



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

**LABOUR, SCIENCE  
AND ENTERPRISE**

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# Provisional Measures Report

## SUBSIDY INVESTIGATION

# Hollow Steel Sections from China

**Trade (Anti-dumping and Countervailing Duties) Act 1988**

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July 2018

**NON-CONFIDENTIAL**

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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 For example, in tables, where possible, actual figures have been replaced by figures showing indexed or percentage changes from the previous period.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 and Acronyms

This report contains the following abbreviations and acronyms:

Acronym	Meaning
<b>Act, the</b>	The <i>Trade (Anti-dumping and Countervailing Duties) Act 1988</i>
<b>AFA</b>	Adverse facts available
<b>AD Agreement, the</b>	The WTO Agreement on Implementation of Article VI of the GATT
<b>ADC</b>	Australian Anti-Dumping Commission, the Australian investigating authority
<b>ADRP</b>	Australian Anti-Dumping Review Panel
<b>CBSA</b>	Canadian Border Services Agency, the Canadian investigating authority
<b>CCP</b>	Chinese Communist Party
<b>China</b>	People's Republic of China
<b>Customs</b>	New Zealand Customs Service
<b>EBIT</b>	Earnings Before Interest and Taxes
<b>EC</b>	European Commission, the EU investigating authority
<b>ERW</b>	Electric resistance welding
<b>EU</b>	European Union
<b>EXIM</b>	Export-Import Bank of China
<b>FIE</b>	Foreign-invested enterprise
<b>FY</b>	Financial Year
<b>GATT 1994</b>	General Agreement on Tariffs and Trade 1994
<b>GOC</b>	Government of China
<b>HNTE</b>	High and new technology enterprise
<b>HRC</b>	Hot rolled coil
<b>HSS</b>	Hollow steel sections
<b>MBIE</b>	Ministry of Business, Innovation and Employment
<b>MPa</b>	MegaPascals (measurement of pressure/stress)
<b>MT</b>	Metric ton (tonne)
<b>NZ</b>	New Zealand
<b>NZ Steel</b>	New Zealand Steel Limited
<b>NZD</b>	New Zealand Dollar

<b>NDRC</b>	National Development and Reform Commission (China)
<b>OCTG</b>	Oil country tubular goods
<b>PBOC</b>	People's Bank of China
<b>POI</b>	Period of investigation
<b>R&amp;D</b>	Research and development
<b>Rebar</b>	Steel reinforcing bar and coil
<b>RFI</b>	Request for information
<b>RMB</b>	Renminbi
<b>SASAC</b>	State-owned Assets Supervision and Administration Commission of the State Council
<b>SCM Agreement, the</b>	The WTO Agreement on Subsidies and Countervailing Measures
<b>SIB</b>	State-invested bank
<b>SIC Report</b>	Steel Industry Coalition Report (United States)
<b>SIE</b>	State-invested enterprise
<b>SIMA</b>	Special Import Measures Act (Canada)
<b>SME</b>	Small or medium-sized enterprise
<b>SOCB</b>	State-owned commercial bank
<b>SOE</b>	State-owned enterprise
<b>SSAW</b>	Spiral submerged arc welded
<b>Statistics NZ</b>	Statistics New Zealand
<b>TMRO</b>	Australian Trade Measures Review Officer
<b>US/USA</b>	United States of America
<b>USDOC</b>	United States Department of Commerce, International Trade Administration, the United States investigating authority
<b>USD</b>	United States Dollar
<b>VAT</b>	Value added tax
<b>VFD</b>	Value for Duty
<b>WTO</b>	World Trade Organisation

## EXECUTIVE SUMMARY

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**MBIE has reviewed the level and effect of subsidisation of HSS and concludes that provisional measures are not necessary to prevent material injury during the remaining period of investigation.**

This report provides the basis for the Minister of Commerce and Consumer Affairs to make a decision under section 16 of the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act) 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, the Ministry of Business, Innovation and Employment (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. MBIE's recommendation to the Minister reflects this conclusion.

**MBIE initiated an investigation on the basis of an application from NZ Steel, which requested that provisional measures be imposed.**

On 9 April 2018 MBIE started (initiated) an investigation under the Act into hollow steel sections (HSS) from the People's Republic of China (China), following the receipt of an application for a subsidy investigation from NZ Steel Ltd (NZ Steel). The applicant claimed that HSS from China is being subsidised and that subsidised imports are causing material injury to NZ Steel. An investigation into NZ Steel's claims that dumped imports of HSS from China and Malaysia are causing material injury was initiated on the same date.

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

**The subject goods are certain specifications of HSS, categorised by finish types and size.**

The subject goods as identified by NZ Steel are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as HSS.

The finish types of the goods are galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised; or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.

The sizes of the goods are: circular products with a nominal diameter up to and including 150mm; or oval, square and

	<p>rectangular products with a perimeter up to and including 520mm.</p> <p>The goods may also be categorised according to minimum yield strength, the most common classification being 250 and 350 MPa.</p>
<p><b>MBIE is reviewing the goods covered by the investigation to ensure that there is a proper match with the goods produced by the New Zealand industry.</b></p>	<p>MBIE is undertaking an analysis to ensure that the imported goods covered by the investigation, the subject goods, are a match with the like goods produced by the New Zealand industry. The analysis is not yet complete but its outcome will inform the Essential Facts and Conclusions Report.</p>
<p><b>The New Zealand industry comprises NZ Steel and other producers.</b></p>	<p>MBIE is satisfied that NZ Steel and two other smaller producers make up the New Zealand industry producing like goods.</p>
<p><b>The Act sets out the conditions for the imposition of provisional measures.</b></p>	<p>Under the Act the imposition of provisional measures requires that:</p> <ul style="list-style-type: none"> <li>• at least sixty days have passed from the initiation of the investigation</li> <li>• the Minister has reasonable cause to believe that the goods are subsidised</li> <li>• the Minister has reasonable cause to believe that by reason of the subsidisation the industry is suffering material injury</li> <li>• the Minister is satisfied that provisional measures are necessary to prevent material injury being caused during the remaining period of investigation.</li> </ul>
<p><b>The information used in this Report is based on the application, responses to questionnaires, information from other jurisdictions, WTO documents, and other information obtained by MBIE.</b></p>	<p>This report and its conclusions are based on information available to MBIE in the period up to and including 7 June 2018, 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.</p> <p>Information available to MBIE includes the NZ 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.</p>
<p><b>Where sufficient information is not available, the amount of</b></p>	<p>Section 7(5) of the Act provides that where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for</p>

**any subsidy can be determined on the basis of the information available that is considered to be reliable.**

the purposes of the Act, the amount of the subsidy shall be such amount as is determined by the chief executive having regard to all available information that the chief executive considers to be reliable.

**MBIE uses the best information available that is considered to be reliable, and is cautious in using information based on the use of adverse inferences.**

This report includes a discussion on the use of the 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 from other jurisdictions are based on differing legislation or interpretations of the WTO Agreement on Subsidies and Countervailing Measures (the SCM 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.

**The assessment of subsidisation is carried out according to the Act and the SCM Agreement.**

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

**A key issue in the investigation of subsidisation of goods from China is the extent to which the GOC controls banks and steel producers.**

A particular issue arising in the investigation of subsidies is the issue of the extent to which the GOC 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.

**The investigation of subsidisation is based on information relating to a sample of Chinese**

MBIE identified a sample of the four Chinese manufacturers responsible for around 86% of exports to New Zealand in 2017. MBIE has assessed the alleged subsidy programmes identified in NZ Steel's application on the basis of the information provided in the

**manufacturers responsible for 86 per cent of exports to New Zealand in 2017.**

application, questionnaire responses, investigations undertaken by authorities in other jurisdictions, and other information available to or identified by MBIE.

**The provisional conclusion regarding the level of subsidisation established to this point in the investigation is that it is 0.03%, which is well below *de minimis*.**

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 0.03%, which is below the *de minimis* levels provided for in the Act and the SCM Agreement.

**The low level of subsidy means that there is no basis for imposing provisional measures, since such a level of subsidy will not cause injury during the remaining period of investigation.**

In the light of the provisional conclusion that the level of subsidy is *de minimis* it is not possible, at this point in the investigation, to conclude that any injury can be attributed to imports of subsidised goods from China. There is, therefore, 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. Any detailed assessment of material injury that may be required will be incorporated into the Essential Facts and Conclusions Report.

**Information made available to MBIE during the remaining period of investigation may modify the provisional conclusion, so there are insufficient grounds to terminate the investigation at this point.**

The provisional conclusion reached is based on information available up to 7 June 2018, not all of which is verified. Subsequent information obtained by MBIE or made available to it, including information provided in supplementary questionnaires, verification visits 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 insufficient grounds for terminating the investigation.

**The next stage of the investigation is the release, by 5 September, of the report on the essential facts and conclusions likely to form the basis for the final determination.**

The next stage of the investigation is the preparation and circulation to interested parties by 5 September 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 5 October 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 6 December 2017 MBIE accepted a properly documented application from NZ Steel, alleging that HSS from China is being subsidised and by reason thereof causing material injury to the New Zealand industry.
2. On 9 April 2018, the chief executive 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:
  - HSS 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 and the AD Agreement, bearing in mind that section 1A of the Act describes its purpose as “to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO Agreement.”<sup>1</sup> Where the Act is silent, or its interpretation and that of the SCM Agreement requires context, WTO dispute settlement findings provide guidance.
4. This report provides a basis for the recommendation to the Minister on the provisional measures determination under section 16 of the Act, that in relation to the importation or intended importation of goods into New Zealand, there is no reasonable cause to believe that the goods are subsidised and by reason thereof material injury to an industry has been or is being caused, and that provisional measures are necessary to prevent material injury being caused during the period of investigation.

## 1.2 Grounds for the Application

5. NZ Steel claimed that the alleged subsidisation of HSS 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>1</sup> The Agreement establishing the World Trade Organisation adopted at Marrakesh on 15 April 1994.

- adverse consequences upon profit, both per unit (e.g. EBIT<sup>2</sup>/tonne) and overall (e.g. EBIT)
  - adverse consequences upon return on investment
  - adverse consequences upon cashflow.
6. NZ Steel stated in its application that the material injury resulting from the importation of allegedly subsidised HSS commenced in 2012.

### 1.3 Provisional Measures

7. NZ 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 up to 7 June 2018. 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 SCM 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 chief executive 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.*

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<sup>2</sup> Earnings before interest and taxation (EBIT).

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

*A provisional direction given under subsection (1) or (2) ceases to have effect from—*

- (a) the date of the determination made by the Minister under section 10H(1); or*
- (b) if no determination has been, or will be, made under section 10H(1), the date of the determination made by the Minister under section 10D(1).*

### **WTO SCM Agreement**

11. Provisional measures are covered in Article 17 of the SCM 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 SCM 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 SCM 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 7 June 2018. 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 9 April 2018. The sixty-day period referred to in section 16 of the Act expired on 7 June 2018. The 180-day investigation period will conclude on 5 October 2018, by which time the Minister must make a final determination. The Essential Facts and Conclusions Report is due on 5 September 2018. The four month period referred to in the SCM Agreement will depend on when any provisional measures are applied, but they cannot go beyond the date of final determination provided for in section 16(3).

19. Questionnaires were sent to importers, manufacturers, trading intermediaries and the GOC. Article 17 of the SCM 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 available as at 7 June 2018, 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 chief executive 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 chief executive having regard to all available information that the chief executive considers to be reliable.*

22. Article 12.7 of the SCM 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 2017, while the investigation of injury involves evaluation of data for the period since January 2011.
27. All volumes are expressed on a metric ton (MT) basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD) or Australian dollars, while values and prices in China are expressed in renminbi (RMB). 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. Annex 1 to this Report sets out MBIE's position on general matters of interpretation; and Annex 2 is the detailed analysis of each programme investigated.
29. Links included in this text were checked for ongoing validity on 26 June 2018 or more recently.
30. It should be noted that this Report provides a summary 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

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### 2.1 Subject Goods

31. The subject goods identified by NZ Steel were:

*Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS).*

32. The characteristics of the particular goods, as identified by NZ Steel in its application, included the following:

- **Finish types:** galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised; or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.
- **Sizes:** circular products with a nominal diameter up to and including 150mm; or oval, square and rectangular products with a perimeter up to and including 520mm.

33. NZ Steel noted that the goods may also be categorised according to minimum yield strength, the most common classification being 250 and 350 MPa (MegaPascals, a measurement of pressure/stress).

34. During the investigation to date questions have been raised about the scope of the description of subject goods:

- Some interested parties submitted that the New Zealand industry is unable to produce goods of certain specifications required to meet market demand, including steel of the greater dimensions described by NZ Steel as the subject goods.
- Some other differences in the characteristics of imported versus New Zealand-produced HSS were also raised, such as production methods for galvanised products and available finishes.

35. MBIE is undertaking a detailed examination of the goods in this investigation to ensure that there is a proper correlation between the goods produced by the domestic industry to which injury claims apply (the like goods), and the imported goods which are said to be causing that injury (the subject goods). The analysis, which will take account of comments from interested parties, was not completed in time for this Report, but its outcome will inform the Essential Facts and Conclusions Report. For this Provisional Measures Report, the subject goods are those identified above.

36. The tariff concessions system provides for tariff free entry of goods that are not available from New Zealand producers. MBIE considers, therefore, that the subject goods description should exclude goods subject to tariff concessions other than goods subject to the temporary tariff concession for residential building materials.

### Tariff Items

37. In its application, NZ Steel noted that the New Zealand tariff classification, including statistical keys, does not fully align with the subject goods description.

38. In 2017, the four tariff item/statistical keys were split out into 24 tariff item/ statistical keys in the New Zealand Tariff due to the introduction of new statistical keys. These tariff items and statistical keys cover the dimensions produced by the New Zealand industry, namely circular HSS with a nominal internal diameter under 102mm and rectangular/square HSS up to 400mm.
39. The tariff items and statistical keys which cover the revised description of the subject goods are set out below, and include oval sections. Some of the statistical keys relating to non-circular goods do cover goods that NZ Steel does not produce (Ex 73066100 63 to 70 to the extent that the perimeter exceeds 400mm).

HS2017	Description
<b><i>Circular sections</i></b>	
<b><i>Previously 7306301911</i></b>	
<b>73063019 23</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 41</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 61</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 81</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm [other]
<b><i>Previously 7306301921</i></b>	
<b>73063019 31</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 51</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 71</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 91</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm [other]

<b>Square and rectangular sections</b>	
<b>Previously 7306610019</b>	
<b>73066100 51</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness <b>not over</b> 2.6mm
<b>73066100 53</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness <b>over</b> 2.6mm
<b>73066100 54</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm
<b>73066100 55</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness over 2.6mm
<b>73066100 56</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness not over 2.6mm
<b>73066100 57</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm
<b>73066100 58</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]
<b>73066100 59</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]
<b>Previously 7306610027</b>	
<b>73066100 63</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with zinc, of wall thickness not over 2.6mm
<b>73066100 64</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , plated or coated with zinc, of wall thickness over 2.6mm
<b>73066100 65</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm
<b>73066100 66</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , plated or coated with metals (excluding zinc), of wall thickness over 2.6mm

<b>73066100 67</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , (painted, lacquered or similarly coated), of wall thickness not over 2.6mm
<b>73066100 68</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm
<b>73066100 69</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]
<b>73066100 70</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]
<b>Oval sections</b>	
<b>73066900 19</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section; of a nominal internal diameter less than 102mm [other]
<b>73066900 21</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section; of a nominal internal diameter of 102mm or more but less than 229mm
<b>73066900 29</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section [other]

40. Note that the tariff descriptions of the goods are indicative only and are not dispositive of the description of the subject goods.
41. Goods entering under these tariff items/statistical keys have provided the basis for the import data used below.

### Duties

42. The following are the rates of Customs duty applicable to the subject goods.

Tariff Item	Normal Tariff (MFN) - %	Preferential Tariff - %
7306.30.19	5	Free* CA Free
7306.61.00	5	Free* CA Free
7306.69.00	5	Free* CA Free

\*Unless otherwise indicated the following rates in the Preferential Tariff are Free:

- AAN – ASEAN, Australia, New Zealand Free Trade Agreement (AANZFTA): from 2012 - Free
- AU – NZ-Australia Closer Economic Relations (CER): from 1990 - Free

- CN – NZ-China Free Trade Agreement (FTA): 2008 – 5%; 2009 – 5%; 2010 – 3%; 2011 – 2%; from 2012 - Free
- HK – NZ-HK China Closer Economic Partnership (CEP): from 2011 - Free
- KR - NZ-Korea FTA: from 2016 - Free
- LLDC – Least Developed Countries: from 2005 - Free
- MY – NZ-Malaysia FTA: 2010 – 5%; 2011 – 3%; from 2012 - Free
- Pac – South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA): from 1981 - Free
- SG – NZ-Singapore CEP: from 2001 - Free
- TH – NZ-Thailand CEP- 2005 – 5.5%; 2006 - 5.5%; 2007 – 5.5%; 2008 – 5%; 2009 – 5%; 2010 - Free
- TPA – P4 (Trans-Pacific Strategic Economic Partnership): 2006 - 5.5%; 2007 – 5.5%; 2008 – 5%; 2009 – 5%; 2010 - Free
- TW – Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC): from 2014 - Free
- CA – Canada

Note: there are no Less Developed Country (LDC) rates for these goods.

### Imports of Subject Goods

43. MBIE has identified imports entering under the tariff items and statistical keys identified above, adjusted to remove goods entering under tariff concessions,<sup>3</sup> apart from the building materials tariff concession that has been in place since July 2014. An adjustment has also been made to include goods from one Chinese supplier that MBIE has good reason to accept were misclassified. On this basis, Table 2.1 below shows imports in the years covering the period of investigation, adjusted as noted above.

**Table 2.1: Import volumes of HSS to New Zealand (tonnes)  
Customs data, adjusted\***

	2010	2011	2012	2013	2014	2015	2016	2017
Australia	10054	9742	9041	10643	8565	2424	2448	3084
China	4565	4873	7220	8637	8791	11631	12215	11662
Malaysia	282	106	253	364	358	287	404	722
Other	932	495	758	427	1049	485	653	858
Total	15834	15215	17272	20071	18763	14826	15720	16326

\* Adjusted as described in paragraph 43 above.

<sup>3</sup> Tariff concessions are generally approved for goods where no suitable alternative goods are produced or manufactured locally in New Zealand.

44. Imports from China represented 71 per cent of total imports in 2017, which is not less than the import share of 4 per cent identified in Article 27.10 of the SCM Agreement as the basis for terminating an investigation, as referred to in section 11(2)(c) of the Act.

## 2.2 Like Goods and New Zealand Industry

45. 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.
46. 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

47. In its application, NZ Steel identified the characteristics that it considered provided the basis for concluding that the goods it produces are like the subject goods. These characteristics included physical characteristics and likeness, commercial likeness, function/substitutability and end-use likeness, production likeness, and substitutability and price transparency/spillover.

#### **MBIE Consideration**

48. As described in section 2.1 above, MBIE has reviewed and amended the scope of the subject goods to match the like goods produced by the domestic industry. The bases for this conclusion were the Issues Paper on Like Goods circulated to interested parties on 13 June 2018, and the comments received in response to that paper.
49. 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***

50. Products made locally by NZ Steel have the same or similar physical characteristics as the allegedly subsidised goods from China, including size and finish characteristics.

#### ***Production Methods***

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

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

52. Both the locally produced and allegedly subsidised goods have comparable or identical end uses.

### **Pricing**

53. The allegedly subsidised goods have a similar pricing structure to NZ Steel's manufactured products in that price relationships between types of goods are similar.

### **2.2.2 New Zealand Industry**

54. Section 3A of the Act sets out the meaning of industry:

*For the purposes of this Act, the term industry, in relation to any goods, means—*

*(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.*

55. In its application, NZ Steel identified three other producers of HSS products, and concluded that two of them produced like goods. MBIE agrees with this conclusion. Letters of support for the application from these producers was included in the application. NZ Steel estimated that the combined production of these two companies was equivalent to [REDACTED] per cent of New Zealand production of like goods.
56. The assessment of injury to the domestic industry is required to address the industry as a whole, but in accordance with section 3A any finding of injury can relate to those New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods. MBIE has established that the two other companies' combined production as in fact equivalent to [REDACTED] per cent of New Zealand production of like goods. In this case, NZ Steel production, at [REDACTED] per cent of such production, would be sufficient to constitute the industry.

### 3. Interested Parties

#### 3.1 Legal Requirements

57. Section 3 of the Act identifies the parties who are to be given notice under section 3E of the Act, including:

- the Government of the country of export
- exporters and importers known by the chief executive to have an interest in the goods
- the applicant in relation to the goods

58. Article 12.9 of the SCM 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.*

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

#### 3.2 New Zealand Producers

60. In its application NZ Steel identified other producers of like goods. The producers making up the New Zealand industry are identified below.

**Table 3.1: New Zealand Producers of HSS**

Manufacturing Company	2017 MT
NZ Steel (applicant)	
Industrial Tube Manufacturing Co Ltd (Industrial Tube)	
New Zealand Tube Mills Ltd (NZ Tube Mills)	
Total production	

61. MBIE sent questionnaires to the producers identified above in order to verify the information provided by NZ Steel and to obtain information relevant to the investigation.<sup>4</sup> The production figures above are based on responses from manufacturers.
62. Information provided by NZ 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 27-29 May 2018.
63. Information provided by other New Zealand producers included information on products produced, sales and volumes.

### 3.3 Government of China

64. The Government of China is considered an "interested Member" under the SCM Agreement.
65. In accordance with the requirements of section 10A(2) of the Act, consultations with the GOC were offered, and on 8 March 2018 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.
66. 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 HSS. The GOC did not respond to the questionnaire. Accordingly, in ascertaining the existence and amount of any subsidy, MBIE has had regard to all available information that is considered to be reliable. The sources of information considered are described in section 4.2 below.

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<sup>4</sup> Relevant WTO dispute findings (relating to anti-dumping but also relevant to subsidy investigations) can be found in *EC – Bed Linen*, "[I]t is clear from the language of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 (the AD Agreement), in particular Articles 3.1, 3.4, and 3.5, that the determination of injury has to be reached for the domestic industry that is the subject of the investigation[...] In our view, it would be anomalous to conclude that, because the [investigating Member chose to consider a sample of the domestic industry, it was required to close its eyes to and ignore other information available to it concerning the domestic industry it had defined. Such a conclusion would be inconsistent with the fundamental underlying principle that anti-dumping investigations should be fair and that investigating authorities should base their conclusions on an objective evaluation of the evidence. It is not possible to have an objective evaluation of the evidence if some of the evidence is required to be ignored, even though it relates precisely to the issues to be resolved." (Panel Report, WTO document WT/DS141/R, at para 6.180).

### 3.4 Manufacturers

67. Chinese manufacturers supplying HSS 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 86 per cent of 2017 imports of HSS from China.
68. Neither the Act nor the SCM Agreement includes provisions relating to the use of samples. However, the WTO Agreement on Implementation of Article VI of the GATT (the AD Agreement), at Article 6.10, provides that authorities may limit their examination either to a reasonable number of interested parties by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of exports which can reasonably be investigated. MBIE has adopted this latter approach in the investigations of both dumping and subsidisation of steel reinforcing bar (rebar) from China, which reflects past practice. Customs data indicates that in 2017 there were 22 suppliers of HSS from China, some of which are likely to have been trading intermediaries, supplying 24 importers. The majority of such suppliers were responsible for less than 50 tonnes each of exports in 2017. In these circumstances, and in view of the time and effort required to track down each supplier in order to obtain details of the manufacturer concerned, it was considered to be impracticable and unnecessary to examine all manufacturers.
69. The Chinese manufacturers were identified as either supplying direct to New Zealand importers or through the intermediaries handling their goods. There were some difficulties in quickly identifying the manufacturer supplying the intermediary Sanwa Pty Ltd, and it was not until their questionnaire response was received that the identity of the relevant manufacturer was confirmed. Another manufacturer which was initially believed to be supplying the subject goods through Sanwa Pty Ltd has, therefore, been excluded from the sample. Also, one manufacturer identified itself as providing the subject goods despite not appearing in Customs data for the tariff items/statistical keys concerned and has been included in the sample on the basis of the volume of goods it stated had been exported. The four manufacturers now identified as the sample are shown in Table 3.1 below. The companies are listed alphabetically.

**Table 3.2: Sample of Chinese manufacturers of HSS**

Manufacturing Company	Company Location	2017 MT
Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce)	No 26, Number 2 Street Dalian Development Zone Dalian Liaoning Province	
Hengshui Jinghua Steel Pipe Co., Ltd (Hengshui Jinghua)	Taocheng North Road Hengshui City Hebei Province	

Jinan MECH Piping Technology Co Ltd) (Jinan Mech)	Meigui Zone of Industrial Park Pingyin Jinan Shandong Province	
Tianjin Youfa Steel Pipe Group (Tianjin Youfa)	15 Floor Guotou Building Dafeng Road Tianjin Municipality	

70. Information was sought from all manufacturers. Dalian Steelforce, Jinan Mech and Tianjin Youfa responded to the Ministry's request for information. Because of the belated identification of Hengshui Jinghua the questionnaire response was not required at the same time as the other sample manufacturers, and the company is not regarded as non-cooperative.

### **Dalian Steelforce**

71. Dalian Steelforce is a wholly-owned foreign enterprise, owned by Steelforce Australia Pty Ltd, an Australian private company. Dalian Steelforce was established in June 2005, and operates a high precision cold rolling steel mill in Dalian in Liaoning Province. The company produces cold rolled galvanized and painted hollow sections and fabricated products, with high integration of production, processing, sales and exportation.<sup>5</sup>
72. Production includes galvanized and painted sections, ranging in size from 20x20mm to 150x150mm; pipe from 15NB (nominal bore) to 219.1OD (outside diameter); finishes including no coating, in-line paint, pre-galvanized and hot-dipped galvanized; and round, square, rectangular and oval pipe and tube. All products are made to order and comply with relevant Australian and New Zealand standards.
73. Exports to New Zealand were made through an intermediary. The main New Zealand customers in 2017 were   
  
 Dalian Steelforce is a foreign-invested enterprise (FIE) and is a small and medium size enterprise (SME)<sup>6</sup> but is not a High and New Technology Enterprise (HNTE).<sup>7</sup> Dalian Steelforce is not a State-owned enterprise (SOE) or a State-invested enterprise (SIE).

<sup>5</sup> Information from website at <http://steelforce.company.weiku.com/about/>.

<sup>6</sup> OECD, *Financing SMEs and Entrepreneurs 2016: An OECD Scoreboard*, see Table 8.2 on page 125.

<sup>7</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 research and development (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>

74. Dalian Steelforce was a party to the Australian Anti-Dumping Commission (ADC) investigation into HSS.
75. Dalian Steelforce provided a detailed response to the Manufacturer's Questionnaire, and also provided a submission on injury-related issues that was received on 6 June 2018 (but dated 6 May 2018).

### **Hengshui Jinghua**

76. Hengshui Jinghua Pipe Co., Ltd. was founded in 1993, under Jinghua Innovation Group, and is a private company located in Hengshui City, Hebei Province.
77. Because Hengshui Jinghua was not initially identified as a major supplier of HSS exported to New Zealand, the despatch of a Manufacturer's Questionnaire was delayed and no response had been received (or was expected) in time to be covered in this Report.
78. Hengshui Jinghua was a party to the ADC investigation of HSS.

### **Jinan Mech**

79. Jinan Mech is a subsidiary of [REDACTED], a private company, and is the 100% owner of Jinan Malleable Pipe Manufacturing Co Ltd.
80. Jinan Mech specializes in manufacturing of welded steel pipes. It is located in the Meigui Zone of Industrial Park, Pingyin, Shandong Province, and has an annual capacity of up to [REDACTED] metric tons of various steel pipes.
81. Jinan Mech did not appear in the original list of manufacturers identified on the basis of Customs data for imports of the subject goods, but approached MBIE independently following publication of advice of the initiation of the investigation. Following this approach, MBIE checked information available and established that imports from Jinan Mech had been misclassified, and should have been included in the subject goods.
82. Jinan Mech exports to [REDACTED] in New Zealand.
83. Jinan Mech is a privately-held company and is not an FIE or an SME, and has been recognised as an HNTA only since December 2017. Jinan Mech is located in Jinan in Shandong Province.
84. Jinan Mech provided a detailed response to the Manufacturer's Questionnaire.

### **Tianjin Youfa**

85. Tianjin Youfa is a large-scale steel pipe manufacturing enterprise producing electric resistance welding steel pipes, hot-dip galvanized steel pipes, oil casing pipes, SSAW (spiral submerged arc welded) steel pipes, square/ rectangular steel pipes and steel-plastic complex steel pipes. Tianjin Youfa is located in Daqiuzhuang Village, Jinghai County, Tianjin City.
86. The Youfa Group has nine subsidiaries related to HSS production and sales:
- Branch No. 1, located in Youfa Industrial park, Daqiuzhuang, Jinghai, Tianjin
  - Branch No. 2, located in Daqiuzhuang, Jinghai, Tianjin

- Dezhong, located in Caigongzhuang Industrial Park, Jinghai, Tianjin
  - Tangshan Youfa, located in Fengnan Development Zone, Tangshan, Hebei Province
  - Zhengyuan, located in Coastal Industrial Park, Fengnan District, Tangshan, Hebei Province
  - Handan Youfa, located in Shangcheng Industrial park, Chengan, Handan, Hebei Province
  - Youfa Sales, located in Daqiuzhuang, Jinghai, Tianjin
  - Youfa International Trade, located in Hongqiao, Tianjin
  - Youfa Hongtuo, located in Youfa Industrial Park, Daqiuzhuang, Jinghai, Tianjin.
87. The information provided by Tianjin Youfa relating to subsidy programmes under which benefits were received covered programmes specific to individual companies within the group. Exports to New Zealand were produced mainly by Branch No. 1, but by other plants for some products. Financial information was provided for each individual subsidiary. MBIE has, therefore, treated subsidy programmes as benefiting the recipient subsidiary and has used that subsidiary's sales as the denominator for calculating the level of benefit.
88. Exports to New Zealand were undertaken through an intermediary. In 2017 the main New Zealand customers were [REDACTED].
89. Tianjin Youfa is a privately owned company and is not an FIE or SOE, and is not an SME or HNTE.
90. Tianjin Youfa was a party to the ADC's Continuance Review of HSS.
91. Tianjin Youfa provided a detailed response to the Manufacturer's Questionnaire

### 3.5 Trading Intermediaries

92. Trading intermediaries (exporters) were identified from Customs data and from questionnaires sent to known importers and manufacturers.
93. Table 3.2 below shows three exporters, primarily trading companies acting as intermediaries between Chinese producers and New Zealand importers, who have been identified as exporting the subject goods from the sample manufacturers in 2017. The companies are listed alphabetically.

