



Australian Government  
Anti-Dumping Commission

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## Government Questionnaire People's Republic of China

**Product:** Rod in coils

**From:** People's Republic of China

**Period of Investigation:** 1 July 2014 to 30 June 2015

**Response due by:** 25 March 2016

Extended to 11 April 2016

**Investigation case manager:** Sanjay Sharma

**Phone:** +61 2 6276 1462

**Fax:** +61 3 8539 2499

**E-mail:** [operations5@adcommission.gov.au](mailto:operations5@adcommission.gov.au)

**Anti-Dumping Commission website:** [www.adcommission.gov.au](http://www.adcommission.gov.au)

**Return completed questionnaire to:** Director Operations 5  
Anti-Dumping Commission  
Level 10 Industry House  
10 Binara Street  
Canberra ACT 2600  
Australia

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**ABBREVIATIONS**

the Act	the Customs Act 1901
the Applicant or OneSteel	OneSteel Manufacturing Pty Ltd
China	the People's Republic of China
CISA	China Iron and Steel Association
CIF	Cost, Insurance & Freight
the Commission	Anti-Dumping Commission
EPZ	Export Processing Zones
FOB	Free On Board
GOC	Government of China
the goods	the goods the subject of the application (Rod in coils)
the investigation period	1 July 2014 to 30 June 2015
SAT	State Administration of Taxation
SASAC	the State-owned Assets Supervision and Administration Commission of the State Council
SEZ	Special economic zone
SIE	State-invested enterprise

## BACKGROUND AND GENERAL INSTRUCTIONS

### 1. Background

On 17 February 2016, following an application by OneSteel Manufacturing Pty Ltd (Onesteel), the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated a countervailing investigation in respect of rod in coils exported to Australia from the People's Republic of China (China). OneSteel alleged that the Australian industry has suffered material injury caused by rod in coils exported to Australia from China at subsidised prices.

Anti-Dumping Notice (ADN) No. 2016/14 outlining the details of the investigation and the procedures to be followed during the investigation was published on 17 February 2016 and can be accessed on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

### 2. Goods under consideration

The goods under consideration ("the goods") i.e. the goods exported to Australia at allegedly at dumped prices and in receipt of subsidies, are:

*"Hot rolled rods in coils of steel, whether or not containing alloys, that have maximum cross sections that are less than 14mm.*

*The goods covered by the application include all steel rods meeting the above description of the goods regardless of the particular grade or alloy content.*

*Goods excluded from this application include hot-rolled deformed steel reinforcing bar in coil form, commonly identified as rebar or debar, and stainless steel in coils."*

### 3. Tariff classification

The goods are typically classified to the following Subheadings in Schedule 3 of the *Customs Tariff Act 1995*.

- Tariff subheading 7213.91.00 with statistical code 44
- Tariff subheading 7227.90.90 with statistical code 02<sup>1</sup>

### 4. Investigation period

The existence and amount of any subsidy in relation to rod in coils exported to Australia from China will be determined on the basis of an investigation period of 1 July 2014 to 30 June 2015 (the investigation period).

The Commission will examine details of the Australian market from 1 July 2011 for injury analysis purposes.

**The GOC is concerned to find that that the investigation period for this subsidisation investigation is 1 July 2014 to 30 June 2015, notwithstanding the fact that the investigation was initiated on 17 February 2016. It is noted that the Commission's Dumping and Subsidy Manual states:**

***The investigation period is generally the 12 months preceding the initiation date***

<sup>1</sup> Statistical code 02 came into effect on 1 January 2015; prior to this, the relevant statistical code was 42.

*and ending on the most recently completed quarter or month.*

The investigation period for this investigation is neither of these alternatives. Indeed, the end of the investigation period is the end of the quarter which was over seven months before the initiation date. The fact that the Australian industry has lately chosen to split up its allegations of dumping and subsidisation in its steel product applications against Chinese exporters has not gone unnoticed by the GOC. It is not clear whether this method is being pursued by the Australian industry with the collaboration the Commission, but certainly it is taking place with the knowledge of the Commission. The GOC observes that this practice of disjunctive and successive applications is objectively unnecessary and creates greater expense and dislocation for all concerned. The GOC's concerns are exacerbated when the Commission then specifies investigation periods in the second investigation which are not reflective of current market conditions in either China or Australia, and which are inconsistent with the Commission's policy. Indeed, the policy emanating from the WTO's Committee on Anti-Dumping Practices, in the almost identically analogous scenario of setting anti-dumping investigation periods, is that:

*...the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable [underlining supplied]*

The evidentiary and substantive implications of the staggering of investigations in the way that has been done over recent times are not lost on the GOC. The "choice" of the times at which an Australian industry might decide to lodge anti-dumping and subsidisation applications is that of the industry concerned. Nonetheless the Commission is requested not to give the appearance of complicity in the corporate strategies which underlie that choice. WTO and Commission policy both require the selection of the most recent period for the purposes of an investigation. The GOC believes that these declared policies should be complied with.

## 5. Purpose of this questionnaire

The purpose of this questionnaire is to assist the Commission to obtain the information from the Government of China (the GOC) it considers necessary for the countervailing investigation generally.

Please note that the subsidy/countervailing sections of this questionnaire focus on identified programs that the Anti-Dumping Commission is specifically investigating at this stage. However, the Commission may also investigate any additional subsidy program(s) that it considers may warrant investigation if additional information comes to light in relation to further programs.

Any additional questions may be posed to the GOC in the form of supplementary questionnaires.

A separate exporter questionnaire will be available for Chinese exporters of rod in coils to complete, if they chose to cooperate with the investigation. All known exporters have been sent notification of the investigation and advice on how to access the Exporter Questionnaire.

The GOC does not have to complete this questionnaire. However, if the GOC does not respond, the Commission may be required to rely on information supplied by other parties (including information supplied by the Australian industry – the applicant for the countervailing measures).

Therefore, it is considered to be in the GOC's interests and the interests of Chinese exporters of rod in coils, to provide a complete response.

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If the GOC chooses to respond to this questionnaire, the response is due by **25 March 2016**.

**The time for the GOC to respond to this questionnaire was extended by the Commission to 11 April 2016.**

### **6. If you decide to respond**

Should the GOC choose to provide a response to this questionnaire, please note the following:

#### **For official use only and public record**

If the GOC chooses to respond to this questionnaire, you are required to lodge a “for official use only” and a “public record” version of your submission by the due date.

In submitting these versions, please ensure that each page of the information you provide is clearly marked either “**FOR OFFICIAL USE ONLY**” or “**PUBLIC RECORD**” in the header and footer.

All information provided to the Commission “for official use only” will be treated confidentially. The public record version of your submission will be placed on the public record, which all interested parties can access.

Your public record submission must contain sufficient detail to allow a reasonable understanding of the substance of the “for official use only” version. If, for some reason, you cannot produce a public record summary, contact the investigation case manager (see contact details on Page 1 of this questionnaire).

#### **Declaration**

You are required to make a declaration that the information contained in the GOC’s response is complete and correct. You must return the signed declaration of an authorised GOC official at last section of this questionnaire with the GOC’s response.

#### **Consultants/parties acting on your behalf**

If you intend to have another party acting on your behalf please advise the Commission of the relevant details.

The Commission will require a written authorisation from the GOC for any party acting on its behalf.

**The GOC confirms that Moulis Legal acts on behalf of the GOC in this matter, and notes that written authorisation to that effect was provided to the Commission by Moulis Legal (email of 16 March 2016 refers).**

#### **Provision of documents**

When providing documents, please indicate whether the documents:

- are currently in force;
- were in force during the investigation period; or
- have been repealed, revised or superseded.

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Where the documents have been repealed, revised or superseded;

- indicate when this revision occurred;
- provide any notice of repeal;
- provide the revised version;
- provide the document that supersedes the requested document; and
- indicate whether the revised version was in force during the investigation period.

Responses to questions should:

- be as accurate and complete as possible, and attach all relevant supporting documents, even where not specifically requested in this questionnaire;
- be in English (with fully translated versions of all requested and other applicable documents submitted);
- list your source(s) of information for each question;
- identify all units of measurement used in any tables, lists and calculations;
- show any amounts in the currency in which they were originally denominated.

Please note that answers such as: "Not Applicable" or an answer that only refers to an exhibit or an attachment may not be considered by the Commission to be adequate. We therefore suggest that in answering the questions you outline the key elements of your response in the primary submission document, rather than merely pointing to supporting documents of varying degrees of relevance and reliability as your answer.

### **Lodgement**

Lodgement by email is preferred. The email address for lodgement is shown on the front cover of this questionnaire. If you lodge by email, you are still required to provide a "for official use only" and "public record" version of your submission by the due date.

You may also lodge your response by mailing it to the address shown on the front cover of this questionnaire. For questions requiring a response in a Microsoft Excel spreadsheet that cannot be emailed, please provide those spread sheets on a CD-ROM or on a USB device.

### **7. Future questions and verification**

Please note that after receiving the GOC response to this questionnaire, the Commission may seek additional information from the GOC.

The Commission may also seek to carry out a visit to the GOC to examine relevant records and to verify the information provided. You will be contacted in advance of such a meeting to make arrangements.



## SECTION A: GENERAL QUESTIONS

### Introductory comments

The Commission's questions concerning the general market structure, distribution channels, and the general changes of government laws and regulations over a five year period, and the other questions in this section, are lacking in relevance for the purposes of a countervailing investigation such as this. Indeed, we note that these are the same questions which were asked in the questionnaire issued by the Commission in its still-current rod in coil anti-dumping investigation.

Before the GOC responds to these general questions, and to the specific questions relating to the alleged subsidy programs, the GOC first wishes to note the comments made by the Commission in the context of its "particular market situation" determination in the Statement of Essential Facts ("SEF 301"), in its still-current anti-dumping investigation concerning rod in coil exported from China:

#### *Chinese Government subsidy programs*

*The nature of support provided by the Chinese Government to the Chinese steel industry is also documented through previous investigations undertaken by the Commission. While these investigations don't correspond with the investigation period, these measures directly contributed to the state of the Chinese steel industry and rod in coil market during the investigation period. Examples of the types of subsidies provided to the Chinese steel industry are set out below.<sup>67</sup>*

- *Steel inputs provided by the government at less than adequate remuneration.*
- *Coking coal and coke provided at less than adequate remuneration.*
- *Preferential Tax Policies for Enterprises with Foreign Investment.*
- *Preferential Tax policies for Specific Regions.*
- *Preferential Tax Policies for Foreign Invested Enterprises.*
- *Land Use Tax Deductions.*
- *Preferential Tax Policies for High and New Technology Enterprises.*
- *Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipment.*
- *Research and Development (R&D) Assistance Grants.*
- *Special Support Funds for Non State-Owned Enterprises.*

<sup>67</sup> *Anti-Dumping Commission, 2013, Report Number 198: Dumping of Hot Rolled Plate Steel Exported from the People's Republic of China, Republic of Indonesia, Japan, The Republic of Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel Exported from the People's Republic of China, pp 41-43. Australian Customs Service, 2013, Report Number 193: Alleged Subsidisation of Zinc Coated Steel And Aluminium Zinc Coated Steel, pp 40-41.*

The GOC has deep concerns about the Commission's anti-dumping determination in SEF 301. This Government Questionnaire concerns subsidisation. The GOC's view is that it is inconsistent with the WTO Anti-Dumping Agreement and the WTO Subsidies and Countervailing Measures Agreement to attempt to address countervailing concerns in an anti-dumping procedure.

To the extent that the existence of certain countervailable subsidies can be said to be relevant to the Commission's determination in its anti-dumping investigation, the GOC has some comments to offer. In so doing the GOC notes that it has consistently rejected, and will continue to reject, the proposition that there can be a mixing of the consideration of alleged subsidies in the Chinese "iron and steel" industry with a determination of a "particular market situation" in the Chinese market for rod in coil.

With respect, the passage we have quoted from SEF 301 suggests that the Commission

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has “the cart before the horse”. SEF 301 acknowledges that the alleged subsidies to which it refers were not determined in respect of the investigation period to which SEF 301 applies. However, with respect, the Commission cannot just “pass over” the fact that alleged subsidies relevant to the Chinese rod in coil exported to Australia during the investigation period are presently being investigated by the Commission in this investigation. The Commission is presently collecting relevant information about the alleged subsidies from the GOC, with this Government Questionnaire response being part of that exercise. Regardless of this, SEF 301 uses conclusions about alleged subsidies - conclusions that have not yet been made in this investigation - to bolster the adverse findings made against the GOC and against the Chinese exporters concerned in SEF 301. This cavalier approach is quite flawed and extremely disappointing to the GOC.

Further, in the paragraph we have quoted from SEF 301, reference is made to previous decisions of Australian Customs and of the Commission concerning coated steel and plate steel, in Reports 193 and 198 respectively. These decisions are cited as “examples of the types of subsidies provided to the Chinese steel industry”. In this regard, the GOC notes that in the case of the measures applicable to coated steel the Minister varied that part of the previous decision to impose countervailing duties in so far as it adopted the findings that the so-called “LTAR” (less than adequate remuneration) subsidies were countervailable. This was done, we believe, in response to this clear finding of the Anti-Dumping Review Panel:

*The fact that the HRC suppliers are complying with the GOC’s policies, plans and measures cannot of itself meet the criteria for finding that they are public bodies.*

That finding would be equally applicable to the findings regarding “Programs 1 to 4 “ in Report 198, given that those findings are solely based on Report 193.

The Commission’s usage of “non-subsidies” – subsidies found by the Minister not to exist in previous cases, and which have not been established in this investigation – for the purposes of expressing its views in SEF 301 is legally and procedurally flawed. It does not comply with the obligation of an investigating authority to rely on positive evidence, and contradicts the requirements, and the spirit, of cooperation. The GOC respectfully requests the Commission to reassess and accordingly reverse its reliance on alleged subsidy findings in SEF 301. Failing that, and in so far as the information or views relied upon by the Commission in that procedure are said to be related to any alleged government subsidies or their impact, the Commission should defer the making of any recommendations to the Minister in the parallel anti-dumping investigation until the conclusion of this countervailing investigation.

1. Describe the nature and structure of the rod in coil industry in China. Without limiting your response include details of any government involvement in the rod in coil industry including upstream raw materials (i.e. coking coal, coke, iron ore and scrap steel). The response should include details of:

### GOC industry involvement

The GOC’s “involvement” in the so called “rod-in-coil industry”, is not different from its general involvement as a government in other industry sectors of the Chinese economy. The GOC passes and enforces laws, makes policies, collects taxes, operates border and customs controls, enters into trade agreements with other countries, and carries out all of the other functions customarily associated with the running of a sovereign state.

Given the size and scale of steel manufacturing in China, its impact on the environment, and its significance to the national and international economy, commercial steelmaking activities are naturally an important part of the GOC’s macro-economic policy settings, in the same way as major industry is important to most

governments internationally.

There is nothing unusual or special about the GOC's consideration of the steel sector, in its most general sense, as a very important part or a "pillar" of China's economy. The importance of China's steel sector is self-evident. For example, China is the largest steel producer in the world, producing 803.8 million tonnes of crude steel, which accounted for more than half of global output in 2015.<sup>2</sup> China is also the largest importer of iron ore, having imported 952 million tonnes in 2015, including 607 million tonnes from Australia (which accounts for 80% of Australia's total exports of iron ore).<sup>3</sup>

Accordingly, it should be considered to be neither surprising nor uncommon for the GOC to maintain oversight and to set out its visions and macro-economic objectives in relation to steel related industries and sectors. It has done this through publishing aspirational policy documents such as five year plans, and the National Steel Plan. Given the high-emission characteristics of the steel making sector, it must also be subject to international commitments and to the GOC's national policies in relation to climate change. Indeed, China has taken on an increasingly active role in promoting global solutions on climate change.<sup>4</sup> Due to global steel overcapacity and economic slowdown, the GOC is often urged by other countries' governments to take actions to alleviate the overcapacity issue in the world steel industry.

As the world's second largest economy, the GOC's laws and regulations, and its economic, social and international policies will all more or less influence business and industry whether operating within China or in other countries, and in this regard the steelmaking sectors are no exception. Further, it is not only the GOC's policies that are relevant – the policies of all countries interact with each other to create the conditions under which all industries compete. However this does not mean that the competitive markets operating within these environments—not being free from government influences or "government involvement" – are therefore "distorted" or are subject to a "particular market situation". Enterprises operating in these environments do not become public simply because of a degree of State ownership, or because the companies that buy raw materials from these enterprises are somehow being "subsidised" in the form of being provided with inputs provided at "less than adequate remuneration".

With respect, no absolutely free market exists in the real world. Governments exist in the world and have a job to do. The opposing concept – that governments should have nothing to do with market regulation – is an anarchic concept that no right-minded person would accept. "Hands-off" government is not a pre-condition to WTO membership nor is it a pre-condition to the enjoyment of a Member's WTO rights.

As the GOC has commented before, the Australian government itself has its own legislative instruments and policies which influence its steel sectors. For example:

- 1 The Australia Steel Transformation Plan 2012 ("AST"), created under the *Steel Transformation Act* 2011, provided for the payment of substantial amounts of money (totalling \$300 million) to:

*...help OneSteel and BlueScope to adapt and modify their business models to ensure their long term sustainability in a low carbon economy.*

The AST involved the payment of money to entities (which according to the relevant Minister's own statement was limited to BlueScope and OneSteel) on the condition that the future activities of those entities were consistent with the Australian Government's expressed policy objectives. This was achieved by requiring the companies' business plans to be first presented to and then

<sup>2</sup> <https://www.worldsteel.org/statistics/crude-steel-production.html>  
<sup>3</sup> [http://www.budget.gov.au/2015-16/content/bp1/html/bp1\\_bs2-02.htm](http://www.budget.gov.au/2015-16/content/bp1/html/bp1_bs2-02.htm)  
<sup>4</sup> [http://news.xinhuanet.com/english/2015-12/11/c\\_134907291.htm](http://news.xinhuanet.com/english/2015-12/11/c_134907291.htm)

approved by the responsible Australian Minister, as a condition of access to the payments. In contrast, China's National Steel Plan is not a legal document and no enterprise is required to commit to it or to follow it. The GOC has views about what would be best for national development, but it does not dictate that Chinese steel markets must behave in one way or another.

2 In contrast to the GOC's policy goals to not encourage high-polluting and high-emission manufacturing, the Australian Government, through legislation, *exempts* its largest steelmaking companies from its Renewable Energy Target scheme.<sup>56</sup> This exemption relates to the proposition that the Applicant and BlueScope Steel Ltd are engaged in an "*emissions-intensive trade-exposed activity*".

