



Government Questionnaire
People's Republic of China



中华人民共和国商务部
Ministry of Commerce of the People's Republic of China

Product: Railway wheels
From: People's Republic of China
Period of Investigation: 1 January to 30 December 2017
Response due by: 25 May 2018

Extended to 11 June 2018

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ABBREVIATIONS

the Act	the Customs Act 1901
the Applicant or OneSteel	OneSteel Manufacturing Pty Ltd
	The GOC notes that this reference appears to be in error, in that the “Applicant” is Commonwealth Steel Company Pty Ltd or “Comsteel”.
China	People’s Republic of China
CISA	China Iron and Steel Association
CIF	Cost, Insurance and Freight
the Commission	Anti-Dumping Commission
EPZ	Export Processing Zones
FOB	Free On Board
GOC	Government of China
the goods	the goods the subject of the application (railway wheel)
the investigation period	1 January to 30 December 2017
SAT	State Administration of Taxation
SASAC	the State-owned Assets Supervision and Administration Commission of the State Council
SEZ	Special economic zone
SIE	State-invested enterprise

BACKGROUND AND GENERAL INSTRUCTIONS

1. Background

On 18 April 2018, following an application by Commonwealth Steel Company Pty Ltd (Comsteel), the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated an investigation into the alleged dumping and subsidisation of certain railway wheels exported to Australia from the People's Republic of China (China) and the alleged dumping of certain railway wheels exported to Australia from France.

Comsteel alleged that the Australian industry has suffered material injury caused by railway wheels exported to Australia from China at dumped and subsidised prices and from France at dumped prices.

The dumping investigation involves allegations that there is a situation within the domestic Chinese railway wheel market that renders sales within this market 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 this market).

Anti-Dumping Notice (ADN) No. 2018/59 outlining the details of the investigation and the procedures to be followed during the investigation can be accessed on the Commission's website at www.adcommission.gov.au

Please note that the applicant has identified Maanshan Iron and Steel Company Limited as a Chinese exporter of railway wheels to Australia in the investigation period.

2. Goods under consideration

The goods under consideration (the goods) ie the goods exported to Australia, allegedly at dumped and subsidised prices, are:

Forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys (railway wheels).

Axles and other components are excluded from the goods coverage.

Additional information

The railway wheels are manufactured in accordance with relevant user defined specifications and drawings, and are used on rail carriages used to transport iron ore.

The railway wheels have the following typical characteristics:

- 38 inch or 966 mm to 970 mm diameter and of similar overall dimensional tolerances and shape;
- manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties as defined in the user specifications;
- manufactured using a forging and rolling process in accordance with defined standards;

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- suitable to operate at axle loads above 36 metric tonnes; and
- a multi-wear rim.

The wheels are manufactured in accordance with specifications established by users. The applicant states that the wheel specifications may be slightly modified and renamed to suit the specific manufacturer's production process, however, all railway wheels will typically be manufactured in accordance with the iron ore producer's specifications.

3. Tariff classification

The goods are generally, but not exclusively, classified to the following tariff classification in Schedule 3 to the *Customs Tariff Act 1995*:

- 8607.19.00 (statistical code 20)¹

This tariff classification and statistical code may include goods that are both subject and not subject to this investigation. The listing of this tariff classification and statistical code is for convenience or reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods, the subject of this investigation.

4. Investigation period

The existence and amount of any dumping and subsidisation in relation to railway wheels exported to Australia from China will be determined on the basis of an investigation period of 1 January to 31 December 2017 (the investigation period).

The Commission will examine details of the Australian market from 1 January 2014 for injury analysis purposes.

5. Purpose of this questionnaire

The purpose of this questionnaire is to assist the Commission to obtain the information from the GOC it considers necessary for investigating the allegation that there is a 'particular market situation' in the domestic market for railway wheels in China and that countervailable subsidies are being received in respect the exports of railway wheels to Australia.

A separate Exporter Questionnaire will be available for Chinese exporters of railway wheels to complete, if they chose to cooperate with the investigation. All known exporters have been sent notification of the investigation and advice how to access the Exporter Questionnaire.

The Exporter Questionnaire also has a section requesting information on subsidies and market situation.

The GOC does not have to complete this questionnaire. However, if the GOC does not respond, the Commission may be required to rely on information supplied by other parties (including information supplied by the Australian industry – the applicant for the anti-

¹ This statistical code became active from 1 July 2015, and relates specifically to wheels. Previously, these goods were classified to statistical code 17, which was inclusive of a broader range of good types.

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dumping measures).

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

If the GOC chooses to respond to this questionnaire, the response is due by **25 May 2018**.

The time for the GOC to respond to this questionnaire was extended by the Commission to 11 June 2018.

6. If you decide to respond

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

For official use only and public record

If the GOC chooses to respond to this questionnaire, you are required to lodge a “for official use only” and a “public record” 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 “**FOR OFFICIAL USE ONLY**” or “**PUBLIC RECORD**” in the header and footer.

All information provided to the Commission “for official use only” will be treated confidentially. The public record version of your submission will be placed on the public record, which all interested parties can access.

Your public record submission must contain sufficient detail to allow a reasonable understanding of the substance of the “for official use only” version. If, for some reason, you cannot produce a public record summary, contact the investigation case manager (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 last section of this questionnaire with the GOC's response.

Consultants/parties acting on your behalf

If you intend to have another party acting on your behalf please advise the Commission of the relevant details.

The Commission will require a written authorisation from the GOC for any party acting on its behalf.

The GOC confirms that Moulis Legal (Australian legal counsel) and Allbright Law Firm (Chinese legal counsel) have been appointed to act on behalf of the GOC in this matter.

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Provision of documents

When providing documents, please indicate whether the documents:

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

Where the documents have been repealed, revised or superseded;

- 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.

Responses to questions should:

- be as accurate and complete as possible, and attach all relevant supporting documents, 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 question;
- 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 the Commission 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.

Lodgement

Lodgement by email is preferred. 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 "for official use only" and "public record" version of your submission by the due date.

You may also lodge your response by mailing it to the address shown on the front cover of this questionnaire. For questions requiring a response in a Microsoft Excel spreadsheet that cannot be emailed, please provide those spread sheets on a CD-ROM or on a USB device.

7. Future questions and verification

Please note that after receiving the GOC response to this questionnaire, the Commission may seek additional information from the GOC.

The Commission may also seek to carry out a visit to the GOC to examine relevant records and to verify the information provided. You will be contacted in advance of such a meeting to make arrangements.

SECTION A: GENERAL QUESTIONS

- 1 Describe the nature and structure of the sector of the steel industry manufacturing railway wheels in China. Without limiting your response include details of any government involvement with railway wheel manufacturers including upstream raw materials (i.e. coking coal, coke, iron ore, steel billet and scrap steel).

(1) The railway wheels industry is distinct from and different to the steel industry and the basic products of the steel industry.

“Railway wheels” are mechanical products made of steel. Railway wheels are a far downstream product from iron and steel and the basic products of that industry. They are outside the scope of steel products. In China the railway wheels industry is not classified within the iron and steel industry, whether at the governmental level or in the consideration of the commercial industry groups that manufacture the products either.²

The GOC does not have any special interest or involvement in relation to “railway wheels”, whether referring to their production, industrial composition, sales or market characteristics. The product is quite specialised and must be engineered to the specific requirements of each particular user. The railway wheels sold to any particular customer must be compatible with, and suited to, the customer’s related capital equipment, surrounding infrastructure and wear tolerances.

The GOC’s “involvement” in the “railway wheel industry” is not different from its general involvement as a government in other industry sectors of the Chinese economy. The GOC passes and enforces laws, makes policies, collects taxes, operates border and customs controls, enters into trade agreements with other countries, and carries out all of the other functions customarily associated with the running of a sovereign state.

Railway wheels are not considered to be “part of” the Chinese steel industry in policy terms. That said, the Commission’s question directs the GOC’s attention to the separate and very much wider “steel industry”, to which we now turn.

(2) The Chinese steel industry is of a large scale, and is an important part of China’s and the world’s economy.

The steel industry in China covers a wide range of products, and is of significant size and scale. There is nothing unusual or special about the GOC’s consideration of the steel sector, in its most general sense, as a very important part, or as the

² Exemplifying this is the fact that railway wheels are not considered by China’s peak association of iron and steel producers, CISA, to fall within its remit. The products are considered by another NGO, namely, CCCME, to sit within its members’ areas of interest.

Applicant has stated, a “pillar” of China’s economy.

The importance of China’s steel sector is self-evident. For example, China is the largest steel producer in the world, producing 831.7 million tonnes of crude steel, which accounted for just under half of global output in 2017.³ China is also the world’s largest importer of iron ore. According to Australia’s 2018 budget outlook, China accounts for more than 80 per cent of Australia’s iron ore exports, and these are only part of China’s total imports.⁴

In view of the importance of this sector, the GOC has previously published aspirational policy documents such as five year plans for the steel industry, and the National Steel Plan, and continues to do so, as is its sovereign right. The latest version of these aspirational policy documents is referred to as *The Iron and Steel Industry Adjustment and Upgrade Plan (2016 2020)*. A copy of this plan is set out in **Attachment 1**.

(3) The GOC has a macro-economic interest in the operation of the Chinese steel industry and in its sustainability. The steel industry is subject to the general laws and regulations of China like other industries.

Taking into consideration the size and scale of steel manufacturing in China, its impact on the environment and its importance to the national and international economy, commercial steelmaking activities are naturally an important part of the GOC’s macro-economic policy. We note that this is no different to the treatment of major industries by the Australian Government, and governments around the world. There is nothing unusual or exceptional about the GOC’s consideration of the steel sector, in its most general sense, as a very important part, ie a “pillar”, of China’s economy. The importance of China’s steel sector is self-evident.

The Chinese steel industry is also subject to international commitments and to the GOC’s national policies in relation to climate change, given the high-emission characteristics of the steel making sector. China has taken on an increasingly active role in promoting global solutions on climate change.⁵

The GOC regulates the steel industry in terms of its environmental effects, land use, employee welfare and safety and product standards. In a more general sense, the steel industry is subject to the same corporate, investment, commercial, employment and competition and consumer laws that apply to all market players in

³ See <https://www.worldsteel.org/media-centre/press-releases/2018/World-crude-steel-output-increases-by-5.3--in-2017.html>

⁴ See <https://www.budget.gov.au/2018-19/content/bp1/index.html>

⁵ See http://news.xinhuanet.com/english/2015-12/11/c_134907291.htm;
http://www.chinadaily.com.cn/business/2017-09/20/content_32247208.htm

China.

(4) The Commission's interest in raw material inputs is misplaced. The manner of consideration of them contradicts China's WTO rights.

The GUC notes that the Commission's interest in input materials has likely been influenced by the allegations regarding a so-called "particular market situation", and belief that the provision of input materials such as billet, coking coal, coke and electricity was for "less than adequate remuneration". The GOC will address these allegations in detail where appropriate in this GQ and in further submissions.

However, given this context, and for the purposes of the current question, the GOC wishes to comment on the nature of the interest and whether it is relevant or can be fruitful for the Commission's investigation.

Railway wheels are a specific product of the steel industry. The investigation seems to contemplate an investigation of the whole steel industry through investigation of input materials. This manner of investigation is inappropriate and outside the scope of an anti-dumping and countervailing investigation relating to railway wheels. Such an investigation should focus on the market for the GUC, and the railway wheel industry, rather than making broad forays into claims about the cost competitiveness of raw material inputs and whether the costs of those inputs constitute adequate remuneration.

The fact is that Australia has long recognised the full market economy status of China, including that of China's steel sectors. Such market economy status is a factual and legal reality, and not a diplomatic fiction. Chinese SIEs have been unfairly accused of being arms of the State, which they are not. In investigations undertaken by the Commission in the past the entire steel industry and all of its upstream suppliers and downstream manufacturing customers have been treated, whether SIEs or not, as if they operate under non-market economy conditions. This contradicts the treatment that China bargained for, and thought it would receive, when it entered into the serious commitments of the WTO Agreements and its Accession Protocol thereto.

Notwithstanding the serious concerns of the GOC in relation to the distorted thinking on these issues in previous cases, and in the spirit of cooperation, we now wish to provide relevant commentary about the product under investigation and some of the raw material inputs as are mentioned in the questionnaire, to allow the Commission to gain a better understanding of the competitive nature of the relevant Chinese industries and markets.

The Chinese railway wheel industry can use either self-produced steel billet, or can engage in steelmaking itself, to manufacture railway wheels. In the latter case the relevant raw materials are iron ore, coking coal, coke, and steel scrap. According to

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the GOC's inquiries there are [CONFIDENTIAL TEXT DELETED – number] producers of railway wheels, but only one producer of the specific GUC in China. This is due to the fact that the GUC are defined by end user specification, and in that regard the GUC is a very specific subset of the railway wheels that are produced.

The [CONFIDENTIAL TEXT DELETED – number] producers of the railway wheels are Maanshan Iron and Steel Co., Ltd, which is the respondent and, we understand, the only necessary participating “interested party” exporter in this investigation. [CONFIDENTIAL TEXT DELETED – identity of other non-interested parties]. Therefore, strictly speaking, only Maanshan is subject to this investigation. The Commission is requested to please refer to Maanshan's own response for the requested information about the Chinese railway wheel industry itself.

The response should include details of:

- (a) distribution channels

(5) The GOC does not control, direct, or dictate the distribution of railway wheels or their input materials.

The GOC does not impose any special regulations on the distribution channels or commercial direction of manufacturers of the GUC, whether of railway wheels, or of its input materials.

In this regard we exclude consideration of regulations relating to corporate registration and reporting, environmental controls (including land use/zoning) and safety requirements (occupational and transport-related). These regulations are of a type that is customary in the economies of all WTO members, including Australia.

The GUC are normally traded as componentry for locomotives or rail cars, and the input materials are normally traded as and with other iron and steel-related goods. Although traders or distributors may choose to focus on some products over others, that decision will be based upon their own commercial imperatives.

Similarly, the producers of the GUC, as well as the producers of input materials, will decide what distribution channels they employ, based on their own circumstances and designs. They may distribute the relevant goods they produce via their own subsidiaries or by out-sourced channels (such as agents and buyers) in domestic or foreign markets, as they deem appropriate.

Companies in China make their own choices on product portfolio and distribution channels. The GOC places no restriction on these choices and the activities which flow from them.

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(b) any vertical integration

(6) The GOC does not control, direct or dictate vertical integration of railway wheels or input producers

The GOC does not impose any special regulations on vertical integration for producers of railway wheels or the producers and sellers of the input materials used by such producers, whether to force or prevent such integration. Nor does the GOC measure the instances of such integration. Nonetheless, on the same basis as before, the GOC does intend to respond to this question as fully as it can.

The GOC does not believe that the production and sale of the GUC has any distinctive vertical integration pattern. The input materials are normally integrated with other iron and steel-related goods. This could mean that a railway wheel manufacturer is fully integrated itself, in the sense that it is also a steelmaker, and therefore buys raw material inputs, or that it is not integrated, such that it buys steel billet for the purpose of then manufacturing railway wheels. Whether a railway wheel manufacturer also makes railway cars is not known to the GOC but would be highly unlikely, given the dissimilarity of the products concerned.

A manufacturer may choose to integrate the chain of supply for the relevant goods by establishing its own branch or subsidiaries or by using sales channels it controls, or operates jointly with, or independently of, others in the domestic or foreign market as appropriate. There are no restrictions on an enterprises' choice of its business structure. A firm can choose any kind of business portfolio as long as the business is registered in a corporate sense and is not prohibited from operation.

(c) any changes over the last 5 years (such as mergers and acquisitions)

(7) The GOC does not control, direct or dictate mergers and acquisitions of railway wheels or input producers.

The GOC does not impose any special regulations on mergers and acquisitions of companies that manufacture the GUC, or for any of the companies that manufacture the transformative steel billet products or produce or sell the raw materials mentioned above, whether to force or to prevent such mergers and acquisitions.

According to the GOC's inquiries there are [CONFIDENTIAL TEXT DELETED – number] producers of railway wheels, but only one producer of the specific GUC in China. This is due to the fact that the GUC is a very specific subset of the railway wheels that are produced. The GUC are defined by end user specification making

broader sale of the GUC, to other customers, difficult if not impossible. For transparency the GOC has provided details for both producers of railway wheels in China.

As mentioned, the [CONFIDENTIAL TEXT DELETED – number] producers of the railway wheels are:

- **Maanshan Iron and Steel Co., Ltd, which we refer to as “Maanshan” in this questionnaire - Maanshan is a Sino-foreign joint stock company with State investment. It is listed on both the Shanghai Stock Exchange and the Hong Kong Stock Exchange.**

[CONFIDENTIAL TEXT DELETED – names of non-interested parties]

With respect to the input materials, there are of course numerous producers. They include fully private-owned enterprises, of varying shareholdings, and SIEs. For clarity, of the producers of crude steel, iron ore, raw coal and coke less than 25% are SOEs.⁶ A summary of this data is provided in Attachment 2 [CONFIDENTIAL ATTACHMENT]. The GOC is unable to provide details of each individual producer as, according to Article 25 of the *Statistics Law of the People's Republic of China* located in Attachment 3:

No entity or individual may provide, disclose or use for any purpose other than statistical activities any information obtained via a statistical investigation, and in which the identity of any individual respondent in the statistical investigation can be recognized or deduced. Therefore, the GOC is legally prohibited from providing the list of the companies requested by this question.

Each enterprise is responsible for running its own business and will make decisions regarding mergers and acquisitions on the basis of its circumstances

⁶ For the purposes of this particular usage of the acronym “SOE”, SIEs are included. In the statistical context, “SOE” means State-Owned Equity Controlled Company, which is defined by the National Bureau of Statistics as:

- a company in which the percentage accounted for by the paid-in capital (shares) of the governmental investor in the total paid-in capital (shares) is more than 50%;
- a company in which the percentage accounted for by the paid-in capital (shares) of the governmental investor in the total paid-in capital (shares) is less than 50%, but is more than that of any other investors;
- a company in which the percentage accounted for by the paid-in capital (shares) of the governmental investor in the total paid-in capital (shares) is less than 50%, but the governmental investor maintains a controlling management interest on contractual basis; and
- a company in which the percentage accounted for by the paid-in capital (shares) of the governmental investor in the total paid-in capital (shares) is equal to 50% without specifying which party maintains a controlling management interest.

