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5 November 2018

**The Director  
Investigations 4  
Anti-Dumping Commission  
55 Collins Street  
Melbourne  
Victoria 3000**

By email

Dear Director

## **Investigation concerning railway wheels GOC comments on the Statement of Essential Facts**

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

The Anti-Dumping Commission ("the Commission") has published its Statement of Essential Facts ("SEF").<sup>1</sup> The SEF advises of the preliminary recommendations proposed for the conclusion of this investigation.

The GOC expresses its disappointment at the path taken by the SEF, which continues to advance a broad typecast of the Chinese steel industry and fails to engage in the market-specific analysis required in an anti-dumping investigation. The SEF itself contains comment and analysis of strong concern to the GOC, due to the disregard for both WTO and Australian domestic jurisprudence demonstrated therein.

The GOC provides its comment as follows.

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<sup>1</sup> See Doc 064 – SEF 466.

## A The causal link is not made out

The preliminary finding is that the applicant, Commonwealth Steel Company Pty Ltd (hereafter “the Applicant” or “Comsteel”) has suffered material injury, and that the material injury is as a consequence of dumped imports.

The primary basis relied on to establish the causal link between dumped imports and material injury is that price was the determinative factor in the award for tenders during the investigation period, and that the Applicant “lost” the tenders as it was not the lowest priced. This sets aside the protracted argumentation on the public record – and, more importantly, the *evidence* - concerning the quality of Comsteel’s product.

The causal link presented in the SEF is one-dimensional. It considers that:

- price is the determinative factor in the tender decision; **and**
- the dumped goods were the lowest priced; **therefore**
- injury has been suffered by the Australian industry.

As an example:

*This is the tender that governed the majority of BHP’s railway wheel purchases in the investigation period. The Commissioner considers that the loss of these sales by Comsteel represented, of itself, material injury to the Australian industry and that there is no question that this injury was caused by dumping and not other factors.<sup>2</sup> (underlining supplied)*

Similarly:

*Following the analysis of evidence provided to support each of the non-price factors examined above, the Commissioner is satisfied that the procurement decisions by Comsteel’s customers were predominantly based on price. Comsteel was unsuccessful in competition with imports at dumped prices. In the absence of dumping Comsteel would have been more price competitive. It is the purpose of the anti-dumping system to address material injury caused to an Australian industry by the dumping of exports to Australia. The Commissioner is satisfied in this case that the dumping has caused material injury to the Australian industry.<sup>3</sup>*

This is a simplistic analysis, betraying little nuance for complex business decision-making, tender conditions, and the belief and behaviours of customers. The reasoning downplays the conduct of Comsteel itself. This is ignored in the SEF.

In fact, the Commission appears to have misunderstood this issue:

*In its submission of 26 July 2018, MOFCOM noted Rio Tinto’s claim that it had raised process-based inefficiencies with Comsteel and had offered to assist Comsteel in improving efficiencies and quality. MOFCOM stated that it struggled to see how an allegation of injury and causation could be made against the importers based on the alleged price of the imports, when Comsteel*

<sup>2</sup> See SEF at page 61.

<sup>3</sup> *Ibid*, at page 64.

*appears to have been unwilling to achieve the better efficiencies and product quality that the customers demand.*

*The submission seems to argue that an Australian industry is not entitled to a remedy for material injury caused by dumping if it has not conformed to its customers' requests to achieve greater efficiencies and lower pricing. While noting that Comsteel defends its record as a manufacturer seeking to improve its performance and efficiencies, the Commissioner does not consider that this is an issue relevant to the question of whether dumping has caused material injury to the Australian industry. Issues relating to product quality are discussed at section 11.12.4 below.<sup>4</sup> [underlining supplied]*

In its analysis, the Commission is legislatively required to consider factors other than dumping that may have caused injury to the Applicant.<sup>5</sup> Instead, the Commission has dismissed these issues, when they have been duly and sensibly raised, as not relevant.

