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25 February 2013

Ms Joanne Reid
Director, Operations 3
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Reid

Public File

Re: Inquiries into Aluminium Zinc coated steel and Galvanized Steel exported from China – EU Proposed Regulation on subsidies for exports of organic coated steel exported from China

BlueScope Steel Limited ("BlueScope") is aware that the European Union has published a "Proposal for a Council Implementing Regulation" that will impose countervailing duties on exports of certain organic coated steel products from the People's Republic of China to the European Union.

The proposed Regulation is dated 15 February 2013 and is a public document. The Regulation will be passed by the EU by 15 March 2013 and operate as a new EU Regulation that applies countervailing measures to the nominated exports.

BlueScope draws Customs and Border Protection's attention to the findings contained in the proposed Regulation. The findings follow a formal European Commission investigation into certain subsidies that have provided benefit(s) to Chinese producers/exporters of organic coated steel exported to the EU.

BlueScope will provide a separate submission that examines the identified subsidy programs that have provided benefits to Chinese producers and exporters of the nominated goods.

Enclosed is a copy of the Proposed Regulation that will be passed by the EU Commissioners by 15 March 2013.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4275 3858.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Alan Gibbs".

Alan Gibbs
Development Manager – International Trade



Brussels, 15.2.2013
COM(2013) 84 final

2013/0052 (NLE)

Proposal for a

COUNCIL IMPLEMENTING REGULATION

**imposing a countervailing duty on imports of certain organic coated steel products
originating in the People's Republic of China**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

Provisional anti-dumping measures were imposed on the same product group by Commission Regulation (EU) No 845/2012 (OJ L 252, 19.9.2010, p.33).

Parallel proposal to impose definitive anti-dumping measures.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 9 January 2012, the Commission initiated an anti-subsidy proceeding concerning imports of certain organic coated steel products originating in the People's Republic of China.

The investigation found subsidisation of the product concerned, which caused injury to the Union industry. The investigation also found that it was not against the Union interest to

impose anti-subsidy measures.

Therefore, it is proposed that the Council adopts the attached proposal for a Regulation in order to impose definitive anti-subsidy measures on imports of certain organic coated steel products originating in the People's Republic of China.

Legal basis

Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation')

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instrument: Regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the EU budget.

Proposal for a

COUNCIL IMPLEMENTING REGULATION

imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community¹, and in particular Article 17 thereof,

Having regard to the proposal from the European Commission,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 22 February 2012, the European Commission announced by a notice published in the Official Journal of the European Union² ('Notice of initiation'), the initiation of an anti-subsidy proceeding with regard to imports into the Union of certain organic coated steel products originating in the People's Republic of China ('PRC' or the 'country concerned').
- (2) The anti-subsidy proceeding was initiated following a complaint lodged on 9 January 2012 by EUROFER ('the complainant') on behalf of producers representing in this case more than 70% of the total Union production of certain organic coated steel products. The complaint contained prima facie evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of the PRC ('the GOC') that it had received a properly documented complaint alleging that subsidised imports of certain organic coated steel products originating in the PRC were causing material injury to the Union industry. The GOC was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The GOC accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the authorities of the GOC in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes. Following the consultations, submissions were received from the GOC.

¹ OJ L 188, 18.7.2009, p. 93.

² OJ C 52, 22.2.2012, p. 4.

1.2. Anti-dumping proceeding

- (4) On 21 December 2011, the European Commission had announced by a notice published in the Official Journal of the European Union³, the initiation of an anti-dumping proceeding concerning imports into the Union of certain organic coated steel products originating in the PRC.
- (5) On 20 September 2012, the Commission, by Regulation (EU) No 845/2012⁴, imposed a provisional anti-dumping duty on imports of certain organic coated steel products originating in the PRC.
- (6) The injury analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. For this reason, comments on injury aspects put forward in any of these proceedings were taken into account in both proceedings.

1.3. Parties concerned by the proceeding

- (7) The Commission officially advised the complainants, other known Union producers, the known exporting producers in the PRC, importers, traders, users, suppliers and associations known to be concerned, and the representatives of the PRC of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (8) In view of the apparent high number of exporting producers, Union producers and unrelated importers, all known exporting producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period from 1 October 2010 to 30 September 2011. This information was requested under Article 27 of the basic Regulation in order to enable the Commission to decide whether sampling would be necessary and if so, to select samples. The authorities of the PRC were also consulted.
- (9) Initially 19 Chinese exporting producers/groups of producers provided the requested information and agreed to be included in a sample. On the basis of the information received from the exporting producers and in accordance with Article 27 of the basic Regulation the Commission initially proposed a sample of 3 exporting producers/groups of exporting producers. However one of the exporting producers included in this sample withdrew its cooperation. Consequently it was replaced with the next exporting producer with the highest volume of exports sales to the EU. Following the notification also this exporting producer withdrew its cooperation.
- (10) In order not to cause any further delay to the proceeding it was decided to limit the sample to two groups of exporting producers, which had the highest export volume to the Union, i.e. Zhangjiagang Panhua Steel Strip Co., Ltd and its related companies and Zhejiang Huadong Light Steel Building Material Co., Ltd and its related companies. The sample of these two groups of exporting producers serves as the basis to determine the level of subsidisation for those groups as well as the level of subsidisation for all cooperating exporting producers not included in the sample, as required by Articles 15.2 and 15.3 of the basic Regulation.

³ OJ C 373, 21.12.2011, p. 16.

⁴ OJ L 252, 19.09.2012, p.33.

- (11) As regards the Union producers, the Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of six Union producers that were known to the Commission to produce the like product selected on the basis of sales, production volume, size and geographical location in the Union. The sampled Union producers accounted for 46% of the Union production and 38% of the Union sales. Interested parties were also invited in the notice of initiation to make their views known on the provisional sample. One of the Union producers stated that it did not wish to be included in the sample and was replaced in the sample by the next largest producer.
- (12) Five unrelated importers provided the requested information and agreed to be included in the sample. In view of the limited number of cooperating importers, sampling was deemed to be no longer necessary.
- (13) The Commission sent questionnaires to the representatives of the PRC, the two sampled exporting producers in the PRC, 14 other exporting producers in the PRC that requested so, the six sampled Union producers, the five cooperating importers in the Union and to the known users.
- (14) Replies were received from the representatives of the PRC, nine exporting producers and related companies in the PRC, the six sampled Union producers, two unrelated importers and ten users.
- (15) The Commission sought and verified all information deemed necessary for the determination of subsidisation, resulting injury and Union interest. Verification visits were carried out at the premises of the following State authority and companies:
- (a) *Government of the People Republic of China*
- Chinese Ministry of Commerce, Beijing, China
- (b) *Union producers*
- ArcelorMittal Belgium, Belgium and related sales company ArcelorMittal Flat Carbon Europe SA, Luxembourg
 - ArcelorMittal Poland, Poland
 - ThyssenKrupp Steel Europe AG, Germany
 - voestalpine Stahl GmbH and voestalpine Stahl Service Center GmbH, Austria
 - Tata Steel Maubeuge SA (formerly known as Myriad SA), France
 - Tata Steel UK Ltd, United Kingdom
- (c) *Groups of Exporting producers (and related companies) in the PRC*
- Zhangjiagang Panhua Steel Strip Co., Ltd and its related companies: Chongqing Wanda Steel Strip Co., Ltd, Zhangjiagang Wanda Steel Strip Co., Ltd, Jiangsu Huasheng New Construction Materials Co. Ltd and Zhangjiagang Free Trade Zone Jiaxinda International Trade Co., Ltd;
 - Zhejiang Huadong Light Steel Building Material Co. Ltd and its related company Hangzhou P.R.P.T. Metal Material Company Ltd;
- (d) *Importers in the Union*
- ThyssenKrupp Mannex, Germany

– Macrometal, Hamburg, Germany

(16) Subsequently all parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive countervailing duties on imports of certain organic coated steel products originating in the PRC ('the final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(17) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.4. Investigation period and period considered

(18) The investigation of subsidisation and injury covered the period from 1 October 2010 to 30 September 2011 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2008 to the end of the IP ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(19) In the notice of initiation the product subject to the investigation was certain organic coated steel products ('OCS'), i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, and excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70% or more of zinc).

2.2. Product exclusion requests

(20) The China Iron and Steel Association, two importers and two users, proposed the exclusion of five product types. These requests were received and have been analysed as follows:

2.2.1. OCS with metallic coating of chromium or tin

(21) A user of OCS submitted a request to exclude OCS with a substrate with a metallic coating of chromium or tin from the product scope. The investigation has established that the metallic coating of chromium or tin renders this product type physically and technically different to the OCS under investigation. Moreover, OCS with a substrate with a metallic coating of chromium or tin is almost exclusively used in the food packaging and cable industries. Finally, the Union industry explained that it did not intend for the above-mentioned product type to be included in this investigation. Given the above-mentioned reasons, OCS with a substrate with a metallic coating of chromium or tin is not included in the product scope.

2.2.2. Hot-rolled plates with protective primer, whether organic or inorganic

(22) This request was rejected because these products do not fall under the CN codes under investigation. The painting or coating is only for rust protection and therefore fall under CN heading 7208 and not CN heading 7210. Hot-rolled plates with a protective primer, whether organic or inorganic, are not included in the product scope and as a result cannot be removed from it.

2.2.3. OCS with substrate thickness between 0.6 and 2.0 mm

- (23) CISA and two importers requested the exclusion of OCS with substrate thickness between 0.6 and 2.0 mm, representing 5 – 10% of imports from China, stating that there was only direct competition between Chinese exports and Union industry production for OCS with substrate thickness of between 0.25 and 0.6 mm.
- (24) This request was rejected, given that both Chinese exporters and the Union industry manufacture and sell OCS with a substrate thickness of between 0.6 and 2.0 mm and that therefore these products are clearly in competition with each other. No evidence was provided to show that OCS with a substrate thickness of over 0.6 mm does not compete with OCS with a substrate thickness of less than 0.6 mm and that therefore this would constitute a different product type. OCS with substrate thickness of less than and above 0.6mm have the same basic physical and technical characteristics and same end uses and therefore are the same product.

2.2.4. OCS with aluminium-zinc alloy coated substrate

- (25) The two importers alleged that only four Union producers have the licence to produce this product type and that only one company was in fact producing it. They also alleged that this product differs from zinc coated OCS in terms of product characteristics.
- (26) This request was rejected as the two product types are interchangeable with overlapping uses and at least two cooperating Union producers manufactured this product type during the investigation period. It should be noted that only one cooperating Chinese exporting producer exported this product type to the Union during the investigation period.

2.2.5. OCS with zinc alloy coated substrate

- (27) This request was rejected because, contrary to the assertion by one user, this product is produced and sold in significant quantities by several Union producers and has the same essential physical and technical characteristics and end uses as other types of OCS.

2.3. Product inclusion request

- (28) One association requested that OCS with a metallic coating of chromium or tin, classified under TARIC codes 7210 12 20 10 and 7210 50 00 10 be included in the product scope. This request was rejected as these codes were not included in the original complaint and the products covered by such codes have different physical and technical characteristics from the products covered by the complaint.

2.4. Product concerned

- (29) Given the acceptance of the exclusion of OCS with metallic coating of chromium or tin, as outlined in recital (21), the product concerned is amended by this exclusion.
- (30) The product concerned is therefore certain organic coated steel products ('OCS'), i.e. flatrolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin, currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70, and originating in the People's Republic of China ('the product concerned').

2.5. Like product

- (31) The investigation has shown that OCS produced and sold by the Union industry in the Union, OCS produced and sold on the domestic market of the PRC and OCS imported into the Union from the PRC have the same basic physical and chemical characteristics and the same basic end uses. Therefore these products are considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. SUBSIDISATION

3.1. Preliminary remarks

- (32) Both the GOC and the sampled Chinese exporting producers submitted questionnaire replies and accepted on-spot visits in order to verify the replies.
- (33) With respect to the GOC, following the analysis of the questionnaire reply, the Commission sent a deficiency letter and two pre-verification letters. The Commission provided to the GOC ample time for the preparation and submission of its representations whenever this was requested and justified. Indeed substantial deadline extensions were granted to the GOC, i.e. 20 days extension for the reply to the questionnaire which resulted in an eventual deadline of 57 days for the submission of the questionnaire reply and 25 days for the reply to the deficiency letter.
- (34) In its replies to the questionnaire, deficiency letters and various other submissions the GOC provided a reply only concerning schemes used by the sampled exporting producers and argued that it should not be requested to provide replies to questions relating to alleged subsidy schemes available also to non-sampled producers or producers which had not made themselves known.
- (35) The Commission respectfully disagreed with this approach and explained to the GOC that the purpose of the questionnaire sent to the GOC is for the Commission to obtain information of subsidisation of the industry producing organic coated steel in China and to determine to what extent Union imports of the product concerned are subsidised. The Commission informed the GOC that broader information on the extent of subsidisation is required in order to address any significant non-cooperation by exporters which are alleged to have received benefits under particular subsidy schemes not used by the sampled or cooperating companies and possible requests for individual examination by cooperating exporting producers. However the GOC did not alter its approach and did not provide information on most of the other subsidy schemes alleged in the complaint but not used by the sampled companies.
- (36) Prior to the on-spot verification visit, the GOC requested the Commission to provide further information in writing, in particular a list of all the questions that it intended to ask during the verification plus a list of the Government departments which were expected to participate in the on-spot visit. In the absence of these, it was argued that the GOC *"was left unaware of what should have been prepared or could be expected during the verification" and that the pre-verification letter "certainly does not provide any indication of what the Commission actually intends to verify..."*.
- (37) The Commission could not grant the GOC's request. In this respect it is noted that the Commission has fulfilled all the relevant conditions of Article 26 of the basic Regulation. A detailed pre-verification letter had been sent to the GOC confirming the agenda (days and group of schemes to be discussed per verification day) and requesting the presence of the authorities responsible for the relevant schemes and of the officials involved in the preparation of the GOC submissions. The Commission also explained before the on-spot verification visit that only the GOC could identify

the authorities responsible for the schemes under investigation as well as those officials which are best placed to take part in the verification and answer questions. As regards the list of specific questions, the Commission explained that such a list is not required by EU legislation (nor by WTO requirements) and that the purpose of this investigation is to verify the GOC reply to the questionnaire and the relevant supplementary submissions; therefore the verification would follow the structure of these documents. The Commission would also seek to obtain and clarify further information necessary for the on-going proceeding but precise questions in this context would depend on the GOC's replies to the initial verification of its replies. It was also made clear to the GOC before the on-spot verification visit that refusals to provide necessary information or to assist the investigating authority in verifying information and data deemed necessary for the purposes of the proceeding might seriously undermine the investigation process. The GOC was also reminded of the consequences of the provision of Article 28 of the basic Regulation.

- (38) During the on-spot verification visit to the Chinese Ministry of Commerce in Beijing, the Commission endeavoured to verify information provided on the basis of the supporting documents that were used to prepare the GOC's response, in line with the provisions of Articles 11 and 26 of the basic Regulation. In doing so, the Commission came preliminarily to the conclusion that the lack of information and supporting documents available did not allow a proper verification of the reply to the questionnaire. Moreover, certain information was not submitted at all although it was specifically requested and certain questions were simply not replied to. Consequently, the GOC was made aware of the consequences of non-cooperation in accordance with Article 28(1) and (6) of the basic Regulation.
- (39) The GOC also submitted that the Commission was imposing an unreasonable burden on the GOC and had requested irrelevant and unnecessary information in the questionnaire and subsequent deficiency letter.
- (40) With respect to the requested information it is noted that the Commission requested only information concerning allegations in the complaint that is deemed necessary for the purposes of arriving at a representative finding and remained consistent in its requests by asking for the same data and information during the investigating process and requesting the GOC to explain the submitted information and its implication for the investigated schemes. In other words, the Commission only requested information that was necessary to assess the existence and level of subsidisation available to the product concerned pursuant to other subsidy schemes alleged in the complaint. Such information would have allowed for an adequate determination of the amount of subsidisation granted pursuant to the other subsidy schemes under investigation available to the non-cooperating exporting producers. Since neither the representatives of the PRC nor the non-cooperating exporting producers provided the necessary information to determine whether the other subsidy schemes were available to the non-cooperating exporting producers, on the basis of best facts available, the Commission concluded that the other alleged subsidy schemes were indeed available to the other non-cooperating exporting producers, and proceeded to calculate the amounts of benefit conferred through those schemes on the basis of best facts available.

3.2. Individual Examination ('IE')

- (41) Claims for IE were submitted by two cooperating exporting producers pursuant to Article 27(3) of the basic Regulation, i.e. Union Steel China (Union Steel) and

Shenzhen Sino Master Steel Co. Ltd. It was not possible to grant these IEs to both companies as, due to the high number of alleged subsidy schemes and time consuming nature of anti-subsidy investigation, it would be unduly burdensome and could prevent completion of the investigation in good time.

- (42) However, Union Steel had already been individually examined in the parallel anti-dumping investigation and consequently individual injury margin was calculated for this company.
- (43) Given that the GOC provided only a reply concerning schemes used by the sampled exporting producers as explained in recital (34) above, it was practically impossible to analyse some of the subsidy schemes possibly used by Union Steel. Consequently, on the basis of facts available under Article 28 of the Basic Regulation, the average subsidy rate applicable to other co-operating companies was attributed to this company.

3.3. Specific Schemes

- (44) On the basis of the information contained in the complaint the Commission sought information related to the following schemes, which allegedly involved the granting of subsidies by the Governmental authority:

(I) Government Provision of Goods and Services for Less than Adequate Remuneration ("LTAR")

- *Provision of inputs at less than adequate remuneration: Hot-rolled and cold-rolled steel*
- *Provision of land use rights for less than adequate remuneration*
- *Programmes consisting of provision of water for less than adequate remuneration*
- *Programme consisting of provision of electricity for less than adequate remuneration*
- *Programme consisting of provision of electricity and water at less than adequate remuneration in the Jiangsu Province*
- *Provision of various inputs for less than adequate remuneration*

(II) Preferential loans and interest rates to the OCS industry

(III) Equity programmes

- *Debt for equity swaps*
- *Equity infusions*
- *Unpaid dividends*

(IV) Income and other direct taxes

- *Tax policies for the deduction of research and development expenses*
- *Tax concessions for Central and Western regions*
- *Income tax credit for the purchase of domestically manufactured production equipment*
- *Preferential tax policies for companies that are encouraged as high and new technology enterprises*

- *Income tax concessions for the enterprises engaged in the comprehensive resource utilisation ('special raw materials')*
 - *Tax credit concerning the purchase of special equipment*
 - *Preferential income tax policy for the enterprises in the Northeast region*
 - *Income Tax exemption for investment in domestic technological renovation*
 - *Various local tax discounts (Shandong Province, Chongqing City, Guangxi Region Zhuang, Tax privileges to develop central and western regions)*
 - *Dividend exemption between qualified resident enterprises*
 - *Two free, three half tax exemptions for the productive FIEs*
 - *Local income tax exemption and reduction programmes for the productive FIEs*
 - *Income tax credit for FIEs purchasing domestically produced equipment*
 - *Income tax subsidies for FIEs based on geographical location*
- (V) *Indirect Tax and Import Tariff Programmes*
- *Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries*
 - *VAT refunds to FIEs purchasing domestically produced equipment*
 - *VAT deduction on fixed assets in the Central region*
 - *Other tax privileges of Ma'anshan*
- (VI) *Grant Programmes*
- *China World Top Brand programme*
 - *Famous Brands programme*
 - *The State key technology project fund*
 - *Programmes to rebate anti-dumping legal fees*
- (VII) *Purchase of goods by the Government for higher than adequate remuneration*
- (VIII) *Other regional programmes*
- *Subsidies provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area*
 - *Programmes related to the Northeast Region*
 - *Grants under the Science and technology programme of Jiangsu Province*
 - *Grants under the Science and Technology programme of Hebei Province*
- (IX) *Ad hoc subsidies referred to in the complaint*

3.3.1. Government Provision of Goods and Services for Less than Adequate Remuneration (“LTAR”)

3.3.1.1. Provision of hot-rolled and cold-rolled steel (HRS and CRS) for less than adequate remuneration

- (45) The allegation in the complaint was that the GOC controls certain upstream industries and products so as to provide favourably priced inputs to producers of OCS. On this basis OCS producers receive countervailable subsidies through the purchase from State-owned enterprises (SOEs) of government-produced HRS and CRS at a below the market price and thus at less than adequate remuneration for the SOEs.

Non-cooperation

- (46) The Commission requested from the GOC detailed information concerning SOEs providing HRS and CRS to the Chinese exporting producers of OCS in order to verify the allegations in the complaint and to establish whether these SOEs are public bodies. In particular, the Commission created Appendix B to the questionnaire for the GOC intended for the SOEs and invited the GOC to provide information requested therein. In the deficiency letter the Commission again asked the GOC to provide the information requested in Appendix B and encouraged GOC to coordinate the responses with the SOEs concerned.
- (47) However, GOC did not provide a reply to any of the questions in Appendix B and also failed to provide relevant information requested in the main questionnaire (e.g. on the ownership and control of Chinese government of the SOEs in the steel sector and its involvement in the reorganisation of Chinese steel industry). Instead of providing the requested information the GOC stated in its response to the questionnaire that the complainants have failed to demonstrate that the HRS and CRS producers are public bodies.
- (48) Because of the lack of cooperation from the GOC the Commission had to look into other best information available. The Commission notified GOC about this course of action. In assessing whether the SOEs providing HRS and CRS to the Chinese exporting producers of OCS are public bodies the Commission considered the limited information provided by the GOC, information in the complaint, publicly available factual information from similar proceedings conducted by other investigating authorities, as well as other publicly available information, and based its findings on the totality of the information on the file.

- (a) *SOEs providing OCS producers with hot-rolled and cold-rolled steel are public bodies*

Preliminary remarks

- (49) The complainant claims that SOEs in China are public bodies within the meaning of Article 2(b) of the basic Regulation which provide goods (HRS and CRS) to OCS producers at below-market prices and thus confer a benefit to them.
- (50) The WTO Appellate Body (AB), in its report in United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China⁵ (the AB report) defined a public body as an entity that "possesses, exercises or is vested with governmental authority"⁶. The AB also considered that public bodies are also characterised by the "performance of governmental functions"⁷ which would

⁵ Document WT/DS379/AB/R, 11 March 2011

⁶ Para 317 of the AB report

⁷ Para 290 of the AB report

"ordinarily be considered part of governmental practice in the legal order of the relevant Member"⁸.

- (51) In light of the WTO AB conclusions, there are two questions for the analysis, i.e. (a) whether the SOEs in question perform functions which are ordinarily considered part of governmental practice in China and (b) if so, whether they exercise government authority when doing so?

Performance of governmental functions

- (52) In the context of the GOC, there is ample evidence to show that the government is deeply involved in the management of the economy. The primary role of the Chinese government in the economy is guaranteed by the Constitution of the People's Republic of China. According to Article 7 of the Constitution reads: "*The state economy is the sector of socialist economy under ownership by the whole people; it is leading force in the national economy. The state ensures the consolidation and growth of the state economy*". Similarly Article 15 of the Constitution reads: "*The state practices economic planning on the basis of socialist public ownership*". Also the Constitution of the Communist Party of China prescribes the primary role of the public ownership, e.g. preamble of the Constitution of CCP reads: "*the Party must uphold and improve the basic economic system, with public ownership playing a dominant role...*" Also the various 5-year plans promulgated by the National Development and Reform Commission (NDRC) and adopted by the China's highest legal authority State Council point to the very strong grip of the Chinese government in the economy.
- (53) As regards the steel sector, the information on the file suggests that the SOEs producing HRS and CRS in China often perform governmental functions described, inter alia, in the sectoral plans for iron and steel industry. These plans confirm that the GOC has chosen to be closely involved in the management and development of the steel industry in China and their implementation by SOEs can therefore be considered to fall under the heading of governmental practices. The plans provide targets and goals for all operators in the iron and steel industry and direct the whole sector to produce specific outcomes. In fact, the GOC is using the iron and steel SOEs as a prolonged arm of the state in order to achieve goals and targets set in the plans.
- (54) *Order No. 35 of the NDRC – Policies for Development of Iron and Steel Industry*, inter alia, outlines a policy to decrease the number of iron and steel smelting enterprises and sets goals on the output for those steel enterprise groups that rank top 10 in the domestic market (Article 3), for the production capacity prohibits the establishment of new iron and steel associated enterprises (Article 10), prescribes the conditions to access into the iron and steel industry on the equipment level and also prescribes the technical and economic indexes steel and iron enterprises should follow (Article 12), sets rules for the changes in the organisational structure of steel enterprises (article 20), manages investments (Articles 22, 23), conditions access to financial funds (Articles 25,26), gives state the right to intervene in the purchase of raw materials (Article 30).
- (55) *Twelfth 5 Year Development Plan for the Steel Industry* summarises the achievement of goals set in the previous plan, covers the development strategy and sets goals for the entire steel industry. Similarly to the Order No.35 it sets very specific targets on the industrial clustering level (Section III.(III).6), encourages certain projects and discourages other (Section IV(IV))and discriminates in support for iron and steel

⁸ Para 297 of the AB report

industry in different provinces (Section IV(V), provides for support of large-scale steel enterprises and gives a leading role to the biggest state-owned Chinese steel producers such as Bao Steel, Anshan Iron and Steel, Wuhan Iron and Steel etc.⁹ The plan also provides for the strengthening of the regulation and management of the existing steel enterprises' production operation (Section V(IV).

- (56) *Law of the People's Republic of China on the State-owned Assets of Enterprises* also obliges the SOEs (or State-invested enterprises (SIEs) are referred to in this law) to comply with the national industrial policies¹⁰. Similarly the *Tentative Measures for the supervision and Administration of the Investments by Central Enterprises* oblige SOEs (SIEs) to follow development plans and industrial policies of the state¹¹. According to *Measures for the Administration of Development Strategies and Plans of Central Enterprises* all SIEs shall formulate a development and strategy plan which State-owned Asset Supervision and Administration Commission of the State Council (SASAC) must examine and approve. When performing such examination and prior the approval SASAC must consider, inter alia, whether or not this plan complies with the national development planning and industrial policies and whether or not it complies with the strategic adjustment of the layout and structure of the State-owned economy¹².
- (57) The concrete examples of the implementation of the measures described in the plans such as the relocation of the Capital Steel Corporation¹³ or numerous mergers of steel enterprises¹⁴ show that the plans are not only indicative documents which serve as guidelines but they result in concrete actions by the state-owned steel enterprises orchestrated by the government (represented by the NDRC and State Council).
- (58) All of the specific actions described in the above paragraphs must be followed and executed by the enterprises covered by the plans. It is concluded that through this direct government involvement in steel enterprises' commercial behaviour, the state-owned steel enterprises act like an arm of the government in performing governmental functions which subsequently lead to the fulfilment of goals and targets set in the plans.

Government control of SOEs

⁹ Page 33 of the English version of 12th 5 year Development Plan for Steel Industry

¹⁰ Article 36 of the Law of the People's Republic of China on the State-owned Assets of Enterprises reads: "A state-invested enterprise making investment shall comply with the national industrial policies,..."

¹¹ Article 6 of Tentative Measures for the supervision and Administration of the Investments by Central Enterprises reads: "the principle of meeting the development plans and industrial policies of the state shall be observed for the investment activities of the enterprises as well as SASAC supervision and administration over the enterprises' investment activities"

¹² Articles 13(1) and 13(2) of the Measures for the Administration of Development Strategies and Plans of Central Enterprises

¹³ Chinese Vice Premier Zheng Peiyan said the relocation of the Capital Steel in Hebei represents a major policy decision made by the Communist Party of China Central Committee and the State Council (Xinhua News Agency, October 23, 2005)

¹⁴ see e.g. "China approves Anshan Steel merger with Panzhihua, <http://www.reuters.com/article/2010/05/25/us-china-steel-merger-idUSTRE64O2G020100525>

"Steel merger will become China's biggest, http://www.chinadaily.com.cn/bizchina/2010-04/19/content_9747309.htm

"Four Chinese steel makers agree to merge, <http://online.wsj.com/article/SB10001424052748703792704575366830150284538.html>

"New steel group formed by merger in China's Hubei Province, <http://www.steelorbis.com/steel-news/latest-news/new-steel-group-formed-by-merger-in-chinas-hubei-province-685647.htm>

- (59) Having established that SOEs are performing government functions, the question remains as to whether they exercise government authority in doing so. In this regard, a key question is whether they are meaningfully controlled by the government¹⁵. If this is the case, it is reasonable to determine, in the light of all the relevant evidence, that SOEs act as an arm of government and effectively implement policy set out in the plans above.
- (60) The governmental control described below indicates that SOEs possess, exercise or are vested with governmental authority. Control can be exercised, *inter alia*, through government ownership, administrative regulation and involvement of SASAC, boards of directors, government plans.

Government ownership

- (61) As already mentioned in the section above concerning non-cooperation (recitals (46) to (48)), GOC did not provide the requested information on the ownership structure of the producers of HRS and CRS in China. With the reply to the questionnaire the GOC submitted a list of 54 companies in which the GOC is the largest shareholder, but during the verification visit it claimed that the list is not correct and also includes privately owned companies. The GOC did not correct the list and also did not specify which of the companies are privately owned and which are owned by the GOC. Because of the non-cooperation the Commission had to look at other evidence on the file and publicly available information.
- (62) The complainant provided evidence that the major HRS and CRS producers are state owned and submitted detailed information in this respect in Annex 10 to the complaint¹⁶. Also other publicly available information¹⁷ confirms that the GOC has ownership stake in many of the producers of HRS and CRS.
- (63) Taking into account all the information on the file it is reasonable to conclude that the GOC has a significant ownership stake in many of the Chinese HRS and CRS producers.

Administrative regulation and involvement of SASAC

- (64) SASAC performs the responsibilities of the State as an investor and manages the state-owned assets under its supervision. It is noted that although the GOC in its response to the questionnaire and subsequent submissions claimed that SASAC is not involved in the commercial operations of SOEs and supported this claim with reference to Article 7 of the Interim Measures for the Supervision and Administration of State-owned Assets of Enterprises¹⁸, other articles of the same law and also other evidence on file¹⁹ suggest otherwise.

¹⁵ ".....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." DS379 Appellate Body Report para.318

¹⁶ The 17 companies listed in the Annex belong to some of the biggest state-owned steel producers in China.

¹⁷ e.g http://en.wikipedia.org/wiki/Shougang_Corporation, http://en.wikipedia.org/wiki/Hebei_Iron_and_Steel, <http://companies.china.org.cn/trade/company/559.html>, <http://companies.china.org.cn/trade/company/557.html> etc.

¹⁸ Article 7 of Interim Measures for the Supervision and Administration of State-owned Assets of Enterprises: "the people's governments at various levels shall strictly execute the laws and regulations on the administration of state-owned assets, shall stick to the separation of the government's function of

- (65) In fact, the GOC reply to the anti-subsidy questionnaire shows that SASAC, authorised by the State Council, appoints and removes the top executives of the supervised enterprises, and evaluates their performances through legal procedures. It is also responsible for urging the supervised enterprises to carry out the guiding principles and policies, has responsibility for the fundamental management of the state-owned assets of enterprises and directs and supervises the management work of local state-owned assets according to the law.
- (66) SASAC is also responsible for remuneration and assessment of the SOEs' managers; furthermore, it appoints and decides on the rewards and punishments to the SOE managers²⁰. In fact, all the evidence suggests that the careers of SOE managers depend on SASAC. These circumstances show that the SASAC clearly is vested with Governmental authority.

Board of directors

- (67) The composition of the Boards of SOEs also demonstrates the high level of control by the GOC of the SOEs. The evidence on file²¹ shows that many of the members of boards of directors and boards of supervisors hold or held in the past government and/or party functions and that their selection is strongly influenced by governmental authorities such as SASAC or Communist Party of China (CCP).

Government plans

- (68) The GOC's policies, interests and goals concerning steel industry are set in various governmental plans on central and also sub-central level, The SOEs are encouraged to follow these policies (the non-compliant companies are even subject to sanctions) and from the recent actions of some major steel SOEs in China it is obvious that these policies are adhered to and the steel SOEs are working towards reaching the targets and goals set in the plans.
- (69) According to the *Twelfth 5 Year Development Plan for the Steel Industry* only the "enterprises that comply with the nation's policies for the iron and steel industry and the Standards and Conditions for Production and Operation of the iron and steel industry play a primary role in merging and reorganization."²²
- (70) A number of provincial and local level plans also mention specific SOEs and set goals and targets for them. The complainant provided extracts from these plans²³. All these

administration of public affairs and the function as the contributor of state-owned assets, and stick to the separation of government bodies and enterprises and the separation of ownership and management power. The state-owned assets supervision and administration bodies shall not exercise the government's function of administration of public affairs, and the other bodies and departments of the government shall not perform duties of the contributor of state-owned assets in enterprises"

¹⁹ The state-business nexus in China's steel industry – Chinese market distortions in domestic and international perspective, 2009 study prepared by Think!Desk – China research & Consulting for Eurofer, Analyses of State-owned Enterprises and State Capitalism in China, 2011, Capital Trade Incorporated prepared for the U.S.-China Economic and Security Review Commission

²⁰ Articles 22,27, 29 of the Law of the People's Republic of China on the State-owned Assets of Enterprises

²¹ The state-business nexus in China's steel industry – Chinese market distortions in domestic and international perspective, 2009 study prepared by Think!Desk – China research & Consulting for Eurofer, Analyses of State-owned Enterprises and State Capitalism in China, 2011, Capital Trade Incorporated prepared for the U.S.-China Economic and Security Review Commission and Annex 10 to the complaint,

²² *Twelfth 5 Year Development Plan for the Steel Industry*, Section IV(VII) – Accelerate merging and reorganisation

²³ Pages 108-109 of the complaint

plans were requested from the GOC in the questionnaire and in the deficiency letter for the purpose of verification and clarification but the GOC decided not to provide them. It is however noted that the GOC did not dispute the accuracy of these citations during the proceeding. Moreover, companies mentioned in the provincial and local plans admit their cooperation with authorities and describe how they act or acted in the past in line with the plans²⁴.

