

BEFORE THE WORLD TRADE ORGANIZATION

PANEL PROCEEDINGS

AUSTRALIA — ANTI-DUMPING AND COUNTERVAILING DUTY

MEASURES ON CERTAIN PRODUCTS FROM CHINA

(DS603)

AUSTRALIA'S INTEGRATED EXECUTIVE SUMMARY

Business Confidential Information

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<i>Australia – Anti-Dumping Measures on Paper</i>	Panel Report, <i>Australia – Anti-Dumping Measures on A4 Copy Paper</i> , WT/DS529/R and Add.1, adopted 28 January 2020
<i>Canada – Dairy (Article 21.5 – New Zealand and US II)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States</i> , WT/DS103/AB/RW2, WT/DS113/AB/RW2, adopted 17 January 2003, DSR 2003:I, p. 213
<i>China – Broiler Products</i>	Panel Report, <i>China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States</i> , WT/DS427/R and Add.1, adopted 25 September 2013, DSR 2013:IV, p. 1041
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<i>EC – Chicken Cuts</i>	Appellate Body Report, <i>European Communities – Customs Classification of Frozen Boneless Chicken Cuts</i> , WT/DS269/AB/R, WT/DS286/AB/R, adopted 27 September 2005, and Corr.1, DSR 2005:XIX, p. 9157
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<i>EU – Biodiesel (Indonesia)</i>	Panel Report, <i>European Union – Anti-Dumping Measures on Biodiesel from Indonesia</i> , WT/DS480/R and Add.1, adopted 28 February 2018, DSR 2018:II, p. 605
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<i>US – Cotton Yarn</i>	Appellate Body Report, <i>United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan</i> , WT/DS192/AB/R, adopted 5 November 2001, DSR 2001:XII, p. 6027
<i>US – Countervailing Duty Investigation on DRAMS</i>	Appellate Body Report, <i>United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea</i> , WT/DS296/AB/R, adopted 20 July 2005, DSR 2005:XVI, p. 8131
<i>US – Gambling</i>	Appellate Body Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, p. 5663 (and Corr.1, DSR 2006:XII, p. 5475)
<i>US – Hot-Rolled Steel</i>	Appellate Body Report, <i>United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i> , WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, p. 4697
<i>US – Lamb</i>	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001, DSR 2001:IX, p. 4051

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<i>US – Softwood Lumber VI</i>	Panel Report, <i>United States – Investigation of the International Trade Commission in Softwood Lumber from Canada</i> , WT/DS277/R, adopted 26 April 2004, DSR 2004:VI, p. 2485
<i>US – Zeroing (EC)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/AB/R, adopted 9 May 2006, and Corr.1, DSR 2006:II, p. 417

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
304 SS CRC	grade 304 stainless steel cold rolled coil
AD	Anti-dumping
ADC	Anti-Dumping Commission
Anti-Dumping Agreement	Agreement on the Implementation of Article VI of GATT 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201
BCI	Business Confidential Information
China's panel request	Request for the establishment of a panel by China, WT/DS603/2
Expiry Review 487	Expiry review into the alleged anti-dumping measures imposed on wind towers from China and Korea
Expiry Review 517	Expiry review into the alleged anti-dumping and countervailing measures imposed on stainless steel sinks from China
CVD	Countervailing duty
DSU	Understanding on the Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401
GATT 1994	Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 1867 U.N.T.S. 14, 33 I.L.M. 1143 (1994)
Interim Review 352	Interim review of anti-dumping measures applying to stainless steel sinks exported to Australia from China by SCEA
Interim Review 459	Interim review of anti-dumping measures applying to stainless steel sinks exported to Australia from China by SCEA
Interim Review 461	Interim review of anti-dumping measures applying to stainless steel sinks exported to Australia from China by Yingao
Investigation 198	Investigation into the alleged dumping of steel plate from China and four other WTO Members
Investigation 221	Investigation into the alleged dumping of wind towers from China and Korea
Investigation 238	Investigation into the alleged dumping and subsidisation of stainless steel sinks from China

Abbreviation	Full Form or Description
Investigation 466	Investigation into the alleged dumping of railway wheels from China and France and the alleged subsidisation of railway wheels from China
Masteel	Maanshan Iron & Steel Co., Ltd.
MCC	Model Control Code
MEPS	MEPS (International) Ltd, a price data agency
OCOT	ordinary course of trade
Primy	Primy Corporation Limited
PRR	Australia's Preliminary Ruling Request, filed on 16 December 2022
SCM Agreement	Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14
SEF	Statement of Essential Facts
VAT	value-added tax
WTO	World Trade Organization
Zhuhai Grand	Zhuhai Grand Kitchenware Co. Ltd.

I. INTRODUCTION

1. China's claims in this dispute relate to three separate steel products – railway wheels, wind towers and stainless steel sinks. Each of these products was the subject of separate and distinct investigations undertaken at different times over nearly a decade: three separate anti-dumping investigations for railway wheels, wind towers, and stainless steel sinks; plus a stainless steel sinks countervailing duty investigation; followed by three separate interim reviews for stainless steel sinks; and separate expiry reviews for stainless steel sinks and wind towers. The evidence shows that the ADC acted as an unbiased and objective investigating authority; that it carefully examined the different evidence before it in each investigation and that it made distinctly different findings based on the evidence.

2. China's case is fully without merit. It has either failed to establish a *prima facie case* or failed to demonstrate that the ADC's conduct and decisions were inconsistent with Australia's WTO obligations.

3. Most of China's claims are directed at matters outside the Panel's terms of reference. China's claims in relation to stainless steel sinks and wind towers are almost entirely directed at measures that have been terminated or superseded before the time of panel establishment. Those original determinations, and interim reviews, were terminated or superseded at the time of panel establishment and are outside the Panel's terms of reference under Articles 3.2, 3.4, 3.7, 6.2, and 7.1 of the DSU. The Panel, therefore, should not make findings or recommendations with respect to these claims under Article 19.1 of the DSU.

4. Moreover, in its panel request, China also failed to cite a legal basis capable of supporting its claims against the interim and expiry reviews, a minimum prerequisite that is always necessary under WTO rules. As a consequence, none of China's claims in relation to stainless steel sinks and wind towers are properly before the Panel. In any event, even if the Panel were to find that these claims are within its terms of reference, those claims lack merit.

5. China's claims that are properly before the Panel are those that concern the railway wheels investigation. These claims are based on a misunderstanding of Australia's domestic framework and on legally unsound interpretations of the Anti-Dumping Agreement.

6. Contrary to China's submissions, an unbiased and objective investigating authority could have reached the same conclusions as the ADC in each of the challenged investigations.

The ADC's conduct and decisions were consistent with Australia's WTO obligations. Australia therefore requests that, to the extent the Panel finds China's claims within its terms of reference, the Panel rejects all of China's claims.

II. BURDEN OF PROOF

7. The burden of proof in WTO dispute settlement is on the complainant to establish a *prima facie* case of a violation of a covered agreement.¹ In presenting a *prima facie* case, the complainant must put forward evidence and legal argument in relation to each element of its claims.² It follows that a respondent's measure is to be "treated as WTO-consistent, until sufficient evidence is presented to prove the contrary."³ Where argument or evidence is presented by a complainant, the evidence must be "sufficient to raise a presumption that what is claimed is true".⁴ A mere assertion of a claim is not enough.⁵

8. China has largely failed in its burden as the complainant to make a *prima facie* case.⁶ This includes with respect to several claims made by China towards Stainless Steel Sinks Interim Reviews 352, 459, 461, Expiry Review 517 and Expiry Review 487, in respect of which China presented no arguments or evidence.⁷

III. STANDARD OF REVIEW

9. The Panel's standard of review is established in Article 11 of the DSU and Articles 17.5 and 17.6 of the Anti-Dumping Agreement. In sum, this standard is whether an unbiased and objective investigating authority, in light of the evidence that was before it and the explanations provided, *could* have (not that it inevitably *would* have) reached the same

¹ Australia's first written submission, para. 9 citing Appellate Body Reports, *US – Carbon Steel*, para. 157; *EC – Tariff Preferences*, para. 105; Australia's first written submission, para. 10.

² Australia's first written submission, para. 9. Appellate Body Report, *US – Gambling*, para. 140. See also Appellate Body Report, *US – Zeroing (EC)*, para. 217.

³ Australia's first written submission, paras. 9 – 10; Australia's responses to Panel question no. 107, para. 236. Appellate Body Report, *Canada – Dairy (Article 21.5 – New Zealand and US II)*, para. 66 (emphasis original). See also Appellate Body Report, *US – Carbon Steel*, para. 157.

⁴ Australia's first written submission, para.10.

⁵ Australia's first written submission, para 10.

⁶ See, e.g., Australia's comments on China's response to Panel question no. 95, paras. 87-96.

⁷ See, e.g., Australia's comments on China's response to Panel question no. 95, paras. 87-96. China has failed to make a *prima facie* case with respect to a number of claims directed at the interim and expiry reviews by failing present any argument or evidence as to how that claim applies to the interim or expiry review, independent from the original investigation. See Australia's comments on China's response to Panel question no. 95, para. 87.

conclusions as the ADC.⁸ Under Article 17.6(i) of the Anti-Dumping Agreement, if the establishment of the facts by the investigating authority was proper and the evaluation was unbiased and objective, a panel should not overturn that evaluation, even though the panel might have reached a different conclusion.

