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**The Director  
Investigations 4  
Anti-Dumping Commission  
Industry House  
10 Binara Street  
Canberra  
Australian Capital Territory 2600**

**By email**

Dear Director

## **Ministry of Commerce of the People's Republic of China Case 466 – investigation concerning railway wheels from China**

As you know we represent the Government of the People's Republic of China ("the GOC") in this investigation.

As part of its investigation the Anti-Dumping Commission ("the Commission") has chosen to investigate whether there is a "particular market situation" ("PMS") in the Chinese market, as has been alleged by the applicant, Commonwealth Steel Company Pty Ltd (hereafter "the Applicant" or "Comsteel"). The Applicant claims that the competitive conditions for the steel material input in China that is used in the manufacture of the goods are materially distorted.

The GOC rejects these allegations outright. They are considered to be factually incorrect and legally unsustainable.

<b>A The GOC disagrees with the PAD and with the adoption of other-governments' reports for the purpose of making the PAD .....</b>	<b>1</b>
<b>B No evidence for alleged distortion because facts contemporaneous with the investigation period have not been considered .....</b>	<b>3</b>
<b>C The allegations rely on GOC revenue mechanisms that are no longer applicable .....</b>	<b>4</b>
<b>D China has further reformed its business establishment, environmental, competition and other laws .....</b>	<b>9</b>
<b>1 Amendments to Chinese company law .....</b>	<b>9</b>
<b>2 Amendments to Chinese environmental law .....</b>	<b>10</b>
<b>C Amendments to Chinese competition law .....</b>	<b>10</b>
<b>E The allegation that SIEs of any and every shape and form are controlled as public bodies of the GOC is without proper foundation .....</b>	<b>11</b>

### **A The GOC disagrees with the PAD and with the adoption of other-governments' reports for the purpose of making the PAD**

The GOC's Government Questionnaire response provides substantive comments in rebuttal of the

Applicant's allegations. We recommend those comments to the Commission. Regrettably, we also note that the Commission's publication of a Preliminary Affirmative Determination ("PAD") maintains the view, for the purposes of that preliminary finding, that the relevant steel billet costs are "not competitive market costs". Apparently, this falls short of enabling the Commission to decide whether or not a PMS was in place at the relevant times in China, in that the Commission did not make a decision to the effect that there was such a PMS.

The GOC now takes this opportunity to provide further factual and legal information and submissions in this letter in supplementation of the Government Questionnaire response.

First and foremost, the GOC wishes to express its disappointment with the Commission's decision to issue a PAD in this investigation. The GOC considers that the facts available and the information relied upon by the Commission did not support the PAD as published.

The PAD advises that the GOC's Government Questionnaire was not taken into consideration by the Commission, on the basis that to do so would have prevented the timely consideration of whether to make the PAD.<sup>1</sup> A key issue in this investigation are the allegations concerning the Chinese market for the goods. The information presented by the GOC was available to the Commission prior to the making of the PAD, and the GOC would have preferred, and expected, for it to have been considered for the purposes of that PAD.

As mentioned, in issuing its PAD the Commission has not made a finding whether there is a PMS for the goods under consideration ("GUC") in China. However, despite this, the Commission has stated that it is preliminarily satisfied that:

*...the GOC's involvement in the Chinese domestic steel market has materially distorted competitive conditions in China for the steel material input to the manufacture of railway wheels.<sup>2</sup>*

As a result, the Commission has taken the position that the costs of production of railway wheel exporters do not reasonably reflect competitive market costs. The Commission has come to this conclusion on the basis of analysis undertaken by other jurisdictions and in previous Australian investigations relating to steel products.<sup>3</sup>

This continues a concerning trend of substantive reliance on information that is not directly before the Commission, that is not directly related to the current investigation either in factual or temporal terms, and which turns on the different policies and legal concepts of other jurisdictions. It is incumbent on an investigating authority to arrive at any findings based on positive evidence and not hearsay or past circumstances. The GOC respectfully requests that the Commission conduct itself independently, within the framework of the WTO Anti-Dumping Agreement. The Commission falls into error if it merely adopts the findings of other jurisdictions as if they were its own.

