



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

**LABOUR, SCIENCE
AND ENTERPRISE**



Non-Confidential Final Report

SUBSIDY INVESTIGATION

Hollow Steel Sections from China

Trade (Anti-dumping and Countervailing Duties) Act 1988

March 2019

NON-CONFIDENTIAL

Non-Confidential Final Report - Subsidy

Hollow Steel Sections from China

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 For example, in tables, where possible, actual figures have been replaced by figures showing indexed or percentage changes from the previous period.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

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

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

Executive Summary

MBIE's investigation of the level and effect of subsidisation of HSS from China provides a basis for the Minister to make a determination on the existence and effect of subsidisation.

The Ministry of Business, Innovation and Employment (MBIE) has investigated allegations of the subsidisation of hollow steel sections (HSS) exported from the People's Republic of China (China) to New Zealand.

This Final Report sets out the essential facts and conclusions that provide the basis for determinations to be made by the Minister of Commerce and Consumer Affairs (the Minister) under section 10D(1) of the *Trade (Anti-dumping and Countervailing Duties) Act 1988* (the Act) on whether the goods are subsidised and whether material injury to an industry has been or is being caused by the subsidisation, and under section 11(1)(g) of the Act relating to the termination of an investigation.

This Final Report takes account of comments made on:

- the Supplementary Essential Facts and Conclusions Report (Supplementary EFC Report), which was released on 29 November 2018 in order to take into account the judicial review of MBIE's *Galvanised Steel Coil* investigation (Galvanised Steel Coil JR),¹ and
- the initial EFC Report released on 5 September 2018.

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 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (the SCM Agreement), and is guided by findings in WTO dispute settlement proceedings.

The outcome of the judicial review of *Galvanised Steel Coil* is reflected in this report.

MBIE's conclusions on *Galvanised Steel Coil* were subject to judicial review, with the Court concluding that the Minister's decision in that case was unlawful because it was "based on advice containing material errors as to the proper test for determining whether an entity is a public body, as to the grounds on which overseas jurisdictions had made their findings; and as to the relevance of those overseas investigations as providing a valid source of available information in light of the limited cooperation from the GOC and the Chinese producers of the subject goods." To the extent necessary and appropriate to the facts of this investigation,

¹ *NZ Steel v Minister of Commerce and Consumer Affairs* [2018] NZHC 2454.

these matters are addressed in this Report.

MBIE initiated an investigation on the basis of an application from NZ Steel.

On 9 April 2018 MBIE started (initiated) an investigation under the Act into HSS from China, following the receipt of an application for a subsidy investigation from New Zealand Steel Ltd (NZ Steel). NZ Steel claimed that HSS from China is being subsidised by the Government of China (GOC) and that subsidised imports are causing material injury to NZ Steel. On the same date, MBIE initiated an investigation into NZ Steel's claims that dumped imports of HSS from China and Malaysia were causing material injury.

The Minister determined that there were no grounds for the imposition of provisional measures.

NZ Steel requested that provisional measures be imposed on the allegedly subsidised imports. On the basis of the provisional conclusion that the level of subsidisation was *de minimis*, the Minister determined that there were 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 reviewed the goods covered by the investigation and has established the description of the subject goods being investigated and the like goods produced by the New Zealand industry.

NZ Steel's original identification of the subject goods included goods that fall outside the scope of goods that NZ Steel does or can produce. Early in the investigation other parties raised questions about the scope of the description of the subject goods. MBIE therefore undertook an analysis to ensure that the imported goods covered by the investigation, the subject goods, matched the like goods produced by the New Zealand industry. The analysis, which took into account the views of NZ Steel and other interested parties, indicated that the subject goods description provided by NZ Steel should be modified to match the goods produced by the New Zealand industry.

The subject goods as determined by MBIE are:

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).

The characteristics of HSS in the description of subject goods are:

Sizes:

Circular products – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm.

Square and rectangular products – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm.

Oval products – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.

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.

The New Zealand industry comprises NZ Steel and other producers.

MBIE is satisfied that NZ Steel and two other smaller producers make up the New Zealand industry producing like goods to the subject goods.

The information used in this report is based on a variety of information available to MBIE.

This report includes, in Annex 1, a discussion on the use of the information available in general terms and in Annex 2 sets out the information used in relation to each of the programmes investigated, as well as the categorisation of programmes considered. Annex 3 sets out MBIE's consideration of subject goods and like goods, while Annex 4 addresses comments by interested parties on the initial and Supplementary EFC Reports.

This report and its conclusions are based on information available to MBIE including information received from identified importers, intermediary exporters, and Chinese manufacturers; the NZ Steel application; information from counterpart investigating authorities in other jurisdictions; WTO notifications and dispute findings; and other information obtained by MBIE. The GOC declined to respond to the government questionnaire.

MBIE has assessed the accuracy of the primary information available to it.

In an investigation MBIE seeks and obtains information directly relevant to that investigation, and satisfies itself as to the accuracy of the information provided. Such primary information includes questionnaire responses from interested parties; laws, regulations and other official documents; relevant WTO documents, such as notifications; Customs and statistical data; and other relevant data such as exchange rates, interest rates and prices. As appropriate, MBIE uses verification visits and the review of evidence available to substantiate information provided by interested parties.

Information from other sources, including secondary information, can also be used to help assess the accuracy of primary information available to MBIE.

MBIE can use information from secondary sources when primary information required to ascertain the level of subsidy has not been provided by interested parties or is not available.

Section 7(5) of the Act provides that where the chief executive (of MBIE) 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.

The use of "facts available," including secondary information, is permitted in instances where information is not available because an interested party refuses access to, or otherwise does not provide

the necessary information within a reasonable period or significantly impedes the investigation. In such circumstances, the amount of the subsidy is determined having regard to all available information that MBIE considers to be reliable.

In considering “facts available” MBIE can take into account secondary information such as that contained in the application (in relation to subsidisation); information from previous MBIE investigations; information from investigations undertaken by counterpart authorities in other jurisdictions; and information from reports and publications covering matters related to the subject matter of the investigation.

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

MBIE identified a sample of the four Chinese manufacturers responsible for around 92 per cent of Chinese exports of subject goods to New Zealand in 2017. MBIE has assessed the alleged subsidy programmes identified in NZ Steel’s application on the basis of full and prompt responses to MBIE’s questionnaire from three sample manufacturers. This primary information has been substantiated and verified through visits to two manufacturers and desk verification of the other manufacturer.

Information was not provided by one of the sample manufacturers or by the GOC. In determining the amount of the subsidy for that manufacturer, MBIE has therefore taken account of secondary information from the application, investigations undertaken by authorities in other jurisdictions, and other information available to or identified by MBIE, as well as the information provided by cooperating manufacturers.

MBIE’s conclusions differ from those of other jurisdictions.

New Zealand takes an objective approach and conducts each investigation on its facts, and follows the guidance provided by the WTO Appellate Body in its interpretations of the SCM Agreement.

MBIE notes that some other jurisdictions, including those which define China as a non-market economy (such as the USA and Canada), have concluded that the GOC has such a degree of control that it distorts production and markets, and in particular the steel industry, such that prices are distorted, and that State-owned bodies as well as privately-owned banks and producers act as an arm of the government. MBIE’s approach is based on taking each case in its evidential merits and following the applicable legislative and treaty provisions. On this basis, MBIE’s assessment of whether banks or input providers are public bodies, and its identification of relevant benchmarks for establishing if there is a benefit to a recipient, are all based on a careful examination of the information available that relates to the manufacturers and the goods covered

A key issue in the investigation is whether MBIE needed to consider the extent to which the GOC controls banks and steel producers. MBIE has reviewed the information available and has established that on the basis of the facts of the case there were no financial contributions by a government or any public body providing a benefit in regard to the programmes concerned. The public body determinations are based on the test identified by the WTO Appellate Body as referred to by the High Court.

by the current investigation.

A particular issue relating to the investigation of two subsidy programmes is the extent to which the GOC exercises meaningful control over State-owned entities, for example State-owned Commercial Banks (SOCBs), or State-owned providers of input material to steel producers.

In the Galvanised Steel Coil JR, the Court stated that it was “fair to say there is an international consensus that Chinese steel products are subsidised by public bodies, and it was also fair to say that the view about the level at which they are subsidised depends on a number of factors: the kind of steel products; the producers of those products; and the extent to which the investigating authority has been able to obtain direct information about those programmes.”

MBIE’s investigation in the current case had the benefit of cooperation from three of the four sample Chinese manufacturers, and MBIE has been able to verify the information they provided.

In light of this view, MBIE has reviewed the information available to it in relation to the particular programmes, entities and products covered by this investigation, and the comments made by interested parties on the Supplementary EFC Report.

MBIE’s conclusion is that on the basis of the primary information provided direct by interested parties and substantiated by verification or from other evidence available to MBIE, and for the programmes concerned, there was no financial contribution by a government or any public body. In relation to the public body determination, MBIE has concluded that SOCBs and State-invested enterprises (SIEs) providing inputs are not public bodies in terms of the test identified by the WTO Appellate Body referred to by the High Court. In addition, in relation to claims of preferential loans, MBIE has established that the cooperating sample manufacturers did not receive loans at preferential rates, while in relation to providers of hot-rolled coil (HRC), the prices paid by the sample manufacturers were broadly similar whether the supplier was an SIE or not, and were also similar to world export prices.

MBIE concludes that the level of subsidisation is well below *de minimis*, and therefore there is no basis for imposing countervailing duties.

MBIE's conclusions provide a basis for the termination of the investigation.

On the basis of the analysis undertaken by MBIE, described in Annex 2, the 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.

In the light of the conclusion that the level of subsidy is *de minimis* it is not possible to conclude that any injury can be attributed to imports of subsidised goods from China.

The conclusion that there is insufficient evidence of subsidisation provides the basis for the Minister to make a negative determination under section 10D(1) of the Act.

Section 10D(3) of the Act provides that where the Minister makes a negative determination under section 10D(1) of the Act, the Minister must terminate the investigation under section 11.

1. Introduction

1.1 Purpose

1. This Final Report sets out the facts and conclusions from MBIE's investigation into the subsidisation of HSS from China, as the basis for the recommendation to the Minister to make a negative final determination as to whether or not imports of HSS from China are being subsidised and that material injury to an industry has been or is being caused because of the subsidisation.

1.2 Proceedings

2. 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.
3. On 9 April 2018, the chief executive of MBIE 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 is being subsidised, and
 - material injury to the New Zealand industry is being caused by subsidised goods imported from China.
4. The investigation was carried out according to the requirements of the Act and the SCM 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."² Where the Act is silent, or its interpretation and that of the SCM Agreement requires context, WTO dispute settlement findings provide guidance.
5. Questionnaires were sent to importers, Chinese manufacturers, trading intermediaries and the GOC.
6. 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. A Provisional Measures Report, based on information available to MBIE up to 7 June 2018, provided to the Minister on 12 July 2018, concluded that there was no basis for imposing provisional measures.

² The Agreement establishing the World Trade Organization adopted at Marrakesh on 15 April 1994.

7. Verification visits were undertaken to two Chinese manufacturers and reports of those visits are available on the Public File.³
8. The EFC Report, provided to parties on 5 September 2018, met the requirement set out in section 10C(2) of the Act that the chief executive must, within 150 days after starting an investigation give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under section 10D(1) of the Act. This provision reflects Article 12.8 of the SCM Agreement which provides that the authorities shall, before a final determination is made, inform all interested members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures, and such disclosure should take place in sufficient time for the parties to defend their interests.
9. Although there were no changes to the overall conclusions stated in the initial EFC Report, a Supplementary EFC Report which replaced the initial EFC Report was sent to interested parties on 29 November 2018. The Supplementary EFC Report took into account, as necessary and appropriate, the judgment in the judicial review of *Galvanised Steel Coil*, issued on 18 September 2018⁴ by, among other matters, explaining MBIE's approach to non-cooperation and the use of information.⁵ The Supplementary EFC Report also took into account comments made on the initial EFC Report.
10. Submissions on the Supplementary EFC Report have been taken into account in the preparation of this Final Report.
11. Given the circumstances of the need to reflect the judgment in the *Galvanised Steel Coil JR*, and the consequent changes to the initial EFC Report, and the need to ensure that interested parties are not deprived of an adequate opportunity to make submissions, MBIE considers that there are "extenuating circumstances" requiring it to go beyond the statutory deadline for this investigation. While the outcome of the investigation has not changed, MBIE considers that the circumstances are "extenuating circumstances" in the sense identified in *Heinz Wattie's Ltd v MBIE* [2018] NZHC 2309.

1.3 Grounds for the Application

12. NZ Steel claimed that the alleged subsidisation of HSS from China is causing the company material injury through:
 - price undercutting
 - price depression

³ Non-confidential information is contained on an investigation's Public File, which is available to any interested party or member of the public to view or copy. Copies of documents held on the Public File are available by specific request or at MBIE's office in Wellington during normal office hours.

⁴ *NZ Steel Ltd v Minister of Commerce and Consumer Affairs* [2018] NZHC 2454.

⁵ See Annex 1.

- price suppression

resulting in:

- adverse consequences upon sales
- adverse consequences upon profit, both per unit (e.g. EBIT⁶/MT) and overall (e.g. EBIT)
- adverse consequences upon return on investment
- adverse consequences upon cashflow.

13. NZ Steel stated in its application that the material injury resulting from the importation of allegedly subsidised HSS commenced in 2012.

1.4 Investigation Process

14. The purpose of a subsidy investigation is to establish the existence and extent of any subsidisation and whether it is causing material injury to a New Zealand industry. This is undertaken by gathering and assessing information for its relevance and accuracy. MBIE's general approach to an investigation is that it is an inquisitorial rather than an adversarial process⁷, 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. The investigation assesses information from the parties to the investigation, as well as information obtained by MBIE from its own research.
15. Information from the application provides the initial basis for the identification of the subsidy programmes to be investigated. MBIE uses questionnaires as a basis for obtaining targeted information from interested parties on these programmes. A questionnaire sent to the government of the country of export of the goods seeks details about the operation of subsidy programmes that were identified in the application and of any other subsidy programmes which the government operates that may provide a benefit to the goods under investigation. Questionnaires are also sent to the manufacturers and exporters of the goods requesting information on the subsidy programmes, including details of any subsidies they have received that have conferred a benefit on the goods under investigation. Questionnaires are also sent to importers and New Zealand manufacturers of like goods where further information is required. MBIE may send supplementary questionnaires where information is not clear, is incomplete, or where a party's response indicates a need for further inquiry or provision of information.
16. Information may be substantiated through a desktop check of documents or may be verified during a visit to the premises of the provider of the information, usually New Zealand manufacturers and the overseas manufacturers of the goods under investigation. The matters to be covered during a verification visit are outlined in a letter to the provider

⁶ Earnings before interest and taxation (EBIT).

⁷ Gault J, in *Kerry (New Zealand) Ltd v Taylor*, HC Auckland [1988] NZHC 595, at page 26 of the judgment.

of the information. MBIE seeks to confirm the accuracy of information provided by sighting relevant firm records to provide confirmation of the information provided in the questionnaire. MBIE also seeks to satisfy itself that all countervailable subsidies have been identified. Verification reports are provided to the participating firms to confirm that they are an accurate record. Further elaboration of the basis for the assessment of information is set out below and in Annex 1.

17. Interested parties may make submissions at any stage during an investigation or in response to Issues Papers and Reports during the investigation. Issues Papers may be released where significant issues arise that require more information and comment from the parties. Reports are released to the parties at initiation, on the imposition of provisional measures, to provide the essential facts and conclusions on which the Minister's decision is likely to be made (EFC Report), and to finalise the investigation. Supplementary reports may be issued where the essential facts and conclusions have changed since the EFC Report in order to provide an opportunity for the parties to defend their interests.

Availability of Information

18. Article 12.1 of the SCM Agreement provides that Interested Members and all interested parties in a countervailing duty (CVD) investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question. Subject to the requirement to protect confidential information, evidence presented in writing by one interested Member or interested party shall be made available promptly to other interested Members or interested parties participating in the investigation. Article 12.3 states that the authorities shall whenever practicable provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their cases, that is not confidential, and that is used by the authorities in a countervailing duty investigation, and to prepare presentations on the basis of this information.
19. MBIE meets these obligations through the provision of questionnaires and 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, with commercially confidential information redacted.

Assessment of Information

20. The foundation of MBIE's approach to the assessment of information is the relevant provisions of the Act and the SCM Agreement, assisted by the interpretation of the SCM Agreement provided in WTO jurisprudence. An outline of the basis for MBIE's approach is set out in Annex 1. This approach reflects the outcome of the *Galvanised Steel Coil* JR, and in particular the need to clarify the role and significance of information from investigations undertaken by other jurisdictions, in the context of the requirements of the Act and the SCM Agreement.
21. In an investigation MBIE seeks and obtains information directly relevant to that investigation, and satisfies itself as to the accuracy of the information provided. Such

primary information includes questionnaire responses from interested parties; laws, regulations and other official documents; relevant WTO documents, such as notifications; Customs and statistical data; and other relevant data such as exchange rates, interest rates and prices. MBIE uses verification visits and the review of evidence available to substantiate the information provided by interested parties and to assess its reliability. Where MBIE is not satisfied as to the accuracy of the information provided, or where information is not available, other primary information can be used, or secondary information can be used as “facts available”.

22. The use of “facts available” is limited to instances where information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation. In such circumstances, the amount of the subsidy is determined having regard to all available information that MBIE considers to be reliable. MBIE is required to take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested. Where primary information is available then there is no compulsion to look at secondary information, but MBIE can choose to do so in order to help assess the accuracy of primary information.
23. In considering “facts available” MBIE can take into account secondary information, such as the application (in relation to subsidisation); information from previous MBIE investigations; information from investigations undertaken by counterpart authorities in other jurisdictions; and information from reports and publications covering matters related to the subject matter of the investigation. In using secondary information, MBIE undertakes a process of reasoning and evaluating which “facts available” constitute reasonable replacements for missing information that can be considered reliable. In this context, MBIE notes that secondary information that is not based on positive evidence but relies on inferences and assumptions may not be considered to be reliable.
24. In the current investigation, MBIE has used information from cooperating manufacturers and other directly obtained information as the primary basis for its determinations on the existence and level of subsidies received, and has satisfied itself as to the accuracy of that information through verification or substantiation on the basis of information available to MBIE.
25. Where information is not available because a party has not provided information requested, and where that information is required in order to make a determination of the existence and extent of a subsidy, MBIE can have recourse to secondary sources of information to replace the missing information. MBIE has used secondary information during this investigation where necessary.
26. Section 4.2 of the Report sets out the information sources used in the investigation of subsidy programmes.

1.5 Report Details

27. 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.
28. 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.
 29. All volumes are expressed on a metric ton (MT or tonne) basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD) or Australian dollars (AUD), while values and prices in China are expressed in renminbi (RMB). The exchange rates used are those relating to specific transactions, where available, or Customs exchange rates, or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.
 30. Annex 1 to this Report sets out MBIE's position on the treatment of information; Annex 2 is the detailed analysis of each programme investigated plus a summary of the categorisation of each of the 240 programmes included in the application; Annex 3 contains MBIE's analysis of subject goods and like goods; and Annex 4 is the summary of the submissions received on the initial and Supplementary EFC Reports and MBIE's comments on them.
 31. Hyperlinks included in this text were checked for ongoing validity on 22 February 2019 or more recently.
 32. It should be noted that this Final 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

2.1 Subject Goods

33. In its application NZ Steel identified the subject goods it considered should be subject to investigation, including finishes and sizes.
34. Early in the investigation questions were 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 undertook 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 included the preparation of an Issues Paper which was provided to interested parties for their comment. On the basis of that Paper and the comments received in response to it, MBIE has concluded the subject goods should be defined as:
- 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).*
- The characteristics of HSS in the description of subject goods are:*
- Sizes:**
- Circular products** – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm.
- Square and rectangular products** – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm.
- Oval products** – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.
- 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.*
36. Annex 3 to this Report summarises the analysis undertaken.
37. The New Zealand 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 and any concessions that cover goods that are clearly produced by the New Zealand industry.

Tariff Items

38. In its application, NZ Steel noted that the New Zealand tariff classification, including statistical keys, does not fully align with the subject goods description.
39. In 2017, the four tariff item/statistical keys were split out into 24 tariff item/statistical keys in the New Zealand Tariff. 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, and with thicknesses up to 6mm.
40. The tariff items and statistical keys that 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, or the thickness exceeds 6mm).

HS2017	Description
<i>Circular sections</i>	
<i>Previously 7306301911</i>	
73063019 23	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
73063019 41	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
73063019 61	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
73063019 81	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]
<i>Previously 7306301921</i>	
73063019 31	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
73063019 51	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
73063019 71	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

73063019 91	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]
Square and rectangular sections	
Previously 7306610019	
73066100 51	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 not over 2.6mm
Ex 73066100 53	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 over 2.6mm
73066100 54	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
Ex 73066100 55	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
73066100 56	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
Ex 73066100 57	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
73066100 58	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]
Ex 73066100 59	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]
Previously 7306610027	
Ex 73066100 63	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
Ex 73066100 64	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
Ex 73066100 65	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

Ex 73066100 66	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
Ex 73066100 67	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
Ex 73066100 68	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
Ex 73066100 69	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]
Ex 73066100 70	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]
Oval sections	
73066900 19	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]
Ex 73066900 21	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
Ex 73066900 29	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section [other]

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

Duties

- 43. 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

*CA – Canada. 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

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

Imports of Subject Goods

44. Based on the revised definition of subject goods, MBIE identified imports of the subject goods from the sample manufacturers in 2017. With two exceptions, there are only minor differences between the Customs data for the statistical keys identified above and the revised information excluding non-subject goods on the basis of an analysis of individual shipments and invoices for sample manufacturers.
45. There appears to have been some tariff misclassification in that when compared with Customs data, all 2017 imports from one sample manufacturer, and significant levels of imports from another sample manufacturer, were not identified in Customs data for the statistical keys identified above. It appears that in both cases the issue arose following the introduction of new statistical keys in 2017.
46. In the absence of details of import shipments from sample manufacturers in years prior to 2017, it is difficult to determine the extent to which any tariff misclassification may have affected Customs data for those years. It does appear that imports from the sample manufacturer which were not included in 2017 are identifiable in Customs data in previous years, so the remaining issues relate to imports from the other sample manufacturer, and how to treat imports from other Chinese exporters and imports from other countries.
47. For the purposes of the analyses required in this Report, the figures for imports from other countries, and from other Chinese exporters, use Customs data for the statistical keys identified above, with imports from Malaysia covering only the subject goods (based on data from the Malaysian exporter). The figures for imports from China for years prior to 2017 are similarly based on Customs data. As discussed in the subject goods analysis, these figures do not exclude some goods entering under tariff concessions.

48. 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	7130	8637	8791	10727	10451	19265
Malaysia	282	106	253	364	358	287	404	529
Other	932	495	758	427	1049	485	653	1055
Total	15834	15215	17182	20071	18763	13922	13956	23933

49. Imports from China represented 83 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

50. 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.
51. 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

52. To establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, or have characteristics which closely resemble the subject goods.
53. The scope of the subject goods is defined in section 2.1 above.
54. 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

55. 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 set out in the "Issues Paper on Like Goods" circulated to interested parties on 13 June 2018, and the comments received in response to that paper have been incorporated into the resulting analysis included as Annex 3 to this Report. Comments

received on the initial and Supplementary EFC Reports on this matter are included in Annex 4 to this Report.

56. 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

57. Products made locally by NZ Steel have the same or similar physical characteristics as the allegedly subsidised goods (within the amended scope) from China, including size and finish characteristics.

Production Methods

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

Function and Usage

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

Pricing

60. 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

61. 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.

62. 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 were included in the application. NZ Steel estimated that the combined production of these two companies was equivalent to 10 per cent of New Zealand production of like goods.
63. MBIE has obtained further information on the production of the other two companies producing HSS.
64. The assessment of injury to the domestic industry is required to address the industry as a whole, but in accordance with section 3A of the Act 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 is equivalent to 10 per cent of New Zealand production of like goods. In this case, NZ Steel production, at 10 per cent of such production, would be sufficient to constitute the industry.

3. Interested Parties

3.1 Legal Requirements

65. 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 (NZ Steel)

66. 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.

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

3.2 New Zealand Producers

68. 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	

69. MBIE sent questionnaires to all three of the producers identified above in order to verify the information provided by NZ Steel and to obtain information relevant to the investigation.⁸ The production figures above are based on responses from manufacturers.
70. 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
 - submissions dated 2 July 2018 and 15 August 2018 covering a number of issues, and submissions on the original EFC Report dated 17 September 2018.
71. Information provided by other New Zealand producers included information on products produced, sales and volumes.

3.3 Government of China

72. The Government of China is considered an "interested Member" under the SCM Agreement.
73. 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.
74. 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. To the extent that the failure of the GOC to respond to the questionnaire has meant that there are any gaps in the information required for ascertaining the existence and amount of any subsidy, MBIE has had regard to all available information that is considered to be reliable.

⁸ 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

75. 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 92 per cent of 2017 imports of the subject goods from China.
76. 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 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.
77. The Chinese manufacturers were identified as either supplying direct to New Zealand importers or through the intermediaries handling their goods. One manufacturer identified itself as providing the subject goods despite not appearing in Customs data for the tariff items/statistical keys concerned and was included in the sample on the basis of the volume of goods it stated had been exported to New Zealand. The four manufacturers identified as the sample are shown in Table 3.2 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	

78. Information was sought from all manufacturers. Dalian Steelforce, Jinan Mech and Tianjin Youfa responded to the Ministry's request for information. No response was received from

Hengshui Jinghua. This lack of response means that Hengshui Jinghua is regarded as a non-cooperating manufacturer and in ascertaining the existence and amount of any subsidy, MBIE has had regard to all available information that is considered to be reliable.

Dalian Steelforce

79. Dalian Steelforce is a wholly-owned foreign enterprise, [REDACTED]. 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.⁹
80. Production includes galvanised and painted sections, ranging in size from [REDACTED] mm to [REDACTED] mm; pipe from [REDACTED] NB (nominal bore) to [REDACTED] OD (outside diameter); finishes including no coating, in-line paint, pre-galvanised and hot-dipped galvanised; and round, square, rectangular and oval pipe and tube. All products are made to order and comply with relevant Australian and New Zealand standards.
81. Exports to New Zealand were made through an intermediary. The main New Zealand customers in 2017 were [REDACTED].
82. Dalian Steelforce is a foreign-invested enterprise (FIE) and is a small or medium-sized enterprise (SME)¹⁰ but is not a High and New Technology Enterprise (HNTE).¹¹ Dalian Steelforce is not a State-owned enterprise (SOE) or a State-invested enterprise (SIE).
83. Dalian Steelforce was a party to the Australian Anti-Dumping Commission (ADC)¹² investigation into HSS.
84. 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 (dated 6 May 2018). A verification visit was undertaken to Dalian Steelforce on 1-3 August 2018, and a report of the visit is available on the Public File.

⁹ Information from website at <http://steelforce.company.weiku.com/about/>.

¹⁰ OECD, *Financing SMEs and Entrepreneurs 2016: An OECD Scoreboard*, see Table 8.2 on page 125.

¹¹ 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>

¹² References to the ADC incorporate references to its predecessor organisation, Australian Customs and Border Protection.

Hengshui Jinghua

85. Hengshui Jinghua was founded in 1993, under Jinghua Innovation Group, and is a private company located in Hengshui City, Hebei Province.
86. 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. However, no response was received, and Hengshui Jinghua was treated as a non-cooperating manufacturer. To the extent that the failure of Hengshui Jinghua to respond to the questionnaire has meant that there are any gaps in the information required for ascertaining the existence and amount of any subsidy, MBIE has had regard to all available information that is considered to be reliable.
87. On the basis of the information that is available, Hengshui Jinghua is not an FIE or an SOE/SIE. However, in the absence of information from Hengshui Jinghua and the GOC it has not been possible to confirm whether the company should be classified as an HNTE or SME.
88. Hengshui Jinghua was also a party to the ADC investigation of HSS.

Jinan Mech

89. Jinan Mech is a subsidiary of [REDACTED]
90. 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.
91. 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 notice 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.
92. Jinan Mech exports to [REDACTED] in New Zealand.
93. Jinan Mech is a privately-held company and is not an FIE, SOE/SIE or an SME, and has been recognised as an HNTE only since December 2017. Jinan Mech is located in Jinan in Shandong Province.
94. Jinan Mech provided a detailed response to the Manufacturer's Questionnaire.

Tianjin Youfa

95. 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 Daqiu Zhuang Village, Jinghai County, Tianjin City.
96. The Youfa Group has nine subsidiaries related to HSS production and sales:
- Branch No. 1, located in Youfa Industrial park, Daqiu Zhuang, 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.
97. 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.
98. Exports to New Zealand were undertaken through an intermediary. In 2017 the main New Zealand customers were [REDACTED].
99. Tianjin Youfa is a privately owned company and is not an FIE or SOE/SIE, and is not an SME or HNTE.
100. Tianjin Youfa was a party to the ADC's Continuance Review of HSS (ADC HSS 379).
101. Tianjin Youfa provided a detailed response to the Manufacturer's Questionnaire. MBIE undertook a verification visit to Tianjin Youfa on 25-27 July 2018, and a report of the visit is available on the Public File.

3.5 Trading Intermediaries

102. Trading intermediaries (exporters) were identified from Customs data and from questionnaires sent to known importers and manufacturers.
103. Table 3.3 below shows three exporters, primarily trading companies acting as intermediaries between Chinese producers and New Zealand importers, which 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]

104. Information was sought from all of the trading intermediaries. Responses were received from Sanwa Pty Ltd and Steelforce Trading.

3.6 Importers

105. New Zealand-based importers were identified from Customs data. Table 3.4 below shows the main importers of the subject goods 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]

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

3.7 Other Interested Parties

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

4. Subsidisation Investigation

4.1 Subsidisation

108. The Act defines 'subsidy', 'subsidised goods' and 'specific subsidy' in section 3, which reflects 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.*

109. 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**.

110. 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.

111. 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) of the Act 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) of the Act 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.

112. 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,¹³ and as provided for in the parentheses in Article 1.1(a)(1) of the SCM Agreement.
113. With regard to the question of whether or not any financial contribution providing a benefit is made by a government or any public body, where there is evidence that a financial contribution providing a benefit has been provided by a central or local government agency, MBIE has concluded that it is a contribution by a government (in the narrow sense). In relation to a financial contribution providing a benefit made by “any public body”, MBIE takes guidance from the description of public body by the WTO Appellate Body in DS379¹⁴ and DS436¹⁵, as identified by the High Court in *NZ Steel Limited v Minister of Commerce and Consumer Affairs*, which is based on the following finding:

*We see the concept of "public body" as sharing certain attributes with the concept of "government". A public body within the meaning of Article 1.1.(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority. Yet, just as 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. Panels or investigating authorities confronted with the question of whether conduct falling within the scope of Article 1.1.(a)(1) is that of a public body will be in a position to answer that question only by conducting a proper evaluation of the core features of the entity concerned, and its relationship with government in the narrow sense.*¹⁶
[Emphasis added]

114. 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

115. The information available to MBIE in investigating the subsidisation of HSS from China includes:

¹³ WTO Appellate Body Report WT/DS379/AB/R, *US — Anti-Dumping and Countervailing Duties (China)*, paragraph 286.

¹⁴ DS379, *US — Anti-Dumping and Countervailing Duties (China)*

¹⁵ DS436, *US — Carbon Steel (India)*

¹⁶ WTO document WT/DS379/AB/R, paragraph 317.

- 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 and manufacturer’s questionnaires and subsequent submissions, and information arising from verification visits
 - 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.
116. With regard to information from other jurisdictions, MBIE notes that some other jurisdictions tend to conclude that the GOC has such a degree of control that it distorts production and markets, and in particular the steel industry, such that prices must be distorted, and that State-owned bodies as well as privately-owned banks and producers act as an arm of the government. MBIE’s approach is based on taking each case on its evidential merits and the applicable legislative and treaty provisions. On this basis, MBIE’s assessment of whether banks or input providers are public bodies, and its identification of relevant benchmarks for establishing if there is a benefit to a recipient, are all based on a careful examination of the information available that relates to the manufacturers and the goods covered by the current investigation.
117. The objective of the investigation of each alleged subsidy 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. With regard to each of these elements an investigation examines, in relation to each of the manufacturers concerned:
- **whether there is a financial contribution of a kind set out in Article 1.1(a)(1) of the SCM Agreement:** where there is no evidence that an alleged programme exists, or if there is evidence that it has been terminated, or there is evidence that the manufacturer concerned does not come within the eligibility requirements for the alleged programme, then the conclusion is that the alleged programme does not need to be pursued in relation to that manufacturer.
 - **whether the financial contribution is made by a government or any public body:** where it is concluded that the entity providing any financial contribution does not meet the requirements for determining that a provider is government or any public body as set out by the WTO Appellate Body, then the conclusion is that the matter does not need to be pursued with regard to that alleged programme. It should be noted that where, for example, grants or loans are paid direct by central or local government agencies, or the programme is based on government revenue being foregone or not collected, then it can be concluded that a financial contribution by a government is involved.
 - **whether the financial contribution provides a benefit to the recipient:** if there is no benefit to the manufacturer concerned when, for example, the amount paid for a loan is not less than the amount that would be paid under a comparable commercial loan on the market, or when the goods or services are not provided for less than adequate

remuneration determined in relation to prevailing market conditions in the country concerned, then the conclusion is that there is no subsidy, and the alleged programme does not need to be pursued. The existence or not of a benefit is not dispositive of whether there is a financial contribution or if a public body is involved, but does help determine the existence of a subsidy.

- **whether the subsidy is specific to an enterprise or industry, or a group of enterprises or industries (certain enterprises):** if the subsidy is explicitly limited to certain enterprises by law then it is specific; if there are automatic and neutral objective criteria governing eligibility for and the amount of the subsidy then it is not specific; notwithstanding any appearance of non-specificity, a subsidy may be in fact specific when other factors are considered.¹⁷ Also, if the subsidy is contingent in law or in fact upon export performance or on the use of domestic over imported goods, then it is deemed to be specific. Note that a specificity analysis is required only where there is a financial contribution by a government or any public body that provides a benefit.

118. All of these elements must be in place before a conclusion can be reached that there is a countervailable subsidy. It follows that where, as here, there is clear evidence that one of the elements is not in place, then it is not necessary to pursue the other elements, for example, if an alleged programme has been terminated, the other elements are irrelevant. Equally, where there is no benefit, there is no subsidy, and the question whether there is a specific subsidy does not need to be addressed. The question of whether a financial contribution is made by a government or any public body does not need to be addressed where there is no financial contribution as indicated above, but where there is a financial contribution that is not clearly from a government agency, then it may be necessary to examine the matter to establish if there is a financial contribution from a public body. Where a financial contribution providing a benefit is provided by a government or any public body, and is specific in terms of Article 2 of the SCM Agreement, then there is a countervailable subsidy.
119. Submissions on the initial EFC Report were received from Dalian Steelforce/Steelforce Trading, NZ Steel and Tianjin Youfa. Submissions on the Supplementary EFC Report were received from NZ Steel. Comments on the submissions as they related to subsidy issues are included as Annex 4 to this Final Report, and are also reflected in amendments and additions to the EFC Reports as included in this Final Report. This includes amendments to ensure, to the extent necessary, that the discussion and analysis of each programme reflects each of the elements noted above.

¹⁷ Article 2.1(c) of the SCM Agreement also requires that in the circumstances where a subsidy may in fact be specific, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

4.2.1 NZ Steel

Application

120. 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 industries and resulting investigations undertaken by Australian and United States investigating authorities, and reports and commentaries on the Chinese steel industry.
121. The application listed subsidy programmes identified by the Australian, Canadian, European Union (EU) and US 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 a range established by looking at the average of the subsidy rates established in the various counterpart investigations applied to the average free-on-board (FOB) export price for Chinese exports to New Zealand identified by NZ Steel, which came to 18.5 per cent, and a level based on the USDOC investigation of *Corrosion-Resistant Steel*, which was 38.99 per cent.¹⁸ To the extent relevant and appropriate, MBIE's analysis of programmes investigated has identified information from investigations undertaken by other jurisdictions as secondary information (see section 4.2.3 below).
122. 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. NZ Steel also cited news agency summaries of a 2007 report by Wiley Rein LLP, updated in 2010, 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.
123. 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 a 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 20 largest groups are majority owned or controlled by the government.

¹⁸ This range replaces the figure of 52.05 per cent which was erroneously included in the initial EFC Report.

124. 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.
125. 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 were 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', and in particular, on claims in applications and on findings from other USDOC investigations (including investigations involving products other than the subject goods).
126. Information in the application is regarded as secondary information for the purposes of the investigation of subsidisation.

Verification Visit

127. MBIE undertook a verification visit to NZ Steel on 27-29 May 2018 and clarified information provided in the application relating to injury. 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 US s.232 national security action on steel products, and statements from the Global Forum on steel excess capacity.

