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21 October 2013

Ms Joan Fitzhenry
Member
Anti-Dumping Review Panel
c/- Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra
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By email

Dear Member

Government of the People's Republic of China
Review of Ministerial decisions concerning coated steel

This submission is made on behalf of the Government of the People's Republic of China ("the GOC"), represented by its Ministry of Commerce ("MOFCOM"), under Section 269ZZJ of the *Customs Act 1901* ("the Act").

The matters to which it refers are the subject of the reviews initiated by the Anti-Dumping Review Panel ("the Review Panel") in relation to zinc coated galvanised steel and aluminium zinc coated steel ("coated steel") exported from the People's Republic of China ("the reviews").

The public notice announcing the initiation of the review was published on 20 September 2013.

A Introduction

The GOC comprehensively set out its positions in relation to the matters raised for the consideration of the Review Panel in these reviews in its application dated 4 September 2013 ("the Application").

The purpose of this submission is not to traverse and repeat each of those positions. The main purpose of this submission is to address matters adjudicated by Nicholas J in the decision of the Federal Court of Australia in *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth*[1] ("Panasia") in the context of the matters presently before the Review Panel.

In so doing we wish to make a few general observations. The first of these is that the Review Panel's function is merits-based. That is, the Review Panel is required to determine the correct and preferable decision, based on the facts and the application of the law to those facts. It is not for the Review Panel to opine that the recommendations of the Chief Executive Officer ("the CEO") of the Australian Customs and Border Protection Service ("Australian Customs") to the Minister, and the Minister's decision, were recommendations and decisions within a range of possible recommendations and decisions that could

[1] [2013] FCA 870 (30 August 2013)

have been made, based on the applicable law. It is also not for the Review Panel to disagree with the CEO's and the Minister's factual conclusions and opinions, but then not disrupt them for the reason that they were factual decisions without legal error. The Review Panel has the mandate and the duty to intervene on matters of fact, opinion and law, and to arrive at its own conclusions in all of these respects.

Nicholas J, and all judges that hear administrative law appeals, make clear that theirs is a role of legal review, and that even if they disagree with the factual conclusions that have been arrived at by the administrators whose decisions they are required to review, it is not for them to re-make those factual conclusions or to have different opinions. Legal review is so limited.

The Review Panel's jurisdiction is to consider what the correct and preferable decision is, and to recommend directly to the Minister as to what that decision should be.

Secondly, and obviously, the decision in Panasia related to dumping and countervailing duty decisions about aluminium extrusions and the aluminium from which those extrusions were formed. The facts of that case are not the same as the facts pertaining to the Chinese iron and steel industry which are the subject of this review. As we point out in this submission, many of the critical or cumulative facts and circumstances taken up as relevant considerations by Nicholas J in Panasia simply do not exist in the case of the iron and steel industry, or are very different in their impact and degree on the facts of the coated steel investigations. The facts in Panasia not only related to a different product in a different industry – they also related to a time period which is now over four years ago.

Thirdly, we observe the following comments of the Review Panel in *Quicklime Exported from the Kingdom of Thailand – Review of Decisions to Terminate an Investigation to Publish a Dumping Duty Notice* (8 August 2013):

> *The principal constraint is the undesirability of the Panel embarking on a reconsideration of the decisions reached by the TMRO. The decisions address legal issues which, if they are disputed, are more appropriately a matter for a court. If, and the Panel expressly makes no such finding, the Panel disagreed with either or both of the decisions of the TMRO then conflicting decisions as to how the one case should be approached would coexist. In undertaking a continuum of administrative review of the one case unresolved conflicting dual approaches existing side by side is, if not incompatible, at least highly undesirable. The better course in difficult circumstances, and the one which the Panel has decided to follow, is to proceed with the review of the findings made in the further injury analysis given that Customs, while explicitly disagreeing with such an approach, has at the same time addressed the issues arising from the TMRO decision.*[2]

