J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

PO Box 3749
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

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

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Certain flat rolled steel products (steel plate) exported from the People's Republic of China

Response to Statement of Essential Facts No. 688

This submission is made jointly on behalf of Baoshan Iron & Steel Co., Ltd ("Baoshan") and Baosteel Zhanjiang Iron & Steel Co., Ltd ("Baosteel Zhanjiang") (together, "Baosteel"), related cooperating exporters of certain flat rolled steel products (“HRP”) from the People's Republic of China ("China"). It responds to the Statement of Essential Facts No. 688 ("the SEF") published by the Anti-Dumping Commission ("the Commission") on 23 June 2026.

The dumping margins, 17.0 per cent for Baoshan and 9.4 per cent for Baosteel Zhanjiang, are driven entirely by the rejection of each exporter's verified recorded cost of steel slab and its replacement with a benchmark derived from the difference between Brazilian and Chinese steel slab price indices published by the subscription service MEPS International Ltd. The same constructed benchmark underpins the countervailing finding against Baoshan, whose subsidy margin of 3.2 per cent rests substantially on a steel slab "less than adequate remuneration" ("LTAR") benefit measured against that benchmark. The Commissioner has proposed to terminate the subsidy investigation in respect of Baosteel Zhanjiang, whose subsidy margin of 0.9 per cent is negligible.

Our clients make the following points.

- substituting a Brazilian steel slab benchmark for Baosteel’s verified recorded steel slab costs is contrary to section 269TAC(2)(c) of the Act, regulation 43 of the *Customs (International Obligations) Regulation 2015* ("the CIO Regulation") and Articles 2.2 and 2.2.1.1 of the *Agreement on Implementation of Article VI of GATT 1994* ("the ADA"). The SEF accepts that each exporter's records "reasonably reflect the costs associated with the production and sale of the goods";
- The word "normally" in Article 2.2.1.1, and a finding that our clients' circumstances are "not normal and ordinary", do not authorise displacing records that satisfy the two conditions of that provision;
- Baosteel’s iron ore input costs are not distorted. All iron ore is imported from unrelated international miners at international spot prices, and the SEF finds that the Government of China's ("GOC") influence over the iron ore market was "limited";

- the benchmark is an unadapted Brazilian surrogate, drawn from a data source (MEPS) the Commission has previously rejected as unreliable;
- the section 269TAC(2)(a)(ii) threshold is not made out. The SEF's finding that Chinese producers benefit "relatively equally" from the input price distortion is inconsistent with a conclusion that domestic sales cannot be properly compared with export prices;
- the countervailing findings against Baoshan depend on the same benchmark and on an external benefit benchmark not justified on positive evidence, and contain three calculation errors: the steel slab uplift is counted a second time through the coal and steel slab LTAR programs, the adjustment to Baoshan's taxable income adds back statutory tax items that are not subsidies or that are already countervailed under other programs, and the loan subsidy is measured on consolidated rather than standalone borrowings; and
- material injury caused by the dumped and subsidised goods is not established. The SEF finds no coincidence during the investigation period between the presence of imports and the Australian industry's economic condition, reconstructs injury on a counterfactual, and does not carry out the non-attribution analysis the Act requires.

1. Normal value

The Commission constructed normal value for Boasteel under section 269TAC(2)(c). It took each exporter's recorded cost of production but replaced the recorded cost of steel slab, the dominant input, with a cost derived from "the proportional difference between the Brazilian and Chinese steel slab market price indices … to reflect a competitive benchmark for steel slab costs in China". That substitution is not open to the Commission on the evidence or on the proper construction of the Act, the CIO Regulation and Australia's international obligations, and it is the substitution alone that produces the margins.

1.1 <u>The recorded cost of steel slab reflects costs actually incurred and may not be displaced</u>

Where normal value is constructed under section 269TAC(2)(c), the cost of production is worked out under regulation 43 of the CIO Regulation. Regulation 43(2) provides that where an exporter's records are kept in accordance with generally accepted accounting principles in the country of export and "reasonably reflect competitive market costs associated with the production or manufacture of like goods", the Minister must work out the cost using those records. The SEF finds that each of our clients' records satisfies the first condition, being "kept in accordance with generally accepted accounting principles in China", and accepts that the records "reasonably reflect the costs associated with the production and sale of the goods". The Commission's stated basis for departing from the records is that "the circumstances in which [the exporter's] costs, specifically, its production of steel slab, were formed are not normal and ordinary, resulting in its recorded production costs reflecting a distorted cost of production".