Submissions

128. NZ Steel made additional submissions on 2 July 2018 and 15 August 2018. The matters raised in these submissions have been addressed in this Report where necessary and appropriate.
129. NZ Steel made a detailed submission, dated 17 September 2018, on matters covered in both the subsidy and dumping EFC Reports.

4.2.2 Questionnaire Responses

130. 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 three main trading intermediaries did not respond to the questionnaire.
131. Importer's Questionnaires were sent to the New Zealand 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.
132. 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. Hengshui Jinghua did not respond to the questionnaire, so in considering information relating to any subsidies received by Hengshui Jinghua, MBIE has

used the facts available and made a judgment on the reliability of the information before it from all sources in order to reach a conclusion on the relevant level of subsidisation.

133. Information provided in questionnaires is considered to be primary information in relation to the parties to which the questionnaires refers.
134. 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 use the facts available and make a judgment on the reliability of the information before it from all sources in order to reach a conclusion.
135. MBIE notes that non-cooperation could be for a number of reasons. While one inference that could be drawn is that full responses may have disclosed subsidies, in the circumstances of the current case, the non-cooperation of the GOC has not adversely affected MBIE's analysis of the specific programmes investigated, which has drawn on primary information provided by the cooperating sample manufacturers, and from secondary sources of information where a gap in the information needed to be filled.

Verification Visits

136. In order to verify and supplement information provided in the questionnaire responses, verification visits were undertaken to Dalian Steelforce (1-3 August 2018) and Tianjin Youfa (25-27 July 2018).
137. A desktop verification of Jinan Mech was undertaken, including requests for and receipt of, additional information.

4.2.3 Other Information

Previous New Zealand Investigations

138. MBIE has also noted 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 being investigated in the current proceedings. Information from previous investigations is regarded as secondary information.
139. As noted in section 1.1, MBIE has also taken into account the outcome of the judicial review proceedings in *Galvanised Steel Coil*.

WTO Documentation and Dispute Settlement Reports

140. 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.
141. 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 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 information on programmes granted or maintained at sub-central government level during the period 2001-2014.

142. 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.

143. WTO documents covering notifications and other factual matters are primary information accessed by MBIE.

WTO Jurisprudence

144. Where reference is made to WTO jurisprudence or reports of panels or the Appellate Body, it should be recalled that:

A WTO dispute relates to a specific matter and takes place between two or more specific Members of the (WTO). The report of a panel or the Appellate Body also relates to that specific matter in the dispute between these Members. Even if adopted, the reports of panels and the Appellate Body are not binding precedents for other disputes between the same parties on other matters or different parties on the same matter, even though the same questions of WTO law might arise. As in other areas of international law, there is no rule of stare decisis in WTO dispute settlement according to which previous rulings bind panels and the Appellate Body in subsequent cases. This means that a panel is not obliged to follow previous Appellate Body reports even if they have developed a certain interpretation of exactly the provisions which are now at issue before the panel. Nor is the Appellate Body obliged to maintain the legal interpretations it has developed in past cases.¹⁹

145. This is an important consideration when authorities are seeking to develop fixed methodologies or tests in order to interpret provisions of the SCM Agreement, since there

¹⁹ WTO Dispute Settlement System Training Module: Chapter 7 at https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c7s2p1_e.htm.

is a risk that the evolution of WTO jurisprudence could lead to such tests becoming inconsistent with relevant findings.

146. It should also be noted that Panels are bound by the standard of review set forth in Article 11 of the DSU, which provides, in relevant part:

[A] panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements.

147. The Appellate Body has stated that the "objective assessment" to be made by a panel reviewing an investigating authority's determination is to be informed by an examination of whether the agency provided a reasoned and adequate explanation as to: (i) how the evidence on the record supported its factual findings; and (ii) how those factual findings supported the overall determination.²⁰ The Appellate Body has also commented that a panel reviewing an investigating authority's determination may not conduct a *de novo* review of the evidence or substitute its judgment for that of the investigating authority. A panel must limit its examination to the evidence that was before the agency during the course of the investigation and must take into account all such evidence submitted by the parties to the dispute. At the same time, a panel must not simply defer to the conclusions of the investigating authority. A panel's examination of those conclusions must be "in-depth" and "critical and searching".²¹

Steel Industry Reports

148. The application identified reports on the Chinese steel industry as providing evidence of the levels and forms of subsidisation available in China. MBIE has noted the material contained in reports, including the 2007 Wiley Rein Report identified by NZ Steel in its application and more recent Wiley Rein reports,²² a report issued by the Steel Industry Coalition in June 2016 (the SIC Report),²³ and a more recent 2018 report by Global Trade Alert "Going Spare: Steel, Excess Capacity, and Protectionism"²⁴ which was brought to MBIE's attention by NZ Steel.
149. The Wiley Rein Report identifies and discusses GOC support to the Chinese steel industry and its direction and control of the industry. Subsidy areas identified include credit, equity

²⁰ *US – Countervailing Duty Investigation on DRAMS*, DS296/AB/R para. 186

²¹ *US – Softwood Lumber VI (Article 21.5 – Canada)*, DS277/AB/RW para. 93

²² 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.

²³ "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>.

²⁴ Available at <https://www.globaltradealert.org/reports/44>.

infusions, land-use discounts, government-mandated mergers and direct cash grants. The SIC Report similarly examines areas of government support for the Chinese steel industry, and also reviews the information available on subsidies received by main steel producers. The Global Trade Alert report includes an analysis of financial reports of Chinese steel companies which showed that from 2008 government subsidies to Chinese steelmakers rose sharply, reaching nearly one billion USD in 2015, but never exceeded one per cent of the firms' revenues. However, the report does note that the analysis does not cover potential upstream subsidies, and there may be other forms of support that Chinese publicly listed firms do not report, so that the reported subsidy levels are likely to understate the scale of policy interventions.

150. Steel industry reports are considered to be secondary information for the purposes of investigating subsidies.

Other Information

151. Other information obtained by MBIE includes copies of Chinese government laws, regulations, plans and other instruments; academic articles on issues raised; relevant news reports and commentaries; financial and other reporting by companies and organisations identified in the investigation; and prices, interest rates and other reference material.
152. Factual information obtained by MBIE, including laws and other official documents, and data such as prices, interest rates and exchange rates, is considered to be primary information, while articles, reports and commentaries are generally considered to be secondary information.

4.2.4 Other Jurisdictions

153. MBIE has reviewed the investigations by other authorities, including those identified by NZ Steel in its application. MBIE notes that Australia, Canada, the EU, India and the USA have imposed countervailing duties on imports of steel products from China. When information from interested parties has not been furnished or is not available, then information from other jurisdictions can serve as secondary information in the investigation, along with the other sources of information identified by MBIE. The analysis of individual programmes set out in Annex 2 covers relevant information from other jurisdictions.
154. It should be noted that Canada, the EU, India and the USA provide access to non-confidential investigation records only to registered interested parties, so MBIE has access only to published reports. Australia does provide public online access to non-confidential versions of investigation documents such as questionnaire responses and submissions.

Australian Investigations

155. In 2011-12 the ADC undertook a subsidy investigation into *Hollow Structural Sections from China* (ADC HSS 177) and in 2013 the ADC undertook a Reinvestigation into certain aspects

(ADC HSS 203), following a review by the Trade Measures Review Officer (TMRO). The ADC then undertook a Continuation Inquiry in 2016-17 (ADC HSS 379), and a further review in May 2018 (ADC HSS 419). These investigations are collectively referred to as ADC 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.²⁵

156. 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 noted by MBIE in its considerations in the current case. Information from other ADC investigations has been noted where appropriate and relevant. In that context, it is noted that the Australian investigations into HSS included Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa as Chinese manufacturers, all of which were subject to verification visits.
157. 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	

158. In the Federal Court case, the Court found that a key determination by the Australian Minister was not authorised by the legislation (since amended), with the result that Dalian Steelforce was not (and is not) subject to any countervailing duty in Australia. The determination related to the specificity of a GOC programme to provide hot rolled coil (HRC), a key input into the manufacture of HSS, to HSS manufacturers at less than adequate remuneration.

²⁵ *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885.

159. The Continuance Inquiry 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. The Tianjin Youfa rate was amended to 3 per cent by the Anti-Dumping Review Panel (ADRP) Report 63, and in the latest investigation ADC HSS 419, the subsidy level for Tianjin Youfa was established as 1.3 per cent, which is *de minimis* (although it should be noted that this results from the need to avoid duplication of anti-dumping and countervailing duties where there are domestic subsidies and a constructed normal value that both relate to a major cost component based on surrogate market data).
160. There have been other Australian investigations involving steel products from China, and these have been taken into account where appropriate and relevant,²⁶ for example, because they covered the same manufacturer or the same programme.
161. The ADC Subsidies Register²⁷ has also been used by MBIE as a source of information on particular programmes.

Canadian Investigations

162. NZ Steel's 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 have been noted by MBIE in its considerations in the current case. Information from other CBSA investigations has been noted where appropriate and relevant.
163. 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 were 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

²⁶ Links to reports and documents relating to archived Australian cases can be found at <http://www.adcommission.gov.au/cases/Pages/Archived-Cases.aspx>.

²⁷ Available through <https://www.adcommission.gov.au/adsystem/referencematerial/Pages/Subsidies-Register.aspx>.

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 exporters, plus the simple average of those amounts applied to each of the remaining 89 potentially actionable subsidy programmes.

164. 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%
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%

165. In other Canadian cases reviewed, the majority of the programmes identified by the Canadian applicant in each case were not investigated, but were assigned subsidy levels on a basis similar to that noted above.²⁸

European Union Investigations

166. NZ Steel’s 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 noted by MBIE in its considerations in the current case, where appropriate and relevant.²⁹ 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.

²⁸ Links to reports on Canadian cases can be found at <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html>.

²⁹ Links to reports on EC cases can be found at <http://trade.ec.europa.eu/tdi/completed.cfm>.

USDOC Investigations

167. NZ Steel's 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 Preliminary and Final Decision Memoranda, has been noted by MBIE in its considerations in the current case, especially as it relates to common individual programmes, where appropriate and relevant.
168. 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 per cent and 18.34 per cent for nine programmes benefitting one or both of them. The investigation established that 26 other programmes identified in the application were not used by the investigated manufacturers. The countervailable programmes included one involving full AFA (export buyer's credits), and others involving preferential loans and the provision of inputs at less than adequate remuneration (LTAR), also heavily reliant on AFA findings in relation to the determination of "public body", specificity, and input industry disturbances (affecting the choice of benchmarks). Subsidy levels for the remainder of programmes totalled less than 2 per cent.
169. 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).³⁰ None of the USDOC investigations appear to have covered manufacturers included in the sample for this investigation.
170. For the reasons outlined in Annex 1 below, conclusions reached on the basis of USDOC's reliance on 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 secondary information available to MBIE provides a more reliable basis for reaching conclusions on these matters.

Other Countries

171. In its submissions, NZ Steel identified a number of other countries that it suggested had investigated Chinese subsidisation of steel products, including India, Botswana, Egypt, Latvia, Mexico, Namibia, South Africa, Swaziland and Turkey.
172. MBIE notes that these investigations are of limited or no relevance to the current investigation. The Indian authority imposed countervailing duties on certain hot-rolled and cold-rolled stainless steel products from China in July 2017, and is currently investigating welded stainless steel pipes and tubes from China. The Egyptian authority investigated

³⁰ 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>.

alleged subsidisation of steel bars and rods from China but did not apply any measures because there was no causal link with injury to the domestic industry. Turkey has notified an investigation of seamless tubes and pipes but no duties have been imposed. The South African case involved stainless steel sinks and was withdrawn (and was taken on behalf of the Southern Africa Customs Union which includes Botswana, eSwatini/Swaziland, Lesotho and Namibia). Latvia became a member of the EU in 2004, but does not appear to have notified any action against China prior to that.

India

173. MBIE has reviewed the Final Finding issued on 4 July 2017 by the Indian Directorate General of Anti-Dumping & Allied Duties (DGAD) on its investigation of certain hot rolled and cold rolled stainless steel flat products (*Stainless Steel Flat Products*). New Zealand has no producer of stainless steel. The GOC did not cooperate with the investigation, while Chinese exporters filed limited questionnaire responses. DGAD stated, “In the absence of complete and verifiable information from the interested parties concerned the Authority is constrained to proceed with the determination with regard to existence, degree and impact of various subsidy programs, on the basis of best facts available, including the information provided by the domestic industry in its petition, WTO notifications, determination earlier made by DGAD, various determinations made by other investigating authorities and information filed by the domestic industry during the course of the investigations.”
174. The application listed 81 programmes. DGAD identified 28 programmes from the limited questionnaire responses which matched those in the application. For the remaining programmes DGAD relied primarily on the application, but also noted the findings of other authorities in regard to these or similar programmes. In particular, DGAD found that the government provision of land-use rights, electricity and water were countervailable, and that providers of inputs that were SOEs were public bodies. Preferential loans to SOEs were found to have provided a benefit of 0.32%. The total subsidy level determined for the 81 countervailed programmes was 18.95%, made up of grants (0.55%); export financing (0.00%); Tax and VAT incentives (2.3%); provision of goods and services (15.78%); preferential loans and lending (0.32%); and equity (0.00%).

4.2.5 Identified Programmes

175. 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.
176. 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. A summary of the programmes and the basis for their exclusion is set out in Annex 2:II.

Lack of Positive Evidence

177. Programmes for which there is no reliable or positive evidence include programmes considered to be countervailable by other jurisdictions solely on the grounds that they have been listed by the relevant applicant in each case, and for which no further

information has been established 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 in some circumstances. An example of the kind of comment included in NZ Steel's application is, "Without a complete response to the subsidy RFI [*request for information*] from the GOC and all known exporters, the CBSA does not have sufficient information to determine that any of these programs do not constitute actionable subsidies."³¹ 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.

178. 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

179. Programmes which were identified in the application as having a year or period of application listed in the application 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

180. 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

181. 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 109 programmes.

³¹ CBSA *Concrete Reinforcing Bar*, page 41.

Location Specific Programmes

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

Duplications

183. On the basis of further scrutiny of the programmes listed in NZ Steel's application, a number of duplications were found, and these programmes have been addressed together. The duplicated programmes are identified. This affected a total of nine programmes, meaning five were combined, leaving four to be investigated.

Conclusions

184. The questionnaires sent to interested parties were based on a preliminary analysis of the programmes. Following further analysis and clarification of information about the sample manufacturers, additional programmes were added, or were found to be terminated, and have been excluded from Table 4.3, or were duplicated and have been addressed in combination.
185. A number of the 240 programmes were covered by more than one of the exclusion criteria.
186. The separate category (group F in Table 4.3) 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).
187. 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.
188. 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. "Applic. #" refers to the number of the programme in NZ Steel's application.

Table 4.3: Alleged Subsidy Programmes

#	Applic. #	Programme
A		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	61/66/86	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		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
C		Government provides goods or services or purchases goods
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
D		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	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
E		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
F		Grant programmes relating to Jinan and Shandong Province
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

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

G	Additional Grant Programmes Notified by Tianjin Youfa
	Environmental Programmes
42	Environmental detection device instalment support
43	Compensation for driven well equipment
44	Compensation for purchase of green vehicle
	Technology Programmes
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
	Other Programmes
51	Yearly Subsidy for Road Construction
52	Vocational Training Support

4.2.6 Attribution of Subsidies

190. 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 manufacture and export the subject goods to New Zealand and any other associated companies.

191. 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.
192. 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.

4.2.7 General Interpretation

193. One of the matters raised in the *Galvanised Steel Coil* JR was the relevance of investigations in other jurisdictions as providing a valid source of available information in light of the limited cooperation from the GOC and the Chinese producers of the subject goods. This matter is addressed in Annex 1 to this Report which outlines the basis for MBIE's approach to the use of information.
194. In light of the comments received on the Supplementary EFC Report, matters relating to the determination of public body and considerations affecting the use of benchmarks, are addressed in MBIE's responses to those comments in Annex 4:II.

4.3 Subsidy Analysis

195. 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 it in terms of reliability, as a basis for determining whether any activity constitutes a countervailable subsidy provided to a sample manufacturer.
196. 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, and whether the contribution is made 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 per cent of the value of the goods are

negligible, and too small to be counted towards countervailable subsidies. A similar approach is taken by the EC.

197. The subsidy analysis takes account of questionnaire responses provided by Dalian Steelforce, Jinan Mech and Tianjin Youfa, and the verification visits to Dalian Steelforce and Tianjin Youfa. Other information identified in section 4.2 has been used as required.

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

Direct transfer of funds – grants

199. 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%.

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

Direct transfer of funds – loans

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

Government provision of goods or services

202. 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

203. 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

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

Grant Programmes relating to Jinan and Shandong Province

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

Additional Grant Programmes Notified by Tianjin Youfa

206. 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%.

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

Non-cooperating Manufacturer – Hengshui Jinghua

208. Because Hengshui Jinghua did not cooperate by providing a questionnaire response, MBIE has based its assessment of an appropriate subsidy level on the available information considered reliable. The primary information available includes the findings regarding the cooperating sample manufacturers, as well as Chinese laws and plans affecting the steel industry, while secondary information includes the ADC *HSS* investigation. MBIE's considerations are:

- **Grants:** MBIE has established that all of the cooperating sample manufacturers received benefits from grants, albeit at very low levels of subsidy. MBIE considers that it is reasonable to assume that Hengshui Jinghua also received benefits through grant programmes, and at similar levels. Accordingly, MBIE considers that an appropriate level of subsidy is a rate equivalent to the highest total for grants found for a cooperating sample manufacturer, which is 0.1087 per cent.
- **Preferential loans:** The findings relating to cooperating sample manufacturers also established that there were no financial contributions by a government or any public body in relation to preferential loans. ADC *HSS* did not include any findings relating to preferential loans, which serves to confirm the primary information. MBIE considers that it is reasonable to conclude that Hengshui Jinghua did not receive any benefits relating to preferential loans.
- **Provision of inputs at LTAR:** The findings relating to cooperating sample manufacturers also established that there were no financial contributions by a government or any public body in relation to the provision of inputs at LTAR. MBIE has established from primary information that prices paid by HSS manufacturers for HRC are not at LTAR, irrespective of the ownership of the supplier, and considers it reasonable to apply the same findings to Hengshui Jinghua. ADC *HSS* found that Hengshui Jinghua received a benefit of 4.6 per cent, based on its conclusion that HRC was being provided by public bodies, and the use of a benchmark based on the weighted average of verified costs incurred by manufacturers in Korea, Malaysia and Taiwan, but without any adjustments to account for differences in quality, availability, marketability or comparative advantage. However, MBIE is satisfied, for the reasons outlined in Annex 2.I relating to programme 22, and in Annex 4:II relating to HRC suppliers as public bodies, that there is a reliable basis for reaching a conclusion that Hengshui Jinghua did not receive a financial contribution from a government or any public body providing a benefit through the provision of inputs at LTAR, because MBIE does not consider that providers of HRC are public bodies.
- **Payments for land-use rights:** The findings relating to Tianjin Youfa for the treatment for payments for land-use rights suggest that similar practices may be available to other companies. However, the investigations of the other two cooperating sample manufacturers did not establish any such benefits. In ADC *HSS* a programme called "Land Use Tax Deduction" was investigated but no subsidy level was found for Hengshui Jinghua. In the circumstances, MBIE does not consider that

there is reliable information that would allow a finding of subsidisation in respect to Hengshui Jinghua for this programme.

- **Other programmes:** The investigation of cooperating sample manufacturers found no subsidies for other programmes. ADC HSS did not record any subsidy findings for Hengshui Jinghua in relation to any of these programmes, which serves to confirm the primary information. MBIE considers that it is reasonable to conclude that Hengshui Jinghua did not receive any benefits relating to other programmes.

4.4 Conclusions Relating to Subsidies

209. Based on the analysis summarised above, and set out in more detail in Annex 2:I, the subsidy levels established for sample manufacturers of HSS exported to New Zealand are set out below. The level for Hengshui Jinghua, the non-cooperating manufacturer, is set on the basis outlined above.
210. The weighted average of cooperating sample manufacturers has been used to establish the All Others level.³² The weighted average for all manufacturers is 0.0248 per cent.

Table 4.4: Subsidy Levels

Sample Manufacturer	Total Subsidy Rate
Dalian Steelforce	Negligible
Hengshui Jinghua	0.1087%
Jinan Mech	Negligible
Tianjin Youfa	0.1633%
Weighted Average (All Others)	0.0175%
Weighted Average - Total	0.0248%

211. MBIE concludes that the level of subsidy established in the investigation is less than two per cent, and is therefore at *de minimis* levels.
212. Section 10D(1) of the Act provides for the Minister to make an affirmative or negative determination whether, in relation to the imported goods, the goods are being subsidised and material injury to an industry has been or is being caused because of the subsidisation. When the Minister makes a negative determination then, under section 10D(3) of the Act, the Minister must terminate the investigation under section 11.
213. 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

³² This is a change from the initial EFC Report which included the non-cooperating sample manufacturer in the weighted average calculation.

- 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.
214. 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 two 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 four per cent of total imports of the like product. The immediate termination is at the time of the final determination, which ensures that the final determination takes into account submissions made on the Supplementary EFC Report.
215. As noted in the analysis above, the conclusion reached is that any subsidies are *de minimis*. Accordingly, on the basis of the findings and recommendations in this Report, the investigation into HSS from China will result in a negative determination, which provides a basis for terminating the investigation under section 11 of the Act.
216. In light of the findings and recommendations it is not considered necessary to address the question of material injury caused by subsidisation, since there is insufficient subsidisation to cause injury.

5. Conclusions

218. MBIE concludes that the level of subsidy established in the investigation of HSS from China is less than two per cent, and is therefore at *de minimis* levels.
219. Since the level of subsidisation is *de minimis*, no material injury to an industry can be attributed to the subsidisation of HSS from China.

6. Recommendations

It is recommended that the Minister:

- (a) **Make a negative determination** under section 10D(1) of the Act, that in relation to imports of HSS from China into New Zealand the level of subsidisation is *de minimis* and material injury to an industry has not been and is not being caused because of the subsidisation.
- (b) **Note** that if a negative determination under section 10D(1) is made, the Minister must terminate the investigation under section 11.
- (c) **Make a determination** under section 11(1)(f) of the Act to terminate the subsidy investigation in respect of imports of HSS from China.
- (d) **Sign** a Gazette notice giving notice of the determinations, in accordance with sections 10D(4) and 11(1)(g) of the Act.

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Labour, Science and Enterprise Group

13 March 2019

ANNEX 1: TREATMENT OF INFORMATION

This Annex sets out the basis on which MBIE uses information in its investigations. It outlines the legal foundations for this approach, including relevant WTO jurisprudence, and summarises the approaches taken in a number of other jurisdictions. It then outlines considerations relevant to the use of information from other jurisdictions, and summarises the position with regard to the current investigation.

One purpose of this clarification of MBIE's approach is because MBIE's conclusions on *Galvanised Steel Coil* were subject to judicial review, with the Court ruling that the Minister's decision was unlawful because it was based on advice (in that case) containing material errors as to the proper test for determining whether an entity is a public body, as to the grounds on which overseas investigations had made their findings, and as to the relevance of those investigations as providing a valid source of available information in light of the limited cooperation from the GOC and the Chinese producers of the subject goods.

To the extent necessary and appropriate to the facts of this investigation, and in the context of the requirements of the Act and the SCM Agreement, these matters were addressed in the Supplementary EFC Report and are repeated in this Final Report.

Treatment of Information

- A1.1. 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.
- A1.2. In an investigation MBIE seeks and obtains information directly relevant to that investigation, and satisfies itself as to the accuracy of the information provided. Such primary information includes questionnaire responses from interested parties; laws, regulations and other official documents; relevant WTO documents, such as notifications; Customs and statistical data; and other relevant data such as exchange rates, interest rates and prices. MBIE uses verification visits and the review of evidence available to substantiate information provided by interested parties, and to assess its reliability. Information from other sources, including secondary information can be used to assist in confirming findings in relation to cooperating manufacturers. Where MBIE is not satisfied as to the accuracy of the information provided by an interested party, or where information is not available, other primary information can be used, or secondary information can be used as "facts available."
- A1.3. The use of "facts available" is limited to instances where information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation. In such circumstances, the amount of the subsidy is determined having regard to all available information that MBIE considers to be reliable.

A1.4. In considering “facts available” MBIE can take into account secondary information, such as the application (in relation to subsidisation); information from previous MBIE investigations; information from investigations undertaken by counterpart authorities in other jurisdictions; and information from reports and publications covering matters related to the subject matter of the investigation. In using secondary information, MBIE undertakes a process of reasoning and evaluation of which “facts available” constitute reasonable replacements for missing information and can be considered reliable. In this context, MBIE notes that secondary information that is not based on positive evidence but relies on inferences and assumptions may not be considered to be reliable.

Current Investigation

A1.5. In the current investigation, MBIE has used information from cooperating manufacturers and other directly obtained information as the primary basis for its determinations on the existence and level of subsidies received, and has satisfied itself as to the accuracy of that information through verification or substantiation on the basis of information available to MBIE.

A1.6. Where information is not available because a party has not provided information requested, and where that information is required in order to make a determination of the existence and extent of a subsidy, MBIE can have recourse to secondary sources of information to replace the missing information. MBIE can also use secondary information to confirm primary information.

A1.7. MBIE has set out in section 4.2 above the sources of primary and secondary information that it has used in this investigation.

Legal Basis

A1.8. The foundation of MBIE’s approach is the relevant provisions of the Act and the SCM Agreement, assisted by the interpretation of the SCM Agreement provided in WTO jurisprudence.

A1.9. Article 12.5 of the SCM Agreement states:

Except in circumstances provided for in Article 12.7, 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.

A1.10. Article 12.7 states:

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.

A1.11. Section 7(5) of the Act reflects Article 12.7 and 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.

A1.12. Article 12.11 of the SCM Agreement provides:

The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested and shall provide any assistance practicable.

A1.13. Although the SCM Agreement does not provide any further elaboration of the requirements of Article 12.7, the AD Agreement does include an Annex II, “Best Information Available in Terms of Paragraph 8 of Article 6” and it has been noted by the Appellate Body, “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, which is almost identically worded to Article 6.8 of the AD Agreement.”³³

A1.14. Annex II to the AD Agreement provides as follows:

- 1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.*
- 2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.*

³³ US — Carbon Steel (India), WT/DS436/AB/R paragraph 4.423.

3. *All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation.*
4. *Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.*
5. *Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.*
6. *If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.*
7. *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.*

WTO Jurisprudence

- A1.15. WTO Members have considerable discretion in defining their own procedures in relation to implementing their WTO obligations. The Panel in *Mexico – Olive Oil* stated:

We also note that other provisions in the SCM Agreement leave considerable discretion to Members to define their own procedures; e.g. Articles 12, 14 and 23. This leads us to believe that, in general, unless a specific procedure is set forth in

*the Agreement the precise procedures for how investigating authorities will implement those obligations are left to the Members to decide.*³⁴

- A1.16. With regard to Article 12.5 of the SCM Agreement, there is little directly applicable jurisprudence. In *US — Carbon Steel (India)*, the Appellate Body noted that Article 12.5 included the qualification, “Except in circumstances provided for in paragraph 7”, and noted that it would not be possible for an investigating authority to “satisfy themselves as to the accuracy of information” in circumstances where an interested party or member refuses access to or otherwise does not provide information.³⁵
- A1.17. In considering whether and when to apply “facts available” an investigating authority needs to give consideration to the reasons why information might not have been supplied. In *US — Carbon Steel (India)*, the Appellate Body, at paragraph 4.422, stated:

We also consider that Articles 12.4 and 12.11 shed light on the meaning of Article 12.7. This is because these provisions recognize some potential reasons why the "necessary information" referred to in Article 12.7 may not be provided, namely, confidentiality and resource constraints. This is implicit in the requirement for investigating authorities to protect confidentiality and to provide any assistance practicable, in particular to small companies, in the provision of information. In our view, the context provided by these provisions suggests that the manner or procedural circumstances in which information is missing can be relevant to an investigating authority's use of "facts available" under Article 12.7. In particular, Article 12.11 requires an investigating authority to take "due account of any difficulties experienced by interested parties", which includes interested parties that have not provided the "necessary information" referred to in Article 12.7. The kinds of "difficulties", or lack thereof, experienced by interested parties to be taken into account by an investigating authority in having recourse to Article 12.7 could relate, inter alia, to the nature and availability of the evidence being sought, the adequacy of protection accorded by an investigating authority to the confidentiality of information, the time period provided in which to respond, and the extent or number of opportunities to respond, including in relation to the essential facts under consideration as provided in Article 12.8. Whether and how such procedural circumstances should be taken into account by an investigating authority, and any appropriate inferences that may be drawn, will necessarily depend on the particularities of a given investigation. We recall, however, that determinations under Article 12.7 must be made on the basis of "facts" that reasonably replace the "necessary information" that is missing, and thus cannot be made on the basis of procedural circumstances alone.

³⁴ DS341, *Mexico — Olive Oil*, Panel Report, para 7.26, footnote 63.

³⁵ *US — Carbon Steel (India)*, AB Report, footnote 1077 to paragraph 4.418.

- A1.18. As the outcome to its discussion of Article 12.7 in regard to the information to be considered and the basis for its evaluation, the Appellate Body in DS436 found that Article 12.7 requires an investigating authority to use “facts available” that reasonably replace the missing “necessary information”, with a view to arriving at an accurate determination, which calls for a process of evaluation of available evidence, the extent and nature of which depends on the particular circumstances of a given case.³⁶ The discussion noted that Article 12.7 limits the use of “facts available” to instances where access to information is refused or is otherwise not provided, which means that the use of “facts available” is to mitigate the absence of particular information that is necessary for a determination to be made by the investigating authority.³⁷
- A1.19. The “facts available” in Article 12.7 refers to pieces of information that can be used as evidence and that are on the written record of the investigating authority. As determinations made under Article 12.7 are to be made on the basis of “facts available”, they cannot be made on the basis of non-factual assumptions or speculation, and should be based on positive evidence.³⁸ The task of ascertaining which “facts available” reasonably replace the missing “necessary information” under Article 12.7 calls for a process of reasoning and evaluation.³⁹ Further on, the Appellate Body notes, “Rather, as we explain above, 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.”⁴⁰ In responding to arguments from India, the Appellate Body went on to note, “For instance, a comparative approach to the evaluation required would not be feasible where there is only one set of reliable information on the record that is relevant to a particular issue and may thus serve as a factual basis for a determination.”

Other Jurisdictions

- A1.20. 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 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

³⁶ US — Carbon Steel (India), AB Report, para 4.435.

³⁷ US — Carbon Steel (India), AB Report, para 4.416.

³⁸ US — Carbon Steel (India), AB Report, para 4.417, including footnote 1075

³⁹ US — Carbon Steel (India), AB Report, para 4.418.

⁴⁰ US — Carbon Steel (India), AB Report, para 4.431.

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.

- A1.21. MBIE notes that some other jurisdictions, including those which define China as a non-market economy,⁴¹ have concluded that the GOC has such a degree of control that it distorts production and markets, and in particular the steel industry, such that prices are distorted, and that State-owned bodies as well as privately-owned banks and producers act as an arm of the government.⁴² MBIE's approach is based on taking each case in its evidential merits and following the applicable legislative and treaty provisions.

Australia

- A1.22. Section 269TAACA 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

- A1.23. In Canada, section 30.4(2) of the Special Import Measures Act (SIMA) 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

- A1.24. The relevant EU legislation, Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016, at Article 28, 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

⁴¹ For example, the USA, in the Tariff Act of 1930, Sec. 1677 (18); Canada, in Special Import Measures Regulations (SOR/84-927), at 17.1.

⁴² For example, the EU in EC *Organic Coated Steel*.

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

- A1.25. 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 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.
- A1.26. 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 *[note that this definition does not include information from other jurisdictions]*. 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.
- A1.27. Finally, under section 776(d) of the Tariff 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.

Using Information from Other Jurisdictions

- A1.28. In considering information from investigations undertaken by other jurisdictions, MBIE accepts that they can provide a valid source of secondary information when information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation. Information from such secondary sources can also provide a basis for confirming or otherwise the reliability of primary information obtained by MBIE. The extent to which such “facts available” can replace missing information requires a process of reasoning and evaluation which takes account of the circumstances of the particular case. These circumstances can include the nature of the product concerned, whether the investigation covered the same manufacturers, and whether the same or similar programmes were involved, and to the extent that the information from other jurisdictions is considered to be reliable and relevant.
- A1.29. However, MBIE does not consider that this means that there is any requirement on it to go beyond an assessment of evidence, and to accept interpretations of relevant law and WTO jurisprudence that New Zealand does not share on the basis of a reasoned and adequate analysis of the situation as it relates to the investigation concerned. This reflects the fact that other jurisdictions operate under different legal frameworks and contexts, and that the investigations concerned are likely to involve different products and different interested parties. In addition, in considering the reliability of secondary information from other jurisdictions, MBIE must assess the extent to which findings, and interpretations, are based on reliable information and positive evidence, and not on the basis of non-factual assumptions or speculation. Where such findings or interpretations are based on “facts available” or AFA (in the case of the USA), MBIE takes into account the process and context of any failure by interested parties to provide information which has led to the use of “facts available” or AFA.
- A1.30. 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.
- A1.31. In this context, it is relevant to note that verification relates to factual information, for example, a producer has received loans from Bank A, in the amount of B at an interest rate of C, or a producer has purchased X tonnes of HRC at price Y from Supplier Z. In such cases verification may also confirm that Bank A and Supplier Z are fully or partly owned by the State. However, verification does not cover assumptions and interpretations, which need to be independently assessed by MBIE.

- A1.32. MBIE notes that in other jurisdictions assumptions of countervailability have been applied because of the lack of questionnaire responses acceptable to the investigating authority,⁴³ without any apparent resort or reference to supplementary or secondary sources of information outside of countervailing duty proceedings (and the US legislation does not allow such sources to be used as secondary information). Under this type of practice, 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 other information could confirm non-applicability.
- A1.33. In a reasonably significant number of cases involving the USA, substantial levels of subsidy have been found based on 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 of the actual existence and level of subsidy.
- A1.34. The conclusion to be drawn is that findings by investigating authorities in other jurisdictions on the basis of facts available or AFA may, in some cases, 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.
- A1.35. Nevertheless, where a “facts available” situation applies, and when information from investigations undertaken in other jurisdictions is based on an actual investigation of relevant manufacturers, that information can be assessed, as secondary information in the absence of primary information, along with other information available to MBIE, 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.

⁴³ “In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, it is the Department’s practice to find that a financial contribution exists under the alleged program and that the program is specific under AFA.” *USDOC Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Certain Corrosion-Resistant Steel from the People’s Republic of China, C-570-027, 2 November 2015.*

Current Investigation

- A1.36. In the current investigation, and in relation to the sample manufacturers, MBIE has relied on primary information provided by cooperating sample manufacturers, but where necessary MBIE has noted the findings in investigations in other jurisdictions for similar products in which the sample manufacturers have been investigated, or for similar programmes even if the sample manufacturers were not involved. This is reflected in the analysis of each programme set out in Annex 2. In this context, the Australian investigations into HSS involved Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa, and some common programmes. Investigations into relevant steel products by Canada, the EU and USA did not include manufacturers common to the subject investigation, but did cover some common programmes. The relevance of information from other jurisdictions is also affected by the extent to which POIs for investigations by other jurisdictions are contemporaneous with the POI of the current investigation.
- A1.37. 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 a lack of information. In particular, where an investigation may have established that cooperating exporters have not benefited from a subsidy, then an assumption that non-cooperating exporters have so benefited, would not, by itself, be sufficient to provide reliable positive information that there is a subsidy.
- A1.38. MBIE notes that three sample manufacturers have cooperated fully in providing the requested information. However, Hengshui Jinghua did not respond to the questionnaire, and is regarded as non-cooperating. The basis for considering subsidies for Hengshui Jinghua is set out in section 4.3 above.

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 from the cooperating sample manufacturers, and assesses the facts available in terms of reliability, as a basis for determining whether any activity constitutes a countervailable subsidy. Where necessary and appropriate, account has been taken of the decisions in *Galvanised Steel Coil JR*.

I. Programmes Investigated

The analysis and conclusions are based on information available to MBIE. Hengshui Jinghua did not provide a questionnaire response, so information relating to this company has been based on information available, as set out in section 4.3 above,

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 across all programmes, the rate applicable to non-sample manufacturers is based on the weighted average of the total rates established for sample manufacturers.

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

In assessing the extent to which the programmes identified below may provide benefits to the sample 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.

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 12/17)	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 (in relation to grants, unless there is evidence to the contrary, it can be assumed that they are provided by a government, whether at a central, regional or local level)
- 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 per cent from USDOC *Steel Wire Strand*. The Canadian case was CBSA *Galvanised Steel Wire*.

Manufacturer Responses

Dalian Steelforce

- A2.3. 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.
- A2.4. 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

- A2.5. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.6. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

- A2.7. 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

- A2.8. 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

- A2.9. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

- A2.10. The sole US case in which this programme was identified was USDOC *Steel Wire Strand* in 2010, when a subsidy level of 0.02 per cent 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.

Summary

- A2.11. 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.