**Table 3.3: Trading Intermediaries for HSS**

Exporting company	Company Location	2017 MT
Datum Ltd	Hong Kong	[REDACTED]
Sanwa Pty Ltd	Australia	[REDACTED]
Steelforce Trading Pty Ltd (Steelforce Trading)	Australia	[REDACTED]
Other		[REDACTED]

94. Information was sought from all of the trading intermediaries. Only Datum Ltd did not respond.

### 3.6 Importers

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

**Table 3.4: Importers of HSS**

Importing company	2017 MT
Fletcher Steel Limited (Fletcher Steel)	[REDACTED]
HJ Asmuss & Co Limited (HJ Asmuss)	[REDACTED]
Steel & Tube Holdings Ltd (Steel & Tube)	[REDACTED]
Tasman PFV	[REDACTED]
United Steel Limited (United Steel)	[REDACTED]
Other	[REDACTED]

96. Information was sought from all of the named importers, with responses received from Fletcher Steel and HJ Asmuss. Alrite Steel & Services NZ Ltd also provided a submission.

### 3.7 Other Interested Parties

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

## 4. Subsidisation Investigation

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### 4.1 Subsidisation

98. The Act defines 'subsidy', 'subsidised goods' and 'specific subsidy' in section 3, which reflect the definitions and descriptions set out in the SCM 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.*

99. Under Article 1.1 of the SCM 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**.

100. Under Article 1.2 of the SCM 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.

101. 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 chief executive 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 SCM 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 SCM Agreement.

102. 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>8</sup>, and as provided for in the parentheses in Article 1.1(a)(1) of the SCM Agreement.
103. Section 7(5) of the Act provides that where the chief executive 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 chief executive having regard to all available information that the chief executive considers to be reliable.

## 4.2 Basis for Investigation of Subsidisation

104. The information available to MBIE in investigating the subsidisation of HSS from China includes:
- information contained in NZ Steel’s application and subsequent submissions, and from MBIE’s verification visit to NZ Steel
  - information from other New Zealand manufacturers of subject goods
  - responses to importer/exporter/manufacturer’s questionnaires and subsequent submissions
  - information from investigations undertaken by other jurisdictions
  - information from previous MBIE investigations
  - information from WTO notifications and other documents
  - information from industry reports and other published material relating to the Chinese steel industry
  - information from MBIE’s independent research.
105. The objective of the investigation of each programme is to establish if it is a countervailable subsidy, i.e. there is a financial contribution by a government or any public body that confers a benefit on the recipient and is specific to certain enterprises.

### 4.2.1 NZ Steel

#### *Application*

106. In its application, NZ 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.

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<sup>8</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.

107. 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 exports to New Zealand identified by NZ Steel. The average so calculated was 52.05%.
108. NZ 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.
109. NZ 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 NZ Steel, this showed that the growth of China's steel industry was being both financed and directed by the GOC. NZ 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.
110. 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.
111. NZ 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 (USDOC) and other investigating authorities, while the rates of alleged subsidy found were based on USDOC's calculations using a range of benchmarks. It appears from the information provided that to a large extent the USDOC findings were based on 'facts otherwise available' and 'adverse facts available' (AFA), and in particular, on claims in applications and on findings from other USDOC investigations (including investigations involving products other than the subject goods).

### **Verification Visit**

112. MBIE undertook a verification visit to NZ Steel on 27-29 May and clarified information provided in the application. In a subsequent letter addressing matters raised in the verification visit, NZ Steel noted factors to be considered by MBIE as including an EU publication on the Chinese economy, the impacts of the United States s.232 action on steel products, and statements from the Global Forum on Steel excess capacity.

### **4.2.2 Questionnaire Responses**

113. Exporter's Questionnaires were sent to the main suppliers identified in Customs data. These companies are primarily trading intermediaries, in two cases associates of the manufacturers. Only one of the main trading intermediaries did not respond to the questionnaire.
114. Importer's Questionnaires were sent to the importers of HSS from the sampled manufacturers. Responses were received from two of the main importers and a voluntary submission was received from a smaller importer.
115. MBIE sent Manufacturer's Questionnaires to each of the sample manufacturers identified in section 3.4 above. Detailed responses were received from Dalian Steelforce, Jinan Mech and Tianjin Youfa. The other sample manufacturer, Hengshui Jinghua, was not expected to provide a response in time for inclusion in this Provisional Measures Report.
116. The GOC did not respond to the Government Questionnaire. While the failure to provide a questionnaire response may reflect a considered judgment by the GOC, it does 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.

### **4.2.3 Other Jurisdictions**

117. MBIE has reviewed the investigations by other authorities, including those identified by the applicant. MBIE notes that as far as it is aware, only Australia, Canada, the EU and the USA have applied countervailing duties to imports of steel products from China.

### **Australian Investigations**

118. In 2011-12 the ADC<sup>9</sup> undertook a subsidy investigation into *Hollow Structural Sections from China* (ADC HSS 177) and a Reinvestigation in 2013 into certain aspects (ADC HSS 203), following a review by the Trade Measures Review Officer (TMRO), and a Continuation Inquiry in 2016-17 (ADC HSS 379). These investigations are collectively referred to as ADC

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<sup>9</sup> References to the ADC incorporate references to its predecessor organisation, Australian Customs and Border Protection.

*HSS*. An Australian Federal Court report addressed a number of issues in judicial review proceedings relating to both dumping and subsidy aspects of the investigation.<sup>10</sup>

119. Information from the public versions of the reports from these investigations, together with verification reports, submissions and responses to questionnaires, have provided information that has been used by MBIE in its considerations in the current case. Information from other ADC investigations has been considered where appropriate and relevant. In that context, it is noted that the Australian investigations into HSS included Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa.
120. The original outcome of the Australian *HSS* investigation was the determination of the following subsidy margins:

**Table 4.1: Australian Investigation**

Exporter	Programmes	Countervailable Subsidy Margin
Dalian Steelforce	2	11.1% Later terminated
Hengshui Jinghua Steel Pipe Co Ltd	1	4.6%
Zhejiang Kingland Pipeline & Technologies Co Ltd (Kingland)	14	2.2%
Jiedong Economic Development Testing Zone Tai Feng Qiao Metal products Co Ltd	1	7.9%
Selected non-cooperating exporters	26	54.8%
Qingdao Xiangxing Steel Pipe Co Ltd	0	Terminated, no subsidy or negligible subsidy
Huludao City Steel Pipe Industrial Co Ltd	0	

121. In the Federal Court case, the judge found that the Minister's determination relating to the specificity of a programme to provide HRC at less than adequate remuneration was not authorised by the legislation, with the result that Dalian Steelforce was not (and is not) subject to any countervailing duty in Australia.
122. The Continuance Review examined 45 programmes, including 28 from the original investigation and 17 programmes identified by exporters. The resulting subsidy margins were 12.0 per cent for Tianjin Youfa and another exporter, and a rate for all non-cooperating entities of 55.8 per cent. The bulk of the total subsidy levels found related to the provision of HRC at less than adequate remuneration.

<sup>10</sup> *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885.

123. There have been other Australian investigations involving steel products from China, and these have been taken into account where appropriate and relevant.<sup>11</sup>

### **Canadian Investigations**

124. The application referred to a number of Canadian investigations undertaken by the Canadian Border Services Agency (CBSA). In 2015-16 the CBSA undertook a subsidy investigation, CBSA *Line Pipe*. 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.
125. The CBSA *Line Pipe* investigation began with 135 potential subsidy programmes, with a further 42 programmes being identified during the investigation. Of the total of 177 programmes investigated, 16 were removed. The GOC did not submit a subsidy response to the request for information, which limited the CBSA's ability to determine the amount of subsidy as the required information on financial contribution, benefit and specificity was not provided. It also limited the CBSA's ability to determine whether producers or other suppliers of goods and services are public bodies. Accordingly, subsidy amounts for all exporters were determined on the basis of the best information available. In the case of cooperating exporters this included information relating to benefits they reported receiving. For other programmes included in the investigation on the basis of the application, the CBSA did not have sufficient information to allow it to determine that they were not countervailable subsidies. For these programmes for all other exporters, the CBSA determined a level of subsidy based on the highest amount found for the 72 programmes for the responding exporter, plus the simple average of those amounts applied to each of the remaining 89 potentially actionable programmes.
126. The outcome of the CBSA *Line Pipe* investigation was the determination of the following subsidy margins:

**Table 4.2: Canadian Investigation**

Exporter	Programmes	Amount of Subsidy as % of export price
Baoshan Iron & Steel Co Ltd	22	0.63%
Hengyang Valin Steel Tube Co Ltd	18	0.64%
Huludao Steel Pipe Industrial Co Ltd	3	0.38%
Jiangsu Changbao Steel Tube Co Ltd	18	4.51%

<sup>11</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>.

Jiangsu Valin Xigang Special Steel Co Ltd	7	7.97%
Tianjin Huilitong Steel Tube Co Ltd	3	1.48%
Wuxi Huayou Special Steel Co Ltd	8	15.50%
Yangzhou Lontrin Steel Tube Co Ltd	12	6.01%
All Other Exporters	161	17.32%
Overall weighted average		7.60%

127. 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>12</sup>

### ***European Union Investigations***

128. The application included references to European Union (EU) subsidy investigations into *Organic Coated Steel* and *Hot-Rolled Flat Products* undertaken by the European Commission (EC). To the extent that these investigations covered similar subsidy programmes, information from the public versions of the Commission Implementing Regulations for the EC investigations has been used by MBIE in its considerations in the current case, where appropriate and relevant.<sup>13</sup> The EC investigations did not cover HSS products, although hot-rolled coil (HRC) is an input product for HSS, and do not appear to have involved any of the sample manufacturers in the current case.
129. MBIE has also taken account of the matters raised in the Commission Staff Working Document *On Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations*, corrected version published on 20 December 2017.

### ***USDOC Investigations***

130. The application referred to a number of USDOC investigations involving steel pipe and other products from China. Information from the public versions of the USDOC 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.
131. The most recent USDOC investigation into a similar product area to the current investigation was USDOC *Cold Drawn Mechanical Tubing* in 2017. In that investigation the two investigated exporters were found to have subsidies totalling 21.41% and 18.34% for 9 programmes benefitting one or both of them. The investigation established that 26 other

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<sup>12</sup> Links to reports on Canadian cases can be found at <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html>.

<sup>13</sup> Links to reports on EC cases can be found at <http://trade.ec.europa.eu/tdi/completed.cfm>.

programmes identified in the application were not used. The countervailable programmes included one involving full AFA, and others involving preferential loans and the provision of inputs at LTAR, with the remainder totalling less than 2%.

132. Other US steel pipe-related cases in the period 2006-2011 have covered *Circular Welded Pipe* (2008), *Light-Walled Rectangular Pipe and Tube* (2008), *Line Pipe* (2008), *Stainless Pressure Pipe* (2009), *Oil Country Tubular Goods (OCTG)* (2010), *Seamless Pipe* (2010) and *Drill Pipe* (2011).<sup>14</sup> None of the USDOC investigations appear to have covered manufacturers included in the sample for this investigation.
133. For the reasons outlined in Annex 1, Section A below, conclusions reached on the basis of facts available or AFA need to be treated with caution and may not be sufficiently reliable indicators of the existence and level of subsidisation, particularly if other information available to MBIE provides a more reliable basis for reaching conclusions on these matters.

#### 4.2.4 Other Information

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

134. MBIE has also taken account of the analysis and conclusions from MBIE's own recent investigations into *Galvanised Steel Coil* and *Steel Reinforcing Bar*, to the extent appropriate, since those investigations addressed programmes similar to those investigated in the current proceedings.

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

135. WTO documentation includes notifications by Members of specific subsidy programmes which Members 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.
136. Relevant WTO documentation also includes G/SCM/N/220/CHN of 30 October 2015 which constituted China's new and full notification of information on subsidy programmes granted or maintained at the central government level during the period 2009-2014. The notification was made under Article 25.7 of the SCM Agreement, and included the statement that such notification does not prejudice either the legal status of the notified programmes under GATT 1994 and the SCM Agreement, the effects under the SCM Agreement, or the nature of the programmes themselves. It was noted that China had included certain programmes in this notification which arguably are not (or are not always) subsidies or specific subsidies subject to the notification obligation. On 19 July 2016, a further document was issued as Suppl.1 to the original notification which included

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<sup>14</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>.

information on programmes granted or maintained at sub-central government level during the period 2001-2014.

137. The WTO documentation also includes document WT/DS358/14 of 4 January 2008, which is a notification by the Chinese and US governments setting out the agreement they reached in respect to the dispute *China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments* (WT/DS358). Under the agreement, the GOC agreed to terminate a number of tax-related programmes, including programmes relating to FIEs.

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

138. 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>15</sup> and a report issued by the Steel Industry Coalition in June 2016 (the SIC Report).<sup>16</sup>

### ***Other Information***

139. 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.

## **4.2.5 Identified Programmes**

140. In its application NZ Steel listed 240 programmes that it had identified, based primarily on Australian, Canadian and US investigations, with some additional EU material.
141. 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 manufacturing companies, MBIE preliminarily excluded programmes from consideration on the bases set out below.

### *Lack of Positive Evidence*

142. Programmes for which there is no reliable or positive evidence covers 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

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<sup>15</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).

<sup>16</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>.

through investigation of Chinese manufacturers or the GOC. Generally this was because those parties had not provided information, and the investigating authority had not obtained or confirmed the application information from other sources, allowing the investigating authorities to rely on facts available, and to draw adverse inferences (adverse facts available - AFA). An example of the kind of comment included in the application is, "Due to lack of cooperation from exporters and the GOC, CBSA was unable to rule the subsidy out as a countervailable subsidy." In the case of USDOC investigations, in many cases investigations involving positive evidence, such as that provided by cooperating exporters, indicated that no benefit was received from a programme, but AFA was relied upon to establish subsidy levels for other suppliers. No positive information is available to MBIE which would confirm that these programmes should be considered.

143. The exclusion of programmes on the grounds that there was no positive evidence provided or available from other sources, including investigations in other jurisdictions, covers 116 programmes.

#### *Out-of-Date Programmes*

144. Programmes which have a year or period of application listed in the application which is from 2012 or earlier, have been excluded on the basis that in the absence of ongoing subsidies the levels of benefit attributable to such programmes are unlikely to be significant or to be applicable to the subsidy POI. This covers a total of 22 programmes.

#### *Terminated Programmes*

145. Programmes have been excluded where MBIE has clear evidence from investigations in other jurisdictions or from WTO sources that the programmes have been terminated. This includes the programmes, primarily relating to FIEs, identified in WTO document WT/DS358/14 of 4 January 2008 which provides the text of an agreement between China and the USA resolving the matters raised in the dispute *China - Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments* (DS358). This covers a total of 15 programmes.

#### *Programmes Limited to Specific Categories of Company*

146. Programmes which are available only to companies falling within specific categories have been excluded if the sample manufacturers do not qualify in terms of such categories, including where the sample manufacturers which would otherwise qualify for inclusion (e.g. because of location), are not covered by those categories. This covers 91 programmes.

#### *Location Specific Programmes*

147. Programmes which apply to companies operating in geographic regions other than those of the sample manufacturers have been excluded. This covers 109 programmes.

#### *Duplications*

148. On the basis of further scrutiny of the programmes listed in the application, a number of duplications were found, and these programmes have been addressed together. The duplicated programmes are identified. This affected a total of 9 programmes, meaning 5 were combined, leaving 4 to be investigated.

### Conclusions

149. The questionnaires sent to interested parties were based on a preliminary analysis of the programmes. Following further analysis in the preparation of this Report and clarification of information about the sample manufacturers, additional programmes have been added, or were found to be terminated, and have been excluded from Table 4.3, or were duplicated and have been addressed in combination.
150. A number of the 240 programmes were covered by more than one of the exclusion criteria. Any changes to the list resulting from further information obtained by MBIE, such as clarification of the categorisation or location of the companies, will be addressed in the Essential Facts and Conclusions Report.
151. The separate category for Grant programmes relating to Jinan and Shandong Province reflects the late inclusion of Jinan Mech as a sample manufacturer, as does the inclusion of a programme relating to preferential tax policies for HNTes (# 26).
152. In its questionnaire response Tianjin Youfa identified a number of programmes, some of which were covered by the programmes in the application, but others were not. These programmes have been included in a separate group G in Table 4.3.
153. On the basis outlined above, the 52 programmes under consideration are shown below. It should be noted that a number of the programmes listed will not apply to all of the sample manufacturers, e.g. because of the geographic location or company categorisation. For the reasons outlined above, the clarification of the programmes investigated means that the reference number attached to the programme for this investigation may vary from that used in the questionnaires sent to interested parties.

**Table 4.3: Alleged Subsidy Programmes**

#	Applic. #	Programme
<b>A</b>		<b>Direct Transfer of Funds - Grant</b>
1	8	Assistance for Optimizing the Structure of Import/Export of High-Tech Products
2	9	Assistance for Technology Innovation - R&D Project
3	13	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
4	15/141	Circular on Issuance of Management Methods for Foreign Trade Development Support Fund
5	16	Debt Forgiveness
6	229	Environmental Protection Grant
7	19	Export Assistance Grant
8	148	Five Points, One Line Strategy in Liaoning Province
9	24	Foreign Trade Development Fund Programme (FTDF) - Grants
10	28	Government Export Subsidy and Product Innovation Subsidy
11	33	Grant - Patent Application Assistance
12	41	Grants Under Regulations for Export Product Research and Development Fund Management

13	44	International Market Fund for Small- and Medium-sized Export Companies) [Matching Funds for International Market Development for SMEs)
14	239	Jinzhou District Research and Development Assistance Programme
15	45	Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees
16	59	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
17	61/66/86	Subsidies provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area
18	65	State Special Fund for Promoting Key Industries and Innovation Technologies
<b>B</b>		<b>Direct Transfer of Funds - Loan</b>
19	207	Loans and Interest Subsidies provided under the Northeast Revitalization Programme
20	77/240	Policy/Preferential lending to particular industries
21	78	Preferential Loans Characterized as a Lease Transaction
<b>C</b>		<b>Government provides goods or services or purchases goods</b>
22	82	Input Materials Provided by Government at Less than Adequate Remuneration
23	117	Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices
24	84	Utilities Provided by Government at Less than Adequate Remuneration
<b>D</b>		<b>Government Revenue Foregone - Concessions on income tax and other taxes</b>
25	88	City Maintenance and Construction Taxes and Education Surcharges for Foreign Invested Enterprises
26	90	Corporate Income Tax Reduction for HNTEs
27	2	Dividend Tax Exemption for Certain Transactions Between Qualified Resident Enterprises
28	99	Income Tax Concessions for the Enterprises Engaged in the Comprehensive Resource Utilization ('special raw materials')
29	210	Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning
30	123	Tax Policies for the Deduction of Research and Development Expenses
31	124	Tax Preference Available to Companies that Operate at a Small Profit
<b>E</b>		<b>Government Revenue Foregone - Concessions on import tariffs and VAT payments</b>
32	92	Exemption of Tariff and Import VAT for the Imported Technologies and Equipment
33	96	Foreign Trade Development Fund Programme - VAT Refunds
34	98	Import tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
35	127/128	VAT Rebates on Domestically Produced Equipment

<b>F</b>		<b>Grant programmes relating to Jinan and Shandong Province</b>
36	230	Environmental Protection Fund - Jinan
37	232	Financial Resources Construction - Special Fund - Jinan
38	234	Grant for Elimination of Out-dated Capacity - Shandong
39	235	Grant from Technology Bureau - Jinan
40	231	Intellectual Property Licensing - Shandong
41	233	Reducing Pollution Discharging and Environment Improvement Assessment Award - Jinan

154. In its questionnaire response Tianjin Youfa identified a number of grant programmes that it had received which are not covered by the above programmes.

<b>G</b>	<b>Additional Grant Programmes Notified by Tianjin Youfa</b>
	<b>Environmental Programmes</b>
42	Environmental detection device instalment support
43	Compensation for driven well equipment
44	Compensation for purchase of green vehicle
	<b>Technology Programmes</b>
45	Bonus of High-Tech Enterprise
46	Research Fund from Jinghai County Science and Technology Commission
47	Industrial Technical Transformation Subsidy
48	Technology Reformation Subsidy from Tangshan City, Fengnan District Science and technology Bureau
49	Technology Innovation Support from Chengan County Science and Technology Bureau
50	Research Fund from Chengan County Finance Centre
	<b>Other Programmes</b>
51	Yearly Subsidy for Road Construction
52	Vocational Training Support

#### 4.2.6 General Interpretation

155. 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:

- I Available Information
- II Public Body
- III The Chinese Steel Industry and Specificity
- IV Attribution of Subsidies.

### 4.3 Subsidy Analysis

156. 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.
157. The analysis is based on the framework provided by the Act and the SCM Agreement, and begins with a review of the information available on the existence of a financial contribution by a government or any public body which provides a benefit to the recipient, thus making the financial contribution a subsidy. MBIE then establishes the level of the benefit, and whether the subsidy programme concerned is specific and therefore countervailable. If the programme is specific and the level of subsidy is not negligible, it can be concluded that there is a countervailable subsidy. MBIE considers that subsidy levels below 0.0100% are negligible, and too small to be counted towards countervailable subsidies. This reflects EC practice.
158. This section summarises the findings of the analysis in Annex 2.

#### **Direct transfer of funds – grants**

159. MBIE has concluded that there is a countervailable subsidy benefiting the named sample manufacturer for the following programme:
- #3 Awards to Enterprises whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China” – Tianjin Youfa: 0.0167%.
160. MBIE has concluded that other programmes addressed under this heading provided subsidies to sample manufacturers but at levels that were negligible, too small to be considered countervailable.

#### **Direct transfer of funds – loans**

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

#### **Government provision of goods or services**

162. MBIE has concluded that there is a countervailable subsidy benefiting the named sample manufacturer for the following programme:
- #23 Reduction in Land-Use Fees, Land rental rates, and Land Purchase Prices – Tianjin Youfa: 0.0546%.

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

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

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

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

### Grant Programmes relating to Jinan and Shandong Province

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

### Additional Grant Programmes Notified by Tianjin Youfa

166. MBIE has identified three programmes with subsidy levels above negligible levels addressed under this heading:

- #47 Industrial Technical Transformation Subsidy – Tianjin Youfa: 0.0118%.
- #49 Technology Innovation Support from Chengan County Science and Technology Bureau – Tianjin Youfa: 0.0125%.
- #50 Research Fund from Chengan County Finance Centre – Tianjin Youfa: 0.0119%.

167. MBIE has concluded that eight other programmes addressed under this heading provided subsidies to sample manufacturers but at levels that were negligible, too small to be considered countervailable.

## 4.4 Conclusions Relating to Subsidies

168. Based on the analysis summarised above, the subsidy levels established for sample manufacturers of HSS exported to New Zealand, and the weighted average that would apply to all non-sample manufacturers, are:

**Table 4.4: Provisional Subsidy Levels**

Sample Manufacturer	Total Subsidy Rate
Dalian Steelforce	negligible
Hengshui Jinghua	n.a.
Jinan Mech	negligible
Tianjin Youfa	0.1633%
Weighted average	0.0271%

169. MBIE concludes that the level of subsidy provisionally determined in the investigation is less than 2 per cent, and is therefore at *de minimis* levels.

## 4.5 Further Proceedings

170. 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 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.

171. Article 11.9 of the SCM 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.

172. As noted in the analysis above, the provisional conclusion reached is based on information available up to 7 June 2018, not all of which has been verified at this point in the investigation. Subsequent information obtained by MBIE or made available to it, including information provided in supplementary questionnaires, verification visits 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 insufficient grounds for terminating the investigation.

## 5. Injury Investigation

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### 5.1 Basis for Considering Material Injury

174. 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 chief executive 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.*

175. 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 SCM Agreement.

176. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive 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.

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

178. 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.

179. The chief executive 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

180. Under section 16 of 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.

181. 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>17</sup>

182. 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>17</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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183. 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.
184. Given this conclusion, MBIE will recommend to the Minister that he not determine that provisional measures should be imposed on HSS from China for the remaining period of the investigation.

Dr Peter Crabtree  
General Manager  
Science, Innovation and International Branch  
Labour, Science and Enterprise Group

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## 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”, considerations relating to the Chinese steel industry and specificity, and the approach to the attribution of subsidies.

The considerations and assessments included in this Annex are based on and update similar sections from previous investigations, reflecting new or additional information available to MBIE, or further clarification of the approach adopted. This includes new or additional information from WTO dispute findings and from investigations in other jurisdictions.

### I. Available Information

- A1.1. Section 7(5) of the Act provides “where the chief executive 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 chief executive having regard to all available information that the chief executive considers to be reliable.”
- A1.2. The provisional conclusions reached by MBIE, as noted in this Report, are based on all available information that MBIE considers to be reliable.

#### ***WTO Obligations***

- A1.3. Article 12.5 of the SCM Agreement states that “Except in circumstances provided for in paragraph 7, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested Members or interested parties upon which their findings are based.”
- A1.4. In accordance with Article 12.7 of the SCM 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.
- A1.5. It should be noted that the SCM Agreement does not include an equivalent to Annex II of the AD Agreement which sets out provisions to be observed in applying the equivalent provision in that Agreement, and includes paragraph 7 as follows:

*If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities,*

*this situation could lead to a result which is less favourable to the party than if the party did cooperate.*

- A1.6. The lack of such an Annex was a deliberate decision by the negotiators of the SCM Agreement.<sup>18</sup> However, the Appellate Body in *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436) 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>19</sup>
- A1.7. With regard to the information to be considered and the basis for its evaluation, the Appellate Body in DS436 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 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.”

### ***Other Jurisdictions***

- A1.8. The approaches followed by other jurisdictions are summarised below. In general, these approaches are based on the provisions of the AD Agreement and the SCM Agreement, including Annex II of the AD Agreement. The US approach is explicit in stating that it will use “adverse facts available” (AFA) in the face of non-cooperation, while the EU approach is more nuanced in that the Regulation notes that the result of the investigation may be less favourable to the party than if it had cooperated, and interested parties are to be made aware of the consequences of non-cooperation. It should be noted that the rules followed by the jurisdictions noted below have been applied to both dumping and subsidy investigations.

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<sup>18</sup> Based on the recollection of the New Zealand negotiator who was engaged in negotiations in 1994 to harmonise texts of the AD Agreement and the SCM Agreement.

<sup>19</sup> WTO document WT/DS436/AB/R, at paragraph 4.423.

*Australia*

A1.9. Section 269TAA of the Customs Act 1901 provides that if the ADC Commissioner is satisfied that an interested party has not given the Commissioner information considered to be relevant to the investigation within a reasonable period, or has significantly impeded the investigation, then, in determining whether a countervailable subsidy has been received in respect of particular goods, or in determining the amount of a countervailable subsidy in respect of particular goods, the Commissioner or the Minister may act on the basis of all the facts available and may make such assumptions as considered reasonable.

*Canada*

A1.10. In Canada, the Special Import Measures Act (SIMA), at section 30.4(2) provides for the level of subsidy to be determined on the basis of ministerial specification where sufficient information has not been provided and where no manner of determining an amount of subsidy has been prescribed or sufficient information has not been provided or is not otherwise available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy shall, be determined in such manner as the Minister may specify.

*EU*

A1.11. The relevant EU legislation, Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016, at Article 29, Non-Cooperation, reflects Annex II of the AD Agreement, and provides, that in cases in which any interested party refuses access to, or otherwise does not provide necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, that information shall be disregarded and use may be made of the facts available. Interested parties shall be made aware of the consequences of non-cooperation. If determinations, including those regarding the amount of countervailable subsidies, are based on facts available, including the information supplied in the complaint, it shall, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation. Such information may include relevant data pertaining to the world market or other representative markets, where appropriate. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result of the investigation may be less favourable to the party than if it had cooperated.

*USA*

A1.12. The relevant US law is section 776 of the Tariff Act of 1930 regarding determinations on the basis of the facts available. Under this provision, USDOC shall apply "facts otherwise available" if necessary information is not on the record or an interested party withholds

information that has been requested, fails to provide information within the deadlines established, or in the form and manner requested by USDOC, significantly impedes a proceeding, or provides information that cannot be verified. USDOC may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, USDOC practice is to ensure that the rate is sufficiently adverse as to induce respondents to provide the Department with complete and accurate information in a timely manner. The USDOC practice also ensures that the party does not obtain a more favourable result by failing to cooperate than if it had cooperated fully.

- A1.13. Section 776 also provides that, when USDOC relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review concerning the subject merchandise. It is USDOC's practice to consider information to be corroborated if it has probative value. In analysing whether information has probative value, it is USDOC's practice to examine the reliability and relevance of the information to be used. However, USDOC need not prove that the selected facts available are the best alternative information.
- A1.14. Finally, under the new section 776(d) of the Act, USDOC may use any countervailable subsidy rate applied for the same or similar programme in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy programme from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.

### ***MBIE Analysis and Consideration***

- A1.15. MBIE's general approach to an investigation is that it is an inquisitorial rather than an adversarial process, and it is MBIE's role to obtain and assess information from all sources necessary to assist in the making of the determinations required under the Act. This will include information from the parties to the investigation, as well as information obtained by MBIE from its own research. It is important that all such information be included on the record of the information through inclusion in Reports, inclusion on the Public File, or inclusion by references in these records to publicly available information.

- A1.16. 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 facts available and AFA arising from the alleged failure of Chinese parties to provide information to the investigating authorities, or dissatisfaction with the information that was provided.
- A1.17. 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 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 SCM Agreement, but the Panel found that in a significant number of instances the application of the rules was not consistent with the SCM Agreement. This suggests that there can be issues about the reliability of findings which use facts available and AFA in situations where it is claimed that parties are not cooperating.
- A1.18. MBIE notes that in other jurisdictions assumptions of countervailability have been applied because of the lack of questionnaire responses acceptable to the investigating authority, without any apparent resort or reference to supplementary sources of information outside of countervailing duty proceedings. There is a risk that applicants could simply compile a list of programmes identified in other proceedings or from other sources, with the expectation that some or all of the exporting country manufacturers will not cooperate so that facts available and AFA will be applied, and that the "facts available" will be those contained in the application. The outcome is that programmes will be considered countervailable and levels of subsidy determined with little or no relationship to the facts of the particular case at hand. This includes, for example, 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.
- A1.19. In a reasonably significant number of cases involving the USA, substantial levels of subsidy have been applied as 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.
- A1.20. The conclusion to be drawn is that findings by other jurisdictions on the basis of facts available or AFA may not be 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.

- A1.21. Nevertheless, where information from investigations undertaken in other jurisdictions is based on an actual investigation of relevant manufacturers, that information can be assessed along with other information available, in order to establish whether there is reliable information that will permit a conclusion regarding the existence of any subsidy and the determination of the amount of any subsidy.
- A1.22. 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, NZ 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 of AFA for non-cooperating parties.
- A1.23. 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 investigations into HSS involved Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa, but investigations into relevant steel products by Canada, the EU and USA did not include manufacturers common to the subject investigation.
- A1.24. In assessing the reliability of information from investigations undertaken by other jurisdictions, MBIE has taken into account the extent to which subsidy rates established are based on positive information from cooperating exporters or are negative assumptions based on lack of information. In particular, where an investigation may have established that cooperating exporters have not benefited from a subsidy, an assumption that non-cooperating exporters have so benefited, would not, by itself, be sufficient to provide reliable information that there is a subsidy.
- A1.25. Where information has not been provided, or is not available, MBIE evaluates the information that is available to ensure that any determination has a factual foundation, and that the information used can reasonably replace information that has not been provided.
- A1.26. MBIE notes that up to this point in the current investigation, the sample manufacturers have cooperated fully in providing the requested information (for the reasons outlined in section 3.4 above, Hengshui Jinghua was not expected to respond to the questionnaire by the cut-off date of 7 June 2018). Consequently, MBIE has not needed to take recourse to facts available as a result of non-cooperation.