10. Further, under Article 17.6(ii) of the Anti-Dumping Agreement, where there is more than one permissible interpretation of a provision, a panel should find the authority's measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.⁹

IV. CHINA'S CLAIMS CONCERNING STAINLESS STEEL SINKS AND WIND TOWERS MEASURES ARE OUTSIDE THE PANEL'S TERMS OF REFERENCE

A. ALL OF CHINA'S CVD CLAIMS ARE OUTSIDE THE SCOPE OF THE PANEL'S TERMS OF REFERENCE

11. China's CVD claims in section B.2 of its panel request are directed only to the countervailing measures associated with Program 1. China expressly and unambiguously limited its claims to "the countervailing measures... only with regard" to Program 1.¹⁰ All countervailing measures related to Program 1 have long been terminated at the time of panel establishment.¹¹

⁸ See, e.g., Australia's first written submission, para. 12; Australia's second written submission, paras. 8-9. Panel Report, *US – Softwood Lumber VI*, para. 7.15. The standard of review under Article 11 of the DSU is understood in light of the obligations of the particular covered agreement to derive a more specific standard of review. In this way the standard of review under Article 11 moulds to the relevant covered agreement. See Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 184 (referring to Appellate Body Reports, *US – Lamb*, para. 105 and *US – Cotton Yarn*, paras. 75-78). For Article 17.6(i), the Appellate Body has recognised the parallels with the Panel's role under Article 11 of the DSU. See Appellate Body Report, *US – Hot-Rolled Steel*, para. 55. While Article 11 of the DSU provides the standard of review for claims under the SCM Agreement, this standard also corresponds with claims under the Anti-Dumping Agreement.

⁹ Australia's first written submission, fn. 11:

In considering their standard of review, the arbitrators in *Colombia – Frozen Fries* found that, "... different treaty interpreters applying the same tools of the Vienna Convention may, in good faith and with solid arguments in support, reach different conclusions on the "correct" interpretation of a treaty provision. This may be particularly true for the Anti-Dumping Agreement, which was drafted with the understanding that investigating authorities employ different methodologies and approaches. Treaty interpretation is not an exact science and applying the Vienna Convention's method does not magically and inevitably lead to a single result. In most cases, treaty interpretation involves weighing, balancing, and choice" (fns. omitted). [Award of the Arbitrator, *Colombia – Frozen Fries*, para. 4.14].

¹⁰ China's panel request, section B.2.

¹¹ PRR paras. 13, 23 and 25; Australia's second written submission, para. 25.

12. With very limited exception, measures that are no longer in existence before panel establishment are outside the panel's terms of reference.¹² The DSU does not vest panels with the authority to issue advisory opinions on measures that are expired, terminated, superseded or otherwise non-existent.¹³

13. At the time that China filed its panel request, no measure related to Program 1 had been in existence for nearly two years.¹⁴ This is because in Expiry Review 517, which superseded the original determination in 2020, the ADC found that no exporter received a benefit in respect of Program 1. As a consequence, there was no subsidy and, in turn, no countervailing duties relating to Program 1 have been applied to any imports of stainless steel sinks from China since 27 March 2020.¹⁵

14. All of China's claims in sections B.2.1 through B.2.5 of its panel request are thus with respect to measures that were not in existence at the time the Panel was established. Accordingly, consistent with Articles 3.2, 3.4, 3.7, 6.2, 7.1 and 19.1 of the DSU and previous panel and Appellate Body reports, China's CVD claims are outside the Panel's terms of reference and the Panel should issue no findings or recommendations in respect of these claims.¹⁶

15. China has advanced several arguments seeking to remedy this defect in its panel request. For the reasons explained below, these arguments are without merit and should be rejected.

¹² Australia's first written submission, paras. 64-73. Appellate Body Report, *EC – Chicken Cuts*, para. 156: "[t]he term "specific measures at issue in Article 6.2 suggests that as a general rule, the measures included in a panel's terms of reference must be measures that are in existence at the time of the establishment of the panel".

¹³ PRR, paras. 4-12; Australia's second written submission, paras. 68-72.

¹⁴ Australia's second written submission, para 25 citing fn 13: "It is clear, based on a plain reading of China's panel request, that the countervailing measures challenged by China are only those related to Program 1, namely the original determination and any resulting duties"; Australia's response to Panel question no. 7, paras. 9-14.

¹⁵ *Stainless Steel Sinks Continuation 517 Report*, (Exhibit CHN-36), pp. 82-83, 85; *Evidence of Termination of Program 1*, (Exhibit AUS-71).

¹⁶ Australia's second written submission, para 25.

1. China improperly attempts to redefine the challenged measures contained in its own panel request

16. Under WTO rules, the measures at issue are those identified by a complainant in its request for panel establishment. Yet, despite the text of its own panel request, China has repeatedly attempted to recast the challenged measures throughout this dispute.¹⁷

17. At the first Panel meeting, China advanced an argument that the measures at issue were not just those "only with regard to Program 1", as expressly identified in its panel request, but, rather, "only one indivisible, continuous measure in each respect", including all instruments listed in no. 8 through 23 of the panel request's appendix.¹⁸

18. A complainant bears the burden of establishing that separate legal instruments comprise part of an overarching measure.¹⁹ The complainant must provide evidence of how the different components operate together as part of a single measure and how a single measure exists as distinct from its components.²⁰ China has presented no evidence for why these separate legal instruments should be considered together, or how a countervailing measure taken as a whole is distinct from its parts.²¹

2. China's attempts to reinvent its claims in section B.2 of its panel request should be rejected

19. China has repeatedly attempted to reinvent its claims under section B.2 of its panel request and to drastically expand the scope of this dispute by advancing two principal arguments: (a) that its claims are with respect to the *methodology* used by the ADC to assess Program 1;²² and (b) that it should be granted assurances that Program 1 would never be considered by the ADC in future reviews.²³ Both of these arguments should be rejected. The first argument amounts to an impermissible attempt to convert China's "as applied" claims in sections B.2.1-B.2.5 to "as such" challenges. The second equates to an impermissible request for an advisory opinion from the Panel with respect to future, speculative measures.²⁴

¹⁷ Australia's second written submission, paras. 122-135.

¹⁸ China's opening statement at the first Panel meeting, paras. 12-14.

¹⁹ Australia's second written submission, para. 35 citing Appellate Body Report, *Russia – Railway Equipment*, para. 5.239.

²⁰ Australia's second written submission, para. 35 citing Appellate Body Report, *Argentina – Import Measures*, para. 5.108.

²¹ Australia's second written submission para. 35.

²² China's second written submission, paras. 39-40.

²³ China's second written submission, para. 40; China's response to the PRR dated 4 January, para. 55.

²⁴ Australia's second written submission, paras. 39-43.

3. China's assertions that countervailing measures related to Program 1 still exist are baseless

20. China has asserted that countervailing measures related to Program 1 still exist.²⁵ China's assertions are simply wrong. Australia's evidence establishes that no countervailing measures related to Program 1 have existed since 27 March 2020.²⁶

B. ALL OF CHINA'S AD CLAIMS WITH REGARD TO STAINLESS STEEL SINKS AND WIND TOWERS ARE OUTSIDE THE SCOPE OF THE PANEL'S TERMS OF REFERENCE

21. China's AD claims concerning both stainless steel sinks and wind towers investigations in section B.1 of its panel request are outside the Panel's terms of reference.

22. First, nearly all of China's claims concerning wind towers and stainless steel sinks in section B.1.1 through B.1.8 relate exclusively to the original determinations in both investigations. As the original determinations for stainless steel sinks and wind towers were superseded by expiry reviews at the time of panel establishment, they are not "measures at issue" for the purposes of Article 6.2 of the DSU.²⁷

23. Second, to the extent that China sought to challenge Expiry Review 487 and Expiry Review 517, China failed to cite the relevant provision of the WTO Agreements related to expiry reviews, Article 11.3 of the Anti-Dumping Agreement. China therefore failed to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly" in accordance with Article 6.2 of the DSU.²⁸ China cannot bring a separate and standalone claim under Article 2 without citing Article 11.3 of the Anti-Dumping Agreement in its panel request.²⁹

24. Third, to the extent China sought to challenge Stainless Steel Sinks Interim Reviews 352, 459, and 461 (and noting China only raised arguments after the first Panel meeting³⁰),

²⁵ China's response to the PRR dated 4 January, paras. 33-48.

²⁶ Australia's second written submission, paras. 44-58.

²⁷ See Australia's first written submission, paras. 54-79.

²⁸ Australia's second written submission, para. 62 and fn. 58 citing Appellate Body Report, *Korea - Dairy*, para. 124, in which the Appellate Body found that:

Identification of the treaty provisions claimed to have been violated by the respondent is always necessary both for purposes of defining the terms of reference of a panel and for informing the respondent and the third parties of the claims made by the complainant; such identification is a minimum prerequisite if the legal basis of the complaint is to be presented at all.