Industry Reports

- A2.12. 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*

- A2.13. No sample manufacturer has advised that it received a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.
- A2.14. MBIE concludes that on the basis of the information available, 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 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 per cent from USDOC *Steel Wire Strand*.

Manufacturer Responses

Dalian Steelforce

- A2.19. 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.
- A2.20. 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

- A2.21. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.22. 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.

Secondary Information

Other Jurisdictions

Australia

- A2.23. 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

- A2.24. 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 per cent was calculated, making an average level of subsidy of 0.08 per cent 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

- A2.25. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

- A2.26. 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 per cent.

Summary

- A2.27. 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.

Industry Reports

- A2.28. 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*

- A2.29. Neither Dalian Steelforce nor Jinan Mech reported receiving a grant under this programme. The position of Tianjin Youfa is addressed in section G. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.
- A2.30. MBIE concludes that on the basis of the information, 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 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. NZ Steel claims that "Tianjin Tianta 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 per cent and 0.03 per cent identified in USDOC *Steel Wire Strand* and USDOC *Citric Acid* respectively.

Manufacturer Responses

Dalian Steelforce

- A2.35. 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.
- A2.36. Dalian Steelforce also advised that its HSS products do not qualify as "Well-Known Trademarks of China" or "Famous Brands of China."
- A2.37. 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

- A2.38. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.39. 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.
- A2.40. 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].
- A2.41. 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.

Secondary Information

Other Jurisdictions

Australia

A2.42. ADC *HSS* recorded that the ADC concluded that Dalian Steelforce and Hengshui Jinghua 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.

A2.43. 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

A2.44. 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

A2.45. 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 per cent for the national programme and the same level for provincial programmes was based on the arithmetic average of findings from USDOC investigations.

A2.46. 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

A2.47. 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 per cent, but with no subsidy benefits found for cooperating companies since 2013. USDOC *Steel Grating*, in 2010, at 0.02 per cent, 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.

Summary

- A2.48. 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, other than Tianjin Youfa, in this investigation

Industry Reports

- A2.49. 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*

- A2.50. Neither Dalian Steelforce nor Jinan Mech reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by these cooperating sample manufacturers is accurate.
- A2.51. MBIE concludes that there is no reliable information to indicate that Dalian Steelforce and Jinan Mech received benefits under this programme.
- A2.52. MBIE concludes 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, which are government bodies.

Level of a Benefit

- A2.53. 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 per cent.

Specificity

- A2.54. 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]

- A2.55. 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

- A2.56. MBIE's 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."
- A2.57. The level of the subsidy established for Tianjin Youfa is 0.0167 per cent.

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

Application

- A2.58. 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 per cent. The application also cited a grant provided by Liaoning Province identified in USDOC *Line Pipe* with a subsidy rate of 0.43 per cent.

Manufacturer Responses

Dalian Steelforce

- A2.59. Dalian Steelforce noted 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.
- A2.60. 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

- A2.61. Jinan Mech advised that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.62. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

- A2.63. 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

- A2.64. 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 per cent.

EU

- A2.65. This programme does not appear to have been investigated by the EC in *EC Organic Coated Steel* or *EC Hot-Rolled Flat Products*.

USA

- A2.66. 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 per cent was found. In USDA *Line Pipe* (2008), the levels of subsidy found for two cooperating exporters were 0.05 per cent and 0.08 per cent for a programme in Liaoning Province. The amounts of the subsidy were less than 0.5 per cent of the relevant export sales denominator so they were expensed as a benefit in the year of receipt.

Summary

- A2.67. 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.

Industry Reports

- A2.68. 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

- A2.69. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.
- A2.70. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

Level of a Benefit

- A2.71. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

- A2.72. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

- A2.73. MBIE's 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**

- A2.74. NZ Steel claimed that the GOC forgives certain debts owed by certain companies, and cited a number of USDOC cases, with subsidy levels of 0.07 per cent and 1.08 per cent found in USDOC *Seamless Pipe* and USDOC *Circular Welded Pipe* respectively.

Manufacturer Responses*Dalian Steelforce*

- A2.75. 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

- A2.76. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.77. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information**Overseas Jurisdictions***Australia*

- A2.78. 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

- A2.79. 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

- A2.80. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

A2.81. The USDOC has examined debt forgiveness in 10 proceedings. In the 3 cases involving steel products, subsidy levels of 0.07 per cent and 0.54 per cent were found for individual exporters in USDOC *Seamless Pipe* (2010); no subsidies were found in USDOC *Line Pipe* (2008); and 1.08 per cent 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.

Summary

A2.82. 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.

Industry Reports

A2.83. The Wiley Rein and SIC Reports made no specific reference to this programme.

MBIE Analysis and Consideration*Financial Contribution*

A2.84. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.85. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

Level of a Benefit

A2.86. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.87. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

A2.88. MBIE's conclusion is that there is no countervailable subsidy relating to the programme: Debt Forgiveness.

6. Environmental Protection Grant**Application**

A2.89. NZ steel 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.

Manufacturer Responses

Dalian Steelforce

- A2.90. 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.
- A2.91. 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

- A2.92. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.93. 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 with the programme being considered here and has addressed the programmes concerned in Section G below.

Secondary Information

Overseas Jurisdictions

Australia

- A2.94. 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.
- A2.95. 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.
- A2.96. The Statement of Essential Facts for ADC *Steel Reinforcing Bar* recorded that the ADC found no evidence to indicate that cooperating exporters of rebar had benefited from the programme (listed as “Environmental Protection Fund”) during the investigation period.

Canada

- A2.97. This programme does not appear to have been covered in any Canadian investigations.

EU

- A2.98. 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

- A2.99. 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 per cent, based on AFA, for a Shandong Province programme; and in USDOC *Steel Wire Strand*, a rate of 0.03 per cent for a cooperating exporter, using AFA, for one programme, and a negligible level for the same exporter in another programme.

Summary

- A2.100. 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.

Industry Reports

- A2.101. 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*

- A2.102. Neither Dalian Steelforce nor Jinan Mech reported receiving a grant under this programme. The position of Tianjin Youfa is addressed in section G. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.
- A2.103. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

Level of a Benefit

- A2.104. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

- A2.105. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

- A2.106. MBIE's conclusion is that there is no countervailable subsidy relating to the programme: Environmental Protection Grant.

7. Export Assistance Grant**Application**

- A2.107. 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 per cent and 0.21 per cent from USDOC *Stainless Steel Sinks* and USDOC *Galvanised Steel Wire*.

Manufacturer Responses

Dalian Steelforce

- A2.108. 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.
- A2.109. 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

- A2.110. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.111. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

- A2.112. 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

- A2.113. The CBSA *Line Pipe (2016)* 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”.
- A2.114. In the CBSA *Concrete Reinforcing Bar (2014)* 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 per cent.

USA

- A2.115. 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 per cent in USDOC *Steel Grating (2010)*, 0.21 per cent in USDOC *Galvanised Wire (2012)*, and 0.04 per cent for one exporter in USDOC *Stainless Steel Sinks (2013)*. In a number of recent proceedings, AFA rates of 0.58 per cent have been determined.

Summary

A2.116. 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.

Industry Reports

A2.117. 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

A2.118. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.119. MBIE concludes that on the basis of the information available, 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 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 per cent from USDOC *Line Pipe*.

Manufacturer Responses*Dalian Steelforce*

- A2.125. 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.
- A2.126. 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

- A2.127. The other sample manufacturers are not located in the Liaoning Province and would not, therefore, be eligible for this programme.

Secondary Information**Other Jurisdictions***Australia*

- A2.128. 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

- A2.129. 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

- A2.130. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

- A2.131. A subsidy level of 0.30 per cent 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 per cent 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.

Summary

A2.132. 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.

Industry Reports

A2.133. 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*

A2.134. Dalian Steelforce has reported that it has not received a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturer is accurate.

A2.135. MBIE is satisfied that on the basis of the information available, 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 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 per cent and 0.08 per cent.

Manufacturer Responses*Dalian Steelforce*

A2.140. 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.

A2.141. 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

A2.142. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

A2.143. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

A2.144. 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

A2.145. 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 per cent.

EU

A2.146. This programme does not appear to have been investigated in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

USA

A2.147. As noted in the application, in USDOC *Line Pipe* in 2008, subsidy rates of 0.05 per cent and 0.08 per cent 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.

Summary

A2.148. 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.

Industry Reports

A2.149. 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

- A2.150. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.
- A2.151. MBIE concludes that on the basis of the information available, 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 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.

Manufacturer Responses

Dalian Steelforce

- A2.156. 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.
- A2.157. 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

- A2.158. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.159. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information**Other Jurisdictions***Australia*

A2.160. 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

A2.161. 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

A2.162. This programme does not appear to have been investigated in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

USA

A2.163. A programme with this description does not appear to have been addressed in any USDOC investigations.

Summary

A2.164. 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.

Industry Reports

A2.165. 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*

A2.166. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.167. MBIE concludes that on the basis of the information available, 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 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. NZ Steel cited a number of Canadian cases without identifying any subsidy levels.

Manufacturer Responses

Dalian Steelforce

A2.172. 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.

A2.173. 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

A2.174. 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].

A2.175. 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

A2.176. 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.

A2.177. 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.

Secondary Information

Other Jurisdictions

Australia

A2.178. 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

A2.179. 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

A2.180. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

A2.181. 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 per cent was established on the basis of AFA.

Summary

A2.182. 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.

Industry Reports

A2.183. 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

A2.184. MBIE concludes that there is evidence that Jinan Mech and Tianjin Youfa received financial contributions from the relevant sub-national government body under this programme.

A2.185. MBIE concludes that the other responding sample manufacturer, Dalian Steelforce, did not receive a financial contribution under this programme.

Level of a Benefit

A2.186. 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 per cent, which is negligible, and too small to be of any account.

A2.187. 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 per cent, which is negligible, and too small to be of any account.

Specificity

A2.188. 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.

A2.189. 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.

A2.190. 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

A2.191. MBIE's 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.

A2.192. 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 per cent.

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

Application

A2.193. 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 per cent.

Manufacturer Responses*Dalian Steelforce*

- A2.194. 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.
- A2.195. 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.
- A2.196. 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

- A2.197. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.198. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information**Other Jurisdictions***Australia*

- A2.199. 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

- A2.200. 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 per cent. The programme was not cited in any other Canadian cases.

EU

- A2.201. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

- A2.202. The USDOC investigated this programme in USDOC *Steel Wire Strand* (2010) and found a subsidy level of 0.03 per cent for a cooperating exporter. A similar programme was investigated in three other non-steel proceedings, with no subsidy found.

Summary

A2.203. 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.

Industry Reports

A2.204. 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*

A2.205. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.206. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

Level of a Benefit

A2.207. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.208. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

A2.209. MBIE's 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]

A2.210. Of the sample manufacturers, only Dalian Steelforce appears to qualify as an SME.

Application

A2.211. 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 per cent 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 per cent and 0.04 per cent from USDOC *Aluminium Extrusions* and USDOC *Stainless Steel Sinks*.

Manufacturer Responses

Dalian Steelforce

A2.212. 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.

A2.213. [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 [REDACTED] per cent of the expenses incurred by the business to a maximum of RMB [REDACTED]. Dalian Steelforce understands that the programme continues to operate.

A2.214. 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

A2.215. The other sample manufacturers are not categorised as SMEs and would not, therefore, be eligible for this programme.

Secondary Information

Other Jurisdictions

Australia

A2.216. In ADC *HSS 177* it was noted that this programme was countervailable, and it was applied to Dalian Steelforce and to non-cooperating exporters. No benefit was established for Hengshui Jinghua. 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.

A2.217. 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 cooperating 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

A2.218. 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 per cent. The programme was also investigated in CBSA *Stainless Steel Sinks*, and a subsidy level was identified.

EU

A2.219. This programme does not appear to have been investigated in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

USA

A2.220. Similar programmes were examined in a number of USDOC proceedings, including: USDOC *Wire Decking* in 2010, subsidy level of 0.01 per cent 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 cooperating exporters ranged from no subsidy to 0.39 per cent, with higher levels based on AFA in some cases. This programme does not appear to have been covered in USDOC *Stainless Steel Sinks*.

Summary

A2.221. MBIE notes that there is evidence from the ADC *HSS* investigation that a sample manufacturer in the current investigation received a benefit under this programme.

MBIE Analysis and Consideration*Financial Contribution*

A2.222. MBIE concludes that Dalian Steelforce received a financial contribution from the relevant sub-national government body under this programme.

Level of a Benefit

A2.223. 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 per cent, which is negligible, and too small to be of any account.

Specificity

A2.224. The programme is limited to SMEs so is specific in that eligibility is limited to certain enterprises.

Conclusions

A2.225. MBIE's 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

A2.226. However, the levels of subsidy calculated for Dalian Steelforce are negligible, too small to be of any account, being less than 0.01 per cent.

14. Jinzhou District Research and Development Assistance Programme

A2.227. Jinzhou District is a prefecture-level city of Liaoning Province. Dalian Steelforce is based in Liaoning Province in Jinzhou District.

Application

A2.228. 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).

Manufacturers Response

Dalian Steelforce

A2.229. 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.

A2.230. 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.

A2.231. 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

A2.232. The other sample manufacturers are not located in the Jinzhou District and would not, therefore, be eligible for this programme.

Secondary Information

Other Jurisdictions

Australia

A2.233. 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

A2.234. This programme does not appear to have been covered in any CBSA investigations.

EU

A2.235. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

A2.236. This programme does not appear to have been covered in any USDOC investigations.

Summary

A2.237. 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.

MBIE Analysis and Consideration*Financial Contribution*

A2.238. Dalian Steelforce has reported that it has not received a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.239. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturer.

Benefit

A2.240. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.241. In the absence of a financial contribution there is no need to establish that any subsidy is specific.

Conclusions

A2.242. MBIE's 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**

A2.243. 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 per cent and 0.06 per cent identified for USDOC *Concrete Steel Wire Strand* (2010) and USDOC *Steel Wheels* (2012) respectively.

Manufacturer Responses*Dalian Steelforce*

A2.244. 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.

- A2.245. 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

- A2.246. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

- A2.247. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

- A2.248. 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.
- A2.249. The Statement of Essential Facts for *ADC Steel Reinforcing Bar* recorded that the ADC found evidence that one cooperating 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 per cent 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.
- A2.250. 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

- A2.251. 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 per cent. In a number of other cases a duty estimate was used on the same basis as for CBSA *Concrete Reinforcing Bar*.

EU

A2.252. This programme does not appear to have been investigated in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

A2.253. In USDOC *Steel Wheels* (2012), the USDOC found a subsidy rate of 0.06 per cent 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 per cent 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.

Summary

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.

Industry Reports

A2.255. 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

A2.256. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.257. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

Level of a Benefit

A2.258. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.259. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

A2.260. MBIE's 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

A2.261. 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.

Manufacturer Responses

Dalian Steelforce

A2.262. 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.

A2.263. 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

A2.264. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

A2.265. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

A2.266. 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.

A2.267. The Statement of Essential Facts for ADC *Steel Reinforcing Bar* recorded that the ADC found no evidence to indicate that cooperating exporters had benefited from the programme during the investigation period.

A2.268. 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

- A2.269. 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.
- A2.270. 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 per cent. 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

- A2.271. 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 per cent 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 per cent 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 per cent.
- A2.272. 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

- A2.273. 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 per cent to 44.91 per cent, with 0.55 per cent being the AFA rate set in USDOC *Steel Wire Rod* in 2014.

Summary

- 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.

Industry Reports

A2.275. The Wiley Rein and SIC Reports made no specific reference to this programme.

MBIE Analysis and Consideration

Financial Contribution

A2.276. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.277. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

Level of a Benefit

A2.278. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.279. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

A2.280. MBIE's 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

A2.281. Tianjin Youfa is the only sample manufacturer located in Tianjin Municipality.

Application

A2.282. 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.

A2.283. 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 per cent identified in *USDA Seamless Pipe*, and a total subsidy level of 0.61 per cent 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 per cent.

Manufacturer Responses*Tianjin Youfa*

- A2.284. 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

- A2.285. The other sample manufacturers are not located in the Tianjin Binhai New Area and would not, therefore, be eligible for this programme.

Secondary Information**Other Jurisdictions***Australia*

- A2.286. 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

- A2.287. 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 per cent. The CBSA determined that one of the cooperating 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.

- A2.288. 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 per cent.

EU

- A2.289. 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 per cent for a cooperating company in relation to the Science and Technology Fund assistance provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area, with an additional 0.58 per cent related to an accelerated depreciation programme.

- A2.290. 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

- A2.291. As noted above, this programme was covered in USDOC *Seamless Pipe* in 2010 when a subsidy of 0.03 per cent was established for one cooperating exporter in relation to the science and technology fund, and 0.58 per cent 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 per cent. 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 per cent and 2.55 per cent being established for cooperating exporters. Similar rates were established in USDOC *Seamless Pipe* in 2010.

Summary

- A2.292. 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.

MBIE Analysis and Consideration

Financial Contribution

- A2.293. Tianjin Youfa has advised that it has not received any grants under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturer is accurate.
- A2.294. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to Tianjin Youfa.

Level of a Benefit

- A2.295. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

- A2.296. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

- A2.297. MBIE's 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

A2.298. 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. NZ Steel cited Canadian and US cases, and identified a subsidy rate of 0.21 per cent from the US *Steel Wheels* case.

Manufacturers Responses

Dalian Steelforce

A2.299. 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.

A2.300. 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

A2.301. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Tianjin Youfa

A2.302. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

A2.303. 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

A2.304. 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 per cent. A similar approach was followed in the CBSA *Galvanised Steel Wire* case.

EU

A2.305. This programme does not appear to have been covered in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

A2.306. 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 per cent.

Summary

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.

Industry Reports

A2.308. The Wiley Rein and SIC Reports made no specific reference to this programme.

MBIE Analysis and Consideration

Financial Contribution

A2.309. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.310. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution by a government or any public body to the sample manufacturers.

Level of a Benefit

A2.311. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.312. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

A2.313. MBIE’s 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

A2.314. A finding of subsidisation in relation to loans would require that evidence is available to confirm that:

- a loan was provided at preferential rates
- 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

A2.315. 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

A2.316. 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.

Manufacturers Responses

Dalian Steelforce

A2.317. 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] per cent 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

A2.318. The other sample manufacturers are not located in the Northeast region and would not, therefore, be eligible for this programme.

Secondary Information

Other Jurisdictions

Australia

A2.319. This programme was not covered in ADC HSS which included Dalian Steelforce. The programme does not appear in the ADC Subsidies Register.

Canada

A2.320. 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 per cent.

EU

- A2.321. 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 per cent.
- A2.322. 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

- A2.323. 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 per cent and 10.54 per cent imposed, based on AFA, for investigations since 2009, mainly involving steel products, and with higher rates in earlier years. In USDOC *Corrosion Resistant Steel* the AFA rate was based on USDOC *Coated Paper* and USDOC *Certain Magnesia Carbon Bricks*. MBIE has not been able to find the relevant findings in those reports.

Summary

- A2.324. 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.

Industry Reports

- A2.325. 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*

- A2.326. MBIE has satisfied itself that Dalian Steelforce did not receive any loans under this programme, so there is no financial contribution.

Government or Public Body

- A2.327. In the absence of a financial contribution there is no need to determine if any financial contribution is provided by a government or any public body.

A2.334. The applicable interest rates were verified during the visit to Dalian Steelforce.

Jinan Mech

A2.335. 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.”

A2.336. 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] per cent is greater than the current PBOC benchmark rate of 4.35 per cent which is used by MBIE (and by the ADC and CBSA) to indicate whether loans are being made at preferential rates. The loans were for the purchase of raw materials.

A2.337. An entrusted loan is one organised 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.⁴⁵

A2.338. 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

A2.339. 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] per cent to [REDACTED] per cent, with a weighted average of [REDACTED] per cent, all above the benchmark rate of 4.35 per cent which is used by MBIE (and by the ADC and CBSA) to indicate whether loans are being made at preferential rates.

A2.340. 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, nine with less than a majority shareholding (but still at significant levels in most cases), and one foreign-owned (Hong Kong) bank. The loans were for working capital.

⁴⁵ From Investopedia at <https://www.investopedia.com/terms/e/entrusted-loan.asp>.

Secondary Information

Other Jurisdictions

Australia

- A2.341. 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.
- A2.342. 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 cooperating 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,⁴⁶ 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

- A2.343. 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. The publicly-available information does not identify the levels of benefit established for each of the four exporters. The CBSA consideration of whether loans were provided by a public body was based on information relating to the Export-Import Bank of China (which MBIE identified as a policy bank in *Galvanised Steel Coil*).
- A2.344. 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

- A2.345. 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

⁴⁶ China: Trade Policy Review, Report by the Secretariat, 2014 WTO document WT/TPR/S/300.

that SOCBs were controlled by the GOC and exercised government authority in a manner that their actions could be attributed to the State, and should be considered to be public bodies. The EC also concluded that private banks were instructed to carry out preferential lending. The EC resorted to facts available to determine the level of subsidy, and assumed that all firms in China would be accorded 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 per cent, with non-cooperating companies receiving the highest rate for an entity related to one of the sampled companies of 0.97 per cent.

- A2.346. In *EC Hot-Rolled Flat Products*, the EC undertook a detailed analysis of the provision of loans and reached 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 per cent for sampled exporting producers.

USA

- A2.347. 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 per cent to 1.53 per cent, 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.

Summary

- A2.348. Other jurisdictions have classified SOCBs as “public bodies” according to their interpretations of the WTO jurisprudence, and have investigated loans provided by them. The benchmarks used by Australia and Canada are the loan benchmark interest rate issued by the PBOC for RMB denominated loans. The EU and the USA use different benchmarks.

Industry Reports

- A2.349. 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

- A2.350. The primary information is that Dalian Steelforce and Tianjin Youfa received loans from banks which have degrees of government ownership, but did not receive loans from “policy banks” – the Agricultural Development Bank of China, the Export-Import Bank of China, or the China Development Bank. The loans received were for working capital, including the purchase of raw materials.

- A2.351. MBIE is satisfied that Jinan Mech did not receive loans that need to be considered under this programme.
- A2.352. The interest rate paid by Dalian Steelforce is above the current PBOC benchmark rate of 4.35 per cent⁴⁷ 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 providing a benefit.
- A2.353. The interest rates paid by Tianjin Youfa are above the current PBOC benchmark rate of 4.35 per cent 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 providing a benefit.
- A2.354. MBIE is satisfied that on the basis of the information available, 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.

Government or Public Body

- A2.355. MBIE is satisfied that the cooperating sample manufacturers did not receive loans from policy banks, which MBIE had concluded in an earlier investigation were public bodies, and which provide loans for development purposes.
- A2.356. As outlined in Annex 4:II, MBIE has reviewed the status of the banks providing loans to the cooperating sample manufacturers, and is satisfied that they do not meet the criteria for determination as public bodies, i.e. they are not entities that possess, exercise or are vested with governmental authority and exercise governmental functions. In undertaking this review, MBIE has noted the secondary information from other jurisdictions outlined above, and does not consider that on the basis of that information it can conclude that SOCBs meet the criteria set out by the Appellate Body for determining a public body, as noted in Annex 4:II.

Provision of a benefit

- A2.357. 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.
- A2.358. 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

⁴⁷ Obtained from <http://www.global-rates.com/interest-rates/central-banks/central-bank-china/psc-interest-rate.aspx> on 23 May 2018.

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.

- A2.359. 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.
- A2.360. 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).
- A2.361. 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.
- A2.362. MBIE considers that the approach based on PBOC's benchmark rate, adopted by the ADC and the CBSA, is consistent with the requirements of Article 14(b) of the SCM Agreement, and 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 compared with a comparable commercial loan which the firm could actually obtain on the market, 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.
- A2.363. 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

- A2.364. 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

- A2.365. Having considered all of the evidence available to it, MBIE's conclusion is that with regard to this programme there is no financial contribution by a government or any public body that provides a benefit, i.e. there are no preferential interest rates for loans provided to sample manufacturers.
- A2.366. MBIE 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

- A2.367. NZ Steel 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 per cent.

Manufacturer Responses

Dalian Steelforce

- A2.368. Dalian Steelforce advised that it did not receive any loans or benefits under this programme.

Jinan Mech

- A2.369. Jinan Mech advised that it did not receive any benefits under this programme.

Tianjin Youfa

- A2.370. This programme was not included in those identified by Tianjin Youfa as being subsidies received.

Secondary Information

Other Jurisdictions

Australia

- A2.371. 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

- A2.372. 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

- A2.373. This programme was not covered in the EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products* investigations.

USA

A2.374. 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 per cent 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.

Summary

A2.375. 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.

MBIE Analysis and Consideration*Financial Contribution*

A2.376. None of the sample manufacturers reported receiving a grant under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.377. MBIE concludes that on the basis of the information available, there is no evidence of a financial contribution to the sample manufacturers.

Government or Public Body

A2.378. In the absence of a financial contribution there is no need to determine if any financial contribution is provided by a government or any public body.

Level of a Benefit

A2.379. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.380. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusions

A2.381. MBIE's 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***

C	Applic. #	Government provides goods or services or purchases goods
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)

A2.382. 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 for LTAR
- the input provider was a government or any public body
- the provision of goods at LTAR conferred a benefit on the purchaser
- the prices paid were specific to an enterprise or industry.

A2.383. The considerations set out in this section have taken account of matters raised in comments made on the Supplementary EFC Report, as set out in Annex 4.II.

Application

A2.384. NZ Steel 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 per cent in CBSA *Steel Piling Pipe* and 60.22 per cent in USDOC *Steel Grating*.

Manufacturer Responses

Dalian Steelforce

A2.385. In its questionnaire response Dalian Steelforce noted that the legitimacy of this programme rested 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.

A2.386. Dalian Steelforce provided details of all of its purchases of HRC, virtually all 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.

Hengshui Jinghua

A2.387. Hengshui Jinghua did not respond to the questionnaire, but in ADC *HSS* this programme was found to be countervailable, and a subsidy level of 4.6 per cent was established, based on the conclusion that suppliers of HRC were public bodies, and that prices of HRC were at less than adequate remuneration. The ADC verification visit report for Hengshui Jinghua is not available but it appears from a submission by the company to the ADC that its HRC suppliers include private companies.

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], which were only about [REDACTED] of its total purchases, 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 stated that [REDACTED] per cent of its narrow strip purchases and [REDACTED] per cent of its HRC purchases were from SIEs, with the overall total being a little over [REDACTED] per cent.

Secondary Information**Other Jurisdictions***Australia*

A2.390. 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.

A2.391. In the most recent review, ADC *HSS* 419, it was confirmed that countervailing duties do not apply to Dalian Steelforce,⁴⁸ while the total subsidy rate applicable to Tianjin Youfa was

⁴⁸ From ADC Report 245A: "Dalian Steelforce applied to the Federal Court of Australia for judicial review of the Ministerial decisions made in relation to reinvestigation 203. In August 2015 the Federal Court of Australia (FCA) handed down its decision, which included a finding that one subsidy program found to be countervailable in REP 177 and REP 203 (program 20 - hot rolled steel provided by government at less than adequate remuneration) was not a countervailable subsidy for the purposes of subsection 269TAAC(4) of the Act."

reduced to 1.3 per cent for programmes where Tianjin Youfa was adjudged to be receiving a benefit, which did not include the programme relating to the provision of HRC at LTAR (possibly in both cases referring to the need to avoid duplication with anti-dumping duties based on the use of surrogate cost data). MBIE also notes that in this review the ADC was satisfied that Tianjin Youfa had accurately identified its suppliers that met the definition of an SIE.

- A2.392. 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

- A2.393. 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).

- A2.394. 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 per cent. 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

- A2.395. 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

To implement the FCA decision, the then Parliamentary Secretary reconsidered the dumping and countervailing duty notices that were issued in respect of Dalian during REP 177, to ensure that program 20 was excluded from Dalian’s subsidy margin. In doing so, the Parliamentary Secretary found that Dalian’s subsidy margin was negligible, and in February 2016 gave public notice of her decision under subsection 269ZZM(1) that the countervailing duty notice in respect of Dalian should be revoked retrospectively. The Parliamentary Secretary determined that Dalian’s dumping margin had changed and consequently the fixed and variable component of IDD applicable to Dalian’s exports had changed (with a dumping margin of 10.6 per cent), and that this would be the effective rate of duty applicable to Dalian.”

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.

- A2.396. 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, irrespectively of whether the inputs were procured domestically or imported or procured from related or unrelated companies.

USA

- A2.397. The USDOC has investigated the provision of input materials at LTAR in a wide range of cases, including some involving steel products. 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 per cent, 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 per cent and no subsidy were found for cooperating exporters, and in USDOC *Steel Cylinders* (2012) the rate found was 0.13 per cent for a cooperating exporter. In USDOC *Corrosion-Resistant Steel* the subsidy rate established for the cooperating exporter was 23.74 per cent. The USDOC based this finding on AFA in regard to the determination that input producers were “authorities”, i.e. “public bodies”; the specificity of the provision of inputs at LTAR; and the establishment of an appropriate benchmark as a basis for establishing the level of benefit. The USDOC did use prices and sales from the cooperating exporter to compare with the AFA-based benchmark to establish the actual benefit level, (rather than relying on its approach to using levels from other programmes or investigations to establish benefit levels in the absence of such information), but the overall outcome is still a level of subsidy that is based on use of AFA.

Summary

- A2.398. Other jurisdictions have classified SOCBs as “public bodies” according to their interpretations of the WTO jurisprudence and their analysis of Chinese law and policy, and have found subsidy levels in respect to inputs provided at LTAR. The EC found no subsidy in one investigation, but the EC, the ADC and the CBSA found subsidies in other investigations, with varying reliance on “facts available”. In USDOC investigations significant subsidy levels were found in cases where AFA was relied on for some or all aspects of the findings.

Industry Reports

- A2.399. 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.

WTO Dispute Settlement Reports

- A2.400. The WTO Appellate Body has found in two dispute proceedings⁴⁹ that the USDOC had acted inconsistently with the SCM Agreement in finding the relevant input providers in China and India to be “public bodies”, while in a third⁵⁰ it concluded that the USDOC had acted inconsistently with the SCM Agreement in its approach to using external benchmarks.
- A2.401. A summary of the relevant reports and a discussion of their application in the current case are set out in Annex 4.II.

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

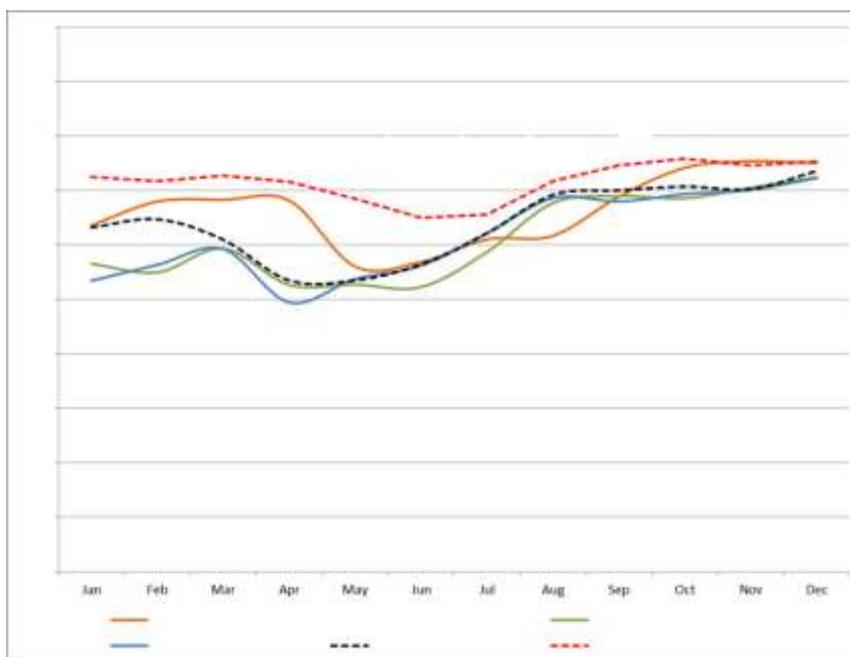
- A2.402. In Section 7(4) of the Act, reflecting Article 14(d) of the SCM Agreement, adequate remuneration is determined in relation to prevailing market conditions in the country concerned for the goods or services, taking into account price, quality, availability, marketability, transportation, and other conditions of the provision or purchase.
- A2.403. 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. Purchases from SOEs/SIEs made up less than 4 per cent of the total for the three cooperating sample manufacturers (obviously affected by the significantly higher volumes of HRC and strip purchased by Tianjin Youfa compared with the others).
- A2.404. Bearing in mind that the prices paid by sample manufacturers set out in Chart A2:1 below are based on many individual transactions, the weighted monthly averages, compared with the simple averages of the prices reported by SteelBenchmark,⁵¹ indicate a commonality of levels and trends. The SteelBenchmark world export prices are FOB prices while the other prices are ex works prices so, depending on the location of the price provider, buyers would need to take account of ocean shipping and other costs (the location of price providers is confidential to SteelBenchmark).

⁴⁹ DS379 and DS436.

⁵⁰ DS437.

⁵¹ SteelBenchmark is a service product of World Steel Dynamics, which provides “a reliable index of the current ‘standard’ or ‘base’ transaction prices for use by participants in the steel industry.” SteelBenchmark was used by NZ Steel in its application. See <http://steelbenchmarker.com/>.

Chart A2:1: HRC Prices 2017
Monthly averages, RMB/MT



Non-confidential summary: legend identifiers removed; Y axis values removed; chart line for pre-galvanised HRC removed

- A2.405. Prices and trends for black HRC appear to be generally consistent with ex-works prices for hot-rolled band reported by industry analysts for 2017, and the world export prices reported by the same analysts). The higher prices for pre-galvanised HRC reflect product differences. MBIE concludes from this that HRC prices were similar, irrespective of whether the purchase was from SIEs or private suppliers in China, and while there were no actual imports of HRC by the sample manufacturers, the prices paid for domestic product and the trends in prices were not dissimilar to world export prices, subject to the need to take account of any ocean freight costs. This conclusion reflects the findings in *EC Hot-Rolled Flat Products* to the extent that that investigation was considering iron ore, coke and coking coal, and concluded that prices from the inputs purchased were similar irrespective of whether the goods were procured domestically or imported or procured from related or unrelated companies.
- A2.406. On the basis of its consideration of the information available from sample manufacturers and from information from its research, MBIE is satisfied that input materials are not being provided at LTAR.

Government or Public Body

- A2.407. As outlined in Annex 4:II, MBIE has reviewed the status of suppliers of HRC and is satisfied that they do not meet the criteria for determination as public bodies, i.e. they are not entities that possess, exercise or are vested with governmental authority and exercise governmental functions. In undertaking this review, MBIE has noted the secondary information from other jurisdictions outlined above, and does not consider that on the basis of this information it can conclude that suppliers of HRC meet the criteria set out by the Appellate Body, as noted in Annex 4:II.

Level of a Benefit

A2.408. In the absence of a financial contribution by a government or any public body there is no benefit level to be established. The issues relating to benchmarks raised by NZ Steel in providing comments on the Supplementary EFC Report are addressed in Annex 4:II.

Specificity

A2.409. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.410. MBIE is satisfied that the information 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 less than adequate remuneration.

A2.411. MBIE 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

A2.412. 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 at preferential rates
- 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

A2.413. 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.” NZ Steel 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 US investigations, with subsidy levels identified as 0.01 per cent and 2.67 per cent from USDOC *Steel Wire Strand* and USDOC *Seamless Pipe*, respectively.

Manufacturer Responses*Dalian Steelforce*

A2.414. 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

- A2.415. 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.
- A2.416. 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

- A2.417. 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.
- A2.418. 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].

MBIE Research

- A2.419. 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.
- A2.420. 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.

Secondary Information**Other Jurisdictions***Australia*

- A2.421. 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.

- A2.422. In the ADC Subsidies Register it is noted that the provision of land-use rights at LTAR was found to be not countervailable in ADC *Aluminium Extrusions*.

Canada

- A2.423. 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

- A2.424. 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 per cent for cooperating exporters and 1.36 per cent for non-cooperating exporters, based on the highest subsidy rate established for an entity related to one of the cooperating exporters.
- A2.425. 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 per cent to 7.63 per cent for the sampled exporters, based on comparisons with land prices in Taiwan.

USA

A2.426. The USDOC 2010 investigation of *Seamless Pipe* found subsidy levels of 2.67 per cent for a cooperating exporter for the provision of land-use rights for LTAR in particular areas in Tianjin. The subsidy level of 0.01 per cent 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.

Summary

A2.427. Other jurisdictions have found that this programme has provided a subsidy in specified cases.

Previous Investigations

A2.428. 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.

A2.429. 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.

A2.430. 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.

A2.431. 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.

Industry Reports

A2.432. 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 Analysis and Consideration

A2.433. 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

A2.434. 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.

A2.435. 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

A2.436. 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.

A2.437. 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. MBIE notes that there may well be situations where there is only one customer for land-use rights, in which case setting the price by quotation would be appropriate. The information available to MBIE from this and previous investigations is that prices have been based on valuation processes.

