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The Director - Investigations
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Hot Rolled Coil Steel Exported from the People's Republic of China
Response to Statement of Essential Facts No. 658

Dear Director,

We act on behalf of Baoshan Iron & Steel Co Ltd (Baoshan), Baosteel Zhanjiang Iron & Steel Co Ltd (Zhanjiang), and Shanghai Meishan Iron & Steel Co Ltd (Meishan) (collectively referred to herein as "Baosteel"). This submission is made on behalf of Baosteel in response to the Statement of Essential Facts No. 658 (SEF 658), published on 23 December 2025.

While Baosteel appreciates the opportunity to comment, we strongly dispute the Commission's preliminary findings, which include errors and inconsistencies with Australia's domestic and international obligations. The Commission's unjustified rejection of Baosteel's recorded costs for steel slab, which represents over 90% of the cost to make hot rolled coil (HRC), and substitution with a flawed Brazilian benchmark blatantly contravenes Article 2.2.1.1 of the Anti-Dumping Agreement (ADA). This approach conveniently ignores that over [redacted]% of Baosteel's HRC raw material costs stem from iron ore imported from Australia at international market prices, which are clearly undistorted and cannot be dismissed as abnormal or extraordinary.

Baosteel insists that the Commission correct these flaws in the final report by relying on Baosteel's verified records for normal value construction, without arbitrary distortions. Persisting with this erroneous methodology risks WTO challenges and undermines the integrity of fair-trade principles. Baosteel reserves the right to submit further evidence as needed.

PRELIMINARY DUMPING FINDINGS

1. Overview of the Commission's findings and Baosteel's position

In Appendix C of SEF 658, the Commission preliminarily determines that Baosteel's cost records comply with Chinese generally accepted accounting principles (GAAP) and "reasonably reflect the actual cost of production". Yet, it arbitrarily rejects these records in

constructing normal value under section 269TAC(2)(c)(i) of the *Customs Act 1901* ("Act"), claiming they fail to reflect "competitive market costs" due to a particular market situation (PMS) allegedly influenced by the Government of China (GOC). The Commission misuses the term "normally" in Article 2.2.1.1 to justify this, asserting that the circumstances are not "normal and ordinary". It then constructs costs using Baosteel's records but inflates the steel slab component via Chinese-Brazilian market index differences, with minimal labour adjustments, and none for factors such as economies of scale, iron ore grade differences, etc.

Baosteel challenges this as WTO-inconsistent. The Commission has improperly merged the focus in Article 2.2.1.1 on *actual* production costs with PMS issues under Article 2.2 for domestic prices. By discarding undistorted costs like Australian imported iron ore and imposing an unreasonably adapted third-country benchmark, the Commission fails to reflect "the cost of production in the country of origin" under Article 2.2. Baosteel's GAAP compliant records reflect real costs and must be used without substitution.

2. Misinterpretation of Article 2.2.1.1 of the ADA

Article 2.2.1.1 of the ADA establishes a clear directive that costs "*shall normally be calculated on the basis of records kept by the exporter or producer under investigation*," subject to two conditions: (i) the records must be in accordance with the generally accepted accounting principles (GAAP) of the exporting country; and (ii) they must "*reasonably reflect the costs associated with the production and sale of the product under consideration*." This provision creates a strong presumption in favour of using the exporter's own records, emphasising the importance of actual costs incurred in the country of origin unless exceptional circumstances justify deviation.

The Commission explicitly acknowledges that Baosteel's records fulfill both prerequisites, confirming their GAAP compliance and that they reasonably reflect the actual costs of production. Despite this, the Commission erroneously rejects these records, contending that they do not represent "competitive market costs" due to alleged distortions from GOC influence on raw material prices, such as iron ore and coal.

This rejection improperly broadens the scope of the second condition to incorporate a requirement that costs be "undistorted" or aligned with hypothetical competitive market benchmarks. This criterion is absent from the text of Article 2.2.1.1. Such an interpretation not only contravenes the ordinary meaning of the provision but also conflicts with extensive WTO jurisprudence, which consistently limits the assessment under Article 2.2.1.1 to the reliability and relevance of the recorded costs to production, without authorising adjustments for broader market situations.

This expansion of the second condition into an unauthorised "undistorted" requirement, directly conflicts with the following WTO jurisprudence.

2.1 Inconsistency with Panel Report in DS529 (*Australia – Anti-Dumping Measures on A4 Copy Paper*)

In DS529, the Panel examined Australia's rejection of Indonesian exporters' recorded costs for pulp inputs on the grounds of government distortions giving rise to a PMS, finding it inconsistent with Article 2.2.1.1. The Panel underscored that the phrase "reasonably reflect" pertains solely to whether the records provide a faithful and logical allocation of costs

actually incurred in relation to the production and sale of the product, and not to whether those costs are influenced by external market distortions.

Furthermore, the Panel clarified that deviations under the "normally" qualifier is exceptional and must be justified by evidence that the records themselves are unreliable for cost allocation purposes, not by generalised market conditions. The Commission's parallel rejection of Baosteel's steel slab costs, despite verification that they reflect actual production expenses, mirrors this invalidated approach, relying on unsubstantiated PMS allegations without demonstrating any flaw in the records' allocation methodology.

2.2 Inconsistency with Panel Report in DS603 (*Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China*)

Similarly, in DS603, the Panel ruled against Australia's substitution of Chinese exporters' steel input costs in investigations concerning wind towers, stainless steel sinks, and railway wheels, deeming it a violation of Article 2.2.1.1. The Panel emphasised that the provision's focus is on the "actual" costs as recorded, provided they meet the GAAP and reasonable reflection criteria.

The Panel further elaborated that the "normally" clause permits deviation only in narrowly circumscribed scenarios, such as non-arm's-length transactions or evident misallocation, and not as a routine mechanism to address perceived market distortions. In the present case, the Commission's focus on "normal and ordinary" circumstances to discard Baosteel's records lacks any exporter-specific evidence of such exceptions, replicating Australia's unsuccessful defence in DS603 and rendering the findings WTO-inconsistent.

2.3 Alignment with Other Relevant WTO Reports

The Commission's preliminary interpretation and application aligns with a broader body of WTO jurisprudence affirming the strict limits on cost adjustments under Article 2.2.1.1. In *Ukraine – Ammonium Nitrate (DS493)*, the Appellate Body reinforced a strong presumption in favour of exporter records, holding that deviations are permissible only where records demonstrably fail to allocate costs reasonably to production, such as in cases of related-party distortions or artificial pricing. The Appellate Body stressed that investigating authorities must provide adequate basis for any rejection, grounded in record evidence.

Likewise, in *EU – Cost Adjustment Methodologies II (Russia)* (DS494), the Panel invalidated the EU's replacement of Russian gas costs due to alleged distortions, ruling that Article 2.2.1.1 does not authorise substitutions based on non-market conditions or government influence, as this would undermine the provision's emphasis on actual costs in the country of origin.

In *EU – Biodiesel (Argentina)* (DS473), the Appellate Body further clarified that input costs cannot be disregarded merely because they are perceived as distorted by government policies; instead, records must be used unless they do not reasonably reflect production costs. The Appellate Body noted[1]:

[1] WT/DS473/AB/R, para 6.55, page 38.

> … we agree with the Panel's statement that the EU authorities' determination that domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system was not, in itself, a sufficient basis under Article 2.2.1.1 for concluding that the producers' records do not reasonably reflect the costs of soybeans associated with the production and sale of biodiesel, or for disregarding those costs when constructing the normal value of biodiesel

The Commission's cross-referencing of the PMS findings set out in Appendix A to justify cost rejection overturns this jurisprudence. While PMS under Article 2.2 may warrant rejecting domestic sales prices for normal value, it does not extend to overriding the Article 2.2.1.1 presumption for costs, as confirmed across these disputes.

2.4 The Commission's approach replicates non-market economy treatment

Moreover, it is worth highlighting that the Commission's rejection of Baosteel's costs effectively replicates the non-market economy (NME) methodologies previously permitted under China's WTO Accession Protocol (Article 15) and analogous provisions in the Act (subsections 269TAC(4)–(6)), which allowed surrogate country benchmarks for normal value calculations in cases where domestic prices or costs were deemed unreliable due to state influence. However, Australia's formal recognition of China as a market economy in April 2005, committed to treating Chinese exporters on equal footing with market economy countries, and avoid presumptive NME treatment. This recognition, formalised in a bilateral memorandum during free trade agreement negotiations, was intended to preclude the use of third-country surrogates absent case-specific evidence of distortion under standard ADA rules.

