013, claimed that BlueScope uses the New Zealand Steel operation (which it owns and controls) to determine IPP for its domestic sales to the distribution market. It submitted that BlueScope's New Zealand Steel imports "should be the benchmark price for imports rather than the notional BlueScope non-injurious price"<sup>28</sup>

Dianjaya requested that the Commission consider imports from New Zealand Steel as the lowest non-dumped source of Australian market supply and as such, as the relevant benchmark for non-injurious pricing.

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<sup>28</sup> Staughton's submission for Dianjaya dated 21 August 2013, page 5

### **11.6 Submission by JFE Steel Corporation, Kobe Steel Ltd, Nippon Steel & Sumitomo Metal Corporation and Nisshin Steel Co., Ltd. regarding NIP**

The submission from the Japanese exporters dated 21 August 2013 submits that the price of undumped imports is a readily available benchmark for the assessment of NIP. It claims that raising the price of dumped imports to the level of undumped prices would remove the material injury attributable to dumping.

### **11.7 The Commission's assessment**

The Commission agrees with BlueScope's reasons for asserting that industry selling prices are not suitable as a basis for the USP. It is possible that selling prices in 2011 were also affected by dumping and the Commission has verified that BlueScope's cost base in 2010 is different to that in 2012.

BlueScope's methodology for constructing a USP is not considered reasonable given that it has no connection to the manner in which its prices are currently established. As highlighted earlier in this report, BlueScope's prices are based not on a cost-plus-profit approach but rather on IPP.

Further, the approach submitted by BlueScope would also appear to compensate for more than just the effects of dumping. The weak demand and excess capacity of steel globally and the strong Australian dollar are all overlooked in its proposed USP.

The Commission has had regard to the submissions by Dianjaya and the Japanese exporters and does not consider that prices from countries not subject to the investigation or undumped prices are a suitable basis for a USP as it cannot be certain that these prices are not also impacted by the dumped imports.

The Commission is of the view that in a market unaffected by dumping, it is reasonable to expect that BlueScope would be able to achieve as a minimum, selling prices that reflect undumped IPP.

The Commission therefore derived NIPs equal to the exporters' normal values for all exporters other than JIGANG.

In the case of the exports of Q&T green feed from China, the Commission found that BlueScope's sales into that sector (to sole customer Bisalloy) were not impacted by subsidised exports. The Commission also noted that all Q&T green feed products from JIGANG went entirely to Bisalloy. Therefore, the Commission considers it appropriate to establish a NIP for Q&T green feed exports from JIGANG using actual export prices found during the investigation period.

For all exports from the nominated countries, the lesser duty rule does not come into effect.

NIP calculations are at confidential attachment 1.

## **12 ANTI-DUMPING AND COUNTERVAILING MEASURES**

The Commission recommends that the Minister publish a dumping duty notice in respect of plate steel exported to Australia by:

- all exporters from Japan and Indonesia;
- all exporters from China except JIGANG;
- all exporters from Korea except Hyundai and POSCO.

The Commission recommends that the Minister publish a countervailing duty notice in respect of plate steel exported to Australia by all exporters from China.

The lesser duty rule can only reduce the amount of interim dumping duty where the NIP is lower than the ascertained normal value (the export price plus the dumping margin).

For all goods and nominated countries (other than exports by JIGANG), the NIP has been set at the level of the normal values for respective exporters. This means that the lesser duty rule does not come into effect and the proposed measures are linked to the full margin of dumping. In relation to JIGANG the NIP is equal to the ascertained export price. This creates a measure whereby no interim countervailing duty (ICD) is payable but variable duty will be payable if the actual export price falls below the ascertained export price.

The Commission recommends to the Minister that the dumping duties take the form of a fixed amount of duty per tonne (calculated as a percentage of the export price) plus a variable amount of duty if the actual export price is below the ascertained export price.

## **13 PUBLIC INTEREST**

### **13.1 Public interest submissions**

The Commission has undertaken to highlight in this final report to the Minister all submissions lodged during the investigation that raise matters relevant to the consideration of public interest in the decision whether or not to impose anti-dumping and countervailing measures.

The following interested parties lodged submissions that contained points related to considerations of the public interest in imposing anti-dumping measures:

- ASA<sup>29</sup> – 9 April 2013
- Bisalloy<sup>30</sup> – submission on 21 August 2013

The ASA submitted that imported plate steel provides the only alternate form of competitive supply to Australian manufacturers and is critical as an insurance to guarantee surety of supply to Australia's plate steel manufacturing operations.

Bisalloy submitted that imposing ICD on imports of Q&T green feed would benefit importers of final Q&T plate steel, to the detriment of both Bisalloy and BlueScope.

Bisalloy submitted that any ICD on Q&T green feed would increase Bisalloy's raw material costs and erode its competitive position in a market already under pressure by imported final Q&T plate steel. Bisalloy's inevitable loss of market share and sales volume to importers of final Q&T plate steel would result in significant reductions in revenue and profitability and reductions in investment and in all possibility the labour force.

Bisalloy submitted that because it purchases a significant proportion of its Q&T green feed from BlueScope, any reduction in Bisalloy's competitive position would also impact BlueScope. As Bisalloy's sales volume and market share contracts it would purchase less of its Q&T green feed requirements from BlueScope, affecting BlueScope's profit and profitability of Q&T green feed.

Bisalloy stated that the imposition of a duty would lead to a deterioration of BlueScope's competitive position as BlueScope's major competitors are the importers of Q&T plate steel.

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<sup>29</sup> The ASA is a membership-based association that represents trading companies, stockists and distributors, service providers, shipping services, logistics services, trade and credit services and consulting services to the steel industry.

<sup>30</sup> Bisalloy is the only Australian manufacturer of high-tensile and abrasion-resistant quench and tempered plate steel. Bisalloy purchases the intermediate material Q&T Green Feed plate steel and subjects it to a quench and tempering process to produce high-strength, wear-resistant Q&T plate steel.

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Section 9.9 of this report details the Commission's findings that BlueScope's sales of Q&T green feed were not impacted by subsidised exports from JIGANG.

Section 11.6 of this report outlines the Commission's recommendation that ICD for JIGANG comprise a floor price equal to the export price.

## **14 RECOMMENDATIONS**

### **The Delegate of the Commissioner is satisfied that:**

- the dumping of plate steel exported to Australia from China, Korea, Indonesia and Japan has caused material injury to the Australian industry producing like goods; and
- the subsidisation of plate steel exported to Australia from China has caused material injury to the Australian industry producing like goods.

### **The Delegate recommends the Minister impose:**

- dumping duty on plate steel exported to Australia from China (except by JIGANG), Korea (except by Hyundai and POSCO), Indonesia and Japan; and
- countervailing duty on plate steel exported to Australia from China.

### **The Delegate recommends the Minister be satisfied:**

- in accordance with s.269TAAD(1), that like goods sold in the country of export in arms' length transactions in substantial quantities during an extended period for home consumption or export to a third country:
  - at a price that is less than the cost of such goods and;
  - it is unlikely that the seller of the goods will be able to recover the cost of those goods within a reasonable period;

the price paid for those goods is taken to not have been paid in the ordinary course of trade;

- in accordance with s.269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of plate steel exported to Australia from China, Korea, Indonesia and Japan by non-cooperating exporters to be determined under s.269TAB(1)(a), (b), or (c);
- in accordance with s.269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of plate steel to be ascertained under s.269TAC(1), (2), (5C) or (5D) for the non-cooperating exporters;
- in accordance with s.269TACC(7) that subsections 269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred, or subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to a conferred benefit;
- in accordance with s.269TG(1) the amount of the export price of plate steel that has been exported to Australia from China, Korea, Indonesia and Japan is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s.269TG(2) the amount of the export price of plate steel already exported to Australia from China, Korea, Indonesia and Japan is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from China, Korea, Indonesia and



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Japan in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;

- in accordance with s.269TJ(2), countervailable subsidies have been received in respect of plate steel already exported to Australia from China, and may be received in respect of like goods that may be exported to Australia from China in the future and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s.269TJA(1), that as to plate steel that have been exported to Australia from China:
  - the amount of the export price of the goods is less than the amount of the normal value of the goods; and
  - a countervailable subsidy has been received in respect of the goods; and
  - because of the combined effect of the two, material injury to the Australian industry producing like goods has been and is being caused
- in accordance with s.269TJA(2), that as to plate steel that have already been exported to Australia from China:
  - the amount of the export price of the goods is less than the amount of the normal value of the goods and the amount of the export price if the goods exported to Australia in the future may be less than the normal value of the goods; and
  - a countervailable subsidy has been received in respect of the goods and may be received in respect of like goods that may be exported to Australia in the future; and
  - because of the combined effect of the two, material injury to the Australian industry producing like goods has been and is being caused.

### **The delegate recommends the Minister determine:**

- in accordance with s.269TAAD(4), the amounts for the cost of production or manufacture of plate steel in the country of export and the administrative, selling and general costs associated with the sale of those goods;
- in accordance with s.269TAB(1)(c) the export prices for certain exports by Rajapaksi and DSM be calculated having regard to all the circumstances of the exportation;
- in accordance with s.269TAB(3) the export prices for non-cooperating exporters from China, Indonesia, Korea and Japan be determined having regard to all relevant information;
- in accordance with s.269TAC(2)(c), the cost of production or manufacture of plate steel in the country of export, and the administrative, selling and general costs associated with the sale and the profit on that sale;

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- in accordance with s.269TAC(6) normal values for non-cooperating exporters of plate steel from China, Indonesia, Korea and Japan be determined having regard to all relevant information;
- in accordance with s.269TACB(1), by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of plate steel from China, Indonesia, Korea and Japan were dumped;
- in accordance with s. 269TACB(2)(a) by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of plate steel from China, Indonesia, Korea and Japan were dumped;
- in accordance with s.269TACC(3), that financial contribution, received in respect of the goods, of a kind that is other than that referred to in s.269TACC(2), has conferred a benefit;
- in accordance with s.269TACC(7), for non-cooperating exporters, an alternative basis for deciding whether a benefit has been conferred or for working out the amount of subsidy attributable to the benefit.

### **The delegate recommends the Minister direct:**

- in accordance with s.269TAC(8), the price paid or payable for like goods sold by DSM, Rajapaksi, Krakatau and Dianjaya be taken to be such a price adjusted for differences between domestic and export sales to ensure a fair comparison.

### **The delegate recommends the Minister compare:**

- in accordance with s.269TACB(2)(a), the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

### **The delegate recommends the Minister declare:**

- in accordance with s.269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to:
  - plate steel exported by all exporters from Japan, Indonesia, China (except by JIGANG) and Korea (except by Hyundai and POSCO) to the extent permitted by s.269TN; and
  - like goods that were exported to Australia by all exporters from Japan, Indonesia, China (except by JIGANG) and Korea (except by Hyundai and POSCO) after the Commissioner made a PAD under s.269TD on 19 July 2013 but before publication of the notice, to the extent permitted by s.269TN.
- in accordance with s.269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all

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exporters from Japan, Indonesia, China (except by JIGANG) and Korea (except by Hyundai and POSCO) after the date of publication of the notice.

- in accordance with s.269TJ(2), by public notice, that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, except JIGANG after the date of publication of the notice.

## **APPENDIX 1 - ASSESSMENT OF A PARTICULAR MARKET SITUATION**

### **1. INTRODUCTION**

This appendix provides an assessment and determination of a 'particular market situation' in relation to hot rolled plate steel (plate steel) in China during the investigation period. The following subsections detail the basis of assessment and the tests applied to determine the existence of a 'particular market situation' in relation to domestic selling prices of plate steel.

Subsection two of this appendix provides a brief background and the reasons for the assessment of a 'particular market situation' in the current investigation. This subsection also highlights the relevance of positive findings by the Commission in investigation numbers INV 177 and INV 190a & INV 190b (hereafter together referred to as INV 190) that a 'particular market situation' existed in relation to domestic sales of hollow structural sections (HSS), galvanised steel and aluminium zinc coated steel.

Subsection three provides an overview of the Chinese iron and steel industry and its importance in China. This subsection also analyses whether the Government of China (GOC) influences found in INV 177 and INV 190 continue to distort prices in the iron and steel sector and thereby the prices of plate steel products. The validity and continuance of various overarching macroeconomic policies, plans and legislation enacted, promulgated and implemented by the GOC at central and local level found in INV 177 and INV 190 are also assessed. The responses provided by the cooperating Chinese exporter (JIGANG) and the GOC in response to the existence of a 'particular market situation' for plate steel have also been considered.

Subsection four analyses the implications of the GOC's import and export tax policies and controls on plate steel and its major raw materials: steel slab, HRC, coke, coking coal, iron ore and scrap metal.

Subsection five discusses the fundamentals of the basic economic theory of supply and demand affecting the price of a commodity. It provides a theoretical framework to understand the implications of increase in the supply of a commodity in a domestic market through direct and indirect government interventions.

Finally, based on the findings made in the above assessments, the Commission has made a positive determination of the existence of a 'particular market situation' in the plate steel market in China such that sales in that market are not suitable for determining a normal value. As such, the Commission has not been able to determine the normal values in accordance with s269TAC(1) of the Act for plate steel exported from China.

The normal value of plate steel was constructed in accordance with s269TAC(2)(c) of the Act. The methodology used for constructing the normal value is discussed in section 6.3.1 of the report.

## **2. BACKGROUND**

In its application, BlueScope claimed that domestic prices of plate steel in China are not suitable for the determination of normal values. More specifically, BlueScope allege that the continued intervention by the GOC in the iron and steel industry distorted the prices of plate steel during the investigation period.

Section 269TAC(1) of the Act establishes that ‘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.’

However, s.269TAC(2)(a) of the Act sets out an exception and states that where ‘...because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1); the normal value of goods exported to Australia cannot be ascertained under subsection (1); ...’. In such circumstances, the normal value may be determined on the basis of construction of cost<sup>1</sup> or third country sales.<sup>2</sup> Therefore, a determination as to whether there is a ‘particular market situation’ has consequences for the assessment of normal value and dumping margins.

### *2.1 The GOC’s influence in the iron and steel industry*

In the recent investigations involving steel products (HSS, galvanised steel and aluminium zinc coated steel) the Commission found that the price of the main raw materials for those goods was distorted by the GOC’s intervention in the Chinese iron and steel industry. The Commission found that a ‘particular market situation’ existed in relation to HSS and also determined that prices in the domestic market for galvanised steel and aluminium zinc coated steel were unsuitable for the determination of normal value under s.269TAC(1) of the Act (REP 177 and REP 190 refers).

The GOC continues to influence the prices of the raw materials in the current investigation period through various forms of interventions in the Chinese iron and steel industry summarised in subsection 2.2 below.

### *2.2 Summary of major findings in Chinese iron and steel industry*

The various forms of the GOC’s intervention found in the iron and steel industry are outlined below;

- (i) the GOC plays a significant role in influencing the domestic iron and steel industry through its numerous broad overarching macroeconomic policies and plans that outline aims and objectives for the Chinese iron and steel industry, including:
  - National Steel Policy (NSP);

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<sup>1</sup> S.269TAC(2)(c)

<sup>2</sup> S.269TAC(2)(d)

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- Blueprint for the Steel Industry Adjustment and Revitalization;
  - Directory Catalogue on Readjustment of Industrial Structure; and
  - national and regional five year plans and guidelines
- (ii) implementation measures (that go towards actively executing the aims and objectives of these policies and plans), as summarised below:
- measures to eliminate out dated production capacity and to encourage technical and environmental improvement;
  - market entry criteria and industry operating conditions;
  - measures to curb 'production capacity redundancy';
  - guiding industry mergers and acquisitions;
  - import and export measures on upstream raw material;
  - subsidies provided to the producers in the iron and steel industry; and
  - other implementation measures, including impact of SIEs.

In recent investigations the Commission established that:

- the GOC has exerted numerous influences on the Chinese iron and steel industry, which are likely to have materially distorted competitive conditions within that industry and affected the supply of HSS, galvanised steel, aluminium zinc coated steel and the common raw materials used for the manufacture of those steel products using HRC, narrow strip, and upstream products and materials;
- the impact of the GOC's influence on supply is extensive, complex and manifold, and their resulting impact on the price of steel products exported to Australia is not able to be easily quantified;
- the information available indicates that prices of steel products in the Chinese market are not substantially the same (likely to be artificially low) as they would have been without the GOC influence; and
- the GOC influences in the Chinese iron and steel industry have created a 'market situation' in the domestic HSS market, galvanised steel market and aluminium zinc coated steel market such that sales of those steel products in these markets were not suitable for determining normal value under s.269TAC(1).

### 2.3 Review Officer's Recommendations on INV 177

The then Trade Measures Review Officer (Review Officer) on 14 December 2012 published a report<sup>3</sup> of his review of the findings in INV 177 and recommended to the Minister certain aspects of the investigation be reinvestigated. One aspect was the finding that a situation in the market of China was such that sales in the Chinese domestic market were not suitable for use in determining a normal value.

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.

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<sup>3</sup> The review officer's report is published on the website: <http://www.adreviewpanel.gov.au>

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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.

On 14 January 2013, the Minister accepted the Review Officer’s recommendation and requested that the CEO of ACBPS reinvestigate a number of findings, including that a ‘particular market situation’ exists in the HSS domestic market in China.

On 13 May 2013, the Minister affirmed the recommendations of the Commission that a particular market situation in China exists in relation to HSS such that the sales of HSS in that market are not suitable for determining normal value under s.269TAC(1).

### 2.4 Galvanised steel and aluminium zinc coated steel findings (INV 190)

The Commission in REP 190 determined that the galvanised steel and aluminium zinc coated steel selling prices in China were distorted during the investigation period. The impacts of the GOC’s policies and other economic measures in INV 177 were found to have continued in the investigation period for INV 190.

In INV 190 the Commission determined that the GOC had 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. Some of the influences were in the form of:

- broad, overarching GOC macroeconomic policies and plans that outline aims and objectives for the Chinese iron and steel industry;
- ‘implementing measures’ that go towards actively executing the aims and objectives of these policies and plans; and
- various import and export taxes, tariffs, quotas have influenced the supply of raw materials in the Chinese domestic market used in production of the plate steel, that has led to a distortion in the selling prices of plate steel.

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 not been insignificant.

The Commission determined that a ‘particular market situation’ exists in the Chinese market for galvanised steel and aluminium zinc coated steel products.

### 2.5 Relevance of HSS, galvanised steel and aluminium zinc coated steel investigations

Plate steel is part of the iron and steel industry. The main raw materials – steel slab and HRC – and some of the main upstream raw materials such as coking coal, coke and scrap metal used in the production of HSS, galvanised steel and aluminium zinc coated steel are also used to manufacture plate steel.



The galvanised steel and aluminium zinc coated steel investigation period overlaps with half the investigation period for this investigation (i.e. from January 2012 to June 2012).

Therefore, the GOC's influence found in the iron and steel industry in INV 177 and INV 190 are directly relevant to this investigation.

### 3. CHINESE IRON AND STEEL INDUSTRY

#### 3.1 Government of China's response to Government Questionnaire

The GOC's response to the Government Questionnaire (GQ) in relation to a 'particular market situation' in this investigation was submitted to the Commission on 15 April 2013. In assessing the response the Commission found that some responses were incomplete or were answered inadequately. In some parts of the questions, where the GOC made certain claims, it did not provide supporting evidence. On 25 June 2013 a supplementary questionnaire was sent to the GOC to:

- (i) seek complete responses to the initial GQ;
- (ii) clarify and understand certain new information collected during the course of the investigation; and
- (iii) seek further information regarding the additional subsidy programs identified by the Commission during the course of its investigation.

