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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

TERMINATION REPORT NO.466

**ALLEGED SUBSIDISATION OF CERTAIN RAILWAY WHEELS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

January 2019

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicant, or Comsteel	Commonwealth Steel Company Pty Ltd
BHP	BHP Billiton Ltd
CCCME	China Chamber of Commerce for Import and Export of Machinery and Electronic Products
China	The People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
EC	European Commission
GOC	Government of the People's Republic of China
the goods	the goods the subject of the application (also referred to as the goods under consideration)
HRC	Hot rolled coil
HSS	Hollow structural sections
LTAR	Less than adequate remuneration
Masteel	Maanshan Iron & Steel Co Ltd
the Minister	Minister for Industry, Science and Technology
the then Parliamentary Secretary	the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Rio Tinto	Rio Tinto Ltd
SCM	Agreement on Subsidies and Countervailing Measures
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
SIE	State invested enterprise
TMRO	Trade Measures Review Officer
Valdunes	MG-Valdunes SAS
VAT	Value added tax
WTO	World Trade Organization

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This Termination Report No. 466 (TER 466) has been prepared in relation to Investigation 466, which was initiated in response to an application by Commonwealth Steel Company Pty Ltd (Comsteel) seeking the publication of a dumping duty notice in respect of certain railway wheels (railway wheels, or the goods) exported to Australia from the People's Republic of China (China) and France, and a countervailing duty notice in respect of the goods exported to Australia from China.

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

This termination report sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his decision to terminate the investigation into the alleged subsidisation of railway wheels exported from China.

1.2 Findings

As a result of his investigation, the Commissioner is satisfied that during the investigation period that:

- in relation to all Chinese exporters, subsidies have been received in respect of some or all of the goods, but the subsidies never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the *Customs Act 1901* (the Act)¹ and, therefore, the countervailing investigation must be terminated in accordance with subsection 269TDA(2)(b)(ii).

Public notice of the Commissioner's termination decision was published on the Anti-Dumping Commission (the Commission) website on www.adcommission.gov.au. (Anti-Dumping Notice (ADN) No. 2019/12) refers.

The facts and findings in relation to an investigation into the alleged dumping of railway wheels exported to Australia from China and France, are contained in a separate report (REP 466) to the Minister for Industry, Science and Technology.

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 2 of Part XVB of the Act describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1) of the Act for the purpose of making a report to the Minister.

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

1.3.2 Application

Comsteel alleges that the Australian industry producing railway wheels has suffered material injury caused by railway wheels exported to Australia from China and France.

The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from China and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Having considered the application, the Commissioner decided not to reject the application and, on 18 April 2018, initiated an investigation. Public notification of the initiation of the investigation was also made on 18 April 2018.

Consideration Report No. 466 and ADN No. 2018/59 provide further details relating to the initiation of the investigation and are available on the Commission website at www.adcommission.gov.au.

1.3.3 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as allowed under subsection 269ZHI(3),² place on the public record a statement of essential facts (SEF) on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.

On 27 July 2018, the Commissioner, under subsection 269ZHI(3) of the Act, extended the deadline to publish the SEF, and provide his final report and recommendation.

On 18 September 2018, the Commissioner approved a further extension to the deadline to publish the SEF, and provide his final report and recommendation.

The Commissioner placed SEF 466 on the public record on 11 October 2018. On 26 November 2018, the Commissioner approved an extension to the deadline to provide his final report and recommendation to the Minister, which then became due by 25 January 2019.

1.3.4 Submissions received from interested parties

After the publication of SEF 466, the Commission received submissions from interested parties, the relevant aspects of which were taken into account in preparing this report.

Non-confidential versions of all submissions received are available on the public record.

² On 14 January 2017, the Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI of the Act to the Commissioner. Refer to ADN No. 2017/10 for further information.

2 BACKGROUND

2.1 Initiation

On 5 March 2018, Comsteel lodged an application under subsection 269TB(1) of the Act. The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from China and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Comsteel alleged that the Australian industry had suffered material injury caused by exports of the goods to Australia from China and France at dumped prices and from China at subsidised prices. Comsteel alleged that the industry had been injured through:

- loss of sales volume;
- loss of market share;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced return on investment;
- reduced attractiveness to reinvest; and
- reduced employment numbers.

Subsequent to receiving further information, the last of which was received on 23 March 2018, and having considered the application, the Commissioner decided not to reject the application. On 18 April 2018, the Commissioner initiated an investigation into the alleged dumping and subsidisation. Public notification of initiation of the investigation was made on 18 April 2018. ADN No. 2018/59 provides further details relating to the initiation of the investigation.

In respect of the investigation:

- the investigation period³ for the purpose of assessing dumping and subsidisation is 1 January to 31 December 2017; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and/or subsidised goods is from 1 January 2014.

The goods are defined in ADN No. 2018/59 as:

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

Axles and other components are excluded from the goods coverage.