By substituting Baosteel's verified costs with Brazilian benchmarks under the guise of PMS, the Commission has circumvented this commitment, imposing an NME-like regime that presumes Chinese costs are inherently distorted. This is inconsistent with Australia's 2005 pledge and the post-2016 expiration of Article 15(a)(ii) of China's Accession Protocol.

The Commission's methodology thus not only violates Article 2.2.1.1 but also undermines bilateral trade understandings, risking further WTO scrutiny.

3. Absence of exceptional circumstances and improper deviation under the "normally" clause.

The Commission's reliance on the qualifier "normally" in the first sentence of Article 2.2.1.1 to reject Baosteel's cost records, on the grounds that GOC influence renders the circumstances not "normal and ordinary", represents an unsubstantiated and overly broad interpretation that lacks any exporter-specific evidence or compelling justification. This approach effectively creates an unauthorised third condition for disregarding records, beyond the two explicitly set out in Article 2.2.1.1.

WTO jurisprudence consistently interprets "normally" as establishing a strong presumption in favour of using the exporter's records, with deviations permitted only in rare, exceptional circumstances supported by specific facts demonstrating that the records are unreliable for allocating costs to production. The Commission's generalised assertions of GOC interventions are speculative, not causally linked to Baosteel's verified costs, and fail to meet

this evidentiary threshold, particularly given Baosteel's reliance on undistorted Australian iron ore imports, which undermine any claim of abnormality.

3.1 Interpretation of the "normally" clause

The Appellate Body and Panels have repeatedly emphasised that the word "normally" in Article 2.2.1.1 does not provide a blanket exception for perceived market distortions, such as those alleged in a PMS, with departure allowed only under narrowly circumscribed conditions. In *Ukraine – Ammonium Nitrate (DS493)*[2], the Appellate Body provided a definitive interpretation of this clause:

> *The word 'normally' may be defined as 'under normal or ordinary conditions; as a rule'. Read in conjunction with the words 'provided that', which introduce the two conditions of the first sentence of Article 2.2.1.1, the word 'normally' indicates that when these two conditions are met, 'under normal or ordinary conditions' or 'as a rule', records shall be used. ... [T]he qualification of an obligation with the adverb 'normally' does not, necessarily, alter the characterization of that obligation as constituting a 'rule' ... [r]ather, ... the use of the term 'normally' ... indicates that the rule ... admits of derogation under certain circumstances. Given the reference to 'normally' in the first sentence of Article 2.2.1.1, we do not exclude that there might be circumstances other than those in the two conditions set out in that sentence, in which the obligation to base the calculation of costs on the records kept by the exporter or producer under investigation does not apply.*

This interpretation establishes a strong presumption in favour of using the exporter's records when the two conditions are satisfied, with deviations limited to exceptional cases where records demonstrably fail to allocate costs reasonably to production. The Appellate Body stressed that any such departure from the use of the exporter's costs must be justified by adequate explanations grounded in specific record evidence. In the present case, the Commission has provided no such evidence relevant to Baosteel. Instead, it relies on broad market-level claims without demonstrating how they render Baosteel's records unreliable for cost allocation purposes.

The Commission has particularly erred in its application of the 'normally' clause by failing to conduct any targeted assessment or analysis of Baosteel's iron ore costs, which are entirely imported from Australia at prevailing international spot prices. These costs, verified during the investigation, are determined by global market benchmarks (e.g., Platts Iron Ore Index) and transacted with unrelated Australian suppliers, free from any direct GOC influence or domestic Chinese distortions. The Commission makes no attempt to provide an adequate explanation for why these costs should be considered not "normal or ordinary," instead subsuming them under vague, industry-wide PMS allegations. This omission is glaring, as it ignores the exporter-specific evidence that Baosteel's records accurately reflect these undistorted inputs, thereby undermining the basis for any derogation under 'normally'.

Furthermore, the significance of this error is amplified by the fact that iron ore costs account for [redacted] % of the total slab costs, the largest single cost item within Baosteel's production expenses for HRC. By rejecting these costs without individualised scrutiny or evidence of abnormality, the Commission not only fails to meet the evidentiary standards articulated in

[2] WT/DS493/AB/R, para 6.87, page 38

DS493 but also introduces an arbitrary uplift in constructed normal value, disproportionate to any demonstrated distortion. This blanket approach contravenes WTO rules, as the Commission has not shown how Baosteel's reliance on international spot-priced imports creates an exceptional scenario warranting non-use of records that otherwise satisfy Article 2.2.1.1's conditions.

3.2 Inconsistencies with DS529 and DS603

The Panel rejected Australia's use of the term "normally" in the first sentence of Article 2.2.1.1 of the ADA as a basis to disregard the Indonesian exporters' recorded pulp costs solely due to an alleged PMS involving government-induced distortions. The Panel concluded that Australia acted inconsistently with Article 2.2.1.1 (and consequently Article 2.2) because the Commission failed to establish that the exporters' records did not satisfy the two explicit conditions. The Panel emphasised that deviations from using exporter records are not routine or broad, particularly where PMS affects input prices but the records still capture actual incurred costs (following Appellate Body guidance in *EU – Biodiesel (Argentina)*, which rejects replacing actual costs with alternatives merely due to perceived distortions).

Similarly, in DS603[3] (*Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China*), the Panel explicitly addressed the "normally" clause, quoting the Appellate Body in DS493:

> "[g]iven the reference to 'normally' in the first sentence of Article 2.2.1.1, we do not exclude that there might be circumstances other than those in the two conditions set out in that sentence, in which the obligation to base the calculation of costs on the records kept by the exporter or producer under investigation does not apply."

However, the Panel stressed that "the word 'normally' may provide a basis for rejecting exporters' record costs when constructing normal value or performing the ordinary-course-of-trade test," but only in rare scenarios beyond the two conditions, such as evident misallocation, and not as a routine PMS exception. The Panel[4] noted Australia's argument that a "not normal" finding renders further analysis redundant:

> "[I]f a finding is made that circumstances are not 'normal', then going on to make findings under the other two circumstances would be redundant ... the subsequent findings would be redundant because there was already a finding to the effect that the obligation to use the exporter's records in the first sentence of Article 2.2.1.1 did not apply."

The Panel rejected this, requiring independent assessment of the two conditions before invoking "normally," as procedural redundancy does not justify bypassing them.

3.3 Lack of compelling reasons and evidentiary gaps

The Commission's assertions that GOC interventions, such as those through the CMRG on iron ore prices and coal price caps, create abnormal circumstances, fall well short of the

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[3] WT/DS603/R, para 7.56, page 33

[4] Ibid., para 7.58, page 33.

certain circumstances required to justify deviation from the exporter's records. As articulated in DS493, such circumstances must be supported by specific, exporter-level facts demonstrating that the records fail to reasonably reflect or allocate costs associated with production, rather than relying on broad, market-wide allegations.

Here, the Commission's references to CMRG and coal caps are entirely generalised and not substantiated with evidence directly linked to Baosteel's operations or cost structures. For instance, no analysis is provided on how these interventions specifically impacted Baosteel's verified cost records, which the Commission itself acknowledges comply with GAAP and reasonably reflect actual production costs. This evidentiary gap breaches the mandate for adequate explanations grounded in record-specific evidence, rendering the deviation under the "normally" clause unwarranted.

Moreover, the Commission's blanket application of PMS findings ignores the undisputed fact that approximately [redacted] % of Baosteel's overall production costs (and [redacted] % of slab costs) derive from iron ore imported from Australia at prevailing international spot prices, unaffected by GOC distortions. These imports, sourced from unrelated suppliers like BHP and Rio Tinto and priced according to global benchmarks (e.g., Platts Iron Ore Index), represent the largest single cost item and are inherently "normal and ordinary" market transactions.

The Commission provides no tailored assessment or adequate explanation for why these specific costs should be deemed abnormal, instead subsuming them under unsubstantiated industry-level claims. This approach inverts the strong presumption in favour of using exporter records, treating "normally" as a permissive loophole for PMS allegations rather than a rule allowing only limited, fact-based departures.