The Review Panel closely couched these comments in terms of the continuum of decisions in that one "investigation" (an investigation concerning quicklime). However the GOC does wish to draw attention to the following decisions of the Trade Measures Review Officer ("the TMRO") that precede this review. The TMRO:

- has determined that no so-called "particular market situation" exists in the "iron and steel industry" in China (referred to as Finding 1 in the Application);
- has not determined that hot-rolled coil ("HRC") costs in China do not reasonably reflect competitive market costs for the purposes of Regulation 180(2)(b)(ii) of the Customs Regulations 1926 (referred to as Finding 2 in the Application);
- has determined that State-invested enterprises that produce HRC in the Chinese iron and steel industry are not "public bodies" (referred to as Findings 4 and 5 in the Application); and

[2] *Quicklime Exported from the Kingdom of Thailand – Review of Decisions to Terminate an Investigation to Publish a Dumping Duty Notice* (8 August 2013), para 36.

- has determined that without evidence as to rates of return of HRC producers, it cannot be determined that remuneration for the sale of HRC by those producers was inadequate (referred to as Finding 6 in the Application).

The TMRO made these findings based on the same underlying evidence and assumptions that the CEO of Australian Customs (now superseded by the Commissioner and the Anti-Dumping Commission respectively) used to arrive at its contrary findings in the coated steel investigations which are presently before the Panel.[3]

B Finding 1 – Particular market situation determination

The GOC relies on the Application and its previous submissions in the coated steel investigations in relation to this matter.

The GOC outlined the reasons why the finding that a "particular market situation" existed for the purposes of Section 269TAC(2)(a)(ii) in the Chinese markets for coated steel was incorrect at paragraphs 1 to 15 of its Application. To summarise, the GOC explained that:

- The unsuitability required by Section 269TAC(2)(a)(ii) is an unsuitability which affects the comparison of an exporter's domestic selling price with its export price. The alleged "situation" in the coated steel investigations has no such comparatively different effect. Any impacts on costs arising from GOC regulation, whether real or imagined, have the same effect on costs whether the coated steel is sold domestically or exported.[4]

- There was no valid rationale for the particular market situation finding.

- There was insufficient evidence to support the particular market situation finding.

- The market situation finding was based on a faulty "economic analysis". The analysis relied on a limited understanding of supply-side factors, to the ignorance of all other factors, including demand. The analysis was based purely on assumption, and was not supported by any actual Chinese market data.

- A comparison of Chinese HRC prices with prices of HRC from other markets does not support the conclusion that Chinese exporters' prices in the coated steel market in China were unsuitable for comparison with their export prices.

The GOC provided a comprehensive explanation of the interpretation of the circumstances in which a "particular market situation" or a "situation in the market" might arise, at the international and Australian levels respectively. The GOC also provided a detailed explanation of every item of evidence that was said to support the particular market situation conclusion.[5]

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[3] *Decision of the Trade Measures Review Officer - Hollow Structural Sections – Review of Decisions to Publish a Dumping Duty Notice ad a Countervailing Notice* (14 December 2012)

[4] Australian Customs now accepts that a situation in the domestic market that negates the use of sales for price comparison with export sales must affect those sales differently. However, the GOC cannot agree with the way in which Australian Customs has attempted to convert a finding which is essentially one of low costs (which have no comparatively different effect) to one of different markets (namely, that the domestic market is different to the export market). In this regard see *International Trade Remedies Branch Report to the Minister No 203 – Reinvestigation of Certain Findings in Report No. 177 – Certain Hollow Structural Sections Exported to Australia from the People's Republic of China, the Republic of Korea., Malaysia and Taiwan* (15 April 2013) at page 25. The domestic market is always different to the export market. The relevant Section refers to a situation in the domestic market which causes an unsuitability of sales for use in determining a price for comparison purposes. The "situation" cannot be different markets *per se*.

[5] See, for example, Attachment G to the Application.