For instance, the findings referenced in footnote 6 of the PAD are:

- a report of the US Department of Commerce which arrived at the outlandish conclusion that China is a "non-market economy", a conclusion which the Australian Government has expressly rejected both at law and in its trade policy;

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<sup>1</sup> See Doc No 016 – PAD at page 7.

<sup>2</sup> Ibid.

<sup>3</sup> The Commission would also need to satisfy itself that it is the costs of any specific exporter under investigation do not reasonably reflect competitive market costs. A finding that inputs supplied by the Chinese iron and steel industry do not reasonably reflect competitive market costs does not mean that its costs of raw materials for the production of those inputs do not reasonably reflect competitive market costs. If a railway wheel exporter is a steelmaker it cannot be categorised as a producer that has steel input costs. Instead, it will have raw material input costs and conversion costs.

- a working document prepared by the European Commission report which allows any one of a list of factors to be evidence that prices are not the result of free market forces, when the existence of any of those factors are not relevant to the treatment of Chinese exporters under the WTO Anti-Dumping Agreement and where Australian law has no similar provision to the EU Basic Regulation which was there being considered; and
- a statement of reasons in a Canadian Border Services Agency dumping and subsidisation investigation that found that “*domestic prices are substantially determined by the GOC*”, a finding that has never been made in those terms in any Australian investigation of which we are aware and that was made with respect to a period of investigation which ended over four years ago and therefore has no contemporaneity with the POI of the present investigational at all.

The focus of Regulation 43 of the *Customs (International Obligations) Regulation 2015* is on the cost of production of the goods under consideration, rather than the situation in the market for the goods under consideration. An investigation of this type cannot be concerned with and is not concerned with the alleged “dumping” of any raw material input. This is misguided. Investigating authorities are not authorised to take into account the market situations of inputs. Article 2.2 of the WTO *Anti-Dumping Agreement* applies to the market for the goods under consideration. So, with respect, the thinking here is confused. Either there is a particular market situation, in which case the cost of production of the goods or a third country export price is to be used to determine their normal value, or there is not and their own price in the domestic market of China is to be used.

The approach evidenced by the PAD, which is to question and then put aside one or other of the actual costs of the exporters, is not an approach permitted by the WTO *Anti-Dumping Agreement*. The Australian regulation, if applied in this way, must be held to be inconsistent with Article 2.2 of that Agreement.

Due to the friendly relations between China and Australia, the GOC has always been patient in its explanation of the erroneous nature of relevant Australian laws and of the investigations that the Australian investigating authorities have conducted with respect to those laws. However, if the Australian side refuses to make corrections in this case, the GOC will seriously consider whether to commence WTO dispute settlement proceedings against this unjustified determination.<sup>4</sup>

## **B No evidence for alleged distortion because facts contemporaneous with the investigation period have not been considered**

The Applicant has based its PMS and related allegations on selected investigations carried out by Australian and foreign investigating authorities.<sup>5</sup> The Applicant did not supply any new information in support of its allegations. In fact, the Applicant does not even focus its allegations on the goods under consideration, but rather claims that there is a PMS for the raw material input for the railway wheels concerned.

The GOC wishes to remind that this is not an investigation into the alleged dumping of steel billet, or of any other raw material input. Any determination of a PMS or, in Australian parlance, of “*a situation in the market of the country of export... such that sales in that market are not suitable for use in determining a price*” for normal value purposes, must pertain to the situation in the market for the subject goods themselves, and not a situation in the upstream or downstream markets tangentially related to the subject goods.

In its PAD the Commission has similarly relied on five of its own previous determinations, having to do

<sup>4</sup> The GOC notes that Indonesia has filed a WTO complaint on this issue in the Dispute Settlement Body with respect to Australia’s measures on A4 copy paper (DS 529). The GOC will closely follow the development of this case.

<sup>5</sup> See Doc No 001 –Application at page 35.

with alloy round steel bar, rod in coils, steel reinforcing bar and steel reinforcing bar.<sup>6</sup> These investigations did not relate to sales in the market for the goods under consideration – railway wheels - in this investigation. Three of them were not dumping investigations. Each of them related to periods of investigation which significantly predate that of the present investigation.