## II. Public Body

- A1.27. 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.
- A1.28. Section 3 of 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. The Act does not include any reference to “public body”.
- A1.29. Section 7 of the Act defines the amount of the subsidy in terms that follow the provisions of Article 14 of the SCM 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.
- A1.30. Under Article 1.1 of the SCM 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) that confers a benefit.
- A1.31. 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.

### WTO Jurisprudence

- A1.32. 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>20</sup> and has listed below the relevant

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<sup>20</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*

findings that provide the basis for its analysis of the matters that an investigating authority needs to consider. The references cover original Panel reports, Appellate Body (AB) reports, and compliance Panel reports (identified as “21.5 panel” after the relevant provision of the Dispute Settlement Understanding (DSU)).

WTO Dispute Findings: References	Comment
<b>What is to be determined</b>	
A public body must possess, exercise or be vested with governmental authority. [DS379 AB para 317] This suggests that the performance of governmental functions, or the fact of being invested with, and exercising, the authority to perform such functions are core commonalities between government and public body. [DS379 AB para 290]	This is the basic finding from DS379, i.e. that a public body must possess, exercise or be vested with governmental authority and perform governmental functions.
Governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise many functions or responsibilities that go beyond the effective power to regulate, control, or supervise individuals, or otherwise restrain their conduct. [DS437 R para 7.69]	Activities of governments and entities they establish can go beyond the effective power to regulate, control or supervise individuals.
In this vein, the Appellate Body found, <i>in Canada – Dairy</i> , that the essence of government is that it enjoys the effective power to regulate, control, or supervise individuals, or otherwise restrain their conduct, through the exercise of lawful authority. The Appellate Body further found that this meaning is derived, in part, from the functions performed by a government and, in part, from the government having the powers and authority to perform those functions. As we see it, these defining elements of the word "government"	The power to regulate, control or supervise individuals or otherwise restrain their conduct through lawful authority is the essence of government, and informs the meaning of “public body.”

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*Certain Hot-Rolled Carbon Steel Flat Products from India (DS436); United States – Countervailing Duty Measures on Certain Products from China (DS437)*. These reports include the Article 21.5 Panel report on the implementation of the recommendations and rulings adopted by the Dispute Settlement Body (“DSB”) in relation to DS437, which has been appealed by both China and the USA. An Article 21.5 Panel has also been established at the request of India in regard to the implementation of the recommendations and rulings of the DSB in DS436. While these developments may affect the interpretations of aspects of the original dispute findings, MBIE is proceeding on the basis of the finding currently available.

inform the meaning of the term "public body". [DS379 AB para 290]	
In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control' or 'supervise' individuals, or otherwise 'restrain' their conduct". Such entities can include SOEs (including banks and other financial institutions); universities, libraries and other academic institutions; scientific research and development centres; hospitals and other healthcare institutions; museums, orchestras, and other cultural organizations; sports organizations; and many others. [DS437 Panel para 7.69]	Governmental activities go beyond those requiring the effective power to regulate or control or supervise individuals or otherwise restrain their conduct. Thus, such powers are not necessary to define a public body.
Where a statute or other legal instrument expressly vests authority in the entity concerned a determination may be straightforward, but the absence of an express statutory delegation of authority does not necessarily preclude a determination that a particular entity is a public body – what matters is whether authority is vested, not how that is achieved. [DS379 AB para 318]	The vesting of government authority does not need to be explicit in legislation.
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. [DS379 AB para 318]	Evidence that an entity is in fact exercising governmental functions may be evidence that it is a public body.
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 in fact exercises such authority in the performance of governmental functions. [DS379 AB para 318]	Meaningful control over an entity by a government can serve as evidence that it is a public body.
...the Appellate Body has explained that the term public body in Article 1.1(a)(1) of the SCM Agreement means "an entity that possesses, exercises or is vested with governmental authority". The substantive legal question to be	The evidentiary standard is not simply that an entity has one or more of the characteristics of a public body but whether a government is in fact exercising meaningful control over

<p>answered is therefore whether one or more of these characteristics exist in a particular case. This substantive standard should not be confused with the evidentiary standard required to establish that an entity is a public body within the meaning of the SCM Agreement. Although the Panel quoted extensively from the Appellate Body report in <i>US – Anti-Dumping and Countervailing Duties (China)</i>, it appears to have blurred the distinction drawn by the Appellate Body in that report between the existence of control by a government over an entity, on the one hand, and "meaningful control", on the other hand. Thus, the Panel did not analyse, in our view, the question of whether the GOI in fact exercised control over the NMDC and its conduct. [DS436 AB para 4.37]</p>	<p>the entity and its conduct. There must be factual evidence that a government controls an entity for it to be a public body.</p>
<p>Apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and a government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority, e.g. the fact that a government is a majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that it has bestowed it with governmental authority. [DS379 AB para 318]</p>	<p>Formal links between a Government and an entity are unlikely to be sufficient to establish the necessary possession of governmental authority.</p>
<p>Although certain entities that are found to constitute public bodies may possess the power to regulate, an entity would not necessarily have to possess this characteristic in order to be found to be vested with governmental authority or exercising a governmental function and therefore to constitute a public body. [DS436 AB para 4.17]</p>	<p>The power to regulate is not necessary to establish that an entity is a public body.</p>
<p>An entity does not need to have the power to entrust or direct a private body to carry out the functions referred to in Article 1.1(a) of the WTO Subsidies Agreement in order to constitute a public body exercising governmental functions. [DS436 AB para 4.18]</p>	<p>The power to entrust or direct is not necessary to conclude that an entity is a public body exercising governmental functions.</p>
<p>Where evidence shows that the formal indicia of government control are manifold, and there is also evidence that control has been exercised in a meaningful way, then such evidence can permit an inference that the entity concerned is</p>	<p>Formal indications of government control and evidence that there is meaningful control can permit an inference that the entity is exercising</p>

exercising governmental authority. [DS379 AB para 318]	governmental authority.
Evidence of a government's meaningful control over an entity can include the government's use of the entity's resources as its own, and government ownership of an entity, while not decisive, may serve in conjunction with other elements, as evidence. [DS436 AB para 4.20]	In conjunction with other elements, evidence that the Government uses the entity's resources as its own can serve as evidence of meaningful control.
Control of the entity by a government, in itself, is not sufficient to establish that an entity is a public body. [DS379, AB para 320]	Control by a government is not, in itself, sufficient to establish an entity as a public body.
Control by government over an entity is not necessarily meaningful control. [DS436 AB para 4.37]	Control over an entity is not necessarily meaningful control, e.g. governments, as a matter of course, exercise control over the activities and behaviour of entities through legislation and regulations in the exercise of governmental authority.
Evidence of government ownership, in itself, is not evidence of meaningful control of an entity by government and cannot, without more, serve as a basis for establishing that an entity is vested with authority to perform a governmental function. [DS379, AB para 346]	Government ownership is not sufficient, without more, to serve as a basis for determining that an entity is a public body.
The Appellate Body specifically rejected the idea that an entity can be found to be a public body based on a notion of control in the sense of the "everyday financial concept of a 'controlling interest' in a company". In our view, other than "the effective power to regulate, control, or supervise individuals, or otherwise restrain their conduct, through the exercise of lawful authority", it is not self-evident that all activities that involve a government in fact constitute "governmental functions". DS437, Panel para 7.71]	All activities that involve a government do not necessarily constitute government functions for the purposes of the SCM Agreement.
As we see it, too broad an interpretation of the term "public body" could equally risk upsetting the delicate balance embodied in the SCM Agreement because it could serve as a licence for investigating authorities to dispense with an analysis of entrustment and direction and instead find entities with any connection to government to be public bodies. [DS379, AB para 303]	The interpretation of "public body" should not be too broad.

<p>In our view, the question of “meaningful control” is inherently specific to particular factual circumstances, and the existence of such control may be established through a variety of potentially relevant considerations that may be cumulatively assessed by an investigating authority. The extent to which the particular conduct of entities is relevant in the context of “meaningful control” may depend on a number of factors, including the particular government function identified by an investigating authority and the evidence in its investigation. [DS437, 21.5 Panel, para 7.70]</p>	<p>The existence of meaningful control is specific to particular factual circumstances, and the relevance to the conduct of entities depends on a number of factors, including the particular governmental function identified by the investigating authority and the evidence available.</p>
<p>We do not consider there to be any <i>a priori</i> limitation on what may be the relevant government function for the purposes of a public body analysis. Rather, where an investigating authority identifies a broader government function as part of a public body analysis, it must provide a reasoned and adequate explanation, based on relevant evidence, to support that identification. [DS437, 21.5 Panel para 7.28]</p>	<p>If a broader government function is part of a public body analysis it must be based on a reasoned and adequate explanation.</p>
<p>Moreover, a finding that an entity is a public body does not, in itself, result in the application of the “disciplines” of the SCM Agreement, as the financial contribution by the public body must confer a benefit and the subsidy granted must be specific for such disciplines to apply. [DS379, AB footnote 212 to para 302]</p>	<p>The financial contribution by a public body must confer a benefit and the subsidy must be specific for the disciplines of the SCM Agreement to apply.</p>
<p>The requisite attributes to be able to entrust or direct a private body, namely authority in the case of direction and responsibility in the case of entrustment, are common characteristics of both government in the narrow sense and a public body. [DS379, AB para 294]</p>	<p>Entrustment or direction of a public body can be a characteristic of both a government and a public body.</p>
<p>A finding that a particular entity does not constitute a public body does not, without more, exclude that entity’s conduct from the scope of the SCM Agreement. Such measures may still be attributed to a government and thus fall within the ambit of the SCM Agreement pursuant to Article 1.1(a)(1)(iv) if the entity is a private entity entrusted or directed by a government or by a public body. [DS379, AB para 302]</p>	<p>Entities that are not public bodies themselves are not necessarily excluded from the ambit of the SCM Agreement.</p>

How is it to be determined	
<p>A determination that an entity is a public body must, in each case, be determined on its own merits, and requires a proper evaluation of the core characteristics and functions of the entity concerned, its relationship with the government in the narrow sense [DS 379 AB para 317], and the legal and economic environment prevailing in the country in which the entity operates. [DS436 AB para 4.43]</p>	<p>Each investigation must assess the situation on its merits, including an evaluation of :</p> <ul style="list-style-type: none"> <li>• The characteristics and functions of the entity</li> <li>• The relationship the entity has with the Government</li> <li>• The legal and economic environment prevailing in the country within which the entity operates</li> </ul>
<p>Evidence regarding the scope and content of government policies relating to the sector in which the investigated entity operates may inform the question of whether the conduct of an entity is that of a public body. [DS436 AB para 4.29]</p>	<p>Evidence of scope and content of government policies in a sector may inform the question of whether the conduct of an entity is that of a public body.</p>
<p>Investigating authorities shall undertake a careful evaluation of the entity in question and identify its common features and relationship with government in the narrow sense, having regard, in particular, to whether the entity exercises authority on behalf of government. [DS379 AB para 319]</p>	<p>Investigate each entity and identify its common features and relationship with Government to establish if it is exercising authority on behalf of the Government.</p>
<p>Investigating authorities have a duty to seek out relevant information and to evaluate it in an objective manner, and the reasoning of the authority must be coherent and internally consistent, and the conclusions reached and the inferences drawn by the authority must be based on positive evidence. [DS379 AB para 344]</p>	<p>Investigations must seek out information, evaluate it and use coherent and internally consistent reasoning, with conclusions based on positive evidence.</p>
<p>In order properly to characterize an entity as a public body in a particular case, it may be relevant to consider whether the functions or conduct [of the entity] are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member. DS379 AB para 297]</p>	<p>Are the functions of a kind that are ordinarily classified as governmental in the legal order of the country?</p>
<p>An investigating authority must, in making its determination, evaluate and give due consideration to all relevant characteristics of the entity and, in reaching its ultimate determination as to how that entity should be characterized,</p>	<p>All characteristics of an entity should be evaluated, and undue focus on any single characteristic should be avoided.</p>

<p>avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant. [DS379 AB para 319]</p>	
<p>The determination of whether a particular conduct is that of a public body must be made by evaluating the core features of the entity and its relationship to government in the narrow sense. That assessment must focus on evidence relevant to the question of whether the entity is vested with or exercises governmental authority. [DS379 AB para 345]</p>	<p>A public body determination involves evaluation of the core features of the entity, with a focus on evidence relevant to the question of whether the entity is vested with or exercises government authority.</p>
<p>As we have pointed out determining whether an entity is a public or private body may be a complex exercise, particularly where the same entity exhibits some characteristics that suggest it is a public body, and other characteristics that suggest that it is a private body. [DS379 AB para 345]</p>	<p>A public body determination is a complex exercise, since different characteristics may indicate either a public or private body.</p>
<p>In our view, merely incorporating by reference findings from other determinations into another determination will normally not suffice as a reasoned and adequate explanation. Nonetheless, where there is a close temporal and substantive overlap between two investigations, such cross reference may, exceptionally, suffice. [DS379 AB para 354]</p>	<p>Incorporation by reference of other determinations can, exceptionally, be done where there is a close temporal and substantive overlap.</p>
<p>In addition to these broad parameters that must be part of a public body determination consistent with Article 1.1(a)(1), there are various other types of information and evidence that may be relevant in assessing whether a particular entity is a public body. We see no basis to prejudge the relative weight or value of various types of relevant evidence in this regard. Rather, we consider that the applicable legal standard requires a holistic assessment by an investigating authority of the evidence before it. [DS437 21.5 Panel para 7.30]</p>	<p>A public body determination requires a holistic assessment.</p>
<p>Further, we do not consider that the factual circumstances and case-specific determinations in prior disputes reflect rigid legal requirements that must be applied in other circumstances involving different analytical approaches. In a public body analysis, an investigating authority</p>	<p>All relevant factors should be examined as appropriate to the particular case.</p>

<p>must give due consideration to all relevant facts regarding the characteristics and functions of an entity as appropriate in the particular circumstances of the case. [DS437 21.5 Panel para 7.32]</p>	
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- A1.33. Bearing in mind the above, MBIE takes the view that the key question is whether the nature and degree of control by the government over the body is meaningful in that the entity possesses, exercises or is vested with governmental authority, and so conducts itself by undertaking an activity envisaged in Article 1.1(a)(1). This is the whole point of the public body analysis, and as noted by the Appellate Body, the determination of whether the conduct of an entity is that of a public body in each case must be determined on its own merits, with due regard being had to the core characteristics and functions of the relevant entity, its relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates.
- A1.34. MBIE 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, and the nature of the subsidy programme at issue.
  - 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.
- A1.35. 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.
  - 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, level and nature 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 SCM 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.
  - does the entity conduct itself by undertaking an activity envisaged in Article 1.1(a)(1)
  - if the entity is not a public body, does it come within the ambit of Article 1.1(a)(1)(iv) of the SCM Agreement.
- A1.36. 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 SCM Agreement, which also confers a benefit to the recipient, and which is specific.
- A1.37. In considering the particular programmes in Annex 2 below, MBIE has addressed 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.

## **Background**

### **Context**

- A1.38. 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”.
- A1.39. China's Constitution<sup>21</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-owned economy, namely, the socialist economy under ownership by the whole people, is the leading force in the national economy. The State ensures the consolidation and growth of the State-owned 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 Chinese Communist Party (CCP) 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 dominates

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<sup>21</sup>. [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm).

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

- A1.40. 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 SCM 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.
- A1.41. With regard to the core characteristics and functions of the entity concerned, 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.
- A1.42. 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 SCM Agreement, which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.

### ***Previous Investigations***

- A1.43. In the investigation into *Galvanised Steel Coil*, MBIE concluded that the People's Bank of China (PBOC) as the central bank, 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.
- A1.44. Similarly, in both *Galvanised Steel Coil* and *Steel Reinforcing Bar*, MBIE concluded, on the basis of an analysis of the elements and evidence identified above, that SOEs providing inputs into production of the subject goods were not public bodies.

## Public Body - Other Jurisdictions

- A1.45. 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 SCM Agreement. MBIE notes that the approaches taken reflect those jurisdictions' 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.
- A1.46. To a large extent, the positions taken in other jurisdictions have been based on assessments of the GOC's role in the steel industry, so the analyses undertaken by them have focused on steel industry plans and directions, as well as the nature of government ownership in the sector.

### **Australia**

- A1.47. The Final Report in ADC *Grinding Balls* (Report 316, Appendix 5, 9 September 2016) provides a summary of the approach taken by Australia in assessing whether State-invested enterprises are public bodies. In that investigation the ADC reviewed information from its previous investigations which had addressed this issue, including Anti-Dumping Review Panel (ADRP) findings, and WTO dispute findings, Appellate Body findings in DS379, and Panel findings in DS436 and DS437. The ADC noted that the findings in AD437 were less relevant because the Panel had found that majority ownership of itself does not lead to a conclusion that an entity is a public body, and the ADC agrees with this view. The ADC did not refer to the Appellate Body findings in DS436, which overturned a number of the Panel findings.
- A1.48. The ADC noted the guidance provided by DS379 in outlining the three indicia that help assess whether an entity is a public body, i.e. vested with or exercising governmental authority). These indicia include the existence of a statute or other legal instrument that expressly vests government authority in an entity; evidence that an entity is in fact exercising governmental functions may serve as evidence that it possesses or is vested with governmental authority; while evidence that the government exercises meaningful control over an entity may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.
- A1.49. The ADC recalled that in ADC *HSS 177* it had assessed whether suppliers of HRC were public bodies, and concluded that there was evidence that an entity was, in fact, exercising government functions, and that the government exercised meaningful control over an entity. The ADC considered that evidence from GOC policy documents and statements by SIE steel manufacturers in public reports showed that such entities were still constrained

by, and abided by, multiple GOC policies, plans and measures, and in some circumstances acted as an important means by which these policies and plans were implemented. The finding was appealed to the TMRO who directed the ADC to conduct a reinvestigation of the public body finding. That reinvestigation (ADC HSS 203) affirmed the findings in ADC HSS 177, noting that the SIES were exercising governmental functions, there was evidence that the government exercised meaningful control over SIES and their conduct, and in performing government functions SIEs were controlling third parties.

- A1.50. The ADC noted that in ADC *Galvanised Steel and Aluminium Zinc Coated Steel*, it had relied on its findings in ADC HSS 203 to find that SIEs were public bodies, but this finding was appealed to ADRP (successor to the TMRO). The ADRP directed a reinvestigation, noting that active compliance with governmental policies and/or regulations did not equate to the exercise of governmental functions or authority, and that the ADC had conflated the purpose of acting in accordance with a government policy and carrying out government function. The ADRP had also noted that the legislation relied on by the ADC related to the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) and not to SIEs and was not evidence of how or whether authority was delegated to SIEs to control participants in the iron and steel industry. It was noted that having an impact on other participants in the industry was not directly controlling them. The ADRP also noted that there was no evidence which demonstrated that there had been a delegation (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.
- A1.51. In Appendix 5 to the Final Report in ADC *Grinding Balls*, the ADC considered that the ADRP decision was, to a large extent, premised on the TMRO's view that an essential element in determining a public body was the exercise of a power of government over third persons. However, as noted in the ADRP Report, the analysis using the indicia derived by the ADC was based on DS379 which had been accepted in the *Panasia* case as being the test, but the ADRP also noted that the Judge, in *Panasia*, indicated a need for the control of the government entity to be a delegation of authority (although not in the strict sense of delegation). The ADRP did not consider that any material in the HSS reinvestigation or in ADC *Galvanised Steel and Aluminium Zinc Coated Steel* demonstrated that there had been delegation of governmental authority to impose State-mandated policies on participants in the iron and steel industry in China.
- A1.52. The ADC also suggested that the ADRP, reporting on 15 November 2013, had not taken account of the findings in DS436 and DS437 which suggested that governmental functions were not limited to control over third parties. However, the ADC's references to those findings are unclear and potentially misleading. The Panel, in DS437, did note that many functions undertaken by governments or any public body do not require the power to regulate or control, but this was not a statement by the Appellate Body as suggested by the ADC (the public body findings of the DS437 Panel were not appealed). With regard to DS436 the ADC 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. In fact, the quotes come from the DS436 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 Final Report for ADC *Grinding Balls* was dated 9 September 2016, it is difficult to understand the conclusions drawn by the ADC, which are not consistent with the findings and recommendation from the Appellate Body and Panel reports in DS436 that were actually adopted by the DSB.<sup>22</sup>

- A1.53. The ADC went on to set out functions and obligations of the SASAC, based on the “Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises” (the Interim Regulations). Relevant provisions identified included the responsibility to appoint or remove responsible persons (Article 13); the requirement to establish and improve mechanisms for selecting and appointing the responsible persons or enterprises (Article 16); the identification governance positions considered to be the responsible persons (Article 17); provisions relating to the removal of responsible persons (Article 17); the establishment of a performance evaluation system and the conduct of annual performance reviews (Article 18); and the determination of remuneration of responsible persons (Article 19). The ADC 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 ADC noted that in ADC *HSS 177* the GOC had submitted that Article 7 of the Interim Regulations prevented SASAC from exercising any government functions of administrative public affairs. Nevertheless, the ADC did not consider that this was at odds with finding that SIEs were public bodies. The conclusions reached by the ADC were that providers of inputs that were SIEs were public bodies, and cited the DSB findings referred to above (actually the overturned DS436 Panel findings).
- A1.54. In February 2018, the ADRP issued a report (ADRP 63) in response to requests for review of the decision to continue anti-dumping and countervailing duties on HSS. The applicants included Dalian Steelforce (relating to anti-dumping only) and Tianjin Youfa (including the public body determination). With regard to the public body finding, the ADRP noted that the GOC had not responded to requests for information from the ADC, and had relied on

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<sup>22</sup> At its meeting on 19 December 2014, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

information from ADC *Grinding Balls* and the ADC Report on the Steel and Aluminium Industry published in August 2016. The ADRP stated that the ADP *Grinding Balls* investigation related specifically to providers of raw materials to manufacturers of grinding balls, so requested the ADC to reinvestigate the finding that Tianjin Youfa had received a countervailable subsidy in respect to HSS. The ADC based its reinvestigation findings on information gathered during the course of the continuation investigation ADC HSS 379, previous findings in ADC HSS 177, and the findings of the EC in a report “Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the Purposes of Trade Defence” (the EC Staff Report).

- A1.55. The ADRP noted that the reinvestigation following ADC HSS 177 confirmed the original findings and were upheld by the Federal Court in *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs*. With regard to ADC HSS 379, the ADRP noted that the analysis relied upon was not specifically in respect to the issue of SIE HRC providers being public bodies, but was directed at assessing whether there was a particular market situation for the purposes of the anti-dumping investigation. On the EC Staff Report, the ADRP considered that it did provide a basis for the findings relied on by the ADC, in particular, that the GOC controls the behaviour of SIEs; that current GOC plans were to strengthen SIEs and their control and influence to better serve strategic goals of China and create larger SIEs to serve the GOC’s strategic industrial policies rather than focus on their own economic performance; SIEs and large private companies execute the GOC’s policy objectives; and that the GOC no longer directs SIEs to adapt to the market environment or to promote market oriented allocation of resources. The ADRP recalled that the ADC reinvestigation had found that it was reasonable to assume that the SIEs possess, exercise and are vested with governmental authority and, therefore, considered SIEs providing HRC to Tianjin Youfa to be public bodies, and considered that there was a sufficient factual basis for the ADC to be so satisfied. The ADRP found persuasive the original findings in ADC HSS 177; the background to the Chinese HRC market (for particular market situation purposes) from ADC HSS 379; the reinvestigation report requested by the ADRP and in particular the EC Staff Report; and the lack of response from the GOC, which the ADRP found the most persuasive.

*MBIE Comment*

- A1.56. As noted above, the ADC findings which rely on their interpretation of WTO dispute findings are not soundly based in that they do not reflect a careful review of the WTO jurisprudence; while the (WTO) untested rationale for Australia’s approach to a particular market situation in relation to anti-dumping may also be an unsound basis for a public body analysis. The EC Staff Report, which has a similar purpose, is addressed below. The main elements that MBIE draws from this summary of the Australian experience are that active compliance with governmental policies and/or regulations does not equate to the exercise of governmental functions or authority; and that the power to regulate, or to entrust or direct, is not necessary to establish that an entity is a public body.

**Canada**

- A1.57. In earlier investigations (e.g. CBSA *Welded Pipe* in 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.
- A1.58. In the report of the 2014 investigation into CBSA *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.” This essentially reflects the approach developed in DS379, and the indicia used by the 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.
- A1.59. In the 2016 CBSA *Line Pipe* investigation the factors from *Concrete Reinforcing Bar* were considered, and took into account the GOC’s control and influence over the primary steel industry, as outlined in CBSA’s inquiry to provide a basis for the normal value determination in the parallel anti-dumping investigation (section 20 inquiry); and 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>23</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.

*Section 20 Inquiry*

- A1.60. Section 20 is a provision of SIMA that may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market

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<sup>23</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.”

of the exporting country. In the case of a “prescribed” country (China is a “prescribed country” under section 17.1 of the Canadian Special Import Measures Regulations), section 20 may be applied where, in CBSA’s opinion, the government of the exporting country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market. In *CBSA Line Pipe*, the complainants alleged that the conditions described in section 20 prevailed in the steel pipe sector in China, citing specific GOC policies in support of the argument.

- A1.61. The CBSA sent section 20 requests for information (RFI) to exporters and the GOC, but the exporter responses were incomplete and no response was received from the GOC.
- A1.62. The CBSA examined steel industry plans, including plans for the steel pipe industry. The “National Steel Policy” (2005) and the “Steel Revitalization/Rescue Plan” (2009) were noted as evidence of control over new or additional steel production capacity, along with the directions of mergers and acquisitions and an emphasis on improving quality. The 2011 “12<sup>th</sup> Five-Year Development Plans for the Steel Industry” served as a guiding document for the Chinese steel industry for 2011-2015, and continued the GOC plan for the reform and restructuring of the steel industry. The CBSA considered that as a result of the Plan the Chinese steel industry was “very much under the purview of the GOC.” Together with related legislation, the plans set out detailed requirements for existing production and operations of steel enterprises in China. The 2011 “12<sup>th</sup> Five-Year Plan for the Steel Pipe Industry” covering 2011-2015 was issued by the Steel Pipe Branch Association of the China Steel Construction Society, which the CBSA states is supervised by the SASAC. The CBSA noted that at the end of the previous Plan period the steel pipe industry was experiencing excess production capacity, intensified market competition, continued backward production and low industry concentration. According to the CBSA, the Steel Pipe Plan directed that output of steel pipe should be controlled at 67-75 million MT and addressed overcapacity, with industry concentration targets set.
- A1.63. The CBSA reviewed GOC ownership of suppliers and producers, noting that most of the top steel companies in China are State-owned, and provide inputs for pipe producers. Evidence from the complainant suggested that the GOC has continuously pressured state-owned steel mills to avoid cutbacks, which in turn has been a contributing factor behind plummeting Chinese steel prices. It was claimed that this indicated that the GOC exerts control over the Chinese steel industry, including steel pipe. According to the complainant, up to 50 per cent of line pipe producers are State-owned, and the CBSA accepted that there was evidence of substantial State ownership in the steel pipe sector in China.
- A1.64. The CBSA considered that, based on the information on record, the scope of the GOC’s macro-economic policies and measures indicated that the GOC was influencing the Chinese steel industry. It suggested that the use of such policies and measures can dramatically change the demand and supply balance in the domestic market and could influence the domestic prices of steel products such as steel pipe. The CBSA also considered that the

GOC's actions to eliminate obsolete steel production and reduce energy-emissions, as well as the plans for mergers and acquisitions, were compelling facts that the GOC is firmly in charge of the reform of the Chinese steel industry. The CBSA suggests that the cumulative effect of the GOC's numerous macro-economic policies and measures has resulted in an environment where enterprises have conflicting objectives, which can affect the products produced, production volumes and ultimately prices. The CBSA believed that the cumulative impact of GOC measures and control indicated that prices of line pipe in China are being indirectly determined by the GOC.

- A1.65. The CBSA used information from the application and from responses to RFIs, and compared average monthly prices of exporters responding to the RFI with prices from Metal Expert<sup>24</sup> provided by the applicant. This comparison indicated that prices of welded line pipe in other countries were higher than in China by 31-38%. The CBSA recognised certain limitations in this price analysis, and undertook a further comparison based on US prices, which indicated very significant price differences.
- A1.66. The CBSA concluded that domestic prices of steel line pipe in China are substantially determined by the GOC and there was sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

*MBIE Comment*

- A1.67. MBIE notes that the section 20 inquiry process is predicated on Canada's legislative definition of China as a non-market economy, which is not the case for New Zealand, and was intended to establish that prices of steel pipe in China were not a basis for determining normal values in the dumping investigation. The CBSA found that the GOC's macro-economic policies were influencing the Chinese steel industry and could influence the price of steel pipe, such that the price of line pipe was indirectly determined by the GOC. MBIE does not consider that this provides sufficiently robust evidence that there was GOC control over HRC prices paid by pipe manufacturers that would support a conclusion that HRC producers were meaningfully controlled by the GOC. The CBSA appears to have blurred the distinction between the existence of control and "meaningful control" referred to by the Appellate Body.

**European Union**

- A1.68. 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

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<sup>24</sup> A specialist media company, an independent provider of pricing intelligence, news, data, analysis and conferences for the iron and steel industry, at <https://metalexpert.com/en/index.html>.

materials for less than adequate remuneration because the producers investigated had received their raw materials at market prices.

- A1.69. 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.
- A1.70. 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 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.*

- A1.71. 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.
- A1.72. 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 III below on “The Chinese Steel Industry and Specificity” addresses the application of these documents).

- A1.73. 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).]*
- A1.74. 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 III below is relevant: MBIE has reviewed Decision 40 and has concluded that the steel industry as such is not ‘encouraged’.]*
- A1.75. 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.
- A1.76. 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.

- A1.77. 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.

*EC Staff Report*

- A1.78. The EC Staff Report (2017) was prepared for the purposes of addressing Article 2(6a) point (c) of the EU Regulation (EU) 2016/1036 on the protection against dumped imports, as amended by Regulation 2017/2321 (the Basic Regulation). The Basic Regulation refers to the publication of a report on the market circumstances where the EC has well-founded indications of the possible existence of significant distortions in a certain country or a certain sector in that country. The Basic Regulation provides that where there are significant market distortions with the consequence that costs reflected in the records of the party concerned are artificially low, such costs may be adjusted or established on any reasonable basis, including information from other representative markets or from international prices or benchmarks. Thus, like the Canadian section 20 inquiry, this process addresses the establishment of normal values in dumping investigations, rather than being a direct response to any need to make a public body determination.
- A1.79. Significant distortions are defined in the Basic Regulation included distortions that occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention. In the assessment of the existence of significant distortions, regard is to be had to the impact of the extent to which the market is served by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country; State presence in firms, allowing the State to interfere with respect to prices or costs; public policies that discriminate in favour of domestic suppliers or otherwise influence free market forces; the lack or discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws; distorted wage costs; and access to finance granted by institutions which implement public policy objectives or otherwise do not act independently of the State.
- A1.80. The EC Staff Report examined the core features of the Chinese economy, including the concept of a "socialist market economy", the role of the CCP in relation to the economy,

the extensive system of plans issued and followed up by various levels of government under the leadership of the CCP, the extensive State-owned sector including the various supervision and control mechanisms, the financial market, the procurement system and the system of investment screening. The EC Staff Report noted that the overall picture that was emerging concerning the framework in which economic activity takes place in China is one where the State continues to exert decisive influence on the allocation of resources and on their prices.