The GOC considers that the Application provides sufficient basis for the Review Panel to determine that the finding that a "situation" existed in the Chinese markets for coated steel rendering sales in those markets as being not suitable for price determination was not the correct and preferable decision. Instead, it was legally and factually incorrect. The correct and preferable decision is that there was no such situation.

The question of whether a "particular market situation"/situation in the market existed in the market for aluminium extrusions was not raised in the Panasia decision, because no such finding was made by the Minister in that investigation.

C Finding 2 - "Reasonably reflect competitive market costs"

The GOC relies on the Application and its previous submissions in the coated steel investigations in relation to this matter.

In the Panasia case, Nicholas J was called upon to consider whether the Minister had correctly determined that the cost of aluminium recorded in the financial records of the exporters concerned (aluminium extruders) reasonably reflected competitive market costs, as required by Regulation 180(2)(b)(ii) of the Customs Regulations 1926. In this regard, His Honour concluded:

> *In the present case the question is not whether any particular market participant exercises a particular degree of market power, nor whether there is competition in any market for primary aluminium in China. Rather, the question which is required to be answered for the purposes of reg 180 is whether the relevant records reasonably reflect competitive market costs associated with the manufacture or production of the relevant goods. Implicit in the CEO's finding is an approach to reg 180(2) which recognises that the implementation of government policy may drive down particular costs associated with the manufacture or supply of goods such that the costs might not only reflect the ordinary effects of supply and demand but also reflect the impact of government policy aimed at increasing or reducing supply or demand. In my view, this approach was open. In particular, it was open to the CEO to conclude that in the circumstances which he found to exist, the cost of primary aluminium did not reasonably reflect "competitive market costs", but also that government policy aimed at reducing the cost of primary aluminium used in the domestic production of finished goods had distorting effects.*[6] [emphasis added]

It is important to note that His Honour tied his conclusion to the facts that were before the Minister, saying that in those circumstances the conclusion that the costs did not reasonably reflect competitive market costs was "open".[7] The GOC submits that in the coated steel reviews that are now before the Review Panel it is simply not possible to conclude that the cost of HRC recorded by Chinese exporters did not reasonably reflect competitive market costs. The evidence paints a graphic and detailed picture of a very active market for HRC in China, populated by a great many buyers and sellers all making profit-motivated decisions, within the overarching and acceptable social, environmental and industrial regulation of the governments of China.

In Panasia, Nicholas J reflected on direct or intended price interventions in the aluminium market in China – for example, referring to findings of an alleged *"distorting influence stemming from the Chinese government's intervention in the domestic aluminium market on the price of primary aluminium"* and

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[6] Panasia, para 91.

[7] The GOC notes that "government purchases" of aluminium were said to be an impact on the market which was important to the decision that aluminium costs in the financial records of the exporters did not reasonably reflect competitive market costs. This is specifically referred to in the judgement of Nicholas J. No such impact was identified in the coated steel cases. In fact all that the coated steel cases seem to have identified is that a huge market of buyers and sellers of HRC operates in China within the framework of the GOC's macro-economic, industry development and environmental protection laws and policies. Please also refer to Attachment 38 to the GOC's response to the Government Questionnaire, for a clear indication of the diversity of ownership of HRC manufacturers in China.

"government policy aimed at reducing the cost of primary aluminium used in the domestic production of finished goods had distorting effects". The GOC does not set, guide or manipulate the price of a product such as HRC in the iron and steel industry, and has no objective to do so. Its national and macro-economic interests lie in the proper functioning of an important industry that is sustainable and environmentally responsible.

As indicated at paragraph 26 of the Application, the report issued by Australian Customs in relation to the alleged dumping of coated steel[8] ("REP 190") provides no detail as to how the Regulation 180(2)(b)(ii) finding was reached. REP 190 merely states a view that HRC prices are affected by GOC influences and, therefore, do not reasonably reflect competitive market costs. It is not clear what circumstances the CEO found to exist which justified the Regulation 180(2)(b)(ii) finding, although as explained at paragraph 28 of the Application, it would appear that the primary reason was that the HRC costs recorded by Chinese exporters of the subject product were different to the "benchmark cost".