- A2.438. In *EC Hot-Rolled Flat Products*, it was noted by the EC that one of the sample exporters had received refunds to compensate for work done by the company on basic infrastructure on the land for which rights were purchased. The EC suggested that this contradicted the claim that prices reflect supply and demand. MBIE does not consider that this sort of refund necessarily constitutes a subsidy nor does it confirm or otherwise that the price determined for land-use rights is not consistent with the requirements of Chinese law.
- A2.439. 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. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate in relation to the provision of land-use rights at LTAR.

Refunds to Tianjin Youfa

- A2.440. With regard to the refunds received by Tianjin Youfa, the verification team clarified from Tianjin Youfa that the programme allowed Tianjin Youfa to pay a proportion of the total land-use fee in 2008 with the remainder being considered as a land transfer fee remit, with payments allocated over a 600 month (50 years) period. This effectively provides a benefit. Tianjin Youfa was unable to identify the reason for this structuring in the land-use fee payable, but suspected that it was due to Tianjin Youfa's location in an Industrial Zone.
- A2.441. MBIE's 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 per cent.

Specificity

- A2.442. MBIE has concluded in previous investigations 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 is no other evidence of price differentiation that 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.
- A2.443. 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. Tianjin Youfa has agreed that the refunds provide a specific subsidy.

Conclusion

- A2.444. MBIE is satisfied that the information available that is considered reliable 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.

A2.445. MBIE's conclusion is that there is a financial contribution by a government or any public body which provides a benefit to Tianjin Youfa, and is specific, so there is a countervailable subsidy in respect to the programme: Provision of land use rights, land rentals and land purchases.

A2.446. The level of the subsidy established for Tianjin Youfa is 0.0546 per cent.

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 at preferential rates
- 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

A2.447. 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 per cent and 4.22 per cent identified from USDOC *Kitchen Appliance Shelving* and USDOC *Seamless Pipe* respectively.

Manufacturer Responses

Dalian Steelforce

A2.448. 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.

A2.449. Dalian Steelforce provided details of its electricity payments to China Network Liaoning Province Dalian Electric Power Supply Company. The verification team verified that payments for water and electricity matched charges for industrial users from the price lists of the relevant authorities.

Jinan Mech

A2.450. 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.

- A2.451. 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.
- A2.452. 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

- A2.453. 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.
- A2.454. The verification team used the Tangshan factory as an example for electricity prices. The company explained that each month it estimates the electricity costs that will be payable, and electricity costs are pre-paid in a company account. Each month the electricity company (National Electricity Net Tangshan Branch) sends an invoice which details the amount of electricity used and the cost. This invoice amount is placed on a sub-ledger and the amount is paid to the electricity company. The verification team sighted a detailed electricity invoice and verified the price per unit of electricity against a publicly available electricity price list.

MBIE Research

- A2.455. 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.

- A2.456. According to its website⁵² the State Grid Corporation of China (SGCC) was founded on 29 December 2002 as a pilot state-owned corporation by the State Council. As a backbone SOE that may affect national energy safety and economic lifelines, SGCC's core business is to build and operate power grids and provide secure and reliable power supply for the development of the society. SGCC has registered capital of RMB 200 billion and services an area covering 26 provinces, autonomous regions and municipalities directly under the jurisdiction of the Central Government, which equals to 88 per cent of the national territory. Its president is the legal corporate representative of SGCC, which owns and manages five regional power grid companies and 24 provincial electric power companies, including Jiangsu Electric Power Company.
- A2.457. 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.
- A2.458. MBIE has noted the paper "Analysis of China's Power Market Structure and Market Entities' Business Interface under the reform of Electric Power System,"⁵³ 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.

Secondary Information

Other Jurisdictions

Australia

- A2.459. ADC *HSS*, which covered three of the sample manufacturers, did not address the provision of electricity for LTAR.
- A2.460. In ADC *Steel Reinforcing Bar*, the ADC investigated the provision of 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.

⁵² <http://www.sgcc.com.cn/ywlm/>.

⁵³ 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>.

Canada

A2.461. 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

A2.462. 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 per cent and 0.17 per cent for non-cooperating exporters based on the highest rate established for an entity related to a cooperating exporter.

A2.463. 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

A2.464. 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 per cent, 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 per cent and 4.22 per cent 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 per cent in *USDOC Stainless Steel Strip*, and 0.75 per cent and 0.44 per cent in *USDOC 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP)*.

Summary

A2.465. Some of the other jurisdictions have found a subsidy in respect to this programme, but others have not.

Previous Investigations

A2.466. 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.

Industry Reports

A2.467. The Wiley Rein Report claims that “it is widely known” that particular industries, including steel are eligible for discounted electricity rates in the effort to promote production. It is stated that prices charged by power companies do not cover marginal costs and cites a specific example of a large steel producer reporting electricity subsidies in its 2004 Annual Report. The SIC Report also claims that subsidies are provided through electricity prices, as reported by a number of companies in their financial statements.

MBIE Analysis and Consideration

A Financial Contribution by a Government or any Public Body

A2.468. MBIE is satisfied that in China electricity is provided by a government or any public body, but on the basis of information available there is no positive evidence that a financial contribution has been provided through the provision of electricity at LTAR. The information available, confirmed in verification visits, indicates that the prices available to the sample manufacturers are standard charges by the supplier for enterprises in the relevant locations. Information from other jurisdictions tends to confirm this view.

Level of a Benefit

A2.469. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.470. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusion

A2.471. MBIE concludes that on the basis of information available the sample manufacturers have not received a financial contribution with regard to electricity which provides a benefit through the provision of electricity at a less than adequate remuneration.

A2.472. MBIE concludes that since there is no financial contribution by a government or any public body which provides a benefit, there is no countervailable subsidy in respect to the programme: Provision of utilities (electricity) for LTAR.

Water

A2.473. A finding of subsidisation in relation to the price of water would require that evidence is available to confirm that:

- a producer purchased water at preferential rates
- 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

A2.474. 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.

Manufacturer Responses

Dalian Steelforce

A2.475. 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. The verification team verified that payments for water and electricity matched charges for industrial users from the price lists of the relevant authorities.

Jinan Mech

A2.476. 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.

A2.477. 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

A2.478. 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.

A2.479. 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.

A2.480. The verification team agreed with Tianjin Youfa to use Tangshan factory as an example for water prices. Tianjin Youfa provided the team with invoices and price lists for water for Tangshan factory. The amount paid by Tianjin Youfa matched that on the government price list.

Secondary Information

Other Jurisdictions

Australia

A2.481. 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

- A2.482. 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

- A2.483. 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 per cent.
- A2.484. Government provision of water was not investigated in *EC Hot-Rolled Flat Products*.

USA

- A2.485. 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 cooperating exporters. Subsidy levels, based on partial or full AFA, have been applied in some cases, with levels up to 20.06 per cent, based on the highest rate established in an earlier investigation for the provision of electricity which was itself based on AFA.

Summary

- A2.486. Investigations based on positive evidence have found no countervailable benefits under this programme.

Industry Reports

- A2.487. 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

- A2.488. MBIE is satisfied that in China water is provided by a government or any public body, but on the basis of information available there is no evidence that a financial contribution has been provided through the provision of water at LTAR. Information from other jurisdictions tends to confirm this view.

Level of a Benefit

- A2.489. In the absence of a financial contribution there is no need to establish the level of benefit.

Specificity

A2.490. In the absence of a financial contribution there is no need to establish whether there is a specific subsidy.

Conclusion

A2.491. MBIE concludes that on the basis of information available the sample manufacturers have not received a financial contribution with regard to water which provides a benefit through the provision of water at a less than adequate remuneration.

A2.492. MBIE 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

A2.493. 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

A2.494. Dalian Steelforce is the only FIE amongst the sample manufacturers.

Application

A2.495. 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 per cent in USDOC *Aluminium Extrusions* and 0.58 per cent in USDOC *Seamless Pipe*.

Manufacturer response

Dalian Steelforce

A2.496. 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 per cent.

Secondary Information

Other Jurisdictions

Australia

A2.497. 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

A2.498. 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

A2.499. This programme does not appear to have been covered in EC *Organic Coated Steel* or EC *Hot-Rolled Flat Products*.

USA

A2.500. 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 per cent 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 per cent based on AFA established of non-cooperating exporters. For the general programme, subsidy levels of 0.01 per cent to 0.58 per cent were found for cooperating exporters in a number of investigations, but none since 2012.

Summary

A2.501. Investigations by other jurisdictions do not provide any reliable evidence that this programme provided a subsidy.

Industry Reports

A2.502. 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

A2.503. 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.

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.

Conclusion

A2.506. MBIE 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

A2.507. This programme applies to HNTEs, and Jinan Mech is the only HNTE among the sample manufacturers.

Application

A2.508. 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 per cent. 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 per cent from EC *Organic Coated Steel*, and 1.44% from US *OCTG*.

Manufacturer Responses

Jinan Mech

A2.509. 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 per cent.

WTO Subsidy Notifications

A2.510. 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 per cent.

MBIE Research

A2.511. 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 per cent." 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.

Secondary Information

Other Jurisdictions

Australia

A2.512. The programme was covered in ADC HSS, and a level of subsidy was found for one cooperating exporter (not Dalian Steelforce, Hengshui Jinghua or Tianjin Youfa). The total level of subsidy for this producer was 2.3 per cent over 14 programmes, giving an average per programme of 0.16 per cent.

A2.513. In ADC *Steel Reinforcing Bar* the ADC found no evidence to indicate that cooperating 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

- A2.514. 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.
- A2.515. 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 per cent. 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 cooperating 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

- A2.516. 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 per cent, which was the arithmetic average of the rates established in EC *Coated Fine Paper*.
- A2.517. 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

- A2.518. 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 per cent, being the standard corporate tax level, covered all tax programmes combined. The subsidy level of 1.44 per cent 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).
- A2.519. 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.

Summary

A2.520. Some investigations by other jurisdictions have determined that this programme provides countervailable subsidies.

Industry Reports

A2.521. 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.

MBIE Analysis and Consideration

Financial Contribution

A2.522. 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

A2.523. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.524. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.525. MBIE's 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

A2.526. 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 per cent.

Manufacturer Responses

Dalian Steelforce

A2.527. 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

- A2.528. 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 per cent.

Tianjin Youfa

- A2.529. Tianjin Youfa advised that it paid the standard tax rate of 25 per cent and did not benefit from any programme providing income tax reduction.

Secondary Information**Other Jurisdictions**

- A2.530. 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

- A2.531. 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 per cent 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 per cent and 0.21 per cent were established for the exporting producers concerned.
- A2.532. 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.

Summary

- A2.533. 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.

Industry Reports

- A2.534. The Wiley Rein and SIC Reports made no specific reference to this programme.

MBIE Analysis and Consideration*Financial Contribution*

- A2.535. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.
- A2.536. MBIE concludes 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

- A2.537. In the absence of a financial contribution there is no benefit level to be established.

Specificity

- A2.538. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

- A2.539. MBIE's 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***

- A2.540. 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 per cent. Thus 10 per cent of income can be deducted when the companies calculate the income tax. NZ Steel cites the EC *Organic Coated Steel* case and the subsidy level it identified of 0.01 per cent.

Manufacturer Responses*Dalian Steelforce*

- A2.541. 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 per cent.

Jinan Mech

- A2.542. 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 per cent.

Tianjin Youfa

A2.543. Tianjin Youfa advised that it paid the standard tax rate of 25 per cent and did not benefit from any programme providing income tax reduction.

MBIE Research

A2.544. 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 per cent 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.

A2.545. 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.

Secondary Information**Other Jurisdictions***Australia*

A2.546. This programme was not investigated in ADC *HSS*, which included Dalian Steelforce, Hengshui Jinghua and Tianjin Youfa.

A2.547. 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.

A2.548. The ADC Subsidies Register notes that ADC *A4 Copy Paper* investigated this programme and found it to be countervailable.

Canada

A2.549. 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 per cent. In CBSA

Large Line Pipe this was one of the 160 programmes considered to be countervailable on a similar basis.

EU

A2.550. 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-cooperating exporters. The level of subsidy so determined was 0.01 per cent.

A2.551. 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 per cent was established for the producer concerned.

USA

A2.552. 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.

Summary

A2.553. 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.

Industry Reports

A2.554. 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

A2.555. 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 per cent.

MBIE Analysis and Consideration

Financial Contribution

A2.556. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that the information provided by the cooperating sample manufacturers is accurate.

A2.557. MBIE concludes 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

A2.558. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.559. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.560. MBIE's 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

A2.561. Dalian Steelforce is the only sample manufacturer located in Liaoning Province, and is the only sample manufacturer designated as an FIE.

Application

A2.562. 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 per cent identified.

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 per cent.

WTO Dispute Settlement Notification

A2.564. WTO document WT/DS358/14 setting out the resolution of matters raised in the dispute (see paragraph 142 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 was included in the confirmation that other tax preferences would not be reinstated.

Secondary Information

Other Jurisdictions

Australia

A2.565. 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

A2.566. 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

A2.567. 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.

A2.568. 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

A2.569. This particular programme was investigated in USDOC *Wire Decking*, with a subsidy established at 0.08 per cent 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*.

A2.570. 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 per cent rate was found in USDOC *Coated Paper* in 2010.

Summary

A2.571. 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.

Industry Reports

A2.572. 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.

MBIE Analysis and Consideration

Financial Contribution

A2.573. MBIE has satisfied itself that Dalian Steelforce did not receive any financial contribution from this programme during the POI.

Level of a Benefit

A2.574. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.575. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.576. MBIE’s 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

A2.577. NZ Steel 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 per cent 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 per cent subsidy level established in it.

Manufacturer Responses

Dalian Steelforce

A2.578. 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 per cent.

Jinan Mech

A2.579. 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 per cent.

Tianjin Youfa

A2.580. Tianjin Youfa advised that it paid the standard tax rate of 25 per cent and did not benefit from any programme providing income tax reduction.

MBIE Research

A2.581. 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 per cent 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 per cent of the cost of intangible assets shall be amortised.”

Secondary Information**Other Jurisdictions***Australia*

A2.582. 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

A2.583. 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 per cent 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

A2.584. 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 per cent for the cooperating exporter, which was applied to non-cooperating companies.

A2.585. 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

A2.586. 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.

Summary

A2.587. 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.

Industry Reports

A2.588. 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.

Other Investigations

A2.589. MBIE investigated this programme in *Steel Reinforcing Bar*, in which one of the sample manufacturers 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

A2.590. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that Dalian Steelforce did not receive any financial contribution from this programme during the POI.

A2.591. MBIE concludes 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

A2.592. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.593. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.594. MBIE's 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

A2.595. 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 NZ Steel.

Manufacturer Responses

Dalian Steelforce

A2.596. 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 per cent.

Jinan Mech

A2.597. 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 per cent.

Tianjin Youfa

A2.598. Tianjin Youfa advised that it paid the standard tax rate of 25 per cent and did not benefit from any programme providing income tax reduction.

MBIE Research

A2.599. 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 per cent." 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.

Secondary Information

Other Jurisdictions

Australia

A2.600. 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

A2.601. 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

A2.602. EC *Organic Coated Steel* and EC *Hot-Rolled Flat Products* did not address this programme.

USA

A2.603. The USDOC has investigated this programme in two steel cases, with a subsidy level of 0.62 per cent 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).

Summary

A2.604. 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.

Industry Reports

A2.605. The Wiley Rein and SIC Reports made no specific reference to this programme.

MBIE Consideration

Financial Contribution

A2.606. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that Dalian Steelforce did not receive any financial contribution from this programme during the POI.

A2.607. MBIE concludes 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 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

A2.611. 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**

A2.612. 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 per cent input VAT paid and the 13 per cent 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 NZ Steel in *ADC Steel Reinforcing Bar*.

- A2.613. 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.

Manufacturer Responses

Dalian Steelforce

- A2.614. Dalian Steelforce advised that it had not imported any equipment or technology since [REDACTED].

Jinan Mech

- A2.615. 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

- A2.616. Tianjin Youfa advised that it did not import equipment or material and did not receive any benefits from programmes providing import tariff reduction, refund, drawback or exemption.

Secondary Information

Other Jurisdictions

Australia

- A2.617. 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.
- A2.618. 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

- A2.619. 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.

A2.620. 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 per cent.

EU

A2.621. The EC *Organic Coated Steel* and EC *Hot-Rolled Flat Products* the investigations appear to have been covered in programme 34 below.

USA

A2.622. 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 cooperating exporters the levels of subsidy found have been low (<1 per cent) 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 2009, the GOC discontinued VAT exemptions under this programme, but companies could still receive import duty exemptions.

Summary

A2.623. 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.

Industry Reports

A2.624. 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 per cent 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

A2.625. 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 per cent export VAT rate.

A2.626. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that Dalian Steelforce did not receive any financial contribution from this programme during the POI.

A2.627. MBIE concludes 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

A2.628. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.629. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.630. MBIE's 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

A2.631. 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 per cent identified.

Manufacturer Responses

Dalian Steelforce

A2.632. Dalian Steelforce advised that it did not receive any benefits under this programme during the POI.

Jinan Mech

A2.633. 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

A2.634. Tianjin Youfa advised that the company had not benefited from any programmes did not receive any benefit in relevant to import tariff reduction, refund or exemption.

Secondary Information

Other Jurisdictions

Australia

A2.635. The programme does not appear to have been included in the ADC Subsidies Register.

Canada

A2.636. This programme does not appear to have been investigated in CBSA cases involving steel products.

EU

A2.637. This programme does not appear to have been investigated in EC cases involving steel products.

USA

A2.638. 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 per cent have been established under AFA for non-cooperating exporters in six cases.

Summary

A2.639. 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.

Industry Reports

A2.640. The Wiley Rein Report includes a section outlining the issues arising from VAT refund programmes.

MBIE Analysis and Consideration*Financial Contribution*

A2.641. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that Dalian Steelforce did not receive any financial contribution from this programme during the POI.

A2.642. MBIE concludes 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 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 FIEs and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries

A2.646. 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

A2.647. 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 per cent and 1.14 per cent established in USDOC *Steel Cylinders* and USDOC *Steel Wire Strand* respectively.

Manufacturer Responses

Dalian Steelforce

A2.648. Dalian Steelforce advised that it has not imported any equipment since [REDACTED].

Jinan Mech

A2.649. 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

A2.650. Tianjin Youfa advised that it did not import equipment or material and did not receive any benefits from programmes providing import tariff reduction, refund, drawback or exemption.

MBIE Research

A2.651. The relevant legislation is the “Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment” (Circular 37)⁵⁴, 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).”⁵⁵ 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.

⁵⁴ <http://www.asianlii.org/cn/legis/cen/laws/cotsccaittpoie931/>.

⁵⁵ <http://www.asianlii.org/cn/legis/cen/laws/ccokipattdowiebts1175/>.

Secondary Information

Other Jurisdictions

Australia

- A2.652. 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.
- A2.653. 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 cooperating exporter of rebar had benefited from the programme during the investigation period.

Canada

- A2.654. 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.
- A2.655. 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 per cent.

EU

- A2.656. 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 per cent based on the arithmetical average for the programme in the *Coated Fine Paper* investigation.
- A2.657. 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 per cent.

USA

A2.658. 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 cooperating exporters were found, ranging from 0.01 per cent to 0.70 per cent.

Summary

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.

Industry Reports

A2.660. 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 Analysis and Consideration*Financial Contribution*

A2.661. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that Dalian Steelforce did not receive any financial contribution from this programme during the POI.

A2.662. MBIE concludes 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

A2.663. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.664. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.665. MBIE's conclusion is that there is no financial contribution by a government or any public body which confers a benefit, so there is no countervailable subsidy in regard to the programme: Import tariff and VAT exemptions for imported equipment in encouraged industries.

35. VAT Rebates on Domestically Produced Equipment

A2.666. 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

A2.667. 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 per cent and EC *Organic Coated Steel*, with a subsidy level from EC *Coated Paper* of 0.04 per cent.

Manufacturer Responses*Dalian Steelforce*

A2.668. Dalian Steelforce advised that it had received VAT exemptions [REDACTED] [REDACTED] acquired between [REDACTED]. The exemption was of the applicable 17 per cent VAT. However, each item of equipment was subject to [REDACTED] [REDACTED] so the benefits would have [REDACTED] [REDACTED]. In these circumstances there is no benefit in 2017. Dalian Steelforce provided details of the amounts concerned.

Jinan Mech

A2.669. 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

A2.670. Tianjin Youfa advised that it did not import equipment or material and did not receive any benefits from programmes providing import tariff reduction, refund, drawback or exemption.

WTO Dispute Settlement Notification

A2.671. 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.

Secondary Information**Other Jurisdictions***Australia*

A2.672. 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 cooperating exporter as the uncooperative exporter subsidy margin for this programme in the Australian case.

Canada

- A2.673. 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 per cent.

EU

- A2.674. In *EC Organic Coated Steel*, the EC noted that the programme provided benefits to FIEs in the form of VAT refunds for purchases of domestically produced equipment, and that the equipment must not fall into the “Non-Exemptible Catalogue” while the value of the equipment must not exceed the total investment limit on the FIE. It was noted that the programme had been countervailed by the EU in *EC Coated Fine Paper* and by the USA in *USDOC Coated Free Sheet*. The EC recorded that the GOC had claimed that this programme was terminated in 2008 but did not provide adequate responses to EC requests for further information. Accordingly, the EC used facts available, being the *EC Coated Fine Paper* investigation, and determined a subsidy level of 0.04 per cent, being the arithmetic average of the rates established in that case.
- A2.675. In *EC Hot-Rolled Flat Products*, the EC found that no sampled exporting producers had received a benefit under this programme.

USA

- A2.676. The programme “VAT rebates on domestically produced equipment” has been investigated in 10 USDOC investigations, but none since 2014. Subsidies have been found for cooperating exporters in three cases, including *USDOC Coated Free Sheet*, which in 2007 was one of the first US countervailing duty investigations involving China.

Summary

- A2.677. 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.

Industry Reports

- A2.678. The Wiley Rein Report included a section on issues arising from China’s VAT refund policies and programmes.

MBIE Analysis and Consideration*Financial Contribution*

- A2.679. None of the sample manufacturers reported receiving a benefit under this programme. MBIE has satisfied itself that Dalian Steelforce did not receive any financial contribution from this programme during the POI.
- A2.680. MBIE concludes 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

- A2.681. In the absence of a financial contribution there is no benefit level to be established.

Specificity

- A2.682. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

- A2.683. MBIE's 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

- A2.684. Jinan Mech is the only sample manufacturer located in Jinan and Shandong Province.

36. Environmental Protection Fund - Jinan**Application**

- A2.685. 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.

Manufacturer Responses*Jinan Mech*

- A2.686. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Secondary Information

Other Jurisdictions

Australia

A2.687. 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

A2.688. 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 per cent.

EU

A2.689. 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 per cent to 0.38 per cent.

USA

A2.690. 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 USDOC *Uncoated Paper*, subsidy levels based on partial-AFA were found for environment protection grants provided by Rizhao City in Shandong Province. In USDOC *Steel Wire Rod*, a subsidy, based on AFA, was found for “Shandong Province’s Environmental Protection Industry R&D Fund.”

Summary

A2.691. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturer in this investigation.

MBIE Analysis and Consideration*Financial Contribution*

A2.692. 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

A2.693. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.694. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.695. MBIE's 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**

A2.696. 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.

Manufacturer Responses*Jinan Mech*

A2.697. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Secondary Information**Other Jurisdictions***Australia*

A2.698. 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

A2.699. The CBSA investigations reviewed do not appear to have covered this programme.

EU

A2.700. 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 per cent and a range of 0.001-0.13 per cent 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.

US

A2.701. 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.

Summary

A2.702. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturer in this investigation.

MBIE Analysis and Consideration*Financial Contribution*

A2.703. MBIE is satisfied that 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

A2.704. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.705. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.706. MBIE’s 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***

A2.707. NZ Steel 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.

Manufacturer Responses*Jinan Mech*

A2.708. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Secondary Information**Other Jurisdictions***Australia*

A2.709. 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

A2.710. The CBSA investigations reviewed do not appear to have covered this programme.

EU

A2.711. 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 per cent and a range of 0.001-0.13 per cent 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.

US

A2.712. 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.

Summary

A2.713. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturer in this investigation.

MBIE Consideration*Financial Contribution*

A2.714. MBIE is satisfied that 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

A2.715. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.716. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.717. MBIE's 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**

A2.718. 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.

Manufacturer Responses*Jinan Mech*

A2.719. Jinan Mech advises that it did not receive any benefits under this programme during the POI

Secondary Information**Other Jurisdictions***Australia*

A2.720. 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

A2.721. 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

A2.722. 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 per cent and a range of 0.001-0.13 per cent 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

A2.723. 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.

Summary

A2.724. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturer in this investigation.

MBIE Analysis and Consideration*Financial Contribution*

A2.725. 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

A2.726. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.727. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.728. MBIE’s 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**

A2.729. NZ Steel 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.

Manufacturer Responses

Jinan Mech

A2.730. Jinan Mech advises that it did not receive any benefits under this programme during the POI

Secondary Information

Other Jurisdictions

Australia

A2.731. 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

A2.732. The CBSA investigations reviewed do not appear to have covered this particular programme.

EU

A2.733. 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 per cent and a range of 0.001-0.13 per cent 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

A2.734. 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 per cent based on AFA for a non-cooperating exporter.

Summary

A2.735. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturer in this investigation.

Industry Reports

A2.736. 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*

A2.737. 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

A2.738. In the absence of a financial contribution there is no benefit level to be established.

Specificity

A2.739. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.740. MBIE's 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**

A2.741. 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.

Manufacturer Responses*Jinan Mech*

A2.742. Jinan Mech advises that it did not receive any benefits under this programme during the POI.

Secondary information**Other Jurisdictions***Australia*

A2.743. 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

- A2.744. 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

- A2.745. 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 per cent and a range of 0.001-0.13 per cent 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

- A2.746. The USDOC investigated a similar programme in *USDOC Steel Wire Strand (2010)* relating to Jiangxi Province, and found a subsidy of 0.02 per cent based on partial-AFA (specificity) for a cooperating exporter.

Summary

- A2.747. There is no recent positive evidence from investigations in foreign jurisdictions which would support a finding of a financial contribution being made to the manufacturer in this investigation.

MBIE Analysis and Consideration

Financial Contribution

- A2.748. MBIE is satisfied that 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

- A2.749. In the absence of a financial contribution there is no benefit level to be established.

Specificity

- A2.750. In the absence of a financial contribution there is no need to consider specificity.

Conclusions

A2.751. MBIE's 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

A2.752. 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.

A2.753. 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

A2.754. 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. In any event, there is some doubt as to whether it is, in fact, a subsidy since it appears to be recompense for managing withholding taxes on employees.

Tianjin Youfa

A2.755. The additional grant programmes reported by Tianjin Youfa 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.

G	Additional Grant Programmes Notified by Tianjin Youfa
	Environmental Protection Programmes
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
	Technology and Research Programmes
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
	Other Programmes
51	Yearly Subsidy for Road Construction
52	Vocational Training Support

A2.756. 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

A2.757. 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.

A2.758. 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

A2.759. 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

A2.760. The level of the grant was divided by the total sales of Branch No. 1, resulting in a subsidy level of less than 0.01 per cent, which is negligible, and too small to be considered as a countervailable subsidy.

Specificity

A2.761. 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

A2.762. MBIE's 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

A2.763. 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.

A2.764. 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 Daqiu Zhuang 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*

A2.765. 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

A2.766. The level of the grant was divided by the total sales of each factory, resulting in a total subsidy level which is less than 0.01 per cent, which is negligible, and too small to be considered as a countervailable subsidy.

Specificity

A2.767. 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

A2.768. MBIE's 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

- A2.769. 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.
- A2.770. 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

- A2.771. 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

- A2.772. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of less than 0.01 per cent, which is negligible, and too small to be considered as a countervailable subsidy.

Specificity

- A2.773. 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

- A2.774. MBIE’s 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

- A2.775. 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.
- A2.776. 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*

A2.777. 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

A2.778. 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 per cent and is negligible, too small to be considered as a countervailable subsidy.

Specificity

A2.779. MBIE is satisfied that, on the basis of information available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.780. MBIE's 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

A2.781. 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.

A2.782. 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*

A2.783. 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

A2.784. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0354 per cent.

Specificity

A2.785. MBIE is satisfied that, on the basis of information available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.786. MBIE's 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.

A2.787. The level of subsidy established for Tianjin Youfa is 0.0354 per cent.

47. Industrial Technical Transformation Subsidy

A2.788. 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.

A2.789. 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*

A2.790. 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

A2.791. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0118 per cent.

Specificity

A2.792. MBIE is satisfied that, on the basis of information available, the programme is explicitly specific, since it is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.793. MBIE's 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.

A2.794. The level of subsidy established for Tianjin Youfa is 0.0118 per cent.

48. Technology Reformation Subsidy from Tangshan City, Fengnan District Science and Technology Bureau

A2.795. 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.

A2.796. 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

A2.797. 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

A2.798. 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% per cent, which is negligible, and too small to be considered as a countervailable subsidy.

Specificity

A2.799. MBIE is satisfied that, on the basis of information available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.800. MBIE’s 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

A2.801. 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.

A2.802. 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

A2.803. 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

A2.804. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0125 per cent.

Specificity

A2.805. MBIE is satisfied that, on the basis of information available, the programme is explicitly specific, since it is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.806. MBIE's 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.

A2.807. The level of subsidy established for Tianjin Youfa is 0.0125 per cent.

50. Research Fund from Chengan County Finance Centre

A2.808. 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.

A2.809. 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*

A2.810. 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

A2.811. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0119 per cent.

Specificity

A2.812. MBIE is satisfied that, on the basis of information available, the programme is explicitly specific since it is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.813. MBIE's 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.

A2.814. The level of subsidy established for Tianjin Youfa is 0.0119 per cent.

Other Programmes

51. Yearly Subsidy for Road Construction

A2.815. 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.

A2.816. Information relating to the legal basis, eligibility criteria and application process was not provided by Tianjin Youfa.

A2.817. 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

A2.818. 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

A2.819. The level of the grant was divided by the total sales of the factory, resulting in a total subsidy level of 0.0030 per cent, which is less than 0.01 per cent and is negligible, too small to be considered as a countervailable subsidy.

Specificity

A2.820. MBIE is satisfied that, on the basis of information available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.821. MBIE's 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

A2.822. 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

A2.823. 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

A2.824. 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 per cent, which is negligible, and too small to be considered as a countervailable subsidy.

Specificity

A2.825. MBIE is satisfied that, on the basis of information available, the programme is limited to enterprises in a specific geographical area and is in turn limited to particular activities.

Conclusion

A2.826. MBIE's 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.

II. Categorisation of Programmes

The following table sets out the categorisation of programmes on the basis set out in section 4.2.5.

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
1	Debt-to-Equity Swaps	X	X			
2	Dividend tax exemption between qualified resident enterprises					
3	Equity Infusions	X	X			
4	Unpaid Dividends	X	X			
5	"Large and Excellent" Enterprises Grant			X		
6	2008 National Science & Technology Support Fund			X	X	
7	Advanced Science/ Technology Enterprise Grant			X		
8	Assistance for Optimizing the Structure of Import/Export of High- Tech Products					
9	Assistance for Technology Innovation - R&D Project					
10	Award for Advanced Enterprises			X		
11	Award for Baotou Rare Earth High and New Technology Industrial Development Zone for Excellent Construction Projects	X		X		
12	Awards for the Contributions to Local Economy and Industry Development			X		
13	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"					
14	Business Bureau 2012 Market Monitoring System of Subsidies			X	X	
15	Circular on Issuance of Management Methods for Foreign Trade Development Support Fund					15/141
16	Debt Forgiveness					
17	Energy Saving Grant 2008				X	
18	Enterprise Technology Centers (e.g. Nanjin City and Jinnan District)			X		
19	Export Assistance Grant					
20	Export Brand Development Fund				X	
21	Export Credit Subsidy Programs: Export Buyer's Credits			X		
22	Export Grant 2006, 2007, 2008				X	
23	Financial Special Fund for Supporting High and New Technology Industry Development Project			X		
24	Foreign Trade Development Fund Program (FTDF) - Grants					
25	Foreign Trade Grant 2008				X	
26	Fund for SME Bank-Enterprise Cooperation Projects	X	X			
27	Funds for Outward Expansion of Industries in Guangdong Province	X	X			
28	Government Export Subsidy and Product Innovation Subsidy					

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
29	Grant - Cleaning-production Qualified Enterprise Reward			X		
30	Grant - Ecological Garden Enterprise Reward			X		
31	Grant - Large Taxpayer Award			X		
32	Grant – Municipal Construction Reward			X		
33	Grant - Patent Application Assistance					
34	Grant - Provincial Foreign Economy and Trade Development Special Fund			X		
35	Grant - Provisional Industry Promotion Special Fund			X		
36	Grant - Resources Conservation and Environment Protection Grant			X		
37	Grant - State Service Industry Development Fund			X		
38	Grants for Export Activities	X	X			
39	Grants for International Certification			X		
40	Grants to Privately-Owned Export Enterprises	X		X	X	
41	Grants Under Regulations for Export Product Research and Development Fund Management					
42	Grants under the Science and Technology program of Hebei Province	X			X	
43	Guaranteed Growth Fund			X		
44	International Market Fund for Small- and Medium-sized Export Companies) [Matching Funds for International Market Development for SMEs)					
45	Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees					
46	Miscellaneous Grants			X		
47	Modern Service Grant			X		
48	Municipal Government - Exhibition Grant			X		
49	Municipal Government - Export Grant			X		
50	Municipal Government - Insurance Fee Grant			X		
51	National Environmental Protection and Resources Saving Program: Grants for the Optimization of Energy Systems			X		
52	National Innovation Fund for Technology Based Firms			X		
53	Pension Fund Grants		X	X		
54	Product Quality Grant			X		
55	Provincial Fund for Fiscal and Technological Innovation			X		
56	Provincial Government - Equipment Grant			X		
57	Provincial Loan Discount Special Fund for SMEs			X		
58	Provincial Scientific Development Plan Fund				X	
59	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments					

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
60	Repaying Foreign Currency Loan by Returned VAT				X	
61	Science and Technology Fund – Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area					61/66/86
62	Small and Medium-sized Enterprise Direct Transfer of Funds -Grant	X	X	X		
63	Special Funds for Development of Science and Technology			X		
64	Special Supporting Fund for Commercialization of Technological Innovation and Research Findings			X		
65	State Special Fund for Promoting Key Industries and Innovation Technologies					
66	Subsidies provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area					61/66/86
67	Subsidy for Promoting Energy-saving Buildings			X		
68	Subsidy for the Technology Development			X		
69	Superstar Enterprise Grant	X	X			
70	Taxpayer Grant			X		
71	Technical Renovation Loan Interest Discount Fund			X		
72	Technology Project Assistance	X	X			
73	The State key technology project fund	X	X			
74	Water Fund Refund/Exemption 2008				X	
75	Export Seller's Credit for High- and New-Technology Products by China EXIM Bank			X		
76	Loan From Local Finance Bureau			X		
77	Policy Lending to particular industries					77/240
78	Preferential Loans Characterized as a Lease Transaction					
79	Preferential Loans for SOEs		X	X		
80	Acquisition of Government Assets at Less than Fair Market Value		X	X		
81	Export Restrictions on raw materials (e.g. Coke)			X		
82	Input Materials Provided by Government at Less than Fair Market Value					
83	Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas			X		
84	Utilities Provided by Government at Less than Fair Market Value					
85	Accelerated Depreciation on Fixed Assets			X		
86	Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin					61/66/86
87	Award for Excellent Enterprise			X		
88	City maintenance and Construction Taxes and education surcharges for Foreign Invested					

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
	Enterprises					
89	Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas	X	X		X	
90	Corporate Income Tax Reduction for New High-Technology Enterprises					
91	Deed Tax Exemptions For Land Transferred through Merger or Restructuring			X		
92	Exemption of Tariff and Import VAT for the Imported Technologies and Equipment					
93	Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas			X		
94	Export Award			X		
95	Financial Assistance for an Overseas Market Survey			X		
96	Foreign Trade Development Fund Program - VAT Refunds					
97	Foreign Trade Promotion Award			X		
98	Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries					
99	Income tax concessions for the enterprises engaged in the comprehensive resource utilization ('special raw materials')					
100	Income tax credit for the purchase of domestically manufactured production equipment				X	
101	Income Tax Refund for Enterprises Located in Tianjin Jinan Economic Development Area	X		X		
102	Income Tax Refund for Re- investment of FIE Profits by Foreign Investors				X	
103	Local income tax exemption and reduction programs for the productive FIEs				X	
104	Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas	X	X			
105	Medium Size and Small Size Enterprises Development Special Fund	X	X	X		
106	Medium Size and Small Size Trading Enterprises Development Special Fund	X	X	X		
107	Municipal Government - Preferential Tax Program			X		
108	PGOG Tax Offset for R&D	X	X			
109	Preferential income tax policies for particular regions				X	
110	Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose				X	
111	Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or				X	

