

CATEGORY ONE: PROVISION OF GOODS

Program 1: Billet provided by government at less than adequate remuneration

The Australian industry submits that Chinese exporters of rebar have benefited from the provision of raw material in the form of steel billet (**billet**) by the Government of China (**GOC**) at less than adequate remuneration.

In particular, the Australian industry claims that billet, one of the main raw materials used in the manufacture of rebar, is being produced and supplied by State Invested Enterprises (**SIEs**) in China at less than adequate remuneration.

The following named exporters are “integrated” producers of rebar:

- Shandong Iron and Steel Co Ltd Laiwu Company;
- Shandong Shiheng Special Steel Co Ltd;
- Jiangsu Yonggang Group Co., Ltd.; and
- Hunan Valin Xiangtan Iron & Steel Co., Ltd..

Integrated producers manufacture rebar using billet as a raw material, while non-integrated producers purchase steel billet to produce rebar.

All (but one) of the above named exporters are either wholly State Owned Enterprises (**SOEs**) of the GOC, or SIEs of the GOC. The definition of a subsidy under paragraph 269T(a) of the *Customs Act 1901*¹ includes reference to “a financial contribution” “(i) by a government... or (ii) by a public body”.

The level of “integration” as producers of rebar and the ownership structures of the named exporters is examined in *table C-1.1.1*, below.

Exporter	Operations	Ownership structure
Shandong Iron and Steel Co Ltd Laiwu Company	“SHANDONG IRON AND STEEL COMPANY LTD is principally engaged in the smelting, processing and distribution of iron and steel. The Company’s major products are iron and steel products, including sheets, profiles, steel billets, cold and hot rolled steel products, coking products and burning power, among others. It distributes its products in domestic and overseas markets” ²	State Invested Enterprise: The Company’s four-largest shareholders are State Owned Corporations (国有法人), namely Jinan Iron and Steel Group Co., Ltd. (39.59%), Laiwu Iron and Steel Group Co., Ltd. (36.59%), Shandong State-owned Assets Investment Holding Co., Ltd. (0.75%) and Shandong Economic Development and Investment Company (0.40%) ³
Shandong Shiheng Special Steel Co Ltd	Iron ore pelletising, pig iron, steel making, billet casting. ⁴	Private, 100.00% ⁵
Jiangsu Yonggang Group Co., Ltd.	“Jiangsu Yonggang Group Co., Ltd. operates integrated iron and steel mills. Its products include hot rolled deformed bars, wire rods, round bars, and steel nails/wires.” ⁶	State Invested Enterprise: “[I]ts main steel producing entity is Jiangsu Lianfeng Industrial Stock Co., a joint stock company. However, it appears that a significant portion of the company’s ownership remains in the hands of state-controlled entities. Jiangsu Yonggang was formed in 1984 by the local village enterprise and the Nanfeng County Supply and Marketing Corporation, which is owned by the

¹ All references hereinafter to legislative provisions are references to provisions of the *Customs Act 1901*, unless otherwise stated.

² <http://www.reuters.com/finance/stocks/overview?symbol=600022.SS> (Accessed 3 September 2015)

³ NON-CONFIDENTIAL ATTACHMENT C-1.9.1, at pp. 31-32.

⁴ CONFIDENTIAL ATTACHMENT C-1.1.6 [copyright licensing restrictions]

⁵ *Ibid.*

⁶ <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=13011216> (Accessed 3 September 2015)

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		<p>Jiangsu Province SASAC. It later jointly invested in a new rolling line with the China Shipbreaker Co., another firm wholly owned by the provincial SASAC. As a result, despite its disparate first line of ownership, ultimate ownership of the group continued to rest with the Jiangsu SASAC and the village... As part of a restructuring in 1998, Jiangsu Yonggang established Jiangsu Lianfeng Industrial Stock Co., with a portion of its shares ultimately transferring to management. However, even after this restructuring, state-owned entities continue to have a majority ownership in Jiangsu Yonggang Group and the Group, in turn, continues to maintain majority ownership in Jiangsu Lianfeng Industrial Stock Co.”⁷</p>
<p>Hunan Valin Xiangtan Iron & Steel Co., Ltd.</p>	<p>The Hunan Valin Steel Group has three steel making subsidiaries in Hunan province, of which the named, known exporter is one: Hunan Valin Xiangtan Iron & Steel Co., Ltd. in Xiangtan produces about 6.5 million tons of steel products such as rebar, wire rod, round bars and heavy plates; Valin Lianyuan Iron & Steel Co., Ltd. in Loudi city produces about 6.5 million tons of steel products such as rebar, sections, hot rolled coils, cold rolled coils, hot dip galvanized coils and hot rolled narrow strips; and Valin Steel Pipe Holding Co., Ltd. with plants in Hengyang and Wuxi, is specializes in production of seamless pipes. The output is approximately 1.5 million tons.</p> <p>Hunan Valin Steel produced 13.55 million tons of steel products in 2010. All the above subsidiary plants are integrated steel plants with iron making, steel making, rolling and further downstream processes.⁸</p>	<p>Foreign Invested Joint Venture between Hunan Valin Iron & Steel Group Co Ltd (40.01%), ArcelorMittal (29.97%) and Shenzhen Stock Exchange listed shares (SHE: 000932).⁹</p> <p>State Invested Enterprise via Hunan Valin Iron & Steel Group Co Ltd (40.01%), a state-owned enterprise authorized by the State-owned Assets Supervision and Administration Commission (SASAC).¹⁰</p>

Table C-1.1.1 Operational and ownership structure of known, named producers/exporters of rebar

Elements of the subsidy

The Australian industry alleges that Chinese State Invested Enterprises (SIEs) that produce rebar are public bodies, and that a financial contribution in the form of provision of raw material inputs, billet, at less than adequate remuneration by these SIEs constitutes a countervailable subsidy.

As Chinese fully integrated exporters use billet in their production of rebar, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods. Where the financial contribution involves a direct transaction between the public bodies and the fully integrated exporters of rebar, the Australian industry considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration. Where the financial contribution involves the provision of the goods (billet) by public bodies to private intermediaries that trade those inputs to the exporters of rebar, the Australian industry submits, in accordance with paragraph 269T(2AC)(a), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of rebar by way of the goods (billet) being provided at less than adequate remuneration.

These benefit amounts are equal to the amount of the difference between the price paid by the exporter and the adequate remuneration.

⁷ NON-CONFIDENTIAL ATTACHMENT C-1.1.7, at pp. 3 & 8.

⁸ http://china.arcelormittal.com/inner.asp?lang=en&topid=21&secondid=30&thirdid=31&menu_id=31 (Accessed 3 September 2015)

⁹ *Ibid.*

¹⁰ NON-CONFIDENTIAL ATTACHMENT C-1.1.8, at p. 49.

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Where exporters of rebar received a financial contribution of billet under the program at less than adequate remuneration, it would therefore confer a benefit in relation to rebar, and the financial contribution would meet the definition of a subsidy under section 269T.

Legal Basis

In 2013, nine of the top ten steel companies in China (in terms of total crude steel production) were SIEs (refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1¹¹), accounting for 39.4% of the total Chinese crude steel production (refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1¹²). Of the nine companies identified to be SIEs, all produce steel billet and/or rebar, themselves or through their subsidiaries. This indicates that the GOC exerts control over the Chinese steel industry, which encompasses the long products steel sector, including rebar.

The GOC classifies the iron and steel industry to be a “fundamental or pillar” industry and therefore the government maintains a degree of control over the industry, through a minimum of 50% equity in the principal enterprises (refer NON-CONFIDENTIAL ATTACHMENT C-1.1.2¹³).

WTO Notification

The Australian industry is not aware of any WTO notification in respect of this program.

Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving billet at less than adequate remuneration.

By a government or public body?

In order for this program to be considered to be a ‘subsidy’ the financial contribution noted above must be from a government, public body, or private body entrusted to carry out governmental functions. As noted above, it is the Australian industry’s contention that SIEs are public bodies (for the purposes of section 269T). In reaching this conclusion, the Australian industry points to the Appellate Body Report in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)*¹⁴, where the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):

- *Indicia 1* - where a statute or other legal instrument expressly vests government authority in the entity concerned;
- *Indicia 2* - where there is evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority; and

¹¹ at p. 8.

¹² at p. 9.

¹³ at p. 38.

¹⁴ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011.

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- *Indicia 3* - where there is 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.¹⁵

In the subsequent Appellate Body Report in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*¹⁶, tested the meaning of “meaningful control” in *Indicia 3*, and stated the following guiding principles:

- ‘government involvement in the appointment of an entity’s directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government’;¹⁷
- ‘while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or “meaningful”, in nature’;¹⁸ and
- ‘in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the “meaningful” control of the government.’¹⁹

In this application, as stated above, nine of the top ten steel companies in China (in terms of total crude steel production) were SIEs (refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1)²⁰, accounting for 39.4% of the total Chinese crude steel production (refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1)²¹. Of the nine companies identified to be SIEs, all produce steel billet and/or rebar, themselves or through their subsidiaries. All of these SIEs are either wholly or partly owned by the *State-Owned Asset Supervision and Administration Commission of the State Council (SASAC)*.

The *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises (Interim Regulations)*²² set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to ‘appoint or remove the responsible persons of the invested enterprise’;
- Article 16 states that a state-owned assets supervision and administration authority ‘shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises’;

¹⁵ *Ibid.*, at para. 318.

¹⁶ Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014.

¹⁷ *Ibid.*, at para. 2.361.

¹⁸ *Ibid.*, at para. 4.10

¹⁹ *Ibid.*, at para. 4.20

²⁰ at p. 8.

²¹ at p. 9.

²² NON-CONFIDENTIAL ATTACHMENT C-1.1.3

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- Article 17 describes the positions presumably considered to be ‘responsible persons’, which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
- Article 17 also states that where the State Council or any level of government ‘provide otherwise’ in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

Examples of SASAC’s current and ongoing direct control and responsibility for the appointment and removal of personnel from SIEs can be found in NON-CONFIDENTIAL ATTACHMENT C-1.1.4 and NON-CONFIDENTIAL ATTACHMENT C-1.1.5. The entire catalogue of appointments and removals across all SIEs can be found at <http://xxgk.sasac.gov.cn/gdnps/>.

Therefore, the Australian industry considers that the functions of SASAC, such as the power to appoint persons to key management positions, evidence a greater role in the management of enterprises than mere shareholder, serves as evidences that the GOC exercises meaningful control over the nine SIEs known to produce steel billet and/or rebar, themselves or through their subsidiaries, and as such these entities possess governmental authority and therefore each are a public body.

A countervailable subsidy (specific or prohibited)

Paragraph 269TAAC(4)(a) provides that the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

Given that billet is one of the key inputs in the manufacture of downstream products (including rebar) it is clear that only enterprises engaged in the manufacture of these products would benefit from the provision of the input by the GOC at less than adequate remuneration.

As such the subsidy is determined to be specific and countervailable.

Amount of subsidy

To determine the amount of benefit received under this program, the Australian industry proposes a benchmark cost that represents adequate remuneration for billet in China.

Approach to benchmark billet costs

The Australian industry submits that internal benchmarks in China are not an appropriate first option for determining adequate remuneration for billet in China.

Neither prices from private enterprises in China, nor import prices constitute an appropriate basis for this benchmark cost. Firstly, private prices are not appropriate because it is the Australian industry’s submission that the entire market for steel billet in China is affected by significant influence by the GOC during (and prior to) the proposed investigation period. It is considered that

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these GOC influences on the Chinese steel billet market have had a distorting effect on the market overall, and hence have distorted prices throughout the entire market, whether they be from SIEs or private enterprises. For this reason, the Australian industry considers that all prices of steel billet in China (regardless of whether the material was manufactured by an SIE or not) to not be suitable in determining adequate remuneration for steel billet in China, as both private and SIE prices are distorted. The distortions observed in the Chinese steel billet market as a result of GOC influence makes private domestic prices unsuitable for determining adequate remuneration, hence providing for the use of external benchmarks.