A “Governmental investor” is interpreted by the NBS to include only government authority as investor. For the purpose of establishing the above standards, the ownership of governmental investor includes the ownership held by the government authorities directly and/or indirectly. If the total ownership percentage held by the government authority (directly and indirectly) in a company does not meet the standard stated above, such company is not classified as a “State-Owned Equity Controlled Company” in the NBS’s statistics.

and plans.

(d) any changes to the government laws and regulations after 1 January 2013

(8) *The GOC does not control, direct or dictate what the railway wheel or steel industry do or how they organise themselves.*

The GOC is not clear about what is sought by the Commission in this question. However, the GOC can answer in a generic way, by saying that there have been no “changes to the government laws and regulations”, in the context of “the nature and structure of the sector of the steel industry manufacturing railway wheels in China”, because it is not the GOC’s habit nor function to control or direct what that industry does and how it organises itself.

The GOC reiterates that there are no special laws or regulations regarding railway wheels or the input materials as referred to by the Commission. The GOC’s laws and policies demonstrate its vision, commitment and responsibility towards important issues at both the domestic and the international levels. In terms of general laws and regulations, the following are notable:

- The *Company Law* was amended on 1 March 2014, further liberalising the regime governing the activities of all enterprises doing business in China, by way of replacing the “paid-up capital” regime for company registration, to a registered capital regime, and removing the requirement for phased payments of capital for foreign invested enterprises. See [Attachment 4](#) for the new *Company Law*.
- Article 37 of the *Company Law* further states that a shareholder is to be responsible for making decisions regarding the operational guideline and investments of a company.
- Through amendment of the *Regulation of Company Registration*, also taking effect from 1 March 2014, the GOC has refined the transparency of market entities by requiring registered legal person businesses, including both SIEs and non-SIEs, to disclose their annual reports. In this way markets can make better informed decisions about risk and investment. This has since been amended again. Please refer to Article 57 of the new *Regulation of Company Registration* at [Attachment 5](#).
- Businesses in China have been better positioned to defend their legitimate rights since the *Law of Administrative Procedures* was amended in 2014. The newly amended law broadens the scope of matters that may be brought to the courts against any government agency by explicitly listing 12 categories of matters (there were formerly only eight categories). The newly

added controversies that enterprises may challenge include administrative decisions regarding appropriation, and compensation for such appropriation, and any abuse of administrative power to monopolize the market or to create monopolistic power in any market. Please refer to Article 12 of the new *Administrative Procedure Law of the PRC*, provided at Attachment 6. These laws provide further legal protection for private enterprise, and emphasise the degree to which the State has distanced itself from business activities and how it wants to assure business that it does not intend to intrude into business activities.

- The GOC has further advanced its policy of adjusting the structure of State capital and assets in the economy by welcoming and facilitating the investment of more private capital into SOEs, such that more can graduate towards the status of other limited liability commercial ownership models such as SIEs, Sino-foreign joint ventures, wholly-owned foreign enterprises, and the like. These efforts have successfully attracted more private investment and involvement in the important and costly infrastructure and network industries in line with public-private partnership modes (“PPP”).
- The GOC has opened the Chinese market to foreign investment to an even greater extent than before.⁷ In 2015 China signed free trade agreements with Australia and South Korea, and upgraded its existing free trade agreement with ASEAN. These followed the signing of the China-Iceland and China-Switzerland Free Trade Agreements in 2014. The China-Australia Free Trade Agreement lowered the tariff rates of more than 80% of the goods traded between the two countries. Further liberalisation was achieved when, on 3 September 2016, the GOC abolished the existing approval requirement for foreign invested enterprises. The requirement for MOFCOM approval for establishment of enterprises with foreign investment was removed.⁸ This has been further expanded upon in 2017.
- The GOC has also repealed a great number of licensing/approval processes for doing business in a range of sectors and business lines. For example, to obtain an official VAT invoice for sales and sales revenue, enterprises previously had to achieve taxation registration, which in turn was subject to an approval by the relevant taxation authority. However from late 2013, this prior approval requirement for taxation registration has been repealed. Enterprises may now register directly with the relevant taxation authority. Please refer to Attachment 7, which contains examples of important

⁷ <https://www.lexology.com/library/detail.aspx?g=6d2fd085-1c5d-4102-bdbc-0bcc92110d6a>

⁸ <https://www.lexology.com/library/detail.aspx?g=8ed7f607-9a74-4a69-bb1d-f30e29540cdd>

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deregulations with respect to Chinese business formation and operation. The list sets out certain licensing/approval requirements that have been repealed or reformed since 2012.

- Since 2015, the GOC has pro-actively promoted electricity market reform. The main aspects of the reform include the enhancement of a more competitive and effective structure and system for the electricity market, as well as the better articulation of the applicable market pricing mechanisms. Pursuant to the *Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity* (NDRC 2015-3169), which is set out in **Attachment 8**, electricity price adjustments since 1 January 2016 are linked to the market fluctuation of thermal coal prices. This has enhanced the commerciality of electricity pricing. As such, electricity prices in China are based on market mechanisms that reflect market supply and demand.
- The *Environmental Protection Law of the People's Republic of China* has been amended since 1 January 2015. The amended law has strengthened the power of law enforcement departments to seize and confiscate facilities and equipment of enterprises which violate the law, or even directly limit production or stop production for those enterprises that fail to observe statutory emission standards.
- The *Law of the People's Republic of China on the Coal Industry (Revision 2016)* has been amended in a way that further liberalises investment in this industry. The original Articles 18 and 19, setting out the criteria and the procedure to establish a coal enterprise, have been removed from the Law.

The raw material inputs industries and the industry that transforms those raw materials are highly competitive in their market behaviour. Through their competition with each other and their interaction with customers, they have created and continue to operate in highly competitive markets. The railway wheels industry itself is highly specialised and engages in competition for its products both internationally and nationally.

There is no reason to ignore the market-based price and cost data of Chinese manufacturers. They are prices and costs that are discovered by the forces of supply and demand within the relevant Chinese markets. These activities are supported by a framework of social, environmental and fiscal regulations which are unremarkable in an internationally comparative context.

The GOC rejects attempts to label purchases by its manufacturers as being at “less than adequate remuneration” and to “surrogate” the prices and costs recorded in the financial records of Chinese exporters with external “benchmarks”. These

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practices are not justified by the facts, and are not permitted by the WTO agreements to which China is a party. The GOC does not somehow “control” or directly “influence” prices or costs in any distortive or non-market sense.

- 2 At all levels of government (central, provincial, regional, municipal, special economic zone (SEZ), etc.) identify the names of the government departments, bureaus or agencies that are responsible for the administration of any GOC measures concerning the sector of the Chinese steel industry manufacturing railway wheels.

(9) GOC agencies are not exclusively dedicated to the administration of railway wheels or steel industry measures

The GOC draws the Commission’s attention to the fact that the various central government agencies, as identified in questions below, are not exclusively dedicated to the “administration” of measures which may impact on the railway wheels industry, or the broader steel industry.

Additionally, local government authorities are not exclusively dedicated to the administration of “measures concerning the sector of the Chinese steel industry manufacturing railway wheels”, both because there are no such measures at the central level and because it would not be something that a local government authority would be empowered to do.

In this context, the GOC submits that Articles 3.4 and 110.2 of the Constitution of China are relevant.

Article 3.4 states:

The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

Article 110.2 states:

Local people's governments at different levels are responsible, and report on their work, to the state administrative organs at the next higher level. Local people's governments at different levels throughout the country are state administrative organs under the unified leadership of the State Council and are subordinate to it.

Nonetheless, as previously advised the GOC has every intention to reasonably cooperate with the Commission in relation to this matter, and in light of the above comments the GOC will provide the information requested for the relevant agencies in the localities of the key companies under investigation.

Include information relating to the following areas:

- supervision of railway wheel sector, State-invested enterprise (SIE) senior

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management and administration;

There is no government agency specifically set-up to supervise the railway wheel sector in China. The GOC, as a whole, supervises all entities, both real and legal, within China, to ensure they comply with the laws of China. This is true of every government.

In relation to the concept of “supervision”, SASAC’s supervisory role mainly applies to senior managers in certain designated wholly and majority State-invested enterprises. This “supervision” is in the nature of a careful watch over behaviour with regard to legal probity and the shareholder interests of the GOC.

The GOC does not “supervise” the senior management of non-designated majority owned SIEs. The senior management of the great majority of SIEs is subject to the “supervision” of the board of supervisors selected by the shareholder.

- consolidation of domestic railway wheel and/or iron and steel producers;

There is no agency of the GOC that is charged with the function of administering any “consolidation of domestic railway wheel and/or iron and steel producers”.

Consolidation of business entities is a commercial decision for enterprises to consider. These are decisions that are ultimately made by boards of enterprises on the advice of their senior management and with the best interests of the shareholders firmly in mind. Merger and acquisition in China is subject to the same considerations as those that must be considered by companies in Australia.

The GOC refers to Article 13 of the *Anti-Monopoly Law* which states,

Competing undertakings are prohibited from concluding the following monopoly agreements:

- (1) on fixing or changing commodity prices;*
- (2) on restricting the amount of commodities manufactured or marketed;*
- (3) on splitting the sales market or the purchasing market for raw and semi-finished materials;*
- (4) on restricting the purchase of new technologies or equipment, or the development of new technologies or products;*
- (5) on joint boycotting of transactions; and*
- (6) other monopoly agreements confirmed as such by the authority for enforcement of the Anti-monopoly Law under the State Council.*

This is supplemented by regulation and policy from the GOC and is thoroughly reviewed through the GOC legal system.⁹

⁹ For example, 《北京奇虎科技有限公司诉腾讯科技（深圳）有限公司、深圳市腾讯计算机系统有限公司滥用市场支配地位纠纷案》 (*Beijing Qihu Technology Co., Ltd. v. Tencent Technology (Shenzhen) Company*

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- industrial policy and guidance on the railway wheel and/or the iron and steel sectors;

There is no government agency that is specifically responsible for the administration of the industrial policy and guidance for the railway wheel industry.

The responses below relate to the steel industry in general.

Central Government

Department: National Development and Reform Commission (“NDRC”)
Mailing address: 38 South Yuetan Street, Xicheng District, Beijing 100824
Phone number: 86-10-6850 1428
Fax number: 86-10-6850 2999

Department: Ministry of Industry and Information Technology (“MIIT”)
Mailing address: 13 West Changan Street, Xicheng District, Beijing 100804
Phone number: 86-10-6601 1228
Fax number: 86-10-6601 1228

The NDRC is China’s high-level macro-economic and social development strategy planning agency. It has been responsible for introducing and facilitating the implementation of China’s macro-economic and overall social development strategies.

MIIT is a central government agency with the general responsibilities of articulating and coordinating the dissemination of industry policy, proposing and optimizing industrial location and structure, and introducing appropriate consultation and approval processes and instruments.

Provincial Government Authorities

Department: Anhui Province Development and Reform Commission
Mailing address: No. 1 Zhongshan Road, Hefei, 230091
Phone number: 86- 551-6260 3406
Fax number: 86- 551-62603407

- market entry criteria for the railway wheel and/or the iron and steel industry;

There is no government agency that is specifically responsible for the administration of market entry criteria for the railway wheel industry. The responses below relate to the steel industry in general.

Central Government

Department: National Development and Reform Commission (“NDRC”)
Mailing address: 38 South Yuetan Street, Xicheng District, Beijing 100824
Phone number: 86-10-6850 1428

Limited and Shenzhen Tencent Computer Systems Company Limited, A Dispute over Abusing Dominant Market Positions), Stanford Law School China Guiding Cases Project, English Guiding Case (EGC78), Apr. 7, 2017 Edition, <http://cgc.law.stanford.edu/guiding-cases/guiding-case-7>

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Fax number: 86-10-6850 2999

The steel industry is understood to be a usual, albeit significantly important, industry, where market pricing, competition and general commercial law mechanisms play the major role in industry regulation. The industry's importance arises from the scale and effect of the present and proposed operations of steel-making companies, and the effect of proposals on China's resources, both physical and social.

The NDRC has played a supervisory and consultative role, at the macro-economic level, in relation to the development of many of the major industries in China. This supervisory function has been progressively transferred to the MIIT, reflecting the fact that the industry and its markets have become more highly developed.

On and from 31 October 2014 the administration form of any new investment plan in the steel industry was further deregulated, from an approval system to a registration system. However, on and from July 2014 the GOC has advised proponents of new or expanded facilities that it would not consider the registration of new steel capacity investments in the absence of evidence that capacity of the same or similar scale had departed the industry. This has been advised in consideration of the serious excessive capacity in the steel industry, and the pressures that this has placed on China's environment and infrastructure.¹⁰

The issues addressed in the context of the GOC's involvement concerning market entry and investment are primarily related to issues such as the size and design of facilities, environmental protection, and the efficient use of energy and natural resources. None of these initiatives are designed to artificially affect prices, whether by reducing them or increasing them. Efficient energy and resource utilisation is geared towards sustainable development, which is an important macro-economic and long-term policy consideration for any responsible government.

- environmental enforcement for the railway wheel sector and /or the iron and steel industry;

Central Government

Department: Ministry of Environmental Protection ("MEP")
Mailing address: 115 Nanxiao Street, XizhimenNei, Beijing 100035
Phone number: 86-10-6655 6163
Fax number: 86-10-6655 6165

¹⁰ This is akin to the way in which matters of national environmental significance would be required to be taken into account by the Commonwealth under the Australian *Environment Protection and Biodiversity Conservation Act 1999*.

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MEP is responsible for China's environment protection administration. It does not specifically promote or regulate the steel industry or the railway wheels industry. The industries are subject to the general application of environmental laws, regulations and policies.

Provincial/Municipal Government Authorities

Department: Anhui Province Environment Protection Admin Bureau
Mailing address: 1766 Huaining Road, Administrative Cultural District, Hefei, 230071
Phone number: 86- 551-62775353
Fax number: 86- 551-62376111

- management of land utilisation;

Central Government

Department: Ministry of Land and Resources
Mailing address: 64 Funei Avenue, Xicheng District, Beijing 100812
Phone number: 86-10-6655 8424
Fax number: 86-10-6655 8004

The Ministry of Land and Resources is responsible for the general administration of land utilisation.

Provincial/Municipal Government Authorities

Department: Anhui Province Office of Land and Resources
Mailing address: 619 Huangshan Road, Hefei, 230088
Phone number: 86-551-6255 3000
Fax number: 86-551-6255 3111

- banking regulations in relation to railway wheels sector and /or the iron and steel industry;

Agency: China Banking Regulatory Commission ("CBRC")
Mailing address: 15 Financial Avenue, Xicheng District, Beijing 100800
Phone number: 86-10-6627 9378
Fax number: 86-10-6629 9144

The CBRC is responsible for the regulation of banks in China. It is not involved in the regulation or administration of the railway wheel sector and the steel industry in any manner. The CBRC has no department or division which is responsible for the railway wheel sector and the steel industry. Functions of the CBRC are not specific to any single industry, other than the regulation of the financial services industry.

- investigation and inspection of railway wheel manufacturing facilities;

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The GOC submits that many administrative departments can be involved in the investigation and expansion of new steel facilities. It is difficult to know how to list these, and their relevance to this investigation would have to be quite remote. The subject matter dealt with by agencies involved in the investigation and inspection of facilities will include such things as construction certification; construction safety; land surveying; and environmental compliance.

The Commission is invited to direct the GOC's attention to any specific area of interest, by way of supplemental request.

- the section in the National Development and Reform Commission that is responsible for the railway wheel and / or the iron and steel sector;

The NDRC is responsible for the promotion and regulation of the Chinese economy at the national level. This role includes the development of policies relating to the steel industry. The steel industry falls within the regulatory scope of the Department of Industry of the NDRC. The relevant contact details of NDRC have been provided as above.

Generally speaking, the direction of the GOC's government restructuring reform in this regard is to focus the NDRC on its key duties of macro-level economic and social development strategy, and to remove it from direct regulatory involvement.

Provincial/Municipal Government Authorities

Department:	Anhui Province Development and Reform Commission
Mailing address:	No. 1 Zhongshan Road, Hefei, 230091
Phone number:	86- 551-6260 3406
Fax number:	86- 551-62603407

- import licensing for raw materials used in railway wheel manufacture;

Any import licenses required would be issued via the Ministry of Commerce. However, railway wheels is not subject to import licensing requirements. Imports of iron ore are subject to an automatic licensing regime. There are no import licensing requirements on the other key raw materials used in steel production and then, subsequently, in railway wheel production.

- export regulations, export licensing, "guidance prices", free trade export zones, etc.; and

The GUC is not subject to export licensing requirements or "guidance prices" (whatever they may be). Further, there are no free trade export zones for the GUC.

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The Ministry of Commerce is responsible for general export regulations.

- taxation - especially export taxes; export tax rebates and value added tax (including any rebates).

The General Administration of Customs is responsible for the administration of export tariffs. Tax rebates and VAT are administered through the taxation system.

**Department: General Administration of Customs
Mailing address: No.6 Jianguomennei Street, Beijing 410114
Phone number: 86-10-65194114
Fax number: 86-10-65194114**

The Chinese taxation system is divided into two parts - the State taxation system and the local taxation system.

The central government is responsible for enactment and promulgation of tax policies, and regional governments are the bodies responsible for the implementation of these policies. Provincial and city state taxation bureaus have a vertical reporting relationship with the State Administration of Taxation (“SAT”) and are seen as local branches of the SAT. The local taxation system has no vertical reporting relationship with the SAT, but can seek advice and information assistance from the SAT.

We provide the following details of local tax authorities for the areas in which Maanshan is located.

