



Particular Market Situation: SG PAM UK

1. The market price in China for cast iron articles is not an appropriate comparable price for determining the normal value in China within the terms of Regulation 7(1).
2. Article 79(2) of the Trade Remedies Regulations provides that the comparable price (i.e. the domestic price in China) should not be used where, because of a particular market situation (PMS), use of that price is not appropriate for determining the normal value. SG PAM UK considers that a PMS exists in China in the market for the goods concerned in this transition review as well as in the markets for the factors of production of these goods.
3. The market price in China for cast iron articles is distorted as a result of a Particular Market Situation (PMS). This PMS affects the market price of cast iron articles in China and thus necessarily distorts the prices of all Chinese producers and exporters. SG PAM UK has identified several distortions in the market in China which create a PMS in the market for cast iron articles.

(1) Cross-cutting distortions

4. 'Cross-cutting distortions' refers to those distortions affecting all markets in China, thus by definition also creating a PMS in the market of cast iron articles in China. The Chinese economic system is based on a 'socialist market economy' whereby the State and the Chinese Communist Party (CCP) hold a leading role in the economic governance of China. The extent of control by the State and the CCP in China across the economy, distorts all markets in China.
5. State ownership in China remains widespread especially in sectors considered important to the Chinese economy. This legal environment is conducive to distortive practices such as preferential access to finances, land, energy, protection by market access restrictions and leads to overcapacities in these encouraged industries.¹
6. The CCP is significantly involved in business decisions of Chinese enterprises. One of the ways in which the CCP exerts its control is through 'party-cells'. Article 19 of the Chinese company law provides:

In a company, an organisation of the Communist Party of China shall be established to carry out the activities of the party in accordance with the charter of the Communist Party of China. The company shall provide the necessary conditions for the activities of the party organisation.

¹ Commission Staff Working Document, page 21

7. The object and purpose of these cells is to ensure that decisions are made in compliance with party policy. The very presence of these cells ensures that decisions are made in compliance with party policy. The CCP cells do not issue orders to management: they are the management; and where they are not the management, management acts in the knowledge of the CCP policy.
8. The Applicant notes that the Director General of MI5, Ken McCallum warned², alongside FBI Director Chris Wray, in July 2022 of the growing threat of the Chinese Communist Party to the security interests of the United Kingdom. The warning was specifically directed at the need to protect the economies of the United Kingdom and the United States. A section of the presentation to UK business leaders was headed 'Risks to your Business'. SG PAM UK considers that the TRA must take this as evidence of the role of the CCP in controlling activities in all markets in China.
9. China's five-year plans set forth China's strategic intentions and objectives for economic development. They are designed to achieve the objectives of the CCP and the State and lay down many preferential policies intended to achieve these objectives. They are drafted by the NDRC, approved by the National People's Congress, and implemented by all organs of the State. Compliance with the five-year plan is the measure of success for enterprises in China rather than the traditional measures of commercial success in a market economy.
10. The five-year plans indicate the broad development policy for the country, promoting (encouraging) certain categories of activities and discouraging or prohibiting others. Promoted sectors, have access to the resources necessary to implement the plan while the availability of resources for discourages sectors is restricted.
11. It is the coordinated implementation of the five-year plans which has resulted in the massive build-up of overcapacity in many sectors. Enterprises achieving the targets set out in the five-year plan have continued access to State resources. Individuals who meet the five-year plan targets advance within the CCP and the State.
12. The 14th Five-Year-Plan runs from 2021 to 2025. It is evident from a close reasoning of the 14th Five-Year-Plan that the State and the CCP will continue to manage and control the allocation of resources in the economy. Article VIII, headed 'Deepen the Implementation of the Manufacturing Powerhouse', makes it clear that the manufacturing industry remains a priority industry for the State in China. Section 4 thereof focuses on implementing 'manufacturing cost and burden reduction actions'.³

² See: <https://www.mi5.gov.uk/news/speech-by-mi5-and-fbi>

³ Center for Security and Emerging Technology, *Translation: Outline of the People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035*, accessible at: <https://cset.georgetown.edu/publication/china-14th-five-year-plan/>

13. Furthermore, many of the investments made and measures adopted under the 12th and 13th five-year plans, which contain sector specific production targets, will continue to produce their effects in the 2020s.