- (71) Although the GOC claims that some of the above plans are only indicative, not binding and are supposed to serve merely as a guidance, this allegation is not supported by other evidence on file. On the contrary, many laws and regulations which certainly are legally binding²⁵ make the state development plans and industrial policies obligatory for the SOEs.

Conclusion

- (72) The GOC formulates the goals and targets for the iron and steel industry through the 5-year plans and other relevant official documents and achieves these goals via the functions and activities described therein. Since these plans and documents are formulated by departments of the Chinese Government such as National Council or NDRC the functions and activities to which they refer should be considered governmental. Since as described above the steel SOEs are obliged to follow the plans and policies they act as an arm of the government and, since the government exercises meaningful control over them, they are in fact exercising government authority.
- (73) In view of the lack of cooperation from the GOC, the scope of those entities which are considered "public bodies" was not defined to the full extent. In any event, any SOE in which the government is the majority or the largest shareholder is a public body. Entities in which the government has no shareholding are private bodies. Having that said, there is no need to draw a bright line between public and private bodies here, since in recitals (85) to (98) below, it is demonstrated that all private bodies in the steel sector are entrusted and directed by the State and so, for all relevant purposes, behave in the same way as public bodies.

(b) Benefit (public bodies)

General considerations

- (74) In order to assess whether there is a benefit in accordance with Article 3(2) of the basic Regulation, it is necessary to compare the prices of HRS and CRS paid by the exporting producers concerned to the relevant benchmark. The AB report confirmed that in a case where the market of the country of provision is distorted by the role of the government, the use of external benchmarks was permitted. It also noted that "*where the government is the predominant supplier, it is likely that private prices will be distorted, but a case-by-case analysis is still required*"²⁶. The AB also stated that: "*...we are not suggesting that there is 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 predominant a government's role in*

²⁴ e.g. **Chongqing Iron and Steel** website (<http://en.cqgtjt.com/>), Baosteel website (http://www.baosteel.com/group_e/01news/ShowArticle.asp?ArticleID=2553)

²⁵ E.g. Tentative Measures for the supervision and Administration of the Investments by Central Enterprises, Measures for the Administration of Development Strategies and Plans of Central Enterprises, Law of the People's Republic of China on the State-owned Assets of Enterprises, Order No. 35 of the NDRC – Policies for Development of Iron and Steel Industry

²⁶ DS 379 AB report Para 441

*the market is, the more likely this role will result in the distortion of private prices"*²⁷. The AB further stated that: "*when the government is a "significant" supplier, evidence pertaining to factors other than government market share will be needed, as the government's role as a significant supplier cannot, on its own, prove distortion of private prices"*. Therefore, the first question to be answered is whether the government share of the production of HRS and CRS in China is predominant or merely significant.

- (75) The Commission requested from the GOC information on the market of HRS and CRS in respect to the proportion of output of HRS and CRS produced by the SOEs and private companies but the GOC did not submit any relevant information in this respect²⁸.
- (76) The Commission used other information available²⁹ concerning this issue on the basis of which it was established that at least 63% of HRS in China is produced by steel SOEs. It is important to note that this 63% share of SOEs was arrived at after very conservative analysis and represents the absolute minimum figure. The fact that many of the allegedly private suppliers reported by the exporters seem to be trading companies (which may well have purchased from the product from SOEs), the non-cooperation of the GOC (see recitals (46) to (48) above) and findings of other investigating authorities (see footnote 32) leads to the conclusion that the real share of SOEs on the HRS market is much higher. Also the strong involvement of the GOC in this sector HRS market (see recitals (85) to (94) below) limits the manoeuvring of the private operators.
- (77) Taking the above into consideration it was established that the SOEs are predominant in the HRS market in China. This predominance of SOEs in the HRS market is so considerable that the private producers have no choice but to align their prices with the SOEs, as is demonstrated below.
- (78) With regard to CRS, the reported share of SOEs from the Chinese exporting producers (18%) was much lower than in the case of HRS, however it was contradicted with other information (see recital (79) below). In view of non-cooperation from the GOC, the fact that many of the allegedly private suppliers reported by the exporters seem to be trading companies (which may well have purchased from the product from SOEs) and the limitations on commercial activities of private operators caused by the strong involvement of the GOC in this sector (see recitals (85) to (94) below) it is concluded (partly on the basis of facts available (see recital (79) below) within the meaning of Article 28 of the basic Regulation) that SOEs also predominate in the CRS market in China.

²⁷ DS 379 AB report Para 444

²⁸ The GOC submitted a table with figures relating to the output of HRS and CRS produced by SOEs and private companies but during the verification it was found that this table is not complete and the GOC refused to provide the information used for preparation of this table which would allow for proper verification

²⁹ The responses of 4 Chinese exporting producers (2 sampled, 2 voluntary responses) concerning their purchases of HRS (and CRS). The similar investigations by other investigating authorities confirm these figures. For example the USDOC established that the following proportions of HRS in China were produced by SOEs in the past: High Pressure Steel Cylinders (70%), Wire Decking (OSDOC determined that government authorities accounted for a majority of the HRS produced during the POI), Light-Walled Rectangular Pipe and Tube (70.81%),

- (79) This conclusion is corroborated by the World Steel Capacity Book, which contradicts the 18% share reported by the Chinese exporters and shows that more than 70% of the whole production capacity of CRS in China is state-owned³⁰.
- (80) The Commission requested information from the GOC on prices of HRS and CRS by state-owned and privately owned companies sold on Chinese market. In the reply to the questionnaire the GOC did not provide any such information. The investigation at the exporters of OCS established that the prices paid by the four exporting producers/groups during the IP for the HRS and CRS sourced from private producers of HRS and CRS or from traders were consistently very close to the prices of SOEs³¹. Thus the observed data, together with the predominance of SOEs in this sector, demonstrates that the price of private suppliers effectively tracks the prices paid to SOEs. Furthermore, in the contract submitted by one of the sampled exporting producers for the provision of HRS by a privately owned supplier there is even a condition to link the price to the SOE supplier price.
- (81) On the basis of the totality of the information on the file it is established that the prices of HRS and CRS sold by SOEs in China are distorted, as a result of the strong predominance of the SOEs in the HRS and CRS market in China. The prices of HRS and CRS of private suppliers are aligned with the prices of SOEs. Taking this into account it is concluded that there are no reliable market prices in China for the HRS and CRS. Since there are no "prevailing market terms and conditions" on the HRS and CRS market in China, the Commission, in accordance with Article 6(d) of the basic Regulation, had to look for an alternative benchmark. Since the whole of the Chinese market is distorted, it is considered impractical to adjust costs and prices in China in any meaningful way and import prices would appear to be similarly distorted by the predominance of SOEs. Therefore, in accordance with Article 6(d)(ii) of the basic Regulation, an external benchmark was sought.
- (82) The most appropriate benchmark appears to be a constructed benchmark on the basis of the world market prices of HRS and CRS regularly published in various specialised steel journals like Steel Business Briefing, MEPS and CRU.
- (83) Comparing the SOE prices to the out of country benchmark (constructed as explained in recital (103) below) showed that these prices were well below the benchmark prices and consequently resulted in benefit for the Chinese exporting producers of OCS within the meaning of Article 3(2) of the basic Regulation.

(c) Specificity

- (84) This subsidy programme is specific within the meaning of Article 4(2)(c) of the basic Regulation given that the HRS and CRS is only used by limited number of industries and enterprises in China in their production.

(d) Entrustment and direction of private suppliers

- (85) The next question to be addressed is whether the private producers of HRS and CRS, which are not public bodies, are nevertheless entrusted or directed by the GOC to provide HRS and CRS to the OCS producers, within the meaning of Article 3.1(a)(iv) of the basic Regulation.

³⁰ According to the World Steel capacity Book, the production capacity of CRS in China is around 81,035,000 tonnes per year and on the basis of publicly available data on ownership around 57,490,000 tonnes is produced by state-owned companies.

³¹ The price difference between the SOE prices and prices of private suppliers were on average only 3.75% different during the IP.

Government policy

- (86) At the outset, it has already been established that the GOC has a policy to provide HRS and CRS to the OCS sector, because public bodies, which are part of the government, are engaged in such provision and hold a predominant place in the market, which enables them to offer below-market prices. And in any event, regardless of the characterisation of those bodies as "public" or not, the same evidence shows the existence of government policy strongly interfering in this sector. It now has to be determined whether that policy extends to private suppliers.

Extension of policy to private suppliers of HRS and CRS

Government plans providing guidance and encouragement

- (87) In a number of government plans and policy documents there are indications that steel producers in China (both SOEs and privately owned) are encouraged and supported by the GOC. Certain sections of these documents suggest that there is a direct link between the government and the conduct of the private steel companies and on a number of occasions it can be observed that this "guidance" resulted in action by steel companies as is recommended in the plans.
- (88) For example, *Order of the NDRC No.35- Policies for the development of Iron and Steel Industry* encourages the steel companies to act in certain way³², sets conditions on investments and makes investment subject to approval by the authorities³³, influence competition for resources³⁴ and even provide for sanctions for non-complying companies³⁵. Also the *Twelfth 5 Year Development Plan for the Steel Industry* influences the business decisions of the steel companies which consequently can have impact on cost structure and prices³⁶.

³² *Article 18* of Order No.35-The policies of imported technologies and equipment: enterprises are encouraged to use home-made equipment and technologies and reduce export.

Article 20 of Order No. 35-The iron and steel enterprises are encouraged to develop into groups and carry out strategic reorganisation by way of alliance between mighty enterprises...

³³ *Article 22* of Order No. 35-The investment in any iron and steel project shall be subject to the examination and approval or verification of the NDRC according to relevant provisions

Article 23 of Order No.35- For any foreign investment in the iron and steel industry of China, foreign investors are not allowed to have a controlling share as is the general principle.

³⁴ *Article 24* of the Order No.35- For any project that fails to comply with the development policies for the iron and steel industry and hasn't been subject to examination and approval or where the examination and approval thereof fails to comply with the relevant provisions, the department of state land and resources shall not handle the formalities for land use and the department of industry and commerce shall not accept its registration, the administrative department of commerce shall not approve its contract and constitution, the financial institution shall not provide any loan or give credit support in any other form...

Article 25 of the Order No.35-To grant mid- and long-term loans for the fixed asset investment to the projects of iron smelting, steel smelting and steel rolling, a financial institution shall comply with the development policies for the iron and steel industry, and strengthen their risk management.

³⁵ *Article 30* Where two or more domestic enterprises are engaged in vicious competition for overseas resource, the state may adopt administrative coordination to hold alliance or select one of them to make investment so as to avoid vicious competition.

³⁶ *Section III (III)6 of the Twelfth 5 Year Development Plan for the Steel Industry.-Industrial clustering level:* significantly reduce the quantity of the steel enterprises; the proportion of the steel production of the top-10 steel enterprises to the national aggregate rises to approximately 60% from 48.6%

III.(V) of the 12th FYP for I&S -Optimising the Industry Layout

This chapter describes how the steel and iron industry should be reconstructed with the help of mergers, relocations, control of production capacity, bans in some provinces and support in others

- (89) In addition to this the complainant provided in the Annex 24 to the complaint a collection of extracts from various policy documents of different government organisations highlighting the GOC support to the steel industry in general or organic coated business specifically³⁷.
- (90) Furthermore, there is publicly available information showing that the privately owned companies act in accordance with different government plans and policy documents³⁸.

Export restrictions on hot-rolled and cold-rolled steel

- (91) The GOC has taken steps to discourage the export of HRS and CRS by means of export restrictions imposed through the complex VAT refund system. More specifically HRS and CRS is subject to the payment of VAT at 17%. VAT for domestically sold OCS produced from CRS (which is produced from HRS) is refundable at 13% whereas if the company chooses to export HRS or CRS the VAT is not at all refunded. This system means that the privately owned producers of HRS and CRS are not able to act with normal commercial freedom and has the effect of increasing the domestic supply of HRS and CRS and inevitably depressing its price on the Chinese market. Thus private-owned HRS and CRS producers (in the same way as SOEs) are unable to act independently from the GOC policy.

Pricing of private suppliers

- (92) In the section above concerning benefit for public bodies, it was established that due to the predominance of the steel SOEs in the HRS and CRS market the private producers of HRS and CRS have no choice but to align their prices with the SOEs prices. In other words they do not set the prices but they rather take them. This is another sign that the private producers of HRS and CRS cannot act independently from the actions of GOC and other public bodies.
- (93) This fact is also supported by the information provided by the Chinese exporting producers which submitted replies to the anti-subsidy questionnaires which shows that the prices of private suppliers of HRS and CRS are almost aligned with those of SOEs. Furthermore, in the contract submitted by one of the sampled exporting producers for the provision of HRS by a privately owned supplier there is even a condition to link the price to the SOE supplier price.
- (94) In view of the above finding that SOE prices are at below-market levels, it is clear that the prices of privately owned suppliers, being aligned to those of SOEs, are also at below-market levels.

(e) Financial contribution

- (95) According to Article 3.1(a)(iv) – second indent - of the basic Regulation, a financial contribution exists where a government: "entrusts or directs a private body to carry out

³⁷ Annex 24 to the complaint – compilation of relevant citations from various plans and legislations

³⁸ e.g. Jiangsu Shagang Group on its website (<http://www.sha-steel.com/eng/index.html>) stated: Shagang Group will conscientiously implement the State policy concerning the steel industry development. With the guidance of Scientific Outlook on development, Shagang would pursue the sustainable development strategy, take a new road to industrialisation, speed up transformation and upgrading, vigorously promote the readjustment of product structure, further extend its industrial chain, pay adequate attention to supporting enterprises, build modern logistics, implement capital operation, constantly improve its overall competitiveness in order to further make Shagang perfect, strong and excellent and try to our best to build Shagang as a famous brand of "Hundred-year Old Factory". Also Shagang people will make new contributions to building harmonious Jiangsu and making China become a powerful steel country.

one or more of the type of functions illustrated in points (i), (ii) and (iii) which would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments;". The WTO Appellate Body has interpreted "direction" as referring to situations where a government exercises its authority, including some degree of compulsion, over a private body, and "entrustment" as referring to situations in which a government gives responsibility to a private body³⁹. In addition, the WTO panel on US-Export Restraints⁴⁰, established a three-pronged test for the existence of entrustment and direction, which requires the existence of (a) a government action, which is (b) addressed to particular party and (c) the objective of which is a particular task or duty⁴¹.

- (96) On this basis, the inclusion of private suppliers in the GOC policy to supply HRS and CRS constitutes government "entrustment" and "direction" of private suppliers for the following reasons:

A government "action":

- The GOC "policy" (see recital (86) above), constitutes an "action" or "actions". The policy is carried out by public bodies (SOEs), which are predominant in the market and sell at below-market prices and by the GOC, through plans and the manipulation of export restrictions. The overall effect is that private suppliers are effectively compelled to follow the below-market prices of public bodies.

"Addressed to a particular party":

- The government policy (notably the plans and export restrictions) applies to all HRS and CRS producers, both state-owned and private. In this sense the policy is "addressed" to all producers. This is evidenced by the fact that SOE and private prices are aligned and that private suppliers sell at prices which are commercially unreasonable.

"the objective of which is a particular task or duty":

- The objective of the government policy, as evidenced by the price levels in China, is the provision of HRS and CRS at below-market prices. The actions of the GOC and SOEs leave private suppliers with no other choice but to follow the practices of public bodies and this effectively imposes a particular task or duty on them. The GOC policy, especially through the plans and VAT manipulation, severely restricts the freedom of private suppliers from this task or duty.

Conclusion

- (97) Taking all of the above factors into consideration it can be concluded that the GOC export restriction, government planning and the predominance of SOEs limits the freedom of private suppliers of HRS and CRS, obliging them to act in a non-commercial manner and to accept economically irrational (below-market) prices which they would not do in a free and open market. This confirms that the government policy

³⁹ Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, paras. 111 and 116

⁴⁰ Dispute No DS194 United States – Measures treating export restraints as subsidies (Panel report 29 June 2001)

⁴¹ Paras 8.28 -8.30 of panel report. Although the government "action" was originally qualified as "explicit and affirmative", subsequent findings of the Appellate Body suggest that this may be too rigid a standard.

to supply HRS and CRS (including to the organic coated steel sector) extends to private suppliers.

- (98) Furthermore, in view of the above analysis, the evidence on the file and other publicly available information led the Commission to the conclusion that private producers of HRS and CRS in China are entrusted and directed by the GOC to provide goods in line with Articles 3.1(a)(iii) and 3.1(a)(iv) of the Basic regulation and act in the same way as steel SOEs.

(f) Benefit (private suppliers)

- (99) The Commission established that the private suppliers of HRS and CRS act under entrustment and direction of the GOC and the investigation showed that the prices of privately owned suppliers of HRS and CRS are aligned with SOEs prices (see the section above).

- (100) Taking this into account it is concluded that the findings concerning benefit and specificity from the provision of HRS and CRS for below market prices by the SOEs also apply to the provision of HRS and CRS by privately owned suppliers.

(g) Findings of the investigation

- (101) Two sampled exporting producers have benefited from this programme. One exporting producer (Panhua Steel Group) has benefited from the provision of HRS for less than adequate remuneration and the other exporting producer (Huadong Steel Group) has benefited from the provision of CRS for less than adequate remuneration.

(h) Calculation of the subsidy amount

- (102) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP. That benefit is calculated by taking the sum of the differences between the actual purchase values and appropriate benchmark values of the HRS and CRS purchases. The resulting amount was then allocated over the total sales turnover of the cooperating exporting producer during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (103) Since the Chinese market for HRS and CRS is distorted, world market prices of HRS and CRS were considered appropriate bases for constructing benchmark prices for HRS and CRS. On the basis of various steel journals (SBB and MEPS) domestic prices, net of taxes, of five countries/regions were selected (i.e. Europe, USA, Turkey, Japan and Brazil). In order to arrive at the representative benchmark the Commission selected the biggest market for each relevant geographical region, i.e. Europe (EU), North America (USA), Latin America (Brazil), Asia (Japan) and Middle East/North Africa (Turkey). The monthly average prices for the IP period of each of the five countries/regions were arithmetically averaged so as to arrive at the monthly benchmark prices. The five countries/regions selected did not have the highest prices during the IP, they are all members of WTO, are among the ten biggest steel producers worldwide and are located in different continents. The benchmark prices thus established are therefore considered reasonable and appropriate.

- (104) The subsidy rate established with regard to this scheme during the IP for the sampled exporting producers amounts to 23,02% for the Huadong Group and 27,63% for the Panhua Group.

- (105) The weighted average subsidy rate for the cooperating companies not included in the sample is 25,37%.
- (106) Given the low level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the highest subsidy rate established for this scheme for an entity related to one of the sampled cooperating companies, i.e. 32,44%.

3.3.1.2. Provision of land use rights for less than the adequate remuneration

(a) *Introduction*

- (107) The complainant alleged that there is no functioning market for land in China and the amount paid by the companies for the use of land is below the normal market rate. In its reply to the anti-subsidy questionnaire the GOC stated that "In accordance with the Land Administration Law of the PRC, land in urban districts shall be owned by the State; land in rural areas and suburban areas, except otherwise provided for by the State, shall be collectively owned by peasants". GOC claimed that there is a standardised and orderly competitive land market, land use rights must be publicly traded in accordance with the law in the land market. GOC also stated that industrial and commercial land should be obtained by compensation for the use in open market by bidding, auction and competition. The GOC did not provide any data with respect to the actual land-use rights prices, minimum land prices formulated by the government which were mentioned in the reply to the anti-subsidy questionnaire and during the verification visit.
- (108) During the verification the Commission requested from the GOC evidence to support its claim that all the industrial land in China is assigned through bidding, quotation or auction. GOC was not able to provide such evidence during the verification visit, but submitted some information in this respect after the verification visit. However, all this evidence shows is that from thirteen land-use rights transactions concerning sampled exporting producers, only six were to be subject to bidding or auction process. No information on the auction/bidding process participant was provided as requested by the Commission and in fact on all occasions the final price paid by the company was same as the price arbitrarily set by the local authorities.
- (109) The Commission also requested from the GOC, under the assumption that there is no market price for land in the PRC, its views on possible benchmarks. Although this was only an assumption and by no means a finding or conclusion at the time when the questionnaire was sent to the GOC, the GOC expressed its view that this assumption is false and did not provide any possible benchmarks. GOC also pointed out to the alleged deficiency in the complaint that on one hand the complainant alleges that there is no market for land in China and "out of country benchmark" should be used, but on the other hand alleges that the SOEs receive land from the government at favourable terms vis-à-vis private industry and suggested that should any benchmark be used it should be the prices that "not favoured" Chinese industries are paying, but did not provide any information on these prices. In this context it should be noted that the complainant alleged that the land use rights market in China was distorted as a whole and both state-owned and private OCS producers have received land-use rights for less than adequate remuneration.

(b) *Legal basis*

- (110) The land-use right provision in China falls under Land Administration Law of the People's Republic of China and Real Right Law of the People's Republic of China.

(c) *Practical implementation*

(111) According to Article 2 of the Land Administration Law, all land is government-owned since, according to the Chinese constitution and relevant legal provisions, land belongs collectively to the People of China. No land can be sold but land-use rights may be assigned according to the law. The State authorities can assign it through public bidding, quotation or auction.

(d) Findings of the investigation

(112) The cooperating exporting producers have reported information regarding the land they hold as well as most of the relevant land-use rights contracts/certificates, but only very limited information was provided by the GOC about pricing of land-use rights.

(113) As mentioned above the GOC claimed that the land-use rights in China are assigned through bidding, auction and competition. This is also provided for in the Article 137 of the Real Right Law of the People's Republic of China⁴².

Panhua Group Co. Ltd.

(114) However, during the verification of cooperating exporting producers it was found that this system as described by the GOC does not always work like that in practice. For example out of six land-use rights purchased by Chongqing Wanda Steel Strip Co. Ltd. (part of Panhua Group Co. Ltd) for four of them, as confirmed by company officials, there was no bidding process. Chongqing Wanda was the only participant and the final transaction price paid by the company was in fact exactly the same as the initial price arbitrarily set by the local Land Resources Bureau. As for the remaining two land-use rights there was a bidding process, but no evidence for this was provided neither by the company nor by the GOC. In fact, from the documents submitted by the GOC after the verification visit it appears that also these two land-use rights were purchased for the price identical to the price set by the local Land Resources Bureau. Zhangjiagang Panhua Steel Strip Co., Ltd (also part of Panhua Group Co. Ltd) obtained three land-use rights by transfer from private companies in exchange for share in Panhua Group Co. Ltd.

Zhejiang Huadong Light Steel Building Material Co., Ltd

(115) Zhejiang Huadong Light Steel Building Material Co., Ltd obtained two of its land-use rights from local Land and Resources Bureau, Xiaoshan District and one from the private company. No evidence on bidding or auction could be provided as according to the GOC for the land-use rights purchased before 1 September 2006 there were no sales confirmation for land use rights transactions and in fact the GOC did not confirm or deny that these transactions were subject to bidding or auction.

(116) The findings of the proceeding confirm that the situation concerning land provision and acquisition in China is unclear and non-transparent and the prices are often arbitrarily set by the authorities. The authorities set the prices according to the Urban Land Evaluation System which instruct them among other criteria to consider also industrial policy when setting the price of industrial land. Also, at least in the steel sector, the access to industrial land is by law limited only to companies respecting the industrial policies set by the State⁴³.

⁴² As regards the land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. as well as the land with two or more intended users, the alienation thereof shall adopt such means as auction, bid invitation or any other public bidding method.

⁴³ Article 24 of the Order of the NDRC No.35 (Policies for Development of Iron and Steel Industry): For any project that fails to comply with the development policies for the iron and steel industry and has not been subject to examination and approval or where the examination and approval thereof fails to

(117) Also, the independent information submitted by the complainant suggest that the land in China is provided for below the normal market rates⁴⁴.

(e) Conclusion

(118) Accordingly, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods which confers a benefit upon the recipient companies. As explained in recitals (114) - (115) above, there is no functioning market for land in China and the use of an external benchmark demonstrates that the amount paid for land-use rights by the cooperating exporters is well below the normal market rate. The subsidy is specific under Article 4 2(a) and 4 2(c) of the basic Regulation because the access to industrial land is by law limited only to companies respecting the industrial policies set by the State, only certain transactions were subject to a bidding process, prices often being set by the authorities and government practices in this area are unclear and non-transparent.

(119) Consequently, this subsidy is considered countervailable.

(f) Calculation of the subsidy amount

(120) As it was concluded that the situation in China with respect to land-use rights is not market-driven, there appear to be no available private benchmarks at all in China. Therefore, an adjustment of costs or prices in China is not practicable. In these circumstances it is considered that there is no market in China and, in accordance with Article 6(d)(ii) of the basic Regulation, the use of an external benchmark for measuring the amount of benefit is warranted. Given that the GOC did not cooperate or failed to submit any proposal for an external benchmark the Commission had to resort to facts available in order to establish an appropriate external benchmark. In this respect it is considered appropriate to use information from the Separate Customs Territory of Taiwan as an appropriate benchmark.

(121) The Commission considers that the land prices in Taiwan offer the best proxy to the areas in China where the cooperating exporting producers are based. The majority of the exporting producers are located in the eastern part of China, in developed high-GDP areas in provinces with a high population density.

(122) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount paid by each company for land use rights and the amount that should have been normally paid on the basis of the Taiwanese benchmark.

(123) In doing this calculation, the Commission used the average land price per square meter established in Taiwan corrected for currency depreciation and GDP evolution as from the dates of the respective land use right contracts. The information concerning industrial land prices was retrieved from the website of the Industrial Bureau of the Ministry of Economic affairs of Taiwan. The currency depreciation and GDP evolution for Taiwan were calculated on the basis of inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the IMF in its 2011 World Economic Outlook. In accordance with Article 7(3) of the basic

comply with the relevant provisions, the department of state land and resources shall not handle the formalities for land-use rights

⁴⁴ George E. Peterson, Land leasing and land sale as an infrastructure-financing option, World Bank Policy Research Working Paper 4043, at 7 November 2006

Regulation this subsidy amount (numerator) has been allocated to the IP using the normal life time of the land use right for industrial use land in China, i.e. 50 years. This amount has then been allocated over the total sales turnover of the co-operating exporting producers during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (124) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 0,34% for the Huadong Group and 1,12% for the Panhua Group.
- (125) The weighted average subsidy rate for the cooperating companies not included in the sample is 0,73%.
- (126) Given the low level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the highest subsidy rate established for this scheme for an entity related to one of the sampled cooperating companies, i.e. 1,36%.

3.3.1.3. Programme consisting of provision of water for less than adequate remuneration

(a) *Introduction*

- (127) The complaint alleged that water prices in China are exclusively determined by public authorities and that the pricing structure is set according to industrial macro-policies. It also reported 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 complaint alleged that it was likely that OCS producers had benefitted from water prices for less than adequate remuneration in accordance with the policy to encourage high-added value steel products.
- (128) The water supply and market in China is administered by the NDRC, the Ministry of Water Resources and the Ministry of Environment. The water supply market is still largely dominated by local state-owned companies, although the entrance of foreign investment companies in some water supply projects of certain cities has broken the monopoly of state suppliers. However, the GOC was unable to provide a detailed list of water suppliers with their service area and volumes supplied (see recital (129) below), but limited its reply to a list of water suppliers in the areas of the sampled exporting producers.
- (129) As for pricing, the NDRC formulates the main pricing policy and the local authorities set the local water price after a hearing procedure with the aim to pursue a sustainable utilisation of water resources. The prices reflect the costs together with a reasonable profit for the local water suppliers. The GOC submitted the relevant price lists applicable in the municipalities where the sampled OCS producing exporters were located. It was clarified that the various municipal prices apply to all industrial users uniformly and do not vary by company or users.

(b) *Findings of the investigation*

- (130) The investigation confirmed that the NDRC sets the basic price of water, and the municipal price administrative authorities set the price for each municipality on the basis of several parameters (e.g. costs of distribution, profit, and reasonable surplus). The water price is supplemented by a 'sewage treatment' fee also set at municipal level.
- (131) While the basic water price, the sewage treatment fee and other possible local surcharges are equally applicable to all users falling in the same categories, it was

found that one of the two sampled exporters, Zhejiang Huadong Group, did not pay the sewage treatment fee.

- (132) The exporter claimed that it paid this fee as a lump-sum amount to the Environment Protection Bureau. However, it is not considered that this payment was made on the place of the sewage treatment fee for the following three reasons: (1) the official document reads "waste water emission" fee and not "sewage treatment" fee; (2) the payment is not proportional to the actual water consumption; (3) the total amount paid is quite small as compared to the actual amount that would have been payable if the sewage treatment fee on the actual water consumption had been due.

(c) Financial contribution

- (133) Zhejiang Huadong Group received a financial contribution within the meaning of Article 3(1)(a)(iii) of the basic Regulation in that the government provided water through the local public water supply company (i.e. Hangzhou Xiaoshan Water Supply Co. Ltd.). This constitutes a government financial contribution in the form of provision of goods other than general infrastructure within the meaning of the basic Regulation. Alternatively, this could be viewed as revenue foregone by the government because a public body did not collect revenue otherwise due in the sense of Article 3(1)(a)(ii).

(d) Benefit

- (134) Huadong Steel Group received a benefit within the meaning of Article 3(2) of the basic Regulation to the extent that the government has provided water for less than adequate remuneration. It has been established that this exporter has not paid the full price for water supply normally applicable to the category of users to which it belongs, as the "sewage treatment fee" component of the water price has not been paid.

(e) Specificity

- (135) The subsidy in form of provision of water to one of the cooperating exporters is specific within the meaning of Article 4(2)(c) of the basic Regulation, since the sewage treatment fee is not waived for all enterprises. Notwithstanding the absence of legislation limiting this subsidy to certain enterprises, the possibility for a certain enterprise producing the product concerned to obtain water supply for less than adequate remuneration, coupled with the apparent discretion conferred with the local authorities to waive part of the rate normally paid for water, makes the subsidy in fact specific. The Commission could not collect any further evidence concerning the basis on which this fee was waived as the exporting producer was unable to provide it.

(f) Calculation of subsidy amount

- (136) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. That benefit is considered to be the amount of sewage treatment fee not paid for water consumption during the IP. In accordance with Article 7(2) of the basic Regulation, this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (137) Zhejiang Huadong Group has benefited from the non-payment of the sewage treatment fee. The subsidy rate established for it is 0,01%.

- (138) The weighted average subsidy rate for the cooperating companies not included in the sample is 0,01%.
- (139) Given the low level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the highest subsidy rate established for this scheme for the sampled cooperating companies, i.e. 0,01%.

3.3.1.4. Programme consisting of provision of electricity for less than adequate remuneration

(a) *Introduction*

- (140) The complaint alleged that the GOC has provided electricity for less than adequate remuneration through preferential rates. In particular, the complaint asserted that electricity rates were set differently in different provinces and also that preferential rates were used as an industrial policy tool to encourage high added-value steel products and discourage outdated production capacities.
- (141) The NDRC is responsible for regulating the electricity market and setting the pricing in China. The trans-provincial and provincial grids are operated by two state-owned suppliers: State Grid Corporation of China and China Southern Power Grid Corporation. The electricity suppliers at municipal level are subsidiaries of these companies. A competition mechanism is in the process of being introduced in China through a few pilot projects, but its impact is still negligible at this stage.
- (142) The electricity prices are set by the NDRC on the basis of a procedure that includes cost investigation, expert appraisal, public hearings, and final price determination and publication. The NDRC publishes the prices applicable to each province into Notices, and then the local price bureaux publish a corresponding notice at local level implementing the prices decided by the central NDRC. The final price reflects purchasing costs, transmission costs and losses, and government surcharges. The prices are differentiated by province depending on the local situation and policy objectives pursued in the various provinces. They are set for different end user categories (e.g. residential, industrial users). An additional price differential exists for different industrial users to pursue the industrial policies set by the GOC and reflected in the catalogue contained in Decision No. 40 (2005) of the NDRC (see further explanation in recital (182)). Users falling in the 'encouraged' enterprises according to the NDRC catalogue pay the basic electricity rate, whereas users falling in the 'outdated' or 'prohibited' enterprises pay a surcharge on top of the basic rate. Users not falling into any category listed in the catalogue fall in the default category of 'allowed' enterprises and also pay the basic rate without surcharges. OCS producers would normally fall in the category of 'encouraged' enterprises according to Decision No. 40 of the NDRC.

(b) *Non-cooperation*

- (143) The Commission requested from the GOC the regulatory framework of the electricity market and pricing and the role that all relevant bodies or entities play. The GOC failed to submit the full set of the relevant pricing decisions issued by the NDRC and the local price bureaux not only with regard to the non-sampled producing exporters, but also with regard to the sampled producing exporters. The GOC also failed to describe accurately the role of the NDRC and the local price bureaux in the setting of the prices. The Commission informed the GOC of these shortcomings with regard to the sampled producing exporters in its letter of 12 August 2012. It was also discovered after the verification visits that the GOC indicated an incorrect electricity rate applicable to one of the sampled cooperating exporters.