**Department: Anhui Province Administration Bureau of State Taxation
Mailing address: 3398 Zhongshan Road, Baohe District, Hefei, 230061
Phone number: 86-551-12366
Fax number: 86-551-12366**

Ensure that your response includes contact information regarding the government officials responsible for the listed areas listed along with their full mailing addresses, phone numbers, email addresses and fax numbers.

- 3** Describe the ownership structure of the sector of the Chinese steel industry producing railway wheels, identifying what proportion of the industry is represented by SIEs, foreign-invested enterprises (FIEs), and Chinese domestic-owned private enterprises.

For each business where the GOC is a shareholder in the business, provide the name and percentage GOC ownership of the enterprise.

The National Bureau of Statistics does not have specific statistics regarding railway wheels industry participants, production, etc.

To the knowledge of the GOC, there is only one producer/exporter in China that

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produces the GUC and exports to Australia, which is the respondent in this investigation, namely Maanshan Iron and Steel Co., Ltd.

The goods under consideration are referred to in the Consideration Report of this investigation as *“Forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys”*.

The Consideration Report further states that:

The railway wheels are manufactured in accordance with the relevant user defined specifications and drawings, and are used on rail carriages used to transport iron ore. The users of these type of railway wheels are:

- *BHP Billiton Ltd (BHP);*
- *Rio Tinto Ltd (Rio Tinto);*
- *Fortescue Mining Group (FMG); and*
- *Roy Hill Holdings Pty Ltd (Roy Hill).*

The railway wheels used in all user applications have the following typical characteristics:

- *38 inch or 966 mm to 970 mm diameter and of similar overall dimensional tolerances and shape;*
- *manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties as defined in the user specifications;*
- *manufactured using a forging and rolling process in accordance with defined standards;*
- *suitable to operate at axle loads above 36 metric tonnes; and*
- *a multi-wear rim.*

The wheels are manufactured in accordance with specifications established by the users listed above (and included as confidential attachments to the application).

As far as the GOC is aware, only Maanshan produces the GUC according to their technical description. Please refer to Maashan’s own Exporter Questionnaire response for the requested information of this question.

- 4 Complete the attached spreadsheet A-4 (using Microsoft Excel format) listing all manufactures/traders of railway wheels and upstream raw material (steel billet, coking coal, coke, iron ore and scrap steel) providers in China including the following details:

- (i) name of the business entity;
- (ii) location of the business entity;
- (iii) function of the business (e.g. manufacturer, trader, exporter);
- (iv) type of business (e.g. State invested enterprise (SIE), Foreign invested enterprise (FIE), private enterprise or other (please specify));

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- (v) association with the GOC;
- (vi) whether the business is a manufacturer of railway wheels;
- (vii) annual production quantity of railway wheels;
- (viii) whether GOC is a shareholder in the business, and if so the percentage of GOC holdings; and
- (ix) whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and indicate any special rights provided to the representative (e.g. veto rights)

As explained above, as far as the GOC knows, Maanshan is the only manufacturer/exporter of the GUC in China. Please refer to Maanshan's questionnaire response for the requested information.

As noted at the outset of this section, upstream raw material providers are part of the iron and steel industry in China. Therefore there are numerous producers of the input materials in this massive industry. It is not practicable for the GOC to provide information relating to every entity operating in those industries.

In addition, in accordance with Article 25 of the *Statistics Law of the People's Republic of China* (see Attachment 3), no entity or individual may provide, disclose or use for any purpose other than statistical activities any information obtained via a statistical investigation, and in which the identity of any individual respondent in the statistical investigation can be recognized or deduced. Therefore, the GOC is legally prohibited from providing the list of the companies requested by this question.

For each business where the GOC is a shareholder and/or there is GOC representations in the business provide:

- (i) the complete organisational structure, including subsidiaries and associated businesses; and
- (ii) copies of annual reports of the business for the last 2 years.

Please refer to the immediately prior response, above.

5 Which industry associations represent railway wheel manufacturers?

Please provide names, address and contact details including their websites of the relevant industry associations. Include all national, provincial and regional producer organisations that represent the interests of railway wheel manufacturers and traders in China.

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The relevant industry association is the China Chamber of Commerce for Import and Export of Machinery and Electronic Products

NGO association: CCCME
Mailing address: 8th Floor, Office Tower 2, No.18, Jianguomennei Street, Dongcheng District, Beijing 100005, China
Telephone: 86-10-58280864
Fax: 86-10-58280860

SECTION B: MARKET SITUATION

Before responding directly to the questions in this section, the GOC would like to make the following observations for the assistance and understanding of the Commission.

(10) Assessing a market situation by looking outside the relevant market is wrong-minded

The GOC submits that the basis upon which the Commission approaches the question of a “situation in the market” which, if found, might then rule out domestic selling prices for normal value purposes, is incorrect. Further, because there can be no evidence of anything untoward or unrealistic about the formation of prices for railway wheels, the Applicant’s argument that those prices cannot be used for normal value purposes must be dismissed.

A so-called “particular market situation” (or “PMS”) does not exist in relation to the sale of railway wheels in China. The methodology used by the Applicant in calculating “normal values” is wrong-minded.

The GOC wants to emphasise that Section 269TAC(2)(a)(ii) of the Act requires, as a starting point, that:

...the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1).

The GOC notes the following implications of this:

- The only market relevant to a “particular market situation” is the market relevant to Section 269TAC(1) of the Act, being the market for like goods sold in the ordinary course of trade for home consumption in the country of export.
- The only situation in the relevant market which can trigger the application of Section 269TAC(2)(a)(ii) is one that renders prices in that market not suitable for comparison with export price.

To date, the GOC has not seen any evidence to support the allegation that there is a PMS in the market for the GUC with that implication of “unsuitability”. The application was based upon previous findings made by the Commission and the Commission’s regulatory predecessor in relation to markets for primary or intermediate steel products. The GOC disagreed with these findings when they were initially made, and disagrees with them still.

Nonetheless, those findings are about the markets to which they applied. They are not findings that can dictate what the situation is or might be in the market for the

GUC, which are railway wheels. The GUC are business-related products sold in entirely different markets to those into which the raw material and intermediate inputs are sold. Inevitably, the markets for the GUC and the markets for their raw material and intermediate inputs are subject to different market conditions.

From the application, we interpret the allegation to be that the costs for steel inputs in the financial records of the manufacturers of railway wheels are somehow lower than they would otherwise be. While this would seem to the GOC to be a rather hypothetical assumption, which has been made without the benefit (or conceivably, from the Applicant's perspective, the limitation) of positive evidence, the GOC again submits that it is not a sufficient basis to find there is a relevant "situation" in the market for the GUC, being railway wheels.

A PMS finding requires or allows the Commission to construct normal values under Section 269TAC(2)(c), based upon "*such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export*" or under Section 269TAC(2)(d) based upon "*the price paid or payable for like goods sold... to a third country*". Both of these alternative methodologies require the costs of the goods concerned to be determined. In the first case, this is because they are the very "building blocks" of the normal value. In the second case, this is because the sales must be in the ordinary course of trade. The point here is that it can hardly be the case that a PMS finding for any specific goods under consideration can include consideration of whether the costs of inputs to the goods under consideration are "artificially low". As a matter of statutory interpretation that would make no sense, because both of the alternative methodologies employ those costs to work out the normal value.

(11) An exporter's actual costs in the country of export must be used for normal value determination.

If the Commission insists in determining that there was a PMS, over the great and steady objection of the GOC, then the cost actually incurred by the exporter/manufacturer must continue to be used for normal value calculation purposes. The other alternative, that of third country export prices, would also be open to the Commission, but again only over the objection of the GOC that a PMS could be considered to be in existence in the first place.

Section 269TAC(2)(a)(ii) of the Act implements the key words (for the most part) and the meaning (wholly) of Article 2.2 of the WTO's *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("the Anti-Dumping Agreement"). It provides that if there is a PMS, the cost of production of the goods "*in [their] country of origin*" can be used for the purposes of determining their normal value, instead of the domestic selling price. Section 269TAC(2)(c)

says, as mentioned above, that resort can be had to *“such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export”* [underlining supplied].

In addition, the WTO Appellate Body and the Full Court of the Federal Court of Australia both support the proposition that it is costs in the country of export that must form the basis for a constructed normal value, although they arrive at that conclusion by different interpretive routes.

(12) The WTO jurisprudence is clear – actual costs in the country of origin must be used for constructed normal value.

The Appellate Body has said that the costs in the country of origin that are to be used for normal value determination are the actual costs recorded in the financial records of the exporter concerned. The first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement requires that the records kept by the exporter or producer under investigation be used for normal value determination if they *“are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration”*.

This condition, according to the Appellate Body in the key decision of *European Union - Anti-Dumping Measures on Biodiesel from Argentina* (“EU - Biodiesel (Argentina)”):¹¹

*...relates to whether the records kept by the exporter or producer under investigation suitably and sufficiently correspond to or reproduce those costs incurred by the investigated exporter or producer that have a genuine relationship with the production and sale of the specific product under consideration.*¹²

Therefore, Article 2.2.1.1 of the Anti-Dumping Agreement mandates the usage of the costs as they appear in the records of the exporter concerned for normal value determination, as long as they suitably and sufficiently correspond to or reproduce the actually incurred costs. This does not admit of the use of a cost, whether real or hypothetical, that is not the cost incurred by the exporter. On this basis the practice known as cost “surrogation” is impermissible.

(13) Alleged distortion of costs because of economic conditions does not mean that financial records do not reasonably reflect the costs

Of further relevance, it is to be noted that the Appellate Body also found that:

...the EU authorities' determination that domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax

¹¹ WT/DS473/AB/R (6 October 2016).

¹² *Ibid*, at para 6.56.

*system was not, in itself, a sufficient basis for concluding that the producers' records did not reasonably reflect the costs of soybeans associated with the production and sale of biodiesel, or for disregarding the relevant costs in those records when constructing the normal value of biodiesel.*¹³

That is to say, the existence of a distortion in the market as a result of a government measure is not a basis for an investigating authority to disregard the cost records of the exporter subject to investigation. This is a further and very direct contradiction of the practice of alleging that costs are distorted simply because of the different market conditions that exist in one country compared to another. "Parachuting in" a cost that has been borrowed from elsewhere, or has been imputed, being a cost that is invariably higher than the exporter's actual cost, is not WTO-compliant.

(14) Australian law mandates the use of costs in China for normal value purposes, either directly or adaptively.

The GOC also wishes to direct the Commission's attention to recent Australian jurisprudence with respect to the practice of cost "surrogation" as it has been practiced against Chinese exporters in the past. On one view the Full Court of the Federal Court has rejected the practice. On another view it has qualified the practice to the extent that Chinese market costs inevitably must be used in any constructed normal value, by reason of the adaptation of any information relating to costs "found" outside China.

In *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* ("Steelforce"),¹⁴ the Full Court considered the application of the Appellate Body's decision as we have referred to above, namely EU – Biodiesel (Argentina). The GOC respectfully directs the Commission to consider the Court's decision in *Steelforce* very carefully, should it be considering the "surrogation" of an external-to-China "benchmark" cost in place of any Chinese exporter's cost.¹⁵

In the main judgment in *Steelforce*, Perram J said explicitly that Section 269TAC(2)(c)(i) of the Act is a faithful implementation of Article 2.2 of the Anti-Dumping Agreement, and that the Appellate Body's decision in EU - Biodiesel (Argentina) is a legitimate material with which to interpret Article 2.2. Perram J held, further, that for Australia to derogate from the principles expounded by the Appellate Body in this respect would amount to a breach of Australia's obligations under WTO law. His judgement assumes and implies that the Australian law in this

¹³ *Ibid.*

¹⁴ [2018] FCAFC 20

¹⁵ The GOC reserves all its rights with respect to any interpretation of Australian law which is not in conformity with WTO law, including any interpretation of the *Steelforce* case.

respect is to be interpreted consistently with WTO law. Specifically, Perram J held that to construe Section 269TAC(2)(c)(i) as having an operation contrary to that determined by the Appellate Body in EU - Biodiesel (Argentina) would amount to a breach of Australia's obligations under Article 2.2 of the Anti-Dumping Agreement.

The Appellate Body in EU - Biodiesel (Argentina) stated:

[W]hatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin". Compliance with this obligation may require the investigating authority to adapt the information that it collects.¹⁶

With respect to the use of an external benchmark, the Appellate Body said:

In sum, we consider that the phrases "cost of production in the country of origin" in Article 2.2 of the Anti-Dumping Agreement and "cost of production ... in the country of origin" in Article VI:1(b)(ii) of the GATT 1994 do not limit the sources of information or evidence that may be used in establishing the cost of production in the country of origin to sources inside the country of origin. When relying on any out-of-country information to determine the "cost of production in the country of origin" under Article 2.2, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin", and this may require the investigating authority to adapt that information. In this case, like the Panel, we consider that the surrogate price for soybeans used by the EU authorities to calculate the cost of production of biodiesel in Argentina did not represent the cost of soybeans in Argentina for producers or exporters of biodiesel.¹⁷ [emphasis added]

Thus, Perram J concluded – in line with and on the basis of the Appellate Body's decision - that the adaptation of an external benchmark cost to the conditions prevailing in the country of export was a "mandatory relevant consideration".¹⁸

The Judge then went on to find that the Minister had engaged in such a consideration, and that the subsequent non-adaptation of the external cost by the Minister was explicable on these twin bases:

- that to do so was considered by the Minister to be "neither practicable, responsible or warranted"; and
- that WTO authority at the time was to the effect that the adaptation of "out-of-country information" to arrive at the cost of production in the country of origin "may require the investigating authority to adapt that information", these being the words which appear in the extract from EU – Biodiesel (Argentina) that we have quoted immediately above.

The GOC's position with regard to the decisions in EU – Biodiesel (Argentina) and

¹⁶ WT/DS473/AB/R, para 6.73.

¹⁷ WT/DS473/AB/R, para 6.82.

¹⁸ Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC 20, para 124.

Steelforce and their implications for this investigation are as follows:

- The costs of production used for the purposes of constructed normal value must be the actual costs recorded in the financial records of the exporter, unless they do not suitably and sufficiently correspond to or reproduce the costs incurred or do not have a genuine relationship with the production and sale of the specific product under consideration.
- The consideration that has been undertaken by the WTO panels and Appellate Body of the use by an investigating authority of information obtained from outside the country of origin of the goods for normal value construction has been clarified to the extent that the cost used ultimately must be the cost in the country of origin.
- Perram J's views as to the possibility that the Australian investigating authority might not have to adapt information about costs that is obtained from a source or location outside the country of origin was based on a factual view that there were obstacles faced in undertaking such an adaptation.
- The factual view he mentioned was not his, but that of the Minister in a now six-year old report of the predecessor to the Commission, namely the Australian Customs and Border Force, with respect to hollow structural sections ("Report 177").¹⁹ However, that was not a view formed by the Minister with respect to the question of what are the "*costs in the country of export*" for normal value calculation. The words "*neither practicable, responsible or warranted*" that are specifically quoted by Perram J appear in that part of Report 177 in which the predecessor to the Commission, namely the Australian Customs and Border Force, was considering the question of "*adequate remuneration*" in the context of the law relating to subsidisation, not dumping.
- Perram J respected and acknowledged the overriding principle "*that it would breach Australia's obligations under Art 2.2 of the Anti-Dumping Agreement to construe s 269TAC(2)(c)(i) as having an operation contrary to that determined by the Appellate Body in the [EU – Biodiesel (Argentina)] decision*".

The present state of the WTO authority on this topic, being authority that Perram J said applied in Australia, was aptly summarised and advanced in a subsequent

¹⁹ Report to the Minister No. 177 – Certain hollow structural sections exported from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan and the Kingdom of Thailand (7 June 2012), at <http://www.adcommission.gov.au/cases/EPR%20193%20%20250/410-Report%20no%20177.pdf>

report of the WTO's Dispute Settlement Body that next-followed EU – Biodiesel (Argentina), namely that of the panel in *European Union - Anti-Dumping Measures on Biodiesel from Indonesia* (“EU – Biodiesel (Indonesia)”).²⁰ The date of adoption of this report was 1 March 2018, two weeks after the decision in *Steelforce* was handed down.

In that report the panel said:

In addressing a similar claim raised by Argentina in EU – Biodiesel (Argentina), the panel and the Appellate Body shared the view that the phrase “cost of production in the country of origin” in Article 2.2 and “cost of production of the product in the country of origin” in Article VI:1(b)(ii) may be understood as a reference to the price paid or to be paid to produce something within the country of origin. The Appellate Body observed that nothing in the language of these two provisions precludes that an investigating authority may need to look for information on the cost of production from sources outside the country. However, the reference to “in the country of origin”, indicates that, whatever information or evidence is used to determine the “cost of production”, it must be apt to or capable of yielding a cost of production in the country of origin. In these instances, information or evidence from outside the country of origin may need to be adapted in order to ensure that it is suitable and it is not sufficient to simply substitute the costs from outside the country of origin for the “cost of production in the country of origin”.²¹ [footnotes omitted] [underlining supplied]

The underlined words clarify that there is nothing discretionary about adaptation in the relevant law. Accordingly, the GOC would reject any contention that cost information obtained from outside a country of export does not need to be adapted so that it “is” a cost in the country of export.

The GOC wishes to again emphasise its clear opinion that the Commission cannot adopt the approach of “parachuting in” an out-of-country cost into the cost construction for the normal values for Chinese exporters. The grounds to do so do not exist. To adopt such an approach would amount to a clear contravention of the WTO Anti-Dumping Agreement, and of the rulings of the panels and the Appellate Body with respect to the relevant Articles of that Agreement. The adjudicative arm of the WTO's Dispute Settlement Body has made clear in *EU - Biodiesel (Argentina)* and *EU – Biodiesel (Indonesia)* that, no matter how it is achieved (whether through adaptation or otherwise), an investigating authority must ensure that it arrives at the actual “cost of production [of the exporter] in the country of origin”.

