



Australian Government
Australian Customs and
Border Protection Service

Public
File 64

International Trade Remedies Branch

SUPPLEMENTARY GOVERNMENT QUESTIONNAIRE - CHINA

PRODUCT CONCERNED: HSS FROM THE PEOPLE'S REPUBLIC
OF CHINA, THE REPUBLIC OF KOREA,
MALAYSIA, TAIWAN AND THE
KINGDOM OF THAILAND

INVESTIGATION PERIOD: 1 JULY 2010 TO 30 JUNE 2011

RESPONSE DUE BY: 23 FEBRUARY 2012

EXTENDED TO 1 MARCH 2012

ADDRESS FOR RESPONSE: International Trade Remedies Branch
Australian Customs and Border Protection
Service
5 Constitution Avenue
Canberra ACT 2601
Australia
Attention: Director Operations 3

CASE MANAGER: Ms Andrea Stone

TELEPHONE: +61-2-6275-6173

FAX: +61-2-6275-6990

EMAIL: tmops3@customs.gov.au

NON-CONFIDENTIAL VERSION

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
ABBREVIATIONS.....	3
BACKGROUND AND GENERAL INSTRUCTIONS.....	4
SUPPLEMENTARY QUESTIONS.....	10
LIST OF ATTACHMENTS	61
DECLARATION	64

NON-CONFIDENTIAL

ABBREVIATIONS

the Act	the <i>Customs Act 1901</i>
China	the People's Republic of China
Customs and Border Protection	the Australian Customs and Border Protection Service
GOC ¹	Government of China
the goods	the goods the subject of the application (HSS)
GQ	The Government Questionnaire
HRC	hot-rolled coil
HRS	hot-rolled steel (both HRC and narrow strip collectively)
HSS	certain hollow structural sections
the investigation period	1 July 2010 to 30 June 2011
Korea	the Republic of Korea
SASAC	the State-owned Assets Supervision and Administration Commission of the State Council
SGQ	The Supplementary Government Questionnaire (this document)
Thailand	the Kingdom of Thailand

¹ For the purposes of this questionnaire, GOC refers to all levels of government, i.e., central, provincial, regional, city, special economic zone, municipal, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

NON-CONFIDENTIAL

BACKGROUND AND GENERAL INSTRUCTIONS

1. Introduction and purpose

The Australian Customs and Border Protection Service (Customs and Border Protection) has initiated:

- an investigation into allegations that certain hollow structural sections (HSS) from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia, Taiwan and the Kingdom of Thailand (Thailand) have been exported to Australia at dumped prices, and because of that dumping, material injury has been caused to an Australian industry producing like goods; and
- an investigation into allegations that countervailable subsidies have been received in respect of HSS exported from China to Australia, and because of that subsidisation, material injury has been caused to an Australian industry producing like goods.

The abovementioned dumping investigation involves allegations that there is a situation within both the domestic Chinese and Thai HSS markets that renders sales within those markets unsuitable for determining normal values under s.269TAC(1) of the *Customs Act 1901* (the Act) (i.e. that a 'particular market situation' exists in these markets).

The investigation also involves allegations that HSS exported to Australia from China has been in receipt of countervailable subsidies.

As part of its investigation, Customs and Border Protection provided the Government of China (GOC) a Government Questionnaire (GQ) that included questions and requested documents that it was considered would be useful in addressing the abovementioned market situation and subsidy claims in relation to Chinese HSS.

A response to this GQ was received on 6 December 2011.

This Supplementary Government Questionnaire (SGQ) has been developed by the Australian Customs and Border Protection Service (Customs and Border Protection) after considering the Government of China's (GOC) response to the Government Questionnaire to this investigation. It contains further questions and requests for information that Customs and Border Protection may be useful in assessing the allegations in relation to Chinese HSS.

It should be noted that any reference below to an Attachment refers to the Attachments submitted by the GOC in response to the Government Questionnaire.

2. Product concerned

Description

The goods the subject of the application (the goods) are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.

NON-CONFIDENTIAL

Sizes of the goods are, for circular products, those exceeding 21 mm up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 1.6mm and air heater tubes to Australian Standard (AS) 2556.

The application includes the following information to clarify the nature of the goods.

Finishes

All HSS regardless of finish is included in the application. Finish types for the goods include in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS. Non-galvanised HSS is typically of painted, black, lacquered or oiled finished coatings.

CHS with other than plain ends (such as threaded, swaged and shouldered) are also included in the application.

Standards

HSS is generally produced to either the British Standard BS 1387 or the Australian Standard AS 1163 or international equivalent standards (including ASTM/JIS and KS). HSS can also be categorised according to minimum yield strength. The most common classifications are 250 and 350 mega Pascals (MPa).

HSS may also be referred to as extra-light, light, medium or extra heavy according to its wall thickness.

Excluded goods

The following categories are excluded from the goods subject of the application:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation);
- precision RHS with a nominal thickness of less than 1.6mm (is not used in structural applications); and
- air heater tubes to AS 2556.

Tariff classification

The application stated that the goods are classified to the following tariff subheadings:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37)
- 7306.61.00 (statistical codes 21, 22 and 23)
- 7306.69.00 (statistical codes 26, 27 and 28)

Customs and Border Protection notes that the statistical codes relevant to the above tariff subheadings have since changed, and the goods are now correctly classified to:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37)
- 7306.61.00 (statistical codes 21, 22 and 25)
- 7306.69.00 (statistical codes 10)

The goods exported to Australia from Korea and Taiwan are subject to a 5% rate of duty.

For China and Malaysia the goods exported to Australia are subject to a 4% rate of duty.

The goods exported to Australia from Thailand using Thailand Free Trade Agreement are free from duty as of 1 January 2010.

There are numerous Tariff Concession Orders applicable to the relevant tariff subheadings.

3. Investigation period

The existence and amount of any subsidy and/or dumping in relation to HSS exported to Australia from China will be determined on the basis of an investigation period from 1 July 2010 to 30 June 2011 (hereinafter referred to as 'the investigation period').

In order to permit the allocation of certain types of subsidy to the investigation period, information relating to earlier periods is also requested in certain sections of this questionnaire.

Customs and Border Protection will examine details of the Australian market from 1 July 2007 for injury analysis purposes.

4. Response to this questionnaire

The GOC does not have to complete the questionnaire.

However, if the GOC does not respond Customs and Border Protection may be required to rely on information supplied by other parties (possibly information supplied by the Australian industry – the applicant for anti-dumping and countervailing measures) and its own interpretation of certain information previously provided by the GOC.

Therefore, it is considered to be in the GOC's interests, and the interest of Chinese exporters of HSS, to provide a complete response.

If the GOC chooses to respond to this questionnaire, the response is due by **COB 23 February 2012**.

5. If you decide to respond

Should the GOC choose to provide a response to this questionnaire, please note the following.

Confidential and non-confidential versions

If the GOC chooses to respond to this questionnaire, you are required to lodge a confidential and a non-confidential version of your submission by the due date.

In submitting these versions, please ensure that each page of the information you provide is clearly marked either "IN-CONFIDENCE" or "NON-CONFIDENTIAL" in the header and footer.

All information provided to Customs and Border Protection in confidence will be treated accordingly. The non-confidential version of your submission will be placed on the Public Record.

Your non-confidential submission must contain sufficient detail to allow a reasonable understanding of the substance of the confidential version. If, for some reason, you

cannot produce a non-confidential summary, contact the investigation case officer (see contact details on Page 1 of this questionnaire).

Declaration

You are required to make a declaration that the information contained in the GOC's response is complete and correct. You must return the signed declaration of an authorised GOC official at the Declaration of this questionnaire.

Coordination of responses

In completing the questionnaire, if a question requires information from other authorities (e.g. provincial or local governments, state owned entities, etc.) please forward the questions to the correct source.

However, it is the responsibility of the GOC to ensure that a full and complete response to all sections of the questionnaire is submitted, and that responses from all levels of government, agencies and/or other applicable entities are collated and coordinated in the one response.

Provision of documents

Numerous documents are requested from the GOC throughout this questionnaire. In many cases, the titles or description of these documents within the questionnaire may not correlate to the official title that the GOC has granted each document, but is rather a descriptor of the document to the best of Customs and Border Protection's knowledge.

If the listed title is unknown to the GOC but a document that appears to be similar to the requested document, relates to a similar topic area, or otherwise would be considered to contain useful information is identified by the GOC, please provide this document.

Further, when providing requested documents, please indicate whether the documents:

- are current/in force;
- were current/in force during the investigation period; or
- have been repealed, revised or superseded.

Where the documents have been repealed, revised or superseded, where applicable:

- indicate when this revision occurred;
- provide any notice of repeal;
- provide the revised version;
- provide the document that supersedes the requested document; and;
- indicate whether the revised version was in force during the investigation period.

Lodgement

You may lodge your response by mailing it to the address for lodgement shown on the front cover of this questionnaire.

Alternatively you are welcome to lodge your response by email. The email address for lodgement is shown on the front cover of this questionnaire. If you lodge by email you are still required to provide a confidential and a non-confidential version of your submission by the due date.

NON-CONFIDENTIAL

In completing any lists of names and addresses requested throughout this questionnaire, electronic responses in a Microsoft Excel spreadsheet would be preferred. If lodging your response in hard copy, please include these lists in electronic format on an included CD-ROM.

General matters

Responses to questions should:

- be as accurate and complete as possible, and attach all relevant supporting documents,² even where not specifically requested in this questionnaire;
- be in English (with fully translated versions of all requested and other applicable documents submitted);
- list your source(s) of information for each answer;
- identify all units of measurement used in any tables, lists and calculations;
- show any amounts in the currency in which they were originally denominated.

Please note that answers such as: "Not Applicable" or an answer that only refers to an exhibit or an attachment may not be considered by Customs and Border Protection to be adequate. We therefore suggest that in answering the questions you outline the key elements of your response in the primary submission document, rather than merely pointing to supporting documents of varying degrees of relevance and reliability as your answer.

6. Clarification

If you have any difficulties in completing the questionnaire, or require clarification on any questions asked, contact the case manager as soon as possible (contact details are provided on Page 1 of this questionnaire).

7. Future questions and verification

If deemed necessary, Customs and Border Protection may seek to carry out a visit to the GOC to examine relevant records and to verify the information provided. It is common practice for Customs and Border Protection officers to visit government officials, exporters and manufacturer(s) of the subject goods in order to verify the information submitted. You will be contacted in advance of such a proposed meeting to make arrangements as to the time and place of the verification meeting.

A complete response, including all of the documentation requested, must be submitted to Customs and Border Protection before a verification meeting will be considered.

If such verification is undertaken, it is preferable that the key government officials involved in preparing the response and who have knowledge of the source documentation and the information contained therein be available to meet with Customs and Border Protection officers and to provide additional clarification and explanation, as required.

² This includes, but is not limited to, any laws, decrees, regulations, statements of policy, or other administrative guidelines. In each case, include any legislative history as well as other descriptive materials and explanations of the criteria underlying the decisions relating to each of the programmes mentioned in this questionnaire. If applicable, a sample of each of the applications that a company must complete to participate in each of the programs should also be included.

NON-CONFIDENTIAL

Public
File 56

If verification meetings are unreasonably delayed, cancelled, or otherwise hindered by the GOC, the assessment of a particular market situation and the assessment as to the receipt and/or countervailability of subsidy programs may be based on the facts available to Customs and Border Protection.