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
	Business Operations Purchasing Domestically Produced Equipment					
112	Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones				X	
113	Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive				X	
114	Preferential Tax Policies for Foreign Invested Export Enterprises				X	
115	Preferential Tax Policies for the Research and Development of FIEs				X	
116	Preferential Tax Programs for Encouraged Industries or Projects			X		
117	Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices					
118	Refund of Land Transfer Fee			X		
119	Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs			X		
120	Stamp Tax Exemption on Share Transfers under Non-tradable Share Reform			X		
121	Supporting Fund for Becoming Publicly Listed Company			X		
122	Supporting Fund for the "Working Capital" Loan Interest			X		
123	Tax policies for the deduction of research and development expenses					
124	Tax Preference Available to Companies that Operate at a Small Profit					
125	Two free, three half tax exemptions for the productive FIEs				X	
126	VAT and Income Tax Exemption/ Reduction for Enterprises Adopting Debt-to-Equity Swaps				X	
127	VAT rebates on domestically produced equipment					127/128
128	VAT refunds to FIEs purchasing domestically produced equipment					127/128
129	"Two New" Product Special Funds of Guangdong Province	X	X	X		
130	2007 Technology Innovation Award	X	X	X	X	
131	2009 Energy-saving Fund	X	X	X	X	
132	Allowance to Pay Loan Interest (Zhongshan City, Guangdong)	X	X	X		
133	Award for Good Performance in Paying Taxes	X	X		X	
134	Award for Taicang City to Support Public Listing of Enterprises	X	X			
135	Award of Taxpayers in Yanghang Industrial Park	X	X	X		
136	Awards for Taicang City to Promote Development of Industrial Economy for the 3-year Period of 2010 to 2012	X	X		X	
137	Balidian Town Public Listing Award	X	X			

#	Subsidy Name	Location	Company Form	No positive evidence	Age/ Expired	Duplicates
138	Business Development Overseas Support Fund (Foshan)	X	X	X		
139	Changzhou Qishuyan District Environmental Protection Fund (Jiangsu)	X	X	X		
140	Changzhou Technology Plan (Jiangsu)	X	X	X		
141	Circular on Issuance of Management Methods for Foreign Trade Development Support Fund					15/141
142	Emission Reduction and Energy- saving Award	X	X	X		
143	Energy-Saving Technique Special Fund	X	X	X		
144	Energy-saving Technology Renovation Fund	X	X	X		
145	Enterprise Innovation Award of Qishuyan District (Jiangsu)	X	X	X		
146	Environment Protection Award (Jiangsu)	X	X	X		
147	Financial Subsidy	X	X	X		
148	Five Points, One Line Strategy in Liaoning Province					
149	Funds of Guangdong Province to Support the Adoption of E- Commerce by Foreign Trade Enterprises	X	X			
150	Fuyang and Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centres	X	X			
151	Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes	X	X		X	
152	Fuyang City Government Grants Under the Export of Sub-Contract Services Program	X	X		X	
153	Government of Shijiazhuang City Export Award	X	X	X		
154	Grant - Changzhou City Key Supporting Industry Upgrading Special Fund	X	X	X		
155	Grant - Changzhou Five Major Industries Development Special Fund	X	X	X		
156	Grant - Financial Subsidies from Wei Hai City Gaocun Town Government	X	X	X		
157	Grant - Jiangsu Province Finance Supporting Fund	X	X	X		
158	Grant - Policy on Value-added Tax for Recyclable Resources	X	X	X		
159	Grant - Special Fund for Fostering Stable Growth of Foreign Trade in 2009	X	X	X	X	
160	Grant - Subsidy from Water Saving Office	X	X	X		
161	Grant - Water Pollution Control Special Fund for Taihu Lake	X	X	X		
162	Grant - Wendeng Government (Shandong)	X	X	X		
163	Grant for key enterprises in equipment manufacturing industry of Zhongshan	X	X			
164	Grant for Market Promotion and Trade Development			X		
165	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	X	X			

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
166	Grants under the Science and technology program of Jiangsu Province	X	X	X		
167	Guangdong - Hong Kong Technology Cooperation Funding Scheme	X	X	X		
168	Guangdong Supporting Fund	X	X	X		
169	Hangzhou City Government Grants Under the Hangzhou Excellent New Products/Technology Award	X	X			
170	Huzhou City Public Listing Grant	X	X			
171	Huzhou City Quality Award	X	X			
172	Huzhou Industry Enterprise Transformation and Upgrade Development Fund	X	X			
173	Implementing Measures on the Supporting Fund for Foreign Trade & Economic Development of Jiangxi Province (Implementing Measures)	X	X			
174	Important Structural Adjustment Program of Jiangsu Province	X	X	X		
175	Initial Public Offering (IPO) Grants from the Hangzhou Prefecture and the City of Fuyang	X	X			
176	Innovative Experimental Enterprise Grant	X	X			
177	Innovative Small and Medium-Sized Enterprise Grants	X	X			
178	Interim Measures of Fund Management of Allowance for Zhongshan Enterprises to Attend Domestic and Overseas Fair (Zhongshan)	X	X			
179	International Market Fund for Export Companies (Jiangmen City)	X	X	X		
180	Investment Grants from Fuyang City Government for Key Industries	X	X			
181	Jiangdu City Industrial Economy Performance Award (Jiangsu)	X	X	X		
182	Jiangxi Provincial Bulk Cement Special Fund: Transformation of Bulk Cement Facilities and Equipment	X	X	X		
183	Jiangxi Provincial Environmental Protection Special Fund	X	X	X		
184	Jiangxi Provincial Wall Material Renovation Special Fund: Special Subsidies for New Wall Materials	X	X	X		
185	Jiulong Lake Town Grant 2008	X	X		X	
186	Liaoning High-Tech Products & Equipment Export Interest Assistance			X		
187	Outstanding Growth Private Enterprise and Small and Medium- sized Enterprises Development in Jiangyin Fund	X	X		X	
188	Patent award in Guangdong province;	X	X			
189	Refund from Government for Participating in Trade Fair (Foshan)	X	X	X		
190	Reimbursement of Foreign Affairs Services Expenses (Foshan)	X	X	X		
191	Research & Development (R&D)	X	X			

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
192	Science and Technology Award	X	X	X		
193	Special Fund for Significant Science and Technology in Guangdong Province	X	X	X		
194	Special Support Fund for Non-State-Owned Enterprises	X	X	X		
195	Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ	X	X	X		
196	Supporting Fund for Non-refundable Export Tax Loss on Mechanical and Electrical Product and High-tech Product (Jiangmen City)	X	X			
197	Supportive Fund Provided by the Government of Xuyi County, Jiangsu	X	X			
198	Technology to Improve Trade R&D Fund	X	X		X	
199	Various Export Contingent Grants Provided by the Fuyang City Government	X	X			
200	Venture Investment Fund of Hi-Tech Industry	X	X			
201	Water Conservancy Fund Deduction	X	X			
202	Water Saving Enterprise	X	X	X		
203	Wuxing District Freight Assistance	X	X			
204	Wuxing District Public List Grant	X	X			
205	Xinhu Municipal Environmental Protection Special Fund: Grants for Pollution Control Facilities and Construction	X	X	X		
206	Zhabei District "Save Energy Reduce Emission Team" Award Program	X	X	X		
207	Loans and Interest Subsidies provided under the Northeast Revitalization Program					
208	Award by Shanghai Songjiang Economic Committee	X	X	X		
209	Fund for Supporting Strategic Emerging Industries by Guangdong Governments	X	X	X		
210	Income Tax Exemption for Investors in Designated Geographical Regions Within Liaoning					
211	Income Tax Refund where Profits Re invested in SEZs and other Designated Areas	X	X			
212	Other tax privileges of Ma'anshan	X	X		X	
213	Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai	X	X			
214	Preferential Tax Policies in the Western Regions	X	X			
215	Shunde Intensive Industrial Zone Administrative Fee Exemptions and Reductions	X	X			
216	Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River			X		
217	Special Supporting Fund for Key Projects of "500 Strong Enterprises in Contemporary Industries" by Guangdong Governments	X	X	X		
218	Supporting Fund for the Development from Guangzhou Local Governments	X	X	X		

#	Subsidy Name	Location	Company Form	No positive evidence	Age/Expired	Duplicates
219	Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas	X	X			
220	Tax concessions for Central and Western regions	X	X			
221	Various local tax discounts (Shandong Province, Chongqing City, Guangxi Region Zhuang, Tax privileges to develop central and western regions)	X	X			
222	VAT deduction on fixed assets in the Central region	X	X			
223	VAT Exemptions for the Central Region	X	X			
224	Anti-dumping Respondent Assistance	X	X			
225	Transformation technique grant for rolling machine	X	X			
226	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009				X	
227	Key industry revitalization infrastructure spending in 2010		X		X	
228	Provincial emerging industry and key industry development special fund			X		
229	Environmental protection grant					
230	Environmental protection fund					
231	Intellectual property licensing					
232	Financial resources construction - special fund					
233	Reducing pollution discharging and environment improvement assessment award					
234	Grant for elimination of out dated capacity					
235	Grant from Technology Bureau					
236	High and New technology Enterprise Grant			X		
237	Independent Innovation and High Tech Industrialization Program			X		
238	Environmental Prize			X		
239	Jinzhou District Research and Development Assistance Program					
240	Preferential loans and interest rates					77/240
		109	109	116	37	9

ANNEX 3: SUBJECT GOODS AND LIKE GOODS

Summary

- A3.1. During the investigations, 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 New Zealand Steel (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.
- A3.2. MBIE provided an Issues Paper to interested parties on 13 June 2018. That paper provided interested parties with an opportunity to comment on issues that have arisen around the scope of the imported goods subject to investigation in the current investigation of alleged dumping and subsidisation of certain HSS from China, and dumping of the same product from Malaysia.
- A3.3. This paper takes into account submissions received in response to the Issues Paper as well as other information received during the course of the investigations, including questionnaire responses that had not been analysed at the time the Issues Paper was drafted.
- A3.4. The paper concludes that the subject goods should be defined as:

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)

- *Circular products – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm*
- *Square and rectangular products – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm*
- *Oval products – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.*

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 black, oiled, painted or lacquered finishes.

Responses

- A3.5. The Ministry of Business, Innovation and Employment (MBIE) received submissions in response to the Issues Paper from:
- Dalian Steelforce Hi-Tech Co., Ltd. and Steelforce Trading Pty Ltd (Steelforce)
 - [REDACTED]
 - New Zealand Steel Ltd (NZ Steel)

- New Zealand Tube Mills Ltd (NZ Tube Mills)
- [REDACTED]
- [REDACTED]

A3.6. The Ministry has now also had the opportunity to consider and incorporate where appropriate any relevant comments from questionnaire responses it has analysed since the Issues Paper on subject goods was drafted.

Subject goods at initiation

A3.7. The applicant, NZ Steel, stated that the goods subject to investigation should be:

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)

A3.8. NZ Steel also stated that:

- The **finish** types of the goods are galvanised including in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG); or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.
- The **sizes** of the goods for respective products are:
 - circular products – nominal [bore] diameter up to and including 150mm; or
 - oval, square and rectangular products – perimeter up to and including 520mm.
- The goods may also be categorised according to minimum yield **strength**, the most common classification being 250 and 350 MPa.

A3.9. NZ Steel noted that New Zealand tariff items and statistical keys do not align with the sizes of subject goods they have identified. NZ Steel identified two tariff items and four statistical keys, namely 7306.30.19 11 and 21, and 7306.61.00 19 and 27. NZ Steel also stated that “some subject goods are, or may be, in up to 114 other tariff classifications [tariff items and statistical keys] currently in the Tariff of New Zealand.”⁵⁶

A3.10. These two tariff items and four statistical keys limit the dimensions of HSS to tubes and pipes with a nominal internal diameter of less than 102mm and rectangular hollow sections of a maximum dimension of less than 128mm. MBIE understands the dimension of rectangular HSS to refer to measurement of the side of the greatest size, therefore the maximum perimeter under these tariff classifications is less than 512mm.

A3.11. In 2017, the two tariff items and four statistical keys were split out into 24 statistical keys in the New Zealand Tariff due to the introduction of new statistical keys. These statistical keys cover the dimensions produced by the New Zealand industry (see table below),

⁵⁶ MBIE has since added tariff item 7306.69.00 for non-circular cross-section other than square or rectangular.

namely circular HSS with a nominal internal diameter under 102mm and rectangular/square HSS up to 400mm.

- A3.12. In the Initiation Report, MBIE referred to eight additional statistical keys that partly cover the subject goods. When calculating import volumes for the Initiation Reports, MBIE used only the statistical keys that included goods made by the New Zealand industry.

Scope of the subject goods

- A3.13. A key issue is the extent to which imported goods that have wider dimensions (smaller or greater) than those produced domestically are “like” the goods produced by the New Zealand industry.⁵⁷ In other words, to what extent is there a New Zealand industry that produces like goods to imported HSS of greater dimensions than those produced domestically?
- A3.14. In determining like 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.
- A3.15. In the Issues Paper MBIE set out a number of questions for interested parties and summarises its findings on each of these questions below, before presenting the detailed analysis on which the findings are made. The questions relate to the extent to which imported HSS of greater dimensions than New Zealand-produced HSS are “like” in terms of having “characteristics closely resembling” each other.

Physical characteristics

- A3.16. To what extent are their physical characteristics similar or different, such as:
- i. Dimensions
 - ii. Composition and strength
 - iii. Appearance and finish
 - iv. Production methods and technologies
 - v. Standards

Dimensions

- A3.17. MBIE considers that differences in cross-sectional and wall thickness measurements constitute a significant difference in physical characteristics, as they are related to strength, function, and usage.
- A3.18. MBIE confirms its view that length is not a defining factor for the scope of the description of subject goods.

⁵⁷ Injury to the domestic industry is assessed in relation to the impact of subject goods (the imported goods under investigation) on like goods produced in New Zealand, therefore the subject goods must be “like” the goods produced by the New Zealand industry.

- A3.19. As a consequence of considering all factors in this report, MBIE has made only one change to its proposed scope of the subject goods, namely increasing the maximum nominal bore size for CHS from 5.4mm to 6.0mm to clarify the boundary for those goods.

Composition and strength

- A3.20. MBIE confirms its view that composition and strength appear to be of little definitive value in deciding whether certain imported and New Zealand-produced HSS are not like goods

Appearance and finish

- A3.21. MBIE considers that the evidence available does not support the exclusion of painted or inline painted HSS from the description of subject goods.

- A3.22. From the information available, MBIE is unable to conclude that pre-galvanised HSS is not a subject and like good.

- A3.23. MBIE considers that plastic-lined HSS is not like the HSS subject to investigation.

Production methods and technologies

- A3.24. MBIE considers that generally similar production processes and technologies do not assist significantly in distinguishing HSS that is like or not like the HSS subject to investigation.

Standards

- A3.25. MBIE finds no persuasive evidence on standards that assists significantly in distinguishing HSS that is like or not like the HSS subject to investigation.

Function and usage

- A3.26. MBIE notes that the New Zealand industry produces HSS for a wide range of uses, across two broad market segments (structural and manufacturing), and that function and usage overlap to some extent.

- A3.27. MBIE considers that function and usage in this case is not particularly helpful in drawing a bright line on the scope of subject and like goods when there is no evidence of a lack of some overlap between end-uses and potential end-uses between HSS of slightly different sizes and there appears to be some overlap.

Pricing structures

- A3.28. Submissions indicate that there are no apparent pricing structures or patterns that indicate significant differences between prices of smaller and larger dimensions of the same types of HSS.

Marketing and distribution

- A3.29. There are two broad market segments, namely manufacturing and construction/engineering.

- A3.30. Larger dimensions and smaller dimensions are sold through the same distribution channels and generally into the same market segment.

Substitutability and commercial interchangeability

- A3.31. The questions to be addressed are the extent to which imported HSS of greater dimensions is substitutable or commercially interchangeable with HSS of the dimensions produced in New Zealand; the extent to which downstream industries and end users would be likely to substitute imported HSS of greater dimensions if HSS of certain lesser dimensions were subject to duties; and whether any cases exist of HSS of greater dimensions than that produced by the New Zealand industry having specific applications that would exclude the use of HSS in the dimensions produced in New Zealand.
- A3.32. MBIE is not convinced that even if duties were to be imposed on subject goods of certain dimensions that substitutability and commercial interchangeability are realistic options in light of design constraints, aesthetics and demand from downstream processors and users.
- A3.33. To what extent is there price elasticity of demand or cross-price elasticity of demand in respect of the imported and locally-produced HSS?
- A3.34. The only submission on this matter was from an importer who does not believe there is any price elasticity of demand for HSS.

Competition and price interconnectivity

- A3.35. To what extent does imported HSS of greater dimensions and NZ-produced HSS compete directly in the New Zealand market?
- A3.36. MBIE is not convinced that the subject goods of greater dimensions than produced in New Zealand compete with HSS of the lesser dimensions produced locally.
- A3.37. To what extent are the prices of imported HSS of greater dimensions and NZ-produced HSS interconnected in the New Zealand market? For example, if duties were only imposed on imported goods of the dimensions produced locally, would importers purchase more imported goods of the greater dimensions because of price spillover effects?
- A3.38. MBIE is not convinced, even if there were price spillover on a per tonne basis in the presence of duties that importers would move significantly to purchases of larger dimensions of HSS.

Other considerations

- A3.39. There were no submissions directly related to the question of what other characteristics or information are relevant and useful in deciding the extent to which imported HSS of greater dimensions than New Zealand-produced HSS are “like” in terms of having “characteristics closely resembling” each other.
- A3.40. NZ Steel disagreed with MBIE’s view that HSS subject to tariff concessions (other than the temporary concession for residential buildings) should be excluded from the scope of the subject goods. MBIE maintains its general position, noting that the criterion for granting tariff concessions, “suitable alternative,” implies matters within the consideration of like and subject goods such as substitutability, interchangeability, function and competition. MBIE does however consider that specific HSS subject to a tariff concession should be included where there is evidence of current production of such HSS.

Conclusion

- A3.41. After taking account of all of the factors discussed in this report, MBIE considers that there is no reasonable basis for considering that HSS of certain greater dimensions than that produced locally should be included in the scope of the subject goods.
- A3.42. MBIE confirms its proposed description of subject goods with a slight increase (from 5.4mm to 6.0mm) for the wall thickness of CHS to allow for tolerances and ensure clarity at the boundary of the description of these products.

The New Zealand Industry

- A3.43. The definition of “industry” is in section 3A of the Act.

3A 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.

- A3.44. “Like goods” are defined in section 3(1) of the Act.

like goods, in relation to any goods, means—

- (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

- A3.45. There are three New Zealand producers⁵⁸ of HSS - NZ Steel, Industrial Tube Manufacturing Co Ltd (Industrial Tube), and New Zealand Tube Mills Ltd (NZ Tube Mills). These producers make HSS in the following dimensions.

	NZ Steel	Industrial Tube	NZ Tube Mills	NZ Industry
CHS (circular)				
NB	15 - 100mm	To 101.6mm OD	To 101.6mm NB	15 – 101.6mm
OD	21.3 – 114.3mm			

⁵⁸ Steelpipe Limited (Steelpipe) produces spiral welded pipes and tubes. MBIE considers that Steelpipe does not produce like goods to the subject goods, and is not therefore part of the New Zealand industry for this investigation, for the following reasons:

- Steelpipe produces mainly goods of larger dimensions than the subject goods.
- Its method of manufacture, namely subarc welding, is significantly different from electric resistance welding used to make circular hollow steel sections.
- Almost all of the pipes it makes within the dimensions of the subject goods are for water transmission, rather than for a wide range of applications such as for structural purposes.
- Steelpipe’s products are significantly more expensive than the subject goods.

Thickness	2.0 - 5.4mm	1.0 - 2.5mm	1.0 - 3.0mm	1.0 - 5.4mm
Length	4.1 – 9.0m	5.0m standard 4.1 – 10m available	5.5 and 6.1m standard	4.1 – 10.0m
SHS (square)				
Perimeter	100 – 400mm	To 260mm	To 260mm	100 – 400mm
Thickness	2.00 - 6.00mm	1.2 - 2.5mm	1.0 - 3.0mm	1.0 to 6.0mm
Length	4.5 – 9.0m	5.0m standard 4 – 10m available	5.5 and 6.1m standard	4.0 – 10.0m
RHS (rectangular)				
Perimeter	150 – 400mm	To 222mm	To 241.4mm	150 – 400mm
Thickness	2.00 - 5.00 ⁵⁹ mm	1.2 - 2.5mm	1.0 - 3.0mm	1.00 - 6.00mm
Length	4.5 – 9.0m	5.0m standard 4 – 10m available	5.5 and 6.1m standard	4.0 – 10.0m
Oval				
Perimeter	183mm	To 222mm	To 314mm	To 314mm
Thickness	2.0mm	1.2 - 2.5mm	1.0 - 3.0mm	1.0 - 3.0mm
Length	8.0m	5.0m standard 4 – 10m available	5.5 and 6.1m standard	4.0 – 10.0m

A3.46. One importer questioned whether NZ Steel can make RHS at the maximum dimension of 125 x 75mm or whether NZ Steel manufactures oval HSS given there is no reference to oval on its website. NZ Steel advised that it makes oval product for specific orders and RHS 125 x 75mm is listed on its website data sheet.

A3.47. Some interested parties consider that Industrial Tube and NZ Tube Mills should not form part of the New Zealand industry.

-  considers HSS produced by these two companies should be excluded from the investigation because they do not produce like goods in terms of standards, grades and third party accreditation requirements and they are not in the same market as HSS produced by NZ Steel and comparable imported goods.

⁵⁹ One importer refers to the NZ Steel price list as suggesting NZ Steel does not offer RHS with a wall thickness of 6mm. MBIE notes that NZ Steel’s website also only refers to RHS up to 5mm.

- Dalian Steelforce notes that there are “two distinct market segments . . . which can be broadly referred to as manufacturing and construction” and the goods in each segment “exhibit very different product and market characteristics.” Dalian Steelforce refers to NZ Tube Mills’ production being “limited to thin gauge precision tube and carbon steel products meeting specific internal standards and for particular manufacturing applications,” which include furniture, outdoor products, exhaust systems and greenhouses and that Industrial Tube makes similar HSS. Dalian Steelforce considers that goods produced by Industrial Tube and NZ Tube Mills “do not possess characteristics closely resembling the imported goods, and as such, should not form part of the industry producing like goods.” Dalian Steelforce also refers to the fact that Industrial Tube and NZ Tube Mills do not make HSS to the same AS or AS/NZS standards as HSS produced by NZ Steel or Dalian Steelforce.
 - At the verification visit in Dalian, Dalian Steelforce and Steelforce Trading noted that NZ Tube Mills and Industrial Tube do not produce HSS that is either structural or for fluid conveyancing, so they don’t come up against these companies in the market as their HSS is for the manufacturing area. There is some overlap at the 2mm/2.5mm gauge (wall thickness), but the distinction is in whether the product meets the standards for fluid conveyancing (AS/NZS 1074) or structural (AS/NZS 1163).
 - [REDACTED] referred to HSS it purchases from Industrial Tube and NZ Tube Mills as “furniture tube” which is “thin wall”, not structural and “not required to conform to the standards mentioned in this investigation.” [REDACTED] noted that Industrial Tube and NZ Tube Mills manufacture precision tube whereas NZ Steel does not.
 - Industrial Tube also referred to two market areas, being “thin wall (0.8-2.5mm) and structural (>4.0).” NZ Tube Mills confirmed that its “production range is within what is known as ‘Precision Tube’ ...whereas this is the ‘lighter wall’ type of tubulars produced.”
- A3.48. NZ Steel disagreed that goods produced by Industrial Tube and NZ Tube Mills are not like the imported goods and should not form part of the industry. NZ Steel suggested there could be three market sectors but considered analysis beyond the two sector market separation would not be useful. NZ Steel considers that delineation between two market segments “is not determinative as to goods coverage because of material overlap between them.”
- A3.49. MBIE notes that the application for dumping and subsidy investigations was lodged by NZ Steel not just in respect of the HSS that it produces but on behalf of the New Zealand industry producing hollow steel sections, including Industrial Tube and NZ Tube Mills from which letters were provided in support of the application.
- A3.50. The application was for the investigation of the goods described above at the time of initiation of the investigations, which included HSS of dimensions similar to those made by Industrial Tube and NZ Tube Mills.

- A3.51. Dalian Steelforce considered that “the inherent nature of the NZTM and ITM products (small size, thin gauge, specialised surface finish) does not lend itself to importation, as these products are prone to damage during transit.” NZ Steel notes the lack of supporting evidence for this contention.
- A3.52. The investigation has found that there have been importations of HSS of dimensions similar to those made by Industrial Tube and NZ Tube Mills and overlapping significantly the dimensions made by these companies (see the table below on dimensions of exports to New Zealand). For example, wall thicknesses produced by these two New Zealand manufacturers range from 1.0 to 3.0mm, and exports start from 1.6mm for both China and Malaysia. A submission from a New Zealand end user which makes greenhouses, [REDACTED], indicates that it uses imports of HSS of the type made by Industrial Tube and NZ Tube Mills.
- A3.53. MBIE notes that, while Industrial Tube and NZ Tube Mills supported the application, they did not provide full responses to MBIE’s questionnaires. Despite this lack of full cooperation, the application by NZ Steel on behalf of the New Zealand HSS industry, including Industrial Tube and NZ Tube Mills contained sufficient evidence to justify the initiation of dumping and subsidy investigations and any deficiency in evidence from the industry is addressed when assessing injury.
- A3.54. MBIE considers that there is no justifiable reason to exclude Industrial Tube and NZ Tube Mills from the New Zealand industry for these investigations as those companies are producing like goods to the goods subject to the application for dumping and subsidy investigations and subject goods of dimensions overlapping significantly those made by those companies are being exported to New Zealand from China and Malaysia.

Analysis and Information

- A3.55. MBIE notes that when deciding on matters of “subject goods” or “like goods”, the Act does not lay the burden of proof on any particular interested party or parties to an investigation. Nor in practice is there any basis for requiring any party or parties to bear the burden of proof.
- A3.56. NZ Steel claimed that HSS of greater dimensions than it produces should be included in the scope of the description of subject goods. NZ Steel disagreed with MBIE’s provisional proposal to limit the subject goods to what it describes as “exactly to the current website New Zealand industry plant dimension range” and considers that “[s]uch provisional view discounts injurious commercial, substitutable and functional likeness in goods analysis, and the Article 2.6 AD Agreement “close resemblance.”
- A3.57. Other parties, including [REDACTED], Dalian Steelforce, Alpine Pipe and [REDACTED], claimed that HSS of greater dimensions are not like to HSS of the smaller dimensions produced in New Zealand.
- Dalian Steelforce and Alpine Pipe consider that the scope of the investigation should be limited to the range of products that NZ Steel manufactures.
 - [REDACTED] considers that the definition of subject goods should exclude goods that, even though within the broad parameters of the dimensions for subject goods, are not of dimensions made by the New Zealand industry. [REDACTED] would increase the

minimum wall thickness for HSS from 1mm to 2mm. [REDACTED] arguments are summarised below.

- A3.58. Dalian Steelforce, in a submission on injury, “contends that the limited range and production capability of NZ Steel prevents it from supplying HSS products required by a significant portion of the NZ market. Demand for products outside the scope of NZ Steel’s manufacturing capabilities is and must be entirely supplied by imports. It is also the case that the vast majority and predominant supply of exported HSS to New Zealand by Steelforce relate to HSS products for which NZ Steel does not and cannot offer like products as it simply does not produce such goods.”

Physical characteristics

- A3.59. NZ Steel claimed that the imported and locally-made HSS have the same physical characteristics, and that the grades, shape and appearance are alike.
- A3.60. [REDACTED] disagreed with this assertion and considered the imported HSS of larger dimensions “are not like for like goods due to the differences in physical characteristics.” Dalian Steelforce “contends that the goods subject to investigation should be limited to the product dimensions and finishes manufactured by NZS during the investigation period,” that is for the construction and engineering market segment, rather than including precision tube, of the type used in manufacturing and made by Industrial Tube and NZ Tube Mills.

Dimensions

- A3.61. The New Zealand industry does not make the following HSS products that are included in the description of subject goods.

CHS

- Less than 15mm NB and greater than 101.6mm NB. There are some imports of 10mm NB and up to 200mm NB.
- While thicknesses are not mentioned in the description of subject goods, the New Zealand industry does not make CHS in thicknesses greater than 5.4mm nor in lengths greater than 10m. Imports include some product of greater thicknesses, such as 6.4mm, and lengths up to 12m.

SHS

- Perimeters less than 100mm or greater than 400mm. Imports include lesser perimeters, such as 80mm, and greater perimeters up to 700mm, exceeding the 520mm perimeter in the description of the subject goods.
- While not mentioned in the description of subject goods, the New Zealand industry does not make SHS in thicknesses less than 1.0mm or greater than 5.4mm, nor in lengths greater than 10m. Imports include some products of greater thicknesses, such as 6.0mm and 9.0mm.

RHS

- Perimeters less than 150mm or greater than 400mm. Imports include products up to 600mm, exceeding the 520mm perimeter in the description of the subject goods.

- While not mentioned in the description of subject goods, the New Zealand industry does not make SHS in thicknesses less than 1.0mm or greater than 6.0mm, nor in lengths greater than 10m. Imports include some products of greater thicknesses.

Oval

- Perimeters greater than 314m. Some imports are outside of this perimeter.
 - While not mentioned in the description of subject goods, the New Zealand industry does not make oval products in thicknesses less than 1.0mm or greater than 3.0mm, or in lengths greater than 10m. Imports include some products of greater length, such as 12m.
- A3.62. NZ Steel stated that “physical characteristics of goods <100mm and goods >100mm is not something inherent at that dimension, but is related to the steel mass, not per se the dimension of that mass,” in reference to using the same weight of steel per square metre in a structure whether using lesser or greater dimensions of HSS.
- A3.63. NZ Steel agreed that the ability to produce HSS of greater dimensions would normally require capital investment, but that there were several reasons why a manufacturer may decide not to identify the availability of certain sizes, such as producer choice or grade considerations.
- A3.64. NZ Steel also cautioned against the use of minimum dimensions as HSS below those dimensions may be made, or may be able to be made, by the New Zealand producers, but did not provide any evidence of this. Likewise NZ Steel indicated larger sizes of oval product could be made by the New Zealand industry, but did not state what dimensions are or have been made.
- A3.65. NZ Steel refers to the difficulty of “hard adherence to made-goods boundary for this goods description purpose”, noting that “a 100mm CHS with 5.4mm wall thickness closely resembles one of 5.5mm wall thickness which would not be dutiable. It is difficult to agree that a further 100 microns thickness has made the 5.5mm thick goods definitively not resemble the 5.4mm thick goods.”
- A3.66. One New Zealand producer claimed it is capable of producing product of the greater dimensions set out in the description of subject goods, but provided no evidence to support this assertion and, in any case, indicated it has no plans to produce HSS in these greater dimensions.
- A3.67. Tianjin Youfa advised that “the goods Youfa Group produces have the same physical characteristics with the New Zealand industry produces. The grades, shape and appearance are alike,” but the company can produce tube in greater dimensions than the New Zealand industry.
- A3.68. Dalian Steelforce and Steelforce Trading, at the verification visit, emphasised that NZ Steel does not make HSS in larger dimensions. This claim was mirrored by Alpine Pipe, at the verification visit to Alpine’s premises.
- A3.69. Jinan Mech stated that it was “not aware of the range of dimensions of the HSS produced by the New Zealand industry. Without prejudice to any future submissions, our company does not intend to comment on the above issues at this stage of the investigation.”

- A3.70. MBIE notes that in the standards HSS tolerances for thicknesses may be up to minus 10 per cent or up to at least plus 10 per cent, which would mean that some HSS with a stated wall thickness of say 6.0mm could compete with the HSS with a wall thickness of 5.4mm produced by New Zealand Steel.

Width

- A3.71. NZ Steel provided an example of two options using lesser or greater dimensions of steel to achieve the same cost per square metre and the same load bearing capacity. NZ Steel used this example to “to illustrate that thinner wall but larger diameter goods are like thicker wall but smaller diameter goods.”
- A3.72. MBIE notes that NZ Steel’s example is a particular structure with a certain load bearing requirement. The ability to use different HSS sizes to create two different design options that cost the same per square metre and have the same load bearing capacity does not on its own equate to proof that larger dimensions of HSS have “characteristics closely resembling” smaller dimensions of HSS. There could be other materials that may result in a structure having similar characteristics but which may not even be of steel and may not therefore be like HSS of smaller dimensions.
- A3.73. NZ Steel points to boundary issues in any definition of subject goods when a small difference in measurement may mean one HSS section is readily substituted for another. MBIE deals with this matter in addressing close dimensions of imported goods in its analysis below.

Length

- A3.74. In the issues Paper, MBIE stated that it “is not convinced that length is a defining factor for the scope of the description of subject goods.” Dalian Steelforce disagreed and argued that HSS “in lengths outside NZS’s product offering should be excluded from the goods subject to investigation.” [REDACTED] also disagreed with MBIE on this point for similar reasons, noting that NZ Steel has never offered it HSS in the 9m lengths it claims to have available and that length is still far short of the 12m lengths available for importation.
- A3.75. At its verification visit, Dalian Steelforce claimed that length is a major factor in construction. The company said that steel fabricators like longer lengths so there is less welding, especially to maintain aesthetics. Dalian Steelforce produces HSS in lengths up to 12 metres, whereas NZ Steel only produces up to 8 or 9 metres in length. In its submission, Dalian Steelforce stated that “[p]roduct length is a factor to ensure unnecessary joins of the products do not have to be performed that can affect the fabricated structures integrity, the aesthetic looks if the steel is exposed, plus unnecessary costly fabrication works.” Dalian noted that a large portion of its sales to New Zealand are in precise lengths to match specific intended applications.
- A3.76. At its verification visit, Alpine Tube said that length is not a compelling factor in deciding whether HSS products differ or are similar, noting that dimension and wall thickness were more important considerations. The company stated this was because HSS of greater lengths could be cut down into shorter lengths after importation, however, the dimension and wall thickness of HSS could not be altered once the product has been manufactured.

A3.77. NZ Steel considers that length is not a determinative factor in deciding whether HSS products differ or are similar, noting that as steel and HSS “is sold per unit of mass, which is pro-rata to length . . . Introduction of a price differential per unit mass/length, will introduce substitution away from the New Zealand industry goods.”

A3.78. MBIE has considered whether length of HSS contributes significantly to the overall consideration of whether different HSS products either have or do not have characteristics that closely resemble each other.

- MBIE acknowledges that some HSS will be imported in specific lengths to meet certain applications and that some of these lengths exceed those available from NZ Steel.
- The inherent physical characteristics of the HSS may however in many cases be the same or similar (composition, diameter or perimeter, and wall thickness) so that HSS of greater lengths could be cut down in to shorter lengths after importation.
- Often it may not be known at the time of exportation or importation whether the HSS is for specific engineered applications or for general use in construction or engineering.
- In MBIE’s view, length dimensions do not ascribe physical characteristics to HSS to anywhere near the same extent that cross-sectional and wall dimensions do.

A3.79. MBIE confirms its view that length is not a defining factor for the scope of the description of subject goods.

Dimensions Exported to New Zealand

A3.80. The following table shows the dimensions of HSS exported to New Zealand by the sample Chinese and Malaysian manufacturers who replied to questionnaires. Information in the table was compiled on the basis of the description of the subject goods at the time of initiation.

Dimensions exported with the subject goods description at initiation.	Dalian Steelforce	Tianjin Youfa	Jinan Mech	Alpine Pipe
CHS (circular) NB Thickness				

Length % of exports ⁶⁰ to NZ within NZ production dimensions Dimensions ⁶¹ outside but closest to NZ production sizes				
SHS (square) Perimeter Thickness Length % of exports to NZ within NZ production dimensions Dimensions outside but closest to NZ production sizes				
RHS (rectangular) Perimeter Thickness Length % of exports to NZ within NZ production dimensions Dimensions				

⁶⁰ Exports within the description of subject goods at the time of initiation, but not taking account of differences in length.

⁶¹ Dimensions within the description of subject goods at the time of initiation.

outside but closest to NZ production sizes				
Oval Perimeter Thickness Length % of exports to NZ within NZ production dimensions Dimensions outside but closest to NZ production sizes				

Information has been redacted because making the information available would give a significant competitive advantage to competitors of the submitters of the confidential information.

A3.81. There may also be specific products within the broad parameters of HSS made by the New Zealand industry that are not made by the New Zealand industry. For example, [REDACTED] stated that NZ Steel does not produce SHS30x30, RHS 75x25 and NB90 galvanised pipe.