(15) Australia's submissions to the WTO about using a PMS argument and “benchmark” costs were rejected by the WTO

Previous Australian Customs and Border Protection Service and Commission reports have referred to a surrogated cost as a benchmark cost. In the WTO

²⁰ *European Union – Anti-Dumping Measures on Biodiesel from Indonesia* (WT/DS480/R, 25 January 2018).

²¹ *Ibid.*, at para 7.30.

authority we have cited the word “benchmark” is never used in the context of normal value construction by the panel or the Appellate Body. The focus is on “information” that exists or is obtained outside the country that reflects or represents the costs in the country of export or, if it does not so reflect or represent those costs, is made to do so by being adapted accordingly. The idea that a benchmark needs to be used to avoid any alleged distortion of costs in the country of export is antithetic to the views of the WTO Appellate Body.

The WTO has expressly disagreed with Australia’s pre-Steelforce position, which has been that alleged cost “distortion” allows non-Chinese costs to be used for normal value construction. In EU – Biodiesel (Argentina), the Appellate Body encapsulated the argument against the use of the exporter’s actual costs in that case, and instead the use of an external cost, as follows:

The first main argument made by the European Union is that the Panel erred in finding that the second condition in the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement refers to the actual costs incurred by the specific exporter or producer under investigation. The European Union submits that the phrase “associated with the production and sale” in this condition is drafted in relatively general and abstract terms, and cannot be interpreted to mean “actual” costs of production and sale. The European Union adds that the Panel erred by failing properly to interpret the term “associated”. In the European Union’s view, a proper interpretation of the term “associated” leads to the conclusion that “the European Union was fully entitled to consider which costs would pertain [or relate] to the production and sale of biodiesel in normal circumstances, i.e. in the absence of the distortion caused by Argentina’s differential export tax system.” In their third participant’s submissions, Australia and the United States express views similar to that of the European Union, and consider that the condition at issue should not be interpreted as referring to the actual costs incurred by the producer or exporter under investigation²². [footnotes omitted] [underlining supplied]

The Appellate Body dismissed the notion that it was up to the investigating authority of any WTO Member to decide to ignore the actual costs of an exporter of a fellow WTO Member by claiming that they were “distorted”:

Reading the Panel’s use of the word actual in light of the broader reasoning of the Panel findings, we understand the Panel to have considered that the second condition in the first sentence of Article 2.2.1.1 concerns the costs incurred by the producer under investigation that are genuinely related to the production and sale of the product under consideration in a particular anti-dumping investigation. Thus, we do not consider that the Panel’s use of the word “actual” is in error. Nor do we consider, as the European Union argues, that the condition at issue allows the EU authorities to consider which costs would pertain to the production and sale of biodiesel in normal circumstances, i.e. in the absence of the alleged distortion caused by Argentina’s export tax system. Rather, we agree with Argentina that such interpretation would add words to the condition at issue that are not present in Article 2.2.1.1, namely,

²² EU – Biodiesel (Argentina), para 6.28.

the costs that "would pertain" and "in normal circumstances".²³ [footnotes omitted] [original emphasis]

The GOC submits that it is now abundantly clear that an investigating authority cannot rely upon what it deems to be an external "benchmark" cost in an exporter's constructed normal value. As per the panel report in EU – Biodiesel (Indonesia):

...it is not sufficient to simply substitute the costs from outside the country of origin for the 'cost of production in the country of origin.'²⁴

The GOC respectfully submits that the Commission cannot, in legally or in good conscience, surrogate costs which are entirely unrelated to China, into the constructed normal values of the exporters of railway wheels. The GOC respectfully reminds the Commission to consider the likely consequences if it were to adopt such an unprincipled approach. The GOC finds that it is lectured about the rule of law, and the need to have laws and to comply with those laws, frequently. Here, with respect to the important question of anti-dumping, a subject which is of huge significance to the trade relations between Australia and China, the rules of law have been clearly laid out. The Australian investigating authority must abide by them. The GOC requests the Commission to do so in arriving at its recommendations to the Minister in this investigation.

(16) Not only is the Commission legally precluded from using alleged "distortion" to reject Chinese costs, they are not factually distorted

The Applicant's position is that all raw material input prices, for railway wheels and steel billet, are somehow distorted. The GOC disagrees outright that the inputs used to manufacture these products are distorted, or not market-derived. The simple fact is that prices differ between markets. China is the largest steel producer in the world and, therefore has a significant comparative advantage in the production of steel products. Prices of steel products in China are not artificially low, and they are certainly not dictated or decided by the GOC.

- 1 Identify and provide an explanation of the specific roles and responsibilities of government departments, agencies or institutions, which are either directly or indirectly involved in economic policy development, economic regulation and decision-making activities with respect to the railway wheel manufacturing sector and /or the iron and steel industry more generally.

There are no specific government policies, economic or otherwise, or economic regulation, for the railway wheel industry.

²³ *Ibid*, para 6.30.

²⁴ EU – Biodiesel (Indonesia), para 7.30.

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Accordingly, the GOC does not have a central government, department, agency or institution that is exclusively assigned the task of administrating measures concerning the “railway wheels industry”.

Please refer to the response to question A-1 for answers to the Commission’s inquiries about government interactions with the iron and steel industry.

- 2 Identify any government departments, agencies or institutions that are involved in the manufacture, sale, purchase or acquisition of railway wheels and /or steel billet used in the production of railway wheels, and explain the nature of their involvement.

There are no GOC departments, agencies or institutions that are involved in the manufacture or sale of railway wheels.

- 3 Provide details of any GOC policies that require different corporate tax rates to be applied to producers within each of the railway wheel; iron ore, coking coal, coke and scrap steel sectors. For example, for producers in any of these specific sectors, do taxation rates differ due to sales revenue, location, export / domestic market orientation etc. Detail any industry specific tax exemptions or tax rebates such as R&D expenditures.

The standard corporate income tax rate of 25% applies to Maanshan.

- 4 Provide a detailed description of the domestic Chinese railway wheel sector and the relevant upstream industries, including the iron and steel industries. The response should include details of:
- a) distribution channels
 - b) any vertical integration
 - c) any changes over the last 5 years (such as mergers and acquisitions)
 - d) any changes to the government laws and regulations after 1 January 2013.

With respect to these matters, please refer to the response in Section A-1.

- 5 Provide quarterly data (using Microsoft Excel format) over the last 5 calendar years of:
- a) import quantity (by volume and value) of
 - (i) iron ore
 - (ii) coking coal
 - (iii) coke

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- (iv) scrap steel
 - (v) steel billet
 - (vi) railway wheels
- b) export quantity (by volume and value) of
- (i) iron ore
 - (ii) coking coal
 - (iii) coke
 - (iv) scrap steel
 - (v) steel billet
 - (vi) railway wheels

For export and import values, specify if the value is based on ex-factory, F.O.B. (port, shipping point, etc), C.I.F. or some other value.

Please refer to Attachment 9 [CONFIDENTIAL ATTACHMENT] – Import and export data for iron ore, coking coal, coke, scrap steel, steel billet and railway wheels. Please note that the respondent is an integrated manufacturer who purchased iron ore to produce steel billet by itself for the production of the goods under consideration.

Please note that all import values are CIF and all export values are FOB.

- 6** Provide a schedule for the last 5 calendar years and provide supporting documentation of:
- a) the corporate tax rate in relation to:
 - (i) the iron ore, coke and coking coal miners/importers/traders
 - (ii) steel billet
 - (iii) scrap steel traders
 - (iv) railway wheel manufacturers/traders

The corporate tax rate of 25% does not differ for producers/trader of railway wheels, iron ore, coke, coking coal, steel billet and scrap steel.

- b) import tariff rates and/or import quotas applicable to:
 - (i) iron ore

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- (ii) coking coal
 - (iii) coke
 - (iv) scrap steel
 - (v) steel billet
 - (vi) railway wheels.
- c) export tariff rates and/or export quotas applicable to:
- (i) iron ore
 - (ii) coking coal
 - (iii) coke
 - (iv) scrap steel
 - (v) steel billet
 - (vi) railway wheels
- d) value added tax (VAT) export rebates applicable to exports of:
- (i) iron ore
 - (ii) coking coal
 - (iii) coke
 - (iv) scrap steel
 - (v) steel billet
 - (vi) railway wheels

With respect to (b), (c) and (d) please refer to the lists of tax and tariffs for iron ore, coking coal, coke, scrap steel, steel billet and railway wheels set out in Attachment 10.

- 7 If export quotas applied to any of the items at Question 6(c) above, identify which agency of the GOC legislates and monitors the quotas.

Of these items, export quota has been applied to coking coal. The Ministry of Commerce of the People's Republic of China and the General Administration of Customs of the People's Republic of China are responsible for the administration of the export quotas.

- 8 The following series of questions concern the *Price Law of the People's Republic of*

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China (the Price Law).

These questions are based on the text of the Price Law, as provided to the Commission by the GOC in the past.

a) For completeness, please provide a translated copy of the Price Law.

Please refer to Attachment 11 for a copy of the *Price Law of the People's Republic of China*.

b) Have there been amendments to the Price Law since last being provided to the Commission (or its predecessors)? If so, in the copy provided of the current Price Law, highlight all such amendments.

No, there have been no amendments.

c) Article 27 of the Price Law states that the government shall "...establish a price regulation fund to control and stabilise the market".

- (i) What form does the "price regulation fund" take generally and what department of the GOC is responsible for the fund?
- (ii) What "price regulation fund" regulations have applied to railway wheels or the iron and steel industry since 1 January 2013?
- (iii) What "price regulation fund" regulations have applied to iron ore, coking coal, coke, scrap steel, and/or steel billet since 1 January 2013?

This is essentially a "price moderation fund". The purpose of such a fund is to help vulnerable groups of people to survive sharp fluctuations in the market prices of daily necessities, such as might occur in a period of extreme inflation. This policy target is reflected in the fact that these Articles are found within Chapter Four of the *Price Law* (see Attachment 11), headed "Moderation of General Price Level", which relates to attempts to avoid "spikes" for daily necessities where possible and appropriate.

There are presently no uniform specific collection and administration measures for any "price moderation fund" at the central government level. The GOC notes that some local governments have formulated their own local regulations in accordance with the Price Law.

There is no "price regulation fund" for railway wheels industry, nor for iron ore, coking coal, coke, scrap steel, and/or steel billet, or the iron and steel industry generally.

d) Article 28 states that "in order to better control prices government price departments shall establish a price monitoring system to monitor changes in the

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prices of major merchandises and services”.

- (i) What price monitoring system has been established generally and what department is responsible?
- (ii) What “price monitoring” has applied to railway wheel since 1 January 2013?
- (iii) What “price monitoring” has applied to iron ore, coking coal, coke, scrap steel, and/or steel billet since 1 January 2013?

The price monitoring system was established for a few important producer goods and consumer goods. Local price bureaus are responsible for collecting the prices as mentioned in the Price Law. This is not a price fixing or setting process. It is simply a way to collect price information for important products.

Railway wheels are not subject to price monitoring, nor have they been at any point since 1 July 2013.

Steel billet, coking coal, coke and raw material for steelmaking are important goods which are subject to the price monitoring system carried out by the local price bureau.

- 9 Provide a list and copies of any specific laws, decrees, rules, promulgations, edicts, opinions, measures, regulations and/or directives regarding
- a) The regulation of the price of railway wheels, steel billet used in railway wheel production, or any of the raw materials used to manufacture those products; and
 - b) Investment in projects related to railway wheels, steel billet used in railway wheel production, or any of the raw materials used to manufacture those products
 - c) Identify the specific government department or institution responsible for the above-mentioned laws and regulations above.

(17) The GOC does not regulate the prices of goods and materials that the Commission has made the subject of this investigation.

The GOC does not regulate the pricing of railway wheels and/or iron ore, coking coal, coke, scrap steel, and/or steel billet.

The GOC does not regulate the pricing of railway wheels and/or iron ore, coking coal, coke, scrap steel, and/or steel billet. Rather, prices for railway wheels, iron ore, billet, coking coal, coke and scrap steel are all determined commercially, in the market place, in transaction between buyers and sellers. These prices are competitive market prices. There are no laws or regulations that are specific to railway wheels prices, nor to any of the raw materials used to manufacture those

products.

The GOC provides the catalogues of central government-set prices promulgated by NDRC and by Anhui provinces (being the provinces where the respondents are located) at Attachment 12 and Attachment 13 respectively. The GOC notes that the Catalogue of Set Prices does not include the above products.

In relation to investment regulation, please refer to the GOC's response to Section C below regarding each of the raw materials identified in that Section.

- 10 Identify and document any financial assistance provided by the GOC since 2013 in support of the railway wheel manufacturing sector or elements of the iron and steel industry producing raw materials used in railway wheel production.

Please refer to Section C for information on any financial assistance provided by the GOC to the responding exporter, Maanshan.

- 11 Has the GOC issued or participated in the issuance of any debt or equity instruments²⁵ in any business entity associated with railway wheel production and elements of the iron and steel industry producing raw materials used in railway wheel production in the last 5 years? If so:
- a) provide the names and address of the business entities
 - b) explain the reasons for using a particular financial instrument(s);
 - c) provide full details (such as number of shares and value of bonds), including the period of investments and the rate of return(s) (and/or expected yields)
 - d) are any of these instruments or securities listed in any securities exchange in China or overseas? If so:
 - (i) provide the name(s) of the securities of exchange
 - (ii) identify any trading restrictions by the business entity and/or the securities exchange

The GOC does not understand what relevance this has to the price of the GUC in the Chinese market for those products, and therefore cannot see how this information would be relevant to the PMS allegation. The GOC also notes that the question itself is vague. How would the GOC "participate" in the issuance of any debt or equity instruments in any business? Also, where is the borderline of entities associated with railway wheels, or iron and steel industry?

Nonetheless the GOC can advise that its only "involvement" in the issuance of debt

²⁵ Examples of such instruments include ordinary shares (including initial public offers), preferential shares, rights issue, bonds, quasi-government bonds warrants, debentures, sub-ordinate loans.

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or equity instruments by business entities, if any, would be in the form of its share ownership in the State-invested enterprises in the sector. Business financing activities of the type described in this question in relation to any business entity associated with the railway wheels, iron and steel industries would need to be carried out in a normal commercial manner and would be subject to the same legal and regulatory requirements and market conditions as applicable to any other business category operating in China.

- 12 Provide details (quantify the value) of any government guarantee provided for any commercial loans by a business entity associated with railway wheel production or the production of raw materials used in railway wheel production in the last 5 years.

The GOC has been informed by the responding exporter that it has not received a “government guarantee” for any commercial loans in the last five years.

- 13 Do enterprises need to be verified by the GOC prior to being approved entry to the railway wheel sector or the iron and steel industry more generally?

There is no requirement for railway wheels producers to be verified by the GOC before they enter into railway wheels production. Further, they are not subject to any approval requirements.

In relation to the iron and steel industries, since October 2013 the GOC has restricted any further increases of steel production capacity in order to address industrial sustainability and environmental problems that are exacerbated by overcapacity.

- 14 Are railway wheel producers or entities producing raw materials for railway wheel production in China required to hold any types of licences for production? If so, provide details and documentary evidence.

No licence for production is required.

- 15 Are there any production limits and/or export limits placed on railway wheel producers? If so, provide documentary evidence.

There are no production or export limits placed on railway wheels producers.

- 16 Are there any price restrictions on railway wheel domestic sales or steel billet used in the production of railway wheels? If so, provide details.

There are no price restrictions on domestic railway wheels or steel billet sales.

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- 17 Identify any GOC initiatives and/or policies that affect the railway wheel sector or the iron and steel industry more generally, including raw materials such as iron ore, coking coal, coke, steel billet, or scrap steel. Provide all documentary evidence.

Please refer to the response to Section B.19.

- 18 Identify any GOC catalogues/plans that have been in effect since January 2013 that affect railway wheel and/or producers of raw materials used in the production of railway wheels (such as steel billet, coke, scrap steel, coking coal, and iron ore). Provide all documentary evidence. Examples of such catalogues/plans previously provided include:

- a) National Steel Policy
- b) A Blueprint for Steel Industry Adjustment and Revitalization
- c) Directory Catalogue on Readjustment of Industrial Structure
- d) National and regional Five year plan for the Chinese Iron and Steel Industry.

The GOC has never issued any national industrial plan/policy specific to railway wheels production. The GOC provides the 13th Five Year Plan for the Steel Industry in Attachment 1 and the Catalogue for Industrial Restructuring Adjustment in Attachment 14.

- 19 Provide copies of the following documents (translated to English):

- a) Directory Catalogue on Readjustment of Industrial Structure

Please refer to Attachment 14 for the Catalogue for Industrial Restructuring Adjustment.

- b) China Nonferrous Metals Yearbooks for the years 2013, 2014, 2015, 2016 and 2017

The GOC believes that the requested China Nonferrous Metals Yearbooks for the years 2013, 2014, 2015, 2016 and 2017 are not relevant to this investigation. Neither the GUC nor its inputs are attributed to nonferrous metals.

- c) 13th Five-Year plans including:

- 13th Five-Year Plan for the Raw Materials Industry;

Please refer to Attachment 1 for the 13th Five Year Plan for the Steel Industry.

- 13th Five-Year Plan for Further Promoting the Economy of the Western

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Regions; and

There is no 13th Five Year Plan for Further Promoting the Economy of the Western Regions. There is a 13th Five Year Plan for Opening Up of Western China. However, the GOC believes that it is not relevant to this investigation, since the respondent is not located in the western regions.

- the two most recent five-year plans at **all levels** of the GOC (including, central, regional, provincial and for any special zones, areas or other such regions), as well as the original Chinese versions.

Please refer to the following Attachments:

- **Attachment 15- 12th National Five Year Plan for Development of the PRC;**
- **Attachment 16 - 13th National Five Year Plan for Development of the PRC;**
- **Attachment 17 - 12th Five Year Plan of Anhui Province; and**
- **Attachment 18 – 13th Five Year Plan of Anhui Province.**

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SECTION C: SUBSIDIES

The applicant alleges that producers of railway wheels in China have benefited from a number of subsidies granted by the GOC, and that these subsidies are countervailable.