That reasoning misdirects the inquiry. The question under regulation 43, construed so far as its language permits consistently with Article 2.2.1.1 of the ADA, is whether the records reflect the costs actually incurred by the exporter. It is not whether the input prices that fed those costs are regarded by the Commission as distorted, or as lower than they would be in some hypothetical undistorted market. The Appellate Body has confirmed that the condition in the first sentence of Article 2.2.1.1 is directed to the accuracy and reliability of the exporter's records, and that the object of the inquiry is "*to establish whether the records reasonably reflect the costs actually incurred, and not whether they reasonably reflect some* *hypothetical costs that might have been incurred under a different set of conditions or circumstances and which the investigating authority considers more 'reasonable' than the costs actually incurred*".[1]

Recourse to an external benchmark on the ground that domestic input prices were "*artificially lower than the international prices due to the distortion created by the … export tax system*" was not "*a sufficient basis under Article 2.2.1.1 for concluding that the producers' records do not reasonably reflect the costs associated with the production and sale" of the goods.*[2]

The SEF's reasoning is the error those passages identify. The Commission does not find that Baosteel's records fail to record the costs actually incurred for steel slab. It finds the opposite, that the records reasonably reflect the costs associated with production, and then displaces them because the input price is said to have been formed in circumstances that "are not normal and ordinary". That substitutes hypothetical costs the Commission considers more reasonable for the costs actually incurred, which Article 2.2.1.1 does not permit.

The same point has been made against the Commission on materially identical facts. In *Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China*, the Panel addressed the Commission's uplift of a Chinese exporter's steel plate costs in constructing normal value and found that "*there was no basis for departure from using [the exporter's] record costs for steel plate in constructing normal value … We therefore find that the ADC acted inconsistently with Article 2.2.1.1 in that segment*". The Panel also found that the Commission "*acted inconsistently with … Article 2.2 … by using uplifted … steel plate costs for the purpose of constructing normal value … without a reasoned and adequate explanation as to why the uplifted costs, without any adjustments to adapt such uplifted costs to [the exporter's] circumstances, represented a cost of production in China*".[3] The cost methodology applied to Baosteel repeats that error.

1.2 <u>The word "normally" in Article 2.2.1.1 does not authorise the deviation</u>

The Commission's reasoning turns on the qualifier "normally" in the first sentence of Article 2.2.1.1. It reasons that because Baosteel's circumstances are "not normal and ordinary", the obligation to use their records does not arise. That reads "normally" as a general exception for perceived market distortions, which it is not.

The Appellate Body has interpreted "normally" as preserving a presumption in favour of the exporter's records, subject only to narrow and exceptional departures justified on evidence specific to the exporter. In *Ukraine – Ammonium Nitrate*, the Appellate Body held that, read with the words "*provided that*" introducing the two conditions, "*normally*" indicates that "*when these two conditions are met, 'under normal or ordinary conditions' or 'as a rule', records shall be used*", and that although it does "*not exclude that there might be circumstances other than those in the two conditions … in which the obligation to base the calculation of costs on the records … does not apply*", any such derogation is exceptional and must be justified.[4]

The Panel in *Australia – AD/CVD (China)*[5] applied the same understanding. It held that the "normally" clause permits departure only in rare circumstances beyond the two conditions,

[1] Panel Report, *European Union – Anti-Dumping Measures on Biodiesel from Argentina*, WT/DS473/R, para. 7.242, in reasoning recorded and upheld in Appellate Body Report, WT/DS473/AB/R, para. 6.8. The Appellate Body report was adopted by the Dispute Settlement Body.

[2] Appellate Body Report, *EU – Biodiesel (Argentina)*, WT/DS473/AB/R, para. 6.10.

[3] Panel Report, *Australia – Certain Products from China*, WT/DS603/R, paras 7.80 and 7.99.

[4] Appellate Body Report, *Ukraine – Ammonium Nitrate*, WT/DS493/AB/R, esp. para. 6.87.

[5] Panel Report, *Australia – AD/CVD (China)*, WT/DS603/R, paras 7.56 to 7.58.

such as evident misallocation, and rejected the contention that a bare finding that circumstances are "not normal" makes assessment of the two express conditions redundant.

On that standard, the Commission's finding that perceived GOC influence renders Baosteel's circumstances "not normal and ordinary" is not a permissible basis for departing from their records. The Commission identifies no flaw in the way Baosteel's records allocate the costs actually incurred. It relies on generalised assertions of GOC influence at the level of the industry, much of it drawn from the findings of Investigations 658 and 690, without showing, on evidence specific to each exporter, that the records fail to record the actual costs. That is the deviation Ukraine – Ammonium Nitrate and Australia – AD/CVD (China) hold impermissible.

1.3 <u>The Commission has not preserved Baosteel's undistorted iron ore input costs</u>

Iron ore is the principal raw material in the steel slab from which the goods are made, and the largest single input into the cost of that slab. All of Baosteel's iron ore is imported from unrelated international mining companies and purchased at prevailing international spot prices referenced to published indices such as the Platts Iron Ore Index, in United States dollars. These are arm's length transactions with suppliers outside China, priced by reference to the international market. They are not distorted by GOC influence, and the recorded cost of that iron ore reflects the cost actually incurred within the meaning of Article 2.2.1.1 of the ADA and regulation 43 of the CIO Regulation.

