

## CATEGORY ONE: PROVISION OF GOODS

### **Program 1: Billet provided by government at less than adequate remuneration**

The applicant contends that Chinese exporters of iron ore railway wheels have received benefits from the provision of raw material in the form of steel billet (billet) by the Government of China (GOC) at less than adequate remuneration.

Comsteel considers that billet use in the manufacture of ingots is a key raw material input in railway wheel manufacture and is produced and supplied by State Invested Enterprises (SIEs) in China at less than adequate remuneration.

The exporter of the goods the subject of the application is an integrated steel and railway wheel manufacturer. Maanshan Iron and Steel Company Limited (“Maanshan”) produces steel used in the manufacture of billet.

Maanshan is a State-Owned (Invested) Enterprise<sup>1</sup> (SIE) ranked as the seventh largest steel company in China. The company is an integrated iron and steel producer that primarily involves iron-making, steel-making and steel-rolling projects. The Company’s principal products fall within four categories: steel plates, section steel, wire rods and train wheels.

The level of integration for Maanshan is demonstrated below.

<b>Exporter</b>	<b>Business Activities</b>	<b>Ownership</b>
Maanshan Iron & Steel Company	Iron and steel making, with 17.7 million tonnes of steel in 2016; cold-rolled steel 4.8 million tonnes and hot-rolled steel 12.8 million tonnes that are used in long products and steel plates; wheels and axles 142,000 tonnes;	Ma Steel Rail Transportation Equipment Co., Ltd is 100 per cent owned by Maanshan. Ma Steel Rail manufactures freight car wheel axles, passenger car wheel axle, urban rail traffic wheel axle, high speed CHR unit wheel axle and locomotive wheel axle, including R&D, manufacturing, sales and related technical consulting service.
		At less than

Comsteel asserts that the exporter Maanshan is an integrated SIE that produces iron ore railway wheels that benefits from a financial contribution that is received in the form of raw material billet at less than adequate remuneration. The benefit received constitutes a countervailable subsidy.

The benefit received by Maanshan is equal to the amount of the difference between the transfer price for the billet by Maanshan and traded billet on domestic markets at adequate remuneration.

As Maanshan is a vertically integrated producer, the financial benefit received by the company from low-priced input billet (under Program One – Billet at less than adequate remuneration) confers a benefit in relation to the railway wheels manufactured by the company. The financial contribution received would meet the definition of the subsidy under Section 269T.

### Legal basis

Comsteel notes from earlier applications involving exports of Chinese steel products (most notably rod in coil and reinforcing bar) the Australian industry noted that in 2013, nine of the top ten steel companies in China (in terms of crude steel production) “were SIEs accounting for 39.4% of the total Chinese crude steel production. Of the nine companies identified to be SIEs, all produce steel billet

<sup>1</sup> Refer MASTeel 2016 Annual Report, P. 60.

and/or rod in coils themselves or through their subsidiaries.” The SIEs actively implement the GOC’s objectives including the aims and objectives detailed in the Steel Industry’s most recent Five-Year Plan. The GOC has categorized the steel industry as a “pillar” industry in which it maintains a level of influence through a high proportion of ownership in key enterprises (e.g. as demonstrated by SASAC’s 100 per cent capital ownership of Maanshan (Group) Holding Company Limited, which in turn owns 45.54% of the Maanshan Iron & Steel Company Limited – refer P.60 of MASTeel 2016 Annual Report).

#### WTO Notification

Comsteel is not aware of any WTO notification in respect of this subsidy program.

#### Eligibility Criteria

Comsteel is unaware of any published criteria for enterprises receiving billet at less than adequate remuneration.

#### A Public Body

For this program to be considered to be a ‘subsidy’ the financial contribution must be from a government, public body, or private body entrusted to carry out governmental functions. As noted above, it is Comsteel’s contention that SIEs are public bodies (for the purposes of section 269T). In reaching this conclusion, the Australian industry points to the Appellate Body Report in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)*, where the Appellate Body provided guidance as to how an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority)<sup>2</sup>:

- *Indicia 1* – where a statute or other legal instrument expressly vests government authority in the entity concerned;
- *Indicia 2* – whether there is evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with government authority; and
- *Indicia 3* – where there is evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of the governmental functions.