To restate the Commission's interpretation of the MOFCOM submission:

*The submission seems to argue that an Australian industry is not entitled to a remedy for material injury caused by dumping if it has not conformed to its customers' requests to achieve greater efficiencies and lower pricing.*

To make this clear, the point raised in that submission is that the Applicant made commercial decisions to ignore the feedback of its customers, and did not make recommended changes that would affect its quality and price to satisfy the needs and concerns of its customer. As a result of not doing so, it did not preserve or enhance its customer relationship and was treated less favourably by its potential customer as a result, making it less competitive in the tenders concerned. Comsteel's failure to address customer concerns must be considered in the Commission's analysis and is not *"an issue irrelevant to the question"*. Moreover, the best evidence of those concerns is from those who are central to this investigation, namely the customers themselves.

## **B Costs in the Chinese railway wheels market are competitive**

The preliminary dumping margin determined for the only Chinese exporter of the goods, Maanshan Iron & Steel Co Ltd ("Masteel"), is 19.0%.

The Commission did not make a determination concerning the allegations of a particular market situation ("PMS"), on the basis that like goods were not sold on the domestic market.

Accordingly, the dumping margin for Masteel was calculated by way of a constructed normal value under Section 269TAC(2)(c) of the *Customs Act 1901* ("the Act").

### **1 The SEF's analysis of "competitive market costs"**

In consideration of Regulation 43(2)(b)(ii),<sup>6</sup> the Commission has formed the view that Masteel's costs do not reasonably reflect competitive market costs.

<sup>4</sup> *Ibid*, at page 54.

<sup>5</sup> See Section 269TAE(2A) of the Act.

<sup>6</sup> See Regulation 43(2) of the *Customs (International Obligations) Regulation 2015*.

Regulation 43(2) states:

*If:*

*(a) an exporter or producer of like goods keeps records relating to the like goods; and*

*(b) the records:*

*(i) are in accordance with generally accepted accounting principles in the country of export; and*

*(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;*

*the Minister must work out the amount by using the information set out in the records.*

As noted, the Commission has not made a PMS determination, and the SEF does not include any analysis relating to the PMS alleged by the Applicant. The SEF does contain the Commission's assessment of competitive market costs, in Appendix 2. However the SEF focuses on broad policies and guidelines that are said to affect the Chinese steel industry broadly. It does not demonstrate why the market for railway wheels is not a competitive one, nor does it isolate any effect of these policies and guidelines on Masteel's costs of manufacturing the specific subject goods.

In fact, the analysis itself often deviates away from the purpose of the investigation entirely. As an example, the Commission has taken it upon itself to make pronouncements on the state of the Chinese steel industry and the practices of the GOC, stating:

*In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commissioner's view that to date these attempts to address existing structural imbalances have had limited success.<sup>7</sup>*

...

*It is the Commissioner's view that while this initiative is likely to improve the industry's structure over the longer term, its current impact has been to increase production and exacerbate the existing structural imbalances.<sup>8</sup>*

This is not the purpose of this investigation, and it is not the place of the Commission to make such grandstanding – and essentially political - commentary. The task at hand is to consider whether the financial records of Masteel reasonably reflect competitive market costs associated with the production or manufacture of the like goods, ie the railway wheels, in the Chinese market.

## **2 The SEF reasoning is flawed and off point**

Noting the specificity, the SEF loses sight of the goods subject to the investigation by focusing on the broader steel industry and not the manufacture by Masteel of the subject goods. In making the determination, it states:

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<sup>7</sup> See SEF at page 83.

<sup>8</sup> *Ibid.*

*Key mechanisms through which the Commissioner considers that the GOC has distorted conditions within the Chinese steel industry, including the demand for and markets for major raw materials, are:*

- *the role and operation of SOEs.*
- *industry planning guidelines and directives.*
- *the provision of direct and indirect financial support.*
- *taxation and tariff policies.*<sup>9</sup>

Each of these will be addressed in turn.

In the main, however, we reiterate that this information is focused on the broader Chinese economy and steel industry and is not specific to the manufacture by Masteel of the subject goods.