²⁹ Australia's first written submission, paras. 95-101; Australia's second written submission, paras. 104-113.

³⁰ China's response to Panel question no. 37, paras. 112-117.

China failed to cite Article 11.2 of the Anti-Dumping Agreement. Having failed to cite the requisite article of the Anti-Dumping Agreement to challenge these reviews, the interim reviews are similarly outside the Panel's terms of reference.³¹

25. Australia has addressed in detail the many jurisdictional flaws in China's AD claims under section B.1 of China's panel request in its written submissions, opening statements, closing statements, and responses to panel questions.³² Australia respectfully requests that the Panel find all of China's AD claims against wind towers and stainless steel sinks are outside the Panel's terms of reference.

V. RESPONSES TO AD CLAIMS: RAILWAY WHEELS

A. DOMESTIC FRAMEWORK

26. China's AD claim 3 and consequential AD claims in relation to railway wheels fundamentally misconceive the function of the "competitive market cost" findings made by the ADC in its determination of antidumping duties.³³ Its flawed understanding of how "competitive market costs" are applied under Australia's domestic framework flowed through to its understanding and interpretation of the ADC's reports. In turn, this led China to assert that the ADC made WTO-inconsistent findings under the second condition of Article 2.2.1.1 of the Anti-Dumping Agreement wherever the term "competitive market cost" is used.³⁴ This is simply incorrect. Contrary to China's erroneous claims, the ADC's findings and determinations were entirely consistent with the Anti-Dumping Agreement.

27. The ADC's consideration of whether exporters' records reflect the concept of "competitive market costs" is not intended as, and does not operate as, a mirror of Article

³¹ Australia's second written submission, paras. 122-129.

³² Australia's PRR dated 16 December 2022; Australia's additional PRR comments dated 12 January 2023; Australia's first written submission, paras. 222-139 and 657-666; Australia's opening statement at the first Panel meeting, paras. 15-41; Australia's closing statement at the first Panel meeting, paras. 4-12; Australia's responses to the Panel questions, particularly Panel questions no. 6-10 and 42-60, as summarised in Australia's second written submission, para. 15.

³³ This finding was made under section 43(2) of the *Customs (International Obligations) Regulation 2015*, which was in effect during the railway wheels investigation. The previous version of this provision, regulation 180(2) of the *Customs Regulations 1926*, was in effect during the wind towers and stainless steel sinks investigations. See, e.g., Australia's first written submission, paras. 146-147; Australia's second written submission, paras. 144, 235, 316; Australia's comments on China's responses to Panel question no. 80, para. 66.

³⁴ See, e.g., Australia's first written submission, paras. 146-147; Australia's second written submission, paras. 144, 235, 316; Australia's comments on China's responses to Panel question no. 80, para. 66.

2.2.1.1 of the Anti-Dumping Agreement.³⁵ Section 43(2) of the Customs (International Obligations) Regulation 2015 (formerly Regulation 180(2) of the *Customs Regulations 1926*) imposes a narrow positive obligation to *use* exporter records where the prescribed criteria are satisfied, including where the records "reasonably reflect competitive market costs".³⁶ The provision at issue says nothing about how to calculate the cost of production if the prescribed criteria are not met.³⁷ Where the records do not "reasonably reflect competitive market costs", the Minister or Parliamentary Secretary has a degree of discretion as to how to construct the cost of production.³⁸ That discretion must be exercised, and was exercised in the railway wheels investigation, in a manner that complies with the requirements of the Anti-Dumping Agreement, including the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement.³⁹

B. AD CLAIM 3

1. Australia acted consistently with Article 2.2.1.1 of the Anti-Dumping Agreement in departing from the exporter's records

28. China's AD claim 3 with respect of railway wheels has shifted throughout the dispute and by the close of submissions included several layers of alternative argument.

29. China originally submitted under AD claim 3 that the ADC made an improper finding under the second condition of Article 2.2.1.1 of the Anti-Dumping Agreement because Railway Wheels Investigation 466 Report contained the phrase "reasonably reflects competitive market costs."⁴⁰ This contention was clearly wrong.⁴¹ China fundamentally misunderstands the ADC's findings. The ADC's decision to depart from Masteel's records for a single cost item—steel billet—was *not* pursuant to the second condition of Article 2.2.1.1. Rather, the

³⁵ See, e.g., Australia's first written submission, para. 148; Australia's second written submission, paras. 144, 235, 316; Australia's response to Panel question no. 61, para. 191; Australia's response to Panel question no. 77, paras. 66-67 and Australia's response to Panel question no. 78, paras. 79, 114.

³⁶ See, e.g., Australia's first written submission, paras. 148-149; Australia's second written submission, paras. 144, 235, 316; Australia's response to Panel question no. 61, paras. 188 - 192; Australia's response to Panel questions nos. 77 and 78.

³⁷ Australia's response to Panel question no. 61, paras. 188 - 192; Australia's response to Panel questions nos. 77 and 78.

³⁸ Australia's response to Panel question no. 77; Australia's response to Panel question no. 78, para. 78.

³⁹ Australia's response to Panel's question no. 77, para. 68; Australia's response to Panel question no. 78, para. 78.

⁴⁰ China's first written submission, paras. 226-228.

⁴¹ See, e.g., Australia's closing statement at the first Panel meeting, para. 24.

ADC expressly found that the circumstances in which Masteel's costs were formed were not normal or ordinary under the "normally" term in Article 2.2.1.1.⁴²

30. The ADC found that there were systemic and structural imbalances in China's steel and steel input markets, owing to the Government of China's serious and pervasive influence in these markets.⁴³ The ADC found that these circumstances translated to Masteel's records, and to one specific element of Masteel's costs in particular—its costs for steel billet.⁴⁴ On this basis, the ADC found that the circumstances in which Masteel's costs for steel billet were formed were not normal or ordinary. The ADC relied on information other than Masteel's records when calculating the cost of production of steel billet for the purpose of constructing the normal value of railway wheels.⁴⁵

31. The ADC's finding was permissible under Article 2.2.1.1 and consistent with the actions of an unbiased and objective investigating authority.⁴⁶ The ADC acted consistently with Article 2.2.1.1 of the Anti-Dumping Agreement in departing from Masteel's records when calculating the cost of steel billet in Railway Wheels Investigation 466.⁴⁷

2. There is no mandatory order of analysis or decision making in the first sentence of Article 2.2.1.1

32. China's next layer of argument was that the ADC was not entitled to make a finding on the basis of "normally" because the ADC was obligated to first make affirmative findings under the first and second conditions of Article 2.2.1.1, in order to have recourse to "normally".⁴⁸

33. This purported requirement for a mandatory order of analysis in the first sentence of Article 2.2.1.1 has no basis in the Anti-Dumping Agreement. There is nothing in the text or structure of Article 2.2.1.1 that suggests, let alone mandates, a particular order of analysis.

⁴² *Railway Wheels Investigation 466 Report*, (Exhibit CHN-3), pp. 24, 80 and 95. Australia's first written submission, paras. 192-246; Australia's second written submission, paras. 181- 186; Australia's response to Panel question no. 61, para. 193. Australia's response to Panel question no. 78, paras. 81 – 84.

⁴³ *Railway Wheels Investigation 466 Report*, (Exhibit CHN-3), pp. 24, 80, 95.

⁴⁴ *Railway Wheels Investigation 466 Report*, (Exhibit CHN-3), pp. 24, 80, 95.

⁴⁵ See Australia's first written submission, paras. 192- 246.

⁴⁶ Article 11 of the DSU, and Articles 17.5(ii) and 17.6(i) of the Anti-Dumping Agreement; Panel Report, *US – Softwood Lumber VI*, para. 7.15. Further, where the Panel finds that a relevant provision of the Anti-Dumping Agreement admits of more than one permissible interpretation, the Panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations. See Article 17.6(ii) of the Anti-Dumping Agreement.

⁴⁷ See Australia's first written submission, paras. 192- 249.

⁴⁸ China's opening statement at the first Panel meeting, para. 71. See also China's closing statement at the first Panel meeting, paras. 11-12.

Nor does the context or purpose of Article 2.2.1.1 support the existence of a sequencing requirement.⁴⁹

34. To the extent that the panel in *Australia – Anti-Dumping Measures on Paper* found that there is a mandatory order of analysis within Article 2.2.1.1,⁵⁰ this approach should not be followed. It is inconsistent with the plain text of the Anti-Dumping Agreement.⁵¹

35. Read as a whole, Article 2.2.1.1 provides an obligation for an investigating authority to use exporters' records as the basis of cost calculations for the purpose of constructing normal value, provided that certain conditions are met.⁵² This obligation only applies where:

- a) circumstances are normal;
- b) the records are in accordance with the generally accepted accounting principles of the export country; and
- c) the records reasonably reflect the costs associated with the production and sale of the product under consideration.⁵³

36. These three circumstances are not mutually exclusive, nor are they contingent on one another.⁵⁴

3. China's *arguendo* arguments regarding "normally" are internally inconsistent and lack merit

37. Lastly, China has provided several mutually inconsistent interpretations of the content of "normally." The first interpretation of "normally" that China advanced was that the term should be given no independent meaning distinct from the first and second conditions provided for in Article 2.2.1.1.⁵⁵ Such an interpretation is incompatible with the ordinary

⁴⁹ Australia's second written submission, paras. 146-180; Australia's opening statement at the second Panel meeting, paras. 43-49.