(2) Distortions affecting the prices of raw materials used in the production of cast iron articles

14. CISA, the China Iron and Steel Association, assists enterprises in the setting of prices and the coordination of production. CISA has pushed tax changes to boost domestic supply of steel scrap. In 2021 it was reported that CISA called for an increase in VAT rebate ratios for domestic steel scrap and the removal of import tariffs on steel scrap.⁴ Moreover, China still imposes a 40% export tariff on waste scrap of iron and steel (HS 720449).⁵ The practice of imposing export duties drives down domestic prices, allowing the downstream industry in China to undercut international prices of the downstream products. As iron and steel scrap make up around 25-35% of the total cost of production of cast iron articles, this affects the price of cast iron articles in China and creates a PMS.
15. As of May 1 2021, China cancelled import tariffs for pig iron, crude steel, recycled steel raw materials and ferro-chrome. Export tariffs were also increased for these products with a 25% tariff imposed on ferro-silicon exports and 15% on high-purity pig iron.⁶ In July 2021 the Ministry of Finance announced an increase in its export tariffs to 20% for pig iron and 40% for ferro-chrome.⁷ These policy measures increase the domestic supply of these raw materials, distorting the domestic price which reflects State intervention rather than market forces. The PRC still imposes a 20% export tariff on pig iron (HS 720110).⁸ These raw materials are used in the production of cast iron articles. Distortions affecting the price of such raw materials therefore creates a PMS in the market of the finished product under investigation.
16. With regard to iron ore, another key raw material used in the production of the product concerned, the five-year plan drafted in 2021 seeks to slash reliance on imported iron ore and achieve iron ore ‘self-sufficiency’. In order to achieve this the NRDC has said that companies

⁴ Argus, ‘CISA pushes tax changes to boost China steel scrap use’ (03 February 2021) accessible at: <https://www.argusmedia.com/en/news/2183369-cisa-pushes-tax-changes-to-boost-china-steel-scrap-use> (last accessed: 20 September 2022), *Annex X*

⁵ *See Annex X*

⁶ BEROE, ‘China’s New Trade Tax Regime: A Shift in the steel landscape’ (20 June 2021) Accessible at: <https://www.beroeinc.com/article/chinas-new-trade-tax-regime-a-shift-in-the-steel-landscape/> (last accessed: 20 September 2022), *Annex X*

⁷ FastMarkets, ‘NEWSBREAK: China to increase export taxes on pig iron, ferro-chrome’ (July 29 2021) accessible at: <https://www.fastmarkets.com/insights/newsbreak-china-to-increase-export-taxes-on-pig-iron-ferro-chrome#:~:text=The%20export%20tariff%20for%20pig,20%25%2C%20the%20ministry%20said.> (last accessed on 20 September 2022), *Annex X*; The State Council of the PRC, ‘China raises export tariffs on steel products to push industrial upgrading’ accessible at:

http://english.www.gov.cn/statecouncil/ministries/202107/29/content_WS6102a001c6d0df57f98ddc8f.html (last accessed on 20 September 2022), *Annex B.01.5*

⁸ *See Annex X*

will be encouraged to boost domestic production.⁹ The NRDC has commented on the roadmap for the development of the iron and steel industry stating that: ‘iron ore is an important strategic resource related to economy and people’s livelihood’, such that the establishment of a system for the reserves of iron ore output and mineral lands will ‘become an important regulatory measure to stabilize iron ore market price and ensure the safety of the industrial chain’.¹⁰ The State in China increases the availability of resources in this sector to artificially lower prices. As iron ore is a raw material used in the production of the product concerned, this creates a PMS in the market in China for cast iron articles.

(3) Distortions in the steel market

17. The steel market in China is significantly distorted. Persistent Government intervention in the steel raw materials market has an impact on downstream markets such as the market for cast iron articles.

18. In previous European Union anti-dumping investigations, the Commission has found that the:

“Chinese system of high export duties and no VAT reimbursement for export of raw materials has essentially lead to a situation where Chinese raw material prices continue to be the result of State intervention, and will, in all likelihood continue to provide in the future a support to the Chinese producers of seamless stainless steel pipes and tubes”.

19. As highlighted above, steel scrap was still subject, in 2022 to an export tariff of 40% which supports Chinese exporters of the product under investigation.

20. Furthermore, the distortions in the steel market in China have been recognised by other National Investigation authorities, namely Canada and Australia. In 2021, the Australian Commission confirmed its position that a particular market situation exists in the steel market as a result of distortive Government practices affecting ‘a number of key inputs in the steel making process, including coking coal, coke, iron ore and scrap steel.’¹¹ In 2018, the Canadian CBSA also confirmed its finding that “domestic prices are substantially determined

⁹ Financial Review, ‘China’s five-year plan to slash Australian iron ore imports’ (May 22, 2021) accessible at: <https://www.afr.com/world/asia/china-s-five-year-plan-to-slash-australian-iron-ore-imports-20210520-p57tq9> (last access, 19 September 2022); *Annex X*