INVESTIGATED PROGRAMS

Table 1 below lists the alleged countervailable subsidy programs for railway wheels that are being investigated.

Note: the below titles of programs are to the best of the Commission's knowledge and in some cases may simply be descriptions of the program. Consequently, the below titles may not exactly reflect any official titles that the GOC has in place.

The GOC is requested to provide information on each program, regardless of the year the benefit was granted by the GOC or the year that the benefit was received by the recipient company, as well as those further identified by the GOC, where the program benefits the production and sale of railway wheels during the investigation period.

Table 1: INVESTIGATED PROGRAMS

The following are programs that the Commission is currently investigating:

Category	Program (number and description)
Part C-1: Provision of goods (Programs 1-4)	1. Billet provided by the Government of China at less than adequate remuneration
	2. Coking coal provided by the Government of China at less than adequate remuneration
	3. Coke provided by the Government of China at less than adequate remuneration
	4. Electricity provided by the Government of China at less than adequate remuneration
Part C-2: Preferential tax policies (Programs 5-9)	5. Preferential Tax Policies for High and New Technology Enterprises
	6. Preferential Tax Policies in the Western Regions
	7. Land Use Tax Deduction
	8. Tariff and VAT Exemptions on Imported Materials and Equipment
	9. VAT refund on comprehensive utilisation of resources

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Category	Program (number and description)
Part C-3: Financial grants (Programs 10-42)	10. One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” and “Famous Brands of China”
	11. Matching Funds for International Market Development for small and medium size enterprises (SMEs)
	12. Superstar Enterprise Grant
	13. Research and Development (R&D) Assistance Grant
	14. Patent Award of Guangdong Province
	15. Innovative Experimental Enterprise Grant
	16. Special Support Fund for Non-State-Owned Enterprises
	17. Venture Investment Fund of Hi-Tech Industry
	18. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
	19. Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan
	20. Water Conservancy Fund Deduction
	21. Wuxing District Freight Assistance
	22. Huzhou City Public Listing Grant
	23. Huzhou City Quality Award
	24. Huzhou Industry Enterprise Transformation & Upgrade Development Fund
	25. Wuxing District Public List Grant
	26. Anti-dumping Respondent Assistance
	27. Technology Project Assistance
28. Transformation technique grant for rolling machine	

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Category	Program (number and description)
	29. Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009
	30. Key industry revitalization infrastructure spending in 2010
	31. Provincial emerging industry and key industry development special fund
	32. Environmental protection grant
	33. Environmental protection fund
	34. Intellectual property licensing
	35. Financial resources construction - special fund
	36. Reducing pollution discharging and environment improvement assessment award
	37. Grant for elimination of out dated capacity
	38. Grant from Technology Bureau
	39. High and New technology Enterprise Grant
	40. Independent Innovation and High Tech Industrialization Program
	41. Environmental Prize
	42. Jinzhou District Research and Development Assistance Program
Part C-4: Equity programs (Programs 43-45)	43. Debt for equity swaps
	44. Equity infusions
	45. Unpaid dividends
Part C-5: Preferential loans (Program 46)	46. Preferential loans and interest rates to producers/exporters of railway wheels

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Category	Program (number and description)
Part C-6: Miscellaneous programs (Programs 47-88)	47. Compensation for land purchasing and storage
	48. Technological transformation fund for Phase II Silicon Steel Project
	49. Subsidy for land use rights in the new zone (Block No. 31836 & 31837)
	50. Subsidy for developing emerging strategic industries in Anhui Province
	51. New-zone Thermal Power Plant CAPP system engineering
	52. EMU Steel wheel production line project
	53. Cold-rolled sheet project
	54. Relocation compensation for transportation company
	55. Exhaust gas power generation projects of - Steel blast furnace- 1# - 4# coke dry quenching
	56. Dezincification engineering of zinc dust and mud rotary hearth furnace for 3rd iron plant
	57. National subsidy for slag muck processing and recycling engineering (AD201050406)
	58. Subsidy for construction by Wuhu Technique
	59. 6# full burning blast furnace gas boiler works
	60. Municipal environmental protection subsidies for desulfurisation engineering of 3rd iron plant's sintering flue gas
	61. 5# and 6# coke dust removal project
62. Fix assets subsidy for thin plate project	
63. Flue gas curtailment project for 1st iron plant's blast furnace	
64. Subsidy for technology advancement from open-hearth furnace to converter for 1st steel plant	
65. Rolled wheel works	

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Category	Program (number and description)
	66. Pulse clarifier anti-pollution
	67. Environmental funds for de-sulfurisation project of 3rd iron plant's flue gas (BOT)
	68. National environmental fund for flue gas treatment by 3rd steel plant (AI201150304)
	69. Subsidies for environmental protection funds of smoke de-sulfurisation plant
	70. No. 3 general factory thermoelectricity plant 135MW generators
	71. New zone coking-field project
	72. Comprehensive utilisation of water resources
	73. Subsidy for Masteel new-zone CDQ project
	74. Subsidy for material modification of high-speed wheel and axle
	75. Environmental protection subsidy for the thermal power plant denitrification
	76. Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 2# sintering machine
	77. Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 3# sintering machine
	78. Interest subsidy for rail industrialisation project of Masteel
	79. Development and reform subsidy
	80. Development fund of efficient and economical construction steel technology
	81. Technology development fund by Ministry of science and technology
	82. Intelligent manufacturing fund for Ma-steel Rail Transportation
	83. Subsidy for Maanshan railway industry

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Category	Program (number and description)
	84. Comprehensive utilisation of gas for power generation of a thermal power plant
	85. Environmental subsidy for biochemical water upgrade project of coke old area upgration project of coke old
	86. Government subsidy for desulfurisation and denitrification of gases project of a thermal power plant
	87. Government subsidy for dust elimination of hot metal pouring on converter roof
	88. Others

In responding to this questionnaire, if the GOC is unfamiliar with the title given to a program, but is aware of the existence of a similar program or one that it appears is being referred to, please identify this (including providing the official title of any such program) and respond to the questionnaire in relation to that program.

ANY OTHER PROGRAM NOT LISTED ABOVE PREVIOUSLY ADDRESSED

If the GOC, any of its agencies, or any other authorised non-governmental body provides any other assistance programs not previously addressed (including market development assistance programs or any domestic support programs related to the manufacture of subject goods) to manufacturers of railway wheels in China, identify these program(s). Such assistance programs are those that constitute a subsidy as defined in the attached Glossary of Terms.

The GOC is requested to provide the information requested for each of the programs identified above and any additional programs the GOC has identified. In addition, please respond to the program-specific information requested.

- 1 For **all programs under investigation** provide any amendments to law, regulations or policy that makes a particular program redundant for this investigation. Provide all documentary evidence.

(18) The allegation that SIEs are public bodies that provided inputs at less than adequate remuneration, and that Maanshan did that to itself, are false

In line with the previous practice that has been adopted by the GOC, the GOC will respond to the questions in relation to Programs 1, 2, 3 and 4 by way of rebuttal, and in relation to other “programs” only if the Chinese exporters of railway wheels participating in this investigation have reported usage of them. In that regard we are advised that there is likely to have been only one exporter in the investigation period, and that there is only one participating exporter, namely Maanshan Iron and

Steel Co., Ltd (“Maanshan”).

The GOC can categorically state that the Programs 1 to 4, having to do with the allegation that billet, coking coal, coke and electricity were provided to Maanshan by public bodies at less than adequate remuneration (“LTAR”), did not exist and do not exist. The Applicant’s claims and the Commission’s acceptance of similar claims in the past are based on a misunderstanding of fact and a misapplication of WTO jurisprudence.

The GOC also wishes to emphasise that Maanshan itself is a joint stock (Sino-foreign) limited liability company, having 45.54% ownership of its shares by SASAC. It is listed on both the Shanghai and Hong Kong Stock Exchanges. It is not a “public body” as defined in Article 1.1(1)(a) of the WTO *Subsidies and Countervailing Measures Agreement* (“the SCM Agreement”). It is a commercial business entity. The allegation that it is an SIE is linked to the claim that Maanshan “self-subsidises” itself through the provision of steel billet at LTAR, which is the alleged Program 1.

(19) Self-subsidisation is a factual and legal myth

The Applicant relies on findings made by the Commission in Reports 322²⁶ and 331,²⁷ which were to the effect that the SIE exporters were purportedly subsidised under the LTAR programs by themselves. In other words, the Commission found that SIE exporters were “self-subsidised” because they were integrated producers and could pass-on the allegedly LTAR inputs from one intermediate stage to the next. The GOC strongly disagrees with these prior findings.

The Applicant in this investigation is arguing (on the basis of these previous findings) that Maanshan, as a vertically integrated producer, is subsidising steel billet to itself. That, it is said, amounts to an LTAR subsidy provided by a public body. It has submitted that the financial benefit received by Maanshan from low-priced input billet (which Maanshan itself produces) confers a benefit upon it in relation to the railway wheels it manufactures. This so-called financial contribution, the Applicant argues, meets the definition of subsidy under Section 269T of the Act.

With respect, the GOC considers this “self-subsidisation” approach to be highly

²⁶ Report Number 322 – Alleged subsidisation of steel reinforcing bar exported from the People’s Republic of China (19 December 2016), at <http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20322%20-%20archived%2013%20December%202016/055%20Final%20Report%20322%20Steel%20Reinforcing%20Bar.pdf>

²⁷ Report Number 331 – Alleged subsidisation of rod in coils exported from the People’s Republic of China (19 December 2016), at <http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20331%20-%20archived%2013%20December%202016/057%20Final%20Report%20331%20Rod%20in%20Coils.pdf>

illogical. It is an absurd allegation and one which must not be indulged in any further by the Commission. A producer should not, by making a commercial decision to produce its own input material, be considered to be subsidising itself by producing that material. The cost of production of that material, which in this case, is steel billet, is exactly that – its cost of production. The GOC is concerned that this unprincipled self-subsidisation argument symbolises deep-rooted, protectionist discrimination against SIEs, and is tantamount to branding China itself as a “non-market economy”.

There is simply no evidence to support the proposition that the cost of steel billet as may have been recorded and reported by Chinese railway wheel manufacturers is anything but the actual costs incurred by them. The accuracy or reliability of Chinese railway wheel manufacturer’s audited cost records for self-produced steel billet cannot be impugned or ignored.

(20) SIEs operating in China’s commercial markets, including Maanshan, are not public bodies because they do not exercise governmental authority.

The real question in terms of Article 1.1 of the SCM Agreement is whether a government or public body has provided goods to Maanshan in a way that confers a benefit on Maanshan. For the purposes of its self-subsidisation argument, the Applicant contends that Maanshan is a public body.²⁸ This itself is illogical, in that Maanshan does not provide anything to itself. It does not convey anything to itself. It does not purchase anything from itself. There is no commercial or for that matter non-commercial transaction that takes place “within” it.

The Applicant’s contention that Maanshan is a public body is wholly dependent and entirely motivated by the Applicant’s self-subsidisation allegation. When that allegation falls away, as it must, the relevance of the status or classification of the type of corporate entity that Maanshan is falls away as well. Maanshan is a State-invested enterprise, but is definitely not invested with public functions, nor does it carry out public functions. It is not a public body, which is the proposition to which we now turn.

Contrary to the applicant’s allegations, Maashan is not 100% owned by SASAC. The State-owned Assets Supervision and Administration Commission (“SASAC”) holds 45.54% of Maanshan’s shares, through its 100% ownership of Magang (Group) Holding Company Limited. This is explained in the 2016 Maasteel Annual Report, which was provided by the Applicant as an attachment to its application. The Report lists and describes the other major shareholders of Maanshan, of which there are many.

²⁸ Application attachment C-1.1.

Therefore, the application is fundamentally misconceived. The Application says:

The Chinese exporter of railway wheels to Australia is Maanshan Iron and Steel Company Limited (“Masteel”) which is owned by Magang (Group) Holding Company Limited. Masteel is a state-owned enterprise (owned 100 per cent by the State-owned Assets Supervisions and Administration People’s Government of Anhui Provincial Government).²⁹

This is untrue. To allege that Maanshan is 100% owned by SASAC is wrong and misleading.

While the Consideration Report does not repeat the error made by the Applicant (that Maanshan is a SOE), it does imply that by virtue solely of its SIE status, Maanshan is a “public body”. The erroneous proposition that “SIEs are public bodies” is stated explicitly by the Applicant.³⁰ The GOC rejects this assertion. SIEs are not “public bodies”. In this regard, the GOC wishes to note the following WTO jurisprudence:

- the key question in determining whether an entity is a public body is whether that entity possesses, exercises or has been vested with government authority;³¹
- the exercise of functions by an entity that may also be undertaken by a government body will not serve as evidence that that entity is a public body, other than the power to regulate, control, or supervise individuals, or otherwise restrain their conduct through the exercise of lawful authority;³² and
- the existence of mere formal links between government and the entity, such as government ownership, does not establish that an entity is a public body.³³

WTO jurisprudence confirms that the percentage of government shareholding in an SIE does not mandate a finding that such entities are or are not public bodies. It cannot and must not be assumed that an SIE is, by definition, a public body.

The approach taken by the Commission and the Applicant, of labelling Maanshan itself and its input suppliers in China as public bodies without any evidence other than the fact that they are State invested enterprise, has been consistently rejected

²⁹ Application, page 31.

³⁰ Application, Attachment C-1.1.

³¹ See Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)* (“WT/DS379/AB/R”) paras 310, 317 and 318, Panel Report, *US – Countervailing Measures on Certain Products (China)* (“WT/DS437/R”), para 7.66; and Appellate Body Report, *US – Countervailing Measures on Certain Hot-Rolled Carbon Flat Steel Products (India)* (“WT/DS436/AB/R”), para 4.9.

³² WT/DS437/R, para 7.71.

³³ WT/DS379/AB/R, para 318.

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by the WTO. The Commission must remain mindful of the WTO's jurisprudence concerning the definition of "public body".

In *United States – Definitive Antidumping and Countervailing Duties on Certain Products from China*,³⁴ the WTO Appellate Body disagreed with the panel's finding that interpreting "public body" to mean any entity that is controlled by the government "best serves the object and purpose of the SCM Agreement". The Appellate Body further indicated that "that control of an entity by a government, in itself, is not sufficient to establish that an entity is a public body".³⁵

In *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*³⁶ the WTO Appellate Body ruled that:

...the terminology advocated by the United States – "a public body may also include an entity controlled by the government... such that the government may use the entity's resources as its own" - is difficult to reconcile with that used by the Appellate Body in US – Anti-Dumping and Countervailing Duties (China).³⁷

The Appellate Body went on to explain that in its consideration of evidence, an investigating authority must avoid focusing exclusively or unduly on any single characteristic. An investigating authority must afford due consideration to the entities other characteristics, and must not take the view that government ownership alone is sufficient to establish that a company is a public body. Put simply:

The question of whether the conduct of an entity is that of a public body must in each case be determined on its own merits, with due regard being had to the core characteristics and functions of the relevant entity, its relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates.³⁸

This "public body" standard is best understood in the Appellate Body's summation of the deficiencies in the analysis of same by the US Department of Commerce in that case:

In sum, the USDOC did not evaluate the relationship between the [alleged public body, or "NMDC"] and the [Government of India, or "GOI"] within the Indian legal order, and the extent to which the GOI in fact "exercised" meaningful control over the NMDC and over its conduct in order to conclude properly that the NMDC is a public body within the meaning of Article 1.1(a)(1) of the SCM Agreement. Instead, the USDOC examined evidence which, in our

³⁴ WT/DS379/AB/R (March 11, 2011), para 303,

³⁵ *Ibid.*, at para 320

³⁶ WT/DS436/AB/R (8 December 2014),

³⁷ *Ibid.*, para. 4.19. See also *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/R (14 July 2014) at para. 7.5.5.3 (rejecting the "rebuttable presumption" that majority government ownership renders a company a public body).

³⁸ *Ibid.* at 4.43.

view, would be seen more appropriately as evidence of “formal indicia of control” such as the GOI’s ownership interest in the NMDC and the GOI’s power to appoint or nominate directors. These factors are certainly relevant but do not provide a sufficient basis for a determination that an entity is a public body that possesses, exercises, or is vested with governmental authority.³⁹

The GOC also wishes to emphasise that its position on public bodies has been officially supported by the Australian Anti-Dumping Review Panel (“ADRP”) and its predecessor the Trade Measures Review Officer (“TMRO”) time and time again.⁴⁰ Because of this, the GOC is confused and confounded as to the Commission’s opinion about the “rule of law”. Why is the proposition that a particular level of State investment cannot determine the “public body” status of an SIE not accepted by the Commission and the Minister? The legal system and decision-making hierarchy of the Australian anti-dumping system has repeatedly ruled, at the review level, that SIEs are not automatically to be considered “public bodies”. The persistent ignoring of the review decisions contradicts the form and purpose of the Australian review system, and is contrary also to the meaning and intent of Article 13 of the Anti-Dumping Agreement. Review can hardly be prompt and independent, or in any way effective, if it is constantly overridden and ignored by the inferior administrative body that the review system has been set up to police.

Whether or not an SIE is also a “public body” is a matter that must be factually determined in the context of the applicable law. It cannot be presumed to be the case.

Alongside its argument that SIEs are *always* public bodies, the Applicant argues that Maanshan is a “public body” because the GOC exercises “meaningful control” over Maanshan as a manufacturer of steel billet. As will be explained, the Applicant’s argument in this respect is entirely illogical and betrays an acute misunderstanding of the legal meaning of the term “public body”.

Three “indicia” were identified in DS379 for the purpose of working out whether any particular corporate entity may be a public body.⁴¹ They are as follows:

- Indicia 1 – where a statute or other legal instrument expressly vests government authority in the entity concerned;
- Indicia 2 – where there is evidence that an entity is exercising governmental

³⁹ Ibid, para 4.54.