3 In October 2015, the New South Wales state government agreed to allow BlueScope Steel a deferral of AUD60 million in payroll tax otherwise due, in exchange for an assurance on BlueScope's part that it would not close down its blast furnace at Port Kembla and would maintain its operations and employment levels.<sup>7</sup>

4 It is also reported that Arrium/OneSteel:

*...receives royalty concessions for its iron ore mines in the state and pays no royalties on the feedstock directed into the steelworks at Whyalla. The cumulative tax breaks are bigger than BlueScope's concessions from NSW.<sup>8</sup>*

5 Most recently, the South Australia government has announced policies to support the Australian steel industry, declared as follows:<sup>9</sup>

*South Australia will lead the charge to secure steelmaking's future in Australia with a new Steel Taskforce to work with Arrium and local fabricators to create a highly competitive and sustainable industry.*

*In Whyalla today, Mineral Resources and Energy Minister Tom Koutsantonis announced that the Steel Taskforce team will coordinate action across government to give Arrium's mining, smelting and manufacturing operations in and around Whyalla every chance to thrive.*

*Mr Koutsantonis also announced that all future State Government projects will be required to use steel which meets Australian Standards and certification, giving the local steel industry a competitive advantage against lower quality imports.*

*The Steel Taskforce's \$4.3 million funding over four years includes*

5 <http://www.cleanenergyregulator.gov.au/RET/Scheme-participants-and-industry/Industry-assistance>

6 "BlueScope Steel has said that the removal of the carbon tax and the Australian Government's ongoing programme to cut red and green tape, as well as the Government's exemption from the RET for emissions intensive trade exposed industries, have all helped increase its competitiveness". See -

<http://www.minister.industry.gov.au/ministers/macfarlane/media-releases/australian-government-working-illawarra-community-steel-future>

7 See Payroll Tax Deferral (BlueScope) Bill 2015, which includes the Payroll Tax Structured Payment Plan Deed.

<http://www.austlii.edu.au/au/legis/nsw/bill/ptdsb2015371/http://www.afr.com/news/politics/blue-scope-accused-of-hypocrisy-over-60m-handout-20151022-gkgfzu>

8 <http://www.afr.com/news/politics/bluescope-accused-of-hypocrisy-over-60m-handout-20151022-gkgfzu>

9 <http://www.premier.sa.gov.au/index.php/media-centre/19-tom-koutsantonis-mp/5131-high-powered-steel-taskforce-to-secure-whyalla-s-future>

\$320,000 to establish a third party audit, in collaboration with the Australian Steel Institute, to ensure State Government projects adhere to the new mandate.

*The funding will also assist the South Australian steel fabrication sector to become compliant with Steelwork Compliance Australia requirements.*

...

*“This State Government will not stand back and allow uncompetitive pressures to crush a strategic industry that has provided decades of jobs and prosperity for South Australians.”*

Mr Koutsantonis said this State Government continues to stand by Arrium and the Whyalla community to ensure that steelmaking remains a major contributor to jobs and economic prosperity in South Australia.

*As a demonstration of that support, the State Government has already:*

- Extended for a further 10 years, the environmental authorisation provided to Arrium to operate its Whyalla Steelworks, to provide Arrium and its shareholders the regulatory certainty required to invest in the company’s future.
- Waived royalties on magnetite used to feed Arrium’s Whyalla Steelworks.
- *Signed a Memorandum of Understanding with Arrium to work together toward creating a major multi-user port at Whyalla and generating new investment opportunities in the Upper Spencer Gulf.*

*“This State Government firmly believes there is a future for Australia’s steelmaking industry as long as we provide unwavering support during these difficult economic conditions,” Mr Koutsantonis said. [underlining supplied]*

6 We also note the Australian Parliament’s initiation of a Senate Committee inquiry into “the future of Australia’s steel industry”, specifically, “the future sustainability of Australia’s strategically vital steel industry and its supply chain”.<sup>10</sup>

7 The Victorian Government has required certain infrastructure projects to use “100 per cent Australian steel”.<sup>11</sup>

8 Most recently in March 2016, the Australian Federal Government announced that a series of railway upgrades in South Australia would be fast tracked in order to create new business for Arrium.<sup>12</sup>

Obviously Australia also considers its steel industry to be “strategic” and “vital”. It maintains policies that directly and indirectly subsidise and influence Australian steel companies, including the Applicant. The GOC refers to the above involvement by the Australian Government in its own steel industry, not as a criticism, because the GOC understands the importance of steel industry for a nation’s economy. The GOC also faces the same economical and policy challenges as many of Chinese steel producers

<sup>10</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Australias\\_Steel\\_Industry](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Australias_Steel_Industry)

<sup>11</sup> <https://www.viclabor.com.au/mediareleases/laborslocaljobs100australiansteel/>

<sup>12</sup> <http://www.smh.com.au/business/pm-malcolm-turnbull-gives-arrium-a-lift-with-rail-line-upgrade-20160309-gne7zd.html>



strives to adapt to the global economic slowdown and steel overcapacity. Based on recent economic analysis and forecast the GOC anticipates about 1.8 million workers in the steel and coal industry may lose their jobs.<sup>13</sup> These significant economic and social issues call for the close policy attention of any responsible government. However, we do not expect that the Australian Government would hold the view that its policies and interventions are circumstances that would render Australian steel manufacturers as “public bodies”, or would render the markets into which they sell their products as being subject to a “particular market situation”.

Indeed the Australian Government is not alone in its regard for the economic significance of its steel industry and in setting out industry supporting policies. For example:

1 The Government of India has its own National Steel Policy, the latest being the *National Steel Policy 2012 (Draft)*, the preamble of which reads as follows:<sup>14</sup>

1.1 *Steel will probably remain the world's one of the most important engineering materials for a long time to come. With strong backward and forward linkages, steel industry is an engine of economic growth and a symbol of economic prosperity. Moreover, steel is vital to the nation's economic security as it is extensively used in strategic areas such as defence, power, atomic energy, and in creation of social and economic infrastructure of the country.*

...

1.6 *The development of domestic steel industry has to be guided by long-term national goals and perspectives. National Steel Policy has, therefore, to be dynamic taking into consideration the changing needs of the industry in view of significant changes in the domestic and global economic environment. The unfolding developments, both on the demand and supply sides, warranted a re-look at the different elements of the NSP and possibly some re-ordering of priorities and modifications in the targets and related policies. In particular, it was felt that a strong policy push is required to expedite creation of green-field steel capacity as growth in steel supply has not been keeping pace with rise in domestic demand for steel. It was also felt that policy making should address the issues related to sustainable growth especially related to long term availability raw materials, protection of environment, inclusive growth, quality of steel products and Research & Development (R&D) with greater focus.*

2 Similarly, the European Union introduced an *Action Plan for a competitive and sustainable steel industry in Europe* (“the Action Plan”) in 2013.<sup>15</sup> The aspirational goals set out in the EU’s Action Plan are similar to those expressed in India’s policy document, and in the GOC’s. For example, the Action Plan emphasises:

- the need for a strong and competitive industry;
- the need to reduce production capacity;
- climate policy and resource efficiency as an ‘important driver’ for technology changes;
- the goals of increasing the use of recycled scrap material
- the implementation of additional energy efficiency measures in steelmaking;
- the diffusion of best available techniques (BATs);
- the need for a regulatory framework which promotes efficiency,

<sup>13</sup> [http://europe.chinadaily.com.cn/business/2016-03/02/content\\_23709565.htm](http://europe.chinadaily.com.cn/business/2016-03/02/content_23709565.htm)

<sup>14</sup> <http://steel.gov.in/06112012%20National%20Steel%20Policy%20Draft.pdf>

<sup>15</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0407&from=EN>

- innovation and competitiveness;
- the importance of supporting the construction industry to assist in boosting demand for steel products.

The Action Plan also openly recognises the importance of the steel sectors to the EU:

*A strong and competitive steel sector is important for Europe's industrial base. The EU is the second largest producer of steel in the world, with an output of over 177 million tonnes of steel a year, accounting for 11% of global output. Steel also forms part of a number of industrial value chains and is closely linked to many downstream industrial sectors such as automotive, construction, electronics, mechanical and electrical engineering...*

*The Commission considers it essential that Europe remains an important steel producing region for economic, social and environmental reasons as well as for security of supply... This Communication represents the Commission's response to the crisis in the steel sector and sets out targeted actions to ensure that the operating environment is conducive to a competitive and sustainable steel industry, so that it is able to solve the structural problems it faces, compete globally and develop the next-generation of steel products vital for other key European industries. [emphasis in original]*

3. The Applicant claims that South African steel billet prices provide the best “benchmark” for the purpose of calculating subsidy margin regarding the alleged provision of steel billet by public body at less than adequate remuneration. However, the South African government requires that public infrastructure such as fluid conveyance pipes, power pylons and electric substations must meet 80-100% of their steel requirements with domestically produced steel, with more steel related projects/products to be subject to similar requirement in the near future.<sup>16</sup> Further, the South African government agreed to help the near monopoly steel producer in the country, ArcelorMittal South Africa, by imposing a 10% import duty on a range of steel products.<sup>17</sup>

The GOC calls upon the Commission to discontinue the discriminatory approach it has exhibited up to now towards Chinese steel exporters. The situation has become unacceptable.

Chinese SIEs have been unfairly accused of being arms of the State, and all exporters - whether SIEs or not - have been treated as if they operated in an entirely non-market economy. The fact is that Australia has long recognised the market economy status of China, including China's steel sectors, and of Chinese SIEs operating in those sectors and markets.

Governments inevitably influence markets and businesses located in their jurisdictions, and outside their jurisdictions, because governments must “do their job” in an environmental and social context. The WTO system, and more specifically the trade remedy regimes, are not intended to operate within a government-free environment, or in an environment in which every Member must have exactly the same economic and market conditions. Indeed, the GOC considers that one of the fundamental principles of the WTO system is “comparative advantage”. The approach taken by the Commission in recent cases in which Chinese exporters have been penalised using concepts such as “less than adequate remuneration”, “particular market situation” and “reasonably reflect competitive market costs” is simply designed to negate the comparative advantage of Chinese exporters. Comparison and substitution of costs due to the selection of other-market “benchmarks” is a serious

<sup>16</sup>

[https://www.thedti.gov.za/industrial\\_development/ip.jsp](https://www.thedti.gov.za/industrial_development/ip.jsp)

<sup>17</sup>

<https://www.thedti.gov.za/editmedia.jsp?id=3468>

derogation of the promises made to China on its entry into the WTO regime.

Notwithstanding these serious concerns of the GOC, and in the spirit of cooperation, we now wish to provide relevant commentary about the product under investigation and some of the raw material inputs as are mentioned in the questionnaire, to allow the Commission to gain a better understanding of the competitive nature of the Chinese rod in coil market.

- (a) distribution channels
- (b) any vertical integration
- (c) any changes over the last 5 years (such as mergers and acquisitions).

#### Rod in coil

As is the case in Australia, the rod in coil industry in China is highly linked to demand in the construction and infrastructure sectors, as rod in coil is mostly considered to be a construction steel.

The rod in coil industry in China is not a well-defined “industry” in itself. This is because the “rod in coil industry” has complex and intertwining relationships with some of its neighbouring industrial sectors. According to the China Iron and Steel Association (“CISA”), a major Chinese rod in coil manufacturer typically produces rod in coil in an integrated process, meaning that the rod in coil manufacturing process would start from steelmaking. The raw material for this would be either iron ore or scrap steel. Given the predominance of blast furnaces over electric arc furnaces in China, the former is more common. Further, producers of the goods under consideration (“GUC”) may also produce non-GUC, such as steel reinforcing bar. It is common for integrated producers to produce a range of input materials/semi-finished products, and to produce a range of related or unrelated steel finish products. For an example in this regard, please refer to the list of products produced by Jiangsu Shagang Group Co., Ltd at Attachment 1.<sup>18</sup>

By any measure, the Chinese rod in coil market operates under vigorous demand and supply side factors. Generally speaking, rod in coil is considered as a low value-added product amongst steel sectors, with a relatively low market entry threshold. The relatively low value-added nature of the product means that rod in coil prices correlate to prices in the upstream supply chain, which in the case of rod in coil is mainly iron ore.

On the demand side, due to its main usage as construction steel, rod in coil is highly exposed to the ebbs and flows of the construction market, and its seasonal nature. The competitive situation of the Chinese rod in coil market is exacerbated by the extraordinary number of producers, both large and small, and the large number of privately owned manufacturers.

The Chinese market for rod in coil is fiercely competitive. According to the National Bureau of Statistics of China (“NBS”), in 2015 there were 335 above-scale rod in coil producers in China.<sup>19</sup> Amongst the 335, there were [CONFIDENTIAL TEXTE DELETED – NUMBER] privately-owned producers, [CONFIDENTIAL TEXTE DELETED – NUMBER] were foreign owned, and [CONFIDENTIAL TEXTE DELETED – NUMBER] have some State investment. Thus, the non-SIE rod in coil producers accounted for over 80% of the total number of producers. In terms of production volume, non-SIE producers also accounted for nearly 80% of the [CONFIDENTIAL TEXTE DELETED – NUMBER] million tonnes of rod in coil production (again, according to the NBS data).

<sup>18</sup>

For more details, see here: <http://eng.shasteel.cn/cpyfw/cpis/index.shtml>

<sup>19</sup>

NBS only collects data from industry manufacturing enterprise of annual main business revenue above CNY20,000,000, and this is what is meant by “above scale”.

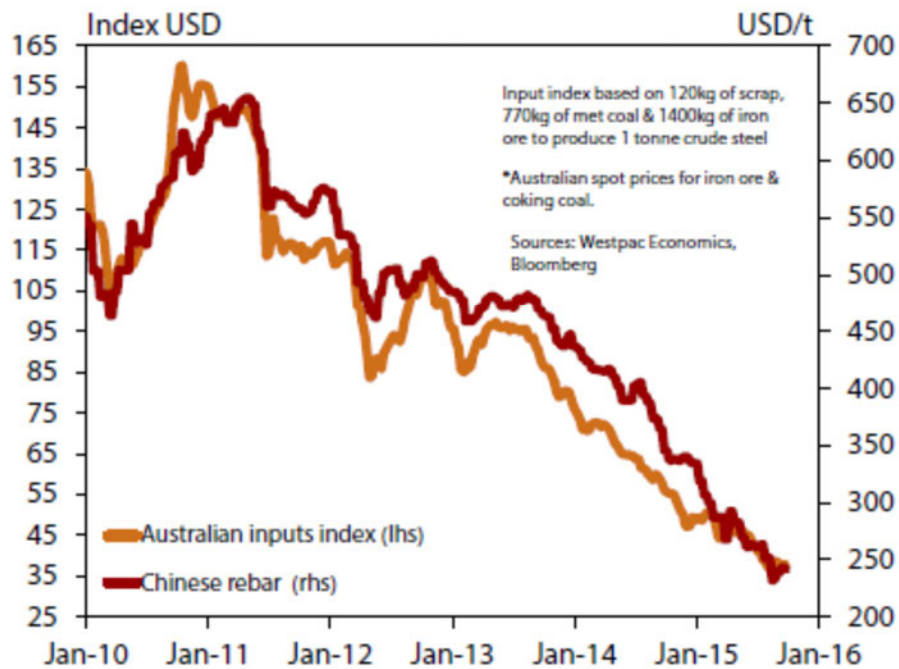


That is, in 2015 the rod in coil produced by above scale Chinese non-SIEs alone was higher than the total crude steel production of North America and Japan.

This fierce competition, coupled with over-capacity in the global steel market, means that neither the GOC nor the Chinese steelmakers themselves, whether SIE or not, have any incentive or ability whatsoever to either further suppress market prices of rod in coil, or to subsidise domestic competitors by way of providing input materials, such as steel billet, “*at less than adequate remuneration*”. This is especially the case for rod in coil, given that rod in coil is typically produced in an integrated process, requiring the manufacturers to produce their own steel billet as a semi-finished feed material for rod in coil. It would be illogical and unrealistic for an integrated producer to sell steel billet to its rod in coil competitors at less than its own costs, or in any form which would render its own rod in coil to be less competitive in the market. Based on the GOC’s understanding, the rod in coil prices are highly reflective of iron ore prices and the activity level of the construction industry.

The GOC understands that rod in coil prices track closely with the prices of steel reinforcing bar. The China Resources Quarterly has charted Chinese steel reinforcing prices with an Australian input index (spot prices for iron ore and coking coal), and in so doing has demonstrated a close correlation between the two.<sup>20</sup>

Figure 15: The rebar price and input costs



#### Iron ore

China is the largest iron ore importing country in the world. The iron ore market in China is well penetrated by imports from a number of countries, most notably Australia and Brazil. It is undisputable that iron ore prices in China are highly competitive. Indeed, the general condition of China’s steelmaking sectors, and its iron ore

<sup>20</sup>

See, China Resources Quarterly 2016 - <http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/crq/China-Resources-Quarterly-Southern-summer-Northern-winter-2016.pdf>

consumption, are generally considered as a key factor for international iron ore prices.<sup>21</sup> It is well established, and verified by the Commission, that iron ore costs represent a significant part of the cost of making rod in coil.

#### Coking coal and coke

China accounts for over 50% of the total world production and over 60% of total world consumption of coking coal. China is also a net importer and the largest importer of coking coal, representing 21% of world trade in that product.<sup>22</sup> It is also reported that exports from Australia accounted for over 50% of China's total importation of metallurgical coal in 2015, at [CONFIDENTIAL TEXTE DELETED – NUMBER] million tonnes, with Mongolia being the second largest source of China's imports. Based on Chinese Customs' data, China's total coking coal importation during 2014 was [CONFIDENTIAL TEXTE DELETED – NUMBER] million tonnes and in 2015 was [CONFIDENTIAL TEXTE DELETED – NUMBER] million tonnes. The GOC provides this import data in Attachment 2 [CONFIDENTIAL ATTACHMENT].

The GOC advises that there have been some changes to the import and export tariffs applicable to coking coal during the investigation period. Effective from 1 January 2015, China's export tariff on coking coal was reduced from 10% to 3%. Effective from 15 October 2014, the import duty was resumed to 3% from the previously applicable interim duty position of 0%. The 3% import tariff has now been eliminated, on and from 1 January 2016, in relation to imports from Australia, giving effect to the *China Australia Free Trade Agreement*.

Domestic coking coal production is vibrant and highly competitive in China. In 2014, China produced [CONFIDENTIAL TEXTE DELETED – NUMBER] million tonnes of coking coal. The majority number of those producers are privately owned companies. Despite the large number of coking coal mines, the demand for coke within China is so high that coking coal still needs to be imported from other countries. Please see Attachments 2 and 3 [CONFIDENTIAL ATTACHMENTS] for further import and export information relating to coking coal.

According to NBS, there were about 700 coke producers in China during 2015, with over 80% of them being non-SIE enterprises accounting for over 60% of the total coke production volume.

Of course, coke is not only used for the production of steel products. It is also used for the following applications:

- the smelting of phosphate rock in the production of elemental phosphorus;
- the production of calcium carbide;
- ferrochrome production;
- the production of manganese alloys;
- the production of soda ash;
- the production of carbon electrodes; and
- domestic fuel.<sup>23</sup>

The high level of production of coking coal, mixed with China's obvious reliance on imports of coking coal to satisfy domestic demand, ensure that the price of coking coal

<sup>21</sup> For example, see <http://www.ironorefacts.com/the-facts/iron-ore-global-markets/>, and [http://www.budget.gov.au/2015-16/content/bp1/html/bp1\\_bs2-02.htm](http://www.budget.gov.au/2015-16/content/bp1/html/bp1_bs2-02.htm), which states: *The Chinese economy now consumes about 80 per cent of Australia's iron ore exports and the cut in production by Chinese steelmakers in early 2015 was a key factor behind the price declines.*

<sup>22</sup> See, China Resources Quarterly 2016, at page 16. <http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/crq/China-Resources-Quarterly-Southern-summer-Northern-winter-2016.pdf>

<sup>23</sup> *Response of the GOC to Further Questions of the Australian Customs and Border Protection Service*, 19 November 2012, page 3.

can neither be inflated nor depressed by any policy measures in the domestic Chinese market.

In recent years, China has also become the largest exporter of coke, reportedly accounting for two thirds of global seaborne supply in 2014.<sup>24</sup>

The GOC can also confirm that the operational import and export tariff for coke has been 0% since 1 January 2013.

Please see Attachments 4 and 5 [CONFIDENTIAL ATTACHMENTS] for further import and export information regarding coke.