The GOC considers that it is possible that the Regulation 180(2)(b)(ii) finding was based on the particular market situation finding. However the GOC does not think the two concepts can be conflated. As the GOC has explained, the particular market situation rules are designed to operate where there is some factor in the domestic market for the goods under consideration which renders the price derived in that market unsuitable for comparison with export prices. In comparison, Regulation 180(2) relates to the accuracy of the records kept by the exporter. A bold finding that a particular market situation exists is not a sufficient basis to find that the input costs of an exporter do not reasonably reflect competitive market costs. Moreover, if the particular market situation was the basis for the Regulation 180(2)(b)(ii) finding, the latter is subject to the same substantial criticisms in fact and logic and law that have been highlighted by the GOC with regard to the former.

In addition, as the GOC explained at paragraph 30 of its Application, it does not consider that the particular benchmark used in this case – based on recorded HRC prices from two Korean exporters and three Taiwanese exporters – is an appropriate benchmark for determining whether the cost of HRC recorded by Chinese exporters of HRC reasonably reflected competitive market costs. Thus, in circumstances where the decision that HRC costs did not reasonably reflect competitive market costs was based on the fact that they did not reflect the benchmark cost, the GOC submits that the benchmark was not itself a competitive market cost such as would enable that decision to be made.

To illuminate this further, the GOC refers to the text of Section 269TAC(2)(c)(i) which explains, in part, how the Minister must calculate the normal value if the price derived from domestic sales is not to be used. It is to be:

> *such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export;* [our emphasis]

As a starting point, it must be emphasised that the relevant cost of manufacture is that which relates to the cost of production or manufacture of the goods in the country of export. Section 269TAC(5)(a) provides that the cost of production or manufacture must be determined in such a manner, and taking into account such factors, as the regulations for the purposes of Section 269TAAD(4)(a) and (b) provide. Regulation 180(2) provides these details for Section 269TAAD(4)(a), and therefore, by way of Section 269TAC(5)(a) for Section 269TAC(2)(c)(i). These regulations provide:

> *(2) If:*
>
> *(a) an exporter or producer of like goods keeps records relating to the like goods; and*
>
> *(b) the records:*

[8] *International Trade Remedies Branch – Report 190 – Dumping of zinc coated (galvanised) and aluminium zinc coated steel exported from the People's Republic of China, the Republic of Korea and Taiwan* (30 April 2013).

> *(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.*

Regulation 180(2) must be read in the context of Section 269TAC(5)(i). From this it follows that the Minister's determination of the cost of production or manufacture in the country of export requires a consideration of whether the costs recorded by the individual exporter reasonably reflect competitive market costs associated with production or manufacture of like goods in the country of export.

In the Panasia litigation, Nicholas J was not called upon to consider whether the LME benchmark was an appropriate benchmark for considering whether the cost of aluminium reasonably reflected competitive market costs. However, we would note that there are differentiating factors between the approach taken in that investigation and the approach taken in the coated steel investigations. Specifically, in the aluminium extrusions investigation the adoption of the LME price as a benchmark for the competitive market cost for aluminium was justified as follows:

> *Customs and Border Protection considered that an appropriate replacement cost for aluminium ingot is the price of primary aluminium quoted on the* [London Metal Exchange, or "LME"]. *The selected exporters confirmed that the decision to purchase primary aluminium at any given point in time involved a comparison of domestic prices quoted on the SHFE and equivalent import prices based on the LME. Further evidence of the correlation between the exporters' purchasing decisions and the relative price differences between SHFE and LME prices can be seen in the shift to sourcing imported primary aluminium from early 2009 as SHFE prices rose above comparable LME prices. Customs and Border Protection considered that LME prices are indicative of what would be competitive market costs in China.*[9]

The GOC does not accept that the LME was an appropriate benchmark for aluminium, nor that there were sufficient evidentiary grounds on which to adopt such a benchmark. However, in that instance the investigating body at least attempted to justify the relevance of the LME to the price of aluminium sold in China. There was no such attempt with regard to the benchmark adopted for HRC in the coated steel investigations.