- A1.81. The EC Staff Report also reviewed the factors of production, including the provision of land, energy, capital, material inputs (including raw materials) and labour. The conclusion was that the allocation and pricing of the various factors of production was influenced by the State in a very significant manner.
- A1.82. Finally, the EC Staff Report examined a number of sectors, including the steel sector. The examination found that there were significant distortions resulting from the specific features of the Chinese economy and those found in relation to the various factors of production.
- A1.83. The EC Staff Report includes a detailed examination of the players and practices in the financial sector, including banks. It is noted that despite a number of transformations throughout the last thirty years the current Chinese financial system is still characterised by a strong presence of State-owned banks, and a widespread influence of the State which imposes a number of policy objectives on the financial system. It is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower. The evidence, including findings from trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments, which stress the priority of the needs of national economic and social development and the industrial policies of the State. The conclusion reached in the EC Staff Report is that the financial system remains highly distorted.
- A1.84. In examining the factors of production, the EC Staff Report notes that rules on land provision and acquisition are often unclear and non-transparent, and prices for land are often set by the authorities on the basis of non-market considerations. On energy, electricity prices are still largely controlled by the State, with price differentiation occurring in the market between types of customers and locations. For water, there is a comprehensive water pricing framework which may not reflect the real cost.
- A1.85. A detailed examination of the steel sector is included in the EC Staff Report. This examination reviews the regulatory framework, considers the presence of SOEs in the steel market, looks at State support measures and raw material and input distortions, and outlines the current situation. The EC Staff Report notes the findings in EC trade defence investigations which, it suggests, established that the GOC exercises meaningful control over steel SOEs, which are obliged to follow the government plans and policies. Much of the evidence referred to in this section is derived from the EU investigations discussed

above (EC *Organic Coated Steel* and EC *Hot-Rolled Flat Products*), or refer to investigations undertaken by Australia and Canada as support for claims that there are widespread State support measures in the Chinese steel sector. Similar evidence is used in relation to the discussion on the provision of inputs at LTAR.

- A1.86. The EC Staff report concludes that the steel industry is regarded as a key/pillar industry by the Chinese government, which guides the development of the sector in accordance with a broad range of policy tools and directives relating to market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation and upgrading. It is suggested that by these means the GOC directs and controls virtually every aspect in the development and functioning of the sector. Financial institutions, following the government's direction, provide access to finance to implement the government's policy objectives, while Chinese steel producers benefit from a wide array of State support measures and other market distortive practices. It is concluded that the overarching control of the government prevents free market forces from prevailing in the steel sector in China

*MBIE Comment*

- A1.87. MBIE's analysis of the various plans and documents relating to the steel industry in China is set out in Part III below.
- A1.88. The identification of policy banks is consistent with MBIE's findings, but MBIE's analysis of SOCBs and SIBs outlined above does not support the conclusions in the EC Staff Report. MBIE notes that the fact that loans provided by banks to manufacturers of the subject goods are at interest rates above the benchmark rate also adopted by Australia and Canada suggests that there is no normative framework as proposed by the EC.
- A1.89. MBIE notes that in EC *Hot-Rolled Flat Products* it was concluded that the government had not provided input materials or electricity for less than adequate remuneration because the producers investigated had received their raw materials at market prices. MBIE's analysis of suppliers of HRC to Chinese producers of the subject goods has reached a similar conclusion, suggesting that there is insufficient evidence that the GOC is controlling prices through any control of the input providers, and indicating that those providers should not be defined as public bodies.

**USA**

- A1.90. The USDOC *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 SCM 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.

- A1.91. 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.
- A1.92. 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 USDOC 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 USDOC 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 in 2017 in *Galvanised Steel Coil* when it concluded that policy banks were public bodies but SOCB's were not.
- A1.93. 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."*

A1.94. In more recent investigations, such as *Corrosion-Resistant Steel* in 2014, the USDOC 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 CCP officials. Such information was necessary for the USDOC to determine whether these producers were authorities. In the absence of the requested information the USDOC determined that the companies were authorities on the basis of AFA.

*Public Body Memorandum*

A1.95. The DS437 21.5 Panel report<sup>25</sup> includes a useful summary of the approach taken by USDOC in addressing whether an entity is a public body. In implementing the DSB recommendations and rulings in the original dispute (section 129 proceedings) the USDOC issued a Public Body Questionnaire to the GOC posing general questions regarding Chinese industrial policies and objectives, the categorisation of industries and enterprises under Chinese industrial plans, and the role of the GOC as it related to identified providers of inputs. The GOC provided a response on the general questions and on specific questions relating to input providers in which it had a majority ownership, but did not respond fully in relation to all of the product investigations concerned.

A1.96. Following receipt of the response to the questionnaire the USDOC placed on the record of the section 129 proceedings the Public Bodies Memorandum and an accompanying CCP Memorandum. The Public Bodies Memorandum reviewed the Appellate Body's discussion of the evidence required for determining if an entity is a public body. The USDOC reviewed the system of governance and state functions in China and determined that China has a constitutional mandate to maintain a leading role for the state sector in the economy; relevant laws grant the government the authority to use SIEs to achieve this mandate; actions taken by the GOC to fulfil its legal mandate are governmental functions in the legal order of China; and the government exercises meaningful control over certain categories of SIEs which allows the government to use these SIEs as "instrumentalities to effect the governmental purpose of maintaining the predominant role of the state sector in the economy and upholding the socialist market economy."

A1.97. These determinations were based on provisions of the Chinese constitution, Chinese Property Law, the Law on State-Owned Assets of Enterprises, provisions of the measure

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<sup>25</sup> WTO document WT/DS437/RW, pp 29-34.

establishing SASAC, and industrial policies and plans with sector-specific goals and objectives. The factual findings leading to the conclusion that control was meaningful were based on comments in a 2011 International Monetary Fund (IMF) Report relating to interest rates, a 2010 report on China by the Economist Intelligence Unit, and an OECD Economic Survey of China regarding lending to SOEs, and a joint World Bank and Development Research Centre of the State Council of China regarding the relationship between state enterprise management and government officials. Findings regarding incentives on firms to further industry policy goals were based on a 2008 World Bank evaluation of China's 11<sup>th</sup> Five-Year Plan, Decision 40 of the State Council and the Catalogue specifying encouraged industries, and industry-specific plans with detailed implementation measures. Other findings included the role of government ownership in maintaining control over the state sector, and that enterprises in the state sector are the primary instrumentality by which the state seeks to manage market competition and market outcomes. The supervisory role of SASAC as a tool of meaningful control was identified, along with government control over all appointments in the state sector as a means of achieving industrial policy objectives. Meaningful control was also attributed to the presence of CCP groups and committees in SIEs.

A1.98. The overall conclusions of the Public Body Memorandum were that:

- Any enterprise in China in which the government has a full or controlling interest is a public body because the GOC exercises meaningful control over all such enterprises such that these enterprises possess, exercise, or are vested with governmental authority, and reflect the numerous indicia of control showing that the government uses SIEs to fulfil its mandate to uphold the socialist market economy.
- Enterprises in which the GOC has significant ownership that are also subject to certain government industrial plans may also be public bodies when examined on a case-by-case basis to establish whether such SIEs are used as instruments of the government to uphold the socialist market economy. Relevant indicia include coverage of the relevant industry by industrial plans, government appointment of company officials, the presence of government or CCP officials on the board or in management, and the existence and role of a CCP committee.
- Enterprises which have little or no formal government ownership are public bodies if the GOC exercises meaningful control over such enterprises, on the basis of indicia similar to those identified above.

A1.99. In the DS437 21.5 proceeding, the Panel noted that:

*The fact that the evidence referred to by China may have supported a conclusion contrary to that reached by the USDOC is insufficient to demonstrate that the*

*USDOC's determinations are inconsistent with Article 1.1(a)(1). To conclude otherwise would require us to substitute our judgment for that of the investigating authority in making a determination based on consideration of the totality of the evidence before it.<sup>26</sup>*

*MBIE Comment*

- A1.100. MBIE's analysis of the various plans and documents relating to the steel industry in China is set out in Part III below.
- A1.101. MBIE does not consider that the findings regarding the role of SASAC and the CCP, and the effects of the various plans and documents, provide sufficiently robust evidence that HRC producers were meaningfully controlled by the GOC such that there was GOC control over HRC prices paid by pipe manufacturers.

### **III. The Chinese Steel Industry and Specificity**

- A1.102. 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 SCM Agreement provides context for the interpretation of "specific".
- A1.103. Article 1.2 of the SCM 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.
- A1.104. Article 2 of the SCM 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,

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<sup>26</sup> WTO Document WT/DS437/RW at paragraph 7.102.

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.

A1.105. In the current case, there is an issue around the identification of a “subsidy programme” while 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 HSS producers or to the steel industry is specific.

A1.106. In DS379, the WTO Appellate Body noted that in *US — Upland Cotton*<sup>27</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.

A1.107. 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.

A1.108. 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 HSS industry.

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<sup>27</sup> WTO document WT/DS267/R.

### **Plans and Documents**

- A1.109. 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 economy to be supported by the State. These include the 12th and 13th Five-year Plans, covering 2011-2015<sup>28</sup> and 2016-2020<sup>29</sup> respectively, and the “Temporary Provisions on Promoting Industrial Structure Adjustment” (Decision 40)<sup>30</sup> and the “Guidance Catalogue for Industrial Structure Adjustment” (Guidance Catalogue)<sup>31</sup> established therein. The “Policies for the Development of Iron and Steel Industry” (the Steel Plan)<sup>32</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.
- A1.110. 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.
- A1.111. In December 2005, the NDRC announced<sup>33</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*

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<sup>28</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).

<sup>29</sup> <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>.

<sup>30</sup> <http://www.asianlii.org/cn/legis/cen/laws/tpopisa783/>.

<sup>31</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>32</sup> <http://www.asianlii.org/cn/legis/cen/laws/pfdoiasi501/>.

<sup>33</sup> [http://en.ndrc.gov.cn/newsrelease/200512/t20051222\\_54289.html](http://en.ndrc.gov.cn/newsrelease/200512/t20051222_54289.html).

*eliminated. The Interim Regulation also specifies the supplementary policy measures to be provided by the Guiding Catalogue. The Guiding Catalogue is a 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.*

- A1.112. 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.
- A1.113. 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.
- A1.114. 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.
- A1.115. 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.
- A1.116. 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.
- A1.117. 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.

- A1.118. 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 HSS. 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 HSS. On the basis of this information, MBIE is unable to conclude that production of HSS is specifically “encouraged.”
- A1.119. 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.
- A1.120. 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.

### ***Specificity***

- A1.121. 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.

- A1.122. 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 SCM 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.
- A1.123. 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 USDOC 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]*

- A1.124. 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.*

- A1.125. 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 USDOC, 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 of the totality of evidence, at all levels of government, on which the USDOC supported its specificity determination, and not simply on the Catalogue.
- A1.126. 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.
- A1.127. 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.
- A1.128. 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. MBIE is also satisfied that HSS production is not in the "encouraged" category.

#### **IV. Attribution of Subsidies**

- A1.129. 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.

- A1.130. The issue arises in relation to the investigation into HSS from China because it appears that the sample manufacturers are parts of wider groups of companies. 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.
- A1.131. 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 HSS 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 7 June 2018. This did not include information from Hengshui Jinghua, which was not identified as a sample manufacturer in time to expect it to meet the questionnaire deadline for other sample manufacturers. The information available regarding programmes applicable to Hengshui Jinghua includes information drawn from ADC HSS, which for Hengshui Jinghua found subsidies only in relation to the provision of inputs at LTAR.

The assessment of subsidy programmes is based on information relating to the sample manufacturers identified in section 3.4 above. Where total levels of subsidy are established, the rate applicable to non-sample manufacturers will be based on the weighted average of the total rates established for sample manufacturers.

Subsidy levels below 0.0100% are considered to be negligible as they are too small to be counted as countervailable subsidies (this is 1/200<sup>th</sup> of the *de minimis* level for developing countries).

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. Any changes to these categorisations arising from further information received will be addressed in the Essential Facts and Conclusions Report.

Manufacturing Company	Company Location	SOE	FIE	HNTE	SME
Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce)	No 26, Number 2 Street Dalian Development Zone Dalian Liaoning Province	No	Yes	No	Yes
Hengshui Jinghua Steel Pipe Co., Ltd (Hengshui Jinghua)	Taocheng North Road Hengshui City Hebei Province	No	No	No	No
Jinan MECH Piping Technology Co Ltd (Jinan Mech)	Meigui Zone of Industrial Park Pingyin Jinan Shandong Province	No	No	Yes (since 12/18)	No
Tianjin Youfa Steel Pipe Group (Tianjin Youfa)	15 Floor Guotou Building Dafeng Road Tianjin Municipality	No	No	No	No

## A. Direct transfer of funds: Grants

A2.1. 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

A	Applic. #	Direct Transfer of Funds - Grant
1	8	Assistance for Optimizing the Structure of Import/Export of High-Tech Products
2	9	Assistance for Technology Innovation - R&D Project
3	13	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
4	15/141	Circular on Issuance of Management Methods for Foreign Trade Development Support Fund
5	16	Debt Forgiveness
6	229	Environmental Protection Grant
7	19	Export Assistance Grant
8	148	Five Points, One Line Strategy in Liaoning Province
9	24	Foreign Trade Development Fund Programme (FTDF) - Grants
10	28	Government Export Subsidy and Product Innovation Subsidy
11	33	Grant - Patent Application Assistance
12	41	Grants Under Regulations for Export Product Research and Development Fund Management
13	44	International Market Fund for Small- and Medium-sized Export Companies) [Matching Funds for International Market Development for SMEs)
14	239	Jinzhou District Research and Development Assistance Programme
15	45	Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees
16	59	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
17	61/66	Subsidies provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area
18	65	State Special Fund for Promoting Key Industries and Innovation Technologies

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

### **Application**

- A2.2. The application claimed that this grant was contingent upon export sales, and cited US and Canadian cases, with a duty of 0.02% from USDOC *Steel Wire Strand*. The Canadian case was CBSA *Galvanised Steel Wire*.

### **Other Jurisdictions**

#### *Australia*

- A2.3. This programme was not included in ADC *HSS* which covered three of the sample manufacturers. The programme is not listed in the ADC Subsidies Register.

#### *Canada*

- A2.4. This programme does not appear to have been investigated in CBSA Line Pipe or CBSA Concrete Reinforcing Bar. In CBSA *Galvanised Steel Wire*, assistance for optimizing the structure of import/export of high-tech products was one of the 118 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate, and for which the CBSA did not have sufficient information to determine that any of these programs did not constitute actionable subsidies

#### *EU*

- A2.5. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

#### *USA*

- A2.6. The sole US case in which this programme was identified was USDOC *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 led the USDOC to conclude that the programme was contingent upon export sales. The grant amount was divided by the consolidated export sales of the exporter during the POI to calculate the level of subsidy.

### **Manufacturer Responses**

#### *Dalian Steelforce*

- A2.7. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

- A2.8. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

- A2.9. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

- A2.10. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

- A2.11. 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.

**MBIE Analysis and Consideration**

*Financial Contribution*

- A2.12. No sample manufacturer has advised that it received a grant under this programme.
- A2.13. The programme was not investigated by the Australian authorities in cases which covered three of the sample manufacturers, while the Canadian investigation findings were based on negative inferences from facts available, with no positive evidence of any subsidy. The 2010 US investigation, on which the application was based, related to a self-reported grant provided in relation to a product and producer that are not covered by the current investigation.
- A2.14. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

*Level of a Benefit*

- A2.15. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

- A2.16. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

**Conclusions**

- A2.17. MBIE’s provisional conclusion is that there is no countervailable subsidy relating to the programme: Assistance for Optimizing the Structure of Import/Export of High-Tech Products.

## 2. Assistance for Technology Innovation - R&D Project

### **Application**

A2.18. The application claimed that this grant was contingent upon export sales, and referred to CBSA *Concrete Reinforcing Bar* investigation where 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 duty of 0.02% from USDOC *Steel Wire Strand*.

### **Other Jurisdictions**

#### *Australia*

A2.19. This particular programme was not included in ADC *HSS* which covered three of the sample manufacturers. A similar programme, "Research and Development (R&D) Assistance Grant," was included and considered to be countervailable, but no subsidy level was established for Dalian Steelforce, Hengshui Jinghua or Tianjin Youfa. The ADC Subsidies Register listed similar programmes which were found to be countervailable in other Australian investigations.

#### *Canada*

A2.20. In the CBSA *Concrete Reinforcing Bar* investigation, this was one of the five programmes benefiting the cooperating exporter, for which a total subsidy rate of 0.40% was calculated, making an average level of subsidy of 0.08% per programme. 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. The exporter concerned was located in Shandong Province.

#### *EU*

A2.21. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

#### *USA*

A2.22. In USDOC *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 USDOC therefore calculated the benefit by dividing the grant amount by the company's total export sales, providing a subsidy level of 0.02%.

## **Manufacturer Responses**

### *Dalian Steelforce*

- A2.23. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.
- A2.24. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

### *Jinan Mech*

- A2.25. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

### *Tianjin Youfa*

- A2.26. Tianjin Youfa identified this programme as covering a number of subsidies it had received. However, on reviewing the nature of the programmes reported, and in particular the fact that the reported programmes are not related to export performance, MBIE does not consider that there is a match and has addressed the programmes concerned in Section G below.

## **Other Information**

- A2.27. 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 Analysis and Consideration**

### *Financial Contribution*

- A2.28. Neither Dalian Steelforce nor Jinan Mech reported receiving a grant under this programme. The position of Tianjin Youfa is addressed in section G.
- A2.29. MBIE notes that a similar programme was investigated by the Australian authorities in ADC HSS but the three sample manufacturers were not receiving benefits from it. Findings by Canadian and US authorities did not relate to the sample manufacturers, and the programme was not investigated by the EC.
- A2.30. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

### *Level of a Benefit*

- A2.31. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

A2.32. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

*Conclusions*

A2.33. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Assistance for Technology Innovation - R&D Project.

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

*Application*

A2.34. 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 Tiante Zhaer" is a "Famous Brand of China" and quotes from the company's website reference to its brand. Several Canadian and US cases, as well as Australian and EU cases are cited in support of the application, with subsidy rates of 0.01% and 0.03% identified in USDOC *Steel Wire Strand* and USDOC *Citric Acid* respectively.

*Other Jurisdictions**Australia*

A2.35. ADC *HSS* recorded that the ADC concluded that Dalian Steelforce had not benefited from the programme, but in ADC *HSS 379* the additional subsidies reported by Tianjin Youfa included "Enterprise famous brand reward of Fengnan Finance Bureau." The programme was a direct transfer of funds to the recipient enterprise, with a benefit conferred on all goods manufactured by the recipient enterprise, while the subsidy was specific because access was limited to enterprises within the jurisdiction of the Fengnan District Science and Technology Bureau.

A2.36. The ADC Subsidies Register records that this programme was investigated in twelve cases, with a finding of no subsidy in one case and the others determining that there was a countervailable subsidy.

*Canada*

A2.37. In the CBSA *Line Pipe* investigation, the Famous Brands programme was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate.

*EU*

- A2.38. In EC *Organic Coated Steel*, the EC investigated 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 USDOC investigations.
- A2.39. In EC *Hot-Rolled Flat Products* the programme was investigated but the EC determined that no sampled exporters had received a financial contribution in respect to this programme.

*USA*

- A2.40. The USDOC has investigated this programme in a large number of its proceedings involving China, including sub-central programmes. The 2008 USDOC *Line Pipe* investigation found that the subsidy was not used. 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. USDOC *Steel Grating*, in 2010, at 0.02%, was the last time a subsidy has been attributed to a cooperating exporter for a steel product. 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.

**Manufacturer Responses***Dalian Steelforce*

- A2.41. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.
- A2.42. Dalian Steelforce also advised that its HSS products do not qualify as “Well-Known Trademarks of China” or “Famous Brands of China.”
- A2.43. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

- A2.44. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

- A2.45. Tianjin Youfa identified this programme as covering two subsidies it had received. MBIE has reviewed information on the programmes reported, and has noted that Tianjin Youfa’s

website states, "Our YOUFA brand was affirmed as "Renowned Brand in China" by SAIC Trademark Bureau in March 2008. Our ERW steel pipes, hot-dip galvanized steel pipes and SSAW steel pipes have been awarded as "Famous Brand Product of Tianjin" by Tianjin Government for many consecutive years." MBIE has therefore addressed the identified subsidies under this programme.

A2.46. Tianjin Youfa has reported subsidies received by its Tangshan Zhengyuan branch from:

- Tangshan City Finance Bureau, 2016 Annual Award, value RMB [REDACTED].
- Hebei Province Quality Supervision Bureau, Quality Award, value RMB [REDACTED].

A2.47. Information was provided to confirm the payments made. Tianjin Youfa noted that the benefit applied to all goods manufactured by the factory concerned, and there were no expenses incurred for receiving the subsidies. With regard to criteria for these awards, Tianjin Youfa noted that the criteria for these programmes were to get the well-known trademark and patent in the year.

### **Other Information**

A2.48. 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..

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

A2.49. Neither Dalian Steelforce nor Jinan Mech reported receiving a grant under this programme.

A2.50. MBIE is satisfied that there is evidence that Tianjin Youfa received financial contributions under this programme from the Tangshan City Finance Bureau and the Hebei Province Quality Supervision Bureau.

A2.51. MBIE is satisfied that there is no reliable information to indicate that Dalian Steelforce and Jinan Mech received benefits under this programme.

#### *Level of a Benefit*

A2.52. The total benefit received by the Tangshan Zhengyuan factory was RMB [REDACTED]. The level of benefit was calculated by dividing this amount by the total level of sales from this factory to give a subsidy rate of 0.0167%.

#### *Specificity*

A2.53. The ADC considered the programme to be specific because it was limited to companies in the jurisdiction of the granting entity. However, this may not be sufficient to confer specificity. In DS437, the Appellate Body in noting the view of the Panel in *EC and certain member states – Large Civil Aircraft* stated:

*" [I]f the granting authority was a regional government, a subsidy available to enterprises throughout the territory over which that regional government had*

*jurisdiction would not be specific." Conversely, if the granting authority was the central government, a subsidy available to the very same enterprises would be specific.*

*The above considerations, in our view, suggest that an essential part of the specificity analysis under Article 2.1 requires a proper determination of whether the relevant jurisdiction is that of the central government or whether it is that of a regional or local government, and whether the granting authority therefore operates at a central, regional, or local level. [4.165-4.166]*

- A2.54. However, in this case, MBIE understands that the programme relating to "Well-Known Trademarks of China" or "Famous Brands of China" is applied at national and sub-national levels and has been applied in many sub-national jurisdictions. This suggests that the distinction drawn by the Appellate Body may not apply in this case, and in any event the benefits of the subsidy are limited to those recipient companies which have "Well-Known Trademarks of China" or "Famous Brands of China." This appears to be an explicit limitation on eligibility, making the programme specific.

### **Conclusions**

- A2.55. MBIE's provisional conclusion is that in respect of Tianjin Youfa only there is a financial contribution by a government or any public body which confers a benefit and which is specific. Accordingly, there is a countervailable subsidy in regard to the programme: Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China."
- A2.56. The level of the subsidy established for Tianjin Youfa is 0.167%.

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

### **Application**

- A2.57. 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 USDOC *Steel Wire Strand* investigation and a subsidy rate of 0.05%. The application also cited a grant provided by Liaoning Province identified in USDOC *Line Pipe* with a subsidy rate of 0.43%.

### **Other Jurisdictions**

#### *Australia*

- A2.58. This programme was not included in ADC HSS which covered three of the sample manufacturers. The programme does not appear to be covered in the ADC Subsidies Register.

*Canada*

A2.59. This programme does not appear to have been investigated in CBSA *Line Pipe*. In CBSA *Concrete Reinforcing Bar*, 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 average subsidy level per programme was around 0.08%.

*EU*

A2.60. This programme does not appear to have been investigated by the EC in *EC Organic Coated Steel* or *EC Hot-Rolled Flat Products*.

*USA*

A2.61. In USDOC *Steel Wire Strand* (2010), it was determined that this was a subsidy contingent upon export performance, and a subsidy level of 0.05% was found. In USDA *Line Pipe*, the levels of subsidy found for two cooperating exporters were 0.05% and 0.08% for a programme in Liaoning Province. The amounts of the subsidy were less than 0.5% of the relevant export sales denominator so they were expensed as a benefit in the year of receipt.

**Manufacturer Responses***Dalian Steelforce*

A2.62. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.63. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

A2.64. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

A2.65. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

A2.66. 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.

## **MBIE Analysis and Consideration**

### *Financial Contribution*

- A2.67. None of the sample manufacturers reported receiving a grant under this programme.
- A2.68. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.
- A2.69. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

### *Level of a Benefit*

- A2.70. In the absence of a financial contribution there is no need to establish the level of benefit.

### *Specificity*

- A2.71. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

## **Conclusions**

- A2.72. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Circular on Issuance of Management Methods for Foreign Trade Development Support Fund.

## **5. Debt Forgiveness**

### **Application**

- A2.73. The applicant claimed that the GOC forgives certain debts owed by certain companies, and cited a number of USDOC cases, with subsidy levels of 0.07% and 1.08% found in USDOC *Seamless Pipe* and USDOC *Circular Welded Pipe* respectively.

### **Other Jurisdictions**

#### *Australia*

- A2.74. This programme was not included in ADC HSS which covered three of the sample manufacturers. The programme does not appear to be covered in the ADC Subsidies Register.

#### *Canada*

- A2.75. In CBSA *Line Pipe* this programme (included in "preferential loans and loan guarantees") was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate.

*EU*

A2.76. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

*USA*

A2.77. The USDOC 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 USDOC *Seamless Pipe* (2010); no subsidies were found in USDOC *Line Pipe* (2008); and 1.08% was found for the exporter in USDOC *Circular Welded Pipe* (2008). The USDOC 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. In USDA *Circular Welded Pipe* the exporter was located in Shandong Province, while in USDA *Seamless Pipe* the exporters were located in Tianjin Municipality and Hunan Province.

**Manufacturer Responses**

*Dalian Steelforce*

A2.78. Dalian Steelforce notes that this programme appears to apply to SIEs with debts owing to the GOC. It is not applicable to Dalian Steelforce which is not an SIE and has no debts held with the GOC.

*Jinan Mech*

A2.79. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

A2.80. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

A2.81. The Wiley Rein and SIC Reports made no specific reference to this programme.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.82. None of the sample manufacturers reported receiving a grant under this programme.

A2.83. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.84. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

#### *Level of a Benefit*

A2.85. In the absence of a financial contribution there is no need to establish the level of benefit.

#### *Specificity*

A2.86. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

### **Conclusions**

A2.87. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Debt Forgiveness.

## **6. Environmental Protection Grant**

### **Application**

A2.88. The applicant quotes from the application in *ADC Steel Reinforcing Bar* investigation in noting that the programme was found to be a countervailable subsidy in previous Australian proceedings, and noted that in *ADC Galvanised Steel and Aluminium Zinc Coated 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**

#### *Australia*

A2.89. The programme was not investigated in *ADC HSS*, which involved three of the sample manufacturers. The ADC Subsidies Register notes that this and similar programmes were covered in a number of other investigations.

A2.90. The Statement of Essential Facts for *ADC Galvanised Steel and Aluminium Zinc Coated Steel* reported that the programme was self-reported by one of the cooperating exporters, but the GOC was uncooperative in providing information on the programme. A zero rate was considered to be applicable to cooperating producers.

A2.91. The Statement of Essential Facts for *ADC Steel Reinforcing Bar* recorded that the ADC found no evidence to indicate that cooperative exporters of rebar had benefited from the programme (listed as "Environmental Protection Fund") during the investigation period.

#### *Canada*

A2.92. This programme does not appear to have been covered in any Canadian investigations.

*EU*

A2.93. In EC *Hot-Rolled Flat Products*, it was established that sampled companies had benefited from a range of grants relating to environmental protection and reduction of emissions.

*USA*

A2.94. The USDOC has investigated programmes relating to environment protection grants in a number of cases, primarily grants provided by local authorities. In steel cases, subsidies were found in USDOC *Steel Wire Rod* (2014), benefits of 0.55%, based on AFA, for a Shandong Province programme; and in USDOC *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.

**Manufacturer Responses**

*Dalian Steelforce*

A2.95. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.96. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

A2.97. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

A2.98. Tianjin Youfa identified this programme as covering a number of subsidies it had received. However, on reviewing the nature of the programmes reported, in particular because the funds appear to be provided by environment agencies and not the Finance Bureau, MBIE does not consider that there is a good match and has addressed the programmes concerned in Section G below.

**Other Information**

A2.99. 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 Analysis and Consideration***Financial Contribution*

- A2.100. Neither Dalian Steelforce nor Jinan Mech reported receiving a grant under this programme. The position of Tianjin Youfa is addressed in section G.
- A2.101. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.
- A2.102. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

*Level of a Benefit*

- A2.103. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

- A2.104. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

**Conclusions**

- A2.105. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Environmental Protection Grant.

**7. Export Assistance Grant****Application**

- A2.106. 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 USDOC *Stainless Steel Sinks* and USDOC *Galvanised Steel Wire*.

**Other Jurisdictions***Australia*

- A2.107. The programme was not investigated in ADC *HSS*, which involved three of the sample manufacturers. The ADC Subsidies Register notes that the programme was investigated in ADC *Aluminium Extrusions* but was not countervailable because it was a duplicate of the programme identified as #13 below.

*Canada*

- A2.108. The CBSA *Line Pipe* investigation covered a number of location-based programmes with this title. The relevant locations of the cooperating exporters were Jiangdu District, Jiangsu Province; Tianjin Municipality; and “Municipality A”.
- A2.109. 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 average subsidy level per programme was around 0.08%.

*USA*

- A2.110. The USDOC 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 USDOC *Steel Grating* (2010), 0.21% in USDOC *Galvanised Wire* (2012), and 0.04% for one exporter in USDOC *Stainless Steel Sinks* (2013). In a number of recent proceedings, AFA rates of 0.58% have been determined.

**GOC Response**

- A2.111. The GOC provided no specific information on the grant programmes specified in the questionnaire.

**Manufacturer Responses***Dalian Steelforce*

- A2.112. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.
- A2.113. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

- A2.114. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

- A2.115. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

- A2.116. 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.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

- A2.117. None of the sample manufacturers reported receiving a grant under this programme.
- A2.118. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.
- A2.119. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

#### *Level of a Benefit*

- A2.120. In the absence of a financial contribution there is no need to establish the level of benefit.