An investigating authority must carry out its own investigation and make its own determinations based on positive evidence. It is not sufficient to rely on past findings from earlier investigations with respect to different goods, and it is certainly not acceptable to rely on findings made by authorities of other jurisdictions under laws which are in any case not a proper implementation of the WTO Anti-Dumping Agreement.

Moreover, the previous determinations of the Commission on which the PAD relies themselves rely on even earlier determinations. As an example, in the rod in coils dumping investigation to which the PAD refers the Commission states:

*Previous investigations by the Commission identified the use of export taxes and export quotas on a number of key inputs in the steel making process including coking coal, coke, iron ore and scrap steel.<sup>78</sup> Due to the lack of response by the Chinese Government, the Commission has relied on the best available information, including previously completed investigations.<sup>7</sup> [underlining supplied]*

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<sup>78</sup> *Anti-Dumping Commission, 2013, Report Number 198: Dumping of Hot Rolled Plate Steel Exported from the People's Republic of China, Republic of Indonesia, Japan, The Republic of Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel Exported from the People's Republic of China, pp41-43.* [underlining supplied]

Pulling on these threads indicates that the determinations relied on in the PAD reach back to even earlier investigations – one with a period of investigation of FY 2011,<sup>9</sup> another with a period of investigation of FY 2012,<sup>9</sup> and another with a period of investigation of calendar 2012.<sup>10</sup>

In each of these investigation the Commission and its predecessor made its findings of a PMS not with respect to the market for the actual goods under consideration, but rather with respect to the “iron and steel industry”. Even putting that default to one side, tracing back the findings cited in the PAD reveals that the Commission and its predecessor have not carried out a full reconsideration of the issues currently before it for six years.

The Chinese economy and the Chinese manufacturing industry are markedly different from that time, and we say this without conceding that there was ever an excuse to apply “PMS” thinking against China in the way that it has been. A finding by the Commission in this investigation must be made on the basis of positive evidence that is applicable and relates to the period of investigation of calendar 2017. The Commission cannot rely only on previous investigations without positive evidence applicable to the specific goods, specific to the actual time.

## **C The allegations rely on GOC revenue mechanisms that are no longer applicable**

As identified, the Commission is reliant on findings that refer back to fact situations over five or six

<sup>6</sup> See Doc No 016 – ADN 2018/99 PAD at page 7.

<sup>7</sup> See INV 301, Doc No 038 – REP 301 at page 64.

<sup>8</sup> See Investigation 177, hollow structural sections exported from China, Korea, Malaysia, Taiwan and Thailand.

<sup>9</sup> See Investigation 190, zinc coated (galvanised) steel exported from China, Korea and Taiwan.

<sup>10</sup> See Investigation 198, hot rolled plate steel exported from China, Indonesia, Japan, Korea and Taiwan.

years ago. Those findings are heavily reliant on the view that distortion has been a consequence of the GOC adjusting the level of export tariffs, export quotas, import tariffs and VAT rebates applicable to inputs in the steel industry.

In particular, the Commission and its predecessor agency have considered that export taxes are a dominant distortive factor, and these taxes have been used in support of the PMS findings for various steel products in China. This heavy reliance on the influence of export taxes was clearly expressed by the Commission in Reports 190 and 198, and is an undercurrent in all of the Commission's pronouncements on the issue.

The Commission's predecessor agency summarised its opinion of the effect of alleged GOC "intervention" in Report 190 as follows:

*Customs and Border Protection considers that the most influential factors were the: 40% export tax on coke and scrap metal; and the 0% VAT rebates on HRC, coke, coking coal and iron ore. These factors have led to increase in the domestic supply those goods, moving the supply curve to the right by distorting the costs of upstream raw material raw materials to produce HRC. As such the price of HRC used in the production of galvanised steel and aluminium zinc coated steel in China was also distorted. [underlining supplied]*

To date, the Commission's view has been that the GOC "diverts... supply" of inputs to the domestic market through the use of high export taxes and export quotas, combined with a lack of import taxes and VAT rebates on exports. It has considered that this diversion exerts downward pressure on domestic prices. As indicated above, the Commission has stated that these were the "most influential" factors supporting its finding that prices in the steel and iron industry have been distorted.