The purpose of the verification meeting is to verify information already provided to Customs and Border Protection in your submission prior to the meeting. It is not intended to be a second opportunity for the GOC to provide new or additional information. Accordingly, your original response should be complete and accurate.

NON-CONFIDENTIAL

SUPPLEMENTARY QUESTIONS

1. Question B2 of the GQ requested the GOC to describe the nature and structure of the Chinese HRS and HSS industries and market, including total size (value and volume) for the period.

Customs and Border Protection considers the GOC's response to Question B2 is limited and does not fully address the question.

Please review your response to Question B2 and provide a fully complete response.

As stated in its response to the GQ, the HSS and HRS sectors in China operate under very competitive conditions, are of an extremely large scale, and are geographically diverse. The GOC does not have close regulation and sufficient daily data in order to provide details which would precisely meet the requirements of B2 of the GQ.

The GOC did its very best to address the question asked at B2 of the GQ. It is unable to provide a more complete response because it maintains its response was as complete as it could make it. However, if the Customs has any specific follow-up question, GOC would reasonably cooperate.

2. In its response to Question B3 of the GQ, the GOC has provided a listing of the top 50 identified Chinese HSS producers (for 2010), and top 11 exporters (for the investigation period) as Attachments 1 and 2 respectively.

Identify within Attachment 1 which entities were the top 15 HSS producers by volume, and detail their total production of HSS, during the investigation period.

Please see **Attachment 136 - Top 15 of HSS enterprise in 2010 [CONFIDENTIAL ATTACHMENT]**.

3. Article 29 of Attachment 4 (*Regulations of the People's Republic of China for controlling the registration of enterprises as legal persons*) talks of the registration of authorities exercising functions of supervision and control over enterprises according to law, including supervising the compliance of enterprises with laws, regulations and policies of the State.

(a) What is the identity of this registration authority?

The authorities in charge of the registration of enterprises as legal persons are the

State Administration for Industry and Commerce ("SAIC") and the administrations for industry and commerce at various levels of provincial and of local governments (local AIC, or "LAIC").

(b) How is this function exercised?

The registration authorities are required to ascertain and confirm the status of enterprises as legal persons by issuing a certificate to that effect confirming the details of the enterprise as a legal person.

More specifically, the promoters of an intended enterprise will apply to SAIC by submitting basic information and documents about the registering enterprise. SAIC will examine the application for registration, and if determined that it is properly documented, issue a business certificate (also known as a business license) for the enterprise to operate as a legal person, and to ascertain and confirm the specific legal status of the enterprise.

The registration authorities at the various levels maintain a file record of the registration of enterprises as legal persons. The registration authorities make available to the public limited data and materials about the registration of enterprises as legal persons, within the limitations of proper confidentiality.

SAIC and local counterparts are also authorized to provide access to registration information to other relevant GOC departments in charge of enforcement of specific legal provisions. This allows the cross-checking of official information for legal compliance purposes, such as for taxation and for undertaking other legal compliance functions.

The Australian equivalent agency is known as the Australian Securities and Investments Commission, or "ASIC".

(c) Has the registration authority exercised any such function in relation to any Chinese HSS or HRS manufacturer during the period 1 July 2006 – 30 June 2011? Provide details.

Yes. This is SAIC's function. SAIC (and LAICs) have conducted its general administration role as discussed above.

The GOC is not aware of the SAIC exercising any functions in relation to enterprises engaged in the HSS or HRS industries in any specific sense.

The reference in Article 29 to "*exercising functions of supervision and control over*

NON-CONFIDENTIAL

enterprises according to law" is only related to the normal and familiar requirements of corporate registration. Equivalent responsibilities can be found in the ASIC charter; the ASIC Act 2001 (eg in Sections 1 and 12A); and in the general administration of the Corporations Act 2001.

4. The following questions relate to the GOC's response to Question B4 of the GQ and related attachment(s).
- (a) Where not previously provided, provide English translations of the names of those companies listed in Attachment 5 that are identified as being State Invested Enterprises ('Control Status Code 1') or Collective Enterprise ('Control Status Code 2').

Please see **Attachment 137 - Enterprises List of production beyond production volume threshold in 2011** [CONFIDENTIAL ATTACHMENT]

- (b) Indicate, within a revised version of Attachment 5, whether the listed enterprise produces HRC, narrow strip, or both.

The GOC does not have or keep such data. The NSB, for example, only keeps limited data, and only at the "above scale" level. The question asks for information at a level of detail which is not captured by the statistical authorities in China. Moreover, enterprises make their production decisions independently and in response to demand in a dynamic market situation, meaning that their production choices are constantly changing.

By way of comparison to Australian Government practices, Moulis Legal made inquiries of the Department of Innovation, Industry, Science and Research to find out this information in relation to production by the Australian industry. Moulis Legal was provided very general information - which was available from public sources - and was directed to contact Bluescope Steel if further information was required.

However, the GOC can say that in general terms, and to the best of its knowledge, the listed enterprises could produce both HRC and narrow strip.

- (c) Indicate what percentage of the total volume of domestic HRS output in China is represented collectively by the companies listed within Attachment 5, by 'Control Status Code'.

Given that it does not have complete statistical data on total output in China, but only partial data for some manufacturers at the "above scale" level, the GOC can only provide some estimated percentages based on what it has for 2010 and for the first

NON-CONFIDENTIAL

half of the year 2011.

Please see **Attachment 138 - HRS (Narrow strip) Production by Ownership**

[CONFIDENTIAL ATTACHMENT]

- (d) Indicate which of the companies within Attachment 5 represent the top 15 HRS producers in China during the investigation period, and the total volume of their production of HRC and/or narrow strip.

Please see **Attachment 139 [CONFIDENTIAL ATTACHMENT]** for the top 15 HRS producers in China during the investigation period. GOC cannot provide the total volume of their production of HRC and/or narrow strip because of the confidentiality protection under Article 9 of the *Law of Statistics (1983)* as amended.

5. Throughout the GOC response, the GOC refers to 'respondent enterprises' or 'the respondents'. Identify what entities are included in this list of 'respondents'.

Please see **Attachment 140 [CONFIDENTIAL ATTACHMENT]** for a list of the enterprises that are referred to as the "respondent enterprises".

6. At Question B8 of the GQ, the GOC was asked to provide, for 1 July 2006 - 30 June 2011, total volume and value data of all exports of coke, coal and iron ore. This has not been provided.

Please see **Attachment 141 [CONFIDENTIAL ATTACHMENT]** for total volume and value data for exports of coke, coal and iron ore for the period from 1 July 2006 to 30 June 2011.

7. The following questions relate to the GOC's provided Attachment 15 (the *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (the SOE Law)).

- (a) Article 26 of the SOE Law notes:

The enterprise shall have the right to determine for itself the prices of its products and the charges for its services, except for those which, as stipulated by the State Council, are under the control of the price authorities and the relevant competent departments.

- i. Provide a listing of products and services which are currently under the control of the price authorities or have been under this control from July 2006 onwards. If this has been previously provided in response to the GQ, identify which Attachment(s) include this listing.

NON-CONFIDENTIAL

We believe this has already been provided in response to the GQ. Please see **Attachment A16 - Government Set Price List**.

- ii. Has HSS, steel (in any form e.g. HRC, steel billet) or any steel raw material, been under the control of the price authorities from July 2006 onwards?

No. As per **Attachment A16**, "*HSS, steel (in any form e.g. HRC, steel billet) or any steel raw material*" were removed from the control of the price authorities from August 1998 onwards.

- iii. Identify which entities are the 'price authorities' identified in this article. Explain the purpose, structure, functions, responsibilities, and powers of these authorities.

During the POI, the "price authorities" referable to this Article will have been the NDRC at the central government level, and the local development and reform commissions or price bureaus at the local level. The price authorities' role is to maintain normal price order and exercise administration, regulation and necessary control over conduct of prices which are on the list concerned. "*HSS, steel (in any form e.g. HRC, steel billet) or any steel raw material*" are not on that list and have not been on that list since August 1998.

For more details about NDRC and its local counterparts, please refer to the GOC's response to the GQ at part C, 2.6, C2.7 and C2.9.

- iv. Provide translated copies of any legislation, policies, or other documents that establish, regulate, prescribe authority to, or are otherwise concerned with these price authorities.

The main legislation that can be said to "*establish, regulate and prescribe authority to*" the price authorities is the *Price Law of the People's Republic of China*. Please see **Attachment A15**.

- (b) Article 35 of the SOE Law observes that enterprises must fulfil 'mandatory plans'.
- i. Provide an explanation of the meaning of 'mandatory plans'. How are these plans developed?

Article 35, first paragraph, was repealed in 2009. Please see **Attachment 142 - Decision of the Standing Committee of the National People's Congress on Amending Some Laws.**

The function of making "mandatory plans" for manufactured goods, including any national plan of HSS and steel production, was abolished before the end of 1990s nationwide. There are no such plans applicable to the HSS/HRC or steel market during the period since 2000.

- ii. What role does the GOC have in developing the content of these plans, approving these plans, or any other influence in the development or implementation of these plans (noting Article 55)?

Please refer to the GOC's response to question 7(b)i above.

- iii. What are the consequences of not adhering to these plans?

Please refer to the GOC's response to question 7(b)i above.

- (c) Article 37 of the SOE Law notes:

The enterprise must observe state provisions concerning finance, labour and wages, price control, etc., and accept supervision by the financial, auditing, labour and wage, price and other administrative authorities.

- i. Provide an explanation of what is meant by state provisions concerning price control.

"State provisions concerning price control" refers to the relevant laws that relate to price, in particular, please refer to the *Price Law*, especially Article 3.

- ii. Are any such price controls currently in effect in relation to HSS, steel (in any form) or any steel raw material, or have there been any such price controls in relation to any of these products from July 2006 onwards? Provide details.

No.

- (d) Article 55 of the SOE Law notes:

NON-CONFIDENTIAL

The government or the competent department of the government shall, in accordance with the provisions of the State Council, issue unified mandatory plans to the enterprises, ensure the supply of materials which are subject to planned allocation and needed by the enterprises for the fulfilment of mandatory plans, examine and approve plans submitted by the enterprises for capital construction and major technical transformation, appoint or remove, reward or punish factory directors, appoint or remove, reward or punish leading administrative cadres at the level of a vice-director of a factory, as proposed by factory directors, and examine and train leading administrative cadres at the factory level.

- i. Provide copies of the current and preceding mandatory plans for all enterprises identified in the GOC's response to Question 2 and 4(d) above that fall under the provisions of the SOE Law.

Article 55 was abolished in 2009, long before the POI. Please see **Attachment 142 - Decision of the Standing Committee of the National People's Congress on Amending Some Laws**. Please also refer to the GOC's response to question 7(b)i above. Therefore, the GOC respectfully considers that this question is not relevant to the current investigation.

- ii. Has the GOC undertaken any action sanctioned by Article 55 against any enterprise identified in the GOC's response to Question 2 and 4(d), or employee of those entities, from the period of July 2007 onwards? Provide details.

Please refer to the GOC's response to question 7(b)i, and to the GOC's general comments relating to this legislation, above. The identified enterprises to which the question refers are established in accordance with the *Company Law*. Even before its termination, Article 55 did not apply to companies established under the *Company Law*. Therefore, the GOC respectfully submits that this question is not relevant to the investigation.