As explained at paragraph 30 of the Application, the benchmark adopted as a result of the coated steel investigations is entirely unrelated to China. The GOC would also recommend to the Review Panel the submission of Union Steel China Co., Ltd ("USC") in the concurrent countervailing investigation dated 5 June 2013. That submission makes it fairly clear that the benchmark was also unrelated to a market, because it did not take into account all the prices that were relevant in the market. In that submission USC discussed the benchmark that was used to test the "adequacy of remuneration" for HRC for countervailing purposes (which was essentially the same figure as the benchmark "competitive cost"). The submission notes that the benchmark was calculated on a basis that excluded all HRC imported by the relevant Korean and Taiwanese entities.[10] It is unclear what the basis for this exclusion was, but the resultant benchmark cost figure could not be considered to reflect, reasonably or otherwise, the competitive market costs of production of like goods in Korea and Taiwan, let alone in China.

To summarise – the GOC does not accept that HRC costs in the Chinese market are not competitive market costs, or that the financial records of the exporters concerned would not have accurately recorded those costs. Notwithstanding that, the CEO adopted a benchmark for HRC cost in China in the coated

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9 *Report to the Minister No. 148 – Certain Aluminium Extrusions Exported to Australia from the People's Republic of China*, at page 39.

10 Page 5.

steel investigations derived from HRC cost information from five entities that are unrelated to the Chinese market, and limited that information to HRC those entities purchased domestically (ie excluding HRC they purchased that was imported). This benchmark does not reflect the competitive market costs for any market, let alone the Chinese market, nor can it be used as a basis to determine what the costs associated with the production or manufacture of coated steel in China are, or should be.

In conclusion, the GOC submits that on a proper view of the evidence submitted by both the GOC and Chinese exporters, the demonstrated circumstances do not justify the Regulation 180(2)(b)(ii) finding. Moreover, the benchmark that was used to determine what the costs of the production and manufacture were in China has no relationship to China, and does not reflect what the competitive market cost for HRC in those markets was. Therefore, the GOC submits that there was no rational basis on which to be satisfied that the cost of HRC recorded by exporters of coated steel did not reasonably reflect the competitive market costs associated with the production or manufacture of like goods, and that there was no basis to exclude those costs from being determined to be the costs associated with the production and manufacture of coated steel in China.

D Finding 3 - Surrogation of the HRC cost for integrated producers

The GOC relies on the Application and its previous submissions in the coated steel investigations in relation to this matter.

The GOC does wish to point out that the Anti-Dumping Commission accepts the proposition that the HRC costs in the financial records of an integrated producer of a finished steel product will not represent the competitive market cost of HRC which is traded on the market. In *Termination of Part of Investigations – Dumping of Hot Rolled Plate Steel exported from the People's Republic of China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan* (10 September 2013), the Commission said:

> *Both POSCO and Hyundai are fully integrated steel manufacturers and produce rather than purchase steel slab used in the manufacture of plate steel. DSM does not produce steel slab and as such is required to purchase this steel slab to use in production of plate steel. It is logical that a constructed normal value for DSM would be higher than a constructed normal value for POSCO or Hyundai as DSM's purchase price of steel slab would incorporate amounts for the seller's SG&A and profit in addition to the manufacture cost.*[11]

Here we see an understanding – as obvious as it might seem – that a competitive market cost for the purchase of HRC is not going to represent the cost of production of HRC by a manufacturer who then uses that HRC to make the finished steel product. This logic is then ignored in REP 190, where the so-called benchmark competitive market cost is substituted into the financial records of all producers regardless of whether they are integrated or non-integrated producers.