#### *Specificity*

- A2.121. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

### **Conclusions**

- A2.122. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Export Assistance Grant.

## **8. Five Points, One Line Strategy in Liaoning Province**

- A2.123. Dalian Steelforce is the only sample manufacturer located in Liaoning Province.

### **Application**

- A2.124. The application notes that this programme was established in the "Several Opinions of the People's Government of Liaoning Province on Encouraging the Extended Opening-up of the Coastal Development." The "Five Points" include the following five industrial zones in Liaoning Province: Dalian Changxing Island Seaport Industrial Zone, Yingkou Coastal Industrial Base, Liaoxi Jinzhou Bay Coastal Economic Zone, Dandong Industrial Zone, and Dalian Huayuankou Economic Zone. Under this programme, the Liaoning Provincial Government provides refunds of VAT and business tax, income tax reduction/exemption, interest subsidy and fee exemptions to enterprises located within the five industrial zones. The granting authority responsible for this programme is the Liaoning Development and Reform Commission. The application cites Canadian and US cases, with a subsidy rate of 0.30% from USDOC *Line Pipe*.

**Other Jurisdictions***Australia*

A2.125. The programme was not investigated in ADC *HSS*, which involved three of the sample manufacturers. The programme does not appear to be covered in the ADC Subsidies Register.

*Canada*

A2.126. The programme was covered in CBSA *Line Pipe* where it was noted that one of the named exporters received a grant in the form of an import interest subsidy. The programme was jointly administered at the federal level by the Ministry of Finance and Ministry of Commerce. Due to a lack of government response to requests for information, subsidy amounts for all exporters were determined on the basis of a ministerial specification, with information on exporters providing information based on their responses to the request for information and obtained during on-site verification or desk audit. For other exporters the amounts of subsidy were determined on the basis of facts available.

*EU*

A2.127. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

*USA*

A2.128. A subsidy level of 0.30% was established in USDOC *Line Pipe* in 2008. The programme was investigated in four other cases with no subsidy levels established for cooperating exporters, but a rate of 44.91% based on AFA was established in USDOC *Wire Decking*. The programme has not been investigated since 2012, although similar programmes involving Liaoning Province have been investigated, but not recently, with cooperating exporters generally found to have not received benefits, while rates based on AFA were established for non-cooperating exporters.

**Manufacturer Responses***Dalian Steelforce*

A2.129. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.130. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Other Sample Manufacturers*

A2.131. The other sample manufacturers are not located in the Liaoning Province and would not, therefore, be eligible for this programme.

**Other Information**

A2.132. 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.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.133. Dalian Steelforce has reported that it has not received a grant under this programme.

A2.134. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.135. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

*Level of a Benefit*

A2.136. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

A2.137. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

**Conclusions**

A2.138. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Five Points, One Line Strategy in Liaoning Province

**9. Foreign Trade Development Fund Programme (FTDF) - Grants**

**Application**

A2.139. The application notes that the FTDF supports projects undertaken by exporting enterprises to improve the competitiveness of their exported products, to develop an export processing base, to support the registration of trademarks in foreign countries, to support the training of foreign trade professionals, and to explore international markets. The application claims that the grant is contingent upon exports, and cites USDOC *Line Pipe* as establishing levels of 0.05% and 0.08%.

**Other Jurisdictions***Australia*

A2.140. The programme was not investigated in ADC *HSS*, which involved three of the sample manufacturers. The programme does not appear to be covered in the ADC Subsidies Register.

*Canada*

A2.141. CBSA *Line Pipe* does not appear to have investigated this particular programme. In the CBSA *Concrete Reinforcing Bar* investigation, a similar 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 average subsidy level per programme was around 0.08%.

*EU*

A2.142. This programme does not appear to have been investigated in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

*USA*

A2.143. As noted in the application, in USDOC *Line Pipe* in 2008, subsidy rates of 0.05% and 0.08% were established for cooperating exporters under this programme. In subsequent steel product investigations subsidy levels were based on AFA. Investigations of a similar programme based on the Northeast Revitalization Programme found no subsidies for cooperating exporters but established subsidy levels based on AFA for non-cooperating exporters.

**Manufacturer Responses***Dalian Steelforce*

A2.144. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.145. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

A2.146. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

A2.147. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

A2.148. 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.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.149. None of the sample manufacturers reported receiving a grant under this programme.

A2.150. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.151. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

*Level of a Benefit*

A2.152. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

A2.153. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

**Conclusions**

A2.154. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Export Brand Development Fund.

**10. Government Export Subsidy and Product Innovation Subsidy**

**Application**

A2.155. 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**

*Australia*

A2.156. A programme with this description does not appear to have been addressed in ADC HSS. The programme does not appear to be covered in the ADC Subsidies Register.

*Canada*

A2.157. In the CBSA *Line Pipe* investigation, this programme was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was used in the other Canadian cases which included this programme.

*EU*

A2.158. This programme does not appear to have been investigated in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

*USA*

A2.159. A programme with this description does not appear to have been addressed in any USDOC investigations.

**Manufacturer Responses**

*Dalian Steelforce*

A2.160. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.161. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

A2.162. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

A2.163. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

A2.164. 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.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.165. None of the sample manufacturers reported receiving a grant under this programme.

A2.166. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.167. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

#### *Level of a Benefit*

A2.168. In the absence of a financial contribution there is no need to establish the level of benefit.

#### *Specificity*

A2.169. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

### **Conclusions**

A2.170. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Government Export Subsidy and Product Innovation Subsidy.

## **11. Grant - Patent Application Assistance**

### **Application**

A2.171. 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**

#### *Australia*

A2.172. A programme with this description does not appear to have been addressed in ADC *HSS*, which involved three of the sample manufacturers. The ADC Subsidies Register notes that this and similar programmes were covered in several investigations, when they were found to be countervailable, with the exception of one programme in ADC *Rod in Coils* found to be not countervailable, although in the same investigation a cooperating exporter reported receiving a grant under a similar programme and a subsidy rate was determined for that exporter.

#### *Canada*

A2.173. In CBSA *Line Pipe*, the investigation covered a number of location-based programmes with this title. The relevant locations of the cooperating exporters were Shanghai Municipality; "Municipality A"; and "Municipality B". In each case, a named exporter received grants from local authorities. 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 other Canadian cases which included this programme.

#### EU

A2.174. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

#### USA

A2.175. A number of non-steel USDOC investigations have covered similar programmes but in none of them have subsidy levels been established for cooperating exporters. In a 2017 case, USDA *Silica Fabric*, a rate of 0.58% was established on the basis of AFA.

### **Manufacturer Responses**

#### *Dalian Steelforce*

A2.176. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.177. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

#### *Jinan Mech*

A2.178. Jinan Mech advises that it received grants under this programme during the POI. Jinan Mech provided details of the programmes, which were operated by the Pingyin Bureau of Science and Technology and the Pingyin Bureau of Finance, and the Jinan City Bureau of Science and Technology, including the eligibility requirements, the amounts of support to be provided, and the application process. The total of the grants was RMB [REDACTED].

A2.179. Jinan Mech also provided information from its non-operating income statement showing the level of the subsidy received, and information concerning its total sales.

#### *Tianjin Youfa*

A2.180. Tianjin Youfa identified a subsidy that it received as coming under this programme, and on reviewing the information provided, MBIE agrees that it is appropriate to consider it here.

A2.181. Tianjin Youfa has advised that its Tangshan Zhengyuan Branch received a patent Application Grant from Fengnan City Science and Technology Bureau, valued at RMB [REDACTED]. Evidence of the payment of the grant was provided. Tianjin Youfa noted that the criteria for patent awards are to get a patent in the year.

### **Other Information**

A2.182. 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 Analysis and Consideration**

#### *Financial Contribution*

A2.183. MBIE is satisfied that there is evidence that Jinan Mech and Tianjin Youfa received financial contributions from the relevant sub-national government body under this programme.

A2.184. MBIE is satisfied that the other responding sample manufacturer to date, Dalian Steelforce, did not receive a financial contribution under this programme.

#### *Level of a Benefit*

A2.185. On the basis of information from Jinan Mech the benefit received was divided by Jinan Mech's total sales of all products, resulting in a rate of subsidy of less than 0.0100%, which is negligible, and too small to be of any account.

A2.186. On the basis of information provided by Tianjin Youfa, the benefit received by the Tangshan Zhengyuan factory was divided by the total sales of that factory, resulting in a rate of subsidy of less than 0.0100%, which is negligible, and too small to be of any account.

#### *Specificity*

A2.187. The grant received by Jinan Mech is limited to enterprises, institutions, government agencies and organisations and individuals whose patent right's place of application is within Pingyin County.

A2.188. The grant received by Tianjin Youfa was provided by the Fengnan City Science and Technology Bureau, but no further information on eligibility criteria or the application process has been provided.

A2.189. Article 2.2 of the SCM Agreement provides that a subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. However, MBIE is satisfied that the availability of patent application assistance appears to be common to a range of locations, such that the designated geographical region provision does not apply. Rather, the grounds for specificity appear to be that the programme is limited to enterprises that apply for patents. In the absence of information requested on the criteria and processes set out by the granting authority or the relevant legislation, MBIE is unable to determine whether or not the programme may be covered by Article 2.1(b) of the SCM Agreement.

**Conclusions**

A2.190. MBIE's provisional conclusion is that in respect of Jinan Mech and Tianjin Youfa there is a financial contribution by a government or any public body which confers a benefit, and which is specific, so there are countervailable subsidies in regard to the programme: Grant - Patent Application Assistance.

A2.191. However, the levels of subsidy calculated for Jinan Mech and Tianjin Youfa are negligible, too small to be of any account, being less than 0.01%.

**12. Grants under Regulations for Export Product Research and Development Fund Management****Application**

A2.192. 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 USDOC *Steel Wire Strand* investigation is cited, with a subsidy level of 0.03%.

**Other Jurisdictions***Australia*

A2.193. A programme with this description does not appear to have been addressed in ADC *HSS*, which covered three of the sample manufacturers. The programme does not appear to be covered in the ADC Subsidies Register.

*Canada*

A2.194. This programme does not appear to have been investigated in CBSA *Line Pipe*. 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 programme was not cited in any other Canadian cases.

*EU*

A2.195. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

*USA*

A2.196. The USDOC investigated this programme in USDOC *Steel Wire Strand* (2010) and found a subsidy level of 0.03% for a cooperative exporter. A similar programme was investigated in three other non-steel proceedings, with no subsidy found.

### **Manufacturer Responses**

#### *Dalian Steelforce*

- A2.197. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.
- A2.198. Dalian Steelforce also noted that the programme appears to be available only to mechanical and electrical products which are not relevant to HSS manufactured by Dalian Steelforce.
- A2.199. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

#### *Jinan Mech*

- A2.200. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

#### *Tianjin Youfa*

- A2.201. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

### **Other Information**

- A2.202. 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.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

- A2.203. None of the sample manufacturers reported receiving a grant under this programme.
- A2.204. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.
- A2.205. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

#### *Level of a Benefit*

- A2.206. In the absence of a financial contribution there is no need to establish the level of benefit.

### Specificity

A2.207. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

### Conclusions

A2.208. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Grants under Regulations for Export Product Research and Development Fund Management.

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

A2.209. Of the sample manufacturers, only Dalian Steelforce appears to qualify as an SME.

### Application

A2.210. 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 USDOC *Aluminium Extrusions* and USDOC *Stainless Steel Sinks*.

### Other Jurisdictions

#### Australia

A2.211. In ADC *HSS 177* it was noted that this programme was countervailable, and it was applied to Dalian Steelforce and to non-cooperating exporters. The programme had been found to be countervailable in a previous investigation ADC *Aluminium Extrusions*, as noted in ADC *HSS 177*; and into ADC *Steel Grinding Balls* as noted in ADC *HSS 379*. ADC *HSS 379* also noted that the programme may have been notified to the WTO in WTO document G/SCM/N/220/CHN as programme #36, but it is not clear from the description in that document that this is the same programme.

A2.212. The ADC Subsidies Register noted that in addition to the investigations referred to above, this programme was found to be countervailable in a number of other Australian investigations involving China. The Statement of Essential Facts for ADC *Steel Reinforcing*

*Bar* recorded that the 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.

#### Canada

A2.213. In the CBSA *Line Pipe* investigation, this programme was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was used in the other Canadian cases which included this programme, including CBSA *Concrete Reinforcing Bar* where 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 programme was also investigated in CBSA *Stainless Steel Sinks*, and a subsidy level was identified.

#### EU

A2.214. This programme does not appear to have been investigated in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

#### USA

A2.215. Similar programmes were examined in a number of USDOC proceedings, including: USDOC *Wire Decking* in 2010, subsidy level of 0.01% for a cooperating exporter; USDOC *Boltless Steel Shelves* in 2015, with no subsidy for cooperating exporters and 0.58% based on AFA for other exporters. For non-steel products, in six investigations findings for cooperative exporters ranged from no subsidy to 0.39%, with higher levels based on AFA in some cases. This programme does not appear to have been covered in USDOC *Stainless Steel Sinks*.

### **Manufacturer Responses**

#### *Dalian Steelforce*

A2.216. Dalian Steelforce has advised that a grant was received under this programme during the POI. The total grant of RMB [REDACTED] was received from the Dalian City Bureau of Foreign Trade and Economic Cooperation. The grant was received during the POI as a lump sum and was not specific to any particular goods.

A2.217. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Export-oriented SME enterprises are eligible for the programme, which is available for a company that has achieved management system certification by providing support for initial certification expenses or a certification audit fee to update the certification each year. The

amount of the grant is  $\frac{1}{100}$ % of the expenses incurred by the business to a maximum of RMB  $\frac{1}{100}$ . Dalian Steelforce understands that the programme continues to operate.

A2.218. Dalian Steelforce provided evidence of the expenses incurred in obtaining certification for which a contribution was sought, which did not include internal time and expenses in developing and documenting the management systems covered.

#### *Other Sample Manufacturers*

A2.219. The other sample manufacturers are not categorised as SMEs and would not, therefore, be eligible for this programme.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

A2.220. MBIE is satisfied that Dalian Steelforce received a financial contribution from the relevant sub-national government body under this programme.

#### *Level of a Benefit*

A2.221. In estimating the rate of subsidy MBIE divided the level of the grant received by total export revenue in the POI, and calculated a total of less than 0.0100%, which is negligible, and too small to be of any account.

#### *Specificity*

A2.222. The programme is limited to SMEs so is specific in that eligibility is limited to certain enterprises.

### **Conclusions**

A2.223. MBIE's provisional conclusion is that in respect of Dalian Steelforce there is a financial contribution by a government or any public body which confers a benefit, and which is specific, so there are countervailable subsidies 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

A2.224. However, the levels of subsidy calculated for Dalian Steelforce are negligible, too small to be of any account, being less than 0.01%.

## **14. Jinzhou District Research and Development Assistance Programme**

A2.225. Jinzhou District is a prefecture-level city of Liaoning Province. Dalian Steelforce is based in Liaoning Province in Jinzhou District.

**Application**

A2.226. The application notes that this programme was included in the application to the ADC in relation to the investigation *Steel Reinforcing Bar* (REP 322), when it was noted that the programme had been found to be countervailable in *Silicon Metal* (REP 237).

**Other Jurisdictions***Australia*

A2.227. This programme was not addressed in ADC *HSS*, which covered three of the sample manufacturers. The ADC Subsidies Register notes that this programme was investigated in ADC *Galvanised Steel*, ADC *Silicon Metal*, ADC *Grinding Balls*, ADC *Steel Reinforcing Bar* and ADC *Rod in Coils*. The basis for specificity was identified as being high and new technology enterprises located in Jinzhou District.

*Canada*

A2.228. This programme does not appear to have been covered in any CBSA investigations.

*EU*

A2.229. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

*USA*

A2.230. This programme does not appear to have been covered in any USDOC investigations.

**Manufacturers Response***Dalian Steelforce*

A2.231. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.232. Dalian Steelforce also noted that the programme appears to be available only to HNTes located in Jinzhou District, and Dalian Steelforce is not categorised as an HNTe.

A2.233. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Other Sample Manufacturers*

A2.234. The other sample manufacturers are not located in the Jinzhou District and would not, therefore, be eligible for this programme.

**MBIE Analysis and Consideration***Financial Contribution*

- A2.235. The information available from ADC investigations is that in order to be eligible for the programme a manufacturer must be located in Jinzhou District and be designated as an HNTE. Dalian Steelforce is the only sample manufacturer located in Jinzhou District, but it is not designated as an HNTE, and therefore does not qualify for the programme.
- A2.236. Dalian Steelforce has reported that it has not received a grant under this programme.
- A2.237. The conclusion, therefore, is that in relation to sample manufacturers there is no financial contribution.

*Benefit*

- A2.238. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

- A2.239. In the absence of a financial contribution there is no need to establish that any subsidy is specific.

**Conclusions**

- A2.240. 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: Jinzhou District Research and Development Assistance Programme.

**15. Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees*****Application***

- A2.241. 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 for USDOC *Concrete Steel Wire Strand* (2010) and USDOC *Steel Wheels* (2012) respectively.

***Other Jurisdictions****Australia*

- A2.242. The ADC Subsidies Register notes that this programme was addressed in three investigations, but not in ADC *HSS*, which covered three of the sample manufacturers.
- A2.243. The Statement of Essential Facts for ADC *Steel Reinforcing Bar* recorded that the ADC found evidence that one cooperative exporter of rebar had benefited from the programme during the investigation period. 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 *ADC Steel Reinforcing Bar* noted that the relevant legislation provided that the grant should be not more than 30% of the premium actually paid. The Australian authorities calculated a benefit and consequent subsidy margin for the exporter concerned. The GOC questionnaire response for *ADC 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 was therefore deemed to be specific under Article 2.3 of the SCM Agreement.

- A2.244. The ADC also investigated the programme in *ADC Steel Shelving* in 2017. In that investigation the ADC concluded that eligibility was limited to production-oriented FIEs and certain eligible domestic-invested enterprises. The programme was considered to be countervailable.

#### *Canada*

- A2.245. In *CBSA Line Pipe*, the investigation established that named exporters benefited from the programme in Changzhou City, a prefecture-level city in southern Jiangsu Province, and in an un-named province. 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%. In a number of other cases a duty estimate was used on the same basis as for *CBSA Concrete Reinforcing Bar*.

#### *EU*

- A2.246. This programme does not appear to have been investigated in *EC Organic Coated Steel* or *EC Hot-Rolled Flat Products*.

#### *USA*

- A2.247. In *USDOC Steel Wheels (2012)*, the USDOC found a subsidy rate of 0.06% for a cooperating exporter for this particular programme. The grants were expensed to the period of investigation and divided by total export sales to arrive at the subsidy level. For a similar programme in *USDOC Steel Wire Strand (2010)*, a subsidy level of 0.04% was established for a cooperating exporter. Similar programmes have been identified in other investigations with no subsidy or very low levels identified for cooperating exporters, and higher levels for non-cooperating exporters based on AFA.

### **Manufacturer Responses**

#### *Dalian Steelforce*

- A2.248. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.

A2.249. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

*Jinan Mech*

A2.250. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

A2.251. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

A2.252. 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.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.253. None of the sample manufacturers reported receiving a grant under this programme.

A2.254. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.255. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

*Level of a Benefit*

A2.256. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

A2.257. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

**Conclusions**

A2.258. MBIE’s provisional conclusion is that there is no countervailable subsidy relating to the programme: Grants on Export Credit Insurance Fees.

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

### **Application**

A2.259. 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**

#### *Australia*

A2.260. In the Final Report for ADC *HSS 177*, the ADC noted that this programme provided a benefit to one cooperating exporter, with assistance provided to that exporter by the Wuxing District Foreign Economic and Trade Bureau. Wuxing District is the central district of the prefecture-level city of Huzhou, Zhejiang Province. A level of benefit was determined on the basis of the amount of subsidy received apportioned to each unit of the goods using that exporter's total sales volume. None of Dalian Steelforce, Hengshui Jinghua or Tianjin Youfa was found to have received a benefit under this programme.

A2.261. The Statement of Essential Facts for ADC *Steel Reinforcing Bar* recorded that the ADC found no evidence to indicate that cooperative exporters had benefited from the programme during the investigation period.

A2.262. According to the ADC Subsidy Register, in addition to the above investigations, there was insufficient evidence that the programme existed in the 2010 investigation of ADC *Aluminium Extrusions*, but the programme was found to be countervailable in ADC *Galvanised Steel and Aluminium Zinc Coated Steel* and ADC *Hot-Rolled Plate Steel* in 2013, ADC *Silicon Metals* in 2014, and ADC *Grinding Balls* in 2016.

#### *Canada*

A2.263. In CBSA *Line Pipe* this programme named exporters received grants under the programme in the form of reimbursement of expenses incurred in anti-dumping and countervailing investigations from the Shanghai Municipality and "Municipality A". Subsidy amounts for all exporters were determined under ministerial specification based on the best information available to the CBSA. In the absence of a response from the GOC there was not sufficient information to indicate that the programmes were not specific, and CBSA concluded that on the basis of available information the programmes did not appear to be generally available to all enterprises in China. Information on individual exporters that provided substantially complete responses to the subsidy request for information was determined using information provided in the exporter's submission.

A2.264. 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%. In a number of other cases a duty estimate was used on the same basis as for CBSA *Concrete Reinforcing Bar*. In CBSA *Carbon Steel Welded Pipe*, the CBSA determined that none of the cooperating exporters received benefits under this programme during the 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.

#### EU

- A2.265. In EC *Organic Coated Steel* the EC noted that the US authorities and the EC in an earlier proceeding (EC *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 EC *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%.
- A2.266. In EC *Hot-Rolled Flat Products* the EC determined that no financial contribution was received by the sampled exporters with respect to programmes included in the investigation but not otherwise identified as having provided a financial contribution.

#### USA

- A2.267. The USDOC 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% being the AFA rate set in USDOC *Steel Wire Rod* in 2014.

### **Manufacturer Responses**

#### *Dalian Steelforce*

- A2.268. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as "Non-operating income" in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.
- A2.269. Dalian Steelforce provided information identifying the elements making up "Non-operating income" in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

#### *Jinan Mech*

- A2.270. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

*Tianjin Youfa*

A2.271. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**Other Information**

A2.272. The Wiley Rein and SIC Reports made no specific reference to this programme.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.273. None of the sample manufacturers reported receiving a grant under this programme.

A2.274. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.275. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

*Level of a Benefit*

A2.276. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

A2.277. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

**Conclusions**

A2.278. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments.

**17. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area**

A2.279. Tianjin Youfa is the only sample manufacturer located in Tianjin Municipality.

**Application**

A2.280. The application identified three programmes relating to subsidies provided under this heading. Since there is a degree of duplication in the cases cited from other jurisdictions they are being addressed together.

A2.281. The application claimed that the Science and Technology Fund's purpose is to promote the construction of the science; enhance science-technology renovation and Tianjin economic and technological service abilities; improve the business environment of renovation

Development Area entrepreneurship; and construct a new science-technology renovation system. The programme was regionally specific, and US cases were cited, with a subsidy level of 0.03% identified in USDA *Seamless Pipe*, and a total subsidy level of 0.61% established in EC *Organic Coated Steel*. The accelerated depreciation programme identified in the application was noted as being available to enterprises located in the Binhai New Area of Tianjin to reduce the depreciation period of eligible fixed assets by up to 40%.

### **Other Jurisdictions**

#### *Australia*

A2.282. This programme was not included in the ADC *HSS* which covered three of the sample manufacturers. The programme does not appear in the ADC Subsidies Register.

#### *Canada*

A2.283. In CBSA *OCTG1* it was noted that this programme 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 programme was established in order to promote the development of the Binhai New Area of Tianjin. The authorities responsible for administering this programme 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 programme 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.

A2.284. The CBSA *Line Pipe* investigation included “Science and Technology Award” among the 89 programmes that were not identified as being used by known exporters. No programme specific to the Tianjin Binhai area was included in this list. In the CBSA *Concrete Reinforcing Bar* investigation, the “Science and Technology Award” 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%.

#### *EU*

A2.285. In EC *Organic Coated Steel* the EC noted that the GOC had not cooperated so the decision on this programme was based on best information available, which was the information in the complaint and in decisions by the US authorities. The US authorities had found that in several investigations this programme was countervailable. The amount of the subsidy was based on the USDOC *Seamless Pipe* findings at 0.03% for a cooperating company in relation

to the Science and Technology Fund assistance provided in in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area, with an additional 0.58% related to an accelerated depreciation programme.

A2.286. In EC *Hot-Rolled Flat Products* the EC determined that no financial contribution was received by the sampled exporters with respect to programmes included in the investigation but not otherwise identified as having provided a financial contribution.

#### *USA*

A2.287. As noted above, this programme was covered in USDOC *Seamless Pipe* in 2010 when a subsidy of 0.03% was established for one cooperating exporter in relation to the science and technology fund, and 0.58% for the accelerated depreciation programme. In USDOC *OCTG* similar levels of subsidy were established for the same cooperating exporter, although the accelerated depreciation programme amount was 0.51%. The programme has not been investigated by USDOC since 2010. The USDOC *OCTG* investigation also covered programmes relating to land-use rights and land leases, with subsidy levels of 0.11% and 2.55% being established for cooperating exporters. Similar rates were established in USDOC *Seamless Pipe* in 2010.

### **Manufacturer Responses**

#### *Tianjin Youfa*

A2.288. This programme was not included in those identified by Tianjin Youfa as being subsidies received. To the extent that there may be some overlap with programmes reported by Tianjin Youfa, they are covered in section G below.

#### *Other Sample Manufacturers*

A2.289. The other sample manufacturers are not located in the Tianjin Binhai New Area and would not, therefore, be eligible for this programme.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

A2.290. Tianjin Youfa has advised that it has not received any grants under this programme.

A2.291. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.292. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to Tianjin Youfa.

#### *Level of a Benefit*

A2.293. In the absence of a financial contribution there is no need to establish the level of benefit.

### Specificity

A2.294. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

### Conclusions

A2.295. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area.

## 18. State Special Fund for Promoting Key Industries and Innovation Technologies

### Application

A2.296. 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

#### Australia

A2.297. This programme was not included in ADC *HSS* which covered three of the sample manufacturers. The programme does not appear in the ADC Subsidies Register.

#### Canada

A2.298. This programme does not appear to have been covered in CBSA *Line Pipe*. 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 followed in the CBSA *Galvanised Steel Wire* case.

#### EU

A2.299. This programme does not appear to have been covered in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

#### USA

A2.300. The USDOC examined this programme in three cases, including USDOC *Steel Wheels* in 2012 and USDOC *Steel Wire Rod* in 2014. In only one case, USDOC *Steel Wheels* was a subsidy found for a cooperating exporter, with the level identified as 0.21%.

### **Manufacturers Responses**

#### *Dalian Steelforce*

- A2.301. Dalian Steelforce notes that its accounting practice is to record receipts from Government grants as “Non-operating income” in the Profit and Loss Statement. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any grants, funds or benefits relevant to this programme.
- A2.302. Dalian Steelforce provided information identifying the elements making up “Non-operating income” in its 2017 Profit and Loss Statement which confirm that no grants under this programme were received.

#### *Jinan Mech*

- A2.303. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

#### *Tianjin Youfa*

- A2.304. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

### **Other Information**

- A2.305. The Wiley Rein and SIC Reports made no specific reference to this programme.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

- A2.306. None of the sample manufacturers reported receiving a grant under this programme.
- A2.307. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.
- A2.308. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

#### *Level of a Benefit*

- A2.309. In the absence of a financial contribution there is no need to establish the level of benefit.

#### *Specificity*

- A2.310. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

### Conclusions

A2.311. 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: State Special Fund for Promoting Key Industries and Innovation Technologies.

### B. Direct transfer of funds: Loans

A2.312. 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

B	Applic. #	Direct Transfer of Funds - Loan
19	207	Loans and Interest Subsidies provided under the Northeast Revitalization Programme
20	77/240	Policy/Preferential lending to particular industries
21	78	Preferential Loans Characterized as a Lease Transaction

### 19. Loans and Interest Subsidies provided under the Northeast Revitalization Programme

A2.313. The Northeast Region consists of the three provinces of Liaoning, Jilin and Heilongjiang. Of the sample manufacturers, only Dalian Steelforce is located in this region.

#### Application

A2.314. The application notes, based on the information available, that enterprises located in the northeast region of China may receive preferential loans in the form of interest subsidy under the Northeast Revitalization Programme. The subsidy is limited in that it is provided only to a limited number of enterprises located in the northeast region. Canadian cases are cited but no subsidy level is identified.

#### Other Jurisdictions

##### Australia

A2.315. This programme was not covered in ADC HSS which included Dalian Steelforce. The programme does not appear in the ADC Subsidies Register.

*Canada*

A2.316. In the CBSA *Line Pipe* investigation, this programme was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was used in the other Canadian cases which included this programme, including CBSA *Concrete Reinforcing Bar* where 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%.

*EU*

A2.317. The programme was listed in EC *Organic Coated Steel*. The investigation report noted that the programme was established in 2003 to revive the old industrial base of Dalian City and the three provinces of the Northeast Region. The complaint in that case referred to subsidies provided by the Export-Import Bank of China in the form of export credits and other low-cost credit, while loans were also extended to non-creditworthy enterprises to enhance the competitiveness of ailing SOEs. In the absence of cooperation from the GOC the EC based its decision on this programme on the information contained in the complaint and in the USDOC findings in USDOC *Line Pipe*. The programme was considered to confer an advantage on the recipient companies in the form of grants as export interest subsidies and VAT refunds for the purchase of fixed assets. The level of subsidy was based on USDOC *Line Pipe* at 0.18%.

A2.318. This programme was not addressed in EC *Hot-Rolled Flat Products*, although preferential tax policies under the Northeast Revitalization Programme was identified as an investigated programme but the conclusion was that no financial contribution or benefit was received by the sampled exporting producers from this programme during the POI.

*USA*

A2.319. USDOC investigations have covered a number of programmes identified as falling within the Northeast Revitalization Programme, including loans and interest subsidies. However, in the 16 investigations which have addressed loan and interest subsidies under this programme, none have found subsidisation for cooperating companies, but with rates of 8.31% and 10.54% based on AFA for investigations since 2009, mainly involving steel products, and higher rates in earlier years. In USDOC *Corrosion Resistant Steel* the AFA rate was based on USDOC *Coated Paper* and USDOC *Certain Magnesite Carbon Bricks*. MBIE has not been able to find the relevant findings in those reports.

**Manufacturers Responses***Dalian Steelforce*

A2.320. Dalian Steelforce advised that during the POI it had [REDACTED] loans from [REDACTED] and provided details of the loans, including the

fixed interest rate of [REDACTED] % for each loan. Dalian Steelforce advised that it had reviewed its records and found no evidence of receiving any loans or subsidies pursuant to the Northeast Revitalisation Programme.

#### *Other Sample Manufacturers*

A2.321. The other sample manufacturers are not located in the Northeast region and would not, therefore, be eligible for this programme.

#### **Other Information**

A2.322. The Wiley Rein and SIC Reports identified preferential loans and directed credit as a major source of subsidisation of the Chinese steel industry.

#### **MBIE Analysis and Consideration**

##### *Financial Contribution by a Government or any Public Body*

A2.323. MBIE is satisfied that Dalian Steelforce did not receive any loans under this programme, so there is no financial contribution.