The SEF's own findings support this. The Commission's particular market situation assessment records that "the GOC's influence over the domestic iron ore market was limited in the period preceding the investigation period", that iron ore pricing into China "was largely determined through direct commercial negotiations between global mining companies and domestic steel producers", and that Chinese "steel producers were exposed to fluctuations in iron ore spot prices".[6] The Commission's case that the market has since become more centralised rests on the establishment of China Mineral Resources Group ("CMRG") in 2022, but the SEF records that "CMRG's influence in the Chinese iron ore market was not immediate", and that "none of the major global iron ore miners had entered into long-term supply contracts with CMRG".[7]

To the extent the SEF's subsidy analysis describes Baosteel's iron ore as sourced through a related State-owned entity, that observation goes to the identity of the immediate counterparty in the procurement chain, not to the origin or pricing of the ore. The Commission examined "the supplier who is the last entity in the supply chain to transfer ownership … irrespective of whether the original vendor" was a state-owned enterprise. On Baosteel's verified records the ore is imported from unrelated international miners at international spot prices, and the SEF acknowledges that both Baoshan and Baosteel Zhanjiang imported these goods from overseas non-State suppliers.[8] A related entity in the chain is a procurement conduit and does not alter the internationally referenced cost actually incurred. To the extent the SEF treats the iron ore cost as distorted, that finding should be corrected. Applying an index uplift to the whole steel slab cost attributes distortion to an iron ore cost that carries none.

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[6] SEF, Appendix A, A.6.5.1 (iron ore).

[7] Ibid.

[8] SEF, Appendix D (subsidy, public body assessment), recording that both Baoshan and Baosteel Zhanjiang "imported a portion of these goods [including iron ore] from overseas suppliers who were not SOEs".

The European Commission reached the same result on the same input, sourced by the same group. In its anti-dumping investigation into certain flat rolled steel products from China, it preserved the Baosteel Group's imported iron ore costs and found insufficient evidence to corroborate allegations that CMRG had significantly affected the purchase price of imported iron ore, and so did not substitute a benchmark for that input.[9] That determination shows that an evidence-based assessment of the same input supports preservation of the actual iron ore cost.

1.4 The section 269TAC(2)(a)(ii) threshold

The construction of normal value also depends on the earlier finding, under section 269TAC(2)(a)(ii), that the situation in the Chinese market is such that domestic sales are "not suitable for use in determining a price under" section 269TAC(1). The Commission accepts that the question is whether, because of the market situation, "domestic prices of the goods cannot be properly compared with export prices". That threshold is not made out, and the SEF's reasoning in Appendix B is against it.

The proper comparison criterion is to be construed, so far as its language permits, consistently with Article 2.2 of the ADA. Under Article 2.2 domestic sales may be set aside only where, because of the market situation, they do not permit a proper comparison with export prices. The Commission accepts, in Appendix B, that this requires an assessment of "the relative effect of the particular market situation on both the domestic sales and export sales", and that the situation renders domestic sales unsuitable only "[i]f domestic sales and export sales are not equally affected" by it. That is the test the Panel stated in *Australia – A4 Copy Paper*: the "*'proper comparison' language calls for an assessment of the relative effect of the particular market situation on domestic and export prices*", and "*while a particular market situation may have an effect on both domestic and export prices, it does not follow that the impact on domestic and export prices will be the same*".[10]

Having stated the test, the SEF does not meet it. The market situation relied on is the distortion of steel slab input prices. The Commission's finding in Appendix B is that, in the domestic Chinese market, "producers benefit relatively equally from the distorted raw material prices". If the input price distortion is reflected relatively equally across Chinese domestic producers, it is reflected in both the cost base and the domestic selling price of the goods, and in the export price, which is built on the same input cost. A distortion that bears on domestic and export prices in the same way does not impair the comparison between them. On the Commission's own finding it affects both equally, which is the condition Appendix B identifies as not rendering domestic sales unsuitable.

The Appendix B reasoning that the "prevailing conditions of competition are different" between Australia and China does not close the gap. Differences in market structure, scale and import penetration go to the comparison between Chinese and Australian suppliers, not to whether the distortion affects a Chinese exporter's domestic price differently from its own export price, which is the comparison section 269TAC(2)(a)(ii) and Article 2.2 address. That is the one-sided analysis found wanting in *Australia – A4 Copy Paper*.

The section 269TAC(2)(a)(ii) threshold is therefore not satisfied. Baosteel's domestic selling prices should be used to determine normal value under section 269TAC(1). If the threshold is

[9] Commission Implementing Regulation (EU) 2025/1042, recital 45-48, 55. (European Commission anti-dumping investigation concerning certain flat rolled steel products from China), in which the European Commission preserved the Baosteel Group's imported iron ore costs and found insufficient evidence to corroborate allegations that CMRG had significantly affected the purchase price of imported iron ore.
[10] Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R, para. 7.75.

not made out, the constructed cost, including the Brazilian steel slab benchmark, does not arise.

1.5 If cost is constructed, the Brazilian benchmark is unadapted and drawn from an unreliable source

Even if the Commission were entitled to construct cost, the benchmark it has chosen does not satisfy Article 2.2 of the ADA, which requires the constructed value to reflect "the cost of production in the country of origin". An external benchmark must be adapted to the conditions of the exporting country. An unadapted third-country price does not measure the cost of production in China.