The GOC provided its response to the supplementary government questionnaire (SGQ) on 12 July 2013.

The analysis of the existence of a 'particular market situation' in the plate steel markets in China is based on an assessment of relevant information from the GOC's responses, other relevant information obtained during the course of the investigation and information gathered during INV 177 and INV 190.

#### 3.2 Changes to macroeconomic policies and plans post INV 177 and INV 190

In its response to the GQ the GOC stated that none of the major government policies, catalogue and plans identified in INV 177 and INV 190 had changed<sup>4</sup>. The GOC stated that "*like the TMRO, the GOC disagreed with the conclusions reached by Australian Customs about the reason and effect of the GOC's policies*" (GOC's response to GQ A-8 refers).

The following major government policies and plans were identified by the Commission in INV 177 that influenced the iron and steel industry and distorted the plate steel prices in China:

- (i) National Steel Policy;
- (ii) A blueprint for the Steel Industry Adjustment and Revitalization;
- (iii) Directory Catalogue on Readjustment of Industrial Structure; and
- (iv) national and regional five year plans and guidelines.

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<sup>4</sup> Investigation period for INV 177 was from 1 July 2010 to 30 June 2011 and INV 190 was from 1 July 2011 to 30 June 2012



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The GOC provided the following comments in relation to three of the above identified major policies and plans.

(i) The National Steel Policy

The GOC stated that the National Steel Policy (NSP) is an ‘aspirational’ document (and not a ‘legal’ document) which sets out the means by which the steel industry can modernise its operation and remain competitive and efficient in future.

The GOC reiterated its earlier statement in response to the GQ for INV 190 that the NSP was drafted to *‘discuss ways to elevate the levels of technology used in the iron and steel industry; to promote structural adjustment; to improve the industry layout; to promote recycling and to minimise the industry’s environment impact; and generally to guide the sound development of the iron and steel industry’*.

The GOC also reiterated that an industry plan by the Government is not unusual and that alone is not sufficient to support a finding that a ‘particular market situation’ exists in the Chinese domestic market for plate steel.

(ii) A Blueprint for the Steel Industry Adjustment and Revitalization

In response to GQ A-8, the GOC stated that *‘the purpose of a Blueprint for steel industry adjustment and revitalization was to stabilize the steel industry following the fallout from the global financial crisis’*. The GOC further stated that it is not uncommon for WTO members to publish such documents in relation to unprecedented economic conditions.

(iii) Directory Catalogue on Readjustment of Industrial Structure

The GOC reiterated<sup>5</sup> that *“the Directory Catalogue on Readjustment of Industrial Structure (“Directory Catalogue”) is part of the same policy as the interim provisions on promoting structural adjustments (the Interim Provisions). The Interim Provisions set out the criteria under which certain production processes may be classified as ‘encouraged’, ‘restricted’, or ‘eliminated’ and how the government agencies may deal with such processes and the Directory Catalogue identifies what production processes actually fall within these categories”*.

### 3.3 Effect of macroeconomic policies and plans

In response to the exporter questionnaire regarding the existence of a ‘particular market situation’ in the plate steel market, the cooperating exporter JIGANG stated that it did not consider that the GOC macroeconomic policies and plans have affected its businesses during the investigation period.

The GOC did not specify any particular new policies or government initiatives that came into effect following INV 177 and INV 190 that would have affected the Chinese iron and steel industry in the current investigation period.

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<sup>5</sup> GQ A-8 refers

Two of the policies identified in INV 177 remained active and valid in the current investigation period for the plate steel investigation. Other policies had either been replaced with similar sentiments or had minor amendments and did not have any significant differing effect in the current investigation period on the iron and steel industry (for example MIIT<sup>6</sup> amended the Steel Standard Conditions in June 2012).

The Commission considers the major government macroeconomic policies and plans identified in previous investigations into HSS, galvanised steel and aluminium zinc coated steel continued and influence the price of plate steel in the current investigation period.

After having found that the GOC's overall macroeconomic policies and implementation plans in the Chinese iron and steel industry have not changed since INV 177, the Commission assessed the impact of the GOC's import and export tax policies on plate steel and its major upstream raw material industries in China, discussed in section 4 of this appendix.

## 4. CHINESE HOT ROLLED PLATE STEEL INDUSTRY

### 4.1 Raw Materials

Steel slab and HRC are the main intermediary materials used for the two manufacturing methods to produce the plate steel via a plate mill or via a hot strip mill and cut to length line. The main raw materials for the manufacture of steel slab and HRC are:

- (i) Coking coal, including pulverised coal injection (PCI), and/or coke;
- (ii) Iron ore; and
- (iii) Scrap metal.

### 4.2 Production Process

In its application, BlueScope provided a detailed description of the manufacturing process of plate steel. BlueScope is a fully-integrated<sup>7</sup> business entity manufacturing flat steel products.

A similar manufacturing process of plate steel was described by JIGANG in its response to exporter questionnaire and verified by the Commission as detailed in the visit report<sup>8</sup>.

During the investigation it was established that JIGANG is an integrated producer, purchasing iron ore, coking coal and other raw materials to produce plate steel.

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<sup>6</sup> Ministry of Industry and Information Technology

<sup>7</sup> A fully integrated business entity produces its own HRC and steel slab to manufacture the goods using upstream raw materials such as coke, coking coal and scrap metal.

<sup>8</sup> JIGANG exporter visit report is available on the Commissions website

## 4.3 Importance of Plate steel in China

In its response to GQ A-1, the GOC stated that the domestic Chinese plate steel and HRC industries are neither separate nor distinct. The GOC stated that due to the large number of participants in the Chinese steel industry, the GOC found it difficult to separately identify and categorise different steel industry participants on the basis of the products they manufacture. The GOC stated that *'as in Australia, Chinese steel producers generally manufacture several different kinds of steel products. Furthermore, the GUC can be made from steel slab or from coil – in each case as part of either a continuous process or a staged process. Only lower range of thicknesses is made from coil'* (response to GQ A-1 refers).

The GOC in responding to the GQ A-1 stated that plate steel is used by a number of sectors. The major consumer of the plate steel is the construction sector. The GOC also identified that domestic demand for steel was also driven by other consumers such as nuclear power plants, wind farms, hydro-power facilities, ports, ships, railways, transportation, mining machinery, medical equipment, construction machinery and housing. The GOC stated that the markets for plate steel and HRC are incredibly competitive and that there is a strong demand domestically within China for these goods, particularly in industries directed toward energy generation.

The GOC stated that it has no incentive to enforce a package of policies designed to depress or suppress prices, or to make Chinese producers uncompetitive in the plate steel industries (including the relevant upstream industries including iron ore, coking coal, coke and scrap metal industries). The GOC further stated that *'...it does not control or regulate the price of the GUC... and that price discovery at all levels – GUC and input materials – takes place under conditions of open and vigorous competition'* (the GOC's response to GQ A-1 (i) refers).

The GOC provided some data for import and export taxes, tariff rates and export quotas for plate steel and its major upstream materials HRC, coke, coking coal, iron ore and scrap metal as applicable between January 2008 and December 2012. Their effects are analysed and summarised below.

## 4.4 Value Added Tax

The GOC makes numerous and regular amendments to Value Added Tax (VAT) rates for various commodities. VAT is generally levied at a rate of 17% in China for purchases and domestic sales.

The GOC refunds some or all of the VAT paid on inputs, referred to in the following section as VAT rebates. In the period of investigation some VAT rebates were paid to exporters of plate steel.

## 4.5 Implication of import and export tax policies

Governments use import and export tax policies as one of the tools to control the level of imports and exports of goods into and out of an economy. This appendix focuses on the effect of the GOC's import and export tax policies and their implications on domestic supply that in turn affect the price of the goods under

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investigation. A detailed theoretical consideration of the effect of import and export tax policies is at section six of this appendix.

### 4.6 Omitted data

In SGQ A-4 the Commission inquired about import and export data that was omitted from the GOC's response to GQ A-2.

The GOC was asked in relevant sub-questions to provide data by value and volume for steel slab, HRC, iron ore, scrap metal and plate steel. In its response, the GOC stated that *"these and other questions regarding data prior to the period of dumping investigation are irrelevant to the investigation..."* The GOC further stated that *"...in the interest of full cooperation the GOC provide 2009 data for plate steel imports and exports..."* (Confidential Attachment 65 refers).

The Commission considers the data requested of the GOC is relevant to the assessment of a 'particular market situation' in China for plate steel. Given that the GOC's major tax policy reform was effected from 2008 (sections 4.7 to 4.15 below refers), it is important to analyse the import and export trends of plate steel and its major upstream raw materials from 2008. The Commission considers the GOC's response in this regard to be non-cooperative.

### 4.7 Plate steel

The GOC, in response to the GQ provided the export VAT rebates, export tariff rates, corporate income tax rates, import tariff rates and export quotas applicable to plate steel as summarised in Table 1 below.

**Table 1: Import and export tax rates applicable to plate steel between January 2008 and December 2012**

Export VAT Rebates	Jan to Dec 2008 (%)	Jan 2009 to May 2009 (%)	June 2009 to Dec 2009 (%)	Jan 2010 to mid- July 2010 (%)	mid July 2010 to Dec 2010 (%)	Jan to Dec 2011 (%)	Jan to Dec 2012 (%)
Plate Steel	5	5	9	9	0	0	0
Export Tariff Rates	Jan to Nov 2008 (%)	2008(Dec 1- Dec 31)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Plate Steel	5	0	0	0	0	0	
Corporate Tax Rate	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
Plate Steel	25	25	25	25	25		
Import Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
Plate Steel	6	6	6	6	6		
Export Quotas	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012		
Plate Steel	NA	NA	NA	NA	NA		

The above table indicates that the export VAT rebate was abolished in mid-July 2010 (formerly provided at 5% and then 9%). However, during the verification visit to JIGANG, the Commission discovered that an export VAT rebate of 13% was applicable in the investigation period on alloyed<sup>9</sup> steel products exported by JIGANG (section 5.3.4 of JIGANG's visit report refers).

<sup>9</sup> Section 3.4.1 of the report discuss alloyed and non-alloyed goods

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The Commission considers that abolishing the VAT rebate on exports of non-alloyed plate steel provides an indication of the GOC's intention to restrict exports of this type of plate steel even though no export tariff has been imposed. The imposition of a 6% import tariff is further evidence of an intention to restrict supply of non-alloyed plate steel to the domestic market.

The confidential data submitted by the GOC (response to GQA-2 confidential attachments 16 and 22 refers) shows that a significant volume of plate steel was imported into China in the investigation period compared to the volume of plate steel that was exported (difference of approximately 450%), although only a very small amount was exported in total.

### 4.8 Steel Slab

Steel slab is an intermediary product used to manufacture plate steel. The GOC did not provide a response to GQ A-3 regarding the volume of imports and exports, VAT rebates, export tariff rates, corporate income tax rates, import tariff rates and export quotas applicable to steel slab.

A follow-up question was sent to the GOC on 21 July 2013 to seek further clarifications regarding the above import and export taxes, tariffs and quotas. In response on 25 July 2013, the GOC stated that *"the GOC was only able to acquire information regarding exports and imports of steel slab from January 2010 onwards"*. The information provided by the GOC is summarised in Table 2.

**Table 2: Import and export tax rates applicable to steel slab between January 2008 and December 2012**

Export VAT Rebates	Jan to Dec 2008 (%)	Jan 2009 to May 2009 (%)	June 2009 to Dec 2009 (%)	Jan 2010 to mid-July 2010 (%)	mid July 2010 to Dec 2010 (%)	Jan to Dec 2011 (%)	Jan to Dec 2012 (%)
Steel Slab	Not Provided	Not Provided	Not Provided	Not Provided	Not Provided	Not Provided	Not Provided
Export Tariff Rates	Jan to Aug 2008 (%)	Aug to Nov 2008 (%)	Dec 2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Steel Slab	25	25	25	25	25	25	25
Corporate Tax Rate	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
Steel Slab	25	25	25	25	25		
Import Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
Steel Slab	11	11	11	11	11		
Export Quotas	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
Steel Slab	NA	NA	NA	NA	NA		

NA=not applicable

The Commission noted that the GOC omitted information regarding export VAT rebates for the steel slab.

The combination of a high export tax and high import tariff makes it difficult to draw meaningful conclusions about the GOC's intentions in regards to slab steel. The export tax would restrict the availability of any domestically produced slab steel to the export market, but the import tariff would make any imports of slab steel to address domestic shortfalls more expensive.

#### 4.9 Hot Rolled Coil (HRC)

HRC is also an intermediary product used in the production of plate steel for the lower range of thicknesses. HRC's major raw materials are coke, coking coal, iron ore and scrap metal. The GOC in its response to the GQ provided the VAT rebates on exports, export tariff rates, corporate income tax rates, import tariff rates and export quotas applicable on imports and exports of HRC, summarised in Table 3 below.

**Table 3: Import and export tax rates applicable to HRC between January 2008 and December 2012**

Export VAT Rebates	Jan to Dec 2008 (%)	Jan 2009 to May 2009 (%)	June 2009 to Dec 2009 (%)	Jan 2010 to mid-July 2010 (%)	mid July 2010 to Dec 2010 (%)	Jan to Dec 2011 (%)	Jan to Dec 2012 (%)
HRC	0	0	9	9	0	0	0
Export Tariff Rates	Jan to Aug 2008 (%)	Aug to Nov 2008 (%)	Dec 2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
HRC	5	5	0	0	0	0	0
Corporate Tax Rate	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
HRC	25	25	25	25	25		
Import Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
HRC	3	3	3	3	3		
Export Quotas	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)		
HRC	NA	NA	NA	NA	NA		

The Commission considers that introducing a VAT rebate on exports (at 9% between June 2009 and mid-July 2010) and then removing it from mid-July 2010 provides an indication of the GOC's intention to restrict export of HRC. It is also evident from the confidential data supplied by the GOC in response to GQ A-2 (confidential attachment 20 refers), that there has been a negligible volume of HRC exported compared to the quantity imported in China during the investigation period.

The Commission considers net effect of GOC's the export and import tax policies leads to an increase the supply of HRC domestically which would make it readily available to downstream users of HRC at lower prices.

#### 4.10 Coking Coal and Coke

##### Coking Coal

Coking coal is mined from open cast or underground mines, washed, and converted into coke (almost pure carbon resulting from conversion of coal without oxygen at high temperatures). The quality of the coking coal, or rather a specific mixture of selected coals, directly influences the final coke quality. The quality of coke is more dependent on the coal mixture than on the production technology<sup>10</sup>.

The GOC stated that a number of entities produce coking coal in China (confidential version of response to the GQ A-1 refers). It stated that 504 mega tonnes (MGT) of

<sup>10</sup> Ignacio et al (2011); 'The iron and steel industry: a global market perspective'

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coking coal was produced in 2011. The GOC stated that due to high demand in China, coking coal is also imported from other countries.<sup>11</sup>

### Coke

In response to GQ A-1 (pg. 8 of confidential version of the GQ refers), the GOC stated that a number of companies produce coke in China. The GOC also identified that, other than manufacture of steel products, coke is also used for the following purposes:

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

The GOC, in its response to the GQ A-3<sup>12</sup>, provided details of the rates of various tariff and taxes on coke and coking coal, which are summarised in Tables 4 and 5.

**Table 4: Summary of taxes and tariff rates applicable to coke between January 2008 and December 2012**

Export VAT Rebates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coke	0	0	0	0	0	
Export Tariff Rates	Jan to Aug 2008 (%)	Aug to Dec 2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Coke	25	40	40	40	40	40
Import Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coke	0	0	0	0	0	
Export Quotas	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coke	Subject to Export quotas	Subject to Export quotas	Subject to Export quotas	Subject to Export quotas	Subject to Export quotas	
Corporate Tax Rate	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coke	25	25	25	25	25	

<sup>11</sup> Response to GQ A-1 page 7 refers

<sup>12</sup> public record Attachments 23, 24, 25, 26 and 31 refers



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**Table 5: Summary of taxes and tariff rates applicable to coking coal between January 2008 and December 2012**

Export VAT Rebates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coking Coal	0	0	0	0	0	
Export Tariff Rates	Jan to Aug 2008 (%)	Aug to Dec 2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Coking Coal	5	10	10	10	10	10
Import Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coking Coal	0	0	0	0	0	
Export Quotas	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coking Coal	NA	NA	NA	NA	NA	NA
Corporate Tax Rate	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Coking coal	25	25	25	25	25	

NA= Not applicable

The Commission considers that imposing a high export tax and no import tax on coke and coking coal in the period under examination indicates that the GOC continued to restrict exportation of those raw materials from China while promoting importation.

The GOC stated that despite the large number of coking coal mines, the demand for coking coal (and coke) is so high in China that it requires imports from other countries. The GOC provided confidential data on the quantity of imports and exports of coke between January 2009 and December 2012. It is evident from this data that some coke was imported during this period<sup>13</sup>.

The Commission noted some inconsistency in the export quota data provided in INV 190 and this investigation. In response to INV 190 (SGQ 3-(i) refers) the GOC stated that coking coal was not subject to any form of export quotas in 2011 and 2012. However in response to GQA-3(c) of this investigation, the GOC stated that coking coal was subject to export quotas in those years (public record Attachment 26 refers).

The Commission (SGQ A-6(d) refers) asked the GOC to clearly identify the correct information. In response the GOC stated that *"In China, coal products, which include coking coal, are subject to a total export quota. Therefore, the GOC in the initial response to the GQ for INV 190(a) and 190(b) stated that coking coal was subject to export quotas from July 2007 to December 2012. However, there is no specific quota assigned to coking coal. For this reason, the more accurate response should be that there are no specifically quantified export quotas for coking coal from 2008 to 2012"*.

The Commission noted that there were other inconsistencies in the coke import data (GOC response to GQA-2 confidential attachment 13 refers) provided by the GOC for the investigation period. For example the USD import prices per tonne between January 2012 and June 2012 was substantially higher (approximately 863%) than July 2012 to December 2012. This data between January 2012 to June 2012 was also submitted by the GOC during INV 190 as part of its responses to GQ. On

<sup>13</sup> It is noted that the data provided by the GOC is stated as being for 'coke and semi-coke' and no further clarification was provided



further inquiry during INV 190, the GOC confirmed that the data provided was correct but did not provide any formal response as to why there was a large variance in the prices. While the Commission attempted to draw the conclusions above based on the data provided, it is considered that the coke import data (both volume and prices) provided by the GOC is questionable as to its reliability.

The GOC provided export quota for coke in 2011 was 8.4 million tonnes and in 2012 was 9 million tonnes (non-confidential version of Attachment 66 refers). This equates to approximately 2% of the total production of coke in China and provides further evidence that the supply of coke was restricted to domestic downstream users of coke.

#### 4.10.1 Effects of Export, Import and VAT policies

##### Coke

China is one of the largest producers of coke in the world<sup>14</sup>. The GOC's policies restricted the supply of coke to the international market by imposing:

- a high export tax;
- providing no VAT rebates on exports; and
- applying export quotas.

Due to the export restrictions, the market for Chinese produced coke was mainly limited to downstream users in the Chinese domestic market. The GOC also implemented policies (such as no import tax) that encouraged importation of coke.

The GOC's policies restricted coke exports, encouraged coke imports and therefore:

- reduced coke availability to the international market;
- increased the supply of coke in the Chinese domestic market; and
- the increased supply led to downward pressure on Chinese domestic prices for coke.

The impact of the GOC's policies created a differential between the price charged to Chinese domestic processors and the price charged to foreign processors.