8. In its response to Question C2.7, the GOC highlights that article 18 of the price law allows it to maintain limited control over the prices of SOE goods and services:

The government shall issue government-set or guided prices for the following merchandises and services if necessary: 1. The few merchandises that are of great importance to development of the national economy and the people's livelihood; 2. The few merchandises that are in shortage of resources; 3. Merchandises of monopoly in nature; 4. Important public utilities; 5. Important services of public welfare in nature.

The GOC would clarify that in its GQ response C2.7:

- (a) the GOC did not mean that Article 18 of the *Price Law* allows it to maintain limited "control" over the prices of goods and services, rather, it stated there exists very limited "guidance" over the prices; and
- (b) the GOC did not mean that the limited "guidance" over prices applied only to goods and services produced or transacted by SOEs.

Has HSS, steel (in any form) or any steel raw material been categorised /considered by the GOC to fall into any of the categories of goods within Article 18 of the *Price Law* since July 2006? If so what, if any action has the GOC taken as a result of this classification?

No.

9. The following questions relate to the National Steel Policy, provided as Attachment A1 to the GQ.

- (a) Explain and provide details of any and all steps the GOC takes to encourage the implementation of the National Steel Policy.

The GOC advises that the main goal of implementation of policies for the iron and steel industry is not to "encourage" expansion of iron and steel capacity. Instead, the main focus is on technical upgrading and structural adjustment, by reducing capacity of backward technology, and by narrowing the remarkable lag behind the advanced level in terms of material and energy over-consumption or inefficient input-output ratio by the iron and steel industry. Over-capacity and increase of raw material costs are globally recognised issues in the steel industry. Therefore, many policies mentioned in this policy document simply outline and reflect such facts and attempt to address such issues, with an intention to limit the unsustainable and blind development of iron and steel industry.

The document *Development Policies for the Iron and Steel Industry* involves all the production processes of steel, but the production process relevant to the current investigation only involves steel rolling, and only HRC. Therefore, the GOC considers that only specific industry policies relevant to this investigation should be discussed here, which include the following:

- the establishment of any new and exclusively steel-rolling factory is not encouraged (Article 10); and
- for the construction of projects such as iron smelting, steel smelting and steel rolling, the proportion of self-owned capital of enterprises shall reach 40% or

NON-CONFIDENTIAL

above (Article 23).

In this context, the general means of "implementation" of the *Development Policies for the Iron and Steel Industry* include:

- NDRC shall organize relevant departments to supervise the implementation of the policy.
- There should be coordination with the relevant industrial associations, who have in the past established industrial indices and information systems, published industrial information and alerts, communicated important issues of the industry development between the enterprises, and advocated improved self-governance of the industry. The relevant industrial associations may complain to relevant department if others intend to take advantage of or benefit from any non-compliance of the policy.
- The industrial associations are invited to brief the government on the industry's development where appropriate and to provide government with their members' views regarding industrial policy.

- (b) Explain and provide details of any and all steps the GOC takes to monitor the implementation of the steel policy.

Relevant GOC departments may observe and monitor effects of the policy as reflected in market and statistical data and information from statistical divisions and other sources.

- (c) Explain how the GOC measures the success of the national steel policy (i.e. whether the aspirations are being achieved).

The implementation of *Development Policies for the Iron and Steel Industry* is a long-term and arduous task, which is very much dependent on the market uncertainties domestic and/or abroad. It cannot be measured simply as whether the national steel policies are "successful" or not. Generally speaking, the Policy provides a policy basis and orientation for the development of the iron and steel industry in China. We can see that, from then on, technology, equipment and environmental facilities have all been advanced; energy-saving and emission-reduction has taken place; and the dismantling of backward capacity has also been progressed.

10. The following questions relate to the five-year plans (FYPs) of the GOC generally.

NON-CONFIDENTIAL

- (a) How does the GOC monitor whether the aims and goals within its FYPs are reached, and what action is generally taken by the GOC to ensure the aims of the FYPs are met?

Generally speaking, an "FYP" will examine the situation of and for the last FYP, and estimate the achievement of leading indicators. An FYP is an aspirational guidance document, and does not set mandatory targets for the steel industry. Moreover, industrial policy aspirations of an FYP are relatively macroeconomic and vague, rather than being specific and quantifiable aims.

For example, the "Eleventh FYP" provides for the steel industry to "[A]dhere to domination of domestic demand, make efforts to resolve surplus production capacity, strictly control additional iron and steel production capacity, accelerate the elimination of backward technology, equipment and product and improve iron and steel product grade and quality. Push iron and steel industry to develop recycling economy and exert functions of iron and steel enterprises in regard to the product manufacture, energy conversion and waste digestion and treatment", etc. Therefore, there is no rigid index or parameter to measure whether the aims of FYP are met or not.

- (b) Customs and Border Protection's research indicates that the Government of China has passed the twelfth FYP; however the GOC has only provided the tenth and eleventh FYPs. Provide a translated copy of the twelfth FYP, as well as the original Chinese version.

Please see **Attachment 143**

- (c) Highlight any provisions/articles within the twelfth FYP that apply to or impact (directly or indirectly) the Chinese HSS, steel or any steel raw materials markets.

Statements within the twelfth FYP do not directly apply to or impact the Chinese HSS market.

Only three of the stated policies apply to or impact on (directly or indirectly) steel or any steel raw materials markets:

- (a) relocation of urban enterprises of iron and steel should be carried out in an orderly way – see Section 9.2 *Reform and improve manufacturing industry - Optimize industry layout*;
- (b) industry to stick to market-based operations, give play to the role of enterprises as market players, improve related policies and eliminate institutional barriers, focus on steel and other industries, promote superior

enterprises to powerful combination and trans-regional merger and recombination, and enhance industrial concentration – Section 9.4 *Reform and improve manufacturing industry - Guide enterprises' merger and reorganization*; and

- (c) promote treatment of sulphur dioxide and ox nitride of steel industry – Section 24 *Intensify environment protection*.

- (d) Provide copies of any laws, regulations, circulars, policies or other GOC-issued documents that have been released/issued to achieve the aims/goals of the twelfth FYP in relation to any steel or steel raw materials.

Please see **Attachment 144 – Twelfth FYP for Iron and Steel Industry**. This was issued after the investigation period, and it can be seen to be an aspirational and commentary document, looking at both the past and future development of the steel industry. It reports on the development of the industry; reflects on the problems the industry faces, and the problems that the Chinese environment and infrastructure capacity faces by reason of steel and iron industry development; and highlights the areas of improvement and development which could take place in the future in order to increase the quality, competitiveness and sustainability of the industry.

- (e) Provide the current and previous FYP for the regions of the top 15 HRS producers in China (identified by the GOC in its response to Question 4(d) above).

The top 15 HRS producers in China in 2010 were located in four provinces: Hebei, Tianjin, Shandong and Jilin. The GOC provides the Eleventh FYPs for these provinces in **Attachments 145, 146, 147 and 148** respectively.

- (f) How are regional FYPs developed, monitored, implemented and measured for success?

Local development and reform commissions survey the industrial situation in their localities, and then coordinate with other government department to develop regional plans. The means of monitoring, implementation and measurement of success are similar to that for the national FYP, in respect of which please refer to the GOC's response to question 10(a).

11. The following Questions Relate to Attachment 22 (*Eleventh Five-Year Plan for national Economic and Social Development*).

NON-CONFIDENTIAL

Public
File 44

- (a) What measures activities, action, etc. has the GOC taken to achieve the outcomes outlined in Chapter 13 Section 1?

Please see **Attachments A1 and A12** in the GOC's response to the GQ. Relevant measures have been reflected in those documents.

- (b) How does the GOC monitor whether it is achieving the goals set out in Chapter 13, Section 1, and the goals within its five-year plans generally?

Please refer to the GOC's response to question 9(b).

- (c) Provide copies of any documents, laws, regulations, etc issues by the GOC aimed at achieving the aims within Chapter 13, Section 1.

Please refer to the GOC's response to question 11(a).

12. It is understood that within China, certain industries are identified as 'strategic' industries and 'pillar' industries.

- (a) Provide a listing of all industries considered to be 'strategic' for the period of July 2006 - July 2011.

The GOC does not produce and/or keep such a list.

The GOC does not specify or define "strategically important" economic sectors, important basic industries for the national economy or pillar industries for industrialization.

There are no specific laws, decrees, rules, promulgations, edicts, opinions, measures, regulations or directives regarding these words and definitions. They may sometimes be used in a policy document in a literal way, without having any quantitatively defined meaning.

- (b) Provide a listing of all industries considered to be 'pillar' for the period of July 2006 - July 2011.

Please refer to the GOC's response to question 12(a).

- (c) Outline what is meant by each of these terms.

NON-CONFIDENTIAL

The terms "strategic" or "pillar" do not have a specific legal definition. These words are used in their customary sense.

13. Customs and Border Protection has accessed the Constitution of the Communist Party of China (CPC) online at <http://www.china.org.cn/english/features/49109.htm> on 28 January 2012. The following questions relate to Article 32 the CPC Constitution as downloaded.

Despite the GOC's careful consideration of the questions, and its responses to them, the GOC considers that questions regarding the Communist Party of China ("CPC") constitution or its membership are irrelevant to the issues in this investigation. The GOC is also concerned that these questions indicate unreasonable misconceptions which may inappropriately affect consideration of the relevant issues of the investigation. Inappropriate weight should not be given to political matters in an economic and legal investigation such as that underway in this matter.

Furthermore, the GOC considers that a government questionnaire is not the best platform for the interpretation of the constitution of a political party.

Article 32 of the CPC Constitution states:

In a state-owned or collective enterprise, the primary Party organization acts as the political nucleus and works for the operation of the enterprise. The primary Party organization guarantees and supervises the implementation of the principles and policies of the Party and the state in its own enterprise and backs the meeting of shareholders, board of directors, board of supervisors and manager (factory director) in the exercise of their functions and powers according to law. It relies wholeheartedly on the workers and office staff, supports the work of the congresses of representatives of workers and office staff and participates in making final decisions on major questions in the enterprise. It works to improve its own organization and provides leadership over ideological and political work, efforts for cultural and ethical progress and the trade unions, the Communist Youth League and other mass organizations.

In a non-public economic institution, the primary Party organization carries out the Party's principles and policies, provides guidance to and supervises the enterprise in observing the laws and regulations of the state, exercises leadership over the trade union, the Communist Youth League organization and other mass organizations, rallies the workers and office staff around it, safeguards the legitimate rights and interests of all quarters and stimulates the healthy development of the enterprise.

In an institution where the administrative leaders assume full responsibility, the primary Party organization acts as the political nucleus. In an institution where the administrative leaders assume full responsibility under the leadership of the Party committee, the primary

Party organization discusses and decides on major issues and at the same time ensures that the administrative leaders are able to fully exercise their functions and powers.

The GOC observes that the Constitution of the CPC as accessed by Australian Customs is a 2002 version, which was last amended at the 17th CPC National Congress in 2007. The 2007 version would have been in place in the investigation period. Please see **Attachment 149 - Constitution of the Communist Party of China as amended in 2007.**

The GOC would advise that it is not in a position to provide an explanation of the affairs of CPC, however for the purposes of cooperation it has formulated and explained its understandings in response to the questions asked to the best of its knowledge.