Secondly, the Australian industry does not consider it suitable to use imported steel billet prices into China as an appropriate in-country benchmark. The Australian industry observes that imported steel billet is not common in China. For example in 2013, China imported 131,573 tonnes²³ of goods classified to the 6 digit HS Customs Code (720711), which includes billet with carbon<0.25%. When compared to China's overall crude steel production of 779,000,000 tonnes²⁴ (which includes steel slab, blooms and billets), the import quantity is so small that import prices were likely, equally affected by the government influences on domestic prices. Therefore, import prices are not suitable for determining a competitive market cost of steel billet.

In considering the use of the external benchmark, it is important to note that any Asian based benchmark price is unsuitable as the prevalence of Chinese billet in Asia has made prices in the region unsuitable. Specifically, China is the world's largest crude steel producer (which includes steel slab, blooms and billets), accounting for 49% of world production, and 72% of Asian production²⁵, it is clear that any Asian based benchmark of steel billet prices will be heavily influenced by Chinese pricing and supply behaviour. Indeed, it is submitted that other Asian steel domestic markets are directly impacted by the size of the Chinese market.

In *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*²⁶ (**DS257**), the Appellate Body considered the issue of the use of benchmarks for determining whether goods were provided at less than adequate remuneration in terms of Article 14(d) of the *Agreement on Subsidies and Countervailing Measures (the SCM Agreement)*. The Appellate Body there examined the circumstances under which an 'external (non-domestic market) benchmark' can be used. In summary, the Appellate Body in *DS257* found that:

“...an external benchmark can only be used in situations where the ‘predominant role of the government in the market [is] as a provider of the same or similar goods’ and where the government distorts the prices of those goods in the market by reason of its predominance. Even then, a benchmark may only be used which relates or refers to, or is connected with the prevailing market conditions in that country and which reflects price, quality, availability, marketability, transportation and other conditions of purchase or sale as required by Article 14(d).”²⁷

²³ Refer CONFIDENTIAL ATTACHMENT C-1.1. 6.

²⁴ Refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1, at p. 9.

²⁵ Refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1, at p. 10.

²⁶ Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004.

²⁷ *Ibid.*, at para. 103.

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Applied here, it is the Australian industry's contention that the conditions set out by the Appellate Body in *DS257* have been satisfied on the basis that the GOC, through its SIEs has a predominant role in the market as a provider of the same or similar goods. For example, of China's largest five steel producers, four are SIEs (Hebei Steel Group, Baosteel Group, Ansteel Group and Wuhan Steel Group)²⁸. These four companies accounted for 157,842,000 tonnes of crude steel production in 2014.²⁹ Based on their 2013 production volumes, these four, SIEs, accounted for 20.8% of total Chinese crude steel production in that year.³⁰

The Australian industry submits that the most appropriate available benchmark for determining adequate remuneration for steel billet in China is an average of the reported MEPS-based Turkish and South African steel billet prices.

The Australian industry has derived a monthly MEPS-based average price for steel billet using the monthly reported MEPS Turkish and South African prices alone (and excluding the Asian price). This was calculated using the monthly reported data available from MEPS at <http://www.meps.co.uk/>.

In choosing a MEPS-based average Turkish and South African price benchmark, the Australian industry considers such a benchmark to be the most reasonable of the available options in the circumstances. This takes into account:

- data availability; and
- the Australian industry's understanding of what is included in the data.

The Australian industry notes that the proposed benchmark:

- includes only data related to prices of steel billet and no other irrelevant products;
- does not include any Asian pricing data that it is considered may be unreasonable due to the influence of Chinese steel billet prices in the region; and
- is based on reported MEPS prices, which is a reputable independent steel pricing and forecasting service.

On the basis of the above, the Australian industry has estimated the quantum of benefit as follows in the period January to May 2015 to be **US\$196/tonne** (refer *Table C-1.1.2*, below).

²⁸ Shagang Group is a privately owned company.

²⁹ Refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1, at p. 9.

³⁰ Refer NON-CONFIDENTIAL ATTACHMENT C-1.1.1, at p. 10.

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		<i>Jan-15</i>	<i>Feb-15</i>	<i>Mar-15</i>	<i>Apr-15</i>	<i>May-15</i>	<i>Average**</i>
China*	<i>[A]</i>	280	277	279	276	277	278
Turkey*	<i>[B]</i>	420	370	380	395	400	393
South Africa*	<i>[C]</i>	591	601	589	515	481	555
Benchmark	$[D]=([B]+[C])/2$	506	486	485	455	441	474
Benefit	$[E]=[D]-[A]$	226	209	206	179	164	196

Notes: * domestic Billet Prices (US Dollars/tonne equivalent)

** straight-line average taken

Table C-1.1.2 Domestic Billet Prices (US Dollars/tonne equivalent)³¹

(Source: <http://www.meps.co.uk/BilletPrice.htm>, accessed 02/09/2015)

Program 2: Coking coal provided by government at less than adequate remuneration

The Australian industry submits that Chinese exporters of rebar have benefited from the provision of raw material in the form of coking coal by the GOC at less than adequate remuneration.

In particular, the Australian industry claims that coking coal, one of the main raw materials used in the manufacture of steel billet, which is in turn used for the manufacture of rebar, is being produced and supplied by SIEs in China at less than adequate remuneration.

As noted in the analysis of program 1, above, the following named exporters are “integrated” producers of rebar:

- Shandong Iron and Steel Co Ltd Laiwu Company;
- Shandong Shiheng Special Steel Co Ltd;
- Jiangsu Yonggang Group Co., Ltd.; and
- Hunan Valin Xiangtan Iron & Steel Co., Ltd..

Integrated producers manufacture steel billet using coking coal as one of the raw materials, while non-integrated producers purchase steel billet to produce rebar.

The definition of a subsidy under paragraph 269T(a) includes reference to “a financial contribution” “(i) by a government... or (ii) by a public body”.

The Australian industry alleges that Chinese SIEs that produce coking coal are public bodies, and that a financial contribution in the form of provision of raw material inputs (coking coal) at less than adequate remuneration by these SIEs to manufacturers of rebar constitutes a countervailable subsidy.

In *Final Report No. 198*, the Commission found that SIEs producing coking coal constitute a public body in the meaning of paragraph 269T(a)(ii).

Under this program, a benefit to exported rebar is conferred by coking coal being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

What constitutes adequate remuneration for coking coal?

³¹ NON-CONFIDENTIAL ATTACHMENT C-1.1.1.1

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In *Final Report No. 198*, the Commission decided to follow the approach applied in *Final Report No. 193*, and considered it reasonable to determine adequate remuneration for coking coal sold domestically in China using the Chinese export price for coking coal (exclusive of export tax) based on data provided by the GOC in the current investigation. The following reasons for using Chinese export prices were applied in both investigations:

- In assessing the data collated from various sources the Commission found there were a variety of factors affecting the quality and forms of coking coal produced, imported and/or exported by each of the top five countries trading in these commodities, which could not be determined. The coking coal exported from China was considered to be the most comparable to the coking coal purchased domestically by the cooperating Chinese exporters. The export data provided by the GOC was considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration;
- domestic purchase price data had been provided by one cooperative exporter in *Dumping and Subsidy Investigation No. 198* and verified by the Commission. The proposed export price data was provided by a reliable source (the GOC) and is considered more directly relevant to Chinese producers and exporters during the then relevant investigation period;
- the cost of production of coking coal for the Chinese domestic and export markets, respectively, is likely to be similar if not the same;
- in *Subsidy Investigation No. 193*, the Commission found that the Chinese export prices for coking coal was comparable to the export prices of the top five exporters (countries) in the world on comparable terms of trade; and
- China was the major producer and consumer of coking coal. There was no other economy comparable to China's demand for coking coal. As such, it was considered appropriate by the Commission to compare Chinese domestic prices with Chinese export prices.

Legal Basis

In *Subsidy Investigation No. 198*, the Commission did not identify any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO Notification

The Australian industry is not aware of any WTO notification in respect of this program.

Eligibility Criteria

In *Subsidy Investigation No. 198*, the Commission did not identify any articulated eligibility criteria for enterprises receiving coking coal at less than adequate remuneration.

Nature of alleged subsidy?

The Australian industry considers that this program involves a financial contribution that involves the provision of the goods (coking coal) by SIEs, being public bodies, at less than adequate remuneration.

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As Chinese fully integrated exporters use coking coal in their production of rebar, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods. Where the financial contribution involves a direct transaction between the public bodies and the fully integrated exporters of rebar, the Australian industry considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration. Where the financial contribution involves the provision of coking coal by public bodies to private intermediaries that trade those inputs to the exporters of rebar, the Australian industry considers, in accordance with subsection 269T(2AA), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of rebar by way of coking coal being provided at less than adequate remuneration. These benefit amounts are equal to the amount of the difference between the price paid by the exporter and the adequate remuneration.

Where exporters of rebar received a financial contribution of coking coal under the program at less than adequate remuneration, it would therefore confer a benefit in relation to rebar, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the “subsidy” a “countervailable subsidy” (specific or prohibited)?

As provided for in paragraph 269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

In *Subsidy Investigation No. 198* the Commission identified that coal can be classified into two categories – thermal coal used for heat generation and metallurgical coal. The form of coking coal examined in that investigation, and this application, is metallurgical coking coal. This type of coking coal is mainly used in the manufacture of iron and steel. Therefore, only the iron and steel industry would benefit from the provision of the input by the GOC at less than adequate remuneration. As such, the Australian industry submits that the subsidy is “specific” and a “countervailable subsidy”.

Amount of countervailable subsidy

In accordance with subsection 269TACC(4), the Australian industry proposes that the amount of the benefit be determined as the difference between adequate remuneration (refer above) and the actual purchase price paid for coking coal incurred by the relevant exporter in purchasing those goods from SIEs. For the purpose of this application, the Australian industry has obtained the [REDACTED] for hard coking coal (HCC 64 Mid Vol) for 30 September 2015 at a CFR Jingtang price of USD 83.11/tonne, compared to the Atlantic hard coking coal (Low Vol HCC) price for the same period of USD 107/tonne³² (CFR China).

According to the World Coal Association, approximately 770 kg of coking coal are required to produce 1 tonne of steel in a blast furnace operation. In the case of Electric Arc Furnaces, about 150 kg of coal is required to produce 1 tonne of steel^{33 34}.

In other words, in the case of the rebar produced from steel billet generated by blast furnace operations, then a percentage of approximately 77% of coking coal required to manufacture one tonne of rebar. Therefore, in accordance with subsection 269TACD(2), the amount of subsidy received in respect of rebar has been apportioned to each unit of rebar using the total benefit

³² Calculated at an FOBUS price of USD 84.50 plus a dry bulk freight assessment of USD 22.50/tonne.

³³ <http://www.worldcoal.org/resources/coal-statistics/coal-steel-statistics/> (Accessed 3 September 2015)

³⁴ CONFIDENTIAL ATTACHMENT C-1.2.1, at p. 4. [subject to copyright licensing restrictions]

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calculated per tonne of coking coal apportioned according to the coking coal required to produce one tonne of rebar.

Accordingly, the Australian industry has calculated the average benefit conferred to the exporters of rebar, as USD 18.40 per tonne of rebar.

Program 3: Coke provided by government at less than adequate remuneration

The Australian industry alleges that Chinese exporters of rebar have benefited from the provision of raw material in the form of coke by the GOC at less than adequate remuneration. Specifically, coke, one of the main raw materials used in the manufacture of rebar, was being produced and supplied by SIEs in China at less than adequate remuneration. Coke is an intermediate raw material used in the manufacture of steel billet. Coking coal is put through a coking oven to produce coke, hence coking coal is the main raw material used in the production of coke.