Two features of the benchmark are contested. The first is that it is a Brazilian index, and Brazil is a structurally different and much smaller steel market than China. The SEF records that China is the largest steel producer in the world, with crude steel output of the order of 1,005 million tonnes in 2024, around 53 per cent of world production,[11] a scale that confers economies of procurement and production a much smaller producer such as Brazil cannot replicate. The SEF applies only limited adjustments to the Brazilian index, principally for differences in the countries' steel slab industries, and does not show that the resulting figure has been adapted to Chinese conditions of scale, utilities, input mix or efficiency. An unadapted or inadequately adapted surrogate of this kind is the error identified in *Australia – AD/CVD (China)* and *Australia – A4 Copy Paper*.[12]

The second is that the Brazilian and Chinese slab price indices are sourced from the subscription service MEPS International Ltd. MEPS is not a reliable source for this purpose. In an earlier investigation the Commission moved away from MEPS in favour of Platts, formerly Steel Business Briefing, after interested parties raised concerns about the objectivity, methodology, transparency and representativeness of MEPS data. MEPS is also a non-confidential subscription source that is not public, whereas comparable authorities in other jurisdictions generally require surrogate benchmarks to rest on publicly available, verifiable data. Reliance on a source that is neither public nor demonstrated to be reliable undermines the constructed value under Article 2.2 and compounds the disclosure problem addressed in Part 3.

2. An alternative methodology consistent with Article 2.2

If the Commission maintains that some adjustment to Baosteel’s slab cost is warranted, two alternatives would produce a more accurate and WTO-consistent result than the unadapted Brazilian MEPS benchmark, and our clients ask the Commission to adopt them.

The first is to use POSCO's verified slab cost as the benchmark. POSCO is a cooperating exporter in this investigation, was verified by the Commission, and was found not to be dumping. POSCO produces the goods by rolling the same steel slab, by the same blast furnace and basic oxygen furnace route, as our clients. A market economy producer's actual, verified slab cost, drawn from the record of the same investigation and the same investigation period, is a closer and directly comparable measure of an undistorted slab cost than an unadapted index from a smaller and structurally different third-country market. Using POSCO's verified slab cost to derive any uplift factor would ground the adjustment in

[11] SEF, Appendix A, A5 (overview of the Chinese steel industry), citing World Steel Association data.

[12] Panel Report, *Australia – AD/CVD (China)*, WT/DS603/R, para. 7.99; Panel Report, *Australia – A4 Copy Paper*, WT/DS529/R (third-country surrogate must be adapted to the circumstances of purchase or production in the exporting country).

exporter specific, market economy data and avoid the surrogate adaptation problems identified.

The second, in any event, is to apply any uplift only to the part of the slab cost other than iron ore. As highlighted, all of Baosteel’s iron ore is imported from unrelated international miners at international spot prices and is not distorted. Applying the slab index differential across the whole slab cost inflates that undistorted iron ore cost and the other undistorted inputs. The Commission should instead determine the iron ore share of the slab cost from each exporter's verified records, retain that iron ore cost unadjusted, and apply any uplift only to the balance before adding the unchanged conversion costs. That keeps the constructed value tied to Chinese production conditions and avoids the inflation caused by a blanket substitution, consistently with Article 2.2 of the ADA. It follows the approach the European Commission took for the same corporate group.

3. The subsidy findings

The subsidy findings differ between our clients. The Commissioner has proposed to terminate the subsidy investigation in respect of Baosteel Zhanjiang. A countervailing margin of 3.2 per cent has been preliminarily determined for Baoshan. Our clients address each.

3.1 Baosteel Zhanjiang: the proposed termination should be confirmed

The Commissioner has proposed to terminate the subsidy investigation in respect of Baosteel Zhanjiang on the basis that its subsidy margin, 0.9 per cent, did not exceed the negligible level applicable to a developing country, 2 per cent, as required by section 269TDA(2) and section 269TDA(16)(b). Baosteel Zhanjiang supports that proposed termination and asks that it be confirmed in the final report.

3.2 Baoshan: the countervailing findings depend on the same benchmark

Baoshan's countervailable subsidy margin depends substantially on the steel slab and raw materials LTAR programs. For the steel slab LTAR benefit, the Commission used "the constructed slab steel benchmark price used in the calculation of the cooperating exporters' normal value as the benchmark for the LTAR", that is, the same challenged Brazilian and Chinese MEPS based constructed benchmark. Each objection to that benchmark, that it displaces records which reasonably reflect costs actually incurred, that it is an unadapted Brazilian surrogate, and that it rests on MEPS data that is neither public nor shown to be reliable, applies to the measurement of Baoshan's steel slab subsidy benefit. If the benchmark cannot stand for the dumping calculation, it cannot stand as the measure of adequate remuneration.