2.2 SEF 466

SEF 466 set out the facts on which the Commissioner proposed to base his recommendations to the Minister. SEF 466 informed interested parties of the facts

³ Subsection 269T(1)

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established to date and provided an opportunity for them to make submissions in response. SEF 466 was placed on the public record on 11 October 2018.

Following its publication on the public record, interested parties had 20 days to respond to SEF 466. Responses to the SEF were to be provided to the Commissioner by no later than 31 October 2018.

2.3 Submissions received and meetings with interested parties

The Commission has received submissions from interested parties during the course of the investigation. Prior to the SEF, the Commissioner had insufficient time to consider the following submissions:

- Comsteel's submission of 2 October 2018;
- a submission made by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) received by the Commission on 4 October 2018;
- a submission made by the CCCME received by the Commission on 9 October 2018; and
- Comsteel's submission of 11 October 2018.

These submissions were considered in preparing this report.

The Commissioner also considered submissions received in response to SEF 466 in making this report.

2.4 Public record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The public record is available for inspection online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this report.

3 SUBSIDY INVESTIGATION

3.1 Findings

The Commissioner is satisfied that countervailable subsidies have been received in respect of railway wheels exported to Australia from China during the investigation period. The Commissioner is satisfied that, in relation to the only known exporter of the goods from China in the investigation period, Maanshan Iron & Steel Co Ltd (Masteel), the countervailable subsidies never, at any time during the investigation period, exceeded the negligible level of countervailable subsidies under subsection 269TDA(16)(b).

3.2 Legislative Framework

The legislative framework is set out in **Non-confidential Appendix 1** at section A1.2.

3.3 Investigated programs

In its application, Comsteel alleged that the Chinese exporter of railway wheels, Masteel, benefited from 88 countervailable subsidies. These alleged subsidies related to programs for the provision of goods, grants, value added tax (VAT) exemptions, preferential taxation schemes, equity programs and preferential loan schemes. In its consideration of the application, the Commission identified a further three programs that Masteel appeared to benefit from.

As a result of its assessment of the information provided in the application, the Commission investigated all 88 alleged subsidy programs as well as the three additional programs identified during the application consideration process.

To assess these programs further in relation to railway wheels exported to Australia, the Commission included questions relating to each program in a questionnaire which was forwarded to the GOC.

During examination of information provided in Masteel's exporter questionnaire response, and at a verification visit by the Commission, the Commission was provided with information that indicated benefits were received under several additional subsidy programs that were not included in the 91 programs already being examined by the Commission.

On 7 August 2018, the Commission requested information from the GOC on the additional subsidy programs. On 21 August 2018, the GOC provided a response stating that it understood the financial contributions received by Masteel were, in their totality, negligible and referred the Commission to Masteel for further information on the programs.

After assessing all relevant information available, the Commissioner has found that countervailable subsidies have been received in respect of railway wheels exported to Australia from China, under 32 countervailable subsidy programs. The Commission's Assessment of all countervailable programs is in **Non-Confidential Appendix 1**.

3.4 Subsidy margins

3.4.1 Masteel

The Commission found that Masteel received countervailable subsidies under 32 programs.

3.4.2 Exporters other than Masteel

The Commission is satisfied that Masteel was the only exporter of railway wheels to Australia in the investigation period. The Commission has established a subsidy margin for exporters other than Masteel at the same level as established for Masteel.

3.4.3 Final subsidy margins

Table 1 below shows the Commission's subsidy margin calculations:

Exporter	Subsidy margin
Masteel	0.6%
Uncooperative and all other exporters	0.6%

Table 1 – Preliminary subsidy margins

The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Non-confidential Appendix 1**.

The calculation of subsidy margins is at **Confidential Appendix 4**.

3.5 Submissions

In response to the Commissioner's preliminary findings, detailed in SEF 466, Comsteel provided a submission⁴ that, amongst other matters, noted that the Commission has previously found that Chinese silicon metal producers received a benefit for electricity at less than adequate remuneration. Comsteel requested that the Commission consider whether Chinese railway wheel producers received a similar benefit during the investigation period.

The Commission undertook an on-site visit to Masteel and verified both the subsidies received by Masteel during the investigation period and the electricity costs incurred in the production of railway wheels. The verification undertaken did not identify that Masteel received a benefit for electricity at less than adequate remuneration.

The GOC strongly rejected the Commission's preliminary finding that SIE's supplying coking coal to Masteel were public bodies.⁵ It claimed that the Commission had conducted no independent analysis to conclude that the GOC exercised meaningful control over the entities. The GOC claimed that the information requested by the Commission to assist in this assessment was clearly unreasonable and that assumptions

⁴ Document 071 on the Electronic Public Record (EPR)

⁵ Document 073 on the EPR

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made in the absence of the requested information ignored the comments of the GOC and the facts at hand.

In view of the Commission's termination of the subsidy investigation, it does not propose to address the GOC's comments in this report.