The integrated producers of rebar in this application manufacture steel billet using coking coal and/or coke as one of the raw materials, while any non-integrated producers purchase steel billet to produce those goods.

The Australian industry submits that Chinese SIEs that produce coke are public bodies, and that a financial contribution in the form of provision of raw material inputs (coke) at less than adequate remuneration by these SIEs to manufacturers of rebar constitutes a subsidy under subparagraph 269T(a)(ii).

In *Subsidy Investigation No. 198*, the Commission concluded that Chinese SIEs that produce coke are “public bodies” for the purposes of subparagraph 269T(a)(ii).

Under this program, a benefit to exported rebar is conferred by coke being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

What constitutes adequate remuneration for coke in China?

The Australian industry refers to *Subsidy Investigation No. 193* where the Commission considered that adequate remuneration for coke sold domestically in China can be established using the Chinese export price for coke (exclusive of export tax) based on data provided by the GOC.

Chinese export prices form the best evidence of adequate remuneration for coke sold domestically in China for the following reasons:

- In *Subsidy Investigation No. 193*, the Commission found that the cost of production of coke for the Chinese domestic and export markets, respectively, was likely to be similar if not the same;
- In *Subsidy Investigation No. 193*, the Commission found that the Chinese export prices for coke are comparable to the export prices of two of the top five exporters (countries) in the world for which data was available for that investigation period; and
- China is the major producer and consumer of coke. There is no other economy comparable to China’s demand for coke. As such, it is appropriate to compare Chinese domestic prices with Chinese export prices.

Legal Basis

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In *Subsidy Investigation No. 198*, the Commission was unable to identify any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO Notification

The Australian industry is not aware of any WTO notification in respect of this program.

Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving at less than adequate remuneration.

Nature of alleged subsidy?

The Australian industry alleges that this program constitutes a financial contribution that involves the provision of the goods (coke) by SIEs, being public bodies, at less than adequate remuneration.

As Chinese fully integrated exporters use coke in their production of rebar, the Australian industry considers this financial contribution is made in respect of the production, manufacture or export of the goods. Where the financial contribution involves a direct transaction between the public bodies and the fully integrated exporters of rebar, the Australian industry considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration. Where the financial contribution involves the provision of coke by public bodies to private intermediaries that trade those inputs to the exporters of rebar, the Australian industry considers, in accordance with subsection 269T(2AA), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of rebar by way of coke being provided at less than adequate remuneration.

For the purpose of this application, these benefit amounts are equal to the amount of the difference between the Chinese delivered domestic price paid for coke and the adequate remuneration. Where exporters of rebar during the proposed investigation period received a financial contribution of coke under the program at less than adequate remuneration, it would therefore confer a benefit in relation to rebar, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the “subsidy” a “countervailable subsidy” (specific or prohibited)?

As provided for in paragraph 269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises. In *Subsidy Investigation No. 198*, the Commission concluded that while coke has a number of uses, it is predominantly used in the production of iron and steel, so the provision of the input by the GOC at less than adequate remuneration would mainly benefit enterprises engaged in the manufacture of iron and steel. In that case, the Commission determined the subsidy to be specific.

Amount of countervailable subsidy

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Given that all rebar exported from China is made using coke as one of the major raw materials, and given that in *Subsidy Investigation No. 198*, it was found that 14 out of 15 Chinese enterprises that produce coke are known to be SIEs, then the Australian industry submits that it is reasonable to assume for the purposes of this application that some Chinese exporters of rebar are fully integrated and purchased coke from SIEs and therefore received a financial contribution under this program.

In accordance with subsection 269TACC(4), the Australian industry proposes that the amount of the benefit be determined as the difference between adequate remuneration (refer above) and the actual purchase price paid for coke incurred by the relevant exporter in purchasing those goods from SIEs. For the purpose of this application, the Australian industry has obtained the DDP North China domestic market price of coking coal for the week ending 30 September 2015³⁵, and the and the monthly FOB export prices for blast furnace coke shipped from Poland and the Czech Republic on an FOB basis³⁶.

The Australian industry considers it is reasonable to compare the delivered purchase prices as reported by the Chinese domestic price index to the FOB export prices, given that both incorporate some amount of freight cost. The difference of one month in price comparison is designed to facilitate the necessary shipping timeframes.

According to the World Coal Association, approximately 600 kg of coke are required to produce one tonne of steel in a blast furnace operation.³⁷

In other words, in the case of the rebar produced from steel billet generated by blast furnace operations, then a percentage of 60% of coke required to manufacture one tonne of rebar. Therefore, in accordance with subsection 269TACD(2), the amount of subsidy received in respect of rebar has been apportioned to each unit of rebar using the total benefit calculated per tonne of coke apportioned according to the coke required to produce one tonne of rebar.

Accordingly, the Australian industry has calculated the average benefit conferred to the exporters of rebar, as follows:

DPP North China	CNY 860/tonne
FOB Europe	EUR 198/tonne
EUR/CNY	7.1760 (RBA cross-rate, 31/08/2015)
FOB Europe	CNY 1,420.85/tonne
Benefit	CNY 560.85/tonne
USD/CNY	6.3555 (RBA cross-rate, 30/09/2015)
Benefit (coke)	USD 88.25/tonne
Conversion rate	60%
Benefit (rebar)	<u>USD 52.95/tonne.</u>

Program 4: Electricity provided by Government at less than adequate remuneration

³⁵ *Ibid.*

³⁶ NON-CONFIDENTIAL ATTACHMENT C-1.3.1.

³⁷ <http://www.worldcoal.org/coal/uses-of-coal/coal-steel/> (Accessed 3 September 2015)

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The Australian industry alleges that during the proposed *Investigation Period*, Chinese exporters of rebar benefited from the provision of electricity by the GOC at less than adequate remuneration. Specifically, the Australian industry alleges that electricity is being produced and supplied by GOC-owned (or partially-owned) enterprises in China, SIEs, at less than adequate remuneration.

The definition of a subsidy under paragraph 269T(a)(ii) includes reference to “a financial contribution by a government or any public body”.

The application alleges that Chinese SIEs that provide electricity are public bodies, and that a financial contribution in the form of provision of raw material inputs at less than adequate remuneration by these SIEs to rebar producers and exporters constitutes a countervailable subsidy.

Under this program, a benefit to exported rebar is conferred by electricity being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

Legal basis

The NDRC (National Development and Reform Commission) 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.

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. 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.

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 China and in that regard the decision is legally binding for other public bodies and the economic operators. This 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, and specifically the industry producing rebar, classified by the Directory Catalogue as an 'encouraged industry'.

WTO Notification

The Australian industry is not aware of any WTO notification in respect of this program.

Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving electricity at less than adequate remuneration.

Is there a subsidy?

(a) Financial contribution

Based on the information above, the Australian industry submits that this program involves a financial contribution that involves the provision of goods, at less than adequate remuneration.

(b) By a "government or public body"?

In order for this program to be considered to be a 'subsidy' the financial contribution noted above must be from a government, public body, or private body entrusted with governmental functions.

The Australian industry observes that in *Subsidy Investigation No. 181*, the GOC provided the then International Trade Remedies Branch, in response to a questionnaire, a copy of the *Electric Power Law of the People's Republic of China*³⁸ (**Electric Power Law**). The Electric Power Law contains, inter alia, the following provisions:

- "Article 3 The electric power industry should meet the needs of the development of the national economy and the society and should therefore develop slightly ahead of the other sectors of the economy...*
- ...*
- Article 6 The electric power administration department under the State Council shall be responsible for supervision and control of the electric power industry throughout the country. The departments concerned under the State Council shall be responsible for supervision and control of the electric power industry within their own limits of authority. The department in overall charge of the economy under the local people's government at or above the county level is the electric power administration department of that administrative region and shall be responsible for supervision and control of the electric power industry there. The departments concerned under the local people's government at or above the county level shall be responsible for supervision and control of the electric power industry within their own limits of authority.*
- ...*
- Article 33 Power-supply enterprises shall calculate and collect electricity fees from the consumers according to the electricity rates that have been*

³⁸ EPR No. 181/082 at Folio 256.

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- examined and approved by the State and the records of the electric meters...*
- ...
- Article 35 *... The rates of electricity shall be based on a centralized policy, fixed in accordance with a unified principle and administered at different levels...*
- ...
- Article 37 *A principle of equal rates for equal quality of electricity supplied by the same power network shall be applied with regard to incorporation into a power network. Specific measures for its application shall be formulated by the State Council. Where different rates for incorporation into a power network are needed to be fixed for power-generating enterprises under special circumstances, specific measure shall be formulated separately by the State Council.*
- Article 38 *With regard to the rates for incorporation into power networks spanning different provinces, autonomous regions, or municipalities directly under the Central Government, as well as for incorporation into provincial power networks, a plan shall be proposed through consultation by the enterprises engaged in power generation and in power network operation and shall be examined for approval by the department in charge of price control under the State Council. With regard to the rates for incorporation into independent power networks, a plan shall be proposed through consultation by the enterprises engaged in power generation and in power network operation and shall be examined for approval by the authorized department in charge of price control. For power generated by locally-funded enterprises that form independent power networks in different areas of a province or that generate power for their own use, the rates shall be under the control of the people's government of the province, autonomous region or municipality directly under the Central Government.*
- Article 39 *With regard to the rates of electricity mutually supplied between the networks spanning different provinces, autonomous regions or municipalities directly under the Central Government and independent power networks, or between provincial networks and independent networks, a plan shall be proposed through consultation by the two parties and shall be examined for approval by the department in charge of price control under the State Council or other department authorized by the said department.*
- ...
- Article 41 *The State institutes two systems for fixing electricity rates: one is to set the rates according to different kinds of consumers; the other is to set the rates according to the different period of time that electricity is used. The criterion for classifying the consumers and the method for dividing the period of time shall be determined by the State Council...*
- Article 42 *The standard rates to be paid by consumers for increased power capacity shall be determined by the department in charge of price*

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control in conjunction with the electric power administration department under the State Council.

Article 43 *No units may overstep their authority to set electricity rates. No power supply enterprises may alter the electricity rates without authorization.*

...
Article 45 *Measures for control of electricity rates shall be formulated by the State Council in accordance with the provisions of this Law.”*

Also provided during *Subsidy Investigation No. 181* was the “*Catalog of Price Regulated by the State Development Planning Commission and Other Department under the State Council*”³⁹. This document states that electric power is one of the goods or services subject to price regulation⁴⁰.

However, in addition to the above evidence of a significant degree of meaningful control and authority by the Government over the provision of electricity and the regulation of prices, the Australian industry also provides actual evidence within the proposed *Investigation Period* of the exercise of this power and control by the Chinese State Council on 8 April 2015⁴¹.

In *Subsidy Investigation No. 237*, the Commission determined that the GOC exercised meaningful control over the electricity providers and this serves as evidence that the relevant entity possesses governmental authority and is therefore a public body. On the basis of the recent exercise of this control by the Chinese State Council, the Australian industry asserts that this remains relevant for the proposed *Investigation Period*.

(c) Conferral of benefit on the goods

As Chinese exporters use electricity in their production of rebar, the Australian industry submits that this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of the goods, the Australian industry considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration.

These benefit amounts are equal to the amount of the difference between the purchase price and the adequate remuneration. Where exporters of the goods during the investigation period received a financial contribution under the program of electricity at less than adequate remuneration, it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the “subsidy” a “countervailable subsidy” (specific or prohibited)?