This unsubstantiated overreach is particularly stark when contrasted with the WTO-consistent methodology employed by the European Commission in its recent anti-dumping investigation on flat-rolled products of iron or non-alloy steel plated or coated products from China (*Commission Implementing Regulation (EU) 2025/1042*)[5]. In section 3.2.1 of that regulation (recital (45)), the EU Commission explicitly used the undistorted import prices paid by the Baosteel Group for iron ore sourced from countries without distortion allegations under Article 2(6a) of the EU basic Regulation, rather than substituting benchmarks. Despite similar claims regarding CMRG's potential influence on imported iron ore purchases (recitals (46)-(48)), the EU Commission concluded there was "insufficient evidence to corroborate" these allegations (recital (55)). This granular, evidence-based approach, which prioritises Baosteel's verified data over generalised distortions, aligns with WTO jurisprudence by preserving actual costs where undistorted, as required under Article 2.2.1.1.

Adopting a similar rigorous, case-specific evaluation here would compel the conclusion that Baosteel's Australian iron ore imports are undistorted, and reflect competitive market conditions, negating any basis for abnormality. The Commission's failure to do so, without providing the requisite "adequate explanations", not only contravenes DS529 and DS603, where PMS alone was insufficient for rejection, but also deviates from international best practices, leading to an arbitrary and disproportionate constructed normal value. As PMS allegations do not suffice on their own, and the Commission admits no compelling reasons

[5] Commission Implementing Regulation (EU) 2025/1042

beyond these generalisations, the deviation under "normally" must be rejected, restoring reliance on Baosteel's verified records.

4. Flaws in the Commission's benchmark construction

Even assuming for the sake of argument that the rejection of Baosteel's records under Article 2.2.1.1 was permissible (which we firmly deny), the Commission's methodology for constructing the cost of production, which involves relying on Brazilian steel slab market indices to adjust Baosteel's steel slab costs, violates Article 2.2 of the ADA.

Article 2.2 mandates that, when constructing normal value due to a PMS or other reasons for rejecting domestic sales, the authority must base it on "the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits". This provision requires that any alternative costs or benchmarks be adapted to reflect conditions prevailing in the exporting country, ensuring the constructed value remains representative of what costs would be in an undistorted Chinese market. The Commission's failure to properly adapt the Brazilian benchmark introduces artificial inflation and bias, rendering the construction WTO-inconsistent.

The Commission's approach involves retaining Baosteel's records for non-slab elements but uplifting the steel slab cost (which represents over 90% of HRC production costs) by the difference between Chinese and Brazilian steel slab indices, resulting in an average 37% increase. Adjustments are minimal and selective, limited to labour costs (ranging from [redacted] - [redacted] % based on selective socioeconomic metrics like GDP per capita), while ignoring critical China-specific factors such as lower utility rates, economies of scale from China's vast production capacity (the world's largest at over 1 billion tonnes annually), alloy input prices, or technological efficiencies.

This selective adaptation creates an upward bias, as Brazilian costs are inherently higher due to differences in market structure, where Brazil ranks 10th globally in steel production (approximately 36 million tonnes), with higher energy and labour costs, rendering it an inappropriate proxy without comprehensive adjustments. The Commission's justification for selecting Brazil, citing superficial similarities in population, GDP, and urbanisation, lacks evidentiary support and fails to address these disparities, leading to a constructed cost that does not reflect "the cost of production in the country of origin" as required by Article 2.2.

This methodology is directly inconsistent with WTO jurisprudence, which demands rigorous adaptation of third-country benchmarks to ensure compatibility with exporting country conditions. In DS603 (*Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China*), the Panel faulted Australia for using unadapted or inadequately adjusted surrogates in constructing normal value for Chinese products, emphasising that information must demonstrably reflective of the cost of production in the country of origin.

The Panel specifically criticised the lack of adjustments for differences in production processes, input costs, and market dynamics, noting that benchmarks must be adapted to avoid bias. Here, the Commission's cursory labour adjustments mirror Australia's errors in DS603, where similar minimal tweaks were deemed insufficient, without addressing utilities or scale economies, the Brazilian indices overstate costs, violating the obligation to construct a value tied to Chinese realities.

Similarly, in DS529 (*Australia – Anti-Dumping Measures on A4 Copy Paper*), the Panel invalidated Australia's use of third-country pulp prices without proper adaptation, requiring that surrogates account for differences in the circumstances of purchase or production to ensure they reflect costs in the exporting country.

The Commission's arbitrary Brazil selection and inadequate adjustments fail these standards, as no evidence demonstrates why Brazilian indices, drawn from a smaller, less efficient and highly protected market, better represent undistorted Chinese costs than Baosteel's verified records, particularly for undistorted inputs like Australian iron ore. This results in a disproportionate uplift, undermining the ADA's fair comparison principle under Article 2.4.

4.1 Inappropriateness of Brazil as a surrogate country

The Commission's selection of Brazil as the surrogate country for benchmarking steel slab costs is fundamentally flawed, as clear disparities between the Brazilian and Chinese steel sectors render Brazil an unsuitable proxy. As detailed in the table below, sector-specific differences in market size, economies of scale, conditions of competition, production methods, cost structures, and trade dynamics make Brazilian costs an unreliable approximation for undistorted Chinese normal value.

For instance, China's steel production dominates globally at 950-1,000 Mt annually (55% of world output in 2024-2025), enabling unparalleled economies of scale and low per-unit costs, whereas Brazil's output is a mere 33 Mt (1.8% globally), leaving it unable to replicate such efficiencies. This volume gap alone distorts any surrogate application, as Brazilian costs reflect a resource-dependent, smaller-scale market without China's bulk procurement advantages.

Cost structures further underscore this incomparability:

- Brazil faces high energy and labour expenses,
- differing input reliance with China's heavy dependence on imported ore versus Brazil's self-sufficiency, leading to Chinese costs tied to commodity fluctuations, which are not replicated in Brazil.
- labour and environmental compliance add premiums in Brazil under stricter regulations.

Further differences arise due to the impact of trade remedies in Brazil, which has imposed anti-dumping duties and import quotas on downstream finished steel products such as carbon steel sheets and heavy steel plate. These indirectly protect domestic slab producers and contribute to higher domestic slab prices than would otherwise prevail without those measures. This stems from the structure of Brazil's steel industry and the economics of vertical integration in steel production:

- limited slab imports into Brazil: Brazil is a major exporter of slabs (semi-finished steel), with exports reaching around 7.3 million tonnes in 2025. There is no evidence of significant slab imports into Brazil so domestic slab producers face minimal foreign competition.
- integrated production chain: Major Brazilian steelmakers (e.g., CSN, Usiminas, ArcelorMittal) are largely integrated, producing slabs upstream and rolling them into finished flat products downstream. The anti-dumping duties and import quotas

targeting finished or semi-processed flat products reduces competition from low-priced imported finished goods, which in turn allows domestic producers to maintain higher prices and margins on their finished output.

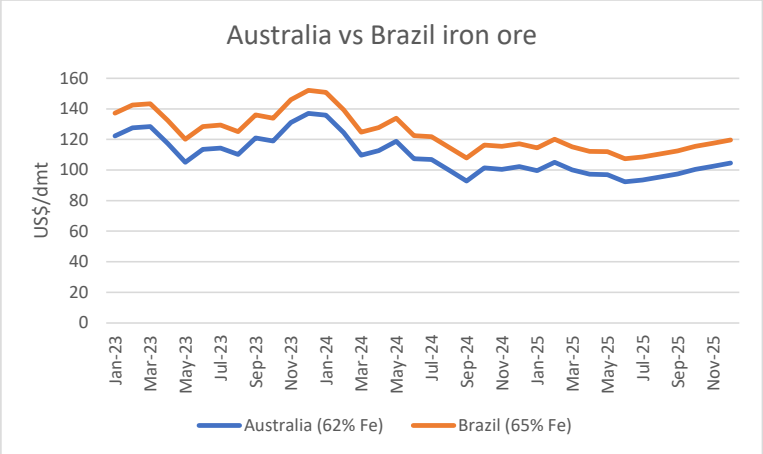
- price transmission along the chain: Higher realisable prices in the protected downstream segment increases the overall profitability of integrated operations. This enables producers to sustain higher internal (transfer) pricing for slabs or support higher costs at the slab stage without eroding margins. In essence, the "price umbrella" created by remedies on finished goods shelters the entire value chain, allowing domestic slab pricing to remain elevated relative to a scenario of unchecked import competition in finished products.