(c) *Findings of the investigation*

- (144) The investigation confirmed that it is the NDRC that sets the prices of electricity applicable in the various provinces. It was verified that the local price bureau merely acts as an executive arm of the decision taken at central level by the NDRC. This is also confirmed by the fact that the NDRC issues Notices in which it sets the actual prices set for each province and then these notices are formally transposed into local notices adopted by the local price bureaux and implemented at local level. The investigation also established that differential electricity rates applicable for certain sectors and/or at provincial and local level are set in accordance with certain factors, including notably the pursuit of the industrial policy goals set by the central and local governments in their 5-year plans and in the sectoral plans.
- (145) The investigation of the cooperating sampled exporters showed that one of them, i.e. Chongqing Wanda Steel Strip ("CWSS") benefited from an electricity rate lower than the rate generally applicable for large industrial users. It was found that in the specific area where this exporter was located a sub-category of certain industrial users, including those producing the product concerned, were entitled to this lower rate.

(d) *Financial contribution*

- (146) One of the cooperating sampled exporters (CWSS) received a financial contribution in the sense of Article 3(1)(a)(iii) of the basic Regulation in that the government provided electricity through the local public electricity supply company. This constitutes a government contribution in the form of provision of goods other than general infrastructure within the meaning of the basic Regulation.

(e) *Benefit*

- (147) CWSS received a benefit within the meaning of Article 3(2) of the basic Regulation to the extent that the government has provided electricity for less than adequate remuneration. It has been established that this exporter was entitled to a rate lower than the rate generally applicable to other large industrial users.

(f) *Specificity*

- (148) The subsidy in form of provision of electricity to one of the cooperating exporters is specific within the meaning of Article 4(2)(a) and 4(3) of the basic Regulation. The lower electricity rate is set out in the relevant NDRC Notice and incorporated in the Notice issued by the local Price Bureau, i.e. it is mandated by a central authority and administered at local level. This lower rate is limited to certain enterprises in certain specified sectors (mainly producers of ferroalloy in electronic furnace and fertilizer companies) included in a sub-category of large-scale industrial users. Therefore, this lower rate is limited de jure only to companies falling into these categories in the meaning of Article 4(2)(a) of the basic Regulation.
- (149) The subsidy is also limited to a certain region in that it only applies in a limited designated geographical area where the exporting producer is located. This area is encouraged according to legislation issued by the Central Government, i.e. the *Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions* (see for more details recital (233) below). This Circular explicitly mentions price mechanism in electricity transmission and provision as one of the tools to achieve development of certain sectors. As the electricity rates applicable in this area are set by a central authority, this subsidy is also regionally specific within the meaning of Article 4(3) of the basic regulation.

(g) *Calculation of subsidy amount*

- (150) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit to the exporting producers has been calculated by considering the difference between the actual electricity rate per Kwh paid and the rate that should have been paid per Kwh for large industrial users, multiplied by the electricity volume consumed during the IP. In accordance with Article 7(2) of the basic Regulation this amount (numerator) has then been allocated over the total sales turnover of the cooperating exporting producers during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (151) One of the cooperating sampled exporting producers belonging to the Panhua Group of companies (i.e. CWSS) has benefited from this lower electricity rate. The subsidy rate established for the Panhua Group is 0,14%.
- (152) The weighted average subsidy rate for the cooperating companies not included in the sample is 0,07%.
- (153) Given the low level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the highest subsidy rate established for this scheme for an entity related to one of the sampled cooperating companies, i.e. 0,17%.

3.3.1.5. Provision of various goods for less than adequate remuneration

- (154) The complaint referred to a number of other goods provided by the GOC to OCS producers through its SOEs. In particular, the complaint listed a number of specific transactions concerning the provision of several steel outputs manufactured by SOEs, including iron ore concentrate, pellets, sintered ore, scrap, billet, sintered ore, alloys and many others. The complaint showed that the price for the provision of these goods was set by reference to different elements and/or benchmarks, and that there were price caps or adjustments depending on the different goods and on whether the transaction concerned related parties.
- (155) The GOC replied that it did not have this programme for steel makers during the IP. Given the lack of further information provided by the GOC on this programme, the Commission based its findings on the information available on file according to Article 28 of the basic Regulation.
- (156) To the extent that prices for the various goods mentioned above do not reflect adequate remuneration, this programme is countervailable according to Article 3(1)(a)(iii) and Article 6(d) of the basic Regulation. However, the complexity of the various transactions for the provision of these goods and of the underlying contracts which were not available in the record of the proceeding did not enable the Commission to come to a firm conclusion on this programme. Therefore the Commission has decided not to assess this programme further.

3.3.2. Preferential loans and interest rates to the OCS industry

(a) *Introduction*

- (157) The complainant alleged that the OCS producers benefit from low (subsidised) interest rates from state-owned commercial banks and government banks in accordance with the GOC policy to support and develop the expansion of the Chinese steel industry under the five year plans.

(b) *Non-cooperation and the use of facts available*

- (158) The Commission requested from the GOC information concerning the proportion of loans provided by the banks where the GOC is the largest or sole shareholder, banks where the GOC has a shareholding stake but is not the largest shareholder, banks where the GOC is not a shareholder and banks which are foreign owned, to both industry as a whole and to the industry concerned by this proceeding. The GOC replied that it does not retain records of the amounts and percentages of the loans provided by the state-owned banks and that the GOC also does not retain the records of loans for steel industry. GOC did not suggest any alternative source for this information.
- (159) The Commission also sought information about the state ownership of the banks and financial institutions but the GOC did not provide the information claiming that it does not retain such records. Although it is unlikely that the GOC is not aware of the assets it owns, it is noted that according to the publicly available information⁴⁵⁴⁶ the GOC is a major shareholder in many of the major banks established in China and therefore, as in the case of the SOEs producing HRS and CRS, it has access to banks' Articles of Association where the information on shareholding should be described in detail. In this respect it is also noted that according to Article 61 of the Law on Commercial Banks [2003] the banks *"shall report the balance sheets, statements of profits, and other financial statement and statistical reports and documents to the banking regulatory organ of the State Council and People's Bank of China"*.
- (160) The Commission also requested information (by means of a specific questionnaire – Appendix A) concerning the structure of government control in the Chinese banks concerned and the pursuit of government policies or interests with respect to the steel industry (i.e. board of directors and board of shareholders, minutes of shareholders/directors meetings, nationality of shareholders/directors, lending policies and assessment of risk with respect to loans provided to the cooperating exporting producers). Nevertheless, in the reply to the questionnaire the GOC submitted only one Appendix A which contained some general information (mostly compiled from websites of the banks). Most of the specific information requested in Appendix A was not provided. To some of the questions the GOC replied that it does not have such information at this time and to some it only provided information on selected banks (e.g. Articles of Association were only provided for eight banks). In the deficiency letter, the Commission repeated its request and invited the GOC to provide all the information as originally requested in the questionnaire. In its reply to the deficiency letter the GOC submitted some additional information. However, the answer was still very incomplete and much of the requested information (e.g. the percentage of government ownership in state-owned banks, the Articles of Association of some banks listed in the questionnaire, complete replies questions in Appendix A) was not provided.
- (161) In the questionnaire, deficiency letter and again during the on-spot verification visit the Commission requested circulars of the People's Bank of China (PBOC) concerning expansion of financial institutions' loan interest rate policy (YinFa [2003] No.250 and YinFa [2004] No 251). The Commission learned about the existence of these circulars

⁴⁵ 2006 Deutsche Bank Research on China's banking sector

⁴⁶ Documents WT/TPR/S/230 p. 79 and WT/TPR/C/264 p.122

in the course of previous investigation⁴⁷. However, instead of providing these circulars the GOC referred the Commission to the PBOC website to find out about the financial institutions' loan interest rate policy. During the verification two exhibits were submitted in this respect, but these were only printouts from the website. It is noted that no complete content of these Circulars could be found on the PBOC website.

- (162) The Commission requested also the Circular of PBOC concerning the changes of 8 June 2012 to be submitted during the on-spot verification. The GOC did not provide the Circular and instead it only provided general information printed from the PBOC website concerning adjustment of benchmark interest rates.
- (163) The Commission also asked the GOC to arrange meetings with specific banks in order to verify information concerning preferential lending to the OCS industry. However the GOC failed to organise such meetings and claimed that it was unable to intervene with state-owned banks to arrange such meetings. It is also noted that in the pre-verification letter of 7 June 2012 the Commission explained that it would be prepared to start the verification one day earlier and in fact allow more time for the verification should the GOC consider that banks are best placed to provide clarifications and explanations concerning preferential lending. The Commission therefore requested the GOC to confirm the presence of the banks before the verification so that necessary arrangements could be made by the verification team. In its letter of 15 June 2012 the GOC stated that it would continue to request the banks to cooperate but that it could not coerce them to do so. Eventually, it was only during the first day of the verification that the Commission team was informed that the representative of the China Construction Bank was available for the questions and explanations. Since the Commission had not been informed about this (although specifically requested in the pre-verification letter) it was not possible to address specific questions about contracts and loan terms but only questions of a general character. In any event, no supporting documentation was provided for the statements made by the representative of the China Construction Bank with the explanation that all the documents that the Commission requested would be confidential and of an internal character.
- (164) The GOC was made aware of the consequences of non-cooperation in accordance with Article 28(1) and (6) of the basic Regulation. In view of this lack of cooperation, it has been necessary, in addition to taking account of relevant GOC documents submitted by other parties, to use information from secondary sources, including the complaint and publicly available information retrieved from internet.

(c) Findings of the investigation

State involvement in the banking sector

- (165) The investigation has established that the Chinese financial market is characterised by government intervention because most of the major banks are state-owned. The Chinese authorities have provided only very limited information concerning shareholding/ownership of banks in China. However, as further outlined below, the Commission compiled available information in order to arrive at a representative finding. In performing its analysis whether banks are entities vested with or exercising government authority (public bodies) the Commission also sought information concerning not only the government ownership of the banks but also other characteristics such as the government presence on the board of directors, the

⁴⁷ Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China

government control over their activities, the pursuit of government policies or interests and whether entities were created by statute.

- (166) From the available information it is concluded that the state-owned banks in China hold the highest market share and are the predominant players in the Chinese financial market. According to the 2006 Deutsche Bank Research on China's banking sector⁴⁸, the state-owned banks' share may amount to more than 2/3 of the Chinese market. For the same matter the WTO Trade Policy Review of China noted that "*The high degree of state ownership is another notable feature of the financial sector in China*"⁴⁹ and "*there has been little change in the market structure of China's banking sector, which is dominated by state-owned banks*"⁵⁰. It is pertinent to note that the five largest state-owned commercial banks (Agricultural Bank, Bank of China, Construction Bank of China, Bank of Communications and Industrial and Commercial Bank) appear to represent more than half of the Chinese banking sector⁵¹.
- (167) The Commission also requested information concerning the structure of government control in those Chinese banks and the pursuit of government policies or interests with respect to the steel industry (i.e. board of directors and board of shareholders, minutes of shareholders/directors meetings, nationality of shareholders/directors, lending policies and assessment of risk with respect to loans provided to the cooperating exporting producers). Nevertheless, as noted in recital (160) above, the GOC provided only very limited information in this respect. Consequently, the Commission had to use the information available. It concluded on the basis of the available data that those banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the State. The relevant data used in order to arrive at the aforesaid findings is derived from information submitted by the GOC, the annual reports of Chinese banks that were either submitted from GOC or publicly available, information retrieved from the 2006 Deutsche Bank Research on China's banking sector, WTO Policy review on China (2010 and 2012), China 2030 World Bank Report, information submitted from the co-operating exporting producers and information existing in the complaint. As for foreign banks, independent sources estimate that they represent a minor part of the Chinese banking sector and consequently play an insignificant role in policy lending; with relevant information suggesting that this may represent as little as 1% of the Chinese market⁵². Relevant publicly available information also confirms that Chinese banks, particularly the large commercial banks, still rely on state-owned shareholders and the government for replenishment of capital when there is a lack of capital adequacy as result of credit expansion⁵³.
- (168) With respect to the banks that provided loans to the cooperating exporting producers, the great majority of them are state-owned banks. Indeed on the basis of the available information it was found that at least 14 out of the 17 reported banks are state-owned banks, including the major Commercial banks in China like Bank of China, China Construction Bank and Industrial and Commercial Bank of China. With respect to the remaining state-owned banks concerned, again the Commission requested the same

⁴⁸ http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000204417.PDF

⁴⁹ Document WT/TPR/S/230 p. 79, April 2010

⁵⁰ Document WT/TPR/S/264 p.122, July 2012

⁵¹ Ibid

⁵² Information retrieved from the 2006 Deutsch Bank Research on China's banking sector, pages 3-4.

⁵³ Information retrieved from the China Monetary Report Quarter Two, 2010 of the Monetary Policy Analysis Group of the People's Bank of China, dated 5 August 2010, page 10.

information mentioned above concerning the government control and the pursuit of government policies or interests with respect to the steel industry. No such detailed information was provided. It is therefore concluded that the banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the State. For this reason the state-owned commercial banks in China should be considered public bodies.

- (169) Another sign of GOC involvement in Chinese financial market is the role played by the PBOC in setting the specific limits on the way interest rates are set and fluctuate. Indeed, the investigation established that the PBOC has specific rules regulating the way interest rates float in China. According to the information available, these rules are set out in the PBOC's Circular on the Issues about the Adjusting Interest Rates on Deposits and Loans-Yinfa (2004) No 251 ("Circular 251"). Financial institutions are requested to provide loan rates within a certain range of the benchmark loan interest rate of the PBOC. For commercial bank loans and policy bank loans managed commercially there is no upper limit range but only a lower limit range. For urban credit cooperatives and rural credit cooperatives there are both upper and lower limit ranges. For preferential loans and loans for which the State Council has specific regulations the interest rates do not float upwards. The Commission sought clarifications from the GOC on the definition and wording stated in the Circular 251 as well as to its preceding legislation (Circular of PBOC concerning expansion of Financial Institution's Loan Interest Rate Float Range – YinFa [2003] No. 250). However as described in the recitals (161) and (162) above, the GOC refused to provide these Circulars which prevented the Commission to verify their content and seek explanations. Since the GOC did not provide any relevant information in this respect which would suggest the situation changed since May 2011 when the Commission concluded its anti-subsidy investigation concerning Coated Fine Paper⁵⁴ it is established that the PBOC is involved and influences setting of interest rates by state-owned commercial bank. The GOC did not provide any evidence that the situation as established in the Coated Fine Paper investigation has changed, therefore on the basis of facts available and the other evidence cited above, it was concluded that the situation concerning the methodology for determining interest rates should remain the same during the entire IP.

Entrustment and direction

- (170) The Commission also endeavoured to analyse whether the privately owned commercial banks in China are entrusted or directed by the GOC to provide preferential (subsidised) loans to the organic coated steel producers, within the meaning of Article 3.1(a)(iv) of the basic Regulation.

GOC policy

- (171) From the section above concerning state involvement in the banking sector (recitals (165) to (169)) it is clear that the GOC has a policy to provide preferential lending to the organic coated steel sector, because public bodies (state-owned commercial banks)⁵⁵ are engaged in such provision and hold a predominant place in the market, which enables them to offer below-market interest rates. It now has to be determined whether that policy extends to private suppliers.

Extension of policy to private banks

⁵⁴ Recitals 87 and 90 of the Council implementing regulation (EU) No 452/2011 of 60 May 2011

⁵⁵ See finding on public bodies in paragraph recital 53.

- (172) The Commercial banking law [2003] applies in the same way to state-owned commercial banks and privately owned commercial banks. For example Article 38 of this law instructs all Commercial banks (i.e. also those which are privately owned) to "*determine the loan rate in accordance with the upper and lower limit of the loan rate set by the PBOC*", Article 34 of the Commercial Banking Law instructs the commercial banks to "*carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies*".
- (173) Also the *Order No.35 - Policies for the development of Iron and Steel Industry*, in particular Articles 24 and 25 which limit the provision of loans only to those companies which comply with the national development policies for the Iron and steel industry do not distinguish between state-owned and privately-owned commercial banks.
- (174) Further the above mentioned (recitals (161) and (162)) Circulars of the PBOC are also binding for privately –owned commercial banks.
- (175) The above citations from laws and regulations relevant for the banking sector show that the GOC policy to provide preferential lending to the organic coated steel producers extends also to privately-owned commercial banks and in fact the GOC instructs them to "*carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies*"⁵⁶.

Credit risk assessment

- (176) The Commission requested relevant information from the GOC in order to assess how the banks in China are performing credit risk assessment of the OCS companies before deciding whether to grant them or not loans and deciding on the conditions of the loans which are granted. In the Appendix A to the questionnaire the Commission requested information on how do the banks take account of risk when granting loans, how is the creditworthiness of the borrower assessed, what are the risk premiums charged for different companies/industries in China by the bank, which are the factors the bank takes into account when assessing the loan application, the description of loan application and approval process etc. However, neither the GOC nor the individual banks identified in the questionnaire provided any evidence in this respect. The GOC provided only replies of general nature not supported by any evidence whatsoever that any kind of credit risk assessment actually takes place.
- (177) The Commission also requested the similar information from the cooperating exporting producers and attempted to verify it during the on-spot verification visits of sampled exporting producers. Both groups of sampled exporting producers replied that banks request certain documents and perform some kind of credit risk analyses before the loans are granted. However, they could not support their claims with any evidence. During the on-spot verification the Commission asked for the evidence that the banks requested such documents or that these documents were provided to the banks by the companies or any kind of report issued by the banks proving that such credit risk analyses was performed. However the sampled groups of exporting producers were not able to provide such evidence, neither were they able to provide any other evidence supporting their claims. It is also noted that none of the sampled groups of exporting producers or individual companies within these groups has a credit rating assigned.

⁵⁶ Article 34 of the Commercial Banking Law

(178) The information concerning credit risk assessment was repeatedly requested from interested parties as it is considered crucial *inter alia* account taken of (i) the finding of the IMF 2006 report which suggested that the bank liberalisation in China is incomplete and credit risk is not properly reflected⁵⁷, (ii) the IMF 2009 report which highlighted the lack of interest rate liberalisation in China⁵⁸, (iii) the IMF 2010 Country Report which stated that cost of capital in China is relatively low, credit allocation is sometimes determined by non-price means and high corporate saving is partly linked to low cost of various factor inputs (including capital and land)⁵⁹ and (iv) the OECD 2010 Economic Survey of China⁶⁰ and OECD Economic Department Working Paper No. 747 on China's Financial Sector Reforms⁶¹ which stated that ownership of financial institutions remains dominated by the State raising issues as the extent to which banks' lending decisions are based purely on commercial considerations while banks' traditional role appears to be that of government agencies with ties to the government.

(d) *Financial Contribution*

(179) Having regard to the totality of the evidence, it is concluded that the vast majority of loans to the 2 sampled groups of exporting producers are provided by state-owned banks which are considered to be public bodies because they are vested with government authority and exercise government functions. There is further evidence that these banks effectively exercise government authority since as it is explained in recital (169) there is a clear intervention by the State (i.e. PBOC) in the way commercial banks take decisions on interest rates for loans granted to Chinese companies. In these circumstances, the lending practices of these entities are directly attributable to the government. The fact that banks exercise government authority is also confirmed by the way NDRC *Order No.35- Policies for the development of Iron and Steel Industry*⁶², *Decision 40* and *Article 34 of the Law on Commercial Banks* act with respect to the fulfilment of the government industrial policies. There is also a great deal of circumstantial evidence, supported by objective studies and reports, that a large amount of government intervention is still present in the Chinese financial system as already explained in recital (178) above. Finally, the GOC failed to provide information which would have enabled a greater understanding of the state-owned banks' relationship with government as explained in recitals (159) to (164). Thus, in the case of loans provided by state-owned commercial banks in China, the Commission concludes that there is a financial contribution to the organic coated steel producers in the form of a direct transfer of funds from the government within the meaning of Article 3(1)(a)(i) of the basic Regulation. In addition, the same evidence shows that SOCBs (as well as privately owned banks) are entrusted or directed by the government and this consequently means that a financial contribution exists within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

⁵⁷ IMF Working Paper, "Progress in China's Banking Sector Reform: Has Bank Behaviour Changed?", WP/06/71, March 2006, (see pages 3-4, 13, 18-20).

⁵⁸ IMF Working Paper, "Interest Rate Liberalization in China", WP/09/171, August 2009, (see pages 3-4, 21-23).

⁵⁹ IMF Country Report, PRC: 2010 Article IV Consultation, No 10/238, July 2010, (see pages 22, 24 and 28-29).

⁶⁰ OECD 2010 Economic Survey of China, February 2010, (see Chapter 3, pages 71, 73-81, 97).

⁶¹ OECD China's Financial Sector Reforms, Economic Department Working Paper No. 747, ECO/WKP (2010) 3, 1 February 2010, (see pages 2, 8-15, 36).

⁶² Articles 16, 24 and 25

(180) In view of the analysis in Recitals (170) to (175) above, it is also determined that privately-owned banks are entrusted and directed by the GOC to provide loans to the OCS producers and that a financial contribution exists under Articles 3(1)(a)(i) and 3(1)(a)(iv) of the basic Regulation.

(e) *Benefit*

(181) A benefit within the meaning of Articles 3(2) and 6(b) of the basic Regulation exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market. Since it has been established that non-government loans in China do not provide an appropriate market benchmark (privately owned banks being entrusted and directed by the GOC), such a benchmark has been constructed using the method described in recitals (191) and (192) below.

(f) *Specificity*

(182) The steel industry belongs to the encouraged category according to the Decision No. 40. Decision No 40, is an Order from the State Council, which is the highest administrative body in the PRC and in that regard the decision is legally binding for other public bodies and the economic operators. It classifies the industrial sectors into 'Encouraged, Restrictive and Eliminated Projects'. This Act represents an industrial policy guideline that along with the Directory Catalogue shows how the GOC maintains a policy of encouraging and supporting groups of enterprises or industries, such as the steel/ OCS industry, classified by the Directory Catalogue as an 'Encouraged industry'. With respect to the number of industries listed as 'Encouraged' it is noted that these represent only a portion of the Chinese economy. Furthermore, only certain activities within these encouraged sectors are given "encouraged" status. Decision No 40 also stipulates under Article 17 that the 'Encouraged investment projects' shall benefit from specific privileges and incentives, inter alia, from financial support. On the other hand, with reference to the 'Restrictive and Eliminated Projects', Decision No 40 empowers the state authorities to intervene directly to regulate the market. In fact, Articles 18 and 19 provide that the relevant authority prevents financial institutions from supplying loans to such 'Restrictive and Eliminated Projects'. It is clear from the above that Decision No 40 provides binding rules to all the economic institutions in the form of directives on the promotion and support of encouraged industries, one of which is the part of OCS industry:

(183) Furthermore, *Order No. 35 of the NDRC - Policies for the development of Iron and Steel Industry*, in particular Articles 24 and 25, limit the provision of loans only to steel enterprises which fully comply with the development policies for the iron and steel industry.

(184) The complainant also provided evidence that some other government plans and documents are encouraging and instructing for the financial support of steel industry in general and also in specific geographical regions of China⁶³⁶⁴.

⁶³

Notice concerning implementation measures for the adjustment and revitalisation of ten key industries for Hubei Province suggest to "*actively integrate the supportive provincial financial capital for industrial development, optimize capital investment, be innovative in various supporting ways. Increase the support intensity for innovation and technological progress of iron and steel...*", "*Make use of financial measures to promote industry consolidation and make it easier for competitive enterprises to obtain financing for M&A*", *Implement supporting plans for pillar industries. Iron and Steel industry: All financial institutions should improve and optimize the credit service to deep processing projects of the steel and nonferrous metals industries to meet the financial needs of relevant companies with regard to investments, export sales and other essential areas*" etc.

- (185) Taking all the above into consideration it becomes clear that the authorities only allow the financial institutions to provide preferential loans to limited number of industries/companies which comply with the development policies of the GOC. On the basis of the evidence on the file and in the absence of the cooperation from the GOC on this matter it is concluded that the subsidies in form of preferential lending are not generally available and are therefore specific in the meaning of Article 4(2)(a) of the basic Regulation. Moreover there was no evidence submitted by any of the interested parties suggesting that the subsidy is based on objective criteria or conditions under Article 4(2)(b) of the basic Regulation.
- (186) The investigation showed that the two groups of sampled exporting producers benefited from the preferential lending in the investigation period.
- (g) *Conclusion*
- (187) Accordingly, the financing of the organic coated steel industry should be considered a subsidy.
- (188) In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, this subsidy should be considered countervailable.
- (h) *Calculation of the subsidy amount*
- (189) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. According to Article 6(b) of the basic Regulation the benefit conferred on the recipients is considered to be the difference between the amount that the company pays on the government loan and the amount that the company would pay for a comparable commercial loan obtainable on the market.
- (190) As explained above (recitals (165) to (178)), since the loans provided by Chinese banks reflect substantial government intervention in the banking sector and do not reflect rates that would be found in a functioning market, an appropriate market benchmark has been constructed using the method described below. Furthermore, due to the lack of cooperation by the GOC, the Commission has also resorted to facts available in order to establish an appropriate benchmark interest rate.
- (191) When constructing an appropriate benchmark, it is considered reasonable to apply Chinese interest rates, adjusted to reflect normal market risk. Indeed, in a context where the exporters' current financial state has been established in a distorted market and there is no reliable information from the Chinese banks on the measurement of risk and the establishment of credit ratings, it is considered necessary not to take the creditworthiness of the Chinese exporters at face value, but to apply a mark-up to reflect the potential impact of the Chinese distorted market on their financial situation.
- (192) With respect to the above as explained in recitals (160), (163) and (164) both the GOC and the cooperating exporting producers were requested to provide information on the lending policies of the Chinese banks and the way loans were attributed to the exporting producers. Parties failed to provide such information, although repeatedly requested to do so, and refused access to the state-owned banks. Accordingly in view of this lack of cooperation and the totality of facts available, and in line with the provisions of Article 28(6) of the basic Regulation, it is deemed appropriate to consider that all firms in China would be accorded the highest grade of "Non-

⁶⁴ Detailed rules for implementing the adjustment and revitalisation program for the steel industry [2009] provides for "increasing the financial support for key backbone enterprises"

investment grade" bonds only (BB at Bloomberg) and apply the appropriate premium expected on bonds issued by firms with this rating to the standard lending rate of the People's Bank of China. The benefit to the exporting producers has been calculated by taking the interest rate differential, expressed as a percentage, multiplied by the outstanding amount of the loan, i.e. the interest not paid during the IP. This amount was then allocated over the total turnover of the co-operating exporting producers.

- (193) The subsidy rate established with regard to this scheme during the IP for the sampled exporting producers amounts to 0,25% for the Huadong group of companies and 0,89% for the Panhua group of companies.
- (194) The weighted average subsidy rate for the cooperating companies not included in the sample is 0,58%.
- (195) Given the low level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the highest subsidy rate established for this scheme for an entity related to one of the sampled cooperating companies, i.e. 0,97%.

3.3.3. Equity Programmes

- (196) A number of alleged subsidy programmes concerning equity were detailed in the complaint in relation to exporting producers not selected in the sample and/or not cooperating with the investigation. The Commission asked the GOC to submit information about these programmes in the original and supplementary questionnaires, and subsequently gave ample opportunity to the GOC to provide replies on these programmes. The GOC took the view that it would only provide replies on alleged subsidy programmes concerning the two sampled exporting producers and confirmed this stance throughout the proceeding.
- (197) The significant level of non-cooperation in this proceeding hindered the possibility for the Commission to acquire information and evidence on these programmes mentioned in the complaint. The Commission verified that the sampled exporting producers did not make use of these programmes. Therefore the Commission had to determine the existence of the subsidy programmes and establish the residual duty with regard to all the other programmes for which the GOC did not submit information and that were not available for or used by the sampled exporting producers on the basis of the evidence available on file in accordance with the provisions of Article 28(1) of the basic Regulation.

3.3.3.1. Debt for equity swaps

(a) Description

- (198) The complaint contained evidence that several steel producers were involved in debt for equity swaps in the year 2000 for a combined total of 62.5 billion RMB of debts. It is alleged that outstanding debt due by State-owned steelmakers to State-owned commercial banks ("SOCBs") was cancelled in exchange for equity through the involvement of four Chinese Asset Management Companies ("AMCs") which was not on the basis of market considerations. The complaint further asserted that AMCs were specifically created to dispose of massive non-performing loans in key industries including the steel sector and to restructure the debts of SOEs through inter alia debt to equity swaps. Given that the GOC has failed to provide any information on this programme, the Commission draws its findings on the basis of the information available in the file according to Article 28 of the basic Regulation (see recitals (33) - (35) above). For the same reason, Article 28 of the basic Regulation was applied with

regard to the Equity Infusion and Unpaid Dividend programmes described in recitals (204) - (215) below.

(b) Findings of the investigation

- (199) The findings on this programme are based on the information contained in the complaint. Debt for equity swaps constitute a financial contribution in the form of equity infusion and/or loan within the meaning of Article 3(1)(a)(i) of the basic Regulation or in the form of revenue forgone resulting from debt cancelled or not repaid within the meaning of Article 3(1)(a)(ii) of the basic Regulation. This financial contribution was provided by the government through public bodies involved in these transactions, i.e. the four AMCs and various SOCBs (refer to recital (168) above). In the absence of any cooperation from the GOC, the evidence on the record demonstrates that AMCs are public bodies because they were specifically created by the GOC to dispose of massive non-performing loans in key industries including the steel sector and to restructure the debts of SOEs. Consequently, they are considered to exercise government authority.
- (200) Furthermore, the complainant has provided prima facie evidence that the huge amount of debt cancellation was not subject to normal commercial considerations as the GOC did not carry out an assessment that a normal private investor would carry out with respect to the expected reasonable rate of return these equity swaps would generate over time. Instead, complaint alleged that the GOC exchanged massive amounts of debt in exchange for equity with the objective to reduce the liabilities-to-assets ratio of steel producers to increase their competitiveness aside from commercial considerations that a private investor would make. The Commission, after careful analyses of the information provided in the complaint and in the absence of any other information on the file concluded that, the measures are therefore considered to confer a benefit within the meaning of Article 6(a) of the basic Regulation.
- (201) This subsidy is specific in the sense of Article 4(2) of the basic Regulation as it is restricted only to selected entities participated by the State and the award of this financing is discretionary and no objective criteria exist. Therefore it is concluded that this programme constitutes a countervailable subsidy for exporting producers of the product concerned.

(c) Calculation of the subsidy amount

- (202) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is a non-recurring benefit and is considered to be the full amount of the debt for equity swaps, i.e. the amount of debt forgiven. In the absence of other information for the assessment of this benefit submitted by the GOC, the Commission based its findings on information contained in the complaint. In accordance with Article 7(3) of the basic Regulation the subsidy amount so calculated has been allocated to the IP on the basis of the normal depreciation period of assets of the recipient companies. The amount has been adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipients. In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the level of production of the product concerned during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (203) The subsidy rate thus obtained for all non-cooperating companies amounts to 0,05%. It was not necessary to calculate the subsidy rate for the sampled and other cooperating producers for the reasons described in recitals (196) and (197).

3.3.3.2. Equity infusions

(a) *Description*

- (204) The complaint alleges that the GOC has provided over the years substantial amounts of cash to steel producers through equity infusions. According to the complaint, the GOC (through various state-owned entities) acquired shares in companies in which it was already the main shareholder without acquiring additional shareholder rights. The complaint also details specific transactions involving State-controlled entities, including China International Capital Corporation (CICC) and SASAC.

(b) *Findings of the investigation*

- (205) Since the GOC failed to provide any information on this programme (see recitals (196) and (197) above), the findings on this programme are based on the information contained in the complaint, as supported by adequate sources. Equity infusions constitute a direct transfer of funds within the meaning of Article 3(1)(a)(i) of the basic Regulation. These financial contributions were provided by the government through public bodies involved in these transactions, including CICC and SASAC. The complaint contains specific evidence on equity infusions concerning an SOE steel producer where CICC acted as the lead underwriter and manager of the share issuance. According to information in the complaint, CICC is 51% state-owned and it is ultimately controlled by SASAC, which in the specific transactions documented in the complaint also acted as the GOC entity controlling the steel producer SOE (for the analysis of SASAC's functions see recitals (64) to (66)) above). Therefore, these transactions were carried out by the GOC through public bodies within the meaning of Article 2(b) of the basic Regulation and the relevant WTO jurisprudence.
- (206) These equity infusions are considered to confer a benefit to the recipient companies within the meaning of Article 6(a) of the basic Regulation as they are inconsistent with the usual investment practice of private investors. The inconsistency of these equity infusions with private investors' practice is proven in detail in the complaint. With regard to these specific transactions, the complaint shows firstly that the SOE steel producer paid an overvalued price of its portion of the new share issue not in line with fair market conditions, and secondly that it used the funds raised to purchase state-owned assets and equity investments at below-market prices. The complaint also shows that the GOC paid the same price as other investors despite its shares were worth less as they had different rights and prospects than the shares sold to other shareholders.
- (207) These subsidies are specific in the sense of Article 4(2)(c) of the basic Regulation because they were provided to a limited number of selected entities in which the government participated. Therefore it is concluded that this programme constitutes a countervailable subsidy for exporting producers of the product concerned.

(c) *Calculation of the subsidy amount*

- (208) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of the equity infusions. In the absence of other information for the assessment of this benefit submitted by the GOC, the Commission based its findings on information contained in the complaint. In

accordance with Article 7(3) of the basic Regulation the subsidy amount so calculated has been allocated to the IP on the basis of the normal depreciation period of assets of the recipient companies. The amount has been adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipients. In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the total level of production of the recipients during the IP as appropriate denominator, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (209) The subsidy rate thus obtained for all non-cooperating companies amounts to 0,08%. It was not necessary to calculate the subsidy rate for the sampled and other cooperating producers for the reasons described in recitals (196) and (197).

3.3.3.3. Unpaid dividends

(a) *Description*

- (210) The complaint alleged that according to GOC policy, state-owned enterprises including the steel companies producing OCS do not have to pay dividends to the government as their owner even when they earn profits. As a result, SOE steel producers are able to finance massive investment through retained profits not distributed as dividends according to this programme.