As provided for in paragraph 269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

In September 2006, the GOC introduced differentiated electricity prices for such industries as “steel, electrolytic aluminium, ferroalloy, calcium carbide, caustic soda, cement, yellow phosphorous and

³⁹ *EPR 181/067 at Folio 103.*

⁴⁰ *Ibid.* at Folio 102.

⁴¹ NON-CONFIDENTIAL ATTACHMENT C-1.4.1

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zinc smelting⁴². Therefore, given that the tariff rates identify specific types of entities that receive a favourable rate of electricity it is clear that only these enterprises would benefit from the provision of the input by the GOC at less than adequate remuneration.

For this reason the subsidy is determined to be specific.

Amount of countervailable subsidy in respect of the goods

For the purposes of this application, the Australian industry has made the following reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods:

- both rebar exported from China, and the steel billet from which it is produced requires a significant amount of electricity in its manufacture - in fact, approximately 35% of an integrated facility's energy input comes from electricity⁴³;
- the ownership of electricity generation, transmission and distribution in China are all State-owned⁴⁴; and
- In the recently concluded Canada Border Services Agency subsidy investigation concerning silicon metal exported from China⁴⁵, that administration found subsidised electricity, and it is considered likely that all exporters purchased electricity from SIEs at subsidised rates and therefore received a financial contribution under this program.

For the purpose of this application, the Australian industry proposes that the amount of the benefit should, at a minimum, be equated to the reduction of USD 0.032/KWh for wholesale users of coal fired electricity announced by the Chinese State Council in April 2015.

The Australian industry submits that an estimated [REDACTED] kWh of electricity are required to convert iron to 1 tonne of steel via Basic Oxygen Furnace steelmaking, and approximately [REDACTED] kWh of electricity to produce 1 tonne of rebar⁴⁶.

Therefore, the minimum subsidy amount for the purpose of this application is USD [REDACTED]/tonne for rebar.

⁴² Wang Yanjia (2006) "China's Energy Efficiency Policy in Industry", Expert Group Seminar with the OECD Global Forum on Sustainable Development, Paris, 27 -28 March 2006.

⁴³ NON-CONFIDENTIAL ATTACHMENT C-1.4.2, at p. 1.

⁴⁴ Stephen Wilson, Yufeng Yang and Jane Kuang (2015), *China's Electricity Sector: Powering growth, keeping the lights on and prices down*, "China update series: China's domestic transformation in a global context", Acton, ACT, The Australian National University. Available from:

<http://press.anu.edu.au/apps/bookworm/view/China%E2%80%99s+Domestic+Transformation+in+a+Global+Context/11651/ch08.xhtml#footnote-035> (Accessed 8 September 2015).

⁴⁵ NON-CONFIDENTIAL ATTACHMENT C-1.4.3.

⁴⁶ CONFIDENTIAL ATTACHMENT C-1.4.4.

CATEGORY TWO: PREFERENTIAL TAX POLICIES

Program 5: Preferential Tax Policies for High and New Technology Enterprises

The Commission has previously determined that this program is a countervailable subsidy including, but not limited to, the following subsidy investigations:

- Program 4, *Subsidy Investigation No. 181*;
- Program 8, *Subsidy Investigation No. 237*; and
- Program 24, *Subsidy Investigation No. 238*.

Under this program, pursuant to the Circular of the State Council concerning the approval of the national development zones for new and high technology industries and the relevant policies and provisions at Articles 2 and 4 of Appendix III, *Regulations on the tax policy for the national new and high technology industries parks*, foreign invested enterprises (FIEs) designated as HNTEs (High and New Technology Enterprises) in high and new technology parks pay a reduced income tax rate of 15%.

WTO Notification

The Australian industry is not aware of any WTO notification in respect of this program.

Legal Basis

This program is provided for in Article 28 of the *PRC Enterprise Income Tax Law 2007*, which states that:

“With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced at a rate of 15 per cent.”

It is considered likely that this program is a national program, administered by the GOC’s *State Administration of Taxation*.

Eligibility criteria

Companies recognised by the GOC as a high and new technology enterprise are eligible for this program.

To be recognised as a high and new technology enterprise, companies must meet certain criteria, submit an application, alongside copies of the company’s business registration and other relevant documentation, and have the application approved by relevant authorities.

Is there a subsidy?

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 269T(1)(a)(vi) of the Act, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), a financial contribution under this program would be made in

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connection to the production, manufacture or export of all goods of the recipient enterprise.

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of rebar during the investigation period received tax savings under the program it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under s. 269T.

Is the subsidy countervailable?

The eligibility criterion of this subsidy limits it to enterprises that are considered high and/or new technology enterprises.

As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.

The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For these reasons the subsidy is specific.

Method of subsidy rate determination

It is proposed that the amount of subsidy in respect of this program should be calculated under ministerial specification pursuant to subsection 269TACD(1), is determined to be the amount of tax revenue forgone by the GOC. In accordance with subsection 269TACD(2), the total amount of subsidy received by the selected exporter should then be apportioned to each unit of the goods using that exporter's total sales volume.

It is proposed that this per unit amount may then be calculated as a proportion of that exporter's weighted average export price, to determine a subsidisation rate.

Program 6: Preferential Tax Policies in the Western Regions

Background

The Australian industry submits that rebar exporters are likely to have benefited from exemptions to income tax based upon the location of enterprises in the Western Regions of China.

Under this program, enterprises established in the Western Regions engaged in industries encouraged by the State are eligible for a reduced tax rate of 15% (as opposed to the standard 25% taxation rate).

In certain circumstances, the program also operates to exempt enterprises from VAT and tariff on imported goods (*Program 8*, below). As the Australian industry will examine *Program 8*, below as a separate program in this application, the assessment of this *Program 6* focuses specifically on the reduced income tax rate part of the program.

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237*⁴⁷, concluded 3 June 2015.

⁴⁷ The Investigation Period for *Subsidy Investigation No. 237* was calendar year 2013.

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Legal Basis

The legal basis to establish this subsidy is pursuant to the following:

- the *Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions*, State Council Circular, Guo Fa [2000] No 33;
- the *Implementing Some Policies and Measures for the Development of Western Regions*, General Office of State Council Circular Guo Ban Fa [2001] No 73;
- the *Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas* Cai Shui [2001] No 202;
- the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee of Enterprises with Foreign Investment*, Guo Shui Fa [1999] No 172; and
- the *Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions*, (Cai Shui [2011] No 58).

The program is administered by the State Administration of Taxation and its local branch offices.

WTO Notification

The GOC notified this program in WTO document G/SCM/N/123/CHN (Notification No. XIV).

Eligibility criteria

The program is available to enterprises established in the Western regions which are engaged in industries encouraged by the State as defined in the:

- *Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State*;
- *Guiding Catalogue for Industry Restructuring*;
- *Circular on the Preferential Tax Policy of the Western Regions*;
- *Catalogue for the Guidance of the Foreign Investment Industries*; and
- *Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment*.

Is there a subsidy?

The Australian industry considers that the laws governing this program mandate a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in the *Western Regions* in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including rebar). Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of rebar during the proposed *Investigation Period* received tax savings under the program it would therefore confer a benefit in relation to rebar and the financial contribution would meet the definition of a subsidy under s.269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

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Paragraph 269TAAC(2)(b), provides that a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority. A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (paragraph 269TAAC(2)(a)).

For enterprises located in the Western Regions, only those industries which are “encouraged” are eligible for the subsidy. Other companies in the designated geographical region (being those enterprises which are not “encouraged”) are not eligible for the subsidy.

Furthermore, this program is limited in eligibility to enterprises based in the Western Region, under the jurisdiction of the granting authority (State Administration of Taxation).

As the criteria or conditions providing access to the subsidy favours particular enterprises, being those “encouraged” enterprises in the Western Regions, over all other enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For these reasons the Australian industry considers that the subsidy is specific.

Method of subsidy rate determination

In calculating the amount of subsidy attributable to exporters under this program, the Australian industry notes that regard should be had by the Commission as to whether or not the exporter is in receipt of the maximum benefit under *Program 5*, above.

However, if the maximum benefit amount available under this program has not already been countervailed in relation to *Program 5*, above, then the amount of subsidy in respect of this program may be calculated under ministerial specification pursuant to subsection 269TACD(1), and determined to be the amount of tax revenue forgone by the GOC. In accordance with subsection 269TACD(2), the total amount of subsidy received by the exporter may then be apportioned to each unit of the goods using the exporter’s total sales volume.

It is proposed that this per unit amount may then be calculated as a proportion of the exporter’s weighted average export price, to determine a subsidisation rate.

Program 7: Land Use Tax Deduction

Background

The Australian industry submits that rebar exporters are likely to have benefited from land use tax deduction. This program provides for the reduction or exemption of land use taxes for high and new technology enterprises.

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237*⁴⁸, concluded 3 June 2015.

Legal Basis

Approval of Tax (Expense) Deduction (Zheng Di Ca Shui [2010] No 11581)

This program is administered by Huzhou City Local Taxation Bureau and Wuxing Sub-Bureau.

⁴⁸ The Investigation Period for *Subsidy Investigation No. 237* was calendar year 2013.

WTO Notification

The Commission is not aware of any WTO notification of this program.

Eligibility criteria

The program is available to new high and new technology enterprises within three years of their establishment.

Is there a subsidy?

The Australian industry considers that the reduction in land use tax provided under this program is a financial contribution by the GOC which involves the forgoing of land use tax revenue otherwise due to the GOC.

Due to the nature of this program (exemption of land use tax), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including rebar). Where received, financial contribution is considered to confer a benefit to recipient manufacturers of rebar due to reduced tax liability owed to the GOC.

Where exporters of rebar during the proposed investigation period receive tax savings under this program, this would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in paragraph 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, this program is limited to high and new technology enterprises that are less than three years old.

As the criteria or conditions providing access to this subsidy favour particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

The Australian industry therefore considers this subsidy to be specific.

Method of subsidy rate determination

The Australian industry considers it is likely that exporters of rebar meet the eligibility criteria for this program, have likely accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including rebar, and that in accordance with subparagraph 269T(1)(a)(vi) confer a benefit to the recipient equal to the amount of the reduction/exemption.

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It is proposed that the amount of subsidy in respect of this program should be calculated under ministerial specification pursuant to subsection 269TACD(1), is determined to be the amount of tax revenue forgone by the GOC. In accordance with subsection 269TACD(2), the total amount of subsidy received by the selected exporter should then be apportioned to each unit of the goods using that exporter's total sales volume.

It is proposed that this per unit amount may then be calculated as a proportion of that exporter's weighted average export price, to determine a subsidisation rate.

Program 8: Tariff and VAT Exemptions on Imported Materials and Equipment

Background

The Australian industry alleges that Chinese producers of rebar are likely to have benefited from this program, under which the GOC provides an exemption of VAT and tariffs on imported equipment used as "productive" assets.

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237*⁴⁹, concluded 3 June 2015.

Legal Basis

The legal basis to establish this subsidy is pursuant to the following:

- *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No 37);
- *Catalogue of Industries for Guiding Foreign Investment (2015 Revision)* (NDRC, 13 March 2015);
- *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004);
- *State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- *Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue*.

The program appears to operate on a national level. The *National Development and Reform Commission* (NDRC) or its provincial branches issue certificates under this program, while local customs authorities administer the VAT and tariff exemptions.

WTO Notification

The GOC notified this program in WTO document G/SCM/N/123/CHN (Notification No. XIV).

Eligibility Criteria

Under Articles 1 and 2 of the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No 37)⁵⁰ to be eligible for this program:

- the enterprise must be an FIE which falls in the "encouraged" or "restricted" categories in the *Catalogue of Industries for Guiding Foreign Investment* (2004) (until 30 November 2007), or the *Catalogue of Industries for Guiding Foreign Investment* (2007) (since 1 December 2007);

⁴⁹ The investigation period for *Subsidy Investigation No. 237* was calendar year 2013.