An external benchmark is available under Article 14(d) of the Agreement on Subsidies and Countervailing Measures ("the SCM Agreement") only where the authority has first established that the government's role in the market is so predominant that in-country prices cannot be used as a reliable benchmark. As the Appellate Body held in *US – Softwood Lumber IV*, "*[w]hen private prices are distorted because the government's participation in the market as a provider of the same or similar goods is so predominant that private suppliers will align their prices with those of the government-provided goods, it will not be possible to calculate benefit having regard exclusively to such prices*", the possibility under Article 14(d) of using a benchmark other than private prices "*is very limited*", and "*[t]he fact* *that the government is a significant supplier of goods does not, in itself, establish that all prices for the goods are distorted*".[13]

That standard was applied to China in *US – Countervailing Duty Measures (China)*[14], which found that a predominant government role distorting in-country prices must be established on the evidence, not assumed from State participation. The SEF does not establish, on positive evidence specific to the plate steel input market, that in-country slab prices were so distorted by a predominant government role that they could not be used, and the requirement in section 269TACC(4) to have regard to prevailing market conditions in the country of provision is not met by substituting an unadapted Brazilian benchmark.

3.3 <u>Baoshan: no benefit arises on imported iron ore, and the steel slab adjustment is counted twice</u>

As established above, all of Baoshan's iron ore is imported from unrelated international miners at international spot prices. Therefore, no LTAR benefit can arise on an input purchased from unrelated foreign suppliers at international market prices. To the extent the raw materials LTAR program captures such iron ore, it must be removed from the benefit calculation.

3.4 <u>Baoshan: the steel slab adjustment is counted twice</u>

The steel slab subsidy findings also count the same alleged benefit twice. The table "(a) Subsidy calculation" of Confidential Attachment 22 to the SEF identifies two programs in respect of Baoshan: "Raw materials and utilities provided at LTAR (688-178)", with a subsidy margin of 0.92 per cent, and "Steel slab provided by government at less than adequate remuneration (688-14)", with a subsidy margin of 0.03 per cent. In the dumping calculation, however, the Commission has already replaced the recorded cost of steel slab in Baoshan's cost to make with a substitute uplifted amount, an uplift of approximately 35 per cent, directed at the very input distortion those programs are said to capture. Having uplifted the slab cost in the normal value calculation to remove the alleged distortion, the Commission cannot also countervail the coal and steel slab procured by Baoshan, as to do so remedies the same alleged benefit twice.

Nor does the coal program capture a separate input. As the table "1) Ori. COM data per line" of Worksheet G-7.2 Raw Material CTM in Baoshan's original questionnaire response demonstrates, coal is the principal raw material input in ironmaking, that is, in the production of hot metal, and all of the hot metal produced is used entirely to manufacture steel slab. The coal purchased by Baoshan therefore serves the production of steel slab, and any alleged benefit on coal is already subsumed within the uplifted slab cost adopted in the dumping calculation.

The SEF itself concedes the overlap. Footnote 2 to the SEF, repeated at footnotes 92 and 93, records that *"[a]s Programs 688-14 and 658-178 are in respect of steel slab and raw materials and utilities provided at less than adequate remuneration (LTAR), and because the commission has adjusted the steel slab as a cost input in constructing the normal value for exporters, the dumping margin calculations already address the impact of the steel slab adjustment on exporters' costs. To avoid double counting, the commission has adjusted the combined interim duty payable.*" An adjustment to the combined interim duty payable does not, however, cure the error. The double count arises within the subsidy calculation itself, and

[13] Appellate Body Report, *United States – Certain Softwood Lumber from Canada*, WT/DS257/AB/R, paras 101 to 102.
[14] Appellate Body Report, *United States – Certain Products from China*, WT/DS437/AB/R.

the countervailing margin of 3.2 per cent published for Baoshan remains overstated by the 0.92 and 0.03 percentage points attributed to the two programs. It is accordingly submitted that programs 688-178 and 688-14 should be excluded from the subsidy calculation in their entirety, rather than offset at the level of interim duty collection.

3.5 Baoshan: the adjustment to taxable income is erroneous

In the table "(e) 688 Tax" of Confidential Attachment 22, the Commission has adjusted Baoshan's taxable income at Item 28 from zero, as stated in the lodged tax return, to [redacted] RMB, characterising the amounts added back as "Countervailed for 658 under Program 176 – Corporate income tax benefit". That adjustment is erroneous as it mischaracterises statutory features of the Chinese corporate income tax system as countervailable benefit, and it adds back amounts the Commission has already countervailed under other programs.

The SEF's own account of the program confirms the error. Appendix D5.10 records that the deductions said to comprise Program 658-176 include "[o]ffsets for equity investment income", cross-referenced to form A107011 of the 2024 income tax return, together with items identified on form A105000, and section D.5.10.4 works out the benefit under Program 688-51 as the difference between tax at the standard rate of 25 per cent and tax at the HNTE rate of 15 per cent on "what would have been each exporters' taxable income absent of the deductions allowable under Program 658-176". Each of the disputed items is therefore carried directly into the measured benefit. As demonstrated below, the principal items are statutory features of the Chinese corporate income tax system of general application, or amounts the Commission has already countervailed under other programs.

First, the amount of [redacted] RMB at Item 21, "Less: Tax adjustment decrease", should not be characterised in its entirety as countervailed under Program 176. As **Confidential Attachment 1.1** to this submission (Form A105000 of the 2024 tax return) demonstrates, that amount comprises gains from dividends on equity investment of [redacted] RMB, non-taxable fiscal funds for special purposes of [redacted] RMB, and other items of [redacted] RMB.