⁴⁰ See e.g. ADRP Recommendation Report *Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People’s Republic of China* (November 2013); TMRO Report *Aluminium Road Wheels exported to Australia from The People’s Republic of China* (December 2012); TMRO Report *Certain Hollow Structural Sections exported from the People’s Republic of China, the Republic of Korea, Malaysia, Taiwan, and the Kingdom of Thailand* (December 2012).

⁴¹ WT/DS379/AB/R, para 3.18.

functions, and this serves as evidence that it possesses or has been vested with government authority; and

- Indicia 3 – where the government exercises meaningful control over the entity, and the entity’s conduct serves as evidence that it possesses governmental authority and exercises that authority in the performance of governmental functions.⁴²

There is no question that the first two indicia do not apply to Maanshan. The Applicant acknowledges this, and instead relies upon the third indicia in its application.

To be clear, there are two elements to this test. The first is that the government exercises “meaningful control” over the entity. The second is that, as a consequence, the entity itself possesses and exercises governmental authority. WTO jurisprudence makes clear that “meaningful control” of an entity by government is not sufficient to establish that an entity is a public body, unless that control properly evidences that the entity possesses, exercises or is vested with governmental authority.⁴³ Thus, there are two elements, and both must exist and be proven to establish the “public body” proposition.

As to the first element, the assertion that Masteel is under “meaningful control” of the GOC must be rejected. The Application and the Consideration Report imply that this allegation is supported by a reference in the 2016 Masteel Annual Report to the effect that SASAC is the “actual controller” of Maanshan. This is simply a translation of the expression “controlling shareholder” as used in a Western context, and is based on the undenied and openly reported fact that the largest shareholder of Maanshan is Magang (Group) Holding Company Limited, a company in which SASAC holds all the issued share capital, with a 45.54% shareholding. Misconstruing these words in the way the Applicant has done is simply childish.

The GOC does not exercise governmental or even complete commercial “control” over Maanshan. It does not exercise control in the “meaningful” context required by the WTO Appellate Body. Maanshan is directed by its shareholders in general meeting, and is supervised by its directors. An SIE owns 45.54% of its shares, but is subject to the same laws as any other major shareholder. Specifically, under the Company Law provided at Attachment 4, we reference the following provisions, which are protective of the commercial and market orientation of all companies in China to which the Company Law applies:

- Article 20 - the shareholders of a company shall abide by the laws,

⁴² *Ibid*, para 3.18.

⁴³ WT/DS436/AB/R, para 4.36.

administrative regulations and company's articles of association, and shall exercise shareholder's rights in accordance with the law. A shareholder shall not prejudice the interests of the company or other shareholders by abusing shareholders' rights; and

- Article 21 - the controlling shareholders, actual holders, directors, supervisors and senior management personnel of a company shall not make use of their affiliation to prejudice the interests of the company.
- Article 37 - a shareholder is to be responsible for making decisions regarding the operational guideline and investments of a company.

Maanshan is a limited liability company whose shares are traded on two stock exchanges. Under the *Company Law* these investors, private (both foreign and domestic) or State, are all participants in the commercial governance of Maanshan as shareholders. To assert that the GOC in some way "controls" Maanshan beyond its capacity as a shareholder is false. In Article 21, one can see specific reference to the expression "controlling shareholder", thereby mandating that such a shareholder, like other shareholders, must only act in the interests of the company itself and not in its own interests. Maanshan operates independently, in the same manner as other market players and in response to market forces.

The fact that SASAC undertakes the role of shareholder or "capital contributor" in SIEs has been patiently explained to the Commission by the GOC on previous occasions. The functions of SASAC are those of a shareholder in the normal sense of the term. As an institution (a non-natural person) it cannot attend a shareholders' meeting or a general assembly of shareholders convened by a company. To efficiently perform its "contributors" functions, it must appoint a representative to attend these meetings. The specific role of these representatives is to put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and to report the performance of his or her duties and results to the appointing body thereafter.

SASAC is obliged to exercise its ownership rights in a manner as provided by law, and not in a way which is dictated by any GOC party or instrumentality. No other parts of the GOC have any authority to intervene contrary to that legal stipulation. The primary and ruling considerations for a SASAC representative to consider in asset management are commercial operation and fair value. SASAC's role is simply that of a shareholder. Investors will always take into account commercial, legal, political ("sovereign") and social risks in managing their investments, and SASAC is no different in this regard.

As to the second element, even when an entity is majority owned and headed by

government officials it is not considered a public body if it does not exercise authority considered to be governmental. The extent of the Applicant's argument in this regard is as follows:⁴⁴

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. [underlining supplied]

There is absolutely no legal basis for the assertion that an entity is a public body because it is "subject to governmental authority". The Applicant's attempt to distort the principles that must be applied to the question is transparent and disingenuous. The applicant fundamentally misconceives what is necessary to be proven to establish that an entity is a "public body". The argument presented by the Applicant simply cannot succeed in establishing that Maanshan is a public body. All entities in any jurisdiction are subject to the authority of the governmental of their jurisdiction, in the sense that the government has laws and regulations about their registration, operations and conduct. The broad statement that SIEs, as a subset of all companies in China, are subject to governmental authority does not advance the applicant's contention that Maanshan is a public body at all. Maanshan is a commercial entity. It does not exercise any governmental functions, and does not carry out the government's bidding. It also has a majority proportion of non-SASAC investors – in the region of 55%. These shareholders have invested in the company with the motivation of commercial gain, as has SASAC. They did not invest in the company so that it could undertake non-commercial activities, such as exercising any "governmental authority".

Accordingly the alleged subsidy program does not exist. Maanshan is an SIE, but it is not a public body. These can be mutually exclusive things. And, in any event, the idea that a public body could self-subsidise itself is untenable. There has not been any provision of billet by the government at less than adequate remuneration – instead, a company has made the commercial choice to produce its own input in order to make a profit. The claim made by the Applicant in respect of this alleged "program" should be dismissed by the Commission at the earliest possible opportunity.

(21) The subsidies alleged to be provided to railway wheel producers by other SIEs are opaque, speculative and not evidenced.

The basis of the Applicant's allegations with respect to Programs 2 and 3 – that coking coal and coke is provided by the GOC at LTAR - programs is highly opaque.

⁴⁴ Application, Attachment C.1.1.

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While the Applicant provided arguments with respect to the alleged Program 1, it has not provided any information with respect to the alleged Programs 2 and 3. Indeed, the Consideration Report acknowledges that:

For Programs 2-4, there is no evidence available to the Commission to include these programs in a preliminary subsidy margin calculation.⁴⁵

Accordingly the GOC can only respond broadly to the allegation that “public bodies” in China are providing input goods (in particular, coking coal and coke) at “less than adequate remuneration”.

The GOC has no information before it to suggest that the input producers in China are anything other than independent business entities, operating on a commercial basis, that make decisions independently with respect to their day-to-day commercial operations, including production, contract signing, price-setting, and commercial negotiations, without any interference or influence from any government agencies. In this regard the GOC firstly repeats what it has had to say about the principles that are to be applied towards determining whether a company could conceivably be a “public body”, in reference to the allegation that Maanshan is such a body, as set out above.

All limited liability companies and joint stock limited companies established within the territory of China are subject to the laws of China including, importantly, the *Company Law of the People’s Republic of China*. Therefore, all input producers are bound by the Company Law. The Company Law is provided at Attachment 4. Decisions of companies in China must be made in conformity with the specific rules set forth in the Company Law and in the articles of association of the company, which must themselves comply with the Company Law.

The GOC reiterates that the critical provisions of the Company Law include:

- Article 36 - that the shareholders’ meeting of a limited liability company is under the authority of the company, and it shall exercise its powers according to this Law;
- Article 37 - that the shareholders’ meeting shall determine all the significant operational issues and plans for the company;
- Article 46 - that the board of directors shall be responsible for the shareholders’ meeting and shall implement the resolutions made at the shareholders’ meetings, as well as manage daily business operations;
- Article 49 - that the manager shall be responsible for the board of directors

⁴⁵ Consideration Report, page 20. See <http://www.adcommission.gov.au/cases/EPR%20451%20%20550/EPR%20466/002%20-%20Report%20-%20Consideration%20Report%20-%20CON%20466.pdf>

and oversee the daily management of the company; and

- Article 147 - that “[t]he directors, supervisors and senior managers shall comply with the laws, administrative regulations, and bylaw” and that “[t]hey shall bear the obligations of fidelity and diligence to the company”.

The articles of association of a company in China, as formulated by its shareholders, establish the company’s corporate governance structure. The articles of association must be compliant with the Company Law. In the event that the Company Law does not govern a particular matter, each company is able to address that matter, at its discretion, in its articles of association. The unique articles of association adopted by each company effectively governs the day to day operation of the company concerned.

The purpose of this demonstration of the way in which the laws of China regulate and interact with the operations of Chinese companies is to emphasise the very great distance between the Applicant’s blanket allegation that all input suppliers are public bodies, and the reality of Chinese companies and their business behaviour. Input suppliers of the type referred to are not told what to do by the Chinese government and do not exercise governmental authority. If that is alleged not to be the case, then positive evidence must be provided to the Commission on a company-by-company basis to demonstrate the truth of the allegation. Otherwise, the Commission itself will be seen not to be observing the rule of law, and instead to be falling in line with a policy of trade protection against Chinese exporters that is discretionary and unbounded.

(22) Remuneration cannot be less than adequate in a case where all prices are discovered by market dynamics

The GOC further stresses that the prices of these inputs are discovered in accordance with market dynamics. Thus, purchases of the inputs concerned cannot have resulted in a benefit in this case. The steel billet, coke and coking coal markets in China operate under market conditions, and the GOC does not interfere in or influence pricing in these markets.

As mentioned in Section A, China is the largest importing country of iron ore and coking coal in the world. China is also the largest producer and exporter of coke. These are the key raw materials for steel billet production, The prevailing costs of such raw materials in China cannot be regarded as anything but competitive market based costs.

(23) An alleged LTAR subsidy cannot be specific if the LTAR goods are available for all uses and are sold to all buyers at the same market price.

The GOC wishes to emphasise that for a subsidy to exist, the provision of a

financial contribution must be shown to be specific. For these alleged programs, the specificity requirement is not satisfied. There are a vast and virtually unlimited number of industrial uses for coking coal and coke. The GOC provides the statistics of annual coal and coke consumption published by the NBS at **Attachment 19** and **Attachment 20** respectively. This is indicative of the vast number of industries using coal and coke. Therefore, coal and coke are widely used across virtually all sectors of industry in China, and thus its use cannot be considered specific to one industry or a particular group of industries.

Further, railway wheel producers in China are not the predominant consumer of either input. The GOC does not impose any limitation on the consumption of coking coal and coke, either by law or by policy. Sales and purchases are necessarily dictated by the market and driven by the forces of supply and demand. The prices of these inputs necessarily fluctuate in accordance with market dynamics.

The Act provides that a subsidy is specific, under Section 269TAAC(2), if:

- access to the subsidy is explicitly limited to particular enterprises – steel billet, coking coal and coke are not so limited;
- access is limited to particular enterprises carrying on business within a designated geographical region – steel billet, coking coal and coke sales are not so limited, because they take place all over China;
- the subsidy is contingent on export, or on using domestic goods in preference to imported goods – there is no such contingencies involved in the purchase by railway wheel manufacturers of steel billet, coking coal and coke.

Specificity connotes a limitation of the class of recipients. There is no such limitations on the normal, commercial, market-based sales of steel billet, coking coal and coal in China. Accordingly, it is submitted that there is no specificity in the provision of these inputs within the meaning of Article 2 of the *SCM Agreement* or under the relevant Australian laws. The GOC therefore reiterates that these subsidies do not exist.

(24) The Commission accepts that different electricity tariff rates for different classes of users is a normal commercial practice and not a subsidy.

Turning now to the specifics of the allegation that the GOC also provides electricity to railway wheel manufacturers at LTAR, we both reject the claim that this alleged program exists and repeat our concern as to the broad brush and unspecified nature of the allegation. The GOC is dumbfounded that the application was accepted for initiation with respect to this alleged subsidy. All the application does is to mention the words *“Program 4: Electricity provided by Government at less*

than adequate remuneration” once, in the entire application. It does not provide any back up submissions or supporting information, apart from referencing two previous investigations in which the Commission *rejected* the claims that such subsidies existed.⁴⁶ Thus, the GOC finds that the initiation of an investigation with respect to this alleged “Program 4” is based on *no information* and previous *denials* by the Commission of similar claims.

Regrettably, and despite the lack of a proper basis for initiation, the GOC is now in the position of having to address the assertions made against it.

With respect to the assertion that electricity supplier enterprises with State investment are “public bodies”, the GOC has already explained that SIEs are not “public bodies”. Electricity suppliers must not be assumed to be “public bodies” in the absence of evidence to the contrary. The GOC will not repeat these arguments here.

With respect to the assertions that the alleged “program” is capable of conferring a subsidy that is “specific” to Maanshan, and that sales of electricity constituted a “financial contribution” or conferred any “benefit” on Maanshan during the investigation period, the GOC wishes to draw the Commission’s attention to its finding in Report 237, having to do with silicon metal.⁴⁷ In that case, the Commission found that electricity was specifically provided to silicon metal exporters in a particular regional area by the GOC at less than adequate remuneration. Critical to that finding was the specificity of the alleged programs. In Report 237 the Commission found that the tariff rate schedule identified specific types of entities that were to receive a favourable electricity rate. In particular, only ferroalloy and silicon producers were eligible to receive it. Applying 269TAAC(4)(a) of the Act, the Commission deemed the program to be specific because it benefited a “*limited number of particular enterprises*”.

We are not aware of any specificity of the type that was explained in Report 237 existing in the present case. And, of course, the Commission’s finding in Report No. 322 and Report No. 331 was to the same effect:

⁴⁶ Eg, in Report 331, the Commission reports as follows:

In SEF 322 and 331, the Commissioner has preliminarily determined that the Chinese manufacturers of RIC and rebar did not benefit from Program 4 – Electricity provided by the Government at less than adequate remuneration.

See Report No. 331, page 84/98 at

<http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20331%20-%20archived%2013%20December%202016/057%20Final%20Report%20331%20Rod%20in%20Coils.pdf>

⁴⁷ Report No. 237 – Alleged dumping of silicon metal exported from the People’s Republic of China and alleged subsidisation of silicon metal exported from the People’s Republic of China (7 May 2015).

<http://www.adcommission.gov.au/cases/EPR%20193%20%20250/EPR%20237%20-%20archived%2012Nov2015/044-Final%20Report%20-%20Other%20-Final%20Report%20237.pdf>

Provincial electricity tariff data was obtained for both the Jiangsu and Shandong provinces, the provinces in which the Cooperative exporters are located, for both 2014 and 2015. The Commission compared the tariff data with the information supplied by each exporter and established that each exporter was subject to the tariff applicable to large industry. The tariff data indicated that certain industries were subject to preferential pricing, including the agricultural sector. The tariff data did not indicate that the rebar and RIC industries were subject to specific or preferential electricity tariff rates.⁴⁸

As the Commission is aware, electricity rates in China are subject to government price settings.⁴⁹ Electricity is an important public utility and has a significant influence on national welfare and the people's livelihood. Electricity is not only provided to railway wheel or iron and steel manufacturers, but is used by nearly all the industries in China. Prices are classified by end-user categories such as residential use prices, agricultural use prices, large industries use prices and/or industrial and commercial use prices.

Since 2015, the GOC has pro-actively promoted electricity market reform. The main aspects of the reform include the enhancement of a more competitive and effective structure and system for the electricity market, as well as the better articulation of the applicable market pricing mechanisms. Pursuant to the *Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity* (NDRC 2015-3169) (see Attachment 8), electricity price adjustments since 1 January 2016 are linked to the market fluctuation of thermal coal prices. This has enhanced the commerciality of electricity pricing. As such, electricity prices in China are based on market mechanisms that reflect market supply and demand.

Further, electricity pricing in China is based on market principles. The relevant pricing authorities are required to take into account the overall demand and supply present in the electricity market, as well as the costs of electricity generation and transmission. The retail prices of electricity consist of purchasing cost, transmission prices, transmission losses, and governmental surcharges. The differences in these costs as well as other costs like coal and coal transportation prices, among others, are carefully. Different cost profiles are the basic reason for different rates applying in different provinces. Within each category for each province in question, the electricity prices are equally applied to all end users.

Producers of railway wheels would likely fall within the "large industries" category. This means the electricity rates which are applicable to Maanshan are the same as those which are applicable to other uses in the "large industries" category in the jurisdiction concerned. The rates available to Maanshan do not benefit a "limited number of particular enterprises". Instead, they are available to a large number of a

⁴⁸ *Ibid*, at page 85/98.

⁴⁹ See GOC response in question 3(ii)(a) below for further detail.

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very broad range of enterprises, being all those enterprises in the “large industries” category. They are not “specific” to producers of railway wheels, and do not confer any “benefit” on them.

The following question relates to Programs 1, 2 and 3

- 2 In INV 277, Commission was provided with a copy of the ‘Law of the People’s Republic of China on State-Owned Assets of Enterprises’. Confirm whether this law is current and has not been superseded or supplemented by other laws. Provide any superseding or supplementary laws to the ‘Law of the People’s Republic of China on State-Owned Assets of Enterprises’.

(25) Even if policies are taken into account by an entity in what it does, that consideration does not equate to any exercise of governmental authority.

The Law of the People’s Republic of China on State-Owned Assets of Enterprises (“State-Owned Assets Law”) has not been superseded or supplemented by other laws.

The GOC notes that the State-Owned Assets Law was misinterpreted and misapplied in Investigation 177. Specifically, Article 36 of this law was misinterpreted by Australian Customs as evidence that the GOC directs SIEs to carry out a government function.

As the TMRO pointed out in its review of Australian Customs finding in Investigation 177:

Customs substantially relied on s 36 of the Company Law, which requires SIEs making investments to comply with National Industrial Policies. But in my view this section requires no more than compliance with the policies of the Government of China. It falls short of establishing that State-Invested HRC producers are invested with the power to control, compel, direct or command private bodies and persons.