The decision in Panasia does not have any relevance to the issues raised by the GOC's Application in relation to the surrogation of costs for integrated producers, as this point was not argued in those proceedings.

E Finding 4 – characterisation of SIEs as "public bodies"

The GOC relies on the Application and its previous submissions in the coated steel investigations in relation to this matter.

At the outset, the GOC wishes to indicate its complete disagreement with the decision in the Panasia case to the effect that it was open for the Minister to consider that the large State-invested enterprises

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[11] *Termination of Part of Investigations – Dumping of Hot Rolled Plate Steel exported from the People's Republic of China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan* (10 September 2013), pages 21 and 22.

CHINALCO and CHALCO, and their subsidiary companies, were "public bodies" for the purposes of the definition of "subsidy" under Section 269T of the Act.

The GOC does recognise that the Review Panel is subject to and must abide by Australian law, and that this submission is not the place for the GOC to set out the entire nature of its disagreement with the Panasia decision. However, it is not necessary for the GOC to do so, because the underlying facts and circumstances of the "public bodies" decision in the Panasia case appear to be quite different to those presented in these coated steel cases.

Nicholas J found that it was open to the CEO to decide that CHALCO and its subsidiaries were "public bodies". It is important to note that this group of companies (including CHINALCO, which for the most part was the supplier of aluminium to the exporters, either through itself or through its directly associated businesses) was undoubtedly a major, significant and dominant presence in the Chinese aluminium market. The subject of the finding appears to have been clearly identified in Panasia as being CHALCO and CHINALCO. This appears to be a very different finding to that made by the Minister in the coated steel cases. For the purposes of the coated steel cases, the "public bodies" finding does not appear to have been directed at one or a number of HRC producers. Rather, it appears to be an indiscriminate blanket finding against all State-invested enterprises in the iron and steel industry, based on little more than the proposition that the GOC has laws, regulations and policies which relate to the operations of the industry. This does not constitute an acceptable legal basis for a finding that a State-invested enterprise is a "public body.

Key pieces of evidence that His Honour in Panasia considered to be relevant related directly to CHALCO and CHINALCO. Thus in the decision in Panasia, we see the Judge drawing attention to an intercompany agreement between CHALCO and CHINALCO which refers to the observance of State-directed or State-guided prices.[12] We also see reference to a Form 20-F filed by CHALCO in the US Securities and Exchange Commission which refers to the exercise of *"a substantial degree of control and influence over the aluminium industry in China"* by *"the central and local PRC governments"*.

The GOC relies on its thorough review and rebuttal of the evidence claimed by the CEO to support the proposition that State-invested enterprises producing HRC in China were public bodies as set out in Attachment H to its application, and notes again that the TMRO did not accept that the evidence justified that finding in his decision in *Hollow Structural Sections – Review of Decisions to Publish a Dumping Duty Notice and a Countervailing Duty Notice* (14 December 2012).

F Finding 6 – Provision of raw materials at less than adequate remuneration

The GOC relies on the Application and its previous submissions in the coated steel investigations in relation to this matter.

In the Panasia case, Nicholas J ruled that it was open for the Minister to arrive at the conclusion that private prices for aluminium did not represent adequate remuneration, on the basis of the impacts of export taxes, government purchases of primary aluminium, and the significance of State-invested enterprises as suppliers of aluminium. This, it was said, was sufficient enough to allow the CEO to recommend, and the Minister to decide, that private prices were "distorted" and could not provide an indicator of adequate remuneration in the country of provision of the alleged subsidy (ie in China).

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[12] Despite having said that this is not the place for a criticism of the "public bodies" finding in the Panasia case, the GOC must offer the observation that the agreement referred to in the judgement (at para 40) between CHALCO and CHINALCO has nothing to do with the GOC. All that the agreement seems to be saying is that a law of China providing for price control must be obeyed by the companies, but that in the absence of such a law market prices shall apply in the transactions that take place between them. So far as the GOC is concerned, the agreement says that the companies must abide by law and that market pricing will always have primacy. There were no price control laws identified in the aluminium extrusions investigation. To us the agreement referred to seems to be an indication of a *lack of control* by the GOC, rather than the opposite.