- (a) Role and operation of SOEs** - the SEF presents information on broad guidelines and policies relating to SOEs. It states:

*The Commissioner considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated efforts by the central government to reduce the scale of steel production. It is also the Commissioner's view that these support mechanisms have created rigidities in the way recipient firms respond to price and profit signals and hence have significantly contributed to the excessive investment in capacity, excess steel production and distorted prices.*<sup>10</sup>

Despite its rejection of this particular line of analysis in the first place, the GOC has presented information on this issue extensively both in this investigation and in previous investigations.<sup>11</sup> For current purposes, the key point that must be restated is that Masteel produces its own steel and then uses that steel in its production of railway wheels. It buys the raw materials required to make steel in order to do so. Its costs are those raw material costs, and not the cost of steel. Thus, any consideration of factors that are alleged to cause the cost of steel to not reasonably reflect a competitive market cost in the financial records of Masteel is simply not relevant. The comments presented by the SEF with respect to SOEs that are in the business of manufacturing and selling steel are simply not relevant. The comments in the SEF about SASAC holding 45.54% of Masteel's shares through its ownership of Magang (Group), and about whatever it is that the European Commission alleges was a task of SASAC, are just not apposite to the question.

- (b) Industry planning guidelines and directives** - again, the SEF relies on policies and aspirational guidelines applicable to the broader Chinese steel industry, stating:

*In noting that some of the listed documents are now dated, the Commissioner considers that this further demonstrates long term involvement of the GOC within the Chinese steel*

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<sup>9</sup> See SEF at page 83.

<sup>10</sup> *Ibid*, at page 84.

<sup>11</sup> As an example, see the GOC questionnaire response at page 15.

*industry and hence it's [sic.] central role in contributing to the structural imbalances and distorted prices, including for steel raw material inputs.<sup>12</sup>*

This is but a brief and essentially dismissive reference to alleged distortion of the prices for steel raw material inputs, however it is not made clear what are the material inputs that have been distorted and to what extent.

- (c) **Direct and indirect financial support** - the SEF provides examples of direct and indirect financial support it considers provide a competitive advantage and an ability to offer steel at lower prices, stating:

*Similar programs previously identified by the Commissioner's countervailing investigations concerning the Chinese steel industry are listed below. While these investigations do not correspond with the current investigation period, it is the Commissioner's view that these programs have directly contributed to conditions within the Chinese steel industry during this period by providing direct financial support to recipient steel producers.<sup>13</sup>*

However, the Commission has examined these programs as part of the parallel subsidy investigation. The SEF recommends the termination of the subsidy investigation on the basis that the preliminary subsidy margin determined is *de minimis* – at 0.6%. It is not made clear then how this type of support can have effected Masteel's costs at such a minor level, if indeed it is present at all.

- (d) **Taxation and tariff policies** - the GOC has provided extensive information, in its questionnaire response and in its subsequent submission, on the lowering of taxation and tariff policies. These changes are noted by the Commission. However, the SEF still points to export tariffs on iron ore (10%) and scrap steel (40%) that remain in place, and claims these are likely to remain factors that cause distortion.

On this the GOC reminds that – under Australia's curious and incorrect implementation of the WTO Anti-Dumping Agreement – the Commission's practice is to search for some other, out-of-country cost as a surrogate and, presumably, "competitive market cost" where it feels that an actual cost is not of that nature. If the Commission was to consider publicly available data for scrap steel prices it would find, for example in the months of March to June 2018, that Chinese scrap steel prices were regularly higher than those of Japan and Russia and in two of those months were higher than those in the European Union.<sup>14</sup>

Regarding the alleged distortion with respect to iron ore, and as noted by Masteel, it purchases its raw materials from both domestic and overseas suppliers, including Australia, and these are purchased at market prices.<sup>15</sup>

Therefore, the GOC does not consider that revenue measures with respect to these two raw materials render the costs for those inputs as not reasonably reflective of competitive market costs, either absolutely or in China. Further, it is not apparent that the Commission has

<sup>12</sup> *Ibid*, at page 86.

<sup>13</sup> *Ibid*, at page 90.

<sup>14</sup> See <http://www.meps.co.uk/ScrapPrice.htm>, and <https://www.scrapmonster.com/scrap-prices/category/Steel/300/1/1>

<sup>15</sup> See Doc 51 – Masteel submission at page 2.

undertaken by comparisons, whether searching or perfunctory, that would enable it to come to the conclusions that it appears to have formed.