¹⁰NRDC, ‘China issues roadmap for high-quality development of iron and steel industry’ (People’s Daily / Updated March 25, 2022) accessed at: https://en.ndrc.gov.cn/news/mediarources/202203/t20220325_1320408.html (last accessed 19 September 2022), *Annex B.01.7*

¹¹ Statement of Essential Facts No. 550 : Alleged Dumping of precision pipe and tube steel exported to Australia from The People’s Republic of China, the Republic of Korea, Taiwa and the Socialist Republic of Vietnam (1 June 2021), Page 45, accessible at : https://www.industry.gov.au/sites/default/files/adc/public-record/550_-_057_-_report_-_statement_of_essential_facts_-_sef_550_0.pdf

by the GOC; and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.”¹²

21. In 2017 the European Commission imposed definitive countervailing duties on imports of non-alloy or other alloy steel originating in China. On the basis of evidence from the Government of China, the Commission concluded that the “supply of domestic coking coal is influenced by State intervention”¹³.
22. The OECD has outlined the various Chinese subsidization programs from which the steel industry in China benefits.¹⁴ The OECD has also analysed the presence of SOEs in the Chinese steel sector to find that a significant share of steelmaking capacity in China is state-owned.¹⁵

(4) Distortions in the energy market

23. The production of cast iron articles is energy intensive. As concluded by the TRA in the AD0012 anti-dumping case on aluminium extrusions from China,¹⁶ a PMS exists in relation to energy costs in China as energy prices in the PRC “reflect non-commercial factors”.
24. China is the world’s largest electricity producer,¹⁷ and 50% of generation capacity is state-owned. Prices are fixed by the State. The Department of Pricing in the National Development and Reform Commission (NDRC)¹⁸ is responsible for overseeing prices in China. The prices for electricity and domestic natural gas are regulated by NDRC and according to the Chinese government set on the basis of a procedure that includes cost investigation, expert appraisal, public hearings, and final price determination and publication.¹⁹
25. The WTO also reported in 2021 that price controls exist in the energy sector in China. Such price controls may take the form of “government-set prices” or government-guided prices” and a variety of products/services are subject to such price controls including *electricity*

¹² Canada Border Services Agency, ‘Statement of Reasons concerning the final determinations with respect to the dumping and subsidizing of Cold-rolled steel from China, South Korea and Vietnam’ CRS 2018 IN (15 November 2018), Recital [133]

¹³ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People’s Republic of China OJ L 146/17, Recital 275

¹⁴ OECD (1 September 2020), “Steel Subsidies and government support measures: a progress report”, DSTI/SC(2020)11

¹⁵ OECD (10 March 2022), “Interim report providing preliminary statistics on a sample of steel enterprises obtained by linking the OECD Steel and Subsidy Databases”, DSTI/SC(2022)6

¹⁶ Statement of Essential Facts AD0012, page 35

¹⁷ See Commission Staff Working Document on Significant Distortion in the Economy of the People’s Republic of China for the purposes of Trade Defence Investigations, Brussels, 20.12.2017 SWD(2017) 483 final/2, page 217; See also World Trade Organisation, Trade Policy Review: China, 15 September 2021 WT/TPR/S/415, accessible at: < https://www.wto.org/english/tratop_e/tp_r_e/s415_e.pdf>

¹⁸ The NDRC is also the body responsible for the drafting of the five-year plans and is central to economic planning in China.

¹⁹ Staff Working Document, page 221.

*transmission and distribution.*²⁰ As the TRA has previously recognised, under the Price Law of the PRC, the Government and the National Development and Reform Commission (NDRC) may enforce Government-set prices.

26. This clearly demonstrates that energy prices are not market-based and are largely still controlled by the State.
27. China also provides considerable subsidies for the production of coal resulting in an oversupply of coal powered electricity. Government policies over-incentivise coal power investment and have made coal power generation ‘almost risk-free’. In particular, China implemented a policy whereby payback of investment plus a reasonable profit margin was guaranteed for each coal-fired power plant. Coal is used in the production of cast iron articles meaning that the distortions present in this factor of production distorts the price of cast iron articles in China.

(5) Distortions in the labour market

28. The production of cast-iron articles is labour intensive with direct labour accounting for around 20% of the total cost of production. The existence of distortions in the labour market in China distorts the final price of cast-iron articles in China.
29. There is no market-based wage system in China. China’s Trade Union Law does not allow for the independent operation of a trade union.²¹ The only legally recognized trade union in China is the ACFTU which is closely tied to the CCP and the State. Wages therefore do not result from normal market forces or negotiation between companies and the work force. Furthermore, the freedom of association and the right to strike – fundamental conditions to arrive at equitable labour market outcomes – were removed from the Chinese constitution in 1982, and no other laws or regulations have explicitly permitted such right. The TRA has acknowledged that in China trade unions, “cannot operate independently and do not permit strike action”.²²
30. The Chinese government also controls access to the labour market by means of residence permits.