While economic theory notes that downstream protection can sometimes depress upstream input prices by incentivising input imports, this requires substantial untaxed input imports, which is not the case in Brazil for slabs. Here, the dominant effect is protective for the integrated domestic industry.

For these reasons, Baosteel submits that Brazil's use as a surrogate is unsupported and WTO-inconsistent, necessitating reliance on Baosteel's records or a more comparable alternative.

4.2 Unsuitability of Brazilian slab prices as a benchmark given iron ore price spreads

The Commission's use of Brazilian steel slab prices as a benchmark for Baosteel's slab costs is particularly unsuitable due to the significant and consistent price spread between Brazilian and Australian iron ore, compounded by differences in Fe grades, which further illustrates the unreasonableness of rejecting Baosteel's verified Australian iron ore costs. As evidenced in the chart below, monthly average spot prices for iron ore fines CFR China from January 2023 to December 2025 show Brazilian ore (65% Fe content) averaging a consistent premium of US$15/dmt (+13%) each month, compared to Australian ore (62% Fe content).



This differential reflects the 3% higher Fe content in Brazilian ore, which commands a premium due to better yield in steel production, but it also highlights inherent cost disparities. Brazilian slab prices, derived from a market self-sufficient in high-grade domestic iron ore, incorporate these elevated input costs, making them an inflated proxy for Baosteel, that sources all of its requirements using lower-cost Australian ore.

This spread underscores the Commission's error in substituting Brazilian benchmarks without accounting for these material differences, leading to an artificial 37% uplift in Baosteel's constructed costs. Even without premium adjustments for grade, the data reveals Australian ore as consistently cheaper, confirmed as being undistorted and reflecting of competitive market conditions. By rejecting these costs under PMS claims, despite their international sourcing from a market economy like Australia, the Commission unreasonably equates them with domestic distortions, ignoring obvious price variances that make Brazilian slabs incomparable. This blanket rejection is disproportionate, as iron ore constitutes [redacted] % of slab costs and [redacted] % of HRC production expenses, amplifying the bias in the constructed normal value.

Furthermore, by uplifting Baosteel's entire slab cost by the indexed spread between Brazil and China market price indices for slab, the observed iron ore price premium of approximately [redacted] % (calculated as the average monthly percentage difference over the investigation period) is effectively applied not only to iron ore but to all other raw materials, manufacturing overheads, and utilities within the slab cost structure. This methodological flaw overstates the overall cost of slab, as non-iron ore components, such as coal, alloys, labour, and energy, do not carry this premium, yet they are inflated uniformly by the slab index differential. Such smearing of the premium across unrelated elements exacerbates the artificial bias, rendering the constructed normal value unrepresentative of Chinese conditions.

This unsuitability violates the requirement in Article 2.2 for benchmarks to reflect the cost of production in the country of origin, as unadapted external benchmarks incorporating higher-cost inputs fail to adapt to Chinese market conditions. The Commission's decision to dismiss Baosteel's Australian iron ore prices, despite these evident spreads, compounds the inconsistency, as authorities must preserve undistorted inputs where available.

5. Error in treatment of undistorted iron ore costs imported from Australia

A core defect in the Commission's analysis lies in its failure to isolate, assess, and preserve Baosteel's undistorted iron ore costs, which are sourced entirely from unrelated suppliers in Australia at international market prices. Baosteel's verified records, as acknowledged by the Commission, demonstrate that approximately [redacted] % of the production costs for HRC are attributable to these iron ore imports, representing the largest single input and accounting for [redacted] % of slab costs alone.

These imports are transacted with unrelated Australian suppliers (e.g., BHP Group Ltd and Rio Tinto Ltd), priced according to prevailing global benchmarks such as the Platts Iron Ore Index, and denominated in USD. The Commission's claim that GOC influence, such as through the CMRG, lowers iron ore prices is inapplicable here, as these are standard, "normal and ordinary" international market transactions that cannot plausibly be deemed abnormal or extraordinary. By substituting these costs with a Brazilian proxy without segregation, the Commission artificially inflates Baosteel's constructed normal value, introducing disproportionate bias.

This oversight is compounded by the Commission's disregard for international precedents, such as the EU Commission's approach in its flat-rolled products of iron or non-alloy steel plated or coated products investigation (*Commission Implementing Regulation (EU) 2025/1042*), where undistorted import prices for iron ore from non-distorted countries were

retained despite CMRG allegations. The EU found "insufficient evidence to corroborate" distortion claims, preserving actual costs in line with WTO rules.

The Commission's failure to align with the EU's findings in the flat-rolled products of iron or non-alloy steel steel case regarding CMRG is particularly revealing. After reviewing evidence from Baosteel Group showing limited CMRG involvement, the EU Commission[6] '*found that the role of CMRG in the sourcing of imported iron ore had been limited and could not have significantly affected the purchase price of imported iron ore by the sampled exporting producers during the investigation.*' This evidence-based rejection of distortion allegations highlights the need for specific, verifiable proof rather than generalised assertions.

The Commission's unsubstantiated reliance on CMRG to reject Baosteel's Australian iron ore imports deviates from this WTO-consistent standard, which mandates the use of actual, undistorted costs where available and prohibits blanket substitutions that disregard exporter-specific evidence.

In Baosteel's case, the Commission's failure to isolate these iron ore costs, despite admitting challenges in linking purchases to consumption but proceeding with total substitution, violates this principle. The dominance of iron ore ([redacted] % of costs) makes this error especially egregious, as it leads to a disproportionate and unsubstantiated adjustment, breaching the obligation for an even-handed and evidence-based investigation.

6. Procedural Fairness and Disclosure Deficiencies

Baosteel has made repeated requests for access to the indexed uplift calculations which rely on Brazil benchmark and Chinese market price indices. This information is critical to understanding the precise methodology for deriving the indices, the data sources used, the time periods covered, any adjustments made or warranted for comparability (beyond the minimal labour adjustment), and the step-by-step computations leading to the average 37% uplift. The Commission confirmed that the relevant confidential appendix contains '*the underlying calculations for the commission's cost replacement*'[7] and that the MEP's pricing data contained in this worksheet has been omitted by the Commission, because this data '*…must remain confidential.*'

Baosteel makes the following observations on the Commission's use of confidentiality for refusing to provide access to the data.

Firstly, Baosteel is not requesting information that can be considered to be confidential to any of the interested parties involved in the investigation. If the data is taken from a 'reputable independent source', then that information would be available to any party prepared to subscribe to the data service.

Secondly, to ensure that the Commissioner complies with his obligations to maintain a public record in accordance with s.269ZJ of the Act, all relevant information must be placed on the public record unless information given by a person '*is claimed to be confidential or to be*

[6] Implementing Regulation (EU) 2025/1042, para 57.

[7] ADC Email correspondence dated 12 January 2026

information whose publication would adversely affect a person's business or commercial interests'.

Once again, Baosteel does not consider that the data can reasonably be argued to be either confidential or information that would adversely affect a person's business or commercial interests, when any party can pay to receive that data. To that end, Baosteel observes that there is no claim of confidentiality or adverse effect on the public record by any interested party to the investigation. In those circumstances, the Act clearly requires the Commissioner to place the relevant information on the public record.

The requirements of s.269ZJ of the Act have been interpreted by the Federal Court in *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs*. Of particular relevance in this case are Buchanan J observations and interpretations of the Commissioner's obligations in maintaining a public record:

> *89 Counsel for the Minister argued that the requirements of natural justice had been substantially curtailed by the confidentiality requirements of the Act. It was submitted that those requirements amounted to an exhaustive statement of any requirement to afford procedural fairness. There are two principal difficulties with this contention. The first is that the Act contains no express statement to support a conclusion that the provisions relied upon have extinguished such an important right. The second is that the provisions in question seem to me to be directed at quite different objectives. Indeed, their focus is less on the imposition of confidentiality restrictions, although the need for confidentiality is a premise of the whole scheme, than on the need to maintain a very high degree of transparency consistently with that premise.*
>
> *91 Far from emphasising any overruling requirement of confidentiality, s.269ZJ imposes an obligation on the CEO to ensure that a claim for confidentiality does not result in inadequate information to interested parties except in very limited circumstances.*

By refusing to provide the relevant benchmark data and calculations, the Commission is failing to provide procedural fairness to Baosteel and restricting its ability to properly defend its interests with respect to this particular matter. Baoseteel therefore requests the Commission to reconsider its position and place the relevant information on the public record so that all interested parties are provided equal opportunity to respond to the essential facts outlined in SEF 658.