### 3 The construction of Masteel's costs is unbounded and incorrect

On the basis that its costs are not competitive market costs, the Commission has made the choice to surrogate Masteel's cost of steel with the cost used by French exporter, MG Valdunes. However, Masteel does not purchase steel billet and therefore the question of whether its cost is a competitive market cost is irrelevant. Axiomatically, steel is not a market cost of Masteel. It cannot be a market cost if it is not purchased on a market.

Before elaborating that point, and as per the GOC questionnaire response, the GOC's position on surrogation of this type is clear. As explained by the GOC, *EU – Biodiesel (Argentina)* clearly and unambiguously requires the following consideration:

*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.<sup>16</sup>*

The Appellate Body could not have stated the proposition any clearer. PMS or no PMS, the costs that are incurred by an exporter must be used in a constructed normal value.

However, the Commission in this instance has taken the phantom of surrogation further.

Masteel does not have a steel buy in price, it produces its own steel billet from raw material. In working out Masteel's normal value, on a constructed basis, the Commission has surrogated a cost that *is not actually incurred* by the exporter. This is a deeply concerning development, which the GOC considers must be revised immediately. Employing Regulation 43(2)(b) does not liberate the Commission from the need to work out a constructed normal value *for Masteel*, that is applicable *to Masteel* and that relates *to Masteel's* manufacturing circumstances and to generally accepted accounting principles.

The GOC maintains that it is highly irregular, illogical and ultimately unlawful to substitute any costs in Masteel's financial records. Further, if this practice is applied, it is similarly irregular, illogical and unlawful to surrogate a cost that was not cost of an input that was actually purchased by Masteel on a market. The only relevant cost that could be surrogated, over the GOC's steadfast objection to the use of this practice at all, would be of a market-purchased cost that was found not to reasonably reflect competitive market costs.

### 4 Misstatement of Federal Court authority and failure to consider a relevant matter

The SEF has dismissed the need to adjust for competitive advantages or disadvantages, stating:

*The Commission concluded that such an adjustment would not be possible particularly given the significant involvement of the GOC in relevant markets. The Commission also observes that no information or evidence on the subject was provided during the investigation.<sup>17</sup>*

In support of its position, the SEF has cited two cases decided by the Federal Court:

<sup>16</sup> See GOC questionnaire response at page 32.

<sup>17</sup> See SEF at page 24

*In Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885, Nicholas J considered the treatment of a more general adjustment to benchmark prices, namely for a claimed Chinese comparative advantage in production of HRC. Nicholas J accepted the view of the ACBPS that such an adjustment was not practical, reasonable or warranted in that case and that the more reasonable approach was to use a benchmark that reflected an average price of HRC that did not include any adjustment for comparative advantage.*

*In the recent Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC20, the Full Federal Court also found that the legislation did not include a mandatory requirement to adjust foreign pricing information for comparative advantages and disadvantages, as long as the matter is given due consideration.<sup>18</sup>*

This stated interpretation is at best fanciful and does not appreciate the actual reasoning of the Federal Court.

In both cases the court recognised the requirement for the investigating authority to consider this issue. In the *Dalian Steelforce* case, Customs conducted a thorough analysis, based on evidence, as to the comparative advantages and disadvantages in the relevant market. Customs considered, on the basis of this evidence, that it was not practical, in that situation, to calculate the adjustment. The Court in that instance determined that there was no legal error, on the basis that the issue had been considered. This is to be contrasted with the Commission's effort in the current investigation, in which no investigation or analysis has been either attempted or undertaken by the Commission.

In the *Steelforce Trading* case the Full Federal Court accepted that consideration of the adjustment for comparative advantage is a mandatory requirement:

*I would accept that the passage at 6.73 [EU – Biodiesel AB Report] requires an investigating body to consider the topic of adjustment and this accords with my own view that adjustment in cases involving foreign price information is a mandatory relevant consideration.<sup>19</sup>*

The Commission is “playing with words” when it claims that there is no mandatory requirement to adjust foreign pricing information. The Court has instructed the Commission that the topic of adjustment must be considered, whether an adjustment is then made depends on that consideration. That does not, however, mean that the Commission need not undertake any consideration, or can say it has given it consideration when it clearly has not, or that interested parties have to undertake the investigation and present the results to the Commission themselves.