(a) Explain what 'the primary Party organization' means.

The "primary Party organization" is a level of organizational hierarchy in the CPC. Primary Party organizations are formed in enterprises, rural areas, government organs, schools, research institutes, communities, social organizations, companies of the People's Liberation Army and other basic entities, where there are at least three full membership Party members.

(b) How are these organisations formed/selected?

A primary party organisation should be formed where there are at least three full membership Party members in an entity or organisation. It is elected either by a general meeting of members or a meeting of delegates.

(c) What is meant by 'backs the meeting of shareholders, board of directors, board of supervisors and manager (factory director) in the exercise of their functions and powers according to law.

Under the relevant laws and regulations, the primary Party organization must

- (a) not intervene into the functions and powers of the meeting of shareholders, board of directors, board of supervisors and managers (factory director);

NON-CONFIDENTIAL

- (b) not be responsible for or intervene into the company's business affairs;
- (c) respect all the decisions made by the meeting of shareholders, board of directors, board of supervisors and manager (factory director) exercising their functions and powers according to laws;
- (d) perform responsibilities in respective positions in accordance with laws and company by-laws, and
- (e) not intervene into the implementation of Board decisions in accordance with laws.

Members of a primary Party organization in an enterprise may propose reasonable opinions and suggestions in accordance with laws to the meeting of shareholders, board of directors, board of supervisors and manager (factory director). After the board of directors and manager (factory director) have made decisions in accordance with laws, the primary Party organization in the company shall call upon all the Party members to actively implement the decisions.

- (d) How do these organisations 'guarantee and supervise' the implementation of the principles and policies of the party?

The GOC clarifies that Article 32 of the CPC Constitution merely regulates the primary Party organization. Therefore, "the principles and policies of the party" as referred to in the question only refers to the principles and policies relative to day-to-day work of the primary Party organization.

As a matter of fact, the principles and policies of the party relative to the enterprises operation and governance are a reflection of the *Company Law*, the *Labour Law* and other laws.

It is considered that the interests of the Party correspond with those of the Chinese people. The Party should not have a special interest of its own. The principles and policies of the Party do not and must not conflict with laws. Therefore, the primary Party organization guarantees and supervises the implementation of the principles and policies of the party by requesting its members to perform their day to day work and duties according to the laws.

- (e) How do these organisations 'participate in making final decisions on major questions in the enterprise'?

Please refer to the GOC's response to Questions 13(a) and (d). The organisation does not participate in making final decisions as an entity itself. Rather, the statement

"participate in making final decisions on major questions in the enterprise" requires the members of the primary party organisations to actively engage in their work at the enterprise according to their capacity: be it as a staff member, worker, director, manager or supervisor of the company. The participation varies accordingly, it may be in the form of expressing opinions on important issues affecting the operation of the company, or by discharging one's responsibility to the company according to the company's articles of association or the *Company Law*.

The primary Party organization must not intervene into the functions and powers exercised by the meeting of shareholders, board of directors and management as prescribed by the *Company Law*.

The CPC or its members are prevented from doing so by provisions such as Article 4 of the *Property Law*, Article 5 of the *Company Law* and Article 16 of the *Law on State-Owned Assets of Enterprises*.

- (f) Provide examples of 'major questions in the enterprise' and indicate whether any of the following would be considered such a 'major decision':
- i. organisation structure
 - ii. management of an organisation
 - iii. source of materials
 - iv. selling prices
 - v. production volumes
 - vi. expansion/contraction of organisation size and/or activities

For items i and ii, the question of whether any decision regarding organisation structure and management of an organisation should be considered a "major decision" or not would be dealt with under the Articles of Association of the company at the time of its establishment. Therefore, generally speaking items i and ii are not major questions to be decided from time to time.

For items iii through to v, namely source of materials, selling prices and production volumes, these are daily operation decisions, and not "major decisions".

Item vi is a major issue and shall be decided by the company's shareholder (investors) in accordance with laws.

The GOC would note that communication with workers and their unions is an ordinary aspect in the management of major issues facing companies in many Western jurisdictions, and that there are legal requirements to communicate and consult in some situations, in particular when the contraction of staff numbers is under

consideration by the company concerned. For example:

- (a) a proposed group lay off in Australia should be notified to employee associations – see Section 531 of the *Fair Work Act 2009*; and
- (b) a 60 day notice requirement is imposed in similar situations in the United States – see *Worker Adjustment and Retraining Notification (WARN) Act*, Public Law 100-379 (29 U.S.C. § 2101 et seq.).

- (g) The Article states that the Party organisation 'guarantees and supervises the implementation of the principles and policies of the Party and the state in its own enterprise'. Are the aims of the GOC's FYPs and/or the National Steel Policy such 'principles and policies of the Party'?

As advised above at (d), the principles and policies of the Party and the state in its own enterprises, shall only refer to the principles and policies relative to day-to-day work of the primary Party organization, rather than any policies that at the national level.

- (h) The Article states that the Party organisation of non-public economic institutions 'carries out the Party's principles and policies, provides guidance to and supervises the enterprise in observing the laws and regulations of the state, exercises leadership over the trade union, the Communist Youth League organization and other mass organizations, rallies the workers and office staff around it, safeguards the legitimate rights and interests of all quarters and stimulates the healthy development of the enterprise'.

Describe what is meant by 'non-public economic institutions. Describe how Party organisations perform this function.

Non-public economic institutions refer to private-owned, foreign-owned and proprietorship. To the best of the GOC's knowledge, how the Party organisations perform the abovementioned functions in non-public economic institutions are as referred to above in the responses to sub-questions (a) through (f).

14. Provide a copy of the State Economic Trade Commission (SETC) development plan for the metallurgical industry for the years 2001 - 2005 (Metallurgical Industry Plan). Provide any subsequent copies of this plan, or similar plans.

NON-CONFIDENTIAL

Public
File 38

The State Economic Trade Commission ("SETC") has not been in existence since March 2003. The SETC development plan for the metallurgical industry for the years 2001 - 2005 (Metallurgical Industry Plan) had expired before the investigation period. After 2005, no GOC agency made a similar follow-up or replacement document of the same kind. Thus there are no subsequent versions of the plan.

15. Provide a copy of the Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of Iron and Steel Industry (2006) Fa Gai Gong Ye.

The document requested has been superseded. Please see **Attachment 150 - Circular of Confirming NDRC and other departments' Opinions on Restricting Over-capacity and Overlapping Investments in Some Sectors and Guiding for an Healthy Development in the Industries** GuoFa [2009]#38.

16. Customs and Border Protection has viewed the official GOC website www.gov.cn. The following questions relate to articles located on that website from the period 16-20 January 2012.

(a) Customs and Border Protection has accessed the article 'China scraps export tax rebates on some steel, metal products' at http://english.gov.cn/2010-06/22/content_1634240.htm.

- i. Provide any official GOC documents, circulars, etc. that relate to this change in export tax rebates.

Please refer to **Attachment 151 - Notice on withdrawal of export tax rebate for some commodities**, which relates to this change.

- ii. Advise the rationale behind this change in rebates.

The rationale behind this change in rebates is to remove excessive incentive to produce and export "two high" (high energy consumption and high pollution) products, in order to meet the ultimate purpose of environment protection.

(b) Customs and Border Protection has accessed the article 'China to raise tax rebates on textile, metal exports' at http://english.gov.cn/2009-03/25/content_1268590.htm.

- i. Provide any official GOC documents, circulars, etc. that relate to this change in export tax rebates.

NON-CONFIDENTIAL

Please refer to **Attachment 152 - Notice of raising export tax rebate rate on some textile and electronic information etc. commodities**, which relates to this change..

- ii. Advise the rationale behind this change in rebates.

The rationale behind this change in rebates was mainly to resist the finance and economic crisis which originated in the United States housing market and which developed into a "global financial crisis"; to maintain the economic stability of China in a reasonable manner in the face of that crisis; and also to make positive contributions to stabilize the regional and global economies as recommended by the G8.

- (c) The article *Report on China's national economic, social development plan*, available at http://english.gov.cn/2010-03/16/content_1556792.htm discusses the *2009 Plan for National Economic and Social Development* and the *2010 Draft plan for National Economic and Social Development*.

- i. Provide copies of both plans, and any subsequent similar plans.

The GOC cannot provide the requested plans, because these kind of short-term plans and proposals are not publicly available, and they involved a large amount of information concerning third-parties which are irrelevant to this case.

- ii. What is the purpose of these plans?

The purpose of these plans – noting that one of the documents referred to was a "draft" - was to set out some overall requirements on agencies and the main aims of economic and social development within the forward period of one year. This includes orientation and guidelines so that government departments at various levels can develop and implement policies within relevant fields, and can inform operators and investors of the trend and orientation of policies as described in the government working report for the relevant year.

- iii. How are these plans developed, disseminated, implemented and their access monitored?

It is the responsibility of NDRC to develop, implement and monitor theses plans in

accordance with normal administrative proceedings.

17. In its response to C2.9(c)(ii) of the GQ, the GOC notes the existence of the 'Specific Monitoring Report System in National Steel Market'.
- (a) Explain the role of this system, describe how it functions, describe how it monitors and exports on the National Steel Market.

The role of this system is to monitor the change of price and industrial situation in the steel market in a timely and accurately manner, and to provide a basis for macro-economic policy adjustment.

The price authorities of provincial or municipal governments are responsible for operation of the specific monitoring and reporting system in their provinces or cities respectively. Price collecting/submitting entities collect and submit price data at various specified local steel markets handling transactions in large-scale and with wide coverage of steel categories under orderly management, and submit price data to NDRC Price Monitor Centre via the price monitor division of local price authorities. The prices so collected and submitted are the actual transaction price of a few prescribed steel products for purpose of consistency and comparability. The timing of price collection and submission is set at every Wednesday.

- (b) How is the information gathered by the system used by the GOC?

Please refer to the GOC's response to question 17(a).

- (c) Does the system produce regular reports for the GOC? Provide copies of these reports for the investigation period.

Price collecting/submitting entities are not required to provide a specific report to price authorities under the administrative system which is in effect.

18. The GOC response to C2.9(c)(ii) of the GQ names the "Monitoring Report System for Price of National Important Consumption Goods and Service" and the "Specific Monitoring Report System on National Steel Market".
- (a) Provide copies of any GOC documents that provide for the establishment, administration, management, function, or any other operations of these systems.

Please see **Attachment 153 – Monitoring Report System for Price of National**

Important Consumption Goods and Attachment 154 – Specific Monitoring Report System on National Steel Market.

- (b) Explain the purpose of each system.

Please refer to the GOC's response to question 17(a), which also applies to other products in basically the same way.

- (c) Explain how these systems operate, how they collect and report upon the pricing of these products, how the data is used by the GOC (e.g. does it contribute to policy formation, the reserving activities of the State Reserve Bureau, etc).

Please refer to the GOC's response to question 17(a), which also applies to other products in basically the same way.

- (d) What action does the GOC take if this system indicates that the price of monitored products is undesirable (e.g. unreasonably high or low)?

The aim of monitoring products is not to monitor "rationality" of a single price of a single product. Instead, the prices so collected are used for estimating the trend of general price levels, thereby providing a basis for macro-economic adjustment in China.

The GOC notes that price discovery is an essential aspect of any well-functioning market system.