#### Scrap steel

We note that “scrap steel” is not a material mentioned by the Australian industry applicant in its subsidy allegations. So far as the GOC is aware, none of the Chinese exporters cooperating with the Commission’s anti-dumping investigation, or with this subsidy investigation, use steel scrap as the main raw material for their steelmaking production. If scrap steel is used, it would be used only as an ancillary material.

In comparison to iron ore, ferrous scrap is not a widely traded commodity. In 2014, there were only 78.3 million tonnes of ferrous scrap imported globally.<sup>25</sup> The GOC considers it likely that the majority of an economy’s scrap demand is fulfilled domestically, either by steel producers re-using scrap by-product from their production processes, or by purchasing scrap from scrap traders which has been recycled and sold.

The GOC does not see it to be necessary to maintain data on such activities, and believes that information relating to scrap steel is insignificant and irrelevant to the current inquiry.

As a general comment, the GOC notes that the iron ore price plummeted during the investigation period, thereby making it much more likely for manufacturers to favour iron ore based steelmaking over steel scrap.

Lastly, the GOC confirms that none of the raw materials mentioned above are subject to export quota. The GOC does not control or regulate the price of any of the input materials, and certainly does not control or regulate the price of rod in coil. Price discovery at all levels – GUC and input materials – takes place under conditions of open and vigorous competition.

The GOC can also advise, contrary to what the Australian industry applicant may try to depict, that Chinese rod in coil manufacturers are not favoured by the GOC, and that they are not subsidised in their key raw material and funding options, whenever a SIE is involved. The Chinese industries that manufacture rod in coil and its input materials are fully marketised and highly dynamic. At the same time, the GOC has been encouraging a more “eco-friendly” steel industry through policies that encourage the dismantling of heavily-polluting and energy-inefficient production facilities and discourage the new building of such facilities. The GOC’s policy goal to encourage capacity reduction is well documented and well known to the Commission. The GOC has no incentive to somehow direct or control State-invested raw material input and electricity suppliers in the various industries, in an attempt to provide such inputs to rod in coil manufacturers at less than adequate remuneration. This would only serve to further depress Chinese and global steel markets, and worsen the over-capacity situation.

<sup>24</sup> <http://www.platts.com/latest-news/metals/singapore/chinas-may-metallurgical-coke-exports-rise-23-26116570>

<sup>25</sup> Source - China Customs statistics.

Distribution channels

The GOC does not impose any special regulations on the distribution channels or commercial direction of manufacturers of rod in coil, whether of steel, or of its input materials, or of any other every-day products.

The GUC and its input materials are normally traded as and with other iron and steel-related goods, although traders or distributors may choose to focus on some or other of them in line with company-specific requirements from time to time. The manufacturers may distribute the relevant goods they produce via their own subsidiaries or by out-sourced channels (agents and buyers) in domestic and foreign markets as appropriate. Firms in China make their own choices on product portfolio and distribution channels. The GOC places no restriction on these choices and the activities which flow from them.

Vertical integration

The GOC does not impose any special regulations on vertical integration in steel or its input materials, whether to force or to prevent such integration. Nor does the GOC measure the instances of such integration.

The manufacturers may establish their own sales branches or subsidiaries or use sales channels controlled by them, or operated jointly with or independently by others in the domestic and foreign market as appropriate. There is no restriction on the choice by enterprises of their business portfolio in accordance with their business registration. A firm can choose any kind of business portfolio as long as the business is not prohibited from operation. They may also further fabricate rod in coil into downstream building products.

As mentioned above, the GOC has been advised that Chinese rod in coil manufacturers are typically integrated steel producers, producing their own semi-finished or raw feed materials such as coke and steel billet.

Merger and acquisition

The GOC does not impose any special regulations on mergers and acquisitions in steel or its input materials, whether to force or to prevent such mergers and acquisitions.

There are many enterprises in the five identified industrial sectors. They include SIEs and fully private-owned enterprises, of varying shareholdings. Enterprises, whether State-invested or not, can also be foreign invested, and some private enterprises are wholly foreign invested. Business activities like mergers and acquisitions are matters for the individual enterprises to consider and implement if and when it is deemed to be beneficial to their business. The GOC plays no part in the making of these decisions.

Regarding the Commission's inquiry about changes over the last five years, the GOC would like to mention the following:

- At the end of the investigation period iron ore prices had declined by more than 60% from their peak level of USD160 in early 2013.<sup>26</sup>
- Oil prices halved during the investigation period, from above USD100 per barrel level to under USD50 at the beginning of 2015, and fell further after the investigation period.
- Similarly, coking coal prices also fell sharply from 2013.
- Changes to China's export and import tariffs for coking coal and coke – see above.

(d) any changes to the government laws and regulations after 1 January 2011

The GOC clarifies that there are no special laws or regulations regarding rod in coil or the input materials referred to by the Commission.

In terms of general laws and regulations, the following are notable:

- 1      Amendments to the *Law of the People's Republic of China on Prevention and Control of Occupational Diseases* were adopted on 31 December 2011. Relevantly, Articles 8 and 21 were amended. These Articles explicitly regard “equipment” as one of the objects among “technologies”, “processes”, and “materials” that may be “restricted in use or eliminated” where they are found to have caused serious occupational disease hazards. This further clarifies the legal basis of some industry guidance catalogues that promote the elimination of particular types of unsafe and outmoded “equipment” and/or “processes”.
- 2      The *Law of the People's Republic of China on Promotion of Cleaner Production* came into effect on 1 July 2012. The law improves the “cleaner production examination” system and makes provisions regarding the system’s compulsoriness and its specific implementation procedure. It explains the concept of “duty of control”, that is, “enterprises discharging pollutants beyond the national or local discharge limits shall control pollution in accordance with relevant laws regarding environmental protection” (Article 27, paragraph 3 of the new Law). In addition, the law further clarifies the legal basis of some industry guidance catalogues that curtail investment in unsustainable types of “equipment” and/or “processes”.
- 3      The *Administrative Compulsion Law* (Attachment 6) came into force as of 1 January 2012. It provides that “administrative compulsion shall be set and implemented according to the statutory authority, extent, conditions and procedures” (see Article 4). It also provides that administrative compulsion without any basis in law or regulation cannot be implemented (or, if implemented, how it shall be corrected), and that the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law (see Article 61). This law makes it clear that “guiding” policies that are not laws or regulations do not have any administrative compulsory legal effect.
- 4      The *Company Law* has been amended since 1 March 2014, further liberalising the regime governing the activities of all enterprises doing business in China, by way of replacing the “paid-up capital” regime for company registration, to a registered capital regime, and removing the requirement for phased payments of capital for foreign invested enterprises. See Attachment 7 for the new *Company Law*.
- 5      Through amendment of the *Regulation of Company Registration*, also taking effect from 1 March 2014, the GOC has refined the transparency of market entities by requiring registered legal person businesses, including both SIEs and non-SIEs, to disclose their annual reports. In this way markets can make better informed decisions about risk and investment. Please refer to Article 58 of the new *Regulation of Company Registration* at Attachment 8.
- 6      Businesses in China have been better positioned to defend their legitimate rights since the *Law of Administrative Procedures* was amended in 2014. The newly amended law broadens the scope of matters that may be brought to the courts against any government agency by explicitly listing 12 categories of matters (there were formerly only eight categories). The newly added controversies that enterprises may challenge include administrative decisions regarding appropriation, and compensation for such appropriation, and any abuse of administrative power to monopolize the market or to create monopolistic power in any market. Please refer Article 12 of the new *Law of Administrative Procedure*, provided at Attachment 9.



- 7 The GOC has further advanced its policy of adjusting the structure of State capital and assets in the economy by encouraging the investment of more private capital into SIEs, and by seeking to attract more private investment and involvement in the important and costly infrastructure and network industries. As advised above, the Chinese rod in coil sector was dominated by non-SIEs in 2015.
- 8 The GOC has opened the Chinese market to foreign investment to an even greater extent than before. For example, in 2015 China signed free trade agreements with Australia and Korea, and upgraded its existing free trade agreement with ASEAN. These followed the signing of the China-Iceland and China-Switzerland Free Trade Agreements in 2014. The China-Australia Free Trade Agreement lowered the tariff rates of more than 80% of the goods traded between the two countries.
- 9 The GOC has also repealed a great number of licensing/approval processes for doing business in a range of sectors and business lines. For example, to obtain an official VAT invoice for sales and sales revenue, enterprises previously had to achieve taxation registration, which in turn was subject to an approval by the relevant taxation authority. However from late 2013, this prior approval requirement for taxation registration has been repealed. Enterprises may now register directly with the relevant taxation authority. Please refer to Attachment 10 - *Shortlist of deregulations since 2011* for a list of selected licensing/approval requirements that have been repealed since 2012.

On the subject of “government laws and regulations”, we have noticed that two policy instruments are referred to in SEF 301 as “planning directives”. The GOC wishes to reiterate that government policies are not laws. They are not enforceable, as is the case in any country, including Australia. For example, the *Guiding Opinions* document was issued by the MIIT to other government agencies. It is not a “directive” by the government to Chinese companies, whether they are in the steel, coal or coke sectors or for that matter any other. As the articles referred to by the Commission state, these policy opinions are nothing new, they are unenforced, and they are historically ineffective in the face of market forces:

*China’s central planners have been talking about consolidation for decades... A plan was announced in 2001, but then the number of steel enterprises doubled between 2002 and 2006 as firms saw profits rise and piled in. From a hefty 3,000 ferrous metals firms at the start of the decade, there were 7,000 by 2005, 8,000 by 2010 and - after a brief pullback in 2011 - currently around 11,000 (Figure 1). The top three are world-scale but accounted for only 14 percent of the total production in 2005, while in Japan, South Korea and the United States the top three control well over half the market.<sup>27</sup>*

In relation to the *Steel Industry Adjustment Policy (2015 Revision)*, the GOC advises that there is no such policy. On 20 March 2015 MIIT issued a document entitled *Steel Industry Adjustment Policy (2015 Revision) (Draft for comment)*. As the title (which is not fully cited in SEF 301) suggests, it is a draft document for the purpose requesting comments from the general public. This is not an official policy document and certainly is not a “directive”. The GOC can also advise that MIIT has not issued or reissued any official *Steel Industry Adjustment Policy (2015 Revision)*. The GOC is concerned about the use of this draft and unofficial “policy directive” by the Commission in purported support of the preliminary findings reached in SEF 301.

The GOC’s laws and policies demonstrate its vision, commitment and responsibility towards important issues at both the domestic and the international levels. The GOC has the oversight of the world’s largest steel sector and the world’s second largest economy. The GUC, as well as the raw material inputs that go into the production of rod in coil such as coking coal, coke and steel billets, are all created through emissions-intensive production. The more demand there is for these products from

outside China, the more pollution occurs within China. Exporting more goods produced by processes which are heavily polluting “relocates” those processes from foreign countries to China. This effectively involves China in “importing pollution” from abroad. Therefore, an environment-friendly policy cannot be effective without requiring the highest levels of technology and without making good judgements about sustainability, infrastructure usage and industrial efficiency. The GOC notes that environmental policies may inevitably cause an economic burden on businesses within China, but that this is no different to the situation anywhere else in the world.

China is a country with a population of 1.35 billion people. The scale of China’s steel sector, and of many of its other economic sectors, cannot be denied. The fact that there is a global overcapacity issue in the steel market – and as in many other commodity markets and sectors, especially mining – is not a justification to discriminate against Chinese exporters using cost surrogation and subsidy benefit excuses. Market competition in China is fierce, at all levels of the production and sale of rod in coil and of its upstream inputs and downstream derivations. All producers and sellers must look to innovate in their raw materials, production techniques, trading and distribution, and the application of technology.

The GOC rejects attempts to label purchases by its manufacturers as being at “less than adequate remuneration” and to “surrogate” or “benchmark” the prices and costs recorded in the financial records of Chinese exporters. This practice is not justified by the facts, and not permitted by the WTO agreements to which China is a party.

In summary, there can be no reason to deny the competitiveness of Chinese steel markets, or to ignore the market-based price and cost data of Chinese manufacturers of rod in coil.

2. At all levels of government (central, provincial, regional, municipal, special economic zone (SEZ), etc.) identify the names of the government departments, bureaus or agencies that are responsible for the administration of any the GOC measures concerning the rod in coil and / or the iron and steel industry.

The GOC draws the Commission’s attention to the fact that the various central government agencies identified below are not exclusively dedicated to the administration of policies which may impact on the steel industry. In each case they have much broader administrative duties and responsibilities under the Chinese government framework.

The GOC does not have any central government agency that is exclusively assigned the task of administrating “measures” concerning either the rod in coil or the steel industry. Also, local government authorities are not exclusively dedicated to the administration of “measures concerning the steel industry” either.

In this context, the GOC submits that Articles 3.4 and 110.2 of the Constitution of China are relevant.

Article 3.4 states:

*The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.*

Article 110.2 states:

*Local people’s governments at different levels are responsible, and report on their work, to the state administrative organs at the next higher level. Local people’s governments at different levels throughout the country are state administrative organs under the unified leadership of the State Council and are*

## FOR PUBLIC RECORD

*subordinate to it.*

The GOC has a keen desire to fully cooperate with the Commission in relation to this matter, and in light of the above comments the GOC now provides the information requested for the relevant agencies in the localities of the key companies under investigation.

The GOC also notes that its comments set out above, when addressing substantive issues about the context and relevance of Commission's questions, apply to the answers below as appropriate.

Include information relating to the following areas:

- supervision of rod in coil State-invested enterprise (SIE) senior management and administration;

The GOC, as a whole, supervises all entities, both real and legal, within China, to ensure they comply with the laws of China. This is true of every government.

In relation to the concept of "supervision", SASAC's supervisory role mainly applies to senior managers in certain designated wholly and majority State-invested enterprises. This "supervision" is in the nature of a careful watch over behaviour with regard to legal probity and the shareholder interests of the GOC.

The GOC does not "supervise" the senior management of non-designated majority-owned SIEs. The senior management of the great majority of SIEs is subject to the "supervision" of the board of supervisors selected by the shareholders themselves, with that board being ultimately responsible to the shareholders.

For more detail, the GOC respectfully requests that attention be paid to the GOC's responses to the questions in Section B of this GQ.

- consolidation of domestic rod in coil and/or iron and steel producers;

Consolidation of business entities is a commercial decision for enterprises to consider. These are decisions that are ultimately made by boards of enterprises on the advice of their senior management and with the best interests of the shareholders firmly in mind. Merger and acquisition in China is subject to the same considerations as those that must be considered by companies in Australia.

There is no agency of the GOC that is charged with the function of administering any "consolidation of domestic rod in coil and/or iron and steel producers".

- industrial policy and guidance on the rod in coil and/or the iron and steel sectors;

### Central Government

Department: National Development and Reform Commission ( "NDRC")  
Mailing address: 38 South Yuetan Street, Xicheng District, Beijing 100824  
Phone number: 86-10-6850 1428  
Fax number: 86-10-6850 2999

Department: Ministry of Industry and Information Technology ( "MIIT")  
Mailing address: 13 West Changan Street, Xicheng District, Beijing 100804  
Phone number: 86-10-6601 1228  
Fax number: 86-10-6601 1228



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The NDRC is China's high-level macro-economic and social development strategy planning agency. It has been responsible for introducing and facilitating the implementation of China's macro-economic and overall social development strategies.

MIIT is a central government agency with the general responsibilities of articulating and coordinating the dissemination of industry policy, proposing and optimising industrial location and structure, and introducing appropriate consultation and approval processes and instruments.

### Provincial Government Authorities

Department: Jiangsu Province Development and Reform Commission  
Mailing address: 70 Beijing West Road, Nanjing 210013  
Phone number: 86-25-8339 2402  
Fax number: 86-25-8339 2402

Department: Hunan Province Development and Reform Commission  
Mailing address: 8 Xiangfu West Road, Changsha 410004  
Phone number: 86-731-8999 1088  
Fax number: 86-731-8999 1088

- market entry criteria for the rod in coil and/or the iron and steel industry;

### Central Government

Department: NDRC  
Mailing address: 38 South Yuetan Street, Xicheng District, Beijing 100824  
Phone number: 86-10-6850 1428  
Fax number: 86-10-6850 2999

Department: MIIT  
Mailing address: 13 West Changan Street, Xicheng District, Beijing 100804  
Phone number: 86-10-6601 1228  
Fax number: 86-10-6601 1228

### Responsibilities

The steel industry is understood to be a usual, albeit significantly important, industry, where market pricing, competition and general commercial law mechanisms play the major role in industry regulation. The industry's importance arises from the scale and effect of the present and proposed operations of steel-making companies, and the effect of proposals on China's resources, both physical and social.

The NDRC has played a supervisory and consultative role, at the macro-economic level, in relation to the development of many of the major industries in China. This supervisory function has been progressively transferred to the MIIT, reflecting the fact that the industry and its markets have become more highly developed.

On and from 31 October 2014 the administration form of any new investment plan in the steel industry was further deregulated, from an approval system to a registration system. However, on and from July 2014 the GOC has advised proponents of new or expanded facilities that it would not consider the registration of new steel capacity investments in the absence of evidence that capacity of the same or similar scale had departed the industry. This has been advised in consideration of the serious excessive capacity in the steel industry, and the pressures that this has placed on China's environment and infrastructure.<sup>28</sup>

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The issues addressed in the context of the GOC's involvement concerning market entry and investment are primarily related to issues such as the size and design of facilities, environmental protection, and the efficient use of energy and natural resources. None of these initiatives are designed to artificially affect prices, whether by reducing them or increasing them. Efficient energy and resource utilisation is geared towards sustainable development, which is an important macro-economic and long-term policy consideration for any responsible government.

- environmental enforcement for the rod in coil and /or iron and steel industry;

### Central Government

**Department:** Ministry of Environmental Protection ("MEP")  
**Mailing address:** 115 Nanxiao Street, XizhimenNei, Beijing 100035  
**Phone number:** 86-10-6655 6163  
**Fax number:** 86-10-6655 6165

MEP is responsible for China's environment protection administration. It does not specifically promote or regulate the steel industry. The industry is subject to the general application of environmental laws, regulations and policies.

### Provincial/Municipal Government Authorities

**Department:** Jiangsu Province Environmental Protection Administration Bureau  
**Mailing address:** 176, Jiangdong North Road, Nanjing 210036  
**Phone number:** 86-25-86557655  
**Fax number:** 86-25-86557655

**Department:** Hunan Province Environmental Protection Administration  
**Mailing address:** 118, Wanjiali Mid Road, Changsha 410014  
**Phone number:** 86-731-85698005  
**Fax number:** 86-731-85698005

- management of land utilization;

### Central Government

**Department:** Ministry of Land and Resources  
**Mailing address:** 64 Funei Avenue, Xicheng District, Beijing 100812  
**Phone number:** 86-10-6655 8424  
**Fax number:** 86-10-6655 8004

The Ministry of Land and Resources is responsible for the general administration of land utilisation.

### Provincial/Municipal Government Authorities

**Department:** Jiangsu Province Office of Land and Resources  
**Mailing address:** 58, Shuiximen Avenue, Jianye District, Nanjing 210017  
**Phone number:** 86-25-86599900  
**Fax number:** 86-25-86599900

**Department:** Hunan Province Office of Land and Resources  
**Mailing address:** 8, Xiangfu West Road, Tianxi District, Changsha 410004  
**Phone number:** 86-731-89991392

## FOR PUBLIC RECORD

**Fax number:** 86-731-89991392

- banking regulations in relation to rod in coil and /or the iron and steel industry;

**Agency:** China Banking Regulatory Commission ("CBRC")  
**Mailing address:** 15 Financial Avenue, Xicheng District, Beijing 100800  
**Phone number:** 86-10-6627 9378  
**Fax number:** 86-10-6629 9144

The CBRC is responsible for the regulation of banks in China. It is not involved in the regulation or administration of the steel industry in any manner. The CBRC has no department or division which is responsible for the steel industry. Functions of the CBRC are not specific to any single industry, other than the regulation of the financial services industry.