This was evident in the recent investigations (INV 193a and INV 193b), where it was found that the domestic price of coke in the investigation period was approximately 38% lower than the export price. The Chinese export price was comparable to the export price of coke by other major exporting countries (Confidential attachment 3 to REP 193 refers).

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<sup>14</sup> Source: world coal association: <<http://www.worldcoal.org/resources/coal-statistics>> and Resource-Net report <<http://resource-net.com>>

## Coking coal

China is the largest producer of coking coal<sup>15</sup> in the world. The GOC's policy of imposing a high export tax, providing no VAT rebates on exports restrained the supply of coking coal to the international market. Due to these restrictions, the market for Chinese produced coking coal was mainly limited to downstream users in China. In addition to the export restrictions, the GOC also implemented policies (such as no import tax) that promoted importation of coking coal.

The effect of these restrictions is the same as those in relation to coke as discussed above. The domestic price of coking coal in China in this investigation period was 16% lower than the export price on comparable terms trade in the investigation period (Confidential Attachment 4 refers).

The Commission considers that, as a result, not only was the price of coke and coking coal in China were influenced and distorted by the import and export tax policies but as key raw materials this had a flow-on effect on the entire steel industry, and thereby on downstream value added industries such as steel slab, HRC and plate steel.

## 4.11 Iron Ore

Iron ore is one of the major raw materials used in the production of slab steel and HRC. The GOC in its response to GQ A-1, stated that “... *in addition to its massive production capacity, the volume of iron ore imported into China has been steadily increasing since 2005...*”. The GOC claims that by 2012 China's demand accounted for 60% of the global iron ore consumption<sup>16</sup>. The GOC also stated that the domestic demand is the major determinant of the price of iron ore in China. The GOC did not provide any data for production and consumption of iron ore in China.

The GOC in its response to GQ A-3 provided the export VAT rebates, export tariff rates, corporate income tax rates, import tariff rates and export quotas applicable on imports and exports of iron ore as summarised in Table 6.

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<sup>15</sup> Source: world coal association: <<http://www.worldcoal.org/resources/coal-statistics>> and Resource-Net report <<http://resource-net.com>>

<sup>16</sup> GOC referred to “the Economist “Iron Ore: the Lore of Ore” 13 October 2012;  
< [http:// www.economist.com/node/21564559](http://www.economist.com/node/21564559) >

**Table 6: Import and export tax rates applicable to iron ore between January 2008 and December 2012**

Export VAT Rebates	Jan to Dec 2008 (%)	Jan 2009 to Mar 2009 (%)	April 2009 to May 2009 (%)	June 2009 to Dec 2009 (%)	Jan 2010 to mid- July 2010 (%)	mid July 2010 to Dec 2010 (%)	Jan to Dec 2011 (%)	Jan to Dec 2012 (%)
Iron Ore	0	0	0	0	0	0	0	0
Export Tariff Rates	Jan to Aug 2008 (%)	Aug to Nov 2008 (%)	Dec 2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	
Iron Ore	10	10	10	10	10	10	10	
Corporate Tax Rate	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)			
Iron Ore	25	25	25	25	25			
Import Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)			
Iron Ore	0	0	0	0	0			
Export Quotas	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)			
Iron Ore	NA	NA	NA	NA	NA			

The Commission considers that the imposition of export tax, together with no VAT rebate on exports, restricted the export of iron ore. The GOC's application of no import tax also promotes the importation of iron ore into China. This increases the domestic supply of iron ore and provides greater access to the downstream industries for the manufacture and supplies of value added products.

Analysis of the confidential export data provided by the GOC indicates that only a small quantity of iron ore was exported during this period while a large quantity was imported in the same period. It was also noted that imports (import data provided by the GOC from January 2008 to December 2012) of iron ore gradually increased over the years from 2008 to 2012. This indicates that the demand for iron ore increased in the domestic market. As the GOC did not provide any domestic production or domestic consumption information for iron ore, it is also difficult to quantify the level of this demand in the domestic market.

#### 4.12 Scrap Steel

The GOC, in its response to GQ A-3<sup>17</sup>, provided the export VAT rebates, export tariff rates, corporate income tax rates, import tariff rates and export quotas applicable on imports and exports of scrap metal, summarised in Table 7.

<sup>17</sup> public record Attachments 23, 24, 25,26 and 31 refer

**Table 7: Import and export tax rates applicable to scrap metal between January 2008 and December 2012**

Export VAT Rebates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Scrap Metal	0	0	0	0	0
Export Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Scrap Metal	40	40	40	40	40
Corporate Tax Rate	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Scrap Metal	25	25	25	25	25
Import Tariff Rates	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Scrap Metal	0	0	0	0	0
Export Quotas	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)
Scrap Metal	NA	NA	NA	NA	NA

The Commission considers that application of high export tax, together with no VAT rebate on exports and no import taxes indicates that the GOC restricts export of scrap metal.

The net effect of the import and export measure restricted export of scrap metal during the period under examination. The data provided by the GOC in response to GQ A-2<sup>18</sup> confirms that China imported a large quantity of scrap metal and exported only a small quantity in the investigation period.

#### 4.13 Other factors considered in INV 190

The GOC, in its response to GQ A-4 in INV 190, stated that coke is typically a highly polluting (high emission) and high-energy consuming product. The GOC claims that European countries and United States have strengthened their corresponding environment protection legislations to reduce coke output.

Furthermore the GOC stated that: “...China has also imposed restrictions on production of highly polluting enterprises. Efforts have been to ensure that the compliance of old technologies are checked against current standards and that if they do not meet these standards they can no longer be operational and therefore must be decommissioned. On this basis, the GOC imposes export quota restrictions on coke in accordance with WTO rules relevant domestic laws and regulations. Domestically, the total capacity of coke producers is restricted because of these environment constraints.” “Enterprises failing to conform to environment protection standards, or to honour common practices in promoting social responsibilities, may be denied export quotas”.

The GOC claims that the above ‘management approach’ has resulted in a number of positive achievements such as growth in coke industry investments; production has slowed down; the industry has reduced its backward capacity; achieved upgrading of its investment and industrial structure. The GOC also claims that in Shanxi province,

<sup>18</sup> confidential Appendices 15 and 21 refers

the dominant province for coke export and production, significant air quality improvements have been researched and documented<sup>19</sup>.

China's export tariffs, export quotas and export licensing on coke (and other raw materials) has recently been subject to a WTO dispute before a WTO Panel<sup>20</sup> and then the Appellate Body, the findings of which were handed down in July 2011 and January 2012 respectively. Both the Panel and Appellate Body found that Chinese measures on coke were WTO-inconsistent<sup>21</sup>.

The Commission is aware that the 40% export tax on coke was abolished with effect from January 2013. Further information and clarifications regarding the abolition of the 40% export tax on coke were sought from the GOC in INV 190 through the SGQ. In its response to the SGQ of INV 190 (INV 190 SGQ 6 refers), the GOC did not provide any explanation. The GOC stated that: *'it does not see how this change in 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'*.

The GOC also did not clarify if the 40% export tax that has been abolished has been replaced by any other form of tax and/or measures that may have similar restrictions on coke exports.

The Commission considers that abolishing the export tax on coke is significant and relevant to these investigations. The export tax on coke was imposed in mid-2008 and was effective in the current investigation period. The Commission found that high export tax was one of the elements that restricted the supply of coke outside China. Considering China as a major producer of coke, even with the export restriction, the demand for coke was so high that China accessed coke from international market and evidenced by the import of coke confidential data provided by the GOC (response to GQ A-2 confidential Attachment 13 refers). This led to short supply of coke outside China which in turn led to an increase in coke prices outside China.

#### 4.15 Changes in the last 5 years in the plate steel industry

The GOC, in its response to GQ A-1 (C)<sup>22</sup>, stated that it does not impose any special regulations on mergers and acquisitions in the steel industry, including industries associated with its input materials, whether to force, or prevent, such mergers and acquisitions. Furthermore, the GOC stated that *'business activities like mergers and acquisition are matters for the individual enterprises to consider and implement if and when it is deemed to be beneficial to their business and that the GOC plays no part in the making of these decisions'*.

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<sup>19</sup> In response to SGQ, the GOC clarified that this research report was published by the Asian Development Bank (public record attachment 85 refers)

<sup>20</sup> WTO Dispute DS394, DS395 and DS398 refers

<sup>21</sup> Reports of the Appellate Body, China – Measures Related to the Exportation of Certain Raw Materials (AB201-5) at 363.

<sup>22</sup> Response to GQ pages 10-13 refer

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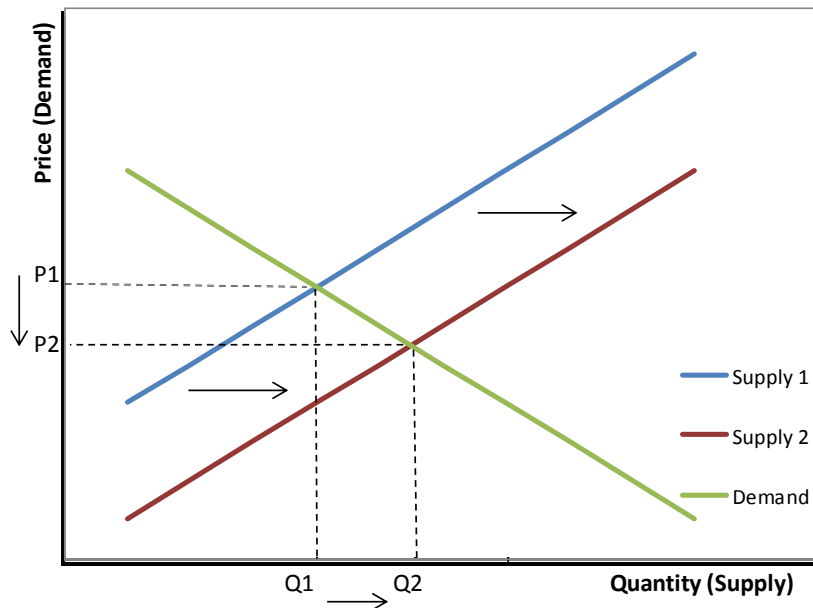
The Commission assessed the list of changes identified by the GOC in response GQ A-1 (c) in the last five years. No major changes were identified by the GOC. Only a few changes listed may be considered relevant to the current investigations such as:

- on 16 January 2012 the *China Iron Ore Spot Trading Platform* officially opened for trading;
- on 22 March 2012, the China Securities Regulatory Commission approved the Dalian Commodity Exchange to conduct the trade of coke future;
- the Ministry of Industry and Information Technology (MIIT) of the GOC published the '*Admittance Conditions of Scrap Steel Processing Industry*' on 11 October 2012. These conditions require newly-established scrap steel processing and distributing enterprises to have the ability to process in excess of 150,000 tons per year of scrap steel;
- in 2012 the State Council published the *12th Five Year Guideline of Energy Conservation and Emission Reduction*. This envisages that by the year 2015 the energy conservation for each ton of steel produced will be reduced to 580 kilograms of coal equivalent at best;
- in 2012, China's MIIT published the '*Standard Conditions of Production and Operation of the Iron and Steel Industry (amended version 2012)*' in order to further promote the structural adjustments and industrial upgrading of the iron and steel industry;
- on 15 October 2012, the New York Mercantile Exchange (NYMEX) trading platform under CME Group listed the contract of the Chinese Steel Rebar HRB 400 (mysteel) Futures for trading; and
- in 2012 the state council published the *12<sup>th</sup> Five Year Guideline of energy conservation and emission reduction*". This envisages that by the year 2015 the energy consumption for each tonne of steel produced in China will be reduced to 580 kilograms of coal equivalent at best.

### 5. Economics of supply

The theory of 'economics of supply' was published in Appendix 1 of REP 190 and is repeated in this appendix. The basic fundamentals of supply theory explain that increasing the supply of a commodity, given all other factors being equal, will lead to lower prices due to excess supply. Figure 1 below illustrates that increasing the supply quantity from Q1 to Q2, exerts downward pressure on the prices moving the prices from P1 to P2. The equilibrium price (intersection where supply equals demand), also moves down (from intersection of P1Q1 to P2Q2).

Figure 1: Shift in Supply



Governments generally impose high export tax rates and export quotas to restrict the exports of a particular commodity that it considers scarce and vice versa. Restricting exports leads to increase in the supply of those goods in the domestic market. This eventually leads to over-supply, exerting a downward pressure on the prices of those goods. This intention is usually to make such goods easily accessible to the domestic consumers and at lower price.

#### 5.1 What causes shifts in supply curve?

Some of the factors increase the supply of a commodity that leads to shift in the supply curve are summarised below.

- (i) *Costs of production* - A fall in the costs of production leads to an increase in the supply of a good as the supply curve shifts downwards and to the right. Lower costs mean that a business can supply more at each price. For example a firm might benefit from a reduction in the cost of raw materials.
- (ii) *Changes in production technology* - technology can change very quickly and in industries where the pace of technological change is rapid it is expected to see increases in supply (and therefore lower prices for the consumer)
- (iii) *Government taxes and subsidies* - government intervention in a market can have a major effect on supply. For example, a tax on producers causes an increase in costs and the supply curve to shift upwards to the left – the result is a lesser quantity of goods being supplied after the tax has been introduced.
- (iv) Alternatively providing no VAT rebates (as opposed to providing rebates) on exports restricts exports and increases the domestic supply.



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- (v) A subsidy has an opposite effect to that of an introduction of a tax. A subsidy will increase supply because a guaranteed payment from the Government reduces a firm's costs allowing them to produce more output at a given price. The supply curve shifts outwards and to the right depending on the size of the subsidy.
- *The number of producers in the market* will affect total market supply. When new firms enter a market, supply increases (moving the supply curve outward (right)) causing downward pressure on the market price.
  - However, mergers and acquisitions through government interventions in a closed economy, will limit the number of producers. This leads to economies of scale leading to lower costs of production hence increased supply. This will move the supply outward (right) reducing the price of the commodity.

### 5.2 How has the GOC intervened in the iron and steel industry?

The Commission found that the price of major raw materials in China was influenced by the GOC throughout the investigation period. Direct intervention by the GOC in the form of imposition of taxes, tariffs, export quotas and other indirect measures including the GOC's overarching macroeconomic policies and plans, such as the National Steel Policy, a Blueprint for Steel Industry Adjustment and Revitalisation Directory Catalogue and 12th Five Year Plan have impacted on the supply and distorted the cost of the raw materials coke, coking coal, iron ore and scrap metal, which in turn has distorted the price of plate steel.

The Commission considers that the most influential factors were the 40% export tax on coke and scrap metal; 0% VAT rebates on non-alloyed plate steel, HRC, coke, coking coal and iron ore. These factors have likely led to an increase in the domestic supply of those goods, moving the supply curve to the right by distorting the costs of upstream raw and intermediary materials used to manufacture iron and steel, and thereby plate steel.



## **5.3 Subsidisation**

BlueScope alleged that Chinese exporters of plate steel have benefitted from thirty countervailable subsidy programs provided by the GOC. During the course of the investigation an additional twelve countervailable subsidy programs were discovered.

Having assessed all 42 subsidy programs, the Commission found that with the exception of program 2 (steel slab provided by government at less than adequate remuneration) all other subsidy programs were countervailable. The Commission determined that plate steel exported to Australia from China was subsidised and that the subsidy margin was not negligible. An assessment of these programs is at Appendix 2.

The Commission considers that the countervailable subsidy programs would also have impacted on reducing the costs of production of plate steel in China.

## **6. Conclusion**

The Commission 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.

In the current investigation, based on available information, the Commission determined that various GOC influences identified in INV 177 and again in INV 190 continued to apply in the Chinese iron and steel industry. These were in the form of broad, overarching GOC macroeconomic policies and plans that outline aims and objectives for the Chinese iron and steel industry and more specifically the 'implementing measures' that go towards actively executing the aims and objectives of these policies and plans.

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 not been insignificant. The various countervailable subsidies provided by the GOC have also influenced the costs of production of plate steel in China. The various taxes, tariffs, export and import quotas have influenced the price of raw materials used in production of plate steel which has led to a distortion in the selling prices of the plate steel itself.

The Commission's assessment and analysis of the available information indicates that prices of plate steel in the Chinese market are not substantially the same as they would have been without the influences by the GOC. The Commission considers that GOC influences in the Chinese iron and steel industry have created a 'particular market situation' in the domestic plate steel markets such that sales of plate steel in China are not suitable for determining normal value under s.269TAC(1) of the Act.

**APPENDIX 2 – ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES**

**1.0 Findings**

After considering all relevant available information, the Commission calculated the following subsidy margins for the one cooperating exporter, JIGANG, and for all other exporters collectively:

<b>Manufacturer / exporter</b>	<b>Subsidy margin</b>
JIGANG	2.6%
<i>All other exporters</i>	36.9%

**1.1 Introduction**

This Appendix details the Commission's assessment of the subsidy programs investigated in relation to hot rolled plate steel (plate steel) exported from China.

**1.1.1 Investigated programs**

The Commission noted that the application had presented reasonable grounds for the publication of a countervailing duty notice in respect of 30 alleged subsidy programs, and the Commission commenced investigations into those programs.

During its investigations with the cooperating Chinese exporter, the Commission identified twelve additional countervailable subsidy programs in respect of plate steel.

The countervailability of each of these programs, and the subsidy amount received by the Chinese exporter under each of these programs is detailed in this Appendix.

**1.1.2 The Act**

Subsidy is defined in s.269T of the Act. Section 269TACC of the Act further defines a countervailable subsidy and directs how to determine whether benefits have been conferred by a subsidy and the amount of this benefit.

**1.1.3 Information relied upon**

In addition to the information contained in BlueScope's application, the Commission has had regard to the following in arriving at the findings regarding countervailable subsidies:

- the responses from the GOC to the Government Questionnaire (GQ) and Supplementary Government Questionnaire (SGQ);
- response to the exporter questionnaire by the cooperating exporter, and information gathered from and verified with this exporter;

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- information submitted to the Commission in recent investigations into HSS (INV 177), galvanised steel and aluminium zinc coated steel (INV 193a and INV 193b) and the Commission's analysis and findings in those investigations;
- submissions to SEF 198; and
- open source research for non-cooperating exporters.

### 1.2 Programs investigated in current investigations

BlueScope submitted that 27 subsidy programs that were initially identified in the HSS (INV 177), the galvanised steel (193a) and aluminium zinc coated steel (INV 193b) investigations are also being provided in relation to plate steel. It also alleged that two countervailable subsidies identified in INV193a and INV193b, identified in this investigation as Programs 3 and 4, were provided in relation to hot rolled plate steel and that one new countervailable subsidy was provided in the form of steel slab provided at less than adequate remuneration (Program 2 in this investigation).

Twelve additional countervailable programs were identified by the Commission during the course of the investigation.

Table 1 below summarises the countervailable subsidy programs identified in the application being investigated in the current investigation (the last two columns in Table 1 refer to the corresponding program number investigated in INV 193a, INV 193b together and INV 177).