4 TERMINATION OF SUBSIDY INVESTIGATION

Subsection 269TDA(2) requires that the Commissioner must terminate a subsidy investigation in relation to an exporter if countervailable subsidisation for that exporter is determined to be negligible.

In relation to goods exported from China (a developing country⁶), countervailable subsidisation is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than 2 per cent.⁷

The Commission notes that for goods exported by the sole Chinese exporter of railway wheels to Australia in the investigation period, Masteel, the subsidy margin is negligible. Furthermore, for goods exported by uncooperative and all other exporters the subsidy margin is also negligible.

The Commissioner has therefore terminated the investigation into the application for a countervailing duty notice in accordance with subsection 269TDA(2)(b)(ii).

⁶ Under the *Customs Tariff Act 1995*

⁷ Subsection 269TDA(16)

5 APPENDICES

Non-confidential Appendix 1	Assessment of subsidy programs
Non-confidential Appendix 2	Public bodies
Non-confidential Appendix 3	Assessment of adequate remuneration for coking coal in China
Confidential Appendix 4	Calculation of subsidy margins

NON-CONFIDENTIAL APPENDIX 1 – ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES

A1.1 Introduction

This appendix sets out the Commissioner's assessment of the subsidy programs investigated in relation to railway wheels exported from China. The Commissioner noted that the application presented reasonable grounds for the consideration of a countervailing duty notice in respect of alleged subsidy programs.

After assessing all relevant information available, the Commissioner considered evidence for 112 programs. The findings in relation to each program investigated are outlined in this appendix.

A1.2 Relevant legislation

Subsection 269T(1) of the Act defines a 'subsidy' as follows:

subsidy, in respect of goods exported to Australia, means:

- (a) a financial contribution:
 - (i) by a government of the country of export or country of origin of the goods; or
 - (ii) by a public body of that country or a public body of which that government is a member; or
 - (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
 - (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
 - (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
 - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
 - (viii) the purchase by that government or body of goods or services; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body; if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Section 269TAAC defines a countervailable subsidy as follows:

- (1) For the purposes of this Part, a subsidy is a **countervailable subsidy** if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
 - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
 - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

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- (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
 - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
- (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
 - (b) eligibility for the subsidy is automatic; and
 - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
 - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
- (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
 - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
 - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
 - (d) the manner in which a discretion to grant access to the subsidy has been exercised;
- determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
 - (b) the length of time during which the subsidy program has been in operation.

Section 269TACC directs how the Minister determines whether a financial contribution or income or price support confers a benefit, and is therefore a countervailable subsidy. Section 269TACD provides how the amount of this benefit is determined.

A1.3 Information relied upon

In addition to the information contained in Comsteel's application, the Commissioner had regard to Masteels's response to the exporter questionnaire and information gathered and verified with the exporter, as well as responses from the GOC to the government questionnaire and supplementary request for information. The GOC declined to provide detailed information requested by the Commissioner on programs 5 to 112, claiming that the benefit reported to have been received by Masteel under these programs is negligible in comparison to Masteel's total revenue.

A1.4 Subsidy programs considered

Table 2 below summarises the programs identified during the course of the investigation:

Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
1	Billet provided by government at less than adequate remuneration	Provision of goods	No
2	Coking coal provided by government at less than adequate remuneration	Provision of goods	Yes
3	Coke provided by government at less than adequate remuneration	Provision of goods	No
4	Electricity provided by government at less than adequate remuneration	Provision of goods	No
5	Preferential Tax Policies for High and New Technology Enterprises	Preferential tax policies	No
6	Preferential Tax Policies in Western Regions	Preferential tax policies	No
7	Land Use Deduction	Preferential tax policies	No
8	Tariff and VAT Exemptions on Imported Materials and Equipment	Preferential tax policies	No
9	VAT refund on comprehensive utilization of resources	Preferential tax policies	No
10	One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” and “Famous Brands of China”	Grants	No
11	Matching Funds for International Market Development for small and medium size enterprises (SMEs)	Grants	No
12	Superstar Enterprise Grant	Grants	No
13	Research and Development (R&D) Assistance Grant	Grants	No
14	Patent Award of Guangdong Province	Grants	No
15	Innovative Experimental Enterprise Grant	Grants	No
16	Special Support Fund for Non-State-Owned Enterprises	Grants	No
17	Venture Investment Fund of Hi-Tech Industry	Grants	No

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Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grants	No
19	Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan	Grants	No
20	Water Conservancy Fund Deduction	Grants	No
21	Wuxing District Freight Assistance	Grants	No
22	Huzhou City Public Listing Grant	Grants	No
23	Huzhou City Quality Award	Grants	No
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grants	No
25	Wuxing District Public List Grant	Grants	No
26	Anti-dumping Respondent Assistance	Grants	No
27	Technology Project Assistance	Grants	No
28	Transformation technique grant for rolling machine	Grants	No
29	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	Grants	No
30	Key industry revitalization infrastructure spending in 2010	Grants	No
31	Provincial emerging industry and key industry development special fund	Grants	No
32	Environmental protection grant	Grants	No
33	Environmental Protection Fund	Grants	No
34	Intellectual property licensing	Grants	No
35	Financial resources construction - special fund	Grants	No
36	Reducing pollution discharging and environment improvement assessment award	Grants	No
37	Grant for elimination of out dated capacity	Grants	No
38	Grant from Technology Bureau	Grants	No
39	High and New technology Enterprise Grant	Grants	No