Since these early reports the Chinese economy, its markets, and its market regulation have changed considerably. The factors that were once relied on are either no longer applicable, not applicable in current circumstances or have been reduced significantly. As an example of this, there have been substantial changes to China's revenue laws.

The GOC wishes to make it clear that circumstances have changed significantly since the investigations upon which the price distortion opinion expressed in the PAD is based.<sup>11</sup> The investigation period for current purposes is 1 January 2017 to 31 December 2017. The Commission's determination is to be based on this period, and is to be based on evidence with respect to this period. The Applicant and the PAD ignore such evidence.

With respect to export taxes specifically, in the years following those that form the aged basis for these distortion findings there have been significant changes:<sup>12</sup>

- the export tariff on coke, which was 40% in 2011 and 2012, has been removed;
- the export quota on coke has been removed; and
- the export tariff rate for coking coal has been reduced from 10% to 3%.

To repeat – coke export tariff **ended**, coke export quota **ended**, coking coal export tariff reduced by **70%** to only 3%.

These deep and significant changes, to revenue mechanisms that were the basis for previous findings of distortion, must be acknowledged by the Commission. The Applicant does not

<sup>11</sup> The investigation periods for INV 177, 190 and 198 were 1 July 2011 to 30 July 2012 and 1 January 2012 to 31 December 2012 respectively.

<sup>12</sup> See INV 198, Doc No 038 –Government of China - Attachment 25 - Export tariff rates; see INV 466 Doc No 011 –Government of China – Attachment 10 – Taxes and tariffs for railway wheels, steel billet, etc.

acknowledge them. It repeatedly makes factually incorrect allegations, relying as it does on historical investigations, presumably in the hope the Commission will be hoodwinked thereby.

The Applicant states:

*Comsteel notes that the Commission found that certain of the raw materials used by integrated producers were also influenced and distorted by the GOC including (but not limited to) coke and coking coal.<sup>13</sup>*

And in its recent submission:

*Further, the policies and programs of the GOC through the range of import and export taxes, significantly influence the domestic prices for raw material inputs (most notably, coking coal) resulting in domestic selling prices for inputs that are artificially low.<sup>14</sup>*

The GOC is disappointed that such allegations have formed the basis of the PAD. As evident from the above, the situation referred to by the Applicant is not an accurate depiction of the relevant position in China today. It is not enough to consider that this is the reasonable belief of the Applicant. The GOC has previously informed the Commission of these changes, and this information is a matter of the public record in previous investigations.

As stated by the GOC in its submissions for Investigations 322 and 331:

- *The operational import tariff for coking coal has been 3% since 15 October 2014;*
- *The operational export tariff on coking coal has been 3% since January 2015; and*
- *no raw materials specifically mentioned in those GQs, excluding coking coal, are subject to export quotas.<sup>15</sup>*

These are considerable changes that run directly counter to the Commission's reasoning in Investigations 190 and 198. These changes should not be ignored by the Commission and must make the so-called "situation" in the Chinese market, as viewed from the Commission's own perspective, quite different to before. Coking coal and coke are two of the key inputs in the production of steel from which railway wheels of the type defined as the GUC are made.

The Commission has previously acknowledged the significance of the abolition of the export tariff on coke, in Report 190 (where the abolition occurred *after* the investigation period). The Commission commented:

*The impact of abolishing the export tax on coke may also be considered during future reviews of the current cases to assess if the GOC export and import policies continue to influence and distort prices in the iron and steel industry.<sup>16</sup>*

The GOC's use of export tariffs has diminished considerably since Reports 190 and 198.

The 40% export tariff on coke was abolished in 2013. To be clear, it has not been reinstated. Clearly, the fact that the export duties have not been reinstated shows that the 2013 abolition was not a temporary attempt to "influence and distort" prices or, if it was, that it now no longer exists, and that therefore the influential and disruptive impact assumed by the Commission no longer exists either.

<sup>13</sup> See Doc No 001 – Application at page 36.

<sup>14</sup> See Doc No 028 – Comsteel submission at page 3.

<sup>15</sup> See INV 331 Doc No 049 –Government of China submission at page 10.

<sup>16</sup> See INV 190 Doc No 142 –at page 157.