**Table 1: Alleged countervailable subsidies being investigated**

Program Number <sup>1</sup>	Program Name	Program Type	INV 193a and INV 193b Program Number	INV 177 Program Number
1	HRC provided by government at less than adequate remuneration	Remuneration	1	20
2	Steel slab provided by government at less than adequate remuneration	Remuneration	NA	N/A
3	Coking coal provided by government at less than adequate remuneration	Remuneration	2	N/A
4	Coke provided by government at less than adequate remuneration	Remuneration	3	N/A
5	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Income Tax	4	1

<sup>1</sup> Refers to the program number that is used in this investigation

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Program Number <sup>1</sup>	Program Name	Program Type	INV 193a and INV 193b Program Number	INV 177 Program Number
6	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Income Tax	5	10
7	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Income Tax	6	11
8	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Income Tax	7	12
9	Preferential Tax Policies in the Western Regions	Income Tax	8	13
10	Land Use Tax Deduction	Income Tax	9	29
11	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	10	35
12	Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipments	Tariff & VAT	11	14
13	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	14	2
14	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	13	5
15	Superstar Enterprise Grant	Grant	14	6
16	Research & Development (R&D) Assistance Grant	Grant	15	7
17	Patent Award of Guangdong Province	Grant	16	8
18	Innovative Experimental Enterprise Grant	Grant	17	15
19	Special Support Fund for Non State-Owned Enterprises	Grant	18	16

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Program Number <sup>1</sup>	Program Name	Program Type	INV 193a and INV 193b Program Number	INV 177 Program Number
20	Venture Investment Fund of Hi-Tech Industry	Grant	19	17
21	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Grant	20	18
22	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	21	19
23	Water Conservancy Fund Deduction	Grant	22	21
24	Wuxing District Freight Assistance	Grant	23	22
25	Huzhou City Public Listing Grant	Grant	24	23
26	Huzhou City Quality Award	Grant	25	27
27	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	26	28
28	Wuxing District Public List Grant	Grant	27	30
29	Anti-dumping Respondent Assistance	Grant	28	31
30	Technology Project Assistance	Grant	29	32

The table below summarises additional countervailable subsidy programs investigated by the Commission following receipt of information during the course of the current investigation:

program Number	Program Name	Program Type	INV 193a and INV 193b Program Number	INV 177 Program Number
31	Technique transformation grant for rolling machine	Grant	NA	NA
32	Grant for Industrial enterprise energy management centre construction demonstration project Year 2009	Grant	NA	NA
33	Key industry revitalization infrastructure spending in budget	Grant	NA	NA

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program Number	Program Name	Program Type	INV 193a and INV 193b Program Number	INV 177 Program Number
	Year 2010			
34	Provincial emerging industry and key industry development special fund	Grant	NA	NA
35	Environmental protection fund	Grant	NA	NA
36	400 sintering desulfuration transformation fund	Grant	NA	NA
37	Intellectual property licensing	Grant	NA	NA
38	Financial resources construction special fund	Grant	NA	NA
39	Reducing pollution discharging and environment improvement assessment award	Grant	NA	NA
40	Comprehensive utilization of resources - VAT refund upon collection	Tariff & VAT	NA	NA
41	Grant of elimination of out dated capacity (350 blast furnace)	Grant	NA	NA
42	Grant from Technology Bureau (development and application of coke oven gas waste heat efficiency reuse technology)	Grant	NA	NA

### 1.3 Co-operation

When the investigation was initiated, the Commission wrote to all Chinese exporters of plate steel identified in the ACBPS's import database and invited them to participate in the investigation by completing a questionnaire.

The Commission received a complete questionnaire response from only one exporter, JIGANG. One other Chinese manufacturer and one trading company also provided a response but did not fully complete the questionnaire. The Commission considered that those responses were deficient to a material degree and did not warrant verification. Those exporters were deemed to be non-cooperative as discussed in section 1.4 of this Appendix.

The Commission visited JIGANG to verify the information contained in the questionnaire response, in conjunction with a verification visit for the dumping investigation.

## **1.4 Non-Cooperation**

At the time of initiation of this investigation the Commission contacted all interested parties including:

- all exporters and importers identified in the ACBPS database and using common contact details from recent investigations into HRC, galvanised steel and aluminium zinc coated steel. In addition, the Commission contacted major Australian importers of plate steel at commencement of the investigation and obtained direct contact details for personnel involved in the export of plate steel to Australia from China;
- the Government of China (GOC), who was alleged to be providing countervailable subsidies for plate steel products exported to Australia; and
- any other parties that the Commission considered might be relevant to the investigation, such as industry associations.

One Chinese manufacturer of plate steel, Jiangyin Xingcheng Special Steel Works Co., Ltd (Jiangyin), provided some information to the Commission on 18 March 2013. The Commission contacted Jiangyin on 20 March 2013 advising it that the wrong questionnaire had been used (Jiangyin had used the importer questionnaire) and provided it with the correct exporter questionnaire. The Commission gave Jiangyin a further opportunity to provide a complete response; however Jiangyin did not provide any further information. On 19 April 2013 the Commission wrote to Jiangyin advising it that sufficient information had not been furnished to enable export prices and normal values to be determined and it regarded Jiangyin to be a non-cooperative exporter in respect of the plate steel investigation.

The Commission was not able to rely on any of the information provided by Jiangyin to determine if Jiangyin received any subsidies from the GOC in the investigation period.

One trading company, Shanghai Tycoon Co. Ltd (Shanghai Tycoon), responded to the exporter questionnaire on 25 March 2013. The Commission identified that Shanghai Tycoon is a trader and asked Shanghai Tycoon to forward the exporter questionnaire to the manufacturer of the goods and extended the due date for response to 4 April 2013. Shanghai Tycoon responded on the same date to acknowledge the Commission's response and stated that it would forward the exporter questionnaire to the manufacturer of the goods. On 8 April 2013, Shanghai Tycoon provided some additional information. The manufacturer that supplied the goods to Shanghai Tycoon did not contact the Commission or respond to the questionnaire. On 6 May 2013, the Commission wrote to Shanghai Tycoon advising that sufficient information had not been furnished to enable export prices and normal values to be determined and it regarded Shanghai Tycoon to be a non-cooperative exporter in respect of plate steel investigation.

The Commission was not able to rely on any of the information provided by Shanghai Tycoon to determine if its supplier received any subsidies from the GOC in the investigation period.

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### Government Questionnaires

The Commission sent the GOC questionnaire (GQ) on 21 February 2013. The GOC provide a response to the GQ on 15 April 2013. In assessing the response the Commission found that some responses were incomplete or were answered inadequately. In some parts of the questions, where the GOC made certain claims, it did not provide supporting evidence.

Furthermore, in its response to section B of the GQ, the GOC restricted its response to the one cooperating exporter (JIGANG).

On 25 June 2013, a supplementary questionnaire was sent to the GOC to seek complete responses to the GQ, to clarify and understand certain new information collected during the course of the investigation and to seek further information regarding the additional subsidy programs identified by the Commission during the course of its investigation. The Commission also asked the GOC to provide responses in relation to all Chinese exporters of plate steel (SGQ B-1 refers).

The GOC provided its response to the SGQ on 12 July 2013.

In response to SGQ B-1 the GOC stated that *"The GOC considers that it has already provided comprehensive, sufficient and relevant responses to questions under section B of the GQ. The GOC provided updated responses regarding the information about the status of the programs identified..."*

In response to the twelve new countervailable subsidy programs identified by the Commission during the course of the investigations the GOC stated that *"... the GOC notes that no timely allegations have been filed by the applicant in relation to these alleged subsidies and that the GOC was not initially notified of them at the time it was asked to respond to GQ. The applicant has not specified any basis for finding that the alleged grants were specific or that the programs otherwise meet the prime facie standards for initiation of such an investigation..."*

Furthermore, the GOC stated that *"...sooner notification of these alleged subsidies could have been helpful. The GOC understands that these additional subsidies were advised to Australian Customs at the verification of the responding exporter concerned. This SGQ was provided to the GOC for response more than five weeks after that..."*

In response to twelve additional countervailable subsidy programs identified in section B of the SGQ, the GOC only provided the amount paid to JIGANG. This information was also provided by JIGANG. The GOC did not identify any legal basis, eligibility criterion, specificity details or any explanation of why the GOC provided those grants and VAT refunds to the cooperating exporter.

JIGANG also did not provide the eligibility criterion for receiving those grants and VAT refunds from the GOC. This information is critical to assess any countervailable subsidies provided by the GOC.



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The Commission considers that given that the exporter concerned is a State Invested Enterprise (SIE) and payments were from the GOC, the GOC is in the best position to provide information about the payments. The Commission considers the GOC's response in this regard to be non-cooperative.

### Information relied upon

The Commission considers that all Chinese exporters other than JIGANG were non-cooperative. The Commission also considers that the GOC's responses to the GQ and SGQ in relation to the subsidy investigation, in particular to section B of GQ and SGQ, were incomplete.

In considering all relevant information at its disposal the Commission had regard to the following possible sources.

- (i) Information from the ACBPS database and information obtained from the cooperating importers was used to identify Chinese exporters that exported the goods in the investigation period. The internet was used to research those companies to determine the production processes of those exporters to establish if they were 'integrated' or 'non-integrated'<sup>2</sup> enterprises. However, the Commission was not able to establish the production process for any of those Chinese exporters.
- (ii) Information obtained in recent investigations of HSS, galvanised steel and aluminium zinc coated steel was used to identify whether there were any common exporters of plate steel and those products to determine their production processes. However, no common Chinese exporters of plate steel were found in those investigations.

After providing an opportunity to all exporters and the GOC and making all reasonable efforts to obtain information about the non-cooperating plate steel exporters as outlined above, the Commission established that:

- (i) plate steel is produced using the same raw materials used to manufacture galvanised steel and aluminium zinc coated steel; and
- (ii) some Chinese exporters of galvanised steel and aluminium zinc coated steel products were fully integrated while others were not. Therefore it is likely that non-cooperating Chinese exporters of plate steel products purchase coking coal, coke and HRC to produce the goods. That is, it seems reasonable to conclude that non-cooperating Chinese exporters of plate steel could be either integrated or non-integrated in respect of their manufacturing process.

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<sup>2</sup> A fully integrated producer manufactures its own main raw material HRC and /or Steel Slab to produce the goods under consideration using upstream raw materials such as coke, coking coal and scrap metal. While a non-integrated manufacturer purchases HRC and/or steel slab to produce the goods.

## **1.5 Program 1: Hot Rolled Steel provided by government at less than adequate remuneration**

### Background

BlueScope alleged that Chinese exporters of plate steel have benefited from the provision of raw material in the form of hot rolled steel (HRC) by the GOC at less than adequate remuneration.

The definition of a subsidy under s.269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that produce HRC are public bodies, and that a financial contribution in the form of provision of raw material inputs (HRC) at less than adequate remuneration by these SIEs to hot rolled plate steel producers constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs producing HRC constitute a public body in the meaning of s.269T(a)(ii) is discussed in Appendix 2.1 of this appendix.

This assessment concludes that these Chinese SIEs that produce HRC are 'public bodies' for the purposes of s.269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit in respect of exported plate steel is conferred by HRC being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

In the aluminium zinc coated steel and galvanised steel investigations information presented by non-integrated exporters showed that SIEs were significant suppliers of HRC to galvanised steel and aluminium zinc coated steel exporters. This was further supported by information provided by the GOC in response to the GQ and second supplementary government questionnaire (SSGQ) during that investigation, which showed the share of total domestic HRC production in China by SIEs to be significant.

### Legal Basis

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

### WTO Notification

The Commission is not aware of any WTO notification in respect of this program.

### Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving HRC at less than adequate remuneration.

## PUBLIC FILE

### Is there a subsidy?

Based on the available information, the Commission considers that this program involves a financial contribution that involves the provision of the goods (HRC) by SIEs, being public bodies, at less than adequate remuneration.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of hot rolled plate steel, the Commission considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by the Commission.

Where the financial contribution involves the provision of HRC by public bodies to private intermediaries that trade those inputs to the exporters of plate steel, the Commission considers, in accordance with s.269T(2AC)(a), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of plate steel by way of HRC being provided at less than adequate remuneration.

These benefit amounts are equal to the difference between the purchase price of HRC paid by the Chinese cooperating exporters in the galvanised steel and aluminium zinc coated steel investigations and the adequate remuneration.

Where exporters of plate steel during that investigation period received a financial contribution of HRC under the program at less than adequate remuneration, it would therefore confer a benefit in relation to plate steel, and the financial contribution would meet the definition of a subsidy under s.269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

Given that HRC is one of the key inputs in the manufacture of downstream products (including plate steel) it is clear that only enterprises engaged in the manufacture of these products would benefit from the provision of the input by the GOC at less than adequate remuneration.

As such the subsidy is determined to be specific and countervailable.

### Amount of subsidy - cooperating exporter

The Commission found that JIGANG was fully integrated and did not purchase any HRC from SIEs.

Therefore the Commission considers a zero amount of subsidy under this program for JIGANG.

## Non-cooperating exporters

For all non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program.

Considering the fact that:

- a significant proportion of Chinese enterprises that produce HRC are known to be SIEs;
- in the galvanised steel and aluminium zinc coated steel investigations non-integrated cooperating exporters purchased a significant amount of HRC from SIEs;
- there is evidence that some cooperating exporters from Indonesia, Korea and Taiwan<sup>3</sup> produced plate steel using HRC;
- BlueScope stated in its application that it produces some hot rolled plate steel using HRC; and
- the GOC in its response to GQ A-1 (pg.6) stated that as in Australia, Chinese manufacturers generally produce several different kinds of steel products and the goods can be made from steel slab or from coil;

it is considered likely that at least some non-cooperators are non-integrated and purchased HRC from SIEs and therefore received a financial contribution under this program.

In the absence of information that demonstrates the volume of HRC purchased from SIEs by non-cooperating exporters, the Commission considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

In accordance with s.269TACC(7), the Commission determines that non-cooperating exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of that benefit by reference to the highest individual benefit amount of the three cooperating non-integrated exporters in the galvanised steel and aluminium zinc coated steel investigations. To determine the subsidy margin the weighted average export price for non-alloyed grades of plate steel for the entire investigation period from JIGANG was used as discussed in section 6.3.2 of the report (in the absence of other reliable information).

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<sup>3</sup> Shang Chen (Taiwan), Hyundai Steel (Korea) and PT Gunung Raja Paksi (Indonesia)

The Commission used all relevant information to assess if the non-cooperating Chinese exporters of plate steel were in receipt of countervailable subsidies provided by the GOC. Therefore, the Commission considers that it is reasonable to use the highest subsidy margin rate calculated for cooperating exporters in galvanised steel and aluminium zinc coated steel investigations for this program to calculate the subsidy margin for non-cooperating exporters.

### **Submissions received**

In response to SEF 198 the GOC submitted that the HRC analysis contained in the SEF is partially out dated and lacks relevance to the current investigation. The GOC claims that none of the cooperative Chinese exporters exported plate steel made from HRC to Australia in the investigation period and that it is also not aware of any cooperative exporters from any country in this investigation who exported plate steel made from HRC to Australia.

### **The Commission's Assessment**

In the absence of full cooperation from the Chinese exporters (other than JIGANG) and the GOC, the Commission used all relevant information, which included information from the recently completed galvanised steel and aluminium zinc coated steel investigations. In those investigations a number of cooperating exporters were found to have purchased HRC to manufacture coated steel. In the coated steel case the Commission worked out the benefit per tonne of coated steel by using the cooperating exporter's purchase data and purchase data from exporters from other countries subject to those investigations for that investigation period (1 July 2011 to 30 June 2012).

Given the lack of data available to it for actual purchase prices of HRC in China during the current investigation period, which overlaps the coated steel investigation period by six months, the Commission considered the benefits per tonne calculated for the cooperating exporters in the coated steel case was the most relevant information. In particular, the Commission used the highest benefit per tonne from any exporter given the lack of cooperation. This was apportioned over JIGANG's weighted average export price to determine the subsidy rate for all other exporters from China.

Due to the lack of cooperation from exporters from China, other than JIGANG, the Commission cannot be satisfied that no plate steel exported from China was manufactured from HRC. Furthermore, the Commission during the course of the current investigation identified that some manufacturers from Taiwan, Korea and Indonesia use HRC to manufacture plate steel exported to Australia.

### **1.6 Program 2: Steel slab provided by government at less than adequate remuneration**

BlueScope alleged that Chinese exporters of hot rolled plate steel have benefited from the provision of raw material in the form of steel slab by the GOC at less than adequate remuneration.

In particular it was claimed that steel slab, one of the main inputs used in the manufacture of hot rolled plate steel, was being produced and supplied by SIEs in China at less than adequate remuneration.

The Commission has no relevant information on which to conclude that any exporter received this benefit, or if such a benefit exists. The cooperating exporter does not purchase steel slab and no Chinese exporters in previous steel cases purchased steel slab. As such this program has been terminated.

### **1.7 Program 3: Coking coal provided by government at less than adequate remuneration**

#### Background

BlueScope alleged that Chinese exporters of hot rolled plate steel have benefited from the provision of raw material in the form of coking coal by the GOC at less than adequate remuneration.

In particular, it was claimed that coking coal, one of the main raw materials used in the manufacture of HRC and steel slab, which is in turn used for the manufacture of hot rolled plate steel, was being produced and supplied by SIEs in China at less than adequate remuneration.

During this investigation it has been established that JIGANG was 'fully integrated'. Integrated producers manufacture HRC using coking coal as one of the raw materials, while non-integrated producers purchase HRC and/or steel slab to produce those goods.

The definition of a subsidy under s.269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that produce coking coal are public bodies, and that a financial contribution in the form of provision of raw material inputs (coking coal) at less than adequate remuneration by these SIEs to manufacturers of hot rolled plate steel constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs producing coking coal constitute a public body in the meaning of s.269T(a)(ii) is discussed at Appendix 2.1.

This assessment concludes that these Chinese SIEs that produce coking coal are 'public bodies' for the purposes of s.269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit to exported hot rolled plate steel is conferred by coking coal being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

The Commission's assessment of what constitutes 'adequate remuneration' for coking coal in China is contained in Appendix 2.3.

## **PUBLIC FILE**

The Commission requested information from all Chinese exporters in relation to their purchases of coking coal during the investigation period. For each supplier of coking coal, the Chinese hot rolled plate steel exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

Information presented by JIGANG showed that SIEs were significant suppliers of coking coal.

### Legal Basis

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

### WTO Notification

The Commission is not aware of any WTO notification in respect of this program.

### Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving coking coal at less than adequate remuneration.

### Is there a subsidy?

Based on the available information, the Commission considers that this program involves a financial contribution that involves the provision of the goods (coking coal) by SIEs, being public bodies, at less than adequate remuneration.

As Chinese fully integrated exporters use coking coal in their production of hot rolled plate steel, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the fully integrated exporters of hot rolled plate steel, the Commission considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by the Commission.

Where the financial contribution involves the provision of coking coal by public bodies to private intermediaries that trade those inputs to the exporters of hot rolled plate steel, the Commission considers, in accordance with s.269T(2AC)(a), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of hot rolled plate steel by way of coking coal being provided at less than adequate remuneration.

These benefit amounts are equal to the amount of the difference between the price paid by the exporter and the adequate remuneration.



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Where exporters of hot rolled plate steel during the investigation period received a financial contribution of coking coal under the program at less than adequate remuneration, it would therefore confer a benefit in relation to hot rolled plate steel, and the financial contribution would meet the definition of a subsidy under s.269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

The Commission understands that coal can be classified into two categories – thermal coal used for heat generation and metallurgical coal. The form of coking coal examined in this investigation is metallurgical coking coal. The commission considers that this type of coking coal, including pulverised coal injection (PCI), is mainly used in the manufacture of iron and steel.<sup>4</sup> Given that the coking coal being examined used mainly in the production of iron and steel it is clear that only enterprises engaged in the manufacture of these products would benefit from the provision of the input by the GOC at less than adequate remuneration.

As such the subsidy is determined to be specific and countervailable.