Baosteel submits that the Commission's process in issuing SEF 658 breaches fundamental principles of procedural fairness and transparency, failing to provide sufficient information for Baosteel to effectively defend its interests. Specifically, the Commission has not disclosed key details regarding the calculation of the indexed uplift applied to Baosteel's steel slab costs based on the spread between Brazilian and Chinese slab price indices. This includes the precise methodology for deriving the indices, the data sources and methodology used by the data provider, the time periods covered, any adjustments made for comparability (beyond the minimal labour adjustment), and the step-by-step computations leading to the average 37% uplift.

Such omissions hinder Baosteel's ability to verify, challenge, or respond to the uplift's accuracy, rendering the SEF inadequate as a basis for informed submissions. This lack of disclosure violates Australia's obligations under the ADA and the Act, compromising the integrity of the investigation.

Under Article 6.4 of the ADA, interested parties must have "timely opportunities... to see all information that is relevant to the presentation of their cases," subject to confidentiality. Article 6.9 further requires disclosure of "essential facts under consideration which form the basis for the decision whether to apply definitive measures" before a final determination, allowing parties to defend their interests. The Commission's SEF, while summarising findings, falls short by not providing the underlying calculations for the uplift, a critical "essential fact" directly impacting Baosteel's dumping margins.

Section 269TDAA of the Act mandates the publication of a Statement of Essential Facts that "sets out the material findings of fact on which the Commissioner intends to base his or her recommendation to the Minister," ensuring transparency and opportunity for comment. The Commission's withholding of uplift calculations breaches this, denying procedural fairness.

In *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice and Customs* [2008] FCA 443, Buchanan J held that the Minister's statement of reasons was inadequate under the Administrative Decisions (Judicial Review) Act 1977 (Cth), as it failed to sufficiently explain the methodology for normal value calculations, stating at paragraph 35:

> "The reasons did not disclose the basis upon which the Minister was satisfied... nor did they disclose the process of reasoning which led to that satisfaction."

The parallel here is clear. Without detailed uplift computations, Baosteel cannot assess or contest the Commission's reasoning. These breaches not only impair Baosteel's defence but also undermine public confidence in the process, contravening the Act's emphasis on transparency. Baosteel requests immediate disclosure of the uplift calculations and an extension for further submissions, failing which the findings should be revised to exclude the uplift.

7. Reliability of MEPS data as a benchmark

Baosteel challenges the Commission's reliance on MEPS data for establishing Brazilian and Chinese steel slab market indices, as this source suffers from longstanding concerns regarding its accuracy, reliability, and independence, rendering it inappropriate for constructing normal value in this investigation.

As highlighted in the submission made to the grinding balls investigation[8] (Investigation No. 316), MEPS data has been critiqued on multiple grounds, including objectivity, resourcing, methodology, popularity, and credibility, issues that persist and undermine its use here. That submission evaluated MEPS against alternatives like Steel Business Briefing (SBB, now part of Platts), concluding that MEPS lacks the rigor needed for anti-dumping benchmarks. These concerns are equally applicable to SEF 658, where MEPS forms the basis for the 37% uplift, introducing unsubstantiated bias into Baosteel's dumping calculations.

[8] Changshu Longte Grinding Ball Co., Ltd submission

The Longte submission details MEPS's deficiencies:

- on objectivity (page 8), MEPS is criticised for potential bias as a subscription-based service catering to industry stakeholders, lacking the independent verification processes of broader platforms like SBB.
- resourcing (page 9) highlights MEPS's limited staff and regional focus, contrasting with SBB's global network, raising doubts about data comprehensiveness.
- methodology (pages 9–11) notes MEPS's opaque collection methods, relying on surveys without transparent sampling or validation, unlike SBB's audited, multi-source approach.
- popularity and usage (page 11) point out MEPS's niche appeal versus SBB's widespread adoption in contracts and indices.
- credibility (pages 12–13) questions MEPS's representativeness due to smaller sample sizes and potential self-reporting biases.
- the conclusion (page 13) deems MEPS unsuitable for benchmarks, recommending alternatives like SBB for reliability.

Following the Longte submission and similar concerns raised by interested parties in the grinding balls investigation, the Commission rejected MEPS as a reputable source for benchmarking and reverted to Platts (formerly SBB) as an independent and reliable basis for the steel input pricing. This shift acknowledged the validity of the critiques on MEPS's methodology, credibility, and representativeness. Moreover, since that 2016 investigation, the Commission has not relied on MEPS data in any subsequent dumping inquiry, reflecting the enduring impact of the initial concerns and a preference for more robust sources like Platts to ensure evidentiary integrity.

Furthermore, the Commission's reliance on MEPS, a subscription-based, non-public source, contrasts with best practices in other major dumping administrations, such as the USA, Brazil, and EU, which mandate that surrogate information be based on publicly available data to comply with transparency and natural justice requirements. In the US, the Department of Commerce's Policy Bulletin 04.1 (March 1, 2004)[9] on surrogate country selection in NME cases emphasises using "publicly available data", ensuring verifiability and fairness.

Similarly, the EU's Basic Anti-Dumping Regulation (EU) 2016/1036 requires surrogate data to be from publicly accessible sources, as seen in Commission Implementing Regulation (EU) 2023/1450, which stresses "availability of relevant public data in the representative country" for transparency. In Brazil, Decree No. 8,058/2013 on anti-dumping procedures aligns with WTO standards by prioritising publicly available, verifiable information for surrogate values, as outlined in the Consolidated Guide to Antidumping Investigations (2021)[10], which promotes natural justice through accessible data.

By relying on non-public subscription-based MEPS data, the Commission is deviating from these standards, breaching its disclosure obligations, thereby placing in jeopardy its reputation and standing as a leading investigating authority or example of good practice.

In the current HRC investigation, these issues exacerbate the Commission's errors. MEPS's methodological opacity fails to ensure the Brazilian indices accurately reflect competitive

[9] Import Administration Policy Bulletin 04.1 - March 1, 2004
[10] Consolidated Guide to Antidumping Investigations

market conditions, potentially inflating costs due to unverified data. This violates Article 2.2 of the ADA, requiring benchmarks to be reasonable and reflective of origin-country costs.

Domestically, normal value must be based on reliable information. Relying on critiqued sources like MEPS breaches this, echoing Federal Court scrutiny in *Thai Pineapple* [2008] FCA 443, where inadequate methodological disclosure invalidated findings. Baosteel therefore urges rejection of MEPS data.

8. Recommended alternative methodology for cost adjustment

As demonstrated in the preceding sections, Baosteel maintains that the Commission's rejection of its cost records, interpretation of Article 2.2.1.1, deviation under the 'normally' clause, benchmark construction, treatment of undistorted iron ore costs, procedural deficiencies, and reliance on unreliable MEPS data are fundamentally flawed and inconsistent with WTO obligations and Australian law.

8.1 Alternate market price benchmark using actual Korean slab costs

As an alternative to the Brazilian benchmark, which suffers from the sectoral differences and comparison issues described earlier, the Commission should derive an uplift factor by directly comparing Baosteel's slab costs with those of POSCO Korea, a fully cooperating exporter in the ongoing hot rolled plate (HRP) dumping investigation (Case 688). This comparison is highly pertinent as HRP is produced by rolling the same steel slab material used for HRC, resulting in identical slab costs for equivalent grades and providing a precise, directly comparable proxy that avoids the arbitrary assumptions inherent in third-country surrogates like Brazil.

Baosteel is actively cooperating in Case 688, and POSCO's actual production cost data, representative of a market economy exporter, offers a superior, evidence-based benchmark grounded in real-time, exporter-specific information from a concurrent investigation, ensuring greater accuracy and relevance under Article 2.2 of the ADA.

To underscore the appropriateness of this approach, a summary of the key similarities between Baosteel and POSCO reveals their operational and structural alignments as leading integrated Asian steel producers. Both groups:

- operate on a large scale, with Baosteel having an annual crude steel capacity of approximately 40-45 million metric tons, contributing to its group's output exceeding 120 million mt, while POSCO produced approximately 33 million mt in 2024.
- they share integrated operations encompassing raw material procurement, ironmaking, steelmaking, and downstream processing, predominantly utilising the blast furnace-basic oxygen furnace route reliant on iron ore and coal, while advancing toward low-carbon alternatives;
- in manufacturing capabilities, both excel in high-value products such as automotive sheets, coated steel, and electrical steel, supported by robust R&D for industries like electric vehicles and appliances.
- iron ore sourcing strategies are notably parallel, with Baosteel targeting 100 million mt annually, and POSCO consuming around 49 million mt, both relying on long-term contracts from major suppliers in Australia and Brazil to mitigate volatility.