"Each person seeks to use every parcel of his property in ways that yield him maximum benefit, either by consuming it most effectively according to his own subjective judgment or by employing it most effectively ("profitably") in production. Market prices are vital to making such decisions ... Market prices are vital because they condense, in as objective a form as possible, information on the value of alternative uses of each parcel of property."

Source: <http://www.econlib.org/library/Enc/InformationandPrices.html>

The GOC notes that it is often asked about price monitoring, as if it is some offence against market operations. The GOC does not understand nor accept such thinking.

- (e) Provide copies of any reports, notices, documents issued in relation to the price monitoring of these systems over the period of July 2006 - June 2011 for all steel products, steel itself and any steel raw materials.

NON-CONFIDENTIAL

Please refer to the GOC's response to question 18(a). As stated in response to question 17(c), price collecting/submitting entities are not required to provide specific reports to price authorities under the rules of the system.

19. The following questions relate to the GOC's response to Question C3.2(b) of the GQ and associated attachments.
- (a) Within the GOC's Attachment 36 the GOC has indicated 'N/A' against certain tariff classifications across the years queried, however this does not seem to indicate that the tariff code was not in use during that time. Explain what is meant by this N/A identification in Attachment 36.

The GOC now provides a revised Attachment 36 – see **Attachment 155**.

- (b) Explain the reasons/rationale and policy aims for the change of VAT rebate on HRS (72111900) from Jan - May 2009 (no refund) to Jun-Dec 2009 (9%).

The rationale behind this change in rebates is to guard against inflation on the domestic market, and to maintain stability in the Chinese economy in a reasonable manner, and meanwhile to make positive contributions to the stabilisation of the global economy.

Generally, in relation to tax policy, the GOC does wish to note – again – that VAT is a common taxation mechanism for most countries in the world. It is not unusual to make changes to the VAT rate or the rate of VAT rebate. The UK, for example, increased its VAT rate from 17.5% to 20% during 2011. In any sense, the changes made to the VAT rebate rate for exportation is a common practice and is WTO compliant.

- (c) Explain the reasons/rationale and policy aims for the changes in HRS VAT rebate between 2010 (9%) and 2011 (no refund).

Please refer to the GOC's response to Question 16(a)ii.

The VAT export rebate mechanism is to avoid the deterrence that would otherwise be caused to Chinese exporters and foreign importers arising from double indirect taxation on the same exported goods, which may also be subject to similar tax in the importing countries. It follows that the removal of such a rebate means that the

NON-CONFIDENTIAL

government does not think such avoidance of deterrence is necessary.

- (d) Explain the reasons/rationale and policy aims for the change in the VAT refund on HSS in 2009 (where the rebate increased to 9%).

Please refer to the GOC's response to Question 19(b).

- (e) Could the GOC indicate within a revised Attachment 36 which circulars provided as Attachment 31 - 35 relate to each change in VAT rebate in Attachment 36?

Please refer to the notes in **Attachment 155**.

20. Within Attachment 42, the GOC references Export Tariff Duty rates as 'Temporary Rate'. Explain what is meant by this term.

Temporary Rate is a kind of temporary importing/exporting tariff duty rate imposed on parts of the importing/exporting commodities by the government, which is usually revised or confirmed every year.

21. Explain the reasons/rationale behind the following export tariff rates identified in Attachment 42 (including the policy aims of these changes).

- (a) The increase in duty on Iron ore from 2006 to 2007.

Please refer to the GOC's response to Question 16(a)ii.

- (b) The increases in duty on coke from 2006 to 2007, 2007 to 2008, 2008 to 2009.

Please refer to the GOC's response to Question 16(a)ii.

- (c) The increase in duty on coal of CN code 27011100 and 2701110090 from 2008 to 2009.

NON-CONFIDENTIAL

Please refer to the GOC's response to Question 16(a)ii.

22. Could the GOC indicate within a revised Attachment 42 and Attachment 43 which circulars provided relate to each change in export tariff rebate in each attachment.

Please refer to the notes/relevant fields in **Attachments 156 and 157**.

23. Explain the reasons/rationale behind the following export tariff rates identified in Attachment 43 (including the policy aims of these changes).
- (a) The decrease in import tariff on coke from 2008 – 2009.

Please refer to the GOC's response to Question 19(b).

- (b) The decrease in rates on all CN codes of coal from 2008 - 2009.

Please refer to the GOC's response to Question 19(b).

24. The following questions relate to the GOC's Attachment 44 (*Notice Regarding Declaration Conditions and Procedure of 2009 Trade Coke Export Quota*).
- (a) It is observed that the original Chinese version of this document had not been provided as requested, and the text of the English translation provided appears to be summarised in parts (e.g. Point I 1.(5) states...Social security fee' which I 3.(4) states 'omitted'. Provide a copy of the original Chinese version of this document, as well as a complete English translation.

Parts of the documents originally requested were not provided, on the basis of their perceived lack of relevance coupled with the large volume of information and translations required. The GOC is however fully ready to now provide the complete documentation as requested by Customs.

Please refer to **Attachment 44 - Notice Regarding Declaration Conditions and Procedure of 2009 Trade Coke Export Quota** now provided in full in Chinese, as well as its full English translation.

NON-CONFIDENTIAL

Public
File 31

- (b) Attachment 44 refers to the 'Regulation of the People's Republic of China on the Administration of the Import and Export of Goods. Provide a copy of this regulation.

Please refer to **Attachment 158** - *'Regulation of the People's Republic of China on the Administration of the Import and Export of Goods.*

- (c) The GOC's Attachment 44 mentioned the Admittance condition of coking industry'. Provide a copy of these conditions. Do any similar conditions exist for HSS, HRS, or any other steel raw material? Provide copies of these.

Please refer to **Attachment 159** - *Admittance condition of coking industry*. As will be apparent, it provides that new and newly expanded coking factory must have a certain capacity – eg, workshop to be more than 4.3 metre high with an annual capacity of above 600,000 MT. The techniques used must meet certain environmental standards, and the coke produced must meet certain grade.

A set of conditions for HSS, HRS, or any other steel raw material are basically reflected in Article 2 of the *Standard Conditions on Production and Operation of the Iron and Steel Industry*, which is provided at **Attachment 160**.

- (d) At point I 3. of Attachment 44, the document states 'In order to enhance concentration of export operation and reduce enterprises quantity....' what is meant by this phrase?

This phrase is a general economic term, the meaning of which is self-explanatory, i.e. reduce the number of exporting enterprises, especially those that are not in compliance with environmental provisions, thereby each operating enterprise undertakes high share of total export volume. It has no further special meaning.

25. The following questions relate to the GOC's response to Question C3.5 of the GQ.

- (a) At its response to C3.5, the GOC identifies that there were export quotas on coke between 2008 and 2010. Explain the reasons (policy rationale, aims, purpose) of these restrictions. Were these restrictions aimed at achieving any of the policy aims of the National Steel Policy or any other GOC policy (if so, provide a copy of this policy)?

NON-CONFIDENTIAL

Coke is typically a high pollution (high emission), high energy consumption product. Countries all over the world, in particular the European countries and the United States, have strengthened their corresponding environment protection legislation to reduce coke output.

In recent years, China has also imposed restrictions on production of highly polluting enterprises. Efforts have been made to ensure that the compliance of old technologies are checked against current standards, and that if they do not meet these standards they are decommissioned. On this basis, the GOC imposes export quota restrictions on coke in accordance with WTO rules and relevant domestic laws and regulations.

Enterprises failing to conform to environment protection standards, or to honour common practices in promoting social responsibilities, may be denied export quotas.

Over the years, the above management approach has obtained achievements: the growth of coke industry investment and production has slowed down, and the industry has reduced its backward capacity and achieved upgrading of its investment and industrial structure.

In terms of environmental improvement, the effects have been obvious. In Shanxi province, the dominant province of coke export and production, air quality has improved greatly.

- (b) At its response to C3.8, the GOC identifies that there were export license restrictions on coal exports from 2006 - 2011. Generally explain how this export restriction operated (e.g. who it related to, how it was enforced, what entity was in charge of imposing and/or monitoring the system, how was the system reviewed, etc.)? Explain the reasons (policy rationale, aims, purpose) of these restrictions. Were these restrictions aimed at achieving any of the policy aims of the National Steel Policy or any other GOC policy (if so, provide a copy of this policy)?

Exporter quota restrictions on coke imposed by China were **[CONFIDENTIAL TEXT DELETED]** in 2010 and 2011 respectively. Exporter quota restrictions on coke are assigned to exporting enterprise in two instalments by the NDRC at the end of the previous year and in August of the current year respectively.

- (c) From the documents provided by the GOC in its response to C3.5, it is evident that foreign-invested enterprises (FIEs) were treated differently from other enterprise types in relation to the exporter quota restrictions

on coke. Explain and describe the different treatment of FIEs in relation to this quota.

This is incorrect. MOFCOM has unified exporter quota restrictions on coke for domestic-invested enterprises and FIEs. Exporter quota restrictions on coke for domestic-invested enterprises and FIEs have been determined according to the same standards and in the same manner since 2010. Domestic-invested enterprises and FIEs are treated the same in relation to exporter quota restrictions on coke at present.

26. Provide a copy of the original Chinese version of the documents provided as Attachment 45, Attachment 46 and Attachment 48 to the GQ.

Please refer to **Attachments 45, 46 and 48** for the original Chinese versions of each of these documents respectively.

27. Customs and Border Protection observes that the GOC has identified that alleged subsidy program 14 (entitled *Tariff and VAT Exemptions for Imported Materials and Equipment*) ceased operation in 2000.

In its response to the GQ in the Aluminium Extrusions investigation (submitted in September 2009), the GOC identified a program with a similar title (*Program 13 - Exemption of tariff and import VAT for the imported technologies and equipment*), and advised it operated under the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment*.

The GOC further identified that part of that program ceased in 2008 and the other part was in operation at the time of submitting that response.

clarify this matter and provide complete responses to Questions D1.1 - D1.14 in relation to this program (if the GOC considers the program did cease in 2000, answer the questions in relation to this program when it was in operation in any case).

The only program that was relevant to this proceeding has been the one implemented pursuant to GuoFa [1997] #37. For the purposes of full cooperation, the GOC provides its response to the "program" under the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment* (GuoFa [1997] #37) as follows.

NON-CONFIDENTIAL

If the GOC considers the program identified within its response to the Aluminium Extrusions investigation is a separate program, answer questions D1.1 - D1.14 in relation to this program).

D1.1 Provide details of the program including the following.

(a) Policy objective and/or purpose of the program.

The policy objective of the program is to attract foreign investment and to encourage domestic investment, and the introduction of foreign advanced technology equipment and industry technology upgrades.

(a) Legislation under which the subsidy is granted.

Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment

(b) Nature or form of the subsidy.

Tariff duty and VAT exemption.

(c) When the program was established.

29 December 1997

(d) Duration of the subsidy program.

Exemption of tariff: 29 December 1997 - Present.

Exemption of VAT: 29 December 1997 - 31 December 2008

(e) How the program is administered and explain how it operates.

Qualified enterprises receive a certificate either directly from the National

NON-CONFIDENTIAL

NON-CONFIDENTIAL

Development and Reform Commission (NDRC) or its provincial branch depending on the scale of the enterprise and other factors including whether the project was reviewed by NDRC before business registration.