⁵⁰ See China's second written submission, para. 201 citing Panel Report, *Australia – Anti-Dumping Measures on Paper*, para. 7.117.

⁵¹ Australia's second written submission, paras. 146-180; Australia's opening statement at the second Panel meeting, paras. 43-49.

⁵² Australia's second written submission, paras. 146-180; Australia's opening statement at the second Panel meeting, paras. 43-49.

⁵³ See Australia's second written submission, paras. 146-180.

⁵⁴ See Australia's second written submission, paras. 146-180.

⁵⁵ China's second written submission, para. 247(a).

principles of treaty interpretation. Previous WTO panels and the Appellate Body have consistently found that the term "normally" must be given meaning and effect.⁵⁶

38. The second interpretation China advanced was that cost records were not required to be used where there is a "compelling reason to doubt the accuracy, completeness, faithfulness and reliability of a cost or costs kept in the records".⁵⁷ On China's account, the content of "normally" is limited to where there has been a "peculiarity of a reason" why the records would not already have been caught by the first and second conditions.⁵⁸ This interpretation reduces the content of "normally" to the same content as the second condition of Article 2.2.1.1, and similarly fails to give "normally" meaning and effect. It is implausible that the parties to the Anti-Dumping Agreement deliberately included the broad term "normally" alongside the more specific first and second conditions, but intended to give "normally" no more than inutile incremental additional meaning.

39. In response to Panel question no. 106, China advanced a third interpretation of "normally." China contended that "normally" modifies *only* the verb "calculated,"⁵⁹ and therefore, "'normally' concerns *only* calculation issues or calculation methodology issues..."⁶⁰ This interpretation is irreconcilable with the plain meaning, structure, and evident purpose of the first sentence of Article 2.2.1.1. On its plain terms, the grammatical effect of "normally" is to modify the phrase, "shall ... be calculated."⁶¹ The practical effect is to qualify the obligation of the investigating authority to calculate the costs on the basis of an exporter's records. That is, in circumstances which are not "normal", an investigating authority may derogate from its obligation to calculate costs on the basis of an exporter's records.

40. In Australia's view, the clear focus of Article 2.2.1.1 is on the costs recorded in an exporter's records, and whether those records provide a sound basis for calculating the costs of production and sale of the product under consideration.⁶² In any event, the Panel need not provide a precise definition of "normally" in order to resolve the issues in this dispute, nor

⁵⁶ Australia's first written submission, paras. 185-188 citing Appellate Body Reports, *US – Clove Cigarettes*, para. 273, *EU – Biodiesel (Argentina)*, para. 6.71; Panel Reports, *China – Broiler Products*, para. 7.161, *EU – Biodiesel (Argentina)*, para. 7.227, *EU – Biodiesel (Indonesia)*, para. 7.65, *Australia – Anti-Dumping Measures on Paper*, paras. 7.111, 7.115.

⁵⁷ China's second written submission, paras. 247(b).

⁵⁸ China's second written submission, para. 234.

⁵⁹ China's response to Panel question no. 106, para. 224.

⁶⁰ China's response to Panel question no. 106, para. 224.

⁶¹ Australia's first written submission, para. 184 citing Panel Report, *Australia – Anti-Dumping Measures on Paper*, para. 7.111.

⁶² Australia's response to Panel question no. 79, para. 121.

should the Panel seek to delineate all circumstances when an investigating authority may invoke it.⁶³ Assessing whether circumstances are not normal and ordinary is an inherently fact-specific examination.⁶⁴

41. China's AD claim 3 with respect to railway wheels does not have merit, and therefore the Panel should reject this claim.

C. AD CLAIM 1

42. In AD claim 1, China contended that out-of-country data can *never* be used by an investigating authority to determine "cost of production in the country of origin".⁶⁵ China's interpretation is irreconcilable with the text of Article 2.2 and is inconsistent with the observations of the Appellate Body in *EU - Biodiesel (Argentina)*.⁶⁶

43. In the facts and circumstances of the ADC's railway wheels investigation, the ADC acted consistently with the requirements of Article 2.2 of the Anti-Dumping Agreement in its reliance on data external to Masteel's records as the basis for constructing steel billet costs in China.⁶⁷

44. Further, the ADC acted consistently with the requirements under Article 2.2 by adapting the out-of-country reference data to Masteel's circumstances as an integrated steel producer in China.⁶⁸ The ADC properly relied on data external to Masteel's records as the basis for constructing steel billet costs in China under Article 2.2 of the Anti-Dumping Agreement.

⁶³ See Australia's first written submission, para. 191; Australia's second written submission, para. 186.

⁶⁴ See, e.g., Australia's first written submission, para. 191; Australia's second written submission, para. 186; Australia's response to Panel question no. 106, para. 232; Australia's response to Panel question no. 79, para. 140, fn. 126:

Australia notes that this fact and circumstance-specific interpretation of "normally" was adopted by the panel in *Pakistan – BOPP Film (UAE)*. While that panel's focus was on the use of the term "normally" in the different context of Article 11.4 of the Anti-Dumping Agreement, it is clear from the panel's reasoning that an analogy was to be drawn with the use of "normally" in Article 2.2.1.1. That panel report has been appealed by Pakistan, but the notice of appeal (as far as Australia is aware) does not refer to the panel's findings relating to the interpretation of Article 11.4 of the Anti-Dumping Agreement.

⁶⁵ China's opening statement at the first Panel meeting, paras. 45-46.

⁶⁶ Australia's first written submission, paras. 279-283; Australia's opening statement at the first Panel meeting paras. 61-63; Australia's closing statement at the first Panel meeting, paras. 17-21; Appellate Body Report, *EU – Biodiesel (Argentina)*, para. 6.70:

We observe that Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 do not contain additional words or qualifying language specifying the type of evidence that must be used, or limiting the sources of information or evidence to only those sources inside the country of origin. An investigating authority will naturally look for information on the cost of production "in the country of origin" from sources inside the country. At the same time, these provisions do not preclude the possibility that the authority may also need to look for such information from sources outside the country.

⁶⁷ Australia's second written submission, paras. 196-198.

⁶⁸ Australia's second written submission, para. 200.

Having determined that recourse to French data was appropriate based on the record evidence, the ADC proceeded to make the necessary adjustments, adapting the data sourced from outside China to Masteel's circumstances in China. It did this on the basis of the information that was available to it and appropriate to use on the facts of the investigation.⁶⁹

45. Contrary to China's arguments, the ADC was under no obligation to adapt the external reference data in a manner that would reintroduce the market distortions that the ADC sought to redress. As the Panel alluded to in question no. 21,⁷⁰ China appears to claim that – through its choice of reference data under Article 2.2 – the ADC should have reintroduced the very same distortions that the ADC legitimately excluded under Article 2.2.1.1. This would be nonsensical.⁷¹

46. The ADC acted consistently with Article 2.2 of the Anti-Dumping Agreement in determining an appropriate cost of production in the country of origin. The Panel should, therefore, reject China's AD claim 1.

D. AD CLAIM 5.D

47. China argues, through AD claim 5.d, that Australia did not properly determine the exporter's cost of production, because the ADC used the cost of an input to production, steel billet, where the exporter did not have an identical cost in its financial records because steel billet was self-made by the exporter from raw materials.⁷²

48. It remains unclear from China's submissions what it contends to be the legal basis for AD claim 5.d.⁷³ To the extent that AD claim 5.d relates to Australia's obligation under Article 2.2 to assess costs of production in the country of origin, it is duplicative of AD claim 1.

49. China originally argued that AD claim 5.d as it relates to Article 2.2.1.1 "deals with the issue of what a 'cost' is, in the records of an exporter, for the purposes of answering the question of whether the records 'reasonably reflect the costs associated with the production'

⁶⁹ Australia's first written submission, paras. 298-300; Australia's second written submission, paras. 199 to 201.

⁷⁰ Panel question no. 21:

To both parties - If non-Chinese surrogate costs were properly used by the ADC to construct normal values, consistent with Articles 2.2.1.1 and 2.2, would the adjustments that China advocates have led the ADC to essentially revert back to the exporters' actual costs to construct normal values? Would such a result make legal or practical sense? Please explain.

⁷¹ Australia's second written submission, para. 197.

⁷² China's panel request, section B.1.5.

⁷³ Australia's second written submission at paras. 209 – 214.

of the product concerned' under Article 2.2.1.1.⁷⁴ That is, China framed this claim as being an offshoot of China's AD claim 3 argument that the ADC misapplied the second condition of Article 2.2.1.1. This argument is predicated on China's incorrect assumption that the ADC's decision was based on a negative finding under the second condition of Article 2.2.1.1. The ADC resorted to information external to Masteel's records pursuant to a finding under the "normally" term of Article 2.2.1.1, not pursuant to a finding under the second condition.