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Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
40	Independent Innovation and High-Tech Industrialization Program	Grants	No
41	Environmental Prize	Grants	No
42	Jinzhou District Research and Development Assistance Program	Grants	No
43	Debt for equity swaps	Equity programs	No
44	Equity infusions	Equity programs	No
45	Unpaid dividends	Equity programs	No
46	Preferential loans and interest rates	Preferential loans	No
47	Compensation for land purchasing and storage	Grants	No
48	Technological transformation fund for Phase II Silicon Steel Project	Grants	Yes
49	Subsidy for land use rights in the new zone (Block No. 31836 & 31837)	Grants	No
50	Subsidy for developing emerging strategic industries in Anhui Province	Grants	No
51	New-zone Thermal Power Plant CAPP system engineering	Grants	Yes
52	EMU Steel wheel production line project	Grants	Yes
53	Cold-rolled sheet project	Grants	No
54	Relocation compensation for transportation company	Grants	No
55	Exhaust gas power generation projects of - Steel blast furnace- 1# - 4# coke dry quenching	Grants	No
56	Dezincification engineering of zinc dust and mud rotary hearth furnace for 3rd iron plant	Grants	No
57	National subsidy for slag muck processing and recycling engineering (AD201050406)	Grants	No
58	Subsidy for construction by Wuhu Technique	Grants	No
59	6# full burning blast furnace gas boiler works	Grants	No

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Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
60	Municipal environmental protection subsidies for desulfurisation engineering of 3rd iron plant's sintering flue gas	Grants	No
61	5# and 6# coke dust removal project	Grants	No
62	Fix assets subsidy for thin plate project	Grants	Yes
63	Flue gas curtailment project for 1st iron plant's blast furnace	Grants	No
64	Subsidy for technology advancement from open-hearth furnace to converter for 1st steel plant	Grants	No
65	Rolled wheel works	Grants	No
66	Pulse clarifier anti-pollution	Grants	No
67	Environmental funds for desulfurisation project of 3rd iron plant's flue gas (BOT)	Grants	Yes
68	National environmental fund for flue gas treatment by 3rd steel plant (AI201150304)	Grants	No
69	Subsidies for environmental protection funds of smoke desulfurisation plant	Grants	No
70	No. 3 general factory thermoelectricity plant 135MW generators	Grants	No
71	New zone coking-field project	Grants	No
72	Comprehensive utilisation of water resources	Grants	No
73	Subsidy for Masteel new-zone CDQ project	Grants	No
74	Subsidy for material modification of high-speed wheel and axle	Grants	Yes
75	Environmental protection subsidy for the thermal power plant Dentrification	Grants	No
76	Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 2# sintering machine	Grants	No
77	Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 3# sintering machine	Grants	No

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Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
78	Interest subsidy for rail industrialisation project of Masteel	Grants	No
79	Development and reform subsidy	Grants	No
80	Development fund of efficient and economical construction steel technology	Grants	No
81	Technology development fund by Ministry of science and technology	Grants	No
82	Intelligent manufacturing fund for Ma-steel Rail Transportation	Grants	No
83	Subsidy for Maanshan railway industry	Grants	Yes
84	Comprehensive utilisation of gas for power generation of a thermal power plant	Grants	Yes
85	Environmental subsidy for biochemical water upgrade project of coke old area upgration project of coke old	Grants	No
86	Government subsidy for desulphurisation and denitrification of gases project of a thermal power plant	Grants	No
87	Government subsidy for dust elimination of hot metal pouring on converter roof	Grants	No
88	Others	Grants	Yes
89	Environmental subsidy funds for flue gas desulfurisation and 135mW thermal power	Grants	Yes
90	Hot rolled sheet program	Grants	No
91	Exhaust heat power generation by sintering belt cooler of 3 rd iron plant	Grants	No
92	Repayment of Administration for Port & Shipping of Ma'anshan	Grants	Yes
93	International Market Development Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
94	Import Subsidies Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes

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Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
95	Overseas Network Construction Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
96	Fourth Quarter Incentive Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
97	Industrial Investment Comprehensive Compensation Funds of 2017 from Economic and Information Commission of Ma'anshan	Grants	Yes
98	National Industrial Transformation Financial Subsidy of 2017 (First Major Technical Equipment Insurance Project)	Grants	Yes
99	Provincial 115 Industry Innovation Team Funds from Finance Bureau of Ma'anshan	Grants	Yes
100	The Second Tranche of Provincial Foreign Trade Policy of 2016 from Business Bureau of Ma'anshan	Grants	Yes
101	Industrial Policy Funds of 2017 from Finance Bureau of Ma'anshan	Grants	Yes
102	Industrial Policy Funds from Finance Bureau Corporate Section of Ma'anshan	Grants	Yes
103	Environmental Assistance from Environmental Protection Bureau of Ma'anshan	Grants	Yes
104	Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan	Grants	Yes
105	Trade Friction Public Service Fund Subsidies of 2016 from Business Bureau of Ma'anshan	Grants	Yes
106	Provincial Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan	Grants	Yes
107	Technical Special Fees	Grants	Yes
108	Export Credit Subsidy	Grants	Yes
109	Annual Transformation Development Financial Aid Fund of 2017	Grants	Yes

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Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
110	Employees' Distributive Resettlement Expenses for resolving excess capacity	Grants	Yes
111	Subsidy for hot-rolled 1580 project	Grants	Yes
112	Subsidy for 4# blast furnace project	Grants	Yes

Table 2 – countervailable programs identified by the Commission

A1.5 Commissioner's Assessment

The Commission conducted an in-country verification of Masteel, which included verification of the government programs for which Masteel received a benefit. Evidence was collected on this visit to support the conclusions in Table 2, and this evidence has been relied on by the Commission to support the findings in this section.

For further information please see the Masteel verification report.⁸

CATEGORY ONE: PROVISION OF GOODS

Program 1 - Billet provided by the Government of China at less than adequate remuneration

Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of steel billet by the GOC at an amount reflecting less than adequate remuneration (LTAR).

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body. Section 269TAAC describes the specificity requirement for a subsidy to be considered countervailable.

The Commissioner's assessment of whether SIEs are public bodies for the purposes of the definition of 'subsidy' in subsection 269T(1) is discussed in **Non-Confidential Appendix 2**.

Legal basis

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO notification

The Commissioner is not aware of any World Trade Organization (WTO) notification of this program.

⁸ Document 045 on the EPR

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Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving steel billet at LTAR.

Is there a subsidy?

The only known exporter of railway wheels to Australia from China does not purchase steel billet for the production of railway wheels. Based on the information above, the Commissioner has no relevant information on which to conclude that the only Chinese railway wheel exporter received this benefit, or if such a benefit exists.

As such, the available evidence does not support a finding that Program 1 is countervailable in relation to the goods.

Program 2 - Coking coal provided by the GOC at less than adequate remuneration

Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of coking coal by the GOC at an amount reflecting LTAR.

During the investigation the Commissioner established from information provided by Masteel that Masteel bought coking coal from SIEs.

The Commissioner's assessment of whether SIEs constitute a public bodies in the meaning of subsection 269T(1) is discussed at **Non-Confidential Appendix 3**.

This assessment concludes that Chinese SIEs that produce coking coal are 'public bodies' for the purposes of section 269T, and the remainder of this section continues on the basis of this finding.

The Commissioner's assessment of what constitutes 'adequate remuneration' for coking coal in China is contained in **Non-Confidential Appendix 2**.

Legal basis

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO notification

The Commissioner is not aware of any WTO notification of this program.

Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving coking coal at LTAR.

Is there a subsidy?

The Commissioner requested detailed information from Masteel regarding its purchases of coking coal and these were assessed for adequate remuneration.

In accordance with subsection 269TACC(4), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration while having regard to the prevailing market conditions in China (as discussed in **Non-Confidential Appendix 3**).

In accordance with subsection 269TACD, a benefit was calculated as the difference between adequate remuneration (the benchmark reference) and the purchase price paid for coking coal incurred by Masteel when acquiring these raw material from an SIE.

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The Commissioner notes that the export prices used to determine the benchmark price are at FOB terms, while the purchase price paid was on delivered terms. Given the absence of information to make any adjustments to reflect this difference, the Commissioner considers it is reasonable to compare the delivered purchase prices as reported by Masteel to the FOB export prices provided by the GOC.

The Commissioner found that the price paid by Masteel was below the FOB export prices provided by the GOC. This analysis is contained in **Confidential Appendix 4**.

Based on this analysis, the Commissioner identified that coking coal acquired from SIEs has been provided at LTAR. As such, the available evidence supports the finding that the goods have benefited from a countervailable subsidy.

Program 3 - Coke provided by the government at less than adequate remuneration

Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of coke by the GOC at LTAR.

Legal basis

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO notification

The Commissioner is not aware of any WTO notification of this program.

Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving coke at LTAR.

Is there a subsidy?

During the investigation, the Commissioner established that Masteel did not purchase coke from SIEs.

Program 4 - Electricity provided by the Government of China at less than adequate remuneration

Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of electricity by the GOC at an amount reflecting LTAR.

Legal basis

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO notification

The Commissioner is not aware of any WTO notification of this program.

Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving electricity at LTAR.