The GOC advises that compliance with governmental policies by enterprises does not equate to the exercise of government function or authority.

The GOC would also like to point out that the scope of Article 36 is limited. It only relates to the making of certain investments, and does not relate to the purchase or sales of goods or raw materials concerned in this investigation. Further, Article 36, if read in the context, mainly regards the security of State assets. It does not suggest any government intervention in the business affairs of the enterprises concerned. This context is more apparent when Article 36 is to be read as a whole.

The second half of the provision states:

...and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

The GOC and the TMRO's view was further supported by the ADRP in its review of Report 193:

...the TMRO considered that active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority. I agree with this view... it does not evidence of the essential element of exercising a power of government over third persons.⁵⁰ [underlining supplied]

...Compliance with government policy does not of itself evidence that an entity possesses, exercises or is vested with government authority. This is the overriding test established by the Appellate Body.⁵¹

The GOC does not understand how it is that the Australian investigating authority and its Minister can flout the rule of law and of legal process in Australia on this matter by taking no notice of the findings of the review bodies that supervise the legality of their actions. Article 13 of the Anti-Dumping Agreement provides as follows:

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

An administrative procedure for the review of anti-dumping decisions cannot comply with Article 13 if its outcomes are repeatedly ignored by the investigating authorities concerned.

Accordingly, there is nothing in the State-Owned Assets Law that can singly be used to paint SIEs as "public bodies".

- 3 Outline how each of the following is determined for manufacturers of railway wheels in China:

The GOC is neither responsible nor authorized to hold and provide such detailed information about individual enterprises.

The below-mentioned matters, except for matters of product or safety standards in some cases, are the business operation of the enterprises. As a matter of principle and fact, the GOC adopts a separation of government function from the operation of business and a non-interference approach. The GOC does not "determine" or "set" any of the above matters for enterprises.

Nonetheless, for the purpose of full cooperation, the GOC provides the following

⁵⁰ ADRP report re Report 193, at page 21, HSS TMRO report, para 245.

⁵¹ ADRP report re Report 193, at page 22

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answers based on the information provided by the Respondent with our general comments.

At the outset, as far as the GOC is informed, the respondent did not purchase billet but self-produced billet. Therefore, the alleged billet LTAR program is not applicable.

- (a) suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials);

From an operational and legal point of view, enterprises choose their suppliers of raw materials. There is no law or government policy on how enterprises in the railway wheels industry, iron ore industry, coking coal industry, coke making industry or scrap steel industry should determine their suppliers of raw material inputs. There are no restrictions on the acquisition or supply of railway wheels or the raw material inputs concerned under the laws of China. Enterprises are entitled to independently determine their suppliers or acquirers, as well as the specifications, quantities and prices thereof, in doing their business.

According to Article 4 of the *Contract Law of the People's Republic of China*:

...parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.

Please refer to **Attachment 21** - *Contract Law of the People's Republic of China*.

Enterprises choose their suppliers of raw material inputs independently and without any interference from the GOC, whether they are SIEs or not.

- (b) purchase prices of raw material inputs;

From an operational and legal point of view, the GOC does not control or interfere with purchase prices of these raw materials. The prices are determined by individual companies in their negotiations with prospective customers. An enterprise has the right to negotiate prices of its raw material inputs independently with the other party to the transaction based on market conditions under various laws.

The GOC advises that there are no specific laws or regulations (regardless of nomenclature) in China relating to the pricing of the raw material inputs concerned (i.e. iron ore, coke, coking coal, and steel scrap). These raw materials are not subject to any price controls.

Please refer to the *Central Government Pricing Catalogue* in **Attachment 12**. As can be seen from this official instrument, none of the raw material inputs concerned are

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subject to any price controls or guidelines.

- (c) allocation of inputs into production process, including raw materials and labour costs;

The GOC advises that there are no laws or regulations that explicitly specify any conditions or requirements as to how enterprises shall allocate inputs into their production processes. Enterprises independently determine the allocation of inputs for their production. Chinese enterprises independently make decisions to establish their own internal business administration organization.

Article 46 of the Company Law provides that the board of directors shall exercise the functions of making decisions on the establishment of the company's internal management departments. Such decisions may be deemed as an indirect "allocation of inputs into production process". Please refer to **Attachment 4 - Company Law of the People's Republic of China**.

In Cases 331 and 322, it was alleged that Chinese exporters' steel billet costs are "influenced and distorted by the GOC" such that they should be disregarded. The GOC strongly objects to such approach. As advised in this response, the GOC does not regulate how the enterprises should record the costs of their inputs.

The costs of steel billet as recorded by Chinese exporters, so far as they are recorded in accordance with the generally accepted accounting principles of China, are not influenced by the GOC. Companies manufacturing railway wheels are no different from companies manufacturing any other products in China, in that they are required to operate within the legal and market environment of China, and abide with the various laws of China concerning corporate governance, taxation, industrial relations, environment protections, etc.

The suggestion that a Chinese railway wheel manufacturer's own cost of production of steel billet and railway wheels can be disregarded is a poorly veiled attack on China's market economy status and ignores the terms of China's membership of the WTO.

- (d) quality by volume and value;

This question is not clearly understood by the GOC. In any case, so far as Chinese railway wheel manufacturers are concerned, the quality/quantity/volume/value of its products are entirely determined by the enterprise/s themselves.

- (e) selling prices;

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The GOC advises again that it does not participate in the setting, controlling or guiding of selling prices of railway wheels or the raw materials concerned, so far as the goods are not listed in the catalogues of central government-set prices nor of Anhui Province (see Attachment 12 and Attachment 13 respectively).

To the GOC's knowledge, the market in which the entities concerned belong in the ordinary course of trade, namely the markets for railway wheels, steel billet, iron ore, coking coal and coke, are all competitive markets within China's market economy. The GOC therefore reiterates that selling prices are determined by the enterprise concerned according to their own business decisions based on market principles.

Further, as stated above, the GOC understands that Maanshan did not purchase of steel billet from external sources. Instead, where steel billets were used by the Respondent in their production of railway wheels, they were self-produced.

Accordingly, the question regarding selling prices of steel billets has no relevance so far as the Respondent are concerned.

- (f) customers (including restrictions on entities that can purchase goods produced from the enterprise);

From a legal point of view, Chinese enterprises are free to choose their customers under various laws. Again, we note that Article 4 of the *Contract Law of the People's Republic of China* protects and enshrines this freedom:

The parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.

Therefore, the enterprises can choose customers independently without any interference from the GOC or any other parties. Please refer to Attachment 21 - *Contract Law of the People's Republic of China*.

In relation to "including restrictions on entities that can purchase goods produced from the enterprise", it is not clear what information is required for this part of the question. The GOC advises that for the enterprises and the goods concerned in this investigation, there are no laws, regulations or policies which impose restrictions on what enterprises can purchase the goods sold by other enterprises, or what enterprises from whom an enterprise must make its purchase. Of course there are laws which impose restrictions on transactions relating to dangerous articles, such as guns, ammunition, explosives and smuggled goods, However the GOC does not consider those to be relevant to this investigation.

- (g) production output (detail any restrictions on production output);

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From a legal point of view, enterprises are responsible for determining their production output both from their own commercial perspective and under various laws.

Pursuant to Article 46 of the *Company Law of the People's Republic of China*, the board of directors shall be responsible for the shareholders' meeting and determine the company's business and investment plans. Please refer to **Attachment 4 - Company Law of the People's Republic of China**.

Production output is determined by the board of directors of the enterprise, according to the market demand, market prices, capacity and other market factors. The GOC does not impose any restrictions on their production output.

(h) safety standards; and

Enterprises in China are subject to various legal requirements with respect to safety standards under relevant laws. For example, the safety standards of enterprises must conform to the *Production Safety Law of the People's Republic of China*. Pursuant to Article 4 of the law:

Production and business operation entities shall abide by this Law and other laws and regulations concerning work safety, strengthen work safety control, establish and improve the responsibility system and rules and regulations for work safety, improve the conditions for work safety, promote the standardization of work safety and improve the level of work safety so as to ensure work safety.

(i) electricity/energy costs.

The GOC understands that the cost of electricity and the cost of burning coal may be considered as “energy costs” for the enterprise concerned.

As already mentioned above, only the prices of certain goods or services are subject to legal requirements under the laws of China. According to Article 18 of the *Price Law of China*:

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;*

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5. Important services of public welfare in nature.

Please see **Attachment 11 - Pricing Law of the People's Republic of China.**

Electricity is an important public utility and has a significant influence on national welfare and the people's livelihood. For more details, please refer to the information already provided regarding electricity rates, both as to the method of market pricing and the catalogues.

However, as advised in other places in this Government Questionnaire, electricity prices for the industries concerned are the same as that applicable to other large industries. In addition, electricity price regulation is not relevant to controlling or guiding prices of railway wheels and the raw material inputs in the sectors concerned by any level of government. As advised, selling prices in the industries concerned, whether raw material inputs or finished goods, are not subject to any government control or guidance. For more information regarding of electricity pricing, please refer to question (ii) below.

The price of coking coal and coke are not subject to government price guidance or controls. Coking coal and coke prices are negotiated by the enterprises and suppliers based on market principles. Further Chinese coal market is also well penetrated by imported coals.

The following questions relate to Programs 1-4

- (i) Complete the attached spreadsheet B-2 (using Microsoft Excel format) listing all electricity providers and spreadsheet B-3 listing all other key raw materials suppliers who service those entities identified in question A-4 including the following details:
 - a. name of the business entity
 - b. location of the business entity
 - c. type of business (e.g. State invested enterprise (SIE), Foreign invested enterprise (FIE), private enterprise or other (please specify))
 - d. whether GOC is a shareholder in the business, and if so the percentage of GOC holdings
 - e. whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and indicate any special rights provided to the representative (e.g. veto rights)

As explained in the response to question 1, none of the input suppliers that produce billet, coking coal, or coke, or the providers of electricity, are “public bodies” with the meaning of Article 1.1(1)(a) of the SCM Agreement. Nonetheless

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the GOC does intend to respond to this question.

The only form of GOC “representation” in any of the entities is that which would apply in the case of SIEs. By their very nature, an SIE has government representation, insofar as the GOC is a shareholder in that entity. The role of shareholder or “capital contributor” is undertaken by the State-owned Assets Supervision and Administration Commission (“SASAC”).

In this role SASAC’s functions are those of a shareholder in the normal sense of the term. As an institution (non-natural person) it cannot attend a shareholders’ meeting or a general assembly of shareholders convened by a company (majority state-holding company or minority state-holding company). To efficiently perform its “contributors” functions, it must appoint a representative to attend these meetings. The specific role of these representatives is to put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and to report the performance of his duties and results thereof to the appointing body promptly.

SASAC is obliged to exercise its ownership rights in a manner as provided by law, and not in a way which is dictated by any GOC party or instrumentality. No other parts of the GOC have any authority to intervene contrary to that legal stipulation. The primary and ruling considerations for a SASAC representative to consider in asset management are commercial operation and fair value. SASAC’s role is simply that of a shareholder. Investors will always take into account commercial, legal, political (“sovereign”) and social risks in managing their investments, and SASAC is no different in this regard.

For the purposes of full cooperation, GOC provides the information requested in relation to the electricity supplier/s for the respondent at [Attachment 22](#) [CONFIDENTIAL ATTACHMENT] Please refer to Maanshan’s questionnaire response for the requested information about its raw material suppliers.

- (ii) In relation to program 4, The Commission understands that China’s National Development and Reform Council regulate prices for electricity.
- (a) How does the government regulate electricity prices at national, provincial or local levels?

Electricity is an important public utility and has a significant influence on national welfare and the people’s livelihood. Electricity rates are mainly subject to government price settings. The GOC refers the Commission to the catalogues at [Attachment 12](#) and [Attachment 13](#).

Prices for electricity are basically composed of the actual cost of electricity

generation and distribution, expense, tax and reasonable amount of profit. The primary basis on which prices for electricity are adjusted is the changes in coal prices, cost of transmission and distribution of electricity and the operation position of power generation enterprises. For example, because much of the electricity in China is produced by burning coal, the price for electricity tends to correlate with the price of coal. Where hydro-electricity is the main power source, the electricity price may also be affected by seasons and weather.

Electricity prices are different depending on the type of end users. Normally there are broad categories of electricity prices covering residential use, agricultural use, industrial, commercial and other use, and provinces may have particular categories and sub-categories in some cases. With a very few exceptions, all end users in each of the categories, such as the large scale industries, must pay the same electricity price. The electricity prices applicable to railway wheels manufacturers are the same as that applicable to other users in the large industries category.

Electricity prices for the industries concerned are the same as that applicable to other large industries. In addition, electricity price regulation is not relevant to controlling or guiding prices of railway wheels and the raw material inputs in the sectors concerned by any level of government. As advised, selling prices in the industries concerned, whether raw material inputs or finished goods, are not subject to any government control or guidance.

The GOC has limited powers to guide the price of a small number of goods and services, including electricity prices, when that is strictly necessary. The Price Law protects market pricing, except in exceptional and limited circumstances. We have already mentioned Article 18 of the Price Law. Through Article 18 the GOC has retained the power to influence the price of a limited number of goods and services where it is necessary to protect against social and economic harm and to maintain fair and proper competition.

The Catalogue contains limited circumstances in which the GOC may influence prices (with respect to seven goods and services). The Catalogue is subject to and is limited by the terms of Article 18. The goods and services can only be subject to influence by the GOC if it is found to be necessary under the limited and strict conditions in Article 18. The Catalogue does not stipulate that all the seven goods and services will be influenced. Only in the limited circumstances listed in Article 18 can the government influence them to achieve the ends listed in that Article, including protecting market competition from monopolies.

Article 18 is unremarkable in the context of similar powers held and exercised by responsible governments throughout the world. For example, reference is made to

the regulation of electricity in Australia by the Australian Energy Regulator.⁵²

The GOC notes that the Australian Government's Energy White Paper refers to the following examples of electricity pricing and policy support that will be implemented by the Australian Government:⁵³

The Australian Government will lead work through the Council of Australian Governments (COAG) Energy Council to support the introduction of appropriate electricity use price signals for consumers, and to support the removal of cross-subsidies.

A national energy productivity improvement target will be determined as part of the development of a National Energy Productivity Plan, which will drive further improvement.

\$476 million Industry Skills Fund, which will enable Australia to have the highly skilled workforce needed to adapt to new business growth opportunities, rapid technological change and market-driven structural adjustment.

\$484.2 million Entrepreneurs' Infrastructure Programme, which will provide Australian companies with structural and strategic support to capitalise on growth opportunities.

...encourage the rapid adoption of new energy technologies, improvements to existing technologies and new energy sources where adoption will support economic growth, productivity and affordability.

\$5 billion Asset Recycling Initiative, which will encourage states and territories to free up capital to invest in additional economic infrastructure by privatising state and territory-owned assets.

The Australian Government is considering research priorities, including energy and resources, and transport, for the \$9.2 billion annual investment in research, focusing on solving local issues, competitive advantage, and industry capability to commercialise research.

The Australian Government is providing over \$1 billion toward research, development and demonstration of renewable energy projects and half a billion to low emissions fossil fuel projects.

The GOC would not expect it to be concluded that these powers, and the threat of their use in any particular circumstance, interfere with price setting in respect of the goods and services offered on the market by Australian companies.

The GOC provides the electricity tariff schedules for Anhui Province applicable in the investigation period, at **Attachment 23**. As can be seen in the tariff schedule, the normal "large industry" rate would be applicable to the respondent.

- (b) Provide names of all the agencies in each region, province or special economic zone responsible for electricity price regulation.

Local Development and Reform Commissions, in coordination with the NDRC, are

⁵² <http://www.aer.gov.au>.

⁵³ <http://ewp.industry.gov.au/>.

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responsible for electricity price regulation.

The following local Development and Reform Commissions are responsible for the price setting of electricity for the provinces where Respondent is located:

Department:	Anhui Province Development and Reform Commission
Mailing address:	1 Zhongshan Road, Hefei 230091
Phone number:	86 551 62603406
Fax number:	86 551 62603407

(c) How does the government's electricity policy apply to or promote the steel manufacturing industry?

The electricity price faced by the steel industry is the same as that faced by other large industry. The GOC does not use its power to set electricity prices under the Price Law to promote the steel industry.

The following questions relate to Programs 5 - 88 identified above.

To the best knowledge of the GOC, the responding exporter Maanshan received grants from the following "programs" amongst the "Programs 5-88" during the investigation period:

[CONFIDENTIAL TEXT DELETED – programs in which the responding exporter may have participated.] The benefit reported to have been received by Maanshan under these programs is negligible ([CONFIDENTIAL TEXT DELETED – number]%) in comparison to Maanshan's total revenue. Accordingly, the GOC has not answered the specific questions about these programs. At the same time, the GOC reserves the right to dispute whether these programs meet the conditions of countervailable subsidy.

[CONFIDENTIAL TEXT DELETED – nature of program reported by Maanshan] In the time available this has not been able to be checked and reported by the GOC, to determine whether such funding was provided with respect to the investigation period and, if it was, the commercial terms of same. The GOC invites the Commission to make its further inquiries of Maanshan itself and to request further information from the GOC only if it considers that that is required.

The GOC notices that questions 8 and 9 below comprise many specific questions regarding performance measurement and profit distribution of SIEs and any possible performance of the GOC's governmental function by an enterprise, no matter whether the enterprise is an SIE, FIE or private company. In the GOC's view, these questions are not relevant to the alleged Programs 5 to 88 listed above but to the finding of a "particular market situation". The GOC provides one uniform

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response to questions 8 and 9 below.

As to the requirement that the GOC needs to identify “any other assistance programs not previously addressed to manufacturers of railway in China”, the GOC objects to such open question style investigation. The GOC believes that the investigation can only be properly conducted in relation to the programs alleged by the Applicant and consulted with the GOC prior to the initiation.