The facts of the "iron and steel industry" for the purposes of the coated steel investigations are very different. Although the CEO seems to want to deny it, and to "play up" the factors that would have an unfavourable effect on the acceptance of market prices for HRC in China, there can be no denying that there were no direct export taxes on HRC (unlike in the case of aluminium); that there were no government purchases of HRC (unlike in the case of aluminium); and that there is a great diversity of HRC producers in China (unlike in the case of aluminium).

In the Panasia judgement, the following was extracted from the WTO Appellate Body report in *United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* ("Softwood Lumber IV"):[13]

> *We emphasize once again that the possibility under Article 14(d) for investigating authorities to consider a benchmark other than private prices in the country of provision is very limited. We agree with the United States that "[t]he fact that the government is a significant supplier of goods does not, in itself, establish that all prices for the goods are distorted". Thus, an allegation that a government is a significant supplier would not, on its own, prove distortion and allow an investigating authority to choose a benchmark other than private prices in the country of provision. The determination of whether private prices are distorted because of the government's predominant role in the market, as a provider of certain goods, must be made on a case-by-case basis, according to the particular facts underlying each countervailing duty investigation.*[14] [our emphasis

His Honour underlined the final sentence of this extract in his judgement, in the course of finding that it was open for the CEO and the Minister to hold the view that private prices of the aluminium raw material were sufficiently distorted by government action and by government presence in the market for them not to be a suitable measure of adequate remuneration. Conversely, the GOC wishes to emphasise the first sentences of this extract, in the circumstances of China's iron and steel industry and markets.

In particular, the GOC wishes to highlight a few facts about the Softwood Lumber IV report that are not properly recognised – or are purposefully ignored – in the rush to discriminate against China's markets and its producers by identifying "out of country" benchmark costs that generate dumping or subsidy margins against its exporters. The primary fact that is lost in the convenient adoption of Softwood Lumber IV is that the "stumpage rights" for timber, the provision of which were determined to confer a subsidy on timber fellers, were overwhelmingly available only from governments (Federal and provincial) as a licence or entitlement to operate in public-owned forests. This footnote from the judgement is instructive:

> *The Panel noted the following summary by USDOC of the market situation in various Canadian provinces:*
>
> > *During the POI, total softwood harvested from Crown lands accounted for between approximately 83 and 99 per cent of all softwood timber harvested in each of the Provinces. Specifically, the Provincial, federal and private share of softwood timber harvests, by Province are:*
> >
> > *British Columbia – 90 per cent Provincial, less than 1 per cent federal, and almost 10 per cent private;*
> >
> > *Quebec – 83 per cent Provincial, and 17 per cent private;*
> >
> > *Ontario – 92 per cent Provincial and 7 per cent private;*
> >
> > *Alberta – 98 per cent Provincial, 1 per cent federal, and 1 per cent private;*

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13 WT/DS257, dated 19 January 2004.

14 Panasia case, at para 82.

Manitoba – 94 per cent Provincial, 1 per cent federal and 5 per cent private;

Saskatchewan – 90 per cent Provincial, 1 per cent federal and 9 per cent private.[15]

As you can see, these are huge government market shares, and miniscule private market shares. By contrast, we refer the Review Panel to the following information that was before Australian Customs in this matter:[16]

- a list of HRC producers and the number of HRC producers in China, as set out below:[17]

Product	Number of enterprises	Number of provinces	Number of cities	A-share listed	Listed abroad
HRC	321	26	103	9	3

- a detailed list of HRC producers in China, indicating their wide ownership diversity:[18]
- a list of the top 15 HRC manufacturer/traders, showing only four companies with State investment amongst the top 16 HRC manufacturer and traders, including one with both State and foreign investment;[19]
- a list of the producers of hot rolled sheet (ie HRC) that held 70% domestic market share (a total of 75 enterprises) in respect of which the GOC advised:[20]
  - that there were 22 State-invested enterprises within the total of 75 enterprises;
  - that the top eight companies on the list accounted for 70% of the total hot rolled sheet output; and
  - that of the top eight producers, three were State-invested enterprises;
- the following question and response:[21]

  [Question] The GOC in its response to GQ A-14 (pg 38 refers) stated that the number of SIE's operating in 2011 were 54% less than in 2006 and that the private enterprises increased by 20% over the same period. What percentage of SIE and private sector stated above relate to the iron and steel industry?