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Assessment

After assessing information presented by the GOC and the exporter, the Commissioner does not have evidence that Masteel benefited from a preferential electricity rate that can be considered specific in the terms of section 269TAAC.

CATEGORY TWO: PREFERENTIAL TAX POLICIES

Programs 5 to 9 inclusive

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel, did not receive a benefit from any preferential tax policies.

CATEGORY THREE: GRANTS

Programs 10 to 42 and 47 to 112 inclusive

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel received a benefit under the following grants programs:

Program Number	Program Name
48	Technological transformation fund for Phase II Silicon Steel Project
51	New-zone Thermal Power Plant CCPP system engineering
52	EMU Steel wheel production line project
62	Fix assets subsidy for thin plate project
67	Environmental funds for desulfurisation project of 3rd iron plant's flue gas (BOT)
74	Subsidy for material modification of high-speed wheel and axle
83	Subsidy for Maanshan railway industry
84	Comprehensive utilisation of gas for power generation of a thermal power plant
88	Others
89	Environmental subsidy funds for flue gas desulfurisation and 135mW thermal power
92	Repayment of Administration for Port & Shipping of Ma'anshan
93	International Market Development Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
94	Import Subsidies Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
95	Overseas Network Construction Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
96	Fourth Quarter Incentive Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
97	Industrial Investment Comprehensive Compensation Funds of 2017 from Economic and Information Commission of Ma'anshan

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Program Number	Program Name
98	National Industrial Transformation Financial Subsidy of 2017 (First Major Technical Equipment Insurance Project)
99	Provincial 115 Industry Innovation Team Funds from Finance Bureau of Ma'anshan
100	The Second Tranche of Provincial Foreign Trade Policy of 2016 from Business Bureau of Ma'anshan
101	Industrial Policy Funds of 2017 from Finance Bureau of Ma'anshan
102	Industrial Policy Funds from Finance Bureau Corporate Section of Ma'anshan
103	Environmental Assistance from Environmental Protection Bureau of Ma'anshan
104	Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan
105	Trade Friction Public Service Fund Subsidies of 2016 from Business Bureau of Ma'anshan
106	Provincial Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan
107	Technical Special Fees
108	Export Credit Subsidy
109	Annual Transformation Development Financial Aid Fund of 2017
110	Employees' Distributive Resettlement Expenses for resolving excess capacity
111	Subsidy for hot-rolled 1580 project
112	Subsidy for 4# blast furnace project

Table 3: Subsidy Programs Investigated

The Commissioner sought information from the GOC to establish the legal basis of these programs. The GOC considered that further information about these financial contributions was 'not necessary or efficient in light of the de minimis nature of any support Masteel may have received pursuant to them'.

The Commissioner was unable to identify any specific legal basis for these programs (i.e. no specific law, regulation, or other GOC document has been identified that provides for their establishment).

WTO notification

The Commissioner is not aware of any WTO notification of these programs.

Eligibility criteria

As per the legal basis section above, the GOC considered that further information about these financial contributions was not necessary. The Commissioner was therefore unable to identify any specific eligibility criteria for these programs.

Masteel advised the Commissioner that access to the grants programs was restricted to either the industry in which Masteel operated or the companies in the local region.

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Is there a subsidy?

Due to the nature of these grants, it is considered that a financial contribution under these programs would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including railway wheels).

This financial contribution is considered to confer a benefit to recipient manufacturers of railway wheels via funds from the GOC (at any level of the Chinese government).

These programs would therefore confer a benefit in relation to the goods, and these financial contributions would meet the definition of a subsidy under section 269T.

In regards to specificity, the Commissioner considers these programs are specific within the meaning of section 269TAAC of the Act since only companies operating in key industries or located a specific region are eligible to receive them. This conclusion was reached based on all available information, specifically Masteel's response to the exporter questionnaire stating that eligibility to receive these grants was conditional on being within the industry to which the business belongs or in the particular region.

Amount of subsidy in respect of the goods

In calculating the amount of subsidy, the Commissioner has referred to the financial records of the company, specifically non-business income and the amount received for these programs was allocated against a proportion of turnover relative to exports of the goods to Australia.

CATEGORY FOUR: EQUITY PROGRAMS

Programs 43 to 45 inclusive

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel, did not receive a benefit from any equity programs.

CATEGORY FIVE: PREFERENTIAL LOAN PROGRAMS

Program 46

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel, did not receive a benefit from any preferential loan programs.

NON-CONFIDENTIAL APPENDIX 2 – PUBLIC BODIES

A2.1 Background

The Commission's Dumping and Subsidy Manual states:

Article 1 of the [Subsidies and Countervailing Measures] (SCM) Agreement provides that a subsidy exists where two distinct elements are present: there must be a financial contribution by a government, or income or price support; and this must confer a benefit.

A financial contribution is a transaction through which something of economic value is transferred by the government – this may include for example money, goods, and services. The government's actions are the focus when examining whether there has been a financial contribution.