⁵⁰ NON-CONFIDENTIAL ATTACHMENT C-1.8.1.

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- the imported equipment sought to be exempt from tariff and/or VAT must be for the enterprise's own use and not fall in the State Council's *Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and either:
 - the total value of the purchase must not exceed the investment "cap", or
 - the enterprise must be a domestic invested enterprise (**DIE**) which falls in the *Catalogue of Industry, Product and Technology Key Supported by the State at Present (2004)* and the imported equipment must be for the enterprises own use and not fall in the *Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue*, and the total value of the purchase must not exceed the investment "cap".

Is there a subsidy?

The Australian industry considers this program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC (specifically tariff and VAT revenue) by eligible enterprises in China.

Subject to the nature of the imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of rebar. Where received, this financial contribution confers a benefit because of the tariff and VAT savings realised.

Where exporters of rebar during the proposed investigation period received tax savings under the program for equipment related to their rebar production activities, it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

Paragraph 269TAAC(2)(a) provides that a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

FIEs that fall in the category of "encouraged" or "restricted" enterprises of the FIE catalogues are eligible for the subsidy, or DIEs that fall under the DIE catalogue are eligible for the subsidy. As the criteria or conditions providing access to this program favour these particular enterprises, over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For these reasons the subsidy is specific.

Method of subsidy rate determination

The Australian industry considers it is likely that rebar exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of information to the contrary, and having regard to the type of equipment likely to be imported by rebar manufacturers, the AUtralian industry considers this financial contribution was received in respect of equipment used in relation to rebar production activities. Although, it is entirely conceivable to the Australian industry that financial contributions under this program may have also been received in respect of equipment not related to rebar production. Notwithstanding this, for the purpose of this application, the Australian industry considers that this financial

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contribution has been made in respect of all products of relevant exporters, including rebar products.

Therefore, in accordance with subsection 269TACC(7), the Australian industry considers that exporters of rebar products have had benefits conferred to them by financial contributions under this program during the proposed investigation period in the form of tax savings.

Program 9: VAT refund on comprehensive utilization of resources

Background

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237*⁵¹, concluded 3 June 2015.

Indeed, the Australian industry has found that one exporter of rebar, namely Shandong Iron and Steel Co., Ltd., reported receiving payments from the Shandong Provincial Economic and Information Commission, which it described as “*Project: Coking of distilled ammonia waste water treatment and comprehensive utilization project of special funds*”^{52, 53}.

Legal Basis

The Australian industry is not aware of the legal basis for this program.

WTO Notification

The Australian industry is not aware of any WTO notification of this program.

Is there a subsidy?

The Australian industry understands that the law governing this program mandates a financial contribution by the GOC, which involves the refund of government revenue, specifically, VAT on comprehensive utilization of resources).

Due to the nature of this program (refund of VAT), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of rebar. Where received, this financial contribution is considered to confer a benefit because of the VAT refunded on the “comprehensive utilisation of resources”.

The Australian industry knows that at a minimum, one exporter of rebar, Shandong Iron and Steel Co., Ltd. received VAT refunds under the program and it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

The Australian industry notes that the GOC and the cooperating exporters in *Subsidy Investigation Nos. 198 and 237*, failed or refused to provide information to the Commission, the latter was compelled to basing its finding on the available information. In *Subsidy Investigation No. 198* it found

⁵¹ The Investigation Period for *Subsidy Investigation No. 237* was calendar year 2013.

⁵² Translation of “*焦化蒸氨废水处理及综合利用项目专项资金*”

⁵³ NON-CONFIDENTIAL ATTACHMENT C-1.9.1, at p. 90.

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that VAT refunds made on “comprehensive utilisation of resources” by the GOC could be made only to entities that have the characteristics of “comprehensive utilisation of resources”. The Commission therefore found the program to be specific, and countervailable.

Method of subsidy rate determination

The Australian industry considers that this financial contribution has been made in respect of all products of Shandong Iron and Steel Co., Ltd., including rebar.

As the financial contribution under this program takes the form of reduced tax liability (rather than a direct transfer of funds) it is determined that the financial contribution has conferred a benefit under subsection 269TACC(3).

In accordance with paragraph 269TACC(6)(d) the amount of subsidy is determined to be the amount of tax revenue forgone by the GOC. This has been disclosed by Shandong Iron and Steel Co., Ltd., as a credit (deferred income) in the sum of RMB 6,175,000⁵⁴.

In accordance with subsection 269TACC(10), the total amount of subsidy received by the cooperating exporter will need to be apportioned to each unit of the goods using that exporter’s total sales volume. This information is not available to the Australian industry.

CATEGORY THREE: Financial Grants

Background

The Australian industry alleges that Chinese producers of rebar are likely to have benefited from the following grant programs:

- Program 10: One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” and “Famous Brands of China”;
- Program 11: Matching Funds for International Market Development for small and medium size enterprises (SMEs);
- Program 12: Superstar Enterprise Grant;
- Program 13: Research and Development (R&D) Assistance Grant;
- Program 14: Patent Award of Guangdong Province;
- Program 15: Innovative Experimental Enterprise Grant;
- Program 16: Special Support Fund for Non-State-Owned Enterprises;
- Program 17: Venture Investment Fund of Hi-Tech Industry;
- Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment;
- Program 19: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan;
- Program 20: Water Conservancy Fund Deduction;
- Program 21: Wuxing District Freight Assistance;
- Program 22: Huzhou City Public Listing Grant;
- Program 23: Huzhou City Quality Award;
- Program 24: Huzhou Industry Enterprise Transformation & Upgrade Development Fund;
- Program 25: Wuxing District Public List Grant;
- Program 26: Anti-dumping Respondent Assistance;

⁵⁴ NON-CONFIDENTIAL ATTACHMENT C-1.9.1, at p. 90.

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- Program 27: Technology Project Assistance;
- Program 28: Transformation technique grant for rolling machine;
- Program 29: Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009;
- Program 30: Key industry revitalization infrastructure spending in 2010;
- Program 31: Provincial emerging industry and key industry development special fund;
- Program 32: Environmental protection grant;
- Program 33: Environmental protection fund;
- Program 34: Intellectual property licensing;
- Program 35: Financial resources construction - special fund;
- Program 36: Reducing pollution discharging and environment improvement assessment award;
- Program 37: Grant for elimination of out dated capacity;
- Program 38: Grant from Technology Bureau;
- Program 39: High and New technology Enterprise Grant;
- Program 40: Independent Innovation and High Tech Industrialization Program
- Program 41: Environmental Prize;
- Program 42: Jinzhou District Research and Development Assistance Program;

It is asserted that under these programs certain enterprises are eligible for cash grants provided by the GOC. Benefits are conferred to these enterprises in the amount of funds provided. It should be noted that were the funds were provided in years prior to the proposed investigation period, then the countervailable subsidies that have been received need to be amortised over a period of years, which may in appropriate circumstances mean that the benefit is attributable to the period of investigation proposed by this application.

WTO Notification

The Australian industry is not aware of any WTO notification in respect of these programs.

Programs 10 to 42

Legal basis and eligibility criteria

Program 10: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 10*), and before then in *Subsidy Investigation No. 198* (there known as, *Program 13*).

Legal basis

In 2005, eight central ministries and administrations jointly launched a program to build up and promote famous export brands. This decision was inspired by the strong promotion effect developed country brands have on the success of their international sales, not least in China, and based on the experience of Chinese exporting companies.

The 'Key Export Brands to be Cultivated and Developed by the Ministry of Commerce' (**export brands**) set out to support Chinese companies in exploring international markets and expanding

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exports through building up famous exports brands⁵⁵. In order to achieve this aim, the initiating document introduced a very comprehensive set of preferential policy measures.

Exporters participating in the pilot program were encouraged and supported:

- (1) to upgrade their technologies and innovative capacities;
- (2) to improve their international marketing abilities; and
- (3) to expand exports of products with own export brands.

It was envisioned that over the five years until 2010, the share of exporting companies with proprietary brands and the proportion of exports with proprietary brands should both double from their 2005 levels to reach 40 percent and 20 percent respectively⁵⁶. While all exporting companies were encouraged to meet the basic preconditions for managing proprietary brands by, for example, registering trademarks overseas, undergoing quality and environmental certification or setting up international sales networks and after sales services, a small number of major companies were chosen for the formation of successful export brands in a lighthouse project. The 'Export Brand Development Fund' was set up specifically to support enterprises in the formation of proprietary brands and the development of famous export brands⁵⁷.

Companies selected for participation could benefit from numerous advantages, they were⁵⁸:

- (1) granted preferential allocation of import and export quotas;
- (2) preferred in government procurement activities in all areas and at all levels of public administration;
- (3) supported in enhancing R&D activities and improving innovative capabilities;
- (4) assisted in the procurement of advanced technology and key equipment;
- (5) helped to continuously increase technology content and value added of famous export brand products;
- (6) granted preferential access to subsidised loans from both the Technology Renovation Project and the Research and Development Fund for Export Products;
- (7) supported in the establishment of state-level technology centres;
- (8) given access to the Foreign Trade Development Fund;
- (9) encouraged to present themselves at domestic and international trade fairs, conduct advertising in overseas target markets, establish overseas operations for marketing and after sales services.

Furthermore, the Administration of Quality Supervision, Inspection and Quarantine gives priority to the exemption of famous export brands from inspection if companies can meet certain conditions.

The General Administration of Customs provides a channel to ease and speed up customs procedures. Banks and insurance companies are encouraged by the GOC to ease access to financing and insurance services. The China Export Credit Insurance Company is encouraged to treat famous export brand companies as 'key clients', develop customised service offerings to cater to their individual needs, grant discounts on relevant fees and give priority to providing value-added services. Chinese embassies and consulates overseas should provide further support by conducting research on industries and markets and communicating relevant information to famous export brand companies. If one of these firms plans to launch sales in a particular foreign market, local

⁵⁵ MOFCOM et al., 2005, Notice concerning the promulgation of the 'Guiding opinions on supporting the development of famous export brands, ShangMaoFa 2005, No. 124

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

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embassies and consulates should offer guidance and help. They should also seize every opportunity to promote the famous export brand.

Considering the comprehensive nature of this programme, the Australian industry expects that participating companies may benefit substantially. The 'famous export brand' policy has a strong bias towards technology-intensive products and could thus serve to advance upgrading in the steel industry in accordance with general industrial policy.

The initiating document of the Famous Export Brand programme specifically called for lower level governments to implement similar programmes and launch their own famous export brands. One such example known to the Australian industry, is the city of Ma'anshan, located in Anhui Province and home to Ma'anshan Iron and Steel Group, one of China's largest steelmakers. In July 2008, the municipal government released the initiating document for the local version of the famous export brand programme. While the document largely echoes the original text drafted at the central government level, citing the same motivations and expressing the same expectations, the scope of support measures announced is smaller. The assistance measures to be mobilised by local authorities, however, include a one-time cash reward and fiscal support channelled through a special fund to create famous export brands.

Authorities have pledged assistance to companies pursuing activities such as applying for international certifications, trademark registrations, marketing campaigns or participation in Chinese and overseas trade fairs. Since technological upgrading plays a major role in the programme's concept, with regard to the procurement of advanced technologies and equipment, the government of Ma'anshan promises to endorse applications of local projects to support funds administered at the provincial or national level. In the same vein, companies admitted into the local programme will be recommended for acceptance into the provincial and national programmes.

Eligibility criteria

- enterprises whose products qualify for the title of "China Worldwide famous Brand"; and
- enterprises whose products qualify for the title of "China well-known brand" and/or "famous trademark" (**China famous Trademark**).

Program 11: Matching Funds for International Market Development for SMEs

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 11*), and before then *Subsidy Investigation No. 198* (there known as, *Program 14*).