The GOC acknowledges that during the investigation period export tariffs remained in place for other input materials, namely iron ore (10%), scrap steel (40%) and steel billet (10%). However, the GOC is not suggesting that “free trade” has been achieved with respect to all steel inputs, and these remaining export tariffs do not justify a PMS finding for the goods under consideration, as we now explain:

- 1 **Iron ore** –Masteel mainly used imported iron ore to product steel billet. China is the largest importer of iron ore in the world. This raw material is imported into China in huge quantities. The imported price of iron ore in China is in line with international market price, being a price which cannot possibly be claimed to be intervened in by the Chinese Government. Prices are strongly reflective of international supply and demand.<sup>17</sup>
- 2 **Steel billet** - the export tariff on steel billet was reduced from 15% to 10% as of 1 January 2018. And, in any event, the GOC firmly but respectfully reminds the Commission that in the current instances the steel billet is itself produced by the exporter subject to the investigation, Maanshan. Accordingly, even if the Applicant persists with the view that export tariffs can increase domestic supply and therefore reduce domestic prices, the export tariff on steel billet cannot in any way distort the price of the subject goods as Maanshan does not purchase steel billet from this market nor sell it into that market. The export tariff on steel billet is therefore irrelevant and should be disregarded by the Commission.
- 3 Scrap steel - the only relevant input material that was subject to a higher export tariff during the investigation period was scrap steel. The GOC has been advised by Masteel that it has also used steel scrap to some extent in its manufacture of railway wheels. However this has a diversity of sources, such as home scrap, industry scrap and obsolete. Irrespective of the export tariff, scrap is only one of numerous inputs into the production process cannot reasonably justify a finding that the price of the far-downstream GUC in its own separate market is distorted.

China has removed the export tariffs on 11 of the Harmonised Tariff Schedule codes having to do with steel products. These are the main products at the first level after transformation from raw materials. Since 1 January 2018, for the steel products listed in the table below, these export tariff reductions have been liberal and complete, as shown below:<sup>18</sup>

HTS Code	Description	Export tariff 1 Jan 2018	Change % points
7213	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel:		
72131000	- Containing indentations, ribs, grooves or other deformations produced during the rolling process.	0	-15
72132000	- Other, of free-cutting steel	0	-15
72139100	- Other: of circular cross-section measuring less than 14 mm in diameter	0	-15
72139900	- Other: Other	0	-15
7214	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling:		

<sup>17</sup> See <http://www.mining.com/china-imported-record-amount-iron-ore-2017/>.

<sup>18</sup> Notice of the Customs Tariff Commission of the State Council on the Tariff Adjustment Plan for 2018.

72142000	- Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling	0	-15
72143000	- Other, of free-cutting steel	0	-15
72149100	- Other: of rectangular cross section (other than square)	0	-15
72149900	- Other: other	0	-15
7215	Other bars and rods of iron or non-alloy steel:		
72151000	- Of free-cutting steel, not further worked than cold-formed or cold-finished	0	-15
72155000	- Other, not further worked than cold-formed or cold finished	0	-15
72159000	- Other	0	-15

To summarise:

- the Commission strongly relied on evidence of export tariffs as indicating that steel input prices were “artificially low” and that this caused the price of one or other steel GUC to be distorted; and
- the facts which enabled the Commission to come to that conclusion (over the objections of the GOC) are no longer in evidence, and are not specifically in evidence in Maanshan’s case;
- the degree of liberalisation in relation to fiscal measures applicable to steel raw materials and steel products since the Commission last arrived at its assessment of their so-called “distortive” influence has been wide and deep.

The GOC implacably rejected the proposition that these fiscal measures caused there to be “artificially low prices” in the Chinese markets concerned, when that proposition was first stated by the Commission in its Report 177. It maintains that view and notes that at the present time the fiscal measures that were the subject of the finding in Report 177 no longer exist, either to the extent they did at that time or at all.