In establishing whether a financial contribution by a government exists, an important question is how broad is the concept of 'government'? It includes not only the 'government' per se, but also:

- any 'public body' within the country of export or origin of the goods; and
- any 'private body' entrusted or directed by the government to carry out a financial contribution as defined (in defining a subsidy, section 269T seeks to incorporate the above provision).

The definition of a subsidy in section 269T of the Act refers to a 'government' and to a 'public body'. The term 'government' is taken to include government at all different levels – national and sub-national. The definition also refers to a 'private body' which the government or a public body entrust or directs to carry out a governmental function.

Section 269TACC(2) states that a direct financial payment received from any of the following is taken to confer a benefit:

- a. a government of a country;
- b. a public body of a country;
- c. a public body of which a government of a country is a member; or
- d. a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

In addition, the applicant has asserted that SIEs are public bodies (for the purposes of section 269T), relying upon previous reports made by the Commission (Investigation 322 – Reinforcing Bars exported from China and Investigation 331 – Rod in Coils exported from China).

The purpose of this investigation is to assess whether for the purposes of this investigation SIEs involved in the provision of raw materials to Masteel can be considered public bodies.

A2.2 Relevant principles

The term 'public body' is not defined in the Act. Therefore, the Commission has had regard to the dictionary definition which refers to an institution or organisation acting on behalf of the community. The determination of whether an entity or company is a 'public body' will not focus on any one factor. Rather, there will be a careful evaluation of all available evidence of the entity's features and of its relationship with government.

Including:

- The objectives and functions performed by the body and whether the entity in question is pursuing public policy objections. In this regard relevant factors include:

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- statues or other legal instruments;
 - the degree of separation and independence of the entity from a government including the appointment of directors; and
 - the contribution that an entity makes to the pursuit of government policies or interests.
- The body's ownership and management structures.

The Commission also notes the following approaches previously taken by the Commission, Anti-Dumping Review Panel (ADRP) and WTO:

- Investigation 177 – the Commissioner's finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- Investigation 203 – the Commissioner's reinvestigation of certain findings in Investigation 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- Investigation 193 – the Commissioner's findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively 'coated steel') exported from China. The Commissioner found that SIEs that supplied HRC to manufacturers of coated steel were public bodies;
- Investigation 237 – the Commissioner's finding in relation to the subsidisation of silicon metal exported from China;
- Investigation 238 – the Commissioner's finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- ADRP Report (15 November 2013) in relation to Investigation 193 – the ADRP disagreed with the Commissioner's finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP's finding in relation to this issue;
- DS379 – this WTO Appellate Body finding considered the meaning of 'public body' in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- DS436 – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- *United States – Countervailing Measures (China)* (DS437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to DS437, while this decision is recent the Commissioner considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commissioner agrees with the views of the Panel in this dispute, and the Appellate Body in DS379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commissioner does not advocate such an approach in the present investigation.

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In DS379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):⁹

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

The Commissioner, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether SIEs should be considered to be public bodies.

A2.3 Submissions by the GOC

In its response to the GOC questionnaire, the GOC stated that SIEs operating in China were not public bodies because they do not exercise governmental authority. The GOC noted the WTO jurisprudence that:

- 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;
- 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; 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.

The GOC stated that WTO jurisprudence also confirmed that the percentage of government shareholding in an SIE did not mandate a finding that such entities are or are not public bodies.

The GOC referred to DS379 in which the WTO Appellate Body indicated that control of an entity by a government, in itself, is not sufficient to establish that an entity is a public body. It also referred to DS436 and the Appellate Body's explanation that an investigating authority must avoid focusing exclusively or unduly on any single characteristic and must not take the view that government ownership alone is sufficient to establish that a company is a public body.

The GOC wished to emphasise that its position on public bodies had been officially supported on numerous occasions by the ADRP and its predecessor, the Trade Measures Review Officer (TMRO).

⁹ Appellate Body report DS379 at [318]

In relation to coking coal, the GOC stated that it had 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 without any interference or influence from any government agencies and subject to the Company Law of the People's Republic of China.

A2.4 The Commissioner's assessment

The Commissioner considers that the ADRP's decision to direct a reinvestigation of the findings in Investigation 177 was, to a large extent, premised on the TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS379, 'that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The Panel considered this issue in DS437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain' the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS379. It stated that:

'In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".'

The Commissioner considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS436, also released after the ADRP's findings, the WTO Panel 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".'

The Panel stated that, in its view:

- 'government involvement in the appointment of an entity's directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government';
- 'while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or "meaningful", in nature'; and
- 'in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the "meaningful" control of the government.'

