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**NON-CONFIDENTIAL**

# **Steel Reinforcing Bar and Coil from China**

## **Provisional Measures Report**

**Dumping and Countervailing Duties Act 1988**

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**November 2017**



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### **Confidentiality of Information**

In a number of instances, information in this report, including figures in the tables, is considered confidential because the release of this information would be of significant competitive advantage to a competitor or its release would otherwise have a significant adverse impact on a party.

In these instances, the information has been redacted or where possible has been summarised in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. For example, in tables, where possible, actual figures have been replaced by figures showing indexed or percentage changes from the previous period. Shading has been used to show where this occurs.

Where it has not been possible to show summaries in this manner, the information has not been susceptible of summary because to do so would unnecessarily expose the provider of the information to commercial risk.

## Abbreviations

The following abbreviations are used in this Report:

ACRS	Australian Certification Authority for Reinforcing and Structural Steels
Act (the)	Dumping and Countervailing Duties Act 1988
ADRP	Australian Anti-Dumping Review Panel
AFA	Adverse facts available
AMC	Asset management company
Anti-Dumping Agreement (the)	WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
AS/NZS	Australia/New Zealand Standard
Australian ADC	Australian Anti-Dumping Commission
BlueScope	BlueScope Steel Limited
CBSA	Canadian Border Services Agency
Chief Executive (the)	Chief Executive of the Ministry of Business, Innovation and Employment
China	People's Republic of China
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EC	European Commission, the EU investigating authority
EU	European Union
FIE	Foreign-invested enterprise
FY	Financial year
GOC	Government of China
Hebei Jingye	Hebei Jingye Iron and Steel Co Ltd
HNTE	High and new technology enterprise
LIBOR	London Interbank Offering rate
LTAR	Less than adequate remuneration
MBIE	Ministry of Business, Innovation and Employment, the
NDRC	National Development and Reform Commission

NZ	New Zealand
NZD	New Zealand dollar
OCTG	Oil country tubular goods
Pacific Steel	Pacific Steel (NZ) Ltd
PBOC	People's Bank of China
POI	Period of investigation
Rebar	Steel reinforcing bar and coil
RMB	Renminbi
SASAC	State-Owned Assets Supervision and Administration Commission
SGCC	State Grid Corporation of China
SIE	State-invested enterprise
SOCB	State-owned commercial bank
SOE	State-owned enterprise
Subsidies Agreement, the	The WTO Agreement on Subsidies and Countervailing Measures (also the SCM Agreement)
US	United States
US DOC	United States Department of Commerce
USD	United States dollar
VAT	Value-added tax
VFD	Value for Duty
WTO	World Trade Organisation
WTO Agreement	The Agreement establishing the World Trade Organisation adopted at Marrakesh on 15 April 1994

## EXECUTIVE SUMMARY

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### Purpose

This report provides the basis for the Minister to make a decision under section 16 of the Dumping and Countervailing Duties Act (the Act<sup>1</sup>) as to whether he has reasonable cause to believe, in relation to the importation or intended importation of goods into New Zealand, that the goods are subsidised and by reason thereof material injury to an industry has been or is being caused, and whether he is satisfied that provisional countervailing measures are necessary to prevent material injury being caused during the period of investigation.

On the basis of the provisional conclusions on the level of subsidisation, MBIE considers that there are no grounds for the imposition of provisional measures in order to prevent material injury being caused by subsidised imports during the remaining period of investigation.

### Proceedings

On 15 August 2017 the Ministry of Business, Innovation and Employment (MBIE) initiated an investigation under the Act into steel reinforcing bar and coil (rebar) from the People's Republic of China (China), following the receipt of an application for a subsidy investigation from Pacific Steel (NZ) Ltd (Pacific Steel). The applicant claimed that rebar from China is being subsidised and that subsidised imports are causing material injury to Pacific Steel. An investigation into Pacific Steel's claims that dumped imports of rebar from China and Malaysia are causing material injury was initiated on the same date.

Pacific Steel requested that provisional measures be imposed on the allegedly subsidised imports during the remaining period of the investigation.

### Goods Subject to the Investigation

The goods which are the subject of the investigation (the subject goods) are:

*Reinforcing steel bar and coil with a diameter equal to or greater than 5mm.*

Pacific Steel is the sole producer of rebar in New Zealand, and constitutes the domestic industry for the purposes of the investigation.

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<sup>1</sup> This investigation was initiated under the Dumping and Countervailing Duties 1988. The Trade (Anti-dumping and Countervailing Duties) Act 1988 (the amended Act), which contains amendments to a number of the provisions of the Act, enters into force on 29 November 2017, but under section 2 of Part 1 of Schedule 1 of the amended Act, an investigation initiated before the commencement of the amended Act must be continued, completed, determined and enforced as if the provisions of the Act (as in force immediately before commencement) were still in force. Section 3 of Part 1 of Schedule 1 of the amended Act provides that the an investigation under the public interest test introduced in the amended Act may be started by the chief executive within 6 months from the date of any countervailing duty imposed as a result of the current investigation.

## Provisional Measures

Under the Dumping and Countervailing Duties Act 1988 (the Act) the imposition of provisional measures requires that:

- At least sixty days have passed from the initiation of the investigation
- The Minister has reasonable cause to believe that the goods are subsidised
- The Minister has reasonable cause to believe that by reason of the subsidisation the industry is suffering material injury
- The Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.

This report and its conclusions are based on information available to MBIE in the period up to and including 14 October 2017, being sixty days from the date of initiation of the investigation. Subsequent information obtained by MBIE or made available to it, including through any additional submissions by interested parties, could provide a basis to modify provisional conclusions during the remaining period of investigation.

## Information

Information available to the Ministry includes the Pacific Steel application; information received from identified importers, intermediary exporters, Chinese manufacturers, and the Government of China (GOC); information from counterpart investigating authorities in other jurisdictions; World Trade Organization (WTO) notifications and dispute findings; and other information obtained by MBIE

Section 7(5) of the Act provides that where the Secretary<sup>2</sup> is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of the Act, the amount of the subsidy shall be such amount as is determined by the Secretary having regard to all available information that the Secretary considers to be reliable.

This report includes a discussion on the use of the best information available in general terms and in relation to each of the programmes investigated. Information from other jurisdictions has been carefully assessed on the basis of the extent to which the investigations concerned addressed similar products and similar subsidy programmes, in similar geographical locations, and in particular on any evidence relating to the manufacturers included in MBIE's sample. Where this evidence is considered reliable it has been judged to be the best information available. However, where findings

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<sup>2</sup> The Act includes references to decisions to be made by "the Secretary", who is defined in section 3 as "the Chief Executive of the Ministry". The "Ministry" is defined, in turn, as "the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Act." MBIE is the department that administers the Act. In this Report, where actions, conclusions and determinations are attributed to MBIE they are actions, conclusions and determinations made in accordance with delegated authority from the Chief Executive of the Ministry to the signatory of this Report.

from other jurisdictions are based on differing legislation or interpretations of the WTO Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement) that MBIE does not share, then that evidence has not been considered to be reliable. This includes assumptions made by other authorities on the basis of adverse facts available (AFA) where information has not been provided, is withheld or is otherwise not available, involving a degree of assumption about the existence and levels of subsidy involved that MBIE does not consider to provide sufficiently reliable evidence.

## Subsidisation

The basis for determining the existence and amount of any subsidisation is governed by the provisions of the Act and the Subsidies Agreement, and by findings in WTO dispute settlement proceedings.

A particular issue arising in the investigation of subsidies is the issue of the extent to which the Government of China exercises meaningful control over state-owned entities, for example state-owned commercial banks or state-owned providers of input material to steel producers. The approach adopted by MBIE is based on a careful analysis of the guidance provided by the WTO Appellate Body in light of the situation in the Chinese market. This report includes a summary of the considerations behind MBIE's approach, and explains the basis for reaching different conclusions from those of other authorities.

MBIE has assessed the alleged subsidy programmes identified in Pacific Steel's application on the basis of the information provided in the application, questionnaire responses, and other information available to or identified by MBIE.

MBIE identified a sample of the four Chinese manufacturers responsible for around 80% of exports to New Zealand in 2016. The investigation of subsidisation relating to these companies included information based on:

- Questionnaire responses from the largest Chinese supplier to New Zealand, plus information from an EU investigation into other steel products involving the same company.
- Information from Australian and Canadian investigations into similar products which included two of the other three sample manufacturers (and which concluded that there were *de minimis* levels of subsidisation for these companies).
- Information from other sources for the fourth sample manufacturer, including reports and commentaries identified by the applicant (which could not specify any particular subsidies benefiting this company).

On the basis of the analysis, described in Annex 2, undertaken by MBIE, which takes into account the best information available at this point in the investigation, the provisional conclusion is that the weighted average level of subsidisation that can reasonably be identified is 0.11% per cent, which is below the *de minimis* levels provided for in the Act and the Subsidies Agreement.

## Injury

In the light of the provisional conclusion that the level of subsidy is *de minimis* there is no basis for addressing the question of whether it is necessary to impose provisional measures to prevent subsidisation causing material injury during the remaining period of the investigation. Accordingly, it

is not possible at this point in the investigation to conclude that any consequent impact can be attributed to imports of subsidised goods from China. Any detailed assessment of material injury that may be required will be incorporated into the Essential Facts and Conclusions Report.

### **Next stages of the investigation**

The next stage of the investigation is the preparation and circulation to interested parties by 1 February 2018 of the report on the essential facts and conclusions that will likely form the basis for the final determination.

The final determination, to be made by 3 March 2018, will finally establish whether or not the subject goods are subsidised and by reason thereof causing material injury to the industry.

# 1. Introduction

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## 1.1 Purpose

1. On 5 April 2017 MBIE accepted a properly documented application from Pacific Steel, alleging that rebar from China is being subsidised and by reason thereof causing material injury to the New Zealand industry.
2. On 15 August 2017, the Secretary initiated an investigation pursuant to section 10 of the Act, being satisfied that for the purpose of initiation the industry had provided sufficient evidence to support its application. This included evidence which suggested that:
  - rebar from China was being subsidised, and
  - material injury to the New Zealand industry was being caused by subsidised goods imported from China.
3. The investigation is carried out according to the requirements of the Act, including sections 11(1)(c) and section 14(3) which require that the imposition of countervailing duties should be consistent with New Zealand's obligations as a party to the WTO Agreement<sup>3</sup>. Where the Act is silent, or its interpretation requires context, the Subsidies Agreement and relevant WTO dispute settlement findings are used in recognition of New Zealand's obligations as a party to the WTO Agreement.
4. This report provides a basis for a recommendation to the Minister on his final determination under section 13 of the Act as to whether or not, in relation to the importation or intended importation of goods into New Zealand, the goods are subsidised and by reason thereof material injury to an industry has been or is being caused.

## 1.2 Grounds for the Application

5. Pacific Steel claimed that the alleged subsidisation of rebar from China is causing the company material injury through:
  - price undercutting
  - price depression
  - price suppressionresulting in:
  - adverse consequences upon sales

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<sup>3</sup> The Agreement establishing the World Trade Organization adopted at Marrakesh on 15 April 1994.

- adverse consequences upon profit, both per unit (e.g. EBIT/tonne) and overall (e.g. EBIT)
- adverse consequences upon return on investment
- adverse consequences upon cashflow.

6. Pacific Steel stated in its application that the material injury resulting from the importation of allegedly subsidised rebar commenced in 2012.

### 1.3 Provisional Measures

7. Pacific Steel requested that provisional countervailing duties be imposed in order to prevent material injury being caused to the domestic industry during the period of investigation.

8. This Provisional Measures Report (Report) is based on information available to MBIE to 14 October 2017. Where sufficient information has not been furnished or is not available to enable MBIE to ascertain the amount of the subsidy, the available information considered to be reliable has provided the basis for a determination of the amount of the subsidy to be taken into account in considering whether or not provisional measures should be imposed. In terms of the Subsidies Agreement, conclusions have been drawn on the basis of the best information available.

#### New Zealand Legislation

9. Section 16(1) of the Act provides as follows:

*If, at any time after 60 days from the date on which an investigation has been initiated by the Secretary under section 10 (not being an investigation that has been terminated under section 11),—*

*(a) the Minister has reasonable cause to believe, in relation to the importation or intended importation of goods into New Zealand, that—*

*(i) the goods are being dumped or subsidised; and*

*(ii) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded; and*

*(b) the Minister is satisfied that action under this section is necessary to prevent material injury being caused during the period of investigation,—*

*the Minister may, by notice, give a provisional direction that payment of duty in respect of the goods shall be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996, except that the rate or amount of duty to be secured shall not exceed the difference between the export price of the goods and their normal value, or the amount of the subsidy, as the case may be.*

10. Section 16(3) of the Act provides:

*A provisional direction given under subsection (1) or subsection (2) shall in all cases cease to have effect following the final determination made by the Minister pursuant to section 13.*

## WTO Subsidies Agreement

11. Provisional measures are covered in Article 17 of the Subsidies Agreement, which provides:
- 17.1 Provisional measures may be applied only if:*
- (a) an investigation has been initiated in accordance with the provisions of Article 11, a public notice has been given to that effect and interested Members and interested parties have been given adequate opportunities to submit information and make comments;*
  - (b) a preliminary affirmative determination has been made that a subsidy exists and that there is injury to a domestic industry caused by subsidized imports; and*
  - (c) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.*
- 17.2 Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.*
- 17.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.*
- 17.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months.*
- 17.5 The relevant provisions of Article 19 shall be followed in the application of provisional measures.*
12. The only WTO jurisprudence relating to this Article is to be found in *US — Softwood Lumber III*, when the Panel found that the provisional measures were in violation of Article 17.3 (and 17.4) because they were imposed less than sixty days after the date of initiation of the investigation and because they applied to imports for a period of more than four months. The Panel found that “Article 17.3 and 17.4 of the SCM Agreement are unambiguous, clearly specifying that provisional measures shall not be applied sooner than sixty days after initiation and their application shall be limited to maximum four months.”
13. Article 22.4 of the Subsidies Agreement provides:
- A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on the existence of a subsidy and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:*
- (i) the names of the suppliers or, when this is impracticable, the supplying countries involved;*
  - (ii) a description of the product which is sufficient for customs purposes;*

- (iii) *the amount of subsidy established and the basis on which the existence of a subsidy has been determined;*
- (iv) *considerations relevant to the injury determination as set out in Article 15;*
- (v) *the main reasons leading to the determination.*

## Summary of Legal Requirements

14. Under the Act the imposition of provisional measures requires that:
- At least sixty days have passed from the initiation of the investigation
  - The Minister has reasonable cause to believe that the goods are subsidised
  - The Minister has reasonable cause to believe that by reason of the subsidisation the industry is suffering material injury
  - The Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.
15. The Subsidies Agreement includes the following additional requirements:
- Interested Members and parties have had an opportunity to submit information and make comments
  - The period of application of provisional measures shall not exceed four months.

## Requirements for the Imposition of Provisional Measures

16. The standard to be met for the imposition of provisional measures is that the Minister must have “reasonable cause to believe” that there is subsidisation causing material injury, and be satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.
17. In this Report the consideration of whether or not there is reasonable cause to believe that there is subsidisation causing material injury and that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation, is based on information available to MBIE as at 14 October 2017. Additional questionnaire responses or further submissions from interested parties received after that date are not reflected in this report, but will be taken into account in any subsequent consideration.

## 1.4 Proceedings

18. The investigation was initiated on 15 August 2017. The sixty-day period referred to in section 16 of the Act expired on 14 October 2017. Taking into account the intervening Christmas holiday period referred to in section 16 of the Act, the 180-day investigation period will conclude on 3 March 2018, by which time the Minister must make a final determination. The Essential Facts and Conclusions Report is due on 1 February 2018. The four month period referred to in the Subsidies Agreement will depend on when any provisional measures are applied, but they cannot go beyond the date of final determination of 4 March 2018.

19. Questionnaires were sent to importers, manufacturers, trading intermediaries and the GOC. Article 17 of the Subsidies Agreement provides for interested Members and parties to have the opportunity to provide information and comments before the imposition of provisional measures, if any.
20. In the questionnaires MBIE advised interested parties that the consideration of the need to impose provisional measures, as summarised in this report, would be based on information to 14 October 2017, reflecting the expiration of sixty days since the initiation of the investigation. References in this Report to information available to “this point in the investigation” refer to this date. Information provided after this date will be taken into account in the preparation of the Essential Facts and Conclusions Report.

### **Availability of Information**

21. Section 7(5) of the Act provides as follows:

*Where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of this Act, the amount of the subsidy shall be such amount as is determined by the Secretary having regard to all available information that the Secretary considers to be reliable.*

22. Article 12.7 of the Subsidies Agreement provides as follows:

*In cases in which any interested Member or interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.*

23. Information relating to those parties who have not provided information is based on the facts available to this point in the investigation that MBIE considers to be reliable.
24. MBIE makes available all non-confidential information via the public file for this investigation. Any interested party is able to request both a list of the documents on this file and copies of the documents on it.

## **1.5 Report Details**

25. In this report, unless otherwise stated, years are calendar years ending 31 December and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for New Zealand Customs Service (Customs) purposes.
26. The period of investigation (POI) for subsidisation is the year ended December 2016, while the investigation of injury involves evaluation of data for the period since January 2011.
27. All volumes are expressed on a tonne basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD). The exchange rates used are those relating to specific transactions, where available, or the Customs

exchange rates or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.

28. It should be noted that this Report provides only a summary only of the information, analysis and conclusions relevant to this particular investigation, and should not be accorded any status beyond that.

## 2. Subject Goods and New Zealand Industry

### 2.1 Subject Goods

29. The imported goods that were the subject of the application are described as:

*Reinforcing steel bar and coil with a diameter equal to or greater than 5mm.*

30. The subject goods and their tariff classification are described as follows:

Tariff Item	Statistical key		Tariff Item	Statistical Key
7213.10.90	01E		7214.99.90	01C
	09E			03K
7213.91.90	01J			05F
	05A			11L
	09D			13G
7213.99.90	01E			15C
	05H			21H
	09L		7227.90.00	19H
7214.20.90	01G		7228.30.00	19D
	05K		7228.50.00	19A
	09B		7228.60.00	19E

### Imports of Subject Goods

31. MBIE has identified imports entering under the tariff items and statistical keys identified above, adjusted to remove goods entering under tariff concessions<sup>4</sup>, apart from the building materials tariff concession that has been in place since July 2014. On this basis, Table 2.1 below shows imports in the years covering the period of investigation, based on Customs data adjusted to remove goods entering under tariff concessions.

32. With regard to official import statistics published by Statistics New Zealand, there has been a data-suppression order in place since February 2003 for tariff item and statistical keys 7214.20.90.01G and 7214.20.90.05K.<sup>5</sup>

<sup>4</sup> Tariff concessions are generally approved for goods where no suitable alternative goods are produced or manufactured locally in New Zealand.

<sup>5</sup> Section 37 of the Statistics Act 1975 makes provision for the international trade statistics, together with local authority statistics and business lists, to be subject to less restrictive confidentiality rules than most other statistics. Aggregated data that discloses individual trade transactions is suppressed only if the exporter or

33. Under an import volume monitoring arrangement between MBIE and the steel industry, MBIE provides summaries of imports of goods subject to data suppression. Information is provided on a monthly basis for, *inter alia*, imports of rebar under tariff items and statistical keys 7214.20.90.01G and 7214.20.90.05K, showing quantities and values (VFD and cost, insurance and freight) for imports from Australia, Singapore and Other,<sup>6</sup> but marked 'CONFIDENTIAL' where there are three or fewer importers, plus a source ranking of exporting countries by volume from largest to smallest. It appears that the bulk of the imports are under the tariff item covering the original subject goods entering under 7210.49.31.09. The data suppression is the reason for the confidential treatment accorded to some of the information in this and other tables showing imports.

**Table 2.1: Import volumes of rebar to New Zealand (tonnes)**  
**Customs data, adjusted\*<sup>7</sup>**  
***Non-confidential version - Indexed year-on-year changes, 2009 base 1000***

	2009	2010	2011	2012	2013	2014	2015	2016
Australia	1000	1066	944	1307	2463	1205	1271	1078
China	1000	26691	940	931	1250	1466	790	1401
Indonesia	1000	1284	943	716	521	6026	463	933
Japan	1000	812	1356	949	520	1198	853	457
Korea	1000	1375	883	1052	1279	885	1091	1518
Malaysia	1000	1216	1186	1064	890	1111	1184	1054
Singapore	1000	1371	934	912	1124	1374	1181	1247
Taiwan	1000	1637	2906	1005	1080	594	699	1995
Other	1000	1039	594	1238	1083	668	734	1320
Total	1000	1373	1069	1016	1100	1269	1055	1141

\* Adjusted as described in paragraph 31 above.

34. Imports from China represented 12% of total imports in 2016, which is not less than the import share of 4% identified in Article 27.10 of the Subsidies Agreement as the basis for terminating an investigation.

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importer requests suppression and an identification risk is confirmed. Suppression can be applied for up to 24 months (as is the case for the item here). For the 24-month option only, the importer/exporter will be contacted before the suppression is lifted to see if they want to continue with the suppression. In practice this may result in data being confidential for much longer than 24 months.

<sup>6</sup> The import monitoring programme was introduced in June 2002 to monitor steel imports so that any increases in imports that could seriously injure the industry could be detected early and the need for safeguard action considered. Under respective bilateral agreements, safeguard measures cannot be taken against imports from Australia and Singapore, hence the need to separate out such imports in the monitoring process.

<sup>7</sup> Information is confidential for the reasons explained in paragraphs 35 and 36. The non-confidential summary will be by way of indexation of the figures.

## 2.2 Like Goods and New Zealand Industry

35. Section 3A of the Act defines the term **industry** as:
- a. the New Zealand producers of like goods, or
  - b. such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.
36. Section 3(1) of the Act defines **like goods**, in relation to any goods, as:
- a. other goods that are like those goods in all respects, or
  - b. in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.

### 2.2.1 Like Goods

37. To establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, or have characteristics which closely resemble the subject goods.
38. The scope of the subject goods is defined in section 2.1 above.
39. Pacific Steel has confirmed that it is the only producer of rebar in New Zealand.
40. In its application Pacific Steel provided information on the rebar it produces.<sup>8</sup> The company produces a range of low and high tensile, standard and high ductile, plain carbon steel for the reinforcing of concrete. The finished product comes in the form of either plain or deformed bars or coils and includes product where the steel has been micro-alloyed with small vanadium additions for superior strength.
41. Pacific Steel produces rebar and coil in diameters ranging from 6 to 50mm in bar form and 6 to 16mm in coil form. Bar lengths range from 6 to 18 metres.
42. In its application Pacific Steel outlined the relevant standards, accreditation and ductility requirements for reinforcing steel for the New Zealand market. The relevant standard is the joint Australia/New Zealand Standard (AS/NZS) 4671, which specifies requirements for the chemical composition and the mechanical and geometrical properties of deformed reinforcing bars and coils used for the reinforcement of concrete. The Australia/New Zealand Standard specifies three levels of yield strength – 250 MPa<sup>9</sup>, 300 MPa, and 500 MPa. Three ductility classes are specified for rebar, and

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<sup>8</sup> More details of Pacific Steel's products can be found at <http://www.pacificsteel.co.nz/products/> accessed on 14 July 2017.

<sup>9</sup> MegaPascals – a unit of pressure used to quantify internal pressure, stress, Young's modulus (defines the relationship between stress and strain in a material) and ultimate tensile strength.

designated as L (low), N (normal) and E (earthquake). The N class ductility is used in the Australian market, and has a minimum 5% ductility, while E class (AS/NZS 4671 500E), with a minimum 10% ductility is the prevailing class in New Zealand, reflecting the differing levels of seismic activity.

43. The Australian Certification Authority for Reinforcing and Structural Steels (ACRS) administers an independent, expert-based product certification scheme. It certifies manufacturers and suppliers of rebar, pre-stressing and structural steels to Australian and New Zealand standards. Pacific Steel notes that it is possible for rebar to be imported into New Zealand from mills that do not have ACRS accreditation.
44. The application notes that the Chinese reinforcing standard GB1499 is not equivalent to AS/NZS 4671 500E, and provides a detailed analysis of the differences in an Appendix to its application. The application also noted that manufacturing to the Australia/New Zealand Standard can incur additional costs compared with manufacturing to the Chinese standard.
45. Pacific Steel considers that the rebar it produces has the same form, function and usage as the allegedly subsidised goods and is therefore “like goods” to the imported goods, as defined under Section 3(1) of the Act.

### **MBIE Consideration**

46. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE normally considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily determinative.

### ***Physical Characteristics***

47. Products made locally by Pacific Steel have the same physical characteristics as the allegedly subsidised goods from China.

### ***Production Methods***

48. Production methods for the locally produced steel coil and the allegedly subsidised goods from China are substantially similar.

### ***Function and Usage***

49. Both the locally produced and allegedly subsidised goods have comparable or identical end uses, with the reinforcement of concrete being the primary use.

### ***Pricing***

50. The allegedly subsidised goods have a similar pricing structure to Pacific Steel’s manufactured products. An illustration of this is that, in order to maintain market share (sales) in New Zealand, Pacific Steel claims that it is forced to meet prevailing import offers in respect to particular goods supplied to particular customers.

### **2.2.2 New Zealand Industry**

51. Pacific Steel has stated that it believes it is the only producer of rebar in New Zealand. MBIE is not aware of any other producer of rebar in New Zealand.
52. Section 10(3) of the Act outlines the minimum level of support required from the domestic industry for the application for an investigation. This requirement has been met as Pacific Steel is the only producer of rebar in New Zealand.

### 3. Interested Parties

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#### 3.1 Legal Requirements

53. Section 9 of the Act identifies the parties who are to be given notice for the purposes of the Act, including:

- The Government of the country of export
- Exporters and importers known by the Secretary to have an interest in the goods
- The applicant in relation to the goods

54. Article 12.9 of the Subsidies Agreement provides:

*For the purposes of this Agreement, "interested parties" shall include:*

- (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and*
- (ii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.*

*This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.*

55. Notice of initiation of the investigation was provided to the parties listed in section 9 of the Act.

#### 3.2 New Zealand Producer

56. Pacific Steel is the applicant, and is the sole New Zealand producer of rebar.

57. Information provided by Pacific Steel includes:

- the application which provided the basis for the Initiation Report
- information verified by MBIE during a visit to the company's premises on 21-22 September 2017

#### 3.3 Government of China

58. The Government of China is considered an "interested Member" under the Subsidies Agreement.

59. In accordance with the requirements of section 10(9) of the Act consultations with the GOC were offered, and on 1 June 2017 the GOC provided MBIE with written consultation points in lieu of a meeting or teleconference. The matters raised in the consultation points were taken into account in the decision to initiate.

60. A questionnaire was provided to the GOC seeking information of both a general nature and also more specifically relating to the identified subsidy programmes, and any assistance provided to Chinese manufacturers of rebar. The GOC provided general comments on programmes identified in the questionnaire, and provided copies of

relevant legislation, regulations and other measures. The GOC also provided more detailed information on programmes relating to the manufacturer, Hesteel Chengde, which had provided a response to the Manufacturer's Questionnaire.

### 3.4 Manufacturers

61. Chinese manufacturers supplying rebar to New Zealand via a range of intermediary exporters were identified from Customs data and questionnaire responses provided by intermediary exporters and importers. For the purposes of the investigation, a sample of the main suppliers to New Zealand was identified, making up 84 per cent of 2016 imports of rebar from China.
62. Four manufacturers were identified, as shown in Table 3.1 below. The companies are listed alphabetically.

**Table 3.1: Chinese manufacturers of rebar**

Manufacturing Company	Company Location	2016 import volume (tonnes)
Hebei Jingye Group (Hebei Jingye)	Nandian Town Pingshan County Shijiazhuang City Hebei Province	
Hesteel Co Ltd, Chengde Branch (Hesteel Chengde)	Shuangluan District Chengde City Hebei Province	
Jiangsu Yonggang Group Co Ltd (Jiangsu Yonggang)	Yonglian Industrial Park Nanfeng Town Zhangjiagang City Jiangsu Province	
Shandong Shiheng Special Steel Group Co Ltd (Shandong Shiheng)	Shiheng Village Feicheng Town Tai'an City Shandong Province	

63. Information was sought from all manufacturers, but only Hesteel Chengde responded to the Ministry's request for information.
64. In examining the existence and extent to which these manufacturers benefit from subsidy programmes, MBIE has taken into account the fact that they all operate within wider groups. The basis for the consideration of this factor is set out in Annex 1, Section D below.

#### Hebei Jingye

65. Hebei Jingye Group is a large corporation, which annually manufactures 3 million tons of iron, 3 million tons of steel and also operates in chemicals, electricity generation and entertainment. Hebei Jingye is located in Nandian Town, Pingshan County, Shijiazhuang City, Hebei Province.

66. Exports to New Zealand were undertaken through Shanghai Jingye International Trade Co Ltd, which is a member of the Hebei Jingye Group, to the New Zealand customer [REDACTED], and through [REDACTED] to the New Zealand customer [REDACTED].
67. Hebei Jingye is a privately-owned, integrated steel producer. Hebei Jingye is not categorised as a foreign invested enterprise (FIE), a small and medium sized enterprise (SME), or a High and New Technology Enterprise (HNTE).<sup>10</sup>
68. Hebei Jingye did not provide a response to the Manufacturer's Questionnaire, so consideration of subsidies available to this company relies on other sources of information.

### Hesteel Chengde

69. Hesteel Chengde is a subsidiary of Hesteel Co Ltd, which is a company listed on the Shenzhen Stock Exchange but with majority ownership by companies in the Hesteel Group. Hesteel Group Company Limited is a Chinese iron and steel manufacturing conglomerate, also known as Hesteel Group or its pinyin shortname Hegang. The company was also known as Hebei Iron and Steel Group Co., Ltd. or HBIS until 2016. Its owner is the Government of Hebei Province and the parent company is the State-owned Assets Supervision and Administration Commission (SASAC) of the Government of Hebei Province. Hesteel Chengde is located in the Shuangluan District, Chengde City, Hebei Province.
70. Exports to New Zealand were undertaken through Chengde Chengsteel Logistics Co Ltd, which is the export agency of Hesteel Chengde. The New Zealand customer was [REDACTED].
71. Hesteel Chengde is a state-owned, integrated steel producer that is not categorised as an HNTE or as an SME. Hesteel Chengde is not categorised as an FIE.
72. Based on the criteria outlined in Annex 1, Section D below, affiliated companies to Hesteel Chengde include Hesteel Group Co Ltd, Chengde Iron & Steel Group Co Ltd, Chengde Steel Logistics Co Ltd, Hesteel Co Ltd.
73. Hesteel Chengde provided a detailed response to the Manufacturer's Questionnaire.