The GOC recalls the fact that Report 177 was the subject of a review by the Trade Measures Review Officer. As directly concerned “interested party”, the GOC participated in that review.<sup>19</sup> The TMRO’s conclusion with respect to the question of a particular market situation, or in Australian parlance the “suitability” of the sales in market for the goods under consideration for normal value purposes, was expressed as follows:

*111. Having regard to the totality of the evidence and submissions made, I consider that the evidence currently available to me fails to sufficiently establish that the policies and plans of the Government of China are being implemented and enforced in such a manner as would support the market situation finding. In saying this I do not wish to be read as positively finding that there is definitely no market situation in the Chinese domestic HSS market. I do not know whether or not that is the case, in part because the Government of China did not*

<sup>19</sup> *Hollow Structural Sections - Review of Decisions to Publish a Dumping Duty Notice and a Countervailing Notice* (Trade Measures Review Officer, 14 December 2012).

*provide all the factual material sought from it by Customs. I simply say that the currently available evidence is not adequate to definitively establish a market situation finding.<sup>20</sup>*

Accordingly, the TMRO ruled that there was no support for a “particular market situation” finding. In arriving at that finding, the TMRO referred to the then-existing fiscal measures relating to the manufacture of the steel product that was there under consideration, namely hollow structural sections, as follows:

*97. The clearest example of government intervention is the imposition of duties on the export of coke and coking coal. These export duties create a commercial barrier to exports, and may in turn impact the domestic price of both those products and the HSS to which they are an input. Customs advised that the cost of coke constitutes approximately 17% of the total production cost of HSS. At the same time, however, there is no data available about the impact of the export duty on the domestic price of coke, and therefore the impact on the domestic HSS market cannot at this time be ascertained.<sup>21</sup>*

Fast forward to the investigation period that is the subject of this investigation, and the Commission will find that:

- the export tariff on coke, which was 40% in 2011 and 2012, has been removed; and
- the export tariff rate for coking coal has been reduced from 10% to 3%.

In light of these matters the GOC calls upon the Commission, and the Minister, to honour its legal obligations by no longer discriminating against China’s steel exports. It must be self-evident to any fair-minded person that the legal grounds to maintain anti-dumping barriers on the basis of claims that China’s steel markets demonstrate some unsuitability, or that input prices do not reasonably reflect competitive market conditions, do not exist.

## **D China has further reformed its business establishment, environmental, competition and other laws**

The GOC also wishes to inform the Commission of the widespread, ongoing liberalisation of Chinese industries through changes to numerous GOC policies. The detail of these changes were provided to the Commission in the GOC’s response to the Government Questionnaire. We now bring this together in summary form as follows.

### **1 Amendments to Chinese company law**

- a. Amendments to the Company Law in March 2014 further liberalised company management by replacing the “paid-up capital” regime for company registration with a registered capital regime; by removing the requirement for phased payments of capital for foreign invested enterprises; and by clearly stating that a company has a duty to shareholders.
- b. The Regulation of Company Registration was amended in March 2014, requiring registered legal person businesses, including both State-invested enterprises (“SIEs”) and non-SIEs, to disclose their annual reports, so that markets can be better informed with respect to decisions about risk and investment.
- c. In 2015 China signed free trade agreements with Australia and South Korea, and upgraded its existing free trade agreement with ASEAN. The China-Australia Free Trade

<sup>20</sup> *Ibid*, para 111.

<sup>21</sup> *Ibid*, para 97.

Agreement lowered the tariff rates of more than 80% of the goods traded between the two countries.

- d. On 3 September 2016 the GOC abolished the then-existing requirement for MOFCOM approval of the establishment of an enterprise with foreign investment was removed. The rights of foreign investment were further expanded upon in 2017.

## **2 Amendments to Chinese environmental law**

- a. A National Development Reform Committee notice<sup>22</sup> was implemented to promote a more competitive and effective structure and system for the electricity market, as well as the better articulation of the applicable market pricing mechanisms. Since 1 January 2016 electricity price adjustments have been linked to the market fluctuation of thermal coal prices, thereby better reflecting market supply and demand.
- b. China's environmental laws<sup>23</sup> were amended, with effect from 1 January 2015, to strengthen the power of law enforcement departments to confiscate facilities and equipment of enterprises which violate the law and to restrict or stop production of enterprises that fail to observe statutory emission standards.
- c. The coal industry law<sup>24</sup> was revised in 2016 to further liberalise investment in this industry, by removing the original Articles 18 and 19 that had set out detailed criteria and procedures to establish a coal enterprise from the applicable law.