The Commission is aware that metallurgical coal comes in a range of qualities. This aspect is discussed in the determination of adequate remuneration at Appendix 2.3.

### Amount of subsidy - cooperating exporter

The Commission found that JIGANG received a financial contribution that conferred a benefit under this program during the investigation period through the purchase of coking coal at less than adequate remuneration from public bodies, under s.269TACC(4)(d) in accordance with s.269TACC(3) of the Act.

Purchases of coking coal, including PCI, manufactured or supplied by SIEs were identified by the exporter with reference to the 'Coking Coal Purchases' spreadsheet supplied by the exporter, which listed the purchases of coking coal during the investigation period. This spreadsheet identified whether coking coal was manufactured by an SIE or not for each listed purchase.

Using this data, each purchase of coking coal from an SIE was assessed for adequate remuneration.

In accordance with s.269TACC(5), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration, established having regard to the prevailing market conditions in China (discussed in detail in Appendix 2.3).

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<sup>4</sup> [http://www.tetrattech.com/pdfs/66/Coal\\_Classification\\_CMP2012\\_Ting\\_Lu.pdf](http://www.tetrattech.com/pdfs/66/Coal_Classification_CMP2012_Ting_Lu.pdf). Reference supplied by the GOC in pre-initiation consultations.



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In accordance with s.269TACC(6)(d), the amount of the benefit has been determined as the difference between adequate remuneration (as established) and the actual purchase price paid for coking coal incurred by the relevant exporter in purchasing those goods from SIEs.

The export prices used to determine the benchmark price are at FOB terms. The purchase price paid by the exporter concerned was on delivered terms. The Commission considered the most reasonable method for ensuring the prices were on comparable terms, noting the following difficulties:

- the exporter purchases coking coal from various mines located in different regions unknown to the Commission. As such there may be large variances in the freight costs to its factory; and
- the distances between the coal mines to the exporter and between the coal mines to the port are unknown and will vary.

The Commission considers it is reasonable to compare the delivered purchase prices as reported by the exporter to the FOB export prices, given that both incorporate some amount of freight cost.

Based on information provided by BlueScope, the Commission has determined a percentage of coking coal required to manufacture one tonne of plate steel. In accordance with s.269TACC(10), the amount of subsidy received in respect of plate steel has been apportioned to each unit of plate steel using the total benefit calculated per tonne of coking coal apportioned according to the coking coal required to produce one tonne of plate steel.

### Non-cooperating exporters

For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program.

However, considering the facts that:

- plate steel exported from China is made using coking coal as one of the major raw materials; and
- a significant proportion of Chinese enterprises that produce coking coal are likely to be SIEs<sup>5</sup>,

it is considered likely that some non-cooperating exporters are fully integrated and purchased coking coal from SIEs and therefore received a financial contribution under this program.

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<sup>5</sup> In absence of any other information, the Commission relied on evidence supplied in the application that suggests more than 50% of coking coal in China is supplied by SIEs.

## **PUBLIC FILE**

In the absence of information that demonstrates the volume of coking coal purchased from SIEs by non-cooperating exporters, the Commission considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

In accordance with s.269TACC(7), the Commission determines that non-cooperating exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of that benefit by using the unit of benefit of plate steel for JIGANG in absence of other information.

To determine the subsidy margin the weighted average export price for non-alloyed grades of plate steel exported by JIGANG during the investigation period was used (as discussed in section 6.3.2 of the report) in the absence of other reliable information.

### **Submissions received**

In response to SEF 198 the GOC submitted that the Commission's price analysis in relation to coking coal do not relate or only partly relate to the current investigation period. The GOC also claims that it is not clear whether the most relevant information provided by JIGANG was considered in the analysis in the SEF in relation to coking coal.

### **The Commission's Assessment**

The Commission used data provided by JIGANG to determine the actual price paid for coking coal in China during the investigation period. To determine the benchmark for coking coal the Commission used Chinese export prices relevant to the investigation period and provided by the GOC.

## **1.8 Program 4: Coke provided by government at less than adequate remuneration**

### **Background**

BlueScope alleged that Chinese exporters of plate steel have benefited from the provision of raw material in the form of coke by the GOC at less than adequate remuneration. In particular it was claimed that coke, one of the main raw materials used in the manufacture of plate steel, was being produced and supplied by SIEs in China at less than adequate remuneration.

Coke is an intermediate raw material used in the manufacture of hot rolled coil and steel slab. Coking coal is put through a coking oven to produce coke, hence coking coal is the main raw material used in the production of coke.

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The Commission was not able establish if non-cooperating Chinese producers and exporters of plate steel were 'integrated producers' and/or 'non-integrated producers'. The integrated producers manufacture HRC using coking coal and/or coke as one of the raw materials, while the non-integrated producers purchase HRC and/or steel slab to produce those goods.

The definition of a subsidy under s.269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that produce coke are public bodies, and that a financial contribution in the form of provision of raw material inputs (coke) at less than adequate remuneration by these SIEs to manufacturers of plate steel constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs producing coke constitute a public body in the meaning of s.269T(a)(ii) is discussed in Appendix 2.1.

This assessment concludes that these Chinese SIEs that produce coke are 'public bodies' for the purposes of s.269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit to exported plate steel is conferred by coke being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

The Commission's assessment of what constitutes 'adequate remuneration' for coke in China is contained in Appendix 2.4 of this report.

The Commission requested information from all Chinese exporters in relation to their purchases of coke during the investigation period. For each supplier of coke, the Chinese plate steel exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

### Legal Basis

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

### WTO Notification

The Commission is not aware of any WTO notification in respect of this program.

### Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving at less than adequate remuneration.

## **PUBLIC FILE**

### Is there a subsidy?

Based on the information above, The Commission considers that this program involves a financial contribution that involves the provision of the goods (coke) by SIEs, being public bodies, at less than adequate remuneration.

As Chinese fully integrated exporters use coke in their production of plate steel, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the fully integrated exporters of plate steel, the Commission considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by the Commission.

Where the financial contribution involves the provision of coke by public bodies to private intermediaries that trade those inputs to the exporters of plate steel, the Commission considers, in accordance with s.269T(2AC)(a), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of plate steel by way of coke being provided at less than adequate remuneration.

These benefit amounts are equal to the amount of the difference between the price paid by cooperating exporters in the galvanised steel and aluminium zinc coated steel cases and the adequate remuneration.

Where exporters of plate steel during the investigation period received a financial contribution of coke under the program at less than adequate remuneration, it would therefore confer a benefit in relation to plate steel, and the financial contribution would meet the definition of a subsidy under s.269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

The Commission understands that while coke has a number of uses, it is predominantly used in the production of iron and steel, so the provision of the input by the GOC at less than adequate remuneration would mainly benefit enterprises engaged in the manufacture of iron and steel.

As such the subsidy is determined to be specific.

### Amount of subsidy - cooperating exporters

The Commission found that JIGANG did not purchase coke from SIEs during the investigation period, and therefore did not receive a financial contribution that conferred a benefit under this program during the investigation period.

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As such the Commission considers a zero amount of a subsidy under this program for JIGANG.

### Non-cooperating exporters

For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program.

However, considering the facts that:

- all plate steel exported from China is made using coke as one of the major raw materials; and
- a significant proportion of Chinese enterprises that produce coke are known to be SIEs<sup>6</sup>;

it is considered likely that some non-cooperators are fully integrated and purchased coke from SIEs and therefore received a financial contribution under this program.

In the absence of information that demonstrates the volume of coke purchased from SIEs by non-cooperating exporters, the Commission considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

In accordance with s.269TACC(7), the Commission determines that non-cooperating exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of that benefit by reference to the benefit found to be received by an exporter of galvanised steel in INV 193b. To determine the subsidy margin the weighted average export price for non-alloyed grades of plate steel for the entire investigation period from JIGANG was used as discussed in section 6.3.2 of the report (in the absence of other reliable information).

### Submissions received

In response to SEF 198 the GOC submitted that the Commission's price analysis in relation to coke do not relate or only partly relate to the current investigation period. The GOC also claims that it is not clear whether the most relevant information provided by JIGANG was considered in the analysis in the SEF in relation to coke.

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<sup>6</sup> SGQ, Attachment 74 – all but one of the top 15 suppliers of coke are SIEs

## **The Commission's Assessment**

In the absence of full cooperation from other Chinese exporters the Commission had regard to all relevant information. In the coated steel cases it was found that one cooperating exporter purchased coke in the manufacture of coated steel.

In the coated steel case the Commission worked out the benefit per tonne of coke used by using the cooperating exporter's purchase data and Chinese export prices provided by the GOC for that investigation period (1 July 2011 to 30 June 2012).

Given the lack of data available to it for actual purchase prices of coke during the current investigation period, which overlaps the coated steel investigation period by six months, the Commission considered the benefit per tonne of coke calculated for the cooperating exporter in the coated steel case was the most relevant information. This was apportioned over JIGANG's weighted average export price to determine the subsidy rate for all other exporters from China.

## **1.9 Exemption, Reduction and Refund of Taxation – Programs 5, 6, 7, 8, 9, 10, 11, 12 and 40**

### **1.9.1 Programs 5, 7, and 8 - Income tax reduction for foreign-invested enterprises (FIEs) based on location**

#### **Background**

The application alleges that plate steel producers/exporters that are FIEs are likely to have benefited from exemptions to income tax based upon the location of those exporters in a particular province or locality. The evidence and relevant documents supplied by the GOC in previous subsidy investigations have also been used to assess if benefits have been provided to plate steel producers.

These programs apply to certain industries with operations in certain designated zones or certain specific geographic locations. They reduce the normal FIE tax payable rate of 25% to various levels, depending on the particular location.

#### **Legal Basis**

The income tax reductions under programs 5, 7 and 8 are provided for in the FIE Income Tax Law, Article 7.

The programs are national programs and are administered by the State Administration of Taxation (SAT) and its local Branch Offices or Bureaus, in accordance with the FIE Tax Regulations. It is administered in accordance with the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law* (the FIE Tax Regulations).

The FIE Income Tax Law and the FIE Tax Regulations were repealed with the introduction of the *Enterprise Income Tax Law 2008* (the EITL). However, transitional

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arrangements for these programs until end 2012 are in place under State Council Notice No 39 of 2007.

### WTO Notification

The GOC notified the following programs in WTO document G/SCM/N/123/CHN dated 13 April 2006.

- Preferential tax policies enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area) (Notification No. X).
- Preferential tax policies enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones (Notification No. XI).
- Preferential tax policies enterprises with foreign investment established in Pudong area of Shanghai (Notification No. XII).

### Eligibility criteria

Program 5: Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones.

- Only FIEs located in economic and technological development zones (ETDZs) or the Coastal Economic Open Areas are eligible for the subsidy.
- DIEs and/or companies located outside ETDZs or the Coastal Economic Open Areas are not eligible for the subsidy.

Program 7: Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area)

- Only FIEs located in a special economic zone (SEZ) designated geographical region are eligible for the subsidy.
- DIEs and/or enterprises located outside an SEZ are not eligible for the subsidy.

Program 8: Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.

- Only FIEs located in a special economic zone (SEZ) designated geographical region are eligible for the subsidy.
- DIEs and enterprises outside the Pudong area are not eligible for the program.

### Are there subsidies?

Based on the information above, the Commission considers that the laws governing these programs mandate a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in China.



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Due to the nature of these programs (general exemption on income tax regardless of what activities generate this income), it is considered that a financial contribution under these programs would be made in connection to the production, manufacture or export of plate steel of the recipient enterprise.

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of plate steel products during the investigation period received tax savings under these programs, it would therefore confer a benefit in relation to the goods, and these financial contributions would meet the definition of a subsidy under s.269T.

### Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in s.269TAAC(2)(b), a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority.

A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)).

These programs limit eligibility to FIEs based in certain geographic locations under the jurisdiction of the granting authority (the State Administration of Taxation (SAT)).

As the criteria or conditions providing access to each of the subsidies favours particular enterprises, being FIEs in particular locations, over all other enterprises, the specificity of these subsidies is not excepted by reference to s.269TAAC(3).

For these reasons the Commission finds that the above subsidies are specific.

### Amount of subsidy - cooperating exporter

The Commission determined that JIGANG did not receive financial contributions in respect of the goods under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to JIGANG under these programs.

### Non-cooperating exporters

For all non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

These programs were investigated in INV 177 and also in INV 193a and INV 193b. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than referring to any subsidies that were applicable to the one cooperating exporter.



Furthermore, it is noted that these programs are limited to enterprises in specific regions in China. The Commission requested the GOC provide information as to the location of all plate steel exporters in China. The GOC provided a list of the top fifty manufacturers of the goods.

ACBPS's import database does list 'supplier' addresses, but it is not certain for each 'supplier' whether they are in fact the exporter of the goods, and whether the supplier operates in more locations than the one listed (e.g. the listed location could represent a central or head office of an enterprise that operates plate steel manufacturing facilities in multiple locations in China).

In the absence of the above relevant information regarding all exporters, the Commission considers it is likely that non-cooperating exporters meet the eligibility criteria for these programs, have accessed these programs, and therefore received financial contributions under these programs.

It is considered that this financial contribution has been made in respect of all products of these exporters, including plate steel products.

In calculating the amount of subsidy attributable to non-co-operators under these programs, it is noted that as:

- these programs would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 6 (50% tax liability) has already been applied to non-cooperating exporters;

the maximum benefit amount available under these programs has already been countervailed in relation to Program 6.

The Commission has therefore calculated a zero amount of subsidy under these tax programs for non-cooperating exporters.

### **1.9.2 Program 6: Preferential Tax Policies for Foreign Invested Enterprises (FIEs) – Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years**

#### **Background**

BlueScope has alleged that Chinese exporters of plate steel have benefited from a preferential tax policy for FIEs provided for under the Chinese *Foreign Invested Enterprise and Foreign Enterprise Income Tax Law 1991* (the FIE Income Tax Law) which came into effect on 1 July 1991.

During the investigation period the prevailing income tax rate for FIEs in China was 25%.

Under this program, from the year an FIE begins to make a profit, they may receive a full exemption from income tax in the first and second years and a 50% reduction in income tax in the third, fourth, and fifth years.

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This program begins in the first profitable year of the FIE and concludes at the end of the fifth subsequent year. There is no deferral of the exemption or reduction for subsequent years where the enterprise does not make a profit.

### **Legal Basis**

The income tax reduction and exemption for FIEs under this program is provided for in Article 8 of the FIE Income Tax Law.

The program is a national program, administered by the State Administration of Taxation (SAT) and its local Branch Offices or Bureaus. It is administered in accordance with the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law* (the FIE Tax Regulations).

The FIE Income Tax Law and the FIE Tax Regulations were repealed with the introduction of the *Enterprise Income Tax Law 2008* (the EITL).

However, transitional arrangements extend the operation of this program and other preferential tax programs in accordance with the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* (State Council Notice No 39 of 2007). This notice provides that:

- as of 1 January 2008, enterprises that previously enjoyed a 2-year exemption and 3-year half payment of the enterprise income tax and other preferential treatments (including periodic tax deductions and exemptions) may continue to enjoy any preferential treatments previously enjoyed until the expiration of the transitional time period; and
- for enterprises that previously had not enjoyed preferential treatment, the preferential time period shall be calculated from 2008.

### **WTO Notification**

The GOC notified this program in WTO document G/SCM/N/123/CHN dated 13 April 2006 (Notification No. I).

### **Eligibility Criteria**

Under Article 8 of the FIE Income Tax Law, to be eligible for this program, the enterprise must be:

- an FIE;
- 'production-orientated';
- an enterprise which has an anticipated term of operation of at least 10 years; and
- an enterprise that has had a financial year in which it made a profit.

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To be categorised as an FIE, the enterprise must be a Chinese–Foreign equity joint venture, a Chinese–Foreign cooperative joint venture or a wholly foreign owned enterprise established in China.

### **Is there a subsidy?**

Based on the information above, the Commission considers that the program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC by eligible production-oriented FIEs in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including plate steel).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of plate steel during the investigation period received tax savings under the program it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under s.269T.

### **Is the subsidy a countervailable subsidy (specific or prohibited)?**

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

Previous estimates by the GOC indicate that FIEs constitute a minor proportion of all enterprises in China. This means that the preferential tax treatment explicitly limited to FIEs is not available to majority of enterprises in China.

Only FIEs are eligible for the subsidy. Other companies in China (being domestic invested enterprises or DIEs) are not eligible for the subsidy. Further, only production-oriented FIEs are eligible for the subsidy (i.e. FIEs that are not production-oriented are not eligible for the program).

As the criteria or conditions providing access to the subsidy favour particular enterprises, being those eligible production-orientated FIEs, over all other enterprises in China, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

For these reasons, the Commission finds that the subsidy is specific.

### **Amount of subsidy - cooperating exporters**

The Commission has determined that JIGANG did not receive financial contributions in respect of the goods under these programs during the investigation period.

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The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporter under these programs.

### Non-cooperating exporters

For all non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

This program was investigated in INV177 and also in INV 193a and INV 193b. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than referring to any subsidies that was applicable to the one cooperating exporter.

In the absence of this information, the Commission considers that, given:

- the fact that the program operates on a national level;
- the understanding that only a minor proportion of enterprises in China are FIEs;
- the Commission in its recent investigations found that three cooperating Chinese galvanised steel and aluminium zinc coated steel exporters were eligible for this program

it is likely that non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including plate steel.

In the absence of usage information, the Commission considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), the Commission determines that non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), the Commission is mindful that, under this program, the maximum benefit that could have been conferred during the investigation period is reduction in the tax liability of 50%. This is because the phasing out of the program and the transitional arrangements mean that the 2012 calendar year will be the final year of eligibility for any enterprise. The Commission notes that enterprises that are eligible for this program will not receive any benefit until lodgement of the income tax return for the

2012 calendar year, which is after the investigation period. The benefit is therefore considered to continue.

In the absence of any other reliable information the Commission has attributed the highest subsidy margin for this program of a cooperating exporter from the galvanised steel and aluminium zinc coated steel investigations to all non-cooperating exporters in this investigation.

### **1.9.3 Program 9: Preferential Tax Policies in the Western Regions**

#### Background

The application alleges that plate steel exporters are likely to have benefited from exemptions to income tax based upon the location of enterprises in the Western Regions of China.

Under this program, enterprises established in the Western Regions engaged in industries encouraged by the State are eligible for a reduced tax rate of 15% (as opposed to the standard 25% taxation rate).

In certain circumstances, the program also operates to extend the duration of the preferential tax period under Program 6 and exempts enterprises from VAT and tariff on imported goods (Program 12). As the Commission has examined Programs 6 and 12 as separate programs in these investigations that operate at the national level, the assessment of Program 9 focuses specifically on the reduced income tax rate part of the program.

#### Legal Basis

The legal basis to establish this subsidy is pursuant to the following:

- the *Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions*, State Council Circular Guo Fa No. 33 of 2000;
- the *Implementing Some Policies and Measures for the Development of Western Regions*, General Office of State Council Circular Guo Ban Fa No. 73 of 2001;
- the *Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas* (Cai Shui (2001) No. 202);
- the SAT Circular Guo Shui Fa No. 172 of 1999; and
- the *Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions*(CAISHUI[2011]No.58).

The program is administered by the SAT and its local Branch Offices or Bureaus.

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### WTO Notification

The GOC notified this program in WTO document G/SCM/N/123/CHN (Notification No. XIV).