The dividend income of [redacted] RMB derives entirely from long-term equity investments (**Confidential Attachment 1.2 - Form A105030**). Under Article 26(2) of the Enterprise Income Tax Law of the People's Republic of China (as amended in 2018), reproduced at **Confidential Attachment 1.3**, "gains from dividends, bonus issues or other returns on equity investment between qualified resident enterprises" are tax-exempt income. The standard Chinese corporate income tax return separately identifies such income and deducts it from taxable income precisely to eliminate economic double taxation: the investee enterprise has already paid corporate income tax on its operating profits, and the dividends distributed to a corporate shareholder are after-tax retained profits. A generally available statutory rule against taxing the same income twice in two legal entities confers no benefit, and the investment income component of Item 21 should not have been adjusted.

The non-taxable fiscal funds for special purposes of [redacted] RMB are non-taxable income under Article 7(1) of the same Law. That amount is composed entirely of government grants, principally the input VAT additional deduction credited to accounts of [redacted] RMB, together with other grants recorded under account 6117 Other income, as itemised in **Confidential Attachment 1.4**. Each of those grants has already been individually assigned a subsidy rate in the table "(a) Subsidy calculation", under "Tax (658-171) VAT additional deduction" and under the various programs of the type "Grant (specific enterprises)". Adding the same [redacted] RMB back to taxable income therefore counts the same items twice.

Second, the Commission has improperly characterised Item 22.2, the exemption of enterprise income tax on dividend, bonus and other equity investment income between eligible resident enterprises, as countervailed under Program 176. The amount of [redacted] RMB (**Confidential Attachment 1.5 - Form A107011**) originates from profit distributions made to Baoshan by nine investee enterprises, each of which has already paid corporate income tax on the profits distributed. For the reasons given above, the exemption exists to avoid taxing the same income twice, and the Item 22.2 amount must not be added back to taxable income.

It is submitted that the specified portion of Item 21 and the entirety of Item 22.2 should not have been added back to taxable income for the purpose of calculating the High and New Technology Enterprise tax benefit, and that the Commission should correct its approach. **Confidential Attachment 1.6** sets out a corrected calculation removing the amounts that should not have been adjusted, with all amendments marked in purple.

3.6 Baoshan: loan subsidies must be calculated on standalone borrowings, not consolidated balances

In Appendix D7 (Preferential loans, program 658-177), in calculating the amount of any loan subsidy, the Commission adopted the balances reported under "28. Short-term Loans" and "38. Long-term Loans" in the Notes to Major Items of the Consolidated Financial Statements contained in Baoshan's audited annual report for 2024, and treated those balances directly as Baoshan's countervailable borrowing amounts without further adjustment. Those balances are prepared on a consolidated financial statement basis: they include not only the short-term and long-term borrowings of Baoshan Iron & Steel Co., Ltd but also the borrowings of every subsidiary and affiliated entity within the group's consolidation scope. Using them as the basis of the calculation necessarily overstates the borrowings attributable to Baoshan and does not reflect its actual borrowing activity during the investigation period.

Baoshan's standalone borrowing position is on the record. In its original questionnaire response and first supplementary response, Baoshan submitted Exhibit E-1.2 (Short-term Borrowing Rate – Baoshan & Zhanjiang) and Exhibit S1 H-5.2 (Long-term Borrowing Listing, submitted on 9 February 2026), each extracted directly from the company's standalone subsidiary ledgers for short-term and long-term borrowings. Those exhibits record every borrowing outstanding during the investigation period, including loans originated before the period and carried forward into it as well as loans newly disbursed during it, and identify for each borrowing the principal amount, interest commencement date, maturity date, applicable interest rate, lender and other relevant loan terms. They provide a complete and accurate basis for calculating any potential loan subsidy.

Those exhibits also answer the premise on which the Commission's resort to facts available rests. Appendix D7.1 states that the questionnaire responses filed for this investigation have "not reported the receipt of loans from any SOE banks", and section D7.6 that "the cooperating exporters failed to provide any information about their loans from SOE banks", on which basis the Commission applied, under section 269TAACA, the benefit ratio found in Investigation 658 to the consolidated year-end balances and deemed 100 per cent of Baoshan's short-term and long-term loans to be debts owed to SOE banks at preferential rates of interest. That premise is incorrect. Exhibit E-1.2 and Exhibit S1 H-5.2 identify the lender of each individual borrowing, together with its principal, term and interest rate, and therefore permit the Commission to determine on the record which loans, if any, were owed to state-owned banks and on what terms. The information the Commission states it did not receive was before it, and recourse to assumptions under section 269TAACA in place of that record information is not open.

It is submitted that any loan subsidy should be calculated on those standalone borrowing records rather than on consolidated balances. That approach is fully consistent with the methodology the Commission adopted in Investigation No. 658 (hot-rolled coil), the very methodology to which the Case 688 calculation itself refers, and consistency and accuracy alike require that the standalone data be used.