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The *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to ‘appoint or remove the responsible persons of the invested enterprise’;
- Article 16 states that a state-owned assets supervision and administration authority ‘shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises’;
- Article 17 describes the positions presumably considered to be ‘responsible persons’, which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
- Article 17 also states that where the State Council or any level of government ‘provide otherwise’ in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commissioner is not in possession of evidence as to whether the State-owned Assets Supervision and Administration Commission has appointed directors or other key management positions to any of the suppliers of coking coal identified by Masteel to be SIEs. 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;
- 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);
- 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.

The GOC advised that it was unable to provide information in response to these questions.

The Commissioner had regard to the findings by the European Commission (EC) in a report entitled *Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence* (EC Report).

The EC Report was prepared for the purposes of Article 2(6a)(c) of *Regulation (EU) 2016/1036*. Article 2(6a)(c) provides that where the EC has well-founded indications of the possible existence of significant distortions in a certain country or a certain sector in

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that country, the EC must publish a report describing the market circumstances in that country or sector.¹⁰

The EC Report found that the GOC no longer directs SIEs to “adapt to the new market-oriented [...] background” and “promote market-oriented allocation of public resources”.¹¹ Rather the GOC’s current primary goal with respect to SIEs is make the sector larger and stronger; this includes strengthening the sector’s control and influence “in order to better serve the strategic goals of the country”.¹² The GOC has decided to maintain SIEs as a means for pursuing policy objectives and not primarily commercial considerations¹³ and to selectively create large SIEs to serve the GOC’s strategic industrial policies rather than focussing on their own economic performance.¹⁴ The GOC has continued controlling SIEs¹⁵ and planned reforms focus on better controlling state-owned assets.¹⁶

The GOC is retreating from the market reforms for SIEs that it previously promoted, even as recently as 2013.¹⁷ Due to the similar operating environments across SIEs in China in different industry sectors, the Commissioner considers that previous findings that SIEs are public bodies are pertinent to this investigation and are likely to understate the GOC’s involvement with SIEs.

On the basis of the above principles and facts available in this case, the Commissioner considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that supply coking coal to Masteel are public bodies.

¹⁰ EC Report at page 2.

¹¹ EC Report at page 106 citing the GOC’s 13th Five Year Plan.

¹² EC Report at page 106 citing the GOC’s 13th Five Year Plan.

¹³ EC Report at page 107-8; the EC Report at page 362 stated that some forms of GOC support in the steel sector were “permanent” and “structural”.

¹⁴ EC Report at page 108-9.

¹⁵ EC Report at page 108.

¹⁶ EC Report at page 106 citing the GOC’s 13th Five Year Plan.

¹⁷ EC Report at page 106 citing the GOC’s 2013 3rd Plenum Decision.

NON-CONFIDENTIAL APPENDIX 3 - ASSESSMENT OF ADEQUATE REMUNERATION FOR COKING COAL IN CHINA

A3.1 Background

After determining that SIEs that supplied coking coal in China are ‘public bodies’ for the purposes of the Act,¹⁸ the Commissioner sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal in accordance with subsection 45(2) of the *Customs (International Obligations) Regulation 2015* from which to calculate the benefit received. The Commissioner then calculated the benefit received under subsidy program 2 (purchases of coking coal from SIEs at LTAR).

In establishing the benchmark for the alleged countervailable subsidy benefits received by Masteel for coking coal, the Commissioner has relied upon information contained in the application, information provided by the GOC as part of its response to the government questionnaire and other publicly available data.

A3.2 Adequate remuneration for coking coal

The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

- private domestic prices;
- import prices; and
- external benchmarks.

A3.2.1 Private domestic prices

The Commissioner found that domestic prices of upstream raw materials (including coking coal) are influenced by the GOC and therefore not suitable as a benchmark.

The Commissioner considers that private domestic prices of coking coal in China are not suitable for determining a competitive market price free from government influences.

A3.2.2 Import prices

The Commissioner found that import prices were not suitable as a benchmark due to the likelihood that import prices were equally affected by the government influences on domestic prices.

A3.2.3 External benchmarks

Having eliminated the first two options discussed above, the Commissioner considered other options to establish a benchmark price for coking coal.

As a result of the Commissioner’s investigation into aluminium zinc coated steel (Investigation 193) the Commissioner used the Chinese export price in the investigation

¹⁸ Assessment of SIEs to be Public Bodies is within Non-confidential Appendix 3

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period to establish the benchmark price for coking coal. In assessing the data collated from various sources in Investigation 193, the Commissioner found there to be a variety of factors affecting the quality and forms of coking coal produced, imported and/or exported by each of the top five countries trading in these commodities. The coking coal exported from China was considered to be the most comparable to the coking coal purchased domestically by the cooperating Chinese exporters, and the export data provided by the GOC was considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration.

The Commissioner did not receive any submissions during the investigation on the most appropriate benchmark for coking coal. The Commissioner has followed the methodology established in Investigation 193, as it is the most contemporaneous and remains a reasonable approach. The Commission used information provided by the GOC on the Chinese export price for coking coal in the investigation period as a benchmark to assess whether Masteel has been provided with coking coal by SIEs at LTAR.