## **C Amendments to Chinese competition law**

- a. China's administrative review laws<sup>25</sup> were amended in 2014. The scope of matters that may be brought to the courts against any government agency were broadened by explicitly listing 12 categories of matters. Notably, enterprises may challenge administrative decisions regarding appropriation, and compensation for such appropriation, and any abuse of administrative power to monopolise the market or to create monopolistic power in any market.
- b. China's *Anti-Monopoly Law* clearly demonstrates the GOC's commitment to liberalisation through the introduction of an "anti-competition" or "anti-trust" regulatory scheme similar to that which is administered by Australia's own Competition and Consumer Commission.

The steady trend of liberalisation of the GOC's economy continues. It has been liberated more than sufficiently for the purposes of being regarded and respected as a socialist market economy operating under the rule of law. China cannot be discriminated against in anti-dumping and countervailing investigations – it must be treated like any other WTO Member.

Australia has recognised and continues to recognise China's full market economy status. The only government agency that does not recognise China in that way, it seems, is the Commission. Our client urges the Commission to itself recognise that no PMS with respect to railway wheels has been established on the facts before the Commission, and that there is nothing to substantiate the opinion expressed in the PAD to the effect that the cooperative Chinese exporter's costs of producing railway wheels do not reasonably reflect competitive market costs.

<sup>22</sup> *Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity* (NDRC 2015-3169)

<sup>23</sup> *Environmental Protection Law of the People's Republic of China*

<sup>24</sup> *The Law of the People's Republic of China on the Coal Industry* (Revision 2016)

<sup>25</sup> *Law of Administrative Procedures*

## **E The allegation that SIEs of any and every shape and form are controlled as public bodies of the GOC is without proper foundation**

The Applicant continues to make misinformed allegations for the purposes of its complaint of subsidisation by way of the provision of goods at less than adequate remuneration. This is another issue upon which the GOC has commented in depth in its Government Questionnaire response.

First, the GOC reiterates that positive evidence is required to make a finding that a party is a “public body”. The evidence must address and satisfy at least one of the key elements as established by substantial WTO jurisprudence. It is not open to the Applicant to simply assert that “SIEs are public bodies”<sup>26</sup> in feigned ignorance of the required elements for such a finding.

As a reminder:

*“Three “indicia” were identified in DS379 for the purpose of working out whether any particular corporate entity may be a public body. 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 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.”<sup>27</sup>*

For detailed information on these considerations the GOC directs the Commission to pages 54 to 60 of its Government Questionnaire response in this regard.

Secondly, the Commission must ask itself what are the goods that are actually being provided to the producer of the railway wheels, and what is the status of the supplier of those goods. Whether or not Maanshan is an SIE, and whether that status informs the question of whether it is a “public body”, is not the relevant question.

Maanshan does not provide steel billet to itself. It produces steel billet. The GOC is informed that Maanshan is not provided with steel billet at all. Instead, it is a steelmaker that purchases raw materials for steelmaking in the open market. These inputs – iron ore, coking coal and coke – are not products of the iron and steel industry. They are certainly not steel billet. There is no evidence, whether out of date or present, to suggest that those inputs are supplied at less than adequate remuneration. They are substantially purchased on international markets at highly contested prices.

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The GOC considers that the information now presented, alongside its Government Questionnaire response, substantially comments on, and repudiates, the incorrect and damaging allegations made by the Applicant.

Those allegations do not address the real issues that need to be addressed. They rely on old and irrelevant evidence. They do not take into account contemporaneous conditions in the Chinese economy and market. They do not relate to the position of the cooperating exporter as an integrated steelmaker.

<sup>26</sup> See Doc No 001 Attachment C-1.1 at page 2.

<sup>27</sup> See Doc No 011 – Government of China Questionnaire pages at 57 – 58.

On this basis, the GOC requests that the PAD be reversed in the Statement of Essential facts with respect to the issues of alleged cost distortions in the Chinese iron and steel industry and, more particularly, with respect to the cooperating exporter itself.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Charles Zhan', written in a cursive style.

**Charles Zhan**  
Senior Associate