### Eligibility criteria

The program is available to enterprises established in the Western regions which are engaged in industries encouraged by the State as defined in the:

- *Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State*
- *Guiding Catalogue for Industry Restructuring*
- *Circular on the Preferential Tax Policy of the Western Regions*
- *Catalogue for the Guidance of the Foreign Investment Industries*
- *Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment*

### Is there a subsidy?

The Commission considers that the laws governing this program mandate a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in the Western Regions in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including plate steel).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of plate steel during the investigation period received tax savings under the program it would therefore confer a benefit in relation to plate steel and the financial contribution would meet the definition of a subsidy under s.269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(2)(b), a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority. A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)).

For enterprises located in the Western Regions, only those industries which are 'encouraged' are eligible for the subsidy. Other companies in the designated geographical region (being those enterprises which are not 'encouraged') are not eligible for the subsidy.

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Furthermore, this program is limited in eligibility to enterprises based in the Western Region, under the jurisdiction of the granting authority (SAT).

As the criteria or conditions providing access to the subsidy favours particular enterprises, being those 'encouraged' enterprises in the Western Regions, over all other enterprises, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

For these reasons the Commission finds that the subsidy is specific.

### Amount of subsidy - cooperating exporters

The Commission has determined that JIGANG did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to JIGANG under this program.

### Non-cooperating exporters

For non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

This program was investigated in INV177. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than referring to any subsidies that were applicable to the one cooperating exporter.

In the absence of the above relevant information, the Commission considers it is likely that non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including plate steel.

In calculating the amount of subsidy for attributable to selected non-cooperators under this program, it is noted that as:

- this program would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 6 (50% tax liability) has already been applied to non-cooperating exporters;

the maximum benefit amount available under this program has already been countervailed in relation to Program 6.

The Commission has therefore calculated a zero amount of a subsidy under this program for non-cooperating exporters.



## 1.9.4 Program 10: Land Use Tax Deduction

### Background

The application alleges that plate steel exporters are likely to have benefited from land use tax deduction. This program provides for the reduction or exemption of land use taxes for high and new technology enterprises.

### Legal Basis

*Approval of Tax (Expense) Deduction (ZhengDiCaShui [2010] No.11581).*

This program is administered by Huzhou City Local Taxation Bureau and Wuxing Sub-Bureau.

### WTO Notification

The Commission is not aware of any WTO notification of this program.

### Eligibility criteria

The program is available to new high and new technology enterprises within three years of their establishment.

### Is there a subsidy?

The Commission considers that the reduction in land use tax provided under this program is a financial contribution by the GOC which involves the forgoing of land use tax revenue otherwise due to the GOC.

Due to the nature of this program (exemption of land use tax), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including plate steel).

Where received, financial contribution is considered to confer a benefit to recipient manufacturers of plate steel due to reduced tax liability owed to the GOC.

Where exporters of plate steel during the investigation period received tax savings under this program, this would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under s.269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, this program is limited to high and new technology enterprises that are less than three years old.



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As the criteria or conditions providing access to the subsidy favours particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

The Commission therefore considers this subsidy to be specific.

### Amount of subsidy - cooperating exporter

The Commission has determined that JIGANG did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to JIGANG under this program.

### Non-cooperating exporters

For non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

This program was investigated in INV177. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than referring to any subsidies that were applicable to the five cooperating exporters.

In the absence of the above relevant information, the Commission considers it is likely that non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including plate steel.

In the absence of usage information, the Commission considers that:

- s.269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), the Commission determines that non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of a reduction in a tax.

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), the Commission considers that because the maximum financial contribution grantable under a program is not stipulated in its legal instrument, the amount of the

financial contribution shall be considered to be the amount found to be received by a cooperating exporter in INV 177.

In attributing the amount of subsidy to each unit of plate steel under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the cooperating exporter in the galvanised steel and aluminium zinc coated steel investigation, in the absence of actual sales data for the non-cooperating exporters.

### **1.9.5 Program 11: Preferential Tax Policies for High and New Technology Enterprises**

#### Background

The application alleges that plate steel exporters are likely to have benefited from preferential tax policies. This program reduces the income tax paid by high and new technology enterprises to 15% (from the standard enterprise income tax rate of 25%).

#### Legal Basis

This program is provided for under Article 28 of the EITL.

It is considered likely that this program is a national program, administered by the SAT.

#### WTO Notification

The Commission is not aware of any WTO notification of this program.

#### Eligibility criteria

From the EITL, it is understood that all high and new technology enterprises are eligible for this program.

#### Is there a subsidy?

The Commission considers that the law governing this program mandates a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including plate steel).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

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Where exporters of plate steel during the investigation period received tax savings under the program it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under s.269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

A subsidy is considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)).

The eligibility criteria of this subsidy limits it to enterprises that are considered higher and/or new technology enterprises. As the criteria or conditions providing access to the subsidy favour these particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

### Amount of subsidy -cooperating exporters

The Commission has determined that JIGANG did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to JIGANG under this program.

### Non-cooperating exporters

This program was investigated in INV177. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that this program was not relevant to current investigations. The GOC did not provide any further information other than referring to any subsidies that were applicable to the one cooperating exporter.

In the absence of the above relevant information, the Commission considers it is likely that certain non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In calculating the amount of subsidy attributable to selected non-cooperators under this program, it is noted that this program would operate to reduce enterprises' income tax liability, but the maximum benefit the maximum benefit amount available under this program has already been countervailed in relation to Program 6.

The Commission has therefore calculated a zero amount of a subsidy under this program for non-cooperating exporters.

### **1.9.6 Program 12: Tariff and VAT Exemptions on Imported Materials and Equipment**

#### Background

BlueScope has alleged that Chinese producers of plate steel are likely to have benefited from this program, under which the GOC provides an exemption of VAT and tariffs on imported equipment used as 'productive' assets.

#### Legal Basis

The legal basis to establish this subsidy is pursuant to the following:

- *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37);
- *Catalogue of Industries for Guiding Foreign Investment*;
- *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004);
- *State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- *Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue*.

The program appears to operate on a national level. The National Development and Reform Commission (NDRC) or its provincial branches issue certificates under this program, while local customs authorities administer the VAT and tariff exemptions.

#### WTO Notification

The GOC notified this program in WTO document G/SCM/N/123/CHN dated 13 April 2006 (Notification No. LX).

#### Eligibility Criteria

Under Articles 1 and 2 of the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37) to be eligible for this program:

- the enterprise must be an FIE which falls in the 'encouraged' or 'restricted' categories in the *Catalogue of Industries for Guiding Foreign Investment* (2004) (until 30 November 2007) or the *Catalogue of Industries for Guiding Foreign Investment* (2007) (after 1 December 2007);
- the imported equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise's own use and not fall in the State Council's *Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- the total value of the purchase must not exceed the investment 'cap';

or

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- the enterprise must be a domestic invested enterprise (DIE) which falls in the *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004) and the imported equipment must be for the enterprises own use and not fall in the *Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue*; and
- the total value of the purchase must not exceed the investment 'cap'.

### Is there a subsidy?

Based on the information above, the Commission considers this program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC (tariff and VAT) by eligible enterprises in China.

It is considered that, depending on the nature of the imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of plate steel products.

Where received, this financial contribution is considered to confer a benefit because of the tariff and VAT savings realised.

Where exporters of plate steel during the investigation period received tax savings under the program for equipment related to their plate steel activities, it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under s.269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

FIEs that fall in the category of 'encouraged' or restricted' enterprises of the FIE catalogues are eligible for the subsidy, or DIEs that fall under the DIE catalogue are eligible for the subsidy. As the criteria or conditions providing access to this program favour these particular enterprises, over all other enterprises in China, the specificity of the subsidy is not excepted by reference to s.269TAAC(3).

For these reasons the Commission finds that the subsidy is specific.

### Cooperating exporters

The Commission has determined that JIGANG did not receive financial contributions in respect of the goods under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to JIGANG under this program.

## Non-cooperating exporters

For non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

This program was first investigated in INV 177 and again in INV 193a and 193b. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that this program was not relevant to current investigations. The GOC did not provide any further information other than referring to any subsidies that were applicable to the one cooperating exporter.

However, in the absence of this information, and having regard to:

- the fact that the program operates nationally; and
- the Commission's understanding that plate steel exporters import various equipment;

The Commission considers it is likely that non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of information to the contrary, and having regard to the type of equipment likely to be imported by plate steel manufacturers, it is considered this financial contribution was received in respect of equipment used in relation to non-cooperators' plate steel activities (however, it is also considered that financial contributions under this program may have also been received in respect of non-plate steel equipment).

Therefore, in the absence of relevant information, it is considered that this financial contribution has been made in respect of all products of these exporters, including plate steel products.

In the absence of usage information, the Commission considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), the Commission determines that non-cooperating exporters have had benefits conferred to them by financial contributions under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), in the absence of other information, the Commission considers that the highest benefit calculated for cooperating exporters in the galvanised steel and aluminium zinc coated investigations is a reasonable basis for calculating the subsidy amount

attributable to non-cooperating plate steel exporters, and has used this information as a basis for its calculations.

To determine the subsidy margin the weighted average export price for non-alloyed grades of plate steel for the entire investigation period from JIGANG was used as discussed in section 6.3.2 of the report (in the absence of other reliable information).

### **1.9.7 Program 40: VAT Refund on comprehensive utilization of resources**

#### Background

The Commission became aware of an additional subsidy program through verification of responses to the exporter questionnaire. The one cooperating exporter reported receiving payments from Shandong Provincial Economic and Information Commission, which it described as “comprehensive utilization of resources - VAT refund upon collection”.

As discussed in section 1.4 of this appendix, the GOC in response to the twelve new countervailable subsidy programs identified by the Commission during the course of the investigations stated that “... *the GOC notes that no timely allegations have been filed by the applicant in relation to these alleged subsidies and that the GOC was not initially notified of them at the time it was asked to respond to GQ. The applicant has not specified any basis for finding that the alleged grants were specific or that the programs otherwise meet the prime facie standards for initiation of such an investigation...*” (the GOC’s response to SGQ B-1 refers).

Furthermore, the GOC stated that “...*the GOC has acted to the best of its ability in the time available, and provided information in relation to the Chinese exporters cooperating with the investigation...*” The GOC provided the amount of benefit that was provided to JIGANG. No further details such as the eligibility criteria, reason for the benefit provided, how applications are made and assessed to receive this grant was provided by the GOC or the exporter.

The Commission considers that given that the exporter concerned is an SIE and payments were from the Shandong Provincial Economic and Information commission, the GOC is in the best position to provide information about the payments. The Commission considers the GOC’s response in this regard to be non-cooperative.

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### WTO Notification

The Commission is not aware of any WTO notification of this program.



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### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Is there a subsidy?

The Commission considers that the law governing this program mandate a financial contribution by the GOC, which involves the refund of government revenue (VAT on comprehensive utilization of resources).

Due to the nature of this program (refund of VAT), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of automotive steel sheets of the recipient enterprise (including plate steel).

Where received, this financial contribution is considered to confer a benefit because of the VAT refunded on 'comprehensive utilisation of resources'.

JIGANG received VAT refunds under the program and it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under s.269T.

### Specificity

Due to the lack of information provided by the GOC and the cooperating exporter, the Commission has based its finding on the available information. It finds that VAT refunds made on 'comprehensive utilisation of resources' by the GOC could be made only to entities that have the characteristics of 'comprehensive utilisation of resources'.

The Commission therefore finds the program to be specific, and countervailable.

### Amount of subsidy - cooperating exporter

The Commission has determined that JIGANG has received financial contributions in respect of the goods under this program.

It is considered that this financial contribution has been made in respect of all products of this exporter, including plate steel.

As the financial contribution under this program takes the form of reduced tax liability (rather than a direct transfer of funds) it is determined that the financial contribution has conferred a benefit under s.269TACC(3).

In accordance with s.269TACC(6)(d) the amount of subsidy is determined to be the amount of tax revenue forgone by the GOC.

In accordance with s.269TACC(10), the total amount of subsidy received by the cooperating exporter has been apportioned to each unit of the goods using that exporter's total sales volume.



Non-cooperating exporters

In relation to all non-cooperating exporters, neither the GOC nor the individual exporters themselves provided information regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information, considered necessary to determine whether a financial contribution has been received in respect of the goods by non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Noting that a cooperating exporter received this program during the investigation period, in the absence of relevant information, the Commission considers it is likely that certain non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of usage information, Commission considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), the Commission determines that non-cooperating exporters have had benefits conferred to them by financial contributions under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), in the absence of other information, the Commission considers that the subsidy amount calculated for the cooperating exporter is a reasonable basis for calculating the subsidy amount attributable to non-cooperating plate steel exporters, and has used this information as a basis for its calculations.

In accordance with s.269TACC(10), the total amount of subsidy received by the non-cooperating exporters has been apportioned to each unit of the goods using the cooperating exporter's total sales value. To determine the subsidy margin the weighted average export price for non-alloyed grades of plate steel for the entire investigation period from JIGANG was used as discussed in section 6.3.2 of the reprot (in the absence of other reliable information).

### **1.9.8 Conclusion – exemption/reduction of taxation programs**

In light of the above, the Commission determines the following taxation programs to be countervailable subsidies in relation to plate steel:

- Program 5: Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones;
- Program 6: Preferential Tax Policies for Foreign Invested Enterprises (FIEs) – Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years;
- Program 7: Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area);
- Program 8: Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai;
- Program 9: Preferential Tax Policies in the Western Regions;
- Program 10: Land Use Tax Deduction;
- Program 11: Preferential Tax Policies for High and New Technology Enterprises;
- Program 12: Tariff and VAT Exemptions on Imported Materials and Equipments; and
- Program 40: VAT Refund on comprehensive utilization of resources.

### **1.10 Financial Grants - Programs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41 and 42**

#### Background

The application alleged that Chinese producers of plate steel are likely to have benefited from the following grant programs:

- Program 13: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China';
- Program 14: Matching Funds for International Market Development for small and medium size enterprises (SMEs);
- Program 15: Superstar Enterprise Grant;
- Program 16: R&D Assistance Grant;
- Program 17: Patent Award of Guangdong Province;
- Program 18: Innovative Experimental Enterprise Grant;
- Program 19: Special Support Fund for Non-State-Owned Enterprises;
- Program 20: Venture Investment Fund of Hi-Tech Industry;
- Program 21: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment;
- Program 22: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan;
- Program 23: Water Conservancy Fund Deduction;
- Program 24: Wuxing District Freight Assistance;
- Program 25: Huzhou City Public Listing Grant;

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- Program 26: Huzhou City Quality Award;
- Program 27: Huzhou Industry Enterprise Transformation & Upgrade Development Fund;
- Program 28: Wuxing District Public List Grant;
- Program 29: Anti-dumping Respondent Assistance; and
- Program 30: Technology Project Assistance.

Under these programs certain enterprises are eligible for cash grants provided by the GOC.<sup>7</sup> Benefits are conferred to these enterprises in the amount of funds provided.

During the course of its investigation the Commission requested information from JIGANG in relation to benefits received over the period 1 January 2008 to 31 December 2012. The purpose of requesting data for years prior to the investigation period was to determine whether countervailable subsidies had been received that should be amortised over a period of years, such that a benefit could be found to be attributable to the period of investigation. The cooperating exporter advised of a number of payments from the GOC<sup>8</sup> from 2009 to 2012.

Further investigation of information from JIGANG has shown that it received other benefits in the investigation period. The Commission has assigned the following descriptions to those programs:

- Program 31: Transformation technique grant for rolling machine;
- Program 32: Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009;
- Program 33: Key industry revitalization infrastructure spending in 2010;
- Program 34: Provincial emerging industry and key industry development special fund;
- Program 35: Environmental protection fund;
- Program 36: 400 sintering desulfuration transformation fund;
- Program 37: Intellectual property licensing;
- Program 38: Financial resources construction - special fund;
- Program 39: Reducing pollution discharging and environment improvement assessment award;
- Program 41: Grant for elimination of out dated 350 blast furnace; and
- Program 42: Grant for development and application of coke oven gas waste heat efficiency and technology reuse.

### WTO Notification

The Commission is not aware of any WTO notification in respect of these programs.

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<sup>7</sup> Either centrally, or through provincial or local government.

<sup>8</sup> Either centrally, or through provincial or local government.

## 1.10.1 Programs 13 to 30

### 1.10.1.1 Legal basis and eligibility criteria

#### **Program 13: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'**

##### Legal basis

*Decision Concerning Commending and/ or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of 'China Worldwide Famous Brand', 'China Famous Brand', or 'China Well-Known Brand'.*

The government of Guangdong province is responsible for the administration and management of this program.

##### Eligibility criteria

- enterprises whose products qualify for the title of 'China Worldwide famous Brand'; and
- enterprises whose products qualify for the title of 'China well-known brand' and/or 'famous trademark (China famous Trademark)'.

#### **Program 14: Matching Funds for International Market Development for SMEs**

##### Legal basis

*Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises.*

The program is administered by the Ministry of Finance and Ministry of Commerce, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions.

##### Eligibility criteria

SME enterprises that have:

- a legal personality according to law;
- the capacity to manage an import or export business;
- made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less;
- sound financial management systems and records;
- employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and
- a solid market development plan.

## Program 15: Superstar Enterprise Grant

### Legal basis

- *Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises; and*
- *Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises.*

This program is administrated by the Huzhou Economic Committee.

### Eligibility criteria

Enterprises located in Huzhou city that satisfy the following criteria.

(a) The 'output scale' of the enterprise must meet one of the following criteria:

- business income of the current year not exceeding RMB 3.5 billion and sales;
- revenue within the city exceeding RMB 2 billion;
- sales revenue within the city exceeding RMB 2.5 billion;
- sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than RMB 10 million; or
- revenue from self-export of current year is more than USD150 million.

(b) The enterprise's accumulated industrial input between 2006 to 2008 must have exceeded RMB 150 million.

(c) The enterprise must be profitable, and its VAT 'paid up', while its

- consumption tax;
- income tax;
- business tax;
- city construction tax; and
- education supplementary tax

must exceed RMB 30 million.

(d) The enterprise must not have suffered environmental or 'unsafe production accidents' (or other illegal incidents) in the current year.

(e) If the enterprise is not state-owned, it must have passed the 'Five-Good Enterprises' assessment conducted by its county or district.

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### **Program 16: Research & Development (R&D) Assistance Grant**

#### Legal basis

*Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.*

The GOC stated that the funding shall not be more than RMB150,000 and the duration for supporting an enterprise shall not be more than 3 years.

The government of Wuxing district and the Science and Technology Bureau of Wuxing District ('STB') are jointly responsible for the administration of this program.

#### Eligibility criteria

The GOC stated that to qualify for this grant, applicant must meet the following requirements:

- register and operate in Jinzhou New District;
- Have complete organisational structure, R&D facilities and intellectual protection measures;
- Have definite direction and task for technology development and technology research and have independent assets and funds;
- have a technology team with strong capacities to do research and development; and
- have more than one patent or science and technology project of municipal level and above.

The GOC provided further information stating that the purpose of the grant is to accelerate the transformation of the economic development pattern and economic restructure of Jinzhou New District, enhance the capacity of self-dependent innovation of the district, implementing the strategy on "innovative Urban District", and making efforts to achieve the sound and rapid economy development of Jinzhou New District.

### **Program 17: Patent Award of Guangdong Province**

#### Legal basis

*2009 Guangdong Patent Award Implementation Proposal.*

Administered by the Guangdong Province Department of Intellectual Property and Department of Personnel.

#### Eligibility criteria

The award is granted to enterprises that have an 'innovations and utility models' or an 'industrial design' patent.