50. China subsequently argued that the ADC failed to discharge its obligation under Article 2.2.1.1 by calculating a cost (of steel billet) that was not genuinely related to Masteel's production and sales of railway wheels.⁷⁵ China's argument is unsupported by the record. It is clear from the facts of Railway Wheels Investigation 466 that there was a genuine relationship between Masteel's steel billet costs and Masteel's costs of producing and selling railway wheels.⁷⁶

51. The ADC properly evaluated the record evidence and acted in an objective and unbiased manner when it determined that calculating costs at the level of steel billet was appropriate for the purpose of constructing the cost of production of railway wheels. China's claim has no discernible legal basis. The Panel should reject China's AD claim 5.d.

E. AD CLAIM 6.A

52. China alleged that the ADC failed to make "due allowances" to ensure a fair comparison between the export price and constructed normal value under Article 2.4 of the Anti-Dumping Agreement, because it did not apply "allowances" that would have had the effect of entirely reversing the construction of normal value under Article 2.2 of the Anti-Dumping Agreement. According to China, "due allowance that reverses the margin calculation's non-compliance with the requirements of Articles 2.1, 2.2 and 2.4 would be perfectly fitting."⁷⁷

53. China's complaints about the construction of normal value are the subject of AD claims 3 and 1. To the extent AD Claim 6 reargues those points, this claim is purely

⁷⁴ China's first written submission, para. 308.

⁷⁵ China's response to Panel's question no. 15, paras. 49-54.

⁷⁶ Australia's first written submission, paras. 260-265.

⁷⁷ China's opening statement at the first Panel meeting, para. 93.

consequential and duplicative of China's earlier claims. But, China's AD Claim 6 also takes the nonsensical further step of arguing that, even if the Panel finds normal value was properly constructed, the ADC was obliged to apply adjustments to reintroduce the very distortions that the ADC deliberately removed from its normal value calculation.

54. Article 2.4 requires investigating authorities to make adjustments to export price and/or normal value to allow for a fair comparison. It is not a mechanism for investigating authorities to re-engineer normal value at the comparison stage of the margin calculation.⁷⁸ China's approach is legally impermissible and makes no practical sense.

55. If China fails on AD claims 1 and 3, China must also fail on AD claim 6.a.⁷⁹ If China succeeds on AD claims 1 and 3, AD claim 6a is legal impermissible and must nevertheless fail.⁸⁰

F. AD CLAIM 7.B

56. In AD Claim 7.b China alleges that the ADC did not determine the profit rate on the basis of the exporter's sales in the domestic market; and complains that the profit rate assessed was applied to the exporter's cost of production as computed by the ADC rather than the Chinese exporter's unadjusted recorded cost of production.⁸¹

57. The ADC used Masteel's actual sales data to calculate the profit component of the constructed normal value, using as its basis Masteel's sales figures from its "Wheels Division".⁸² This data was the verified information available to the ADC.⁸³ The record shows that Masteel had positively suggested that the ADC use this data for this purpose.⁸⁴

58. China's further allegation that Australia improperly applied the profit ratio to an out-of-country cost of production is entirely consequential on China's earlier claims, in particular AD claim 1. Given that China has failed to make a *prime facie* case in support of AD claim 1, China has also failed to make a *prima facie* case for AD claim 7.b.⁸⁵

⁷⁸ Panel Report, *EU – Biodiesel (Argentina)*, para. 7.296; Panel Report, *Egypt – Steel Rebar*, para. 7.333; Panel Report, *EU – Footwear (China)*, para. 7.263.

⁷⁹ Australia's second written submission, para. 268.

⁸⁰ Australia's second written submission, para. 268.

⁸¹ China's first written submission, paras. 431-432.

⁸² Australia's first written submission, paras. 337-341.

⁸³ Australia's response to Panel question no. 31, paras. 88-93.

⁸⁴ See *Emails from Percival Legal to ADC, dated 9 June 2018 to 11 June 2018*, (Exhibit AUS-77).

⁸⁵ Australia's first written submission, para 343; Australia's second written submission, para 229.

G. AD CLAIM 8

59. China's AD claim 8 under Article 9.3 of the Anti-Dumping Agreement is entirely consequential on China's other claims.⁸⁶ Since China's other claims fail, so too must AD claim 8.

VI. CONDITIONAL RESPONSES TO AD CLAIMS: STAINLESS STEEL SINKS

60. Even if the AD measures relating to stainless steel sinks – Investigation 238, Interim Reviews 352, 459, 461, and Expiry Review 517 – were within the Panel's terms of reference, all of China's AD claims would fail. China failed to demonstrate that an unbiased and objective investigating authority, considering the evidence that was before the ADC, *could not* have reached the ADC's conclusions. Further, China has failed to make a *prima facie* case for AD claims 1, 2, 3, 6.a, 6.b.i, 7.a and 8 for Interim Reviews 352, 459, 461 and Expiry Review 517.⁸⁷

A. AD CLAIM 3**1. Regulation 180(2) is not the second condition of Article 2.2.1.1**

61. China's argument that the ADC's findings in Stainless Steel Sinks Investigation 238 Report made for the purposes of regulation 180(2) were also findings to reject records for the purposes of the second condition of Article 2.2.1.1 is without merit.⁸⁸

62. In Investigation 238 Report, the ADC found that the criteria in regulation 180(2) were not met.⁸⁹ The ADC therefore conducted a further evaluation of whether to use the exporters' records under Article 2.2.1.1, as discussed further in the following section.⁹⁰ In this further evaluation, the ADC properly departed from the exporters' records with respect to a single cost item – 304 SS CRC – in accordance with the second condition of Article 2.2.1.1.⁹¹

⁸⁶ Australia's first written submission, para. 344.

⁸⁷ Australia's comments on China's response to Panel question no. 95, paras. 87-96.

⁸⁸ Australia's first written submission, para. 149; Australia's second written submission, paras. 144-145, 235; Australia's closing statement at the first Panel meeting, para. 24; Panel Report, *Australia – Anti-Dumping Measures on Paper*, paras. 7.102-7.103. See *Customs (International Obligations) Regulation 2015*, (Exhibit CHN-41), pp. 36-37.

⁸⁹ Australia's second written submission, para. 240; see also para. 145; *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), p. 42.

⁹⁰ Australia's second written submission, para. 240; *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 134-136, 146-147.

⁹¹ Australia's first written submission, paras. 362-381; Australia's second written submission, paras. 237, 241-243; Australia's response to Panel question no. 61, paras. 194. Australia's response to Panel question no. 78, paras. 85-91.

2. The ADC's second condition finding

63. The ADC considered that the exporters' recorded costs for 304 SS CRC did not reasonably reflect the actual costs of 304 SS CRC associated with the production and sale of stainless steel sinks.⁹² The operative finding is on page 42 of Investigation 238 Report.⁹³ A further discussion of the ADC's assessment of the evidence underpinning these findings appears at pages 134 to 136 of Investigation 238 Report.⁹⁴ It is clear from page 146 of the Report that in making that finding the ADC expressly considered the specific terms of the second condition of Article 2.2.1.1, as distinct from its consideration of its obligations under regulation 180(2).⁹⁵

64. The ADC found that the recorded costs in the exporters' records were not an accurate and reliable reflection of the costs of 304 SS CRC actually incurred.⁹⁶ This determination was based on the ADC's finding that 304 SS CRC prices in China were affected by the Government of China's influence in the iron and steel industry, which had a distorting effect on the 304 SS CRC market.⁹⁷ The record evidence demonstrated that the Government of China's influence in the 304 SS CRC market in China distorted the market overall.⁹⁸

65. In light of this finding, the ADC concluded that the exporters' recorded costs for 304 SS CRC did not reasonably reflect the costs associated with the production and sale of the product under consideration and, therefore, could not be relied upon for the construction of normal value. Given the record before the ADC this was a conclusion that could have been reached by an unbiased and objective investigating authority.

66. Accordingly, China's AD claim 3 in relation to Investigation 238 should fail.⁹⁹

⁹² Australia's first written submission, paras. 362 -381; Australia's second written submission, para. 241; Australia's response to Panel question no. 61, paras. 194. Australia's response to Panel question no. 78, paras. 85-91.

⁹³ Australia's first written submission, para. 374 – 380; Australia's second written submission, para. 241; Australia's response to Panel question no.61, para. 194; Australia's response to Panel question nos. 85-91.

⁹⁴ *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 134-136. See also Australia's first written submission, paras. 362 -381; Australia's second written submission, para. 241; Australia's response to Panel question no. 61, paras. 194. Australia's response to Panel question no. 78, paras. 85-91.

⁹⁵ *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), p. 146. See also Australia's first written submission, paras. 362 -381; Australia's second written submission, para. 241.

⁹⁶ Panel Reports, *EU – Biodiesel (Argentina)*, fn. 400, *EU – Biodiesel (Argentina)*, para. 7.232; see also Appellate Body Report, *EU – Biodiesel (Argentina)*, para. 6.33. See also Australia's first written submission, paras, 374-380; Australia's second written submission, paras. 245-246. Australia's second written submission, paras. 245-246.