##### *Level of a Benefit*

A2.324. In the absence of a financial contribution there is no requirement to establish a level of benefit.

##### *Specificity*

A2.325. In the absence of a financial contribution there is no requirement to establish specificity.

#### **Conclusions**

A2.326. MBIE's provisional conclusion is that there is no financial contribution by a government or any public body which provides a benefit, so there is no countervailable subsidy programme: Loans and Interest Subsidies provided under the Northeast Revitalization Programme

## **20. Policy/Preferential Lending to particular industries**

### **Application**

A2.327. The applicant notes in that policy lending to particular industries is a programme of preferential policy lending specific to particular producers in particular regions. Canadian, EU and US cases are cited, with duty rates listed of 0.01% and 1.99% from USDOC *OCTG* and USDOC *Seamless Pipe*, respectively. The application also referred to the application in *ADC Steel Reinforcing Bar* which noted that EC *Organic Coated Steel* had established a subsidy rate of 0.97% for this programme.

### **Other Jurisdictions**

A2.328. An analysis of the approach taken by other jurisdictions on the issue of whether or not banks are public bodies is included in Annex 1, Section II of this Report.

*Australia*

- A2.329. This programme was not covered in ADC HSS, which included Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa. The programme was listed in the ADC Subsidies Register in relation to ADC *Grinding Balls* and ADC *Steel Reinforcing Bar* as loans from State-owned banks.
- A2.330. In the Statement of Essential Facts for ADC *Steel Reinforcing Bar*, the 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 ADC reviewed the EC consideration in EC *Organic Coated Steel* and issues discussed in the WTO trade policy review of China,<sup>34</sup> and concluded that both SOCBs and privately-owned banks were controlled by the GOC and exercised government authority in a manner such that their actions could be attributed to the GOC, meaning that they were public bodies. The ADC determined an amount of subsidy 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.

*Canada*

- A2.331. In CBSA *Line Pipe*, it was established that four named exporters had benefited from preferential loans from State-owned banks. In the absence of information from the GOC, a public body analysis was based on the Export-Import Bank of China with the conclusion that it constituted “government” for the purposes of section 2(1) of SIMA as it was found to have exercised government functions. In order to determine if there was a financial contribution, the CBSA established the benchmark interest rate as the loan benchmark interest rate issued by the PBOC for RMB denominated loans, with the financial contribution being the extent to which the exporter’s loan interest rate was below the PBOC rate.
- A2.332. 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.

*EU*

- A2.333. EC *Organic Coated Steel* noted that the GOC had not responded adequately to EC questions relating to loans by SOCBs. On the basis of information available to it, the EC concluded that SOCBs were controlled by the GOC and exercised government authority in a manner

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<sup>34</sup> *China: Trade Policy Review, Report by the Secretariat, 2014* WTO document WT/TPR/S/300.

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 only the highest grade of “Non-investment grade” bonds (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%.

- A2.334. In EC *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 based on formal indicia of government control and evidence that it had been exercised in a meaningful way. This reflected the EC’s interpretation of the findings in relevant WTO dispute proceedings. The EC concluded that all banks in China, whether State-owned or private, were effectively acting as public bodies. The EC established rates of subsidy of 1.99%-27.91% for sampled exporting producers.

#### USA

- A2.335. In 2008 USDOC *OCTG* concluded that loans to producers from Policy Banks and SOCBs in China constituted 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-based rates for some loans. Subsidy levels for policy loans have been established in a significant number of USDOC investigations involving China, with subsidies established for cooperating exporters at a range of levels.

### **Manufacturer Responses**

#### *Dalian Steelforce*

- A2.336. As noted above in relation to Programme 19, Dalian Steelforce advised that during the POI it had only [REDACTED] loans from [REDACTED] and provided details of the loans, including the fixed interest rate of [REDACTED] % for each loan. Dalian Steelforce notes that [REDACTED] is a publicly listed financial company with shares largely held by corporate entities, and is not, therefore, a policy bank or a state-owned commercial bank.
- A2.337. Dalian Steelforce noted that the [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Evidence to support this statement was provided along with copies

of loan contracts. Dalian Steelforce emphasised that these were normal commercial loans at commercial rates with no government involvement in the provision of the loan.

#### *Jinan Mech*

- A2.338. Jinan Mech advised that the company obtains entrusted loans through the Agricultural Bank of China Pingyin Branch, “on behalf of one of our related companies, i.e. [REDACTED], while the bank charges only the commission.” Jinan Mech notes that “the ultimate lender, i.e. [REDACTED], is a private company without government ownership.”
- A2.339. Jinan Mech provided details of the entrusted loans obtained via the Agricultural Bank of China for the purchase of materials, that were outstanding at the end of the POI, including a copy of the Entrusted Loan Contract and the interest rate charged. This rate, at [REDACTED]% is greater than the current PBOC benchmark rate of 4.35% which is used by MBIE (and by the ADC and CBSA) to indicate whether loans are being made at preferential rates.
- A2.340. An entrusted loan is one organized by an agent bank between borrowers and lenders. In an entrusted loan the agent bank is considered the trustee and the company providing the funds is considered the trustor. The trustee is responsible for the collection of principal and any interest, for which it charges a handling fee, but does not undertake any of the loan risks.<sup>35</sup>
- A2.341. Jinan Mech claims that because the loan is actually obtained from [REDACTED], which is a private company, there is no involvement by a State-owned bank, or any bank, other than to act as an intermediary.

#### *Tianjin Youfa*

- A2.342. Tianjin Youfa provided information on current loans, including the banks providing the loans, the amounts and the interest rates. The various branches of Tianjin Youfa received loans covering the POI, with interest rates ranging from [REDACTED]% to [REDACTED]%, with a weighted average of [REDACTED]%, all above the benchmark rate of 4.35%.
- A2.343. Tianjin Youfa provided details of the loans it received from each of the 23 banks that provided loans to the various branches of Tianjin Youfa over the last five years. Nearly all of the banks had some degree of State investment, with 13 having a majority State shareholding, 9 with less than majority shareholding (but still at significant levels in most cases), and one foreign-owned (Hong Kong) bank.

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<sup>35</sup> From Investopedia at <https://www.investopedia.com/terms/e/entrusted-loan.asp>.

**Other Information**

A2.344. The Wiley Rein and SIC Reports identified preferential loans and directed credit as a major source of subsidisation of the Chinese steel industry.

**MBIE Analysis and Consideration***Financial Contribution by a Government or any Public Body*

A2.345. The interest rate paid by Dalian Steelforce is above the current PBOC benchmark rate of 4.35%<sup>36</sup> which is the benchmark rate used by the Australian and Canadian authorities in determining whether there is a financial contribution which provides a benefit. On the basis of this information there is no indication that there is a financial contribution.

A2.346. [REDACTED] is a publicly-listed financial company with shares held by corporate entities. In 1987, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] The majority of the shares are held by corporate entities that are State-owned legal persons, with [REDACTED] as the major shareholder. [REDACTED] can be regarded as a State-invested bank (SIB).

A2.347. MBIE is satisfied that Jinan Mech has not received loans that need to be considered under this programme.

A2.348. The interest rates paid by Tianjin Youfa are above the current PBOC benchmark rate of 4.35% which is the benchmark rate used by the Australian and Canadian authorities in determining if there is a financial contribution that confers a benefit. On the basis of this information there is no indication that there is a financial contribution.

A2.349. MBIE is satisfied that on the basis of the information available to date, the interest rates paid by sample manufacturers are not at preferential rates, in that they are not below the PBOC benchmark rate which is also used by the Australian and Canadian authorities as the basis for determining the existence and level of any benefit.

A2.350. As noted above in Annex 1, Section II, MBIE has established that the PBOC and policy banks – the Agricultural Development Bank, the Export-Import Bank of China and the China

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<sup>36</sup> Obtained from <http://www.global-rates.com/interest-rates/central-banks/central-bank-china/psc-interest-rate.aspx> on 23 May 2018.

Development Bank – are public bodies. None of the sample manufactures reported receiving loans from these banks.

- A2.351. Additionally, for the reasons outlined in Annex 1, Section II, MBIE does not consider that SOCBs/SIBs are public bodies or that private banks are being entrusted or directed to provide preferential loans. The banks identified by Dalian Steelforce and as main providers by Tianjin Youfa have been assessed on the basis of the factors and considerations outlined in Annex 1, Section II to confirm this view.
- A2.352. MBIE's conclusion is that with regard to this programme there is no financial contribution from a government or any public body that provides a benefit, i.e. there are no preferential interest rates for loans provided to sample manufacturers.

*Provision of a benefit*

- A2.353. The discussion in this section is provided primarily to illustrate the basis for MBIE's view that in determining if there is a financial contribution and if so the level of the benefit provided, then the benchmark of the PBOC benchmark rate, as used by Australia and Canada, is relevant and appropriate.
- A2.354. MBIE notes that section 7(2)(b) of the Act, reflecting Article 14(b) of the SCM Agreement, provides that the provision of a loan by a foreign Government shall not be regarded as conferring a benefit unless the amount the recipient of the loan pays under the loan is less than the amount the recipient would pay under a comparable commercial loan that the recipient could obtain on the market, in which case the level of benefit is the difference between those amounts.
- A2.355. In *ADC Steel Reinforcing Bar* the 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 for RMB-denominated loans.
- A2.356. 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).
- A2.357. For short-term RMB-denominated loans, the USDOC 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.

- A2.358. MBIE considers that the approach based on PBOC's benchmark rate, adopted by the ADC and the CBSA, provides the most appropriate way of determining whether there is a financial contribution and 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 judgments 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.
- A2.359. The comparison of interest rates paid by the sample manufacturers with the benchmark interest rates published by the PBOC indicates that there is no financial contribution or benefit provided through preferential interest rates.

#### *Specificity*

- A2.360. In the absence of a financial contribution by a government or any public body that confers a benefit there is no requirement to consider specificity.

#### **Conclusions**

- A2.361. 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/preferential lending to particular industries.

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

#### **Application**

- A2.362. 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 USDOC *Seamless Pipe*, with a subsidy rate listed of 0.01%.

#### **Other Jurisdictions**

##### *Australia*

- A2.363. This programme was not covered in ADC HSS, which included Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa. The programme does not appear to be listed in the ADC Subsidies Register.

*Canada*

A2.364. 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.

*EU*

A2.365. This programme was not covered in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

*USA*

A2.366. The USDOC 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, USDOC *Seamless Pipe*, an 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.

**Manufacturer Responses**

*Dalian Steelforce*

A2.367. Dalian Steelforce advised that it did not receive any loans or benefits under this programme.

*Jinan Mech*

A2.368. Jinan Mech advised that it did not receive any benefits under this programme.

*Tianjin Youfa*

A2.369. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.370. None of the sample manufacturers reported receiving a grant under this programme.

A2.371. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.372. MBIE is satisfied that on the basis of the information available to this point in the investigation, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

*Level of a Benefit*

A2.373. In the absence of a financial contribution there is no need to establish the level of benefit.

*Specificity*

A2.374. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

**Conclusions**

A2.375. MBIE's provisional conclusion is that there is no countervailable subsidy relating to the programme: Preferential Loans Characterized as a Lease Transaction.

**C. Government provision of goods and services*****Identified programmes***

<b>C</b>	<b>Applic. #</b>	<b>Government provides goods or services or purchases goods</b>
22	82	Input Materials Provided by Government at Less than Adequate Remuneration
23	117	Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices
24	84	Utilities Provided by Government at Less than Adequate Remuneration

**22. Input Materials Provided by Government at Less than Adequate remuneration (LTAR)**

A2.376. 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***

A2.377. The applicant claimed that the GOC is providing raw materials (such as steel) at less than fair market price [*Note: the WTO 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 CBSA *Steel Piling Pipe* and 60.22% in USDOC *Steel Grating*.

**Other Jurisdictions**

A2.378. The approaches adopted by other jurisdictions are set out in some detail in Annex 1, Section B.

*Australia*

A2.379. The approach adopted by the ADC in ADC *HSS* and subsequent investigations is addressed in Annex 1, Section II above. In ADC *HSS*, including the Continuance Review in ADC *HSS* 379, the ADC concluded that the three sample manufacturers also covered in this investigation were receiving benefits under this programme.

A2.380. The ADC Subsidies Register records that programmes involving the provision of input materials were covered in ADC *Deep Drawn Stainless Sinks* and ADC *Grinding Balls*.

*Canada*

A2.381. The approach adopted by the CBSA is addressed in Annex 1, Section II above. In CBSA *Line Pipe* it was concluded that SOE suppliers of input materials were “government” as they possess, exercise or are vested with government authority. The CBSA noted that its ability to assess the status of such SOEs was limited by the lack of cooperation from the GOC. The CBSA applied the conclusions reached in its section 20 inquiry (dumping related - addressing normal value where domestic prices are substantially determined by the government of the exporting country), and concluded that it had reason to believe that there was sufficient evidence that the GOC exercises meaningful control over state-owned suppliers and producers. The level of benefit determined was based on a comparison with a benchmark derived from the *Metal Bulletin* by taking the average monthly selling price for each country reported on an FOB basis (excluding China).

A2.382. In CBSA *Concrete Reinforcing Bar*, this was one of the 175 programmes for which a duty was estimated on the grounds that the GOC and known exporters did not cooperate. The estimated subsidy level per programme was around 0.08%. Although a number of alleged programmes related to the provision of goods and services by the Government at less than fair market value, because of the incomplete responses from the GOC and exporters none were actually investigated, and it appears, therefore, that the CBSA did not specifically address the question of whether providers of goods and services were, in fact, SOEs.

*EU*

A2.383. EC *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 facts available, and concluded that SOEs providing 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 prices in five international markets.

A2.384. EC *Hot-Rolled Flat Products* addressed the supply of 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.

#### USA

A2.385. The USDOC has investigated the provision of input materials at LTAR in a wide range of cases. The following are specifically related to hot-rolled steel. In USDOC *Steel Grating* (2010), the USDOC used AFA to establish subsidy levels of 44.91%, while in USDOC *OCTG* (2009) and USDOC *Drill Pipe* (2011) no subsidy was found for cooperating exporters. In USDOC *Wire Decking* (2010), rates of 0.32% and no subsidy were found for cooperating exporters, and in USDOC *Steel Cylinders* (2012) the rate found was 0.13% for a cooperating exporter. In USDOC *Corrosion-Resistant Steel* the subsidy rate established was 23.74%, based on AFA.

### **Manufacturer Responses**

#### *Dalian Steelforce*

A2.386. In its questionnaire response Dalian Steelforce notes that the legitimacy of this programme rests on the assertion that suppliers of major raw material inputs into the production of HSS, which may be state-invested enterprises, fall within the definition of a public body. Dalian Steelforce challenges this view, which was followed by the Australian authorities, and considers that the approach adopted by MBIE in *Galvanised Steel Coil* was correct and preferable.

A2.387. Dalian Steelforce provided details of all of its purchases of HRC, most of which are from SOEs, with major suppliers being [REDACTED] and [REDACTED]. Smaller suppliers included [REDACTED], an SOE, and [REDACTED], not an SOE. The details identified all shipments during the POI, with prices, volumes and product details included. Dalian Steelforce stated that prices are negotiated taking into account the prevailing regional market price and the amount invoiced is the amount paid. An explanation of sourcing decisions was provided.

#### *Jinan Mech*

A2.388. Jinan Mech advised that it purchased HRC for the manufacture of HSS, and provided details of suppliers and purchases of HRC during the POI. Jinan Mech claims that it did not receive any reduction or reduced price for the purchase of raw material. Only one of its suppliers, [REDACTED], is an SOE, [REDACTED]. Jinan Mech claimed that purchases from [REDACTED] were made on a commercial basis, with prices and purchase terms similar to those from private suppliers. A copy of the standard purchase contract from [REDACTED] was provided.

*Tianjin Youfa*

A2.389. Tianjin Youfa provided details of its purchases of HRC and narrow strip for the manufacture of HSS, including purchases by plant, volumes, prices and suppliers (totalling over 200). Tangshan Youfa claimed that 1.43% of its narrow strip purchases and 9.47% of its HRC purchases were from SIEs.

**Other Information**

A2.390. 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 Analysis and Consideration***Financial Contribution by a Government or any Public Body*

A2.391. MBIE has reviewed the purchase and price information provided by the sample manufacturers, and has noted that there is no apparent pattern of the prices from SOEs/SIEs being lower than those of private providers, while prices from all suppliers are generally within a fairly similar range across the sample manufacturers. Prices also appear to be generally consistent with ex-works prices for hot-rolled band reported by industry analysts for 2017.<sup>37</sup>

A2.392. On the basis of the analysis outlined in Annex 1, Section II above, MBIE does not consider that suppliers of raw material inputs are public bodies.

A2.393. In reaching this conclusion MBIE has carefully reviewed the considerations put forward by other jurisdictions in the light of the analysis in Annex 1, Section II. In MBIE's view, these other jurisdictions tended to focus on the "formal indicia" of control, rather than on the actuality of "meaningful control", and made very general assumptions about the extent and nature of GOC involvement in the steel industry that led them to particular assumptions about the control of prices that are not supported by the evidence. There is also a reliance on facts available and AFA in the absence of full and precise responses to requests for information.

A2.394. On the basis of its consideration of the information available MBI does not consider that there is a financial contribution by a government or any public body in regard to the provision of input materials at LTAR.

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<sup>37</sup> Based on prices reported in SteelBenchmarker™ Report #292 of June 11, 2018, page 11, accessed at <http://steelbenchmarker.com/files/history.pdf>, with historical exchange rates sourced from <https://xe.com/currencycharts/?from=USD&to=CNY&view=2Y>.

*Level of a Benefit*

A2.395. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.396. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.397. 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.

A2.398. 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.

**23. Reduction in land use rights fees, land rental rates and land purchase prices**

A2.399. A finding of subsidisation in relation to the provision of land-use rights would require that evidence is available to confirm that:

- producers of HSS 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**

A2.400. 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. Cases cited included Australian, Canadian, EU and USA investigations, with subsidy levels identified as 0.01% and 2.67% from USDOC *Steel Wire Strand* and USDOC *Seamless Pipe*, respectively.

**Other Jurisdictions***Australia*

A2.401. ADC HSS did not address the provision of land-use rights for LTAR. However, a programme “Land use tax deduction” was reported by one exporter, was investigated and found to be countervailable in the original investigation. In the Continuance Review, ADC HSS 379, the programmes “Return of Land Transfer Fee” and “Return of Land Transfer fee from Shiyou” were reported by Tianjin Youfa and were found to be countervailable on the grounds that they were a refund of government revenue, with a benefit on all goods manufactured by the recipient, and access to the programme was limited to enterprises within the jurisdiction of the local authorities.

*Canada*

A2.402. In CBSA *Line Pipe* investigation, a named exporter was found to have benefited from a programme for the provision of land for less than adequate remuneration by Jiangsu Province. Other programmes for exemption/reduction of special land tax and land-use fees in special economic zones (SEZs) and other designated areas, and provision of land within specified zones, were two of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was adopted in CBSA *Concrete Reinforcing Bar*.

*EU*

A2.403. The EU investigation into *Organic Coated Steel* considered the provision of land-use rights for LTAR. The EC reviewed information on land-use right transactions and, on the grounds 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 producers 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.

A2.404. 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.

#### USA

A2.405. The USDOC 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 USDOC 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**

A2.406. 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.

A2.407. 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.

A2.408. 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.

A2.409. In *Steel Reinforcing Bar*, MBIE established that the price for the land-use rights relating to the sample manufacturer had been based on a valuation process.

#### **Manufacturer Responses**

##### *Dalian Steelforce*

A2.410. Dalian Steelforce advised that land-use rights were purchased by Dalian Steelforce in 2006 at prevailing market rates. Information was provided on the contract involved and the prices paid. Dalian Steelforce was not aware of any difference in price between districts.

*Jinan Mech*

- A2.411. Jinan Mech claims that it has not benefited from any programme for the provision of land-use rights, land rents or land purchase at concessional rates. Jinan Mech provided a copy of the Land Administration Law of China, and also provided details of the prices paid by Jinan Mech for land-use rights and land rent.
- A2.412. Jinan Mech stated that to its knowledge the price of land-use rights charged to it did not differ from the prices charged to other companies in the district. With regard to land rents, land leased by Jinan Mech was from a related party, Jinan Malleable Piping Co Ltd.

*Tianjin Youfa*

- A2.413. Tianjin Youfa advised that it received refunds of a land assignment fee from the local Finance Bureau, but also noted that prices for land-use rights are the same for all enterprises. Tianjin Youfa advised that factories which paid for a land-use right can all get a refund from the local Finance Bureau and there was no need to apply.
- A2.414. The refunds received by Tianjin Youfa appear to relate to the difference between the original land transfer fee payable for the land-use and the amount actually paid, with the difference considered to be a land transfer fee remit allocated over a 600 month (50 year) period and appearing as non-operating income for each of Tianjin Youfa's factories. The total amount allocated for 2017 was reported as RMB [REDACTED].

**Other information**

- A2.415. 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.

*MBIE Research*

- A2.416. 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.
- A2.417. 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 Analysis and Consideration**

A2.418. In light of the questionnaire response received from Tianjin Youfa, MBIE is addressing this programme in two parts – the first part addresses the provision of land-use rights at LTAR, and the second addresses the particular aspect of the programme identified by Tianjin Youfa involving refunds which effectively reduce the original price.

#### *Financial Contribution by a Government or any Public Body*

A2.419. 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.

A2.420. 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 payment, so the provision of land-use rights involves a government.

#### *Provision of a benefit*

A2.421. A benefit is provided if the land-use rights are provided for less than adequate remuneration. Under Article 14(d) of the SCM 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 USDOC, comparing prices in Thailand, are not appropriate.

A2.422. The information provided regarding the legal situation indicates that prices are based on market principles through bid invitation, auction or quotation. However, in *EC 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 facts available 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. It is difficult to see how such cases necessarily lead to a conclusion that the price paid is questionable. The other information available to MBIE from previous investigations is that prices have been based on valuation processes.

- A2.423. With regard to the current case, MBIE notes that the sample manufacturers who have responded have claimed that they have not paid prices for land that are different from those charged for other enterprises in their area.
- A2.424. With regard to the refunds received by Tianjin Youfa, further clarification will be sought, but the provisional conclusion is that the refunds provide a benefit in that they are an effective reduction in the price payable for land-use rights, and are recorded as non-operating income in Tianjin Youfa's accounts. The level of the benefit can be calculated as the sum of the value of the rebate for each plant divided by the total sales for each plant, which gives a total rate for Tianjin Youfa of 0.05463%.

#### *Specificity*

- A2.425. 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. There any other evidence of price differentiation that which would lead to a conclusion of specificity. MBIE's understanding is that the GOC 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 all industries having access to obtaining land-use rights in accordance with the relevant laws and regulations.
- A2.426. With regard to the refund received by Tianjin Youfa, MBIE notes that the criterion for eligibility appears to be simply that a land-use fee has been paid. Clarification will be sought so that a proper assessment of specificity can be made, but the provisional conclusion is that on the basis of the information available the programme may well be specific.

#### **Conclusion**

- A2.427. MBIE is satisfied that the information available that is considered reliable at this point in the investigation indicates that Dalian Steelforce and Jinan Mech 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.
- A2.428. MBIE notes that further information has been sought in order to clarify matters relating to Tianjin Youfa's position in regard to refunds of land fees, but the provisional conclusion is

that there is a financial contribution by a government or any public body which provides a benefit to Tianjin Youfa, so there is a countervailable subsidy in respect to the programme: Provision of land use rights, land rentals and land purchases.

A2.429. The level of the subsidy provisionally established for Tianjin Youfa is 0.0546%.

## **24. Utilities Provided by Government at 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**

A2.430. 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 USDOC *Kitchen Appliance Shelving* and USDOC *Seamless Pipe* respectively.

### **Other Jurisdictions**

#### *Australia*

A2.431. ADC *HSS*, which covered three of the sample manufacturers, did not address the provision of electricity for LTAR.

A2.432. In ADC *Steel Reinforcing Bar*, the 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 ADC concluded that there was no subsidy involved, and the programme was not countervailable. The ADC Subsidies Register notes that the programme was covered in ADC *Steel Shelving* in 2017, when the ADC could not identify any benefit provided under the programme.

#### *Canada*

A2.433. In CBSA *Line Pipe*, utilities provided by Government at less than fair market value was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was followed in CBSA *Concrete Reinforcing Bar*.

**EU**

- A2.434. In EC *Organic Coated Steel*, it was 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.
- A2.435. In EC *Hot-Rolled Flat Products* no evidence was found that any of the sampled companies benefited from a lower preferential rate for electricity. 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 had benefited 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.

**USA**

- A2.436. Virtually all USDOC investigations since USDOC *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 USDOC *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 USDOC *Seamless Pipe*, partial AFA was used to establish subsidy levels of 1.53% and 4.22% for the cooperating exporter, based on information from USDOC *Kitchen Appliance Shelving*. In more recent (2017) investigations involving cooperating exporters with no AFA being used, subsidy levels were established of 5.62% in USDOC *Stainless Steel Strip*, and 0.75% and 0.44% in USDOC *1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP)*.

**Previous Investigations**

- A2.437. 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 concluded that there was no countervailable subsidy arising from the provision of electricity at LTAR.

**Manufacturer Responses***Dalian Steelforce*

- A2.438. Dalian Steelforce's understanding is that electricity tariff rates are categorised according to broad end-user groups (e.g. residential, commercial, non-industrial, general industrial, large industry), so all general industrial enterprises will be subject to the same kilowatt per

hour electricity tariff as Dalian Steelforce, irrespective of the goods being produced or the specific industry. Dalian Steelforce notes that the New Zealand and Australian investigating authorities have concluded that there is not a countervailable subsidy.

- A2.439. Dalian Steelforce provided details of its electricity payments to China Network Liaoning Province Dalian Electric Power Supply Company.

#### *Jinan Mech*

- A2.440. Jinan Mech noted that during the POI it purchased electricity from a state-owned electricity supplier, Pingyin County Electricity Company of State Grid Shandong Electricity Power Company. The electricity fee is settled monthly on the basis of the reading of the meter installed by the power authority to monitor usage. Jinan Mech provided a list of all purchases of electricity in 2017 and copies of the corresponding invoices and evidence of payments. Jinan Mech understands that the GOC establishes different electricity prices for different provinces based mainly on the availability of electricity.

- A2.441. Jinan Mech noted that it received a commercial discount for purchases of electricity in 2017 on a commercial basis and free of government interference. The discount was based on a three-party agreement among Jinan Mech, the electricity supplier and a related electricity broker. The electricity broker reached out to the power plants and negotiated for a lower electricity rate on behalf of multiple large electricity users, including Jinan Mech. The difference between the electricity price set by the GOC and that negotiated by the electricity broker was reflected in the form of a discount on the total amount on the monthly meter reading issued by the electricity supplier.

- A2.442. Jinan Mech stated that this business model was first introduced by the State Council of China in 2015 as a further step into the marketization of the once strictly state-controlled electricity industry. In 2015 the National Energy Administration and the National Development and Reform Commission issued "Implementation Opinions on Deepening the Supply-Side reform of Electricity Sales" which outlines this business model. A copy was provided. Jinan Mech pointed out that this is a new business model in China and is conducted on a commercial basis so is not considered to be a benefit. Jinan Mech also provided a copy of the three-party agreement.

#### *Tianjin Youfa*

- A2.443. Tianjin Youfa advised that all of its factories purchase electricity from the State Grid Corporation of China which is owned by SASAC. Tianjin Youfa paid electricity on the basis of invoices from the electricity company, and provided evidence of payments, and claimed that it did not receive any reduction or reduced price. Tianjin Youfa provided copies of the relevant electricity charging standard and invoice and payment information.

## **Other Information**

### *Industry Reports*

A2.444. 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.

### *Previous Investigations*

A2.445. In previous MBIE investigations, 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.

A2.446. 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, , 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.

A2.447. MBIE has viewed 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.

### *MBIE Research*

A2.448. 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

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<sup>38</sup> <http://www.sgcc.com.cn/ywlm/>.

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

- A2.449. 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 of market principles, 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. MBIE has also noted current moves to reform the electricity market.
- A2.450. MBIE has noted the paper “Analysis of China’s Power Market Structure and Market Entities’ Business Interface under the Reform of Electric Power System,”<sup>39</sup> which analyses recent developments in the structure and business interfaces of players in the electricity market. This summary confirms the position outlined by Jinan Mech.

### ***MBIE Analysis and Consideration***

#### *A Financial Contribution by a Government or any Public Body*

- A2.451. MBIE is satisfied that in China electricity is provided by a government or any public body, but on the basis of information available to this point in the investigation there is no evidence that a financial contribution has been provided through the provision of electricity at LTAR. Information from other jurisdictions tends to confirm this view.
- A2.452. Further information will be sought from the sample manufacturers to confirm that prices paid are consistent with standard rates.

#### *Provision of a benefit*

- A2.453. 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 the sample manufacturers are those charged for similar enterprises in the relevant

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<sup>39</sup> Weicheng Chen, Pengcheng Zhou, Menghua Fan And Ming Zeng, *Analysis of China's Power Market Structure and Market Entities' Business Interface under the Reform of Electric Power System*, Proceedings of 2017 3rd International Conference on Management Science and Innovative Education (MSIE 2017), <http://dpi-proceedings.com/index.php/dtssehs/article/viewFile/15437/14949>.

locations, although in the absence of information from the GOC further information may be required to confirm that prices paid are at standard rates.

### *Specificity*

A2.454. 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, or were subject to competitive pricing practices. On this basis there is no specific subsidy.

### **Conclusion**

A2.455. MBIE concludes that on the basis of information available at this point in the investigation 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.

A2.456. 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: Provision of utilities (electricity) for LTAR.

### **Water**

A2.457. 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**

A2.458. 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. The cases cited are the same as those identified above in relation to electricity.

### **Other Jurisdictions**

#### *Australia*

A2.459. This programme was not addressed in ADC *HSS*. In the review ADC *Aluminium Extrusions 248* the programme was investigated with the basis for the claim of a subsidy being the EU investigation EC *Organic Coated Steel*. The ADC reviewed the information from that investigation and was not satisfied that the programme was countervailable. The ADC Subsidies register does not appear to include any programme of this kind.

*Canada*

A2.460. In CBSA *Line Pipe*, utilities provided by Government at less than fair market value was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was followed in CBSA *Concrete Reinforcing Bar*.

*EU*

A2.461. In EC *Organic Coated Steel* it was 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 investigation clarified that the various municipal prices apply to all industrial users uniformly and do not vary by company or users. However, 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%.

A2.462. Government provision of water was not investigated in EC *Hot-Rolled Flat Products*.

*USA*

A2.463. The USDOC has investigated the provision of water for LTAR in a number of cases, including programmes specifically identified as applying in Dalian in Liaoning Province, but has yet to establish the existence of subsidisation for 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.

**Manufacturer Responses***Dalian Steelforce*

A2.464. Dalian Steelforce's understanding is that all general industrial enterprises will be subject to the same water rates, irrespective of the goods being produced or the specific industry. Dalian Steelforce provided details of its water payments to China Liaoning Province Dalian Development Zone Water Supply Company.