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An application under the ‘innovations and utility models’ patent category must establish that:

- the product in question is skilfully constructed and innovative with high creation and technical level;
- the product contributes to technical improvement and creation;
- the patent has created or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

An application under the industrial design category must establish that:

- the industrial design has reached high level at shape, pattern and colour;
- application of this industrial design has brought or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

### **Program 18: Innovative Experimental Enterprise Grant**

#### Legal basis

*Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises.*

Administered by the administrative office of Science and Technology Bureau of Zhejiang province.

#### Eligibility criteria

Eligible enterprises are those that are located in Zhejiang Province, and are:

- independent economic entities with ‘reasonable asset-liability ratios’, consistent earnings over the past 3 years, and an increasing market share;
- well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres;
- investing at least 5% of annual sales income;
- using intellectual property rights to protect major products; and
- strongly committed to technological innovation and protection with previous technological achievements.

## **Program 19: Special Support Fund for Non-State-Owned Enterprises**

### Legal basis

*Notions concerning accelerating the growth of the non-state-owned economy.*

### Eligibility criteria

- non-SOEs (SIEs) located in Yunnan Province.

## **Program 20: Venture Investment Fund of Hi-Tech Industry**

### Legal basis

*Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing.*

The program is administered by the Chongqing Venture Investment Fund.

### Eligibility criteria

Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District.

In addition:

- the program must have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority);
- the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone;
- the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities;
- the enterprise must have good legal standing; and
- the total investment in the program must be RMB 100 million or more.

## **Program 21: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment**

### Legal basis

*Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters*

Administered by the local commerce authority of Guangzhou.



## Eligibility criteria

This program is available to enterprises whose headquarters are established in the Guangzhou Municipality by a foreign investor.

To qualify as 'Headquarters' the facility must control all the operations and management of any enterprises it is invested in, both in China and internationally.

Only one enterprise Headquarters is permitted in the Guangzhou Municipality.

To qualify as 'Regional Headquarters', the facility must control operations and management of some or all enterprises it is invested in a certain area of China.

Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.

## **Program 22: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan**

### Legal basis

*Notice of Issuing 'Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan,' Zhong Fu (2005) No.127.*

The program is administered by the local economic and trade office, by the Municipal Economic and Trade Bureau ('METB') and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City ('MLG').

### Eligibility criteria

For an enterprise to be eligible for this program:

- it must be established, registered and carrying out business in Zhongshan City;
- its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies;
- it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise's main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development;
- it must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation; and
- it must have good credit standing.

## Program 23: Water Conservancy Fund Deduction

### Legal basis

*Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local Taxation Bureau (ZheDiShuiFa [2007] No.63).*

This program is administered by the Local Taxation Bureau of Zhejiang Province and it is implemented by the competent local taxation authorities of the municipal and county levels in Zhejiang Province.

### Eligibility criteria

The GOC has confirmed that only enterprises satisfying one of following criteria will eligible for the grant under this program:

- provide job opportunities to laid-off workers, the disabled, and retired soldiers searching for jobs;
- enterprises that 'utilize resource comprehensively as designated by government department above municipal level';
- trading enterprises of commodities with annual gross profit rate of less than 5%;
- enterprises undertaking 'State reserve and sale, the portion of revenues incurred from that undertaking may qualify for an exemption of the fee';
- 'advanced manufacturing enterprises' or key enterprises as designated by the municipal government, which are undertaking technology development projects and incurring development expenditure at an amount above RMB1 million;
- 'insurance company's revenue from sales which are subject to exemption of excise tax';
- 'bank's revenue from turnovers between banks';
- 'revenue from sales between members of an enterprise group subject to same consolidated financial statement'.

## Program 24 – Wuxing District Freight Assistance

### Legal basis

*Several Opinions On Further Supporting Industrial Sector To Separate And Develop Producer-Service Industry (HuZhengBanFa [2008] 109).*

This program is administered by the Finance Bureau of Huzhou City.

### Eligibility criteria

Those enterprises whose annual freight cost is RMB 3 million or above, will be refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007.

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For enterprises whose annually paid income tax is RMB100,000 or above:

- 100% of the income tax paid by the 'separated enterprise' and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise; and
- 50% of the turnover tax paid by the separated enterprise and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise.

### **Program 25: Huzhou City Public Listing Grant**

#### Legal basis

*Notification of Government of Huzhou City (HuBan No.160).*

This program is administrated by the Finance Bureau of Huzhou City.

#### Eligibility criteria

Enterprises that successfully completed listing of shares during 2010.

### **Program 26: Huzhou City Quality Award**

#### Legal basis

*Notification of the Office of People's Government of Huzhou City (HuZhengBanFa No.60).*

The Government of Huzhou City and the Bureau for Quality and Technical Supervision are jointly responsible for the administration of this program.

#### Eligibility criteria

The award is granted to no more than three enterprises each year that are registered in Huzhou City and have been in operation for more than three years and that have:

- 'enjoyed excellent performance';
- 'implemented quality management'; and
- 'obtained a leading position in industry with significant economic benefits and social benefits'.

The products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy.

### **Program 27: Huzhou Industry Enterprise Transformation & Upgrade Development Fund**

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### Legal basis

The purpose of the program is to promote industrial structure adjustment and upgrading, and to support technology updating and innovation of enterprises.

The GOC has advised that there is no single purpose legal document directly related to any benefit received by a respondent under investigation.

The Bureau of Finance and the Economic and Information Committee of Huzhou City are jointly responsible for the administration of this program. The Bureau of Finance and the Economic and Information Committee of Huzhou City examine and approve applications, with the funds provided from the budget of the Financial Bureau of Huzhou City.

### Eligibility criteria

This program is limited to enterprises registered in Huzhou and encourages the transformation and upgrade of enterprises, 'including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new technology industry and new industry'.

### **Program 28: Wuxing District Public List Grant**

#### Legal basis

*Notification on Awarding Advanced Individuals and Advanced Entities of Industrial Economy and Open Economy for the Year of 2010* (WuWeiFa [2011] No.14).

This program is administered by the Government of Wuxing District.

#### Eligibility criteria

A grant is available to eligible advanced publicly listed enterprises.

### **Program 29: Anti-dumping Respondent Assistance**

#### Legal basis

*Notification of Receiving Fair Trade Assistance by Wuxing Foreign Economic and Trade Bureau.*

This program is administrated by Wuxing District Foreign Economic and Trade Bureau.

#### Eligibility criteria

Enterprises which incurred expenses in an anti-dumping proceeding may benefit from this program.

## **Program 30: Technology Project Assistance**

### Legal basis

*Interim Measure for Administration of Post-completion Assistance or Loan Interest Grant for Industrialization of Science and Technology Achievements Sponsored by Zhejiang Province (2008).*

The Bureau of Finance and the Science and Technology Bureau of Huzhou City are jointly responsible for the administration of this program.

### Eligibility criteria

This program is available to enterprises that undertake a scientific research project which meets the scope of the projects encouraged under this program.

#### 1.10.1.2 Are there subsidies?

Based on the information above, the Commission considers that the grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.

Due to the nature of each grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including plate steel).

The Commission noted that programs 13 to 30 have been investigated recently during INV 193a and INV 193b and earlier during INV 177 and found to be countervailable subsidies.

This financial contribution is considered to confer a benefit to recipient manufacturers of plate steel due to receipt of funds from the GOC.

Where exporters of plate steel during the investigation period received grants under any of the above programs, these would therefore confer a benefit in relation to the goods, and these financial contributions would meet the definition of a subsidy under s.269T.

#### 1.10.1.3 Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, each grant is limited to specific enterprises either by location, enterprise type; product manufacture; ownership structure; the possession of certain patents; trading focus (export oriented); public listing status; participation in an anti-dumping investigation; hi-tech status; and length of operation; capital contribution or other criteria.

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As the criteria or conditions providing access to the subsidies favours particular enterprises over all other enterprises in China, the specificity of these subsidies is not excepted by reference to s.269TAAC(3).

The Commission therefore considers each of the above-listed grant programs to be specific.

### Amount of subsidy - cooperating exporters

The Commission has determined that JIGANG did not receive any financial contribution in respect of plate steel under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to JIGANG under these programs.

### Non-cooperating exporters

For non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

These programs were recently investigated in INV 193a and INV 193b and earlier in INV 177. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than referring to any subsidies that were applicable to the one cooperating exporter.

It is noted that some of these programs are limited to enterprises in specific regions in China. The Commission requested the GOC provide information as to the location of all plate steel exporters in China. The GOC restricted its response to only top 50 producers (GOC response to GQA-4 confidential attachment 32 refers). Noting that at least some of these programs are limited in operation to specific areas in China, the Commission does not have reliable information as to the location of non-cooperating exporters.

However the Commission considers it likely that some non-cooperating exporters are eligible for these programs in their respective provinces.

In accordance with s.269TACC(2), receipt of the above grants are taken to have conferred a benefit because of the direct financial payment.

Having regard to the nature and eligibility criteria for each subsidy, it is considered that the financial contribution received for each program was in respect of all goods sold by that exporter (including plate steel).

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In the absence of usage information, the Commission considers that:

- s.269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under these programs; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), the Commission determines that non-cooperating exporters have had benefits conferred to them under these programs during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), the Commission considers that:

1. where the legislative instrument that establishes the program specifies the maximum financial contribution that can be made under that program, that maximum amount be the amount determined to be the benefit for each program;
2. where the maximum financial contribution grantable under a program is not stipulated in its legal instrument (or where no known legal instrument exists), the amount of the financial contribution shall be considered to be the maximum amount found in relation to point 1.

In attributing the amount of subsidy to each unit of plate steel under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the cooperating exporters in INV 193a and INV 193b, in the absence of actual sales data for the non-cooperating exporters. To determine the subsidy margin the weighted average export price for non-alloyed grades of plate steel for the entire investigation period from JIGANG was used as discussed in section 6.3.2 of the report (in the absence of other reliable information).

### **1.10.2 Programs 31 to 39, 41 and 42**

#### Background

The Commission became aware of additional subsidy programs through verification of responses to the exporter questionnaire by JIGANG.

As discussed in section 1.4 of this appendix, the GOC in response to the new subsidy programs identified by the Commission during the course of the investigations stated that “... *the GOC notes that no timely allegations have been filed by the applicant in relation to these alleged subsidies and that the GOC was not initially notified of them at the time it was asked to respond to GQ. The applicant has not specified any basis for finding that the alleged grants were specific or that the programs otherwise meet the prime facie standards for initiation of such an investigation...*” (the GOC’s response to SGQ B-1 refers).

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Furthermore, the GOC stated that “...the GOC has acted to the best of its ability in the time available, and provided information in relation to the Chinese exporters cooperating with the investigation...” The GOC provided the amount of benefit for each of these programs listed above provided to the Cooperating exporter. No further details such as the eligibility criteria, reason for the benefit provided, how applications are made and assessed to receive this grant was provide by the GOC and the exporter.

The Commission considers that given that the exporter concerned is an SIE and payments were from the GOC, the GOC is in the best position to provide information about the payments. The Commission considers the GOC’s response in this regard to be non-cooperative.

### Legal basis, Eligibility Criteria and Specificity

#### **Program 31: Transformation technique grant for rolling machine**

##### Legal Basis

The Commission is not aware for the legal basis for this program.

##### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

##### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria in relation to transformation technique and be located in Jinan district in order to be eligible for the subsidy provided by the Jinan Development and Reform Commission.

The Commission therefore finds the program to be specific, and countervailable.

#### **Program 32: Grant for Industrial enterprise energy management- centre construction demonstration project Year 2009**

##### Legal Basis

The Commission is not aware for the legal basis for this program.

##### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

##### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria in relation to energy management in order to be eligible for the subsidy provided by the Ministry of Finance.



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The Commission therefore finds the program to be specific, and countervailable.

### **Program 33: Key industry revitalization infrastructure spending in 2010**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

#### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria in relation to key industry revitalization infrastructure and be located in Shandong Province in order to be eligible for the subsidy provided by Shandong Provincial Department of Finance.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 34: Provincial emerging industry and key industry development special fund**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

#### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria to be identified as an emerging industry and be located in Shandong Province in order to be eligible for the subsidy provided by Shandong Provincial Department of Finance and Shandong Economic and Information Committee.

The Commission therefore finds the program to be specific, and countervailable.

## **Program 35: Environmental protection fund**

In recent investigations into galvanised steel and aluminium zinc coated steel products a similar program “Environmental protection grant” was identified. The cooperating exporter in those investigations explained that the program was available to enterprises to purchase equipment to help protect the environment and payments were by the Ministry of Finance. On further inquiry, the GOC advised that it was not able to confirm if there was a ‘program 31’ and otherwise did not provide any information. The Commission considered the GOC’s response in regard to that program to be non-cooperative (program 31 in REP 193 refers).

### Legal Basis

The Commission is not aware for the legal basis for this program.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria in relation to environment protection be located in Jinan District in order to be eligible for the subsidy provided by the Jinan Municipal Bureau of Finance and Jinan Municipal Environmental Protection Bureau.

The Commission therefore finds the program to be specific, and countervailable.

## **Program 36: 400 sintering desulfuration transformation fund**

### Legal Basis

The Commission is not aware for the legal basis for this program.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria to be identified as transforming sintering desulfuration and be located in Jinan District in order to be eligible for the subsidy provided by Jinan Municipal Economic and Information Committee and Jinan Municipal Bureau of Finance.

The Commission therefore finds the program to be specific, and countervailable.

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### **Program 37: Intellectual property licensing**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

#### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria to be identified as intellectual property and be located in Shandong Province in order to be eligible for the subsidy provided by Intellectual Property Office of Shandong Province.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 38: Financial resources construction - special fund**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

#### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria to be identified as financial resources construction of special fund and be located in Jinan District in order to be eligible for the subsidy provided by Jinan Finance Bureau.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 39: Reducing pollution discharge and environment improvement assessment award**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

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### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria to be identified as reducing pollution to help improve the environment and be located in Jinan District in order to be eligible for the subsidy provided by Jinan Municipal Finance Bureau.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 41: Grant for elimination of out dated 350 blast furnace**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria to be identified as eliminating out dated blast furnace and be located in Shandong Province in order to be eligible for the subsidy provided by Shandong Province Finance Bureau.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 42: Grant for development and application of coke oven gas waste heat efficiency and technology reuse**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Specificity

Due to the lack of information provided by the GOC, the Commission considers that enterprises must meet some criteria to be identified as developing application of coke oven gas waste heat efficiency and be located in Jinan District in order to be eligible for the subsidy provided by Jinan Licheng District Finance Bureau.

The Commission therefore finds the program to be specific, and countervailable.

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### **1.10.2.1 Amount of subsidy - Programs 31 to 39, 41 and 42**

#### Amount of subsidy - cooperating exporter

The Commission has determined that JIGANG has received financial contributions in respect of the goods under these programs.

Having regard to the nature and eligibility criteria for the subsidy, it is considered that the financial contribution received was in respect of all goods sold by that exporter including plate steel.

In accordance with s.269TACC(2), receipt of the grant is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with s.269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with s.269TACC(10), the total amount of subsidy received by JIGANG has been apportioned to each unit of the plate steel using JIGANG's total sales volume. To determine the subsidy margin the weighted average export price of Steel plate for JIGANG was used.

#### Non-cooperating exporters

For non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Furthermore, it is noted that this program is limited to enterprises in specific regions in China. The Commission requested the GOC provide information as to the location of all plate steel exporters in China. The GOC restricted its response to only top 50 producers (GOC response to GQA-4 confidential attachment 32 refers). Noting that at least some of these programs are limited in operation to specific areas in China, the Commission does not have reliable information as to the location of non-cooperating exporters.

In the absence of the above relevant information, and in light of the above receipt of the program by the cooperating exporter, the Commission considers it is likely that non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of usage information, the Commission considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a

benefit has been conferred to non-cooperating exporters under this program; and

- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(10), the Commission determines that non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), the Commission considers that the subsidy amount calculated for the cooperating exporter is a reasonable basis for calculating the subsidy amount attributable to non-cooperating plate steel exporters in this investigation, and has used this information as a basis for its calculations.

In attributing the amount of subsidy to each unit of plate steel under s.269TACC(10), the benefit under each subsidy program has been attributed using the total sales volume of all products of the cooperating exporter, in the absence of actual sales data for the non-cooperating exporters. To determine the subsidy margin the weighted average export price for non-alloyed grades of plate steel for the entire investigation period from JIGANG was used as discussed in section 6.3.2 of the report (in the absence of other reliable information).

### **1.10.3 Conclusion – financial grants programs**

In light of the above, the Commission determines the following financial grants programs to be countervailable subsidies in relation to plate steel:

- Program 13: One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’;
- Program 14: Matching Funds for International Market Development for small and medium size enterprises (SMEs);
- Program 15: Superstar Enterprise Grant;
- Program 16: R&D Assistance Grant;
- Program 17: Patent Award of Guangdong Province;
- Program 18: Innovative Experimental Enterprise Grant;
- Program 19: Special Support Fund for Non-State-Owned Enterprises;
- Program 20: Venture Investment Fund of Hi-Tech Industry;
- Program 21: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment;
- Program 22: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan;
- Program 23: Water Conservancy Fund Deduction;
- Program 24: Wuxing District Freight Assistance;
- Program 25: Huzhou City Public Listing Grant;
- Program 26: Huzhou City Quality Award;
- Program 27: Huzhou Industry Enterprise Transformation & Upgrade Development Fund;

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- Program 28: Wuxing District Public List Grant;
- Program 29: Anti-dumping Respondent Assistance;
- Program 30: Technology Project Assistance;
- Program 31: Transformation technique grant for rolling machine;
- Program 32: Grant for Industrial enterprise energy management - center construction demonstration project Year 2009;
- Program 33: Key industry revitalization infrastructure spending in 2010;
- Program 34: Provincial emerging industry and key industry development special fund;
- Program 35: Environmental protection fund;
- Program 36: 400 sintering desulfuration transformation fund;
- Program 37: Intellectual property licensing;
- Program 38: Financial resources construction - special fund;
- Program 39: Reducing pollution discharging and environment improvement assessment award;
- Program 41: Grant for elimination of out dated 350 blast furnace; and
- Program 42: Grant for development and application of coke oven gas waste heat efficiency and technology reuse.

## **APPENDIX 2.1 – DO SIES QUALIFY AS ‘PUBLIC BODIES’ UNDER THE ACT?**

### **A2.1 Background**

The application asserts that the findings in the recent HSS investigation are also applicable to the circumstances of the plate steel investigation, given the contemporaneous findings of the Commission in REP 177 published on 7 June 2012.

The Commission recently completed subsidy investigations into galvanised steel and aluminium zinc coated steel exported from China. In those investigations the Commission determined that the SIE suppliers of HRC (the main raw material used to manufacture the goods), coke and coking coal (main raw materials to manufacture HRC) were public bodies (REP 193 refers).

The Commission notes that half of the investigation period for the current investigation overlaps with the investigation period of the galvanised steel and aluminium zinc coated steel investigations<sup>9</sup>.

#### *Review Officer's decision*

The Trade Measures Review Officer (Review Officer) reviewed the decision of the Minister to publish a countervailing duty notice in relation to exports of HSS from China. Following a recommendation from the TMRO, the Minister directed the Commission to reinvestigate its finding that HRC producers were SIEs for the purpose of assessing subsidies. The Minister considered the Commission's recommendation following the reinvestigation and affirmed his decision to publish a countervailing duty notice<sup>10</sup>.