Legal basis

Regulatory instrument: *Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises*.

The program is administered by the Ministry of Finance and Ministry of Commerce, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions.

Eligibility criteria

SME enterprises that have:

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- a legal personality according to law;
- the capacity to manage an import or export business;
- made exports in the previous year of less than or equal to USD 45,000,000;
- sound financial management systems and records;
- employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and
- a solid market development plan.

Program 12: Superstar Enterprise Grant

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 12*), and before then *Subsidy Investigation No. 198* (there known as, *Program 15*).

Legal basis

- *Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises*; and
- *Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises*.

This program is administrated by the Huzhou Economic Committee.

Eligibility criteria

Enterprises located in Huzhou city that satisfy the following criteria.

- (a) The “output scale” of the enterprise must meet one of the following criteria:
- business income of the current year not exceeding RMB 3.5 billion and sales;
 - revenue within the city exceeding RMB 2 billion;
 - sales revenue within the city exceeding RMB 2.5 billion;
 - sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than RMB 10 million; or
 - revenue from self-export of current year is more than USD150 million.
- (b) The enterprise’s accumulated industrial input between 2006 to 2008 must have exceeded RMB 150 million.
- (c) The enterprise must be profitable, and its VAT “paid up”, while its:
- consumption tax;
 - income tax;
 - business tax;
 - city construction tax; and
 - education supplementary tax,

must exceed RMB 30 million.

- (d) The enterprise must not have suffered environmental or “unsafe production accidents” (or other illegal incidents) in the current year.

- (e) If the enterprise is not state-owned, it must have passed the “Five-Good Enterprises” assessment conducted by its county or district.

Program 13: Research & Development (R&D) Assistance Grant

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 13*), and before then *Subsidy Investigation No. 198* (there known as, *Program 16*).

Legal basis

Regulatory instrument: *Notice of the Office of People’s Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.*

In *Subsidy Investigation No. 198* it is understood that the GOC admitted that the funding shall not be more than RMB 150,000 and the duration for supporting an enterprise shall not be more than 3 years.

The Wuxing District government, and the Science and Technology Bureau of Wuxing District (**STB**) are jointly responsible for the administration of this program.

Eligibility criteria

In *Subsidy Investigation No. 198* it is understood that the GOC admitted that to qualify for this grant, applicant must meet the following requirements:

- register and operate in Jinzhou New District;
- have complete organisational structure, R&D facilities and intellectual protection measures;
- have definite direction and task for technology development and technology research and have independent assets and funds;
- have a technology team with strong capacities to do research and development; and
- have more than one patent or science and technology project of municipal level and above.

The Australian industry further understands that in *Subsidy Investigation No. 198* the GOC provided further information stating that the purpose of the grant was to accelerate the transformation of the economic development pattern and economic restructure of Jinzhou New District, enhance the capacity of self-dependent innovation of the district, implementing the strategy on “innovative Urban District”, and making efforts to achieve the sound and rapid economy development of Jinzhou New District.

Program 14: Patent Award of Guangdong Province

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 14*), and before then *Subsidy Investigation No. 198* (there known as, *Program 17*).

Legal basis

Regulatory instrument: *2009 Guangdong Patent Award Implementation Proposal*

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Administered by the Guangdong Province Department of Intellectual Property and Department of Personnel.

Eligibility criteria

The award is granted to enterprises that have an “innovations and utility models” or an “industrial design” patent.

In *Subsidy Investigation No. 198* the Commission found that:

- an application under the “innovations and utility models” patent category must establish that:
 - the product in question is skilfully constructed and innovative with high creation and technical level;
 - the product contributes to technical improvement and creation;
 - the patent has created or has the potential to bring significant economic or social benefit;
 - the patent holder has significantly protected the patent, and
- an application under the industrial design category must establish that:
 - the industrial design has reached high level at shape, pattern and colour;
 - application of this industrial design has brought or has the potential to bring significant economic or social benefit; and
 - the patent holder has significantly protected the patent.

Program 15: Innovative Experimental Enterprise Grant

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 15*), and before then *Subsidy Investigation No. 198* (there known as, *Program 18*).

Legal basis

Regulatory instrument: *Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises*

Administered by the administrative office of Science and Technology Bureau of Zhejiang province.

Eligibility criteria

In *Subsidy Investigation No. 198* the Commission found that eligible enterprises are those that are located in Zhejiang Province, and are:

- independent economic entities with “reasonable asset-liability ratios”, consistent earnings over the past 3 years, and an increasing market share;
- well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres;
- investing at least 5% of annual sales income;
- using intellectual property rights to protect major products; and
- strongly committed to technological innovation and protection with previous technological achievements.

Program 16: Special Support Fund for Non-State-Owned Enterprises

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 16*), and before then *Subsidy Investigation No. 198* (there known as, *Program 19*).

Legal basis

Regulatory instrument: *Notions concerning accelerating the growth of the non-state-owned Economy*, People's Government of Yunnan Province [2003-04-18]

Proposed in order to fully implement the guidelines made in the 16th National Congress of the Communist Party of China and the 7th Congress of the CPC's Committee of Yunnan Province, to grasp opportunities and concentrate all efforts on resolving key problems in the growth of the non-state-owned economy in Yunnan Province, promoting the non-state-owned economy to a new level, and pushing forward the construction of the "all-round well-off society" in Yunnan.

Eligibility criteria

Non-SOEs (SIEs) located in Yunnan Province.

Program 17: Venture Investment Fund of Hi-Tech Industry

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 17*), and before then *Subsidy Investigation No. 198* (there known as, *Program 20*).

Legal basis

Regulatory instrument: *Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing*

The program is administered by the Chongqing Venture Investment Fund.

Eligibility criteria

In *Subsidy Investigation No. 198* the Commission found that that eligible enterprises are those with "high-tech programs" located in the High-Tech Zone or the High-Tech Park of the new Northern District, and:

- the program must have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority);
- the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone;
- the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities;
- the enterprise must have good legal standing; and
- the total investment in the program must be RMB 100 million or more.

Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment

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This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 18*), and before then *Subsidy Investigation No. 198* (there known as, *Program 21*).

Legal basis

Regulatory instrument: Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters

Administered by the local commerce authority of Guangzhou.

Eligibility criteria

This program is available to enterprises whose headquarters are established in the Guangzhou Municipality by a foreign investor.

To qualify as “Headquarters” the facility must control all the operations and management of any enterprises it is invested in, both in China and internationally.

Only one enterprise Headquarters is permitted in the Guangzhou Municipality.

To qualify as “Regional Headquarters”, the facility must control operations and management of some or all enterprises it is invested in a certain area of China. Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.

Program 19: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 19*), and before then *Subsidy Investigation No. 198* (there known as, *Program 22*).

Legal basis

Regulatory instrument: *Notice of Issuing ‘Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan’*, Zhong Fu [2005] No 127.

The program is administered by the local economic and trade office, by the Municipal Economic and Trade Bureau (**METB**) and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City (**MLG**).

Eligibility criteria

In *Subsidy Investigation No. 198*, the Commission found that for an enterprise to be eligible for this program:

- it must be established, registered and carrying out business in Zhongshan City;
- its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies;
- it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise’s main economic

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and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development;

- it must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation; and
- it must have good credit standing.

Program 20: Water Conservancy Fund Deduction

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 20*), and before then *Subsidy Investigation No. 198* (there known as, *Program 23*).

Legal basis

Regulatory instrument: *Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local Taxation Bureau*, Zhe Di Shui Fa [2007] No 63.

This program is administered by the Local Taxation Bureau of Zhejiang Province and it is implemented by the competent local taxation authorities of the municipal and county levels in Zhejiang Province.

Eligibility criteria

In *Subsidy Investigation No. 198*, the GOC confirmed that only enterprises that satisfy one of following criteria will eligible for the grant under this program:

- provide job opportunities to laid-off workers, the disabled, and retired soldiers searching for jobs;
- enterprises that “utilize resource comprehensively as designated by government department above municipal level”;
- trading enterprises of commodities with annual gross profit rate of less than 5%;
- enterprises undertaking “State reserve and sale, the portion of revenues incurred from that undertaking may qualify for an exemption of the fee”;
- “advanced manufacturing enterprises” or key enterprises as designated by the municipal government, which are undertaking technology development projects and incurring development expenditure at an amount above RMB1 million;
- “insurance company’s revenue from sales which are subject to exemption of excise tax”;
- “bank’s revenue from turnovers between banks”; or
- “revenue from sales between members of an enterprise group subject to same consolidated financial statement”.

Program 21 Wuxing District Freight Assistance

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 21*), and before then *Subsidy Investigation No. 198* (there known as, *Program 24*).

Legal basis

Regulatory instrument: *Several Opinions On Further Supporting Industrial Sector To Separate And*

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Develop Producer-Service Industry, HuZhengBanFa [2008] No 109.

This program is administered by the Finance Bureau of Huzhou City.

Eligibility criteria

In *Subsidy Investigation No. 198*, the Commission found that those enterprises whose annual freight cost was RMB3 million or above, are refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007.

For enterprises whose annually paid income tax is RMB100,000 or above:

- 100% of the income tax paid by the “separated enterprise” and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise; and
- 50% of the turnover tax paid by the separated enterprise and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise.

Program 22: Huzhou City Public Listing Grant

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 22*), and before then *Subsidy Investigation No. 198* (there known as, *Program 25*).

Legal basis

Regulatory Instrument: *Notification of Government of Huzhou City*, (HuBan, No. 160).

This program is administrated by the Finance Bureau of Huzhou City.

Eligibility criteria

Enterprises that successfully completed listing of shares during 2010.

Program 23: Huzhou City Quality Award

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 23*), and before then *Subsidy Investigation No. 198* (there known as, *Program 26*).

Legal basis

Regulatory instrument: *Notification of the Office of People's Government of Huzhou City*, (HuZhengBanFa, No. 60)

The Government of Huzhou City and the Bureau for Quality and Technical Supervision are jointly responsible for the administration of this program.

Eligibility criteria

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In *Subsidy Investigation No. 198* the Commission determined that this award is granted to no more than three enterprises each year that:

- are registered in Huzhou City and have been in operation for more than three years and that have:
 - “enjoyed excellent performance”;
 - “implemented quality management”; and
 - “obtained a leading position in industry with significant economic benefits and social benefits”, and
- the products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy.

Program 24: Huzhou Industry Enterprise Transformation & Upgrade Development Fund

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 24*), and before then *Subsidy Investigation No. 198* (there known as, *Program 27*).

Legal basis

The purpose of the program is to promote industrial structure adjustment and upgrading, and to support technology updating and innovation of enterprises.

In *Subsidy Investigation No. 198*, the GOC advised that there was no single purpose legal document directly related to any benefit received by the respondents there under investigation.

The Australian industry understands that the *Bureau of Finance and the Economic and Information Committee of Huzhou City* are jointly responsible for the administration of this program. The *Bureau of Finance and the Economic and Information Committee of Huzhou City* examine and approve applications, with the funds provided from the budget of the *Financial Bureau of Huzhou City*.

Eligibility criteria

This program has been found to be limited to enterprises registered in Huzhou and encourages the transformation and upgrade of enterprises “including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new technology industry and new industry”.

Program 25: Wuxing District Public List Grant

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 25*), and before then *Subsidy Investigation No. 198* (there known as, *Program 28*).

Legal basis

Regulatory instrument: *Notification on Awarding Advanced Individuals and Advanced Entities of Industrial Economy and Open Economy for the Year of 2010* (Wu Wei Fa [2011] No 14)

This program is administered by the Government of Wuxing District.

Eligibility criteria

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A grant is available to eligible advanced publicly listed enterprises.

Program 26: Anti-dumping Respondent Assistance

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 26*), and before then *Subsidy Investigation No. 198* (there known as, *Program 29*).