  [Response] The GOC's best information is that, by the end of 2011, there were 10,224

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15 Softwood Lumber IV, footnote 103.

16 Noting that Australian Customs indicated that information previously submitted, such as in the hollow structural sections investigation, was to be taken up into this investigation, and that where questions directed towards the GOC on the coated steel investigations touched upon that previous information, the GOC did not have to repeat the previous substratum of information. Australian Customs continues to base its findings for other steel products, in later investigations, having different periods of investigation, as updated in some respects in those later investigations, on the information used for the purposes of the hollow structural sections investigation and the conclusions reached in the reports issued as a result of that investigation.

17 GOC's response to the Government Questionnaire, page 30.

18 GOC's response to the Government Questionnaire, Attachment 38.

19 GOC's response to the Supplementary Government Questionnaire, Attachment 87.

20 GOC's response to the Supplementary Government Questionnaire, Attachment 93.

21 GOC's response to the Supplementary Government Questionnaire, page 33.

business entities in the iron and steel industry, including iron ore mining, mills and processing plants, of which 454 were State majority owned enterprises or were the controlled subsidiaries of State majority owned enterprises.

	Total number of enterprises	Number of State majority-invested enterprises	FIEs, private enterprise	Other non-SIE
Iron and steel manufacturing	6,742	312	4,767	1,663
Iron ore mining	3,482	142	2,573	767
Total	10,224	454	7,340	2,430

The GOC rejects the proposition that private entrepreneurs are not earning "adequate remuneration" in the Chinese markets for HRC when they hold such a significant market presence. The GOC submits that it is highly improper – indeed hypocritical – to accept that a fully functioning market for HRC exists in China, but at the same time to decide that the enterprises operating in that market do not receive adequate remuneration for their production. All of the enterprises – whether State-invested or not – choose to compete in the market and do so by accepting risk with the opportunity of reward. This reward sustains the enterprises and is adequate remuneration in the Chinese market. Unlike "stumpage rights", no prices of HRC in China are "fixed", guided or dictated by the government.

The GOC calls upon the Review Panel to undertake a proper application of the principles enunciated in Softwood Lumber IV in the circumstances presented in this case.

G Finding 7 – Non-specificity of "Programs 1, 2 and 3"

The GOC relies on the Application and its previous submissions in the coated steel investigations in relation to this matter.

The question of "specificity" was not raised in the Panasia decision, because the issue was not argued by the parties to those proceedings.

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In highlighting certain arguments in this submission, the GOC is not to be taken to have abandoned or to have reduced its reliance on any of its other arguments.

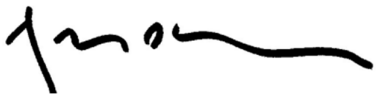
On the facts of this matter, the GOC believes that its positions are irrefutable. The decision in Panasia provides useful guidance to the Review Panel for it to arrive at the correct and preferable decisions in these reviews, on the separate and distinct facts presented by the coated steel investigations, as per the reasons set out by the GOC in its Application and as augmented by this submission.[22]

These are important matters.

[22] Nonetheless, the GOC does want it to be clear that it does not agree with many aspects of the Panasia decision.

The GOC appreciates the opportunity afforded to it, by way of this Review Panel process, for there to be a proper, unbiased and objective evaluation and assessment of the matters at issue.

Yours sincerely



Daniel Moulis
Principal