*Jinan Mech*

A2.465. Jinan Mech advised that it purchased water from the local State-owned water supplier company, Pingyin Water Co. Ltd. In addition, during the POI Jinan Mech extracted a limited amount of underground water for production purposes and paid the water resource fee to Pingyin Water Authorities for the use of underground water. The water fee is settled monthly according to the reading on the meter installed by the water supplier.

A2.466. Jinan Mech provided information on all purchases of water during the POI. The company claims that it did not receive any reduction or reduced price for the purchase of water

during the period of investigation, and prices paid are generally applicable to all companies in the same area. Copies of the agreement with the water supplier were provided.

#### *Tianjin Youfa*

- A2.467. Tianjin Youfa noted that except for Branch No. 2 the Youfa factories used underground water and paid a resource tax to the local Tax Bureau. Tianjin Youfa noted that it is common in China for some remote areas to use underground water rather than tap water. However, during 2017 Youfa factories started to move from underground water to tap water, although Branch No. 2 is the only factory to have completed the process. The supplier of tap water to Branch No. 2 is Tianjin Water Works Co Ltd.
- A2.468. Tianjin Youfa states that it does not receive any reduction or reduced price for the purchase of water, and provided copies of the Water Charge Standard and relevant invoices and receipts.

#### **Other Information**

- A2.469. The SIC Report notes that some steel producers had reported water price-related subsidies in their financial statements.

#### **MBIE Analysis and Consideration**

##### *A Financial Contribution by a Government or any Public Body*

- A2.470. MBIE is satisfied that in China water is provided by a government or any public body, but on the basis of information available to this point in the investigation there is no evidence that a financial contribution has been provided through the provision of watery at LTAR. Information from other jurisdictions tends to confirm this view.
- A2.471. Further information will be sought from the sample manufacturers to confirm that prices paid are consistent with standard rates.

##### *Provision of a benefit*

- A2.472. 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 available to this point in the investigation indicates that the prices available to the sample manufacturers are those charged for similar enterprises in the relevant locations, although in the absence of information from the GOC further information may be required to confirm that prices paid are at standard rates.

##### *Specificity*

- A2.473. 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**

A2.474. MBIE concludes that on the basis of information available at this point in the investigation 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.

A2.475. 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: Provision of utilities (water) for LTAR.

**D. Government revenue foregone: Concessions on income tax and other taxes**

A2.476. 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**

D	Applic. #	Government Revenue Foregone - Concessions on income tax and other taxes
25	88	City Maintenance and Construction Taxes and Education Surcharges for Foreign Invested Enterprises
26	89	Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
27	90	Corporate Income Tax Reduction for HNTEs
28	2	Dividend Tax Exemption for Certain Transactions Between Qualified Resident Enterprises
29	99	Income Tax Concessions for the Enterprises Engaged in the Comprehensive Resource Utilization ('special raw materials')
30	210	Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning
31	115	Preferential Tax Policies for the Research and Development of FIEs
32	123	Tax Policies for the Deduction of Research and Development Expenses
33	124	Tax Preference Available to Companies that Operate at a Small Profit

## 25. City Maintenance and Construction Taxes and Education Surcharges for Foreign Invested Enterprises

A2.477. Dalian Steelforce is the only FIE amongst the sample manufacturers.

### **Application**

A2.478. The application notes that under this programme an FIE is exempt from paying the “Urban Maintenance and Construction Tax”, the “Education Surcharge” and “local Education Surcharge.” Since the exemption is limited to certain enterprises (FIEs) it is specific. Cases cited include USDOC and CBSA investigations, with subsidy levels of 0.01% in USDOC *Aluminium Extrusions* and 0.58% in USDOC *Seamless Pipe*.

### **Other Jurisdictions**

#### *Australia*

A2.479. This programme was not investigated in ADC *HSS* which covered Dalian Steelforce, and the programme does not appear to be listed in the ADC Subsidies Register.

#### *Canada*

A2.480. In the CBSA *Line Pipe* investigation, this programme was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was followed in CBSA *Concrete Reinforcing Bar*.

#### *EU*

A2.481. This programme does not appear to have been covered in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

#### *USA*

A2.482. USDOC investigations involving this and location-specific equivalents included: USDOC *Kitchen Appliance Shelving* (2009) when, for a Guangdong Province programme, a subsidy of 0.03% was established for a cooperating exporter; and USDOC *Wire Decking* (2010) when, for a Dalian-specific programme, no subsidy was found for the cooperating exporter and a rate of 44.91% based on AFA established of non-cooperating exporters. For the general programme, subsidy levels of 0.01% to 0.58% were found for cooperating exporters in a number of investigations, but none since 2012.

### **Manufacturer response**

#### *Dalian Steelforce*

A2.483. Dalian Steelforce advised that it did not receive any benefits under this programme during the POI. Tax returns for 2012-2017 were provided, indicating that Dalian Steelforce paid the standard corporate tax rate of 25%.

## **Other Information**

### *Industry Reports*

A2.484. The Wiley Rein Report specifically references the ability provided by Article 9 of the FIE Tax Law for provincial and local governments to provide exemptions and reductions of local income taxes for productive FIEs, but does not refer to other taxes of the type listed for this programme.

## **MBIE Analysis and Consideration**

### *Financial Contribution*

A2.485. MBIE is satisfied that the information available to this point in the investigation indicates that Dalian Steelforce did not receive a benefit under this programme. There is no evidence that Dalian Steelforce received any benefits under this programme, and investigations by other jurisdictions do not provide any reliable evidence that would contradict this conclusion.

### *Level of a Benefit*

A2.486. In the absence of a financial contribution there is no benefit level to be established.

### *Specificity*

A2.487. In the absence of a financial contribution there is no need to consider specificity.

## **Conclusion**

A2.488. 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: City Maintenance and Construction Taxes and Education Surcharges for Foreign Invested Enterprises.

## **26. Corporate Income Tax Reductions for HNTes**

A2.489. This programme applies to HNTes, and Jinan Mech is the only HNTe among the sample manufacturers.

## **Application**

A2.490. The application notes that this programme was established under the "Income Tax law of the PRC 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 responsible for this programme is the State Administration of Taxation, and it 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 claims that income tax reduction afforded by this programme is limited as a matter of law to certain enterprises,

i.e. HNTes and is thus specific. Australian, Canadian, EU and US cases are cited, with subsidy rates identified as 0.09% from EC *Organic Coated Steel*, and 1.44% from US *OCTG*.

### **Other Jurisdictions**

#### *Australia*

- A2.491. The programme was covered in ADC *HSS*, and a level of subsidy was found for one cooperating exporter (not Dalian Steelforce or Tianjin Youfa). The total level of subsidy for this producer was 2.3% over 14 programmes, giving an average per programme of 0.16%.
- A2.492. In ADC *Steel Reinforcing Bar* the ADC found no evidence to indicate that cooperative exporters of HSS had benefited from the programme during the investigation period. With regard to non-cooperating exporters, the 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 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.

#### *Canada*

- A2.493. In CBSA *Line Pipe*, it was established that two named exporters paid a reduced amount of corporate income tax under this programme, with the subsidy amounts determined on the basis of information provided by each exporter.
- A2.494. 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 CBSA *Concrete Reinforcing Bar*. In CBSA *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.

#### *EU*

- A2.495. In EC *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 EC *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 EC *Coated Fine Paper*.

- A2.496. In *Hot-Rolled Flat Products* the EC concluded that there was no financial contribution and no benefit was received by the sampled exporting producers for this tax exemption programme.

#### USA

- A2.497. The USDOC 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 USDOC *OCTG* related to preferential tax treatment for FIEs identified as HNTes (which would not apply to Jinan Mech which is not an FIE).
- A2.498. The general programme has been investigated by USDOC in many cases, but with no subsidies found for cooperating exporters in investigations involving steel products. For non-cooperating exporters rates using AFA were established at levels based on an assumption that no income tax was paid at all.

### **Manufacturer Responses**

#### *Jinan Mech*

- A2.499. Jinan Mech advised that it did not receive any benefits under this programme during the POI because it was not awarded HNTe status until December 2017 and made no claims in relation to that status during the POI. Tax returns for 2013 to 2017 (first quarter) were provided, indicating that Jinan Mech paid the standard corporate tax rate of 25%.

### **Other Information**

#### *Industry Reports*

- A2.500. 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.

### *WTO Subsidy Notifications*

A2.501. This programme was included in China's WTO notification under Article 25.7 of the SCM Agreement as Programme 6 "Preferential Tax Policies for HNTes". The purpose was to encourage high and new technology industrial development and enhance the technology progress. The relevant legislation was the "Law of the PRC on Enterprise Income" (2007) and "Regulations for the Implementation of Law of the PRC on Enterprise Income Tax" (2007). Under the law, the enterprise income tax of enterprises recognised as HNTes is levied at a reduced rate of 15%.

### *Legal Basis*

A2.502. 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 to 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 Analysis and Consideration**

#### *Financial Contribution*

A2.503. MBIE is satisfied that the only sample manufacturer that might qualify for this programme did not become eligible for it until the end of the POI and did not receive any benefits from it during the POI. There was, therefore, no financial contribution.

#### *Level of a Benefit*

A2.504. In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

A2.505. In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

A2.506. 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 HNTes.

## 27. Dividend Tax Exemption for Certain Transactions between Qualified Resident Enterprises

### **Application**

A2.507. 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**

A2.508. The programme does not appear to have been addressed by the Australian, Canadian or US authorities. It is not listed in the ADC Subsidies Register.

### **EU**

A2.509. In EC *Organic Coated Steel* this programme was listed under “Income and other direct taxes.” It was 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 EC *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 EC *Coated Fine Paper*. In EC *Coated Fine Paper*, the investigation established that cooperating exporters had received a tax exemption for dividends, bonuses and other equity investment income of eligible residents and enterprises. The EC noted that tax schemes under Chapter 4 of the Enterprise Income Tax Law were reserved exclusively to important industries and projects supported or encouraged by the State, as provided for in Article 25 of the Tax Law, and concluded that it was a specific subsidy. Subsidy levels of 1.34% and 0.21% were established for the exporting producers concerned.

A2.510. In EC *Hot-Rolled Flat Products* the EC concluded that no financial contribution or benefit was received by the sampled exporting producers for this tax exemption programme.

### **Manufacturer Responses**

#### *Dalian Steelforce*

A2.511. Dalian Steelforce advised that it does not qualify as a Chinese resident enterprise that is a shareholder in other Chinese resident enterprises so would not be eligible for it.

*Jinan Mech*

A2.512. Jinan Mech advised that it did not receive any benefits under this programme during the POI. Tax returns for 2013 to 2017 (first quarter) were provided, indicating that Jinan Mech paid the standard corporate tax rate of 25%.

*Tianjin Youfa*

A2.513. Tianjin Youfa advised that it paid the standard tax rate of 25% and did not benefit from any programme providing income tax reduction.

**Other Information**

A2.514. The Wiley Rein and SIC Reports made no specific reference to this programme.

**MBIE Analysis and Consideration**

*Financial Contribution*

A2.515. None of the sample manufacturers reported receiving a benefit under this programme.

A2.516. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.517. MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.518. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.519. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.520. 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.

**28. Income tax concessions for the enterprises engaged in the comprehensive resource utilization ('special raw materials')**

**Application**

A2.521. 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**

#### *Australia*

- A2.522. This programme was not investigated in ADC *HSS*, which included Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa.
- A2.523. In ADC *Steel Reinforcing Bar*, the 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. The refund of VAT was also investigated in ADC *Grinding Balls*. Note that the programme being investigated by MBIE relates to income tax concessions, not VAT refunds.
- A2.524. The ADC Subsidies Register notes that ADC *A4 Copy Paper* investigated this programme and found it to be countervailable.

#### *Canada*

- A2.525. In CBSA *Line Pipe*, one of the named exporters received benefits under this programme. 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 CBSA *Large Line Pipe* this was one of the 160 programmes considered to be countervailable on a similar basis.

#### *EU*

- A2.526. 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-cooperative exporters. The level of subsidy so determined was 0.01%.
- A2.527. In *Hot Rolled Flat Products* the EC noted that one of the sampled producers 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 producer concerned.

*USA*

A2.528. The USDOC 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.

**Manufacturer Responses***Dalian Steelforce*

A2.529. Dalian Steelforce advised that it does not purchase or consume primary raw materials so does not qualify for this programme. Tax returns for 2012-2017 were provided, indicating that Dalian Steelforce paid the standard corporate tax rate of 25%.

*Jinan Mech*

A2.530. Jinan Mech advised that it did not receive any benefits under this programme during the POI. Tax returns for 2013 to 2017 (first quarter) were provided, indicating that Jinan Mech paid the standard corporate tax rate of 25%.

*Tianjin Youfa*

A2.531. Tianjin Youfa advised that it paid the standard tax rate of 25% and did not benefit from any programme providing income tax reduction.

**Other Information***Industry Reports*

A2.532. The Wiley Rein Report does not identify this specific programme. The SIC Report notes the existence of general tax exemptions, reductions and credits.

*Previous Investigations*

A2.533. MBIE investigated this programme in *Steel Reinforcing Bar* and found that one of the sample manufacturers had benefited from the programme. MBIE was satisfied that there was 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 was specific to a group of enterprises or industries. MBIE was satisfied that the sample manufacturer concerned had benefited from the subsidy programme and calculated the level of benefit at 0.04%.

*MBIE Research*

A2.534. 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. It appears that the Catalogue has a list of the waste products that are the resources to be comprehensively utilised and the products which can be produced.

- A2.535. 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 Analysis and Consideration**

#### *Financial Contribution*

- A2.536. None of the sample manufacturers reported receiving a benefit under this programme.
- A2.537. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.
- A2.538. MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

#### *Level of a Benefit*

- A2.539. In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

- A2.540. In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

- A2.541. 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: Income tax concessions for the enterprises engaged in the comprehensive resource utilization ('special raw materials').

## **29. Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning**

- A2.542. Dalian Steelforce is the only sample manufacturer located in Liaoning Province, and is the only sample manufacturer designated as an FIE.

**Application**

A2.543. The application notes that under Article 9 of the FIE Tax Law, the provincial governments, the autonomous regions, and the centrally governed municipalities have been delegated the authority to provide exemptions and reductions of local income tax for industries and projects for which foreign investment is encouraged. The programme is claimed to be regionally specific, The USDOC *Wind Towers* is cited, with a subsidy level of 0.08% identified.

**Other Jurisdictions***Australia*

A2.544. The ADC Subsidies Register does not appear to include this specific programme. In ADC *HSS 379*, a programme "Local Tax Bureau Refund" was identified as providing a benefit to Tianjin Youfa, but that sample manufacturer is neither an FIE nor based in Liaoning Province.

*Canada*

A2.545. CBSA *Line Pipe* included "Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas" among the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. Similarly, in CBSA *Concrete Reinforcing Bar*, the same programme was among the 176 programmes for which a duty estimate was used on the same grounds.

*EU*

A2.546. EC *Organic Coated Steel* investigated "Local Income Tax exemption and reduction programmes for the productive FIEs" as one of a number of tax programmes benefitting FIEs. It was noted that the GOC had reported that programmes concerning FIEs had been terminated with the adoption on 16 March 2007 of the "Corporate Income Tax law of 2008", which provided for the progressive phase-out of FIE income tax benefits until the end of 2011. The GOC had stated that there was no replacement programme for FIEs and the tax treatment for FIEs was now the same as for other corporate taxpayers. The EC noted this, but while it considered that there may be outstanding benefits during the POI, decided not to assess the programmes further.

A2.547. The programme "Local tax discounts" was included in EC *Hot-Rolled Flat Products*, but the EC concluded that no financial contribution or benefit was received by the sampled exporting producers from any of the direct tax exemption programmes covered by the investigation.

USA

- A2.548. This particular programme was investigated in USDOC *Wire Decking*, with a subsidy established at 0.08% for a cooperating exporter. In USDOC *Galvanized Wire* no subsidy was found. The programme does not appear to have been addressed in USDOC *Wind Towers*.
- A2.549. A programme “Local income tax exemption and reduction programmes for ‘productive’ FIEs” was investigated in at least 34 USDOC investigations, but with no subsidies found for cooperating exporters since a 0.25% rate was found in USDOC *Coated Paper* in 2010.

**Manufacturer Responses**

*Dalian Steelforce*

- A2.550. Dalian Steelforce advised that it did not receive any benefits under this programme during the POI. Tax returns for 2012-2017 were provided, indicating that Dalian Steelforce paid the standard corporate tax rate of 25%.

**Other Information**

*Industry Reports*

- A2.551. The Wiley Rein report identifies Article 9 of the FIE Tax Law as providing a subsidy through the authority granted to provincial and local governments to provided exemptions and reductions of local income taxes for ‘productive’ FIEs. Specific examples cited are Jiangsu Province and Xuzhou Province.

*WTO Dispute Settlement Notification*

- A2.552. WTO document WT/DS358/14 setting out the resolution of matters raised in the dispute (see paragraph 137 above) noted that the FIE Income Tax Law and the FIE Income Tax Implementing Rules were repealed. It is not clear if the particular authority provided by Article 9 of the FIA Tax Act were included in the confirmation that other tax preferences would not be reinstated.

**MBIE Analysis and Consideration**

*Financial Contribution*

- A2.553. MBIE is satisfied that Dalian Steelforce did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

- A2.554. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

- A2.555. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.556. 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: Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning

**30. Tax policies for the deduction of research and development expenses****Application**

A2.557. 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***Australia*

A2.558. This programme does not appear to have been investigated in ADC *HSS*, which included Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa. The ADC Subsidies Register notes that this programme was investigated in ADC *Steel Shelving* in 2017, but was not considered to be countervailable because it was not specific.

*Canada*

A2.559. In CBSA *Line Pipe*, it was established that three of the named exporters paid a reduced amount of corporate income tax by claiming an additional 50% of research and development expenses when calculating their income for tax purposes, provided that the projects fall within "New and High Technology Tech Sectors" receiving primary supports from the State. In CBSA *Concrete Reinforcing Bar* the CBSA noted that the cooperating exporter received a benefit under this programme.

*EU*

A2.560. 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.

A2.561. In *Hot-Rolled Flat Products* the EC noted that the legal basis for the programme was Article 30(1) of the Enterprise Income Tax Law along with the relevant Implementation Rules. At

verification with the GOC, the EC established that the activities that can benefit from the tax deduction were part of certain high technology fields supported by the State, as well as current priorities on high technology fields supported by the State, as listed in the “Guidance on Priority Areas for High-Tech Industrialization Priority Development.” The EC considered the subsidy to be specific since the legislation itself limited the application of the scheme only to enterprises that incur R&D expenses in certain high technology priority areas determined by the State, such as the steel sector.

#### USA

A2.562. The USDOC investigated this or a similar programmes in a number of investigations. However, in the four steel product investigations covered, no subsidies were found for cooperating exporters.

### **Manufacturer Responses**

#### *Dalian Steelforce*

A2.563. Dalian Steelforce advised that it did not receive any benefits under this programme during the POI. Tax returns for 2012-2017 were provided, indicating that Dalian Steelforce paid the standard corporate tax rate of 25%.

#### *Jinan Mech*

A2.564. Jinan Mech advised that it did not receive any benefits under this programme during the POI. Tax returns for 2013 to 2017 (first quarter) were provided, indicating that Jinan Mech paid the standard corporate tax rate of 25%.

#### *Tianjin Youfa*

A2.565. Tianjin Youfa advised that it paid the standard tax rate of 25% and did not benefit from any programme providing income tax reduction.

### **Other Information**

#### *Industry Reports*

A2.566. 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.

#### *MBIE Research*

A2.567. 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.”

#### *Other Investigations*

A2.568. MBIE investigated this programme in *Steel Reinforcing Bar*, in which one of the sample manufactures was identified as having received a benefit under this programme. On the basis of the information available, MBIE noted that there was evidence of limitations on eligibility for the programme in terms of the activities involved, which did not meet the provisions relating to objective criteria. Accordingly, MBIE concluded that the programme was specific.

#### **MBIE Consideration**

##### *Financial Contribution*

A2.569. None of the sample manufacturers reported receiving a benefit under this programme.

A2.570. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.571. MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

##### *Level of a Benefit*

A2.572. In the absence of a financial contribution there is no benefit level to be established.

##### *Specificity*

A2.573. In the absence of a financial contribution there is no need to consider specificity.

#### **Conclusions**

A2.574. 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 policies for the deduction of research and development expenses.

### **31. Tax Preference Available to Companies that Operate at a Small Profit**

#### **Application**

A2.575. 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**

#### *Australia*

A2.576. This programme was not investigated in ADC *HSS*, which covered Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa. The ADC Subsidies Register notes that in ADC *Deep Drawn Stainless Steel Sinks* the programme was considered to be countervailable. In that investigation no subsidy rate was established because none of the selected exporters received a subsidy under this programme.

#### *Canada*

A2.577. In CBSA *Line Pipe*, this was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. A similar approach was followed in CBSA *Concrete Reinforcing Bar* and CBSA *Galvanised Steel Wire*. In CBSA *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.

#### *EU*

A2.578. EC *Organic Coated Steel* and EC *Hot-Rolled Flat Products* did not address this programme.

#### *USA*

A2.579. The USDOC has investigated this programme in two steel cases, with a subsidy level of 0.62% established for a cooperating exporter in USDOC *Steel Wheels* (2012), and AFA used in establishing a subsidy level based on the assumption that no income tax was paid in USDOC *Steel Wire Rod* (2014).

### **Manufacturer Responses**

#### *Dalian Steelforce*

A2.580. Dalian Steelforce advised that it did not receive any benefits under this programme during the POI. Tax returns for 2012-2017 were provided, indicating that Dalian Steelforce paid the standard corporate tax rate of 25%.

#### *Jinan Mech*

A2.581. Jinan Mech advised that it did not receive any benefits under this programme during the POI. Tax returns for 2013 to 2017 (first quarter) were provided, indicating that Jinan Mech paid the standard corporate tax rate of 25%.

*Tianjin Youfa*

A2.582. Tianjin Youfa advised that it paid the standard tax rate of 25% and did not benefit from any programme providing income tax reduction.

**Other Information**

*Industry Reports*

A2.583. The Wiley Rein and SIC Reports made no specific reference to this programme.

*MBIE Research*

A2.584. 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*

A2.585. None of the sample manufacturers reported receiving a benefit under this programme.

A2.586. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.587. MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.588. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.589. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.590. 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.

## E. Government revenue foregone: Concessions on import tariffs and VAT payments

A2.591. 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**

E	Applic. #	Government revenue foregone: Concessions on import tariffs and VAT payments
32	92	Exemption of Tariff and Import VAT for the Imported Technologies and Equipment
33	96	Foreign Trade Development Fund Programme - VAT Refunds
34	98	Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
35	127/128	VAT Rebates on Domestically Produced Equipment

### **32. Exemption of Tariff and Import VAT for the Imported Technologies and Equipment**

#### **Application**

A2.592. The application claims that the policy objective of this programme is to attract foreign investment and to encourage domestic investment, and the introduction of foreign advanced technology equipment and industry technology upgrades. The programme provides a refund of the difference between the 17% input VAT paid and the 13% export VAT rate. The application notes that whilst certain domestic enterprises are eligible to receive VAT and tariff exemptions under this programme as well as certain FIEs, the reach or the particularity of enterprises is not sufficiently broadened to render the programme non-specific. A number of CBSA cases are cited but no subsidy level is identified. It is also noted that this programme was identified by the applicant in *ADC Steel Reinforcing Bar*.

A2.593. MBIE notes that this programme has some similarities to programme 34 below, but there are a number of possible differences, including the nature of the benefit and the product coverage, such that they are not being treated as duplicates.

**Other Jurisdictions***Australia*

- A2.594. In ADC *HSS* the programme “Tariff and VAT exemptions on imported materials and equipment” was identified as being countervailable, and in ADC *HSS 379* it was stated that it was notified by China to the WTO in G/SCM/N/220/CHN. The original investigation relied on the assessment of countervailability from ADC *Aluminium Extrusions*, and noted that eligibility was limited to enterprises which were ‘encouraged’ or ‘restricted’ (FIEs) or ‘key supported’ (DIEs), and the goods concerned should not be in the relevant ‘not exempted’ category. In that investigation and review it was established that the cooperating exporters (including Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa) had not received financial contributions under this programme.
- A2.595. The ADC Subsidy Register identifies a large number of investigations which covered this programme, including ADC *Steel Reinforcing Bar*, which found one cooperating exporter receiving a financial contribution. However, it does appear that the programmes investigated are more like programme 34 below.

*Canada*

- A2.596. In CBSA *Line Pipe*, the programme “Exemption of tariff and Import VAT for the Imported Technologies and Equipment” was found to have provided a benefit to four of the named exporters and was determined to provide a financial contribution that conferred a benefit. Due to the lack of response from the GOC there was not sufficient information to determine whether the programme was specific and on the basis of the available information it did not appear to be generally available.
- A2.597. In CBSA *Concrete Reinforcing Bar*, 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%.

*EU*

- A2.598. The EC *Organic Coated Steel* and EC *Hot-Rolled Flat Products* the investigations appear to have been covered in programme 34 below.

*USA*

- A2.599. It is fair to say that virtually all USDOC subsidy investigations involving China have addressed a programme relating to VAT and tariff exemptions on imported equipment for encouraged industries (by FIEs, domestic enterprises). In most of those investigation involving cooperative exporters the levels of subsidy found have been low (<1%) or non-existent. However, it does appear that the programmes investigated were more like programme 34 below. In USDOC *Stainless Steel Strip* it was noted that as of 1 January 1 2009, the GOC discontinued VAT exemptions under this programme, but companies could still receive import duty exemptions.

## **Manufacturer Responses**

### *Dalian Steelforce*

A2.600. Dalian Steelforce advised that it had not imported any equipment or technology since



### *Jinan Mech*

A2.601. Jinan Mech advised that it had not benefited from any programmes relating to the exemption, reduction or refund of import tariffs or VAT payments during the POI.

### *Tianjin Youfa*

A2.602. Tianjin Youfa advised that it did not import equipment of material and did not receive any benefits from programmes providing import tariff reduction, refund, drawback or exemption.

## **Other Information**

### *Industry Reports*

A2.603. The Wiley Rein Report discusses this programme in relation to VAT policies providing subsidies to steel producers. In particular it records concerns raised over the programme by the EU and the USA that it provides an export subsidy. The VAT system introduced in 1994 is outlined, and it is noted that the VAT rate is 17% for taxpayers selling most goods but export goods are exempt from VAT. In addition to the VAT exemption applicable to exported goods, taxpayers are entitled to a refund or rebate of the VAT they paid as part of the price for the inputs they purchased and used to produce the exported goods. The Wiley Rein Report goes on to note that VAT export rebate systems can be consistent with the requirements of the SCM Agreement as long as the exemption or remission of indirect taxes does not exceed the indirect taxes levied on the production and distribution of the same products sold in the domestic market.

## **MBIE Analysis and Consideration**

### *Financial Contribution*

A2.604. It is not clear from the application what the nature of the financial contribution is in regard to this programme. The application refers to exemption of tariffs and import VAT on imported technologies and equipment but identifies the nature of the contribution as arising from a refund of the difference between the VAT paid on inputs and the 13% export VAT rate.

A2.605. None of the sample manufacturers reported receiving a benefit under this programme.

A2.606. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.607. In any event, MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.608. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.609. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.610. 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: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment

**33. Foreign Trade Development Fund Programme - VAT Refunds**

**Application**

A2.611. The application states that VAT tax payers that are members of the equipment manufacturing, petrochemical, metallurgical, ship building, automobile, and agricultural product industries may deduct VAT for purchases of fixed assets from the VAT for sales of finished goods. The application states that the programme is regionally specific but does not identify any regional limitation. USDOC *Line Pipe* is cited with a subsidy level of 0.10% identified.

**Other Jurisdictions**

*Australia*

A2.612. The programme does not appear to have been included in the ADC Subsidies Register.

*Canada*

A2.613. This programme does not appear to have been investigated in CBSA cases involving steel products.

*EU*

A2.614. This programme does not appear to have been investigated in EC cases involving steel products.

*USA*

A2.615. The USDOC has investigate the programme "VAT and tax exemptions for purchases of fixed assets under the Foreign Trade Development Fund programme" in at least 14 cases, but USDOC *Line Pipe* (2010) was the only investigation in which a cooperating exporter was

found to have received a benefit. Since USDOC *Steel Wire Rod* in 2014 rates of 9.71% have been established under AFA for non-cooperative exporters in six cases.

### **Manufacturer Responses**

#### *Dalian Steelforce*

A2.616. Dalian Steelforce advised that it did not receive any benefits under this programme during the POI.

#### *Jinan Mech*

A2.617. Jinan Mech advised that it had not benefited from any programmes relating to the exemption, reduction or refund of import tariffs or VAT payments during the POI.

#### *Tianjin Youfa*

A2.618. Tianjin Youfa advised that it did not import equipment of material and did not receive any benefits from programmes providing import tariff reduction, refund, drawback or exemption.

### **Other Information**

#### *Industry Reports*

A2.619. The Wiley Rein Report includes a section outlining the issues arising from VAT refund programmes.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

A2.620. None of the sample manufacturers reported receiving a benefit under this programme.

A2.621. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.622. MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

#### *Level of a Benefit*

A2.623. In the absence of a financial contribution there is no benefit level to be established.

#### *Specificity*

A2.624. In the absence of a financial contribution there is no need to consider specificity.

### **Conclusions**

A2.625. 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: Foreign Trade Development Fund Programme - VAT Refunds

### **34. Import Tariff and VAT exemptions for FIE's and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries**

A2.626. This programme appears to overlap to some extent with programme 32 above, but has a different form of financial contribution. Most of the information available appears to be more likely to relate to this programme than to programme 32.

### **Application**

A2.627. 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 in USDOC *Steel Cylinders* and USDOC *Steel Wire Strand* respectively.

### **Other Jurisdictions**

#### *Australia*

A2.628. In ADC *HSS* the programme "Tariff and VAT exemptions on imported materials and equipment" was identified as being countervailable, and in ADC HSS 379 it was stated that it was notified by China to the WTO in G/SCM/N/220/CHN. The original investigation relied on the assessment of countervailability from ADC *Aluminium Extrusions*, and noted that eligibility was limited to enterprises which were 'encouraged' or 'restricted' (FIEs) or 'key supported' (DIEs), and the goods concerned should not be in the relevant 'not exempted' category. In that investigation and review it was established that the cooperating exporters (including Dalian Steelforce and Tianjin Youfa) had not received financial contributions under this programme.

A2.629. The ADC Subsidy Register identifies a large number of investigations which covered this programme, including ADC *Steel Reinforcing Bar*. The Statement of Essential Facts for ADC *Steel Reinforcing Bar* recorded that the ADC found evidence to indicate that a cooperative exporter of rebar had benefited from the programme during the investigation period.

#### *Canada*

A2.630. In CBSA *Line Pipe*, the programme "Exemption of tariff and Import VAT for the Imported Technologies and Equipment" was found to have provided a benefit to four of the named exporters and was determined to provide a financial contribution that conferred a benefit.

Due to the lack of response from the GOC there was not sufficient information to determine whether the programme was specific and on the basis of the available information it did not appear to be generally available.