Legal basis

Regulatory instrument: *Notification of Receiving Fair Trade Assistance by Wuxing Foreign Economic and Trade Bureau*

This program is administrated by Wuxing District Foreign Economic and Trade Bureau.

Eligibility criteria

The Australian industry understands that enterprises which incur expenses in anti-dumping proceedings may benefit from this program.

Program 27: Technology Project Assistance

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 27*), and before then *Subsidy Investigation No. 198* (there known as, *Program 30*).

Legal basis

Regulatory instrument: *Interim Measure for Administration of Post-completion Assistance or Loan Interest Grant for Industrialization of Science and Technology Achievements Sponsored by Zhejiang Province (2008)*

The *Bureau of Finance* and the *Science and Technology Bureau* both of Huzhou City are jointly responsible for the administration of this program.

Eligibility criteria

The Australian industry understands that this program is available to enterprises that undertake a scientific research project which meets the scope of the projects encouraged under this program.

Program 28: Transformation technique grant for rolling machine

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 198* (there known as, *Program 31*).

In that case, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria in relation to transformation technique and be located in Jinan district in order to be eligible for the subsidy provided by the Jinan Development and Reform Commission.

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The Commission therefore found the program to be specific, and countervailable.

Program 29: Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 198* (there known as, *Program 32*).

In that case, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria in relation to energy management in order to be eligible for the subsidy provided by the Ministry of Finance.

The Commission therefore found the program to be specific, and countervailable.

Program 30: Key industry revitalization infrastructure spending in 2010

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 198* (there known as, *Program 33*).

In that case, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria in relation to key industry revitalization infrastructure and be located in Shandong Province in order to be eligible for the subsidy provided by Shandong Provincial Department of Finance.

The Commission therefore found the program to be specific, and countervailable.

Program 31: Provincial emerging industry and key industry development special fund

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 198* (there known as, *Program 34*).

In that case, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria to be identified as an emerging industry and be located in Shandong Province in order to be eligible for the subsidy provided by Shandong Provincial Department of Finance and Shandong Economic and Information Committee.

The Commission therefore found the program to be specific, and countervailable.

Program 32: Environmental protection grant

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 29*), and before then in *Subsidy Investigation No. 193* (there known as, *Program 31*)

In in *Subsidy Investigation No. 193*, a cooperating exporter explained that the program was available to enterprises to purchase equipment to help protect the environment and payments were by the Ministry of Finance.

In that case, the Commission found the program to be specific, and countervailable.

Program 33 Environmental protection fund

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 38*), and in *Subsidy Investigation No. 198* (there known as, *Program 34*).

In *Subsidy Investigation No. 198*, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria in relation to environment protection be located in Jinan District in order to be eligible for the subsidy provided by the Jinan Municipal Bureau of Finance and Jinan Municipal Environmental Protection Bureau.

The Commission therefore found the program to be specific, and countervailable.

Program 34: Intellectual property licensing

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 39*), and before then *Subsidy Investigation No. 198* (there known as, *Program 37*).

In *Subsidy Investigation No. 198*, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria to be identified as intellectual property and be located in Shandong Province in order to be eligible for the subsidy provided by *Intellectual Property Office of Shandong Province*.

The Commission therefore found the program to be specific, and countervailable.

Program 35: Financial resources construction - special fund

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 40*), and before then *Subsidy Investigation No. 198* (there known as, *Program 38*).

In *Subsidy Investigation No. 198*, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria to be identified as financial resources construction of special fund and be located in Jinan District in order to be eligible for the subsidy provided by *Jinan Finance Bureau*.

The Commission therefore found the program to be specific, and countervailable.

Program 36: Reducing pollution discharging and environment improvement assessment award

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 41*), and before then *Subsidy Investigation No. 198* (there known as, *Program 39*).

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In *Subsidy Investigation No. 198*, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria to be identified as reducing pollution to help improve the environment and be located in Jinan District in order to be eligible for the subsidy provided by *Jinan Municipal Finance Bureau*.

The Commission therefore found the program to be specific, and countervailable.

Program 37: Grant for elimination of out dated capacity

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 43*), and before then *Subsidy Investigation No. 198* (there known as, *Program 41*).

In *Subsidy Investigation No. 198*, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria to be identified as eliminating out dated blast furnace and be located in Shandong Province in order to be eligible for the subsidy provided by Shandong Province Finance Bureau.

The Commission therefore found the program to be specific, and countervailable.

Program 38 Grant from Technology Bureau

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 44*), and before then *Subsidy Investigation No. 198* (there known as, *Program 42*).

In *Subsidy Investigation No. 198*, although the Commission was not aware of the legal basis or eligibility criteria of the program, it found that due to the lack of information provided by the GOC, the Commission nevertheless considered that enterprises were required to meet some criteria to be identified as developing application of coke oven gas waste heat efficiency and be located in Jinan District in order to be eligible for the subsidy provided by *Jinan Licheng District Finance Bureau*.

The Commission therefore found the program to be specific, and countervailable.

Program 39 High and New technology Enterprise Grant

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 30*).

Program 40 Independent Innovation and High Tech Industrialization Program

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 31*).

Program 41 Environmental Prize

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 33*).

Program 42 Jinzhou District Research and Development Assistance Program

This program was found to be a current and countervailable subsidy most recently in *Subsidy Investigation No. 237* (there known as, *Program 34*).

CATEGORY FOUR: Equity programs

Background

The Australian industry alleges that Chinese producers of rebar are likely to have benefited from the following equity programs:

- Program 43 Debt for equity swaps;
- Program 44 Equity infusions; and
- Program 45 Unpaid dividends.

It is asserted that under these programs certain enterprises are eligible for the acceptance of liabilities, whether actual or potential, by the GOC. Benefits are conferred to these enterprises in the amount of the liability accepted. It should be noted that were the liability was accepted in years prior to the proposed investigation period, then the countervailable subsidies that have been received need to be amortised over a period of years, which may in appropriate circumstances mean that the benefit is attributable to the period of investigation proposed by this application.

WTO Notification

The Australian industry is not aware of any WTO notification in respect of these programs.

Programs 43 to 45

Program 43: Debt for equity swaps

Background

This program was found to be a current and countervailable subsidy most recently by the *Canada Border Services Agency (CBSA)* in ‘Concerning the final determinations with respect to the dumping of certain concrete reinforcing bar originating in or exported from the People’s republic of China’, 4218-39 CV/138, 23 December 2014⁵⁹ (there known as, *Program 176*) and the European Commission (EC) in ‘Countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China’, 11 March 2013⁶⁰.

Legal basis

The debt for equity swap was a measure used in the financial restructuring of China’s State-owned steelmakers to State-owned commercial banks (**SOCBs**). Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on 20 November 2000), the State Council established four asset Asset Management Companies (**AMCs**) that were directed to purchase certain non-performing loans from SOCBs. The four AMCs were supervised and managed by the People’s

⁵⁹ Hereinafter *Canada – Countervailing measures on rebar from China*

⁶⁰ Hereinafter *European Community – Countervailing measures on organic steel from China*

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Bank of China, China's Ministry of Finance and the China Securities Regulatory Commission. One of the authorised business activities available for the management of non-performing loans purchased by the AMCs was the debt for equity swap. A debt for equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company.

This financial contribution was provided by the government through public bodies involved in these transactions, i.e. the four AMCs and various SOCBs. 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. SOCBs are public bodies because the great majority of them are state-owned banks. In *European Community – Countervailing measures on organic steel from China* it was found that at least 14 out of the 17 reported banks in that case were state-owned banks, including the major Commercial banks in China like Bank of China, China Construction Bank and Industrial and Commercial Bank of China, and they were controlled by the government and exercised government authority in a manner that their actions were attributable to the State. For this reason the SOCBs (state-owned commercial banks) in China should be considered public bodies.

This subsidy is specific 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.

Benefit amount

In *European Community – Countervailing measures on organic steel from China*, the subsidy rate there calculated amounted to 0.05 %.

Program 44 Equity infusions

Background

This program was found to be a current and countervailable subsidy most recently by the CBSA in *Canada – Countervailing measures on rebar from China* (there known as, *Program 178*) and the EC in *European Community – Countervailing measures on organic steel from China*.

Legal basis

The GOC has provided over the years substantial amounts of cash to steel producers through equity infusions, specifically, the GOC (through various state-owned entities) acquired shares in companies in which it was already the main shareholder without acquiring additional shareholder rights.

Equity infusions constitute a direct transfer of funds. These financial contributions were provided by the government through public bodies involved in these transactions, including *International Capital Corporation (CICC)* and SASAC. In *European Community – Countervailing measures on organic steel from China*, the EC was there satisfied that CICC acted as the lead underwriter and manager of the share issuance in respect of an SIE steel producer.

The Australian industry understands that CICC is 51 % state-owned and it is ultimately controlled by SASAC, which also acted as the GOC entity controlling the SIE steel producer.

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Therefore, these transactions were carried out by the GOC through public bodies within the meaning of relevant WTO jurisprudence.

The Australian industry considers that these equity infusions confer a benefit to the recipient companies as they are inconsistent with the usual investment practice of private investors, specifically, the payment by the SIE steel producer of an overvalued price of its portion of the new share issue not in line with fair market conditions. Furthermore, the use of funds raised to purchase state-owned assets and equity investments at below-market prices. In the case of *European Community – Countervailing measures on organic steel from China*, the EC was satisfied that the GOC paid the same price as other investors despite the GOC's shares in the SIE steel producer being worth less as they had different rights and prospects than the shares sold to other shareholders.

These subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of the product concerned.

Benefit amount

In *European Community – Countervailing measures on organic steel from China*, the subsidy rate there calculated amounted to 0.08 %.

Program 45 Unpaid dividends

Background

This program was found to be a current and countervailable subsidy most recently by the CBSA in *Canada – Countervailing measures on rebar from China* (there known as, Program 179) and the EC in *European Community – Countervailing measures on organic steel from China*.

Legal basis

SIEs including the steel companies producing rebar do not have to pay dividends to the government as their owner even when they earn profits. As a result, SIE steel producers are able to finance massive investment through retained profits not distributed as dividends according to this programme.

Unpaid dividends must be considered as a disguised grant or as revenue forgone 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 SIE steel producers, in principle SASAC. As noted above, SASAC performs Government functions.

The full amount of unpaid dividends is considered to confer a benefit to the recipient SIE steel producers as this is inconsistent with the usual investment practice of private investors that require dividend distributions normally attached to their shares. For SIEs partially owned by private investors, the amount of the benefits equals the amount of unpaid dividends distributed to them on a *pro rata* basis.

These subsidies are 'specific' because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of rebar.

Benefit amount

In *European Community – Countervailing measures on organic steel from China*, the subsidy rate there calculated amounted to 1.36 %.

CATEGORY FIVE: PREFERENTIAL LOANS AND INTEREST RATES TO PRODUCERS/EXPORTERS OF REBAR

Program 46 Preferential loans and interest rates

The Australian industry producers benefit from low (subsidised) interest rates from SOCBs 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.

This program was found to be a current and countervailable subsidy most recently by the EC in *European Community – Countervailing measures on organic steel from China*.

Legal basis

The GOC is a major shareholder in many of the major banks established in China⁶¹ and therefore, as in the case of the SIEs producing steel billet, it has access to banks' Articles of Association where the information on shareholder membership 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".

In *European Community – Countervailing measures on organic steel from China*, the EC established that the Chinese financial market is characterised by government intervention because most of the major banks are State- owned.

From the available information the EC, there 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 sector⁶², the state-owned banks' share may amount to more than two-thirds of the Chinese market. For the same matter the WTO Trade Policy Review of China noted that "[t]he high degree of state ownership is another notable feature of the financial sector in China"⁶³, and "there has been little change in the market structure of China's banking sector, which is dominated by state-owned banks"⁶⁴. It is observed 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 sector⁶⁵.