Enterprises present the certificates and other customs clearance documents to their local customs authorities in order to receive tariff and VAT exemptions on eligible equipment imports.

(f) To whom and how is the subsidy provided.

This program is available to all enterprises. FIEs are eligible if the project is covered under the preferential or restrictive-B categories of *Catalogue for the Guidance of the Foreign Investment Industries 2004* (now replaced by the *Catalogue for the Guidance of the Foreign Investment Industries 2007*) and domestic enterprises are eligible if the project falls within the *Current Catalogue of Key Industries, Products and Technologies The Development of Which is Encouraged by the State*.

Qualifying enterprises can be exempted from paying tariffs and/or VAT on purchases of selected imported equipment if it is for self-use and the equipment is not listed in the *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Domestic Invested Projects* or the *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects*.

(g) The eligibility criteria in order to receive benefits under the program.

- (a) Domestic enterprises – the equipment relating to the project concerned must be listed in the *Current Catalogue of Key Industries, Products and Technologies The Development of Which is Encouraged by the State*. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the domestic project. Finally, any equipment that is imported and listed in the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Domestic Invested Projects* is not eligible for exemption under this program.
- (b) Foreign invested enterprises – the equipment relating to the project concerned must align with projects listed in the "encouraged" category of the *Catalogue for the Guidance of the Foreign Investment Industries*. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the foreign project. Finally, any type of equipment that is imported and listed in the

NON-CONFIDENTIAL

Directory of Imported Commodities of Non-Tax Exemption to be Used in Foreign Invested Projects is not eligible for exemption under this program.

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

- *Circular of the State Council on Adjustment of Imported Equipment Taxation Policies* - **Attachment 161**
- *Catalogue for the Guidance of the Foreign Investment Industries 2004* - **Attachment 162**
- *Catalogue for the Guidance of the Foreign Investment Industries 2007* - **Attachment 163**
- *Catalogue of Key Industries, Products and Technologies The Development of Which is Encouraged by the State (2000)* - **Attachment 164**
- *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Domestic Invested Projects (2000)* - **Attachment 165**
- *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects (2002)* - **Attachment 166**
- *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects (2008)* - **Attachment 167**

D1.3 Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

D1.4 Identify the GOC department or agency administering the program.

Authority: National Development and Reform Commission
Address: 38 South Yuetan Street, Xicheng District, Beijing 100824
Authority: General Administration of Customs
Address: 6 Jianguomen Avenue, Dongcheng District, Beijing 100730

D1.5 Identify and explain the types of records maintained by the relevant government or governments (e.g., accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

Local authority keeps the payment document.

D1.6 Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the period of: 1 July 2001 to 30 June 2011.

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

The GOC has been able to determine that [CONFIDENTIAL TEXT DELETED] companies that responded to Australian Customs received and benefited from this program in 2001 and 2002 respectively. In the time available the GOC has not been able to determine whether any of the companies listed in the GOC's response to Question B3 applied for, accrued, or received benefits under the program during the POI.

D1.7 Answer the following questions regarding the application process:

- (a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

There are no application fees charged by the authority.

Please refer to **Attachment 168** for a blank copy of an application form. This form is used for both FIE and domestic enterprise applications.

- (b) After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

The competent authority examines the application forms submitted by enterprises. Applications are approved or denied based upon whether the applicants have adequately documented both the project eligibility and the imported article eligibility under the program. If the application is in order, it will be approved and the applicant

NON-CONFIDENTIAL

Public
File 24

will receive a certificate.

- (c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the application is approved, it means that the applicant has satisfied the relevant eligibility criteria.

There are no specific approval documents.

- (d) If the application is disapproved, provide the disapproval documents together with the reasons for disapproval.

If the application is denied it is because the applicant did not satisfy the relevant eligibility criteria.

There are no specific disapproval documents.

D1.8 Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

This program is not contingent on export performance

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

This program is not contingent on the use of domestic over imported goods.

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

NON-CONFIDENTIAL

NON-CONFIDENTIAL

Public
File 23

This program is not limited to particular designated regions.

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

Eligibility for this program is not limited to any particular enterprise, group of enterprises or to any industry or group of industries.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

- (a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws.

- (b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

- (c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant meets the eligibility criteria discussed above the applicant will receive the certificate from NDRC, no further discretion is exercised by the administering agency.

Upon presentation of an NDRC issued certificate Customs will make a decision on whether the enterprises may receive the benefit.

- (d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official

NON-CONFIDENTIAL

NON-CONFIDENTIAL

Public
File 22

document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required

- (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

This is a tax reduction relief program established by the laws and regulations or other official documents and there is no contractual agreement between the Government of China and the companies that are receiving the benefits.

- D1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

- D1.11** Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

- D1.12** How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of years from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

- D1.13** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from from 1 July 2007 to 30 June 2011?

NON-CONFIDENTIAL

NON-CONFIDENTIAL

Public
File 21

Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

- D1.14** Describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

No changes are currently anticipated to the tariff exemptions, which continue in operation.

Exemption of VAT was terminated on 1 January 2009. The last day that a company could receive benefits under this program was 31 December 2008. **Attachment 169** provides a copy of the relevant notification.

- 28.** In its response to Section D of the GQ, the GOC has been unable to identify a program identified by Customs and Border Protection as the *Special Support Fund for Non State-owned Enterprises*.

During its investigations into Aluminium Extrusions, Customs and Border Protection found evidence of this program in Yunnan Province online at http://www.ynppb.gov.cn/bofcom_cn/5189555245125992448/20061114/83873.html.

With this in mind, could the GOC conduct further research and answer Questions D1.1 - D1.4 in relation to this program.

GOC confirms that none of the respondents had applied for, or received or benefited from any program of this kind anywhere in their localities (provinces, municipality or county) respectively, therefore, the GOC submits that this question is not relevant to this proceeding.

- 29.** At its response to Question D2.8(a) of the GQ, the GOC identifies that the 'system for the administration and supervision of State-owned assets' is a system 'designed to ensure and achieve safety and operation of state-owned assets'.

The GOC further identifies that SASAC of each level of government is the main body of implementation of this system.

- (a) Describe this system in detail including what form it takes, how it is administered, and how it is monitored.

NON-CONFIDENTIAL

First, supervision separately on each level and management is one of the main characteristics of the system for the administration and supervision of State-owned assets.

The government of a province, autonomous region or municipality, autonomous region or municipality where State-owned assets are trivial in amount need not establish a separate State-owned assets supervision and administration authority ("SASAA" for the purposes of this answer). Subject to that, the State Council; the government of a province, autonomous region or municipality; or the government at the level of a city or of an autonomous prefecture divided into districts, may establish a SASAA. This is a special entity directly subordinated to the relevant government, and is different from other departments under the same government. SASAAs are to perform their duties as investors in the relevant enterprises in accordance with the laws.

Secondly, SASAAs are specially established and are substantially different from the functional "departments" of the government. Under the system for the administration and supervision of State-owned assets, the mission of a SASAA is simple and unique. They must only perform investor's duties in accordance with the policy of separating the public administration function of government from that of investors of State-owned assets. They must perform investor's duties in proportion to the state-owned assets in the enterprise, and are not responsible for any public administration function.

Thirdly, in consideration that the specific government officials or entities are needed and entrusted to implement the state-owned assets supervision and administration, the SASAA shall establish some specific systems in order to perform the investors' duties and to safeguard the state-owned assets better, such as property rights management system and finance supervision system of state-owned assets, board of supervisors system, board of directors system of wholly state-owned enterprises, evaluation and assessment system of state-owned enterprises, accountability system, etc.

Fourthly, state-owned assets supervision and administration systems include an approval and examination system for major matters. In particular, the authorities that perform the investor's duties shall report major matters to the government at the same level for approval, such as matters regarding the restructuring of SIEs to non-SIEs; any altered legal form proposed for the enterprise; or any change in status of the majority shareholders by state in any state-owned enterprises (for instance, merger, dissolution, application for bankruptcy and etc.).

It must be noted that the number of enterprises in which the State SASAC actually does choose to actively and directly perform its capital contributor's role is limited.

According to SAIC, by the end of 2008, there were about 568,000 SIEs in China. Of those, the State SASAC directly performed its capital contributor's role in less than 150 SIEs, or 0.026%. Local SASAAs may perform the capital contributor's role where the State SASAC does not do so, however the GOC does not believe that the number of SIEs in which local SASAA's exercise this overview is large, and the number certainly would not have any significant effect on the percentage mentioned.

In other words, in most SIEs SASAC or SASAAs do not directly perform the role of capital contributor.

(b) Explain what is meant by 'ensure and achieve safety and operation of state-owned assets'.

From the view of the Company Law, any rational and normal investor (shareholder) will act to ensure and achieve safety, operation, value maintenance and increment of the assets generated from their investments. Similarly, a state-owned assets supervision and administration authority will perform the investors' function on behalf of the State to its best capacity to ensure and achieve safety, operation, value maintenance and incremental growth of State-owned assets in SIEs.

Regarding how to "ensure and achieve safety and operation of state-owned assets", please refer to the GOC's response to Question 29(a).

30. In its response to D2.8(b), the GOC identifies that the system of administration and supervision 'requires the capital contributor to supervise the safety of State asset while requesting the enterprises with State investment be responsible for their own profit and loss'.

(a) How does the capital contributor 'supervise the safety of state assets'?

Please refer to the GOC's response to Question 29.

(b) What form do these 'requests' to be responsible for profits take? What are the repercussions for not adhering to these requests?

The State-owned assets supervision and administration system does not have a special requirement on SIE profits beyond those prescribed in relevant laws, such as the *Company Law*. SASAC may act the same way as other shareholders, and benefit in the same way as other shareholders, under the relevant laws.

The concept of "requesting the enterprises with State investment be responsible for their own profit and loss" emphasizes the independent operation rights of SIEs, and that the enterprise shall make profits by its own independent decisions and by using its own legal property, and shall bear losses independently as well, avoiding either reliance on or intervention by governments at all levels. In general, under the context of the Company Law, *"be[ing] responsible for their own profit and loss"* is something that any company must understand and acknowledge.

Regardless of having state capital contribution or not, a company, as an independent legal person, must operate independently and be responsible for its own profit and loss with its independent legal property in accordance with the Company Law. Its directors, supervisors, and senior officers owe fiduciary duties to the company and must exercise due diligence in carrying out those duties. In the event a director, supervisor or senior officer causing detriment to the company while performing his or her duties in violation of these duties, he or she shall be liable for the loss so caused.

Even Article 6 of the *Law on the State-Owned Assets of the Enterprises* states the policy that State capital contributed enterprises shall operate independently and shall not be intervened by the government at any levels. Article 26 of this Law states that the directors, supervisors, and senior officers of State-owned enterprises have fiduciary duties and duties of due diligence, and that they must not cause detriment to the rights and interests of other investors. In the event these personnel fail to perform their duties and functions and cause significant detriment to the value of the State share in an SIE they shall be liable for the loss so caused.

31. Attachment 132 of the GOC's response to the questionnaire (the Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises) makes mention of the Regulations of the Supervision and Administration of State-owned Assets of Enterprises. Provide a copy of these regulations.

Please refer to **Attachment 170** – *Regulations of the Supervision and Administration of State-owned Assets of Enterprises*

32. The following questions relate to the GOC's Attachment 160 to the GQ, the *Standard Conditions on Production and Operation of the Iron and Steel Industry*.
- (a) The GOC appears to have only partially translated Attachment 160 and has not provided the original Chinese version of this document.
 - i. Provide the original Chinese document of this attachment and a full English translation.