It is not open to the Commission to ignore this mandatory relevant consideration. The SEF does not engage in any such assessment and in fact puts the onus on interested parties to provide the information for that purpose, stating that “no information or evidence on the subject was provided during the investigation”<sup>20</sup> and that the “Commissioner will consider any information provided in response to this SEF on the appropriate level of adjustment to the steel costs used to replace the costs from Masteel's records”.<sup>21</sup> As the investigating authority, it is on the Commission to evaluate this adjustment in its entirety. The Commission cannot wave this issue away by placing some “burden of

<sup>18</sup> *Ibid.*

<sup>19</sup> *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC20* at paragraph 124.

<sup>20</sup> See SEF at page 24.

<sup>21</sup> *Ibid.*



proof” on to exporters, and then to blame the exporters if it is considered that they have not acquitted that burden.

## 5 No attempt to adjust surrogated costs

Further, and without detracting from the GOC’s overall and consistent objections, the SEF does not even attempt to adjust the surrogated costs for competitive advantages or disadvantages of the respective markets.

*The Commission also considered whether it would be appropriate to adjust the benchmark to reflect any comparative differences that might be present in the Chinese market. The Commission concluded that such an adjustment would not be possible particularly given the significant involvement of the GOC in relevant markets. The Commission also observes that no information or evidence on the subject was provided during the investigation. To calculate any differences, including those due to any comparative advantages or disadvantages, with any degree of accuracy would require the Commission to isolate and subtract the effect of GOC’s significant involvement in the Chinese steel market. The Commission considers that it would not be possible to isolate and quantify the effect of GOC involvement in the relevant markets and to determine comparative advantages or disadvantages.<sup>22</sup>*

It is undeniable that there are different factors that influence the Chinese and French steel markets, and that Masteel itself has a number of competitive advantages based on its internal production of steel billet. It is also undeniable that the Federal Court cases to which we have referred recognise that the adjustment of costs in this way is a relevant consideration. The inability to make such an adjustment in that case related to an investigation in respect of which the evidence had been closed. That is not the case here, and for the Commission to say that it is incumbent on interested parties to come forward with the proof is to deny the Commission’s investigative role and to reverse the burden of proof. The Commission is making all of this up anyway – costs not reflecting competitive market costs, surrogation of costs for items that are not purchased by Masteel anyway, and that that are not even present on the financial records of the exporter – so why is it excused from undertaking the very thing that the Federal Court has said is relevant? This investigation is not over and it is not up to the interested parties to do the job that the Act and that the Federal Court requires the Commission to do.

And, for clarity, the GOC reiterates that it is trenchantly opposed to the view that adjustment is an appropriate or lawful concept, whether in the context of Section 269TAC(2)(c) of the Act, Regulation 43(2)(b) of the Regulations, or Article 2.2.1.1 of the WTO *Anti-Dumping Agreement*.

## C Incorrect analysis of alleged coking coal LTAR program

The SEF recommends the termination of the subsidy investigation on the basis that the subsidy margin determined for Masteel is *de minimis* at 0.6%. Despite this, the SEF has made a finding that a countervailable subsidy was received in respect of “Coking coal provided by government at less than adequate remuneration” (Program 2).<sup>23</sup>

It is the Commission’s position that:

<sup>22</sup> *Ibid.*

<sup>23</sup> The reasoning of which is contained in SEF Appendix 11 for “public bodies” analysis and Appendix 12 for the LTAR assessment.

*it is reasonable to conclude for the purpose of the current investigation that SIEs that supply coking coal to Masteel should be considered public bodies.*<sup>24</sup>

The GOC strongly rejects this finding.