The EC concluded that on the basis of the available data that Chinese banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to

⁶¹ World Trade Organization, *Trade Policy Review Body*, 'Trade Policy Review Report by the Secretariat: China', WT/TPR/S/230 (26 April 2010) at p. 79

⁶² NON-CONFIDENTIAL ATTACHMENT C-1.46.1.

⁶³ World Trade Organization, *Trade Policy Review Body*, 'Trade Policy Review Report by the Secretariat: China', WT/TPR/S/230 (April 2010) at p. 79.

⁶⁴ World Trade Organization, *Trade Policy Review Body*, 'Trade Policy Review Report by the Secretariat: China', WT/TPR/S/264 (July 2012) at p. 122.

⁶⁵ *Ibid.*

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the State. The relevant data used in order to arrive at this finding was derived by the EC 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 *Deutsche Bank Research on China's banking sector* (2006), *WTO Policy review on China* (2010 and 2012), *China 2030 World Bank Report*⁶⁶, information submitted from the co-operating exporting producers and information existing in the complaint, in that investigation. As for foreign banks, the EC concluded on the evidence 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 market⁶⁷. The EC further found that Chinese banks, particularly the large commercial banks, still relied on state-owned shareholders and the government for replenishment of capital when there is a lack of capital adequacy as result of credit expansion.

The EC found in *European Community – Countervailing measures on organic steel from China* that with respect to the banks that provided loans to the cooperating exporting producers, the great majority of them were 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. The EC there concluded that the banks were controlled by the government and exercised government authority in a manner that their actions can be attributed to the State. For this reason the state-owned commercial banks in China were considered by the EC to be public bodies.

Another sign of GOC involvement in Chinese financial market is the role played by the People's Bank of China (**PBOC**) in setting the specific limits on the way interest rates are set and fluctuate. Indeed, EC found in *European Community – Countervailing measures on organic steel from China* the investigation established that the PBOC has specific rules regulating the way interest rates float in China. According to the information available, those rules were set out in the PBOC's Circular on the Issues about the Adjusting Interest Rates on Deposits and Loans⁶⁸. 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. Accordingly, in *European Community – Countervailing measures on organic steel from China* the European Commission found that the GOC had a policy to provide preferential lending to the steel sector, because public bodies (state-owned commercial banks) were (a) engaged in such provision, and (b) hold a predominant place in the market, which enabled them to offer below-market interest rates.

Further, the European Commission found that the laws and regulations relevant for the banking sector show that the GOC policy to provide preferential lending to 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”*⁶⁹

⁶⁶ NON-CONFIDENTIAL ATTACHMENT C-1.46.2.

⁶⁷ NON-CONFIDENTIAL ATTACHMENT C-1.46.1., at pp. 3-4.

⁶⁸ Yinfa (2004) No 251.

⁶⁹ Article 34, *Commercial Banking Law* [2003].

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Specifically, the *Commercial banking law* [2003] applies in the same way to state-owned commercial banks and privately owned commercial banks. For example, Article 38 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”

Also *Order No. 35 - Policies for the development of Iron and Steel Industry*, in particular Articles 24 and 25, 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.

Similarly, in *European Community – Countervailing measures on organic steel from China*, the European Commission there also how the banks in China performed credit risk assessment of the steel producers before deciding whether to grant them or not loans and deciding on the conditions of the loans which are granted. The European Commission there found according to evidence contained in numerous *International Monetary Fund* (“IMF”) and Overseas Economic Cooperation and Development (**OECD**) reports that:

- bank liberalisation in China was incomplete and credit risk is not properly reflected⁷⁰;
- there is a lack of interest rate liberalisation in China⁷¹;
- the 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)⁷²; and
- the 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 government⁷³.

Financial contribution

State-owned banks are considered to be public bodies because they are vested with government authority and exercise government functions. These banks effectively exercise government authority as 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*⁷⁴, Decision 40 and Article 34 of the *Law on Commercial Banks* act with respect to the fulfilment of the government industrial policies.

In *European Community – Countervailing measures on organic steel from China*, the European Commission concluded that in the case of loans provided by SOCBs in China, there is a financial contribution to steel producers in the form of a direct transfer of funds from the government.

⁷⁰ IMF Working Paper, *Progress in China's Banking Sector Reform: Has Bank Behaviour Changed?*, WP/06/71, March 2006, pp. 3-4, 13, 18-20.

⁷¹ IMF Working Paper, *Interest Rate Liberalization in China*, WP/09/171, August 2009, pp. 3-4, 21-23.

⁷² IMF Country Report, *PRC: 2010 Article IV Consultation*, No 10/238, July 2010, pp. 22, 24 and 28-29.

⁷³ *OECD 2010 Economic Survey of China*, February 2010, pp. 71, 73-81, 97, see also OECD China's Financial Sector Reforms, *Economic Department Working Paper No. 747*, ECO/WKP (2010) 3, 1 February 2010, pp. 2, 8-15, 36.

⁷⁴ Articles 16, 24 and 25.

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Furthermore, the European Commission there found evidence to show that SOCBs (as well as privately owned banks) are entrusted or directed by the government.

In view of the above analysis, it is also appropriate to conclude that privately-owned banks are entrusted and directed by the GOC to provide loans to the steel producers, and as such may be considered to be public bodies, and that a financial contribution.

Benefit

A benefit exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market.

Specificity

The GOC only allows the financial institutions to provide preferential loans to limited number of industries/companies which comply with the development policies of the GOC. This program, in form of preferential lending, is not generally available and is therefore specific

The steel industry belongs to the encouraged category according to the Decision No. 40, being 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 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'. Therefore, it is clear 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.

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.

However, there is further 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 China. For example, in the Hubei Province, *Notice concerning implementation measures for the adjustment and revitalisation of ten key industries for Hubei Province*, has been given. This policy is designed 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,

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“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.

Calculation of the subsidy amount

The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period, which in the case of this program 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.

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 needs to be constructed.

When constructing an appropriate benchmark, the Australian industry considers it 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.

In *European Community – Countervailing measures on organic steel from China*, the European Commission considered it appropriate to consider that all firms in China would be accorded the highest grade of "Non-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 may then be 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 investigation period. This amount may then be allocated over the total turnover of the co-operating exporting producers.

In *European Community – Countervailing measures on organic steel from China*, the highest subsidy rate there calculated for this program was 0.97 %.

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CATEGORY SIX: MISCELLANEOUS PROGRAMS DISCLOSED IN THE ANNUAL REPORT OF SHANDONG IRON AND STEEL CO., LTD.

The following programs were identified in the 2014 Annual Report⁷⁵ of Shandong Iron and Steel Co., Ltd, a known producer and exporter of rebar.

Program Number	Program Name (English translation)	Program Name (Chinese)	NON-CONFIDENTIAL ATTACHMENT C-1.9.1 Reference (page no.)	Amount (CNY)		
				2014	2013	Deferred (2014)
47	Project: Shortage of coke oven gas heat efficient return Development and Application Technology	焦炉荒煤气余热高效回用技术开发与应用	90	1 000 000.00		
48	Project: Finance Bureau of independent innovative technology funds (seabed pipeline steel)	财政局企业自主创新技术资金(海底管线钢)	90	300 000.00		
49	Project: The first batch of industry and information technology development funds FY2014	2014年度第一批工业和信息化发展专项资金	90	500 000.00		
50	Project: Second five special funds for the national support program	十二五国家支撑计划课题专项资金	90	290 000.00		
51	Project: Major technical equipment special plate manufacturing support fund	重大技术装备特厚板制造扶持资金	90	200 000.00		
52	Project: The second batch of key industrial adjustment and revitalization and transformation funds FY2009	2009第二批重点产业调整振兴和技术改造	90			8 828 473.02
53	Project: Industrial enterprise energy management center demonstration project construction FY 2009	2009年工业企业能源管理中心建设示范项目	90			8 305 304.24
54	Project: Coke ovens 1 - 5 Gas desulfurization renovation project	1#-5#焦炉脱硫改造工程	90			7 216 877.64
55	Project: Industrial park wastewater treatment and reuse project funding	工业园区污水处理及回用工程项目资金	90			5 958 333.34
56	Project: 2011 environmental protection special fund	2011年环保专项资金	91			4 139 303.48
57	Project: Special funds for energy conservation	节能减排专项资金	91	4 000 000.00		
58	Project: Coke oven gas desulfurization improvement project	焦炉煤气脱硫完善项目	91	3 900 000.00		
59	Project: Special promotion with steel caster reconstruction funds for support	特殊用钢板连铸机提升改造项目扶持资金	91	3 160 000.00		
60	Project: Water Reuse project	中水回用项目	91	150 000.00		
61	Project: 2010 key industry revitalization and transformation	2010重点产业振兴和技术改造	91			2 615 843.86
62	Project: Energy power plant waste heat heating reconstruction project grants	能源动力厂余热供暖改造项目补助款	91			1 580 000.00
63	Project: 320 sintering flue gas desulfurization project environmental protection funds	320烧结机烟气脱硫项目环保资金	91			1 350 000.00
64	Project: 400 sintering desulfurization funds	400烧结机脱硫改造资金	91			827 860.70
65	2012 annual special funds for energy	2012年度节能专项资金	91	550 000.00		
66	Coke ovens No. 1, 2 & 5 tamper top-loading change project	1#2#5#焦炉顶装改造团堆焦项目	91	20 000.00		400 000.00
67	Project: 2010 provincial emerging industries and key industries Development Special Fund Project	2010省战略性新兴产业和重点行业发展专项基金	91			326 980.48
68	Regional Government economic incentives	政府区域经济奖励	94	890 000.00		1 120 000.00
69	Set aside safety production capital Jinan City Bureau of Finance	济南市历城区财政局拨安全生产资金	94	500 000.00		
70	Nanshi Bureau of Water Resources water consumption units appraisal award funds	南市水利局用水单位考核奖励款	94	500 000.00		
71	City key projects mentioned standard award	全市重点项目达标奖励	95	500 000.00	445 200.00	
72	E420 marine platform steel research and application projects	E420海洋平台用钢研制与应用项目	95	250 000.00		
73	Xuejiadao financial and tax refund payments	薛家岛财政税收返还款项	95	57 000.00	204 000.00	
74	Jinan City Bureau of Finance Cleaner Production special funds	济南市历城区财政局清洁生产专项资金	95	30 000.00		10 780 683.05
75	Security special funds	安全专项资金	95		200 000.00	
76	Patent Development Grant funds	专利发展资助资金	95		20 000.00	
77	Shandong Huimin Technology Development Co. Ltd. R & D funding	山东慧敏科技发展有限公司研发经费	95		150 000.00	
78	National Pillar Program special funds	国家支撑计划专项资金	95		150 000.00	
79	Government allocated industry Enterprises Award	财政拨付工业企业发展奖	95		50 000.00	
80	Enterprise workers vocational training allowance	企业职工职业培训补贴	95		67 654.00	
81	Municipal Export trade and economic development guide funds	市商务外贸发展引导资金	95		403 000.00	
82	Income received from Commerce Bureau in 2012 to guide the development of foreign trade financing	商务局2012年外贸发展引导资金	95		103 600.00	
83	2013 annual export credit insurance subsidies 9.12	2013年度出口信用保险补贴9.12	95		136 064.00	
84	2013 municipal foreign trade development guide funds	2013市外贸发展引导资金	95		285 000.00	
85	Two by one guarantee fund to support foreign trade	两增一保外贸扶持资金	95		4 985 500.00	
86	The financial return of funds	财政返还款项	95		300 000.00	

⁷⁵ NON-CONFIDENTIAL ATTACHMENT C-1.9.1.