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<sup>10</sup> Circular 32 "Administrative Measures for Recognition of HNTE (Guokefahuo [2016] No 32) amended the assessment standards for HNTE status relating to ownership of intellectual property, the proportion of R&D personnel in a company, and the R&D expense ratio, simplified the indicator requirements, and introduced a compliance record test. See article from *The National Law Review* at: <https://www.natlawreview.com/article/changes-to-china-s-high-and-new-technology-enterprise-hnte-regime-both-sharpen-its>

### Jiangsu Yonggang

74. Jiangsu Yonggang is a large-scale integrated iron and steel enterprise, which ranks No. 183 among China's Top 500 enterprises and No. 96 among Top 500 enterprises of China's manufacturing industry. The company produces, processes, and distributes steel products including steel wire rods and steel bars, and markets its products both in domestic China and international markets. Jiangsu Yonggang is located in Yonglian Industrial Park, Nanfeng Town, Zhangjiagang City, Jiangsu Province.
75. Exports to New Zealand were undertaken [REDACTED] steel trading company. The New Zealand customers were [REDACTED] and [REDACTED].
76. The Australian ADC, in Investigation 322 into steel reinforcing bar from China, confirmed that Jiangsu Yonggang was a privately-owned, integrated steel producer. Jiangsu Yonggang is not categorised as an HNTE or as an SME, but its categorisation or not as an FIE remains to be clarified.
77. Jiangsu Yonggang did not provide a response to the Manufacturer's Questionnaire, so consideration of subsidies available to this company relies on other sources of information.

### Shandong Shiheng

78. Shandong Shiheng Special Steel Group Co. Ltd is a large-scale privately-operated, special steel enterprise with annual gross production of 3.0 million tons, integrating coking, sintering, iron-making, steelmaking, rolling mill, power-generation, machinery manufacturing. Shandong Shiheng is located in Shiheng Town, Feicheng, Tai'an, Shandong Province.
79. Exports to New Zealand were undertaken through [REDACTED]. The New Zealand customer was [REDACTED].
80. The Australian ADC, in Investigation 322 into steel reinforcing bar from China, confirmed that Shandong Shiheng was a privately-owned, integrated steel producer. Shandong Shiheng is not categorised as an FIE or as an HNTE, but its categorisation or not as an FIE remains to be clarified.
81. Shandong Shiheng did not provide a response to the Manufacturer's Questionnaire, so consideration of subsidies available to this company relies on other sources of information.

## 3.5 Trading Intermediaries

82. Trading intermediaries (exporters) were identified from Customs data and from questionnaires sent to known importers and manufacturers.
83. Table 3.2 below shows five exporters, primarily trading companies acting as intermediaries between Chinese producers and New Zealand importers, who were

originally identified as exporting the subject goods from the sample manufacturers in FY2016. The companies are listed alphabetically.

**Table 3.2: Trading Intermediaries for rebar**

Exporting company	Company Location	2016 import volume (tonnes)
Chengdesteel Logistics Co., Ltd	Shuangluan District, Chengde City, Hebei Province	
Sunshine (China) Ltd	Zibo City, Shandong Province	
Shanghai Jingye International Trading Co Ltd	Zhabei District, Shanghai Municipality	
Sino Golden Sunshine (Group) Stock Company Limited	Hexi District, Tianjin Municipality	
Stemcor (S.E.A) Pte Ltd (Stemcor)	Singapore	

84. Information was sought from all of the trading intermediaries. Two – Chengde Steel Logistics Co Ltd and Shanghai Jingye International Trading Co Ltd – are related companies to Hesteel Chengde and Hebei Jingye respectively, and are covered by the questionnaires sent to those companies (Hebei Jingye did not respond to the questionnaire). Stemcor provided a detailed response to the Ministry’s request for information, but had no information relevant to the investigation of subsidisation. No responses were received from Sunshine (China) Limited or Sino Golden Sunshine (Group) Sock Company Limited.

### 3.6 Importers

85. New Zealand-based importers were identified from Customs data. Table 3.3 below shows the importers that MBIE has identified.

**Table 3.3: Importers of rebar**

Importing company	2016 import volume (tonnes)
Brilliance International Limited	
Euro Corporation Ltd	
NZ Steel Distributor Limited (Timber King Ltd)	
United Steel Limited	
Steel & Tube Holdings Ltd	

86. Information was sought from all of the importers, but responses were received only from Euro Corporation Ltd and United Steel Limited. Neither of these companies had information relevant to the investigation of subsidisation.

### **3.7 Other Interested Parties**

87. No other interested parties have come forward or have been identified.

## 4. Subsidisation Investigation

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### 4.1 Subsidisation

88. The Act defines 'subsidy', 'subsidised goods' and 'specific subsidy' in section 3, which reflect the definitions and descriptions set out in the Subsidies Agreement (emphasis added):

***subsidy** includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, programme, practice, or thing done, provided, or implemented by a foreign Government; but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback.*

***subsidised goods** means goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of which a specific subsidy has been or will be paid, granted, authorised, or otherwise provided, directly or indirectly, by a foreign Government.*

***specific subsidy** means a subsidy that is specific to an enterprise or industry, or a group of enterprises or industries, within the jurisdiction of a foreign Government.*

89. Under Article 1.1 of the Subsidies Agreement, a subsidy is deemed to exist if:

- There is a **financial contribution** by a **government or any public body**, including a direct transfer of funds (e.g. grants, loans, equity infusions), government revenue that is foregone or not collected (e.g. tax credits), and the provision or purchase by government of goods or services; and
- The financial contribution confers a **benefit**.

90. Under Article 1.2 of the Subsidies Agreement, subsidies meeting the requirements of Article 1.1 are countervailable under Part V of the Agreement only if they are **specific** in accordance with the provisions of Article 2, i.e. the subsidy is limited to an enterprise or industry or group of industries or enterprises, including geographical limitation, or if the subsidies are contingent on export performance or the use of domestic over imported goods.

91. As defined in section 7(1) of the Act, the **amount of the subsidy**, in relation to any subsidised goods, means the amount determined by the Secretary as being the benefit conferred on the recipient of the subsidy. Section 7(2) of the Act sets out limitations on the nature and calculation of the benefit, based on the provisions of Article 14 of the Subsidies Agreement, while section 7(3) sets out amounts that are not to be included in the amount of the subsidy, including any application fee or other fees, or costs necessarily incurred in order to qualify for or receive the benefit of the subsidy. Section

7(4) sets out the basis for determining adequate remuneration in terms of section 7(1)(d), reflecting the provisions of Article 14(d) of the Subsidies Agreement.

92. The definitions relating to “subsidy” in section 3 of the Act refer to a financial or commercial benefit provided by “a foreign Government”. MBIE treats this as including “Government” in both the narrow and collective sense described by the WTO Appellate Body<sup>11</sup>, and as provided for in the parentheses in Article 1.1(a)(1) of the Subsidies Agreement.
93. Section 7(5) of the Act provides that where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of this Act, the amount of the subsidy shall be such amount as is determined by the Secretary having regard to all available information that the Secretary considers to be reliable.

## 4.2 Basis for Investigation of Subsidisation

94. The information available to MBIE in investigating the subsidisation of rebar from China includes:
- Information contained in Pacific Steel’s application and subsequent submissions
  - Information obtained during MBIE’s verification visit to Pacific Steel
  - Responses by the GOC to the Government Questionnaire and Supplementary Questionnaire
  - Responses to importer/exporter/manufacturer questionnaires
  - Information arising from MBIE’s independent research into the matters raised.

### 4.2.1 Pacific Steel Application

95. In its application, Pacific Steel set out the sources of information it used in seeking to identify subsidies available to the subject goods. These sources included subsidy applications by industry and investigations undertaken by Australian and United States investigating authorities, and reports and commentaries on the Chinese steel industry.
96. The application listed subsidy programmes identified by the Australian, Canadian, European Union and United States authorities. For the purposes of estimating an amount of subsidy applicable to the subject goods, on the basis of reasonably available information, the application proposed that the level of countervailable subsidy could be reasonably estimated by looking at the average of the subsidy rates established in the various counterpart investigations applied to the average FOB export price for Chinese

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<sup>11</sup> WTO Appellate Body Report WT/DS379/AB/R, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, at p.111.

exports to New Zealand identified by Pacific Steel. The average so calculated was 52.05%.

97. Pacific Steel pointed to general commentary about the extent to which the Chinese steel industry is allegedly benefitting from various forms of subsidies to a material level. It quoted a number of published articles on the Chinese steel industry, including Reuters (UK), which claimed that subsidies accounted for significant and growing percentages of revenue in 2013-2014, and that government subsidies, largely from local governments, were channelled to the steel, cement and property sectors in the form of cash, tax rebates or support for loan repayments. News agency summaries of a 2007 report by Wiley Rein LLP, updated in 2010, were also cited, with the report documenting allegedly massive government subsidies covering preferential loans and directed credit, equity infusions and/or debt-to-equity swaps, land-use discounts, government-mandated mergers, and direct cash grants. The application stated that these articles outline the extent and impact of the subsidisation of the Chinese steel industry.
98. Pacific Steel believed that these commentaries showed that the expansion of the Chinese steel industry was the direct result of the GOC's direction and control of the industry, and its bestowal of an extraordinary range of subsidies to Chinese steel producers. According to Pacific Steel, this showed that the growth of China's steel industry was being both financed and directed by the GOC. Pacific Steel noted that eight of the ten largest Chinese steel groups are one hundred per cent owned or controlled by the GOC, while 19 of the top 20 groups are majority owned or controlled by the government.
99. In the Initiation Report, MBIE noted that reports and news articles will not by themselves normally provide sufficient evidence of the existence of subsidies, but need to be considered in the context of other sources of information, and with an understanding of the perspective of the authors of the reports.
100. Pacific Steel stated that it had been unable to identify the mills supplying New Zealand so was unable to conclude whether programmes relating to particular regions might be applicable. The claims that the programmes are specific subsidies were based primarily on the findings of US Department of Commerce (US DOC) and other investigating authorities, while the rates of alleged subsidy found were based on US DOC's calculations using a range of benchmarks. It appears from the information provided that to a large extent the US DOC findings were based on 'facts otherwise available' and 'adverse facts available' (AFA), and in particular on claims in applications and on findings from other US DOC investigations (including investigation involving products other than the subject goods).

#### **4.2.2 GOC Questionnaire Response**

101. The GOC lodged a response to the government questionnaire on 1 October 2017. The response provided general comments on programmes identified in the questionnaire, and provided copies of relevant legislation, regulations and other measures. The GOC

also provided more detailed information on programmes relating to the manufacturer, Hesteel Chengde, which had provided a response to the Manufacturer's Questionnaire.

#### **4.2.3 Exporter's/Manufacturer's/Importer's Questionnaire Responses**

102. Exporter's Questionnaires were sent to known exporters, but these companies were intermediaries, in two cases associates of the manufacturers. One exporter/intermediary, Stemcor, provided a questionnaire response.
103. MBIE sent Manufacturer's Questionnaires to each of the sample manufacturers identified in section 3.4 above. A detailed response was received from Hesteel Chengde. No other sample manufacturers provided questionnaire responses. While the failure to provide questionnaire responses may reflect the comparative insignificance of exports to New Zealand in the context of a manufacturer's total business, it does materially affect MBIE's ability to source information and to draw appropriate conclusions relating to the level of subsidisation that might be applicable. In such circumstances, MBIE must make a judgement on the reliability of the information before it, and use the best information that is available to it from all sources in order to reach a conclusion.
104. Importer's Questionnaires were sent to the importers of rebar from the sampled manufacturers. Responses were received from Euro Corporation Ltd and United Steel Limited.

#### **4.2.4 Other jurisdictions**

105. MBIE has undertaken further research into matters relating to the alleged subsidisation of Chinese production and exports of rebar to New Zealand, including the review of the investigations by other authorities referred to in the application, and the various general commentaries identified by the applicant.

##### ***Australian Investigations***

106. In 2015-2016 the Australian Anti-Dumping Commission (Australian ADC) undertook a subsidy investigation into *Steel Reinforcing Bar from China* (Investigation No. 322). Information from the public versions of the Statement of Essential Facts and the Final Report, together with verification reports, submissions and responses to questionnaires, have provided information that has been considered by MBIE in its considerations in the current case. Information from other Australian ADC investigations has been considered where appropriate and relevant. In that context, it is noted that the Australian investigation included Shandong Shiheng and Jiangsu Yonggang.
107. The outcome of the *Steel Reinforcing Bar* investigation was the determination of the following subsidy margins:

Exporter	Countervailable Subsidy Margin
Shandong Iron and Steel Company Limited, Laiwu Company	22.96%
Shandong Shiheng Special Steel Co Ltd	1.66%
Jiangsu Yonggang Group Co Ltd	0.26%
Hunan Valin Xiangtin Iron & Steel Co Ltd	25.17%
Uncooperative and All other Exporters	29.61%

108. The investigation was terminated for Shandong Shiheng and Jiangsu Yonggang because the total subsidy levels were *de minimis*.
109. There have been other Australian investigations involving steel products from China, and these have been taken into account where appropriate and relevant.<sup>12</sup>

### **Canadian Investigations**

110. The application referred to a number of Canadian investigations undertaken by the Canadian Border Services Agency (CBSA). In 2014 the CBSA undertook a subsidy investigation into *Concrete Reinforcing Bar from China*. Information from the public version of the Statement of Reasons for the final determination and other publicly available information has been used by MBIE in its considerations in the current case. Information from other CBSA investigations has been considered where appropriate and relevant.
111. The CBSA *Concrete Reinforcing Bar* investigation established a total amount of subsidy of RMB 13/tonne, equivalent to 0.4% of the export price, for the 5 programmes benefiting the cooperating exporter, Shandong Shiheng. The determination was based on best information available because the GOC did not provide sufficient information to indicate whether or not the programmes were specific. The amount of subsidy for all other exporters was RMB 469/tonne, or 14.7%, based on the subsidy levels established for the five programmes identified for cooperating exporter, plus the average of those five programmes applied to each of the remaining 176 potentially actionable subsidy programmes. Complete responses to the subsidy Request for Information were not received from the GOC and all known exporters so the CBSA did not have sufficient information to determine that any of the 176 programmes did not constitute actionable subsidies.
112. The outcome of the *Concrete Reinforcing Bar* investigation was the determination of the following subsidy margins:

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<sup>12</sup> Links to reports and documents relating to archived Australian cases can be found at <http://www.adcommission.gov.au/cases/Pages/Archived-Cases.aspx>.

Exporter	Amount of Subsidy as % of export price	Amount of Subsidy RMB/tonne
Shiheng Special Steel	0.40%	13
All Other Exporters	14.70%	469

113. In the other Canadian cases cited, the majority of the programmes identified by the applicant in each case were not investigated, but were assigned subsidy levels on a basis similar to that noted above.<sup>13</sup>

### **European Union Investigations**

114. The application referred to a European Union (EU) investigation undertaken by the European Commission (EC) into organic coated steel products. In 2012-2013 the EC undertook an investigation into *Organic Coated Steel from China*, and in 2016-2017 undertook an investigation into *Hot-Rolled Flat Products from China*. Information from the public versions of the Commission Implementing Regulations for these investigations has been used by MBIE in its considerations in the current case, where appropriate and relevant.
115. The *Organic Coated Steel* investigation did not include any of the manufacturers from the current case among the cooperating or investigated producers.
116. The cooperating producers in *Hot-Rolled Flat Products* included the Hesteel Group. The outcome of the investigation in that case was the determination of the following subsidy margins:

Exporter	Amount of Subsidy as % of export price
Benxi Group	28.50%
Hesteel Group	7.80%
Jiangsu Shagang Group	4.60%
Shougang Group	38.60%
Other cooperating companies	17.10%
All other companies	38.60%

117. In this case the EC investigated claims relating to 44 programmes, and found subsidies by one or more of the sampled exporters for 9 programmes (7 for the Hesteel Group).
118. Because the EC investigations involved different product areas than the rebar covered in the current investigation, and, with one exception, involved different Chinese

<sup>13</sup> Links to reports on Canadian cases can be found at <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html>.

manufacturers, the total subsidy levels, and the company-specific levels may not be strictly relevant. Common individual programmes are addressed in the analysis in Annex 2 below of each of the programmes, where appropriate and relevant.<sup>14</sup>

### **US DOC Investigations**

119. The application referred to a number of US DOC investigations involving steel and other products from China. Information from the public versions of the US DOC findings, including Federal Register notices and Decision Memoranda has been used by MBIE in its considerations in the current case, especially as they relate to common individual programmes, where appropriate and relevant.
120. A 2014 US DOC investigation into steel wire rod covered some of the goods, and ten of the programmes subject to the current investigation, and also covered Hebei Iron & Steel. Hebei Iron & Steel was included because it was cross-owned with two non-cooperating companies, with the levels of subsidy and CVD rates determined on the basis of AFA. The outcome was based on use of AFA because of the failure of the selected companies to cooperate with the US DOC. The subsidy levels so decided were as follows:

<b>Company</b>	<b>Subsidy rate</b>
Benxi Steel	193.31%
Hebei Iron & Steel	178.46%
All others	185.89%

121. In other US steel-related cases since 2006, covering steel sheet, strip, rod, wire and pipe, only one included an investigation of a manufacturer from the current case, when a branch of Hebei Iron & Steel (Tangshan Steel) was investigated in *Steel Wire Rod* in 2015.<sup>15</sup>
122. For the reasons outlined in Annex 1, Section A below, conclusions reached on the basis of AFA need to be treated with caution and may not be sufficiently reliable indicators of existence and level of subsidisation, particularly if other information available to MBIE provides a more reliable basis for reaching conclusions on these matters.

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<sup>14</sup> Links to reports on EC cases can be found at <http://trade.ec.europa.eu/tdi/completed.cfm>.

<sup>15</sup> Links to copies of Federal Register Notices and Issues and Decision Memoranda relating to investigations involving China can be found at <http://enforcement.trade.gov/frn/summary/prc/prc-fr.htm>.

#### 4.2.5 Other Information

##### ***Previous New Zealand Investigations***

123. MBIE has also taken account of the analysis and conclusions in its recent investigation into *Galvanised Steel Coil from China*, to the extent appropriate, since that investigation addressed programmes similar to those investigated in the current proceedings.

##### ***WTO Documentation and Dispute Settlement Reports***

124. WTO documentation includes notifications by Members of specific subsidy programmes which they operate, while reports of dispute settlement cases by panels and the Appellate Body provide a basis for analysing and assessing the treatment of programmes under domestic legislation and WTO rules.

##### ***Steel Industry Reports***

125. The application identified reports on the Chinese steel industry as providing evidence of the levels and forms of subsidisation available in China. MBIE has taken account of the material contained in reports, including the 2007 Wiley Rein Report identified by the applicant and more recent Wiley Rein reports,<sup>16</sup> and a report issued by the Steel Industry Coalition in June 2016 (the SIC Report).<sup>17</sup>

##### ***Other Information***

126. Other information obtained by MBIE includes copies of government laws, regulations and other instruments; academic articles on issues raised; relevant news reports and commentaries; financial reporting by companies and organisations investigated; and prices, interest rates and other reference material.

#### 4.2.6 Identified Programmes

127. In its application Pacific Steel listed 240 programmes that it had identified, based primarily on Australian, Canadian and US investigations, with some additional EU material. As a preliminary step for the preparation of questionnaires, and following receipt of responses to the Importers' and Exporters' Information Sheets which identified the location and form of company, MBIE preliminarily excluded from consideration programmes which could be categorised as follows:

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<sup>16</sup> For example, "Unsustainable: Government Intervention and Overcapacity in the Global Steel Industry" April 2016, Wiley Rein LLP, at [https://www.wileyrein.com/media/publication/204\\_Unsustainable-Government-Intervention-and-Overcapacity-in-the-Global-Steel-Industry-April-2016.pdf](https://www.wileyrein.com/media/publication/204_Unsustainable-Government-Intervention-and-Overcapacity-in-the-Global-Steel-Industry-April-2016.pdf) last accessed on 6 November 2017.

<sup>17</sup> "Report on Market Research into the People's Republic of China Steel Industry", prepared by the Steel Industry Coalition, 30 June 2016, at <https://www.steel.org/~media/Files/AISI/Reports/Steel-Industry-Coalition-Full-Final-Report-06302016> last accessed on 6 November 2017.

- Programmes for which there is no reliable evidence, i.e. programmes considered to be countervailable by other jurisdictions solely on the grounds that they have been listed by the applicant and for which no information has been established through investigation of Chinese manufacturers or the GOC (generally because they have not provided information) or obtained or confirmed from other sources, allowing the investigating authorities to rely on best information available, and to draw adverse inferences (adverse facts available - AFA).
- Programmes which have a year or period of application listed in the application which is 2012 or older, on the basis that in the absence of ongoing subsidies the levels of benefit attributable to such programmes are, in the absence of any information to the contrary, unlikely to be significant.
- Programmes which apply only to foreign-invested enterprises (FIEs), since MBIE's initial research indicated that none of the sampled manufacturers are classified as FIEs (to be confirmed).
- Programmes which apply to companies operating in geographic regions other than those of the sampled manufacturers.
- Programmes which duplicate other programmes identified for inclusion in questionnaires.

128. A number of the 240 programmes were covered by more than one of the exclusion criteria. The total remaining was 38. These programmes were included in the questionnaires sent to Chinese manufacturers and the GOC. Any changes to the list resulting from further information obtained by MBIE, such as clarification of the categorisation of the companies, will be addressed in the EFC Report.

129. On the basis outlined above, the alleged subsidy programmes under consideration are shown below.

**Table 4.1: Alleged Subsidy Programmes**

#	Programme
<b>A</b>	<b>Direct Transfer of Funds - Equity infusion</b>
1	Debt-to-Equity Swaps
2	Equity Infusions
3	Unpaid Dividends
<b>B</b>	<b>Direct Transfer of Funds - Grant</b>
4	Assistance for Optimizing the Structure of Import/Export of High- Tech Products
5	Assistance for Technology Innovation - R&D Project
6	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
7	Circular on Issuance of Management Methods for Foreign Trade Development Support Fund

8	Debt Forgiveness
9	Environmental protection grant
10	Export Assistance Grant
11	Export Brand Development Fund
12	Government Export Subsidy and Product Innovation Subsidy
13	Grant for elimination of out dated capacity
14	Grant - Patent Application Assistance
15	Grants Under Regulations for Export Product Research and Development Fund Management
16	Grants under the Science and Technology program of Hebei Province
17	Intellectual property licensing
18	International Market Fund for Small- and Medium-sized Export Companies [Matching Funds for International Market Development for SMEs]
19	Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees
20	Provincial Scientific Development Plan Fund
21	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
22	State key technology project fund
23	State Special Fund for Promoting Key Industries and Innovation Technologies
24	Technology to Improve Trade R&D Fund
<b>C</b>	<b>Direct Transfer of Funds - Loan</b>
25	Policy Lending to particular industries
26	Preferential Loans Characterized as a Lease Transaction
<b>D</b>	<b>Government provides goods or services or purchases goods</b>
27	Input Materials Provided by Government at Less than Adequate Remuneration
28	Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices
29	Utilities Provided by Government at Less than Adequate Remuneration
<b>E</b>	<b>Government Revenue Foregone - Concessions on income tax and other taxes</b>
30	Corporate Income Tax Reduction for New High Technology Enterprises
31	Income tax concessions for the enterprises engaged in the comprehensive resource utilization ('special raw materials')
32	Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose

33	Tax policies for the deduction of research and development expenses
34	Tax Preference Available to Companies that Operate at a Small Profit
35	Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin
36	Dividend tax exemption for certain transactions between qualified resident enterprises
<b>F</b>	<b>Government Revenue Foregone - Concessions on import tariffs and VAT payments</b>
37	Import tariff and VAT exemptions for FIE's and certain domestic enterprises using imported equipment in encouraged industries
38	VAT and Income Tax Exemption/ Reduction for Enterprises Adopting Debt-to-Equity Swaps

130. In its questionnaire response Hesteel Chengde identified a number of grant programmes that it had received, and provided some information on them.

<b>G</b>	<b>Grant programmes notified by Hesteel Chengde</b>
39-61	Reported grant programmes

#### 4.2.7 General Interpretation

131. There are a number of matters of general interpretation raised in this investigation which affect the determinations reached on particular programmes. These matters are addressed in Annex 1 to this Report, and include:

- Best Information Available
- Public Body
- Specificity
- Attribution of Subsidies

### 4.3 Subsidy Analysis

132. A detailed analysis of the subsidy programmes subject to investigation is contained in Annex 2 to this Report. This analysis considers the information available to MBIE and assesses the information available in terms of reliability, as a basis for determining whether any activity constitutes a countervailable subsidy provided to a sample manufacturer.

133. This section summarises the findings of the analysis in Annex 2.

#### **Direct transfer of funds – equity infusions**

134. MBIE has concluded that none of the programmes addressed under this heading provided countervailable subsidies to sample manufacturer.

**Direct transfer of funds – grants**

135. MBIE has concluded that there are countervailable subsidies benefiting the named sample manufacturers for the following programmes:

- #5 Assistance for Technology Innovation – R&D project: Shandong Shiheng - 0.08%
- #19 Reimbursement Grants on Export Credit Insurance Fees: Jiangsu Yonggang - 0.01%
- ##39-61 Hesteel Chengde Reported Grants: Hesteel Chengde - 0.04%

136. MBIE has concluded that no other programmes addressed under this heading provided countervailable subsidies to sample manufacturers.

**Direct transfer of funds – loans**

137. MBIE has concluded that no programmes addressed under this heading provided countervailable subsidies to sample manufacturers.

**Government provision of goods or services**

138. MBIE has concluded that no programmes addressed under this heading provided countervailable subsidies to sample manufacturers.

**Government revenue foregone – concessions on income tax and other taxes**

139. MBIE has concluded that there are countervailable subsidies benefiting the named sample manufacturers for the following programmes:

- #31 Income tax concessions for the enterprises engaged in the comprehensive resource utilization: Hesteel Chengde – 0.05%
- #33 Tax policies for deduction of research and development expenses: Hesteel Chengde – 0.08%; Shandong Shiheng – 0.08%

140. MBIE has concluded that no other programmes addressed under this heading provided countervailable subsidies to sample manufacturers.

**Government revenue foregone – concessions on import tariffs and VAT payments**

141. MBIE has concluded that no programmes addressed under this heading provided countervailable subsidies to sample manufacturers.

**4.4 Conclusions Relating to Subsidies**

142. Based on the analysis summarised above, the subsidy levels established for manufacturers of rebar exported to New Zealand are:

Sample Manufacturer	Total Subsidy Rate
Hebei Jingye	0.00%
Hesteel Chengde	0.17%
Jiangsu Yonggang	0.01%
Shandong Shiheng	0.16%
Weighted average	0.11%

143. MBIE concludes that the subsidies provisionally determined in the investigation are at *de minimis* levels.

## 4.5 Further Proceedings

144. Section 11 of the Act requires the Minister, at any time before making a final determination, to terminate an investigation where the Minister is satisfied that there is insufficient evidence of subsidisation to justify proceeding with the investigation; or there is insufficient evidence that material injury to a New Zealand industry is being caused or threatened; or in the case of subsidisation, that the imposition of countervailing duties in respect of the goods would be inconsistent with New Zealand's obligations as a party to the WTO Agreement.
145. Article 11.9 of the Subsidies Agreement requires that an investigation be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidisation or injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of subsidy is *de minimis*, or where the volume of subsidised imports, actual or potential, is negligible. In the case of developing countries, which includes China, the *de minimis* level of subsidy is 2 per cent of the value of the goods, calculated on a per unit basis. The volume of subsidised imports is negligible if it represents less than 4 per cent of total imports of the like product.
146. As noted in the analysis above, the provisional conclusion reached is based on information available up to 14 October 2017. Subsequent information obtained by MBIE or made available to it, including information provided in supplementary questionnaires, or submissions by interested parties, could provide a basis to modify this provisional conclusion during the remaining period of investigation. Accordingly, at this point, the conclusion is that while there are not sufficient grounds for the imposition of provisional measures, there are also no grounds for terminating the investigation.

## 5. Injury Investigation

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### 5.1 Basis for Considering Material Injury

148. The basis for considering material injury is set out in section 8(1) of the Act:

*8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the Secretary shall examine—*

- (a) The volume of imports of the dumped or subsidised goods; and*
- (b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and*
- (c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.*

149. MBIE interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly subsidised goods, their effect on prices, and the consequent impact on the industry. This is consistent with Article 15 of the Subsidies Agreement.

150. The Act goes on to set out a number of factors and indices which the Secretary shall have regard to, although noting that this is without limitation as to the matters the Secretary may consider. These factors and indices include:

- The extent to which there has been or is likely to be a significant increase in the volume of subsidised goods, either in absolute terms or relative to production or consumption;
- The extent to which the prices of subsidised goods represent significant price undercutting in relation to prices in New Zealand;
- The extent to which the effect of the subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
- The economic impact of the subsidised goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

151. In addition, the Secretary must have regard to factors other than subsidisation which may be injuring the industry, since in accordance with Article 15.5 of the Subsidies Agreement, it must be demonstrated that the subsidised imports are, through the effects of subsidies, causing material injury.

152. The demonstration of a causal relationship between the subsidised imports and the injury to the domestic industry must be based on an examination of all relevant evidence before the authorities, who must examine any known factors other than the subsidised imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidised imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-subsidised imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.
153. The Secretary is also required to have regard to the nature and extent of importations of subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.

## 5.2 Material Injury and Provisional Measures

154. Under the Act the imposition of provisional measures requires that:
- At least sixty days have passed from the initiation of the investigation
  - The Minister has reasonable cause to believe that the goods are subsidised
  - The Minister has reasonable cause to believe that by reason of the subsidisation the industry is suffering material injury
  - The Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.
155. In the light of the provisional conclusion that the level of subsidy is *de minimis* there is no basis for addressing the question of whether it is necessary to impose provisional measures to prevent subsidisation causing material injury during the remaining period of the investigation. Accordingly, at this point in the investigation, there is no reason to undertake an assessment of the extent to which subsidisation is causing material injury to the domestic industry<sup>18</sup>.
156. Any detailed assessment of material injury that may be required will be incorporated into the Essential Facts and Conclusions Report.