In affirming the decision to publish the notice, the Minister accepted the Commission's finding that the original finding in relation to public bodies should not be changed. REP 203 sets out the Commission's findings in relation to the reinvestigation, which include the following in relation to the public body issue:

The reinvestigation finds that sufficient evidence exists to reasonably consider that, for the purposes of the investigation into the alleged subsidisation of HSS from China, SIEs that produce and supply HRC and/or narrow strip should be considered to be 'public bodies'. The reinvestigation considers that these SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.<sup>11</sup>

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<sup>9</sup> The investigation period for the galvanised steel and aluminium zinc coated steel was from July 2011 to June 2012 and the investigation period for current investigation is from January 2012 to December 2012

<sup>10</sup> Notified on 13 May 2013

<sup>11</sup> REP 203, p44



## The Commission's assessment

As discussed in section 1.4 of Appendix 2, the GOC did not provide full responses to the GQ and SGQ regarding the alleged countervailable subsidy programs. The GOC did not provide any information regarding the GOC's representation in entities that manufacture plate steel, responsible authorities, organisational structure or copies of any annual reports requested by the Commission (GQ A-4 refers). The Commission considers this information to be critical in assessing the objectives and functions performed by SIE's in pursuing public policy objectives.

Therefore, the Commission has based its findings on relevant information available as outlined below:

- (i) the evidence and reasons set out in REP 203 and REP 193, while made in relation to consideration of HRC producers and suppliers, are equally applicable to SIE producers and suppliers of coking coal and/or coke to plate steel manufacturers. For example, the analysis of Indicia 3 from DS379 refers to various documents and policies that indicate the GOC's control over SIEs generally;
- (ii) REP 203 also states that '*The reinvestigation considers that these notices and laws demonstrate that the GOC exercises meaningful control over iron and steel producing SIEs.*'<sup>12</sup>; and
- (iii) coking coal and coke producers are part of the iron and steel industry in China, therefore the Commission considers that SIE producers and suppliers of coking coal and coke in China are also public bodies.

Therefore, the Commission considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that produce and supply HRC, coke and coking coal to manufacturers of plate steel should be considered public bodies.

## **Submissions received**

In response to SEF 198 submissions were received from the GOC and Bisalloy.

The GOC submitted that the public body finding by the Commission based on previous findings is incorrect. The GOC stated that REP 203 contains major flaws of evidence and of logic in relation to the ultimate finding that SIEs are public bodies. The GOC attached a submission it made recently regarding the public body findings in galvanised steel and aluminium zinc coated investigations.

Bisalloy submitted that "*benefit*" in ordinary meaning of the word must be understood as denoting an advantage to the recipient of the financial contribution. Bisalloy claims that it would only exist if the recipient is 'left better-off'. Bisalloy also claims that JIGANG was not left better off by purchasing coking coal from SIEs than from other suppliers.

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<sup>12</sup> REP 203, p56

## **The Commission's Assessment**

The Commission's detailed response to the GOC and Bisalloy submissions is at section 7.4.4 of the report.

## **APPENDIX 2.2 - ASSESSMENT OF ADEQUATE REMUNERATION FOR HRC IN CHINA**

### **A2.2.1 Introduction**

After determining:

- that SIEs that supplied HRC in China are ‘public bodies’ for the purposes of the Act in relation to subsidy Program 1 (see Appendix 2.1); and
- that the costs incurred by steel manufacturers in China for HRC used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2) due to the influence of the GOC in the Chinese iron and steel industry;

the Commission has sought to determine a benchmark cost that represents adequate remuneration for HRC in China, to determine the amount of benefit received under subsidy Program 1 (purchases of HRC from SIEs at less than adequate remuneration).

### **A2.2.2 Approach to benchmark HRC costs**

The Commission has considered three options for determining a benchmark, in order of preference based on World Trade Organisation (WTO) Appellate Body findings:

- private domestic prices;
- import prices; and
- external benchmarks.

#### (i) Private domestic prices

The Commission’s assessment of data submitted by cooperating exporters in the galvanised steel and aluminium zinc coated steel investigations shows that there is no significant difference between HRC prices from SIE and private suppliers. Based on this information the Commission considers that private domestic prices of HRC in China are still not suitable for determining a competitive market cost free from government influence as they are equally affected by government influence.

#### (ii) Import prices

The GOC’s response to the GQ indicates that only a small quantity of HRC was imported into China during the investigation period. Due to the small quantity of imports of HRC, it is likely that import prices were equally affected by the government influences on domestic prices. The Commission considers that import prices are not suitable for determining a competitive market cost of HRC.

### (iii) External benchmarks

As discussed in Section 1.4 of Appendix 2, only one exporter (JIGANG) cooperated in this investigation and it did not purchase HRC as it is fully integrated. As such the Commission considers that it is reasonable to use data provided by cooperating exporters in the galvanised steel and aluminium zinc coated steel investigations to determine adequate remuneration for HRC as discussed below.

The Commission has determined that an appropriate benchmark for HRC costs in China is the weighted average domestic HRC price paid by cooperating exporters of galvanised steel and aluminium zinc coated steel from Korea<sup>13</sup> and Taiwan<sup>14</sup>, at comparable terms of trade and conditions of purchase to those observed in China.

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<sup>13</sup> Dongbu Steel and Union Steel.

<sup>14</sup> Chung Hung Steel, Yieh Phui Enterprise and Sheng Yu Steel.

**APPENDIX 2.3 - ASSESSMENT OF ADEQUATE REMUNERATION FOR COKING COAL IN CHINA**

**A2.3.1 Introduction**

After determining that SIEs that supplied coking coal in China are ‘public bodies’ for the purposes of the Act (Appendix 2.1 refers), the Commission has sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal (under Regulation 180(2)) and the benefit received under subsidy Program 3 (purchases of coking coal from SIEs at less than adequate remuneration).

The Commission notes that the concept of ‘adequate remuneration’ for the purposes of its subsidy investigation, and the notion of a competitive market cost for the purposes of constructing normal values in line with Regulation 180(2), are separate concepts.

It is considered that these do not necessarily require the same calculation/data base, and there may be circumstances in which it is reasonable to use separate information to establish adequate remuneration and competitive market costs for the same goods in an investigated country.

However, the Commission considers it reasonable to determine that the benchmark established to determine adequate remuneration for coking coal in China is also suitable for use to determine competitive market costs for coking coal.

In the circumstances of coking coal in China, a competitive market cost is considered to be adequate remuneration for those goods, and vice versa. Consequently, the same amount has been applied by the Commission in each context (hereafter referred to as ‘the benchmark’ irrespective of the context of its use).<sup>15</sup>

In establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for coking coal, the following issues have been identified:

- the volume and value of production of coking coal in China could not be reliably ascertained because the GOC was not able to provide the relevant data; and
- there is no international benchmark price for coking coal. China has been identified as the major producer and consumer of coking coal. China also restricted the trade of coking coal to the international market by levying high export taxes and restrictions. As such, the market for coking coal is highly concentrated in China.

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<sup>15</sup> i.e. whether it refers to adequate remuneration, or competitive market costs for coking coal.

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As detailed in Appendix 3 of REP 193, the Commission established a benchmark price for coking coal using the Chinese export price of coking coal in the investigation period.

In INV 193 the following sources of data were obtained and compared: the GOC, data purchased by Commission from Resource-net, Steel Business Briefing (SBB) subscriptions and data provided by BlueScope. It is to be noted that none of these sources of data has been independently verified by the Commission; however it can be established that prices obtained from these different sources closely resemble each other in most cases (detailed assessment is at Appendix 3 of REP 193).

The GOC in its responses to the GQ (response to GQ A-3 confidential Appendices 12 and 18 refers) provided import and export data for coking coal from January 2009 to December 2012.

### **A2.3.2 Adequate remuneration for coking coal**

Having found that domestic prices of coking coal in China are being influenced and distorted by the GOC (as discussed in section 4.10 of Appendix 1), a benchmark price has been established. The three options for determining a benchmark, in order of preference based on World Trade Organisation (WTO) Appellate Body findings are:

- private domestic prices;
- import prices; and
- external benchmarks.

#### (i) Private domestic prices

The Commission found that private prices of coking coal were affected by government influence and therefore not suitable.

The Commission's assessment of data submitted by JIGANG shows that there is no significant difference between coking coal and coke prices from SIE and private suppliers.

The Commission considers that private domestic prices of coking coal in China are not suitable for determining a competitive market price free from government influences.

#### (ii) Import prices

The Commission found that import prices were not suitable as a benchmark due to the lack of import penetration of coking coal and the likelihood that import prices were equally affected by the government influences on domestic prices.

The GOC's response to the Government questionnaire in relation to coking coal imports during the current investigations indicate that only a small quantity of coking coal was imported into China during the investigation period. This was to supplement the shortfall from its own production capability. Due to the small quantity of imports of

coking coal, it is likely that import prices were affected by the government influences on domestic prices. The Commission considers that import prices are not suitable for determining a competitive market price of coking coal in the investigation period.

### (iii) External benchmarks

Having eliminated the first two options as discussed above, the Commission considered various other options (as detailed in Appendix 3 of REP 193) to establish a benchmark price of coking coal. These options are summarised below:

- Chinese export price of coking coal compared to the export prices of the top 5 exporting countries in the world;
- Australian export price of coking coal – Australia being one of the major producers of coking coal;
- Import prices of a third country. India is one of the major producers and consumers of coking coal and has similar geographical location and economy. Indian import prices has been compared to the import prices of the top 4 importing countries in the world; and
- Korean and Taiwan prices for coking coal.

After having considered each of the above options in INV 193, the Commission used the Chinese export price in the investigation period to establish the benchmark price for coking coal.

### **A2.3.3 Benchmark price for coking coal**

As established in the galvanised steel and aluminium zinc coated steel investigations, the Commission considers that it is reasonable to determine adequate remuneration for coking coal sold domestically in China using the Chinese export price for coking coal (exclusive of export tax) based on data provided by the GOC in the current investigation.

The following reasons for using Chinese export prices discussed in REP 193 (Appendix 3 of 193 refers) are also applicable in this investigation:

- In assessing the data collated from various sources in INV 193 (Appendix 3 of REP 193 refers) the Commission found there are a variety of factors affecting the quality and forms of coking coal produced, imported and/or exported by each of the top five countries trading in these commodities, cannot be determined. The coking coal exported from China is considered to be the most comparable to the coking coal purchased domestically by the cooperating Chinese exporters. The export data provided by the GOC is considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration;
- domestic purchase price data has been provided by JIGANG and verified by the Commission. The proposed export price data was provided by a reliable source (the GOC) and is considered more directly relevant to Chinese producers and exporters in the IP;

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- the cost of production of coking coal for the Chinese domestic and export markets, respectively, is likely to be similar if not the same;
- in INV 193, the Commission found that the Chinese export prices for coking coal are comparable to the export prices of the top 5 exporters (countries) in the world on comparable terms of trade; and
- China is the major producer and consumer of coking coal<sup>16</sup>. There is no other economy comparable to China's appetite for coking coal. As such, it is appropriate to compare Chinese domestic prices with Chinese export prices.

The use of Chinese export prices is not without problems. As noted above, coking coal is of varying qualities. The GOC was not able to identify in the export data what type of coking coal was represented in the prices. The Commission cannot be certain that the coking coal purchased by Chinese manufacturers of plate steel is comparable, in terms of quality, to the exported coking coal.

### **Submissions received**

In response to SEF 198 submissions were received from Bisalloy and JIGANG.

Bisalloy claims that the Commission failed to consider the public body tests posited by the Appellate Body regarding the coking coal supplied by SIE's to JIGANG. Bisalloy also claims that there is no evidence of inadequate remuneration or of any benefit to JIGANG flowing from JIGANG's purchases of coking coal from SIEs.

JIGANG claims that the export price of coking coal provided by the GOC was inclusive of export tax and influenced by the quotas. JIGANG also claims that it uses lower percentage of coking coal (as it replaces coking coal with PCI) to produce a tonne of plate steel than the percentage determined the Commission.

### **The Commission's Assessment**

After carefully considering all options to determine an appropriate benchmark in accordance with the guidelines outlined by the WTO Appellate Body, the Commission considered that the Chinese export prices (based on the data provided by the GOC) are appropriate to establish a benchmark (adequate remuneration) price for coking coal in China.

The Commission used JIGANG's verified purchase price of coking coal from SIEs and other suppliers in the investigation period. The Commission compared JIGANG's purchase prices of coking coal with the benchmark price on a quarterly basis and found that JIGANG benefited from the purchase of coking coal from the Chinese SIEs. Based on the total benefit calculated in the investigation period, the Commission calculated the subsidy margin and found it not to be negligible (Confidential Attachment 2 refers).

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<sup>16</sup> Source: world coal association: <<http://www.worldcoal.org/resources/coal-statistics>> and Resource-Net report <<http://resource-net.com>>



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During the galvanised steel and aluminium zinc coated steel investigations, the Commission inquired and the GOC confirmed that all coking coal export prices provided by the GOC were exclusive of export tax<sup>17</sup>. The Commission also noted that the coking coal export data provided by the GOC was consistent with the data provided earlier for the galvanised steel and aluminium zinc coated steel investigations from January to June 2012.

The Commission acknowledges that JIGANG uses PCI to manufacture plate steel products. While JIGANG provided data for total coking coal consumed in 2012, JIGANG did not provide the quantity of coking coal used to produce plate steel in that period. JIGANG also did not provide any supporting evidence as to how it derived at a lower percentage of coking coal used to manufacture a tonne of plate steel. Based on the information collated during the investigation, the Commission is aware that JIGANG manufactures products other than plate steel using coking coal.

Based on the information provided by JIGANG (unverified coking coal consumption table for 2012) and PCI data, the Commission calculated the percentage of coking coal used by JIGANG to produce one tonne of plate steel. The Commission noted a minor variance when compared to the percentage determined by the Commission.

Therefore, the Commission considers that the percentage coking coal used to manufacture one tonne of plate steel determined by the Commission is appropriate.

The Commission's detailed response to Bisalloy and JIGANG submissions is at section 7.4.4 of the report.

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<sup>17</sup> the Commission is aware that the GOC abolished export tax of 40% on coke with effect from 1 January 2013.

## **APPENDIX 2.4 - ASSESSMENT OF ADEQUATE REMUNERATION FOR COKE IN CHINA**

### **A2.4.1 Introduction**

After determining that SIEs that supplied coke in China are ‘public bodies’ for the purposes of the Act (see Appendix 2.1), the Commission has sought to determine a benchmark price that represents adequate remuneration for coke in China, to determine benefit received under subsidy Program 4 (purchases of coke from SIEs at less than adequate remuneration).

In establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for coke, the following difficulties have been identified:

- the volume and value of production of coke in China could not be reliably ascertained because the GOC was not able to provide the relevant data;
- data for coke imports provided by the GOC may not be reliable. This is due to the fact that there seems to be anomalies in the data. In response to the GQ for the current investigation the GOC provided the same data set provided in INV 193 for the period January 2012 to June 2012. In INV 193 the GOC confirmed that the data provided is correct but did not provide any formal response as to why there is a large difference in import prices in the period January 2012 to June 2012 compared to July 2011 to December 2011 (difference of 863%). The GOC assumes that it could be due to the quality of coke or based on negotiated prices; and
- there is no international benchmark price for coke. China has been identified as the major producer and consumer of coke<sup>18</sup>. China also restricted the trade of coke to the international market by levying high export taxes and restrictions. As such, the market for coke is highly concentrated in China.

In INV 193 the following sources of data were obtained and compared: data provided by the GOC, data purchased by Commission from Resource-net, SBB subscriptions and data provided by BlueScope. The prices obtained from these different sources closely match in most cases (detailed assessment is at Appendix 4 of REP 193).

The GOC in its responses to the GQ (response to GQ A-3 confidential Appendices 13 and 19 refers) provided import and export data for coke from January 2009 to December 2012.

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<sup>18</sup> Source: world coal association: <<http://www.worldcoal.org/resources/coal-statistics>> and Resource-Net report <<http://resource-net.com>>

## A2.4.2 Adequate remuneration for coke

Domestic prices of coke in China are being influenced and distorted by the GOC (as discussed in section 4.10 in Appendix 1). The three options for determining a benchmark, in order of preference, based on World Trade Organisation (WTO) Appellate Body findings are:

- private domestic prices;
- import prices; and
- external benchmarks.

### (i) Private domestic prices

In REP 193 the Commission found that private prices of coke were affected by government influence and therefore not suitable.

The Commission's assessment of data submitted by fully integrated cooperating exporters in the galvanised steel and aluminium zinc coated steel investigations shows that there is no significant difference between coke prices from SIE and private suppliers.

The Commission considers that private domestic prices of coke in China are not suitable for determining a competitive market price free from government influences.

### (ii) Import prices

The Commission found that import prices were not suitable as a benchmark due to the lack of import penetration of coke and the likelihood that import prices were equally affected by the government influences on domestic prices.

The GOC's response to the Government questionnaire in relation to coke imports and the data supplied by cooperating exporters during the galvanised steel and aluminium zinc coated steel investigations indicate that only a small quantity of coke was imported in China during the investigation period. Due to the small quantity of imports of coke, it is likely that import prices were also affected by the government influences on domestic prices. The Commission considers that import prices are not suitable for determining a competitive market price of coke in the investigation period.

### (iii) External benchmarks

Having eliminated the first two options as discussed above, in INV 193 the Commission considered various other options (as detailed in Appendix 4 of REP 193) to establish a benchmark price of coke. These options are summarised below:

- Chinese export price of coke compared to the export prices of the top 5 exporting countries in the world<sup>19</sup>; and

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<sup>19</sup> Source: data provided by Resource-net and by BlueScope

- Import prices of a third country. India is one of the major producers and consumers of coking coal and has similar geographical location and economy<sup>20</sup>.

After having considered each of the above options in INV 193, the Commission used Chinese export price in that IP to establish the benchmark price for coke.

### A2.4.3 Benchmark price for coke

As established in INV 193, the Commission considers that adequate remuneration for coke sold domestically in China can be established using the Chinese export price for coke (exclusive of export tax) based on data provided by the GOC.

The following reasons for using Chinese export prices discussed in REP 193 (Appendix 3 of REP 193 refers) are also applicable in this investigation.

- In INV 193 the Commission found that there are a variety of factors affecting the quality of coke, it is difficult to determine the quality of coke produced, imported and/or exported by each of the top five countries trading in these commodities. The coke exported from China is considered to be comparable to the coke purchased domestically by the cooperating Chinese exporters. The export data provided by the GOC is considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration;
- domestic purchase price data has been provided by cooperating Chinese exporters of galvanised steel and aluminium zinc coated steel and verified by the Commission. The proposed export price data was provided by the GOC and is considered more directly relevant to Chinese producers and exporters in the IP;
- In INV 193, the Commission found that the cost of production of coke for the Chinese domestic and export markets, respectively, is likely to be similar if not the same;
- In INV 193, the Commission found that the Chinese export prices for coke are comparable to the export prices of two of the top 5 exporters (countries) in the world for which data was available for the investigation period; and
- China is the major producer and consumer of coke<sup>21</sup>. There is no other economy comparable to China's appetite for coke. As such, it is appropriate to compare Chinese domestic prices with Chinese export prices.

The use of Chinese export prices is not without problems. The GOC was not able to identify in the export data what type of coke was represented in the prices. The Commission cannot be certain that the coke purchased by Chinese manufacturers of plate steel is comparable, in terms of quality, to the exported coke.

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<sup>20</sup> Source: data provided by Resource net and by BlueScope

<sup>21</sup> Source : <http://www.worldcoal.org/resources>