- A2.631. In CBSA *Concrete Reinforcing Bar*, 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%.

#### EU

- A2.632. In EC *Organic Coated Steel* it was 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 EC *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.
- A2.633. In EC *Hot-Rolled Flat Products* it was concluded that the programme was a financial contribution that conferred a benefit and was specific, but identified only one of its sampled exporters as receiving a subsidy under the programme, with a subsidy level of 0.11%.

#### USA

- A2.634. This programme has been investigated in most of the USDOC'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%.

### **Manufacturer Responses**

#### *Dalian Steelforce*

- A2.635. Dalian Steelforce advised that it has not imported any equipment since [REDACTED].

#### *Jinan Mech*

- A2.636. Jinan Mech advised that it had not benefited from any programmes relating to the exemption, reduction or refund of import tariffs or VAT payments during the POI.

#### *Tianjin Youfa*

- A2.637. Tianjin Youfa advised that it did not import equipment of material and did not receive any benefits from programmes providing import tariff reduction, refund, drawback or exemption.

**Other Information***Industry Reports*

A2.638. The Wiley Rein Report identified this programme in general terms in its section on the issues arising from VAT programmes. The SIC Report did not refer to it.

*MBIE Research*

A2.639. The relevant legislation is the “Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment” (Circular 37)<sup>40</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>41</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 HSS as a product.

**MBIE Analysis and Consideration***Financial Contribution*

A2.640. None of the sample manufacturers reported receiving a benefit under this programme.

A2.641. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.642. MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.643. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.644. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.645. 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

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<sup>40</sup> <http://www.asianlii.org/cn/legis/cen/laws/cotsctaittpoie931/>.

<sup>41</sup> <http://www.asianlii.org/cn/legis/cen/laws/ccokipattdowiebts1175/>.

the programme: Import tariff and VAT exemptions for imported equipment in encouraged industries.

### 35. VAT Rebates on Domestically Produced Equipment

A2.646. The analysis here combines two programmes (identified in the application as #127 and #128) relating to VAT rebates on domestically produced equipment, one referring specifically to FIEs in the total and the other not, but the description provided for both was virtually identical and both related to FIEs.

#### **Application**

A2.647. The application claims that the GOC refunds the VAT on purchases of certain domestically produced equipment to FIEs if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Because the rebates are contingent upon the use of domestic over imported goods the subsidy is specific. Investigations cited include USDOC *Wind Towers* with a subsidy of 0.13% and EC *Organic Coated Steel*, with a subsidy level from EC *Coated Paper* of 0.04%.

#### **Other Jurisdictions**

##### **Australia**

A2.648. ADC *HSS*, which investigated Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa, does not appear to have covered this programme. The ADC Subsidies Register includes the programme "VAT Rebates on FIE Purchases of Chinese Made Equipment" as being investigated in ADC *A4 Copy Paper*. In that investigation, the ADC noted that the USDOC had examined this programme as part of its recent uncoated paper investigation and had found that one exporter had benefited from it. The ADC relied upon USDOC's findings and the supporting evidence provided to USDOC. The legal basis for the programme was "Pilot Measures of Tax Rebate Management Method for Purchase of Domestic-Made Equipment by Foreign-Invested Program." The ADC concluded that the programme was countervailable but found that neither cooperating exporter benefited from this programme. The ADC applied the USDOC-determined rate for the cooperative exporter as the uncooperative exporter subsidy margin for this programme in the Australian case.

##### **Canada**

A2.649. In CBSA *Line Pipe* this was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. Similarly, In CBSA *Concrete Reinforcing Bar* 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%.



## **Other Information**

### *Industry Reports*

A2.656. The Wiley Rein Report included a section on issues arising from China's VAT refund policies and programmes.

### *WTO Dispute Settlement Notification*

A2.657. WTO document WT/DS358/14 setting out the resolution of matters raised in the dispute (see paragraph 125 above) noted US concerns over the WTO-consistency of VAT refunds provided under measures relating to the purchase of domestically produced equipment by FIEs. The GOC stated that these measures did not create a preference, either in law or on a *de facto* basis, for the use of domestic over imported goods. The GOC undertook to ensure that imported equipment receives VAT treatment under terms and conditions no less favourable than those applicable to domestically-produced goods.

## **MBIE Analysis and Consideration**

### *Financial Contribution*

A2.658. None of the sample manufacturers reported receiving a benefit under this programme.

A2.659. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturers in this investigation.

A2.660. MBIE is satisfied that the sample manufacturers did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

### *Level of a Benefit*

A2.661. In the absence of a financial contribution there is no benefit level to be established.

### *Specificity*

A2.662. In the absence of a financial contribution there is no need to consider specificity.

## **Conclusions**

A2.663. 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 Rebates on Domestically Produced Equipment.

## F. Grant programmes relating to Jinan and Shandong Province

F	Applic. #	Grant programmes relating to Jinan and Shandong Province
39	230	Environmental Protection Fund - Jinan
40	232	Financial Resources Construction - Special Fund - Jinan
41	234	Grant for Elimination of Out-Dated Capacity - Shandong
42	235	Grant from Technology Bureau - Jinan
43	231	Intellectual Property Licensing - Shandong
44	233	Reducing Pollution Discharging and Environment Improvement Assessment Award - Jinan

A2.664. Jinan Mech is the only sample manufacturer located in Jinan and Shandong Province.

### 36. Environmental Protection Fund - Jinan

#### **Application**

A2.665. The application noted that in *ADC Steel Reinforcing Bar* this programme was included in the application and had been found to be specific in other investigations because to be eligible enterprises had to be located in Jinan District. No subsidy level was identified.

#### **Other Jurisdictions**

##### *Australia*

A2.666. This programme was not investigated in *ADC HSS*, which covered Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa. The programme was investigated in *ADC Steel Reinforcing Bar* and was found to be countervailable, although no cooperating exporters had received a benefit under the programme. The ADC Subsidies Register notes that the programme was listed in other investigations: in *ADC Grinding Balls* and *ADC Silicon Metal* it was noted that previous investigations had found the programme to be countervailable, and in *ADC Hot-Rolled Plate Steel* the programme had been identified as providing a benefit to a Jinan-based exporter.

##### *Canada*

A2.667. CBSA *Line Pipe* did not include a Jinan or Shandong-related programme of this description, although a programme “Environmental Protection Award (Jiangsu)” was one of the 89 programmes for which a duty estimate was used on the grounds that the GOC and known exporters did not cooperate. Similarly, in CBSA *Concrete Reinforcing Bar* the Jiangsu-based 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%.

*EU*

A2.668. *EC Organic Coated Products* did not cover this or any similar programmes. In *EC Hot-Rolled Flat Products*, environmental protection grants of various kinds were investigated, since the sampled companies benefited from such grants. The legal bases for the programmes were identified, and were considered to provide a basis for specificity since the legislation itself limited access to the schemes to certain categories of companies defined by law. Subsidy levels covering all environment-related grants to sample companies ranged from 0.05% to 0.38%.

*USA*

A2.669. USDOC *Steel Wire Strand* investigated Environmental Protection Fund grants in Jiangsu Province and Jiangxi Province for particular activities and found no subsidies for cooperating exporters for some programmes, and low levels of subsidy based on partial-AFA for others. In USDA *Uncoated Paper*, subsidy levels based on partial-AFA were found for environment protection grants provided by Rizhao City in Shandong Province. In USDA *Steel Wire Rod*, a subsidy, based on AFA, was found for “Shandong Province's Environmental Protection Industry R&D Fund.”

**Manufacturer Responses***Jinan Mech*

A2.670. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

**MBIE Analysis and Consideration***Financial Contribution*

A2.671. MBIE is satisfied that the Jinan Mech did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.672. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.673. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.674. 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 Fund – Jinan.

### **37. Financial Resources Construction - Special Fund – Jinan**

#### ***Application***

A2.675. The application noted that in *ADC Steel Reinforcing Bar* this programme was included in the application and had been found to be specific in other investigations because to be eligible enterprises had to be located in Jinan District. No subsidy level was identified.

#### ***Other Jurisdictions***

##### *Australia*

A2.676. This programme was not investigated in *ADC HSS*, which covered Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa. The programme was investigated in *ADC Steel Reinforcing Bar* and was found to be countervailable, although no cooperating exporters had received a benefit under the programme. The ADC Subsidies Register notes that the programme was listed in other investigations; in *ADC Grinding Balls* and *ADC Silicon Metal* it was noted that previous investigations had found the programme to be countervailable, and in *ADC Hot-Rolled Plate Steel* the programme had been identified as providing a benefit to a Jinan-based exporter.

##### *Canada*

A2.677. The CBSA investigations reviewed do not appear to have covered this programme.

##### *EU*

A2.678. This particular programme was not addressed in *EC Organic Coated Steel* or *EC Hot-Rolled Flat Products*, although both investigations covered “Ad hoc grants provided by municipal/regional authorities” which covered one-off or recurring grants received by sampled groups of companies. Subsidy amounts of 0.05% and a range of 0.001%-0.13% respectively were established in these investigations. It should be noted that there is no evidence that the programme addressed in this section was included in these findings.

##### *USA*

A2.679. The USDOC does not appear to have investigated this programme in any of the 56 countervailing duty investigations involving China that it has undertaken since 2006.

#### ***Manufacturer Responses***

##### *Jinan Mech*

A2.680. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

**MBIE Analysis and Consideration***Financial Contribution*

A2.681. MBIE is satisfied that the Jinan Mech did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.682. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.683. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.684. 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: Financial Resources Construction - Special Fund – Jinan.

**38. Grant for Elimination of Out-dated Capacity - Shandong****Application**

A2.685. 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 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***Australia*

A2.686. This programme was not investigated in ADC *HSS*, which covered Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa. The programme was investigated in ADC *Steel Reinforcing Bar* and was found to be countervailable, although no cooperating exporters had received a benefit under the programme. The ADC Subsidies Register notes that the programme was listed in other investigations: in ADC *Grinding Balls* and ADC *Silicon Metal* it was noted that previous investigations had found the programme to be countervailable, and in ADC *Hot-Rolled Plate Steel* the programme had been identified as providing a benefit to a Jinan-based exporter.

*Canada*

A2.687. The CBSA investigations reviewed do not appear to have covered this programme.

*EU*

A2.688. This particular programme was not addressed in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*, although both investigations covered “Ad hoc grants provided by municipal/regional authorities” which covered one-off or recurring grants received by sampled groups of companies. Subsidy amounts of 0.05% and a range of 0.001%-0.13% respectively were established in these investigations. It should be noted that there is no evidence that the programme addressed in this section was included in these findings.

*USA*

A2.689. The USDOC investigated a similar programme in USDOC *Steel Wire Strand* (“Grants under the elimination of backward production capacity award fund”), and established a level of subsidy for a cooperating exporter based on AFA. No other investigation has covered this programme.

**Manufacturer Responses***Jinan Mech*

A2.690. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

**MBIE Consideration***Financial Contribution*

A2.691. MBIE is satisfied that the Jinan Mech did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.692. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.693. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.694. 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.

**39. Grant from Technology Bureau – Jinan****Application**

A2.695. The application noted that in *ADC Steel Reinforcing Bar* this programme was included in the application and had been found to be specific in other investigations because to be

eligible enterprises had to be identified as developing application of coke oven gas waste heat efficiency and be located in Jinan District. No subsidy level was identified.

### **Other Jurisdictions**

#### *Australia*

A2.696. This specific programme was not investigated in ADC *HSS*, although possibly similar programmes involving locations in Tianjin were noted in ADC *HSS 379*, which related to Tianjin Youfa. The programme was investigated in ADC *Steel Reinforcing Bar* and was found to be countervailable, although no cooperating exporters had received a benefit under the programme. The ADC Subsidies Register notes that the programme was listed in other investigations: in ADC *Grinding Balls* and ADC *Silicon Metal* it was noted that previous investigations had found the programme to be countervailable, and in ADC *Hot-Rolled Plate Steel* the programme had been identified as providing a benefit to a Jinan-based exporter.

#### *Canada*

A2.697. The CBSA investigations reviewed do not appear to have covered this particular programme, but technology grants were included and duty estimates were used on the grounds that the GOC and known exporters did not cooperate, with no benefits established for cooperating exporters.

#### *EU*

A2.698. This particular programme was not addressed in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*, although both investigations covered “Ad hoc grants provided by municipal/regional authorities” which covered one-off or recurring grants received by sampled groups of companies. Subsidy amounts of 0.05% and a range of 0.001%-0.13% respectively were established in these investigations. It should be noted that there is no evidence that the programme addressed in this section was included in these findings.

#### *USA*

A2.699. The USDOC investigated a similar programme in USDOC *HEDP* (“Technology bureau subsidy”), and found no subsidy for a cooperating exporter. No other investigation has covered this programme.

### **Manufacturer Responses**

#### *Jinan Mech*

A2.700. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

**MBIE Analysis and Consideration***Financial Contribution*

A2.701. MBIE is satisfied that the Jinan Mech did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.702. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.703. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.704. 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 from Technology Bureau – Jinan.

**40. Intellectual Property Licensing - Shandong****Application**

A2.705. 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 ADC had nevertheless considered that because enterprises had to be identified as intellectual property and 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***Australia*

A2.706. This programme was not investigated in ADC *HSS*. The programme was investigated in ADC *Steel Reinforcing Bar* and was found to be countervailable, although no cooperating exporters had received a benefit under the programme. The ADC Subsidies Register notes that the programme was listed in other investigations: in ADC *Grinding Balls* and ADC *Silicon Metal* it was noted that previous investigations had found the programme to be countervailable, and in ADC *Hot-Rolled Plate Steel* the programme had been identified as providing a benefit to a Jinan-based exporter.

*Canada*

A2.707. The CBSA investigations reviewed do not appear to have covered this particular programme.

*EU*

A2.708. This particular programme was not addressed in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*, although both investigations covered “Ad hoc grants provided by municipal/regional authorities” which covered one-off or recurring grants received by sampled groups of companies. Subsidy amounts of 0.05% and a range of 0.001%-0.13% respectively were established in these investigations. It should be noted that there is no evidence that the programme addressed in this section was included in these findings.

*USA*

A2.709. The USDOC investigated two similar location-specific programmes relating to Jiangsu Province in USDOC *Steel Wire Strand*, but found no subsidies. More general programmes were investigated in USDOC *Silica Fabric*, where no subsidy was found, and in USDOC HEDP when no subsidy was found for a cooperating exporter and a rate of 0.58% based on AFA for a non-cooperating exporter.

**Manufacturer Responses**

*Jinan Mech*

A2.710. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

**Other Information**

A2.711. 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*

A2.712. MBIE is satisfied that the Jinan Mech did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.713. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.714. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.715. 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 - Shandong.

#### **41. Reducing Pollution Discharging and Environment Improvement Assessment Award – Jinan**

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

A2.716. The application noted that in *ADC Steel Reinforcing Bar* this programme was included in the application and had been found to be specific in other investigations because to be eligible enterprises had to be identified as reducing pollution to help improve the environment and be located in Jinan District. No subsidy level was identified.

##### ***Other Jurisdictions***

###### *Australia*

A2.717. This programme was not investigated in *ADC HSS*. A possibly similar programme was identified in *ADC HSS 379*, but it related to Fengnan in Hebei Province. The programme was investigated in *ADC Steel Reinforcing Bar* and was found to be countervailable, although no cooperating exporters had received a benefit under the programme. The ADC Subsidies Register notes that the programme was listed in other investigations: in *ADC Grinding Balls* and *ADC Silicon Metal* it was noted that previous investigations had found the programme to be countervailable, and in *ADC Hot-Rolled Plate Steel* the programme had been identified as providing a benefit to a Jinan-based exporter.

###### *Canada*

A2.718. The CBSA investigations reviewed do not appear to have covered this particular programme, but a grant relating to pollution control was included in *CBSA Large Line Pipe* and a duty estimate was used on the grounds that the GOC and known exporters did not cooperate, with no benefits established for cooperating exporters.

###### *EU*

A2.719. This particular programme was not addressed in *EC Organic Coated Steel* or *EC Hot-Rolled Flat Products*, although both investigations covered “Ad hoc grants provided by municipal/regional authorities” which covered one-off or recurring grants received by sampled groups of companies. Subsidy amounts of 0.05% and a range of 0.001%-0.13% respectively were established in these investigations. It should be noted that there is no evidence that the programme addressed in this section was included in these findings.

###### *USA*

A2.720. The USDOC investigated a similar programme in *USDOC Steel Wire Strand (2010)* relating to Jiangxi Province, and found a subsidy of 0.02% based on partial-AFA (specificity) for a cooperating exporter.

**Manufacturer Responses***Jinan Mech*

A2.721. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

**MBIE Analysis and Consideration***Financial Contribution*

A2.722. MBIE is satisfied that the Jinan Mech did not receive any financial contribution from this programme during the POI, and there is no reliable evidence that might contradict this conclusion.

*Level of a Benefit*

A2.723. In the absence of a financial contribution there is no benefit level to be established.

*Specificity*

A2.724. In the absence of a financial contribution there is no need to consider specificity.

**Conclusions**

A2.725. 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: Reducing Pollution Discharging and Environment Improvement Assessment Award – Jinan

**G. Other subsidy programmes**

A2.726. 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.

A2.727. 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.

*Jinan Mech*

A2.728. Jinan Mech advised that it received a small amount of assistance from one additional programme. The programme was provided for in "Notice on Further Strengthening the Management of Commission for Withholding, Collecting and Paying Taxes by Proxy" and related to a refund as commission on withholding taxes. The amount concerned was RMB [REDACTED]. Information relating to the payment was provided by Jinan Mech. The very small

size of the payment makes it negligible, too small to be considered as a countervailable subsidy.

#### Tianjin Youfa

A2.729. The additional grant programmes reported by Tianjin are listed below. MBIE has assigned a broad categorisation of the programmes into those relating to environmental protection; those relating to technology and research; and other programmes, and they have been addressed under these headings.

<b>G</b>	<b>Additional Grant Programmes Notified by Tianjin Youfa</b>
	<b>Environmental Protection Programmes</b>
42	Environmental detection device instalment support from Jinghai County Environment Protection Bureau
43	Compensation for driven well equipment
44	Compensation for purchase of green vehicle
	<b>Technology and Research Programmes</b>
45	Bonus of High-Tech Enterprise
46	Research Fund from Jinghai County Science and Technology Commission
47	Industrial Technical Transformation Subsidy
48	Technology Reformation Subsidy from Tangshan City, Fengnan District Science and Technology Bureau
49	Technology Innovation Support from Chengan County Science and Technology Bureau
50	Research Fund from Chengan County Finance Centre
	<b>Other Programmes</b>
51	Yearly Subsidy for Road Construction
52	Vocational Training Support

A2.730. The information provided by Tianjin Youfa related to the identification of the programme, the amount of the subsidy and the subsidiary receiving it. Some other limited information was provided relating to the legal basis, eligibility requirements and application processes, and further information will be sought on these matters.

## Environmental Protection Programmes

### 42. Environmental detection device instalment support from Jinghai County Environment Protection Bureau

A2.731. Tianjin Youfa advised that its Branch No. 1 factory had received a grant for the support of the installation of an environmental detection device. The level of the grant was RMB [REDACTED], and it was provided by the Tianjin Jinghai District Environment Protection Bureau. Evidence of the payment was provided. [REDACTED] Tianjin Youfa noted that local government, such as the Environment Protection Bureau, may have a yearly conference when local government may recruit local factories for environmental protection programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. Tianjin Youfa stated that it did not actively apply for the grant but was “recruited” by local government.

#### **MBIE Analysis and Consideration**

##### *Financial Contribution*

A2.732. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa’s Branch No. 1 factory from the Tianjin Jinghai District Environmental Protection Bureau, which is a branch of local government.

##### *Level of Benefit*

A2.733. The level of the grant was divided by the total sales of Branch No. 1, resulting in a subsidy level of less than 0.0100%, which is negligible, and too small to be considered as a countervailable subsidy.

##### *Specificity*

A2.734. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

#### **Conclusion**

A2.735. MBIE’s provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific. However, the level of subsidy established by MBIE is too small to be countervailable, so there is no countervailable subsidy in regard to the programme: Environmental detection device instalment support from Jinghai County Environment Protection Bureau.

### 43. Compensation for driven well equipment

A2.736. Tianjin Youfa advised that its Branch No. 1 and Branch No. 2 factories had received environmental protection grants for the filling in of wells. The levels of the grants were RMB [REDACTED] for each factory, and were provided by the Tianjin Jinghai District Water

Administration Supervision Bureau. Evidence of the payments was provided. Tianjin Youfa noted that local government, such as the Environment Protection Bureau, may have a yearly conference when local government may recruit local factories for environmental protection programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. It was noted that factories in the Daqizhuang area had used underground water for production, but the local government encouraged enterprises to use tap water instead, to protect underground water. Tianjin Youfa had agreed to fill its wells and received compensation. Tianjin Youfa stated that it did not actively apply for the grant but was “recruited” by local government.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

A2.737. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa’s Branch No. 1 factory and the Branch No. 2 factory from the Tianjin Jinghai District Water Administration Supervision Bureau, which is a branch of local government.

#### *Level of Benefit*

A2.738. The level of the grant was divided by the total sales of each factory, resulting in a total subsidy level which is less than 0.0100%, which is negligible, and too small to be considered as a countervailable subsidy.

#### *Specificity*

A2.739. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

### **Conclusion**

A2.740. MBIE’s provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific. However, the level of subsidy established by MBIE is too small to be countervailable, so there is no countervailable subsidy in regard to the programme: Compensation for driven well equipment.

## **44. Compensation for purchase of green vehicle**

A2.741. Tianjin Youfa advised that its Dezhong factory had received an environmental protection grant for the purchase of a green vehicle. The level of the grant was RMB [REDACTED] and was provided by the Tianjin Environment Protection Bureau. Evidence of the payment was provided. Tianjin Youfa noted that local government, such as the Environment Protection Bureau, may have a yearly conference when local government may recruit local factories for environmental protection and low carbon programmes. Then, if the factories completed the missions requested by local government they can get compensation or

benefit. Tianjin Youfa stated that it did not actively apply for the grant but was “recruited” by local government.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

A2.742. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa’s Dezhong factory from the Tianjin Environment Protection Bureau, which is a branch of local government.

#### *Level of Benefit*

A2.743. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of less than 0.0100%, which is negligible, and too small to be considered as a countervailable subsidy.

#### *Specificity*

A2.744. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

### **Conclusion**

A2.745. MBIE’s provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific. However, the level of subsidy established by MBIE is too small to be countervailable, so there is no countervailable subsidy in regard to the programme: Compensation for purchase of green vehicle

## **Technology and Research Programmes**

### **45. Bonus of High-Tech Enterprise**

A2.746. Tianjin Youfa advised that its Dezhong factory had received a grant of RMB [REDACTED] as a bonus of high-tech enterprise provided by Caigongzhuang County. Evidence was provided for the payment by the Caigongzhuang County Finance Bureau.

A2.747. Tianjin Youfa noted that local government, such as the Science and Technology Bureau, may have a yearly conference when local government may recruit local factories for technology development programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. Tianjin Youfa stated that it did not actively apply for the grant but was “recruited” by local government.

**MBIE Analysis and Consideration***Financial Contribution*

A2.748. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa's Dezhong factory from the Caigongzhuang County Finance Bureau, which is a branch of local government.

*Level of Benefit*

A2.749. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level which is less than 0.0100% and is negligible, too small to be considered as a countervailable subsidy.

*Specificity*

A2.750. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

**Conclusion**

A2.751. MBIE's provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific. However, the level of subsidy established by MBIE is too small to be countervailable, so there is no countervailable subsidy in regard to the programme: Bonus of High-Tech Enterprise.

**46. Research Fund from Jinghai County Science and Technology Commission**

A2.752. Tianjin Youfa advised that its Dezhong factory had received two grants totalling RMB [REDACTED] from the Jinghai County Science and Technology Commission. Evidence was provided for the payments by the Jinghai County Science and Technology Commission.

A2.753. Tianjin Youfa noted that local government, such as the Science and Technology Bureau, may have a yearly conference when local government may recruit local factories for technology development programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. Tianjin Youfa stated that it did not actively apply for the grant but was "recruited" by local government.

**MBIE Analysis and Consideration***Financial Contribution*

A2.754. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa's Dezhong factory from the Jinghai County Science and Technology Commission, which is a branch of local government.

*Level of Benefit*

A2.755. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0354%.

*Specificity*

A2.756. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

**Conclusion**

A2.757. MBIE's provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific, so there is a countervailable subsidy in regard to the programme: Research Fund from Jinghai County Science and Technology Commission.

A2.758. The level of subsidy established for Tianjin Youfa is 0.0354%.

**47. Industrial Technical Transformation Subsidy**

A2.759. Tianjin Youfa advised that its Dezhong factory had received a grant totalling RMB [REDACTED] for industrial technical transformation. Evidence was provided for the payments by the Tianjin Jinghai District, Caigongzhuang County Financial Bureau.

A2.760. Tianjin Youfa noted that local government, such as the Science and Technology Bureau, may have a yearly conference when local government may recruit local factories for technology development programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. Tianjin Youfa stated that it did not actively apply for the grant but was "recruited" by local government.

**MBIE Analysis and Consideration***Financial Contribution*

A2.761. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa's Dezhong factory from the Tianjin Jinghai District, Caigongzhuang County Financial Bureau, which is a branch of local government.

*Level of Benefit*

A2.762. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0118%.

*Specificity*

A2.763. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

**Conclusion**

A2.764. MBIE's provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific, so there is a countervailable subsidy in regard to the programme: Industrial Technical Transformation Subsidy.

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A2.765. The level of subsidy established for Tianjin Youfa is 0.0118%.

#### **48. Technology Reformation Subsidy from Tangshan City, Fengnan District Science and Technology Bureau**

A2.766. Tianjin Youfa advised that its Tangshan Zhengyuan factory had received a grant totalling RMB [REDACTED] for technology reformation from the Tangshan City Fengnan District Science and Technology Bureau. Evidence was provided for the payment by the Tangshan City Fengnan district Science and Technology Bureau.

A2.767. Tianjin Youfa noted that local government, such as the Science and Technology Bureau, may have a yearly conference when local government may recruit local factories for technology development programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. Tianjin Youfa stated that it did not actively apply for the grant but was “recruited” by local government.

#### **MBIE Analysis and Consideration**

##### *Financial Contribution*

A2.768. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa’s Dezhong factory from the Tangshan City Fengnan district Science and Technology Bureau, which is a branch of local government.

##### *Level of Benefit*

A2.769. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level which is less than 0.0100%, which is negligible, and too small to be considered as a countervailable subsidy.

##### *Specificity*

A2.770. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

#### **Conclusion**

A2.771. MBIE’s provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific. However, the level of subsidy established by MBIE is too small to be countervailable, so there is no countervailable subsidy in regard to the programme: Technology Reformation Subsidy from Tangshan City, Fengnan District Science and Technology Bureau

#### **49. Technology Innovation Support from Chengan County Science and Technology Bureau**

A2.772. Tianjin Youfa advised that its Handan Youfa factory had received three grants totalling RMB [REDACTED] for technology innovation support from the Chengan County Science and

Technology Bureau. Evidence was provided for the payments by the Chengan County Treasury Payment Center.

- A2.773. Tianjin Youfa noted that local government, such as the Science and Technology Bureau, may have a yearly conference when local government may recruit local factories for technology development programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. Tianjin Youfa stated that it did not actively apply for the grant but was “recruited” by local government.

### **MBIE Analysis and Consideration**

#### *Financial Contribution*

- A2.774. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa’s Handan Youfa factory from the Chengan County Science and Technology Bureau, which is a branch of local government.

#### *Level of Benefit*

- A2.775. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0125%.

#### *Specificity*

- A2.776. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

### **Conclusion**

- A2.777. MBIE’s provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific, so there is a countervailable subsidy in regard to the programme: Technology Innovation Support from Chengan County Science and Technology Bureau .

- A2.778. The level of subsidy established for Tianjin Youfa is 0.0125%.

## **50. Research Fund from Chengan County Finance Centre**

- A2.779. Tianjin Youfa advised that its Handan Youfa factory had received three grants totalling RMB [REDACTED] for a research fund from the Chengan County Finance Center. Evidence was provided for the payments by the Chengan County Treasury Payment Center.

- A2.780. Tianjin Youfa noted that local government, such as the Science and Technology Bureau, may have a yearly conference when local government may recruit local factories for technology development programmes. Then, if the factories completed the missions requested by local government they can get compensation or benefit. Tianjin Youfa stated that it did not actively apply for the grant but was “recruited” by local government.

**MBIE Analysis and Consideration***Financial Contribution*

A2.781. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa's Handan Youfa factory from the Chengan County Finance Center, which is a branch of local government.

*Level of Benefit*

A2.782. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0119%.

*Specificity*

A2.783. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

**Conclusion**

A2.784. MBIE's provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific, so there is a countervailable subsidy in regard to the programme: Technology Innovation Support from Chengan County Science and Technology Bureau.

A2.785. The level of subsidy established for Tianjin Youfa is 0.0119%.

**Other Programmes****51. Yearly Subsidy for Road Construction**

A2.786. Tianjin Youfa advised that its Branch No. 1 received an annual subsidy for road construction, with the total of RMB [REDACTED] allocated over five years, giving an annual subsidy of RMB [REDACTED] for each year. Evidence was provided for payments in previous years by the Tianjin Daqiuzhang Local Fund.

A2.787. Information relating to the legal basis, eligibility criteria and application process was not provided by Tianjin Youfa.

A2.788. MBIE notes that a similar road construction subsidy programme relating to a Tianjin Youfa factory was investigated in ADC HSS 379 and found to be countervailable.

**MBIE Analysis and Consideration***Financial Contribution*

A2.789. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa's Branch No. 1 factory from the Tianjin Daqiuzhang Local Fund, which is a branch of local government.

*Level of Benefit*

A2.790. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0030%, which is less than 0.01% and is negligible, too small to be considered as a countervailable subsidy.

*Specificity*

A2.791. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

**Conclusion**

A2.792. MBIE's provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific. However, the level of subsidy established by MBIE is too small to be countervailable, so there is no countervailable subsidy in regard to the programme: Yearly Subsidy for Road Construction.

**52. Vocational Training Support**

A2.793. Tianjin Youfa provided evidence that its Dezhong factory had received a grant of RMB [REDACTED] for vocational training support. Evidence of the payment from the Tianjin Human Resources and Social Security Bureau was provided, but Tianjin Youfa has offered no further information relating to the basis for this programme.

**MBIE Analysis and Consideration***Financial Contribution*

A2.794. MBIE is satisfied that there has been a financial contribution to Tianjin Youfa's Dezhong factory from the Tianjin Human Resources and Social Security Bureau, which is a branch of local government.

*Level of Benefit*

A2.795. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level which is less than 0.01%, which is negligible, and too small to be considered as a countervailable subsidy.

*Specificity*

A2.796. MBIE is satisfied that, on the basis of information currently available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

**Conclusion**

A2.797. MBIE's provisional conclusion is that there is a financial contribution by a government or any public body which confers a benefit, and which is specific. However, the level of

subsidy established by MBIE is too small to be countervailable, so there is no countervailable subsidy in regard to the programme: Vocational Training Support.