As indicated, Maanshan Iron and Steel is ultimately controlled by China’s State-owned Supervision and Administration People’s Government of Anhui Provincial Government (i.e a body within SASAC) and is subject to the *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) for the appointment and selection of responsible persons.

The role of SASAC as detailed in the MASTeel annual report confirms that the GOC exercises meaningful control over the producer and serves as evidence that the GOC exercises meaningful control over the SIE iron and steel producers that manufacture steel billet. These entities (including Maanshan Iron and Steel) therefore are subject to governmental authority and must be considered a public body.

#### A countervailable subsidy (specific or prohibited)

Paragraph 269TAAC(4)(a) provides that the Minister may determine a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of enterprises.

As billet is one of the key inputs in the manufacture of railway wheels it is evident that manufacturers engaged in the production of these goods (and other products manufactured from billet) would benefit

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<sup>2</sup> Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/A8/R, adopted 11 March 2011, P. 318.

from the provision of the input by the GOC at less than adequate remuneration.

The subsidy is therefore determined to be specific and countervailable.

#### Amount of subsidy

In determining the amount of the subsidy that can be attributed to the cost of billet in China, Comsteel considers it is relevant to consider external benchmarks to China (as per investigations 322 and 331). In Final Reports 322 and 331 the Commission concluded that Chinese exporters that manufacture their own billet can receive a benefit if they themselves are a public body. Maanshan Iron and Steel is a public body and it is therefore concluded that it is receiving a benefit in billet provided at less than adequate remuneration.

In the Reports 322 and 331 the Commission considered the following factors when assessing the benefit<sup>3</sup>:

- The cooperating bodies were found to be SIEs;
- The SIE has purchased coking coal at LTAR from another SIE. That coking coal was used to produce coke to use in the production of billet;
- The SIE also purchased coke from another SIE for LTAR, for the production of the billet;
- The benefit of the purchase of raw materials from an SIE for LTAR is specific to the production of the billet;
- The billet supplied by the SIE to itself is a benefit from a public body. The benefit arises from the SIEs ability to produce the billet with raw material inputs purchased from other SIEs at LTAR, and those raw materials being further processed to billet which was used in the production of inter alia RIC and rebar for LTAR based on benchmark prices;
- The Commission has determined that the benefit conferred on the SIE extends to the production of billet rather than just the purchase of the raw materials to make the billet, as the SIE itself receives additional government support to produce the billet. This support is for the increase in steelmaking capacity through increasing blast furnace capacity. This is specific to the iron and steel industries as well as to RIC and rebar manufacturers and integrated producers specifically;
- If the SIE was to sell the billet to another entity, the Commission would consider this to be a countervailable subsidy at the billet level rather than the raw material input. As such, the Commission considers that the supply of the billet at LTAR by the SIE to itself is also a countervailable subsidy for the purpose of calculating a subsidy margin.
- If the integrated producer was a private entity, the purchase of the raw materials at LTAR from a public body would confer the benefit, rather than the supply of billet by the private body back to itself. This is due to the fact that the production of the billet is not supported by a public body, just the raw material inputs.

#### *Benchmark*

In Reports 322 and 331, the Commission selected a Latin American export billet price as the benchmark for determining Chinese billet at less than adequate remuneration.

Comsteel does not consider that there has been any difference in the findings as published in Reports 322 and 331 in late 2016. Comsteel does not have access to Latin American traded billet prices, and therefore can not demonstrate the full margin of steel billet in China at less than adequate remuneration. Comsteel does not consider that the differential determined by the Commission during investigations 322 and 331 will have changed during 2017, and the finding of steel billet at less than adequate remuneration continues to apply in 2017.

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<sup>3</sup> Report No. 322, Steel Reinforcing Bar exported from China, P.74.