⁹⁷ *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 40-42, 134-136. Australia's second written submission, para. 241. Australia's first written submission, paras. 362 -381; Australia's response to Panel question no. 78, paras. 85 – 109.

⁹⁸ Australia's first written submission, paras. 376-378; Australia's second written submission, para. 249.

⁹⁹ Australia's second written submission, para. 251.

B. AD CLAIM 1

67. China's AD claim 1 is premised on a mischaracterisation of the ADC's analysis and findings in Investigation 238 Report.¹⁰⁰ China considers there was a "simple substitution" of Chinese data for European data, even though the Report demonstrates that the ADC's analysis resulted in an appropriate and tailored constructed cost.¹⁰¹

68. First, the ADC considered whether it could use in-country data.¹⁰² The record evidence before the ADC indicated that using in-country data would have reintroduced the distortions identified in the 304 SS CRC market in China that had informed the ADC's decision to depart from the exporters' recorded 304 SS CRC costs in the first place.¹⁰³ As such, in-country data could not be used.

69. Second, the ADC considered seven potential out-of-country sources of reference data that were on the record.¹⁰⁴ The ADC assessed the available data and arrived at an appropriate proxy that was: (a) limited to the steel grade in question (304 SS CRC);¹⁰⁵ (b) not overly narrow (e.g., sourced from a single buyer purchasing the input predominantly from a single supplier);¹⁰⁶ (c) derived from independent sources;¹⁰⁷ and (d) unaffected by distortions in the 304 SS CRC market in China.¹⁰⁸ Ultimately, the ADC determined that the MEPS-based average price for 304 SS CRC using the monthly reported MEPS North American and European prices was suitable for its purpose.¹⁰⁹

¹⁰⁰ Australia's second written submission, paras. 254-255.

¹⁰¹ Australia's second written submission, para. 255; Australia's first written submission, paras. 383-386.; c.f. China's opening statement at the first Panel meeting, paras. 55-59.

¹⁰² Australia's second written submission, para. 259; Australia's first written submission, paras. 387-391.

¹⁰³ Australia's second written submission, paras. 254-255, 258-259; Australia's first written submission, paras. 387-391. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 207-208; *Stainless Steel Sinks Investigation 238 – PAD*, (Exhibit AUS-48), p. 28; *Stainless Steel Sinks Investigation 238 – SEF*, (Exhibit AUS-49), pp. 182-183; *Stainless Steel Sinks Investigation 238 – SEF*, (Exhibit AUS-49), pp. 182-183; [REDACTED] (Exhibit AUS-52 (BCI)) p. 9.

¹⁰⁴ Australia's second written submission, paras. 254-255, 258, 260; Australia's first written submission, paras. 392-393. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 209-217.

¹⁰⁵ Australia's second written submission, paras. 254-255, 258, 260; Australia's first written submission, para. 394. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 213.

¹⁰⁶ Australia's second written submission, paras. 254-255, 258, 260; Australia's first written submission, para. 394. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 215.

¹⁰⁷ Australia's second written submission, paras. 254-255, 258, 260; Australia's first written submission, para. 394. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 216.

¹⁰⁸ Australia's second written submission, paras. 254-255, 258, 260; Australia's first written submission, para. 394. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 213.

¹⁰⁹ Australia's second written submission, paras. 254-255, 258, 260; Australia's first written submission, paras. 395-397. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 217.

70. Third, the ADC did not "simply substitute" this reference data.¹¹⁰ Informed by the record evidence, the ADC adapted the data to arrive at an appropriate proxy for the cost of production in China. It incorporated the verified delivery costs of 304 SS CRC in China and the verified per tonne slitting cost, where that cost had been incurred by exporters when purchasing 304 SS CRC.¹¹¹

71. An unbiased and objective authority could have reached the conclusions of the ADC in Investigation 238.¹¹² China's AD claim 1 must, therefore, fail.¹¹³

C. AD CLAIMS 2 AND 4

72. There is no factual dispute between the parties regarding the ADC's approach to determining the below-cost sales in the ordinary course of trade (OCOT) in Investigation 238 Report.¹¹⁴ Further, the parties agree that costs determined under Article 2.2 apply to the OCOT determination in Articles 2.1 and 2.2.1.¹¹⁵ Considering this, Australia understands that AD claim 2 is consequential on AD claim 1 with respect to Investigation 238 and, AD claim 4 is consequential on AD claim 3 with respect to Investigation 238.¹¹⁶

73. Therefore, China's AD claims 2 and 4 must fail because China's AD claims 1 and 3 must fail with respect to Investigation 238.¹¹⁷

D. AD CLAIM 6.A

74. As in the case of Railway Wheels Investigation 466, China's AD claim 6.a in relation to stainless steel sinks impermissibly conflates the calculation of normal value with fair comparison under Article 2.4 of the Anti-Dumping Agreement. It is an attempt to challenge the basis of the cost of production in the Stainless Steel Sinks Investigation 238 through the

¹¹⁰ Australia's second written submission, paras. 254-255, 261.

¹¹¹ Australia's second written submission, paras. 254-255, 258, 261; Australia's first written submission, paras. 398-405. See *Stainless Steel Sinks Investigation 238 Report*, (Exhibit CHN-2), pp. 42, 217-219.

¹¹² Australia's first written submission, para. 406; Australia's second written submission, para. 262.

¹¹³ Australia's first written submission, para. 406; Australia's second written submission, para. 262.

¹¹⁴ Australia's second written submission, para. 265. See also Australia's first written submission, paras. 407-411.

¹¹⁵ Australia's second written submission, para. 265. See also Australia's first written submission, paras. 407-411.

¹¹⁶ Australia's first written submission, paras. 407-411; Australia's response to Panel question no. 2, para. 2. In the interests of clarity, Australia uses the descriptions consequential and dependent to mean the same thing: that if no contravention were established under one claim, then the other claim must likewise fail as it depends on the success of the anterior claim. See Australia's response to Panel question no. 12, para. 29.

¹¹⁷ Australia's second written submission, paras. 263-266. See also Australia's first written submission, paras. 407-411.

guise of Article 2.4 adjustments.¹¹⁸ If China fails on AD claims 1 and 3, China must also fail on AD claim 6.a. If China succeeds on AD claims 1 and 3, China's AD claim 6.a should nevertheless fail.¹¹⁹

E. AD CLAIM 6.B

1. AD claim 6.b.i

75. AD claim 6.b.i focuses on the ADC's calculation of a due allowance for VAT under Article 2.4 with respect to Investigation 238. China made two related submissions. The first was that the ADC did not provide a reasoned and adequate explanation or there was no evidence before the ADC that the difference in the VAT recoverability rate had any impact or any likely impact on price comparability.¹²⁰ The second was that "even if the VAT liability differences did have an impact on price comparability, then the allowance to account for that difference should have been made on its merits" i.e., that the adjustment should have been computed based on the exporters' recorded costs, not on the costs computed by the ADC.¹²¹

76. Both arguments are without merit. In carrying out the obligation to make a due allowance on its merits under Article 2.4, there is no particular methodology or "specific rules" that an investigating authority must apply.¹²² The issue before the Panel is whether the approach adopted was one which an unbiased and objective authority could have used.

77. In response to China's first submission, the ADC relied on clear evidence on the record that there was an actual, quantifiable difference in the VAT liability for export sales as compared to domestic sales. Given the evident difference in tax treatment, as reported by the investigated companies themselves, the ADC determined that this VAT liability difference likely had an impact on price comparability.¹²³ In doing so, the ADC adopted a method for calculating due allowance adjustments for taxation that was based on evidence on the record and consistent with Article 2.4.¹²⁴

¹¹⁸ Australia's second written submission, para. 267.

¹¹⁹ Australia's second written submission, para. 268.

¹²⁰ Australia's first written submission, para. 415; Australia's second written submission, para. 272.

¹²¹ Australia's first written submission, para. 415.

¹²² Australia's first written submission, paras. 417-423.

¹²³ Australia's first written submission, paras. 424-431; Australia's second written submission, paras. 272-273.

¹²⁴ Australia's second written submission, paras. 272-274.

78. Contrary to China's second submission, the ADC's approach to the VAT due allowance was merited. If China's approach was accepted and the adjustment was made by application of the adjustment rate to the exporters' recorded costs, instead of the constructed costs, there would be an illogical dissonance between the adjustment value and the constructed value to which that adjustment would be applied. Under China's proposed approach, the ADC would effectively be recalculating the cost of production on a different basis.¹²⁵ The ADC's approach was consistent with Australia's obligations under Article 2.4 of the Anti-Dumping Agreement.¹²⁶

2. AD claim 6.b.ii

79. China's AD claim 6.b.ii concerns one exporter, Primy, and is limited to Expiry Review 517. Even if Expiry Review 517 is within the Panel's terms of reference (which Australia argues it is not), the ADC acted consistently with Article 2.4 in relation to calculating due allowances for differences in accessories by (a) not including an additional amount for profit for externally purchased accessories; and (b) averaging externally sourced domestic accessory costs for each MCC to calculate the downward adjustment to the normal value.¹²⁷

80. Australia agrees with China that differences in physical characteristics between the export and the domestic model should be quantified, and adjustments should be made to prices to account for these differences.¹²⁸ The disagreement between Australia and China is with respect to the methodology used to quantify these cost differences.