These alignments of vertical integration, product focus, scale, and procurement resilience, make POSCO an ideal benchmark, far surpassing Brazil's smaller, resource-dependent market. This exporter-to-exporter comparison from a market economy like Korea is infinitely more appropriate and reasonable than Brazil, as it ensures the uplift reflects genuinely undistorted costs without introducing extraneous sectoral disparities, such as Brazil's limited production scale (1.8% of global output versus China's 55%) or differing trade dynamics (Brazil as a net importer versus China's export dominance). Adopting POSCO's data would promote even-handedness and proportionality, aligning with WTO requirements for evidence-based adaptations.

Although the investigation periods for the HRC and HRP cases differ slightly, there is an overlap in the September quarter of 2024. This minor offset does not affect the proposed adjustment, as the comparison serves solely to calculate an uplift factor based on slab prices. This factor is then applied to Baosteel's actual slab costs during the HRC investigation period, rather than directly substituting Baosteel's costs with the actual slab prices from the HRP period.

8.2 Recommended alternative methodology for slab cost adjustment

Irrespective of whether the Commission adopts the proposed Korean slab prices for its benchmarking, or persists with its reliance on Brazil slab price data, Baosteel recommends adopting a more nuanced and WTO-consistent approach that preserves undistorted inputs while addressing alleged distortions. Specifically, given that Baosteel's Australian iron ore imports reflect competitive international spot prices, verified as transactions free from GOC influence, the Commission should follow the methodology employed by the European Commission in its flat-rolled products of iron or non-alloy steel plated or coated products investigation (*Commission Implementing Regulation (EU) 2025/1042*).

This involves applying the uplift exclusively to the non-iron ore portion of Baosteel's slab costs, thereby isolating and retaining the undistorted iron ore component. Such a granular adjustment ensures the constructed normal value remains reflective of "the cost of production in the country of origin" under Article 2.2 of the ADA, avoiding the disproportionate inflation caused by blanket substitution.

Baosteel has provided detailed costing information enabling precise tracing of costs back to iron ore purchases in “spreadsheet G-5 Australian CTM”, equipping the Commission with the data needed to calculate iron ore as a percentage of the raw material cost of HRC (iron ore as % of raw material cost of HRC). See screenshot below. Based on this, the ratio is approximately [redacted] % for Baosteel, [redacted] % for Zhanjiang, and [redacted] % for Meishan.

[Confidential screenshot redacted]

Subsequently, the proportion of slab cost to the HRC cost to make (slab as % of as-rolled coil CTM) can be derived from “Spreadsheet G-7.2 Raw material CTM”, a ratio the Commission has already computed in sheet “(a) Baosteel slab cost calcs” within “Confidential Attachment 6A - Baoshan - Cost replacement” as approximately [redacted] %. See screenshot below.

[Confidential screenshot redacted]

These steps allow for an accurate determination of iron ore's proportion in the total raw material cost of the slab, ensuring the uplift is applied only to the non-iron ore cost elements.

The formula for this adjustment is as follows:

1. Iron ore as % of raw material cost of slab = iron ore as % of raw material cost of HRC * slab as % of as-rolled coil CTM
2. Replaced CTM = iron ore as % of raw material cost of slab * original raw material cost * (1 + uplifted ratio) + other part of raw materials cost + other part of cost item (such as labor, overheads)

This methodology aligns with WTO jurisprudence requiring adaptations to preserve undistorted costs, promoting fairness and proportionality. Baosteel urges its adoption to rectify the current overstatement.

9. Unrepresentative sample for calculating Bao Australia's profit

In the worksheet *DRAFT - 658 - Appendix 2 - Profitability of Imports* disclosed by the Commission, the methodology for calculating Bao Australia's ("BaoAu") resale profit margin is outlined, resulting in a margin of [redacted] %.

We note that the Commission's calculation of BaoAu's resale profit margin utilises purchase prices derived from Howa's reported purchases in Table (c) *Cost to Import and Sell* ("CTIS") of the worksheet, supplemented by inland freight, port handling fees, and SG&A expenses borne by BaoAu, to construct the CTIS. However, we submit that the appropriate basis for constructing the CTIS should not be the data from Table (c) *Cost to Import and Sell*, but rather the transaction-by-transaction data reported in the exporters' B-2 Australian sales listings, which detail Howa's sales to BaoAu.

The purchase prices reported in CTIS lack representativeness, as this table only includes sample prices from 25 purchase orders, totalling [redacted] tons, of which the subject products account for only [redacted] tons. In contrast, BaoAu resold [redacted] MT of the subject products during the investigation period. Relying on these 25 purchase orders, which represent merely [redacted]% of the resale volume, is insufficient to accurately reflect the purchase prices for all subject products handled by BaoAu.

By comparison, the exporters' B-2 Australian sales listings provide a comprehensive, transaction-by-transaction record of all sales from Howa to BaoAu during the investigation period. The total sales volume of subject products from Howa to BaoAu, as reported across the three exporters', is [redacted] MT, which closely aligns with BaoAu's resale volume. Accordingly, we recommend that the Commission rely on this data when constructing the CTIS using Howa's purchase prices, as it offers greater representativeness.

To illustrate our position, we have consolidated the B-2 Australian sales listings from the three exporters (drawing from the Commission's *Confidential Attachment 3 - Baoshan - Export Price - "(a) Australian Sales"*; *Confidential Attachment 3 - Zhanjiang - Export Price - "(a) Australian Sales"*; and *Confidential Attachment 3 - Meishan - Export Price - "(a) Australian Sales"*, as disclosed in the SEF) and used it as the basis for BaoAu's purchase prices. Applying the Commission's methodology to construct the CTIS, we have recalculated BaoAu's profit margin at [redacted]%. Details of our position and the specific calculation process

are provided in the attached *DRAFT - 658 - Bao Australia - Appendix 2 - Profitability of Imports and Ocean Freight - Recal*.

10. Incorrect ocean freight calculation

In the worksheet *DRAFT - 658 - Appendix 2 - Profitability of Imports* disclosed by the Commission, the use of ocean freight and marine insurance costs from the sampled 25 purchase orders to represent Howa's average costs during the investigation period is incorrect.

As noted above, these 25 shipments do not provide a reasonable or comprehensive weighted average of the ocean freight costs borne by Howa, due to their limited representativeness. Moreover, the ocean freight figures reported by BaoAu in this table are estimates that include premiums charged by Howa to BaoAu.

As previously explained, the exporters reported sales from Howa to BaoAu on a line-by-line basis in the B-2 Australian sales listings, including the actual ocean freight and marine insurance costs incurred by Howa. These figures reflect the true costs borne by Howa. We submitted supporting documentation, including invoices for approximately 20 ocean freight (and marine insurance) shipments, Howa's payment records, and Howa's accounting entries for these costs, in our original questionnaire responses and during subsequent on-site verification, all of which substantiate this data. Therefore, we recommend that the Commission utilise the data from the exporters' B-2 Australian sales listings when calculating Howa's average ocean freight and marine insurance costs during the investigation period, as it is more representative, evidence-based, and has been verified on-site.

To clarify our approach, we have included the calculation process for Howa's average ocean freight, based on the exporters' data, in the attached *DRAFT - 658 - Bao Australia - Appendix 2 - Profitability of Imports and Ocean Freight - Recal*.

PRELIMINARY SUBSIDY FINDINGS

Baosteel strongly disputes the Commission's preliminary findings with respect to the subsidy programs dealing with less than adequate remuneration (LTAR), which include errors and inconsistencies with Australia's domestic and international obligations. The Commission's determinations that certain entities providing inputs such as iron ore and coking coal are public bodies, or that private entities are entrusted or directed by the Government of China GOC, contravene Articles 1.1(a)(1)(iii) and (iv) of the Agreement on Subsidies and Countervailing Measures (SCM). Furthermore, the use of Brazilian slab price benchmarks to calculate the benefit under Article 14(d) of the SCM Agreement is unreasonable and inappropriate, as it fails to reflect prevailing market conditions in China and introduces artificial inflation.