- investigation and inspection of rod in coil manufacturing facilities;

The GOC submits that many administrative departments can be involved in the investigation and expansion of new steel facilities. It is difficult to know how to list these, and their relevance to this investigation would have to be quite remote. The subject matter dealt with by agencies involved in the investigation and inspection of facilities will include such things as construction certification; construction safety; land surveying; and environmental compliance.

The Commission is invited to direct the GOC's attention to any specific area of interest, by way of supplemental request.

- the section in the National Development and Reform Commission that is responsible for the rod in coil and / or the iron and steel sector;

The NDRC is responsible for the promotion and regulation of the Chinese economy at the national level. This role includes the development of policies relating to the steel industry. The steel industry falls within the regulatory scope of the Department of Industry of the NDRC. The relevant contact details of NDRC have been provided as above.

Generally speaking, the direction of the GOC's government restructuring reform in this regard is to focus the NDRC on its key duties of macro-level economic and social development strategy, and to remove it from direct regulatory involvement.

### Provincial/Municipal Government Authorities

**Department:** Jiangsu Province Development and Reform Commission  
**Mailing address:** 70 Beijing West Road, Nanjing 210013  
**Phone number:** 86-25-83392402  
**Fax number:** 86-25-83392402

**Department:** Hunan Province Development and Reform Commission  
**Mailing address:** 8 Xiangfu West Road, Changsha 410004  
**Phone number:** 86-731-89991088  
**Fax number:** 86-731-89991088

- import licensing for raw materials used in rod in coil manufacture;

**Department:** Ministry of Commerce  
**Mailing address:** 2 Dongchang'an Road, Beijing, 100731

## FOR PUBLIC RECORD

Phone number: 86-10-6519 7107  
Fax number: 86-10-6519 7447

On and from 1 July 2013, the import licensing requirement for iron ore was lifted. All importation is now subject to an automatic licensing regime. There are no import licensing requirements on the other key raw materials used in rod in coil manufacturer.

- export regulations, export licensing, “guidance prices”, free trade export zones, etc.; and

There is no export licensing of steel exports. For the purpose of collecting macro-level statistics, there is a framework in place for reporting on exports for statistical purposes. Statistical collection of information in this way neither limits quantity nor does it influence steel prices. The legal status or qualification of companies to export is not examined in this process.

There are no “guidance prices” in China for steel products, and no government control of prices at the regional or local level.

- taxation - especially export taxes; export tax rebates and value added tax (including any rebates).

The General Administration of Customs is responsible for the administration of export tariffs. Tax rebates and VAT are administered through taxation system.

Department: General Administration of Customs  
Mailing address: No.6 Jianguomennei Street, Beijing 410114  
Phone number: 86-10-65194114  
Fax number: 86-10-65194114

The Chinese taxation system is divided into two parts: the State taxation system and the local taxation system. The central government is responsible for enactment and promulgation of tax policies, and regional governments are the bodies which implement such policies. Provincial and city state taxation bureaus have a vertical reporting relationship with the State Administration of Taxation (“SAT”) and are seen as local branches of the SAT.

The local taxation system has no vertical reporting relationship with the SAT, but can seek advice and information assistances from the SAT. We provide the details of local tax authority for the areas that the Respondents are located.

Department: Jiangsu Province Administration Bureau of State Taxation  
Mailing address: 55 Zhongshan North Road, Nanjing 210000  
Phone number: 86-25-83101888  
Fax number: 86-25-83101888

Department: Hunan Provincial Administration Bureau of State Taxation  
Mailing address: 6 Huanbao West Road, Yuhua District, Changsha 410114  
Phone number: 86-731-85530318  
Fax number: 86-731-85530318

Ensure that your response includes contact information regarding the government officials responsible for the listed areas listed along with their full mailing addresses, phone numbers, email addresses and fax numbers.

3. Describe the ownership structure of the Chinese rod in coil industry, identifying what proportion of the industry is represented by SIEs, foreign-invested enterprises (FIEs),

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and Chinese domestic-owned private enterprises.

For each business where the GOC is a shareholder in the business, provide the name and percentage GOC ownership of the enterprise.

**Please see the GOC's comment above at A-1, providing the NBS statistics regarding rod in coil producers in China. Please see Attachment 11 [CONFIDENTIAL ATTACHMENT] for further details of the NBS data.**

4. Complete the attached spreadsheet A-4 (using Microsoft Excel format) listing all manufactures/traders of rod in coil and upstream raw material (steel billet, coking coal, coke, iron ore and scrap steel) providers in China including the following details:
- (a) name of the business entity;
  - (b) location of the business entity;
  - (c) function of the business (e.g. manufacturer, trader, exporter);
  - (d) type of business (e.g. State invested enterprise (SIE), Foreign invested enterprise (FIE), private enterprise or other (please specify));
  - (e) whether the business is a manufacturer of rod in coil;
  - (f) production quantity of rod in coil;
  - (g) value of total benefit provided to each company
  - (h) whether GOC is a shareholder in the business, and
  - (i) if so the percentage of GOC holdings; and
  - (j) whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and indicate any special rights provided to the representative (e.g. veto rights).

**The GOC notes that most of the information requested above bears little or no relevance to a countervailing investigation. It is neither necessary nor desirable for the GOC to provide the detailed commercial information such as name and location, ownership information and production quantity, for each and every manufacturer and trader of rod in coil and of "upstream raw materials".**

**The GOC is also not aware of any allegation of a "pass-through" subsidy allegation in this investigation – therefore the information requested in relation to upstream manufacturers and traders cannot be relevant to an inquiry about subsidies allegedly received by a manufacturer of rod in coil.**

**In relation to the question concerning the "value of total benefit provided to each company", if this means the value of any subsidy as alleged by the applicant, and as is being presently investigated by the Commission, the GOC advises that it has provided detailed responses in relation to the amount of any particular subsidy as received by the respondent companies under each of the alleged subsidy programs at Section B of this questionnaire.**

**In relation to the issue of whether any SIE raw material supplier is a "public body" that is capable of providing a subsidy to a rod in coil manufacturer by way of providing raw material at less than adequate remuneration, the GOC again notes that it is now well-established that State ownership in a company is neither a sufficient nor determinative**

factor. The GOC's response in relation to the applicant's specific "less than adequate remuneration" subsidy allegations is provided in Section B of this questionnaire.

As already advised above, according to NBS there are over 335 above scale producers of rod in coil in China, with more over 80% being non-SIEs, accounting for nearly 80% of total production.

In terms of raw materials for rod in coil, available NBS data show over 700 producers of coke in China, with over 80% being non-SIEs and accounting for more than 63% of total production. In the case of iron ore, there are over 1,171 iron ore producers in China, over 90% being non-SIEs accounting for more than 70% of total production. As advised above, the Chinese market for coking coal, coke and iron ore are all well penetrated by import sources.

In terms of steel billet, due to its nature as a semi-finished feed material, the NBS does not maintain data directly related to the steel billet which may be used for rod in coil or reinforcing bar production. In accordance with NBS, steel billet data is included as part of the information for crude steel generally. At the general category level of "crude steel/steel billet", the NBS data show that there are over 552 producers in China, with non-SIE producers accounting for about 54% of total production.

Nonetheless, the GOC does intend to respond to this question, again in the interests of cooperation.

The only form of GOC "representation" in any of the entities is that which would apply in the case of SIEs. By their very nature, an SIE has government representation, insofar as the GOC is a shareholder in that entity. The role of shareholder or "capital contributor" is undertaken by the State-owned Assets Supervision and Administration Commission ("SASAC").

In this role SASAC's functions are those of a shareholder in the normal sense of the term. As an institution (non-natural person) it cannot attend a shareholders' meeting or a general assembly of shareholders convened by a company (majority state-holding company or minority state-holding company). To efficiently perform its "contributors" functions, it must appoint a representative to attend these meetings. The specific role of these representatives is to put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and to report the performance of his duties and results thereof to the appointing body promptly.

SASAC is obliged to exercise its ownership rights in a manner as provided by law, and not in a way which is dictated by any GOC party or instrumentality. No other parts of the GOC have any authority to intervene contrary to that legal stipulation. The primary and ruling considerations for a SASAC representative to consider in asset management are commercial operation and fair value. SASAC's role is simply that of a shareholder. Investors will always take into account commercial, legal, political ("sovereign") and social risks in managing their investments, and SASAC is no different in this regard.

For other information regarding the GOC's involvement and the operation of SASAC please see the GOC's responses in A1, A2, and Section B.

The GOC provides the following information in relation to rod in coil producers in China and their raw material inputs.

- list of rod in coil manufacturers and/or traders as maintained by CISA at Attachment 12 [CONFIDENTIAL ATTACHMENT];<sup>29</sup>

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- NBS statistics for rod in coil production in 2014 and 2015, at Attachment 11;
- NBS statistics for coke production in 2014 and 2015, at Attachment 11;
- NBS statistics for iron ore production in 2014 and 2015, at Attachment 11;
- NBS statistics for crude steel/billet production in 2014 and 2015, at Attachment 11.

The GOC has been advised by NBS that statistics are not available in relation to “coking coal” as a separate category of goods.

In relation to steel scrap please refer to the GOC’s responses at A-1 above.

For each business where the GOC is a shareholder and/or there is the GOC representations in the business provide:

- (a) the complete organisational structure, including subsidiaries and associated businesses; and
- (b) copies of annual reports of the business for the last 2 years.

The GOC respectfully draws the Commission’s attention to Articles 7 and 10 of the *Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises*, which note the separation between the GOC and any entities in which it has an investment.

The GOC does not collect the information requested by the Commission in this question, nor does the GOC consider that information to be relevant to the question of whether any of the alleged subsidies exists or - if this be one intent of the question - whether a situation exists in the market for rod in coil that would render sales in that market unsuitable for determining dumping margins under Section 269TAC(1).

We again refer to the NBS data concerning rod in coil producers in China as provided in Attachment 11, which indicates that there are 62 SIEs producing rod in coil in China amongst the 335 above scale rod in coil producers. It is not clear to the GOC whether each and every one of these enterprises publishes an “annual report” for general circulation. The GOC understands that some of the respondents to this investigation are SIEs, and the GOC would expect that they have already provided the requested information.

5. Which industry associations represent rod in coil manufacturers?

Please provide names, address and contact details including their websites of the relevant industry associations. Include all national, provincial and regional producer organisations that represent the interests of rod in coil manufacturers and traders in China.

The GOC understands that rod in coil manufacturers who are members of CISA might be represented by CISA. The address of CISA is No.46, Dongsi West Street, Beijing. Its telephone number is +86 10 65133322.

6. The GOC Questionnaire Response to INV 277 (hollow structural sections - alloy) identified the China Iron and Steel Association (CISA) as the relevant industry association that represents hollow structural sections manufacturers. Indicate whether the CISA also represent any of the following sectors:

- (a) iron ore and coking coal, miners, billet manufacturers, importers and traders;



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- (b) coke producers, importers and traders; and/or
- (c) scrap metal producers, importers and traders.

If there are other industry associations that represent the above business types, provide names, address and contact details including the websites of the relevant industry association.

**The GOC does not understand the relevance of this question in this investigation.**

**The laws of China confer no rights on the GOC to constitute, sponsor or administer industrial associations except for regular legal entity registration or regulation. CISA is an organisation that is independent of the GOC.**

**In order to cooperate with the investigation, the GOC clarifies that, to the best of its knowledge, besides the CISA, there are other industry associations in China having some roles on behalf of the industries concerned and their members.**

**The GOC provides a list of relevant associations in Attachment 13 [CONFIDENTIAL ATTACHMENT]. For other information concerning relevant industry associations, please inquire of the respondent firms.**



## SECTION B: SUBSIDIES

The applicant alleges that producers of rod in coils in China have benefited from a number of subsidies granted by the GOC, and that these subsidies are countervailable.

Table 1 below lists all the alleged countervailable subsidy programs for rod in coils that are being investigated.

*Note: the below titles of programs are to the best of the Commission's knowledge and in some cases may simply be descriptions of the program. Consequently, the below titles may not exactly reflect any official titles that the GOC has in place.*

**In responding to this questionnaire, if the GOC is unfamiliar with the title given to a program, but is aware of the existence of a similar program or one that it appears is being referred to, please identify this (including providing the official title of any such program) and respond to the questionnaire in relation to that program.**

The GOC is requested to provide information on each program, regardless of the year the benefit was granted by the GOC or the year that the benefit was received by the recipient company, as well as those further identified by the GOC, where the program benefits impact on the production and sale of rod in coils during the investigation period.

**Table 1: PROGRAMS UNDER INVESTIGATION**

The following are programs that the Commission is currently investigating:

Category	Program (number and description)
Part B-1 Provision of goods (Programs 1-4)	1. Billet provided by the Government of China at less than adequate remuneration
	2. Coking coal provided by the Government of China at less than adequate remuneration
	3. Coke provided by the Government of China at less than adequate remuneration
	4. Electricity provided by the Government of China at less than adequate remuneration
Part B-2 Preferential tax policies (Programs 5-9)	5. Preferential Tax Policies for High and New Technology Enterprises
	6. Preferential Tax Policies in the Western Regions
	7. Land Use Tax Deduction
	8. Tariff and VAT Exemptions on Imported Materials and Equipment
	9. VAT refund on comprehensive utilisation of resources
Part B-3 Financial grants (Programs 10-42, 47, 48, 50, 56, 57 and 62)	10. One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" and "Famous Brands of China";
	11. Matching Funds for International Market Development for small and medium size enterprises (SMEs)
	12. Superstar Enterprise Grant
	13. Research and Development (R&D) Assistance Grant

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Category	Program (number and description)
	14. Patent Award of Guangdong Province
	15. Innovative Experimental Enterprise Grant
	16. Special Support Fund for Non-State-Owned Enterprises
	17. Venture Investment Fund of Hi-Tech Industry
	18. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
	19. Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan
	20. Water Conservancy Fund Deduction
	21. Wuxing District Freight Assistance
	22. Huzhou City Public Listing Grant
	23. Huzhou City Quality Award
	24. Huzhou Industry Enterprise Transformation & Upgrade Development Fund
	25. Wuxing District Public List Grant
	26. Anti-dumping Respondent Assistance
	27. Technology Project Assistance
	28. Transformation technique grant for rolling machine
	29. Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009
	30. Key industry revitalization infrastructure spending in 2010
	31. Provincial emerging industry and key industry development special fund
	32. Environmental protection grant
	33. Environmental protection fund
	34. Intellectual property licensing
	35. Financial resources construction - special fund
	36. Reducing pollution discharging and environment improvement assessment award
	37. Grant for elimination of out dated capacity
	38. Grant from Technology Bureau
	39. High and New technology Enterprise Grant

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Category	Program (number and description)
	40. Independent Innovation and High Tech Industrialization Program
	41. Environmental Prize
	42. Jinzhou District Research and Development Assistance Program
	47. Energy Saving Grants
	48. Technology Development Grants
	50. Other Government Grants/Subsidies
	56. Saving technological transformation items (Head Subsidy)
	57. Environmental Protection Project Grants
	62. Other Grants/Subsidies
Part B-4 Equity programs (Programs 43-45)	43. Debt for equity swaps
	44. Equity infusions
	45. Unpaid dividends
Part B-5 Preferential loans	46. Preferential loans and interest rates
Part B-6: Miscellaneous programs (Programs 49 – 55 & 58 – 62)	49. Land Acquisition Compensation
	50. Other Government Grants
	51. Other rebates (Government Grants)
	52. Interest (Financial) discount
	53. The 43.3 thousand yuan investment in the Environmental Special Protection Fund
	54. The 13.4 thousand yuan investment in the Environmental Special Protection Fund
	55. The 62.28 million yuan investment in the Environmental Special Protection Fund
	58. "Provincial key industrial restructuring and revitalization project special boot funds"
	59. "Financial assistance"
	60. "Development of special guide funds"
	61. "Investment cooperation agreement Award Jiangsu Huaian Qingpu Industrial Park"
	62. "Other grants"

If the GOC, any of its agencies, or any other authorised non-governmental body provides



any other assistance programs not referred to in table one (including market development assistance programs or any domestic support programs related to the manufacture of subject goods) to manufacturers of (rod in coils) in China, identify these program(s). Such assistance programs are those that constitute a subsidy as defined in the attached Glossary of Terms.

## PART B-1 GENERAL INFORMATION FOR ALL PROGRAMS

The GOC is requested to provide the information requested for each of the programs identified above and any additional programs the GOC has identified. In addition, please respond to the program-specific information requested.

1. For **all programs under investigation and any other program/s identified by the GOC** provide any amendments to law, regulations or policy that makes a particular program redundant for this investigation. Provide all documentary evidence.

**The GOC will respond to the questions in relation to Programs 1, 2, 3, 4 and 46 by way of rebuttal, and in relation to other “programs” only if the Chinese exporters of rod in coil participating in this investigation (hereinafter “Respondent/s”) have reported usage of them. For those “programs” of which the GOC is not aware of any usage by a Respondent, the GOC has nonetheless provided explanatory notes and comments in so far as the GOC is able to identify those programs, in order to assist the Commission’s consideration.**

## PART B-2 PROGRAMS FOR PROVISION OF INPUTS AT LESS THAN ADEQUATE REMUNERATION

The applicant claims that public bodies (in the form of state-invested enterprises (SIEs<sup>30</sup>)) are supplying raw materials (steel billet, coking coal, coke, electricity), directly or indirectly, to manufacturers of rod-in-coils at less than fair value:

- Program 1:** Billet provided by the Government of China at less than adequate remuneration
- Program 2:** Coking coal provided by the Government of China at less than adequate remuneration
- Program 3:** Coke provided by the Government of China at less than adequate remuneration
- Program 4:** Electricity

In relation to these programs, provide the following information:

### **Program 1 – Steel billet provided by the government at less than adequate remuneration**

**The GOC advises that there is no such program.**

**The Commission’s consideration report makes the following comments in response to the alleged Program 1:**

***The Commission has not previously made a finding regarding the provision of billet at less than adequate remuneration, nor is it aware that such a finding has been made by any other anti-dumping authority. The Commission notes the following concerning the applicant’s arguments regarding the provision of billet at less than adequate remuneration:***

- ***The Chinese companies referred to by the applicant are vertically integrated in producing billet that is then used to produce rod in coil.***

<sup>30</sup>

For the purpose of this questionnaire State Owned enterprise (SOE) and State Invested Enterprise (SIE) are together referred to as SIE. The term SIE is defined in the glossary of this questionnaire.