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<sup>18</sup> MBIE notes that in *Galvanised Steel Coil* an injury assessment was proceeded with, despite a similar *de minimis* level of subsidy being identified in the Provisional Measures Report for that investigation. MBIE has reflected on that approach, and now considers that, in the face of a provisional *de minimis* finding of subsidy, it is more appropriate not to proceed with a detailed injury assessment at this stage when no injury can be attributable to subsidisation.

## 6. Conclusions

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157. MBIE concludes that on the basis of the provisional findings on the level of subsidisation there is no basis for the imposition of provisional measures in order to prevent material injury being caused by subsidised imports during the remaining period of investigation.
158. Given this conclusion, MBIE will recommend to the Minister that he not determine that provisional measures should be imposed on rebar from China for the remaining period of the investigation.

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28 November 2017

## ANNEX 1: GENERAL INTERPRETATION

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This Annex summarises the approach taken by MBIE in relation to the use of the best information available, the interpretation of “public body”, the consideration of specificity, and the approach to the attribution of subsidies. The analysis updates the similar process outlined in *Galvanised Steel Coil*.

### A. Best Information Available

1. Section 7(5) of the Act provides “where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of the Act, the amount of the subsidy shall be such amount as is determined by the Secretary having regard to all available information that the Secretary considers to be reliable.”
2. The provisional conclusions reached by MBIE, as noted in this Report, are based on all available information that MBIE considers to be reliable. In accordance with Article 12.7 of the Subsidies Agreement, where any interested Member or interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, determinations relating to provisional measures may be made on the basis of the facts available. It should be noted that the Subsidies Agreement does not include an equivalent to Annex II of the Anti-Dumping Agreement which sets out provisions to be observed in applying the equivalent provision in that Agreement. The lack of such an Annex was a deliberate decision by the negotiators of the Subsidies Agreement.<sup>19,20</sup>
3. With regard to the information to be considered and the basis for its evaluation, the Appellate Body in *US – Carbon Steel India*<sup>21</sup> accepted the Panel view that the standard in Article 12.7 of the SCM Agreement requires that all substantiated facts on the record be taken into account, that “facts available” determinations have a factual foundation, and that “facts available” be generally limited to those facts that may reasonably replace the missing information. The Appellate Body added the requirement that the purpose of the process was to facilitate arriving at an accurate determination. The Appellate Body also

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<sup>19</sup> Based on recollection of New Zealand negotiator who was engaged in negotiations in 1994 to harmonise texts of Anti-Dumping and Subsidies Agreements.

<sup>20</sup> However, the Appellate Body in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436), WTO document WT/DS436/AB/R, noted “Thus, while Annex II to the Anti-Dumping Agreement does not form part of the SCM Agreement, it has been found by the Appellate Body to be relevant context for the interpretation of Article 12.7.”

<sup>21</sup> *United States – Countervailing Measures on Certain Hot-Rolled Steel Flat Products from India*, WT/DS436/AB/R.

noted, "...we would expect that a process of reasoning and evaluation in respect of the "facts available" on the record flows from the legal standard for Article 12.7, although the degree and nature of the reasoning and evaluation required will depend on the circumstances of a particular case. Where there are several "facts available" from which to choose, it would seem to follow naturally that the process of reasoning and evaluation would involve a degree of comparison."

4. In the Initiation Report, MBIE noted that care needed to be taken in assessing the use of information from investigations and findings of counterpart authorities. While MBIE considered this information provided a sufficient basis for initiating an investigation into the existence of subsidisation, it noted that many of the findings of counterpart authorities were based on use of AFA arising from the alleged failure of Chinese parties to provide information to the investigating authorities, or dissatisfaction with the information that was provided.
5. In considering the reliability of the information available to it, MBIE recognises the need for care in that non-cooperation from interested parties should not be rewarded or encouraged. MBIE notes that in *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436) the Panel and the Appellate Body found (for different reasons) that the US rules on the use of adverse inferences in the case of non-cooperation were not inconsistent 'as such' with the Subsidies Agreement, but the Panel found that in a significant number of instances the application of the rules was not consistent with the Subsidies Agreement. This suggests that there can be issues about the reliability of findings which use AFA in situations where it is claimed that parties are not cooperating.
6. MBIE notes that in other jurisdictions assumptions of countervailability have been applied because of lack of questionnaire responses acceptable to the investigating authority, without any resort or reference to supplementary sources of information outside of countervailing duty proceedings. It appears that it may have become a tactic of applicants in other jurisdictions to compile a list of programmes identified in other proceedings, or from other sources, with the expectation that some or all of the Chinese manufacturers will not cooperate so that AFA will be applied, and that the best information available will be that contained in the application. The outcome is that all programmes will be considered countervailable and levels of subsidy determined with little or no relationship to the facts of the matter. This includes assumptions that a manufacturer receives a geographically-based subsidy if there is no evidence provided by the GOC or the company that it does not operate in the area to which a programme applies, and even if alternative supplementary information could confirm non-applicability.
7. In a reasonably significant number of cases involving the USA, substantial levels of subsidy have been applied as adverse facts available (AFA) even where no investigated manufacturer has been found to have received benefits from the programme. The subsidy levels so determined are based on the highest possible rates according to a hierarchy of

criteria, leading, in some cases, to very high levels of duty that are clearly not related to any realistic assessment. A similar approach has been adopted in investigations by the Canadian authority.

8. The conclusion to be drawn is that findings by other jurisdictions on the basis of AFA are not a sufficiently reliable basis for concluding the existence of a subsidy programme without some degree of confirmation from supplementary sources. MBIE is aware of the need to ensure that just as non-cooperation should not be rewarded, equally the indiscriminate listing of alleged programmes by applicants should not be accepted on its own as a reliable basis for determining the existence of subsidies.
9. Accordingly, MBIE has based its assessments on information from a variety of sources, and its conclusions reflect a careful evaluation of the reliability that can be attached to them, as they relate to the circumstances of the case before it. In this context, MBIE notes that in its application, Pacific Steel was careful to ensure that the subsidy ranges for the programmes it listed were based on investigated manufacturers, and avoided using any rates based solely on the use for AFA for non-cooperating parties.
10. In the current investigation, and in relation to the sample manufacturers, MBIE has taken account of the findings in investigations in other jurisdictions for similar products in which the sample manufacturers have been investigated. In this context, the Australian investigation into *Steel Reinforcing Bar* involved Jiangsu Yonggang and Shandong Shiheng, the Canadian investigation into *Concrete Reinforcing Bar* involved Shandong Shiheng, and the EU investigation into *Hot-Rolled Flat Products* involved the Hesteel Group.

## **B. Public Body**

In the current investigation the issue of whether an entity is a “public body” arises in relation to the programmes dealing with the provision of loans and the Government provision of goods or services.

### **Summary**

11. Section 3 of the *Dumping and Countervailing Duties Act 1988* (the Act) defines ‘subsidy’ as including any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, programme, practice, or thing done, provided, or implemented by a foreign Government; but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback.
12. Section 7 of the Act defines the amount of the subsidy in terms that follow the definition in the WTO Subsidies Agreement, while section 14 of the Act provides that no countervailing

duty may be imposed if to do so would be inconsistent with New Zealand's obligations as a party to the WTO Agreement.

13. The Act does not include any reference to 'public body'.
14. Under Article 1.1 of the Subsidies Agreement, a subsidy exists if there is a financial contribution by a government or any public body ("a financial or other commercial benefit" by "a foreign Government" in the terms of section 3(1) of the Act).
15. A number of the programmes investigated in this proceeding relate to claims that there is a financial contribution by a government or any public body, where the entity providing the financial contribution may not be a part of the government in the narrow sense of being an agency of government at a national or sub-national level, but does have characteristics or functions that suggest that it is exercising governmental authority or functions.
16. It is clear from the WTO jurisprudence that any approach to developing a basis for determining whether or not an entity is a 'public body' for the purposes of a subsidy investigation must be carefully considered, bearing in mind the Appellate Body's view that an investigating authority must avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant. MBIE has undertaken an analysis of the WTO jurisprudence,<sup>22</sup> and concludes that the key elements to be investigated when determining whether or not an entity is a "public body" include:
  - The context, including the scope and content of government policies relating to the sector.
  - The entity's core characteristics and functions.
  - The governmental authority and functions involved.
  - The relationship between the entity and the government.
  - The nature of the entity's performance of the functions at issue.
17. The evidence to be assessed, bearing in mind that this is not an exhaustive list and will not necessarily be determinative on its own as to whether an entity is a public body, includes:
  - The statutory basis for the entity and whether there is an express delegation of authority or functions.

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<sup>22</sup> Mainly, WTO Appellate Body and Panel Reports for *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379); *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436); *United States — Countervailing Duty Measures on Certain Products from China* (DS437).

- The extent to which the entity is exercising authority or functions in a sustained and systematic practice.
  - Evidence that a government exercises meaningful control over an entity such that the entity possesses governmental authority and exercises such authority in the performance of the governmental functions involved.
  - The ownership of the entity, including the extent of government ownership.
  - Whether the entity has the power to regulate.
  - Whether the entity has the power to entrust or direct a private body to undertake the functions in Article 1.1(a) of the Subsidies Agreement.
  - Whether the government uses the entity's resources as its own.
  - The extent of government involvement in entity governance, including presence on the board of directors.
  - The extent of government control over activities.
  - The extent to which the entity operates in pursuit of governmental policies or interests.
18. The identification of an entity as a "government or any public body" does not, on its own, provide a basis for concluding that a subsidy exists. There must be a financial contribution in the form of one of the activities set out in Article 1.1(a)(1)(i)-(iv) of the Subsidies Agreement, which also confers a benefit to the recipient, and which is specific.
19. With regard to the context within which commercial activity is undertaken in China, it is useful to note the comments by the Appellate Body in DS379, that "no two governments are exactly alike, the precise contours and characteristics of a public body are bound to differ from entity to entity, State to State, and case to case".
20. China's Constitution<sup>23</sup> states that the People's Republic of China "is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants," and that the state organs "apply the principle of democratic centralism", while "The state ensures the consolidation and growth of the state economy." The Constitution is clear that the state is the controlling body. Since the 1970s, China has moved towards a more market-oriented mixed economy under one-party rule. The Third Plenum of the 18th Central Committee of the Communist Party of China in November 2013 made a key decision to assign the market a decisive role in allocating resources. Today, China can be characterized as having moved towards a market economy based on private property ownership, and is one of the leading examples of state capitalism. The state still

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<sup>23</sup> <http://en.people.cn/constitution/constitution.html> accessed on 1 November 2017.

dominates in strategic "pillar" sectors such as energy production and heavy industries, but private enterprise has expanded enormously.

21. In this context, it is not surprising that many manufacturing enterprises in the steel sector and financial institutions in the economy as a whole are owned partly or fully by the State, and that they operate within an environment of broad government policies and plans for the development of the sector. However, as the WTO Appellate Body has recognised, ownership on its own is not sufficient to bring such entities into the ambit of Article 1.1(a)(1) of the Subsidies Agreement, and there needs to be an examination of the extent to which the entity is, in fact, exercising governmental authority or functions in a sustained and systematic practice. MBIE also notes the view of the Australian Anti-Dumping Review Panel (ADRP) that active compliance with governmental policies and regulations does not equate to the exercise of governmental functions or authority, and acting in accordance with a government policy and carrying out government functions should not be conflated.
22. With regard to the core characteristics and functions of the entity being examined, the purpose of the entity and the activities it carries out need to be examined, including its legal status and the role it fulfils in the legal and economic environment of China. This is particularly relevant to determining whether an entity is complying with government policies and direction or whether it is undertaking governmental functions. This also requires an examination of the government functions involved and the extent to which the entity is exercising governmental authority or functions. This examination will include the relationship between the entity and the government, and the nature of the entity's performance of the functions at issue.
23. The examination of any financial contribution by a government or any public body also needs to consider whether the contribution involves the government making payments to a funding mechanism, or entrusting or directing a private body to carry out one or more of the type of functions set out in Article 1.1(a)(1)(i)-(iii) of the Subsidies Agreement, which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.
24. In the investigation into *Galvanised Steel Coil*, MBIE concluded that PBOC and the policy banks were public bodies since they were established and operate as development finance institutions. These banks include the Agricultural Development Bank, the Export-Import Bank of China (EXIM), and the China Development Bank. MBIE also concluded that State-owned commercial banks (SOCBs) were not public bodies, because while they were wholly or partly owned by the State, their activities follow government policies and directives relating to commercial banking rather than development policies, and there was no positive confirmation that SOCBs are exercising governmental authority or functions, or were subject to meaningful control by the GOC, rather than acting in accordance with government policy.
25. In considering the particular programmes in Annex 2 below, MBIE has addressed of the key elements and evidence described above as they relate to the bodies identified as providing

financial contributions. In doing so, it has taken into account the findings in other jurisdictions and the views of WTO dispute bodies, and the information available to it.

### **Other Jurisdictions**

26. The following reviews the positions taken by other jurisdictions in considering the issue of whether State-owned or State-invested entities in China should be regarded as public bodies for the purposes of Article 1.1(a)(1) of the Subsidies Agreement. MBIE notes that the approaches taken reflect interpretations of the findings of the WTO Appellate Body in dispute proceedings, in particular with regard to what constitutes “meaningful control” by a government over a State-owned enterprise (SOE). MBIE is satisfied that its approach of assessing the elements and evidence identified above provides a sound basis for a reasonable and objective investigating authority to reach a conclusion on the issue.

### **Australia**

27. The Australian ADC’s *Dumping and Subsidy Manual* (November 2015) includes a section on Public Body. It notes that the term ‘public body’ is not defined in the Act and the Commission has regard to the dictionary definition which refers to an institution or organisation acting on behalf of the community. The determination of whether an entity or company is a ‘public body’ will not focus on any one factor. Rather, there will be a careful evaluation of all available evidence of the entity’s features and of its relationship with government including:
- The objectives and functions performed by the body – whether the entity in question is pursuing public policy objectives. In this regard factors which are relevant include:
    - Any instrument or record evincing the grant or delegation of authority;
    - The degree of separation of the entity from a government including the appointment of directors; or
    - The contribution that an entity makes to the pursuit of government policies or interests; and
    - The body’s ownership and management structures.
28. The Manual notes that this reflects the approach in the WTO Appellate Body in DS379. which referred to three indicia a ‘public body’ may possess, exercise or be vested with government authority, where:
- a statute or other legal instrument expressly vests government authority in the entity concerned;
  - evidence exists that an entity is, in fact, exercising governmental functions, which may serve as evidence that it possesses or has been vested with governmental authority; and
  - evidence exists that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity

possesses governmental authority and exercises such authority in the performance of governmental functions.

29. The Australian ADC treats these indicia as illustrations of circumstances which would point to an entity being a public body. Different types of evidence can be relevant depending on the circumstances when addressing the issues set out in first paragraph above under 'Public Body'. Concerning the first factor, the Australian ADC does not read the word "authority" in the narrow sense as meaning a public body has to be an agent of the government.
30. In its Statement of Essential Facts REP 193 of 15 May 2013 into subsidisation of zinc coated (galvanised) steel and aluminium zinc coated steel from China, the Australian authorities considered whether State-invested enterprises (SIEs) qualified as 'public bodies'. This analysis covered SOCBs as well as State-owned providers of inputs. It was noted that in REP 177 (investigating hollow structural sections) it had been concluded that SIEs producing hot-rolled coil and/or narrow strip constitute a public body, after taking into account the recent findings of the WTO Appellate Body in *US — Anti-Dumping and Countervailing Duties (China)*, and the reinvestigation required in that case following a Trade Measures Review Officer (TMRO) recommendation. The reinvestigation, set out in REP 203 concluded that the SIEs producing and supplying hot-rolled coil and/or narrow strip should be considered to be 'public bodies'. The reinvestigation considered that the SIEs were exercising government functions and that there was evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs were controlling third parties.
31. The ADRP<sup>24</sup> considered the findings in Australian ADC Report 193 including, inter alia, the existence of alleged subsidy programmes relating to findings that state-invested enterprises (SIEs) were "public bodies". In her report of 15 November 2013, the Anti-Dumping Review Panel Member reviewed the WTO Appellate Body findings in the light of an Australian legal decision in the *Panasia* case,<sup>25</sup> and the TMRO review,<sup>26</sup> including the indicia developed by the Australian authorities.
32. The ADRP noted that the conclusion reached by the Australian authorities in their reinvestigation in REP 203 appeared to conflate the purpose of acting in accordance with a government policy and carrying out government functions, and did not address whether

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<sup>24</sup> <http://www.adreviewpanel.gov.au/PastReviews/Documents/ADRPReviewReportMOFCOM-November2013AmendedFINAL.pdf> last accessed on 1 November 2017.

<sup>25</sup> *Panasia Aluminium (China) Ltd v Attorney-General of the Commonwealth* [2013] FCA 870.

<sup>26</sup> TMRO, Report 177, see <http://www.adcommission.gov.au/cases/Documents/TMRO-HollowStructuralSections-Decision14Dec12.pdf> last accessed on 3 November 2017.

the entity had to be exercising government functions as evidence that it possessed or was vested with government authority. Compliance with government policy does not, according to the ADRP, of itself evidence that an entity possesses, exercises or is vested with government authority, which is the overriding test established by the WTO Appellate Body. The ADRP noted that SASAC had certain obligations with respect to the State economy, but there was no evidence that SASAC had delegated its authority to SIEs to control participants in the iron and steel industry, and the ADRP was unable to agree with the conclusion that indicia two was established with respect to the hot-rolled coil producing SIEs.

33. With regard to the third indicia, the ADRP noted that the evidence relied on by the Australian authorities did demonstrate that the GOC regulated the iron and steel industry and that there was a degree of control by the GOC over participants in the industry, but the material did not show that such control amounted to meaningful control in the sense intended by the Appellate Body, and did not show that SIEs in the iron and steel industry were exercising government authority.
34. The overall conclusion of the ADRP was that the decision of the Attorney-General with respect to countervailing duties on exports of coated steel from China was not the correct or preferable decision and should be revoked.
35. In INV 322, the Australian ADC summarised the observations of the ADRP as follows:
  - Active compliance with governmental policies and/or regulations does not equate to the exercise of governmental functions or authority.
  - In concluding that certain companies were actively implementing objectives in the five-year plans the Australian ADC conflated the purpose of acting in accordance with a government policy and carrying out government functions.
  - The Chinese regulations setting out the functions and obligations of the State-Owned Assets and Supervision Committee (SASAC), which in Article 14 vests SASAC with certain obligations in respect of the economy, is a reference to SASAC and not to SIES, and does not provide evidence of how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry.
  - Having an impact on other participants in the industry is not indirectly controlling them and not evidence of the exercise of governmental authority.
  - There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.
36. As outlined in the Essential Facts and Termination Reports for *Steel Reinforcing Bar* (INV322), the basis for the Australian ADC finding in that case was its assessment of the indicia for determining whether an entity is a public body that it has derived from DS379. The Australian ADC noted the observations of the ADRP in relation to INV193 in overturning the Australian ADP's findings in that case, but considered that the ADRP had been to a large extent premised on the view of the TMRO in the INV177 investigation that

there needed to be an essential element of exercising the power of government over third persons, and had not taken account of the Appellate Body's findings in DS436 and DS437 which suggested that governmental functions were not limited to control over third parties. With regard to DS436 the Australian ADP suggested that the Dispute Settlement Body (DSB) had made statements indicating that government shareholding plus involvement in the appointment of directors, including the appointment of serving government officials, was extremely relevant in assessing whether there was meaningful control by the government.<sup>27</sup> The Australian ADB went on to set out functions and obligations of the SASAC, and noted that the GOC had not responded to questions about suppliers of raw materials and the extent and nature of government representation on their boards of directors. The conclusions reached were that providers of inputs that were SIEs were public bodies, while the Australian ADC also concluded on the basis of information gathered in the course of the investigation that both SOCBs and privately-owned banks were controlled by the GOC and exercising government authority in a manner that their actions can be attributed to the GOC.

### Canada

37. In earlier investigations (e.g. *Welded Pipe* [2008]) the CBSA considered goods supplied by SOEs as constituting a financial contribution, and an SOE as any corporation that is acting for, on behalf of, or under the authority of the government, which includes any corporation which is effectively controlled by the GOC through laws, regulations, orders, directives, or through any other similar mechanism or, alternatively, whose shares are majority or wholly owned by the GOC.
38. In the report of the 2014 investigation into *Concrete Reinforcing Bar* it was noted that "An SOE may be considered to constitute "government" for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government a function; 3) the SOE is meaningfully controlled by the government; or some combination thereof."

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<sup>27</sup> In fact, the quotes come from the Panel report and relate to findings which the Appellate Body expressly reversed as being in error and not providing evidence of "meaningful control". In particular, the Appellate Body considered that the Panel appeared to have blurred the distinction drawn by the Appellate Body in DS379 between the existence of control by a government over an entity, and "meaningful control" on the other hand. Given that the Appellate Body Report was circulated on 8 December 2014, and the Essential Facts report for *Steel Reinforcing Bar* was dated 5 August 2016, it is difficult to understand the conclusions drawn by the Australian ADB.

39. This approach essentially reflects the approach developed in DS379, and the indicia used by the Australian ADC, but did not take account of the subsequent elaboration of what may or may not represent “meaningful control” in the view of the WTO Appellate Body.
40. In the 2016 *Line Pipe* investigation the factors from *Concrete Reinforcing Bar* were considered, and took account of the GOC’s control and influence over the primary steel industry, the requirement under Article 36 of the Law on the State-owned Assets of Enterprises which requires SIEs to comply with all national industrial policies<sup>28</sup>, and under which the GOC controls eligibility for a director or supervisor within SIEs and the criteria against which SIE management is evaluated. The CBSA considered that on this basis there was sufficient evidence that the GOC exercises meaningful control over state-owned steel suppliers and producers, and therefore SOE suppliers of raw materials are “government” as they possess, exercise or are vested with government authority.

#### European Union

41. In *Hot-Rolled Flat Products* [2017] the EC addressed the question of “public body” in relation to preferential loans from State-owned banks, but did not need to deal with suppliers of inputs because it assessed that the government had not provided input materials for less than adequate remuneration because the producers investigated had received their raw materials at market prices.
42. The EC did undertake a detailed analysis of the position of banks by looking at the ownership and formal indicia of control by the GOC, and the evidence showing that the Government exercised meaningful control over the conduct of those institutions.
43. With regard to the formal indicia of control, the EC outlined the applicable test that it had derived from DS379, DS436 and DS437. This test was stated as:

*What matters is whether an entity is vested with authority to exercise government functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our*

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<sup>28</sup> The CBSA’s characterisation of this law does not reflect the full text. Article 36 of the Law of the PRC on the State-Owned Assets of Enterprises provides, “A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions, and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.”

*view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.*

44. The EC looked at five cooperating State-owned banks, including EXIM which MBIE has previously determined to be a public body, and four SOCBs. The EC reviewed the level of GOC ownership and its role in appointing members of the Boards of Directors and Boards of Supervisors, and the roles and responsibilities of Directors. The EC considered that together these indicated the institutional control of the State on the business of each bank.
45. With regard to the exercise of meaningful control with respect to lending policies and assessment of risk where loans were provided to the steel industry, the EC reviewed a number of regulatory documents. These included the Law on Commercial Banks, the PBOC's General Rules on Loans, the 12<sup>th</sup> and 13<sup>th</sup> Five Year Steel Plans, Decision 40 ("Temporary Provisions on Promoting Industrial Structure Adjustment"), and a number of other documents which it considered to be relevant to the provision of support to the steel industry (the discussion in Section C below on "Specificity and the steel industry in China" addresses the application of these documents).
46. The EC noted that Article 34 of the Bank Law, which applies to all financial institutions operating in China, requires that commercial banks 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. The GOC suggested that this article should not be read in isolation, and referred to Articles 4, 5 and 7 relating to banks' autonomy. However, the EC considered that those provisions were applied subject to Article 34, which is in the Chapter covering basic rules for loans and other business operations, whereas the Articles referred to by the GOC came under general provisions. The existence of the general rules did not prevent commercial banks from taking government industrial policy into account. [MBIE notes that the rules for loans also address banks' responsibilities in considering and processing loans, including the management of risk, and provide that loan interest rates shall be determined in accordance with the upper

- and lower limits of interest rates prescribed by the PBOC (these limits have since been abolished).]
47. The EC considered that the industrial policy of the State was established through central planning, as outlined in the Five Year Plans and other documents, and referred to Chapter 5 of the 13th Five Year Plan which issued guidance to financial institutions and private capital to support the priority tasks of the Plan, and required banks to keep the demand for credit reasonable as regards enterprises having a market and being profitable. It was noted that Decision 40 instructed all financial institutions to provide credit support to 'encouraged' projects, and the EC considered that projects of the steel industry belonged to the 'encouraged' category (the discussion in Section C below is relevant: MBIE has reviewed Decision 40 and has concluded that the steel industry as such is not 'encouraged').
  48. The EC considered that financial institutions in China are operating in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives when taking financial decisions, and that the steel industry was regarded as a key/strategic industry, whose development was actively pursued by the GOC as a policy objective. On the basis of its analysis the EC concluded that the GOC had created a normative framework that had been adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. The GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the five state-owned banks whenever those banks were providing loans to the steel industry.
  49. The EC noted that the five banks refused to provide information on concrete examples of credit risk assessments for the sampled companies, citing regulatory and contractual reasons. In the absence of concrete evidence of creditworthiness, the EC examined the overall legal environment, and concluded that the banks were not acting like financial institutions would normally do based on a thorough market-based risk assessment. This conclusion was based on the EC's finding that interest rates to all the sampled exporters were close to the PBOC's benchmark interest rates regardless of the companies' financial and credit risk situation, and were therefore provided at below market rates when compared to the rate corresponding to the risk profile of the companies. Additionally, all of the sampled companies had received revolving loans, which allowed them to immediately replace the capital repaid on loans at the maturity by fresh capital from new loans.
  50. The EC then went on to use the best facts available to it to determine whether other State-owned banks qualified as public bodies, and having reviewed the ownership structure of a further 30 banks and concluded that these banks were also public bodies since they were also operating within the normative framework established by the GOC. The EC also concluded that, in the absence of divergent information from them, privately-owned banks were entrusted or directed by the government in terms of Article 1.1(a)(2) of the SCM Agreement.

## USA

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51. The US DOC *Antidumping and Countervailing Duty Handbook* sets out the definition of a subsidy as occurring when an “authority” (i.e., “a government of a country or any public entity within the territory of the country”), provides a financial contribution, provides any form of income or price support within the meaning of Article XVI of GATT 1994, or makes payments of the kind set out in Article 1.1(a)(1)(iv) of the Subsidies Agreement. US practice was to find that an entity was an authority if it was owned by the government. The US has in the past examined five factors: government ownership; government presence on the board of directors; government control over activities; pursuit of government policies or interests; and whether the entity was created by statute.
52. In DS379, the US argued that “public body” includes entities owned by the government, but not necessarily exercising functions of a governmental character. The US considered that majority government ownership could demonstrate control, in that government ownership gives the government the ability to appoint managers and directors and thereby to oversee operations. It was noted that in the investigations under review, the USDOC applied a rule of majority ownership to determine whether an entity was a public body, and found that if the government was the majority owner, then that producer was a public body. The Appellate Body in this case did not share the US view and stated clearly that a public body must be an entity that possesses, exercises or is vested with governmental authority, but investigating authorities need to conduct a proper evaluation of the core features of the entity concerned and its relationship with government in the narrow sense. The Appellate Body noted that the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority.
53. In DS379, the Appellate Body found that with regard to SOEs providing inputs, information about ownership was insufficient, since it was not, on its own, evidence of meaningful control of an entity by government. With regard to SOCBs, the Appellate Body noted that the US DOC had gone beyond reliance on ownership and control and had considered other factors, including relevant provisions of applicable laws, statements by the banks, and other evidence, and was satisfied that the US DOC determination was supported by evidence on the record. Note that this does not mean that Chinese SOCBs should always be treated as public bodies, but rather that the 2007-2008 determinations were based on an examination of a range of factors, not simply ownership. MBIE followed a similar approach earlier in 2017 in *Galvanised Steel Coil* when it concluded that policy banks were public bodies but SOCB’s were not.
54. In DS436 and DS437 the US position, as put to the Panels in those cases, was that the term “public body” in Article 1.1(a)(1) means an entity that is controlled by the government such that the government can use that entity's resources as its own, irrespective of whether the entity also possesses governmental authority or exercises this authority in the performance of governmental functions. In DS436, the Appellate Body recalled that in DS379 the

Appellate Body had emphasised that a public body "must be an entity that possesses, exercises or is vested with governmental authority." It went on to note, however, that:

*... a government's exercise of "meaningful control" over an entity and its conduct, including control such that the government can use the entity's resources as its own, may certainly be relevant evidence for purposes of determining whether a particular entity constitutes a public body. Similarly, government ownership of an entity, while not a decisive criterion, may serve, in conjunction with other elements, as evidence. Significantly, however, in its consideration of evidence, an investigating authority must "avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant."*

55. In more recent investigations, such as *Corrosion-Resistant Steel* in 2014, the US DOC noted that the GOC had failed to respond adequately to questions regarding companies classified as privately-held, and had provided no information on the identification of owners, directors or senior managers who may also be GOC or Chinese Communist party officials. Such information was necessary for the US DOC to determine whether these producers were authorities. In the absence of the requested information the US DOC determined that the companies were authorities on the basis of AFA.

### **C. Specificity**

56. Section 3(1) of the Act defines a specific subsidy as a subsidy that is specific to an enterprise or industry, or group of enterprises or industries, within the jurisdiction of a foreign Government. The Subsidies Agreement provides context for the interpretation of "specific".
57. Article 1.2 of the Subsidies Agreement provides that a subsidy, as defined in Article 1.1, shall be subject to the provisions of Part V of the Agreement (i.e. the provisions relating to Countervailing Measures), if such a subsidy is specific in accordance with the provisions of Article 2 of the Agreement.
58. Article 2 of the Subsidies Agreement covers the following:
- Article 2.1 sets out principles to be applied in determining whether or not a subsidy is specific to an enterprise or industry, or group of enterprises or industries (referred to as "certain enterprises"), and covers explicit limitation of access by the granting authority or in legislation (specific), the use of objective criteria or conditions for eligibility (not specific), and *de facto* specificity. Objective criteria and conditions are defined in footnote 2 to Article 2.1(b) as "criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise."
  - Article 2.2 provides that a subsidy limited to certain enterprises within a designated geographical region within the jurisdiction of the granting authority shall be specific,

although the setting or change of generally applicable tax rates by all levels of government shall not be deemed a subsidy.