(b) *Findings of the investigation*

- (211) Since the GOC failed to provide any information on dividend distributions by the SOE steel producers (see recitals (196) and (197) above), the findings on this programme are based on the information contained in the complaint, as supported by adequate sources. Unpaid dividends must be considered as a disguised grant in the meaning of Article 3(1)(a)(i) of the basic Regulation or as revenue forgone under Article 3(1)(a)(ii) of the basic Regulation in that the GOC does not collect dividends that are normally paid to private investors on their shares. These disguised grants were provided by the government through the entity directly holding the shares in the SOE steel producers, in principle SASAC. The analysis concerning SASAC shows that it performs Government functions (see for details recitals (64) to (66) above).
- (212) The full amount of unpaid dividends is considered to confer a benefit to the recipient SOE steel producers within the meaning of Article 6(a) of the basic Regulation as this is inconsistent with the usual investment practice of private investors that require dividend distributions normally attached to their shares. For SOEs partially owned by private investors, the amount of the benefits equals the amount of unpaid dividends distributed to them on a pro rata basis.
- (213) These subsidies are specific under Article 4(2) of the basic Regulation because they were provided to a limited number of selected entities in which the government participated. Therefore it is concluded that this programme constitutes a countervailable subsidy for exporting producers of the product concerned.

(c) *Calculation of the subsidy amount*

- (214) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of the unpaid dividends. In the absence of other information for the assessment of this benefit submitted by the GOC, the Commission based its findings on publicly available financial information on the

recipients. In accordance with Article 7(2) of the basic Regulation, the subsidy amount so calculated has been allocated over the total turnover of the recipients during the IP as appropriate denominator, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (215) The subsidy rate thus obtained for all non-cooperating companies amounts to 1,36%. It was not necessary to calculate the subsidy rate for the sampled and other cooperating producers for the reasons described in recitals (196) and (197).

3.3.4. Income and other direct tax Programmes

3.3.4.1. Tax Policies for the deduction of research and development (R&D) expenses

- (216) This scheme provides a benefit to companies which introduce new technologies, new products or new techniques in their production. The eligible companies can decrease their corporate income tax by 50% of the actual expenses for approved projects.

- (217) It is noted that although the GOC limited its reply to the questionnaire and deficiency letter to the schemes used by the sampled companies it did not provide any information on this scheme, despite the fact that one of the sampled companies reported benefits under this scheme in its questionnaire reply. When requested again during the on spot verification to provide the necessary information, GOC provided a partial supplementary response concerning this programme. Despite the late provision of this information the verification team asked for clarifications on several issues (see recital (219) below) however these were not provided. As a result the Commission had to base its findings on the best fact available.

(a) Legal Basis

- (218) This scheme is provided as preferential tax treatment by Article 30(1) of the Corporate Income Tax Law of the PRC (Order No 63 of the President of the People's Republic of China, effective from 1 January 2008), Article 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC (Decree No 512 of the State Council of the PRC) and the Guide to Key Fields (Notification n.6, 2007). The GOC did not provide Decree No 512 and Notification No 6 in this proceeding.

(b) Eligibility

- (219) As noted above the GOC did not provide any relevant information for this scheme in the replies to the questionnaire and deficiency letter. In the document submitted during the on spot verification GOC stated that only the "*research and development fees incurred by Enterprises in the development of new technology, new products and new skills*" may be computed in the taxable income for the purpose of deduction. However, the GOC did not elaborate on the meaning of terms "new technology", "new product" and "new skills". The Commission also endeavoured to find the exact meaning of these terms during the verification of Zhejiang Huadong but the company was not able to provide any concrete explanation and replied that these are general terms only.
- (220) However, in the Coated Fine Paper investigation, it was established that only R&D projects of the companies of New and High Tech Sectors Receiving Primary Support from the State and projects listed in the Guide to Key Fields of High Tech Industrialization under the current Development Priority promulgated by the NDRC

are eligible for this scheme⁶⁵. Given the fact that no new relevant information was provided in this proceeding which would rebut this conclusion it is established that the scheme is not generally available, as only selected industries/companies/projects are eligible.

(c) *Practical implementation*

- (221) According to the GOC reply, companies which intend to apply for this tax concession shall file their Income Tax Return and "other relevant documents" with the taxation authority without specifying which these other relevant documents are. In the *Coated Fine Paper* investigation it was established that any company that intends to apply for the benefit from this scheme must file detailed information about the R&D projects with the local Science and Technology Bureau and that only after examination will the Tax Bureau issue the notice of approval. Following the approval the amount subject to corporate income tax is decreased by 50% of actual expenses for approved projects⁶⁶.

(d) *Findings of the investigation*

- (222) This scheme was used by one of the cooperating exporting producers, Zhejiang Huadong Light Steel Building Material Co. Ltd during the IP. Because of the lack of cooperation from the GOC and because of its late and incomplete reply concerning this scheme, it was not possible to determine the application and approval procedure which must be undertaken by the companies benefiting from this scheme. As noted above, the Commission had to partially rely on the facts established in the *Coated Fine Paper* investigation.

(e) *Conclusion*

- (223) This scheme should be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.
- (224) The GOC was requested to provide information on the eligibility criteria for obtaining benefits from this scheme and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information in its reply to the questionnaire and to the deficiency letter. In addition, the information submitted in this respect during the on-spot verification visit appears to be incomplete in view of the findings concerning same scheme found to be used by the companies in *Coated Fine Paper* investigation. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be 'clearly substantiated' on the basis of positive evidence, therefore had to base its findings on the facts available in accordance with Article 28 of the basis Regulation. The best facts available included the findings of the *Coated Fine Paper* investigation.
- (225) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to certain enterprises and industries

⁶⁵ Article 116 of Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the PRC, OJ of the EU L128, 14 May 2011

⁶⁶ Article 117 of Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the PRC, OJ of the EU L128, 14 May 2011

classified as encouraged, such as those belonging to OCS industry. In addition, there do not seem to be objective criteria to limit eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with Article 4(2)(b) of the basic Regulation. It is noted that the lack of cooperation from the GOC authorities does not permit the Commission to assess the existence of such objective criteria.

(226) Accordingly, this subsidy should be considered countervailable.

(f) *Calculation of the subsidy amount*

(227) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of total tax payable according to the normal tax rate, after the subtraction of what was paid with the additional 50% deduction of the actual expenses on R&D for the approved projects. In accordance with Article 7(2) of the basic Regulation, this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(228) One of the cooperating sampled exporting producers, namely the Huadong Group of companies, has benefited from this scheme. The subsidy rate established for the Huadong Group is 0,19%.

(229) The weighted average subsidy rate for the cooperating companies not included in the sample is 0,09%.

(230) Given the low level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the highest subsidy rate established for this scheme for the sampled cooperating companies, i.e. 0,19%.

3.3.4.2. Tax concessions for Central and Western Regions

(231) This scheme provides a benefit to companies located in the Central and Western Regions. The eligible companies are subject to preferential income tax rate of 15% instead of normal income tax rate of 25% applicable in China.

(232) The GOC was requested to provide information on this scheme in the questionnaire, in the deficiency letter and again during the on-spot verification visit. In its responses to the questionnaire and deficiency letter the GOC did not reply to any of the questions and stated that this programme is no longer valid as it expired on 31 December 2010 and also claimed that no sampled companies benefited from this scheme in the IP. However, this was in contradiction with the responses of one of the exporting producers (Chongqing Wanda Steel Strip Co., Ltd) and with the evidence collected during the on-spot verification visit of this company.

(a) *Legal Basis*

(233) This scheme is provided for as preferential tax treatment by the *Notice on Favourable Tax Policies for Western Region Development* (issued by the Ministry of Finance , General Tax Bureau and General Customs Office, effective from 1 January 2001) which was updated by the *Notice on Further Implementation on Tax Policies of the Western Development Strategy* (issued the Ministry of Finance ,General Tax Bureau and General Customs Office, effective from 1 January 2011 onwards) which extends the period of validity of this programme until 31 December 2020.

(b) *Eligibility*

(234) It is noted that the GOC did not provide answers to any of the questions concerning this scheme in its response to the questionnaire, deficiency letter or during the on-spot verification visit. However, according to the *Notice on Favourable Tax Policies for Western Region Development* this preferential tax treatment is available for the encouraged type of enterprises in the Western Region (encouraged refers to those enterprises with major business accounting for 70% or more of total income as described in the Catalogue of industry, product & technologies encouraged by the State). During the on-spot verification of Chongqing Wanda, the company confirmed that the reason for the preferential tax rate is that they belong to the encouraged category of industries in the Western and Central region.

(c) *Practical implementation*

(235) Neither the GOC, nor the Chongqing Wanda Steel Strip Co., Ltd provided information on the operation and administration of this programme. According to the Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions, an approval of people's governments of the provincial level is necessary for the reduction of the normal tax rate of 25% to the preferential rate of 15%. On the company's annual income tax declaration form the deducted (exempted) income tax amount is listed under item 28 – deducted tax.

(d) *Findings of the investigation*

(236) This scheme was used by one of the cooperating exporting producers, Chongqing Wanda Steel Strip Co., Ltd during the IP. Because of the non-cooperation from the GOC it is difficult to discern the application and approval procedure which must be undertaken by the companies benefiting from this scheme. The Commission had to draw its own conclusions from submitted documents which form the legal basis for this scheme without being able to seek the explanations from the GOC.

(e) *Conclusion*

(237) This scheme should be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

(238) The GOC was requested to provide information on the eligibility criteria for obtaining benefits from this scheme and on the use of the subsidy in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be 'clearly substantiated' on the basis of positive evidence, therefore had to base its findings on the facts available in accordance with Article 28 of the basis Regulation.

(239) This subsidy scheme is specific within the meaning of Article 4(2)(a) and 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to certain enterprises and industries classified as encouraged, such as those belonging to the OCS industry, and in addition located in certain regions of China. In addition, there do not seem to be objective criteria to limit eligibility and no conclusive evidence to found to determine that the eligibility is automatic in accordance with Article 4(2)(b) of the basic Regulation. It is noted that the lack of cooperation from the GOC authorities does not permit the Commission to assess the existence of such objective criteria.

(240) Accordingly, this subsidy should be considered countervailable.

(f) *Calculation of the subsidy amount*

- (241) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of tax payable according to the normal income tax rate, after the deduction of the amount of tax paid according to the preferential income tax rate. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producers during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (242) The subsidy rate established for the Panhua Group is 0,03%.
- (243) The weighted average subsidy rate for the cooperating companies not included in the sample is 0,02%.
- (244) Given the low level of cooperation, the subsidy rate for all non-cooperating companies is set at the level of the highest subsidy rate established for this scheme for an entity related to one of the sampled cooperating companies, i.e. 0,04%.

3.3.5. Other Income tax Programmes for which the GOC provided insufficient or no replies

- (245) A number of alleged subsidy programmes were detailed in the complaint in relation to exporting producers not selected in the sample and/or not cooperating with the investigation. The Commission asked the GOC to submit information about these programmes in the original and supplementary questionnaires, and subsequently gave ample opportunity to the GOC to provide replies on these programmes. The GOC took the view that it would only provide replies on alleged subsidy programmes concerning the two sampled exporting producers and confirmed this stance throughout the proceeding. However, the GOC did submit for some of these programmes information and evidence indicating that they had been terminated and were not in force during the IP. The Commission took into account this evidence submitted by the GOC in its findings.
- (246) For all the other programmes, the GOC failed to submit any information or evidence. The significant level of non-cooperation in this proceeding hindered the possibility for the Commission to acquire information and evidence on these programmes included in the complaint by the exporting producers. The Commission verified that the sampled exporting producers were not eligible or did not make use of these programmes (mainly due to the fact that they were privately owned, or their being outside the area of application of the programme, or their relatively limited size). Therefore the Commission had to determine the existence of this programme and establish the residual duty with regard to all the other programmes for which the GOC did not submit information and that were not available for or used by the sampled exporting producers on the basis of the evidence available on file in accordance with the provisions of Article 28(1) of the basic Regulation.

3.3.5.1. Income tax credit for the purchase of domestically manufactured production equipment

(a) *Description*

- (247) This programme allows a company to claim tax credits on the purchase of domestic equipment if a project is consistent with the industrial policies of the GOC. A tax

credit up to 40% of the purchase price of domestic equipment may apply to the incremental increase in tax liability from the previous year.

(b) Legal basis

- (248) The legal bases of this programme are the Provisional measures on enterprise income tax credit for investment in domestically produced equipment for technology renovation projects of 1 July 1999 and the Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment, No. 52 [2008] of the State Administration of Taxation, effective 1 January 2008.

(c) Non cooperation

- (249) The GOC replied that this programme has been terminated as from January 2008 according to the mentioned Notice No. 52 and that to the best of its knowledge no programme has replaced this programme. The Commission asked the GOC to provide relevant additional information, namely details of the timetable for the phase-out of benefits. The GOC did not provide this information and limited its reply on the actual benefits accrued to all OCS producers by simply referring to the questionnaire replies of the sampled producers. The Commission has already explained the reasons why the GOC was required to provide information with regard to all the OCS producers and not just the sampled producers (see recitals (34) and (35) above). Furthermore, the GOC also failed to provide information with regard to the sampled producers as it merely referred to their replies. The Commission considers that it is not sufficient to provide evidence of termination of a programme without providing additional evidence on the phasing out of the actual benefits under the programme and potential replacement programmes. With regard to this programme, a tax benefit (i.e. a tax credit) accrued in a certain year may actually be used in a different tax year and thus the benefits can extend beyond its period of validity even if the programme has in the meantime been terminated. Other "terminated" tax programmes have turned out to continue to confer benefits for some years after their official expiry date. It may also be the case that unusually large amounts of benefit can be allocated over time. In the absence of information provided by the GOC in this respect, the Commission bases its findings on the information on the record (in this case complaint) in accordance with Article 28 of the basic Regulation.

(d) Findings of the investigation

- (250) This programme constitutes a subsidy as it provides a financial contribution in the form of revenue forgone by the GOC according to Article 3(1)(a)(ii) of the basic Regulation. This programme provides a benefit to the recipients for an amount equal to the tax saving in the meaning of Article 3(2) of the basic Regulation. This subsidy is specific under Article 4(4)(b) of the basic Regulation since the tax saving is contingent on the use of domestic over imported goods.

(e) Calculation of the subsidy amount

- (251) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. Since this programme has not been examined in an anti-subsidy proceeding by the Union institutions yet, and in the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a comparable decision by the US authorities. When basing subsidy amounts on findings

in other investigations, account is taken throughout this regulation of, inter alia, whether there have been any significant changes in the scheme in question and whether the subsidy amount may have diminished over time. It is noted that the amount of recurring subsidies will normally not diminish in this way. In the absence of any such changes or diminution of the subsidy amount, the original rate from the investigation in question is used as the amount of subsidy in the present case.

- (252) The subsidy rate thus established with regard to this scheme during the IP for all non-cooperating companies is set at 0,38% which is the rate for this scheme as established in the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Page No. 26) (Federal Register / Vol. 73, No. 227, page 70961 / 24 November 2008). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from tax programmes is substantially the same as that employed by the EU⁶⁷.

3.3.5.2. Preferential tax policies for companies that are recognised as high and new technology companies

(a) Description

- (253) This programme allows an enterprise applying for a Certificate of High and new technology Enterprise to benefit from a reduced income tax rate of 15% as compared to the ordinary rate of 25%. This programme has been found countervailable by the EU in the *Coated Fine Paper* investigation and also by the US authorities.⁶⁸

(b) Legal basis

- (254) The legal basis of this programme are Article 28 of the *PRC Law on Enterprise Income Tax* (No. 63 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).

(c) Non cooperation

- (255) The GOC replied that none of the sampled companies made use of this programme during the IP and referred to the responses of the sampled producers for information concerning any benefits that may have been received pursuant to this programme. The Commission refers to the arguments developed above with regard to the request to the GOC to provide full replies not limited to the sampled exporters (recitals (34) - (35) above). Therefore the Commission bases its findings on this programme on the information available on record (*Coated Fine Paper* findings and the complaint in this case) in accordance with Article 28 of the basic Regulation.

(d) Findings of the investigation

- (256) This programme constitutes a subsidy as it provides a financial contribution in the form of revenue forgone by the GOC according to Article 3(1)(a)(ii) of the basic Regulation. The benefit for the recipient is equal to the tax saving enjoyed through this programme according to Article 3(2) of the basic Regulation. This subsidy is specific

⁶⁷ The methodology for the calculation of the subsidy amount is explained on pages 25 and 26 of the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Page No. 26) (Federal Register / Vol. 73, No. 227, page 70961 / 24 November 2008).

⁶⁸ *Certain Steel Wheels From the People's Republic of China*, Preliminary Affirmative Countervailing Duty Determination, 6 September 2011, US Federal Register, document number 2011-22720

within the meaning of Article 4(2)(a) of the basic Regulation since it is limited to certain enterprises and industries classified as encouraged, such as those operating in the steel sector. Furthermore, there are no objective criteria established by the legislation or the granting authority on the eligibility of the scheme and this is not automatic pursuant to Article 4(2)(b) of the basic Regulation.

(e) Calculation of the subsidy amount

- (257) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of total tax payable according to the normal tax rate, after the deduction of what was paid with the reduced preferential tax rate. In the absence of information for the assessment of this benefit and since this programme has already been examined in a previous anti-subsidy proceeding by the Union institutions, the most appropriate source of information for the assessment of the benefit to the exporting producers has been the assessment made for this programme in the Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper origination in the People's Republic of China, duly adjusted if needed as mentioned in recital (252) above.
- (258) The subsidy rate thus established for all non-cooperating companies is set at 0,9% which is the arithmetical average of the rates established for this programme in the Regulation mentioned in the preceding recital.

3.3.5.3. Income tax concessions for the enterprises engaged in comprehensive resource utilisation (special raw materials')

(a) Description

- (259) 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 manufacture 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%. Therefore, 10% of income can be deducted when the companies calculate the income tax. This exemption is granted for 5 years.

(b) Legal basis

- (260) The legal bases of this programme are: Article 33 of the PRC Law on Enterprise Income Tax, Article 99 of Regulations on Implementation of the PRC Law on Enterprise Income Tax by the State Council and the Catalogue of Income Tax Concessions for Enterprises engaged in Comprehensive Resource Utilisation.

(c) Non-cooperation

- (261) The GOC stated that none of the sampled companies made use of this programme during the IP and referred to the responses of the sampled producers for information concerning any benefits that may have been received pursuant to this programme. The Commission refers to the arguments developed above with regard to the request to the GOC to provide full replies not limited to the sampled exporters (recitals (34) - (35) above). The Commission thus bases its findings on this programme on the information available on record (in this case complaint), in accordance with Article 28 of the basic Regulation.

(d) Findings of the investigation

(262) This programme constitutes a subsidy since it provides a financial contribution in the form of revenue forgone by the GOC within the terms of Article 3(1)(a)(ii) of the basic Regulation. The scheme provides a benefit for the recipient equal to the amount of tax savings according to Article 3(2) of the basic Regulation. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as it is limited only to certain enterprises using as primary raw materials the resources listed in the above-mentioned *Catalogue of Tax Concessions* for the purpose of manufacturing products enlisted in that Catalogue.

(e) Calculation of the subsidy amount

(263) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of total tax payable according to the normal tax rate, after the deduction of what was paid with the reduced preferential tax rate. In the absence of other information for the assessment of this benefit, the Commission based its findings on information contained in the complaint. In accordance with Article 7(2) of the basic Regulation, the subsidy amount so calculated has been allocated over the total turnover of the recipients during the IP as appropriate denominator because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(264) The subsidy rate thus established for all non-cooperating companies amounts to 0,01%.

3.3.5.4. Tax credit concerning the purchase of special equipment

(a) Description

(265) This programme allows firms to offset 10% of the purchase cost of special equipment used for environmental protection, energy and water saving and production safety against the corporate income tax payable in the year of purchase. The remaining part of the 10% of the amount invested can be carried forward to the following 5 years.

(b) Legal basis

(266) The legal bases of this programme are: Article 34 of the PRC Law on Enterprise Income Tax, Article 100 of Regulations on Implementation of the PRC Law on Enterprise Income Tax by the State Council.

(c) Non-cooperation

(267) The GOC replied that none of the sampled companies made use of this programme during the IP and referred to the responses of the sampled producers for information concerning any benefits that may have been received pursuant to this programme. The Commission refers to the arguments developed above with regard to the request to the GOC to provide full replies not limited to the sampled exporters (recitals (34) - (35) above). The Commission thus bases its findings on this programme on the information available in accordance with Article 28 of the basic Regulation.

(d) Findings of the investigation

(268) This programme confers a subsidy as it provides a financial contribution in the form of revenue forgone by the GOC within the terms of Article 3(1)(a)(ii) of the basic Regulation. The scheme gives a benefit for the recipient equal to the amount of tax savings according to Article 3(2) of the basic Regulation.

- (269) With respect to the specificity of this programme, it is considered that there is insufficient information on the record for the Commission to make further findings and subsequently to reach a definitive finding of specificity of the programme. Therefore the Commission could not assess this programme any further.

3.3.5.5. Preferential income tax policy for the enterprises in the Northeast region

(a) Description

- (270) This programme allows companies located in the Northeast Region (including Liaoning, Jilin, and Heilongjiang Provinces, and Dalian Municipality), first, to reduce the depreciation life of fixed assets by up to 40% for tax purposes, thereby increasing the annual amount of depreciation deductible from the income tax and, second, to shorten the period of amortisation of intangible assets by up to 40% for tax purposes, resulting in a larger annual deduction. Under a document released by the Ministry of Finance and State Administration of Taxation, corporate taxpayers in certain specified sectors including the metallurgical sector may also benefit from other VAT, resource tax, and corporate income tax advantages, namely in connection with purchase of fixed assets.

(b) Legal basis

- (271) The legal bases of this programme are the Preferential policies regarding enterprise income tax for revitalization of companies of the old industrial base in the Northeast (Caishui, No 153, 20 September 2004), Notice of the Ministry of Finance and the State Administration of taxation on the Assets Depreciation and the Implementation Calibre of Amortization Policy in the Northeast Old Industrial Base (Caishui, No 17, 2 February 2005). The GOC submitted the legal basis showing termination of this programme on 1 January 2008, namely the Notice of the Ministry of Finance and State Administration of Taxation on Several Preferential Policies in Respect of Enterprise Income Tax (No 1 [2008]).

(c) Non cooperation

- (272) Apart from providing the aforementioned legal basis showing termination of the programme, the GOC simply referred to the responses of the sampled producers for information concerning any benefits that may have been received pursuant to this programme. The Commission refers to the arguments developed above with regard to the request to the GOC to provide full replies not limited to the sampled exporters (recitals (34) - (35) above). Furthermore, the Commission notes that as this programme provides for subsidies linked to purchase of fixed assets that may be amortised over several years and the GOC has failed to provide any details on the phasing-out of benefits under the programme or on the outstanding benefits still not fully amortised, the Commission has decided to base its findings on this programme on the information available on record (in this case the complaint and relevant US findings) in accordance with Article 28 of the basic Regulation.

(d) Findings of the investigation

- (273) This programme provides a subsidy in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The benefit under Article 3(2) of the basic Regulation amounts to the tax savings generated for eligible companies by the deduction of accelerated depreciation and amortisation expenses linked to the purchase of fixed assets. This subsidy is specific within the meaning of Article 4(3) of the basic Regulation since it is limited to enterprises located in a designated geographical area, i.e. the Northeast Region.

(e) *Calculation of the subsidy amount*

- (274) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the difference between the amount of tax that would have been paid during the IP under the normal depreciation schedule for the assets concerned and the amount actually paid under accelerated depreciation. Since this programme has not been examined in an anti-subsidy proceeding by the Union institutions yet, and in the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a comparable decision (based on similarity in the nature of the programme⁶⁹) by the US authorities. As noted in recital (252) above, when basing subsidy amounts on findings in other investigations, account is taken throughout this regulation of, inter alia, whether there have been any significant changes in the scheme in question and whether the subsidy amount may have diminished over time. It is noted that the amount of recurring subsidies will normally not diminish in this way. In the absence of any such changes or diminution of the subsidy amount, the original rate from the investigation in question is used as the amount of subsidy in the present case.
- (275) The subsidy rate thus established with regard to this scheme during the IP for all non-cooperating companies is set at 0,08% which is the rate for the 'Income Tax Exemption for Investors in Designated Geographical Regions Within Liaoning' Scheme as established in the US Decision Memorandum of 3 June 2010 on Wire Decking (Page No. 25) (Federal Register / Vol. 75, No. 111, page 32902 / 10 June 2010). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from tax programmes is substantially the same as that employed by the EU⁷⁰.

3.3.5.6. Income tax exemption for investment in domestic technological innovation

(a) *Legal basis*

- (276) The legal bases for this programme are the Technological Transformation of Domestic Equipment Investment Credit management of Enterprise Income Tax Audit, adopted by the State tax Administration, No 13 of 17 January 2000, and the Notice concerning the Promulgation and Circulation of Measures for the Administration of national Key Technological Renovation Projects.

(b) *Findings of the investigation*

- (277) The GOC replied that this programme was terminated since 1 January 2008 by the Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy for the Investments of an Enterprise in Purchasing home-made Equipment No. 52 [2008] of the State Administration of Taxation. As this programme provides recurring tax benefits that have terminated since 2008 and there is no evidence on outstanding benefits still being amortised during the IP, the Commission concludes that this programme is not countervailable.

3.3.5.7. Various local tax discounts

⁶⁹ Both programmes relate to similar preferential income tax treatment in the same geographical region

⁷⁰ The methodology for the calculation of the subsidy amount is explained on page 25 of the US Decision Memorandum of 3 June 2010 on Wire Decking (Page No. 25) (Federal Register / Vol. 75, No. 111, page 32902 / 10 June 2010).

(a) *Description*

- (278) The complaint lists a number of tax discounts available in several provinces (i.e. Shandong, Chongqing Municipality, Guangxi Region Zhuang, Central and Western Regions) in the form of a reduced corporate tax rate of 15% as opposed to the generally applicable tax rate of 25%.

(b) *Legal basis*

- (279) The complaint reports the legal basis of Shandong tax discount, namely Reduced Income Taxes based on Geographical Location (Zhejiang and Shandong Provinces): Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises, Article 7, adopted on 9 April 1991, No. 45.

(c) *Non-cooperation*

- (280) The GOC simply stated that none of the sampled companies made use of this programme during the IP and referred to the replies of the sampled companies for information relating to benefits which may have been received by them. In addition to the arguments on the obligation for the GOC to provide full replies (see recitals (34) - (35) above), the Commission notes that at least one of the lower tax rates listed under this section benefited one of the cooperating exporters (see recitals (231) and following above). Therefore the Commission is resorting to the information available on record (in this case the complaint and relevant US findings) in accordance with Article 28 of the basic Regulation for the assessment of this programme.

(d) *Findings of the investigation*

- (281) This programme confers a subsidy in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) of the basic Regulation. This recurring benefit is equal to the amount of tax savings generated by the lower corporate tax rate according to Article 3(2) of the basic Regulation. The programme is specific since it is limited to companies located in designated geographical areas within the meaning of Article 4(3) of the basic Regulation.

(e) *Calculation of the subsidy amount*

- (282) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of total tax payable according to the normal tax rate reduced by the amount paid under the preferential tax rate. Since this programme has not been examined in an anti-subsidy proceeding by the Union institutions yet, and in the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a comparable decision (based on similarity in the nature of the programme) by the US authorities. As noted before, when basing subsidy amounts on findings in other investigations, account is taken throughout this regulation of, inter alia, whether there have been any significant changes in the scheme in question and whether the subsidy amount may have diminished over time. It is noted that the amount of recurring subsidies will normally not diminish in this way. In the absence of any such changes or diminution of the subsidy amount, the original rate from the investigation in question is used as the amount of subsidy in the present case.
- (283) The subsidy rate thus established with regard to this scheme during the IP for all non-cooperating companies is set at 0,66% which is the rate for the 'Reduced Income Taxes Based On Geographic Location' Scheme as established in the US Decision

Memorandum of 12 June 2009 on Certain Tow Behind Lawn Groomers and Certain Parts Thereof (Page No. 11) (Federal Register / Vol. 74, No. 117, page 29180 / 19 June 2009). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from tax programmes is substantially the same as that employed by the EU⁷¹.

3.3.5.8. Dividend exemption between qualified resident enterprises

(a) *Description*

(284) This programme consists of a 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 enterprises. This programme was countervailed by the EU in the anti-subsidy proceeding concerning *Coated Fine Paper*⁷²

(b) *Legal basis*

(285) The legal basis are Article 26 of the Enterprise Income Tax Law of the PRC, Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC, Decree no. 512 of the State Council, promulgated on 6 December 2007.

(c) *Non-cooperation*

(286) The GOC replied that none of the sampled companies made use of this programme during the IP and referred to the responses of the sampled producers for information relating to any benefits that may have been received pursuant to this programme. The Commission refers to its arguments on the request to the GOC to provide full replies (recitals (34) - (35) above). Therefore it has decided to base its findings on this programme on the information available on file according to Article 28 of the basic Regulation, namely the findings as included in the decision on Coated Fine Paper.

(d) *Findings of the investigation*

(287) This programme confers a subsidy in the form of revenue forgone within the meaning of Article 3(1)(a)(ii) of the basic Regulation. This benefit is equal to the amount of tax savings given by the tax exemption on dividends, bonuses and other equity investments for Chinese resident enterprises according to Article 3(2) of the basic Regulation. The programme is *de jure* specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislation pursuant to which the granting authority operates limits its access only to enterprises resident in China receiving dividend income from other resident enterprises, as opposed to enterprises investing in non-resident enterprises. The programme is also specific under Article 4(2)(b) of the basic Regulation given that this programme is reserved exclusively to important industries and projects encouraged by the State, such as the steel industry (see e.g. recital (182) above) and also that there are no objective criteria to limit eligibility for this programme and no conclusive evidence to conclude that eligibility is automatic.

(e) *Calculation of the subsidy amount*

(288) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the

⁷¹ The methodology for the calculation of the subsidy amount is explained on page 11 of the US Decision Memorandum of 12 June 2009 on Certain Tow Behind Lawn Groomer and Certain Parts Thereof (Federal Register / Vol. 74, No. 117, page 29180 / 19 June 2019).

⁷² , Recitals 125-136 of the Council Implementing Regulation (EU) No 452/2011 of 6 May 2011, OJ L128 14 May 2011

recipients is considered to be the amount of total tax payable with the inclusion of the dividend income coming from other resident enterprises in China, after the subtraction of what was actually paid with the dividend tax exemption. In the absence of information for the assessment of this benefit and since this programme has already been examined in a previous anti-subsidy proceeding by the Union institutions, the most appropriate source of information for the assessment of the benefit to the exporting producers has been the assessment made for this programme in *Coated Fine Paper* proceeding, duly adjusted if needed as mentioned in recital (252) above.

(289) The subsidy rate thus established for all non-cooperating companies is set at 0,77% which is the arithmetical average of the rates established for this programme in the *Coated Fine Paper* proceeding.

3.3.5.9. Preferential Tax Programme for Foreign Invested Entities (FIEs)

(290) The complaint lists the following preferential income tax schemes in favour of FIEs:

- *Two free, three half-tax exemptions for the productive FIEs*
- *Local income tax exemption and reduction programmes for the productive FIEs*
- *Income tax credit for FIEs purchasing domestically produced equipment*
- *Income tax subsidies for FIEs based on geographical location*

(291) The GOC submitted the relevant legal bases to show that programmes concerning FIEs had been terminated with the adoption on 16 March 2007 of the *Corporate Income Tax Law* of 2008 at the 5th Session of the 10th National People's Congress of the People's Republic of China, namely:

- *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax No. 39 [2007] of the State Council;*
- *Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy for the Investments of an Enterprise in Purchasing Home-made Equipment, No. 52 [2008] of the State Administration of Taxation*

(292) These provisions show that income tax benefits for FIEs have been progressively phased out until the end of 2011. The GOC has also stated that there is no replacement programme for FIEs and the tax treatment of FIEs is now the same as for other corporate taxpayers. The Commission notes that these preferential income tax programmes concerning FIEs are still countervailable as OCS producers may still enjoy outstanding benefits at least for a part of the IP until the end of 2011 and it cannot be ruled out that there exists a replacement programme for FIEs as from 2012. Nevertheless, the Commission has decided not to assess them further considering the need to reduce the administrative burden for all the parties concerned, also in consideration of the approaching end of the progressive phase-out period and the absence of indications on a possible replacement programme.

3.3.6. Indirect Tax and Import Tariff Programmes

3.3.6.1. Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries

(a) *Description*

(293) This programme provides an exemption from VAT and import tariffs in favour of FIEs or domestic enterprises for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a Certificate of State-Encouraged projects issued by the Chinese authorities or by the NDRC in accordance with the relevant investment, tax and customs legislation. This programme was countervailed by the Union in the anti-subsidy proceeding concerning *Coated Fine Paper*⁷³.

(b) *Legal basis*

(294) The legal bases of this programme are Circular of the State Council on Adjusting Tax Policies on Imported Equipment, Guo Fa No. 37/1997, Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No. 43, Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, No. 316 2006 of 22 February 2006 and Catalogue on Non-duty-exemptible Articles of importation for either FIEs or domestic enterprises, 2008.

(c) *Non cooperation*

(295) The GOC claimed that none of the sampled companies benefited from this programme during the IP and referred to the responses of the sampled producers for information relating to any benefits that may have been received pursuant to this programme. The Commission refers to its arguments on the request to the GOC to provide full replies (recitals (34) and following above), and thereby will base its findings on this programme on the information available on file according to Article 28 of the basic Regulation, namely its findings in the *Coated Fine Paper* proceeding.