Baosteel insists that the Commission correct these flaws in the final report by relying on in-country benchmarks for benefit calculations and rejecting unsubstantiated findings of public body status or entrustment/direction, without arbitrary distortions. Persisting with this erroneous methodology risks WTO challenges and undermines the integrity of fair trade principles. Baosteel reserves the right to submit further evidence as needed.

11. Overview of the Commission's findings and Baosteel's position

The Commission preliminarily determines that Baosteel received countervailable subsidies through the provision of inputs such as iron ore and coking coal at LTAR, constituting financial contributions under Article 1.1(a)(1)(iii) of the SCM, where providers are deemed public bodies, or under Article 1.1(a)(1)(iv) where private entities are allegedly entrusted or directed by the GOC. The Commission then calculates the benefit under Article 14(d) by comparing Baosteel's total slab costs against out-of-country benchmarks derived from Brazilian slab prices, adjusted minimally, resulting in subsidy margins that inflate the level of subsidisation.

Baosteel challenges this as inconsistent with the Act and the SCM. The Commission has improperly classified entities as public bodies without evidence of governmental authority and has failed to demonstrate specific entrustment or direction for private providers. In particular, no such benefit can have been received by Baosteel with regard to iron ore purchases, given that all were imported from Australia at prevailing international market prices, rendering any allegation of LTAR inapplicable to this key input. Moreover, by resorting to unadapted Brazilian benchmarks, the Commission disregards in-country prevailing market conditions, violating the preference for domestic benchmarks under Article 14(d). Baosteel's verified purchase records reflect arm's-length transactions and must be assessed without substitution.

12. Misinterpretation of ‘Public Bodies’.

Article 1.1(a)(1)(iii) of the SCM defines a subsidy to include financial contributions where "a government provides goods or services other than general infrastructure." For entities to qualify as providing such contributions, they must be public bodies, meaning entities that possess, exercise or are vested with governmental authority. The Commission's classification of state-owned enterprises (SOEs) supplying iron ore and coal as public bodies, relies on generalised assertions of GOC ownership and influence, without exporter-specific evidence of authority to exercise. This approach contravenes the Appellate Body's strict interpretation, which requires more than mere ownership or control to establish public body status.

This misinterpretation directly conflicts with the following WTO jurisprudence.

In DS379, the Appellate Body provided the definitive interpretation of "public body," ruling that it encompasses entities that "possesses, exercises or is vested with governmental authority". Mere government ownership or affiliation is insufficient; there must be evidence that the entity performs functions "which would normally be vested in the government" and exercises authority in a governmental capacity. The Appellate Body emphasised an entity-specific analysis, rejecting blanket assumptions based on state ownership. The Commission's parallel classification of SOEs as public bodies, based on broad GOC influence without demonstrating Baosteel-specific exercise of authority (e.g., no proof that suppliers acted governmentally in transactions), mirrors the US's invalidated approach, violating Article 1.1(a)(1)(iii).

In DS437, the Appellate Body reinforced that "public body" requires "affirmative evidence" of authority vesting, not presumptions from ownership. The report emphasised that "mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body", rejecting presumptions rooted in ownership alone and requiring case-by-case assessment of vested authority.

13. Lack of evidence for 'entrustment' or 'direction'

The Commission's findings that private entities providing inputs at LTAR are entrusted or directed by the GOC lack the required specific, affirmative evidence of government action conferring responsibility or compelling behavior. Article 1.1(a)(1)(iv) requires proof of explicit entrustment (delegation of governmental function) or direction (compelling private action), not inferred from market conditions or policy alignment. The Commission's reliance on broad GOC interventions (e.g., through industry plans or CMRG) is speculative and fails to link to Baosteel-specific transactions, treating private suppliers as de facto directed without evidentiary threshold.

13.1 Interpretation of entrustment or direction

The Appellate Body[11] has consistently required "affirmative acts" by government to establish entrustment or direction, defined as "giving responsibility to" or "exercising authority over" private bodies:

> Additionally, we agree with the panel in *US – Export Restraints* that entrustment and direction do not cover "the situation in which the government intervenes in the market in some way, which may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market". Thus, government "entrustment" or "direction" cannot be inadvertent or a mere by-product of governmental regulation.

The Commission's generalised claims of GOC direction via policies fall short.

13.2 Lack of compelling reasons and evidentiary gaps

The Commission's assertions of GOC direction through CMRG or coal caps are market-wide and unlinked to Baosteel's private suppliers, who transacted at arm's-length based on commercial terms. This evidentiary gap violates the Appellate Body's mandate for affirmative evidence, particularly for undistorted imports such as Australian iron ore, negating any direction claim. The EU's recent findings in flat-rolled products (*Regulation (EU) 2025/1042, recital 55*) rejected similar CMRG allegations for lack of evidence, aligning with WTO standards the Commission ignores.

14. Flawed benchmark construction

Even assuming arguendo that LTAR subsidies exist (which we deny), the Commission's use of Brazilian slab prices as an out-of-country benchmark to calculate benefit under Article 14(d) violates the SCM Agreement's requirement that adequacy of remuneration be determined "in relation to prevailing market conditions for the good or service provided in the country of provision." The preference is for in-country benchmarks; out-of-country ones require evidence of distortion and must be adapted to Chinese conditions. The Commission's unadapted Brazilian benchmark introduces bias, failing to reflect China's market.

14.1 Inappropriateness of Brazil as a surrogate for benefit calculation

[11] WT/DS296/AB/R, para 114, page 41.

Brazil's steel sector disparities, smaller scale (36 million tons vs. China's 1 billion tons), higher costs, and differing inputs, render it unsuitable without adjustments. As in our dumping critiques, Brazil's net importer status and trade remedies distort prices, violating Article 14(d)'s market condition focus. In DS437, the Appellate Body required benchmarks "relating to" origin-country prices, invalidating unadapted surrogates.

14.2 Unsuitability of Brazilian slab prices given iron ore disparities

Brazilian slab prices incorporate higher Fe-grade ore premiums (US$15/dmt over Australian), inflating benefits when applied to Baosteel's lower-cost imports. This unadapted use breaches the mandate to adjust external benchmarks accordingly, which overestimates the benefits disproportionately.

15. Error in treatment of undistorted Australian iron ore inputs

A core defect in the Commission's subsidy analysis lies in its failure to isolate, assess, and preserve Baosteel's undistorted iron ore costs, which are sourced entirely from unrelated suppliers in Australia at prevailing international market prices. Baosteel's verified records, as acknowledged by the Commission, demonstrate that approximately [redacted] % of the production costs for steel slab (and thus a substantial portion of HRC costs) are attributable to these iron ore imports, representing the largest single input. These imports are transacted with unrelated Australian suppliers (e.g., BHP Group Ltd and Rio Tinto Ltd), priced according to global benchmarks such as the Platts Iron Ore Index, and denominated in USD.

The Commission's claim that GOC influence, such as through the CMRG, distorts iron ore prices is inapplicable here, as these are standard, arm's-length international market transactions that cannot plausibly be deemed subject to LTAR or any form of subsidisation. By substituting these costs with an unadapted Brazilian proxy without segregation, the Commission artificially inflates the calculated benefit, introducing disproportionate bias and overestimating the subsidy margin.

This oversight is compounded by the Commission's disregard for international precedents, such as the EU Commission's approach in its flat-rolled products of iron or non-alloy steel plated or coated products investigation (Commission Implementing Regulation (EU) 2025/1042), where undistorted import prices for iron ore from non-distorted countries were retained despite CMRG allegations. The EU found "insufficient evidence to corroborate" distortion claims, preserving actual costs in line with WTO rules.

The Commission's unsubstantiated reliance on CMRG to reject Baosteel's Australian iron ore imports deviates from this WTO-consistent standard, which mandates the use of actual, undistorted costs where available and prohibits blanket substitutions that disregard exporter-specific evidence.

The Commission's failure to segregate these costs violates Article 14(d) of the SCM Agreement, which requires that adequacy of remuneration be assessed "in relation to prevailing market conditions for the good... in the country of provision or purchase," with a clear preference for in-country benchmarks unless distortions are demonstrably proven.