- Article 2.3 provides that any subsidy falling under the provisions of Article 3 shall be deemed to be specific. This covers prohibited subsidies including subsidies contingent on export performance or import replacement.
- Article 2.4 requires that any determination of specificity shall be clearly substantiated on the basis of positive evidence.

59. In the current case, the main specificity issue arises in relation to the question of the breadth of the industry or industries to be caught by “certain enterprises”, and the extent to which assistance to rebar producers or to the steel industry is specific.
60. In DS379, the WTO Appellate Body noted that in *US — Upland Cotton*<sup>29</sup> the panel considered that an “industry” or “group of industries”, for the purposes of the chapeau of Article 2, may generally be understood in terms of producers of particular types of product, although the breadth of this concept of “industry” may depend on several factors in a given context. Hence, the specificity of a subsidy can only be assessed on a case-by-case basis.
61. The Appellate Body, in DS379, saw merit in the view that the concept of “specificity” in Article 2 of the SCM Agreement serves to acknowledge that some subsidies are broadly available and widely used throughout an economy and are therefore not subject to the Agreement’s subsidy disciplines. The Appellate Body analysed the words used in Article 2, which suggested that the term “certain enterprises” refers to a single enterprise or industry or a class of enterprises or industries that are known and particularised, but agreed that the concept of specificity involved a certain amount of indeterminacy at the edges, and that any determination of whether a number of enterprises or industries constitute “certain enterprises” can only be made on a case-by-case basis.

### ***Specificity and the steel industry in China***

62. In the current case, the issue arises in relation to the basis for provision of financial assistance in a number of areas, and in particular the extent to which any assistance provided to the steel industry is specific to that industry and the enterprises operating within it, and the extent to which any such assistance can be considered to be specific to the rebar industry.
63. As noted in investigations undertaken in other jurisdictions, there are a number of legal instruments issued by the GOC which identify actions to be taken and areas of the

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<sup>29</sup> WTO document WT/DS267/R.

economy to be supported by the State. These include the 12th and 13th Five-year Plans, covering 2011-2015<sup>30</sup> and 2016-2020<sup>31</sup> respectively, and the “Temporary Provisions on Promoting Industrial Structure Adjustment” (Decision 40)<sup>32</sup> and the “Guidance Catalogue for Industrial Structure Adjustment” (Guidance Catalogue)<sup>33</sup> established therein. The “Policies for the Development of Iron and Steel Industry” (the Steel Plan)<sup>34</sup>, was issued by the National Development and Reform Commission (NDRC) in 2005, and identifies the iron and steel industry as an important basic industry and sets out policies for its development in accordance with the relevant laws and regulations. In addition, various provincial and local governments have implemented national plans and policies at their respective levels.

64. In the 12th Five-Year Plan, specific references to steel are to relocation, mergers and reorganisation, and the inclusion of some specific steel activities in “key fields of development of manufacturing.” Otherwise, the Plan makes general references to objectives, such as activities aimed at improving and promoting manufacturing (Chapter 9). References to “encouraged” industries related to the modification of the industrial guidance catalogue in the context of regional policies. The 13th Five-year Plan included specific references to steel only in relation to the need to address over-capacity, environmental objectives and international cooperation. There was no reference to “encouraged” industries.
65. In December 2005, the NDRC announced<sup>35</sup> major measures to promote the adjustment of industrial structure, including Decision 40, and the issuance of the Guidance Catalogue. As noted by the NDRC:

*The Interim Regulation identifies the targets, principles, direction and priorities of the adjustment of industrial structure at present and for a future period, and it also provides the categorizing principle of the Guiding Catalogue, i.e. industries are categorized into three types: the encouraged, restricted and those to be eliminated. The Interim Regulation also specifies the supplementary policy measures to be provided by the Guiding Catalogue. The Guiding Catalogue is a*

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<sup>30</sup> [http://cbi.typepad.com/china\\_direct/2011/05/chinas-twelfth-five-new-plan-the-full-english-version.html](http://cbi.typepad.com/china_direct/2011/05/chinas-twelfth-five-new-plan-the-full-english-version.html) last accessed on 6 November 2017.

<sup>31</sup> <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf> last accessed on 6 November 2017.

<sup>32</sup> <http://www.asianlii.org/cn/legis/cen/laws/tpopisa783/> last accessed on 6 November 2017.

<sup>33</sup> Latest version, 2013 Amendment to the 2011 version, provided as Exhibit 2 to the GOC response to the Supplementary Questionnaire in *Galvanised Steel Coil*.

<sup>34</sup> <http://www.asianlii.org/cn/legis/cen/laws/pfdoiasi501/> last accessed on 6 November 2017.

<sup>35</sup> [http://en.ndrc.gov.cn/newsrelease/200512/t20051222\\_54289.html](http://en.ndrc.gov.cn/newsrelease/200512/t20051222_54289.html) last accessed on 6 November 2017.

*document supplementary to the Interim Regulation, covering more than 20 industries that include agriculture, water conservancy, coal, power, transportation, information industry, iron and steel, nonferrous metals, petrochemical industry, building materials, machinery, light and textile industries, service industry, environmental and ecological protection, conservation and comprehensive use of resources, and etc.*

66. The announcement goes on to state, “Regarding investment projects falling into the encouraged category, they are subject to examination and approval, authorization or filing procedures according to relevant investment regulations of the state. Financial institutions shall grant loans to support these projects in line with credit granting principles, and these projects should also be supported by preferential taxation policies.” The restricted category covered activities which were outdated or did not improve the industrial structure.
67. Article 12 of Decision 40 states that the Guidance Catalogue “is the important basis for guiding investment directions, and for the government to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export etc.” Articles 14-16 set out the principles to be applied in determining the inclusion of industries in the “encouraged”, “restricted” and “elimination” categories.
68. Article 17 of Decision 40 provides, for “encouraged” projects, that all financial institutions shall provide credit supports in compliance with credit principles, and for the exemption from tariff and VAT payments of imports of equipment for self-use in such projects. In the case of other preferential policies on encouraged industry projects the relevant provisions of the state shall be applied.
69. Article 18 of Decision 40 provides that new investment projects under the “restricted” category shall be prohibited, with no approvals given for them, no loans, and no relevant procedures handled by administrative departments, such as land administration and a range of other processes. Existing production capacities within the restricted category may take measures within a certain period to transform or upgrade themselves, and financial institutions shall, in compliance with credit principles, continue providing supports.
70. Investments are prohibited from contributing to projects under the “eliminated” category, with financial institutions to stop granting credit support, and for all localities and departments to take “powerful” measures to eliminate such projects, including raising the electricity price. Failure to eliminate the activity on time could lead to an order to stop production or close.
71. The 2013 Amendment to the 2011 version of the Guidance Catalogue identified forty sectors of the economy covering 761 “encouraged” activities. In the case of the iron and steel industry the Amendment referred to 17 activities. The “restricted” category, covering 17 sectors, identified 20 activities in the iron and steel industry, primarily aimed at discouraging older and smaller production capabilities. The “elimination” category covered

- outdated production techniques and equipment (17 sectors, 288 activities) and outdated products (12 sectors, 136 products). Industries not belonging to any of the specified categories, but conforming to the relevant laws, regulations and policies of the state, belong to the “permitted” category.
72. The “encouraged” category in the Guidance Catalogue includes, under the Iron and Steel Industry heading, the activity, “Development and application of technologies for higher performance, high-quality and upgrading steel products, including but not limited to....”, and lists a number of areas and products, not including rebar. The “restricted” and “elimination” categories appear to focus primarily on various types and capacities of steelmaking technology as it relates to various parts of the process, but does not specifically refer to rebar. In its questionnaire response the GOC confirmed that the rebar industry is not an “encouraged industry.”
73. On the basis of this information, MBIE is unable to conclude that production of rebar is specifically “encouraged.” However, the four sampled manufacturers of rebar exported to New Zealand are all integrated steel companies, and may, therefore, be involved in aspects of steel production that do fall within the “encouraged” category. The analysis of individual programmes will need to take account of this possibility, and of the considerations outlined in Section D below.
74. In considering the totality of the information available, MBIE considers that the Five-Year Plans provide the overview authority and guidance for economic development, and thus the basis for particular instruments relating to aspects or areas of the economy. In the case of industrial structure, development and adjustment, this is provided by Decision 40 and the Guidance Catalogue, while the Steel Plan clarifies objectives within that sector, with the identification of particular activities and assistance being confirmed in the subsequent Decision 40. Thus, the main instruments for examination to determine specificity are Decision 40 and the Guidance Catalogue.
75. The industries included in the Guidance Catalogue cover virtually the whole economy, and if that was the level of categorisation then it would be difficult to sustain a claim that the kind of support referred to in Decision 40 was specific to those industries. However, as noted above, the Guidance Catalogue goes on to identify particular categories of activities within those industries which are to be encouraged. In the case of the iron and steel industry, the products, technologies and processes identified cover a range of activities within the industry.
76. The specificity issue is whether the provision of government support mandated by Decision 40, and provided to the “encouraged” activities, means that support to the overall industry is specific, and whether any such support, which is found to be a subsidy, is specific on the grounds that the activity is identified as being among those that are encouraged. That is, what drives specificity is the fact that there is an “encouraged” category of activities, which is narrower than all enterprises, and which constitutes “certain enterprises.” MBIE considers that the heading references to industries and sectors in the Catalogue does not

mean that specificity attaches to those industries or sectors in their entirety, so specificity does not apply to the industry or sector as a whole. The limitation of the requirement to provide support through a range of instruments to only those activities identified as "encouraged" means that the support is limited to the group of enterprises and industries undertaking those activities, i.e. "certain enterprises" are those identified activities in the "encouraged" category, and specificity attaches to the listed activities.

77. The criteria for identifying activities within the "encouraged" category is set out in Decision 40, but they are not neutral, economic in nature or horizontal in application in the sense described in footnote 2 to Article 2.1(b) of the Subsidies Agreement, since they are not criteria that can bring an enterprise into eligibility which is not already eligible by reason of its activity. Thus, for the purposes of determining specificity, inclusion of an activity on the "encouraged" list explicitly limits access to a subsidy to qualifying enterprises, meaning that where any financial contribution to "encouraged" activities, mandated by Decision 40, is shown to be applicable to that activity and provides a benefit to an investigated party, then the subsidy will be specific.
78. This view reflects WTO dispute findings. In DS379, the Panel noted "... we do not consider that the sheer diversity of economic activities supported by a given subsidy is sufficient by itself to preclude that subsidy from being specific..." [Page 74]. The Panel went on to undertake an analysis of the evidence on which the US DOC based its findings of specificity, including Decision 40 (the Implementing Regulation) and the Catalogue described above, and stated:

*In our view, the Implementing Regulation in its own words confirms the finding of the USDOC that the function of the GOC Catalogue which it cross-references is to form the basis for investment direction by the various levels of government. [Page 81]*

...

*...the GOC Catalogue – in particular its encouraged category – identifies the universe of types of projects singled out as a matter of national policy for encouragement and investment.... our conclusion as to the de jure specificity finding must necessarily hinge on whether the encouraged projects, taken as a whole, could reasonably be viewed as a sufficiently discrete segment of the economy as to constitute, collectively, "certain enterprises". [Page 81]*

...

*We thus do not consider that these documents would compel a reasonable and objective investigating authority to conclude that any subsidies granted on the basis of that category were non-specific. To the contrary, we consider that a reasonable and objective investigating authority could conclude that any subsidies granted on the basis of the "encouraged" category were to a sufficiently discrete segment of the economy as to be limited to "certain enterprises". [Page 84]*

79. The Panel went on to note:
- ...given the USDOC's determination that the programme is a central level programme, we must analyse its specificity determination at the same level. If we were to find that the specificity determination was not supported by the central government-level planning documents, such that the programme was non-specific, then provincial and/or municipal-level evidence of specific instances of implementation of the central-level programme (even if they referred explicitly to particular industries and/or enterprises) could not override the programme's non-specificity.*
80. The Appellate Body in DS379 noted that the Panel had conducted a detailed and lengthy examination of policy planning documents at the central, provincial and municipal levels that had been relied upon by the USDOC. It reviewed the examination undertaken by the Panel and noted that it was uncertain whether the Panel made the finding, challenged by China on appeal, that the entirety of the "encouraged" category constitutes "certain enterprises", nor did the Appellate Body consider it necessary to examine whether the "encouraged" category as a whole, or entries in that category, other than the particular goods examined by the US DOC, were not described in "very specific, narrowly-circumscribed terms" within the meaning of Article 2.1(a). The Appellate Body upheld the Panel's finding that China did not establish that the USDOC acted inconsistently with the obligations of the United States under Article 2.1(a) of the SCM Agreement by determining in the *Off-the-Road Tires* (OTR) investigation that state-owned commercial bank (SOCB) lending was specific to the tyre industry, but emphasised that the panel finding was based on an examination the totality of evidence, at all levels of government, on which the US DOC supported its specificity determination, and not simply on the Catalogue.
81. MBIE concludes that Decision 40 does not provide a basis for concluding that the "steel industry" as such is "encouraged". However, the listing of various activities under each industry sufficiently limits the scope of "encouraged" activities to bring them within the scope of "certain enterprises." MBIE considers, on the basis of the analysis outlined above, that subsidies provided in respect of goods within the "encouraged" category will be specific subsidies.
82. The corollary is that if goods are not covered by the "encouraged" category then, apart from the unavailability of financial contributions dependent on them being in the "encouraged" category, any other financial contribution will not be specific if the grounds for specificity are based on Decision 40 and the Guidance Catalogue.
83. In considering the particular programmes in Annex 2 below, MBIE has based its assessment of specificity on the conclusions above and in particular, that the steel industry as such is not an encouraged activity. However, while MBIE is unable to conclude that production of rebar is specifically identified as "encouraged," where rebar production comes within the scope of activities aimed at achieving higher performance, high-quality and upgrading of

steel products, MBIE is also unable to conclude that rebar production might not be indirectly covered in the “encouraged” category.

#### **D. Attribution of Subsidies**

84. An investigation into the subsidisation of goods needs to ensure that subsidies are appropriately attributed. This requires the identification of the ownership and control links that exist between companies which manufacturer and export the subject goods to New Zealand and any other associated companies.
85. The issue arises in relation to the investigation into rebar from China because it appears that the sampled manufacturers are parts of wider groups of companies involved in the production and sale of steel products, including rebar. In addition to determining which subsidies need to be investigated and included in any calculation of countervailing duty, the response to the issue will help determine the denominator to be used in measuring subsidy levels for particular programmes.
86. MBIE has reviewed the practices of other jurisdictions and findings from WTO disputes on this issue. MBIE’s approach is to seek to identify all related parties (to manufacturers of rebar exported to New Zealand), and make decisions on whether or not subsidies to those related parties should be included when it is deemed reasonable to do so. Subsidies would be examined when (1) a firm that received a subsidy is a holding or parent company of the subject company and the subsidy provides a benefit to the production or sale of the subject goods; (2) a firm that produces an input that is primarily dedicated to the production of the downstream product receives a subsidy that provides a benefit to the production or sale of the subject goods ; or (3) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company, such that it could be deemed to provide a benefit to the production or sale of the subject goods. The inclusion of location-based subsidies would follow this approach.

## ANNEX 2: ANALYSIS OF SUBSIDY PROGRAMMES

This Annex sets out MBIE's detailed analysis of the subsidy programmes subject to investigation as set out in Table 4.1 above. This analysis considers the information available to MBIE and assesses the facts available in terms of reliability, as a basis for determining whether any activity constitutes a countervailable subsidy. The analysis and provisional conclusions are based on information available to MBIE as at 14 October 2017.

The assessment of subsidy programmes is based on information relating to the sampled manufacturers identified in section 3.4 above. Where levels of subsidy are established, the rate applicable to non-sampled manufacturers will be based on the simple average of the rates established for sampled manufacturers where more than one rate is established, or the rate found for the sampled manufacturer where only one rate is established.

In assessing the extent to which the programmes identified below may provide benefits to the sampled manufacturers, MBIE has taken into account the following attributes of the companies concerned as they relate to qualifying criteria relating to the programmes in terms of the nature and location of the companies (square-bracketed entries are yet to be confirmed, any changes will be addressed in the EFC Report).

Manufacturing Company	Company Location	SOE	FIE	HNTE	SME
Hebei Jingye	Nandian Town Pingshan County Shijiazhuang City Hebei Province	Yes	No	[No]	No
Hesteel Chengde	Shuangluan District Chengde City Hebei Province	No	No	No	No
Jiangsu Yonggang	Yonglian Industrial Park Nanfeng Town Zhangjiagang City Jiangsu Province	No	[No]	[No]	No
Shandong Shiheng	Shiheng Village Feicheng Town Tai'an City Shandong Province	No	[No]	[No]	No

Levels of benefit that are less than 0.01% are considered to be negligible, and have not been counted as providing a subsidy. This reflects EU practice.

### A. Direct transfer of funds: Equity infusions

A finding of subsidisation in relation to equity infusions would require that evidence is available to confirm that:

- Funds were effectively provided

- The fund provider was a government or any public body
- The investment decision was inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in China
- The funding was specific to an enterprise or industry.

### **Identified Programmes**

1	Debt-to-Equity Swaps
2	Equity Infusions
3	Unpaid Dividends

These programmes are applicable only to SOEs or to companies with a significant State shareholding. On the basis of the best information available, this means that Hesteel Chengde was the only sampled manufacturer to which the programmes could apply.

#### **1. Debt-to-Equity Swaps**

The question of a financial contribution through debt-to-equity swaps arises only in relation to State-owned enterprises. Hesteel Chengde is the only SOE among the sampled manufacturers.

#### **Application**

The applicant claimed that a debt-to-equity swap was a measure used in the financial restructuring of China's State-owned enterprises (SOEs) and state-owned banks. Pursuant to the regulations of Asset Management Companies (decree of 20 November 2000), the State Council established four asset management companies (AMCs) that were directed to purchase certain non-performing loans from state-owned banks. The four AMCs were supervised and managed by the People's Bank of China (PBOC), China's Ministry of Finance and the China Securities Regulatory Commission. One of the authorised business activities available for the management of non-performing loans purchased by the AMCs was the debt-to-equity swap. A debt-to-equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company. The precedents cited are Canadian and EU cases, with the listed subsidy level being 0.05% from the EU *Organic Coated Steel* finding.

#### **Other Jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperative exporters of rebar, which included Jiangsu Yonggang and Shandong Shiheng, had benefited from the programme during the investigation period, and also noted that the recent Investigation 316 (grinding balls) had also found that no exporters had benefitted from the programme. The Australian ADC therefore considered that a zero subsidy rate was applicable to all exporters in Investigation 322.

In the CBSA *Concrete Reinforcing Bar* investigation, debt-to-equity swaps was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters

did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was established in regard to Shandong Shiheng.

In the absence of any other information, the EC investigation into *Organic Coated Steel* based its findings on debt-to-equity swaps on information contained in the complaint, which cited such a swap in the year 2000. The level of subsidy calculated on the basis of a non-recurring benefit at the level of the full amount of the debt-to-equity swap, allocated to the period of investigation on the basis of the normal depreciation period of assets of the recipient companies, with interest added. The amount of subsidy so calculated was 0.05% for all non-cooperating companies. Debt-to-equity swaps were not considered in the EC investigation into *Hot-Rolled Flat Products*, which covered the Hesteel Group.

The US-DOC has investigated equity infusions in a number of steel product proceedings, but found no subsidy for cooperating exporters in any of those cases. A subsidy rate of 0.58% was applied in a number of cases on the basis of AFA, with the rate in *Corrosion-Resistant Steel* being based on a similar programme in *Lightweight Thermal Paper from China* [MBIE has been unable to confirm this]; in *Cold Rolled Steel*, the rate determined for a cooperating exporter in the special fund for energy saving technology reform, based partially on AFA, in *Chlorinated Isocyanurates (Isos)*; in *Cut-to-Length Plate*, the rate determined in *Corrosion-Resistant Steel*; and in *Stainless Sheet and Strip*, the rate determined in *Isos*.

### **GOC Response**

In its questionnaire response the GOC noted that to the best of its knowledge there were no programmes of debt-to-equity swaps utilised by Hesteel Chengde during the investigation period.

### **Hesteel Chengde Response**

In its questionnaire response Hesteel Chengde stated that it had not received any benefit from debt-to-equity swaps during the investigation period. Hesteel Chengde confirmed that it had not had loans from State-owned banks purchased by AMCs.

The Hesteel Chengde response to questions relating to land-use rights indicated that an associated company had been involved in an equity swap relating to the granting of land-use rights. Further information is being sought on this transaction, but the information available indicates that it was not a debt-to-equity swap as envisaged in the programme identified in the application.

### **Other information**

The Wiley Rein Report outlines the way in which equity infusions and conversions have been used by the GOC to support the steel industry. The report identified debt-to-equity swaps which occurred in the period 1997-2001, but none included the Hesteel Group or occurred more recently.

The SIC Report analysed each of the 25 largest steel companies in China, including the Hebei Steel group and Hebei Jingye, and detailed the amount and types of government subsidies each company received in recent years. The analysis included consideration of the ownership of the companies and

the extent of government involvement in their activities, as well as the levels of subsidy they were provided. The SIC Report could not identify any programmes benefiting Hebei Jingye.

The report noted that in 2008 the equity held by the SASAC of Hebei Province in the Hebei Steel Group increased from RMB 50 million to RMB 20 billion, but with regard to Hesteel Chengde there is no mention of a debt-to-equity swap.

### **MBIE Consideration**

#### *Financial Contribution*

MBIE notes that both the GOC and Hesteel Chengde have stated that there were no debt-to-equity swaps during the period of investigation, while the application cites Canadian and EU cases as the basis for determining a level of benefit.

In other jurisdictions, the Australian and US authorities established that no investigated exporters benefitted from the alleged programme. The programme was not considered in one EU case, while where duties were applied in the other EU case, in the Canadian case, and to non-cooperating exporters in the US cases, it was on the basis of the use of AFA, with the best information available being taken as that contained in the applications or from previous investigations.

In these circumstances, MBIE is satisfied that there is no reliable evidence that the sample manufacturers have received a financial contribution under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy relating to the programme: Debt-to-equity swaps.

## **2. Equity Infusions**

The question of a financial contribution through an equity infusion arises only in relation to State-owned enterprises. Hesteel Chengde is the only SOE among the sampled manufacturers.

### **Application**

The application claims that over the years the GOC has provided substantial amounts of cash to steel producers through equity infusions. It is alleged that, through various state-owned entities, the GOC has acquired shares in companies in which it was already the main shareholder without acquiring additional shareholder rights. The precedent cited is the EU *Organic Coated Steel* case, with a rate listed of 0.08%.

**Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme during the investigation period, and also noted that the recent Investigation 316 (grinding balls) had also found that no exporters had benefitted from the programme. The Australian ADC therefore considered that a zero subsidy rate was applicable to all exporters in Investigation 322.

In the CBSA *Concrete Reinforcing Bar* investigation, equity infusions was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%.

In the absence of any other information, the EC investigation into *Organic Coated Steel* based its findings on equity infusions on information contained in the complaint. The level of subsidy was calculated on the basis of the amount of the equity infusions, allocated to the period of investigation on the basis of the normal depreciation period of assets of the recipient companies, with interest added. The amount of subsidy so calculated was 0.08% for all non-cooperating companies.

The US-DOC has investigated equity infusions in a number of steel product proceedings, but found no subsidy for cooperating exporters in any of those cases. A subsidy rate of 0.58% was applied in a number of cases on the basis of AFA, with the rate in *Corrosion-Resistant Steel* being based on a similar programme in *Lightweight Thermal Paper from China* [MBIE has been unable to confirm this]; in *Cold Rolled Steel*, the rate determined for a cooperating exporter in the special fund for energy saving technology reform, based partially on AFA, in *Chlorinated Isocyanurates (Isos)*; and in *Stainless Sheet and Strip*, the rate determined in *Isos*.

**GOC Response**

In its questionnaire response the GOC noted that to the best of its knowledge there were no programmes of equity infusions utilised by Hesteel Chengde during the investigation period.

**Hesteel Chengde Response**

In its questionnaire response Hesteel Chengde stated that it had not received any benefit from equity infusions during the investigation period. Hesteel Chengde confirmed that there was no government purchase of shares in the business which provided a benefit.

**Other information**

The Wiley Rein Report outlines the way in which equity infusions and conversions have been used by the GOC to support the steel industry. The report identified equity infusions in 1993-97 and in 2005, but none included the Hesteel Group or occurred more recently.

The SIC Report included consideration of the ownership of the companies and the extent of government involvement in their activities, as well as the levels of subsidy they were provided. The report claimed that in 2008 the equity held by the SASAC of Hebei Province in the Hebei Steel Group increased from RMB 50 million to RMB 20 billion, but with regard to Hesteel Chengde there is no

mention of an equity infusion. The SIC Report could not identify any programmes benefiting Hebei Jingye.

### ***MBIE Consideration***

#### *Financial Contribution*

MBIE notes that both the GOC and Hesteel Chengde have stated that there were no equity infusions during the period of investigation, while the application cites an EU case as the basis for determining a level of benefit.

In other jurisdictions, the Australian and US authorities established that no investigated exporters benefitted from the alleged programme. The programme was not considered in one EU case, while where duties were applied in the other EU case, in the Canadian case, and to non-cooperating exporters in the US cases, it was on the basis of the use of AFA, with the best information available being taken as that contained in the applications or from previous investigations.

MBIE notes that the information available to it is that the GOC and Hesteel Chengde have indicated that there were no benefits from equity infusions during the period of investigation, while no benefits have been established by other jurisdictions in relation to sample manufacturers. The information suggesting that there could be a countervailable subsidy arises from investigations by other authorities which have relied on AFA, while reports on the Chinese steel industry do not provide any confirmation of activity involving the sampled manufacturers.

In these circumstances, MBIE is satisfied that there is no reliable evidence that the sample manufacturers have received a financial contribution under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### ***Conclusions***

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy relating to the programme: Equity infusions.

## **3. Unpaid Dividends**

The question of a financial contribution through unpaid dividends arises only in relation to State-owned enterprises. Hesteel Chengde is the only SOE among the sampled manufacturers.

### ***Application***

The applicant claims that SOEs, including certain steel companies, do not have to pay dividends to the government as their owner even when they earn profits. The precedents cited are Canadian and EU cases, with a rate listed of 1.36% from the EU *Organic Coated Steel* finding.

### **Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme during the investigation period, and also noted that the recent Investigation 316 (*Grinding Balls*) had also found that no exporters had benefited from the programme. The Australian ADC therefore considered that a zero subsidy rate was applicable to all exporters in Investigation 322.

In the CBSA *Concrete Reinforcing Bar* investigation, unpaid dividends was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%.

In the absence of any other information, the EC investigation into *Organic Coated Steel* based its findings on unpaid dividends on information contained in the complaint. The level of subsidy is based on the amount of the unpaid dividends, allocated over the total turnover of the recipient during the investigation period. The amount of subsidy so calculated was 1.36% for all non-cooperating companies.

The US-DOC has investigated unpaid dividends in a number of steel product proceedings, but found no subsidy for cooperating exporters in any of those cases. A subsidy rate of 0.58% was applied in a number of cases on the basis of AFA, with the rate in *Corrosion-Resistant Steel* being based on a similar programme in *Lightweight Thermal Paper from China* [MBIE has been unable to confirm this]; in *Cold Rolled Steel*, the rate determined for a cooperating exporter in the special fund for energy saving technology reform, based partially on AFA, in *Chlorinated Isocyanurates (Isos)*; and in *Stainless Sheet and Strip*, the rate determined in *Isos*.

### **GOC Response**

In its questionnaire response the GOC noted that to the best of its knowledge there were no programmes of unpaid dividends utilised by Hesteel Chengde during the investigation period.

### **Hesteel Chengde Response**

In its questionnaire response Hesteel Chengde stated that it had not received any benefit from unpaid dividends during the investigation period. Hesteel Chengde provided copies of its Financial Statements for 2014-2016, indicating that in 2016

[REDACTED]

### **Other information**

The Wiley Rein Report outlines the way in which equity infusions and conversions have been used by the GOC to support the steel industry. The report identified that unless it demands a reasonable commercial return on its investment, in the form of dividends or a higher return on sale, the GOC is in effect providing a straight cash grant. No specific examples were provided.

The SIC Report included consideration of the ownership of the companies and the extent of government involvement in their activities, as well as the levels of subsidy they were provided. The report noted that in 2008 the equity held by the SASAC of Hebei Province in the Hebei Steel Group increased from RMB 50 million to RMB 20 billion, but with regard to Hesteel Chengde there is no reference to unpaid dividends. The SIC Report could not identify any programmes benefiting Hebei Jingye.

### ***MBIE Consideration***

#### *Financial Contribution*

MBIE notes that both the GOC and Hesteel Chengde have stated that there were no benefits from unpaid dividends during the period of investigation, while the application cites Canadian and EU cases as the basis for determining a level of benefit.

In other jurisdictions, the Australian and US authorities established that no investigated exporters benefitted from the alleged programme. The programme was not considered in one EU case, while where duties were applied in the other EU case, in the Canadian case, and to non-cooperating exporters in the US cases, it was on the basis of the use of AFA, with the best information available being taken as that contained in the applications or from previous investigations.

MBIE notes that the information available to it is that the GOC and Hesteel Chengde have indicated that there were no benefits from unpaid dividends during the period of investigation, while no benefits have been established by other jurisdictions in relation to sample manufacturers. The information suggesting that there could be a countervailable subsidy arises from investigations by other authorities which have relied on AFA, while reports on the Chinese steel industry do not provide any confirmation of activity involving the sample manufacturers.

In these circumstances, MBIE is satisfied that there is no reliable evidence that the sample manufacturers have received a financial contribution under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### ***Conclusions***

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy relating to the programme: Unpaid dividends.

## **B. Direct transfer of funds: Grants**

A finding of subsidisation in relation to grants would require that evidence is available to confirm that:

- A grant was received
- The grant provider was a government or any public body
- The grant conferred a benefit on the recipient
- The grant was specific to an enterprise or industry.