MBIE’s View on Dimensions

A3.82. MBIE notes the following in regard to dimensions:

- Circular products – New Zealand producers and exporters supply CHS with nominal bores from 15mm, so there is no need to change the minimum bore size in MBIE’s proposed scope of the subject goods. The closest bore size exceeding the 101.6mm bore size that is produced by the New Zealand industry is 114.1mm⁶² and then 125mm. The maximum bore size could be extended to 115mm if the other factors relating to like goods support this extension, but the analysis below indicates the factors do not support this extension. The wall thickness of 5.4mm proposed by MBIE could be extended to 6.0mm to provide clarification and address the boundary issue raised by NZ Steel.
- Square and rectangular products – the closest perimeter being exported to New Zealand that exceeds the maximum perimeter produced by the New Zealand

⁶² CHS 114.3mm and RHS 150 x 100mm in a list of common HSS available in Australia and New Zealand in AS/NZS1163.

industry is 456mm. The analysis below supports MBIE's view that 456mm SHS and RHS should not be included in the scope of the subject goods. All but one shipment was of HSS with a wall thickness of 1.0mm or above and MBIE sees no reason to adjust the minimum wall thickness of 1.0mm. The closest perimeter exported to New Zealand and exceeding the 6.0mm maximum thickness produced by the New Zealand industry is 9mm. MBIE sees no reason for extending the maximum wall thickness in this category above 6mm.

- Oval products – exports of HSS to New Zealand fall within the perimeter and wall thickness dimensions produced by the New Zealand industry. MBIE sees no reason to change its proposed scope of subject goods for this category.

Composition and strength

- A3.83. In its application, NZ Steel referred to the production of HSS from hot rolled coil/cold rolled carbon steel coil. MBIE has received no information that HSS of the type under investigation is made by other interested parties from materials other than carbon steel, although some producers use different types of carbon steel.
- A3.84. NZ Steel's product data sheets refer to various measurements of strength, such as minimum yield strengths, minimum tensile strengths and minimum elongation.
- A3.85. NZ Steel agreed with MBIE's view in the Issues Paper that composition and strength appear to be of little definitive value in deciding whether certain imported and New Zealand-produced HSS are not like goods.
- A3.86. [REDACTED] confirmed this view by noting that composition refers to chemical characteristics and strength refers to grade and that [REDACTED] has to comply with relevant standards in respect of both factors whether locally-produced or imported steel. [REDACTED] considered therefore that imported and locally-produced HSS is like in terms of composition and strength.
- A3.87. [REDACTED] also distinguished between strength and load-bearing capacity, noting that "imported HSS of greater dimensions would have significantly higher loadbearing capacity than locally produced HSS and as such does not have a close resemblance."

Appearance and finish

- A3.88. MBIE understands from submissions that there are two broad types of product finish, namely galvanised and non-galvanised, which can be further broken down into non-coated, painted, pre-galvanised and HDG.
- Black/NOPC (not oiled, painted or coated) – NZ Steel and imports
 - Painted - NZ Steel and imports
 - In-line galvanised (ILG) (Dalian Steelforce) and pre-galvanised (NZ Tube Mills, Industrial Tube and imports)
 - Hot dip galvanised (HDG) – NZ Steel and imports.
- A3.89. NZ Steel produces HSS coated with paint, oils or zinc (galvanised). NZ Steel's website page on pipe and hollow sections states that "[t]hese products are available black, pre-primed or galvanised." NZ Steel provides CHS with different end finishes, namely plain end (mill cut),

screwed one or both ends, screwed and socketed, and swaged.⁶³ NZ Tube Mills offers aluminium coated and galvanised steel options.

- A3.90. Dalian Steelforce claims that NZ Steel does not produce inline painted product which is a preference of Steelforce Trading's customers. At the verification visit Dalian Steelforce stated that technology and market demands in New Zealand have changed towards coating and technology options of the type that it produces. Dalian Steelforce noted that its painting process is high-tech as HSS needs to be stripped for welding and other processes.
- A3.91. Dalian Steelforce did not explain the extent of any difference between HSS coated by inline primer and pre-primed HSS. Dalian Steelforce explained that "[c]oatings on HSS can greatly enhance the steel's condition through transport, handling and the end application it is designed for."
- A3.92. [REDACTED] noted the preference expressed by some of its customers for painted HSS includes cleanliness in transport, storage and handling, less susceptibility to oxidization, and easier to mark up for accuracy. [REDACTED] stated that painted HSS to meet its "requirements is not available in any dimensions from New Zealand producers."
- A3.93. NZ Steel considered that the principal reason for imported HSS being painted is to protect against corrosion during transport to New Zealand.
- A3.94. MBIE considers that the evidence available does not support the exclusion of painted or inline painted HSS from the description of subject goods.

HDG and Pre-galvanised HSS

- A3.95. Dalian Steelforce argues that "pre-galvanised and HDG possess substantially different characteristics which support the view that they are not like goods to each other". Dalian explains the differences between the two products as outlined below.

HDG

- HSS is formed from non-galvanised coil.
- HDG HSS is made by dipping HSS into a bath of molten zinc followed by processes to smooth the zinc coverage.
- Coating thickness ranges from 30 microns to 77 microns.
- End uses involve applications where a high level of corrosion resistance is required, such as fencing, fluid conveyance and fire protection systems.

Pre-galvanised

- HSS is formed from coil that is already galvanised.
- Coating thickness is typically [REDACTED] microns.

⁶³ Swaging is a forging process in which the dimensions of an item are altered using dies into which the item is forced. (Wikipedia)

- Used for small structural applications where appearance is important.
- A3.96. MBIE has confirmed that the pre-galvanised coil referred to by Dalian Steelforce is not electro-galvanized steel.
- A3.97. The pre-galvanised HSS produced by NZ Tube Mills differs from the pre-galvanised product described by Dalian Steelforce because it has a greater coating depth in microns. Technical sheets on NZ Tube Mills' website show that its pre-galvanised HSS is produced from galvanised steel coil sourced from NZ Steel which is produced by running steel coil through molten zinc as shown on its website.⁶⁴ The pre-galvanised HSS produced by NZ Tube Mills has a zinc coating of Z275 and Z450 (grams of zinc coat per square metre), namely 38.5 and 63 microns,⁶⁵ for the following applications and in the following shapes and dimensions:
- Applications- general engineering, handrails, greenhouses, agricultural buildings,⁶⁶ ladders, fencing, garage doors, AgBeam (horticultural) and cattle rail;
 - Circular from NB 12.7 to 101.6mm;
 - Square from a perimeter of 50.8 to 260mm;
 - Rectangular from a perimeter of 76.2 to 190.4mm.
- A3.98. Industrial Tube's website states that it purchases primarily pre-galvanised steel coil from NZ Steel and refers to its use of pre-galvanised commercial grade steel: G250 Z275 and G310 Z450,⁶⁷ which equates to the same thickness as the pre-galvanised HSS produced by NZ Tube Mills. Tube sizes range from 6.35mm to 203.2mm outside diameter, but it is not clear whether Industrial Tube offers pre-galvanised HSS across the range of these dimensions, nor is it clear what uses the pre-galvanised HSS may be put to.
- A3.99. ██████████ stated that pre-galvanised HSS to meet its requirements "is not available in any dimensions from New Zealand producers", tending to confirm that the type of pre-galvanised HSS with thicker zinc coatings made by New Zealand producers is not the same as at least some of the pre-galvanised HSS that is imported.
- A3.100. Dalian Steelforce also referred to commercial substitutability and pricing structures for HDG and pre-galvanised HSS which are discussed in the sections below.
- A3.101. MBIE notes that pre-galvanised HSS appears to have different thicknesses of zinc coating, depending on the thickness of zinc coating on the input galvanised coil. From the information available, MBIE is unable to conclude that pre-galvanised coil, regardless of the thickness of zinc coating, is not a subject and like good. While MBIE's comments on pre-

⁶⁴ <https://www.nzsteel.co.nz/new-zealand-steel/the-story-of-steel/the-steel-making-process/metal-coating-plant/>.

⁶⁵ Coating Thickness (µm) = Coating Mass (g/m²) x 0.14.

⁶⁶ <http://nztubemills.co.nz/wp-content/uploads/2014/06/ProductCatalogueV11.pdf>.

⁶⁷ <https://www.industrialtube.co.nz/materials-and-quality>.

galvanised steel are included under the heading of “appearance and finish”, MBIE has also taken into consideration other factors such as usage.

Plastic-lined

- A3.102. During the investigation, MBIE also encountered sales of plastic-lined HSS by a Chinese producer on the Chinese domestic market. MBIE notes that plastic-lined pipes are not goods under investigation and have been mentioned by neither the New Zealand industry nor overseas producers or importers as being like goods. Plastic-lined pipes are specifically designed for conveying fluids, gas or oil used for heating, ventilation, and air conditioning systems. The Chinese producer’s product catalogue noted the advantages of plastic-lined pipes for ensuring the quality of inside fluids, improving transport efficiency and having environmental and health advantages due to the smooth inside surface.
- A3.103. Because of these differences, MBIE considers that plastic-lined HSS is not like is not like the HSS subject to investigation.

Production methods and technologies

- A3.104. Submissions analysed to date indicate that there are no significant differences in the production methods for HSS used by New Zealand producers and by producers in China and Malaysia, namely they all use a process of cold forming and electric-resistance welding.
- A3.105. While the mechanical processes for production of HSS are very similar or the same, Tianjin Youfa noted that its raw material is narrow steel strip, so “there is one process less compared with the hot rolled coil that New Zealand industry used.”
- A3.106. Dalian Steelforce noted that NZ Steel produces galvanised products by hot dipping and does not produce HSS from pre-galvanised coil. MBIE notes that other New Zealand producers, Industrial Tube and NZ Tube Mills, do however produce HSS made from pre-galvanised coil.
- A3.107. As noted above, the coating thickness of the raw material pre-galvanised coil used for some imports appears to be different to the pre-galvanised coil used by Industrial Tube and NZ Tube Mills to produce HSS.
- A3.108. MBIE considers that generally similar production processes and technologies do not assist significantly in distinguishing between HSS that is like or not like.

Standards

- A3.109. Where standards are appropriate and when applied, New Zealand producers and importers reference three standards that are applied to HSS of the dimensions produced by the New Zealand producers and HSS of greater dimensions that are imported.
- AS 1074:1989 for “steel tubes and tubulars for ordinary service.”
 - AS/NZS 1163:2016 (previously AS/NZS 1163:2009) for “cold-formed structural steel hollow sections.”
 - AS/NZS 4792:2006 for “hot-dip galvanized (zinc) coatings on ferrous hollow sections, applied by a continuous or a specialized process.”

- A3.110. NZ Steel's online data sheets state that it manufactures HSS to AS/NZS1163:2009 grade C250/C350. [REDACTED] notes that imports of HSS are manufactured to AS/NZS1163:2016 grade C250/C350.
- A3.111. Industrial Tube and NZ Tube Mills make tube to standard AS1450 for steel tubes for mechanical purposes. NZ Steel pointed out that NZ Tube Mills' website also refers to selected sizes being available to AS1163⁶⁸ and considered that "the consequence of NZTM making to AS/NZS1163 is that NZTM and its range competes in the same segment as NZS and imported Steelforce goods."
- A3.112. Dalian Steelforce distinguishes standards for different products, applications and purposes in two market segments:
- AS1450:2007 for the manufacturing segment. Dalian Steelforce noted that AS1450:2007 specifies "the general technical delivery requirements for carbon and carbon-manganese steel tubes of round, square, rectangular or other non-circular cross-sections that have been either cold or hot formed."
 - AS/NZS1163:2016 and AS1074:1989 for construction and engineering. AS/NZS1163:2016 specifies "the requirements for manufacturers and suppliers of longitudinal welded cold-formed structural hollow sections for general structural and engineering applications." AS1074:1989 "specifies requirements for threaded steel tubes and tubulars, and plain-end steel tubes suitable for screwing...". Dalian Steelforce advises that "these tubes are generally used for fluid reticulation (building sprinkler systems) as they are pressure tested, however, they are also used in fencing applications."
- A3.113. NZ Steel considered there is difficulty in using AS1074 and AS/NZS1163 to assist in like goods delineation and stated that "[t]he difficulty with such premise is the cross-over in possible end use of those goods, and AS/NZS1163. Tube of say 2.6mm wall thickness 20mm diameter is available from the New Zealand industry in either AS1450 or AS/NZS1163, and can serve same in-use function."
- A3.114. MBIE finds no persuasive evidence on standards that assists significantly in distinguishing between HSS that is like or not like and considers market segmentation below.

Function and usage

- A3.115. On function, [REDACTED] states that "the difference would be in the ability to support structures of differing sizes and weights" but cautions that the company is not a design engineer, consultant or specifier.
- A3.116. NZ Steel stated in its application that "both the locally produced and allegedly dumped goods have comparable or identical end uses and are functionally substitutable." NZ Steel claimed that the example it provided of two options using different dimensions of steel

⁶⁸ <http://nztubemills.co.nz/specifications/>

demonstrated “[f]unctional likeness in that the larger dimension goods are shown to function to achieve” the same result in load-bearing capacity.

- A3.117. MBIE understands that some CHS is used for reticulation, but that most HSS is processed or fabricated to meet a wide range of end uses and applications, such as agricultural, automotive, mechanical handling, engineering, general manufacturing, and construction.
- A3.118. In the Issues Paper, MBIE asked interested parties for information on the extent to which HSS of dimensions covered by the description of subject goods is used for applications and end uses that differ from the dimensions available from the New Zealand industry, including not just width but other dimensions such as wall thickness. This information could include whether HSS of different widths and/or thicknesses to that produced in New Zealand are specified by engineers or designers and in what circumstances.
- A3.119. MBIE notes comments earlier in this report about the existence in New Zealand of two market segments, namely manufacturing and construction/engineering. [REDACTED] stated that “imported HSS of greater dimensions than NZ-produced HSS is typically used more in the construction sector” and “is regularly specified by engineers and designers.”
- A3.120. Dalian Steelforce stated that the batch hot dip galvanizing (used by NZ Steel) results in the end product and applications being different. MBIE understands that batch immersed galvanised products are more suitable for exterior environments. [REDACTED] stated that HDG HSS “is destined for applications that will be used in a “moderate to severe” corrosive environment” and that HDG and pre-galvanised HSS are used for different end uses and are not substitutable.
- A3.121. [REDACTED] stated that pre-galvanised HSS is used in “a “mild” corrosive environment” and is “more likely to have applied a finishing coat e.g. powder coated.”
- A3.122. MBIE points out that the other New Zealand producers, Industrial Tube and NZ Tube Mills form HSS from pre-galvanised coil, but this appears to have a coating of greater thickness than some imported pre-galvanised HSS.
- A3.123. MBIE noted that HSS can be sold broadly either for manufacturing or for construction/ engineering and that there is some overlap between these broad market segments. The New Zealand industry produces HSS for both broad market segments and therefore MBIE cannot exclude HSS on grounds of function or usage.
- A3.124. It is not clear whether there are significant differences in uses for pre-galvanised steel of different zinc coating thicknesses.
- A3.125. MBIE observes that dimensions are determinative of efficient design to meet structural requirements and also notes NZ Steel’s example of the effective use of different dimensions to achieve the same outcome. Function and usage is not particularly helpful in this case in deciding on the scope of subject and like goods when there is some overlap in end-uses and potential end-uses between HSS of different sizes.

Pricing structures

- A3.126. MBIE understands that pricing structures for HSS are based on dollars per MT.

- A3.127. There are differences in pricing between different types of HSS. Dalian Steelforce stated that “pricing between HDG and pre-galvanised sections differ considerably . . . which reflects the different costs of production, different market segments and different end-use applications.” Pre-galvanised HSS will likely carry a price that is 30 per cent lower than HDG, according to [REDACTED], because of the lesser amount of zinc used.
- A3.128. Dalian Steelforce understands that there are “very different pricing structures with each segment”, namely manufacturing or construction and engineering.
- A3.129. NZ Steel referred to evidence in its application of different sizes of steel of adjacent dimensions being sold at the same (across sizes from 50x50mm to 500x300mm) or similar prices per tonne (across HSS between 80mm and 200mm).
- A3.130. [REDACTED] noted that it sells imported and locally-produced price at the same rate per tonne.
- A3.131. Tianjin Youfa stated that “length does not influence price a lot”
- A3.132. MBIE notes that pricing differs between HSS that is significantly different, for example between HDG and pre-galvanised HSS. Submissions indicate some similarity in prices per tonne of similar HSS. Submissions indicate that there are no apparent pricing structures or patterns that indicate significant differences between prices of smaller and larger dimensions of the same types of HSS.

Marketing and distribution

- A3.133. NZ Steel claimed that the imported and locally-made HSS compete “with strong price competition” in the New Zealand market using the same distribution channels.
- A3.134. There is a lack of evidence in support of the claim that imported HSS of larger dimensions competes with HSS of the dimensions produced locally.
- A3.135. MBIE understands that imported HSS of the full range of dimensions, whether imported or produced in New Zealand, is distributed mainly through the same channels, namely through steel merchant distributors and direct to end user processors and fabricators.
- A3.136. Submissions received indicate that there are two broad market segments, namely manufacturing (generally thin wall (0.8-2.5mm – or 5.0mm according to [REDACTED] - and under 356mm in perimeter) and construction/engineering (generally a wall thickness of >4.0mm - >6.0mm according to [REDACTED] - and greater than 356mm in perimeter). [REDACTED] indicates there is some crossover between these market segments, which is reflected to some extent in the wall thicknesses it references.
- A3.137. MBIE notes that the New Zealand industry and importers supply HSS to both market segments and there is some overlap between the two segments. MBIE agrees that similar distribution channels are used for locally-produced and imported HSS. Larger dimensions and smaller dimensions are sold through the same distribution channels and generally into the same market segment.

Substitutability or commercial interchangeability

- A3.138. In its application, NZ Steel claimed there is “product substitutability between locally produced and allegedly dumped goods across the product end uses.” In addition, NZ Steel

claimed that HSS of larger dimensions can to some degree be substituted in applications where lesser dimensions may be used.

- A3.139. Substitutability includes the concept of functional likeness, that is, the extent to which two products perform the same function. In the Issues Paper, MBIE stated that it considers substitutability to be secondary to the physical characteristics of the goods. [REDACTED] agreed. In a limited review of wire nails in 2012, for example, MBIE considered that the difference in the design features of screws and nails was “so significant that substitutability is not a relevant factor in determining whether screws constitute “like goods”” to nails.
- A3.140. NZ Steel considered that the wire nails consideration does not assist in the case of HSS because the difference between screws and nails is manifest.
- A3.141. Submissions were divided on whether HSS of dimensions produced by New Zealand producers is substitutable for HSS of greater dimensions and vice versa.
- NZ Steel argued for substitutability.
 - A foreign manufacturer, importers and an end user argued against NZ Steel’s substitutability argument.

NZ Steel

- A3.142. NZ Steel claimed that there is commercial interchangeability between its HSS and the goods in its subject goods description. Considerations of commercial interchangeability include the extent to which downstream industries and end users would likely substitute imported HSS of different dimensions if HSS of certain lesser dimensions was subject to duties. Dalian Steelforce claims that “product substitution of HSS would typically require a re-evaluation and re-engineering of the structure by a certified Structural Engineer.”
- A3.143. NZ Steel referred to its applications for the conceptual and engineering rationale of substitutability of goods that seeks material-use efficiency. In its applications NZ Steel stated that “[a]n OEM⁶⁹ Engineer can achieve the desired mechanical performance in a HSS application via design options comprising fewer, but larger dimension HSS, or, alternatively, a greater number of smaller dimension HSS members.”
- A3.144. NZ Steel provides a commercial structural engineering example where two options were provided: the first using HSS within the range of dimensions produced by NZ Steel and the second option “using CHS sections of >100mm OD.” NZ Steel claimed that this example provided evidence of “current product substitutability and likeness, functional likeness, and direct goods-goods competition and thus commercial likeness. In turn this evidences price spillover and injury matters.” The cost per square metre in the example was almost identical and NZ Steel claimed that if duties are imposed on only steel of dimensions made by the New Zealand industry that steel of greater dimensions will be substituted. NZ Steel

⁶⁹ OEM: original equipment manufacturer.

argued that this example showed “[c]ommercial likeness in that goods <100mm and >100mm both are shown to provide same design solution.”

- A3.145. NZ Steel considered that this example provides evidence that “imported HSS of larger dimensions competes with HSS of the dimensions produced locally”. MBIE disagrees. This is only one example and may not be replicable for other situations and applications. The example may provide evidence that imported HSS of larger dimensions can be substituted in some circumstances with HSS of the dimensions produced locally, but not evidence that it is being substituted in this way, nor evidence of actual competition between different dimensions.
- A3.146. No evidence is available about the extent to which there may be commercial substitutability between pre-galvanised HSS with thicker and thinner zinc coatings.

Importers

- A3.147. [REDACTED] did not consider that HSS with different dimensions can be substituted by an end user. [REDACTED] noted that end users specify a certain dimension and type of product for particular applications and that the “choice to substitute a product remains with the end user not the manufacturer of one product vs. that of another.” [REDACTED] concluded that “substitutability and commercial interchangeability are not realistic options in light of design constraints and demand from downstream processors.”
- A3.148. [REDACTED] did not agree that there is a high degree of interchangeability. [REDACTED] referred to perimeter, wall thickness (WT), and length as the main differentiating factors between locally produced and imported HSS. [REDACTED] noted that “a section with a 6mm WT cannot simply be substituted for a 9mm WT (which is the next greater dimension WT imported and a 50% increase in WT) as key properties such as strength and load capacity would be compromised.” [REDACTED] also observed that “[I]t is often not practical to substitute products as this may require a re-evaluation and re-engineering of the entire structure.”

Foreign Manufacturers

- A3.149. Dalian Steelforce and Steelforce Trading, at the verification visit, claimed that substitution of larger dimensions looked possible to the uninitiated, but not in their experience. They said that consulting engineers say what can and cannot be used and the use of greater dimensions would depend on specific end use. The companies stated that the standard is more important for a structural application. For example, AS/NZS 1163 ensured that the 14 required chemical elements were included and that yield strength and tensile elongation (mechanical) strengths were met.
- A3.150. Dalian Steelforce stated that, for reasons of different galvanised coating thickness and different applications, “there is little commercial substitutability between HDG and pre-galvanised sections.”
- A3.151. Alpine Tube mirrored the views of importers and other foreign manufacturers. At the verification visit, the company stated that the dimensions and wall thickness of the HSS must meet the design specifications required by the customer. For example, if a customer wants HSS with a 9mm wall thickness to meet certain design specifications for a building or

other structure using HSS, it must receive a HSS with a 9mm wall thickness. A 6mm wall thickness won't be sufficient to fit the design specifications.

- A3.152. NZ Steel disagreed with Dalian Steelforce, estimating that the majority of the 38 end uses it identified in its application could be met by either HDG HSS or pre-galvanised HSS.

End users

- A3.153. [REDACTED] makes commercial greenhouses and animal shelters from galvanised HSS and noted that New Zealand steel manufacturers do not make all of the sizes and steel grades used in their structures. For site-specific engineered buildings, sections and steel grades are determined by engineers. [REDACTED] considered that the substitution of different HSS to avoid anti-dumping duties would require a significant redesign of their structures because of matching brackets. They would also encounter problems shaping steel of different wall thicknesses through rollers. These issues point to significant difficulty and change being required to allow for the substitution of larger sizes for smaller sizes of HSS.
- A3.154. MBIE considers that, in the context of questions of subject or like goods, substitutability is just one factor that may be taken into account if the goods are found in fact to be substitutable. It is not just a question of whether the goods being compared could be substituted one for the other, but whether in practice they are being substituted one for the other. NZ Steel provides one example where HSS of different sizes could be substituted but no evidence that this is happening in practice. There is no apparent incentive at the moment for designers to specify a larger size instead of a smaller size. MBIE is not convinced, on the basis of one example (even if duties were to be imposed on subject goods of certain dimensions) that substitutability and commercial interchangeability are realistic options in light of design constraints, aesthetics and demand from downstream processors.
- A3.155. From the evidence available, MBIE cannot make a clear distinction between HDG HSS and pre-galvanised HSS that would indicate they are not like goods to each other.

Competition and price interconnectivity

Competition

- A3.156. NZ Steel claimed that the subject goods (of greater dimensions than produced in New Zealand) compete with locally-produced goods.
- A3.157. [REDACTED] and [REDACTED] considered that goods of greater dimensions do not compete with each other as they are not like for like goods. [REDACTED] stated that “[L]ocal and imported HSS do not compete as being of differing dimensions they have different load bearing capacities and applications.”
- A3.158. [REDACTED] indicated that NZ Steel will not supply it or other small-medium businesses with HSS, “forcing them to import like goods.”
- A3.159. [REDACTED] stated that “it is noted the investigation is about goods being like, not competition between locally and imported products.” It sells HSS from NZ or other countries [REDACTED] [REDACTED], so does “not believe there is any price elasticity of demand.”

A3.160. MBIE notes that the question is whether the imported HSS and locally produced HSS are like, not whether they are directly competitive. Competition is just one factor in the consideration of like goods. MBIE is not convinced that the subject goods of greater dimensions than produced in New Zealand compete with HSS of the lesser dimensions produced locally.

Price interconnectivity and spillover

A3.161. NZ Steel, when noting that the imported HSS in its description of subject goods includes HSS of sizes up to 30 percent greater than that produced locally, claimed that the greater dimensions estimate the extent of possible price spillover and injury. NZ Steel referred to correspondence which does not differentiate in price per tonne between goods of larger and smaller dimensions.

A3.162. Price spillover effects may occur when the pricing of different goods is not differentiated to the extent that a customer's product preference would not switch to different goods if the price of one good increases significantly. For example, if duties were only imposed on imported goods of the dimensions produced locally, would importers purchase more imported goods of the greater dimensions because of price spillover effects?

A3.163. NZ Steel referred to correspondence where prices per tonne are the same for HSS regardless of their dimensions. ██████████ confirmed that "prices per tonne tend to be similar regardless of dimension," but differ between some coatings, such as pre-galvanised and HDG.

A3.164. In reference to the description of subject goods including HSS of dimensions 30 per cent greater than those produced by NZ Steel, NZ Steel stated that "this estimates the extent of possible price spillover and injury . . . in the manner explained by the Canadian International Trade Tribunal" (CITT) in Carbon And Alloy Steel Line Pipe Inquiry No. NQ-2015-002 [CITT *Line Pipe*] and [*Certain Fasteners*] Inquiry No. RR-2014-001, underpinned in this case by some functional product substitutability."

A3.165. The CITT *Line Pipe* reference is to the CITT's consideration of requests from several parties that certain goods should be excluded from its finding that the subject goods caused material injury to the domestic industry. The CITT noted that exclusions under Canadian legislation "are extraordinary measures that may be granted in exceptional circumstances at the Tribunal's discretion, specifically when the Tribunal is of the view that such exclusions are not likely to cause injury to the domestic industry."

A3.166. The CITT's consideration was in respect of neither the scope of the descriptions of "subject goods" nor "like goods." The CITT had already found that "domestically produced line pipe, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods."

A3.167. The CITT did however consider price spillover when some parties argued that it "should conduct a separate injury analysis for different types of line pipes and/or market segments" (i.e. seamless and welded, or different technical specifications) and/or different end uses for line pipe, rather than carry out its injury inquiry in respect of a single class of goods. Eighty-five percent of the goods were fully substitutable for each other. The CITT was "satisfied with its conclusions that the subject goods and the domestically produced

- like goods constitute a single class of goods.” The CITT noted that additional factors that weighed against making product distinctions were “the responsiveness of pricing in the market and the potential for spillover effects on the price of line pipe generally.”
- A3.168. The CITT’s report noted the submissions of some parties that “the product definition was overly broad and captured all sorts of pipe products that are not necessarily “line pipe.” The CITT was constrained to “conduct its [injury] inquiry on the basis of the product definition of the dumped or subsidized goods set out in the CBSA’s final determinations” and whether certain goods should “be excluded from the scope of the subject goods is a matter that falls under the CBSA’s exclusive jurisdiction.”⁷⁰
- A3.169. The *Certain Fasteners* report referred to requests by some parties for exclusions of products from an order continuing an existing order, on the basis that certain specific products are not likely to cause injury.
- A3.170. NZ Steel considered that “CITT NQ-2015-002 and RR-2014-110 show that (while bifurcated between CBSA and CITT which is the structurally different arrangement to New Zealand) subject goods beyond the manufacturing scope of the domestic Canadian industries are remedy-able because of like goods substitutability considerations.”
- A3.171. NZ Steel stated that “subject goods consideration ought to reach to product substitution matters. Clearly therefore, subject goods need not necessarily be at the goods boundary of the domestic industry equipment and range produced at any point in time – which is the outcome in Canada and the Australian HSS approach through REP144 to now.” MBIE agrees that substitutability is a factor for consideration in deciding on the scope of subject goods and on the scope of like goods, but it is only one factor and a factor that is not solely determinative of whether the scope of the subject goods should be extended beyond the manufacturing scope of the domestic industry.
- A3.172. Dalian Steelforce rejected NZ Steel’s argument about pricing continuity across goods of adjacent dimensions, “as a primary driver for the purchase of HSS products is the dimensions for the specified end-use application” as per project specifications. Dalian Steelforce notes that “the nominated size, grade, length and coating finish is commonly calculated and verified by a structural engineer and specified in project drawings.”
- A3.173. NZ Steel claimed that the example it provided of two alternative options using steel of different dimensions “confronts close resemblance and empirically disagrees” with Dalian Steelforce’s contention.
- A3.174. Dalian Steelforce noted that “[g]iven that the intended application of HSS products is typically in a structural capacity of some kind, the nominated size, grade, length and coating finish is commonly calculated and verified by a structural engineer and specified in

⁷⁰ CITT *Inquiry No. NQ-2015-002*, Finding issued 29 March 2016, Reasons issues 13 April 2016, para 22.

project drawings. The structural engineer will consider the most efficient steel section by size, grade, length and coating to perform the task required.”

- A3.175. MBIE’s initial conclusion was that price spillover has limited application when considering the scope of “subject goods.” Dalian Steelforce agreed with this view. MBIE observes that one importer imports only product outside of the NZ Steel range, which supports a view that there is not significant competition or price spillover between HSS of greater dimensions than those produced by NZ Steel.
- A3.176. NZ Steel claimed that there is commercial interchangeability between its HSS and the goods in the subject goods description.
- A3.177. MBIE’s analysis of exports shows that there is a significant difference between HSS of the maximum dimensions produced by the New Zealand industry and the closest larger dimensions being imported e.g. CHS of 101.6mm compared with 114.1mm and RHS of 400mm compared with 456mm. MBIE is not convinced, even if there were price spillover on a per tonne basis in the presence of duties, that importers would move significantly to purchases of larger dimensions of HSS.

Other matters

Tariff classification

- A3.178. The subject goods are classified under the tariff items shown below in bold type:
- 73.06 Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.
 - Line pipe of a kind used for oil or gas pipelines:
 - ...
 - Casing and tubing of a kind used in drilling for oil or gas:
 - ...
 - 7306.30 - Other, welded, of circular cross-section, of iron or non-alloy steel
 - 7306.30.01 -- Boiler tubes
 - 7306.30.09 -- High-pressure hydro-electric conduits of steel, whether or not reinforced
 - 7306.30.19 -- Other**
 - 7306.40 - Other, welded, of circular cross-section, of stainless steel
 - ...
 - 7306.50 - Other, welded, of circular cross-section, of other alloy steel
 - ...
 - Other, welded, of non-circular cross-section:
 - 7306.61.00** -- Of square or rectangular cross-section
 - 7306.69.00** -- Of other non-circular cross-section
- A3.179. During the investigations, to take account of oval shaped products included in the definition of subject goods, MBIE has added tariff item 7306.69.00 for non-circular cross-section other than square or rectangular.
- A3.180. MBIE makes a reasonable assumption that the tariff items for the HSS goods produced by the NZ industry are the same as those for the imported goods of greater dimensions,

namely 7306.30.19, 7306.61.00, and 7306.69.00, but the statistical keys may differ depending on the dimensions of the goods.

Tariff concessions

A3.181. Duty-free tariff concessions are available under Part II of the Tariff of New Zealand where suitable alternative goods are not locally produced or manufactured. Applications for tariff concessions on these grounds may be contested by local manufacturers.

A3.182. The meaning of “suitable alternative” is explained on the Customs website as follows:

Suitable alternative goods are defined as those goods which perform the same or a similar function to the imported goods for which a tariff concession is sought; and where the imported goods would compete directly in the same market with the New Zealand produced or manufactured goods. Price and quality are not normally taken into consideration when deciding on whether suitable alternative goods are produced or manufactured in New Zealand. The term “suitable alternative” is not interpreted in the narrow sense of requiring that the imported goods should be identical to locally produced or manufactured goods, but rather, that goods produced or manufactured in New Zealand are a suitable alternative⁷¹.

A3.183. The removal of tariffs on HSS when sourced from countries with which New Zealand has free trade agreements may have resulted in less use of the tariff concessions system in recent years. Nonetheless, it is reasonable to assume that the existence of tariff concessions for certain dimensions of HSS is indicative of a lack of local availability and also of a lack of substitutability or interchangeability.

A3.184. Tariff concessions that are particularly indicative of constraints on New Zealand production of HSS are:

Tariff Item	Goods	Ref No
7304) 7305) 7306)	Exhaust tubing 127mm OD and 152.4mm OD	681190G
7306.61.00	Rectangular hollow sections, being: Rectangular hollow sections in sizes exceeding 127mm x 51mm; or square hollow sections in sizes exceeding 89mm x 89mm	310039B
7306.61.00) 7306.69.00)	Rectangular hollow sections: 64mm x 64mm x 6.3mm 51mm x 51mm x 6.3mm 89mm x 89mm x 6.3mm	601555H
7306.69.00	Carbon steel elliptical tubing of a nominal internal diameter exceeding 112mm x 75mm	302392D

⁷¹ <https://www.customs.govt.nz/globalassets/documents/tariff-documents/tariff-concessions-guide.pdf>

- A3.185. NZ Steel considered that “[t]he assumption of lack of substitutability and interchangeability is not correct insofar as application of AD or CVD tests, because the tariff concession process does not reach to that construct. Tariff concessions ought not be read directly into this case.”
- A3.186. MBIE notes that NZ Steel produces some HSS that is subject to a tariff concession. NZ Steel produces some “square hollow sections in sizes exceeding 89mm x 89mm” (concession reference number 310039B), namely 100mm x 100mm. Since there is evidence NZ Steel produces these products, the tariff concession in this particular case is not useful in helping define the limits of New Zealand production.
- A3.187. MBIE considers that tariff concessions for dimensions of HSS that are outside of known current production are, however, useful in confirming or defining constraints on local production. In support of its position, MBIE notes that “suitable alternative” implies that substitutability and interchangeability are considerations in granting tariff concessions, just as is function and competition as set out in the description above of “suitable alternative goods.”

The Scope of Subject Goods

- A3.188. MBIE has carried out some initial analysis of the circumstances in which it may be appropriate to change the description of subject goods.

World Trade Organization Jurisprudence

Like Goods

- A3.189. “Like product” is defined in the WTO Antidumping Agreement⁷² (AD Agreement) and the Subsidies and Countervailing Measures Agreement (SCM Agreement).
- Article 2.6 of the AD Agreement provides that “[t]hroughout this Agreement the term “like product” (“produit similaire”) shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.”
 - Footnote 46 to the SCM Agreement has text that is identical to Article 2.6 of the AD Agreement.
- A3.190. In its application, in relation to physical characteristics and likeness NZ Steel noted that “the WTO Panel in *Indonesia - Autos*⁷³ held that the term “characteristics closely resembling” is “on its face... quite narrow” and “includes but is not limited to physical characteristics”^[74].” In the Panel’s view “the analysis as to which cars have “characteristics

⁷² Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

⁷³ DS54/DS55/DS59/DS64 *Indonesia — Certain Measures Affecting the Automobile Industry*.

⁷⁴ Panel Report, *Indonesia – Autos*, at [14.172] – [14.173]

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds64_e.htm

closely resembling" . . . logically must include as an important element the physical characteristics of the cars in question. This is especially the case because many of the other possible criteria identified by the parties are closely related to the physical characteristics of the cars in question." Other possible criteria identified by the parties were uses to which a product may be put, the substitutability of products, price and tariff classification principles and Indonesia also mentioned consumer perceptions and preferences.

A3.191. The Panel also noted, *inter alia*, that:

- Differences in uses generally arise out of, and assist in assessing the importance of, different physical characteristics of products.
- Similarly, the extent to which products are substitutable may also be determined in substantial part by their physical characteristics.
- "The term "characteristics closely resembling" in its ordinary meaning includes but is not limited to physical characteristics, and we see nothing in the context or object and purpose of the SCM Agreement that would dictate a different conclusion."⁷⁵

Subject Goods

A3.192. The term "subject goods" (also known as "products under consideration") refers to "the product allegedly dumped and exported to the importing country and allegedly injuring the domestic industry producing a like product in the importing country".⁷⁶ Article 2.1 of the AD Agreement states that "[f]or the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. . . ."

A3.193. There is no guidance in the "like goods" article 2.6 of the AD Agreement on the way in which the "subject goods" should be determined. The Panel in *US – Softwood Lumber V* considered that once the product under consideration (the subject goods) is defined, the "like product" to the product under consideration has to be determined on the basis of Article 2.6, but there is no guidance in that Article on the way in which the 'product under consideration' should be determined.⁷⁷

A3.194. The "like goods" article (AD Agreement 2.6) does not apply to the determination of the scope of the subject goods, nor does it require the product under consideration in an

⁷⁵ Panel Report, *Indonesia – Autos*, at 14.173.