*However to the extent that not all Chinese producers of rod in coil are vertically integrated, the provision of billet at less than adequate remuneration from SIE producers of billet may be a countervailable subsidy; and*

- *The applicant has cited the WTO Appellate Body Report in United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436) in support of its reasoning that Chinese billet suppliers are public bodies (see the definition of ‘subsidy’ at Section 269T) because the GOC exercises meaningful control over them. However the Appellate Body in DS436 rather overturned a decision by the WTO Panel that relied too heavily on the ‘meaningful control’ indicia as one of the three indicia to be considered in assessing whether an entity possesses, exercises or is vested with governmental authority (DS436 at paragraph 4.36).*

*During the course of the investigation, the Commission will further consider, whether the supply of billet at less than adequate remuneration is a countervailable subsidy.*

*Appear to be reasonable grounds*

*Accordingly, the Commission accepts that, at least for coke, coking coal and electricity, there is a sufficient basis for the Commissioner to be satisfied, having regard to the matters in the application and to other relevant information that there appear to be reasonable grounds that the programs for provision of goods described by the applicant are countervailable subsidies.*

*Programs for provision of billet at less than adequate remuneration may only be applicable to rod in coil producers that purchase billet, not integrated producers of billet and rod in coil. However, in SEF 301, having found that ‘a particular market situations’ exists in the rod in coils market in China, the Commission replaced the costs of billets for both integrated and non-integrated producers to calculate a normal value under s269TAC(2)(c). [footnote omitted]*

Quite apart from the non-presence of “public bodies” in China’s steel industry, and quite apart from any question of whether a “benefit” would be found if there were, the GOC welcomes the Commission’s statement that:

*Programs for provision of billet at less than adequate remuneration may only be applicable to rod in coil producers that purchase billet, not integrated producers of billet and rod in coil.*

The GOC considers that the allegation that a fully integrated rod in coil producer could somehow be subsidised by itself, by way of producing and fully costing its steel billet, as a stage in the production of rod in coil, is plainly illogical.

The GOC respectfully disagrees with the Commission’s decision to initiate any investigation concerning the alleged “Program 1”, in light of the fact that the allegation does not achieve any reasonable *prima facie* threshold for initiation. In this regard the GOC notes the allegation in the application is that all of the Chinese exporters of rod in coil identified in the application are “integrated” steel producers that produce steel billet. The Application does not provide any evidence that any Chinese rod in coil exporters that exported rod in coil during the investigation period were not integrated producers of rod in coil. Nor was any evidence provided to demonstrate whether any of the rod in coil exported from China to Australia during the investigation period was indeed made from steel billet *supplied* by SIEs. Accordingly, the Application contained no evidence of the *prima facie* existence of the alleged Program 1 subsidy in so far as it concerns “non-integrated” Chinese rod in coil producers who exported rod in coil to Australia during the investigation period.

Further, in relation to the “legal basis” of the “public body/government” element of the alleged subsidy, the Application:

- *stated that nine of the top 10 crude steel producers in China are SIEs and account for less than 40% of total Chinese output;*
- *referred to the importance of the Chinese iron and steel industry as a*

“fundamental or pillar” industry;

- cited the Appellate Body’s views regarding what constitutes a “public body” in DS436.

The GOC notes that the first two points have no direct relevance to the Applicant’s allegation that all Chinese SIEs who supplied steel billet to rod in coil producers are public bodies. As to the third point, the reference to the Appellate Body’s report in DS436 as legally supporting the allegation is simply a misrepresentation. None of the points cited by the Applicant as being “*guiding principles*” of the Appellate Body’s decision represent the Appellate Body’s view in DS436.<sup>31</sup> As the Commission’s Consideration Report points out, the alleged “*guiding principles*” were indeed overturned and were not supported by the Appellate Body in DS436.

Accordingly, it is not apparent that the Application contained any “reasonable grounds”, whether from a factual or legal perspective, to support the existence of the alleged Program 1 subsidy, nor any benefit that the Chinese exporters of rod in coil may have enjoyed under that subsidy.

The GOC respectfully requests the Commission to terminate its investigation in relation to the “Program 1” subsidy immediately, as the legal requirement under the SCM Agreement and its equivalent under Australian law for the initiation of the countervailing investigation were not met.

Lastly, the GOC notes the Commission’s reference to its own findings in SEF 301. In SEF 301, the Commission appears to have decided to recommend to the Minister that the cost of steel billet used by Chinese producers of rod in coil should be surrogated, even where the producer concerned was an integrated steelmaker that self-produced its own billet. The GOC considers this finding to be illogical and legally flawed. The Commission has already pointed out the illogicality in the applicant’s allegation regarding Program 1 concerning an integrated producer – who simply does not have steel billet provided to it by the government or any other entity, because it makes the steel billet itself. The same illogicality applies to the cost surrogation treatment in the anti-dumping investigation, because there is simply no evidence to support the proposition that the cost of steel billet as recorded and reported by the Chinese rod in coil producers is anything but the actual costs incurred by those producers. Any allegation that the “market” for rod in coil or steel billet in China is somehow distorted has no relevance whatsoever to the accuracy or reliability of the Chinese rod in coil producers cost records for self-produced steel billet.

As mentioned in Section A, China is the largest importing country of iron ore and coking coal in the world. China is also the largest producer and exporter of coke. These are the key raw materials for steel billet production. The prevailing costs of such raw materials in China cannot be regarded as anything but competitive market based costs.

Quite apart from the logical chaos, the Commission’s proposed approach to surrogate the Chinese producers’ steel billet costs in the construction of normal value on the basis that such cost might have been distorted or artificially low or due to a “particular market situation” is also legally incorrect. The claim that such surrogation and the “benchmark” approach is somehow in accordance with WTO authority<sup>32</sup> is completely misplaced.

In this regard, the GOC notes that it has consistently objected, in this and various previous investigations, to the Commission’s practice of surrogating Chinese exporters’ costs of production. The GOC’s position has been confirmed by the latest

<sup>31</sup> The first dot points referred to in the Application was actually the Panel’s view which ultimately not supported by the Appellate Body in DS436. The other dot points were plainly misquotation as they were not from the AB report at all.

<sup>32</sup> See SEF 301, page 19. The GOC advises that the alleged “WTO Appellate Body findings” based method for assessing “appropriate competitive market cost” by looking at “private domestic prices, import prices and external benchmarks” does not exist in relation to anti-dumping investigations.

WTO jurisprudence on this issue, as contained in the WTO Panel decision in *European Union – Anti-Dumping Measures on Biodiesel from Argentina*,<sup>33</sup> in which Australia was a third party. Of most relevance, the Panel concluded that:

- the costs used for constructing normal value under Article 2.2 of the Anti-Dumping Agreement must be based on the cost of production *in the country of origin*; and
- the cost of production calculated for the purpose of constructing normal value under Article 2.2 and Article 2.2.1.1 of the Anti-Dumping Agreement must be based on the *actual* cost of the producers.

The Commission is respectfully urged to withdraw its cost surrogation findings as stated in SEF 301 and in any of its recommendations to the Minister following on from SEF 301 as submitted under Section 269TEA of the *Customs Act 1901*.

Programs 2 and 3 – Coking coal and coke provided by government at less than adequate remuneration

The GOC advises that there are no such programs.

The GOC notes that the sole basis relied upon by the Applicant was the Commission's decisions in Reports 193 and 198 (with the latter basically repeating the decision in Report 193).

Report 198 was published on 19 December 2013, together with the Minister's decision to accept the Commission's recommendation in that Report. That included the recommendations to find that the alleged Programs 2 and 3, being the same Programs 2 and 3 as those in the current investigation, amounted to countervailable subsidies.

The basis of the Commission's findings in Report 198 was the findings in Report 193 made by the Commission's predecessor agency, the Australian Customs and Border Protection Service, hereinafter "Customs". However, those Customs findings were challenged by the GOC before the Anti-Dumping Review Panel ("the ADRP"). The ADRP ruled that Customs had erred in finding that the alleged provision of steel inputs in the form of hot rolled coil (being "Program 1" in Report 193), and raw materials in the form of coking coal and coke (being Program 2 and Program 3 in Report 193) by SIEs were countervailable subsidies.

This resulted in the Minister *removing* the subsidy duties in relation to Programs 1, 2 and 3 from the dumping duty notice for coated steel from China. The Minister's decision was published on 20 February 2014 – *after* the publication of Report 198.

Accordingly, there are clear defects in the grounds relied upon by the Applicant in the Application concerning the existence of the so called Programs 2 and 3 – given that the reasoning and the determination upon which those grounds relied were ruled to be unlawful by the ADRP, and overturned by the Minister. It follows that the Commission's finding that there appears to be "*reasonable grounds to be satisfied that the provision of coke and coking coal to rod in coil suppliers at less than adequate remuneration are countervailable subsidies*", and to initiate an investigation concerning the so called "Programs 2 and 3", on the basis that it had previously made such a determination, are also flawed.

The fact – and the law in Australia – is that State-invested enterprises producing and supplying coking coal and coke in China are not public bodies. For the purposes of a countervailing investigation the question of whether coking coal and coke are supplied by those enterprises at "less than adequate remuneration" is not reached and is not relevant.

Program 4 – electricity provided by government at less than adequate remuneration

There is no such subsidy program.

The GOC rejects the claims:

- that electricity supplier enterprises with State investment are "public bodies";

- that sales of electricity constituted any “financial contribution” or conferred any “benefit” on the Respondents during the investigation period;
- that the alleged “program” is capable of conferring a subsidy that is “specific” to the Respondents.

The evidence referred to by the Applicant in relation to the “less than adequate remuneration” and “specificity” elements of the claim are clearly flawed.

In the Commission’s Report 237 concerning silicon metal exported from China, the Commission formed the view that the electricity supplied to the cooperating Chinese exporters was at less than adequate remuneration, on the basis that the electricity provided was less than the “other large industry” tariff:

*The Commission determined that the most reasonable option available for a benchmark is the tariff rate for ‘Other Large Industry’ as indicated on the schedule of tariff rates provided by the GOC. This is considered the most reasonable benchmark as it represents a competitive market cost in China for all other industries in the relevant provinces, that is, those where the cooperating exporter conducts its manufacturing activities.*

Rod in coil production does not fall under any “silicon” or “ferroalloy” tariff category, nor under any other electricity tariff categories which specify a lower tariff rate than for “other large industry”. Based on the information provided by the respondent exporters, rod in coil producers are not subject to any “preferential” electricity tariff rate, when compared with the applicable “other large industry” rate in the relevant region.

Indeed, as both the Applicant and the Commission should both know full well, there is equally relevant administrative precedent which points directly against the Applicant’s claim of the provision of electricity at “less than adequate remuneration”. In Investigation 177, concerning hollow structural sections from China, the Applicant OneSteel ATM – an affiliated company of the Applicant in the current case - claimed that the electricity costs of the HSS producers were somehow subsidised and “artificially low”. In relation to this claim, the Customs and Border Protection found<sup>34</sup>:

*During this investigation and previous investigations concerning exports from China, Customs and Border Protection has observed that arrangements for the supply of electricity in China vary from province to province. Customs and Border Protection verified electricity costs for all co-operating exporters and did not find any evidence that the price of electricity during the investigation period reflected anything other than competitive market prices.*

Accordingly the Commission should find that the available information does not establish that there is any provision of electricity by government at less than adequate remuneration, and should terminate the investigation in so far as it relates to this program immediately.

We also mention that the Applicant’s claims concerning the “public body” element of the alleged subsidy are entirely based upon the Commission’s finding in Report 237. In this regard, the conclusion in Report 237 that Chinese SIEs providing electricity were “meaningfully controlled” by the GOC was influenced by the Commission’s interpretation of the WTO Panel report in DS436. The GOC notes that the WTO Panel’s views concerning the determination of “meaningful control” as part of public body consideration were overturned by the Appellate Body. Therefore the analysis in Report 237 cannot properly be relied upon as a basis for the Applicant’s claim in the current investigation.

Lastly, the GOC would also like draw the Commission’s attention to the issue of determining whether any such “subsidies” could have caused material injury to the Australian industry. Even if, for some reason, the Commission considers that it can legitimately find that the alleged Program 1 to 4 exists, and that cost surrogation can be applied to the internal cost of manufacturing steel billet, the Commission is required to choose between attributing the injury caused to the Australian industry to subsidisation or to dumping, not both. This is because the cost surrogation approach contained in SEF 301 would fully absorb any amount of “subsidisation” calculated



under Programs 1 to 4. The Commission must eliminate any proportion of the Programs 1 to 4 subsidies not just for the purpose of duty collection but, more fundamentally, in considering whether the subsidisation involved is negligible according to Section 269TDA of the *Customs Act 1901*.

2. In INV 277, Commission was provided with a copy of the 'Law of the People's Republic of China on State-Owned Assets of Enterprises'. Confirm whether this law is current and has not been superseded or supplemented by other laws. Provide any superseding or supplementary laws to the 'Law of the People's Republic of China on State-Owned Assets of Enterprises'.

**This law has not been superseded or supplemented by other laws.**

**The GOC notes that it was required to give the same confirmation in its response to the Government Questionnaire in INV 193, in relation to which the GOC commented as follows:**

*The GOC notes that in INV177, Article 36 of this law was misinterpreted by Australian Customs as evidence that the GOC directs SIEs to carry out a government function.*

*The GOC disagrees with such interpretation and treatment of this law. As the TMRO pointed out in its review of Australian Customs finding in INV177:*

*Customs substantially relied on s 36 of the Company Law, which requires SIEs making investments to comply with National Industrial Policies. But in my view this section requires no more than compliance with the policies of the Government of China. It falls short of establishing that State-Invested HRC producers are invested with the power to control, compel, direct or command private bodies and persons.*

*...the GOC advises that compliance with governmental policies by enterprises does not equate to the exercise of government function or authority.*

*The GOC would also like to point out that the scope of Article 36 is limited. It only relates to the making of certain investments, and does not relate to the purchase or sales of goods or raw materials concerned in this investigation. Further, Article 36, if read in the context, mainly regards the security of State assets. It does not suggest any government intervention in the business affairs of the enterprises concerned. This context is more apparent when Article 36 is to be read as a whole. The second half of the provision states:*

*...and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.*

**The GOC and the TMRO's view was further supported by the ADRP in its review of Report 193:**

*...the TMRO considered that active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority. I agree with this view... it does not evidence the essential element of exercising a power of government over third persons.<sup>35</sup> [underlining supplied]*

*...Compliance with government policy does not of itself evidence that an entity possesses, exercises or is vested with government authority. This is the overriding test established by the Appellate Body.<sup>36</sup>*

**The GOC does not understand how it is that the Australian investigating authority and its Minister can flout the rule of law and of legal process in Australia on this matter by taking no notice of the findings of the review bodies that supervise the legality of their actions. Article 13 of the Anti-Dumping Agreement provides as follows:**

<sup>35</sup>

ADRP report re Report 193, at page 21, HSS TMRO report, para 245.

<sup>36</sup>

ADRP report re Report 193, at page 22

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*Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.*

**An administrative procedure for the review of anti-dumping decisions cannot comply with Article 13 if its outcomes are repeatedly ignored by the investigating authorities concerned.**

3. Outline how each of the following is determined for the entities identified in Section A, Question 6 above **and** for manufacturers of rod in coils in China (where this differs across enterprise or type (e.g. SIEs, FIEs), describe this differently):
- (a) suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials);
  - (b) purchase prices of raw material inputs;
  - (c) allocation of inputs into production process, including raw materials and labour costs;
  - (d) quality by volume and value;
  - (e) selling prices;
  - (f) customers (including restrictions on entities that can purchase goods produced from the enterprise);
  - (g) production output (detail any restrictions on production output);
  - (h) safety standards; and
  - (i) electricity/energy costs.

**Please refer to the GOC's responses to questions B-1 above in relation to Programs 1 to 4. The GOC is neither responsible nor authorised to hold and provide such detailed information about individual enterprises.**

**The abovementioned matters, except for matters of product or safety standards in some cases, are the business operation of the enterprises. As a matter of principle and fact, the GOC adopts a separation of government function from the operation of business and a non-interference approach. The GOC does not "determine" or "set" any of the above matters for enterprises.**

**Nonetheless, for the purpose of full cooperation, the GOC provides the following answers based on the information provided by the Respondents with our general comments.**

**Suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials)**

**From an operational and legal point of view, enterprises choose their suppliers of raw materials. There is no law or government policy on how enterprises in the rod in coil industry, iron ore industry, coking coal industry, coke making industry or scrap steel industry should determine their suppliers of raw material inputs. There are no restrictions on the acquisition or supply of rod in coil or the raw material inputs concerned under the laws of China. Enterprises are entitled to independently determine their suppliers or acquirers, as well as the specifications, quantities and prices thereof, in doing their business.**

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According to Article 4 of the Contract Law of the People's Republic of China:

*...parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.*

Please refer to Attachment 14 - *Contract Law of the People's Republic of China*.

Therefore, enterprises choose their suppliers of raw material inputs independently and without any interference from the GOC, whether they are SIEs or not.

### Purchase prices of raw material inputs

From an operational and legal point of view, the GOC does not control or interfere with purchase prices of these raw materials. The prices are determined by individual companies in their negotiations with prospective customers. An enterprise has the right to negotiate prices of its raw material inputs independently with the other party to the transaction based on market conditions under various laws.

The GOC advises that there are no specific laws or regulations (regardless of nomenclature) in China relating to the pricing of the raw material inputs concerned (ie. iron ore, coke, coking coal, steel scrap and steel billet). These raw materials are not subject to any price controls.

Please refer to the *Catalogue of Price Regulated by the State Development Planning Commission and Other Department under the State Council* in Attachment 15. As can be seen from this official instrument, none of the raw material inputs concerned are subject to any price controls or guidelines. The GOC notes that it has already provided this explanation and the Catalogue in its response to the Government Questionnaires in INV 177, INV 180, INV 190, INV 193, INV 198 and Review 263.

### Allocation of inputs into production process, including raw materials and labour costs

The GOC advises that there are no laws or regulations that explicitly specify any conditions or requirements as to how enterprises shall allocate inputs into their production processes. Enterprises independently determine the allocation of inputs for their production. Chinese enterprises independently make decisions to establish their own internal business administration organization. Article 46 of the Company Law provides that the board of directors shall exercise the functions of making decisions on the establishment of the company's internal management departments. Such decisions may be deemed as an indirect "allocation of inputs into production process". Please refer to Attachment 7 *Company Law of the People's Republic of China*.

In SEF 301, it is alleged that Chinese exporters' steel billet costs should somehow be disregarded due to alleged "government influence". The GOC strongly objects to such approach. As advised in this response, and by each of the Respondents, the GOC does not regulate how the enterprises should record the costs of their inputs. The costs of steel billet as recorded by Chinese exporters, so far as they are recorded in accordance with the generally accepted accounting principles of China, are not influenced by the GOC. Companies producing rod in coil are no different from any companies manufacturing any other products in China, in that they are required to operate within the legal and market environment of China, and abide with various laws of China concerning corporate governance, taxation, industrial relations, environmental protections, etc.

The suggestion that a Chinese rod in coil manufacturer's own cost of production of steel billet and rod in coil can be disregarded is a poorly veiled attack on China's market economy status and ignores the terms of China's membership of the WTO.

### Quality by volume and value

This question is not clearly understood by the GOC. In any case, so far as Chinese rod in coil manufacturers are concerned, the quality/quantity/volume/value of its products are entirely determined by the enterprise/s themselves.

### Selling prices

The GOC advises again that it does not participate in the setting, controlling or

guiding of selling prices of the rod in coil or the raw materials concerned, so far as the goods are not listed in the *Catalogue of Price Regulated by the State Development Planning Commission and Other Department under the State Council*.

To the GOC's knowledge, the market in which the entities concerned belong in the ordinary course of trade, namely the markets for rod in coil, steel billet, iron ore, coking coal and coke, are all competitive markets within China's market economy. The GOC therefore states that the selling prices are determined by the enterprises concerned according to their own business decisions based on market principles.