As was started by the GOC in its questionnaire response,<sup>25</sup> the Commission has accepted the indicia as stated in *United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (“DS379”)<sup>26</sup> as the basis for determining whether an entity is considered to be a “public body”.<sup>27</sup>

The Commission has come to the position that the suppliers of coking coal to Masteel are public bodies. In its assessment, the Commission notes WTO jurisprudence, including that:

*In DS 436, also released after the ADRP’s findings, the WTO Dispute Settlement Body further considered the issue of whether a government exercises ‘meaningful control’ over an entity. The Panel stated that ‘to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is “meaningful”.*<sup>28</sup>

The Commission goes on to discuss comments on government shareholding and directorship that the Dispute Settlement Body considered may provide guidance on “meaningful control”.

It is at this point that the SEF assessment deviates off point.

The SEF presents information on the “*functions and obligations of a state-owned assets supervision and administration authority*” as based on the *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises*. This information comments on management considerations in state-owned enterprises – to the point that this is indicative of meaningful control. However, the Commission notes that:

*The Commissioner is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to any of the suppliers of coking coal identified by Masteel to be SIEs.*<sup>29</sup>

The SEF states that it requested the GOC to provide:

*Additionally, as part of the government questionnaire, the GOC was requested to respond to a number of questions concerning entities that produce raw materials, including:*

- *a list of all manufacturers of upstream raw materials suppliers and the percentage of GOC ownership in each (A4);*

<sup>24</sup> Page SEF at page112.

<sup>25</sup> See GOC questionnaire response at page 58.

<sup>26</sup> See DS379 at paragraph 318.

<sup>27</sup> See SEF at page 109.

<sup>28</sup> *Ibid*, at page 110.

<sup>29</sup> *Ibid*, at page 111.

- *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 an indication of any special rights provided to the representative (e.g. veto rights) (A4);*
- *for each business where the GOC is a shareholder and/or there is GOC representations in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A4).<sup>30</sup>*

This is clearly an unreasonable request, given the size of the Chinese market and the timeframes of this investigation. As the GOC said in its questionnaire response:

*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.<sup>31</sup>*

However, the Commission goes on:

*In the absence of this information the Commissioner has proceeded on the basis of all the facts available and made assumptions as the Commissioner considered reasonable.<sup>32</sup> (underlining supplied)*

The SEF summarises comments made in a European Commission report, which comments broadly on State-invested enterprises (“SIEs”) in China. This is the extent of the Commission’s analysis. That is to say, there is no independent analysis at all. The SEF finally states:

*The Commissioner considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that supply coking coal to Masteel should be considered public bodies.<sup>33</sup>*

Where the SEF has “made assumptions” it is clear those assumptions are to ignore the comments of the GOC and the actual facts at hand. It is taken as true that companies that supply Masteel with coking coal are SIEs *without any evidence at all*. There is no consideration or assessment on whether the specific entities that supply coking coal to Masteel should be considered public bodies. We remind the Commission of guidance it noted in the SEF:

*The Panel stated that ‘to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is “meaningful”.<sup>34</sup> [underlining supplied]*

There is no indication that the Commission is even aware of the entities involved, let alone a clear evaluation of the “core features of the entity and its relationship to the government”. Such assumptions, without any evidentiary foundation, cannot be considered a satisfactory assessment.

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<sup>30</sup> *Ibid.*

<sup>31</sup> See GOC questionnaire response at page 61.

<sup>32</sup> See SEF at page 111.

<sup>33</sup> *Ibid*, at page 112.

<sup>34</sup> *Ibid*, at page 110.

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The SEF as presented is flawed. It persists with a number of previous interpretations of law, and engages in new interpretations, that are of deep concern to the GOC. The underlying assessment often fails to address the subject goods, instead focusing on the broader Chinese steel industry. The purpose of an anti-dumping investigation is to narrow the analysis to the specificity of the subject goods, and the exporter itself, in the market of the WTO Member concerned. If the facts and evidence are not supportive of adverse findings of the type that have been made in the SEF it is not open to the Commission to make such findings.

Noting that this is a recommendation of preliminary character, the GOC looks forward to the Commission's considered review and rectification of these issues prior to the its final recommendation and report to the Minister.

Yours sincerely



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