(d) *Findings of the investigation*

(296) This programme is considered a subsidy in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) as FIEs and other eligible domestic enterprises are relieved from payment of VAT and/or tariffs otherwise due if they did not obtain the relevant NDRC certificate of State-encouraged project. It therefore confers a benefit on the recipient companies in the sense of Article 3(2) of the basic Regulation. The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation since the legislation pursuant to which the granting authority operates limits its access to enterprises that invest under specific business categories defined exhaustively by law and obtaining the Certificate of State-encouraged Projects. In addition, there are no objective criteria to limit eligibility for this programme and no conclusive evidence to conclude that eligibility is automatic under Article 4(2)(b) of the basic Regulation.

(e) *Calculation of the subsidy amount*

(297) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. In the absence of information for the assessment of this benefit and since this programme has already been examined in a previous CVD proceeding by the EU, the most appropriate source of information for the assessment of the benefit to the

⁷³ Recitals 137-147 of the Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the PRC, OJ L128 14 May 2011

exporting producers has been the assessment made for this programme in the *Coated Fine Paper* investigation, duly adjusted if needed as mentioned in recital (252) above.

- (298) The subsidy rate thus established for all non-cooperating companies is set at 0,89% which is the arithmetical average of the rates established for this programme in the *Coated Fine Paper* investigation.

3.3.6.2. VAT refunds to FIEs purchasing domestically produced equipment

(a) *Description*

- (299) This programme provides benefits in the form of VAT refunds for the purchase of domestically produced equipment by FIEs. The equipment must not fall into the – Non-Exemptible Catalogue and the value of the equipment must not exceed the total investment limit on an FIE according to the 'trial Administrative Measures on Purchase of Domestically Produced Equipment'. This programme was countervailed by the EU in the anti-subsidy proceeding concerning Coated Fine Paper⁷⁴ and by the US authorities in a countervailing duty proceedings concerning Coated Free Sheet from the PRC⁷⁵.

(b) *Legal basis*

- (300) The legal bases of this programme are Circular of State Administration of taxation on the release of the provisional measures for the Administration of tax refunds for purchase domestically-manufactured equipment by FIEs No 171, 199, 20.09.1999; Notice of the Ministry of Finance and the State Administration of Taxation on Stopping the Implementation of the Policy of Refunding Tax to Foreign-funded Enterprises for Their Purchase of Home-made Equipment, No 176 [2008] of the Ministry of Finance.

(c) *Non-cooperation*

- (301) The GOC claimed that this programme was terminated by the *Notice No 176 [2008]* referred to above as from of 1 January 2009. The Commission requested the GOC to provide information on the actual termination of benefits that would have to be allocated over a longer period of time since this programme is linked to the purchase of domestically-manufactured assets. The GOC simply referred to the replies of the sampled producers for information relating to any benefits that may have been received pursuant to this programme. The Commission refers to its arguments on the request to the GOC to provide full replies (recitals (34) and following above). The Commission also notes that that the *Notice No 176* provides for a transitional period for the acquisition of eligible fixed assets and filing of the application to obtain benefits until 30 June 2009. As the GOC failed to provide any information on the phasing-out of benefits and given that such benefits, being linked to fixed assets, may be allocated over time and continue into the IP, the Commission issues its findings on this programme on the basis of the information available according to Article 28 of the basic Regulation, namely the findings in the *Coated Fine Paper* proceeding.

(d) *Findings of the investigation*

⁷⁴ , Recitals 148-159 of the Council Implementing Regulation (EU) No 452/2011 of 6 May 2011, OJ L128 14 May 2011

⁷⁵ Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Coated Free Sheet from the People's Republic of China, 17 October 2007; US Federal Register, C-570-907.

(302) This programme is considered a subsidy in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) and thus conferring a benefit to the recipient companies in the sense of Article 3(2) of the basic Regulation. The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislation itself pursuant to which the granting authority operates limits its access to certain enterprises (FIEs) for purchase of equipment not falling into the Catalogue of non-exemptible equipment. There is no indication of non-specificity according to Article 4(2)(b) of the basic Regulation because there are no objective criteria to limit eligibility for this programme and no conclusive evidence to conclude that eligibility is automatic. In addition, the programme is also specific within the terms of Article 4(4)(b) of the basic Regulation as the subsidy is contingent upon the use of domestic over imported goods.

(e) *Calculation of the subsidy amount*

(303) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of VAT reimbursed on the purchase of domestically produced equipment. In the absence of information for the assessment of this benefit and since this programme has already been examined in a previous CVD proceeding by the EU, the most appropriate source of information for the assessment of the benefit to the exporting producers has been the assessment made for this programme in the *Coated Fine Paper* proceeding, duly adjusted if needed as mentioned in recital (252) above.

(304) The subsidy rate thus established for all non-cooperating companies is set at 0,04% which is the arithmetical average of the rates established for this programme in the *Coated Fine Paper* proceeding.

3.3.6.3. VAT deduction on fixed assets in the Central region

(a) *Description*

(305) This programme covers VAT taxpayers mainly active in certain listed industries, including the metallurgical industry. The programme provides that eligible VAT taxpayers located in 26 cities of the old industrial bases of the central region that make investments in certain fixed assets can deduct the amount of VAT paid on the fixed assets from its total VAT payable.

(b) *Legal basis*

(306) The legal bases of this programme are Notice on Ministry of Finance and State administration of Taxation issuing the Interim Measures for Expanding the Scope of Offset for Value Added Tax in the Central Region, No. 75, 2007, Notice of the Ministry of Finance and the State Administration of Taxation on Several Issues concerning the National Implementation of Value-added Tax reform, No 170 [2008] of the Ministry of Finance.

(c) *Non-cooperation*

(307) The GOC claimed that this programme was terminated by the *Notice No 170* [2008] since 1 January 2009 and referred to the replies of the sampled producers for information relating to any benefits that may have been received pursuant to this programme. The Commission refers to its arguments on the request to the GOC to provide full replies (recitals (34) and following above). The Commission notes that the Notice No. 170 does state that VAT benefits for companies located in the Central

Region terminate at the end of 2008 and can only be carried forward until January 2009. However, such benefits, being linked to fixed assets, may be allocated over time and continue into the IP ; in addition, the Notice also seems to contain another preferential VAT system for these enterprises located in the Central Region as from January 2009 consisting of half of the applicable VAT rates. In the absence of clarification by the GOC on the phasing-out of outstanding benefits under this programme or on the details of any replacement programme, the Commission bases its findings on this programme on the evidence available on the file under Article 28 of the basic Regulation.

(d) Findings of the investigation

- (308) This programme is considered a subsidy in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) and thus conferring a benefit to the recipient companies in the sense of Article 3(2) of the basic Regulation equal to the amount of VAT savings generated by the deduction on the purchase of fixed assets. The programme is specific according to Article 4(2)(a) of the basic Regulation given that the legislation limits access to certain enterprises, i.e. industries that operate in the listed sectors. This programme is also specific under Article 4(3) of the basic Regulation given that it is limited to certain designated areas, i.e. the cities of the old industrial bases of the Central region.

(e) Calculation of the subsidy amount

- (309) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of VAT savings generated by the deduction on the purchase of fixed assets. In the absence of information for the assessment of this benefit and since a comparable VAT programme has already been examined in this proceeding, the most appropriate source of information for the assessment of the benefit to the exporting producers has been the assessment made in recitals (297) and (298).
- (310) The subsidy rate thus established for all non-cooperating companies is set at 0,89%.

3.3.6.4. Other tax privileges of Ma'anshan

(a) Findings of the investigation

- (311) The complaint listed miscellaneous tax privileges from 2008 to 2010 enjoyed by OCS producers located in Ma'anshan and Wuhan, including exemptions from city maintenance and construction tax, and extra charges on education funds. The Commission asked the GOC to provide information on these tax benefits. The GOC replied that the requested information were irrelevant for the investigation because none of the sampled exporting producers was located in Ma'anshan. The Commission refers to its explanation that the GOC was requested to submit information also with regard to the subsidy allegations concerning the non-sampled companies (recitals (34) - (35) above).
- (312) In the absence of information provided by the GOC, the Commission concludes that the tax privileges available in Ma'anshan and Wuhan are to be considered a subsidy in the form of revenue forgone by the GOC in accordance with Article 3(1)(a)(ii). They confer a benefit to the recipient companies in the meaning of Article 3(2) of the basic Regulation in that they provide a tax saving equal to the difference between the tax paid and the amount of tax normally payable in the absence of this programme. The programme is specific within the meaning of Article 4(3) of the basic Regulation

given that it is limited to the enterprises established in certain designated regions or municipalities in Ma'anshan.

(b) *Calculation of the subsidy amount*

(313) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of other information for the assessment of this benefit the Commission based its findings on information contained in the complaint. In accordance with Article 7(2) of the basic Regulation, the subsidy amount so calculated has been allocated over the total turnover of the recipients during the IP as appropriate denominator, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(314) The subsidy rate thus established for all non-cooperating companies amounts to 0,08%.

3.3.7. Grant Programmes

(315) The complaint alleged that as from the year 2005 until recently (including the year 2009) the companies producing the product concerned received benefits under several grant programmes and sub-programmes. It cannot be ruled out that payments under this programme either are still on-going or have been effected on a non-recurring basis in connection with capital investment and thus there are still on-going benefits not fully amortised during the chosen 15-year amortisation period. The GOC was requested to submit information on these programmes but has failed to provide a meaningful reply on any of these programmes. Therefore, in the absence of replies by the GOC on all these aspects, the Commission is basing its findings on the best evidence available in compliance with Article 28 of the basic Regulation

3.3.7.1. China World Top Brand programme

(a) *Legal basis*

(316) The legal bases of this programme as reported in the complaint are the following:

- *Circular on Carrying out Evaluation of Products to be Recognised as China World Top Brand, GZJH [2005] No 95*
- *Announcement No 5, 2005 of China Promotion Committee for Top Brand Strategy, Promulgating the List of China Top Brand Products*
- *Circular on application of China World Top Brands in 2006, ZJZH [2006] No 11;*
- *Announcement No 6, 2006 of China Promotion Committee for Top Brand Strategy, Promulgating the List of China Top Brand Products;*
- *Announcement No 6, 2007 of China Promotion Committee for Top Brand Strategy, Promulgating the List of China Top Brand Products;*
- *Circular on application of China World Top Brands in 2008, ZJZH [2008] No 23;*
- *Measures for the Administration of Chinese Top-Brand Products issued by the GOC*

(b) *Eligibility*

(317) Only producers granted the designation of "China World Top Brand" are entitled to the benefits of this programme. The complaint reports a number of steel products produced by the steel companies subject to this investigation as being granted this designation.

(c) *Findings of the investigation*

- (318) Given the lack of cooperation of the GOC, the findings are based on the information present on the file in accordance with Article 28 of the basic Regulation.
- (319) This programme provides financial contributions in the form of grants, below-market loans and other incentives, which constitute a direct transfer of funds conferring a benefit upon the recipients within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic regulation.
- (320) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation because the legislation limits access to certain enterprises only, that is the enterprises that have received the designation "China World Top Brand" for their products. Furthermore, there are no objective criteria established by the granting authority with regard to the eligibility of the scheme, which is not automatic under Article 4(2)(b) of the basic Regulation.

(d) *Calculation of the subsidy amount*

- (321) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been comparable decisions by the US authorities. As mentioned before, when basing subsidy amounts on findings in other investigations, account is taken throughout this regulation of, inter alia, whether there have been any significant changes in the scheme in question and whether the subsidy amount may have diminished over time. It is noted that the amount of recurring subsidies will normally not diminish in this way. In the absence of any such changes or diminution of the subsidy amount, the original rate from the investigation in question is used as the amount of subsidy in the present case.
- (322) The subsidy rate thus established with regard to this scheme during the IP for all non-cooperating companies is set at 0,13% which is the arithmetical average rate for similar programmes as established in the US Decision Memorandum of 6 April 2009 on Citric Acid and Certain Citrate Salts (Page No. 6) (Federal Register Vol. 74, No. 69, page 16836 / 13 April 2009), the US Decision Memorandum of 14 May 2010 on Pre-Stressed Concrete Steel Wire Strand (Page No. 29) (Federal Register Vol. 75, No. 98, page 28557 / 21 May 2010), the US Decision Memorandum of 28 May 2010 on Certain Steel Grating (Page No. 18) (Federal Register Vol. 75, No. 109, page 32362 / 8 June 2010), the US Decision Memorandum of 28 March 2011 on Aluminium Extrusions (Page No. 19) (Federal Register Vol. 76, No. 64, page 18521 / 4 April 2011) and the US Decision Memorandum of 11 October 2011 on Multi-layered Wood Flooring (Page No. 17) (Federal Register Vol. 76, No. 201, page 64313 / 18 October 2011). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from grant programmes is substantially the same as that employed by the EU⁷⁶.

3.3.7.2. Famous Brands programme and sub-programmes (Chongqing Famous Brands, Hubei Province Famous Brands, Ma'anshan Famous Brands, Shandong Province Top Brands, Wuhan Famous Brands)

(a) *Legal basis*

⁷⁶ The methodology for the calculation of the subsidy amount is explained on page 18 of the US Decision Memorandum of 28 May 2010 on Certain Steel Grating (Federal Register Vol. 75, No. 109, page 32362 / 8 June 2010)

(323) The legal bases of this programme as reported in the complaint with regard to the Shandong sub-programme are the following:

- *Notice on Printing and Distribution of 2003 Policies for Encouraging and expanding Foreign Trade Export to Shandong, LWJMJCZ, [2003] No 180;*
- *2004 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong, LWJMJCZ, [2003] No 1037;*
- *2005 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong;*
- *Notice on Printing and Distribution of 2006 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong, LCQ [2006] No 5.*
- *Special Award Fund Budget for the Development of Self-Exporting Brands, Lucaiqizhi, 2008, No 75.*

(b) *Eligibility*

(324) This programme confers benefits to producers of products designated as "Famous Brands" and meant for export markets. The complaint refers to a number of producers of the product concerned having benefited from this programme until at least 2009.

(c) *Findings of the investigation*

(325) The complaint asserts that this programme was designed to promote domestic advanced industries and encourage exports of their products to the world markets. The main framework of this programme is set in the central programme, and provincial and local governments develop their own famous brands programmes consistently with the central programme to promote the export of local products. The USA have challenged this grant programme at the WTO (DS 387). In addition, the US authorities have countervailed this programme in several proceedings referred to in the complaint. The Commission has also countervailed the benefits under this programme in the Coated fine paper case⁷⁷.

(326) The 'famous brands' programme provides financial contributions in the form of subsidised interest loans, R&D funding, and cash grant rewards for exporting. These incentives constitute a direct transfer of funds conferring a benefit upon the recipients within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation.

(327) This subsidy is specific under Article 4(2)(a) of the basic Regulation because the legislation limits access only to those enterprises recognised to export products designated as 'famous brands'. Furthermore, given the apparent absence of objective criteria and conditions for the application of this programme by the granting authority, specificity is also found under Article 4(2)(b) of the basic Regulation. The preferential treatment under this programme is also specific according to Article 4(4)(a) of the basic Regulation because its benefits are contingent upon export performance of the relevant 'famous brand' products.

(d) *Calculation of the subsidy amount*

(328) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise

⁷⁷ Recitals. 172-181 of the Council Implementing Regulation (EU) No 452/2011 of 6 May 2011, OJ L128 14 May 2011

quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been comparable decisions (based on similarity in the nature of the programme) by the US authorities. As mentioned before, when basing subsidy amounts on findings in other investigations, account is taken throughout this regulation of, inter alia, whether there have been any significant changes in the scheme in question and whether the subsidy amount may have diminished over time. It is noted that the amount of recurring subsidies will normally not diminish in this way. In the absence of any such changes or diminution of the subsidy amount, the original rate from the investigation in question is used as the amount of subsidy in the present case.

- (329) The subsidy rate thus established with regard to this scheme during the IP for all non-cooperating companies is set at 0,13% which is the arithmetical average rate for similar programmes as established in the US Decision Memorandum of 6 April 2009 on Citric Acid and Certain Citrate Salts (Page No. 6) (Federal Register Vol. 74, No. 69, page 16836 / 13 April 2009), the US Decision Memorandum of 14 May 2010 on Pre-Stressed Concrete Steel Wire Strand (Page No. 29) (Federal Register Vol. 75, No. 98, page 28557 / 21 May 2010), the US Decision Memorandum of 28 May 2010 on Certain Steel Grating (Page No. 18) (Federal Register Vol. 75, No. 109, page 32362 / 8 June 2010), the US Decision Memorandum of 28 March 2011 on Aluminium Extrusions (Page No. 19) (Federal Register Vol. 76, No. 64, page 18521 / 4 April 2011) and the US Decision Memorandum of 11 October 2011 on Multi-layered Wood Flooring (Page No. 17) (Federal Register Vol. 76, No. 201, page 64313 / 18 October 2011). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from grant programmes is substantially the same as that employed by the EU⁷⁸.

3.3.7.3. The State key technology project fund

(a) *Non-cooperation by the Government of China*

- (330) In its questionnaire reply GOC only stated that this programme has been terminated in 2003 and that none of the sampled exporters has benefited from it. As the GOC has not supplemented this reply with any underlying evidence or further clarification, the Commission analyses this programme on the basis of facts available pursuant to Article 28 of the basic Regulation.

(b) *Legal basis*

- (331) The legal bases of this programme referred to in the complaint are the following:
- *State Circulars: Guojingmao Touzi No 886 of 1999, Guojingmao Touzi No 122 of 1999, Guojingmao Touzi No 1038 of 1999, Guojingmao Touzi No 822 of 2000 and*
 - *Measures for the Administration of National Debt Special Fund for National Key Technology Renovation Projects*

(c) *Eligibility*

- (332) According to quotations of the main legal basis contained in the complaint, enterprises supported under this programme "shall be mainly selected from large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the

⁷⁸ The methodology for the calculation of the subsidy amount is explained on page 18 of the US Decision Memorandum of 28 May 2010 on Certain Steel Grating (Federal Register Vol. 75, No. 109, page 32362 / 8 June 2010)

leading enterprises of the industry." There is also a geographical preference for enterprises located in the old industrial bases in north-east, central and west areas.

(d) Findings of the investigation

- (333) Given the lack of cooperation of the GOC, the Commission relies on the elements included in the complaint and/or on the other sources mentioned in the complaint⁷⁹.
- (334) The complaint reports that this programme sought to provide financial support to eligible enterprises to promote: technological renovation in key industries, enterprises and products; facilitation of technology upgrades; improvement of product structure; improvement of quality; increase of supply; expansion of domestic demand; continuous and healthy development of the State economy. According to the complaint, the fund has supported 47 iron and steel enterprises with respect to investments totalling RMB 75 billion. The US authorities have countervailed this programme in at least two proceedings.
- (335) The programme constitutes a subsidy as it provides financial contributions in the form of grants for the acquisition of fixed assets in accordance with Article 3(1)(a)(i) of the basic Regulation, which confers a benefit to the recipient. Since the subsidy is linked to fixed assets and is allocated over time, it is concluded, on the basis of facts available, that this benefit continues into the IP.
- (336) This subsidy is specific in the meaning of Article 4(2)(a) of the basic Regulation as the support is limited to certain large-sized state-owned enterprises and state-holding enterprises among 512 key enterprises and 120 pilot enterprise groups. In so far as the project focuses on companies located in specifically designated geographical regions of the old industrial base in north-east, central and west areas, it is also specific within the meaning of Article 4(3) of the basic Regulation.

(e) Calculation of the subsidy amount

- (337) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a similar decision by the US authorities, namely the US Decision Memorandum of 10 September 2010 on Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (Page No 19) (Federal Register Vol. 75, No. 182, page 57444 / 21 September 2010)..
- (338) The subsidy rate thus established with regard to this scheme during the IP for all non-cooperating companies is set at 0,01% which is the rate for a similar scheme as established in the US decision referred to in the preceding recital.

3.3.7.4. Programmes to rebate anti-dumping legal fees

(a) No cooperation by the GOC

- (339) The complaint referred to various investigations carried out by the US authorities⁸⁰ and the Commission (*Coated Fine Paper* proceeding) which found countervailable

⁷⁹ E.g. Conference of the High Tech Industries of the Chinese Academy of Sciences, 11 November 2002, Issues and Decision Memorandum for the Final Affirmative CVD Determination: OTR tires from the PRC, 188 April 2011; US Federal Register, C-570-913, p.24

⁸⁰ Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Laminated Woven sacks for the PRC, 16 June 20087; US Federal Register, C-570-917, p.27; Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the PRC, 23 March 2009, US Federal Register,

several provincial programmes under which 40% of the legal fees for a company's participation in anti-dumping proceeding was refunded by the local financial bureau. As the GOC decided not to reply to questions on this programme, merely stating that the sampled exporters had not benefited from it, the Commission bases its findings on the evidence available on the file according to Article 28 of the basic Regulation.

(b) *Legal basis*

(340) According to the complaint and the Commission decision in *Coated Fine Paper* (recital 193), the legal basis of this programme is the following:

- Rules for the Implementation of the Support Policy for the Anti-dumping, Anti-subsidy, Safeguard investigation respondent

(c) *Eligibility*

(341) This programme is available for companies involved in the anti-dumping investigations and working in compliance with the instructions of the Ministry of Commerce and provincial authorities.

(d) *Findings of the investigation*

(342) This programme constitutes a subsidy as it provides financial contribution in the form of a direct transfer of funds in the meaning of Article 3(1)(a)(i) of the basic Regulation in order to cover legal fees in anti-dumping proceedings and confers a benefit within the meaning of Article 3(2) of the basic Regulation. This subsidy is specific under Article 4(2)(a) and (c) of the basic Regulation because it is restricted to certain enterprises that are subject to foreign anti-dumping proceedings. Furthermore, this programme is also specific within the terms of Article 4(3) of the basic Regulation given that it is limited to certain enterprises registered in the designated geographical regions governed by the relevant provincial authorities implementing this programme.

(e) *Calculation of the subsidy amount*

(343) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of information for the assessment of this benefit and since this programme has already been examined in a previous anti-subsidy proceeding by the Union institutions, the most appropriate source of information for the assessment of the benefit to the exporting producers has been the assessment made for this programme in the *Coated Fine Paper* proceeding, duly adjusted if needed as mentioned in recital (252) above.

(344) The subsidy rate thus established for all non-cooperating companies is set at 0,01% on the basis of *Coated Fine Paper* findings⁸¹.

3.3.8. Purchase of goods by the Government for higher than adequate remuneration

(345) The complaint contained evidence that the GOC purchased through SOEs steel products manufactured by OCS producers. The complaint referred to the GOC purchases of a number of steel outputs, including colour-coated sheet, hot-rolled sheet coils, cold-rolled sheet, medium plates, galvanised sheet, and many others. The complaint showed that the price for the purchase of these goods by SOEs was set by

C-570-936, p.18, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Light –Walled Rectangular Pipe and Tube from the PRC, 13 June 2008, US Federal Register, C-570-915, p.13

⁸¹ Recital 202 of the Council implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the PRC

reference to different elements and/or benchmarks, and that there were price caps or adjustments depending on the different goods and on whether the transaction concerned related parties.

- (346) The GOC replied by reference to its general arguments concerning SOEs that it has not been demonstrated that purchasers SOEs of these steel products were public bodies within the meaning of the WTO SCM Agreement and that it was impossible for the GOC to collect transaction-specific data with regard to unknown entities. The GOC also stated that the complaint did not refer to any purchase of goods involving the sampled exporters. The Commission refers to its conclusions on purchasers of OCS and other steel products being SOEs (recitals (49) - (73) above) and to the request to the GOC to provide information also concerning non-sampled exporters (see recitals (34) and (35) above). Given the lack of further information provided by the GOC on this programme, the Commission bases its findings on the information available on file according to Article 28 of the basic Regulation.
- (347) To the extent that prices are above market prices and a benefit is conferred by the State on OCS producers through its purchasers SOEs, this programme is countervailable according to Article 3(1)(a)(iii) and Article 6(d) of the basic Regulation. It also needs to be considered that the complaint allegation that there is no reliable private price in the market because of the predominance of the public sector in the steel market has been confirmed by the investigation as SOEs have a predominant share in the steel market in China at least with regard to hot-rolled steel and cold-rolled steel (see recitals (76) to (79)). This subsidy is also specific under Article 4(2) of the basic Regulation as it is restricted only to selected entities participated by the State in the steel sector. However, the complexity of these transactions and of the underlying contracts coupled with the lack of the necessary details on the record did not enable the Commission to come to a firm conclusion on this programme. Therefore the Commission has decided not to assess this programme further.

3.3.9. Other regional programmes

(a) *Non-cooperation by the GOC*

- (348) The Government of China replied that as none of the sampled producers was located in the areas of application of the regional programmes included in this section, the information requested by the Commission was irrelevant for the investigation. Given the relevance of this information for the investigation (see recitals (34) - (35) above), in the absence of a reply by the GOC the Commission is basing its decision on all the regional programmes in this section on the facts available on file in accordance with Article 28 of the basic Regulation.

3.3.9.1. Subsidies provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area

(a) *Legal basis*

- (349) The legal basis of the Accelerated Depreciation scheme is the Circular of the Ministry of Finance and the State Administration of Taxation concerning the Related Preferential Policies of Enterprise Income Tax for Supporting the Development and Openness of Binhai New Area of Tianjin.

(b) *Findings of the investigation*

- (350) The complaint alleged that the programme aims to promote the construction of science-technology infrastructure in the Tianjin Binhai New Area (TBNA) and the

Tianjin Economic and Technological Development Area (TETDA) and build a science-technology renovation system and service abilities. According to the complaint, financial benefits under this programme were granted under the Science and Technology Fund and under the Accelerated Depreciation Programme. These benefits would be limited to enterprises established in the TBNA Administrative Committee's jurisdiction, including companies producing/exporting the product concerned. The complaint referred to the decision by the US authorities in the countervailing proceeding concerning certain seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China, which found this programme countervailable⁸².

- (351) In the absence of cooperation by the GOC, the Commission bases its decision on this programme on the best information available in accordance with Article 28 of the basic Regulation contained in the complaint and in the mentioned decision by the US authorities.
- (352) This programme confers a non-recurring benefit to the recipient companies in the form of grants under the Science and Technology Fund in the meaning of Article 3(1)(a)(i) of the basic Regulation (direct transfer of funds) and in the form of revenue forgone under Article 3(1)(a)(ii) of the basic Regulation as concerns the Accelerated Depreciation Programme.
- (353) The subsidies under the Science and Technology Fund and under the Accelerated Depreciation Programme are specific within the meaning of Article 4(3) of the basic Regulation as they are limited to certain enterprises located within designated geographical regions (i.e. the TBNA and/or the TETDA).
- (c) *Calculation of the subsidy amount*
- (354) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a comparable decision by the US authorities, namely the US Decision Memorandum of 10 September 2010 on Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (Pages Nos 20 and 21) (Federal Register Vol. 75, No. 182, page 57444 / 21 September 2010). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from tax and grant programmes is substantially the same as that employed by the EU⁸³.
- (355) The total subsidy rate thus established during the IP for all non-cooperating companies is set at 0,61% which corresponds to the accumulated rate for the schemes concerned as established in the decision referred to in the preceding recital.

3.3.9.2. Programmes related to the Northeast Region

The Northeast Revitalization Programme

(a) *Legal basis*

⁸² *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China*, Final Affirmative Countervailing Duty Determination, 21 September 2010, US Federal Register Vol. 75, No. 182, p. 57444.

⁸³ The methodology for the calculation of the subsidy amount is explained on pages 20 and 21 of the US Decision Memorandum of 10 September 2010 on Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (Federal Register Vol. 75, No. 182, page 57444 / 21 September 2010)

(356) The legal basis is the Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with respect to Expansion of VAT Deduction Scope in the Northeast Areas of 14 September 2004.

(b) Findings of the investigation

(357) The complainant affirmed that the GOC established the Northeast Revitalisation Programme in 2003 to revive the old industrial base of Dalian City and the three Northeast Provinces of Liaoning, Jilin and Heilongjiang, which is the traditional centre of China's steel industry. According to the complaint, the GOC has created a special bank, the Northeast Revitalisation Bank (NRB) under the control of the State Council with a mandate to finance the support for the revitalisation of Northeast old heavy industrial hub.

(358) The complaint also referred to subsidies provided under this programme by the Export-Import Bank of China ("ExIm Bank") through its Dalian branch for a total amount of RMB 5 billion in export credits and other "low-cost credit" worth RMB 150 million in savings for local enterprises since November 2003. The complaint also reported that loans were also extended to non-creditworthy enterprises to enhance the competitiveness of ailing SOEs, which enjoyed a disproportionate access to financial resources despite having the highest share of non-performing loans in the country.

(359) In the absence of cooperation by the GOC, the Commission bases its decision on this programme on the information contained in the complaint and in the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Pages 21 and 22) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008), duly adjusted if needed as mentioned in recital (252) above.

(360) This programme confers an advantage to the recipient companies in the form of: (i) grants as export interest subsidies; (ii) VAT refunds for purchase of fixed assets.

(361) With regard to (i) export interest subsidies, the provision of interest subsidies constitutes a subsidy in the form of grant within the meaning of Article 3(1)(a)(i) of the basic Regulation. The US decision refers to this programme as the "Foreign Trade Development Fund" rather than the "Northeast Revitalisation Programme", as also mentioned in the complaint. This programme is managed by the Liaoning provincial authorities (namely the Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation and the Liaoning Department of Finance). Eligible projects include those undertaken by exporting enterprises inter alia to improve the competitiveness of their export base and to explore international markets. Because these grants are contingent upon export performance, this programme is specific according to Article 4(4)(a) of the basic Regulation.

(362) With regard to (ii) VAT refunds, for the purchase of fixed assets, they constitute a subsidy in the form of revenue forgone by the State according to Article 3(1)(a)(ii) of the basic Regulation. This programme provides that VAT taxpayers of certain industries may deduct VAT for purchases of fixed assets from the VAT for sales of finished goods. This VAT deduction is limited to firms located in the northeast region and is therefore regionally specific within the meaning of Article 4(3) of the basic Regulation.

(c) Calculation of the subsidy amount

(363) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the

assessment of the benefit to the exporting producers has been a comparable decision (based on similarity in the nature of the programme) by the US authorities.

- (364) The total subsidy rate thus established for the Northeast Revitalization Programme during the IP for all non-cooperating companies is set at 0,18% which corresponds to the accumulated rate for the grants and VAT refunds received under the Foreign Trade Development Fund Program as established in the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Pages 21 and 22) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from similar programmes is substantially the same as that employed by the EU⁸⁴.

Export interest subsidies

(a) *Legal basis*

- (365) The legal basis is the Provisional Administration Measures on High Tech Products and Equipment Manufacturing Products Export Financial interest Assistance of Liaoning Province, established on 16 December 2004.

(b) *Findings of the investigation*

- (366) The complaint alleged that this programme provides assistance to companies to expand the export of high-tech products and supports the development of enterprises located in the Liaoning Province. The programme is managed by the Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation, the Liaoning Department of Finance, and the Economic Commission of Liaoning province. The US authorities have found this programme countervailable in the above-mentioned decision concerning *Line Pipe* (see recital (359)).
- (367) This programme confers a benefit in the form of direct transfer of funds from the GOC used to pay interest on bank loans within the meaning of Article 3(1)(a)(i) of the basic Regulation. Export loans means short-term loans obtained by enterprises that produce high-tech products and equipment manufacturing products in the province from banks and non-bank financial institutions due to the shortage of necessary funds for production and operation between products export declaration and receipt of payment. Eligible enterprises must have an annual export value above \$ 1 million and have exported products falling in the scope of the "China High-Tech Product Export Catalogue" or the scope of equipment manufacturing products. This programme is therefore specific under Article 4(2) of the basic Regulation because it is limited to enterprises fulfilling these criteria. This programme is also contingent upon export performance according to Article 4(4)(a) of the basic Regulation. The programme is also regionally specific within the terms of Article 4(3) as it is limited to enterprises located within the designated geographical region in the Northeast of China.

(c) *Calculation of the subsidy amount*

- (368) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the

⁸⁴ The methodology for the calculation of the subsidy amount is explained on pages 20 and 21 of the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008)

assessment of the benefit to the exporting producers has been a comparable decision (based on similarity in the nature of the programme) by the US authorities.

- (369) The subsidy rate thus established during the IP for all non-cooperating companies is set at 0,43% which corresponds to the rate for the export interest subsidies scheme as established in the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Page No 23) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008). With regard to investigations conducted by the US authorities, it is noted that the methodology used for calculating the amount of benefit from similar programmes is substantially the same as that employed by the EU⁸⁵.

Export loans

(a) Findings of the investigation

- (370) The complaint refers to the previous programme of export interest subsidies, which is eligible only in connection with outstanding "export loans". The US authorities have found also this programme countervailable in the decision concerning Line Pipe.
- (371) The legal basis is the "Provisional Administration Measures on High Tech Products and Equipment Manufacturing Products Export Financial interest Assistance of Liaoning Province", established on 16 December 2004.
- (372) This programme constitutes a benefit in the form of direct transfer of funds from the GOC in the meaning of Article 3(1)(a)(i) of the basic Regulation. The subsidy confers a benefit under Article 3(2) and 6(b) of the basic Regulation equal to the difference between what the recipients paid, and the amount they would have paid for a comparable commercial loan in the absence of the programme. These loans are provided by the government through its policy banks and its SOCBs (see analysis in recitals (157) - (180) above). These export loans are specific under Article 4(4)(a) of the basic Regulation because they are contingent upon export performance and also under Article 4(3) as they are limited to enterprises located within a designated geographical region in China.