4. Material injury and causation

No dumping duty notice or countervailing duty notice may be made unless the Minister is satisfied that material injury has been caused to the Australian industry because of the dumping and subsidisation, and the Commission must ensure that injury caused by factors other than the dumped and subsidised goods is not attributed to them, under section 269TAE(2A) and (2AA). On the SEF's own findings that standard is not met, and the proper course is termination under section 269TDA(13) on the basis that any injury caused by the dumped and subsidised goods is negligible.

4.1 <u>There was no coincidence during the investigation period between imports and the industry's injury</u>

The SEF's causation reasoning states that the Australian industry's injury coincided with the presence of dumped and subsidised goods. The Commission finds the opposite for the investigation period. It records that "there does not appear to be a coincidence during the investigation period between a loss of market share held by BlueScope AIS, and the presence of imports", and that it has, in consequence, "considered BlueScope's claims based on a counterfactual analytical method". The Commission finds that BlueScope AIS "achieved increasing market share in all quarters of the investigation period", that the increase "appears to be a function of decreasing import volumes from all sources", and that the volume of its sales was maintained at similar levels throughout. The injury case is advanced not on what occurred during the period examined, but on a hypothesis of what would have occurred but for the imports, described as "market share foregone".

That cannot support an affirmative causation finding. A temporal correlation, still less a counterfactual that runs against the actual data, is not causation. In *China – GOES*[15], the Appellate Body held that an investigating authority "*is required to examine domestic prices in conjunction with subject imports in order to understand whether subject imports have explanatory force for the occurrence of significant depression or suppression of domestic prices*". The Panel in *China – X-Ray Equipment*[16] held that it is "*not sufficient … to consider only the existence of price depression or suppression per se[;] … it is necessary to consider whether dumped imports have 'explanatory force' for the occurrence of suppression of domestic prices*".

Where the data for the investigation period show that the industry's market share improved in every quarter, and did so because imports from all sources were declining, the dumped and subsidised imports do not have explanatory force for the outcomes complained of, and a counterfactual does not supply the causal link the Act requires. On the proper analysis, any injury caused to the Australian industry by the dumped and subsidised goods during the

[15] Appellate Body Report, *China –Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/AB/R, para. 138.
[16] Panel Report, *China – X-Ray Security Inspection Equipment from the EU*, WT/DS425/R, para. 7.59.

investigation period is at most negligible, so that the requirements for the notices are not met and the investigation should be terminated under sections 269TAE and 269TDA(13).

4.2 The non-attribution analysis has not been performed

Section 269TAE(2A) requires the Commission to identify injury caused by factors other than the dumped and subsidised exports and to ensure that such injury is not attributed to those exports. The SEF concedes a series of such factors. It finds that POSCO's exports from Korea were not dumped, that the subsidy margins of Baosteel Zhanjiang and Hunan Valin were negligible, and that subject goods that were not dumped or subsidised, and goods from other sources, "have also contributed to the price depression and suppression experienced by Australian industry and the related effects of reduced sales volume, market share, profit and profitability". It records the alternative causes advanced by POSCO which include irregular and exogenous phenomena in the injury analysis period, BlueScope's published FY2026 results and takeover interest, a decline in prices tracking global benchmarks, contraction in construction and mining demand, a shift to prefabricated steel, and the timing of government infrastructure investment.[17]

Having identified those factors, the SEF does not separate and distinguish their injurious effects from those of the dumped and subsidised goods. It concludes that those goods are the "primary cause" on the basis that their share of import volume grew and they were "consistently … the lowest priced in the market", without quantifying or excising the contribution of the other factors it has conceded. As the Appellate Body explained in *US – Hot-Rolled Steel*[18], a non-attribution assessment "*must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports", failing which "the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors*". The rejection of POSCO's alternative cause submissions in a single paragraph, that "material injury can still be caused within a context that an Australian industry is displaying signs of improvement", shows the separation and distinction exercise was not carried out. That defect, on its own, precludes the affirmative causation finding.

4.3 The price effects analysis does not support the finding

The price effects reasoning is inconsistent with the conclusion drawn from it. The SEF finds that, in FY2025, the prices of subject goods that were not dumped or subsidised "decreased at a far greater rate" than those of the dumped goods, "such that the prices of goods in each category came into alignment", and that "the lowest prices in the market … alternated between subject dumped and subsidised goods and those subject goods that were not". On the undercutting analysis, it finds that "where price matching was evident, the sale was profitable for Australian industry". Those findings are difficult to reconcile with a conclusion that the dumped and subsidised goods had the price effects required for material injury and causation under Article 3.2 of the ADA, which requires the dumped imports to have explanatory force for the price effects relied on.

Further, the causal reasoning advanced by the Commission, that the predominance of dumped goods placed downward pressure on all market participants, is expressed in terms of likelihood. The Commission "considers it likely" that non-dumped prices fell "in response to" the dumped goods, and that their predominance "has likely placed downward pressure" on other prices. Section 269TAE(2AA) requires the Commission's determination to be "based on

[17] SEF, Section 9.11, recording POSCO's submission of 25 February 2026 (EPR 688, item 8).