Further, as stated above, the GOC understands that the Respondents either did not purchase or purchased very minor volumes of steel billet from external sources. Instead, where steel billets were used by the Respondents in their production of rod in coil, they were self-produced. Accordingly, the question regarding selling prices of steel billets has no relevance so far as the Respondents are concerned.

Customers (including restrictions on entities that can purchase goods produced from the enterprise)

From a legal point of view, Chinese enterprises are free to choose their customers under various laws. According to Article 4 of the *Contract Law of the People's Republic of China*:

*The parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.*

Please refer to Attachment 14 *Contract Law of the People's Republic of China*. Therefore, the enterprises can choose customers independently without any interference from the GOC or any other parties.

In relation to "including restrictions on entities that can purchase goods produced from the enterprise", It is not clear what information is required for this part of the question. The GOC advises that for the enterprises and the goods concerned in this investigation, there are no laws, regulations or policies which impose restrictions on what enterprises can purchase the goods sold by other enterprises, or what enterprises from whom an enterprise must make its purchase. Of course there are laws which impose restrictions on transactions relating to dangerous articles, such as guns, ammunition, explosives and smuggled goods, However the GOC does not consider those to be relevant for this investigation.

Production output (detail any restrictions on production output)

From a legal point of view, enterprises are responsible for determining their production output both from their own commercial perspective and under various laws. Pursuant to Article 46 of the *Company Law of the People's Republic of China*, the board of directors shall be responsible for the shareholders' meeting and determine the company's business and investment plans. Please refer to Attachment 7 *Company Law of the People's Republic of China*. Production output is determined by the board of directors of the enterprise, according to the market demand, market prices, capacity and other market factors. The GOC does not impose any restrictions on their production output

Safety standards

The safety standards of enterprises in China are subject to various legal requirements under relevant laws. For example, the safety standards of enterprises must conform to the *Production Safety Law of the People's Republic of China*. Pursuant to Article 4 of the law:

*Production and business operation entities shall abide by this Law and other laws and regulations concerning work safety, strengthen work safety control, establish and improve the responsibility system and rules and regulations for work safety, improve the conditions for work safety, promote the standardization of work safety and improve the level of work safety so as to ensure work safety.*

Energy costs

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The GOC understands that the cost of electricity and the cost of burning coal may be considered as “energy costs” for the enterprises concerned.

As already mentioned above, only the prices of certain goods or services are subject to legal requirements under the laws of China.

According to Article 18 of the *Price Law of China*:

*The government shall issue government-set or guided prices for the following merchandises and services if necessary:*

1. *The few merchandises that are of great importance to development of the national economy and the people's livelihood;*
2. *The few merchandises that are in shortage of resources;*
3. *Merchandises of monopoly in nature;*
4. *Important public utilities;*
5. *Important services of public welfare in nature.*

Please see Attachment 16 - *Price Law of the People's Republic of China*.

Electricity is an important public utility and has a significant influence on national welfare and the people's livelihood. For more details, please refer to Attachment 15 - *Catalogue of Regulated Prices*.

However, as advised in other places in this Government Questionnaire, electricity prices for the industries concerned are the same as that applicable to other large industries. In addition, electricity price regulation is not relevant to controlling or guiding prices of rod in coil and the raw material inputs in the sectors concerned by any level of government. As advised, selling prices in the industries concerned, whether raw material inputs or finished goods, are not subject to any government control or guidance. For more information regarding the price setting of electricity, please refer to question (ii) below.

The price of coal is not subject to government price guidance or controls. Coal prices are negotiated by the enterprises and energy suppliers based on market principles. Further Chinese coal market is also well penetrated by imported coals.

4. For programs 1–4, listed above, please complete the attached spreadsheet B-2 (using Microsoft Excel format) listing all electricity providers and spreadsheet B-3 listing all other key raw materials suppliers who service those entities identified in question A-4 including the following details:
- a. name of the business entity
  - b. location of the business entity
  - c. type of business (e.g. State invested enterprise (SIE), Foreign invested enterprise (FIE), private enterprise or other (please specify))
  - d. whether GOC is a shareholder in the business, and if so the percentage of GOC holdings
  - e. whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and indicate any special rights provided to the representative (e.g. veto rights).

Given the findings of the Appellate Body in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (“DS379”), the GOC cannot see how this information would be relevant to the subsidy investigation. As was noted at paragraph 318 of that report:

*the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority*



Further, in DS436, the Appellate Body stated:

*...that "the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority". Instead, "[a]n investigating authority must, in making its determination, evaluate and give due consideration to all relevant characteristics of the entity and, in reaching its ultimate determination as to how that entity should be characterized, avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant". Thus, the mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body. [footnotes omitted]*

Nonetheless, on the same basis as before, the GOC does intend to respond to this question.

The only form of GOC “representation” in any of the entities is that which would apply in the case of SIEs. By their very nature, an SIE has government representation, insofar as the GOC is a shareholder in that entity. The role of shareholder or “capital contributor” is undertaken by the State-owned Assets Supervision and Administration Commission (“SASAC”).

In this role SASAC’s functions are those of a shareholder in the normal sense of the term. As an institution (non-natural person) it cannot attend a shareholders’ meeting or a general assembly of shareholders convened by a company (majority state-holding company or minority state-holding company). To efficiently perform its “contributors” functions, it must appoint a representative to attend these meetings. The specific role of these representatives is to put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and to report the performance of his duties and results thereof to the appointing body promptly.

SASAC is obliged to exercise its ownership rights in a manner as provided by law, and not in a way which is dictated by any GOC party or instrumentality. No other parts of the GOC have any authority to intervene contrary to that legal stipulation. The primary and ruling considerations for a SASAC representative to consider in asset management are commercial operation and fair value. SASAC’s role is simply that of a shareholder. Investors will always take into account commercial, legal, political (“sovereign”) and social risks in managing their investments, and SASAC is no different in this regard.

For the purposes of full cooperation, GOC provides the information requested in relation to the electricity suppliers for the respondent at Attachment 17 [CONFIDENTIAL ATTACHMENT]. The GOC also provide the electricity tariff schedules for Hunan and Jiangsu Province, at Attachments 18 and 19. As can be seen in the tariff schedule, the normal “large industry” rate would be applicable to steel manufacturers.

5. In relation to program 4, The Commission understands that China’s National Development and Reform Council regulate prices for electricity.
- a. How does the government regulate electricity prices at national, provincial or local levels?

Electricity is an important public utility and has a significant influence on national welfare and the people's livelihood. Electricity rates are mainly subject to government price settings. The GOC refers Customs to the Attachment 15 - *Catalogue of Regulated Prices*. Prices for electricity are basically composed of the actual cost of electricity generation and distribution, expense, tax and reasonable amount of profit. The primary basis on which prices for electricity are adjusted is the changes on coal prices, cost of transmission and distribution of electricity and the operation position of power generation enterprises. For example, because much of the electricity in China is produced by burning coal, the price for electricity tends to correlate with the price of coal. Where hydro-electricity is the main power source, the electricity price may also be affected by seasons and weather.



Electricity prices are different depending on the type of end users. Normally there are broad categories of electricity prices covering residential use, agricultural use, industrial, commercial and other use, and provinces may have particular categories and sub-categories in some cases. With a very few exceptions, all end users in each of the categories, such as the large scale industries, must pay the same electricity price. The electricity prices applicable to rod in coil producers are the same as that applicable to other users in the large industries category.

The GOC has limited powers to guide the price of a small number of goods and services, including electricity prices, when that is strictly necessary.

The Price Law protects market pricing, except in exceptional and limited circumstances. As we have already mentioned, Article 18 of the Price Law states that:

*The government shall issue government-set or guided prices for the following merchandises and services if necessary:*

- *The few merchandises that are of great importance to development of the national economy and the people's livelihood;*
- *The few merchandises that are in shortage of resources;*
- *Merchandises of monopoly in nature;*
- *Important public utilities;*
- *Important services of public welfare in nature.*

Through Article 18 the GOC has retained the power to influence the price of a limited number of goods and services where it is necessary to protect against social and economic harm and to maintain fair and proper competition. However, electricity prices for the industries concerned are the same as that applicable to other large industries. In addition, electricity price regulation is not relevant to controlling or guiding prices of rod in coil and the raw material inputs in the sectors concerned by any level of government. As advised, selling prices in the industries concerned, whether raw material inputs or finished goods, are not subject to any government control or guidance.

The Catalogue contains limited circumstances in which the GOC may influence the prices of 13 goods and services. The Catalogue is subject to and is limited by the terms of Article 18. The goods and services can only be subject to influence by the Government if it is found to be necessary under the limited and strict conditions in Article 18. The Catalogue does not stipulate that all the 13 goods and services will be influenced. Only in the limited circumstances listed in Article 18 can the government influence them to achieve the ends listed in that Article, including protecting market competition from monopolies.

Article 18 is unremarkable in the context of similar powers held and exercised by responsible governments throughout the world. For example, reference is made to the regulation of electricity in Australia by the Australian Energy Regulator.<sup>37</sup>

The GOC notes that the Australian Government's Energy White Paper refers to the following examples of electricity pricing and policy support that will be implemented by the Government:<sup>38</sup>

*The Australian Government will lead work through the Council of Australian Governments (COAG) Energy Council to support the introduction of appropriate electricity use price signals for consumers, and to support the removal of cross-subsidies.*

*A national energy productivity improvement target will be determined as part of the development of a National Energy Productivity Plan, which will drive further improvement.*

*\$476 million Industry Skills Fund, which will enable Australia to have the highly skilled workforce needed to adapt to new business growth opportunities, rapid*

37

<http://www.aer.gov.au>

38

<http://ewp.industry.gov.au/>

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*technological change and market-driven structural adjustment.*

*\$484.2 million Entrepreneurs' Infrastructure Programme, which will provide Australian companies with structural and strategic support to capitalise on growth opportunities.*

*...encourage the rapid adoption of new energy technologies, improvements to existing technologies and new energy sources where adoption will support economic growth, productivity and affordability.*

*\$5 billion Asset Recycling Initiative, which will encourage states and territories to free up capital to invest in additional economic infrastructure by privatising state and territory-owned assets.*

*The Australian Government is considering research priorities, including energy and resources, and transport, for the \$9.2 billion annual investment in research, focusing on solving local issues, competitive advantage, and industry capability to commercialise research.*

*The Australian Government is providing over \$1 billion toward research, development and demonstration of renewable energy projects and half a billion to low emissions fossil fuel projects.*

The GOC would not expect it to be concluded that these powers, and the threat of their use in any particular circumstance, interfere with price setting in respect of the goods and services offered on the market by Australian companies.

- b. Provide names of all the agencies in each region, province or special economic zone responsible for electricity price regulation.

**Local Development and Reform Commissions, in coordination with the NDRC, are responsible for electricity price regulation**

**The following local Development and Reform Commissions are responsible for the price setting of electricity for the provinces where Respondents are located respectively:**

**Department:** Jiangsu Province Development and Reform Commission  
**Mailing address:** 70 Beijing West Road, Nanjing 210013  
**Phone number:** 86 25 83392402  
**Fax number:** 86 25 83392402

**Department:** Hunan Province Development and Reform Commission  
**Mailing address:** 8 Xiangfu West Road, Changsha 410004  
**Phone number:** 86-731-89991088  
**Fax number:** 86-731-89991088

- c. How does the government's electricity policy apply to or promote the steel manufacturing industry?

**The electricity price faced by the steel industry is the same as that faced by other large industry. The GOC does not use its power to set electricity prices under the Price Law to promote the steel industry.**

**6. For programs 1 – 4, please provide full details of the following::**

- policy objective and/or purpose of the program
- legislation under which the subsidy is granted
- nature or form of the subsidy
- when the program was established
- duration of the program
- how the program is administered and explain how it operates

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- g. to whom and how is the program provided
- h. the eligibility criteria in order to receive benefits under the program

**There are no such programs. Please refer to the GOC's response to B-1 above.**

**To the contrary, as noted by the Commission in SEF 301, the GOC has a number of policies which are aimed at limiting further expansion of steel production capacity and to address the environmental issues caused by steel production. These policies, if effective, would be more likely to increase the prices of the inputs referred to in "Program 1 to 4".**

7. Please provide translated copies in English of the decrees, laws and regulations relating to the program and any reports published since 1 January 2011 pertaining to Programs 1, 2 and 3.

**There are no such programs. Please refer to the GOC's response to B-1 above.**

**In relation to the alleged Programs 2 and 3, and the issue of "public body" in the "iron and steel" industry, the GOC refers to the following reports and decisions published since 1 January 2011:**

- **TMRO Report concerning *Certain Hollow Structural Sections exported from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan, and the Kingdom of Thailand*, published on 18 January 2013;<sup>39</sup> and**
- **ADRP Report concerning *Zinc Coated Steel and Aluminium Zinc Coated Steel exported from China*, published on 20 February 2014.<sup>40</sup>**

**China has a very large body of law directed towards achieving and fostering the precisely opposite outcome to that of supplying any goods "at less than fair market value". They include laws on companies, partnerships, sole proprietorship, Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, wholly foreign-owned enterprises, private enterprises, state-owned enterprises, contract, UN convention on sales contract, general principles of commercial contracts, general principle of civil procedure, prices, anti-unfair competition, anti-monopoly, futures market regulation, foreign trade, securities and investment, banking, insurance, maritime matters, taxation, property, bankruptcy, arbitration, litigation, administrative, environmental, civil procedure and their associated regulations, amongst others.**

**Some Chinese laws actively prohibit below cost selling behaviour – conduct which is referred to as "predatory pricing" in some jurisdictions. For example, Article 14 of the Price Law prohibits business operators from engaging in the making of sales (except the cases of sales of fresh and live merchandises, seasonal merchandises and stockpiled merchandises at discount) at below cost prices in order to obtain an upper hand over rivals or to dominate the market and disrupt normal production and market operation. Please refer to Attachment 16 – *Price Law of the People's Republic of China*.**

**In the period since the GOC last responded to the Commission (then Customs), the GOC has further liberalised the regime governing the activities of all enterprises doing business in China. This has equalised SIEs and private enterprises to an even greater extent than before, and facilitated greater competition between all companies in all sectors.**

**In other words, a further liberalisation of the business practices of SIEs has been brought about by changes to the structural requirements for all enterprises and by reinforcing and promoting the private sector of the economy.**

8. Please identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

<sup>39</sup> <http://adreviewpanel.gov.au/PastReviews/Pages/20120912HHSChinaKoreaMalaysiaTaiwanThailand.aspx>  
<sup>40</sup> <http://adreviewpanel.gov.au/PastReviews/Pages/20140220GAZCSteelChina.aspx>

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**There are no such programs. Therefore, there is no GOC department or agency that administers the “programs”.**

**Please see the GOC’s comments in relation to Programs 1 to 4 at B-1 above.**

9. Please identify which of the companies in your response to Section A- Question 4 applied for, accrued or received benefits under programs 1, 2 and 3 during the investigation period.

**There are no such programs. Therefore no companies could have applied for, accrued or received benefits under such programs.**

10. Provide, on an annual basis, the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under programs 1 to 4.

**There are no such programs.**

**Further, we understand that the Respondents either did not purchase or purchased very minor amount of steel billets during the investigation period.**

### PART B-3 OTHER SUBSIDY PROGRAMS

The questions in this part relate to programs 5 to 62 as listed below.

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

**Program 6:** Preferential Tax Policies in the Western Regions

**Program 7:** Land Use Tax Deduction

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

**Program 9:** VAT refund on comprehensive utilisation of resources

**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
- 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
- Program 43:** Debt for equity swaps
- Program 44:** Equity infusions
- Program 45:** Unpaid dividends
- Program 46:** Preferential loans and interest rates
- Program 47:** Energy Saving Grants<sup>41</sup>
- Program 48:** Technology Development Grants<sup>42</sup>
- Program 49:** Land Acquisition Compensation<sup>43</sup>
- Program 50:** Other Government Grants/Subsidies<sup>44</sup>
- Program 51:** Other rebates (Government Grants)<sup>45</sup>
- Program 52:** Interest (Financial) discount<sup>46</sup>
- Program 53:** The 43.3 thousand yuan investment in the Environmental Special Protection

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<sup>41</sup> Refer page 135 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “节能环保 (与资产相关)” and page 141 for the phrase “节能环保 (与收益相关)”.

<sup>42</sup> Refer page 135 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “技术开发 (与资产相关)” and page 141 for the phrase “技术开发 (与收益相关)”.

<sup>43</sup> Refer page 135 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “征地补偿 (与资产相关)”.

<sup>44</sup> Refer page 135 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “其他 [政府补助] (与资产相关)” and page 141 for the phrase “与收益相关 (其他与收益相关的政府补助)”.

<sup>45</sup> Refer page 141 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “其他退税”

<sup>46</sup> Refer page 141 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “财政贴息”

Fund<sup>47</sup>

**Program 54:** The 13.4 thousand yuan investment in the Environmental Special Protection Fund<sup>48</sup>

**Program 55:** The 62.28 million yuan investment in the Environmental Special Protection Fund<sup>49</sup>

**Program 56:** Saving technological transformation items (Head Subsidy)<sup>50</sup>

**Program 57:** Environmental Protection Project Grants<sup>51</sup>

**Program 58:** Provincial key industrial restructuring and revitalization project special Boot funds<sup>52</sup>

**Program 59:** Financial Assistance<sup>53</sup>

**Program 60:** Development of special guide funds<sup>54</sup>

**Program 61:** Investment cooperation agreement Award Jiangsu Huaian Qingpu Industrial Park<sup>55</sup>

**Program 62:** Other Grants<sup>56</sup>

To the best knowledge of the GOC, the Respondents may have enjoyed tax benefits or received grants from the following investigated programs according to the list in this questionnaire and the description provided by the Applicant in the Application for this investigation:

5. Preferential Tax Policies for High and New Technology Enterprises
7. Land Use Tax Deduction
8. Tariff and VAT Exemptions on Imported Materials and Equipment
9. VAT refund on comprehensive utilisation of resources
36. Reducing pollution discharging and environment improvement assessment award
41. Environmental Prize

The GOC will provide program specific answer for these programs, one by one.

<sup>47</sup> Refer page 29 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “华菱湘钢 2014 年全年累计投入环保专项资金 4.33 亿元”

<sup>48</sup> Refer page 29 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “华菱涟钢 2014 年全年累计投入环保专项资金 1.34 亿元”

<sup>49</sup> Refer page 29 of the 2014 Hunan Valin Annual Report, translated from the Chinese phrase: “华菱钢管 2014 年全年累计投入环保专项资金 6,228 万元”

<sup>50</sup> Refer page 117 of the 2014 Jiangsu Shagang Annual Report, translated from the Chinese phrase: “节能技术改造项目补助”.

<sup>51</sup> Refer page 117 of the 2014 Jiangsu Shagang Annual Report, translated from the Chinese phrase: “环保项目补助”.

<sup>52</sup> Refer page 122 of the 2014 Jiangsu Shagang Annual Report, translated from the Chinese phrase: “省重点产业调整和振兴项目专项引导资金”.

<sup>53</sup> Refer page 122 of the 2014 Jiangsu Shagang Annual Report, translated from the Chinese phrase: “财政补助”.

<sup>54</sup> Refer page 122 of the 2014 Jiangsu Shagang Annual Report, translated from the Chinese phrase: “发展专项引导资金（淮安市财政局和商务局—淮财工贸 [2013]39 号）”.

<sup>55</sup> Refer page 122 of the 2014 Jiangsu Shagang Annual Report, translated from the Chinese phrase: “江苏淮安工业园清浦工业园管理委员会签署的投资合作协议书奖励 —（淮商财 [2013]204 号）拨付 2013 年度淮安市商务”.