(b) Calculation of the subsidy amount

- (373) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a comparable decision (based on similarity in the nature of the programme) by the US authorities.
- (374) The subsidy rate thus established during the IP for all non-cooperating companies is set at 1,05% which corresponds to arithmetical average of the rates for the export loans scheme as established in the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Page No 23) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008). With regard to investigations conducted by the US authorities, it is noted that the methodology used

⁸⁵ The methodology for the calculation of the subsidy amount is explained on page 23 of the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008)

for calculating the amount of benefit from similar programmes is substantially the same as that employed by the EU⁸⁶.

Liaoning Province Grants- Five Point One Line Programme

(a) Findings of the investigation

- (375) The complaint states that the "Five Points, One Line Coastal Belt" programme was introduced on 21 January 2006 by the Liaoning Provincial Government. The Liaoning government provides subsidies for certain enterprises located in the area. The first priority is given to enterprises set up in the five key areas as export manufacture bases. The preferential treatment include a number of benefits, including a reduced income tax rate of 15% for enterprises certified as "high-tech" enterprises; income tax exemption for 'domestically invested' high-tech enterprises; priority to receive interest subsidies; economic management privileges; and exemptions from government fees. According to the complaint the China Development Bank (CDB), a state-owned policy bank, has provided preferential loans under this programme.
- (376) The US authorities have found this programme countervailable in the above-mentioned decision concerning Line Pipe.
- (377) The legal basis of this programme is the "Opinion of Liaoning Provincial Encouraging the Expansion of Opening-Up in Coastal Key Developing Areas." The Liaoning Development and reform Commission and the Liaoning Finance Bureau manage the interest subsidies, and the Huludao Beigang Industrial Park, Industry, and Commerce Authority administer the fee exemptions provided under this programme.
- (378) This programme provides financial advantages in the form of direct transfer of funds from the GOC in the terms of Article 3(1)(a)(i) of the basic Regulation and/or revenue forgone or not collected in the terms of Article 3(1)(a)(ii) of the basic Regulation. These subsidies constitute a benefit under Article 3(2) of the basic Regulation equal to the amount of the grant and/or to the tax/fee exemptions. These subsidies are specific within the terms of Article 4(3) of the basic Regulation as they are limited to certain enterprises located within the designated jurisdiction of the Liaoning Provincial authority. The first priority for the granting of these subsidies is given to enterprises set up in the five key areas as export manufacture bases, and therefore they are also specific according to Article 4(4)(a) of the basic regulation insofar as they are contingent upon export performance.

(b) Calculation of the subsidy amount

- (379) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a comparable decision (based on similarity in the nature of the programme) by the US authorities.
- (380) The subsidy rate thus established during the IP for all non-cooperating companies is set at 0,30% which corresponds to the rate established for this scheme in the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Page No 23) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008). With regard to investigations conducted by the US

⁸⁶ The methodology for the calculation of the subsidy amount is explained on page 23 of the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008)

authorities, it is noted that the methodology used for calculating the amount of benefit from grant programmes is substantially the same as that employed by the EU⁸⁷.

3.3.9.3. Grants under the Science and technology programme of Jiangsu Province

(a) *Legal basis*

(381) The legal basis of this programme is the Administrative Measures on Jiangsu Sci-Tech Public Service Platform (Sukeji (2006) No 102; Sucaijiao (2006) No 22).

(b) *Findings of the investigation*

(382) The complaint states that this programme provides, among others, grants to certain enterprises. The Government of China stated in its questionnaire reply that no sampled company used or benefited under this programme. The Commission refers to its arguments that the GOC was expected to provide complete replies also to questions concerning non-sampled companies (recitals (34) - (35) above). Furthermore, the Commission notes that the complaint lists as potential beneficiaries both companies that were sampled and other non-sampled OCS producers located in the relevant area of application. The Commission therefore bases its findings on the facts available on record in accordance with Article 28 of the basic Regulation, and in particular the information contained in the complaint and the findings by the US authorities that have countervailed this programme in the decision concerning Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China.⁸⁸

(383) The financial advantages granted in the form of grants provide a contribution within the meaning of Article 3(1)(a)(i) of the basic Regulation. These subsidies are specific within the terms of Article 4(2)(c) of the basic Regulation because, there seem to be no objective criteria or conditions governing the eligibility for the benefits from this scheme (as provided for in Article 4(2)(b) of the basic Regulation) and, on the basis of the facts available, discretion does not seem to be exercised by the Jiangsu Department of Science and Technology in an objective manner.

(c) *Calculation of the subsidy amount*

(384) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of precise quantification elsewhere, the most appropriate source of information for the assessment of the benefit to the exporting producers has been a comparable decision (based on similarity in the nature of the programme) by the US authorities.

(385) The subsidy rate thus established during the IP for all non-cooperating companies is set at 0,01% which corresponds to the rate established for this scheme in the US Decision Memorandum of 14 May 2010 on Pre-Stressed Concrete Steel Wire Strand (Page No 35) (Federal Register Vol. 75, No. 98, page 28557 / 21 May 2010). With regard to investigations conducted by the US authorities, it is noted that the

⁸⁷ The methodology for the calculation of the subsidy amount is explained on page 23 of the US Decision Memorandum of 17 November 2008 on Circular Welded Carbon Quality Steel Line Pipe (Line Pipe) (Federal Register Vol. 73, No. 227, page 70961 / 24 November 2008)

⁸⁸ *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China*, Preliminary Affirmative Countervailing Duty Determination, 2 November 2009, US Federal Register, document number E9-26322, p. 56576-56592.

methodology used for calculating the amount of benefit from grant programmes is substantially the same as that employed by the EU⁸⁹.

3.3.9.4. Grants under the Science and Technology programme of Hebei Province

(a) *Findings of the investigation*

- (386) The complaint refers to two grants provided under the Science and Technology programme of Hebei province to an OCS producer in 2009 under this programme for an amount of RMB 700.000 and RMB 2.080.000. The Government of China stated in its questionnaire reply that none of the sampled company was established in Hebei and therefore the requested information was irrelevant for the investigation. The Commission refers to its arguments that the GOC should have provided complete replies also to questions concerning non-sampled companies (recitals (34) - (35) above). The Commission findings are therefore based on the facts available on record (in this case the complaint) in accordance with Article 28 of the basic Regulation.
- (387) The financial advantages provided under this programme in the form of grants constitute subsidies given that they provide a financial contribution in the terms of Article 3(1)(a)(i) of the basic Regulation. They constitute a benefit under Article 3(2) of the basic Regulation equal to the amount of the grants. These subsidies are specific according to Article 4(3) of the basic Regulation as they are provided only for companies located in the Hebei province.

(b) *Calculation of the subsidy amount*

- (388) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. In the absence of other information for the assessment of this benefit the Commission based its findings on information contained in the complaint. In accordance with Article 7(2) of the basic Regulation, the subsidy amount so calculated has been allocated over the total turnover of the recipients during the IP as appropriate denominator, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (389) The subsidy rate thus established for all non-cooperating companies is negligible (less than 0,01%).

3.3.10. Ad hoc subsidies

(a) *Findings of the investigation*

- (390) The complaint listed a number of ad hoc subsidies allegedly granted to certain OCS producers, both SOEs and private companies. These subsidies were either grants or other tax exemptions or reductions inter alia in order to finance particular projects or assets. They were granted in the context of the general strategic policy to upgrade the steel industry.
- (391) The Commission asked the GOC to provide information on these ad hoc subsidies. The GOC replied that the allegations in the complaint were based on quotations from the annual reports and it seemed that none of them concerned sampled companies. Therefore, the GOC concluded that it was not necessary to address transaction-specific allegations concerning non-sampled companies and provinces. Furthermore, the GOC

⁸⁹ The methodology for the calculation of subsidy amount is explained on page 35 of the US Decision Memorandum of 14 May 2010 on Pre-Stressed Concrete Steel Wire Strand (Federal Register Vol. 75, No. 98, page 28557 / 21 May 2010)

restated one of its general comments that the mere listing of certain transactions as 'subsidiaries' in a company's annual report cannot be taken as evidence sufficient to launch an investigation on them as it "*does not constitute sufficient prima facie evidence according to Article 11.2 of the WTO SCM Agreement*".

- (392) The Commission refers to its arguments explaining why the GOC was required to submit information also with regard to the subsidy allegations concerning the non-sampled companies (recitals (34) - (35) above). The Commission based its findings on these ad hoc subsidies on the facts available on file in accordance with Article 28 of the basic Regulation.
- (393) The ad hoc subsidies listed in the complaint constitute a subsidy in the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct transfer of funds with regard to the grants and similar transfers of resources, and in the meaning of Article 3(1)(a)(ii) of the basic Regulation in the form of revenue forgone for the various exemptions or reductions of taxes and/or fees at central, provincial, or municipal level otherwise due. The Commission notes that the annual reports of the various OCS producers themselves refer to these financial contributions as 'subsidiaries'. On the face of it, a number of these subsidies appear to be specific in law or in fact, within the terms of Article 4(2) of the basic Regulation because, in the absence of cooperation from the GOC, they are deemed to be granted to a limited number of steel companies in the encouraged steel sector, and/or because of the manner in which discretion of the granting authorities has been exercised for their granting. Furthermore, some of these subsidies appear also specific pursuant to Article 4(3) of the basic Regulation since their access was limited to certain enterprises located in designated geographical regions in the territory of a certain province.

(b) Calculation of the subsidy amount

- (394) The Commission has carefully studied the information available on the record concerning each of these ad hoc subsidies for the various producers of OCS. The Commission found that some of these subsidies are non-trade distortive and/or confer relatively small amounts to OCS producers. By contrast, there are also a number of specific subsidies that appear to confer significant amounts of subsidies to the OCS producers. In view of this and of the information present on file, the Commission considers it appropriate to calculate the applicable countervailing duty by reference to the simple average resulting from the grants and the tax programmes countervailed in this proceeding despite the non-cooperation by the GOC and the relevant OCS producers.
- (395) The subsidy rate thus established for all non-cooperating companies is set at 0,5%.

3.4. Comments of parties after definitive disclosure

- (396) GOC, one sampled exporting producer (Zhejiang Huadong) and the complainant submitted comments on definitive disclosure.

3.4.1. Comments of GOC on definitive disclosure

- (397) In view of the numerous and very detailed arguments submitted by the GOC and that fact that it would be impracticable (also due to the presence of some confidential information) to include all of them in this regulation, the Commission has bilaterally explained in writing to the GOC all the legal and factual elements underlining the rejection of these claims.

3.4.1.1. Procedural issues

- (398) In a number of its arguments on the initiation of the investigation, the GOC seemed to consider the *GOES* panel report⁹⁰ to be controlling in interpreting certain provisions of the SCM Agreement and the EU Basic Regulation. For instance, the GOC talks about doubts being "removed" by the *GOES* panel⁹¹. While the Commission took note of the findings of the panel in this and does not disagree with a number of its conclusions, these findings do not amend the relevant Treaty or legislative language, notably Articles 11.2 and 11.3 of the WTO Subsidies Agreement or Articles 9(2) and 9(3) of the basic CVD Regulation which are relevant and binding for the Commission in all AS proceedings.
- (399) The GOC claimed that the Commission is in breach of Article 11.2 of the SCM Agreement (ASCM) because it initiated this investigation on the basis of a complaint which did not contain any evidence of the "existence, degree and effect of any (/each) alleged subsidy" and therefore the Commission had violated its obligation under Article 11.3 to review the accuracy and the adequacy of the evidence.

This claim had to be rejected. The GOC's reference to "existence, degree and effect" of the subsidy is a quote from Article 11.1 of the ASCM and describes the purpose of an *investigation*. In Commission's view it is unrelated to Article 11.2 of ASCM, which requires that the complainant shall provide "sufficient evidence of the existence of a subsidy and, if possible, its amount" and the complaint shall include "such information as is *reasonably available*" to the complainant. The Commission has analysed the evidence submitted by the complainant, which was substantial, as it appears clearly from the version open for inspection by interested parties of the complaint. The Commission services only proposed the initiation of an investigation after having duly analysed the accuracy and adequacy of the evidence which they consider sufficient *prima facie*.

- (400) The GOC suggested that each element (financial contribution, benefit and specificity) of each subsidy scheme has to be determined individually. The Commission agrees with the GOC that subsidy allegations have to be *examined* individually. However, it is not the case that the evidence presented with regard to each element of each subsidy programme has to be examined in isolation. For instance, evidence of the existence of specificity for one programme could be highly relevant for the determination of specificity with regard to another programme, *inter alia*, depending on how much information is publicly available on the programmes in question, as well as the extent to which the programmes are closely connected and depend upon the same legislation.
- (401) The GOC argued that there must be evidence of the (above *de minimis*) amount of subsidy during the IP for each programme and that there must be sufficient evidence of current subsidization for each subsidy, not of "potential" or "likely" benefits. On this point, the Commission does not agree with the GOC, since there is no requirement in the basic Regulation or WTO SCM Agreement to show that subsidies for a particular programme are above *de minimis*. There is no dispute that a subsidy must confer a benefit during the IP in order to be countervailed and that the complainants should endeavour to produce such evidence. However, Article 11.2 of ASCM requires "sufficient evidence" of subsidization on the basis of information "reasonably available" to the complainant. Since much information on subsidy benefits (e.g. tax exemptions, grants, provision of goods) is not publicly available, it is often impossible

⁹⁰ Panel report on China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States

⁹¹ *ibid*

for complainants to establish with certainty that the subsidy has conferred a benefit to producers of the product concerned. In such situations, the complainant is required to provide the best available evidence showing that, for example, producers of the product concerned are *eligible* for the subsidy and that the programme is still in force or providing benefits. The level of evidence required will depend on the facts of the case in question and on how much information is reasonably available to the complainant.

- (402) The GOC claimed that the Notice of Initiation is in violation of Article 22.2 (iii) of the ASCM, arguing that it cannot be considered that the simple repetition of the names assigned to the various programs constitutes a "description" thereof. The Commission considers that subsidy practices to be investigated have been adequately described in the Notice of Initiation by specifying the schemes concerned and therefore the Notice does not violate Article 22.2(iii) of ASCM.
- (403) The GOC argued that the Commission has wrongly initiated on a number of subsidy programmes because it has looked at the complaint "holistically" or "in its totality" rather than examining each programme; GOC also stated that the findings of other investigating authorities on various programmes are not by themselves sufficient evidence for initiation. As explained above (recital (400)), the Commission services have examined each programme. The extent, to which findings of other authorities on a particular programme can constitute sufficient evidence for initiation, is a case by case issue and depends to some extent on what other information is reasonably available to the complainant.
- (404) The GOC (quoting a US submission in the *GOES* case⁹²) claimed that the "encouraged" status of OCS producers in government planning documents may have been used in "blanket fashion" to show specificity. This does not represent reality. The legislation classifying OCS producers as "encouraged"⁹³ (and the consequences which flow from this) is not (as GOC submits) "general information about government policy, with no direct connection to the programme at issue". Given that it explicitly limits access to programmes to certain enterprises (or gives preferential benefits), such legislation obviously has a very direct connection to the programme in question.
- (405) The GOC claimed that there must be evidence of a current benefit from a subsidy programme and that the fact that programmes were countervailed in other cases is insufficient, as such findings relate to a different IP. There is no dispute that a subsidy must confer a benefit during the IP in order to be countervailed and that the complainants should endeavour to produce such evidence. However, for the purposes of initiation, evidence of use of a programme in a reasonably recent period can be highly relevant, for instance if there is no publicly available information that the programme has been terminated or modified. The reference of the *GOES* panel⁹⁴ by GOC (to Paragraph 7.72 of the panel report) is inconclusive, because this refers to situations where it is "clear" that there is no present subsidization, which is not the case here.

⁹² Panel report on China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States

⁹³ Decision No. 40 of the State Council on Promulgating and Implementing the Temporary Provisions on Promoting Industrial Structure Adjustments

⁹⁴ Panel report on China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States

- (406) The GOC claimed that there must be evidence that some producers of the product concerned have actually received a benefit from a programme, in order for initiation to take place. This claim could not be accepted. There is no requirement in the basic Regulation nor it is a requirement of Article 11.2 of the ASCM, which requires "sufficient evidence of the existence of a subsidy...", or explicit evidence of actual utilisation by certain producers. Since much information on subsidy benefits (e.g. tax exemptions, grants, provision of goods) is not publicly available, it is often impossible for complainants to establish with certainty that the subsidy has conferred a benefit to producers of the product concerned. In such situations, the complainant is required to provide the best available evidence showing that, for example, producers of the product concerned are *eligible* for the subsidy and that the programme is still in force or providing benefits. The level of evidence required will depend on the facts of the case in question and on how much information is reasonably available to the complainant. Imposing such a requirement on complainants would effectively favour non-transparent systems over more transparent ones granting the same type of subsidy.
- (407) The GOC argued that the Commission did not provide a "reasonable period" for the GOC to submit the necessary information under Article 12.7 of the SCM Agreement. The GOC also claimed that the Commission did not grant to the GOC "ample opportunity" to present in writing all relevant evidence concerning the investigation in accordance with Article 12.1 of the SCM Agreement. These arguments must be rejected as the Commission granted a reasonable period and ample opportunity for the GOC to submit the relevant information in accordance with the relevant provisions of the WTO and of the basic Regulation. The Commission notes that it granted exceptionally generous extensions to the deadline for the original questionnaire reply, bringing the total period for the reply from 37 days to almost 2 months. Considering also the deficiency process, the GOC had more than 3 months since the initiation to provide the requested information. The GOC was also offered the opportunity to provide missing information until the time of the verification visit. The Commission also notes that 'reasonable period' must be seen in the procedural context whereby the Commission is mandated by the basic anti-subsidy Regulation to conclude the investigation within a period of 13 months. Granting even longer deadlines as requested by the GOC would inevitably have negatively affected the possibility for the Commission to proceed expeditiously in order to comply with the relevant legal deadlines.
- (408) The GOC also referred to its request for assistance to the Commission in preparing the questionnaire reply, which in the GOC view was denied by the Commission. This does not correspond to reality because the GOC request for assistance was so broad and open-ended (i.e. it covered *each* question in the questionnaire and the appendices) that the Commission was only able to offer the GOC assistance with respect to the specific problems the GOC was encountering in the replies, rather than the individual questions. The GOC decided not to take up this offer for assistance further. The Commission also notes that Article 12.11 ASCM states that the assistance requested must be "practicable", which is not the case with respect to broad, open-ended requests imposing an impossibly high burden on the investigating authority, particular when the questionnaire is self-explanatory. The Commission notes that the GOC is highly experienced in anti-subsidy investigation and uses the services of outside lawyers.
- (409) With respect to the subsidy programmes contained in the complaint that were not used by the sample exporters, the GOC argued that it would be unable to provide the requested information on all these programmes in the time allotted by the Commission

because of the fragmentation of the steel industry. The GOC also claimed that it did not understand from the Commission until late in the proceeding the potential consequences from the failure to provide the requested information on these programmes given that they concerned non-sampled companies. The Commission at the outset notes an inconsistency in the position of the GOC, as its claim that it did not have sufficient time to provide replies in the time allotted appears to conflict with its deliberate choice of not replying to all the programmes not used by the sampled exporters because it allegedly did not understand the purpose of the Commission's request and the consequences for the refusal to provide the requested information. In any event, as specified above (recital (407)) the Commission granted several deadline extensions to the GOC in order to enable it to submit the requested information concerning on all of the programmes. Therefore the total time allotted (i.e. more than 3 months considering the deficiency process) was more than sufficient to provide the requested information. The GOC itself explicitly acknowledges in its comments that it is true that it took this position that it should not have been required to submit the information on these other programmes, and this is also shown by the fact that it did not even try to submit a partial or incomplete reply to show its willingness to cooperate but simply did not submit any information at all in this respect.

- (410) The Commission also cannot accept the GOC argument that it did not understand the consequences for failure to provide the requested information on the programmes not used by the sampled exporters. As a matter of fact, the Commission clarified these consequences in several instances since the beginning of the proceeding. More specifically, the consequences for non-cooperation are explicitly indicated with reference to the relevant provisions of the basic Regulation in the Notice of Initiation and in the cover page of the questionnaire. The Commission also replied extensively on the purpose of sampling and on the need for the GOC to provide the requested information given the high level of non-cooperation and the possible examinations of the requests for individual treatment in its letters of 19 March, 11 April, 4 May (deficiency letter), 7 June (pre-verification visit letter), and 14 August 2012. Therefore, the GOC could not possibly have been unaware or have misunderstood the consequences of its lack of cooperation on these programmes not used by the sampled exporting producers. Fundamentally, the GOC appears to have ignored that, as the *grantor* of the alleged subsidy schemes, it was required to cooperate and provide information with respect to all subsidy schemes alleged to be available for the product under investigation.
- (411) The GOC also made a number of arguments with regard to the verification process and the verification visit itself. The GOC objected that from the Commission's pre-verification letter it could not discern the extent of the verification of the relevant information and complains about an alleged refusal by the Commission to provide a more specific outline for the verification. The GOC added that it was entitled at a minimum to some "narrowing down" of the possible scope of the verification (e.g. by means of an advance written list of all questions that the Commission officials would ask)⁹⁵ which in the GOC view could not have been exhaustive given short duration of the visit. With respect to this latter argument, the Commission rejects the GOC argument as there is no legal basis in either the WTO ASCM or the EU basic anti-subsidy Regulation granting a purported right to this narrowing-down of the scope of

⁹⁵ From the Commission's understanding, such a list would be exhaustive and would therefore remove any flexibility from the verification and preclude the asking of follow-up questions or questions arising from arguments or facts raised during the verification.

the visit. Nor is there any ruling by the WTO even suggesting that such an entitlement would have to be interpreted as to exist.

With regard to the other GOC arguments, the Commission notes that it sent a detailed pre-verification letter on 7 June 2012 clearly indicating (i) a proposed schedule previously agreed informally with the GOC, (ii) the purpose of the verification visit, (iii) the scope, content and object of the visit, and (iv) the possible resort to facts available for the programmes not used by the sampled exporters (see above). In order to limit the need for the presence of the relevant GOC officials, it also indicated on which day each programme would be addressed. The Commission went even further than that in order to accommodate the requests for further details on the verification visits by the GOC in the spirit of full cooperation, as it met the representatives of the GOC at a very short notice to provide the requested clarifications on the details of the verification visits. The Commission then followed-up in writing to this meeting by answering further requests for clarifications by the GOC in a number of emails exchanged with the GOC. Therefore the Commission did everything it possibly could to ensure a successful verification visit, but nevertheless the GOC seems to have ignored all these efforts.

3.4.1.2. Provision of HRS and CRS for less than adequate remuneration

- (412) GOC claimed that the Commission should have made a “threshold” determination of the existence of a public body before requesting transaction-specific information in Appendix B to the GOC questionnaire. This claim could not be accepted as it would be impractical to separate the investigation into two stages in this way, as the Commission would have to make two separate requests for information and carry out two separate verification visits to China. In addition to the resource implications, this would in practice make it virtually impossible to complete the investigation within the deadlines. In any event, the totality of the evidence (including the transaction-specific data on prices and quantities) may be relevant to the public body determination.
- (413) GOC claimed that its failure to provide responses to Appendix B intended for the SOEs supplying HRS and CRS to the OCS producers should not lead to the application of Article 28 of the Basic regulation and the fact that the Commission applied facts available is in breach of Article 12.7 of the ASCM agreement. GOC further claimed that the Commission required that the Appendix B be completed by many companies irrelevant to the investigation. This claim must be rejected. The Commission constructed Appendix B in a way to verify the allegations in the complaint and did so in line with the findings of WTO Appellate Body in DS379 which set out certain guidelines for the determination of public body. The claim of the GOC that "it is not only SOEs to which appendix B pertained" does not represent reality. It is true that initially the Commission asked all producers of HRS/CRS to fill in Appendix B, but following the GOC reply to the questionnaire the Commission, in order to facilitate the work of the GOC in replying to Appendix B, scaled down the request only to SOEs concerned⁹⁶. Despite this effort from the Commission the GOC and the SOEs concerned did not reply to the Appendix B although it is clear (notably from the complaint) that SOEs providing HRS/CRS to the exporting producers of OCS are concerned by this investigation.

⁹⁶ Question 5.12 of the deficiency letter to the GOC

- (414) Taking the above into account the Commission had no alternative but to apply Article 28 (1) of the basic Regulation and did so fully in compliance with Article 12.7 of the ASCM.
- (415) The GOC claimed that the facts available used by the Commission do not support the conclusion that the cited steel industry “guidelines” are legally binding. The main steel industry planning document on the basis of which the Commission based its findings concerning the existence of a public body is the Order No. 35 of the NDRC – Policies of the Development of Iron and Steel Industry. The Commission asked a direct question concerning the legal status of orders of the NDRC and it was confirmed that orders in Chinese legislation are legally binding as they fall into the one of the four categories of law in China. Therefore this claim is in contradiction with the relevant information on the file.
- (416) The GOC claimed that the market distortion found by the Commission in the steel sector is irrelevant for the public body determination of the HRS/CRS producers and that the public body determination should have been made specifically to the entities supplying HRS/CRS to the two sampled groups of exporting producers and not only to all SOEs producing HRS/CRS in China in general. According to the GOC, if the Commission does not have information on these entities, it cannot make a determination; otherwise, it would be drawing an impermissible adverse inference. The Commission does not agree with this claim. The existence of the market distortion is a relevant, although not determining, factor in the analysis. The "public body" finding of the Commission in the context of this proceeding concerns all the HRS/CRS producers which are fully or partly state-owned, because it was made on the basis of evidence relating to broad policy and industry-wide factors and was not a company-specific determination. The state-owned entities supplying HRS/CRS to the two sampled exporting producers clearly fall within the scope of the public body finding and therefore it was not considered necessary to do make a specific determination limited to them. In any event, the GOC provided no information which may serve for such a company-specific determination in response to the Commission’s questionnaire.

The GOC argument that the Commission cannot make a determination in the absence of "actual facts" on the specific SOEs concerned would mean that the GOC would actually benefit from non-cooperation (as it had refused to supply the "facts") and would thus obtain a "more favourable" result than if it had cooperated, which is the opposite to an adverse inference.

- (417) GOC objected that it was notified by the Commission of the "entrustment and direction" analyses only at the stage of final disclosure and therefore its rights of defence were breached. However, the Commission could not know that it would come to this conclusion at the earlier stage of the investigation. This finding is a result of all the information and data collected throughout the proceeding and was disclosed as soon as the final determination was made, i.e. at the time when the definitive disclosure was made. The complaint alleged subsidies related to the government provision of goods by SOEs. The investigation showed that the government policy in question, which initially concerned SOEs, also applied to private entities, leading to a conclusion of entrustment or direction by government.
- (418) The GOC claimed that the facts discussed by the Commission in no way justify the conclusion that any private body in the steel sector is entrusted and directed by the state to provide the subsidies countervailed. This claim had to be rejected. In its

analyses concerning entrustment and direction the Commission referred to number of government plans and policy documents and cited sections from these documents which show a direct link between the government and the conduct of the private steel companies and supported this finding by examples of actions by these private operators.

- (419) The GOC claimed that the Commission failed to distinguish between the consequences of government action and the intention of government action when doing the entrustment and direction analysis. This claim is also rejected. The Commission established the existence of a government policy to support the steel industry and to provide HRS/CRS through public bodies (SOEs) at below-market prices. It was further established that this policy (by means of the predominance of SOEs and the dissuasion of exports of HRS/CRS) effectively forced private producers to supply the domestic OCS industry at the same below-market prices charged by SOEs. Indeed, there is evidence that the prices of private suppliers are explicitly linked to those of SOEs. Therefore, the Commission established that the one of the aims of the policy was to direct and entrust private bodies to follow the same practices as the SOEs. This is a classic case of the government, by itself and through SOEs, "exercising its authority" over private suppliers. The policy has all the required elements for entrustment and direction i.e. a "government action", "addressed to a particular party", "the objective of which is a particular task or duty." As an illustration of government intentions, certain provisions of the Order No 35 penalise the companies which do not act in line with policies described therein. This shows that the GOC has an intention to lead the whole steel industry in a certain direction and that should there be companies which do not follow this intention there will be consequence for them.
- (420) The GOC also claimed that the Commission did not establish that the GOC has a policy to provide HRS and CRS to the OCS sector and that the Commission did not draw a conclusion to that effect. This claim had to be rejected. As shown in the analysis in recitals (49) - (72) above, the SOEs providing HRS/CRS to the OCS producers are public bodies, the extended arm of the GOC and it is clear that they provide HRS/CRS to the OCS exporting producers. It was also established that the prices of these inputs do not reflect the market values. Therefore it is concluded that through these SOEs the GOC exercises a policy of provision of cheap HRS and CRS.
- (421) GOC claimed that the Commission has erroneously concluded that there is pervasive government control of the steel sector generally and that the steel industry complies with certain guidelines, but it has not concluded that the provision of steel to the OCS sector at below market prices is a goal of that policy. This claim had to be rejected. As explained in recital (419) above, the Commission has found that the government policy involves an intention to direct private suppliers to follow the below-market provision practices of SOEs.
- (422) GOC claimed that the Commission did not make a finding that there is a specific intent by the GOC to provide actual financial contribution at issue in the case of provision of HRS and CRS as prescribed by *the AB report in US –Countervailing Duty Investigation on DRAMS from Korea*⁹⁷. This claim had to be rejected. The

⁹⁷ AB in the US-Countervailing Duty Investigation on DRAMS from Korea: the entrustment and direction do not cover "the situation in which the government intervenes in the market in some way, which may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market. This, government "entrustment" or "direction" cannot be inadvertent or a mere by-product of governmental regulation."

governmental actions in question are based on a government policy intended to direct private suppliers to follow the below-market provision practices of SOEs. This is not a “consequence” or “by product” of government intervention; it is the purpose of it. It is clear that in this case private suppliers of HRS/CRS are not exercising "free choice" in the market because the market is distorted by the predominance of SOEs and the export of HRS/CRS is discouraged.

- (423) The GOC claims that the Commission made no findings on the actual private bodies which supplied HRS/CRS to the sampled companies. This claim had to be rejected. As in the case of public bodies, the Commission made a sector-wide determination of entrustment and direction which applies to all private suppliers. Since the government policy in question applies to all such entities, there is no need to make a company-specific determination.
- (424) The GOC claimed that the Commission rejected the GOC's evidence concerning the proportion of Chinese production of HRS and CRS which comes from SOEs. The table provided by the GOC in this respect cannot be considered evidence. The GOC refused to provide source data before and during the verification for this table and therefore it cannot be considered to be reliable information. For this reason the Commission used information from the World Steel Capacity Book, which is generally accepted by the world steel industry.
- (425) The GOC claimed that the Commission did not explain why the world market prices of HRS and CRS are the most appropriate benchmark and referred to the AB ruling in the US-Softwood Lumber IV that the out-of-country benchmark "must relate or refer to, to be connected with, the prevailing market conditions in the country of provision and must reflect price, quality, availability, marketability, transportation and other conditions for purchase or sale". GOC also claims that the "government predominance" cannot lead to relaxation of this jurisprudence, because if it were the option to use an out-of-country benchmark would not be available at all. GOC claim that the Commission has not complied with the requirements of Article 14 of the ASCM. The Commission disagrees with this claim. The prevailing market conditions in China are distorted as found by the Commission and explained in recitals (49) - (97) above. Since steel is produced worldwide by similar processes and is traded worldwide, the most reasonable external benchmark is world price, since should China be in a normal non-distorted market situation, it is likely that the prices would align with the world prices. GOC provided very little information on the steel market in China even though it was specifically requested by the Commission. Also China did not propose any other benchmark except the in-country benchmark which was not suitable because of market distortions found.

GOC claimed that the Commission did not base the specificity finding in respect to the provision of HRS/CRS for less than adequate remuneration on anything other than the tautological statement made by the complainants in the complaint and this is not sufficient to fulfil the requirements of the ASCM. This claim had to be rejected. Both HRS and CRS are used as inputs only by a limited number of companies, since companies in many sectors will have no use for these products. The GOC itself in its reply to the questionnaire confirmed that the HRS and CRS are used only by limited number of industries. The GOC did not dispute this fact in the comments to definitive disclosure. Therefore it is confirmed that this subsidy is specific within the meaning of Article 4(2)(c) of the basic Regulation which is a reproduction of Article 2.1.(c) of the ASCM.

3.4.1.3. Preferential Loans and Interest Rates to the OCS industry

- (426) The GOC claimed that the banks are not required to follow the industrial guidelines, do not have individual business decisions dictated to them by the government, and the banking sector is not predominated by the government. This claim cannot be accepted. Articles 24 and 25 of the Order No 35 limit the provision of loans only to those companies which comply with national development policies for the iron and steel industry, therefore the claim of the GOC are not required to follow the industrial policies is in contradiction to this evidence. Clearly, these provisions restrict which companies the banks can finance and which not. Also the claim that the banking sector is not dominated by the Government must be disregarded. In this respect it is noted that the GOC provided only very limited information on the ownership structure in the banking sector, claiming it does not possess such information, although according to Article 24 of the Commercial Banking Law all banks are obliged to report such information to the China Banking Regulatory Commission, a state agency authorised by the State Council. The other information on the files cited in this regulation led to the conclusion that the banking sector in China is indeed dominated by the government (see recitals (166)-(169) above). In addition to the sources referred to in this regulation, the IMF Country Report No 11/321 on China from November 2011 states that the state is also directly and indirectly involved in the financial sector and recommends the re-orientation in the role and responsibilities of the government in the financial sector away from using the banking system to carry out broad government policy goals and to allow lending decisions to be based on commercial goals^{98 99}.
- (427) The GOC claimed that its failure to comply with the demands of Appendix A to the GOC questionnaire could not trigger a valid resort to facts available, because the Commission should not have held the GOC responsible to provide internal, sensitive, transaction-specific data concerning banks many of which were not in any way owned by the government. As explained in the recital (426) above the GOC had access at least to some of the requested information but refused to provide any answers to questions in Appendix A. In this respect it is also noted that since the GOC refused to provide any ownership data the Commission, in the case of many banks, did not know which banks are and which are not state-owned.
- (428) In relation to certain Circulars of the PBOC the GOC claims that the publicly available summaries of the contents of the relevant circulars together with the testimonies of the PBOC officials are sufficient to replace the actual Circulars of the PBOC and no facts available should be applied due to the GOC's failure to provide these. The GOC also claimed that the Commission has rejected information provided in good faith, i.e. the testimony of the PBOC official combined with the abstract of the circulars at issue and referred to the Article 28 of the Basic Regulation which says that only the information which is false or misleading may be disregarded. In addition GOC claimed that the Commission did not base its findings on actual facts available or the the information

⁹⁸ "Banks large exposures to state-owned enterprises, guaranteed margins provided by interest regulations, still limited liability and willingness to differentiate loan rates, coupled with the implicit guidance on the pace and direction of new lending, undermine development of effective credit risk management of the banks. It is important that banks have tools and incentives to make lending decisions based upon purely commercial goals.