### **Identified Programmes**

4	Assistance for Optimizing the Structure of Import/Export of High- Tech Products
5	Assistance for Technology Innovation - R&D Project
6	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
7	Circular on Issuance of Management Methods for Foreign Trade Development Support Fund
8	Debt Forgiveness
9	Environmental protection grant
10	Export Assistance Grant
11	Export Brand Development Fund
12	Government Export Subsidy and Product Innovation Subsidy
13	Grant for elimination of out dated capacity
14	Grant - Patent Application Assistance
15	Grants Under Regulations for Export Product Research and Development Fund Management
16	Grants under the Science and Technology program of Hebei Province
17	Intellectual property licensing
18	International Market Fund for Small- and Medium-sized Export Companies) [Matching Funds for International Market Development for SMEs)
19	Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees
20	Provincial Scientific Development Plan Fund
21	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
22	State key technology project fund
23	State Special Fund for Promoting Key Industries and Innovation Technologies
24	Technology to Improve Trade R&D Fund

### **GOC Response**

The GOC made general comments relating to the alleged grant programmes. It claimed that the application lacked sufficient concrete and credible evidence concerning the existence of the alleged

grants, and noted that in the absence of references in the application to Chinese laws and regulations it was difficult for the GOC to identify the alleged grants programme concerned.

The GOC suggested that, as far as it knew, the amount of grants received by the cooperating manufacturer was negligible compared with its sales revenue, and referred MBIE to that company's questionnaire response.

The GOC indicate that if MBIE intended to investigate any specific grant programme received by the cooperating manufacturer then the GOC was willing to provide more information.

#### *Hesteel Chengde Response*

Hesteel Chengde provided details of the programmes for which it had received government grants in 2016. In a number of cases there may be some overlap with the programmes identified below. The programmes identified by Hesteel Chengde have been allocated programme numbers 39-61 and are analysed in section G below.

#### *Other information*

The Wiley Rein Report identified grants as a favoured form of support for the steel industry, and noted a number of general categories for grants and for recipients. Grants made up 0.5% of the subsidies identified in the Wiley Rein Report, which suggested that it was likely that a substantial portion of these subsidies went to favoured and state-owned industries, especially small and medium sized steel producers. Other categories included enterprises operating at a loss, grants for technology and research, export performance, upgrades and renovation, industry expansion, and environmental incentives. The Wiley Rein Report also noted that local and provincial governments provide substantial cash grants to steel producers, which are "often little more than creatively titled export subsidies." The Wiley Rein Report pointed out that numerous Chinese steel producers reported direct cash grant subsidies in their financial statements, but made specific reference to only one programme – the State Key Technology Renovation Project Fund.

The SIC Report suggested that cash grants were essentially an injection of government capital to provide support for steel companies' commercial activities and specific programmes that fit with the country's wider policy agendas. Such subsidies typically involve financial support for technology innovation and commercialisation, technology renovation and upgrading, environmental protection, transformation and adjustment of the industrial structure, and employment and training. Examples provided included a 2014 subsidy to Hebei Steel Group and to other producers for innovation of e-platforms; and a programme relating to energy savings, pollution prevention and retreatment, or carbon emissions, provided to another identified company.

The SIC Report also provides further detail on specific cash grants provided to major steel producers, including Hebei Steel Group. The research was unable to identify any grants to Hebei Jingye Group.

#### **4. Assistance for Optimizing the Structure of Import/Export of High-Tech Products**

##### ***Application***

The application claimed that this grant was contingent upon export sales, and cited US and Canadian cases, with a duty of 0.02% from a US case.

##### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, assistance for optimizing the structure of import/export of high- tech products was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. Shandong Shiheng, the cooperative exporter in this investigation was not identified as having received a benefit.

The sole US case in which this programme was identified was *Steel Wire Strand* in 2010, when a subsidy level of 0.02% was established for a cooperating producer which reported receiving the grant. The source documents provided by the GOC lead the US DOC to conclude that the program was contingent upon exports sales.

##### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

##### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

##### ***Other Sample Manufacturers***

Investigations by other jurisdictions which covered sample manufacturers – Hesteel Group in the EC's *Hot-Rolled Flat Products*; Shandong Shiheng in Canada's *Concrete Reinforcing Bar*; and Shandong Shiheng and Jiangsu Yonggang in Australia's *Steel Reinforcing Bar* – did not establish them as receiving benefits under this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

##### ***Other Information***

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export performance and both identified technology and research as targets for grants.

##### ***MBIE Consideration***

###### ***Financial Contribution***

Hesteel Chengde has not identified this programme as one of those for which it received a benefit, and which are identified in its 2016 Annual Report. The programme was not investigated by the

Australian and EU authorities in cases which covered three of the sample manufacturers, while the Canadian investigation established that Shandong Shiheng did not benefit from the programme.

In these circumstances, MBIE is satisfied that there is no reliable evidence that the sample manufacturers have received a financial contribution under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy relating to the programme: Assistance for Optimizing the Structure of Import/Export of High-Tech Products.

## **5. Assistance for Technology Innovation - R&D Project**

### ***Application***

The application claimed that this grant was contingent upon export sales, and referred to CBSA findings in the *Concrete Reinforcing Bar* investigation that a cooperating exporter had received a grant under this programme from the Feicheng Science and Technology Bureau. Feicheng is a city in Shandong Province. The application also cited a US case with a duty of 0.02%.

### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, Assistance for Technology Innovation – R&D Project was one of the five programmes benefiting the cooperating exporter, Shandong Shiheng, for which a total duty of 0.40% was calculated, making an average subsidy rate per programme of around 0.08%. The grant was provided through a related raw material supplier, and was for the development of energy saving technology, increasing energy use efficiency, encouragement of technology innovation, and reduction of pollutant emissions. There was no reference to the grant being conditional on export sales.

In the US DOC investigation, *Steel Wire Strand*, one of the cooperating exporters reported receiving a grant under this programme. The information in the company's questionnaire response indicated that the programme was contingent upon exports. The US DOC therefore calculated the benefit by dividing the grant amount by the company's total export sales, providing a subsidy level of 0.02%. The cooperating company was headquartered in Jiangyin, in Jiangsu Province.

### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

**Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

**Other Sample Manufacturers**

Investigations by other jurisdictions which covered sample manufacturers – Hesteel Group in the EC's *Hot-Rolled Flat Products*; and Shandong Shiheng and Jiangsu Yonggang in Australia's *Steel Reinforcing Bar* – did not establish them as receiving benefits under this programme. However, in the Canadian investigation *Concrete Reinforcing Bar* Shandong Shiheng was identified as receiving benefits under this programme, based on its own reporting. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export performance and both identified technology and research as targets for grants.

**MBIE Consideration***Financial Contribution*

Hesteel Chengde has not identified this programme as one of those for which it received a benefit, and which are identified in its 2016 Annual Report. The programme was not investigated by the Australian and EU authorities in cases which covered three of the sample manufacturers, but the Canadian authorities established a rate of subsidy for one of the sample manufacturers. In these circumstances, MBIE is satisfied that there is reliable evidence that one of the sample manufacturers, Shandong Shiheng, may have received a financial contribution under this programme.

In *Concrete Reinforcing Bar* the Canadian authorities, based on information from Shandong Shiheng, identified the Feicheng Science and Technology Bureau as the government body administering the grant.

In these circumstances, MBIE is satisfied that there is reliable evidence to support a conclusion that Shandong Shiheng received a financial contribution under this programme.

*Level of Benefit*

In *Concrete Reinforcing Bar* the Canadian authorities, based on information from Shandong Shiheng, calculated a level of benefit by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable. The actual level calculated for this programme is not available but on the basis that the total subsidy level of 0.40% calculated over five programmes for Shandong Shiheng, the average per programme is 0.08%.

### *Specificity*

The 2014 Canadian investigation does not provide support for the claim that the programme was contingent on exports, although the Canadian authorities concluded that on the basis of the available information the programme did not appear to be generally available to all enterprises in China. The 2010 US investigation concluded that the programme was contingent on exports, based on information provided by the exporter.

MBIE does not consider that there is sufficient information available to deem the programme to provide a specific subsidy under Article 2.3 of the Subsidies Agreement. However, on the basis of the findings in the Canadian investigation into *Concrete Reinforcing Bar*, and in the absence of any information on the applicable criteria and the actual allocation of benefits, then it can be concluded that the benefits of the programme are limited to certain enterprises and it is therefore specific.

### **Conclusions**

MBIE's provisional conclusion is that with regard to Shandong Shiheng there is a financial contribution by a government or any public body, which confers a benefit and is specific, so there is a countervailable subsidy relating to the programme: Assistance for Technology Innovation - R&D Project.

The level of subsidy is provisionally established as 0.08% for Shandong Shiheng.

## **6. Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"**

### **Application**

The application claimed that this programme was established in 2007 for the purpose of rewarding enterprises whose brands were recognised as well-known trademarks. Specifically, enterprises first apply for well-known trademark status and then apply for grants under the programme. The applicant claims that "Tianjin Tianta Zhaer" is a "Famous Brand of China" and quotes from the company's website reference to its brand. Canadian, EU and US cases are cited in support of the application, with subsidy rates of 0.01% and 0.03% identified in US DOC investigations.

### **Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme during the investigation period. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

In the CBSA *Concrete Reinforcing Bar* investigation, assistance for optimizing the Famous Brands programme was one of the 176 programmes for which a duty estimate was used on the grounds

that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%.

In *Organic Coated Steel*, the EC investigated the both national and provincial sub-programmes, and identified their legal basis. In the absence of requested information from the GOC, the EC noted that the US and EU authorities had countervailed the programme in previous proceedings, and that it provided financial contributions in the form of subsidised interest loans, R&D funding, and cash grant rewards for exporting. The calculation of the levels of subsidy at 0.13% for the national programme and the same level for provincial programmes was based the arithmetic average of findings from US DOC investigations.

In *Hot-Rolled Flat Products* the programme was investigated but the EC determined that no sampled exporters (which included Hesteel Group) had received a financial contribution in respect to this programme.

The US DOC has investigated this programme in a large number of its proceedings involving China, including sub-central programmes. In recent years, the level of subsidy most often established using AFA has been 0.58%, but with no subsidy benefits found for cooperating companies since 2013. *Steel Grating*, in 2010, at 0.02%, was the last steel product for which a subsidy has been attributed to a cooperating exporter. That exporter, located in Ningbo City in Zhejiang Province, had reported receiving the grant. The level of subsidy was calculated on the benefit divided by total sales.

### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### ***Other sample exporters***

Shandong Shiheng and Jiangsu Yonggang were among the cooperative exporters determined by the Australian ADC not to have benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### ***Other Information***

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export promotion. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### ***MBIE Consideration***

#### ***Financial Contribution***

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel

Group, and by Australia, in relation to Shandong Shiheng and Jiangsu Yonggang, indicate that investigations into those manufacturers did not establish receipt of a benefit under this programme.

MBIE is satisfied that the information from other jurisdictions was based on investigations into the specified manufacturers and can be considered reliable. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

#### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China."

### **7. Circular on Issuance of Management Methods for Foreign Trade Development Support Fund**

#### ***Application***

The application claimed that firms with an annual export value of \$1-5 million are eligible to receive grants from the Ministry of Foreign Trade and Economic Cooperation, and cited the US DOC *Steel Wire Strand* investigation and a subsidy rate of 0.05%.

#### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was established for Shandong Shiheng

The US DOC investigated this programme in *Steel Wire Strand*, determined that it was a subsidy contingent upon export performance, and found a subsidy level of 0.05%. Only one other US investigation involved this programme and no subsidy was found.

#### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

#### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

**Other Sample Manufacturers**

No subsidy was found for Shandong Shiheng in Canada's *Concrete Reinforcing Bar* investigation, while investigations by other jurisdictions which covered sample manufacturers – Hesteel Group in the EC's *Hot-Rolled Flat Products*; and Shandong Shiheng and Jiangsu Yonggang in Australia's *Steel Reinforcing Bar* – did not address this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export promotion. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel Group, and by Australia, in relation to Shandong Shiheng and Jiangsu Yonggang, did not address this programme.

MBIE is satisfied that the information from other jurisdictions, which covered three of the sample manufacturers can be considered reliable did not establish that they were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Circular on Issuance of Management Methods for Foreign Trade Development Support Fund.

**8. Debt Forgiveness****Application**

The applicant claimed that the GOC forgives certain debts owed by certain companies, and cited a number of US DOC cases, with subsidy levels of 0.07% and 1.08% found in two cases.

**Other jurisdictions**

In the CBSA *Concrete Reinforcing Bar* investigation, this programme (included in “preferential loans and loan guarantees”) was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was established for Shandong Shiheng.

The US DOC has examined debt forgiveness in 10 proceedings. In the 3 cases involving steel products, subsidy levels of 0.07% and 0.54% were found for individual exporters in *Seamless Pipe*; no subsidies were found in *Line Pipe*; and 1.08% was found for the exporter in *Circular Welded Pipe*. The US DOC treated debt forgiveness as a direct transfer of funds on a non-recurring basis, with the benefit allocated over the average useful life of assets and attributed the subsidy amount to total sales to establish the subsidy rate.

**GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

**Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

**Other Sample Manufacturers**

No subsidy was found for Shandong Shiheng in Canada’s *Concrete Reinforcing Bar* investigation, while investigations by other jurisdictions which covered sample manufacturers – Hesteel Group in the EC’s *Hot-Rolled Flat Products*; and Shandong Shiheng and Jiangsu Yonggang in Australia’s *Steel Reinforcing Bar* – did not address this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration****Financial Contribution**

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by Canada in relation to Shandong Shiheng did not establish receipt of a subsidy. Australia, in relation to Shandong Shiheng and Jiangsu Yonggang, did not address this programme in *Steel Reinforcing Bar*. The SIC Report could not identify any grant to Hebei Jingye.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this

programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body conferring a benefit, so there is no countervailable subsidy in regard to the programme: Debt Forgiveness.

## **9. Environmental Protection Grant**

### ***Application***

The applicant quotes from the application in the Australian *Steel Reinforcing Bar* investigation in noting that the programme was found to be a countervailable subsidy in previous Australian proceedings, and noted that in *Zinc Coated (Galvanised) Steel* a cooperating exporter had explained that the programme was available to enterprises to purchase equipment to help protect the environment and payments were by the Ministry of Finance. No subsidy level was identified.

### ***Other jurisdictions***

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme during the investigation period. With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

This programme does not appear to have been covered in any Canadian investigations.

In *Hot-Rolled Flat Products*, the EC established that sampled companies, including the Hesteel Group had benefited from a range of grants relating to environmental protection and reduction of emissions. The analysis in section G below takes this information into account.

The US DOC investigated programmes relating to environment protection grants in a number of cases, primarily grants provided by local authorities. In *Steel Wire Strand*, duties of 0.01% and 0.02% were found for cooperative exporters, but based on AFA, for three programmes, and no benefits for two programmes; in *Steel Wire Rod*, benefits of 0.55%, based on AFA, for a Shandong Province

programme; in *Steel Wire Strand*, a rate of 0.03% for a cooperating exporter, using AFA, for one programme, and a negligible level for the same exporter in another programme.

### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response identified several programmes among the subsidies that it reported that could be similar to this programme. These programmes are addressed in section G below.

### ***Other Sample Manufacturers***

The Australian investigation into *Steel Reinforcing Bar* found no benefits for Shandong Shiheng or Jiangsu Yonggang. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### ***Other Information***

The Wiley Rein and SIC Reports made no specific reference to this programme, although both noted that grants relating to environmental protection were being provided by the GOC.

### ***MBIE Consideration***

#### *Financial Contribution*

The information available is that the Australian authorities found no benefits to Shandong Shiheng and Jiangsu Yonggang, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Chengde has provided information on grants it received relating to environmental protection and reduction of emissions, while the EC authorities found benefits in these areas for the Hesteel Group. These programmes are addressed in section G below.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme, bearing in mind that similar programmes reported by Hesteel Chengde are addressed in section G below. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### ***Conclusions***

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Environmental Protection Grant.

## 10. Export Assistance Grant

### **Application**

The application stated that funds provided under this programme are for the purpose of holding or participating in overseas exhibitions; accreditation fees for quality management system, environment management system, or for the product; promotion in the international market; exploring a new market; holding training seminars and symposiums; and overseas bidding. The application cites a number of Canadian and US investigations, and identifies subsidy amounts of 0.04% and 0.21% from US DOC investigations.

### **Other jurisdictions**

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%.

The US DOC has examined export assistance grants in a number of proceedings involving China. Subsidies were found in 3 investigations of cooperating exporters, with levels of 0.09% in *Steel Grating*, 0.21% in *Galvanised Wire*, and 0.04% for one exporter in *Stainless Steel Sinks*. In a number of recent proceedings, AFA rates of 0.58% have been determined.

### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### **Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation of *Concrete Reinforcing Bar* found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export promotion. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **MBIE Consideration**

#### *Financial Contribution*

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel Group, Canada in relation to Shandong Shiheng and by Australia, in relation to Shandong Shiheng

and Jiangsu Yonggang, did not address this programme. The SIC Report could not identify any grant to Hebei Jingye.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

#### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Export Assistance Grant.

## **11. Export Brand Development Fund**

#### ***Application***

The application notes that this programme appears to have been established by the State government and administered by the provincial authorities. A document entitled "Notice on Issuing the Directive on Supporting the Development of Name Brands for Export Fund" provides that the State shall arrange a special item under the heading "export brand development fund" to support enterprises in building up their independent brands and nurture and develop name brand exports. Canadian investigations are cited, but no subsidy amount is identified.

#### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy level was established for Shandong Shiheng.

#### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

#### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

**Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation of *Concrete Reinforcing Bar* found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export promotion. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel Group, and by Australia, in relation to Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation found that Shandong Shiheng did not benefit from this programme. The SIC Report could not identify any grant to Hebei Jingye.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Export Brand Development Fund.

**12. Government Export Subsidy and Product Innovation Subsidy****Application**

The application notes that Chinese producers may receive grants based on export performance, and cited a number of Canadian cases without identifying any subsidy levels.

**Other jurisdictions**

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. A similar approach was used in the other Canadian cases which included this programme. No subsidy was found for Shandong Shiheng.

**GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

**Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

**Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation of *Concrete Reinforcing Bar* found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export promotion. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel Group, and by Australia, in relation to Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation found that Shandong Shiheng did not benefit from this programme. The SIC Report could not identify any grant to Hebei Jingye.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Government Export Subsidy and Product Innovation Subsidy.

## **13. Grant for elimination of out-dated capacity**

### **Application**

The applicant quotes from the application in the Australian *Steel Reinforcing Bar* investigation in noting that the programme was found to be a countervailable subsidy in previous Australian proceedings, despite there being no confirmation of its legal basis or the eligibility criteria. It was noted that the Australian ADC had nevertheless considered that because enterprises had to meet some criteria to be identified as eliminating out of date blast furnace and be located in Shandong Province Finance Bureau, the programme was therefore countervailable. No subsidy level was identified.

### **Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperating exporters of rebar had benefited from the programme during the investigation period. With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

The US DOC investigated a similar programme in *Steel Wire Strand*, and established a level of subsidy for a cooperating exporter based on AFA.

### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response identified a programme among the subsidies that it reported that could be equivalent to this programme. This programme is addressed as #54 in section G below.

### **Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* found no benefits for Shandong Shiheng or Jiangsu Yonggang. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

The information available is that the Australian authorities found no benefits to Shandong Shiheng and Jiangsu Yonggang, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Jingye has provided information on a grant it received relating to the elimination of out-dated capacity. This programme is addressed in section G below.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme, bearing in mind that the similar programme reported by Hesteel Chengde is addressed in section G below. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Grant for elimination of out-dated capacity.

**14. Grant - Patent Application Assistance****Application**

The application claimed that the programme's purpose is to implement the strategy of intellectual property right; encourage invention and creation; promote independent innovation; promote development of patent technology and products; and accelerate commercialisation of patent. The applicant cited a number of Canadian cases without identifying any subsidy levels.

**Other jurisdictions**

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. A similar approach was used in the other Canadian cases which included this programme. No subsidy was found for Shandong Shiheng.

### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response identified one programme among the subsidies that it reported that relates to intellectual property. This programme is addressed as #56 in section G below.

### ***Other Sample Manufacturers***

The Australian investigation into *Steel Reinforcing Bar* found no benefits for Shandong Shiheng or Jiangsu Yonggang. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### ***Other Information***

The Wiley Rein and SIC Reports made no specific reference to this programme, although both noted that grants relating to technology and research were being provided by the GOC.

### ***MBIE Consideration***

#### *Financial Contribution*

The information available is that the Australian authorities found no benefits to Shandong Shiheng and Jiangsu Yonggang, the Canadian authorities found no subsidy to Shandong Shiheng, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Jingye has provided information on a grant it received relating to intellectual property. This programme is addressed in section G below.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme, bearing in mind that the similar programme reported by Hesteel Chengde is addressed in section G below. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### ***Conclusions***

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme:

Grant - Patent Application Assistance.

## 15. Grants under Regulations for Export Product Research and Development Fund Management

### ***Application***

The application claims that the programme is a grant from the Ministry of Finance pursuant to the “Notice on Publishing Management Fund Used in Research and Development of Export Mechanical and Electric Products” provided under Cao Qi No. 479 Decree. The US DOC *Steel Wire Strand* investigation is cited, with a subsidy level of 0.03%.

### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng. The programme was not cited in any other Canadian cases.

The US DOC investigated this programme in *Steel Wire Strand* and found a subsidy level of 0.03% for a cooperative exporter. A similar programme was investigated in three other proceedings, with no subsidy found.

### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### ***Other Sample Manufacturers***

The Australian investigation into *Steel Reinforcing Bar* which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation of *Concrete Reinforcing Bar* found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### ***Other Information***

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export promotion. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### ***MBIE Consideration***

#### ***Financial Contribution***

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel Group, and by Australia, in relation to Shandong Shiheng and Jiangsu Yonggang, did not address this

programme. The Canadian investigation found that Shandong Shiheng did not benefit from this programme. The SIC Report could not identify any grant to Hebei Jingye.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

#### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Grants under Regulations for Export Product Research and Development Fund Management.

#### **16. Grants under the Science and Technology programme of Hebei Province**

Hebei Jingye and Hesteel Chengde are the two sampled manufacturers located in Hebei Province.

#### **Application**

The application cites the EC *Organic Steel* investigation as the basis for the provision of grants under the Hebei Province Science and Technology programme. The application does not identify a subsidy level.

#### **Other jurisdictions**

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng. The programme was not cited in any other Canadian cases.

The EC, in *Organic Coated Steel*, based its finding of a subsidy level of 0.01% on the application in that case, which referred to grants made to a producer of organic coated steel. The GOC was considered not to have responded adequately to requests for information because while it claimed that the sampled exporters were not located in Hebei Province, it did not provide information on non-sampled companies.

#### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

**Hesteel Chengde Response**

The Hesteel Chengde questionnaire response identified several programmes among the subsidies that it reported that are similar to this programme. These programmes are addressed in section G below.

**Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* found no benefits for Shandong Shiheng or Jiangsu Yonggang. The Canadian investigation into *Concrete Reinforcing Bar* found no benefits to Shandong Shiheng. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, although both noted that grants relating to technology and research were being provided by the GOC. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

With regard to the Hebei-based sample manufacturers, there is no evidence that Hebei Jingye received any benefit under this programme, while Hesteel Chengde has provided information on grants it received relating to innovation and technology. These programmes are addressed in section G below.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme, bearing in mind that similar programmes reported by Hesteel Chengde are addressed in section G below. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Grants under the Science and Technology programme of Hebei Province.

## 17. Intellectual property licensing

### **Application**

The applicant quotes from the application in the Australian *Steel Reinforcing Bar* investigation in noting that the programme was found to be a countervailable subsidy in previous Australian proceedings, despite there being no confirmation of its legal basis or the eligibility criteria. It was noted that the Australian ADC had nevertheless considered that because enterprises had to be located in Shandong Province to be eligible for the subsidy provided by the Intellectual Property Office of Shandong Province the programme was therefore countervailable. No subsidy level was identified.

### **Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperating exporters of rebar had benefited from the programme during the investigation period. With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

The US DOC investigated programmes involving support in relation to intellectual property in a handful of cases, but found no subsidies to cooperating exporters. In one case a subsidy level was identified on the basis of AFA.

### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response identified one programme among the subsidies that it reported that relates to intellectual property. This programme is addressed as #56 in section G below.

### **Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* found no benefits for Shandong Shiheng or Jiangsu Yonggang. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, although both noted that grants relating to technology and research were being provided by the GOC.

**MBIE Consideration***Financial Contribution*

The information available is that the Australian authorities found no benefits to Shandong Shiheng and Jiangsu Yonggang, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Jingye has provided information on a grant it received relating to a government subsidy for intellectual property. This programme is addressed in section G below.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme, bearing in mind that the similar programme reported by Hesteel Chengde is addressed in section G below. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme Intellectual property licensing.

**18. International Market Fund for Small- and Medium-sized Export Companies [Matching Funds for International Market Development for SMEs]**

None of the sampled companies are SMEs.

**Application**

The application stated that this programme was established in a document "Measure Cai Qi [2010] No 87" in order to provide support for export companies identified as small and medium-sized enterprises. The funds are provided for developing international markets, including overseas exhibitions certification of enterprise management systems, various product certifications, foreign patent applications, promotional activities in international markets, electronic business, foreign advertisement and trademark registration, international investigation, bids (negotiations) abroad, enterprise training, foreign technology and brand acquisition, etc. Benefits granted to an enterprise under this programme shall not exceed 50% of the total expenditure paid by the enterprise. The programme is administered jointly by the Ministry of Finance and the Ministry of Commerce. The application cited Australian, Canadian and US investigations, and identified subsidy rates of 0.01% and 0.04% from US DOC cases.

**Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme during the investigation period, and also noted that the programme was abolished from 9 April 2014. With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng. The programme was investigated by the CBSA in *Stainless Steel Sinks*, and a subsidy level was identified. In a number of other cases a duty estimate was used on the same basis as for *Concrete Reinforcing Bar*.

This and similar programmes were examined in a number of US DOC proceedings, with subsidy rates for cooperating exporters ranging from no subsidy to 0.01% to 0.39%, and higher rates where AFA was used.

**GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

**Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported. Hesteel Chengde has advised that it is not an SME.

**Other Sample Manufacturers**

In *Steel Reinforcing Bar* the Australian ADC found no evidence to indicate that Shandong Shiheng or Jiangsu Yonggang had benefited from this programme. In *Concrete Reinforcing Bar* the CBSA found no subsidy for Shandong Shiheng. These manufacturers do not fall within the definition of SMEs in China.

**MBIE Consideration***Financial Contribution*

MBIE is satisfied that on the basis of the information available none of the sample manufacturers are SMEs and therefore do not qualify for this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation there is no financial contribution has been made under this programme.

### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: International Market Fund for Small- and Medium-sized Export Companies [Matching Funds for International Market Development for SMEs] Local and Provincial Government Reimbursement

## **19. Grants on Export Credit Insurance Fees**

### **Application**

The application claims that local and provincial governments provide reimbursement grants on export credit insurance fees. Canadian and US investigations are cited, with subsidy rates of 0.04% and 0.06% identified.

### **Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found evidence that one cooperative exporter of rebar had benefited from the programme during the investigation period. The Subsidy Margin Calculation Report for Jiangsu Yonggang confirmed that this company was the exporter concerned. The legal basis for the grant was identified as the "Notice of Financial Department and Department of Commerce of Jiangsu Province to Issue Budget for Support Fund for Export Credit Insurance Premium of the Year 2013" Su Cai Gong Mao [2014] No 67. These agencies are government bodies. The GOC questionnaire response for *Steel Reinforcing Bar* noted that the relevant legislation provided that the grant should be not more than 30% of the actually paid premium. The Australian authorities calculated a benefit and consequent subsidy margin for Jiangsu Yonggang. The GOC questionnaire response for *Steel Reinforcing Bar* also confirmed that to be eligible for the grant an enterprise had to purchase export credit insurance. This indicates that the provision of the grant is contingent on export performance and is therefore deemed to be specific under Article 2.3 of the Subsidies Agreement.

With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not

cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng. In a number of other cases a duty estimate was used on the same basis as for *Concrete Reinforcing Bar*.

In *Steel Wheels*, the US DOC found a subsidy rate of 0.06% for a cooperating exporter. The grants were expensed to the period of investigation and divided by total export sales to arrive at the subsidy level.

### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### **Other Sample Exporters**

Jiangsu Yonggang was the exporter found to have benefited from this subsidy by the Australian authorities in *Steel Reinforcing Bar*. The total subsidy level was 0.26% for all of the 23 programmes for which a benefit to Jiangsu Yonggang was determined, indicating that the level applicable to individual programmes is likely to be very small. The Australian and Canadian authorities did not find benefits for Shandong Shiheng in the relevant investigations.

### **Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, but the former did note generally that grants were provided for export promotion. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **MBIE Consideration**

#### *Financial Contribution*

The Australian investigation into *Steel Reinforcing Bar* identified the legal basis for the grant and its provision by government bodies, so a financial contribution is made by a government or any public body. MBIE is satisfied that the information from other jurisdictions was based on investigations into the specified manufacturers and can be considered reliable. Accordingly, MBIE provisionally concludes that on the basis of the information available to it at this point in the investigation it can be concluded that Jiangsu Yonggang received a financial contribution under this programme. MBIE also provisionally concludes that there is no evidence to indicate that the other sample manufacturers have received a financial contribution under this programme.

#### *Level of Benefit*

Without access to the details of the benefit level determined by the Australian authorities, MBIE has estimated the level at 0.01%, based on the average per programme for the total subsidy level established for Jiangsu Yonggang of 0.26% over 23 programmes.

### *Specificity*

The grant is to provide support for the purchase of export credit insurance, which means that it is contingent on export performance and is therefore deemed to be specific under Article 2.3 of the Subsidies Agreement.

### **Conclusions**

MBIE is satisfied that on the basis of the information available it can provisionally conclude that Jiangsu Yonggang has received a benefit from a financial contribution by a government or any public body that provides a benefit and is specific in regard to the programme: Grants on Export Credit Insurance Fees.

The level of the benefit is provisionally estimated to be 0.01%.

## **20. Provincial Scientific Development Plan Fund**

### ***Application***

The application claims, based on the information available, that this programme was established by governments at the local level in order to provide financial assistance to research and development projects. The application identified the granting authorities responsible as the Science and Technology Departments located in Liaoning Province and Tianjin. The application cites a number of Canadian cases but does not identify any level of subsidy.

### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng. In a number of other cases a duty estimate was used on the same basis as for *Concrete Reinforcing Bar*. In *Oil Country Tubular Goods 1 (OCTG1)* the CBSA determined that two of the cooperating exporters received benefits under this programme during the Subsidy POI. The amount of subsidy was calculated by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

The EU investigation into *Hot-Rolled Flat Products* found benefits to the Hesteel Group for grants relating to technological upgrading or transformation. The analysis in section G below takes this information into account.

### ***GOC Response***

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### ***Hesteel Chengde Response***

The Hesteel Chengde questionnaire response identified several programmes among the subsidies that it reported that are similar to this programme. These programmes are addressed in section G below.

**Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation into *Concrete Reinforcing Bar* did not find that Shandong Shiheng benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme, although both noted that grants relating to technology and research were being provided by the GOC.

**MBIE Consideration***Financial Contribution*

The information available is that the Australian authorities found no benefits to Shandong Shiheng and Jiangsu Yonggang, the Canadian authorities found no benefits to Shandong Shiheng, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Chengde has provided information on grants it has received relating to innovation and technology. These programmes are addressed in section G below.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this particular programme, bearing in mind that the similar programmes reported by Hesteel Chengde are addressed in section G below. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Provincial Scientific Development Plan Fund.

**21. Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments****Application**

The application claims that subsidies are provided by regional/provincial financial bureaux in order to facilitate a company's participation in a US anti-dumping investigation. A number of Canadian cases were cited but no subsidy level was identified.

**Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme during the investigation period. With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng. In a number of other cases a duty estimate was used on the same basis as for *Concrete Reinforcing Bar*. In *Carbon Steel Welded Pipe*, the CBSA determined that none of the cooperating exporters received benefits under this programme during the Subsidy POI, but because the GOC had not provided information regarding the programme, a level of subsidy for non-cooperating exporters was based on ministerial determination.

In *Organic Coated Steel* the EC noted that the US authorities and the EC in an earlier proceeding (*Coated Fine Paper*) had found that in several provinces the local financial bureau refunded 40% of the legal fees for a company's participation in anti-dumping proceedings. The GOC did not reply to questions on this programme, so the amount of the subsidy was based on information from previous proceedings at 0.01% for all non-cooperating companies. In *Coated Fine Paper*, the programme was reported by a cooperating exporter in relation to Shandong Province. The GOC claimed that the programme was terminated in 2008, but no relevant notification was provided. The subsidy rate identified was 0.01%.

In *Hot-Rolled Flat Products* the programme was investigated but the EC determined that no sampled exporters (which included Hesteel Group) had received a financial contribution in respect to this programme.

The US DOC has investigated this and similar programmes, including location-specific programmes, in a number of cases. No subsidies have been found for any cooperating exporters, while rates using AFA have ranged from 0.10% to 44.91%, with 0.55% the AFA rate set in *Steel Wire Rod*.

**GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

**Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

**Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation into *Concrete Reinforcing Bar* did not find that Shandong Shiheng benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel Group, Australia, in relation to Shandong Shiheng and Jiangsu Yonggang, and Canada in relation to Shandong Shiheng, indicate that investigations into those manufacturers did not establish receipt of a benefit under this programme. There is no evidence that Hebei Jingye received any benefits under this programme.

MBIE is satisfied that the information from other jurisdictions was based on investigations into the specified manufacturers and can be considered reliable. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy for the programme:

Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments.

**22. State key technology project fund****Application**

The application claimed that the purpose of this programme is to "support the technological renovation of key industries and key products...The enterprises shall be mainly selected from large-sized state-owned enterprises and large-sized state-holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises of the industries." Canadian and

US cases were cited, with a subsidy level of 0.01% identified from the US *Seamless Pipe* case. The programme is also known as the “State key technology renovation fund.”

### **Other jurisdictions**

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng.

In *Organic Coated Steel* the EC noted that the GOC had stated that the programme had been terminated in 2003 and that none of the sampled exporters had benefited from it. In the absence of further information the EC relied on facts available, being the complaint and sources identified in the complaint. The level of benefit was established at 0.01% based on findings by the US DOC for a similar scheme in *Seamless Pipe*.

In *Hot-Rolled Flat Products* the programme was investigated but the EC determined that no sampled exporters (which included Hesteel Group) had received a financial contribution in respect to this programme.

This programme has been investigated in many of US DOC proceedings involving China, but in only two steel cases, *Oil Country Tubular Goods* (2009) and *Seamless Pipe* (2010), was a subsidy found for cooperating exporters, with a level of 0.01% in both cases. In other investigations AFA was used to establish subsidy levels for non-cooperating exporters, but no benefits have been found for cooperating exporters.

### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### **Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation into *Concrete Reinforcing Bar* did not find that Shandong Shiheng benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein Report specifically noted this programme as having been investigated by the US DOC, but the SIC Reports made no specific reference to this programme in relation to the Hebei Steel Group and could not identify any grant programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. Investigations by the EC, in relation to Hesteel Group, and Canada in relation to Shandong Shiheng, indicate that investigations into those manufacturers did not establish receipt of a benefit under this programme. The programme was not addressed by Australia in *Steel Reinforcing Bar*, in relation to Shandong Shiheng and Jiangsu Yonggang. There is no evidence that Hebei Jingye received any benefits under this programme.

MBIE is satisfied that the information from other jurisdictions was based on investigations into the specified manufacturers and can be considered reliable. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy programme: State key technology project fund.

**23. State Special Fund for Promoting Key Industries and Innovation Technologies*****Application***

The application claimed that this programme involved a lump-sum grant from the NDRC and the Ministry of Industry and Information Technology. The one-time grant is intended to assist a producer's development of new facilities, with export performance being one of the conditions for receiving a grant under the programme. The applicant cited Canadian and US cases, and identified a subsidy rate of 0.21% from the US *Steel Wheels* case.

***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng. A similar approach was followed in the *Galvanised Steel Wire* case.

The US DOC examined this programme in three cases, including *Steel Wheels* and *Steel Wire Rod*. In only one case, *Steel Wheels* was a subsidy found for a cooperating exporter, with the level identified as 0.21%.

### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### **Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme. The Canadian investigation into *Concrete Reinforcing Bar* did not find that Shandong Shiheng benefited from this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **MBIE Consideration**

#### *Financial Contribution*

This programme was not included in the information provided by Hesteel Chengde on the grants it had received during the period of investigation. The investigations by Canada established that Shandong Shiheng was not receipt of a benefit under this programme. The programme was not addressed by Australia in *Steel Reinforcing Bar*, in relation to Shandong Shiheng and Jiangsu Yonggang or by the EC in relation to the Hesteel Group. There is no evidence that Hebei Jingye received any benefits under this programme.

MBIE is satisfied that the information from other jurisdictions was based on investigations into the specified manufacturers and can be considered reliable. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy programme: State Special Fund for Promoting Key Industries and Innovation Technologies.

## 24. Technology to Improve Trade R&D Fund

Jiangsu Yonggang is the only sampled manufacturer located in Jiangsu Province.

### **Application**

The application noted that this was a one-time award in 2009 from the Jiangsu Treasury Department under the Technology to Improve Trade R&D Fund, which benefited the company's research and development efforts. The programme was contingent upon export performance. The US DOC *Drill Pipe* case was cited, with a subsidy level of 0.08%.

### **Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* does not appear to include any grants provided to Jiangsu Yonggang which match this programme.

In the CBSA *Concrete Reinforcing Bar* investigation, this programme was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. No subsidy was found for Shandong Shiheng (which is not located in Jiangsu Province)The estimated subsidy level per programme was around 0.08%.

The US DOC investigated a similar programme in *Galvanized Wire* and found no subsidy for the cooperative exporter, but in an investigation not related to a specific region in *Drill Pipe* in 2011, made a subsidy finding of 0.08% for the cooperating exporter. In that investigation the cooperating exporter reported receiving the grant, and the GOC stated that this program, administered by the Financial Department of the Jiangsu Government and the Department of Commerce of Jiangsu Province, was established in 2008, for the purpose of inducing research and development activities related to export products. The GOC provided further information relating to eligibility and applications for the grants. The US DOC divided the total grant amount approved by the total consolidated export sales the year received to calculate the subsidy level. In several other investigations, the US DOC found no subsidy level for the cooperating exporters but identified levels of subsidy for non-cooperating exporters using AFA.

### **GOC Response**

The GOC provided no specific information on the grant programmes specified in the questionnaire.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### **Other Sample Manufacturers**

Jiangsu Yonggang is the only sample manufacturer which could benefit from this programme. It has not been possible to confirm that Jiangsu Yonggang received a financial contribution under this programme.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme.

**MBIE Consideration**

*Financial Contribution*

This programme is potentially applicable only to Jiangsu Yonggang. The programme does not appear to have been addressed by Australia in *Steel Reinforcing Bar*

MBIE provisionally concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made to the sample manufacturers under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE’s provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy programme: Technology to Improve Trade R&D Fund.

**C. Direct transfer of funds: Loans**

A finding of subsidisation in relation to loans would require that evidence is available to confirm that:

- A loan was provided
- The loan provider was a government or any public body
- The difference between the rate paid on the government loan and the amount paid on a comparable commercial loan conferred a benefit on the purchaser
- The rates paid were specific to an enterprise or industry.

**Identified programmes**

25	Policy Lending to particular industries
26	Preferential Loans Characterized as a Lease Transaction

## 25. Policy Lending

### **Application**

The applicant notes that policy lending to particular industries is a programme of preferential policy lending specific to particular producers in particular regions. The precedents cited are Canadian, EU and US cases, with duty rates listed of 0.01% and 1.99% from US cases.

### **Other jurisdictions**

In the Statement of Essential Facts 322 for *Steel Reinforcing Bar*, the Australian ADC addressed this programme under “Preferential loans and interest rates,” noting that some of the cooperative exporters had been provided with loans by SOCBs. The Australian ADC concluded that both SOCBs and privately-owned banks were controlled by the GOC and exercised government authority in a manner that their actions could be attributed to the GOC, meaning that they were public bodies. An amount of subsidy was determined for cooperating exporters based on the difference between the benchmark rate based on the PBOC standard lending rate and the actual rate at the time the loan was sourced. For uncooperative and all other exporters the rate was set at the highest rate found for a cooperating exporter. The rates established for Jiangsu Yonggang and Shandong Shiheng are not available, but the average levels of subsidy for each of the programmes identified as countervailable for these companies in this investigation were 0.01% for Jiangsu Yonggang and 0.10% for Shandong Shiheng.

In the CBSA *Concrete Reinforcing Bar* investigation, policy loans was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. No subsidy was found for Shandong Shiheng.

The EU investigation into *Organic Coated Steel* noted that the GOC had not responded adequately to EC questions relating to loans by SOCBs. On the basis of data available to it, the EC concluded that SOCBs were controlled by the GOC and exercised government authority in a manner that their actions could be attributed to the State, and should be considered to be public bodies. The EC also concluded that private banks were instructed to carry out preferential lending. The EC resorted to facts available to determine the level of subsidy, and assumed that all firms in China would be accorded the highest grade of “Non-investment grade” bonds only (BB at Bloomberg) and applied the appropriate premium expected on bonds issued by firms with this rating to the standard PBOC lending rate. The benefit was calculated by taking the interest rate differential expressed as a percentage, multiplied by the outstanding amount of the loan, with this amount allocated over the total turnover of the cooperating exporting producers. The weighted average subsidy rate for cooperating producers was 0.58% with non-cooperating companies receiving the highest rate for an entity related to one of the sampled companies of 0.97%.

In *Hot-Rolled Flat Products*, the EC undertook a detailed analysis of the provision of loans with the conclusion that state-owned banks were exercising governmental authority being based on formal indicia of government control and evidence that it had been exercised in a meaningful way. This reflected the EC’s understanding of the findings in relevant WTO dispute proceedings. The EC

concluded that all banks in China, whether State-owned or private, were public bodies. The EC established a rate of subsidy of 4.68% for the Hesteel Group.

The 2008 US DOC investigation into *Oil Country Tubular Goods* concluded that loans to producers from Policy Banks and SOCBs in China constitute a direct financial contribution from the government. The subsidy levels for cooperating producers ranged from 0.01% to 1.53%, with the higher rates reflecting averaging with higher AFA rates for some loans. Subsidy levels for policy loans have been established in a significant number of US DOC investigations involving China, with subsidies established for cooperating exporters at a range of levels.

An analysis of the approach taken by other jurisdictions on the issue of whether or not banks are public bodies is included in Annex 2, Section B of this Report.

### ***GOC Response***

In its questionnaire response the GOC expressly asserted that there was no government programme consisting of “policy loans” to the rebar industry. Any loans obtained by producers or exporters were of a commercial nature and based on market operation. The GOC provided copies of relevant measures, including the “Provisional Measures for the Administration of Working Capital Loans” which establishes rules relating to working capital loans, and do not provide that industrial policy should be a consideration for such loans. The GOC also asserted that the various rules enacted by the China Banking Regulatory Commission (CBRC) established tight disciplines over the management of loans, while the People’s Bank of China (PBOC) had deregulated interest rates to further the market-oriented reform of the Chinese banking sector.

### ***Hesteel Chengde Response***

Hesteel Chengde noted, in its questionnaire response, that it had obtained loans from banks with its credit, and the interest rates were at normal market rates with no preferential treatment. Detailed information was provided on loans from banks and financial institutions which had not been fully reimbursed by the end of the investigation period.

Hesteel Chengde noted that it had borrowed from both state-owned banks and commercial banks, and there were no differences in the terms and condition of loans between the state-owned banks and commercial banks. The loans were provided on the basis of applications made by Hesteel Chengde and contracts entered into. The loans were provided for the operation of the company and were not linked to the achievement of any government plans, and no third parties were involved with the loan application process. All of the loans were credit loans and did not involve guarantees.

The detailed information provided by Hesteel Chengde confirms that the loans it received during the period of investigation were at a margin above the PBOC benchmark rate.

### ***Other Information***

The Wiley Rein Report suggests that the GOC directs credit to Chinese steel producers in order to effectuate its policy goals, and that central, provincial and local governments provide direct and indirect preferential loans through the State-owned banks. Specific examples of loans to steel

producers are provided (none including sample manufacturers). Most of the information is based on the period up to 2005. The SIC Report makes similar claims, and provides more recent information relating to loans for particular projects for expansion, environmental protection, and merger-and – acquisition activities. The SIC report, in its section on the Hebei Steel Group, identifies loan subsidies for a project which is dealt with as a grant reported by Hesteel Chengde in section G of Annex 2. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

### **MBIE Consideration**

#### *Financial Contribution*

Hesteel Chengde has received loans from banks for short-term working capital and for longer-term loans. The information available indicates that the other sample manufacturers have received bank loans.

#### *A Government or any Public Body*

As noted above, Hesteel Chengde provided information on the banks and financial institutions providing credit loans for its operations. Ownership details, based on information from the *Galvanised Steel Coil* investigation, the *EC Hot-Rolled Flat Products* investigation, and from research by MBIE, has established that most of the banks and financial institutions which provided loans to Hesteel Chengde can be classified as SOCBs.

For the reasons outlined in Annex 1, Section B, MBIE does not consider that SOCBs are public bodies. It is also relevant that on the basis of the approach used by Australia, Canada and New Zealand for ascertaining the level of any benefits, there is no benefit in this case, i.e. loans are not provided at preferential rates, which suggests that no “normative framework” of the kind posited by the EC is in place, and suggests that the provision of finance is based on commercial and legal considerations.

#### *Provision of a benefit*

Article 14(b) of the Subsidies Agreement provides that:

*[A] loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between the two amounts.*

In *Steel Reinforcing Bar* the Australian ADC determined the amount of subsidy for each exporter as the difference between the benchmark rate (which was the interest rate provided by the PBOC) and the actual interest rate at the time. A similar approach was taken by Canada in *Line Pipe* in 2016.

The EC generally uses the PBOC standard lending rate adjusted to reflect the EC’s assessment of the market risk for Chinese steel companies, being the premium expected on bond issues by firms with the highest grade of “non-investment grade” bonds (BB rating at Bloomberg).

For short-term RMB-denominated loans, the US DOC generally uses a benchmark based on interest rates in countries similar to China in income terms, based on World Bank classifications, modified by a regression analysis to account for strength of governance. Interest and inflation rates for the countries concerned are taken from rates reported to the IMF, excluding countries considered to be non-market economies, and non-reporting countries. A further adjustment is made to exclude countries with aberrational or negative real interest rates. For longer-term loans the US adds a further adjustment to convert the short-term rates by using Bloomberg BB-rated bond rates. For foreign currency-denominated loans the US uses a one-year London Inter-Bank Offering Rate (LIBOR) for the given currency plus the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating.

MBIE notes that a 2014 bond issue by Hesteel Iron & Steel was given an A1 rating by Moody's.

MBIE considers that the approach adopted by the Australian ADC and the Canadian CBSA provides the most appropriate way of determining the extent of any benefit through the provision of loans at preferential interest rates. In particular, it provides a reliable and straightforward way to determine if loans are at preferential rates, without requiring judgements to be made on the creditworthiness of the companies concerned, nor does it require the construction of rates involving the use of information from other countries adjusted in a variety of ways to produce a benchmark which may or may not have any meaningful relationship to the original market.

The comparison of interest rates paid by Hesteel Chengde with the benchmark interest rates published by the PBOC indicates that there is no benefit provided through preferential interest rates.

#### *Specificity*

In the absence of a financial contribution by a government or any public body that confers a benefit there is no need to consider specificity.

#### **Conclusions**

MBIE provisionally concludes that there is no financial contribution by a government or any public body which provides a benefit, so there is no countervailable subsidy programme: Policy lending to particular industries.

## **26. Preferential Loans Characterized as a Lease Transaction**

#### **Application**

The applicant claims that the leases provide a benefit equal to the difference between what the company paid on the leases and the amount the company would have paid on comparable commercial loans. The precedent cited is a US case, with a duty rate listed of 0.01%.

#### **Other jurisdictions**

The US DOC has investigated preferential loans characterised as lease transactions in only one proceeding in 2010, when it established a level of subsidy of 0.01% for a cooperating exporter. In that case, *Seamless Pipe*, the exporter reported that it held two leases from finance companies. No

further information is available on the rationale for treating these leases as being provided by the government or any public body.

### **GOC Response**

The GOC did not provide any comment on this programme.

### **Hesteel Chengde Response**

Hesteel Chengde did not address this programme separately. The EC investigation into *Hot-Rolled Flat Products*, which covered Hesteel Group, did not address this programme.

### **Other Sample Manufacturers**

This programme was not addressed by Australia in *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, or by Canada in *Concrete Reinforcing Bar*, which covered Shandong Shiheng.

### **MBIE Consideration**

#### *Financial Contribution*

On the basis of the information available to this point in the investigation, MBIE does not consider that there is reliable information that would indicate that this programme is applicable in this case. In particular, the absence of this programme from investigations undertaken by other jurisdictions involving three of the sample manufacturers is a strong indicator that it has not been applicable to any of them. Accordingly, MBIE concludes that there is no financial contribution.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE provisionally concludes that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy for the programme: Preferential Loans Characterized as a Lease Transaction.

## **D. Government provision of goods and services**

### **Identified programmes**

27	Input Materials Provided by Government at Less than Adequate Remuneration (LTAR)
28	Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices
29	Utilities Provided by Government at Less than Adequate Remuneration (LTAR)

## 27. Provision of input materials for LTAR

A finding of subsidisation in relation to the price of inputs would require that evidence is available to confirm that there is a financial contribution by a government or any public body that provides a benefit because:

- A producer purchased the designated inputs
- The input provider was a government or any public body
- The prices paid were for LTAR and conferred a benefit on the purchaser
- The prices paid were specific to an enterprise or industry.

### **Application**

The applicant claimed that the GOC is providing raw materials (such as steel) at less than fair market price [Note: the legal requirement is “at less than adequate remuneration”]. It is claimed that the programme relates to the acquisition cost of major raw materials from SOEs and subsequently used in the production of finished subject goods. The application suggests that when exporters or producers of subject goods acquire raw material inputs at less than fair market value directly or indirectly from SOEs and those SOEs are considered to be possessing, exercising, or vested with governmental authority, then a subsidy may be found to exist. The subsidy level is equivalent to the difference between the fair market value of the goods and the price at which the goods are provided by the SOE. The application noted subsidy levels of 0.103% in a Canadian case and 60.22% in a US case.

### **Other jurisdictions**

In *Steel Reinforcing Bar*, the Australian ADC investigated the provision of billet, coking coal, and coke. With regard to steel billet, the Australian ADC found that the self-provision of billet at less than adequate remuneration (LTAR) by integrated steel producers which were State-invested enterprises (SIEs) constituted a subsidy, since SIEs were public bodies, and raw material inputs into billet production had been purchased from other SIEs. On this basis, the sale of the billet to another entity would have been countervailable. The Australian ADC considered that SIEs providing coking coal and coke were “public bodies”. With regard to coking coal and coke, the Australian ADC established that coking coal and coke had been purchased from SIEs at LTAR, which constituted a subsidy, but subsumed the benefit into that identified for billet.

The Australian ADC determined that Jiangsu Yonggang was not an SIE and did not benefit from the provision of billets to itself and did not purchase coking coal, so no subsidy was found in regard to these inputs. However, it was determined that Jiangsu Yonggang did purchase coke from SIEs so had benefited from a subsidy. With regard to Shandong Shiheng, the Australian ADC determined that the company was not an SIE so there was no subsidy on self-provided billet, but it was found that Shandong Shiheng had purchased coking coal and coke from SIEs so had benefited from a subsidy. The particular subsidy levels applicable to purchases of inputs at LTAR are not available to MBIE, but the average levels of subsidy for each of the programmes found to be countervailable by the Australian ADC in *Steel Reinforcing Bar* were 0.01% for Jiangsu Yonggang and 0.10% for Shandong

Shiheng. The investigation was terminated for both of these manufacturers because the total subsidy levels were below *de minimis*.

In the CBSA *Concrete Reinforcing Bar* investigation, government provision of input materials was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was established for Shandong Shiheng. Although a number of alleged programmes relating to the provision of goods and services by the Government at less than fair market value were included in the list of programmes included in the investigation, none were actually investigated because of the incomplete responses from the GOC and known exporters. It appears, therefore, that the Canadian authorities, in this case, did not actually address the question of whether providers of goods and services were, in fact, SOEs.

The EU investigation into *Organic Coated Steel* considered the provision of hot-rolled and cold-rolled steel for LTAR. In the absence of information requested from the GOC, the EC used other best information available, and concluded that SOEs providing the input materials were public bodies. The level of subsidy was based on a comparison of the prices paid by Chinese producers compared with a benchmark established on the basis of an average of prices in five international markets. The subsidy levels so established averaged 25.37% for cooperating exporters and 32.44% for non-cooperating exporters, based on the highest subsidy rate established for an entity related to one of the cooperating exporters.

The EU investigation into *Hot-Rolled Flat Products* did not address the supply of billet, but did cover iron ore, coke and coking coal. The EC could not establish that there was any subsidy to the sampled companies in respect to any of these products. In particular, the EC found that prices paid for inputs were similar, irrespective of the source. This investigation covered the Hesteel Group.

The US DOC has investigated the provision of input materials in a wide range of cases. With regard to coking coal, no subsidies were attributed to cooperating exporters while AFA was used to establish subsidy rates with a maximum of 5.51%. With regard to steel billet, there has been only one investigation, *Steel Wire Rod* in 2014, which used AFA to establish a rate of 15.48%. In the 2010 *Steel Grating* case, US DOC used AFA to establish subsidy levels of 44.91% for hot-rolled steel and 15.31% for wire rod, totalling 60.22%. In two cases the effect of the limitation on coke exports was investigated, with no countervailable subsidy found in one case and duties based on AFA found in the other (the EC specifically addressed this issue and found that there was no subsidy). The provision of coal was investigated in a number of cases, with subsidy rates determined only by the use of AFA.

### **GOC Response**

In its questionnaire response the GOC asserted that there was no government programme for the provision of goods or services to the rebar industry at less than adequate remuneration. Input suppliers were not “government authorities” or “public bodies”, and no specificity existed in the provision of steel billets, iron ore, coke or coking coal. The GOC stated that all the input producers



### **Other Sample Manufacturers**

Hebei Jingye, Jiangsu Yonggang and Shandong Shiheng are all integrated steel producers and are not state-owned. The Australian investigation Steel Reinforcing Bar found subsidy rates for Jiangsu Yonggang in relation to coking, and Jiangsu Yonggang and Shandong Shiheng in relation to coke. The Canadian investigation of *Concrete Reinforcing Bar* found no subsidies relating to input pricing for Shandong Shiheng. The EC investigation of *Hot-Rolled Flat Products* found no subsidy rate for the Hesteel Group for raw material inputs.

### **Other Information**

Market information<sup>36</sup> supports the trends shown in the prices paid by Hesteel Chengde.

The Wiley Rein and SIC Reports focus primarily on GOC restrictions on exports of raw materials, such as coke, and assistance provided for iron ore purchases and production.

### **MBIE Consideration**

#### *Financial Contribution*

All of the sample manufacturers are integrated steel producers that use self-produced billets in their manufacturing process. All of the sample manufacturers produce steel products based on raw material inputs, such as iron ore, coking coal and coke purchased from a variety of sources. Hesteel Chengde's iron ore purchases are primarily through imports, which are lower in price than domestic supplies, which also include purchases from associated companies, while the majority of coke purchases appear to be from associated companies.

MBIE does not consider that that integrated steel producers self-supplying steel billets can be considered to be providing inputs at LTAR even if were found to be "public bodies."

#### *A Government or any Public Body*

On the basis of the analysis outlined in Annex 1, Section B above, MBIE does not consider that suppliers of raw material inputs are public bodies, or that integrated steel producers self-supplying billets are public bodies.

In reaching this conclusion MBIE has carefully reviewed the considerations put forward by other jurisdictions. In particular, MBIE agrees with the conclusions reached by the ADRP in its consideration of the *Zinc Coated (Galvanised) Steel (INV193)* investigation<sup>37</sup>, and disagrees with the Australian ADC's subsequent interpretation of the findings arising from DS436 relating to the nature

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<sup>36</sup> For example, information published by Fenwei Energy Information Services on [sxcoal.com](http://www.sxcoal.com), see <http://www.sxcoal.com/news/4552905/info/en> last accessed on 30 October 2017.

<sup>37</sup> See above, paragraph 33 in Annex 1, Section B.

of the control which the government should have over an entity in order for it to be considered a “public body.” In MBIE’s view, the other jurisdictions reviewed similarly focus on the “formal indicia” of control, rather than on “meaningful control,” make general assumptions about the extent and nature of GOC involvement in the steel industry, and tend to rely on AFA in the absence of full and precise responses to requests for information.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established. MBIE notes, however, that In *Hot-Rolled Flat Products* the EC assessed that the GOC had not provided input materials for less than adequate remuneration because the producers investigated had received their raw materials at market prices.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

#### **Conclusions**

On the basis of information provided by Hesteel Chengde and from the findings of other jurisdictions, MBIE is satisfied that the best information available that is considered reliable indicates that the sample manufacturers have not received a financial contribution from a government or any public body with regard to the purchase of input materials which provides a benefit through the provision of such raw materials at a less than adequate remuneration..

MBIE provisionally concludes that there is no financial contribution by a government or any public body which provides a benefit, so there is no countervailable subsidy in respect to the programme: Government provision of input materials at less than adequate remuneration.

#### **28. Provision of land use rights, land rentals and land purchases**

A finding of subsidisation in relation to the provision of land-use rights would require that evidence is available to confirm that:

- Producers of rebar paid for or received allocated land-use rights
- The land-use rights were provided by a government or any public body
- The land-use rights were provided for LTAR
- The prices paid were specific to an enterprise or industry.

#### **Application**

The application included this programme under “Government revenue foregone”, but MBIE considers that it is more appropriate to address it in the context of “Government provision of inputs and services.” The applicant claimed that the programme provides for the reduction in land-use fees, rental rates and purchase prices to lower than adequate remuneration, and referred to a document entitled “(2003) No 8 Preferential Supply of Land.” Examples provided related to particular locations. It was claimed that there were distinctions in the government’s provision of land-use rights within a specific areas and outside a specific area.

**Other jurisdictions**

In *Steel Reinforcing Bar*, the Australian ADC was not required to address the provision of land-use rights for LTAR.

In the CBSA *Concrete Reinforcing Bar* investigation, exemption/reduction of special land tax and land-use fees in special economic zones (SEZs) and other designated areas was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng.

The EU investigation into *Organic Coated Steel* considered the provision land-use rights for LTAR. The EC reviewed information on land-use right transactions and on the basis that not all such transactions were based on bidding or auction processes concluded that prices were often set by the local authorities concerned. The level of subsidy was based on a comparison of the prices paid by Chinese produces compared with a benchmark established on the basis of land prices in Taiwan. The subsidy levels so established averaged 0.73% for cooperating exporters and 1.36% for non-cooperating exporters, based on the highest subsidy rate established for an entity related to one of the cooperating exporters.

In *Hot-Rolled Flat Products* the EC recalled that in previous investigations it had found that prices paid for land-use rights were not representative of a market price determined by free market supply and demand, since the bidding or public offering process was found to be unclear, non-transparent and non-functioning in practice, and prices were found to be arbitrarily set by the authorities. The current investigation did not show any noticeable changes, with recent allocations of plots of land being at negotiated prices. The EC also found that one sampled exporter had received a refund from local authorities, including for works done by the company itself as regards basic infrastructure on the land. The EC noted that the authorities set the prices of land in accordance with the Urban Land Evaluation System which instructed them, among other criteria to consider also industrial policy, and in the steel sector at least, access to industrial land is limited to companies respecting the industrial policies set by the State. The EC calculated subsidy levels ranging from 1.20% to 7.63% for the sampled exporters, based on comparisons with land prices in Taiwan.

The US DOC 2010 investigation of *Seamless Pipe* found subsidy levels of 2.67% for a cooperating exporter for the provision of land-use rights for LTAR in particular areas in Tianjin. The subsidy level of 0.01% established by the US DOC in the 2010 *Steel Wire Strand* investigation related to the provision of land-use rights for LTAR to FIEs in Jiangxi and the City of Xinju. Other investigations involving China found a range of subsidy levels for cooperating exporters, and significantly higher rates using AFA for non-cooperating exporters.

**Previous Investigations**

In *Galvanised Steel Coil*, MBIE considered that information provided by the GOC and the cooperating exporter was the best information available, and on this basis there was no financial contribution provided by way of the provision of land-use rights for LTAR. In doing so, MBIE noted that in *Organic*

*Coated Steel* the EC had found that not all of the transactions it had reviewed involved bidding or auction processes but in some cases prices had been set by the authorities, there being only one participant in the process or information was not available.