81. The issue raised by the first part of China's claim is that, as part of determining the value of accessories, the ADC assigned a profit margin to accessories that were manufactured in-house and did not assign a profit margin to accessories that were purchased from third parties. The ADC took this approach because it assessed that the price paid for third-party sourced accessories would include a profit margin (i.e., the profit of the third party), whereas the cost to make for in-house produced accessories did not include a profit. The reason for the different approaches was fully explained by the ADC as follows: the purchase price of the third-party produced accessories reflected the market value of the item, and therefore already

¹²⁵ Australia's second written submission, paras. 275-279.

¹²⁶ Australia's first written submission, paras. 432-435.

¹²⁷ Australia's first written submission, paras. 436-455; Australia's second written submission, paras. 280-290.

¹²⁸ Australia's first written submission, para 417-418.

included an amount for profit.¹²⁹ The ADC reached this position after an extensive dialogue with exporters and taking their views and the evidence into account.¹³⁰

82. In relation to the second part of China's claim, the ADC sought and relied on the information from the exporters to develop an MCC structure and assess differences between domestic and export sales.

83. The averaging (and deduction) of domestic accessory costs for each MCC was: (a) based on an MCC structure that was developed taking into account comments from the exporters; and (b) designed to help generate fair price comparisons across MCCs that were sold with different accessories.

84. The ADC's quantification of accessory costs incorporated Primy's data for its domestic and export sales, was on its merits and was appropriate in the circumstances.¹³¹ China's AD claim 6.b.ii should be rejected by the Panel.

3. AD claim 6.b.iii

85. China's AD claim 6.b.iii concerns a single exporter, Zhuhai Grand, and is limited to Expiry Review 517. Even if Expiry Review 517 is within the Panel's terms of reference (which Australia argues it is not), the ADC acted consistently with Article 2.4. China's claim relates to a disagreement with the ADC's approach to computing the adjustment to account for certain product differences between a domestic and an export sale. Australia and China agree that an adjustment is required.¹³² China disagreement is with the ADC's approach in accounting for certain product differences between export and domestic products.¹³³ The ADC's calculations clearly accounted for the differences between export and domestic products and was consistent with its obligations under Article 2.4 of the Anti-Dumping Agreement.¹³⁴

4. AD claim 7.a

86. China's AD claim 7.a alleges that, in Investigation 238, the ADC failed to determine the profits of exporters based on actual data pertaining to production and sales of stainless

¹²⁹ Australia's first written submission, para 440; *Stainless Steel Sinks Continuation 517 Report*, (Exhibit CHN-36), p 59.

¹³⁰ Australia's first written submission, para. 441.

¹³¹ Australia's first written submission, paras. 444 -445; Australia's second written submission, paras. 287-289; Australia's response to Panel's question no. 26.

¹³² Australia's second written submission, para. 292.

¹³³ Australia's first written submission, para. 459.

¹³⁴ Australia's first written submission, paras. 456-463; Australia's second written submission, paras. 291-297.

steel sinks. China's AD claim 7.a is derivative of AD claims 1 and 3.¹³⁵ It should be rejected for the reasons set out in Australia's responses to those claims.¹³⁶

87. Contrary to China's allegations, the ADC determined a reasonable amount for profits based on actual data pertaining to production and sales, consistent with Articles 2.2 and 2.2.2 of the Anti-Dumping Agreement. Article 2.2.2 does not otherwise provide for any particular methodology in order to determine the amount for profits.¹³⁷

88. Australia considers that the words "based on" in Article 2.2.2 must be given meaning and effect, in the context and in light of the object and purpose of the Anti-Dumping Agreement. Article 2.2.2 does not require the wholesale adoption of the raw data in the exporters records without exception, such that an investigating authority is precluded from assessing or evaluating that raw data consistent with the disciplines of Articles 2.2.1.1 and 2.2.

89. An unbiased and objective authority could have reached the conclusions of the ADC in Stainless Steel Sinks Investigation 238 with respect to the profit amount. China's AD claim 7.a should be rejected by the Panel.

F. AD CLAIM 8

90. China's AD claim 8 under Article 9.3 of the Anti-Dumping Agreement is consequential on the Panel finding inconsistency with Article 2 under China's earlier AD claims regarding Investigation 238.¹³⁸ As China has not demonstrated any error in its earlier claims, AD claim 8 must fail also.¹³⁹

VII. CONDITIONAL RESPONSES TO AD CLAIMS: WIND TOWERS

91. Australia's primary submission is that all of China's claims regarding the wind towers measures are outside the scope of the Panel's terms of reference.

92. Even if the Panel were to find that Investigation 221 and/or Expiry Review 487 were within the scope of its terms of reference, it should find that China's AD claims fail to make a

¹³⁵ Australia's first written submission, para. 473.

¹³⁶ Australia's second written submission, para. 298.

¹³⁷ Australia's first written submission, para. 465; Panel Report, *US – Softwood Lumber V*, para 7.263.

¹³⁸ Australia's second written submission, para. 311; Australia's first written submission, paras. 550-553. See China's first written submission, paras. 465, 469, 474-475, 477-479.

¹³⁹ Australia's second written submission, para. 311; Australia's first written submission, paras. 550-553.

prima facie case that the wind towers measures are inconsistent with the Anti-Dumping Agreement.¹⁴⁰ Accordingly, China's claims should be rejected.

A. CHINA HAS NOT MADE A PRIMA FACIE CASE THAT THE WIND TOWERS MEASURES ARE INCONSISTENT WITH THE ANTI-DUMPING AGREEMENT

1. AD claim 3

93. China's argument, under AD claim 3 concerning the ADC's findings in *Wind Towers Investigation 221 Report* is based on a misunderstanding of the findings in the report. China treats the references to "competitive market costs" and regulation 180(2) as a finding under the second condition of Article 2.2.1.1. As discussed in paragraph 26 above, regulation 180(2) says nothing about, and provides no basis for, the rejection of records, and is not the same as findings made under the second condition.¹⁴¹ The references to it serve a different purpose, and do not reflect a finding on the basis of Article 2.2.1.1.¹⁴² The ADC's distinct finding under the second condition is apparent from the investigation report.¹⁴³

2. AD claim 1

94. China's arguments under claim 1 are predicated on China's contention that the "uplift ratio" was based on the differences between price values associated with a Chinese plate steel producer in a different investigation and "the values associated with Korean and Chinese Taipei plate steel producers."¹⁴⁴ But, as the *Wind Towers Report* makes clear, Korean and Chinese Taipei plate steel prices had no role in the ADC's calculation of the normal value of wind towers in Investigation 221. This is confirmed in *Confidential Appendix 2 – Wind Towers Investigation 221 Report* which was exhibited in response to Panel question no. 42(a).¹⁴⁵

3. AD claim 5.c

95. Under AD claim 5.c, China claims that the "cost difference used for the purposes of the so-called 'uplift' was not and could never be considered to have been unbiased and

¹⁴⁰ Australia's first written submission, paras. 475-562.

¹⁴¹ Australia's second written submission, paras. 145, 235, 313, 315-316.

¹⁴² Australia's second written submission, paras. 315-317; Australia's response to Panel question no. 61, para. 195; Australia's response to Panel question no. 78, paras. 110-115.

¹⁴³ Australia's response to Panel question 78, para. 88.

¹⁴⁴ China's response to Panel question no. 11, para. 31. See also China's opening statement at the first Panel meeting, paras. 48-49.

¹⁴⁵ [[REDACTED]] (Exhibit AUS-75 (BCI)).

objective."¹⁴⁶ The legal basis for China's arguments is entirely unclear, even after multiple rounds of submissions.¹⁴⁷ To the extent that it is predicated on Article 2.2, this claim appears to be wholly subsumed under, and duplicative of, China's AD claim 1.¹⁴⁸

96. To the extent that China's AD claim 5.c is based on the second condition of Article 2.2.1.1, then there may be a separate aspect of the claim, but there is no legal basis for it.¹⁴⁹ It appears that China's ultimate complaint is that because the second condition of Article 2.2.1.1 uses the phrase "the costs associated with the production and sale of the product", that when an investigating authority engages in a construction of normal value it must only — unequivocally, according to China — have regard to costs of the exporter being considered. This is unsupported by the text of the Anti-Dumping Agreement. China has not established any legal basis for this purported requirement.

4. AD claim 6.a

97. For the same reasons set out above in relation to railway wheels, China AD claim 6.a in relation to wind towers should fail.¹⁵⁰

5. AD claim 7.a

98. Under AD claim 7.a, China challenges the multiplication of the actual profit rate to the "uplifted cost of production" which it alleges was not "the cost of production in the country of origin".¹⁵¹

99. If the calculated cost of production is the correct amount for a "cost of production in the country of origin", then applying an *uncontested actual profit rate* to that amount would result in a "reasonable amount for...profits" that would be consistent with Articles 2.2 and 2.2.2 of the Anti-Dumping Agreement. As such, since China has failed to make a *prima facie* case under AD claim 1, then this claim must also necessarily fail.¹⁵²

¹⁴⁶ China's first written submission, para. 261.