⁹⁹ A large share of the banking sector is state owned as is much of the banks' corporate client base. As the principal shareholder, the state appoints senior management in all major banks. In the absence of an explicit deposit insurance system and resolution framework, the state also implicitly insures all deposits. The heavy involvement by the state in many aspects of the financial system reduces market discipline, weakens corporate governance, and is likely to create soft budget constraints.

provided, but rather made it incumbent upon the GOC to prove that the state of affairs examined during the Coated Fine Paper case was no longer current. In this case, according to the GOC, the Coated Fine Paper findings do not even contradict the information provided by the GOC, since these were based on information pertaining to a different time period altogether.

Concerning the extracts provided from the PBOC and website and the testimony of the PBOC official, these could not have been verified without the source documents, i.e. the Circulars themselves. The Commission fails to understand why on the one hand the GOC considers these to be confidential internal documentation and on the other the summary of the contents is allegedly published on the website of PBOC. The Coated Fine Paper findings are highly relevant to the present case. The fact that the information pertained to a different time period is of limited relevance, as the facts on the record (including the complaint) demonstrate that the practices in question have not changed since then. As regards GOC's allegation that the Commission is reversing the burden of proof, it is noted that the Coated Fine Paper findings are part of the totality of the evidence taken into account but that the GOC is not required to "disprove" them. Co-operation in such investigations is two-way process and all parties may offer evidence or arguments to rebut other evidence on the record.

- (429) The GOC argues that the Commission has not found that the GOC benchmark rates reflect a non-commercial distortion (thereby conceding that the Chinese market interest rates generally reflect adequate remuneration) and that the fact that there is only a lower limit on the interest rates for commercial loans works to the detriment of the exporting producers making use of such loans rather than benefit. Without the PBOC-imposed floor, those rates may well have been considerably lower. This argument is misplaced. The fact that the GOC (PBOC) sets the benchmark rates arbitrarily points to non-commercial behaviour at the first place. This is also confirmed by the IMF Country Report No 11/321¹⁰⁰ on China from November 2011 which refers to interest regulation.
- (430) The GOC claimed that the Commission failed to assess the creditworthiness of the actual parties investigated as it did in the Coated Fine Paper case. In reply, the creditworthiness of the sampled exporting producers was not assessed as it is in any event influenced by the industrial policies and by state support and intervention. As it was found that the financial system in China is distorted this would be a pointless exercise. There was no such creditworthiness assessment in Coated Fine Paper case.
- (431) The GOC also objects the BB rating determination because it alleges to be "purely punitive" and "in any event the Commission's reasons for this selection have not been disclosed in a manner capable of scrutiny." For the GOC, if the Commission finds that the Chinese benchmark plus the BB risk premium would be that rate, then it must explain its reasoning in that regard and on a producer and loan specific basis. This claim had to be rejected. Given the distortions and the lack of proper creditworthiness or risk assessment of the OCS producers by the lending banks the Commission could not have taken the credit rating (if they had any at all) of the individual exporting producers at its face value. The BB rating is in this case not unfavourable for the exporting producers because it is the best non-investment rating on the market.

3.4.1.4. Provision of LURs for less than adequate remuneration

¹⁰⁰ 2011 International Monetary Fund, November 2011, IMF Country Report No 11/321, People's Republic of China: Financial System Stability Assessment

- (432) The GOC claimed that the Commission recognised that the GOC's claims that the LURs are provided with reference to competition are such that they would obviate the need for an external benchmark. GOC also claimed that throughout its explanation of why the GOC claims were rejected the Commission focuses solely on the GOC evidence rather than the facts actually available. The GOC requests that the Commission disclose the actual factual basis it has determined that the prices set by the local authorities were arbitrary, i.e. that they did not refer or relate to the supply and demand for industrial land.

The GOC's understanding of this issue is not correct. The Commission did not find that that the LURs are provided with reference to competition. The Commission found that out of the 13 LUR transactions only 6 were to be subject to bidding or auction process. With regard to these 6 the evidence submitted in this respect showed that the tenders were not competitive as there was only one offer/bid and the price was set by the authorities. The Commission did not understand the GOC's requests for the facts available used in respect to the lack of a market for LUR to be disclosed when no facts available were used to reject GOC claims in this matter and the analysis was done on the basis of information submitted by the GOC and exporting producers in this respect. The factual basis for the determination that the prices are arbitrarily set is referred to in recitals (114) - (116) above, i.e. information on actual transactions submitted by the sampled exporting producers, Urban Land Evaluation System and Order No 35.

- (433) According to the GOC the Commission did not determine specificity under Articles 2.1 and 2.2 of the ASCM, nor did it clearly substantiate its determinations of specificity on the basis of positive evidence, as required by Article 2.4 of the ASCM . In addition, it did not substantiate the need to base the benefit amount on an out-of-country benchmark nor did it construct the benchmark selected in the manner consistent with Article 14 (d) of the ASCM. These claims had to be rejected. The basis for Commission's specificity findings is the fact that all companies which do not comply with industrial policies set by the state are excluded from the provision of LUR, prices are often arbitrarily set by the authorities and government practices are unclear and non-transparent. The need for the out-of-country benchmark was explained and justified in paragraphs (109), (118) and (120)-(121) above. As it was found that the LUR market in China is distorted it was not possible to apply in-country benchmark as proposed by the GOC. The Commission does not agree with the claim that the benchmark was constructed in a manner inconsistent with Article 14(d) of the ASCM. The Taiwan benchmark is considered a best proxy available to the Commission and is consistent with the recommendations of the AB in DS 379.
- (434) The GOC claims that it suggested that any possible benchmark should be in-country and be based on the prices that "not favoured" Chinese industries were paying; according to GOC, this is precisely because there is no distinction in the first place, and that therefore the subsidy amount would rightly be zero. The Commission does not agree with this claim and in any event the GOC did not provide any information for the "non-favoured" industries LUR prices which could, in theory, be used for the benchmark construction.
- (435) GOC also claims that the complainant provided no indication or evidence that LURs were granted in particular to any subset of limited enterprises and the EU has not made the crucial finding that the provision of LURs is explicitly limited to certain/encouraged enterprises. The Commission has made the finding that the

provision of LUR is limited to companies which comply with the industrial policies set by the GOC in the Order No 35 of the NDRC (recital (116) above).

- (436) The GOC claimed that the Commission did not perform a rigorous examination in order to find a benchmark that refers or relates to the situation in China and that the Commission did not do its best to identify a benchmark that approximates the market conditions that would prevail in the absence of the distortion, or if it did it has not explained how this is so. This claim had to be rejected. The Commission indeed looked in detail in the various indicators and compared Taiwan and PRC as a whole as well as individual Chinese provinces concerned. After such analyses the Commission considers Taiwan¹⁰¹ as an appropriate benchmark because of the totality of the information on the file i.e. (i) the level of economic development and economic structure prevailing in Taiwan and the relevant Chinese provinces and city¹⁰² where the co-operating exporting producers are established, (ii) the physical proximity of these two Chinese provinces with Taiwan, (iii) the high degree of infrastructure that both Taiwan and these two Chinese provinces have, (iv) the strong economic ties and cross border trade between Taiwan and the PRC, (v) the similar density of population in the Chinese provinces concerned and in Taiwan, (vi) the similarity between the type of land and transactions used for constructing the relevant benchmark in Taiwan with those in the PRC and (vii) the common demographic, linguistic and cultural characteristics in both Taiwan and the PRC. Furthermore, Jiangsu and Zhejiang provinces together with Chongqing City are considered top manufacturing provinces in the PRC. Although the GDP per capita of Taiwan and the Chinese provinces and Chongqing City is not identical, the GDP of these Chinese provinces and Chongqing City has grown rapidly in recent years i.e. they are catching up with Taiwan.

In addition, recent data suggest that the both PRC as a whole, the two provinces and Chongqing City have much higher GDP growth rate than Taiwan¹⁰³, i.e. they are catching up very fast. However, it is important to note that the exact comparison made between the GDP of a non-market economy (the PRC) and the GDP of a well-established market economy (Taiwan) is not a decisive fact because it is normal for a non-market economy to lag behind a functioning market economy in terms of GDP. In addition, many other factors e.g. planning rules, environmental policy may affect the supply and demand of industrial land. The real issue is what would be the 'prevailing market conditions' with regard to LUR in the PRC if it was a functioning market economy and on the basis of all evidence they would be very similar to those of Taiwan.

- (437) GOC also claims that the Commission in its calculation used depreciation period of 50 years while not all of the relevant land use right contracts were based on the 50 years terms. This was not correct. All the LUR, the provision of which was countervailed in this investigation, were based on the 50 years terms.

3.4.1.5. Programme consisting of provision of electricity for less than adequate remuneration

- (438) GOC claimed that the conclusion concerning specificity is "wholly artificial" on the grounds that the range of economic activity paying the non-penalised rate

¹⁰¹ Information retrieved from <http://www.taiwanembassy.org/be/ct.asp?xItem=306196&CtNode=3382&mp=102&xp1=http://en.wikipedia.org/wiki/Taiwan>

¹⁰² Information retrieved from <http://en.wikipedia.org/wiki/Jiangsu>; <http://en.wikipedia.org/wiki/Zhejiang#Economy> and <http://en.wikipedia.org/wiki/Chongqing#Economy>

¹⁰³ Information retrieved from <https://www.cia.gov/library/publications/the-world-factbook/rankorder>

encompasses the vast majority of the Chinese economy. The GOC also questioned the Commission's finding on 'regional' specificity and in particular the conclusion that this subsidy is only available in the geographical areas where the exporting producer is located. According to the GOC the penalty applies across the board in all geographical areas in which all exporting producers are located and therefore there is no regional specificity. This claim had to be rejected. The Commission notes that the GOC seems to base its comments exclusively on the differential pricing system for the categories of 'encouraged', 'restricted', 'prohibited', and 'allowed' enterprises according to decision No. 40. However, the Commission based its findings on the special electricity pricing system available in the broader Chongqing municipality area where one of the sampled cooperating exporters has a production plant. This exporter benefits from a lower electricity rate specifically applying only to a sub-set of companies belonging to certain sectors (namely ferroalloy electronic furnace and fertilizer companies) within the same category of large industrial users. Therefore, the Commission has concluded that the lower electricity rate only applying to this very restricted sub-set of companies belonging only to those specific eligible sectors is *de jure* specific.

With regard to 'regional' specificity, recital (149) does not refer to any penalty system as the GOC indicates in its comments. This paragraph clarifies that this beneficial electricity rate applying to the restricted sub-set of companies including the producer of the product concerned is limited to a designated geographical area (i.e. the broader Chongqing municipality) which is part of the China's Vast Western Region encouraged according to the law referred to in the same recital and further explained in recital (233) above. As further stated in recital (149), this legislation refers to electricity pricing as one of the tools to achieve the main policy objective to foster the development of this region. The Commission finding that this subsidy is also regionally specific is hereby confirmed.

- (439) The GOC questioned the conclusions in recital (146) above concerning specificity on the basis of the differential pricing system between the categories of 'encouraged', 'restricted', 'prohibited', and 'allowed' enterprises. The GOC explains again that the difference in electricity price paid between the specifically discouraged project and everyone else operates as a penalty, or surcharge, to discourage specific projects rather than a "discount" paid to encouraged projects. The GOC concludes that the Commission must make a finding of what remuneration would be considered adequate and in this case the Commission has assumed that the penalty price would be adequate remuneration. This claim had to be rejected. As explained at length above, the Commission's finding of financial contribution refers to the lower electricity rate that this company is entitled to as part of the restricted sub-set of companies within the larger industrial user category. The GOC arguments are therefore not relevant with respect to the findings by the Commission.

3.4.1.6. Other income and tax programmes not used by the sampled producers countervailed for the purposes of the "residual rate"

- (440) The GOC argued that the Commission had not applied consistently the relevant WTO rules concerning sampling contained in the WTO Anti-dumping Agreement (i.e. Articles 6.10, 9.2 and 9.3), because the purpose of sampling would be to limit the scope of the investigation. This argument was linked to Article 19.4 WTO ASCM, which limits the amount of countervailing duty to the amount of subsidy "found to exist". The GOC concluded that if the Commission did not consider the extent of subsidisation sufficiently captured by the sample selected, the solution would have

been to *sample more companies*. In the first place, the Commission notes that the analogy between sampling in anti-dumping and anti-subsidy investigations has certain limits, because unlike anti-dumping investigations in CVD investigations there is no general rule that each exporter receives an individual duty and so-called 'aggregate' cases are explicitly permitted. Moreover, unlike in anti-dumping cases, the government is a required participant and respondent in a CVD case and the government is therefore implicitly included in the scope of any "sample" for the purposes of a CVD determination. In other words, the government's actions as the grantor of the alleged subsidisation, always fall under the scope of the CVD investigation, regardless of the use of a sample of exporting producers.

- (441) As regards the GOC comment that the recourse is to "sample more companies", the Commission notes that this is exactly what it did in this case. Further to the withdrawal of cooperation by one of the exporters that had originally agreed to cooperate, the Commission decided to include another exporter in the sample. However, shortly after this company was informed of its inclusion in the sample, it notified to the Commission that it no longer intended to cooperate in the investigation. The Commission was consequently forced to limit the sample to the two remaining exporters originally sampled that had not withdrawn cooperation in order to avoid any further delay that would put in jeopardy the expeditious completion of the investigation within the prescribed legal deadlines. The Commission notes that this unsuccessful attempt undermined solely by the exporters' behaviour shows precisely that this GOC claim is without merit in that does not address the problem of companies which do not come forward for sampling in the first place or which withdraw if selected for sampling.
- (442) With respect to the application of facts available, the GOC referred to Article 12.7 ASCM and quoted WTO jurisprudence holding that facts on the record can only be used to replace missing information, and that non-cooperation does not justify determinations devoid of factual foundations. The Commission does not understand the logic of this claim, given that in its determination it has used the facts on the record as allowed under the WTO provision and the basic Regulation in full compliance with the relevant WTO jurisprudence. As the GOC has also recognised, the findings in *Coated Fine Paper* and in the various US DOC decisions constitute the best *facts* available to the Commission and are used precisely to replace the information gaps caused by the GOC lack of cooperation.

The GOC also questioned the use of these facts as they would not reflect a present subsidization and are also not specifically linked to the product concerned. The Commission notes in this respect that most of these subsidy programmes concern non-recurring subsidies (e.g. grants, tax advantages linked to investment in assets) which are normally amortised over several years and therefore their benefits continue well in the future and thus even beyond the IP in this case. Where recurring subsidies are involved, there is no evidence that these programmes have changed since the investigation in question. As for the link between these programmes and the product concerned, the Commission recalls that all of these programmes cover the steel sector (they are not product-specific), or apply in the region where the OCS exporters have located their factories. In the absence of evidence to the contrary in the file, the Commission has decided that it is reasonable to conclude that the benefits of these programmes still reflect the best proxy for present subsidization for producers of the product concerned. It is stressed that the GOC had ample opportunity to submit evidence to the contrary on all these programmes but it deliberately decided not to

submit it and as a result the Commission has to resort to the facts available on record as prescribed by the basic Regulation and the WTO ASCM.

3.4.1.7. Equity programmes

- (443) The GOC claimed that all these programmes (unpaid dividends, debt-for equity swaps and equity infusions) were not initiated in accordance with requirements with Articles 11.2 and 11.3 of the ASCM.

This claim had to be refused. As already explained in the section concerning the reply to the GOC's comments on initiation (recitals (399) - (406) above) the Commission services have analysed the evidence submitted by the complainant, which was substantial, as it appears clearly from the version open for inspection by interested parties of the complaint. The Commission services only proposed the initiation of an investigation on specific schemes after having duly analysed the accuracy and adequacy of the evidence which they consider sufficient on a *prima facie* basis.

- (444) In the view of the GOC the equity programmes are unique ad-hoc subsidies, to the extent they exist, in that that they apply only to one particular recipient and not pursuant to any particular legislation and since "the Commission knows for a fact that the companies subject to the residual duty not only did not receive, but could not have received given their ad-hoc nature" these subsidies, they should not be countervailed. In addition the GOC claimed that to the extent that facts available determinations are made, they must be based on actual facts. For this reason the countervailing of ad hoc subsidies to companies other than those actually alleged to have received them is a violation of Article 12.7 of the ASCM.

It is noted that the GOC did not reply to a single question in the questionnaire or in the deficiency letter concerning these schemes. Therefore the statement of the GOC that "the Commission knows for a fact that the companies subject to the residual duty not only did not receive, but could not have received given their ad-hoc nature" these subsidies, does not represent reality. To the contrary, the complaint listed several companies benefiting from these equity schemes and did not allege this list to be exhaustive. Since the GOC did not provide any information on the nature or eligibility of these schemes the Commission has no other option but to apply facts available.

3.4.2. Comments of Zhejiang Huadong

3.4.2.1. Provision of LURs for less than adequate remuneration

- (445) Zhejiang Huadong claimed that it provided the Commission with all relevant legislations governing the mechanics and value-setting of sales of LURs in China and referred to the *Provisions on the Assignment of State-Owned Construction LUR through bid invitation, auction and quotation* to demonstrate that there is a well-functioning real estate market in China, where quotes and prices paid are made public. It further claimed that the real estate market that exists today in China, and the exhaustive official statistics on LUR prices available, form the best evidence for assessing the price of the LURs at the time this exporting producer bought them.

This claim had to be rejected. The Commission explains the findings in respect to Zhejiang Huadong's LURs in recital (115) above. These findings were not disputed in its comments to definitive disclosure. Evidence at hand shows that the LUR market in China is distorted as the tenders investigated on-the-spot by the Commission were not competitive and the prices were arbitrarily set by the authorities. The factual basis for

the determination that the prices are arbitrarily set is referred to in recitals (114) - (116) above, i.e. information on actual transactions submitted by the sampled exporting producers, Urban Land Evaluation System and Order of the NDRC No 35.

- (446) Zhejiang Huadong claimed that according to Article 14(d) of the WTO SCM Agreement adequate benchmark prices should relate or refer to prevailing market conditions in the country of provision in the first instance or in the absence of such conditions, any out-of-country benchmark should be adjusted appropriately so as to avoid the countervailing of comparative advantages. It further claimed that on the basis of paragraph 15(b) of the China – WTO Accession Protocol, when prevailing terms and conditions in China are not available as appropriate benchmarks, the importing WTO Member should adjust such prevailing terms and conditions, where practicable, before considering the use of terms and conditions prevailing outside China. Whilst the Commission agrees with much of the legal theory behind this claim, it also concluded that there is no functioning market for land in China and for this reason external benchmark for land prices was used. The need for an out-of-country benchmark was explained and justified in recitals (109), (118) and (120)-(121) above. As it was found that the LUR market in China is distorted it was not possible to apply an in-country benchmark as suggested by the Zhejiang Huadong and there is no basis on which to adjust such a benchmark. In addition, from the information submitted in relation to the benchmark suggested by the Zhejiang Huadong (Xiaoshan of Zhejiang Province) it is unclear and not verifiable whether the price information suggested is limited to allegedly "non-favoured" industries' LUR prices.
- (447) Zhejiang Huadong claimed that the choice of Taiwan as a benchmark is not reasonable and objective for the following reasons: 1) Zhejiang Province was not a developed-high GDP region similar to Taiwan at the time the LURs were bought; 2) the Commission's selection of actual land prices in Taiwan was based on offers for sale of industrial land and not on the basis of actual prices for leasehold for industrial use which is similar to LUR assigned to Zhejiang Huadong.

This claim has to be rejected. With regard to 1) as stated above in recital (436) the Commission looked in detail in the various indicators and compared Taiwan and the PRC as a whole as well as individual Chinese provinces concerned. After such analyses the Commission considers Taiwan as an appropriate benchmark consistent with the basic Regulation and the WTO rules. With regard to 2) it is noted that the Commission had used the best information which was reasonably available to it.

- (448) Zhejiang Huadong pointed to an arithmetical mistake in the calculation of the inflation rates used in the adjustment for inflation of the benchmark. The Commission took this claim into account and revised the calculation concerned.
- (449) Zhejiang Huadong claimed that there is no specificity in its acquisition of LURs since all companies in China are treated the same way under the legislation. Zhejiang Huadong claimed also that the Commission did not adequately address the specificity issue and that there was no reasoning in the definitive disclosure regarding the grounds on which the price paid by Zhejiang Huadong results in a benefit.

This claim had to be rejected. The basis for the Commission's specificity findings is the fact that all companies which do not comply with industrial policies set by the state are excluded from the provision of LUR, prices are often arbitrarily set by the authorities and government practices are unclear and non-transparent. The Commission has made the finding that the provision of LUR is limited to companies which comply

with the industrial policies set by the GOC in the Order No 35 of the NDRC (recital (116) above).

3.4.2.2. Provision of CRS for less than adequate remuneration

- (450) Zhejiang Huadong claimed that for the sake of reasonability and objectiveness and for reasons of consistency the Commission should have retrieved steel price data from the same data source (i.e. Steel Business Bulletin (SBB) for all the regions represented in the benchmark basket when constructing the benchmark. It claimed also that SBB provides a variety of markets for CRS prices other than those selected by the Commission and suggested to add Mexico and Argentina as these countries represent the emerging market of steel in the American continent. This claim had to be rejected as in its construction of the benchmark the Commission used price data that reflect the actual market situation in each country or region as accurately as possible. As for the prices of Europe (the majority of which are EU countries) the Commission considered that it had more detailed pricing data available from MEPS. If it had possessed MEPS data for the other countries selected, it would have used them. Concerning the inclusion of prices in Mexico and Argentina, it is noted that these are relatively small markets in comparison with China as well as with the other countries/regions in the benchmark basket used by the Commission.

The Commission revised its subsidy margin calculation for this scheme following a correction to the constructed benchmark prices for HRS and CRS. The correction concerned the steel prices for Brazil used in the benchmark construction which erroneously included taxes in the calculations disclosed to parties.

- (451) Zhejiang Huadong also claimed that the Commission's conclusion on specificity is unsubstantiated (no positive evidence) and unfounded, hence the alleged subsidy by provision of CRS for LTAR is not countervailable. Zhejiang Huadong submitted that the benefit, if exists, of provision of HRS and CRS for LTAR is not limited to certain enterprises or sectors, but universally conferred to all potential buyers and consumers from all economic sectors.

This claim had to be rejected. GOC made the same comment and the Commission addresses it in recital (415) above. The "potential" buyers are by definition limited to certain enterprises.

3.4.3. Comments of the complainant

3.4.3.1. Provision of water and electricity for less than adequate remuneration

- (452) Complainant claimed that, because of the distortions and state influence in the Chinese water and electricity markets, the Commission should have used international benchmarks and calculate the benefits for these schemes in accordance with Article 6(d)(ii) of the basic Regulation.

This claim had to be rejected. In this particular case, the evidence on the record did not enable the Commission to find that water and electricity markets are distorted to an extent which would justify recourse to an out-of-country benchmark.

3.4.3.2. Certain Tax programmes concerning Foreign invested enterprises (FIEs)

- (453) The complainant claimed that the Commission should have quantified the amount of subsidy for two tax programmes related to FIEs, i.e. Income tax credit for the purchase of domestically produced equipment and Two free, Three half-tax exemption for the

productive FIEs, given the lack of cooperation from the GOC and the fact that GOC should have provided evidence that no benefits for these programmes were granted to OCS producers in the IP.

This claim had to be rejected. As already explained in recitals 282 above, for the purpose of reducing the administrative burden for all the parties concerned and taking in consideration the particular situation in relation to the pending termination of these schemes, the Commission has decided not to countervail them.

3.5. Amount of countervailable subsidies

(454) The amounts of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed ad valorem, for the investigated companies are set out in the table below:

Exporting producer	DEFINITIVE SUBSIDY MARGIN
HUADONG GROUP	23,8%
PANHUA GROUP	29,7%
UNION STEEL CHINA	26,8%
COOPERATING COMPANIES NOT SAMPLED	26,8%
ALL OTHER COMPANIES	44,7%

(455) In accordance with Article 15(3) of the basic Regulation, the total subsidy margin for the cooperating companies not included in the sample is calculated on the basis of the total weighted average subsidy margin established for the cooperating companies in the sample, i.e. 26,8%.

(456) With regard to all other exporters in the People's Republic of China, the Commission first established the level of cooperation. The comparison between Eurostat import data and the volume of exports to the Union of the product concerned reported for the investigation period by the cooperating companies shows that cooperation of exporting producers in the People's Republic of China was low, namely 58%. Given this low level of cooperation, the total subsidy rate for all non-cooperating companies is set at the level of the total of the subsidy rates as established for all non-cooperating companies for all schemes investigated, i.e. 44,7%.

4. INJURY

4.1. Union production and Union industry

(457) All available information concerning Union producers, including information provided in the complaint, data collected from Union producers before and after the initiation of the investigation, and the verified questionnaire responses of the sampled Union producers, was used in order to establish the total Union production for the period considered.

(458) During the IP, OCS was manufactured by 22 producers in the Union. On the basis referred to in the previous recital, the total Union production was estimated to be around 4 018 310 tonnes during the IP. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 9(1) of the basic Regulation and will be hereafter referred to as the ‘Union industry’.

4.2. Determination of the relevant Union market

(459) It was found during the investigation that a substantial part of the sampled Union producers' production was destined for captive use, i.e. often simply transferred (without invoice) and/or delivered at transfer prices within the same company or group of companies for further downstream processing.

(460) In order to establish whether or not the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, it was examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.

(461) In order to provide as complete a picture as possible of the situation of the Union industry, data have been obtained and analysed for the entire OCS activity and it was subsequently determined whether the production was destined for captive use or for the free market.

(462) For sales volume and sales prices on the Union market and market share, it was found that a meaningful analysis and evaluation of these indicators had to focus on the situation prevailing on the free market.

(463) However the other economic indicators could only reasonably be examined by referring to the whole activity, thereby including captive use and sales. Production, capacity, capacity utilisation, investments, stocks, employment, productivity, wages and ability to raise capital depend upon the whole activity, whether the production is captive or sold on the free market.

4.3. Union consumption

(464) The like product is sold by the Union industry to unrelated customers as well as sold/transferred to related companies for further downstream processing, e.g. in steel service centres.

(465) In calculating the apparent Union consumption of OCS, the institutions added the volume of total imports of OCS into the Union as reported by Eurostat and the volume of sales and captive use of the like product in the Union produced by the Union industry as reported in the complaint and as verified during the verification visits for the sampled Union producers.

(466) Eurostat import data is however based on full CN codes, and it is clear that for a part of these CN codes the import is not the product concerned.

(467) On this basis, the total Union consumption developed as follows:

	2008	2009	2010	IP
Consumption (in tonnes)	5 197 716	3 879 380	4 548 528	4 811 310
<i>Index (2008=100)</i>	<i>100</i>	<i>75</i>	<i>88</i>	<i>93</i>

(468) Total consumption on the EU market shrunk by 7% over the period considered. Between 2008 and 2009 there was a decrease of about 25% mainly as a result of the global negative effects of the economic crisis, especially on the construction industry. After that the consumption started to recover and increased in total by 24% from 2009 to the IP but it was still below the initial level of 2008.

4.4. Imports from the country concerned and market share

(469) Imports into the Union from the PRC developed as follows during the period considered:

	2008	2009	2010	IP
Volume of imports from the PRC (tonnes)	472 988	150 497	464 582	702 452
<i>Index (2008=100)</i>	100	32	98	149
Market share	9.1%	3.9%	10.2%	14.6%
<i>Index (2008=100)</i>	100	43	112	160

Source: Eurostat

(470) Despite the fall in consumption, the volume of imports from the PRC increased significantly by 49% over the period considered. Due to the negative effects of the economic crisis, the volume of imports from the PRC sharply decreased in 2009. However, the imports from the PRC started to recover at an extremely fast pace, so that the increase from 2009 to the IP was a staggering 367%.

(471) Similarly, the market share held by those imports increased by 60% over the period considered. Although it dropped from 2008 to 2009 by more than half, it showed an impressive increasing trend from 2009 to the IP and rose by 275%.

4.4.1. Prices of imports and price undercutting

Imports from the PRC	2008	2009	2010	IP
Average price in EUR/tonne	875	728	768	801
<i>Index (2008=100)</i>	100	83	88	91

Source: Eurostat

(472) The average import price from the PRC decreased by 9% during the period considered. Between 2008 and 2009, it decreased significantly by 17%, then it increased by five percentage points between 2009 and 2010 and by further three percentage points in the IP.

(473) The import prices from the PRC consistently remained below the sales prices of the Union industry during the whole period considered. As highlighted in the table above, while in 2009 during the height of the economic crisis, even the price cut of 17% could not help the Chinese imports to keep the market share in a situation of suddenly shrinking consumption and significant market slowdown, continuous undercutting in the subsequent years explains the steady impressive increase in the market share held by the imports from the PRC between 2009 and the IP.

- (474) In order to determine price undercutting during the IP, the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices per product type of the imports from the cooperating Chinese producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for post-importation costs.
- (475) The post importation costs referred to in the recital above were calculated based on verified data from two unrelated importers of the product concerned.
- (476) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison, when expressed as a percentage of the sampled Union producers' turnover during the IP, showed weighted average undercutting margins of up to 20.2% by the cooperating Chinese exporting producers.
- (477) Following disclosure one exporting producer requested further information on the calculation of the price undercutting, where there was no exact match between the product type exported from the PRC and the product type sold on the Union market by the Union industry. They also requested information as to whether an adjustment had been made for physical differences where no exact match had been found.
- (478) Where no exact match existed between the exported product type and the product type sold by the Union industry, the Commission compared the exported product type to the closest resembling product type sold by the Union industry. In these cases a comparison was made to the closely resembling product type where the only difference was the substrate thickness.
- (479) Where there was more than one closely resembling product type, the Commission compared the exported product type to the cheaper product type sold on the Union market, regardless of whether this cheaper product type had a thicker, or thinner, substrate. Therefore, no adjustment for physical differences was deemed necessary

5. ECONOMIC SITUATION OF THE UNION INDUSTRY

5.1. Preliminary remarks

- (480) Pursuant to Article 8(4) of the basic Regulation, the institutions examined all relevant economic factors and indices having a bearing on the state of the Union industry.
- (481) The data provided by the complainant for all producers of OCS in the Union, as cross-checked with other available sources and verified data of the sampled Union producers, was used to establish macroeconomic indicators such as Union industry production, production capacity, capacity utilisation, sales volume, market share, growth, captive sales, employment and productivity.
- (482) The data provided and verified of the six sampled EU producers was used in order to establish microeconomic indicators such as unit sales price, unit cost of production, profitability, cash flow, investments, return on investments, ability to raise capital, stocks and labour costs.

5.2. Data relating to the Union industry as a whole

5.2.1. Production, production capacity and capacity utilisation

- (483) All available information concerning the Union industry, including information provided in the complaint, data collected from Union producers before and after the initiation of the investigation, and the verified questionnaire responses of the sampled

Union producers, was used in order to establish the total Union production for the period considered.

	2008	2009	2010	IP
Production volume (tonnes)	4 447 780	3 514 965	3 992 209	4 018 310
<i>Index (2008=100)</i>	100	79	90	90
Production capacity (tonnes)	6 007 536	6 128 301	6 099 587	5 923 311
<i>Index (2008=100)</i>	100	102	102	99
Capacity utilisation	74%	57%	65%	68%
<i>Index (2008=100)</i>	100	77	88	92

Source: Complaint, questionnaire replies

- (484) The table above shows that production decreased by 10% over the period considered. In line with a decrease in demand, production decreased sharply in 2009, after which it partially recovered in 2010. Even though consumption increased in the IP, production volume remained more or less at the same level as in 2010.
- (485) Production capacity remained stable over the period considered. Capacity utilisation followed the trend of production and declined by 8% during the period considered.

5.2.2. Sales volume, market share and growth

	2008	2009	2010	IP
Sales volume (tonnes)	2 951 468	2 280 304	2 643 923	2 592 540
<i>Index (2008=100)</i>	100	77	90	88
Market share (tonnes)	56.8%	58.8%	58.1%	53.9%
<i>Index (2008=100)</i>	100	104	102	95

Source: Complaint, questionnaire replies

- (486) In 2009 the Union industry sales volume to unrelated customers decreased sharply by 23%. In 2010, sales volume increased by thirteen percentage points, but then dropped by two percentage points in the IP.
- (487) The Union industry's market share decreased by 2.9 percentage points over the period considered. After an initial increase in market share in 2009, the Union industry saw its share decrease in 2010 and the IP with the result that its share of the market was 5 percentage points less in the IP than in 2009. This occurred against the background of an increase of more than 24% in consumption from 2009 to the end of the IP. It was thus unable to benefit from the growing consumption and to regain the sales volumes and some of the market share previously lost.
- (488) While Union consumption declined by 7% during the period considered and the Union industry sales volume to unrelated parties decreased by 12%, the market share of the Union industry decreased by 2.9 percentage points from 56.8% in 2008 to 53.9% in the IP.