<sup>56</sup> Refer page 122 of the 2014 Jiangsu Shagang Annual Report, translated from the Chinese phrase: “其他补助 — 与收益相关”.



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The GOC notices that Questions 15 and 16 below comprise many specific questions regarding performance measurement and profit distribution of SIE and any possible performance of the GOC's governmental function by an enterprise, no matter whether the enterprise is an SIE, FIE or private company. In the GOC's view, these questions are not relevant to the alleged Program 5 to 62 listed above but to the finding of a "particular market situation". The GOC provides a uniform answer to Question 15 and 16 below, and will not "re-answer" these questions in the separate sets of questions about each of the above listed programs.

11. Provide full details of the programs including the following.
- (a) policy objective and/or purpose of the program.
  - (b) legislation under which the subsidy is granted.
  - (c) nature or form of the subsidy.
  - (d) when the program was established.
  - (e) duration of the program.
  - (f) how the program is administered and explain how it operates.
  - (g) to whom and how is the program provided.
  - (h) the GOC department or agency administering the program.
  - (i) the eligibility criteria in order to receive benefits under the program.
12. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.
13. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.
14. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):
- (a) the business' address (including the city, province and region);
  - (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
  - (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
  - (d) whether the entity produces rod in coil
- Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.
15. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.
- (a) How are the operations of the enterprise funded?

The GOC is neither responsible nor authorised to hold and provide such detailed information about individual enterprises. Further, each enterprise will have different funding mechanisms and structures. The Commission is requested to contact the

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individual companies directly to acquire such information if it is considered necessary.

China has established a modern and increasingly sophisticated corporate finance legal framework where all the market players (including State-owned companies) are equally subject to corporate finance legislation. Companies in China are generally financed through the commercial banking system, capital markets, equity raising, corporate bond issuance, etc.

As an example of how an enterprise handles its own funding needs, please see Attachment 20 News on Baosteel Co., Ltd, indicating it had successfully issued USD500 million in overseas bonds.

- (b) Provide details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest.

The GOC is neither responsible nor authorised to hold and provide such detailed information about individual enterprises. Therefore, the GOC is not in a position to advise the *“details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest”*.

The Commission is requested to contact each of the individual companies directly to acquire such information if it is considered necessary. Further, for enterprises which are publicly listed companies, such information can be accessed from the relevant information filed with the stock exchange.

In addition, the GOC would like to emphasize that the question is totally beyond its capacity, for the following reasons.

First, the range of "other liabilities" mentioned in this question is too broad and too complex. Commercial banks can carry out various kinds of commercial activities which may give rise to a variety of "liabilities" with the relevant enterprises.

For example, from a legal perspective, a commercial bank may have the following businesses in part or in whole:

- absorbing public deposits;
- offering short-term, medium-term and long-term loans;
- arranging settlement of both domestic and overseas accounts;
- handling acceptance and discount of negotiable instruments;
- issuing financial bonds;
- issuing, cashing and undertaking the sale of government bonds as agents;
- buying and selling government bonds or financial bonds;
- undertaking inter-bank borrowing or lending;
- buying and selling foreign exchange by itself or as agents;
- engaging in bank card business;
- offering L/C services and guarantee;
- handling receipts and payments and insurance business as agents;
- providing safe boxes services; and
- other businesses as approved by the banking regulatory organ of the State Council.

Secondly, the scope of the word "interest" mentioned in the question is also very ambiguous. To the GOC's knowledge, holding shares in a company may be considered as holding an interest, but other conduct that may give rise to a legal or equitable claim in a company may also be deemed as "holding an interest".

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Thirdly, the scope of the "GOC" mentioned in the question is also very complicated, as there are five levels of governments in China. Apart from the central government, each of the other level contains a large number of governments. Although the central government does not directly hold interests in a bank, it is possible that governments at other levels may hold an interest in the form of a shareholding in a bank or by investing by other means.

According to the statistics published by the China Banking Regulatory Commission, at the end of 2014 there were 4,091 banking institutions in China. Most of these can offer loans and carry out other kinds of financial business according to law. It is impossible for the GOC to check out whether any of the SIEs have a loan or loans from any of the 4,091 banks or financial institutions where a government of China may or may not hold an interest.

- (c) How is the performance of the enterprise measured? For example, profitability, employment, output, social wellbeing, etc.

The GOC is neither responsible nor authorised to hold and provide such detailed information about individual enterprises.

As stated above, the relationship between the GOC and State-invested enterprises is that of a shareholder and the company in which it holds a share. From a legal perspective, according to Article 3 of the Company Law:

*A company is an enterprise legal person, which has independent legal person property and enjoys the right to legal person property. It shall bear the liabilities for its debts with all its property. For a limited liability company, a shareholder shall be liable for the company to the extent of the capital contributions it has paid. For a joint stock limited company, a shareholder shall be liable for the company to the extent of the shares it has subscribed to.*

From this it can be inferred that an enterprise measures its performance by the amount of "legal person property" it owns.

According to Article 4 of the Company Law:

*The shareholders of a company shall be entitled to enjoy the capital proceeds, participate in making important decisions, choose managers and enjoy other rights.*

Therefore, it can also be inferred that the shareholders measure the performance of the enterprise by the amount of "capital proceeds" they can receive.

Generally, the key measurement for every company is the company's financial results in accordance with the Company Law, including Chapter VIII of that Law.

For more details, please refer to Attachment 7 Company Law of the People's Republic of China.

- (d) Provide details and explain how the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) or any other government entity inspects or evaluates enterprise performance, including:

- output and quality performance;
- performance of employees/directors/managers; and
- financial performance.

*If any other GOC entity plays such a role, provide a detailed explanation of this entity and the role it plays with regard to SIEs.*

As stated above (and as qualified below) the role of SASAC in a State invested enterprise is the same as that of a shareholder of a company. Therefore, SASAC may evaluate the performance of an SIE as a shareholder would, as discussed in the response to other questions above. In essence, SASAC will assess the performance of an enterprise with State investment based on its commercial and financial performance, in line with industry averages.

There is no essential difference between the methods which SASAC adopts to inspect and evaluate enterprise performance and those adopted by other shareholders to inspect and evaluate business performance of private enterprises.

The performance of managers of State-invested enterprises is evaluated according to the *Law on State Owned Assets* and more specifically, the *Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises* which provides the evaluation method guideline. Please see Attachments 21 and 22.

Lastly, we do wish to point out that SASAC must have certain specific considerations in mind when exercising its shareholders' rights, which may not be shared by some ordinary private shareholders. However, these features do not change the nature of the SASAC as a shareholder to the enterprise. From the legal perspective, SASAC is required to perform its contributor's function consistently with Article 14 of the *Law of the People's Republic of China on the State-Owned Assets of Enterprises*:

*Bodies performing the contributor's functions shall perform the contributor's functions according to laws, administrative regulations and enterprise bylaws, safeguard the contributor's rights and interests, and prevent the loss of state-owned assets.*

In relation to the question of "other GOC entity" - if this refers to government entities that might perform the contributor's functions as SASAC does, then the GOC confirms that only SASAC performs that function. No "other GOC entity" other than SASAC is responsible for inspecting or evaluating enterprise performance.

- (e) Provide details of any official reporting mechanisms that the enterprise must comply with.

There is no substantial difference between the reporting mechanisms for a non-State invested enterprise on the Chinese market and that for a State-invested enterprise. The difference is more dependent upon whether the company is public listed.

SASAC must perform its contributor's functions according to the *Company Law*. According to Article 37 of the *Company Law*, examples of official reporting mechanisms by the enterprises to shareholders may include reporting during the course of shareholders' meetings, putting forward reports orally or in writing. For details, please refer to Attachment 7 *Company Law of the People's Republic of China*.

The GOC clarifies that State-invested enterprises – like other companies– do not report every matter relating to their daily operation to their shareholder SASAC. They do not need to do that and are not compelled to do that.

Further, amongst SIEs, the reporting requirement may be different according to the type of enterprise and the level of State investment, as well as whether the company is publicly listed. *For example, see Articles 32, 33, 34 of the Law on State Owned Assets of Enterprises.*

- (f) Provide an explanation of the systems that exist for assessing the performance of administrators of SIEs. Provide examples of recent appraisals of SIE administrators of the enterprise.

The GOC notes that not all administrators of State-invested enterprises are assessed according to the *Law on State Owned Assets of Enterprises*, which provides the basic

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principles for such assessment (at Chapter IV). Only the administrators of a wholly State-owned enterprise, or of an enterprise with majority State-holding, are subject to the performance assessment of the body performing the capital contributor's function.

The method of evaluation is solely related to the commercial and financial performance of the enterprise.

(g) How are profits of the enterprise distributed and to whom?

The GOC is not authorised by law to govern or interfere with the business operations of enterprises, whether with State investment or not. The opposite is true – the GOC is positively excluded from doing so.

The GOC expects that profits of enterprises are distributed in light of its Articles of Association and Part VIII of the *Company Law*. There are no special rules on how a SIE is to distribute its profit.

(h) Outline what action, if any, is taken by SASAC or any other government entity if the enterprises makes a loss or under-performs.

Performance of an enterprise is a critical aspect of its existence and of the directors, managers and employees of the enterprise. Therefore performance is taken into account by any shareholders - including that of the State *via* SASAC - in participating in decision making about the company or in making proposals regarding the future management of the enterprise. Some senior members of the management, such as the directors and senior managers of the enterprise will be held liable in the terms of remuneration and promotion if the enterprise makes a loss or under-performs.

(i) Over the past 10 years, has the GOC provided any payment or made any injection of funds to the enterprise, including but not limited to:

- grants;
- prizes;
- awards;
- stimulus payments and rescue type payments;
- injected capital funds;
- purchasing of shares.

The question is too broad for the GOC to answer. The GOC objects to such questions which are not supported by any *prima facie* evidence or direction.

(j) If so, provide details, indicating the amount, circumstance, and purpose of any such payment or injection of funds, as well as whether they were tied to any past or future performance, direction or action of the enterprise.

For information about alleged “subsidies”, please refer to the GOC’s response to other questions of this section.

16. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions:

(a) Provide a list of functions the enterprise performs.

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What information is required by this question is unclear to the GOC.

As indicated in the above responses to questions A3 and A4 there are hundreds and thousands of enterprises involved in the production and supply of relevant products identified by this questionnaire. The functions of the enterprise are commercial business, and each as producer/supplier of the products in relation to which they are identified.

In any event, the GOC can advise that it has not allocated any special or governmental function to any of those enterprises whether they are enterprises with State investment or not. Government powers are not shared or bestowed or vested on or in commercial entities.

According to the laws of China, government function must be separated from that of enterprises. As Article 6 of *Law of the People's Republic of China on the State-Owned Assets of Enterprises* provides:

*The State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.*

Further, Article 14 of the law provides

*Bodies performing the contributor's functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.*

- (b) Provide details of any government policies the enterprise administers or carries out on behalf of the GOC.

The GOC would like to clarify that governmental policies are not legal instruments. They are not enforceable, and are aspirational in nature.

No government policies are administered or carried out on behalf of GOC by any enterprises, nor are they expected to be carried out. *The Law on State Owned Assets* explicitly requires a strict separation of government function from the operation of business.

Whether or not individual enterprises conduct their business in light of or in line with any government policy is another matter of fact and the GOC cannot comment on behalf of the enterprises.

The enterprises may carry out business decision which reflect or are in line with governmental policies. Likewise, governmental policies are often designed to promote further economic growth and commercial development which the enterprises/market participants share a common interest in the broad sense. For example, a governmental policy to encourage market competition, or to encourage “innovation”, does not make every business which also engages in market competition or which strives to be innovative, an administrator of the government policy.

Similarly, it is a governmental policy of China to encourage enterprises to reduce their energy use and carbon emission. This policy is not mandatory, however enterprises may act in conform with such a policy as it is also a sensible commercial decision.

- (c) Indicate whether any of the enterprise's functions are considered to be



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governmental in nature.

**No enterprise functions are considered to be governmental in nature.**

- (d) Indicate whether the enterprise has been trusted, tasked, vested with any government authority. Provide details of this authority including how it is exercised or administered, as well as copies of relevant statutes or other legal instruments that vest this authority.

**No enterprise relevant to this investigation has been so “trusted”, “tasked” or “vested”.**

- (e) Indicate whether the enterprise has the authority or power to entrust or direct a private body to undertake responsibilities or functions.

**What information is required by this question is unclear to GOC.**

**As answered above, the GOC is not aware of any enterprise relevant to this investigation which has been trusted, tasked, vested with governmental authority, and no enterprises relevant to this investigation are considered to be carrying out any governmental function. Therefore no enterprise can have the authority or power to entrust or direct another body, private or not, to undertake any governmental function.**

**On the other hand, an enterprise, as a legal person, may entrust or direct another entity, to undertake certain non-governmental “responsibilities or functions” according to the relevant civil law or contract law principles.**

- (f) Explain whether the enterprise is in pursuit of, or required to support governmental policies or interests.

**As stated above, governmental policies are not enforceable or mandatory. Accordingly, enterprises are not required or expected to support governmental policies or interests.**

**The GOC is not in the position to comment on behalf of any enterprises in terms of whether they develop business plans which reflect governmental policies or interests, or whether they take a contrary view. This is a matter of individual business operation and choice.**

**On the other hand, it is clearly every government’s desire for its policies to be supported and that the goals set out in the policies to be achieved – which is why the policies are issued at the first place. Further, we note that the notion of “governmental interests” is very broad – for example, it is almost every government’s interest to have a crime-free society and those persons and companies are certainly required to not commit a crime. It is also a governmental interest to increase revenue by collecting income taxes, and every enterprise is required to pay tax according to tax laws.**

**Further, the GOC is also not in the position to advise whether enterprises are “in pursuit of” governmental policies or interests. This is because that the GOC cannot and does not interfere with the every-day business operation of enterprises, due to the fact that is simply not the GOC’s interest or desire, as reflected in the legal principle which requires the separation of government and enterprises.**

**However, it is possible that what an enterprise is “in pursuit of” will coincide with certain governmental interests. For example, it is an interest of most governments in the world to ensure that the people of their country have a better living standard, and to create the conditions in which the enterprises of their country can prosper and can be of benefit to the country itself. Commercial companies that maximise their profits and**

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pay more income tax are pursuing their own commercial interest in doing so - but that commercial interest coincides with broad governmental interests. Likewise, every single economic entity in China makes a contribution to the broad governmental policy of developing the Chinese market economy, whether as a natural person or as a business, by participating in that economy. However, those entities do not become “public bodies” simply because they supported such government policies or acted in a way which serves a governmental interest. Plainly, development is a recognised right of a nation and its people.

The GOC considers that if some government policies are formulated in accordance with the interests of its citizens or the economy in general, including that of the resident enterprises as legal persons, the enterprises may pursue or support the policy actively. However, they are not compelled to pursue or support such policy.

For example, to follow policies on environmental protection and energy conservation may also help increase productivity and profits of the enterprises. The fact that law permits enterprises to support some governmental policies does not mean that the enterprises must pursue or are compelled to support governmental policies. Voluntary behaviours are ultimately driven by commercial interest.

Further, performing social responsibilities by the enterprises may also be in line with government policies or interests. Nowadays, social responsibilities of enterprises are well recognised as a key element of corporate management. For example, please refer to Attachment 23 OECD Guidelines for Multinational Enterprises. The GOC notes that more and more enterprises in China are willing to undertake social responsibilities as an act of goodwill and to “give back” to the society in which they operate and prosper.

- (g) Provide examples of any ‘social responsibilities’ the enterprise undertakes or is involved in (reference is made to Article 17 of the Law on State Owned Assets)?

From the legal point of view, the *Company Law* encourages all Chinese companies to undertake social responsibilities. In other words, all enterprises are encouraged to engage in community acts.

In particular, Article 5 of the *Company Law* provides that:

*when conducting business operations, a company shall comply with the laws and administrative regulations, social morality, and business morality. It shall act in good faith, abide the supervision of the government and general public, and bear social responsibilities.*

Please refer to Attachment 7 - *Company Law of the People’s Republic of China*. However, these are aspirational provisions and are not enforceable. Chinese companies are free to choose to undertake any type of social responsibility as part of their social participation as a legal person.

Further, the GOC advises that the reference to “social responsibility” provided in the *Law on State Owned Assets of Enterprises* is no more than a recognition and encouragement of best practice. As already mentioned above, social responsibility is a well-recognized element in corporate management – not just for SIEs.

As an example, we refer to a brief introduction on the engagement of Jiangsu Shagang Group, a private company, in social responsibility. Please see Attachment 24.

17. Describe the application process (including any application fees charged by the government agency or authority) for the program.

After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

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18. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.
- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.
  - (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.
  - (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.
  - (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.
  - (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).
19. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2011 to 30 June 2015.
20. For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

*The following questions relate to Programs 5 - 86 identified above.*

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

11. Provide full details of the programs including the following.

- (a) policy objective and/or purpose of the program.

**To support and encourage development of high and new technology enterprise.**

- (b) legislation under which the subsidy is granted.

**Article 28 of Corporate Income Tax Law of the People's Republic of China and Article 93 of Implementation Regulations for the Corporate Income Tax Law of the People's Republic of China.**

- (c) nature or form of the subsidy.

**The standard corporate income tax rate is 25%. For qualified advanced and new technology enterprises accessing this program, the corporate income tax is levied at a reduced rate of 15%.**

- (d) when the program was established.

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**1 January 2008**

(e) duration of the program.

**From 1 January 2008 until now.**

(f) how the program is administered and explain how it operates.

**This tax incentive is administered by the State Administration of Taxation and other relevant departments, and local tax bureau is responsible for implementation. Enterprises which intend to apply for such incentive shall file application to relevant competent tax administration and submit relevant materials to prove it meets the criteria regulated by laws and regulations. Competent tax administration shall grant such incentive to the applicant upon examination and confirmation that the applicant meets all criteria.**

(g) to whom and how is the program provided.

**The standard corporate income tax rate is 25%. This tax incentive allows the key advanced and new technology enterprises supported by the country to pay the corporate income tax at a reduced tax rate of 15%.**

(h) the GOC department or agency administering the program.

**This tax incentive is administered by the State Administration of Taxation and other relevant departments, and local tax bureaus are responsible for implementation.**

(i) the eligibility criteria in order to receive benefits under the program.

**This program is open to enterprises which have obtained independent intellectual property for the core technology of its key products and/or services and meet all of the following criteria:**

- 1 The products or services fall under the eligible scope;**
- 2 The percentage of the total amount of expenditure for research and development in the total amount of sales revenue shall not be lower than a regulated percentage;**
- 3 The revenue from high-tech products (services) constitutes more than a regulated percentage of the total revenue of the enterprise;**
- 4 The technical personnel constitute more than a certain regulated percentage of the total number of employees of the enterprise;**
- 5 Other criteria regulated by Administrative Measures on Accreditation of High-tech Enterprises.**

**For more detailed criteria, please refer to Article 10 of *Administrative Measures on Accreditation of High-tech Enterprises* in Attachment 25.**

- 12.** Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

**Please refer to:**

- Attachment 25 - *Administrative Measures on Accreditation of High-tech Enterprises*.**
- Attachment 26 - *Corporate Income Tax Law of the People's Republic of China*;**
- Attachment 27- *Implementation Regulations for the Corporate Income Tax Law of the People's Republic of China*;**

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13. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

**The competent tax administrator for specific enterprise, i.e. the local state tax bureau keeps records related to this tax incentive, including certificate of advanced and new technology enterprise and corporate income tax return of enterprise.**

14. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):
- (a) the business' address (including the city, province and region);
  - (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
  - (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
  - (d) whether the entity produces rod in coil

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

**[CONFIDENTIAL TEXTE DELETED – details and amount of benefit received]**

15. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.