With regard to specificity, MBIE noted that it had concluded that the steel industry as such was not an “encouraged” industry, nor was it clear that land-use rights provided to steel companies were somehow differentiated between those usages that might fall within “encouraged” status and those that did not.

In *Galvanised Steel Coil* MBIE had established that the price paid for land-use rights by an investigated manufacturer was similar to the price paid by another business in the same locality, which was based on an appraisal of the value in the context of a related-party transaction. Taking into account this information and the information from the GOC, MBIE concluded, in regard to galvanised steel coil, that there was no financial contribution by way of the provision of land-use rights for LTAR.

**GOC Response**

In its questionnaire response the GOC noted that Hesteel Chengde had not obtained land-use rights from the government between 2011 and 2016. The GOC also stated that it was not correct that the GOC provided land-use rights to companies for little or no cost. While land may have been allocated before 1998 when the Land Administration Law was promulgated, since that time fees were charged for land-use rights, with specified exceptions. The GOC provided a summary of the legal requirements surrounding the allocation of land-use rights. It was emphasised that for land for which there are two or more intended users the assignment is to be conducted through bid invitation, auction or quotation. The GOC stated that it does not set or direct the land-use right price specific to any industry or any region, and the transfer of land-use rights in China is based on market principles. It also noted that in China all industries have access to obtaining land-use rights in accordance with the relevant laws and regulations.

**Hesteel Chengde Response**

Hesteel Chengde stated that its land-use right is leased from its related company, Chengde Iron and Steel Group (Chengde Group), and fees are paid to that company each year according to a contract. Chengde Group obtained the land-use right from the Bureau of Land and Resources of Hebei Province by means of transfer through a debt-to-equity swap

[REDACTED]

Hesteel Chengde's 2016 Annual Reports makes provision for land-use rights under note V.14 on Tangible Assets. Further information is being sought from the company to clarify the relationship with the lease agreement.

### ***Other information***

The Wiley Rein Report claims that China's steel industry receives heavily subsidised lease agreements for the land utilised by its operations. The land-use rights are listed as intangible assets by steel companies and can be used as collateral in securing financing. The Report highlighted the accounting for land-use rights in the period 2003-2006 by three major steel producers (not including the sample manufacturers). The SIC Report recognises that there is no market for land in China, but claims that prices paid by steel companies are artificially low. The specific sections on the Hebei Steel group and Hebei Jingye did not identify any subsidies relating to land-use rights.

### ***MBIE Research***

Although private ownership of land is not possible in China, under the Constitution's Amendment Act in 1988 land-use rights became divisible from land ownership, thus making it possible for land-use rights to be privatised. In 1998 the Land Administration Law was promulgated and since then all land use rights have been granted in return for fees, with exceptions relating to governmental entities and military entities; municipal infrastructure and social welfare facilities; energy, transportation, and irrigation facilities with government support; and other entities explicitly set out by laws and regulations.

In 2001, the Ministry of Land Resources issued a Catalogue of Allocation of Land (MOLAR Decree 9), which set out the categories for allocated land, but land for profit driven industrial and commercial use was not included in those categories. The Regulation on the Implementation of the Land Administration Law of the People's Republic of China, and the Provisions on the Assignment of State-owned Construction Land Use Right through Bid, Invitation, Auction, and Quotation, provide that with respect to land for industry, commerce, tourism, entertainment, commercial housing or other business operations, or on which there are two or more intended land users, the assignment shall be conducted through bid invitation, auction or quotation.

### ***MBIE Consideration***

#### ***Financial Contribution***

As provided for in Chinese legislation, users of land in China pay, directly or indirectly, for land-use rights. The information available to MBIE confirms that steel producers make such payments.

In the case of Hesteel Chengde, the company makes lease payment to an associated landlord company which originally obtained the land-use rights through a debt-for-equity swap with the State. Hesteel Chengde leases the land from a landlord, which is the holder of the land-use right, and, on the face of it, the level of lease payment exceeds the apparent cost to the landlord. This suggests that, in the case of Hesteel Chengde, there may not be a financial contribution to be examined. However, since the landlord is an associated company, as listed in section 3.4 above on

the basis of the considerations set out in Annex 1, Section D above, MBIE is, at this point in the investigation, treating payments for land-use rights as potentially providing a financial contribution to Hesteel Chengde. Additional information is being sought from Hesteel Chengde to clarify the position.

*A government or any public body*

In China land is owned by the State or by peasants' collectives, and its use is subject to legislation and regulations, with municipal and county governments responsible for allocating land-use rights in accordance with the requirements of the legislation and regulations.

For the reasons outlined above in regard to the leasing arrangements between Hesteel Chengde and its associate company, MBIE, at this point in the investigation, treating payments for land-use rights by Hesteel Chengde as possibly being provided by a government. Note that for the reasons outlined in relation to purchases of inputs, and on the basis of the considerations set out in Annex 1, Section B, MBIE does not consider that Chengde Group is a public body.

*Provision of a benefit*

A benefit is provided if the land-use rights are provided for less than adequate remuneration. Under Article 14(d) of the Subsidies Agreement, the adequacy of remuneration is to be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale). As noted in *Galvanised Steel Coil*, it is MBIE's view that it is difficult to realistically compare the price paid for land-use rights in China with the price of land in another jurisdiction, when what is being provided or purchased is different. It is difficult to see how such a comparison would meet the requirements of Article 14(d) relating to market conditions. In *Galvanised Steel Coil*, MBIE suggested that the proper approach would be to compare the charges for land-use rights for the Chinese producers of the good exported to New Zealand and other producers or industries in China. On the basis of this view, the approaches adopted by the EC, comparing prices in Taiwan, and the US DOC, comparing prices in Thailand, are not really appropriate.

The information provided by the GOC indicates that prices are based on market principles through bid invitation, auction or quotation. However, in *Hot-Rolled Flat Products* the EC claimed that no evidence was provided by the GOC or by exporters to confirm that prices not based on bidding or auction were not set arbitrarily by the authorities, and recalled that before 2000 land-use rights were usually allocated to a company free of charge. This would appear to illustrate a reliance on AFA where a negative cannot be proved, and the reliability of such assumptions must therefore be carefully considered in the context of other information that is available.

With regard to the current case, MBIE is satisfied that there is evidence that the original value of the land-use rights utilised by Hesteel Chengde was subject to an appraisal process, and pending further information that has been requested, does not consider that there is reliable information available that would permit a conclusion that a benefit has been conferred.

### *Specificity*

MBIE has concluded that the steel industry as such is not an “encouraged” industry, nor is it clear that land-use rights provided to steel companies are somehow differentiated between those usages that might fall within “encouraged” status and those that did not. The GOC has advised that it does not set or direct the land-use right price specific to any industry or any region, and the transfer of land-use rights in China is based on market principles, with all industries having access to obtaining land-use rights in accordance with the relevant laws and regulations.

### **Conclusion**

MBIE is satisfied that the best information available that is considered reliable at this point in the investigation indicates that the sample manufacturers have not received a financial contribution from a government or any public body with regard to land-use rights which provides a benefit through the provision of land-use rights at a less than adequate remuneration. MBIE notes that further information has been sought in order to clarify matters relating to Hesteel Chengde’s position in regard to payments for land-use rights.

MBIE provisionally concludes, and subject to further clarification, that there is no financial contribution by a government or any public body which provides a benefit, so there is no countervailable subsidy in respect to the programme: Provision of land use rights, land rentals and land purchases.

## **29. Provision of utilities for LTAR**

### **Electricity**

A finding of subsidisation in relation to the price of electricity would require that evidence is available to confirm that:

- A producer purchased electricity
- The electricity provider was a government or any public body
- The prices paid were for LTAR and conferred a benefit on the purchaser
- The prices paid were specific to an enterprise or industry.

### **Application**

The application claims that electricity rates are set differently in different provinces and also that preferential rates are used as an industrial policy tool to encourage high added-value steel products and discourage outdated production facilities. Canadian, EU and US cases are cited, with subsidy rates of 0.04% and 4.22% identified from US investigations.

### **Other jurisdictions**

In *Steel Reinforcing Bar*, which covered Jiangsu Yonggang and Shandong Shiheng, the Australian ADC investigated the provision electricity at LTAR by reviewing the prices paid by the cooperating exporters with prices for large industry users in the provinces in which they were located. On the basis of this analysis the Australian ADC concluded that there was no subsidy involved.

In the CBSA *Concrete Reinforcing Bar* investigation, provision of utilities at less than fair market value was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was found for Shandong Shiheng.

In *Organic Coated Steel*, the EC established that one cooperating exporter had benefited from an electricity rate lower than the rate generally applicable for large industrial users. The weighted average level of subsidy identified for cooperating exporters was 0.07% and 0.17% for non-cooperating exporters based on the highest rate established for an entity related to a cooperating exporter. In *Hot-Rolled Flat Products* the EC found no evidence that any of the sampled companies benefited from a lower preferential rate for electricity.

In *Hot-Rolled Flat Products*, which covered the Hesteel Group, the EC established that all sampled companies either generated power themselves or purchased it from the grid. The purchase prices from the grid followed the officially established price levels set at the provincial level for large industrial clients. No evidence was found that the companies investigated benefitted from a lower preferential rate. The EC could not establish that the GOC had provided a subsidy for the purchase of electricity during the investigation period.

Virtually all US DOC investigations since *Kitchen Appliance Shelving* in 2009 have found subsidies for the provision of electricity at LTAR, despite having concluded that there were no countervailable subsidies before then. Most findings have involved partial or full use of AFA. In *Kitchen Appliance Shelving* the subsidy level was 0.04%, based on AFA due to the failure of the GOC to provide all information requested. In *Seamless Pipe*, partial AFA was used to establish subsidy levels of 1.53% and 4.22% for the cooperating exporter, based on information from *Kitchen Appliance Shelving*.

### **Previous Investigations**

In *Galvanised Steel Coil*, MBIE noted that the legal requirement in China is that electricity prices should reflect differing costs in different regions, with different rates according to broad end-user categories. On the basis of the information available the manufacturer of galvanised steel coil exported to New Zealand had not benefited from preferential electricity rates which were specific to certain enterprises, and consequently MBIE concludes that there was no countervailable subsidy arising from the provision of electricity at LTAR.

### **GOC Response**

The GOC questionnaire response noted that electricity prices are classified by end-user categories, such as residential price use prices; agricultural use prices; large industries use prices; and/or industrial and commercial use prices. Within each category for each province the electricity prices are equally applied to all end users.

The GOC also stated that electricity prices in China are based on market principles. The relevant pricing authorities are required to take into account the overall demand and supply present in the electricity market as well as the costs of electricity generation and transmission. The retail prices of electricity are made up by the purchasing costs, transmission prices, transmission losses and

governmental surcharges. The differences in these costs, as well as other costs like coal and coal transportation prices, among others, are analysed on an enterprise as well as on a provincial basis. Differences in such costs are the basic reason for different rates in different provinces or cities.

The GOC also provided copies of the Price Law, and the Order of the State Development Planning Commission setting out “The Catalogue of Prices regulated by the State Development Planning Commission and Other Departments under the State Council.” The list includes (1) electric power in terms of the price of electrical power of the transmission-line system that has not adopted competitive price, and (2) the distribution price of electrical power. Information on electricity prices in Hebei Province was also provided.

### ***Hesteel Chengde Response***

Hesteel Chengde advised that it organises the supply of electricity through both purchasing and generating electricity itself. Purchases are from State Grid Jibei Electric Power Company Chengde Electricity Supply Company, which is a state-owned company. Hesteel Chengde provided information on its monthly payments for electricity. Hesteel Chengde stated that electricity prices were set in accordance with GOC policy and it did not receive any benefit from price reductions.

### ***Other Information***

The Wiley Rein Report claims that “it is widely known” that particular industries, including steel are eligible for discounted electricity rates in the effort to promote production. It is stated that prices charged by power companies do not cover marginal costs and cites a specific example of a large steel producer reporting electricity subsidies in its 2004 Annual Report. The SIC Report also claims that subsidies are provided through electricity prices, as reported by a number of companies in their financial statements.

### ***MBIE Consideration***

*A government or any public body*

According to its website<sup>38</sup> the State Grid Corporation of China (SGCC) was founded on 29 December 2002 as a pilot state-owned corporation by the State Council. As a backbone SOE that may affect national energy safety and economic lifelines, SGCC’s core business is to build and operate power grids and provide secure and reliable power supply for the development of the society. SGCC has registered capital of RMB 200 billion and services an area covering 26 provinces, autonomous regions and municipalities directly under the jurisdiction of the Central Government, which equals to 88 per cent of the national territory. Its president is the legal corporate representative of SGCC,

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<sup>38</sup> <http://www.sgcc.com.cn/ywlm/gsgk-e/gsgk-e/gsgk-e1.shtml>: accessed on 6 November 2017.

which owns and manages five regional power grid companies and 24 provincial electric power companies, including Jiangsu Electric Power Company.

Electricity prices are controlled by the NDRC, which undertakes functions and responsibilities relating to national strategic planning for economic and social development across the Chinese economy. A variety of sources suggest that while the NDRC has sought to implement pricing policies on the basis outlined in the GOC questionnaire response, attempts to raise power prices have met with resistance from provincial and local officials who maintain an interest in providing reduced utility rates to industries operating within their localities.

#### *Provision of a benefit*

A benefit will be provided where electricity is provided at LTAR when compared with prevailing market conditions for the good or service in the country of provision. The information available to this point in the investigation indicates that the prices available to Hesteel Chengde are those charged for similar enterprises in Hebei Province. Further clarification is being sought to clarify the relationship between the prices listed by the Hebei Province authorities and the costs identified by Hesteel Chengde.

MBIE notes that investigations by other jurisdictions which involved the sample manufacturers did not find any level of benefit.

MBIE is satisfied that, pending further information that has been requested, that the information available does not permit a conclusion that a benefit has been conferred.

#### *Specificity*

The information available to this point in the investigation is that electricity charges to sample manufacturers followed the officially established price levels set at provincial level for large industrial users. On this basis there is no specific subsidy.

#### **Conclusion**

MBIE is satisfied that the best information available that is considered reliable at this point in the investigation indicates that the sample manufacturers have not received a financial contribution from a government or any public body with regard to electricity which provides a benefit through the provision of electricity at a less than adequate remuneration. MBIE notes that further information has been sought in order to clarify matters relating to Hesteel Chengde's payments for electricity.

MBIE provisionally concludes, and subject to further clarification, that there is no financial contribution by a government or any public body which provides a benefit, so there is no countervailable subsidy in respect to the programme: Provision of utilities (electricity) for LTAR.

#### **Water**

A finding of subsidisation in relation to the price of water would require that evidence is available to confirm that:

- A producer purchased water
- The water provider was a government or any public body
- The prices paid were for LTAR and conferred a benefit on the purchaser
- The prices paid were specific to an enterprise or industry.

### **Application**

The application claims that water prices in China are exclusively determined by public authorities and that the pricing structure is set according to industrial macro-policies. It was also claimed that water prices were different in the various local areas and that there was also a differentiation of rates on a company-by-company basis.

### **Other jurisdictions**

This programme was not addressed by the Australian ADC or the EC in their recent investigations into *Steel Reinforcing Bar* and *Hot-Rolled Flat Products*, respectively.

In the CBSA *Concrete Reinforcing Bar* investigation, provision of utilities at less than fair market value was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. No subsidy was established for Shandong Shiheng.

In *Organic Coated Steel*, the EC noted that the price of water for each municipality is based on distribution costs, profits and a reasonable surplus, and is supplemented by a sewage treatment fee. The EC established that a cooperating exporter had benefited by being exempted from the sewage treatment fee. The weighted average level of subsidy identified for all exporters was 0.01%. Government provision of water was not investigated by the EC in *Hot-Rolled Flat Products*.

The US DOC has investigated the provision of water for LTAR in a number of cases, but has yet to establish subsidisation of any cooperative exporters. Subsidy levels, based on partial or full AFA, have been applied in some cases, with levels up to 20.06%, based on the highest rate established in an earlier investigation for the provision of electricity which was itself based on AFA.

### **GOC Response**

The GOC provided copies of the Price Law, and the Order of the State Development Planning Commission setting out "The Catalogue of Prices regulated by the State Development Planning Commission and Other Departments under the State Council." The list includes the price of water supplies of central or trans-provincial water conservancy in terms of ex-reservoir (beginning of the ditch) price.

### **Hesteel Chengde Response**

Hesteel Chengde advised that it purchased water from Shuangluan District Water Supply Company, the Chengde Zhong Bao Water Management Company, and Chengde Shuangluan District Zhong Run Water management Company, which are controlled by the government. Hesteel Chengde stated

that the price of water charged to it did not differ from the prices charged to other companies in the district. Hesteel Chengde provided information on its monthly payments for electricity.

### ***Other Information***

The SIC Report notes that the Hebei Steel Group had reported water price-related subsidies in its financial statements but reported no subsidies with regard to Hebei Jingye. MBIE notes that government subsidies identified as “Water resource expenses” are covered in the Reported Grants identified by Hesteel Chengde and addressed in section G below.

### ***MBIE Consideration***

#### *A government or any public body*

The bodies providing water are State agencies, and are therefore “a government or any public body.”

#### *Provision of a benefit*

A benefit will be provided where water is provided at LTAR when compared with prevailing market conditions for the good or service in the country of provision. The information provided by Hesteel Chengde is that there are no preferential charges for water. Further clarification is being sought to clarify the relationship between the prices charged by the Hebei Province authorities and the costs identified by Hesteel Chengde.

#### *Specificity*

The information available to this point in the investigation is that water charges to sample manufacturers followed the officially established price levels set at provincial level. On this basis there is no specific subsidy.

### ***Conclusion***

MBIE is satisfied that the best information available that is considered reliable at this point in the investigation indicates that the sample manufacturers have not received a financial contribution from a government or any public body with regard to water which provides a benefit through the provision of water at a less than adequate remuneration. MBIE notes that further information has been sought in order to clarify matters relating to Hesteel Chengde’s payments for water.

MBIE provisionally concludes, and subject to further clarification, that there is no financial contribution by a government or any public body which provides a benefit, so there is no countervailable subsidy in respect to the programme: Provision of utilities (water) for LTAR.

## E. Government revenue foregone: Concessions on income tax and other taxes

A finding of subsidisation in relation to concessions on income taxes and other taxes would require that evidence is available to confirm that:

- Tax concessions were provided
- There was government revenue otherwise due that is foregone or not collected and that a benefit is conferred on the purchaser
- The programme was specific to an enterprise or industry.

### **Programmes identified**

30	Corporate Income Tax Reduction for New High Technology Enterprises (HNTEs)
31	Income tax concessions for the enterprises engaged in the comprehensive resource utilization ('special raw materials')
32	Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose
33	Tax policies for the deduction of research and development expenses
34	Tax Preference Available to Companies that Operate at a Small Profit
35	Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin
36	Dividend tax exemption for certain transactions between qualified resident enterprises

### *GOC Response*

The GOC noted that to the best of its knowledge there were no such programmes utilized by Hesteel Chengde during the period of investigation, except for programmes 31 and 33. Comments relating to these programmes are included below.

### *Hesteel Chengde Response*

Hesteel Chengde confirmed that it had received benefits in respect to two programmes, 31 and 33, during the period of investigation.

## **30. Corporate Income Tax Reduction for New High Technology Enterprises (HNTEs)**

### ***Application***

The applicant claims that the programme was established in the Income Tax Law of the People's Republic of China for Enterprises, which came into effect as of 1 January 2008. The Programme was established to provide income tax reduction for new high-technology enterprises and to promote

enterprise technology upgrades. The granting authority is the State Administration of Taxation and the programme is administered by local tax authorities. Under this programme, new high-technology enterprises may apply for and receive income tax reduction at a lower rate of 15%. The application cites Australian, Canadian, EU and US cases, and identifies subsidy rates of 0.09% from the EC Organic Coated Steel investigation and 1.44 from the US DOC OCTG investigation.

### **Other jurisdictions**

The applicant suggested that in the Australian ADC *Steel Reinforcing Bar* investigation the programme was known as “Preferential tax policies for High and New Technology Enterprises.” In that investigation the Australian ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme during the investigation period. With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters. The application in *Steel Reinforcing Bar* indicated that programme was the subject of a Circular of the State Council concerning the approval of new national development zones for new and high technology industries and related to reductions in income tax for FIEs designated as HNTes operating in high and new technology parks.

In the CBSA *Concrete Reinforcing Bar* investigation, this was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. In a number of other cases a duty estimate was used on the same basis as for *Concrete Reinforcing Bar*. In *OCTG1* the CBSA determined that four of the cooperative exporters received benefits under this programme during the Subsidy POI. The amount of subsidy was calculated under ministerial specification (i.e. where sufficient information has not been furnished or is not available) by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

In the EC’s *Organic Coated Steel* investigation the programme was known as “Preferential tax policies for companies that are recognised as high and new technology companies.” The legal basis identified was Article 28 of the Enterprise Income Tax Law, promulgated on 16 March 2007 along with the “Administrative Measures for the determination of High and New Technology Enterprises” and the “Notice of the State Administration of Taxation on the issues concerning Enterprises Income Tax payment of High and New Technology Enterprises” (Guo Shui Han [2008] No 985). The EC based its findings on the information available on record, which in this case was the *Coated Fine Paper* findings and the complaint, because the GOC in its questionnaire response noted that none of the sampled companies made use of the programme but did not provide information on any other companies. The level of subsidy identified for non-cooperating exporters was 0.9%, which was the arithmetic average of the rates established in *Coated Fine Paper*.

In *Hot-Rolled Flat Products* the EC concluded that no financial contribution no benefit was received by the sampled exporting producers (including the Hesteel Group) for this tax exemption programme.

The US DOC has investigated preferential tax reductions for HNTes in relation to FIEs and regional programmes, as well as for companies generally. For investigations involving steel and steel products, no subsidy levels for cooperating companies were established, although in more recent cases (since 2015) rates established on the basis of AFA have been applied to non-cooperating exporters. The levels so established applied to a number of preferential tax programmes based on the assumption that no income tax was paid so a level of 25%, being the standard corporate tax level, covered all tax programmes combined. The subsidy level of 1.44% in the OCTG investigation related to preferential tax treatment for FIEs identified as HNTes.

### **GOC Response**

The GOC noted that to the best of its knowledge there was no such programme utilized by Hesteel Chengde during the period of investigation.

### **Hesteel Chengde Response**

This programme was not included in the tax programmes that Hesteel Chengde admitted to receiving benefits under. Hesteel Chengde advised that it is not categorised as a High and New Technology Enterprise.

### **Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* found no evidence that Shandong Shiheng and Jiangsu Yonggang, had benefited from this programme. The Canadian investigation of *Concrete Reinforcing Bar* found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein Report identifies this programme as providing benefits and cites examples of steel enterprises receiving tax benefits due to their status as HNTes. The SIC Report notes the existence of general tax exemptions, reductions and credits, and cites the Hebei Steel Group as having reported receiving such benefits. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

The Chinese Enterprise Income Tax Law provides, in the second paragraph of Article 28, that “As regards important high-tech enterprises necessary to be supported by the state, the enterprise income tax shall be levied at the reduced rate of 15%.” Article 93 of the Implementation Regulations for the Corporate Income Tax Law, with regard the second paragraph of Article 28 of the Income Tax Law, establishes the conditions to be met, including that the products or services involved should fall under the scope stipulated in the Key Advanced and New Technology Industries Supported by the State, the ratios required for R&D expenses, revenue from advanced and new technology products or services, and of technical personnel.

**MBIE Consideration***Financial Contribution*

The information available is that the Australian authorities found no benefits to Shandong Shiheng and Jiangsu Yonggang, the Canadian authorities in *Reinforcing Steel Bar* found no benefit for Shandong Shiheng, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Chengde is not an HNTe so does not qualify for this programme.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Corporate Income Tax Reduction for New High Technology Enterprises HNTes).

**31. Income tax concessions for the enterprises engaged in the comprehensive resource utilization ('special raw materials')*****Application***

The application claims that this tax programme allows companies that use any of the materials listed in the "Catalogue of Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilisation" as its major raw material and which manufactures products listed in the same Catalogue in a way that meets relevant national and industrial standards, to include the income they thereby obtain in the total income at the reduced rate of 90%. Thus 10% of income can be deducted when the companies calculate the income tax. The applicant cites the EC *Organic Coated Steel* case and the subsidy level it identified of 0.01%.

***Other jurisdictions***

In *Steel Reinforcing Bar*, the Australian ADC investigated the refund of VAT on comprehensive use of resources. A subsidy level was calculated for one cooperating exporter, but a zero level for other cooperating exporters since there was no evidence they were receiving any benefit. Note that the programme being investigated by MBIE relates to income tax concessions, not VAT refunds.

In the CBSA *Concrete Reinforcing Bar* investigation, this was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%.

In *Organic Coated Steel*, the EC noted that the GOC had advised that none of the sampled exporters had made use of the programme but because the GOC did not provide information on other exporters, the EC used information available on the record, the complaint, as the basis for its findings for non-sampled exporters. The level of subsidy so determined was 0.01%.

In *Hot Rolled Flat Products* the EC noted that the Hesteel Group had used this subsidy. The EC concluded that it was specific since it was limited to certain categories of raw materials and final products under specific business categories as defined in the “Catalogue of Enterprise Income Tax Preference for Synergistic Utilisation.” The level of benefit was calculated as the difference between the amount of tax normally paid and the tax actually paid. On this basis a level of subsidy of 0.06% was established for the Hesteel Group.

The US DOC has investigated this programme in several proceedings, but has not found any benefits to cooperating exporters in steel proceedings. Subsidy levels based on AFA have been applied to non-cooperating exporters in a few steel cases.

### **GOC Response**

The initial GOC response on this programme appears to have been related to VAT refunds and not to income tax concessions.

### **Hesteel Chengde Response**

In its questionnaire response Hesteel Chengde confirmed that it had received benefits under this programme during the period of investigation, and that the benefits related to all production of the company. Hesteel Chengde provided a copy of the “Circular of the State Administration of Taxation on Managing the Preferential Corporate Tax Treatment to Enterprises Comprehensively Using Resources” Guoshuihan No. 85 [2009], which outlined the requirements for applying for and receiving preferential tax treatment. Hesteel Chengde also provided a copy of the form it had filed to claim the benefit in relation to the 2015 tax year, which identified the amounts of the deductions from taxable income provided under the scheme.

### **Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme, but did find that a different exporter had benefited from a similar programme relating to VAT benefits. The Canadian investigation of *Concrete Reinforcing Bar* found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein Report does not identify this specific programme. The SIC Report notes the existence of general tax exemptions, reductions and credits, and cites the Hebei Steel Group as having

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reported receiving such benefits. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

MBIE notes that Article 33 of the Chinese Enterprise Income Tax Law provides “As regards the incomes earned by an enterprise from producing products complying with the industrial policies of the state by comprehensively utilizing resources, the income may be downsized in the calculation of the amount of taxable income.” The “Implementation Regulations for the Corporate Income Tax Law” provide, at Article 99, that the “Deduction of income referred to in Article 33 of the Enterprise Income Tax Law shall mean that 90% of the income derived by an enterprise which uses the resources stipulated in the Catalogue for Corporate Income Tax Incentives for Comprehensive Utilisation of Resources as key raw materials to manufacture products which are not restricted or prohibited by the State and which comply with the relevant standards of the State and the industry shall be included in the total income amount.”

From the information provided by the GOC in relation to VAT refunds, it appears that the Catalogue referred to above has a list of the waste products that are the resources to be comprehensively utilised and the products which can be produced.

The purpose of the programme is to encourage the use of non-hazardous wastes as inputs to production, thus creating environmental benefits by avoiding disposal impacts, mitigating manufacturing impacts, and conserving virgin resources. China has incentivized reuse since the 1980s through the “Comprehensive Utilization of Resources” policy.

### **MBIE Consideration**

#### *Financial Contribution*

The information available is that the Australian authorities did not address this particular programme in *Steel Reinforcing Bar*, but in relation to a similar programme involving VAT, found that Shandong Shiheng and Jiangsu Yonggang did not receive benefits, the Canadian authorities in *Concrete Reinforcing Bar* found no benefit for Shandong Shiheng, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Chengde has reported receiving benefits under this programme.

MBIE is satisfied that the information available can be considered reliable, and does not establish that the sample manufacturers Hebei Jingye, Jiangsu Yonggang and Shandong Shiheng were in receipt of a financial contribution under this programme. However, there is evidence that Hesteel Chengde has received a financial contribution under this programme.

#### *Level of Benefit*

Based on the information provided by Hesteel Chengde, the level of benefit, arrived at by calculating the reduced level of tax payable as a result of the reductions in taxable income provided for under this programme, divided by operating income, was 0.05%.

### *Specificity*

MBIE considers that the subsidy is specific because the eligibility for the programme is explicitly limited to producers of specified products using specified raw materials, and thus is specific to a group of enterprises or industries, as provided for in section 3 of the Act, and as required by Article 2.1 of the Subsidies Agreement.

### **Conclusions**

MBIE is satisfied that there is reliable evidence that income tax concessions for enterprises engaged in comprehensive resource utilisation is a financial contribution by a government in the form of government revenue that is otherwise due being foregone or not collected, and that the subsidy is specific to a group of enterprises or industries.

MBIE is satisfied that Hesteel Chengde has benefited from the subsidy programme and has calculated the level of benefit at 0.05%.

With regard to the other sampled exporters, on the basis of the information available that is considered reliable MBIE provisionally concludes that they did not receive benefits under the programme: Income tax concessions for the enterprises engaged in the comprehensive resource utilization ('special raw materials').

## **32. Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose**

### **Application**

MBIE is treating this programme as a duplicate of programme #100 in the application, "Income tax credit for the purchase of domestically manufactured production equipment.

The application claims that this programme was established in the "Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment." Cai Shui Zi [1999] No 290, which came into force on 1 July 1999. The programme was established to encourage domestic investment and support the technology upgrading of enterprises. The granting authority responsible for this programme is the State Administration of taxation and the programme is administered by local tax authorities. Under the programme enterprises with investment in technological transformation projects conforming to the State Industrial Policy can have 40% of the expenses on purchasing domestically produced equipment deducted from the increment of income tax for that year compared to the previous year. Where the total increment of income tax is less than 40% of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years. The applicant cites a number of Canadian and US cases, with subsidy levels identified of 0.14% and 1.68% from US DOC steel cases

**Other jurisdictions**

In the CBSA *Concrete Reinforcing Bar* investigation, this was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. In a number of other cases a duty estimate was used on the same basis as for *Concrete Reinforcing Bar*. In the 2008 investigation of *Carbon Steel Welded Pipe*, the CBSA noted that the programme was not included in the New Income Tax law which came into effect on 1 January 2008, but was in operation for the subsidy POI for that case. It was noted that while the GOC had confirmed that cooperating exporters had not received benefits under the programme, the GOC had not provided information regarding the use of the programme by non-cooperating exporters. The CBSA therefore determined a level of subsidy for non-cooperating exporters under ministerial specification.