5.2.3. Employment and productivity

	2008	2009	2010	IP
Employment (in FTE)	7 088	6 470	6 097	6 046
<i>Index (2008=100)</i>	100	91	86	85
Productivity (tonnes/FTE)	627	543	655	665
<i>Index (2008=100)</i>	100	87	104	106

Source: Complaint, questionnaire replies, Eurofer

(489) Employment in the Union industry followed a progressively declining trend. Thus, the total number of employees measured in full time equivalents (FTE) in the industry decreased by 15% over the period considered and reached its lowest level in the IP. However, the productivity increased by 6% over the period considered, which shows that the industry was trying to rationalise their production costs.

5.2.4. Captive use and captive sales

	2008	2009	2010	IP
Captive use and captive sales (tonnes)	1 135 987	914 412	986 386	970 757
<i>Index (2008=100)</i>	100	80	87	85
Market share (%)	22%	24%	22%	20%
<i>Index (2008=100)</i>	100	108	99	92

Source: Complaint and verified questionnaire replies of the sampled producers

(490) As indicated in recital (459), there is a significant market for OCS in the EU that is formed by the downstream use of OCS by the Union industry.

(491) It was found that the captive use and captive sales were destined for further transformation by the companies themselves or their related companies dealing mainly with construction material business, i.e. being end-users of OCS.

(492) On the basis identified above, it was established that the captive use and captive sales of the Union industry constituted 24% of the total production volume in the IP. Over the period considered, the captive use and related sales volumes decreased by 15% and their market share dropped by 8%.

(493) The investigation found that there was no material difference between captive use and captive sales in terms of end use of the product. Captive use was reported by companies where the downstream production was taking place in the same legal entity, however, captive sales were the sales to other related legal entities with an invoice. Furthermore, the pricing method in both captive use and sales to related parties was similar, i.e. a fair value ("cost plus" method) of the product was charged to both the related companies as well as to internal downstream production units of the sampled companies.

(494) The average value per tonne remained stable during the period considered and was 3% lower than the sales price to unrelated customers in the IP of the sampled Union

producers. This price difference was not considered significant and the trend in the price of captive sales follows the trend in the price to unrelated customers.

	2008	2009	2010	IP
Captive use and captive sales (EUR/tonne)	962	802	901	965
<i>Index (2008=100)</i>	<i>100</i>	<i>83</i>	<i>94</i>	<i>100</i>

Source: Verified questionnaire replies of the sampled producers

(495) Considering that most of the captive sales and captive use were destined for the downstream construction material business of the Union producers, those sales and captive use were also indirectly exposed to competition from other market players including the subsidised imports from the PRC. The internal demand of the downstream production depended on the chance to sell the downstream products on the free market which was not affected by subsidised imports of OCS. Thus, it can be concluded that the shrinking volumes and market share during the period considered were due to competition from subsidised imports from the PRC.

5.3. Data relating to the sampled Union producers

5.3.1. Average unit sales prices in the Union and cost of production

	2008	2009	2010	IP
Unit price in EU to unrelated customers (EUR/tonne)	1 023	805	911	994
<i>Index (2008=100)</i>	<i>100</i>	<i>79</i>	<i>89</i>	<i>97</i>
Unit cost of production (EUR/tonne)	925	884	893	978
<i>Index (2008=100)</i>	<i>100</i>	<i>95</i>	<i>97</i>	<i>106</i>

Source: Verified questionnaire replies of the sampled producers

(496) The average sales prices of the sampled Union producers to unrelated customers in the EU decreased by 3% over the period considered. The biggest drop of 21% occurred in 2009 in line with the decrease in consumption. In the period from 2009 to the IP, in line with an increasing consumption and sales volumes, prices recovered by 23% but did not reach the level of 2008.

(497) In parallel, the average costs to produce and sell the like product increased by 6% over the period considered which was caused by an increase of the raw material cost.

(498) After the drop in unit price to unrelated customers by 21% in 2009, the unit price started to increase. In 2010 and during the IP, compared to 2009, the Union industry experienced an increase in costs and could only moderately increase the prices to cover them, enough just to keep the profitability on the same low level for 2010 and the IP. However, this resulted in a further loss in market share since the Chinese imports prices were constantly undercutting the Union industry prices.

5.3.2. Profitability, cash flow, investments, return on investment and ability to raise capital

	2008	2009	2010	IP
Profitability of sales in the EU to unrelated customers (% of sales turnover)	6.7%	-9.3%	2.8%	2.6%
Index (2008=100)	100	-138	41	39
Cash flow (EUR)	328 190 880	211 298 356	152 030 083	204 650 414
<i>Index (2008=100)</i>	100	64	46	62
Investments (EUR)	55 717 957	4 537 128	12 530 132	15 302 264
<i>Index (2008=100)</i>	100	8	22	27
Return on investments	13.8%	-13.9%	5.9%	6%
<i>Index (2008=100)</i>	100	-101	43	44

Source: Verified questionnaire replies of the sampled producers

- (499) The profitability of the Union industry was established by expressing the pre-tax net profit of the sales of the like product to unrelated customers as a percentage of the turnover of these sales. In 2009 the profitability of the Union industry decreased dramatically and resulted in a loss of 9.3%. From 2010 it started to recover but the increasing costs of production prevented from achieving the level considered healthy and sustainable for the industry (6.7%). Over the whole period considered, profitability dropped by 61%.
- (500) The trend in cash flow followed to some extent the negative trend in profitability. The lowest level was achieved in 2010. Similarly, the return on investment decreased by 56% from 13.8 % in 2008 to 6% in the IP.
- (501) The evolution of profitability, cash flow and return on investment during the period considered limited the ability of the Union industry to invest in its activities and undermined its development. The Union industry managed to make substantial investment in the beginning of the period considered, however, thereafter the investments dropped sharply in 2009 and overall decreased by 73% over the period considered.
- (502) Given the nature of the Union industry, which is to some extent made up of large multinational integrated steel companies, the ability of these companies to raise capital was not affected by the poor financial performance of the OCS sector.

5.3.3. Stocks

	2008	2009	2010	IP
Closing stocks (tonnes)	116 852	97 533	124 848	130 593
<i>Index (2008=100)</i>	100	83	107	112

Source: Verified questionnaire replies of the sampled producers

- (503) For the six sampled Union producers, stocks represented around 8% of the production volume in the IP. The closing stock level increased by 12% during the period

considered. Although, it should be noted that stocks are not an important indicator for the industry as the production mainly takes place on order, the main increase in stocks took place from 2009 to the IP and coincided with the surge in the subsidised imports from the PRC.

5.3.4. Employment, wages and productivity

Average labour costs per employee (EUR, sampled EU producers)	60,959	57,892	58,637	62,347
<i>Index (2008=100)</i>	100	95	96	102

(504) The average labour costs of the sampled Union producers rose by only 2% over the period considered which is lower than the inflation rate. The investigation showed that the sampled producers made significant cuts, especially in general and administrative costs, and therefore made efforts to be more efficient.

5.3.5. Effects of past dumping or subsidisation

(505) Since this is the first anti-subsidy proceeding regarding the product concerned, no data are available to assess effects of possible past dumping or subsidisation.

5.4. Magnitude of the actual subsidy margin

(506) All margins established and specified above in the subsidy section are significantly above the *de minimis* level. Given the volume and the prices of subsidised imports from the PRC the impact on the EU market of the actual margin of subsidy cannot be considered negligible.

5.5. Conclusion on injury

(507) The investigation showed that all injury indicators (except productivity) deteriorated or did not develop in line with consumption during the period considered.

(508) Over the period considered, in the context of decreasing consumption, the volume of imports from the PRC increased significantly. At the same time, the Union industry sales volume decreased overall by 12% and its market share dropped from 56.8% in 2008 to 53.9% in the IP. Although consumption recovered by 24%, from 2009 to the IP, after the year of economic crisis affecting demand, the Union industry market share was decreasing. The Union industry was unable to regain the lost market share in view of the significant expansion of the subsidised imports from the PRC in the EU market. The low-priced subsidised imports increased over the period considered, constantly undercutting the prices of the Union industry.

(509) Furthermore, the injury indicators related to the financial performance of the Union industry, such as cash flow and profitability were seriously affected. This means that the ability of the Union industry to raise capital and to invest was undermined.

(510) In the light of the foregoing, it was concluded that the Union industry suffered material injury within the meaning of Article 8(5) of the basic Regulation.

6. CAUSATION

6.1. Introduction

(511) In accordance with Article 8(5) and 8(6) of the basic Regulation, it was examined whether the subsidised imports originating in the PRC have caused injury to the Union industry to a degree that enables it to be classified as material. Known factors other

than the subsidised imports, which could at the same time have injured the Union industry, were examined to ensure that any injury caused by those other factors was not attributed to the subsidised imports.

6.2. Effect of the subsidised imports

- (512) The investigation showed that the Union consumption decreased by 7% over the period considered, while the volume of subsidised imports from the PRC increased by about 49%, their market share also increased by 60% from 9.1% in 2008 to 14.6% in the IP. At the same time, the sales volume of the Union industry to unrelated parties decreased by 12% and market share of those sales dropped by 2.9% from 56.8% in 2008 to 53.9% in the IP.
- (513) While the imports from the PRC were also affected by the economic crisis and dropped by 68% from 2008 to 2009, they recovered from 2009 to the IP at a very fast pace increasing by 367% at the end of the IP, even though Union consumption only increased by 24% during this period. By lowering the unit price by 9% compared to 2008 and undercutting the Union industry by up to 20.2% during the IP, Chinese imports increased their market share from 2008 to the IP by 60% up to 14.6%.
- (514) At the same time, from 2008 to the IP the Union producers' sales volumes to unrelated parties overall dropped by 12%. At the time of market recovery, from 2009 to the IP, the Union industry could raise their sales volumes to unrelated parties by only 13% but lost a market share of 8% thus benefiting to a limited extent from the increased consumption. Chinese imports benefited most from the recovering consumption leaving other market players far behind.
- (515) The average import prices from the PRC dropped by 9% over the period considered. Although on a rising trend after the sharp drop in 2009, from 2009 to the IP, they remained constantly below the levels charged by the Union industry. The unit price to unrelated customers in the EU decreased by only 3%, showing some resistance to price pressure exerted by the Chinese imports. However, these prices were obviously sustained at a cost of lower sales volumes and decreased profitability on those sales as profitability dropped by 61% from 6.7% in 2008 to 2.6% in the IP.
- (516) Based on the above, it is concluded that the surge of subsidised imports from the PRC at prices constantly undercutting those of the Union industry have had a determining role in the material injury suffered by the Union industry, which has prevented the Union industry to fully benefit from the recovering Union consumption.

6.3. Effect of other factors

6.3.1. Imports from third countries

Country		2008	2009	2010	IP
South Korea	Volume (tonnes)	228 123	226 568	173 935	237 164
	<i>Index (2008=100)</i>	100	99	76	104
	Market share (%)	4.4%	5.8%	3.8%	4.9%
	<i>Index (2008=100)</i>	100	133	87	112
	Av. price	901	727	846	903

	<i>Index (2008=100)</i>	100	81	94	100
India	Volume (tonnes)	159 999	149 138	155 384	141 391
	<i>Index (2008=100)</i>	100	93	97	88
	Market share (%)	3.1%	3.8%	3.4%	2.9%
	<i>Index (2008=100)</i>	100	125	111	95
	Av. price	932	667	773	824
	<i>Index (2008=100)</i>	100	72	83	88
Other countries	Volume (tonnes)	249 151	158 461	124 319	167 007
	<i>Index (2008=100)</i>	100	64	50	67
	Market share (%)	4.8%	4.1%	2.7%	3.5%
	<i>Index (2008=100)</i>	100	85	57	72
	Av. price	951	809	924	955
	<i>Index (2008=100)</i>	100	85	97	100
Total of all third countries except the PRC	Volume (tonnes)	637 274	534 167	453 637	545 562
	<i>Index (2008=100)</i>	100	84	71	86
	Market share (%)	12.3%	13.8%	10.0%	11.3%
	<i>Index (2008=100)</i>	100	112	81	92
	Av. price	929	735	842	898
	<i>Index (2008=100)</i>	100	79	91	97

Source: Eurostat

- (517) While imports from the PRC constituted 56% of all imports in the EU during the IP, other important sources of imports were from the Republic of India ('India') (11%) and South Korea (19%). Unlike imports from the PRC, imports from India, although their average price dropped sharply by 12%, overall decreased by 12% over the period considered and lost market share by 5%. Imports from South Korea increased by only 4% with the average price remaining on the same level as in 2008. The market share of imports from India was 2.9% in the IP, while imports from South Korea held a share of 4.9%.
- (518) Other imports, representing 14% of the total imports, decreased by 33% and their average price stayed at the same level as in 2008.
- (519) Although the average price of all other imports was below the price level of the Union industry, the effect of these imports, if any, can possibly be only marginal. Firstly, is the Commission received no evidence that the imports from other sources were

unfairly traded. Secondly, in contrast to the Chinese imports, the overall price level from main sources of other imports was more stable over the whole period considered, and thus shows that the Union industry can successfully compete in the market segments with those imports. Thirdly, the imports from other countries have generally declined over the period considered and still remain at a low level, both overall and for main exporting countries individually. Moreover, the dropping market share of other imports confirms that those imports could not have caused injury to the Union industry.

6.3.2. Export performance of the Union industry

	2008	2009	2010	IP
Exports, Eurostat (tonnes)	669 790	612 204	580 477	605 760
<i>Index (2008=100)</i>	<i>100</i>	<i>91</i>	<i>87</i>	<i>90</i>
Average price (EUR/tonne)	1 068	937	995	1 092
<i>Index (2008=100)</i>	<i>100</i>	<i>88</i>	<i>93</i>	<i>102</i>
Exports by sampled Union producers	53 542	46 516	48 102	46 228
<i>Index (2008=100)</i>	<i>100</i>	<i>87</i>	<i>90</i>	<i>86</i>
Average selling price (EUR/tonne)	1 086	826	984	1 132
<i>Index (2008=100)</i>	<i>100</i>	<i>76</i>	<i>91</i>	<i>104</i>

Source: Eurostat and verified questionnaire replies

- (520) The total exports of OCS by the Union industry to third countries according to Eurostat decreased by 10% over the period considered. However, the average price has been relatively high and increased by 2% over the period considered. Exports represented 15% of the total EU production and as such helped the Union industry to achieve economies of scales and reduce overall costs of production. Hence, it can be concluded that the export activity of the Union industry could not be a potential cause of the material injury.
- (521) This general picture is mirrored by the situation in exports to unrelated customers in third countries by the sampled Union producers. They decreased by 14% over the period considered, however, the export price per unit has been constantly higher (on average by 2 to 14% depending on year) than the price in the EU.

6.3.3. Imports from the PRC by the complainants

- (522) During the investigation and following the final disclosure, it was claimed that the complainants (through their related companies) were engaged in importing the product concerned from the PRC themselves and that those imports allegedly constituted 20 to 40% of the total imports from the PRC. However, no evidence was provided to support this allegation. Having investigated these allegations, by examining the verified data from the sampled Union producers, it was found that they imported only about 10 000 tonnes during the IP, which was largely in line with the data in the complaint. About a similar volume, not disclosed in accordance with Article 29 of the

basic Regulation, was found to be imported by related companies of the sampled Union producers. These imports together accounted for only about 2-3% of total imports from the PRC. Consequently, it cannot be concluded that the complainants were importing from the PRC in such quantities and in such a pattern as to put in question their own status as Union producers according to Article 9(1)(a) of the basic Regulation, or to cause injury to themselves. Therefore, the argument is rejected.

6.3.4. Captive use and captive sales

- (523) It has been alleged by some interested parties that the injury to the Union industry was caused from its engagement in the downstream business of producing construction materials (e.g. sandwich panels, trapezoidal sheets etc.) either directly or through related companies within the groups. Specifically, it was claimed that the Union industry made OCS available to its own downstream business at lower prices than to unrelated companies, thus "subsidising" them within the group and enabling them to undercut their competitors in the downstream segment.
- (524) As shown above, the average value of captive use and captive sales per tonne was only 3% lower than the sales price to unrelated customers in the IP. The investigation showed that the captive use and captive sales were most likely themselves indirectly affected by the unfair competition from subsidised imports. Should there have been any advantage for the downstream business as alleged, it would have been reflected in the comparison between captive sales prices and unrelated sales prices. Therefore, this argument is rejected.
- (525) Following the final disclosure CISA again claimed that the Union industry was making OCS available to its related downstream businesses at a "subsidised" price, thereby undercutting their competitors in the downstream segment. However, no evidence was provided to change the Commission's conclusion in recital (524), i.e. that the price difference between related and unrelated sales was small (2%) and that this was not a case of self-inflicted injury.
- (526) CISA also challenged the data on the cost of production of OCS and, in extension, the price of OCS to related parties. Given the sales price of hot-dipped galvanised coils, a raw material in the manufacture of OCS, they allege that the cost of production of OCS in the investigation period could not exceed 900 EUR/tonne.
- (527) Firstly, it was not clear to which extend all costs such as SG&A and finance costs were included in the total cost to which CISA was referring to. Secondly, The Commission verified the cost of production of OCS in all of the sampled Union producers and is satisfied that the full cost of production included raw materials, processing, coating, SG&A, finance costs etc.
- (528) CISA then claimed that the sale of OCS to related parties is made at a loss and is therefore a cause of injury to the Union industry. This is based on a comparison of the total cost of production (978 EUR/tonne) versus the average price of related sale (965 EUR/tonne).
- (529) Whereas it is correct that a simple mathematical comparison would suggest that related sales were made at a loss, this would assume that the Union industry would incur the same level of SG&A and other sales overheads on their captive sales as on their unrelated ones. As stated in recital (493), sales to related parties were made on a 'cost plus' basis and therefore the Union Industry was recovering their costs on these sales.

6.3.5. Economic crisis

- (530) The economic crisis and its effect on the construction business at least partially explain the contraction of demand and price pressure during the period considered. As mentioned above, in 2009 the consumption shrunk by 25%. However, as of 2010, the market started recovering and, between 2009 and the end of the IP, consumption increased by 24%.
- (531) However, the injury and causality analysis has separated the market breakdown of 2009 and the subsequent recovery from 2009 to the IP. It has been clearly demonstrated in the injury and causality analysis that the imports from the PRC took full advantage of the recovering consumption and in addition constantly undercut the Union industry's prices, and thus turning the possibility of equal chance to all players to recover from the drop, into a continuous battle for survival.
- (532) After the deadline for comments to the final disclosure an interested party noted the announced closure of a plant in Belgium, and that force majeure was causing difficulties to normal production and shipment from other facilities in Belgium. The interested party alleged that this shows the lack of security of supply of OCS in the EU and was a reason to allow importers and users to freely source their OCS from the EU and from China.
- (533) These arguments are rejected. Given that capacity utilisation in the EU is low, the issue is not one of problem of supply as the Union industry has adequate available capacity. In any case the facilities being closed in Belgium did not manufacture OCS. Security of supply is of course important, but the proposed duties in this case are not designed to stop supply of OCS from China, merely to prevent that supply being dumped onto the EU market.

6.3.6. Structural overcapacity

- (534) It has been claimed by some interested parties that the cause of injury to the Union industry, which mostly are vertically integrated steel producers, has not been the imports from the PRC but that it was due to structural problems of the EU steel industry such as overcapacity. It was also argued that the consolidation of the steel industry that took place before the period considered had led to overcapacity and that any injury suffered was a consequence of too many production facilities.
- (535) It is the case that production of the OCS is capital intensive and the industry has relatively high fixed costs. The consolidation of the steel industry - that took place before the start of the period considered - however did not result in overcapacity. After a small increase in installed capacity in 2009, the industry slightly decreased its capacity in 2010 and again in the IP. Installed capacity during the IP was lower than total Union consumption and if demand in the IP had recovered to the level of 2008 and the Union industry had been able to take advantage of that increased demand, capacity utilisation would have been around 74%.
- (536) The negative effect of overcapacity can only be attributed to a minimal extent to the EU producers of OCS. First, the investigation showed that the Union industry has obviously been taking steps to sustain its efficiency, as productivity increased by 6% for the whole industry. Second, continued investment in the production lines and flexibility in their use for producing other products helped to achieve economies of scale and reduced fixed costs. Thus, with capacity utilisation of the sampled companies going down by 18% over the period considered, the average costs of production increased by only 6%, and that including the increase of raw material costs.

Thus, it cannot be concluded that the overcapacity would break the causal link. This argument is therefore rejected.

6.4. Conclusion on causation

- (537) It has been demonstrated that there was a substantial increase in the volume and market share of the subsidised imports originating in the PRC in the period considered, especially from 2009 to the IP. It was also found that these imports were constantly undercutting the prices charged by the Union industry on the Union market and in particular during the IP.
- (538) This increase in volume and market share of the low priced subsidised imports from the PRC coincided with the negative development in the economic situation of the Union industry. This situation worsened in the IP, when, despite recovering consumption, the Union industry was unable to regain its lost market share and profitability. Other financial indicators such as return on investments stagnated at the level of 2010, and employment reached its lowest level.
- (539) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors are not such as to break the causal link established between the subsidised imports from the PRC and the injury suffered by the Union industry.
- (540) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised exports, it was concluded that the subsidised imports from the PRC have caused material injury to the Union industry within the meaning of Article 8(6) of the basic Regulation.

7. UNION INTEREST

7.1. Preliminary remarks

- (541) In accordance with Article 31 of the basic Regulation, the institutions examined whether, despite the above findings, compelling reasons existed for concluding that it is not in the Union interest to adopt countervailing measures. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users of the product concerned.

7.2. Interest of Union industry

- (542) The Union industry as a whole is composed of 22 known producers representing all of the Union OCS production. The producers are located in different Member States of the Union, employing directly over 5 400 people in relation to the like product.
- (543) None of the producers opposed the initiation of the investigation. As shown above in the macroeconomic indicators, the whole EU industry experienced a deterioration of their situation and was negatively affected by the subsidised imports.
- (544) The Union industry has suffered material injury caused by the subsidised imports from the PRC. All injury indicators showed a negative trend during the period considered. In particular, injury indicators related to the financial performance of the Union producers, such as profitability and return on investments, were seriously affected. In the absence of measures, a further deterioration in the Union industry's economic situation appears very likely.
- (545) It is expected that the imposition of countervailing duties will restore fair trade conditions on the Union market, allowing the Union industry to align the prices of

OCS to reflect the costs of the various components and the market conditions. It can also be expected that the imposition of countervailing measures would enable the Union industry to regain at least part of the market share lost during the period considered, with a positive impact on its profitability and overall financial situation.

- (546) Should measures not be imposed, further losses in market share could be expected and the Union industry's profitability would deteriorate. This would be unsustainable in the medium to long-term. It is also likely that some individual producers would have to close down their production facilities, as they have been lossmaking over the period considered. In view of the losses incurred and the high level of investment in production made at the beginning of the period considered, it can be expected that most Union producers would be unable to recover their investments, should measures not be imposed.
- (547) It is therefore concluded that the imposition of countervailing duties would be in the interest of the Union industry.

7.3. Interest of users and importers

- (548) As mentioned above in recital (14) five importers came forward but only two replied to the questionnaire. Out of about 100 users listed in the complaint, 19 came forward expressing interest in the proceeding. Subsequently, ten companies provided questionnaire replies.
- (549) The most active users and importers have made joint written submissions and several hearings were held in the course of the investigation. Their main arguments regarding imposition of measures are analysed below.
- (550) Following the final disclosure, comments were received from importers and other interested parties. However, no new elements other than the ones below were provided.

7.3.1. Competition on the EU market

- (551) Users and importers alleged that the EU market of OCS was not sufficiently competitive and that imports from the PRC were necessary to give more bargaining power to companies importing and using OCS. They also suggested that the Union industry was engaged in oligopolistic arrangements to control the market. The Union producers were competing on the same markets and often selling to the same customers, or to the construction companies of each other. Considering that no evidence beyond anecdotal complaints about difficulties in price negotiations was provided and that apart from the five groups of complaining Union producers, 11 other producers of OCS operate in the EU, among which some are very large, and that there is a variety of other import sources, these claims were rejected.

7.3.2. Shortage of supply

- (552) Users and importers also alleged that imposition of measures on Chinese imports would create a shortage of OCS on the EU market. However, considering the wide variety of supply sources described above, as well as the free production capacity of the Union industry, it is not considered likely that such shortage could take place. Therefore, the argument is rejected.

7.3.3. Conclusion on the interests of users and importers

- (553) The ten cooperating users represented 7% of total imports from the PRC during the IP. The investigation showed that all users maintain various sources of supply. On

average, purchases from the PRC constituted around 15% of their total purchases of the OCS products; moreover, the largest volumes were found to be sourced from the EU producers (73%) and 12% were imported from other third countries. Indeed, as the product concerned is highly standardised, the importance of customer binding is rather relative, and both users and importers can quite easily change the sources of supply as far as the product quality is concerned.

- (554) The investigation showed that all cooperating users, except one, were profitable in the sector which uses the product concerned and their profitability during the IP ranged from 1% to 13%, depending on the company. The profitability of those companies did not significantly depend on imports of the product concerned from the PRC.
- (555) On the basis of questionnaire replies from the users, the likely effect of the proposed measures was estimated. Thus, even assuming the unlikely worst-case scenario for cooperating users, i.e. that no price increase could be passed on and they would be bound to import from the PRC in the same volumes as in the IP, the impact of the duty level on their cost of production would be an increase between 1 to 5% and a decrease by 1 to 2.8 percentage points in profitability for most of the imports and by about 4 percentage points for importing under residual duty. However, the more likely scenario is an impact significantly less than this. Imports from the PRC represent a rather small part of the users' business and it can be expected that the cost increase from the countervailing measures will be relatively easily passed on. Furthermore, given that in addition to the many EU producers alternative significant import sources, not subject to measures, are available e.g. India and South Korea, it is expected that prices in the market, following the imposition of measures will take into account these factors as well.
- (556) The two cooperating importers represented around 6% of total imports from the PRC during the IP, the exact amount could not be disclosed in accordance with Article 29 of the basic Regulation. Similarly as for the users, the importers also maintained different sources of supply besides the PRC. Furthermore, it was established that the profitability of the importers would be possibly more affected by the measures than that of the users, if they were to maintain the importing pattern practiced during the IP. However, in practice importers as traders tend to be even more flexible than users, and they would most likely be first to turn to the alternative sources of supply.
- (557) Part of the benefit from Chinese imports on the user and importer side is effectively drawn from and made possible by the unfair price discrimination practiced by the Chinese exporters, and not from a natural competitive advantage. Thus, reinstating the level playing field on the EU market by correcting the trade distortion coming from subsidised imports, will actually enable the OCS market to return to healthy, market-economy-driven dynamics and price development, while at the same time not disadvantaging other players (users, producers, end-consumers) who are not immediately able to benefit from subsidised imports.

7.4. Conclusion on Union interest

- (558) In view of the above, it is concluded that based on the information available concerning the Union interest, there are no compelling reasons against the imposition of measures on imports of the product concerned originating in the PRC.

8. DEFINITIVE COUNTERVAILING MEASURES

8.1. Injury elimination level

- (559) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, countervailing measures should be imposed in order to prevent further injury being caused to the Union industry by the subsidised imports.
- (560) For the purpose of determining the level of these measures, account was taken of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry.
- (561) When calculating the amount of duty necessary to remove the effects of the injurious subsidisation, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of subsidised imports, on sales of the like product in the Union. It is considered that the profit that could be achieved in the absence of subsidised imports should be based on the year 2008 when Chinese imports were less present on the Union market. It is thus considered that a profit margin of 6.7% of turnover could be regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious subsidisation.
- (562) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adding the above-mentioned profit margin of 6.7% to the cost of production.
- (563) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the PRC, duly adjusted for importation costs and customs duties with the non-injurious price of the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average CIF import value of the compared types.
- (564) Following final disclosure interested parties challenged the use of 6,7% as the target profit of the Union industry and the description of 2008 as a representative year for profitability. However, their argument that the profit made by the Union industry in 2008 was affected by the financial crisis, making 2008 an exceptional year, would seem to point to an argument that the profit realised in 2008 is lower than the industry would expect in a normal year. This argument is rejected as no evidence as to what the profit of the Union industry would have been in 2008 in the absence of the financial crisis was provided.
- (565) Interested parties also pointed to the fact that import volumes from the PRC were at their lowest in 2009 rather than in 2008. However, given that the Union industry was not profitable in 2009, it is impossible to use 2009 data to set a target profit for the Union industry.
- (566) CISA have further alleged that the profit to unrelated customers in 2008 cannot be used as the target profit because that year shows the largest price difference between related and unrelated sales. This argument was rejected, as this price difference is not relevant to the calculation of the profit of sales to unrelated customers.
- (567) CISA then proposed that the target profit for sales of OCS to unrelated parties in the Union be based on the average overall profit for the multinational corporation ArcelorMittal for the years 2010 and 2011. This was rejected as a reliable source for the profit on OCS in the Union in the absence of dumped imports, because taking the profit of the entire worldwide ArcelorMittal group is clearly not representative of profit on sales of OCS in the Union.

- (568) One interested party challenged the Commission's methodology for the calculation of the underselling margin. However, this challenge was based on the erroneous assumption that the Commission had calculated the underselling margin by removing the average profit of the Union industry in the IP (2.6%) from the market price to get to the 'break-even point' (i.e. a price that would result in zero profit) and then adding the target profit onto this 'break-even point'.
- (569) The Commission calculated the underselling margin by adding the target profit to the cost of production of each product type. The methodology suggested by this interested party is flawed, because the average profit of 2.6% was not automatically achieved on each sale of each model by all companies from which the data was used.
- (570) One interested party also challenged the Commission's injury calculations. Given that that party did not have full access to the data used by the Commission to calculate the injury margin, it attempted to calculate it on its own, based on its understanding of the price difference on the market between aluminium zinc coated and zinc coated substrate, which it had calculated at USD 50 per MT. This 'recalculation', based on incomplete data, resulted in a lower injury margin than that which the Commission had calculated and disclosed.
- (571) Their arguments were rejected because the analysis of the full data from both the exporting producers and the Union industry, the alleged price difference could not be found. Consequently, it should be underlined that the data which the interested party was using was incomplete and thus could not be relied upon to reproduce the Commission's injury calculations.

8.2. Definitive measures

- (572) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, and in accordance with Article 15 of the basic Regulation, a definitive countervailing duty should be imposed on imports of OCS originating in the PRC at the level of the lower of the subsidy or injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the subsidy margins found. On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company Name	Subsidy margin	Injury margin	Countervailing duty
Zhangjiagang Panhua Steel Strip Co., Ltd.; Chongqing Wanda Steel Strip Co., Ltd.; Zhangjiagang Free Trade Zone Jiaxinda International Trade Co., Ltd.	29,7%	55,8%	29,7%
Zhejiang Huadong Light Steel Building Material Co. Ltd.; Hangzhou P.R.P.T. Metal Material Co., Ltd.	23,8%	29,7%	23,8%
Union Steel China	26,8%	13,7%	13,7%
Other cooperating companies	26,8%	43,0%	26,8%

Residual duty	44,7%	58,3%	44,7%
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- (573) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to ‘all other companies’) are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in Article 1 with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to ‘all other companies’.
- (574) Any claim requesting the application of an individual company countervailing duty rate (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission¹⁰⁴ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (575) In order to ensure proper enforcement of the countervailing duty, the residual duty level should not only apply to the non-cooperating exporting producers but also to those producers which did not have any exports to the Union during the IP,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of certain organic coated steel products, i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin, currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70 (TARIC codes 7210 70 80 11, 7210 70 80 91, 7212 40 80 01, 7212 40 80 21, 7212 40 80 91, 7225 99 00 11, 7225 99 00 91, 7226 99 70 11 and 7226 99 70 91), and originating in the People's Republic of China.

2. The rate of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Company	Duty	TARIC additional code

¹⁰⁴ European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels.

Union Steel China	13,7%	B311
Zhangjiagang Panhua Steel Strip Co., Ltd.; Chongqing Wanda Steel Strip Co., Ltd.; Zhangjiagang Free Trade Zone Jiaxinda International Trade Co., Ltd.	29,7%	B312
Zhejiang Huadong Light Steel Building Material Co. Ltd.; Hangzhou P.R.P.T. Metal Material Co., Ltd.	23,8%	B313
Angang Steel Company Ltd.	26,8%	B314
Baoutou City Jialong Metal Works Co., Ltd.	26,8%	B317
Changshu Everbright Material Technology Co., Ltd.	26,8%	B318
Changzhou Changsong Metal Composite Material Co., Ltd.	26,8%	B319
Inner Mongolia Baotou Steel Union Co., Ltd.	26,8%	B321
Jigang Group Co., Ltd.	26,8%	B324
Maanshan Iron & Steel Company Limited	26,8%	B325
Qingdao Hangang Color Coated Sheet Co., Ltd.	26,8%	B326
Shandong Guanzhou Co., Ltd.	26,8%	B327
Shenzen Sino Master Steel Sheet Co, .Ltd.	26,8%	B328
Tangshan Iron & Steel Group Co., Ltd.	26,8%	B329
Tianjin Xinyu Color Plate Co., Ltd.	26,8%	B330
Wuhan Iron and Steel Company Limited	26,8%	B331
Zhejiang Tiannu Color Steel Co., Ltd.	26,8%	B334
All other companies	44,7%	B999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*