Please see **Attachment 160**

- ii. indicate the date of this document.

21 June 2010

- iii. What is the purpose of this document?

Relevant departments are required to improve policy management of the iron and steel industry, to provide the basic conditions and standard that enterprises are required to meet, in the aspects of product standard, environmental impact, and OH&S. It aims to provide an industrial standard for the iron and steel industry which can facilitate the exit of high polluting, low efficiency capacities.

- iv. How has it been implemented, monitored, and its success/failure evaluated?

Relevant departments announce the list of enterprises that are meeting the Standard Conditions in the form of announcement, and exercise social supervision and dynamic management. Relevant departments conduct selective examination on the announced enterprises at the same time.

Enterprises failing to meet the Standard Conditions shall be reformed in accordance with the Standard Conditions. Where the enterprises still fails to meet the Standard Conditions, it shall exit from the steel production gradually.

It is however important to recall that policies such as this are not "self-executing" or "forced" on to enterprises without legal justification. For example, a policy such as that reflected in Section IV.F of **Attachment 160** can be implemented through provisions such as Article 19 of the *Law of Air Pollution Prevention and Remedy* – see **Attachment 171** The reflection of policy in laws is a normal aspect of implementing environmental or other social goals.

- v. Explain what are the potential outcomes or repercussions for enterprises that do not adhere to the conditions set out in the document.

The potential outcomes or repercussions for enterprises that do not adhere to laws which reflect the conditions set out in the document – either as new entrants or existing producers - will be that there application will be refused or their continued

operation will be strongly policed by the relevant authorities for compliance with those laws.

- (b) Attachment 160 refers to the *Steel and Iron Industry Development Policy*, the *Steel and Iron Industry Restructuring and Revitalisation Plan* and the *Directory Catalogue on Readjustment of Industrial Structure*.

confirm that these refer to Attachment A1, A12 and A6 respectively.

These refer to **Attachments A1, A12, A6-1 and A6-2** respectively.

- (c) Attachment 160 refers to "Several Opinions of General Office of the State Council on Further Strengthening Energy Conservation and Reducing Discharge and Accelerating Industrial Structure Adjustment of Iron and Steel Industry" (Guo Ban Fa [2010] No.34).

Provide a copy of this document in English, along with its original Chinese version.

Please refer to **Attachment 172**.

33. Appendix A to the GQ, the GOC has advised that it has not attached the requested document A34 ('*State Will Adjust Tariff Rates from June 1 to Control the Export of High-Energy Consumption Products*').

The GOC Has advised that it does not consider this document relevant to the investigation.

- (a) Explain why this document is not considered relevant to the investigation.

This is not an official document. Therefore, this document is not considered relevant to the GOC's questionnaire.

- (b) Provide the original Chinese version of the document.

This document is not an official GOC document, and the GOC does not have this document in archive. It is therefore unable to provide an original Chinese version of the document.

32. The GOC has provided the Directory Catalogue on Readjustment of Industrial Structure as its Attachment A-6.2.

(a) It appears as though this document has only been partially translated (with the GOC focussing on the translation of the Iron & Steel sections of the catalogue, though these appear to only be partially translated).

Provide a full translation of the following sections of this catalogue:

Parts of the documents originally requested were not provided, on the basis of their perceived lack of relevance coupled with the large volume of information and translations required. The GOC is however fully ready to now provide the complete documentation as requested by Customs.

- i. I(8) Iron and Steel Encouraged Investment Industries

Please refer to **Attachment 173**.

- ii. I(3) Coal Encouraged Investment industries

Please refer to **Attachment 173**.

- iii. II(2) Coal Restricted Investment Industries

Please refer to **Attachment 173**.

- iv. II(6) Iron and Steel Restricted Investment Industries

Please refer to **Attachment 173**.

- v. III(I)(2) Coal Eliminated investment industries

Please refer to **Attachment 173**.

vi. III(I)(5) Steel Eliminated Investment Industries

Please refer to **Attachment 173**.

vii. III(II)(3) Steel eliminated investments industries

Please refer to **Attachment 173**.

(b) Explain what is meant by 'encouraged', 'restricted', or 'eliminated' investment industries, as listed within Attachment A6.2. Include information that describes:

i. what each classification means;

The encouraged category mainly includes the key technologies, equipment and products which are conducive to resource saving, environmental protection, and optimization and upgrading of the industrial structure.

The restricted category mainly includes those not conforming to the conditions for industry entry, being unconducive to work safety; being unconducive to environmental protection or recovery of the ecological system; or being under conditions of serious low-level redundant construction.

The eliminated category mainly includes the out-dated techniques, equipment and products which do not conform to the relevant laws and regulations, seriously waste resources, pollute environment, and/or do not meet acceptable work safety conditions.

The GOC points out that the Directory Catalogue is not a document which exists in isolation from Chinese law. The Directory Catalogue is in the nature of a regulation which carries out the requirements of the environmental laws of China.

These laws are ultimately general in their nature and do not discriminate between one industry or another on an economic basis. For example we refer to the following Articles:

- Articles 29 and 38 to 43 of the *Law of Environmental Protection*;
- Articles 69 to 72 of the *Law of Solid Waste Pollution Prevention*;
- Articles 70 to 77 of the *Law of Water Pollution Prevention*;

- Articles 68 to 72, among others, of the *Law of Energy Saving*;
- Articles 18 and 50, among others, of the *Law of Recycling Economy Promotion*.

The GOC defends its right to legislate for the protection of its environment and the health of its people. The Directory Catalogue is not an instrument of industry intervention with the commercial intention of making Chinese industries the most competitive in the world or of forcing the industry to conduct its business as dictated by the GOC. It is a regulatory document which articulates how environmental laws are to be applied.

- ii. what are the consequences/benefits to industries characted in each of these groups; and

First of all, HSS and relevant raw materials (hot rolled sheet and hot rolled narrow strip) industry are not mentioned in the "encouraged" category, therefore information about the encouraged category would not appear to be relevant to this investigation. However, for the purposes of full cooperation, the GOC states that "encouraged" investment projects shall be filed with relevant authority in accordance with the relevant provisions of the State on investment administration. The encouraged category enjoys some corresponding preferential treatment with regard to imported equipment.

Investments are prohibited for projects under the "restricted" or "eliminated" categories. Relevant departments shall supervise projects of the eliminated category to exit the industry within the prescribed time limit in accordance with law.

The specific industrial process or product that Customs considers to be relevant to this proceeding – "1450 mm or less hot rolled strip (excluding special steel)" - is on the "eliminated" category list.

Please see **Attachment 173** regarding steel facility, industrial process of eliminated category.

- iii. what different treatment (if any) enterprises within these groups receive in comparison with industries not on the catalogue by the GOC, its departments or agencies (e.g. are development approvals denied for eliminated industries, are encouraged industries granted preferential treatment and/or assistance etc.).

Please refer to the GOC's response to question 32-2(b)ii.

33. The following questions relate to Attachment A12 of the GQ, the *Blueprint for Steel Industry Adjustment and Revitalization*.

- (a) What is the purpose of this document (Attachment A12)? Which agency is responsible for its development, implementation and monitoring?

"A *Blueprint for Steel Industry Adjustment and Revitalization*" illustrates that the purpose of this document is to cope with the impact of international financial crisis on the national economy, ensure stable operation of steel industry, accelerate structural adjustment, and facilitate industrial upgrading, this blueprint is hereby formulated as an comprehensive action plan of measures for the steel industry to deal with the current situation'. NDRC in cooperation with other departments are to develop, implement and monitor its performance.

- (b) Within Attachment A12 it is stated that an aim is to 'Improve the import and export environment of steel products, implement appropriate and facile export tax policy, stabilize international market share, and encourage indirect steel export.'

It is unclear what this statement means. Detail what is meant by this statement, including identifying what is meant by 'facile export tax policy'.

The GOC believes the meaning of this statement is clear, which was to stabilize the export market of Chinese merchandise, so as to contribute to stabilize the whole Chinese economy under the conditions of economic crisis which were then in existence. The phrase "facile export tax policy" refers to "flexible export duty and tax policies" in dealing with the impact from the financial crisis in the short run.

- (c) Within Attachment A12 it is stated that:

Industrial association and chamber of commerce shall help to build market orders with more self-discipline, by seizing the recession of current market, coordinate domestic consumers and iron ore providers, and build import pricing mechanism and long-term stabilized partnership which benefits both parties. Build steel product sales system with risk-shared mechanism and exert the adjusting function of circulation channels to the steel market stabilization.

- i. What associations or chambers of commerce are intended to be referred to here?

The China Iron and Steel Industry Association and relevant chamber of commerce

are being referred to.

- ii. What 'import pricing mechanism' has been built?

This is in the nature of advice. To the best of GOC's knowledge, there is no detailed progress in implementation of this advice.

- iii. Describe this mechanism in detail (including the rationale behind it, what form it takes, how it is administered, monitored, enforced, etc).

Please refer to the GOC's response to question ii above.

- iv. What 'steel product sales system' exists? Provide a detailed explanation of this system. What is the rationale for this system?

Please refer to the GOC's response to question ii above.

- v. What 'risk-shared mechanism' has been built? Provide a detailed description. What is the rationale for this mechanism?

Please refer to the GOC's response to question ii above.

- vi. How has the GOC exerted the 'adjusting function of circulation channels to the steel market stabilization'? Describe what is meant by this statement. Describe the rationale behind this exertion of influence.

Please refer to the GOC's response to question ii above.

- (d) Attachment A12 states an aim to Continue on policy orientation of controlling export of "two high, one resource" and low value-added goods.

What is meant by 'two high, one resource'?

High emission, high energy consumption, resource commodities is meant.

34. Attachment 32 of the GQ, the *Notice for the Adjustment of The Catalogue of Export Products Subject to Price Review by Customs*, makes reference to the fact that 'Export products subject to price review by customs after adjustments will be 30 categories.'

- (a) Provide a complete listing of these categories, and detail any sub-categories that relate to HSS, steel, or any steel raw materials.

First, the GOC would point out that none of the 30 products in the complete listing of these categories includes or relates to HSS, steel, or any steel raw materials. Therefore, the GOC submits that this document is not relevant to these proceedings.

Second, the *Notice for the Adjustment of the Catalogue of Export Products Subject to Price Review by Customs* referred to in **Attachment 174** and its attached categories were pronounced null and void on 16 August 2010. Although this Notice and its attached categories are still effective to the investigation from 1 July to 16 August 2010, the GOC does not consider that the six weeks or so can have a relevant influence on this investigation.

This Notice has become null and void in accordance with *MOFCOM and General Administration of Customs Notice on Abolishing Two Documents Concerning Export Products Subject to Price Review by Customs*, referred to in **Attachment 175**.

- (b) Explain the purpose of this price monitoring, what form it took, and how it was administered.

Please refer to the GOC's response to Question 34(a).

- (c) The GOC's Appendix A response to the GQ notes that Attachment A32 was terminated in 2010.

- i. Has any document replaced it?

No.

- ii. Provide a copy of any such replacement.

Not applicable.

- iii. Did the price monitoring system cease as well in 2010, or did it continue (in any form)?

This specific price monitoring system ceased in 2010.