¹⁴⁷ Australia's second written submission, paras. 319-320.

¹⁴⁸ Australia's second written submission, para 320.

¹⁴⁹ Australia's response to Panel question no. 16, paras. 35-36.

¹⁵⁰ Australia's first written submission, paras. 531-536. Australia's second written submission, paras. 323-326.

¹⁵¹ China's first written submission, paras. 412-416.

¹⁵² Australia's second written submission, paras. 327-329.

6. AD claim 7.c

100. China's claim 7.c that the ADC's findings on like products were inconsistent must fail for the reasons set out in Australia's written submissions.¹⁵³ In both the original investigation and expiry review the ADC found that there were sales of like goods in China. However, the ADC found there was an absence of *relevant* sales of like goods for the purpose of determining normal value.¹⁵⁴

7. AD claim 8

101. China's AD claim 8 is entirely contingent on the Panel finding that Australia acted inconsistently with Article 2 of the Anti-Dumping Agreement under its earlier claims. As outlined above, there is no basis for such findings in each case.¹⁵⁵

VIII. CONDITIONAL RESPONSES TO CVD CLAIMS

102. Australia's submission is that all of China's claims regarding the stainless steel sinks measures, including China's CVD claims, are outside the scope of the Panel's terms of reference. Specifically, China's CVD claims under section B.2 of its panel request are limited solely to the CVD measures "with regard to" Program 1.

103. Even if the Panel were to find that China's claims involving Program 1 were within its terms of reference, China has failed to demonstrate that ADC acted inconsistently with the SCM Agreement.¹⁵⁶ Accordingly, China's CVD claims should be rejected. Moreover, because any measures relating to Program 1 were terminated with effect from 27 March 2020 there is simply no matter at issue between the parties that this Panel could resolve, nor any measure it could recommend Australia bring into compliance as a result, in accordance with Article 19.1 of the DSU.¹⁵⁷

A. CVD CLAIM 1

104. China confirmed in bilateral communications with Australia that it would no longer be pursuing any claims related to financial contribution and Article 1.1(a) of the SCM

¹⁵³ Australia's first written submission, paras. 545-549; Australia's second written submission, para. 330.

¹⁵⁴ Australia's response to Panel question no. 29, paras. 83-84.

¹⁵⁵ Australia's second written submission, para. 331.

¹⁵⁶ Australia's first written submission, paras. 563-707.

¹⁵⁷ PRR, para. 25.

Agreement.¹⁵⁸ Australia notes that China did not advance any arguments with respect to these claims in any of its submissions.

B. CVD CLAIMS 2 AND 3

105. China contends that the ADC was not entitled, in light of the requirements of the SCM Agreement, to disregard in-country prices of 304 SS CRC and challenges the ADC's use of an out-of-country benchmark as well as the associated adjustments.¹⁵⁹

106. Contrary to China's submission, the ADC:

- a) in accordance with Article 14(d) of the SCM Agreement, and previous decisions of the Appellate Body, including in *US – Carbon Steel (India)*, correctly disregarded in-country prices of 304 SS CRC due to pervasive intervention by the Government of China in the market, causing distortions;
- b) adopted an out-of-country benchmark that was the best available representation of the market-determined price of 304 SS CRC in China; and
- c) adjusted this benchmark for prevailing market conditions in China.¹⁶⁰

107. The ADC, therefore, acted consistently with the requirements of Articles 1.1(b) and 14(d) of the SCM Agreement, and China's claims should be rejected.¹⁶¹

C. CVD CLAIM 4

108. China argued that the ADC failed to properly establish that Program 1 was specific in accordance with Articles 1.2 and 2.1(c) of the SCM Agreement. China alleges four separate inconsistencies. However, China's arguments are unsupported by the facts and WTO law.

109. First, China argues that the ADC did not identify a subsidy programme as required under Article 2.1(c) of the SCM Agreement.¹⁶² But the record shows that the ADC did identify

¹⁵⁸ Australia's first written submission, para. 570.

¹⁵⁹ China's first written submission, paras. 481-534.

¹⁶⁰ Australia's second written submission, para. 337. See also Australia's first written submission, paras. 607-617.

¹⁶¹ Australia's second written submission, paras. 336-364.

¹⁶² China's first written submission, paras. 554-558.

a subsidy programme. Specifically, the ADC identified a systematic pattern of 304 SS CRC being provided to Zhuhai Grand for less than adequate remuneration.¹⁶³

110. Second, China submits Australia failed to consider whether Program 1 was used by a limited number of certain enterprises.¹⁶⁴ China is mistaken. The ADC acted consistently with Article 2.1(c) of the SCM Agreement by showing that access to the subsidy was limited to "certain enterprises" that used 304 SS CRC as a key input. Specifically, the ADC found that access to Program 1 was limited to enterprises engaged in the manufacture of downstream products (including stainless steel sinks) that use 304 SS CRC as a key input.¹⁶⁵

111. Third, China argues Australia failed to expressly or implicitly take account of the two factors listed in the final sentence of Article 2.1(c) of the SCM Agreement.¹⁶⁶ But the record shows that the ADC complied with the requirements of the final sentence of Article 2.1(c) of the SCM Agreement. The ADC took into account both factors, and its consideration of both factors is indicated in Stainless Steel Sinks Investigation 238 Report.¹⁶⁷

112. Finally, China contends that the ADC failed to clearly substantiate its determination of specificity on the basis of positive evidence as required by Article 2.4.¹⁶⁸ But, China failed to raise a claim under Article 2.4 of the SCM Agreement in its panel request. Accordingly, China's claims with respect to Article 2.4 of the SCM Agreement fall outside the Panel's terms of reference and, in turn, the Panel should not make any findings or recommendations with respect to this claim.¹⁶⁹

D. CVD CLAIM 5

113. China makes two allegations under CVD claim 5.

114. First, China alleges that the ADC did not have sufficient evidence that Program 1 was specific to initiate the investigation.¹⁷⁰ Contrary to China's submission, the record shows the

¹⁶³ Australia's first written submission, paras. 638, 652-653; Australia's second written submission, paras. 367-371; Australia's response to Panel question no. 91, paras. 175-178.

¹⁶⁴ China's first written submission, paras. 559-560.

¹⁶⁵ Australia's first written submission, para. 639; Australia's response to Panel question no. 92, paras. 179-182.

¹⁶⁶ China's first written submission, paras. 561-565.

¹⁶⁷ Australia's first written submission, paras. 640-641; Australia's second written submission, paras. 372-379.

¹⁶⁸ China's first written submission, para. 566.

¹⁶⁹ Australia's first written submission, paras. 657-666.

¹⁷⁰ China's first written submission, paras. 580-582, 587-588.

application did contain information in relation to the nature of the alleged subsidy. The application provided evidence of the common recipients that used and benefited from a variation of Program 1 investigated by the Canada Border Services Agency.¹⁷¹

115. In addition, there was evidence and associated confidential documentation connected with two previous investigations into similar steel products that was not reasonably available to the applicant, but was available to the ADC.¹⁷² The ADC considered this evidence, along with the information provided by the applicant, and concluded that there was a sufficient basis to justify the initiation of an investigation under Article 11.3 of the SCM Agreement. Having regard to all of that evidence, as an objective and unbiased investigating authority, the ADC properly concluded that the evidence was sufficient to justify the initiation of an investigation under Article 11.3 of the SCM Agreement.¹⁷³

116. Second, China claims that one piece of evidence relied on by the ADC to initiate the investigation was "out-of-date" and did not demonstrate that stainless steel sinks were being "presently" subsidised during the relevant period of review.¹⁷⁴ China's argument is focused on a single piece of evidence relied upon, and ignores the surrounding context of all of the other evidence considered by the ADC that covered the period of investigation.¹⁷⁵

117. The ADC acted consistently with the requirements of Article 11.1, 11.2 and 11.3 of the SCM Agreement. China's claims should fail.

IX. CONCLUSION

118. Australia requests that the Panel find that the entirety of China's claims with respect to the stainless steel sinks and wind towers cases are outside the Panel's terms of reference. In any event, as demonstrated in Australia's submissions and responses to questions from the Panel, the ADC's findings with respect to all three cases are consistent with Australia's obligations under the Anti-Dumping Agreement and the SCM Agreement.

¹⁷¹ Australia's response to Panel question no. 94, paras. 184-188.

¹⁷² Australia's second written submission, para. 390; *Hot Rolled Plate Steel Investigation 198 Report*, (Exhibit CHN-33); *Aluminium Zinc Coated Steel Investigation 193 Report*, (Exhibit AUS-70).

¹⁷³ Australia's first written submission, paras. 690-697; Australia's second written submission, paras. 386-400; Australia's response to Panel question no. 35, paras. 99-103; Australia's response to Panel question no. 94, paras. 184-188.

¹⁷⁴ China's first written submission, paras. 583-586, 589.

¹⁷⁵ Australia's first written submission, paras. 698-704; Australia's second written submission, paras.401-402; Australia's response to Panel question no. 115, paras. 259-260.