*The [United Nations Committee on Economic, Social, and Cultural Rights] notes with deep concern the de facto discrimination against internal migrants in the fields of employment, social security, health service, housing, and education that indirectly result[s], inter alia, from the restrictive national household registration system (hukou) which continues to be in place despite official announcements regarding reforms.*²³

²⁰ SEF AD0012, Page 35 and 36; WTO, Trade Policy Review: China, page 95

²¹ Staff Working Document, page 343

²² AD0012 Final Determination, paragraph 151

²³ United Nations Committee on Economic, Social, and Cultural Rights, Concluding Observations of the Committee on the Initial Report of the People’s Republic of China (including Hong Kong and Macao), May 13, 2005, pg 3.

31. Workers without a legal residence permit can be, and are, discriminated by employers. This pool of illegal internal migrants employed in enterprises distorts the overall employment situation in those enterprises.
32. The first reforms to the labour system fully controlled by the State were introduced in the 1980s. However, remnants of the old system are still in place, such as the hukou system having an impact on the mobility of workers, lack of the explicit right to strike, as well as the lack of independent collective bargaining.

(6) Distortions in capital

33. The capital market in China is distorted. China's Commercial Banking Law states that *commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State.*²⁴ Thus, decisions are not made on the commercial considerations but on the basis of strategic political considerations.
34. In 2019, the OECD reported that:

*The vast majority of financial support was provided by China's state-owned banks to Chinese aluminium SOEs; however, two large private firms also benefitted from support from state-owned banks: China Hongqiao, the world's largest producer of primary aluminium, and China's Zhongwang, China's largest producer of extraction products. While governments participate in the aluminium value chain via SOEs, state influence is at least as important as ownership, including because SOEs are both recipients and providers of support, especially in China, where SOEs provide SOEs and private producers alike with below-market-cost inputs and loans. This fluid relationship between the government and companies generates opacity around the form and scale of government support.*²⁵

35. According to two studies published in 2016, 60% of all rated corporate bonds in China has been rated by a state-owned ratings agency.²⁶ Even 'private' ratings agencies are not fully independent of the State. According to one of these studies, one of the largest domestic credit rating agencies in China, Dagong Global Credit Rating, is 'private' from the standpoint of equity ownership but has its origins in the government and is led by a politically well-connected controlling shareholder whose business model is closely aligned with the policy objectives of the government.²⁷

²⁴ Law of the People's Republic of China on Commercial Banks (December 27, 2003, 2015 Amended), Article 34

²⁵ Lin, L.W. and Milhaupt, C.J. (2016). Bonded to the State: A Network Perspective on China's Corporate Debt Market. Columbia Law and Economics Working Paper No.543, p. 20; Livingstone, M. Poon, W.P.H. and Zhou, (2017). Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry, in *Journal of Banking & Finance*. p.9

²⁷ Lin, L.W. and Milhaupt, C.J. (2016). Bonded to the State: A Network Perspective on China's Corporate Debt Market. Columbia Law and Economics Working Paper No.543, p. 20.

36. In general, Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. This is demonstrated by the fact that Chinese credit ratings are heavily skewed towards the highest end of the rating scale. According to the IMF, over 90% of Chinese bonds are rated AA to AAA by local rating agencies. This is not comparable to other markets, such as the EU or the US. For example, less than 2% of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies thus have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category. This demonstrates that loan interest rates are often distorted.

(7) Distortions in land

37. All land is owned by the State in China and allocation is exclusively dependent on the State. Land use rights can be ‘granted’ or ‘allocated’. In both cases the decision on the transfer of land-use rights is made by local government bodies. The cost of land in China for favoured enterprises within the terms of the five-year plans is therefore significantly below international benchmarks for land allocation in market economies.
38. Access to land is clearly necessary for the production of the product under investigation. Thus, as the cost of land is artificially lowered, Chinese exporting producers operate in a distorted market.

Conclusions on Particular Market Situation

39. SG PAM UK considers that a Particular Market Situation in the market for cast iron articles in China. This PMS is a result of distortions specifically affecting the raw materials used in the production of cast iron articles, as well as cross-cutting distortions and distortions in the markets for labour, energy and other utilities in China.
40. Ample evidence has been provided demonstrating that the market for cast iron articles is distorted and affected by a PMS. Market players cannot operate in isolation from these distortions. Thus, the result of a finding of a PMS is that all prices on the market in China cannot be deemed comparable prices for the determination of the normal value. The normal value must therefore be constructed for each Chinese exporting producer.