- iv. If so, provide details of the categories of goods subject to the system following 2010, highlighting whether any HSS, steel, or steel raw materials, were subject to this price review.

Not applicable.

35. Attachment A35 to the GQ (the *Notice of the State Council on Printing and Issuing General Work Plan for Energy Conservation and Pollutant Discharge Reduction*) states the aim to eliminate 'backward production capacity'.

Advise what is meant by 'backward production capacity' in this context.

"Backward production capacity" means the out-dated techniques, equipment and products which do not conform to the relevant laws and regulations; which seriously waste resources; which pollute the environment; or which do not meet work safety conditions (same as those in the "eliminated category").

36. Attachment A44 (the *Announcing 2010 Export Licensing Management Commodities List*) notes at I(i):

Goods subject to export quota: Corn. Rice. Wheat Coal. Coke.....

The document further notes at II(III):

Corn, rice...coal...are subject to state-owned trade management.

- (a) Provide details on the export quota on coal including its size, any documents that provide for this quota, its purpose, and the date(s) of operation of the quota (noting that the GOC's response to C3.5 states 'An export quota was placed on coke between 2008 and 2010. All other products listed in C3.2(a) have not been subject to any export restrictions).

GOC responds to this question assuming that Australian Customs is questioning a follow-up question relating to the GOC's response to C3.5 in the GQ which states "An export quota was placed on **coke** between 2008 and 2010". Exporter quota

restrictions on coke imposed by China were [CONFIDENTIAL TEXT DELETED] in 2010 and 2011 respectively. Please see the GOC's response to question 25(b).

For the document that provides for this quota, please refer to **Attachment 44**. The purpose of this quota is to avoid over-investment in the high polluting sector of coke production.

(b) Explain in detail what is meant by 'state-owned trade management'?

"State-owned trade management" is State trading. Under Article 11 of the *Foreign Trade Law*, the goods subject to this trading regime may in general only be traded by some licensed enterprises, which are not necessarily SIEs or SOEs. A certain quantity of the subject goods may also be traded by enterprises which are not licensed.

37. Define what is meant by the term 'collective controlled company' and/or 'collective-owned enterprise' (where the two differ). Are these entities in any way owned by the GOC?

"Collective controlled company" and "collective-owned enterprise" are different concepts.

"Collective-owned enterprise" includes "urban collective-owned enterprise" and "rural collective-owned enterprise". An urban collective-owned enterprise is an economic organization, the property of which is collective-owned by workers therein working together, with the income or profits distributed on the basis of working contribution. A rural collective-owned enterprise is an enterprise collectively organized by the farmers of that enterprise, excluding agricultural cooperatives, rural supply and marketing cooperatives or rural credit cooperatives.

The assets of these two kinds of collective-owned enterprises are owned collectively. Collective ownership and State ownership are two independent definitions and do not overlap. In this regard please refer to Article 5 of the Property Law in **Attachment 130**. Collective-owned enterprises are not owned by the GOC in any way.

A "collective controlled company" is a mixed investment enterprise controlled by two kinds of collective-owned enterprises abovementioned. There may be individual capital contribution, private enterprise capital contribution, foreign investment, state capital contribution and other diversified assets forms existing in a collective controlled enterprise.

38. Provide copies of the following documents:

- (a) Notice of Further Strengthen the Elimination of Backward Production Capacity (state Council 2010)

Please refer to **Attachment 176**.

- (b) Notice on Introduction Plan for Clean Producing Technologies in Seventeen Major Industries (MIIT, 2010)

Please refer to **Attachment 177**.

- (c) Guidance of Energy Saving and Emission Reduction in Steel Industry (MIIT 2010)

Please refer to **Attachment 178**.

- (d) Some Opinions on Further Strengthening Energy Saving and emission reduction and Speeding up Structural adjustment of steel industry' (State Council 2010)

Please refer to **Attachment 172**.

- (e) Production and Management Norm for Steel Industry (MIIT, 2010)

Please refer to **Attachment 160**.

- (f) Notice on withdrawal of export tax rebate for some commodities (Ministry of Finance, June22 2010)

Please refer to **Attachment 151**.

39. Answer Question D1.6 of the GQ for alleged subsidy programs 3, 4, 6, 7, 8, 9, 11, 12, 15, 17, 18 and 19 for the period 1 July 2001 – 30 June 2010:

The GOC confirms non-usage by respondents of all the programs for the period of 2001-2011, except where expressly stated otherwise.

This confirmation is based on the definitions of the programs in the GOC's response to the GQ. These definitions were necessarily adopted by the GOC because of a lack of legal basis cited by the applicant for many of the alleged programs, and the need to have a frame of reference for the GOC's inquiries of the various governments, authorities and other interested parties in China.

40. Advise whether the GOC's response to D1.6 in relation to Program 4, is a complete account of the GOC's knowledge of all entities that received the alleged program from 1 July 2001 - 30 June 2011. If not, provide a complete listing of such entities.

Yes, it is.

41. Advise whether the GOC's response to D1.6 in relation to Program 5, is a complete account of the GOC's knowledge of all entities that received the alleged program from 1 July 2001 - 30 June 2011. If not, provide a complete listing of such entities.

GOC confirms that [CONFIDENTIAL TEXT DELETED] under this program in 2005.

42. Confirm whether the GOC's response to D1.6 relates specifically to those companies the GOC has identified as responding to the investigation.

Yes, this is confirmed.

43. Customs and Border Protection observes that the GOC has identified the following two programs at Section D of the GQ:

- the *One-Time Awards to Enterprises Whose Products Qualify for 'Well-known Trademarks of China' and 'Famous Brands of China'* (Program 2); and
- the *Special Fund for Developing Trade Through Science and Technology of Guangdong Province* (Program 3); and

NON-CONFIDENTIAL

Public
File 5

The GOC has identified that these program ceased operation in 2009 and has since provided limited responses in relation to these programs in its response to Section D as a result.

Customs and Border Protection considers it possible that HSS exporters benefited from these programs during the investigation period.

Provide detailed responses to Questionsd1.1 - D1.14 in relation to these programs that identify how the programs operated when in operation.

Please refer to the GOC's response in relation to Programs 2 and 3 in the GQ in this matter.

NON-CONFIDENTIAL

LIST OF ATTACHMENTS

Question	Name	No.
Q2	<i>Top 15 HSS producers Total production of top 15 HSS producers [CONFIDENTIAL]</i>	136.
Q4	<i>Top HRS producers [CONFIDENTIAL]</i>	137.
Q4	<i>2010 Hot Rolled Narrow Strip Production by Ownership ; 2011 first half year Hot Rolled Narrow Strip Production by Ownership [CONFIDENTIAL]</i>	138.
Q4	<i>Top 15 HRS producers Total production of top 15 HRS producers [CONFIDENTIAL]</i>	139.
Q5	<i>Respondents list [CONFIDENTIAL]</i>	140.
Q6	<i>Export data of coke, coal and iron ore [CONFIDENTIAL]</i>	141.
Q7	<i>Decision of the Standing Committee of the National People's Congress on Amending Some Laws</i>	142.
Q10	<i>National 12th Five-Year Plan</i>	143.
Q10	<i>12th Five-Year Plan of Iron and Steel Industry</i>	144.
Q10	<i>11th Local FYP Tianjin</i>	145.
Q10	<i>11th Local FYP Shandong</i>	146.
Q10	<i>11th Local FYP Hebei</i>	147.
Q10	<i>11th Local FYP Jilin</i>	148.
Q13	<i>CPC Constitution 2007</i>	149.
Q15	<i>Curbing Overcapacity and Redundant Construction and Guiding the Sound Development</i>	150.
Q16	<i>Notice of scrapping export tax rebate rate on some commodities</i>	151.
Q16	<i>Notice of raising export tax rebate rate on some textile and electronic information etc. commodities</i>	152.
Q18	<i>Monitoring Report System for Price of National Important Consumption Goods</i>	153.
Q18	<i>Specific Monitoring Report System on National Steel Market</i>	154.

Q 19	<i>Schedule of products subject to VAT Rebate 2006-2011-EN (revised)</i>	155.
Q22	<i>Schedule of products subject to export duty 2006-2011-EN (revised)</i>	156.
Q22	<i>Schedule of products subject to import duty 2006-2011-EN (revised)</i>	157.
Q24	<i>Notice Regarding Declaration Conditions and Procedure of 2009 Trade Coke Export Quota</i>	44
Q24	<i>Regulation of the People's republic of China on the Administration of the Import and Export of Goods</i>	158.
Q24	<i>Admittance condition of coking industry</i>	159.
Q24	<i>Standard Conditions on Production and Operation of the Iron and Steel Industry</i>	160.
Q26	<i>Notice Regarding Passing Down the 2009 Export Quota of manufactured goods for Foreign Invested Enterprises of Ministry of Commerce</i>	45
Q26	<i>Notice Regarding Passing Down the 2009 Second Batch Export Quota of Coke and Rare Earth for Foreign Invested Enterprises of Ministry of Commerce</i>	46
Q26	<i>Notice Regarding Passing Down the 2010 First Batch Regular Trade Coke Export Quota</i>	48
Q27	<i>Circular on Adjustment in the Taxation Policy of Import Equipment</i>	161.
Q27	<i>Catalogue for the Guidance of the Foreign Investment Industries 2004</i>	162.
Q27	<i>Catalogue on the Guidance of the Foreign Investment Industries 2007</i>	163.
Q27	<i>Catalogue of Encouraged Industries, Products and Technologies</i>	164.
Q27	<i>Directory of Non-Exempt Imported Commodities for Domestic Projects</i>	165.
Q27	<i>Directory of Non-Exempt Imported Commodities for Foreign Projects 2002</i>	166.
Q27	<i>Directory of Non-Exempt Imported Commodities for Foreign Projects 2008</i>	167.

NON-CONFIDENTIAL**Public
File 2**

Q27	<i>Tariff & VAT Exemption Application Form</i>	168.
Q27	<i>Notification of Cancellation of VAT Exemption</i>	169.
Q31	<i>Regulations of the Supervision and Administration of State-owned Assets of Enterprises</i>	170.
Q32-1	<i>Law on Air Pollution Prevention and Remedy</i>	171.
Q32-1	<i>Several Opinions of General Office of the State Council on Further Strengthening Energy Conservation and Reducing Discharge and Accelerating Industrial Structure Adjustment of Iron and Steel Industry</i>	172.
Q32-2	<i>Directory Catalogue on Readjustment of Industrial Structure</i>	173.
Q34	<i>Notice for the Adjustment of The Catalogue of Export Products Subject to Price Review by Customs</i>	174.
Q34	<i>MOFCOM and General Administration of Customs Notice on Abolishing Two Documents Concerning Export Products Subject to Price Review by Customs</i>	175.
Q38	<i>Notice of Further Strengthen the Elimination of Backward Production Capacity</i>	176.
Q38	<i>Notice on Introduction Plan for Clean Producing Technologies in Seventeen Major Industries</i>	177.
Q38	<i>Guidance of Energy Saving and Emission Reduction in Steel Industry</i>	178.

NON-CONFIDENTIAL

NON-CONFIDENTIAL

Public
File 1

DECLARATION

DECLARATION

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

March 1, 2012
Date

Wu Dan
Signature of authorised official

Wu Dan
Name of authorised official

First Secretary
Title of authorised official

NON-CONFIDENTIAL