[18] Appellate Body Report, *United States – Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, para. 223.

facts, not … conjecture". A causal mechanism expressed as a likelihood, and contradicted by the SEF's findings that non-dumped prices fell faster and that the lowest prices alternated, is not a finding based on facts within section 269TAE(2AA).

4.4 Objectivity of the examination and the evidentiary base

The injury determination must rest on positive evidence and an objective examination, under Article 3.1 of the ADA. The evidentiary base disclosed in the SEF does not meet that standard. The Commission records that the applicant's headline market share claim, a 13 per cent change, was the product of a denominator error corrected by the Commission using ABF data, and that the applicant's case has been recast from "lost market share", as claimed in the application, to "market share foregone", because the actual data did not support the original claim. Where the applicant's central injury metrics required correction, and the import data show that imports were declining and the industry's share improving during the investigation period, the positive evidence supporting a causal link to the dumped and subsidised goods is limited. In *Mexico – Rice*[19] the Appellate Body upheld the finding that the authority "*acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement by failing to conduct an objective examination, based on positive evidence, of the volume and price effects of dumped imports*". That the Australian industry is a single producer does not relieve the Commission of that obligation.

4.5 Volume effects

The volume analysis does not support the finding. On the SEF's data, the Australian industry's market share improved during the investigation period, increasing in every quarter, with the improvement "predominantly due to a fall in the volume of exports from Korea and countries not subject to the application". Recharacterising that improving position as "market share foregone" does not convert it into volume injury caused by the dumped and subsidised goods. The assessment must be based on the actual movement in the volume of those imports over the period, under section 269TAE(1) and Article 3.2 of the ADA, and an authority may not make a volume finding on a selected earlier part of the period while disregarding the most recent, contrary trend. In *Pakistan – BOPP Film (UAE)*[20] the Panel found that the authority "*failed to make an objective examination … because it focused selectively on the only year in which imports increased and did not explain how it took into account the conflicting evidence pertaining to the rest of the POI, including the most recent period*".

4.6 Profit

The profit indicators are equivocal, and to the extent there was any deterioration within the investigation period the SEF attributes it in part to factors other than the dumped and subsidised goods. The Commission finds that the Australian industry's unit profitability "was observed to slightly improve" over the investigation period, that the June 2025 quarter "indicated a marked improvement", and that the earlier FY2024 decline coincided with "rising unit costs". Where the economic indicators trend positively over the period examined, an objective examination based on positive evidence under Article 3.1 of the ADA requires the Commission to explain why material injury is nonetheless found. No such explanation is given, and the cost driven character of the FY2024 movement is a factor other than the dumped and subsidised goods that must not be attributed to them.

[19] Appellate Body Report, *Mexico – Beef and Rice*, WT/DS295/AB/R, para. 28.

[20] Panel Report, *Pakistan – Biaxially Oriented Polypropylene Film from the UAE*, WT/DS538/R, para. 7.275.

5. Conclusion

For the reasons above, the preliminary findings affecting Baosteel should not be carried into the final report in their current form. The Commission is asked to:

- determine each exporter's normal value on its domestic selling prices under section 269TAC(1), the section 269TAC(2)(a)(ii) threshold not being satisfied;
- if normal value is constructed, calculate the cost of production on each exporter's actual verified recorded costs, including its iron ore costs, which are imported from unrelated international miners at international spot prices and are not distorted, without substituting an external benchmark, consistently with section 269TAC(2)(c), regulation 43 and Articles 2.2 and 2.2.1.1 of the ADA, the word "normally" not authorising the deviation;
- if any uplift is applied, use POSCO's verified slab cost as a market economy benchmark and apply any uplift only to the part of the slab cost other than iron ore, and reject MEPS as a source that is neither public nor shown to be reliable;
- confirm the proposed termination of the subsidy investigation in respect of Baosteel Zhanjiang;
- for Baoshan, re-measure the steel slab subsidy benefit on the corrected cost benchmark, establish on positive evidence whether an external benefit benchmark is available under Article 14(d) of the SCM Agreement, remove any iron ore component sourced from unrelated foreign miners, and establish specificity on the record of this investigation;
- for Baoshan, exclude programs 688-178 and 688-14 from the subsidy calculation itself, rather than offsetting the combined interim duty payable as foreshadowed in footnote 2 to the SEF, the uplifted slab cost adopted in the dumping calculation already accounting for the same alleged input distortion;
- for Baoshan, correct the adjustment to taxable income by removing the tax-exempt dividend income and the non-taxable fiscal funds within Item 21, and the entirety of Item 22.2, in accordance with the corrected calculation at Confidential Attachment 1.6;
- for Baoshan, calculate any loan subsidy on the standalone borrowing records at Exhibit E-1.2 and Exhibit S1 H-5.2, rather than on facts available applied to consolidated balances, consistently with the methodology adopted in Investigation No. 658; and
- find that the dumped and subsidised goods have not caused material injury to the Australian industry, and terminate the investigation, the SEF's findings disclosing no coincidence during the investigation period, an improving market share, equivocal profit, price effects without explanatory force, and no completed non-attribution analysis.