- 1 Provide full details of the programs including the following.
 - (a) policy objective and/or purpose of the program.
 - (b) legislation under which the subsidy is granted.
 - (c) nature or form of the subsidy.
 - (d) when the program was established.
 - (e) duration of the program.
 - (f) how the program is administered and explain how it operates.
 - (g) to whom and how is the program provided.
 - (h) the GOC department or agency administering the program.
 - (i) the eligibility criteria in order to receive benefits under the program.
- 2 Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.
- 3 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.
- 4 Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):
 - (a) the business' address (including the city, province and region);
 - (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
 - (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
 - (d) whether the entity produces railway wheels.

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.
- 5 For each entity identified in your response to Question 7 above that is an SIE,

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answer the following questions regarding their performance and profits.

(a) How are the operations of the enterprise funded?

The GOC is neither responsible nor authorized to hold and provide such detailed information about individual enterprises. Further, each enterprise will have different funding mechanisms and structures. The Commission is requested to contact the individual companies directly to acquire such information if it is considered necessary.

China has established a modern and increasingly sophisticated corporate finance legal framework where all the market players (including State-owned companies) are equally subject to corporate finance legislation. Companies in China are generally financed through the commercial banking system, capital markets, equity raising, corporate bond issuance, etc.

(b) Provide details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest.

The GOC is neither responsible nor authorized to hold and provide such detailed information about individual enterprises. Therefore, the GOC is not in a position to advise the “*details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest*”.

The Commission is requested to contact each of the individual companies directly to acquire such information if it is considered necessary. Further, for enterprises which are publicly listed companies, such information can be accessed from the relevant information filed with the stock exchange.

In addition, the GOC would like to emphasize that the question is totally beyond its capacity, for the following reasons. First, the range of "other liabilities" mentioned in this question is too broad and too complex. Commercial banks can carry out various kinds of commercial activities which may give rise to a variety of "liabilities" with the relevant enterprises.

For example, from a legal perspective, a commercial bank may have the following businesses in part or in whole:

- absorbing public deposits;**
- offering short-term, medium-term and long-term loans;**
- arranging settlement of both domestic and overseas accounts;**
- handling acceptance and discount of negotiable instruments;**

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- issuing financial bonds;
- issuing, cashing and undertaking the sale of government bonds as agents;
- buying and selling government bonds or financial bonds;
- undertaking inter-bank borrowing or lending;
- buying and selling foreign exchange by itself or as agents;
- engaging in bank card business;
- offering L/C services and guarantee;
- handling receipts and payments and insurance business as agents;
- providing safe boxes services; and
- other businesses as approved by the banking regulatory organ of the State Council.

Secondly, the scope of the word "interest" mentioned in the question is very ambiguous. To the GOC's knowledge, holding shares in a company may be considered as holding an interest, but other conduct that may give rise to a legal or equitable claim in a company may also be deemed as "holding an interest".

Thirdly, the scope of the "GOC" mentioned in the question is also very complicated, as there are five levels of governments in China. Apart from the central government, each of the other level contains a large number of governments. Although the central government does not directly hold interests in a bank, it is possible that governments at other levels may hold an interest in the form of a shareholding in a bank or by investing by other means.

According to the statistics published by the China Banking Regulatory Commission, at the end of 2014 there were 4,091 banking institutions in China. Most of these can offer loans and carry out other kinds of financial business according to law. It is impossible for the GOC to consult with all of these entities to ascertain whether any of the SIEs have a loan or loans from any of the 4,091 banks or financial institutions where a government of China may or may not hold an interest.

The GOC suggests that inquiries be directed to Maanshan, with the GOC being amenable to any reasonable supplemental inquiries the Commission may have.

- (c) How is the performance of the enterprise measured? For example, profitability, employment, output, social wellbeing, etc.

The GOC is neither responsible nor authorized to hold and provide such detailed

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information about individual enterprises.

As stated above, the relationship between the GOC and State-invested enterprises is that of a shareholder and the company in which it holds a share. From a legal perspective, according to Article 3 of the *Company Law*:

A company is an enterprise legal person, which has independent legal person, property and enjoys the right to legal person property. It shall bear the liabilities for its debts with all its property. For a limited liability company, a shareholder shall be liable for the company to the extent of the capital contributions it has paid. For a joint stock limited company, a shareholder shall be liable for the company to the extent of the shares it has subscribed to.

From this it can be inferred that an enterprise measures its performance by the amount of "legal person property" it owns.

According to Article 4 of the *Company Law*:

The shareholders of a company shall be entitled to enjoy the capital proceeds, participate in making important decisions, choose managers and enjoy other rights.

Therefore, it can also be inferred that the shareholders measure the performance of the enterprise by the amount of "capital proceeds" they can receive.

Generally, the key measurement for every company is the company's financial results in accordance with the *Company Law*, including Chapter VIII of that Law.

For more detail, please refer to **Attachment 4**, *Company Law of the People's Republic of China*.

(d) Provide details and explain how the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) or any other government entity inspects or evaluates enterprise performance, including:

- output and quality performance;
- performance of employees/directors/managers; and
- financial performance.

If any other GOC entity plays such a role, provide a detailed explanation of this entity and the role it plays with regard to SIEs.

As stated above, and on numerous occasions in previous investigations, the role of SASAC in a SIE is the same as that of any shareholder in any company. Therefore, SASAC may evaluate the performance of an SIE, in the same way that any shareholder would evaluate the performance of a company in which it has an interest. In essence, SASAC assesses the performance of an SIE based on its commercial and financial performance, in line with industry averages. There is no

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essential difference between the methods which SASAC adopts to inspect and evaluate enterprise performance and those adopted by other shareholders to inspect and evaluate business performance of private enterprises.

The performance of managers of State-invested enterprises is evaluated according to the *Law on State Owned Assets* and more specifically, the *Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises* which provides the evaluation method guideline. Please see **Attachment 24** and **Attachment 25** respectively.

The GOC wishes to emphasize that SASAC exercises its rights a shareholder in the exact same way as does every other shareholder. Each shareholder has different considerations in mind when exercising his or her rights. The considerations which SASAC has in mind might very well be different to those of an ordinary private shareholder. This not change the fact that SASAC exercises the same rights as each other shareholder. From the legal perspective, SASAC is required to perform its contributor's function consistently with Article 14 of *the Law of the People's Republic of China on the State-Owned Assets of Enterprises*:

Bodies performing the contributor's functions shall perform the contributor's functions according to laws, administrative regulations and enterprise bylaws, safeguard the contributor's rights and interests, and prevent the loss of state-owned assets.

In relation to the question of “other GOC entity” - if this refers to government entities that might perform SASAC’s contributor’s functions, the GOC confirms that only SASAC performs these function. No “other GOC entity” is responsible for inspecting or evaluating enterprise performance.

- (e) Provide details of any official reporting mechanisms that the enterprise must comply with.

There is no substantial difference between the reporting mechanisms of a non-State invested enterprise and that of an SIE. The difference instead depends on whether a company is public listed.

According to Article 37 of the *Company Law*, examples of official reporting mechanisms by the enterprises to shareholders may include reporting during the course of shareholders' meetings, putting forward reports orally or in writing. For details, please refer to **Attachment 4 - Company Law of the People's Republic of China**.

Among SIEs, the reporting requirement may be different according to the type of enterprise and the level of State investment, as well as whether the company is publicly listed. For example, see Articles 32, 33, 34 of the *Law on State Owned*

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Assets of Enterprises at Attachment 24.

The GOC wishes to clarify that SIEs – like other companies– do not report on every matter relating to their daily operation to their shareholder SASAC. They are not required, nor compelled, to do so.

- (f) Provide an explanation of the systems that exist for assessing the performance of administrators of SIEs. Provide examples of recent appraisals of SIE administrators of the enterprise.

Some, but not all, administrators of SIEs are assessed according to the *Law on State Owned Assets of Enterprises*, which provides the basic principles for such assessment (at Chapter IV).

Only the administrators of a wholly State-owned enterprise, or of an enterprise with majority State-holding, are subject to the performance assessment of the body performing the capital contributor’s function. The method of evaluation is solely related to the commercial and financial performance of the enterprise.

- (g) How are profits of the enterprise distributed and to whom?

The GOC is not authorized by law to govern or interfere with the business operations of enterprises, whether or not enterprises are State invested. In fact, the GOC is positively excluded from doing so.

The GOC expects that profits of enterprises are distributed in light of its Articles of Association and Part VIII of the *Company Law*. There are no special rules on how a SIE is to distribute its profit.

- (h) Outline what action, if any, is taken by SASAC or any other government entity if the enterprises makes a loss or under-performs.

As is the case in any jurisdiction, the performance of an enterprise is taken into account by its shareholders, including SASAC, when making decisions about the company or making proposals regarding the future management of the enterprise.

If the enterprise makes a loss or under-performs, senior members of the management, such as the directors and senior managers of the enterprise may be held liable in terms of remuneration and promotion.

- (i) Over the past 10 years, has the GOC provided any payment or made any injection of funds to the enterprise, including but not limited to:
- grants;

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- prizes;
- awards;
- stimulus payments and rescue type payments;
- injected capital funds;
- purchasing of shares.

The GOC considers that this question has been appropriately answered by reference to the disclosures of the *de minimis* grants made to Maanshan.

- (j) If so, provide details, indicating the amount, circumstance, and purpose of any such payment or injection of funds, as well as whether they were tied to any past or future performance, direction or action of the enterprise.

6 For each entity identified in Question 7 above, answer the following questions regarding enterprise functions:

- (a) Provide a list of functions the enterprise performs.

What information is required by this question is unclear to the GOC.

The Commission has requested information on a significant number of programs and a significant number of enterprises may perform a significant number of functions. It is not practicable for the GOC to list all of those functions.

In any event, the GOC can advise that it has not allocated any special or governmental function to any of those enterprises whether they are enterprises with State-investment or not. Government powers are not shared or bestowed or vested on or in commercial entities. The functions of enterprises are purely commercial.

According to the laws of China, government function must be separated from that of enterprises. As Article 6 of the *Law of the People's Republic of China on the State-Owned Assets of Enterprises* provides:

The State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

Further, Article 14 of the law provides:

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

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This is the law. SIEs do not exercise government functions.

- (b) Provide details of any government policies the enterprise administers or carries out on behalf of the GOC.

The GOC would like to reiterate that government policies are not legal instruments. They are not enforceable, and are aspirational in nature. No government policies are administered or carried out on behalf of GOC by any enterprises, nor are they expected to be carried out. The *Law on State Owned Assets* explicitly requires a strict separation of government function from the operation of business.

Whether or not individual enterprises conduct their business in light of or in line with any government policy is another matter of fact and the GOC cannot comment on behalf of the enterprises.

Enterprises might make commercial decisions which reflect or are in line with government policies. Likewise, government policies are often designed to promote further economic growth and commercial development. Enterprises and market participants share this common interest in the broad sense. For example, a government policy to encourage market competition, or to encourage innovation, does not make every business which also engages in market competition or which strives to be innovative an administrator of the government policy.

Similarly, it is a government policy of China to encourage enterprises to reduce their energy use and carbon emission. This policy is not mandatory, however enterprises may act in conformity with such a policy as it is also a sensible commercial decision.

- (c) Indicate whether any of the enterprise's functions are considered to be governmental in nature.

No enterprise functions are considered to be governmental in nature.

- (d) Indicate whether the enterprise has been trusted, tasked, vested with any government authority. Provide details of this authority including how it is exercised or administered, as well as copies of relevant statutes or other legal instruments that vest this authority.

No enterprise relevant to this investigation has been so "trusted", "tasked" or "vested".

- (e) Indicate whether the enterprise has the authority or power to entrust or direct a private body to undertake responsibilities or functions.

What information is required by this question is unclear to GOC.

As answered above, the GOC is not aware of any enterprise relevant to this investigation being trusted, tasked, or vested with governmental authority. No enterprises relevant to this investigation are considered to be carrying out any governmental function. Therefore no enterprise can have the authority or power to entrust or direct another body, private or not, to undertake any governmental function.

On the other hand, an enterprise, as a legal person, may entrust or direct another entity, to undertake certain non-governmental “responsibilities or functions” according to the relevant civil law or contract law principles.

- (f) Explain whether the enterprise is in pursuit of, or required to support governmental policies or interests.

As stated above, government policies are not enforceable or mandatory. Accordingly, enterprises are not required or expected to support government policies or interests.

The GOC is not in the position to comment on behalf of any enterprises in terms of whether they develop business plans which reflect governmental policies or interests, or whether they take a contrary view. This is a matter of individual business operation and choice.

On the other hand, it is clearly every government’s desire for its policies to be supported and that the goals set out in the policies to be achieved – which is why the policies are issued at the first place. Further, we note that the notion of “governmental interests” is very broad – for example, it is almost every government’s interest to have a crime-free society. Therefore, enterprises are required by law to refrain from criminal acts. It is also a governmental interest to increase revenue by collecting income taxes. Therefore, enterprises are required to pay tax according to tax laws.

The GOC is not in any position to advise whether enterprises act “in pursuit of” governmental policies or interests. This is because that the GOC cannot and does not interfere with the every-day business operation of enterprises. The GOC has no desire to do so, and in any case the law requires the separation of government and enterprises.

However, it is possible that what an enterprise is “in pursuit of” will coincide with certain governmental interests. For example, it is an interest of most governments in the world to ensure that the people of their country have a better living standard, and to create conditions in which the enterprises of their country can prosper and

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can be of benefit to the country itself. Commercial companies that maximise their profits and pay more income tax are pursuing their own commercial interests in doing so - but that commercial interest coincides with broad governmental interests. Likewise, every single economic entity in China makes a contribution to the broad governmental policy of developing the Chinese market economy, whether as a natural person or as a business, by participating in that economy. However, those entities do not become “public bodies” simply because they supported government policies or acted in a way which happens to serve a governmental interest. Plainly, development is a recognised right of a nation and its people.

The GOC considers that if government policies are formulated in accordance with the interests of its citizens or the economy in general, including that of the resident enterprises as legal persons, enterprises may actively pursue or support such policies. However, they are not compelled to do so.

For example, to follow policies on environmental protection and energy conservation may also help increase productivity and profits of the enterprises. The fact that law permits enterprises to support some governmental policies does not mean that the enterprises *must* support governmental policies. Voluntary behaviour is ultimately driven by each enterprise’s commercial interest.

Further, performing social responsibilities by the enterprises may also be in line with government policies or interests. Nowadays, social responsibilities of enterprises are well recognised as a key element of corporate management. For example, please refer to [Attachment 26 - OECD Guidelines for Multinational Enterprises](#). The GOC notes that more and more enterprises in China are willing to undertake social responsibilities as an act of goodwill and to “give back” to the society in which they operate and prosper.

- (g) Provide examples of any ‘social responsibilities’ the enterprise undertakes or is involved in (reference is made to Article 17 of the Law on State Owned Assets)?

From a legal point of view, *the Company Law* encourages all Chinese companies to undertake social responsibilities. In other words, all enterprises are encouraged to engage in community acts. The law does not, however, *require* enterprises to do so.

Please refer to [Attachment 4 - Company Law of the People’s Republic of China](#). In particular, Article 5 of the *Company Law* provides that:

A company shall, when conducting business operations, comply with the laws and administrative regulations, social morality, and business morality. It shall act in good faith, abide the supervision of the government and general public,

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and bear social responsibilities.

This is an aspirational provision and is not enforceable. Chinese companies are free to undertake any type of social responsibility as part of their social participation as a legal person.

Further, the GOC advises that the reference to “social responsibility” provided in the Law on State Owned Assets of Enterprises is no more than a recognition and encouragement of best practice. As already mentioned above, social responsibility is a well-recognized element in corporate management – not just for SIEs.

- 7 Describe the application process (including any application fees charged by the government agency or authority) for the program.
- After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.
- 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.
 - (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.
 - (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.
 - (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.
 - (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.).
- 9 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 January 2013 to 31 December 2017.
- 10 For all programs listed in Table 1, 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?

As the GOC has stated above, it believes that Maanshan may have received

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assistance under the following programs:

[CONFIDENTIAL TEXT DELETED – programs in which the responding exporter may have participated.]

[CONFIDENTIAL TEXT DELETED – nature of program reported by Maanshan] the GOC wishes to stress that it has no such subsidy program. Notwithstanding that, [CONFIDENTIAL TEXT DELETED – nature of program reported by Maanshan] the GOC is available to further consider the nature of such [CONFIDENTIAL TEXT DELETED – nature of program reported by Maanshan] at the Commission's request.

The GOC does not consider that Maanshan received a benefit under any of the other alleged programs listed in Table 1 (or any other programs meeting similar descriptions).


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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.

<p><u>June 10, 2018</u></p> <p>Date</p>	<p><u></u></p> <p>Signature of authorised official</p>
	<p><u>WANG Jianfeng</u></p> <p>Name of authorised official</p>
	<p><u>Deputy Director, Export Division I</u></p> <p><u>Trade Remedy and Investigation Bureau,</u></p> <p><u>Ministry of Commerce, P.R. China</u></p> <p>Title of authorised official</p>

GLOSSARY OF TERMS

This glossary is intended to provide you with a basic understanding of technical terms that appear in the questionnaire.

Enterprise

“Enterprise” includes a group of enterprises, an industry and a group of industries.

Government of China (GOC)

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.

Particular market situation

Refers to a situation within the domestic market of exported goods that renders sales within that market of those goods unsuitable for determining normal values under s.269TAC(1) of the Act.

Special Economic Zone (SEZ)

Refers to a Special Economic Area, Economic and Technical Development Zone, Bonded Zone, Export Processing Zone, High Technology Industrial Development Zone, or any other designated area where benefits from the GOC (including central, provincial, municipal or county government) accrue to a company because of being located in such an area.

State Invested Enterprises (SIE)

For the purposes of this questionnaire, SIE refers to any company or enterprise that is wholly or partially owned by the GOC as defined above (either through direct ownership or through association) including.

- ‘enterprises with state investment’
- ‘state-owned assets’
- ‘state-invested enterprises’
- ‘enterprises under the supervision of SASAC’

For the purposes of this questionnaire, SIE refers to any and all of the above

types of enterprises.