In *Organic Coated Steel*, the EC noted that the legal basis of this programme was the “Provisional Measures on Enterprise Income Tax Credit for Investment to Domestically Produced Equipment for Technology Renovation Projects” of 1 July 1999, and the “Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment” No 52 [2008]. The GOC advised that the programme had been terminated as from January 2008, but because it could not provide relevant additional information, including the timetable of phase-out of the benefits, and information relating to non-sampled exporters, the EC based its findings on the information on the record, being the complaint. The subsidy level of 0.38% established for non-cooperating exporters was based on the rate established by the US DOC in its 2008 investigation of *Line Pipe*.

In *Hot-Rolled Flat Products* the EC concluded that no financial contribution no benefit was received by the sampled exporting producers (including the Hesteel Group) for this tax exemption programme.

The US DOC examined this programme in many of its investigations involving China. Subsidy levels for cooperating exporters were found in several cases with levels ranging up to 2.40%, and including 0.38% for *Line Pipe*, but in most cases there was no subsidy found. Subsidy levels for non-cooperating exporters were found in many cases, based on AFA.

**GOC Response**

The GOC noted that to the best of its knowledge there was no such programme utilized by Hesteel Chengde during the period of investigation.

**Hesteel Chengde Response**

This programme was not included in the tax programmes that Hesteel Chengde admitted to receiving benefits under.

**Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme, and the Canadian investigation of *Concrete Reinforcing*

Bar found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein Report identifies this programme as providing benefits, and cites particular examples. The SIC Report notes the existence of general tax exemptions, reductions and credits, and cites the Hebei Steel Group as having reported receiving such benefits. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

### **MBIE Consideration**

#### *Financial Contribution*

The information available is that the Canadian authorities in *Concrete Reinforcing Bar* found no benefit for Shandong Shiheng, and there is no evidence that Hebei Jingye received any benefit under this programme. Hesteel Chengde did not advise that it had received benefits under this programme, and this appears to be confirmed by the EC findings in *Hot-Rolled Flat Products*.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading.

## **33. Tax policies for the deduction of research and development expenses**

### **Application**

The applicant claims that this programme provides a benefit to companies which introduce new technologies, new products or new techniques to their production. The eligible companies can decrease their corporate income tax by 50% of the actual expenses for approved projects. The programme was established in Article 30(1) of the Enterprise Income Tax Law and Article 95 of the "Release of Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China" by the State Council (Decree 512 of the State Council 2007). The application cited the EC *Organic Coated Steel* investigation and the 0.19% subsidy level established in it.

**Other jurisdictions**

In *Concrete Reinforcing Bar* the CBSA noted that the cooperating exporter, Shandong Shiheng, received a benefit under this programme.

In *Organic Coated Steel* the EC summarised the legal basis for the programme, and noted that it was used by one of the cooperating exporters. However, because the GOC did not provide the full information requested the EC had to partially rely on facts established in the *Coated Fine Paper* investigation, and identified subsidy levels of 0.19% for the cooperating exporter, which was applied to non-cooperating companies.

In *Hot-Rolled Flat Products* the EC concluded that no financial contribution or benefit was received by the sampled exporting producers (including the Hesteel Group) for this tax exemption programme.

The US DOC investigated this or a similar programme in *Non-oriented Electrical Steel* when it applied AFA with an assumption that no income tax was paid by non-cooperating exporters so a 25% subsidy level was applied over nine programmes.

**GOC Response**

The GOC provided copies of the relevant governmental measures under which the programme is authorised and operated, and advised that the State Administration of Taxation and its local branches are responsible for administering this programme. The GOC stated that the programme is just a methodology for the calculation of R&D expenses and is applicable to all legal person enterprises within China without any prejudice. The relevant authority (the State Administration of Taxation and its local branches) reviews the application to determine if the facts are accurate and true, and if the eligibility criteria are met the enterprise receives the appropriate treatment. The administering authority does not have discretion whether or not to grant or how much to grant under the programme. The GOC emphasised that there is no bias as to enterprise type, industrial sector or geographical location, and argues that the programme is not a specific subsidy.

**Hesteel Chengde Response**

In its questionnaire response Hesteel Chengde confirmed that it had received benefits under this programme during the period of investigation, and that the benefits related to all production of the company. Hesteel Chengde provided a copy of the “Circular on Refining the Pre-tax Super-deduction Policy for Research and Development Expenses” Caisui No 119 [2015], which outlined the requirements for applying for and receiving tax deductions for qualifying R&D expenses. Hesteel Chengde also provided a copy of the form it had filed to claim the benefit in relation to the 2015 tax year, which identified the amounts of the additional deductions from taxable income provided under the scheme.

**Other Sample Exporters**

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme, and the Canadian investigation of *Concrete Reinforcing*

Bar found that Shandong Shiheng had benefited from this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

### **Other Information**

The Wiley Rein Report identifies benefits being provided for R&D expenditure, and cites particular examples. The SIC Report notes the existence of general tax exemptions, reductions and credits, and cites the Hebei Steel Group as having reported receiving such benefits relating to research. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

Article 30 of the Enterprise Income Tax Law provides that “An enterprise may additionally calculate and deduct the following expenditures in the calculation of the taxable income amount: (1) The expenditures for researching and developing new technologies, new products and new techniques.” The Implementation Regulations for the Corporate Income Tax Law provide that “Deduction of research and development expenses referred to in item (1) of Article 30 of the Corporate Income Tax Law shall mean that where an enterprise has incurred research and development expenses in the development of new technologies, new products and new processes but intangible assets are yet to be formed and included in the profit and loss for the current period, 50% of the research and development expenses shall be deducted on the basis of actual deduction pursuant to the provisions; where tangible assets are formed, 150% of the cost of intangible assets shall be amortised.”

### **MBIE Consideration**

#### *Financial Contribution*

The best information available to this point in the investigation indicates that Shandong Shiheng and Hesteel Chengde received financial contributions under this programme. There is no positive evidence that Hebei Jingye or Jiangsu Yonggang received financial contributions.

#### *Level of benefit*

Based on the information provided by Hesteel Chengde, the level of benefit, arrived at by calculating the reduced level of tax payable as a result of the reductions in taxable income provided for under this programme, was 0.08%.

In *Concrete Reinforcing Bar* the Canadian authorities, based on information from Shandong Shiheng, calculated a level of benefit by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable. The actual level calculated for this programme is not available but on the basis that the total subsidy level of 0.40% calculated over five programmes for Shandong Shiheng, the average per programme is 0.08%.

#### *Specificity*

In examining specificity in terms of Article 2 of the Subsidies Agreement, MBIE must consider whether the relevant legislation explicitly limits access to the subsidy to certain enterprises; whether the granting authority or the legislation explicitly establishes objective criteria or conditions

governing eligibility, which are automatic and strictly adhered to (i.e. criteria which neutral, do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as the number of employees or size of enterprise); or, if notwithstanding the appearance of non-specificity there are reasons to believe that the subsidy may in fact be specific. Also, the setting or changing of generally applicable tax rates is not deemed to be a specific subsidy.

The GOC advised that this programme is simply a methodology for the calculation of R&D expenses and is applicable to all legal person enterprises within China without any prejudice. No government agency maintains any record for this programme except for income tax returns. With regard to eligibility, the relevant authority reviews the conditions of the applicant and determines whether the facts of the application are accurate and true. If the eligibility criteria are met, an enterprise receives the appropriate treatment under the law. The administering agency does not have discretion on whether to grant the tax deduction and how much to grant.

During its verification visit to the Hesteel Group in *Hot-Rolled Flat Products*, the EC established that the benefits of this programme were provided to new technologies, new products and new crafts which were part of certain high technology fields supported by the State as well as those fields listed in "Guidance on the Priority Areas for High-Tech Industrialisation Priority Developments." The EC concluded that the subsidy was specific because the legislation itself limited the access to the subsidy only to certain high technology priority areas determined by the State, such as the steel industry.

The documentation provided by Hesteel Chengde included the "Circular on Refining the Pre-tax Super-deduction Policy for Research and Development Expenses" which identified the scope of R&D activities and expenses, and also identified industries not eligible for pre-tax super-deduction, including tobacco manufacturing, a number of service industries, and other industries as prescribed by the Ministry of Finance and the State Administration of Taxation.

On the basis of the information available to it to this point in the investigation, MBIE notes that there are limitations on eligibility for the programme in terms of the activities involved, which do not meet the provisions relating to objective criteria. Accordingly, MBIE concludes that the programme is specific.

### **Conclusions**

MBIE is satisfied that the information available is that income tax concessions for research and development expenses provide a financial contribution by a government in the form of government revenue that is otherwise due being foregone or not collected, and that the subsidy is specific to a group of enterprises or industries.

MBIE is satisfied that both Hesteel Chengde and Shandong Shiheng have benefited from the subsidy programme and has calculated the level of benefit for each of these sample manufacturers at 0.08%.

With regard to the other sampled exporters, on the basis of the information available that is considered reliable MBIE provisionally concludes that there is no financial contribution by a

government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Tax policies for the deduction of research and development expenses.

### **34. Tax Preference Available to Companies that Operate at a Small Profit**

#### ***Application***

The application claimed that this programme was established in the Enterprise Income Tax Law which came into effect on 1 January 2008. The programme was established in order to reduce the burden on enterprises making small profits and to maintain job opportunities. The granting authority responsible for this programme is the Ministry of Finance and the State Administration of Taxation, and it is administered by local tax authorities. Two Canadian cases were cited by the applicant.

#### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, this was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. A similar approach was followed in *Galvanised Steel Wire*. In *Stainless Steel Sinks* a cooperating exporter reported having received a benefit under this programme, and an amount of subsidy was calculated under ministerial specification by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

The US DOC has investigated this programme in two steel cases, with a subsidy level of 0.62% established for a cooperating exporter in *Steel Wheels*, and AFA used in establishing a subsidy level based on the assumption that no income tax was paid in *Steel Wire Rod*.

#### ***GOC Response***

The GOC noted that to the best of its knowledge there was no such programme utilized by Hesteel Chengde during the period of investigation.

#### ***Hesteel Chengde Response***

This programme was not included in the tax programmes that Hesteel Chengde admitted to receiving benefits under.

#### ***Other Sample Exporters***

The Australian investigation into *Steel Reinforcing Bar*, which covered Shandong Shiheng and Jiangsu Yonggang, did not address this programme, and the Canadian investigation of *Concrete Reinforcing Bar* found that Shandong Shiheng had not benefited from this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

#### ***Other Information***

The Wiley Rein and SIC Reports made no specific reference to this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

Article 28 of the Enterprise Income Tax Law provides that “As regards a small meagre-profit enterprise satisfying the prescribed conditions, the enterprise income tax shall be levied at a reduced tax rate of 20%.” Article 92 of the Implementation Regulations for the Corporate Income Tax Law provides that “Qualified small profit enterprises referred to in the first paragraph of Article 28 of the Corporate Income tax Law shall mean enterprises in industries which are not restricted or prohibited by the State and satisfy the following conditions: (1) industrial enterprises with annual taxable amount of income below RMB 300,000, less than 100 employees and total assets below RMB 30 million; and (2) other enterprises with annual taxable amount of income below RMB 300,000, less than 80 employees and total assets below RMB 10 million.

### ***MBIE Consideration***

#### *Financial Contribution*

Hesteel Chengde did not advise that it had received a financial contribution under this programme and on the basis of the information available it seems unlikely that it would qualify for the programme. The information available is that the Canadian authorities in *Concrete Reinforcing Bar* found no benefit for Shandong Shiheng, and there is no evidence that the other sample exporters received any benefit under this programme, and it also seems unlikely that they would be eligible.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

### ***Conclusions***

MBIE’s provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Tax Preference Available to Companies that Operate at a Small Profit.

## **35. Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin**

None of the sample manufacturers are located in Tianjin.

### ***Application***

The application claims that under this programme, enterprises located in the Binhai New Area of Tianjin are eligible to reduce the depreciation period of eligible fixed assets (excluding houses and buildings) by up to 40%. Canadian and US cases are cited, with subsidy levels of 0.51% and .58% identified in US DOC investigations.

**Other jurisdictions**

The CBSA in *OCTG1* noted that this program was established in the “Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin”, Cai Shui (2006) No. 130, which came into effect as of July 1, 2006. This program was established in order to promote the development of the Binhai New Area of Tianjin. The authorities responsible for administering this program are the Department of Public Finance of Tianjin Municipality, the State Taxation Bureau of Tianjin Municipality and the Local Taxation Bureau of Tianjin Municipality. Under this program, enterprises located in the Binhai New Area of Tianjin are eligible to reduce the depreciation period of eligible fixed assets (excluding houses and buildings) by up to 40%. The CBSA determined that one of the cooperative exporters has received benefits under this program during the subsidy POI. The amount of subsidy was calculated under ministerial specification by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

The US DOC investigated this programme in three proceedings, finding subsidy levels for cooperating in two cases, 0.51% in *OCTG* and 0.58% in *Seamless Pipe*, but no benefit in *Steel Cylinders*.

**MBIE Consideration***Financial Contribution*

Since none of the sample manufacturers are located in Tianjin they do not qualify for this programme, and there is no financial contribution.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE provisionally concludes that on the basis of the best information available to this point in the investigation there is no financial contribution by a government or any public body which confers a benefit in regard to the programme: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin.

**36. Dividend tax exemption for certain transactions between qualified resident enterprises****Application**

The application classified this programme under “Direct transfer of funds – Equity Infusion”. It was claimed that the programme consisted of preferential tax treatment for Chinese resident enterprises that are shareholders in other Chinese resident enterprises in the form of tax exemption on income

from certain dividends, bonuses and other equity investments for the resident parent enterprise. The EC *Organic Coated Steel* investigation was cited, with a subsidy level identified of 0.77%.

### **Other Jurisdictions**

The programme does not appear to have been addressed by the Australian, Canadian or US authorities.

In *Organic Coated Steel* the EC noted that the legal basis for the programme was Article 26 of the Enterprise Income Tax Law and Article 83 of the “Regulations on the Implementation of Enterprise Income Tax law of the People’s Republic of China” Decree No 512 of the State Council, promulgated on 6 December 2007. The GOC provided information on the sampled exporter but did not provide information on other exporters, so the EC decided to base its findings on information available on file, namely the findings in *Coated Fine Paper*. On this basis the EC established a rate of subsidy of 0.77% which was the arithmetic average of the rates established in *Coated Fine Paper*.

In *Hot-Rolled Flat Products* the EC concluded that no financial contribution or benefit was received by the sampled exporting producers (including the Hesteel Group) for this tax exemption programme.

### **GOC Response**

The GOC noted that to the best of its knowledge there was no such programme utilized by Hesteel Chengde during the period of investigation.

### **Hesteel Chengde Response**

The Hesteel Chengde questionnaire response did not identify this programme among the subsidies that it reported.

### **Other Sample Manufacturers**

This programme was not addressed in relevant Australian, Canadian or US investigations so there is no positive evidence to indicate that the other sample manufacturers received a financial contribution under it.

### **Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

### **MBIE Consideration**

#### *Financial Contribution*

Hesteel Chengde advised that it had not received a financial contribution under this programme; the EC investigation into *Hot-Rolled Flat Products* concluded that there was no financial contribution to the Hesteel Group. No other authorities have addressed this programme.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this

programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

#### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Dividend tax exemption for certain transactions between qualified resident enterprises.

### **F. Government revenue foregone: Concessions on import tariffs and VAT payments**

A finding of subsidisation in relation to concessions on import tariffs and VAT payments would require that evidence is available to confirm that:

- Concessions on import tariffs and VAT payments were provided
- There was government revenue otherwise due that is foregone or not collected and that a benefit is conferred on the purchaser
- The programme was specific to an enterprise or industry.

#### ***Programmes identified***

38	Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries
39	VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps

### **37. Import tariff and VAT exemptions for imported equipment in encouraged industries**

#### ***Application***

The application claims that the programme exempts both FIEs and domestic enterprises from VAT and tariffs on imported equipment used in production provided the equipment is not included in prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce advance technology equipment and industry technology upgrades. Investigations by Australia, the EU and the US are cited, with subsidy rates of 0.01% and 1.14% established by the US.

**Other jurisdictions**

The Statement of Essential Facts 322 for *Steel Reinforcing Bar* recorded that the Australian ADC found evidence to indicate that a cooperative exporter of rebar (not Shandong Shiheng or Jiangsu Yonggang) had benefited from the programme during the investigation period. With regard to non-cooperating exporters, the Australian ADC noted that the GOC had not provided any information and that the programme was investigated in other proceedings. In the absence of any other relevant information the Australian ADC considered it likely that non-cooperating exporters had received benefits from the programme, and calculated an amount of subsidy based on the highest amount found in a previous investigation applied to the lowest weighted average export price amongst cooperating exporters.

In the CBSA *Concrete Reinforcing Bar* investigation, this was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%.

In *Organic Coated Steel* the EC noted that the GOC had claimed that none of the sampled exporters had benefited from this programme in the period of investigation but would not provide information on any other exporters. The EC therefore relied on the best information available to it, which was information from *Coated Fine Papers* to determine that there was a countervailable subsidy, and determined a subsidy level of 0.89% based on the arithmetical average for the programme in the *Coated Fine Paper* investigation.

In *Hot-Rolled Flat Products* the EC concluded that the programme was a financial contribution that conferred a benefit and was specific, but identified only one of its sampled exporters (not the Hesteel Group) as receiving a subsidy under the programme, with a subsidy level of 0.11%.

This programme has been investigated in most of the US DOC's investigation involving China. In many of those cases the investigations into cooperating exporters did not involve AFA and resulted in subsidy rates being determined. For the 22 cases involving steel and steel products since 2007, six found no subsidy for cooperating exporters, six found subsidies on the basis of AFA only, in two the programme was not investigated, and in eight cases benefit rates for cooperative exporters were found, ranging from 0.01% to 0.70%. The Hebei Iron & Steel Group was involved in one investigation through cross-ownership with a non-cooperative exporter, resulting in a subsidy level based on AFA for this programme, and was a non-cooperative exporter in another investigation, when the subsidy level determined on the basis of AFA was the level determined for the cooperative exporter of 0.56%.

**GOC Response**

The GOC advised that to the best of its knowledge there was no such programme utilised by Hesteel Chengde during the period of investigation.

**Hesteel Chengde**

In its questionnaire response Hesteel Chengde advised that it had not received benefits under this programme.

**Other Sample Manufacturers**

The Australian investigation into *Steel Reinforcing Bar* found that Shandong Shiheng and Jiangsu Yonggang did not benefit from this programme. The Canadian investigation into *Concrete Reinforcing Bar* found that Shandong Shiheng did not benefit from this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein Report identified this programme in general terms. The SIC Report did not refer to it and could not identify any tax programmes benefiting Hebei Jingye.

In *Galvanised Steel Coil* MBIE noted that the VAT exemption under this programme was discontinued from 1 January 2008, so decided to exclude it from that investigation.

As noted in *Galvanised Steel Coil*, the relevant legislation is the “Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment” (Circular 37)<sup>39</sup>, which provides for the exemption from tariffs on equipment imported in line with “Current Catalogue of Key Industries, Products and Technologies the Development of Which Is Encouraged by the State (Provisional).”<sup>40</sup> This Catalogue appears to have been superseded by the Guidance Catalogue referred to in Annex 1, Section C above with regard to domestic industries. The list of “encouraged” projects does not include rebar as a product. Since none of the sample manufacturers are FIEs, the FIE aspects of this programme are not relevant.

**MBIE Consideration***Financial Contribution*

Hesteel Chengde advised that it had not received a financial contribution under this programme; the EC investigation into *Hot-Rolled Flat Products* concluded that there was no financial contribution to the Hesteel Group; the Canadian authorities in *Concrete Reinforcing Bar* found no financial contribution to Shandong Shiheng; and there is no positive evidence that the other sample manufacturers received any financial contribution under this programme. The US DOC findings of financial contributions relating to the Hebei Iron & Steel Group were based on AFA.

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<sup>39</sup> <http://www.asianlii.org/cn/legis/cen/laws/cotsctaittpoie931/> last accessed on 27 October 2017

<sup>40</sup> <http://www.asianlii.org/cn/legis/cen/laws/ccokipattdowiebts1175/> last accessed on 27 October 2017.

MBIE is satisfied that the information available can be considered reliable, and does not establish that any of the sample manufacturers were in receipt of a financial contribution under this programme. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation no financial contribution has been made under this programme.

#### *Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

In the absence of a financial contribution there is no need to consider specificity.

#### **Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Import tariff and VAT exemptions for imported equipment in encouraged industries.

### **38. VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps**

#### ***Application***

The application claims that this programme was established in the "Notice on the Tax Policies for Debt-to-Equity Swap Enterprises, Cai Shui (2005) No 29," which came into effect on 1 January 2004. Its purpose is to exert further efforts of the debt-to-equity work and support the reform of enterprises. The granting authority responsible for administering the programme is the Ministry of Finance and the State Administration of Taxation. Under the programme, enterprises adopting debt-to-equity swaps, pursuant to the debt-to-equity swap agreement signed between the enterprise and a financial asset management company, are exempted from paying VAT and/or consumption tax. The programme was scheduled to expire on 31 December 2008. Canadian cases are cited to support the claim, but no subsidy rates are identified.

#### ***Other jurisdictions***

In the CBSA *Concrete Reinforcing Bar* investigation, VAT and income tax exemptions for enterprises adopting debt-to-equity swaps was one of the 176 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%.

No other jurisdictions, including the United States, have considered this programme.

#### ***GOC Response***

The GOC advised that to the best of its knowledge there was no such programme utilised by Hesteel Chengde during the period of investigation.

**Hesteel Chengde**

In its questionnaire response Hesteel Chengde advised that it had not received benefits under this programme.

**Other Sample Manufacturers**

The Canadian investigation *into Concrete Reinforcing Bar* determined that Shandong Shiheng had not received a financial contribution under this programme. The SIC Report could not identify any grant programmes benefiting Hebei Jingye.

**Other Information**

The Wiley Rein and SIC Reports made no specific reference to this programme. The SIC Report could not identify any tax programmes benefiting Hebei Jingye.

**MBIE Consideration***Financial Contribution*

The Canadian investigation of *Concrete Reinforcing Bar* found that there was no financial contribution to Shandong Shiheng. There is no evidence that this programme has been actively investigated by any other of the overseas jurisdictions reviewed. The GOC and the Hesteel Chengde have indicated that no benefits under this programme have been provided during the period of investigation. The SIC Report could not identify any grant programmes benefiting Hebei Jingye. Accordingly, MBIE concludes that on the basis of the information available to it at this point in the investigation there is no financial contribution has been made under this programme.

*Level of a Benefit*

In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps.

**G. Other subsidy programmes**

During the course of the investigation to date, evidence has been obtained that there are subsidy programmes providing benefits to the manufacturers being investigated, other than those identified in the application, including those addressed above.

In addition to the grant programmes identified above, and with some possible overlapping, Hesteel Chengde reported on grants that it had received from government authorities, and which are reported as "Non-operating Income" in its financial reporting.

A finding of subsidisation in relation to other subsidy programmes would require that evidence is available to confirm that:

- A subsidy was received
- The subsidy provider was a government or any public body
- The subsidy conferred a benefit on the recipient
- The subsidy was specific to an enterprise or industry.

### **Hesteel Chengde Reported Programmes**

The grant programmes reported by Hesteel Chengde are listed below. MBIE has assigned a broad categorisation of the programmes into E – relating to environmental protection; T – relating to technology and research; U – relating to upgrades and renovation; and O – other programmes.

#	Cat.	Programme	Hesteel Chengde Comment
39	U	Special funds for pipe survey on electric power requirement	Supporting documents not found
40	U	Special funds for sewage treatment	Supporting documents not found
41	U	Discount interest funds for comprehensive utilization and reformation of vanadium and titanium resources	Supporting documents not found
42	U	Water resource expenses	Supporting documents not found
43	U	Project funds for transformation for capacity expansion of vanadium and titanium products	Supporting documents not found
44	E	Funds for transformation for saving energy and comprehensive utilization	Supporting documents not found
45	E	Special funds for environmental protection	Supporting documents not found
46	E	Funds for innovation of technology of extracting vanadium [Vanadium extraction technology innovation of vanadium-titanium magnetite ore as well as the research and development of vanadium micro-alloy steel]	Supporting documents provided
47	E	Awards for energy-saving technological innovation [Gas resource utilization power generation project: construct 1 set of 260t/h high-temperature and high-pressure gas boiler and 1 set of 60MW extraction condensing steam turbine generator unit as well as related auxiliary facilities]	Supporting documents provided
48	E	Sintering machine flue gas desulfurization	Supporting documents

		engineering [Sintering machine flue gas desulfurization engineering; 1 # 360m2 sintering machine flue gas desulfurizing engineering]	provided
49	E	Sintering machine flue gas desulfurization engineering [ #2 #3 sintering machine flue gas desulfurization engineering]	Supporting documents provided
50	E	Funds for special treatment of air pollution related to desulfurization project [ #5 180m2 sintering machine flue gas desulfurization project]	Supporting documents provided
51	E	Funds received for special treatment of smoke and dust [Comprehensive smoke and dust control project]	Supporting documents provided
52	E	Special funds received for air pollution control	Supporting documents provided
53	E	Special funds received for air pollution control [Shut down and dismantle two sets of 2x12m2 shaft furnace and 180m2 sintering machine]	Supporting documents provided
54	U	Subsidy for elimination of outdated capacity and relocation project	Related directly to subsidiary company
55	T	Government subsidy to Hesteel Chengde & Steel Group Co Ltd for projects of Academician's workstation	Not related to production of Hesteel Chengde
56	T	Appropriations from Institute of Process Engineering, Chinese Academy of Sciences	Not related to production of Hesteel Chengde
57	U	Subsidy received for dismantle of No 2 chemical chimney of vanadium factory	Not related to production of Hesteel Chengde
58	T	Government subsidy related to intellectual property	Not related to production of Hesteel Chengde
59	T	Special subsidy from the Department of Industry and Information Technology of Hebei Province for "Internet +" manufacturing pilot programs	Supporting documents provided
60	O	Outstanding young talent fund (1st batch) provided by the Hebei Provincial Finance Bureau	Not related to production of Hesteel Chengde
61	O	Tax incentives	Not related to production of Hesteel Chengde

### ***Hesteel Chengde Response***

The subsidies have been identified by Hesteel Chengde as having been received. In the absence of documentation for particular programmes MBIE cannot conclude that they do not apply to Hesteel

Chengde, particularly since they appear in the 2016 Annual Report for Hesteel Co Ltd, Chengde Branch.

### ***Other jurisdictions***

In *Hot-Rolled Flat Products*, the EC established that sampled companies, including the Hesteel Group had benefited from a range of grants relating to environmental protection and reduction of emissions. These grants included incentives for Environmental Protection and Resource Conservation; Promotion of synergistic resource utilisation; Incentive funds for energy conservation retrofit projects; Promotion of Energy Management Demonstration Centres; grants related to Air Pollution Improvement Projects; grants relating to Flue Sintering Desulfuration Projects; and incentives for circular economy projects. The EC determined the programmes to be specific since only companies operating in key technologies or in the production of key products were eligible to receive them, and the legislative documents involved referred to specific industries, including but not limited to the steel industry. The level of subsidy determined for the Hesteel Group was 0.05%.

In the same investigation, the EC established that sampled companies, including the Hesteel Group, has benefited from grants relating to technological upgrading or transformation. These included grants related to R&D; technological upgrading and innovation such as promotion of R&D tasks under the Science and Technology Support Plans; projects under the 863 Plan; Promotion of Key Industry Adjustment, Revitalisation and Technology renovation; grants for the Commercial Application of R&D Results; and Promotion of Quality Improvement. The EC determined the grants to be specific because only companies operating in key technologies were eligible to receive them, with the steel sector being listed among the eligible sectors. The EU argued that because the steel industry was specifically mentioned in the governing legislation, the fact that other industries were mentioned did not contradict a finding of specificity. The level of subsidy determined for the Hesteel Group was 0.01%

### ***MBIE Consideration***

#### *Government or any public body*

The information provided by Hesteel Chengde confirms that the grants were provided by government authorities. The supporting documents for some of the programmes confirm that the financial contributions were made by the Chengde Bureau of Finance, the Chengde Bureau of Environmental Protection, and the Chengde Municipal Development and Reform Committee. These are all government bodies, so the financial contributions are made by a government or any public body.

#### *Provision of a benefit*

The level of benefit will depend on how the subsidy is treated in the accounts of the recipient. Where a subsidy is treated as income, the level of the benefit is normally equivalent to the level of the grant, less any fees or other costs as set out in section 7(3) of the Act. Where a subsidy is treated as an asset, the level of benefit, net of any fees or other costs will be allocated across the life of the asset.

In the absence of evidence to the contrary, MBIE considers that all of the grant programmes can be regarded as providing a benefit. The level of benefit for each programme based on the total of the subsidy programme as listed by Hesteel Chengde for 2016, divided by the total operating income for 2016 for Hesteel Chengde's main business activities. On this basis the benefit levels by broad category are as follows:

<b>Category</b>	<b>Level of Benefit</b>
Environmental protection	0.0110%
Technology and research	0.0144%
Upgrades and renovation	0.0099%
Other	0.0006%
Total	0.0358%

### *Specificity*

The documentation provided by Hesteel Chengde does not permit an analysis of the extent to which the programmes are specific. While most of the programmes for which information is provided appear to relate to support for technological transformation or innovation, there is no information on the criteria or the scope of the or other programmes. Similarly, there is no documentation which supports the claims by Hesteel Chengde that a number of the programmes are not related to its production. Accordingly, MBIE considers that on the basis of the information available to it, it can be concluded that the programmes are specific.

### **Conclusions**

MBIE is satisfied that it has reliable information, based on the best information available to it to this point in the investigation, that Hesteel Chengde has benefited from subsidies provided through the grants that it has reported, and that the total level of benefit from these grant programmes is 0.04%