In DS437 (*US – Countervailing Duty Measures on Certain Products from China*), the Appellate Body emphasised that out-of-country benchmarks may only be used if in-country

prices are distorted, and even then, they must be adapted to reflect origin-country conditions. The Panel further required authorities to rely on verified, undistorted inputs in benefit calculations, rejecting blanket out-of-country approaches absent specific evidence of distortion. Here, the Commission's subsuming of Baosteel's Australian iron ore imports under generalised distortion claims repeats these errors, ignoring exporter-specific verification that these costs are market-driven and free from GOC influence.

In Baosteel's case, the Commission's failure to perform a targeted assessment, despite admitting challenges in linking purchases to consumption but proceeding with total substitution, violates this principle. The dominance of iron ore ([redacted] % of slab costs) makes this error especially egregious, as it leads to a disproportionate and unsubstantiated benefit calculation, breaching the obligation for an even-handed and evidence-based investigation.

16. Disclosure deficiencies and unreliability of MEPS data

Baosteel reiterates its concerns regarding procedural fairness and transparency in the Commission's subsidy findings, particularly for LTAR programs, where the lack of disclosure mirrors the deficiencies outlined in section 6 of this submission. Baosteel has requested access to the indexed uplift calculations relying on Brazilian benchmarks and Chinese market price indices for benefit assessment under Article 14(d) of the SCM Agreement. This information is critical to understanding methodology of the source slab benchmark prices, and whether errors exist in the precise calculations and the step-by-step computations leading to the calculated subsidy margins.

The Commission has denied these requests, citing confidentiality, yet confirmed that the relevant confidential appendix contains 'the underlying calculations for the commission's cost replacement' and that the MEPS pricing data has been omitted because it '…must remain confidential.' Baosteel reiterates requests for Brazilian benchmark details, denied due to confidentiality.

Baosteel challenges the Commission's reliance on MEPS data for establishing Brazilian and Chinese steel slab market indices in the LTAR benefit calculations, as this source suffers from longstanding concerns regarding its accuracy, reliability, and independence, rendering it inappropriate for subsidy determinations under Article 14(d) of the SCM Agreement.

Furthermore, the Commission's reliance on MEPS, a subscription-based, non-public source, contrasts with best practices in other major dumping and countervailing administrations, such as the USA, Brazil, and EU, which mandate that surrogate information be based on publicly available data to comply with transparency and natural justice requirements. Baosteel therefore urges rejection of MEPS data.

17. Recommended Alternative Methodology for Benefit Calculation

Baosteel submits that the Commission's preliminary findings on LTAR subsidies are fundamentally flawed and inconsistent with Article 14(d) of the SCM Agreement, as they fail to reflect prevailing market conditions in China and introduce artificial inflation through unadapted out-of-country benchmarks. To rectify these errors, Baosteel proposes the following alternative methodologies for benefit calculation, which prioritise in-country evidence where possible and ensure any necessary adjustments are granular, evidence-based, and proportionate.

17.1 Preference for In-Country Benchmarks

Article 14(d) of the SCM Agreement explicitly requires that the adequacy of remuneration for goods or services be determined "in relation to prevailing market conditions for the good or service provided in the country of provision or purchase." This creates a clear preference for in-country benchmarks, as they best reflect actual market conditions in the exporting country. Out-of-country benchmarks may only be used where in-country prices are demonstrably distorted, and even then, they must be adapted to align with the circumstances prevailing in China.

In this case, the Commission has not established that Baosteel's in-country input prices, particularly for iron ore imported from Australia, are distorted by GOC influence. As detailed in sections 10–13 above, Baosteel's iron ore purchases are arm's-length transactions with unrelated Australian suppliers (e.g., BHP and Rio Tinto), priced according to global benchmarks such as the Platts Iron Ore Index, and free from any substantiated GOC intervention (e.g., CMRG allegations lack exporter-specific evidence).

Accordingly, the Commission should rely on Baosteel's verified in-country purchase prices for iron ore as the appropriate benchmark for that portion of costs.

17.2 Use of POSCO Korea raw material costs as a market economy benchmark

If the Commission persists with an out-of-country benchmark (which Baosteel firmly opposes), it should adopt actual raw material costs available from POSCO Korea, a cooperating exporter in the concurrent hot rolled plate (HRP) investigation (Case 688). POSCO's costs provide a superior, evidence-based proxy compared to Brazilian indices for the following reasons:

- direct comparability: HRP is produced by rolling the same steel slab as HRC, ensuring identical costs for equivalent grades and eliminating assumptions inherent in third-country surrogates.
- market economy status: Korea is a recognised market economy, with POSCO's costs reflecting undistorted, competitive conditions free from the alleged GOC distortions.
- Operational alignment: Baosteel and POSCO are both large-scale, integrated Asian steel producers operating on the blast furnace-basic oxygen furnace route, sourcing iron ore primarily from Australia and Brazil under long-term contracts, and producing high-value flat products.

Although the investigation periods differ slightly, the overlap in the September 2024 quarter allows for a reliable comparison of slab costs. The Commission should calculate an uplift factor based on POSCO's actual slab costs relative to Baosteel's reported costs, then apply this factor only to the allegedly distorted portions of slab costs (i.e., excluding undistorted Australian iron ore). This exporter-to-exporter comparison promotes accuracy, proportionality, and compliance with Article 14(d)'s requirement for benchmarks that relate to prevailing market conditions.

17.3 Preserving undistorted iron ore costs

Regardless of whether the Commission adopts POSCO's costs or persists with Brazilian indices, Baosteel urges adjustment that isolates and retains the undistorted Australian iron ore

component. This approach mirrors the European Commission's methodology in its flat-rolled products investigation (*Commission Implementing Regulation (EU) 2025/1042*), where undistorted import prices were preserved despite generalised CMRG allegations.

Baosteel has provided detailed costing data enabling precise tracing of iron ore purchases, and the ability to properly calculate the non-iron ore component of the slab costs, as per the formulas outlined in section 8.2 of this submission. This methodology ensures the benefit calculation remains tied to Chinese production conditions, avoids overstatement from applying the uplift uniformly (including to the [redacted] % undistorted iron ore component), and complies with requirement for adaptation of benchmarks to reflect origin-country realities.

18. Double counting on Baoshan' long term borrowing

In the worksheet *Confidential Attachment 21 - Baoshan - Subsidy Margin* disclosed by the Commission, we have identified an error in the calculation of Baoshan's long-term loan interest accrued, which appears to involve double counting. The correct interest accrued amount should be RMB [redacted], rather than the inflated figure of RMB [redacted].

We have previously raised this issue with the Commission via email. In the long-term borrowing subledger provided, each reference number corresponds to a single loan, and Baoshan may have made multiple repayments during the investigation period. To accurately calculate the total principal loan amounts and avoid double counting, the long-term borrowing table must be pivoted by reference number before summing the interest accrued. Specific details of this communication are captured in the email screenshot below. Furthermore, the Commission has acknowledged and agreed with our proposed calculation method.

Despite this, the disclosed documents continue to use the incorrect, double-counted figure of RMB [redacted] as the interest incurred. We believe it is essential to resubmit our calculation worksheet to demonstrate the proper methodology. The detailed calculation is available in the attached *2025-10-16 - 87 - ADC Demo - 658 - Baoshan - Long Term Borrowings (Details Added) - Calculation Proposal*.

19. Conclusion and Recommendations

The Commission's findings in Appendix C of SEF 658 are fundamentally flawed and inconsistent with Australia's WTO obligations under the ADA and SCM, as well as the Act.

Baosteel respectfully requests that the Commission:

- revise its cost of production determination to rely fully on Baosteel's verified records, without adjustments for alleged distortions, and recalculate normal value accordingly, leading to revised dumping margins;
- immediately disclose detailed calculations for the indexed uplift, including MEPS data sources and methodologies, and extend the submission period for further comments;
- reject MEPS as a benchmark source due to its documented unreliability and revert to verified alternatives;

- if uplifting persists, rely on POSCO's slab costs as a market benchmark and adopt the proposed methodology of apply the uplift only to the non-iron ore portion of slab costs, with downward adjustments for Brazilian Fe grade premiums, using the provided formulas to ensure proportionality;
- revise and update the calculation of Bao Australia's profit and ocean freight expenses in the deductive export prices;
- revise to reject public body/entrustment findings and use in-country benchmarks; and
- correct the double counting of interest in the subsidy margin.

Baosteel is available to provide additional information or participate in further verification as required. We look forward to the Commission's consideration of this submission.