⁷⁶ Czako J, Human J, Miranda J, (2003) *A Handbook on Anti-Dumping Investigations*.

⁷⁷ Panel Report, *US – Softwood Lumber V*, para. 7.153 – "As the definition of 'like product' implies a comparison with another product, it seems clear to us that the starting point can only be the 'other product', being the allegedly dumped product. Therefore, once the product under consideration is defined, the 'like product' to the product under consideration has to be determined on the basis of Article 2.6. However, in our analysis of the AD Agreement, we could not find any guidance on the way in which the 'product under consideration' should be determined."

investigation to be defined so as to only include products that are "like" within the meaning of Article 2.6. In *EC – Fasteners (China)*, the Panel rejected an argument that Articles 2.1 and 2.6 together required the product under consideration in an investigation to be defined so as to only include products that are "like" within the meaning of Article 2.6. The Panel stated: “[T]he subject of Article 2.6 is not the scope of the product that is the subject of an anti-dumping investigation at all.” The Panel further stated that “[w]hile it seems self-evident to us that an investigating authority must, at the time it initiates an anti-dumping investigation, make a decision as to the scope of that investigation, and give notice of the "product involved", we are not persuaded that either Article 2.1 or Article 2.6 of the AD Agreement establishes a requirement for making an elaborated determination in that regard.”⁷⁸

A3.195. An investigating authority is not however precluded from refining the scope of description of the subject goods. While the AD Agreement does not appear to provide guidance about how to determine the “subject goods”, it likewise does not appear to limit an investigating authority when considering the scope of “subject goods” for an investigation. The Panel in *Mexico - Steel Pipes and Tubes* accepted that an investigating authority may modify its product scope after initiation and during the course of an investigation.⁷⁹

MBIE’s view on the scope of subject goods

A3.196. There are good reasons why an investigating authority may change the definition of subject goods.

- “[A] wide product scope complicates the investigation as the requirement of making a fair comparison between normal value and export price becomes increasingly difficult.”⁸⁰
- “[The] absence of a definition of what may constitute the product under consideration in the AD Agreement allows for the possibility of a disjoint in the types of products included in the scope of the like product and those included in the product under consideration.”⁸¹ MBIE notes that such a disjoint could, for example, affect the injury analysis such as where price undercutting analysis could not be carried out for some product categories.
- MBIE considers the subject goods should be defined to include only those goods which are allegedly injuring a domestic industry, rather than those which might

⁷⁸ Panel Report, *EC – Fasteners (China)*, paras. 7.267-7.268.

⁷⁹ Panel Report, *Mexico – Steel Pipes and Tubes*, para 7.105. Mexico expanded the definition and scope of the products covered by the investigation at two points during the investigation – in the Preliminary Determination and late in the investigation. The Panel noted that, making this factual finding is not “meant to imply that changing the product scope of an investigation, as such, is problematic under the *Anti-Dumping Agreement* . . . the parties are in agreement that the Agreement does not prohibit, as such, changes to the product scope of an investigation”.

⁸⁰ Mavroides, P.C. et al, *The Law and Economics of Contingent Protection in the WTO*, p.162.

⁸¹ *Ibid*, p.165

cause injury to the industry as result of changes in purchasing behaviour following the imposition of duties. The latter circumstance is related to potential circumvention of duties, rather than the focus of an investigation into whether dumping or subsidisation is causing material injury to an industry. ██████████ agreed with this view.

- A3.197. NZ Steel agreed with the principle in the chapeau to the preceding paragraph, but considers the principle is not material in this case due to its demonstration of price continuity and connection across different sizes of HSS. NZ Steel did not agree with the third bullet point, because in its view HSS of greater than 100mm is injuring NZ Steel's pricing in HSS less than 100mm "due to them being available now (pre any duty) and both goods being a functional equivalent option to meet the project brief [*in the examples of two options provided by NZ Steel*]. Spillover extends that injury; Second, we consider it persuasive that this MBIE view is not that of Canada and Australia [*where certain goods not made in Australia were considered like those made in Australia*]."
- A3.198. MBIE maintains its position that the subject goods should be defined to include only those goods which are allegedly injuring a domestic industry currently and prior to the imposition of any duties.
- A3.199. *An investigating authority is not precluded from using a definition of like goods to help it assess the scope of the description of subject goods.* There is nothing in the AD or SCM Agreements to preclude such use. In MBIE's view, it is open to an investigating authority to decide that the scope of subject goods is so much greater than the like goods produced by the domestic industry that certain subject goods are not like goods to those being produced domestically. Sections 10F(3) and 11(2)(c) of the Act refer to "like goods" as either all like goods or imports of like goods, not just the like goods produced by the New Zealand industry, confirming that the definition of "like goods" may be used to assess the scope of the subject goods.
- A3.200. *An investigating authority may refine the description of "subject goods."* The definition of "like goods" applies to goods being produced by the domestic industry. If the industry claiming injury does not produce "like goods" to some of the goods included in the description of "subject goods" MBIE considers that an investigating authority may then conclude that those particular subject goods should be excluded from the investigation, for example because there is not an industry that is producing like goods to those particular goods.
- A3.201. *The scope of an investigation should not be confused with potential circumvention of any duties that are imposed.* An industry may apply for action against a wider range of subject goods than the like goods it produces for a range or reasons. One of these reasons is that the industry may be concerned that any duties that are imposed may be circumvented,⁸²

⁸² Ibid, p. 162.

The extended scope of subject goods for this reason is related to circumvention, rather than injury being caused by like goods, and MBIE considers that an investigating authority may therefore decide to exclude the wider range of goods from its investigation.

██████████ agreed with this view.

- A3.202. NZ Steel considered “it would be incorrect to consider the greater than 100mm goods scope is circumvention-related.” NZ Steel considers that subsequent price differential between lesser and greater dimensions of HSS “is an aspect of what may occur but we consider the commercial likeness, functional substitutability . . . are all pre-differential circumstances.” NZ Steel submits that “the MBIE circumvention suggestion would have the unintended consequence of unfairly traded and injurious goods being neither remediable via [anti-dumping or countervailing] duty, nor able to be redressed via an anti-circumvention claim.”
- A3.203. MBIE notes that this situation would not arise as MBIE’s stated view is that “the subject goods should be defined to include only those goods which are allegedly injuring a domestic industry”, not unfairly traded goods that are not injurious to the industry making application.

New Zealand investigations

- A3.204. In its investigation into subsidisation of galvanised steel coil imports from China, MBIE refined the subject goods definition to limit the goods to an upper width of 1260mm, to reflect NZ Steel’s manufacturing capability, concluding that “galvanised steel coil of widths greater than 1260mm does not closely resemble lesser widths, so the latter are not like goods to the former.” This decision is currently subject to judicial review.
- A3.205. In 2012, MBIE concluded a limited review to determine whether the New Zealand industry produced like goods to several types of specialised wire nails imported from China. The review report found that four specialised nails imported from China should be exempted from the anti-dumping duty imposed on wire nails.
- A3.206. A key factor in determining the exemption of one type of nail was function. The review set out an important principle about whether like goods produced by the domestic industry are just those actually being produced or whether potential production could be included. The review’s final report stated that “[b]oth the Act and the Anti-Dumping Agreement are premised on the basis that the domestic industry is currently producing a purported “like good”, not a notional ability to do so. The Ministry considers that it can only compare existing goods with existing goods, and not those that are merely notional.”
- A3.207. NZ Steel considers the wire nails can be distinguished from the lesser/greater circumstance in this HSS case. “In this case the NZS position is that the goods >100mm are like goods <100mm, for all the commercial substitutability, functionality etc reasons that have been discussed.”

Australian investigations

- A3.208. NZ Steel referred to a number of Australian trade remedy investigations into HSS as contextual evidence.

- A3.209. The ADC Dumping and Subsidy Manual (ADC Manual) contains no guidance about changing the scope of the product under consideration, other than that “[i]n order to determine whether there is, or may be established, an Australian industry producing like goods, the ADC will identify the imported goods (commonly referred to as the goods under consideration or the goods the subject of the application).”
- A3.210. The ADC Manual identifies the considerations the ADC takes into account when assessing whether the locally-produced goods and subject goods have characteristics closely resembling each other, namely, physical likeness, commercial likeness, functional likeness, production likeness and other considerations, such as marketing.

Certain Hollow Steel Sections

- A3.211. Although not referred to by NZ Steel in its application, MBIE notes that when the ADC was investigating alleged dumping and subsidisation of certain hollow structural sections (Investigation 144), it released an issues paper⁸³ in early 2009 on the goods under consideration and like goods. Some interested parties had raised issues alleging that the local producers may have included goods in the goods under consideration (the imported subject goods) when they may not be producing like goods.
- A3.212. The issues centred mainly around limitations in the dimensions of hollow structural sections produced by the Australian industry. The ADC called for submissions after identifying its practice to have regard to:
- physical likeness, including size, grade, shape and standards
 - commercial likeness (identifiable from market behaviour), such as direct competition in the same market sector, willingness of purchasers to switch, price competition and differentiation, and distribution channels
 - functional likeness, including end use, similar function and consumer preference
 - production likeness and other considerations.
- A3.213. The ADC maintained the definition of subject goods in its Statement of Essential Facts of 8 July 2009⁸⁴. The ADC concluded that “the goods manufactured by the Australian industry are like goods to the goods under consideration for the following reasons:
- physical: the goods are produced in similar grades, weights, standards and appearance;
 - commercial: the goods directly compete with Australian produced goods and are interchangeable;
 - functional: the goods are used to perform the same function and have the same end-use;
- and

⁸³ https://www.adcommission.gov.au/adsystem/referencematerial/Documents/Microsoft_Word_-_Issues_paper_2008_144_Like_Goods_HSS.pdf

⁸⁴ <https://www.adcommission.gov.au/cases/Documents/EPR%20144/SEF%20No.%20144%20Malaysia-%20China%20Final.pdf>

- production: the goods are manufactured in a similar process.”
- A3.214. While this investigation was terminated due to negligible injury, MBIE notes that the dimensions of HSS in a subsequent investigation (Investigation 177), which resulted in the imposition of duties, remained the same.
- A3.215. NZ Steel referred to investigation 177 in its application. The ADC in its final report on this investigation into dumping and subsidisation of hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand⁸⁵ of 7 June 2012 noted several submissions claiming that the Australian industry does not, or cannot, “supply certain models of HSS that would fit within the goods description.”
- A3.216. The ADC considered that such a claim, even if correct, would not allow it to change the description of the subject goods. Rather, it noted that it may be open to the Minister to exclude that subset from duty notices or separate non-injurious prices could be established to ensure that any measures are imposed in a manner that removes only the injury caused by dumping and subsidisation.
- A3.217. In considering whether the industry made HDG pipe, the ADC again appeared to make a judgment about whether those goods should be treated separately, but not excluded from, the investigation. The ADC concluded that, due to the fact that the Australian manufacturer produced HDG pipe in the investigation period that is “like” to imported HDG pipe, and they still had the capacity to produce this HDG pipe, the ADC did not consider that HDG pipe should be treated separately for purposes of the investigation.
- A3.218. Some interested parties also claimed the Australian industry was limited in its ability to produce products above certain thicknesses and cross-sectional sizes. The ADC rejected those claims because there was a manufacturer of larger size product during the period of investigation (even though since closed) and that the applicant producer “has the ability to modify its production facilities in order to manufacture an expanded range of sections.” It is unclear whether, if a case was justified, the ADC would have excluded the products of greater dimensions or dealt with them (as it could have done for the models referred to above) through injury analysis or at the time of imposing duties.
- A3.219. On the other hand, the ADC appeared open to excluding red painted CHS used in fire systems if sufficient information had been provided. The ADC found “no reason for it to be excluded from the investigation or from material injury considerations.”
- A3.220. The ADC assessed that the Australian industry produced like goods to the imported subject goods on grounds of physical likeness (it manufactured a wide variety of goods), commercial likeness (the industry’s product competed directly with imported subject goods), functional likeness and production likeness. The ADC noted that “[t]hese findings are not premised on a comparison of individual imported and domestically produced

⁸⁵ <https://www.adcommission.gov.au/cases/documents/REP177-FINAL.pdf>

models, but rather represent a global consideration.” MBIE notes that the Australian HSS industry produces a wider range of dimensions than does the New Zealand industry.

Tariff Concessions

- A3.221. The tariff concessions system provides for tariff free entry of goods that are not available from New Zealand producers, namely when there is no suitable alternative. 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.⁸⁶
- A3.222. NZ Steel disagreed that HSS subject to general tariff concessions should be excluded on grounds that tariff concessions are provided under the Tariff Act 1988 in the form of “a limited review” rather than using the term “like goods”. NZ Steel considers that “like goods” goes beyond the Tariff Act by incorporating “likeness in terms of injury matters.”
- A3.223. MBIE refers to its explanation above about the description of “suitable alternative goods” including some of the factors considered when deciding on the scope of subject or like goods, such as implied substitutability and interchangeability, function and competition. MBIE also notes that New Zealand manufacturers may object to the granting of tariff concessions if they consider they make suitable alternative goods, indicating that a successful application for a tariff concession has raised no sustainable concerns from a New Zealand manufacturer that removal of tariff protection or assistance on suitable alternative goods will adversely affect their business.
- A3.224. MBIE considers that goods subject to tariff concessions should not be subject to the dumping and subsidy investigations into imported HSS. MBIE does however consider that specific HSS subject to a tariff concession should be included where there is evidence of current production of such HSS.

Conclusions

- A3.225. The key question is what subject goods are required to be investigated to establish whether or not dumping or subsidisation of those goods is causing, or threatening to cause, material injury to a New Zealand industry.
- A3.226. Dumping and subsidy investigations are taken in respect of goods that are like. The domestic industry consists of those producers making like goods to the subject goods.
- A3.227. MBIE is satisfied that the New Zealand industry for these investigations consists of Industrial Tube, NZ Steel and NZ Tube Mills.
- A3.228. After considering the totality of factors analysed in this report, MBIE considers that:

⁸⁶ The rationale for the temporary tariff concession for residential building materials is not based on whether goods are unavailable from New Zealand producers. Many residential building materials under that tariff concession are made in New Zealand.

- there is no reasonable basis for concluding that HSS of certain greater dimensions than those produced locally should be included in the scope of the subject imported goods being investigated
- there is no reasonable basis for concluding that painted or pre-galvanised HSS should be excluded from the scope of the subject goods and the like goods.

A3.229. MBIE therefore defines the subject goods as:

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)

- *Circular products – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm*
- *Square and rectangular products – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm*
- *Oval products – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.*

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 black, oiled, painted or lacquered finishes.

ANNEX 4: COMMENTS RECEIVED ON THE EFC REPORTS

I. Comments on the Initial EFC Report

Comments on the initial EFC Report were received from:

- A. Dalian Steelforce/Steelforce Trading
- B. NZ Steel
- C. Tianjin Youfa

A. Dalian Steelforce/Steelforce Trading

- A4.1. The submission from Dalian Steelforce/Steelforce Trading focussed on matters relating to the establishment of normal values in the dumping investigation and did not specifically address subsidy issues.

B. NZ Steel

- A4.2. NZ Steel's submission covered matters relating to both the dumping and subsidy EFC Reports. This section addresses issues specifically relating to the subsidy EFC Report. Other matters raised by NZ Steel which arise in both contexts included sampling and subject goods, and were addressed in the dumping Final Report.
- A4.3. Matters covered by the judgment in *NZ Steel Ltd v Minister of Commerce and Consumer Affairs* were addressed through the Supplementary EFC report.

Expert Information

- A4.4. NZ Steel noted that MBIE's findings relating to public bodies were the subject of judicial review proceedings, and that expert reports which address public body matters directly relevant to the current case were provided to MBIE in NZ Steel's submission of 2 July 2018.

International Consensus on Chinese SIEs as Public Bodies

- A4.5. NZ Steel noted that MBIE had not addressed the relevant Indian findings that Chinese SIEs are public bodies, and should do so in the Final Report.

Subsidy Matters Unengaged

- A4.6. NZ Steel identified a number of other matters that had been raised in its submissions of 2 July 2018 and 15 August 2018 that had not been addressed or engaged *[with]* in the EFC Report, including:
 - MBIE's references to EU cases relating to "public body"
 - NZ Steel's submissions on state-owned input producers
 - References to Australian actions involving Dalian Steelforce
 - Subsidy programmes established before 2012
 - Non-sampling of geographic and specific category subsidies
 - Export buyer's credit.

MBIE Comment*Expert Information*

- A4.7. MBIE noted the release of the judgment in the judicial review proceedings and also noted that the judgment is being appealed. Nevertheless, where relevant and appropriate, the matters raised by the Court were reflected in the Supplementary EFC Report. The expert opinions attached to the NZ Steel submission of 2 July 2018 were the affidavits made in those proceedings, and MBIE's response was similarly made in those proceedings. NZ Steel's submission of 15 August 2018 included a comment from Stephen Gospage regarding specificity.
- A4.8. With regard to the issues relating to specificity in Mr Gospage's comments, MBIE reviewed Mr Gospage's opinion, and included a comment in the initial EFC Report and modified the text from the Provisional Measures Report, as follows:

A1.129 In its submission of 15 August 2018, NZ Steel provided an expert opinion that MBIE's approach to specificity was partial and incorrect. It was suggested that finding that the product under investigation falls into a particular encouraged activity is one way of determining specificity but is not the only one. The expert opinion goes on to discuss specificity in relation to government loans and the provision of inputs for LTAR. However, MBIE has found that SOCBs and SIEs providing inputs are not public bodies, so the issue of specificity does not arise.

A1.130 Where subsidy programmes have been found in relation to sample manufacturers, the question of specificity has been addressed, and in each case has been found to exist. The point of the MBIE discussion above was to provide a context for considering specificity for those programmes where being in the "encouraged" category was a condition for receiving a benefit under a programme. In the case of input materials provided at LTAR (but not utilities), it is highly likely that if a subsidy was established then MBIE would find that it was specific because if the subsidy relates to a particular product, e.g. HRC, then it is likely to meet the requirements for specificity. MBIE has not identified any Chinese government legislation or guiding document which links the provision of inputs to "encouraged" categories, so any specificity analysis would not be affected by MBIE's conclusions regarding "encouraged" activities.

- A4.9. For the Supplementary EFC Report, MBIE reviewed the relevance of the matters raised by Mr Gospage regarding specificity in the context of the programmes investigated. The outcome of that review, and the conclusion that a public body analysis was not required, meant that MBIE did not consider it necessary to analyse the position, which nevertheless remained essentially as set out in paragraph A1.130 shown above. The clarification of MBIE's approach, as set out in section 4.2 of the Final Report and section 4:II of this Annex, does not alter this conclusion.

International Consensus on Chinese SIEs as Public Bodies

- A4.10. NZ Steel considered that MBIE should address the Indian analysis of whether Chinese SIEs are public bodies, together with relevant findings from the USA, EC, Canada and Australia.

- A4.11. MBIE's analysis of the actions taken by other countries is summarised in section 4.2.3 above, including specific comments on the Indian investigation referred to by NZ Steel.
- A4.12. MBIE noted that claims by NZ Steel in its submission of 15 August 2018 that there is a "settled position" regarding the treatment of SIEs as public bodies, indicate a failure by NZ Steel to appreciate the WTO Appellate Body's findings in DS379 and DS436 that 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, and the legal and economic environment prevailing in the country in which the entity operates. What this means is that it is inappropriate to speak of "settled position" apparently going across all products and all suppliers of input materials.
- A4.13. NZ Steel's suggestion of an "international consensus" on the treatment of SIEs as public bodies is not consistent with Appellate Body findings regarding decisions by USDOC in relation to entities providing input materials in China (DS379) and India (DS36). In these cases the Appellate Body found that the USDOC findings were inconsistent with the SCM Agreement. Decisions by other countries have not yet been tested through challenges under the WTO dispute settlement system.

Subsidy Matters Unengaged – Public Body

- A4.14. In its submission of 15 August 2018, NZ Steel took issue with MBIE's reference to EC *Hot-Rolled Flat Products* in relation to the EC Staff Report. NZ Steel noted that the EC case is not comparable to the MBIE HSS investigation because the input products are not the same. On the other hand, in EC *Organic Coated Steel* input subsidies for HRC and CRC were examined by the EC, which found that the Chinese SIEs in question were public bodies, that the goods were being supplied at below market prices, and the subsidies were specific.
- A4.15. NZ Steel was referring to the MBIE comments on the EC Staff Report, which referred to EC findings in both EC *Hot-Rolled Flat Products* and EC *Organic Coated Steel* in support of its conclusions regarding the distortions arising from GOC control of the steel industry. The point is that the findings in EC *Hot-Rolled Flat Products* do not support claims that the GOC controls the price of inputs.

Subsidy Matters Unengaged – SIE Input Producers

- A4.16. NZ Steel's submission of 2 July 2018 in its claims relating to the identification of a particular market situation in China (a dumping issue) relied heavily on the views of Dr Lardy on the question of protection from failure. MBIE notes that Dr Lardy's analysis appears to rely heavily on dated and generalised information, and appears to be directly contradicted by the Global Trade Alert report in regard to steel company profitability.
- A4.17. NZ Steel also referred to information in its submission of 2 July 2018 relating to government ownership of major producers of HRC. MBIE included a detailed discussion and analysis of the basis for its consideration of whether or not an entity is a public body in Annex 1 of the initial EFC Report. In particular, this included references to the view of the WTO Appellate Body that, "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 government function.” (DS379, AB report, para 346).

- A4.18. NZ Steel identified sections of its 2 July 2018 submission (again relating to dumping matters) in which it quoted extensively from ADC HSS 379 regarding price differentials between HRC in China and other Asian markets. NZ Steel claimed that the price differentials reflected distortions created by government intervention in the market. In the dumping EFC Report MBIE included a section which discussed and analysed the basis for its position that there is not a particular market situation in China requiring it to construct normal values. Similarly, in the initial EFC Report, MBIE provided a detailed discussion of the basis for determining if an entity is a public body.
- A4.19. However, following a review of the information available in regard to HRC prices paid by sample manufacturers in the current case, MBIE concluded that there is no financial contribution, and therefore saw no need to determine whether suppliers of HRC are “public bodies” providing HRC at LTAR. This position was reflected in the Supplementary EFC Report, but has been modified on the basis set out in section 4.2 of the Final Report and section 4:II of this Annex.
- A4.20. All information provided or referenced by NZ Steel in its various submissions has been considered by MBIE in reaching its conclusions.

Subsidy Matters Unengaged – Australian Actions Involving Dalian Steelforce

- A4.21. NZ Steel suggested that the initial EFC Report did not correctly reflect the situation regarding Dalian Steelforce and the outcome of a Federal Court case. MBIE has reviewed the matters raised by NZ Steel and considers that the description was a correct statement of the situation as it applied to ADC HSS 177. The amendment to the Australian legislation addressing the reason for the decision on Dalian Steelforce meant that Tianjin Youfa could not rely on the same argument. MBIE has clarified that the legislation which allowed Dalian Steelforce to claim non-specificity has been amended. MBIE notes that the issue of whether an SIE providing an input at LTAR is a public body is not the same issue as whether any such provision is a specific subsidy.

Subsidy Matters Unengaged – Exclusion of Pre-2012 Programmes

- A4.22. NZ Steel has noted that in its submission of 15 August 2018 it had identified three particular subsidy programmes that could still be providing a benefit, but they had been excluded because they were applicable only before 2012.
- A4.23. As noted in section 4.2.5 of this Final Report, Programme 6 was specifically identified by MBIE as a 2008 programme, but was also excluded because the only evidence of a subsidy was an AFA finding by the USDOC; programme 124 was not excluded and was investigated (as #31); programme 142 was not excluded on the basis of date, but was excluded because the programme related to Jiangsu Province and the only evidence of subsidy was a ministerial specification finding by the CBSA.
- A4.24. MBIE included, as Annex 2:II to the Supplementary EFC Report (and to this Final Report), a summary of the basis for the exclusion of each programme of the 240 in the application.

Subsidy Matters Unengaged – Exclusion of Programmes

- A4.25. NZ Steel noted that in its submission of 15 August 2018 it identified two particular subsidy programmes that had been excluded but non-sampled manufacturers may have been receiving them.
- A4.26. As noted in section 4.2.5 of this Final Report, exclusions were made on the basis of a lack of positive evidence. In the case of programme 91, the only evidence of a subsidy were AFA findings by the CBSA and USDOC, while in the case of programme 109 MBIE was satisfied that there was evidence that the programme, which related to FIEs, had been terminated in 2008.
- A4.27. MBIE included, as Annex 2:II to the Supplementary EFC Report (and to this Final Report), a summary of the basis for the exclusion of each programme of the 240 in the application.

Subsidy Matters Unengaged – Export Buyer’s Credit

- A4.28. NZ Steel noted that this programme was raised in its submission of 2 July 2018 and it cannot understand why it has not been addressed.
- A4.29. This programme was included in the list of 240 programmes submitted by NZ Steel in its application (as programme 21), but was excluded from the investigation on the basis of a lack of positive evidence, as described in section 4.2.5 of this Final Report. The programme was investigated in a number of USDOC cases but in the only case not involving use of AFA, no subsidisation was found. The AFA rate of 10.54% used by USDOC came from a 2012 investigation.

C. Tianjin Youfa*ADC Findings*

- A4.30. Tianjin Youfa advised that ADRP Report 63 of February 2018 amended the subsidy level established for Tianjin Youfa in the ADC’s HSS 379 investigation from 12 per cent to 3 per cent to correct an error in calculation, and that in the latest ADC investigation, HSS 419, the subsidy margin for Tianjin Youfa was concluded to be 1.3 per cent, which is *de minimis*.

MBIE Comment*ADC Findings*

- A4.31. MBIE has noted the comments and made relevant additions to the text in section 4.2.3 of the Supplementary EFC Report.

II. Comments on Supplementary EFC Report

Comments on the Supplementary EFC Report were received from NZ Steel. Dalian Steelforce commented that it agreed with the findings and conclusions in the Supplementary EFC Report as they related to Dalian Steelforce. The following sections address the comments from NZ Steel.

The NZ Steel comments related primarily to the approach MBIE has taken to the addressing the alleged subsidy arising from the provision by a government or any public body of input materials, in this case HRC, at less than adequate remuneration, and the question of the benchmark to be used in assessing the existence and level of any benefit. MBIE has therefore addressed these issues together

under the heading “A. Issues relating to the provision of HRC at LTAR”. NZ Steel also raised a number of other issues, and these are addressed under the heading “B. Other issues”.

A. Issues relating to the provision of HRC at LTAR

NZ Steel Comments

China HRC Market Distortion

A4.32. NZ Steel says that MBIE should have considered whether the Chinese HRC market is distorted by Government intervention, such that an external benchmark analysis is required. To determine whether the Chinese market is distorted MBIE needed to consider Government intervention in that market, which is a distinct but related analysis to an analysis of a particular market situation in the dumping context. In any event, MBIE’s analysis in the dumping investigation was of the HSS market and not the HRC market. NZ Steel claims that MBIE is required to consider whether government intervention, “through directives and oversight, controls, subsidies, SIE involvement and the like,” has distorted the Chinese HRC market. NZ Steel also claimed that MBIE appears to have concluded that no distortion exists without providing a reasonable explanation for this conclusion or its use of an internal benchmark. NZ Steel was particularly concerned because all comparable overseas regulators have found distortions in the Chinese HRC market that require the use of an external benchmark. NZ Steel considers that an examination of the HRC market would require MBIE to consider whether there were “government plans, directives, oversight and so forth” which might affect the conditions in the Chinese HRC market, and since it is uncontroversial that such plans and directives exist, the task is to seek to establish whether evidence exists of an effect attributable to them. [See MBIE comments in paragraphs A4.68-A4.89]

Input Materials at LTAR

A4.33. NZ Steel considers that MBIE’s conclusions relating to input materials at LTAR are materially flawed.

SteelBenchmarker data

A4.34. NZ Steel compared the price information used by MBIE with price information from SteelBenchmarker (the source of some of MBIE’s information) including prices from the USA and Western Europe. NZ Steel claims that the in-China price is not an appropriate comparator for determining LTAR because the Chinese HRC market as a whole is distorted by Government intervention, and prices should therefore be tested against an external benchmark. NZ Steel also claims that the use of SteelBenchmarker’s World price is flawed because it includes Chinese HRC prices, which should be excluded because of the distortions caused by GOC intervention. In NZ Steel’s view, the appropriate external comparator is domestic transaction prices in Korea and Taiwan.

A4.35. NZ Steel also observes that all sampled manufacturers were lower than Steelbenchmarker’s World price for most of the period, and considers that this is evidence of HRC market distortion. NZ Steel also referred to additional information it provided regarding prices in Korea and Taiwan, which it considered to be more relevant because the information was not totally in-China nor “directly contaminated” with Chinese information.

NZ Steel claims that the prices it has provided are positive evidence that the price paid by the domestic Chinese HRC buyers are systematically lower, which is a result of the GOC's material influence on conditions in that market. [See MBIE comments at paragraph A4.90]

Adjustments to benchmark

- A4.36. NZ Steel considered that the discussion of adjustments is not entirely clear, and NZ Steel considers that adjustments of the type apparently suggested are not appropriate. NZ Steel suggests that the benchmark price is the local in-market pricing in an undistorted market, without adjustments back for their use by Chinese HSS exporters. [See MBIE comments at paragraph A4.91]

Conclusions from EC Hot-Rolled Flat Products

- A4.37. NZ Steel challenged the statement by MBIE that its conclusions substantially reflect the findings in *EC Hot-Rolled Flat Products*. NZ Steel pointed out that the EC investigation did not look at HRC, but in *EC Organic Coated Steel* the investigation found that HRC suppliers were public bodies, that private producers of HRC were entrusted and directed by the government, and that the Chinese HRC market was distorted by government intervention. *EC Hot-Rolled Flat Products* was looking at different input products, including iron ore, coke and coking coal, and considered the difference between the domestic and export price or the price from related and unrelated suppliers. [See MBIE comments in paragraphs A4.92-A4.93]

Conventional benefit approach

- A4.38. NZ Steel set out the approach adopted by other jurisdictions in assessing the countervailed benefit of Chinese HRC at LTAR, noting that this was undertaken at the benefit stage and not at the financial contribution stage as MBIE has done. NZ Steel also noted that none of the findings relied on AFA. NZ Steel claims that this is positive evidence that MBIE's approach is an outlier against peer unanimity elsewhere and is therefore unreasonable.
- A4.39. NZ Steel referred to the Final Report of ADC *HSS 419*, a review of the countervailing duties on HSS from China. NZ Steel quoted a passage stating the ADC's view that distortions in the HRC market were such that an external benchmark must be used, and that verified, actual costs of HRC in Korea and Taiwan were suitable for determining the adequacy of remuneration, having regard to the prevailing market conditions in the Chinese HRC market.
- A4.40. For Canada, NZ Steel referred to findings from CBSA *Line Pipe*, which noted its findings from its section 20 inquiry (undertaken for the dumping investigation), summarised its findings on market conditions in China and the GOC's industrial policies, and concluded that domestic selling prices were not appropriate for the purposes of determining the "fair market value" of the goods, and that world prices set out in the Metal Bulletin were most appropriate as benchmarks, calculated on the basis of the average monthly selling price for each country that was reported on an FOB basis, excluding China.
- A4.41. For the EU, NZ Steel quoted from *EC Organic Coated Steel*, and its conclusion that prices of HRC and CRC sold by SOEs in China were distorted and the prices of private suppliers were

aligned with SOE prices, so there were no reliable market prices. Alternative benchmarks were constructed on the basis of prices published in specialised steel journals.

- A4.42. Emphasising that the information was not based on AFA, NZ Steel quoted from USDOC *High Pressure Steel Cylinders (2012)*, that because 70 per cent of HRC in China was produced by SOEs and imports were insignificant, it was determined that HRC prices were distorted so could not be used as in-country benchmarks.
- A4.43. NZ Steel also referred to India's DGAD *Stainless Steel Flat Products* which stated that the price paid for raw material was to be compared with an international benchmark price in a similar economy of a third country. [See MBIE comments in paragraphs A4.72-A4.89]

Counterfactual test

- A4.44. NZ Steel suggested that the prevailing market conditions in China could be examined under a counterfactual analysis. The key background facts were presented as the extensive suite of plans, directives, etc directed to the steel industry; China is a net importer of key steelmaking materials so Chinese steel-making economics are substantially based on import-parity input prices and some non-market economics; and counter to what the previous points would suggest, there is systematic and material difference between in-China and the higher rest of the world HRC prices.
- A4.45. NZ Steel suggests that the counterfactual analysis supports the conclusion of all comparable overseas regulators, that the Chinese HRC market is distorted by Government intervention. MBIE has not provided any other reasonable explanation for the US\$ [REDACTED] per tonne differential between Chinese prices and world prices, and NZ Steel suggests that MBIE should inquire whether the evidence of lower Chinese prices is evidence of Chinese market distortion, and also needs to take account of the consensus of other jurisdictions that the Chinese HRC market is distorted. [See MBIE comments in paragraphs A4.90]

Financial Contribution versus Benefit

- A4.46. NZ Steel suggested that MBIE has conflated the question of "financial contribution from a public body" and whether a subsidy confers a "benefit". NZ Steel suggests that these are distinct tests, and cites DS46 *Brazil – Aircraft* as support for its argument. NZ Steel summarised the Appellate Body in *US – Softwood Lumber IV* that a financial contribution is a transaction through which something of economic value is transferred by the government, and the evaluation of its existence involves a consideration of the nature of such transactions. A benefit exists when such a transfer gives an advantage to the recipient. NZ Steel considers that MBIE's analysis that there is no financial contribution in regard to the provision of inputs at LTAR is incorrect because MBIE did not consider the nature of the transaction as something of economic value. NZ Steel considers that MBIE has jumped straight into the question of the benefit before considering whether a financial contribution has been provided by a public body. [See MBIE comments in paragraphs A4.53-A4.61]

Input materials at LTAR – Individual Companies Commentary*Dalian Steelforce*

- A4.47. NZ Steel noted the reference to the non-application of countervailing duties to Dalian Steelforce in ADC HSS 419, and suggested that the absence of a countervailing duty margin should not be taken to indicate that Dalian Steelforce was not in receipt of HRC at LTAR, since the ADC was taking account of the need to avoid duplicating anti-dumping and countervailing duties to counter the same situation. Since Dalian Steelforce is not subject to anti-dumping duties in New Zealand, the same considerations do not apply. NZ Steel noted that virtually all of Dalian Steelforce's HRC purchases were from SOEs so therefore it received a financial contribution from a public body. *[See MBIE comments in paragraph A4.94]*

Tianjin Youfa and Jinan Mech

- A4.48. NZ Steel noted the very low level of HRC and narrow strip purchased by Tianjin Youfa from SIEs, and assumed, because it was not mentioned in the verification report, that MBIE did not inquire on this topic during the verification visit. NZ Steel considered that on the basis of information from other jurisdictions Tianjin Youfa's purchases from SIEs cannot be as low as MBIE perceives. NZ Steel suggested that Tianjin Youfa was more likely reporting on the private ownership status of the many traders through which it buys HRC feed. NZ Steel has requested that MBIE clarify this matter. *[See MBIE comments in paragraph A4.95]*

Hengshui Jinghua

- A4.49. NZ Steel notes the comment by MBIE regarding a statement by Hengshui Jinghua to the ADC but suggests it is "oblique" to the key facts. These included that Hengshui Jinghua cooperated with the ADC and was visited by the ADC, that Hengshui Jinghua argued to the ADC that HRC from private-owned suppliers did not receive any benefits from governments or public bodies, but a final countervailing duty rate of 4.6 per cent was established for Hengshui Jinghua under programme 20 (HRC at LTAR).
- A4.50. NZ Steel considered that there was reasonable peer information indicating that Hengshui Jinghua was receiving HRC at LTAR and it was not correct to interpret Hengshui's statement as referring to state-owned companies. *[See MBIE comments in paragraph A4.96]*

MBIE Comment

- A4.51. The above comments by NZ Steel relate primarily to aspects of the assessment of whether there is a countervailable subsidy because there is a financial contribution by a government or public body that is providing a benefit and the resulting subsidy is specific. The particular issue arises in relation to the provision of goods by a government at less than adequate remuneration. The matters raised include the scope of MBIE's approach and the need to consider whether suppliers of inputs are public bodies, while the issues that arise are when a benchmark needs to be used, what benchmarks can be used, and what adjustments might need to be made to benchmarks to ensure that the adequacy of remuneration is determined in relation to prevailing market conditions for the good in question in the country of provision or purchase.

- A4.52. In this Annex, MBIE responds to NZ Steel's comments, and identifies areas where the Final Report includes modifications to the Supplementary EFC Report to take account of the comments and reflect MBIE's response to them.

MBIE Approach

- A4.53. A subsidy investigation must establish whether there is a financial contribution by a government or any public body that provides a benefit to the recipient and is specific. NZ Steel has suggested that MBIE has conflated the question of whether a provider of a financial contribution is a public body and the question of the benefit.
- A4.54. In this investigation, MBIE has examined the relevant laws, plans, directives and oversight documents, including those identified by NZ Steel and by other jurisdictions. MBIE's conclusion is that the various Plans provide the overview authority and guidance for economic development, including the development of the steel industry, while the relevant laws and directives set out legal requirements and disciplines. However, it is MBIE's view that taken all together, these laws, plans, directives and oversight documents do not provide evidence that the government exercises meaningful control over banks or input providers that would justify a determination that such bodies possess, exercise or are vested with governmental authority. Similarly, the laws, plans, directive and oversight documents, taken with the factual information established by MBIE in the course of the investigation, do not provide a basis for concluding that the GOC distorts prices in the steel sector such that in-country benchmarks would not be appropriate.
- A4.55. In order to address the matters raised by NZ Steel, MBIE has included additional clarification of its general approach in section 4.2 of this Final Report, and with more specific discussion of the issue of provision of a financial contribution by a government or public body in the analysis of individual programmes in Annex 2:I. In particular, MBIE has clarified its consideration of the elements required to determine if there is a countervailable subsidy and, to the extent necessary, has included relevant elements in the discussion of each programme.

Public Bodies

- A4.56. Article 1.1(a)(1) of the SCM Agreement provides that a subsidy shall be deemed to exist if there is a financial contribution by a government or any public body within the territory of a Member. The particular conduct must come under the functions set out in subparagraphs (i) to (iii) of the Article, or under subparagraph (iv) regarding entrustment or direction of a private body to undertake one of the functions described.
- A4.57. *In US – Anti-Dumping and Countervailing Duties (China)*, the Appellate Body, as noted by the Court in *NZ Steel v Minister of Commerce and Consumer Affairs*, has explained that “A public body within the meaning of Article 1.1.(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority. Yet, just as 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. Panels or investigating authorities confronted with the question of whether conduct falling within the scope of Article 1.1.(a)(1) is that of a public body will be in a position to answer that

question only by conducting a proper evaluation of the core features of the entity concerned, and its relationship with government in the narrow sense.”⁸⁷

A4.58. The Appellate Body went on to state:

*In some cases, such as when a statute or other legal instrument expressly vests authority in the entity concerned, determining that such entity is a public body may be a straightforward exercise. In others, the picture may be more mixed, and the challenge more complex. The same entity may possess certain features suggesting it is a public body, and others that suggest that it is a private body. We do not, for example, consider that the absence of an express statutory delegation of authority necessarily precludes a determination that a particular entity is a public body. What matters is whether an entity is vested with authority to exercise governmental 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.*⁸⁸

A4.59. In *US – Carbon Steel (India)*, the Appellate Body noted :

[...] 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

⁸⁷ WTO document, WT/DS379/AB/R at paragraph 317.

⁸⁸ *Ibid*, at paragraph 318, footnotes omitted,

governmental authority". The substantive legal question to be 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.⁸⁹

- A4.60. On the basis of these opinions, MBIE has applied the test identified by the Appellate Body and the Court in *NZ Steel Limited v Minister of Commerce and Consumer Affairs*, and takes the approach that in determining if an entity is a public body, 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 to exercise governmental functions, and so conducts itself by undertaking an activity envisaged in Article 1.1(a)(1). 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.
- A4.61. MBIE has reviewed the status of entities involved in the consideration of financial contributions made through preferential loans (banks) and the provision of input materials at LTAR (HRC suppliers), on the basis of the information available in the investigation, including secondary information from other jurisdictions.
- Banks*
- A4.62. MBIE notes that NZ Steel did not make any specific comments on MBIE's findings regarding the status of banks. The following comments are intended to clarify MBIE's position regarding the provision of a financial contribution by a government or any public body that provides a benefit to the recipient in relation to consideration of policy loans or preferential lending.
- A4.63. In considering the status of banks providing loans to sample manufacturers, MBIE has based its analysis on the governmental authority and functions involved as being the provision of financial support to promote national development objectives, with the conduct concerned being the provision of loans at preferential rates of interest.
- A4.64. MBIE has established that none of the cooperating sample manufacturers received loans from policy banks. MBIE has reviewed the information available relating to policy banks – the Agricultural Development Bank of China, the Export-Import Bank of China, and the China Development Bank. MBIE is satisfied that on the basis of ownership and control by the State and the declared purpose of the policy banks that they possess, exercise or are vested with governmental authority to exercise governmental functions, as shown by the channelling of development finance. MBIE considers that there is evidence that the GOC

⁸⁹ WTO document, WT/DS436/AB/R at paragraph 4.37, footnotes omitted.

exercises meaningful control such that the policy banks are in fact exercising governmental functions as a sustained and systematic practice.

- A4.65. MBIE has also reviewed the information available relating to SOCBs, such as those providing working capital loans to the sample manufacturers in this investigation, and is satisfied that these banks do not meet the criteria for determination as public bodies, and the evidence does not indicate that SOCBs provide a governmental function in the legal order of China. In reaching this conclusion, MBIE has taken into account the information provided by the cooperating sample manufacturers, and relevant Chinese laws and regulations, including the Law of the PRC on Commercial Banks (1995), the Provisional Measures on Administration of Working Capital Loans (2010), and the Capital Rules for Commercial Banks (Provisional) (2012).
- A4.66. MBIE notes that the other jurisdictions do not appear to differentiate between policy banks and SOCBs which, in MBIE's view, is not consistent with the information available. The policy banks are not commercial banks and do not take deposits from the public, and are not subject to the same regulatory requirements as are commercial banks.
- A4.67. MBIE does not consider that the findings by other investigating authorities require it to change its conclusions regarding SOCBs. The ADC investigation did not address the issue in its HSS investigation; the CBSA relied on an analysis of a policy bank to conclude that all banks were public bodies; the 2013 EC *Organic Coated Steel* investigation is, as noted by the High Court in the *Galvanised Steel Coil* JR, now quite dated with some significant changes in the Chinese banking system having been implemented since then; the EC *Hot-Rolled Flat Products* investigation draws conclusions from the various laws and plans that MBIE does not consider meet the criteria set out by the Appellate Body which requires that there be evidence that an entity is, in fact, exercising governmental functions, in this case being the provision of financial support to promote national development objectives, as demonstrated by the provision of loans at preferential rates of interest. Canada, the EC and USDOC (and, by extension, the ADC) also conflate the status of policy banks and SOCBs which, in MBIE's view, leads to confusion over the determination of whether SOCBs are public bodies. In particular, MBE considers that if it relied on the findings of other jurisdictions it could not be satisfied that it was meeting the Appellate Body criteria, including the Appellate Body's guidance that a determination that a body is a public body requires something more than the identification of the formal indicia of control.

HRC Suppliers

- A4.68. In considering the status of HRC suppliers providing HRC to sample manufacturers, MBIE has based its analysis on the governmental authority and functions involved as being the provision of financial support to promote national development objectives, with the conduct concerned being the provision of a financial contribution through the sale of HRC at LTAR.
- A4.69. MBIE has reviewed the suppliers of HRC to the cooperating sample manufacturers in the context of the criteria set out by the Appellate Body. The evidence does not indicate that SOEs/SIEs selling HRC provide a governmental function in the legal order of China. As noted in Annex 2:I in the discussion on this programme, suppliers of HRC included both State-owned and private companies. With regard to the State-owned companies, MBIE has

established that they include major steel producers which are majority-owned by the State through central or provincial SASACs. However, there is no evidence that the GOC exercises meaningful control over the entities that would support contentions that these companies use reduced prices of HRC to provide financial support to promote national development. The evidence from the cooperating sample manufacturers is that prices are market-based and are not inconsistent with international prices, bearing in mind that China's production makes up a very significant proportion of world supply (and demand), which will have a natural impact on prices.

A4.70. MBIE has noted the secondary information from other jurisdictions:

- In ADC HSS 379, the 2017 continuance review of HSS (POI 2015-2016), the evidence that HRC was provided by the government at LTAR was based on the ADC's finding that the GOC materially influenced conditions within the Chinese HRC market. The ADC found that the price of HRC provided by SIEs was less than the competitive market benchmark. The findings were based on the ADC's analysis of a particular market situation in the parallel dumping investigation.
- In CBSA *Line Pipe* (POI 2014-2015), the conclusion that SOE suppliers of input materials were government (public bodies) was based on the conclusions reached by the CBSA in its parallel dumping investigation regarding the suitability of using domestic prices for normal values. In CBSA *Concrete Reinforcing Bar*, there was no analysis or investigation relating to public bodies.
- In EC *Organic Coated Steel* (POI 2009), the public body determination was based largely on facts available. The EC concluded that SOEs providing HRC perform functions that are ordinarily considered part of governmental practice in China, on the basis that sectoral plans for the steel sector confirm that the GOC has chosen to be closely involved in the management and development of the steel industry in China, so their implementation by SOEs can therefore be considered to fall under the heading of governmental practices. The EC claims that the plans provide targets and goals for all operators in the iron and steel industry and direct the whole sector to produce specific outcomes, so that, in fact, the GOC is using the iron and steel SOEs as a prolonged arm of the state in order to achieve the goals and targets set in the plans. The EC considered that SOEs providing input materials were meaningfully controlled by the government through government ownership, and control through the involvement of SASAC and the Chinese Communist party (CCP), and appointments to boards of directors. The EC also concluded that all private bodies in the steel sector were entrusted and directed by the State, so behaved in the same way as public bodies. EC *Hot-Rolled Flat Products* was addressing raw materials, rather than HRC, and found no evidence that the government had provided subsidies through the pricing of such inputs.
- In USDOC *Corrosion Resistant Steel* (POI 2014), the finding of a subsidy in relation to the cooperating exporter was based on AFA in regard to the determination that input producers were "authorities", i.e. "public bodies", the specificity of the provision of inputs at LTAR, and the establishment of an appropriate benchmark as a basis for establishing the level of benefit. The USDOC did use prices and sales from the cooperating exporter to compare with the AFA-based benchmark to establish the actual benefit level, rather than relying on its approach to using levels from other programmes or investigations to

establish benefit levels in the absence of such information, but the overall outcome is still a level of subsidy that is based on use of AFA. The USDOC's finding that input suppliers were authorities (public bodies) appears to derive primarily from considerations relating to ownership and the possible involvement of government and CCP officials as board members, owners or senior managers, i.e. to the formal indicia of control, without evidence that meaningful control has, in fact, been exercised to provide goods at LTAR.

- A4.71. MBIE does not consider that the findings by other jurisdictions require it to change its conclusions regarding the status of SOEs/SIEs providing HRS to sample manufacturers. The ADC and CBSA investigations were applying information from dumping investigations relating to the establishment of normal values, and while there is a commonality of information on the role of the GOC in the steel market, such information does not of itself provide a basis for concluding that providers of HRC are public bodies in terms of the criteria established by the Appellate Body. Also, MBIE has reviewed this information in its parallel dumping investigation into HSS from China and on the basis of its own research into the Chinese steel market, including the laws, plans and directives identified by other authorities, does not consider that the matters raised provided compelling evidence that prices for HSS were significantly distorted by GOC interventions. Such distortions include pricing of inputs such as HRC. Both the EC and the USDOC appear to have focused heavily on the formal indicia of control, such as ownership and the extent of GOC, SASAC and CCP involvement in board and other appointments, as well as reliance on facts available or AFA (in the case of the USDOC). Also, the EC *Organic Coated Steel* findings were based on information from 2009, which is now dated and does not reflect developments since that time. The consideration of whether or not the GOC is in fact exercising meaningful control, for example through the direction of day-to-day pricing policies, does not appear to have been addressed by the other authorities. MBIE's assessment of the information from cooperating sample manufacturers is that there is no such control. MBIE also notes that in WTO disputes addressing whether input suppliers are public bodies the USA has been found to have acted inconsistently with the SCM Agreement.

Benchmarks

- A4.72. Benchmarks are used to determine the existence and extent of any benefit provided by a financial contribution of the nature set out in Article 1.1(a)(1) of the SCM Agreement. Thus, a benchmark can be used to ascertain whether there is a *prima facie* case that a benefit exists and to establish the level of benefit where it is determined that a financial contribution has been provided by a government through the provision of goods at less than adequate remuneration.
- A4.73. The existence and level of benefit in relation to whether the provision of goods or services by a foreign Government (a government or any public body) is at less than adequate remuneration is determined in relation to prevailing market conditions in the country concerned for the goods or services, taking into account price, quality, availability, marketability, transportation, and other conditions of the provision or purchase. In this context, sections 7(2)(d) and 7(4) of the Act reflect Article 14 (d) of the SCM Agreement.
- A4.74. It should also be noted that the findings of some other foreign jurisdictions which have led them to use external benchmarks arose from their conclusions that input providers were

public bodies, and that in-country benchmarks were not appropriate. It is also noteworthy that the use of such benchmarks has been and is being challenged in WTO disputes as not being consistent with the requirements of the SCM Agreement, and that the outcomes have assisted in clarifying the interpretation of Article 14(d) of the SCM Agreement.⁹⁰

- A4.75. As outlined in the analysis of programme #22 in Annex 2.I of this Final Report, MBIE examined prices actually paid by cooperating sample manufacturers to HRC suppliers, including suppliers with State-ownership and private companies, and also compared the prices with world prices from an external source. MBIE did not consider that there was any evidence that prices were at less than adequate remuneration.
- A4.76. In addressing the matters raised by NZ Steel, MBIE has reviewed the relevant WTO dispute findings, and reviewed its consideration in light of those findings, and in particular the identification of matters that an investigating authority needs to address.

WTO Jurisprudence

- A4.77. The Appellate Body, in DS436 stated;

What an investigating authority must do in conducting the necessary analysis for the purpose of arriving at a proper benchmark, however, will vary depending upon the circumstances of the case, the characteristics of the market being examined, and the nature, quantity, and quality of the information supplied by petitioners and respondents, including such additional information an investigating authority seeks so that it may base its determination on positive evidence on the record. In all cases, in arriving at a proper benchmark, an investigating authority must explain the basis for its conclusions.

We recognize that, depending on the circumstances, some types of prices may, from an evidentiary standpoint, be more easily found to constitute market-determined prices in the country of provision. In this regard, the Appellate Body has considered that the primary benchmark, and therefore the starting point of the analysis in determining a benchmark for the purposes of Article 14(d) of the SCM Agreement, is the prices at which the same or similar goods are sold by private suppliers in arm's-length transactions in the country of provision. This is so because "private prices in the market of provision will generally represent an appropriate measure of the 'adequacy of remuneration' for the provision of goods." This should not be read to suggest that there is, in the abstract, a hierarchy between different types of in-country prices that can be relied upon in arriving at a proper benchmark. We emphasize that whether a price may be relied

⁹⁰ Relevant cases include DS533, *US – Softwood Lumber VII* (currently before a panel); DS523, *US – Pipe and Tube Products (Turkey)* (Panel findings appealed); DS505, *US – Supercalendered Paper* (Panel findings appealed); DS491, *US – Coated Paper (Indonesia)*; DS436, *US – Carbon Steel (India)* and DS436 21.5 proceedings (currently before a panel); DS437, *US – Countervailing measures (China)*; DS257, *US – Softwood Lumber IV*; DS336, *Japan – DRAMS (Korea)*.

upon for benchmarking purposes under Article 14(d) is not a function of its source but, rather, whether it is a market-determined price reflective of prevailing market conditions in the country of provision. Accordingly, while the prices at which the same or similar goods are sold by private suppliers in the country of provision may serve as a starting point of analysis, this does not mean that, having found such prices, the analysis must necessarily end there. For example, prices on record of government-related entities other than the entity providing the financial contribution at issue also need to be considered to assess whether they are market determined and can therefore form part of a proper benchmark. Article 14(d) establishes no legal presumption that in-country prices from any particular source can be discarded in a benchmark analysis. Rather, Article 14(d) requires an analysis of the market in the country of provision to determine whether particular in-country prices can be relied upon in arriving at a proper benchmark.⁹¹

- A4.78. The Appellate Body went on to recall that in *US – Softwood Lumber IV*, it had noted that there may be situations where the government's role in providing the financial contribution may be so predominant that it effectively determines the price at which private suppliers sell the same or similar goods, so that the comparison contemplated by Article 14 would become circular. The Appellate Body, in DS436, went on to note

*The Appellate Body has emphasized that, although a government's predominant role as a supplier in the market makes it "likely" that private prices will be distorted, the distortion of in-country private prices must be established "on a case-by-case basis, according to the particular facts underlying each countervailing duty investigation". In *US – Anti-Dumping and Countervailing Duties (China)*, the Appellate Body emphasized that "an investigating authority cannot, based simply on a finding that the government is the predominant supplier of the relevant goods, refuse to consider evidence relating to factors other than government market share." It clarified that its reasoning in *US – Softwood Lumber IV* excluded the application of a *per se* rule, according to which an investigating authority could properly conclude in every case, and regardless of any other evidence, that the fact that the government is the predominant supplier means that private prices are distorted. The Appellate Body has therefore cautioned against equating the concepts of price distortion and government predominance, and has highlighted that the link between the two concepts is an evidentiary one. Thus, there does not exist "a threshold above which the fact that the government is the predominant supplier in the market alone becomes sufficient to establish price distortion, but clearly, the more*

⁹¹ WTO document DS436/AB/R, paragraphs 4.153-4.154, footnotes omitted.

*predominant a government's role in the market is, the more likely this role will result in the distortion of private prices.*⁹²

- A4.79. The Appellate Body in DS437 also addressed the issue of establishing benchmarks, and drew a distinction between the determination that the entity providing the goods is a public body, and the extent to which prices of government-related entities could be regarded as distorted. In this context, the Appellate Body noted:

*Unlike China, however, we do not consider that the fact that the SCM Agreement establishes a single definition for the term "government" means that, under Article 14(d), a proper analysis for selecting a benefit benchmark is dependent on an examination of whether any relevant entities in the market fall within the definition of "government", including on the basis of a finding that an SOE is a public body[...] The first sentence of Article 14(d) thus provides guidance for assessing whether the provision of goods confers a benefit, following a previous affirmative determination that such provision of goods constitutes a financial contribution under Article 1.1(a)(1)(iii) that was carried out by a "government" as defined in Article 1.1(a)(1).*⁹³

- A4.80. The Appellate Body went on to note:

*Proper benchmark prices would normally emanate from the market for the good in question in the country of provision. To the extent that such in-country prices are market determined, they would necessarily have the requisite connection with the prevailing market conditions in the country of provision that is prescribed by the second sentence of Article 14(d). Such in-country prices could emanate from a variety of sources, including private or government related entities.*⁹⁴

...

As explained in more detail below, in conducting the necessary analysis to determine whether in-country prices are distorted, an investigating authority may be called upon to examine various aspects of the relevant market. Although a government's predominant role as a supplier in the market makes it likely that prices will be distorted, the distortion of in-country prices must be established on the basis of the particular facts underlying each countervailing duty investigation. In US – Anti-Dumping and Countervailing Duties (China), the Appellate Body emphasized that "an investigating authority cannot, based simply on a finding that the government is the predominant supplier of the relevant goods, refuse to consider evidence relating to factors other than government market share." In

⁹² WTO document DS436/AB/R, paragraph 4.156, footnotes omitted.

⁹³ WTO document WT/DS437/AB/R, at paragraph 4.43.

⁹⁴ Ibid, at paragraph 4.46.

*that dispute, the Appellate Body indicated that an investigating authority may reject in-country prices if there is price distortion and, thus, that the analysis is not limited to determining whether the government is a predominant supplier. In this regard, the Appellate Body clarified that its reasoning in US – Softwood Lumber IV excluded the application of a per se rule according to which an investigating authority could properly conclude in every case, and regardless of any other evidence, that the fact that the government is the predominant supplier establishes that there is price distortion.*⁹⁵

- A4.81. The Appellate Body recalled the views expressed in DS436, set out above, and the view that:

*In US – Carbon Steel (India), the Appellate Body held that, in conducting the necessary analysis to determine whether in-country prices are distorted or market determined, an investigating authority may be called upon to examine, depending on the relevant circumstances, "the structure of the relevant market, including the type of entities operating in that market, their respective market share, as well as any entry barriers. It could also require assessing the behaviour of the entities operating in that market in order to determine whether the government itself, or acting through government-related entities, exerts market power so as to distort in-country prices."*⁹⁶

- A4.82. The Appellate Body also recalled the Appellate Body's findings in DS379,

*In particular, the Appellate Body emphasized that what allows an investigating authority to reject in-country prices is price distortion, not the fact that the government, as a provider of goods, is the predominant supplier per se.[...] The Appellate Body explained that price distortion must be established on a case-by-case basis and that an investigating authority cannot base a finding of price distortion merely on a finding that the government is a predominant supplier, and cannot refuse to consider evidence relating to factors other than government market share.*⁹⁷

- A4.83. The Appellate Body went on to state:

In conducting the analysis required under Article 14(d), investigating authorities may have to examine the structure of the relevant market, including the nature of the entities operating in that market, their respective market shares, as well as any entry barriers. However, evidence relating to government ownership of SOEs and their respective market shares does not, in and of itself, provide a sufficient basis for concluding that in-country prices are distorted. In addition, investigating

⁹⁵ Ibid, at paragraph 4.51, footnotes omitted.

⁹⁶ Ibid, at paragraph 4.52.

⁹⁷ Ibid, at paragraph 4.59.

authorities may be required to assess "the behaviour of the entities operating in that market in order to determine whether the government itself, or acting through government-related entities, exerts market power so as to distort in-country prices". Thus, investigating authorities may be called upon to examine the conditions of competition in the relevant market in order to assess whether the government is influencing the pricing conduct of any government-related or private entities. The specific type of analysis that an investigating authority must conduct for the purpose of arriving at a proper benchmark will vary depending upon the circumstances of the case, the characteristics of the market being examined, and the nature, quantity, and quality of the information supplied by petitioners and respondents, including additional information that an investigating authority may seek in order to base its determination on positive evidence on the record. In any event, in all cases, in arriving at a proper benchmark, an investigating authority must provide a reasoned and adequate explanation of the basis for its conclusions in its determination. Once an investigating authority has properly established and explained that in-country prices are distorted, it is warranted to have recourse to an alternative benchmark for the benefit analysis under Article 14(d).⁹⁸

- A4.84. In DS437, the Appellate Body examined the explanations provided by the USDOC for reaching its findings of price distortion in each of the four investigations addressed in that dispute. The Appellate Body found that the USDOC explanations were inadequate and appeared to assume that government-related prices were automatically distorted by government intervention, and that a finding of ownership or control by the government meant that the government had a significant role as provider of the goods. The Appellate Body noted that the USDOC did not explain how prices from government-related producers possessed or exerted market power such that other in-country prices were distorted. In one case the USDOC, through application of AFA, had assumed that government-owned producers manufactured all HRC produced in China during the period of investigation, and the Appellate Body understood the USDOC's distortion finding in that investigation was predicated on the USDOC's determination that entities owned or controlled by the government can be treated as "authorities" and that prices of goods provided by them can be discarded in benchmark analysis solely on the basis of government ownership or control. The Appellate Body concluded that the USDOC acted inconsistently with the SCM Agreement by rejecting in-country prices in China as benefit benchmarks in the context of the investigations examined.

Market situation

- A4.85. In assessing whether prices paid for HRC reflected the market situation in China, MBIE reviewed the primary information that it had obtained on actual transactions, and saw no

⁹⁸ Ibid, at paragraph 4.62, footnotes omitted.

significant differences between goods from SOEs/SIEs and private providers or between those prices and world prices. In considering the nature of the market for HRC, MBIE noted the presence of a large number of buyers and sellers engaged in trading in a relatively homogenous product, which are two of the characteristics of a competitive market. The other key characteristic is the ease of entry into the market, which does not appear to be a significant issue. Also relevant is the size of the Chinese market and, to the extent that it has some impact, the difference in wage rates between China and other producers. These considerations are relevant to assessing NZ Steel's counterfactual test and concluding that it does not provide a basis for determining that Chinese prices are distorted by GOC interventions.

- A4.86. With regard to the role of the GOC in the steel industry and the distortion of prices, MBIE took into account its review of the Chinese steel sector in the parallel dumping investigation. The purpose of that review was to address the existence of GOC influence over prices in the HSS market for the purposes of the dumping investigation, but in doing so MBIE reviewed source information and the views of other jurisdictions on "directives and oversight, controls, subsidies, SIE involvement and the like." In that investigation, MBIE reviewed the 12th and 13th Five-year Plans, covering 2011-2015 and 2016-2020 respectively; the "Temporary Provisions on Promoting Industrial Structure Adjustment" (Decision 40) and the "Guidance Catalogue for Industrial Structure Adjustment" (Guidance Catalogue); and the "Policies for the Development of Iron and Steel Industry" (the Steel Plan), issued by the National Development and Reform Commission (NDRC) in 2005, which 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 considering the totality of the information available, MBIE considered 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. However, none of these plans or instruments provides any basis for concluding that the level and nature of GOC involvement in the steel sector was such that HSS prices are substantially distorted by GOC interventions to the extent that they did not provide a basis for determining normal values for the purposes of establishing the existence of dumping.
- A4.87. In the Dumping Final Report, MBIE went on to review information from other jurisdictions, again in relation to the calculation of dumping, and concluded that it could base normal values on prices in the Chinese market, i.e. it did not consider that the GOC was distorting or influencing HSS prices in the Chinese market.
- A4.88. In considering whether these conclusions can be applied to the HRC industry in the current investigation, MBIE took account of the information from cooperating sample manufacturers, and international prices, as a basis for assessing any level of influence over HRC prices, including the extent of purchases from private suppliers. MBIE has also noted the comments of the Appellate Body, as reported above, in relation to the extent to which government ownership is relevant, but is also conscious of other guidance of the Appellate

Body regarding the need for the GOC to have meaningful control over SOEs/SIEs in order for them to be determined to be public bodies and therefore to be included in establishing whether the GOC is a dominant supplier to the market. This issue is discussed above in relation to Public Body.

- A4.89. The effect of this conclusion is that government ownership of HRC producers does not provide a basis for concluding that the market is distorted by GOC interventions, irrespective of the conclusion that there is no financial contribution by a government or any public body through the provision of HRC at LTAR.

Other matters

Benchmark Data

- A4.90. NZ Steel queried MBIE's use of SteelBenchmarker data, and emphasised the need to use non-China data. MBIE notes that as described above it has concluded that HRC prices in China are not distorted by government ownership or intervention, and that suppliers of HRC are not public bodies. In these circumstances the use of in-China prices and the use of SteelBenchmarker prices which include Chinese prices is not inappropriate. The fact that prices in other markets are higher than Chinese prices can be attributed to a range of factors, not least of which are the significance of Chinese production as a proportion of world production, and the extent to which protective measures through tariffs or trade remedies have been applied in a range of producing countries, including the EU and the USA, on flat products such as HRC. These factors will have an impact on market prices, and also suggest that a counterfactual analysis of the kind suggested by NZ Steel would not be useful.

Adjustments

- A4.91. The reference to adjustments relates to the requirement in Article 14(d) of the SCM Agreement that the adequacy of remuneration shall 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). Adjustments may be required to ensure this requirement is met, but in the current case it has not been necessary to consider any adjustments because there has not been a need to consider any out-of-country benchmarks.

Conclusions from EC Hot-Rolled Flat Products

- A4.92. MBIE agrees that the *EC Hot-Rolled Flat Products* did not specifically consider HRC, but the reference was intended to reflect the fact that the prices MBIE identified for HRC were similar, irrespective of whether the supplier was an SOE/SIE or not, and were similar to international prices. The EC conclusion was that prices from the inputs purchased (iron ore, coke, coking coal) were similar irrespective of whether the goods were procured domestically or imported or procured from related or unrelated companies.
- A4.93. MBIE has amended the relevant reference in the Final Report to reflect the point made by NZ Steel.

Dalian Steelforce

- A4.94. MBIE is aware of the approach taken by the ADC to ensure that it does not double count anti-dumping and countervailing duties. In the paragraph of the Supplementary EFC Report referred to by NZ Steel, MBIE notes that the countervailing duty rate applicable to Tianjin Youfa may have taken account of the need to avoid the duplication of duties. While the statement regarding Dalian Steelforce is a statement of fact, MBIE has amended the Final Report to clarify the situation, and to include a reference to the relevant ADC Report.

Tianjin Youfa and Jinan Mech

- A4.95. NZ Steel suggested that Tianjin Youfa's purchases of HRC may have been from traders, not producers, since SIEs are responsible for 75 per cent of Chinese HRC production but most of Tianjin Youfa's purchases appear to be from private companies. In fact, the information provided by Tianjin Youfa included both the manufacturer and the trader through which the goods were supplied. MBIE is satisfied with Tianjin Youfa's characterisation of its suppliers, and notes that where an unrelated trading company is indicated, that tends to confirm that an effective market is operating for HRC in that there is competition amongst suppliers. Similarly, Jinan Mech provided identification of both manufacturers and traders, and MBIE is satisfied that the suppliers have been correctly identified.

Hengshui Jinghua

- A4.96. MBIE has noted NZ Steel's comments and has amended the text in section 4.3 and Annex 2:1 to reflect the statement made by Hengshui Jinghua rather than MBIE's inference from it.

B. Other issues**NZ Steel Comments****Like Goods**

- A4.97. NZ Steel considered that MBIE's conclusion on like goods and its setting aside of NZ Steel's empirical evidence is flawed. NZ Steel claimed that MBIE has identified a number of characteristics as of no significant assistance, are of little definitive value or do not assist likeness delineation. These characteristics include length, composition and strength, appearance and finish, production methods and technologies, standards, function and usage, pricing structures or patterns, and marketing and distribution.
- A4.98. NZ Steel also claimed that MBIE has "distilled" likeness under section 3(1) of the Act away from a) to h) to focus on whether NZ Steel makes the goods, which NZ Steel considers to be unreasonable. [See MBIE comments in paragraphs A4.102-A4.105]

Sampling

- A4.99. NZ Steel has again raised its concerns over the size of the sample used by MBIE, claiming that it has resulted in an unduly limited analysis, and is not consistent with previous investigations. NZ Steel also raised this issue in previous submissions and in comments on the Dumping EFC Report. [See MBIE comments in paragraphs A4.106-A4.109]

Import Volumes

A4.100. NZ Steel expressed concern that the Table 2.1 might include non-subject goods which would affect the weighting for All Others and non-cooperative subsidy levels. NZ Steel has made estimates of the levels of imports attributable to the sample manufacturers and taken with comments from Dalian Steelforce, this suggests to NZ Steel that the total it estimated for China of 17,422 tonnes seemed an improbably large volume of subject goods. [See MBIE comments in paragraphs A4.110-A4.112]

Process and Timing

A4.101. NZ Steel suggested that since its submission contained information and views regarding MBIE's analysis of inputs at LTAR which, in NZ Steel's view, required MBIE to make material changes to its analysis and conclusions, then a further Supplementary EFC Report would be required. Given this view, and in the interest of ensuring the outcome of the investigation is robust and reflects a proper treatment of the evidence, then there needed to be adequate time to fully evaluate the matters raised. This suggested that completion before the Christmas 2018 break was unrealistic, and NZ Steel acknowledged that MBIE may need to extend the investigation. [See MBIE comments in paragraph A4.113]

MBIE Comment

Like Goods

A4.102. NZ Steel has not properly reflected the nature of the comments it has cited from Annex 3 of the Supplementary EFC Report (which is repeated as Annex 3 to this Final Report). Those comments summarise MBIE's conclusions with regard to the identification of HSS as subject goods/like goods, which are also reflected in section 2 of this Final Report.

A4.103. In considering like goods, MBIE notes that section 3(1) of the Act, which reflects footnote 46 to Article 15.1 of the SCM Agreement, defines like goods in relation to any goods, as other goods that are like those goods in all respects, or in the absence of such goods, goods which have characteristics closely resembling those goods. It appears that the "a) to h)" NZ Steel is referring to is the listing of characteristics discussed in Annex 3 in paragraphs A3.18 to A3.31, but this notation does not form part of section 3(1). Section 3A of the Act, reflecting Article 16 of the SCM Agreement, defines the industry as New Zealand producers of like goods, or such New Zealand producers of like goods whose collective output constitutes a major proportion of like goods.

A4.104. The paragraphs cited by NZ Steel provide a summary of MBIE's assessment of the characteristics to identify whether they provide a basis, in this case, for determining whether or not goods produced by NZ Steel and the goods imported are like goods. A proper reading of the paragraphs is:

- *Dimensions*: in the case of HSS, the length of the domestic goods does not exclude them from being like goods in this case, but differences in cross-sectional and wall thickness measurements constitute significant differences in physical characteristics as they are related to strength, function and usage.
- *Composition and strength*: in the case of HSS, there are no differences in composition and strength that would exclude domestic goods from being like goods, other than those arising from differences in dimensions.

- *Appearance and finish*: in the case of HSS, the fact that domestic goods are not painted, or are not inline painted, does not mean that they are not like goods. Similar considerations apply in regard to pre-galvanised HSS.
- *Production methods and technologies*: The production methods and technologies for both domestic and imported goods are generally similar and do not provide a basis for concluding that domestic goods are not like goods.
- *Standards*: MBIE has not found any evidence that the standards applicable to domestic and imported goods provide a basis for concluding that domestic goods are not like goods.
- *Function and usage*: there are no differences in function and usage that would allow a bright line to be drawn between domestic and imported HSS such that domestic goods of slightly different sizes or dimensions are not like goods.
- *Pricing structures*: There are no apparent differences in pricing structures that would exclude domestic goods from being regarded as like goods.
- *Marketing and distribution*: All dimensions appear to be sold through the same distribution channels within the two broad market segments of manufacturing and construction/engineering, so this does not provide a basis for concluding that domestic goods are not like goods.

A4.105. The summary of its consideration of the characteristics is not a “distilling away” of likeness, but is a proper application of the Act and the SCM Agreement. The remainder of Annex 3 includes the analysis of the comments and considerations that went into MBIE’s conclusions regarding subject goods/like goods. The considerations included submissions made by interested parties. The Analysis and Information section of Annex 3, from paragraph A3.55 to paragraph A3.187, sets out in detail the basis on which MBIE reached its conclusions. This conclusion is that while many of the characteristics do not provide a basis for any differentiation between domestic goods and imported goods, the differences in dimensions are sufficiently significant to justify a conclusion that goods that are within the range of cross-sectional and wall thickness dimensions of imported goods which are outside those of domestic goods, are not subject goods.

Sampling

- A4.106. MBIE’s approach to sampling was set out in section 3.4 of the Supplementary EFC Report, repeated as section 3.4 in this Final Report. The parallel dumping investigation used a similar sample, as provided for in Article 6.10 of the AD Agreement.
- A4.107. MBIE’s response to NZ Steel’s comments on the Dumping EFC Report noted that MBIE balances the requirements of undertaking an effective investigation within deadlines with the desirability of obtaining as wide a range of information as is possible. This requires decisions on the practicability of the approach taken to identifying the foreign manufacturers to be approached for information. The sample process adopted means that very high proportions of goods are covered (92 per cent on the basis of the revised subject goods, and 18 per cent of the number of possible suppliers). The impact of not including very small suppliers is minimal in terms of the overall level of subsidisation.
- A4.108. The situation regarding *Diaries*, identified by NZ Steel in its comments on the Dumping EFC Report, supports MBIE’s approach. In that case, involving five countries, the selected

Chinese manufacturers made up 8 per cent of the number, with the total final sample across five countries covering 17 per cent of the total number. In *Wire Nails*, the selected manufacturers from China were responsible for 93 per cent of exports.

- A4.109. MBIE is satisfied that its approach to sampling provides a sufficient basis on which to make proper determinations of subsidisation and injury.

Import Volumes

- A4.110. The basis for the figures included in Table 2.1 was set out in paragraphs 47-50 of the Supplementary EFC Report. The volume of 2017 imports from Chinese sample manufacturers and from the Malaysian manufacturer were analysed on the basis of invoice information for actual shipments and include only subject goods, i.e. any shipments of non-subject goods were excluded. This analysis was also a key to the parallel dumping investigation (because a similar analysis was undertaken for domestic sales). Clearly, MBIE did not fully accept Dalian's statement regarding the goods which compete with New Zealand production, for example, because MBIE has not accepted that length should define the subject goods.
- A4.111. The basis for the establishment of subsidy rates for non-sample manufacturers or for non-cooperating manufacturers was set out in sections 4.3 and 4.4 of the Supplementary EFC report. The level of subsidy for All Others is the weighted average of the sample manufacturers, and since those volumes are known to represent only subject goods, it is not clear how the concerns expressed by NZ Steel would be manifested.
- A4.112. MBIE is satisfied that the matters raised by NZ Steel do not require any modification of the essential facts and conclusions as set out in the Supplementary EFC Report.

Process and Timing

- A4.113. MBIE notes that it has not been required to make material changes to its analysis and conclusions from the Supplementary EFC Report. In order to address the matters raised by NZ Steel some additional text has been added to provide clarification, but the circumstances are not such as to require a further Supplementary EFC Report. No deadline was provided for completion of responses to comments on the Supplementary EFC Report, so there is no requirement to make any specific extension. In fact, the statutory deadlines for the investigation have already been extended for extenuating circumstances, as outlined in section 1.2 of this Final Report.