**Please see the GOC's response to the same question above.**

16. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions.

**Please see the GOC's response to the same question above**

17. Describe the application process (including any application fees charged by the government agency or authority) for the program.
- After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

**Enterprises which intend to apply for this program shall file an application with the relevant competent tax administration and submit relevant materials to prove it meets the criteria. The competent tax administration shall grant such incentive to the applicant upon examination and confirmation that the applicant meets all criteria.**

18. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**No.**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

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No.

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

No.

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**This tax incentive program allows qualified advanced and new technology enterprise to pay corporate tax at a reduced rate. Their products or services shall fall under the scope stipulated in the Areas of Strongly Supported Advanced Technologies by the State. Those areas include electronic information technology, biotechnology and new medicine technology, aerospace technology, new material technology, high technology service industry, new energy and energy conservation technology, resources and environment technology and new and high technology transforming traditional industries.**

- (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**This program is established by the laws and regulations or other official documents.**

**No contractual agreements between the Government of China and an enterprise receiving a benefit under the program are needed or contemplated.**

19. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2011 to 30 June 2015.

**The GOC does not keep such data by industries.**

20. For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**There is no anticipated change for the *Corporate Income Tax Law of the People's Republic of China and Implementation Regulations for the Corporate Income Tax Law of the People's Republic of China*. The *Administrative Measures on Accreditation of High-tech Enterprises 2008* has been replaced by *Administrative Measures on Accreditation of High-tech Enterprises 2016* since 1 January 2016, being after the investigation period.**

### Program 6: Preferential Tax Policies in the Western Regions

**The GOC understands that the Respondents are located in Jiangsu Province and Hunan Province respectively. None of them is located in the Western Regions of China. Thus, this program is not applicable to these Respondents.**



## Program 7: Land Use Tax Deduction

11. Provide full details of the programs including the following.

(a) policy objective and/or purpose of the program.

To reduce the taxation burden of taxpayers facing financial difficulty due to serious natural disaster or other force majeure factors or suffering serious financial loss due to engaging in public welfare activities

(b) legislation under which the subsidy is granted.

This subsidy is granted under:

- Article 7 of *Interim Regulations of the People's Republic of China on Urban and Town Land Use Tax*;
- *Notice of State Administration of Taxation on Relevant Matters Regarding Delegating the Approval Right for Reduction and Exemption of Urban and Town Land Use Tax Due to Difficulty* (Public Notice of SAT No.1/2014);
- Article 9 of *Implementation Measure of Urban and Town Land Use Tax of Hunan Province* (No.217 order of the People's Government of Hunan Province); and
- *Public Notice of Local Taxation Bureau of Hunan Province on Certain Issues Regarding Reduction and Exemption of Property Tax and Conduct Tax* (Public notice of Local Taxation Bureau of Hunan Province No.2/2015).

(c) nature or form of the subsidy.

Exemption from paying land use tax.

(d) when the program was established.

1 November 1988.

(e) duration of the program.

Since 1 November 1988 until now.

(f) how the program is administered and explain how it operates.

The exemption of land use tax is approved annually. The tax payer in difficulty and intending to apply for tax exemption shall submit a written application and relevant materials to the competent tax administration. According to *Public Notice of Local Taxation Bureau of Hunan Province on Certain Issues Regarding Reduction and Exemption of Property Tax and Conduct Tax* (Public notice of Local Taxation Bureau of Hunan Province No.2/2015), applications for an exemption of CNY300,000 or less shall be approved by the local tax administration at the county/city level, and applications for an exemption of over CNY300,000 shall be approved by local tax administration at the provincial level.

(g) to whom and how is the program provided.

This program provides land use tax exemption to tax payers which have difficulty paying their land use tax and which apply for an exemption.

(h) the GOC department or agency administering the program.

State Administration of Taxation and Local Taxation Bureau of Hunan Province.

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- (i) the eligibility criteria in order to receive benefits under the program.

**Enterprises which by reason of suffering serious loss due to:**

- natural disaster;
- other *force majeure* factors; or
- engaging in public welfare activities
- would encounter financial hardship as a result of paying their land use tax in full

**are eligible to be considered for a deduction under this program.**

12. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

**Please refer to:**

- Attachment 28 - *Interim Regulations of the People's Republic of China on Urban and Town Land Use Tax*;
- Attachment 29 - *Notice of State Administration of Taxation on Relevant Matters Regarding Delegating the Approval Right for Reduction and Exemption of Urban and Town Land Use Tax Due to Difficulty* (Public Notice of SAT No.1/2014);
- Attachment 30 - *Implementation Measure of Urban and Town Land Use Tax of Hunan Province* (No.217 order of the People's Government of Hunan Province [CONFIDENTIAL ATTACHMENT]);
- Attachment 31 - *Public Notice of Local Taxation Bureau of Hunan Province on Certain Issues Regarding Reduction and Exemption of Property Tax and Conduct Tax* (Public notice of Local Taxation Bureau of Hunan Province No.2/2015) [CONFIDENTIAL ATTACHMENT].

13. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

**Local Taxation Bureau of Hunan Province retains the application and approval table for tax exemption, the application and report of the tax payer and relevant materials proving the financial difficulty of the tax payer.**

14. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):

- (a) the business' address (including the city, province and region);
- (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
- (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
- (d) whether the entity produces rod in coil

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

**[CONFIDENTIAL TEXT DELETED – details and amount of benefit received]**

15. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.

**FOR PUBLIC RECORD**

**Please refer to the GOC's response to question 15 for all alleged subsidies, above.**

16. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions.

**Please refer to the GOC's response to question 16 for all alleged subsidies, above.**

17. Describe the application process (including any application fees charged by the government agency or authority) for the program.
- After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

**Exemption applications are approved annually. The taxpayer in difficulty and intending to apply for tax exemption shall submit a written application and relevant materials to the competent tax administration. The local tax administration approves or rejects the application based on the specific situation of the applicant. No application fee is charged by the government authority.**

18. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**No.**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**No.**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**No. The administrative authority does not limit the eligibility to enterprises or industries located in any designated regions within its administrative jurisdiction.**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**This program provides a land use tax exemption to taxpayers which have difficulty in paying land use tax and request exemption. For further information, please see the response to 4(i) above.**

- (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contract is needed for arranging such exemption.**

19. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2011 to 30 June 2015.

The administrative authority does not retain such data from industries.

20. For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

There is no anticipated change for this grant.

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

11. Provide full details of the programs including the following.

- (a) policy objective and/or purpose of the program.

To encourage the introduction of advanced technology and equipment from abroad.

- (b) legislation under which the subsidy is granted.

*Notice of the State Council on the Adjustment of Tax Policies for Imported Equipment* (Guo Fa [1997] No.37)

- (c) nature or form of the subsidy.

Exemption of import tariff and import VAT.

- (d) when the program was established.

1 January 1998.

- (e) duration of the program.

For exemption of import tariff, from 1 January 1998 until now. For exemption of import VAT, from 1 January 1998 until 31 December 2008.

- (f) how the program is administered and explain how it operates.

Qualified enterprises receive a certificate either directly from the National Development and Reform Commission ("NDRC") or its provincial branch depending on the scale of the enterprise and other factors, including whether the project was reviewed by NDRC before business registration.

Enterprises present the certificates and other customs clearance documents to their local customs authorities in order to receive tariff and VAT exemptions on eligible equipment imports.

- (g) to whom and how is the program provided.

This program is available to all enterprises. FIEs are eligible if the project is covered under the preferential or restrictive-B categories of the *Catalogue for the Guidance of the Foreign Investment Industries 2007*. Domestic enterprises are eligible if the project falls within the *Catalogue of Encouraged Development of Key Industries, Products and Technologies*.

Qualified enterprises can be exempted from paying tariffs and/or VAT on purchases of selected imported equipment if it is for self-use and the equipment is not listed in the

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*Directory of Imported Commodities of Non-Tax-Exemption to be Used in Domestic Invested Projects or the Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects.*

- (h) the GOC department or agency administering the program.

**NDRC and General Administration of Customs.**

- (i) the eligibility criteria in order to receive benefits under the program.

**For domestic enterprises, the equipment relating to the project concerned must be listed in the *Current Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State*. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the domestic project. Finally, any equipment that is imported and listed in the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Domestic Invested Projects* is not eligible for exemption under this program.**

**For foreign invested enterprises, the equipment relating to the project concerned must align with projects listed in the “encouraged” category of the *Catalogue for the Guidance of the Foreign Investment Industries*. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the foreign project. Finally, any type of equipment that is imported and listed in the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Foreign Invested Projects* is not eligible for exemption under this program.**

12. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

**Attachment 32 provides *Notice of the State Council on the Adjustment of Tax Policies for Imported Equipment*.**

13. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

**The local development department retains the certificate, and the competent Customs office retains the declaration document for importing equipment.**

14. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):

- (a) the business' address (including the city, province and region);
- (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
- (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
- (d) whether the entity produces rod in coil

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

**[CONFIDENTIAL TEXT DELETED – details and amount of benefit received]**

15. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.

**Please refer to the GOC's response to question 15 for all alleged subsidies, above.**

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16. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions.

**Please refer to the GOC's response to question 16 for all alleged subsidies, above.**

17. Describe the application process (including any application fees charged by the government agency or authority) for the program.
- After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

**The competent authority examines the application forms submitted by enterprises.**

**Applications are approved or denied based upon whether the applicants have adequately documented both the project eligibility and the imported article eligibility under the program. If the application is in order, it will be approved and the applicant will receive a certificate.**

**There are no application fees charged by the authority.**

18. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**No.**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**No.**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**No.**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**This program does not limit the applicant but only provides exemption of import tariff and import VAT for importing equipment qualified for certain industries and certain catalogue of products.**

- (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contract is needed for enjoying the exemption under this program.**

19. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2011 to 30 June 2015.

**The administrative authority does not retain such data by industries.**



20. For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**For exemption of import tariff, there is no anticipated change.**

**The exemption of import VAT was terminated on 1 January 2009 under Announcement No. 43 of General Administration of Customs 2008. The last day that a company could receive benefits under this program was 31 December 2008. Please see Attachment 33 for a copy of this Announcement.**

## **Program 9: VAT refund on comprehensive utilisation of resources**

11. Provide full details of the programs including the following.

(a) policy objective and/or purpose of the program.

**To support comprehensive utilization of resources and to encourage energy conservation and emission reduction.**

(b) legislation under which the subsidy is granted.

**The VAT exemption for building materials produced with waste and used resources is first established under *Notice of Ministry of Finance and State Administration of Taxation on Exemption of VAT for Certain Products Comprehensively Utilizing Resources* (CaiShuiZi [1995] No.44).**

**This was then repealed in 2008, but reinstated in 2011 under *Notice of Ministry of Finance and State Administration of Taxation on Adjustment and Improvement of VAT Policy for Products and Services with Comprehensive Utilization of Resources* (CaiShui [2011] No.115), for products with comprehensive utilization of resources.**

**From 1 July 2015, the VAT refund or exemption scheme for production and labour services which comprehensively utilise resources. are now consolidated under the *Notice of Ministry of Finance and State Administration of Taxation to Print and Issue Catalogue of Products and Labour Services with Comprehensive Utilization of Resources* (CaiShui [2015] No.78).**

(c) nature or form of the subsidy.

**Preferential tax treatment.**

(d) when the program was established.

**1995.**

(e) duration of the program.

**From 1995 until now.**

(f) how the program is administered and explain how it operates.

**Prior to 1 July 2015, the taxpayer applying for the program would be required to file the relevant data and quality testing report for products and labour services to competent tax authority. The competent tax authority would verify the taxpayer's claims in relation to their production and operation, tax declaration and VAT refund declaration through investigating particular claims on an irregular basis. The preferential tax treatment is provided in three forms, i.e. direct exemption of VAT for certain goods or**

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labour services, refund of VAT after collection, and refund of VAT after collection (tax authority first collects VAT fully, then the competent financial department partially or fully refunds tax paid).

From 1 July 2015, when dealing with a VAT refund matter, the taxpayer shall provide to the competent tax authority a written declaration of its technical standards and other relevant conditions regulated by *Catalogue of Products and Labour Services with Comprehensive Utilization of Resources*. If the taxpayer fails to provide such written declaration or provides false material, the tax authority shall not grant a VAT refund. The tax authority at the provincial level, autonomous regions, municipalities directly under the central government, and municipalities with independent planning status publicize the following information for each taxpayer within its jurisdiction which received a VAT refund in the last year on its website before the end of February each year: name of taxpayer, identification number of taxpayer, name and quantity of comprehensively utilized resources and name of products and labour services comprehensively utilizing resources.

(g) to whom and how is the program provided.

Tax payer whose production or labour service comprehensively utilises resources.  
Please also see responses above at (f).

(h) the GOC department or agency administering the program.

Ministry of Finance and State Administration of Taxation are responsible for formulating relevant regulations and rules for administering this program. Local competent state tax authority is responsible to implement the VAT refund policy pursuant to relevant regulations and rules.

(i) the eligibility criteria in order to receive benefits under the program.

Prior to 1 July 2015, tax payers who engage in the sales of certain products produced using recycled resources as raw materials or for provide services related to waste treatment, is eligible to apply for VAT exemption or refund under this program.

From 1 July 2015, eligible applicant shall work on the projects comprehensive utilizing resources listed in the *Catalogue of Products and Labour Services with Comprehensive Utilization of Resources* and meet the following criteria:

- Is an ordinary VAT payer.
- The product and service sold is not under the prohibited or restricted items in the *Guideline Catalogue on Adjustment of Industrial Structure*.
- The product and service sold is not a “high pollution, high environmental risk” product or of heavy pollution technology as stated in *Comprehensive Catalogue on Environmental Protection* issued by Ministry of Environmental Protection.
- If the comprehensively utilized resource is hazardous waste listed in the *National Catalogue on Hazardous Wastes issued by Ministry of Environmental Protection*, the tax payer shall obtain the Certificate for Operation of Hazardous Waste issued by environmental protection department on provincial or higher level, and the scope of certificate shall cover the utilization of such hazardous waste.
- The tax credit rating shall not be on C or D class assessed by tax authority.

12. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

Please refer to:

- Attachment 34 - *Notice of Ministry of Finance and State Administration of*

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***Taxation on Exemption of VAT for Certain Products Comprehensively Utilizing Resources (CaiShuiZi [1995] No.44).***

- ***Attachment 35 - Notice of Ministry of Finance and State Administration of Taxation on VAT Policy for Comprehensive Utilization of Resources and Other Products (CaiShui [2008] No.156).***
- ***Attachment 36 - Notice of Ministry of Finance and State Administration of Taxation on Adjustment and Improvement of VAT Policy for Products and Services with Comprehensive Utilization of Resources (CaiShui [2011] No.115).***
- ***Attachment 37 - Notice of Ministry of Finance and State Administration of Taxation to Print and Issue Catalogue of Products and Labour Services with Comprehensive Utilization of Resources (CaiShui [2015] No.78).***

13. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

**Prior to 1 July 2015, local tax authorities kept the data for record, quality testing report and VAT tax return of tax payer applying for enjoying tax preference.**

**Since 1 July 2015, local tax authority keeps written declaration and VAT tax return of tax payer applying for enjoying tax preference.**

14. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):

- (a) the business' address (including the city, province and region);
- (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
- (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
- (d) whether the entity produces rod in coil

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

**[CONFIDENTIAL TEXT DELETED – details and amount of benefit received]**

15. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.

**Please refer to the GOC's response to question 15 for all alleged subsidies, above.**

16. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions.

**Please refer to the GOC's response to question 16 for all alleged subsidies, above.**

17. Describe the application process (including any application fees charged by the government agency or authority) for the program.

After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

**Tax payer submits data for record and VAT tax return to apply for enjoying tax preference. No approval is required from competent tax authority. The authority does not collect any application fee.**

18. Answer the following questions regarding eligibility for and actual use of the benefits  
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provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**No.**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**No.**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**No.**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**Please see the GOC's responses at above in relation to eligibility.**

**Eligible recipient is not limited by industries. Eligibility is based on the utilization of designated recycled resource for the production. The designated recycled resource is very broad, including paragenic ore, associated ore resources, waste residue, waste water (liquid), exhaust gas, renewable resources, and agricultural and forestry leftovers. Thus the eligibility is not limited to certain industry or enterprise.**

- (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contract is needed for enjoying this tax preference.**

19. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2011 to 30 June 2015.

**The administrative authority does not keep such data by industries.**

20. For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**There is no anticipated change for this tax preference.**

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

**The legal basis referred to in the Application, Notice concerning the promulgation of**

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*the 'Guiding opinions on supporting the development of famous export brands' (Shang Mao Fa 2005, No. 124) has been abolished since 2 April 2009. Moreover, as the GOC understands, during the period of investigation none of the Respondents of this investigation received any grant which could correspond to the name of this program.*

### **Program 11: Matching Funds for International Market Development for small and medium size enterprises (SMEs)**

*The legal basis referred to in the Application, the Notice on Promulgation of Administrative Measure on Fund of Exploring International Market by Small and Medium Size Enterprises (Cai Qi [2010] No.87) has been abolished since 9 April 2014. Moreover, as the GOC understands, during the period of investigation none of the Respondents of this investigation received any grant which could correspond to the name of this program.*

### **Program 12: Superstar Enterprise Grant**

*According to the description in the Application for this investigation, this program is applicable to enterprises located in Huzhou City of Zhejiang Province. Since none of the Respondents is located in Huzhou City, this grant is not applicable to any of them.*

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

*According to the description of the Application on this program, this program is applicable to enterprises located in Wuxing District Huzhou City of Zhejiang Province or in Jinzhou District Dalian City of Liaoning Province. Since none of the Respondents is located in Huzhou City or Liaoning City, this grant is not applicable to any of them.*

### **Program 14: Patent Award of Guangdong Province**

*According to the description of the Application on this program, this program is applicable to enterprises located in Guangdong Province. Since none of the Respondents case is located in Guangdong Province, this grant is not applicable to any of them.*

### **Program 15: Innovative Experimental Enterprise Grant**

*According to the description of the Application on this program, this program is applicable to enterprises located in Zhejiang Province. Since none of the Respondents case is located in Zhejiang Province, this grant is not applicable to any of them.*

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

*According to the description of the Application on this program, this program is applicable to enterprises located in Yunnan Province. Since none of the Respondents is*

located in Yunnan Province, this grant is not applicable to any of them.

### Program 17: Venture Investment Fund of Hi-Tech Industry

According to the description of the Application on this program, this program is applicable to enterprises located in Chongqing Municipality. Since none of the Respondents is located in Chongqing Municipality, this grant is not applicable to any of them.

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

The legal basis of this program mentioned in the Application, *the Notice on Promulgation of Provisions of Guangzhou City on Encouraging Establishment of Headquarter and Regional Headquarter of Foreign Investment* (Hui Fu Ban [2006] No.34) has been abolished since 16 January 2010. Moreover, according to the description of the Application on this program, this program is applicable to enterprises located in Guangzhou City of Guangdong Province. Since none of the Respondents is located in Guangdong Province, this grant is not applicable to any of them.

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

According to the description of the Application on this program, this program is applicable to enterprises located in Zhongshan City of Guangdong Province. Since none of the Respondents is located in Guangdong Province, this grant is not applicable to any of them.

### Program 20: Water Conservancy Fund Deduction

The legal basis mentioned for this program in the Application, the *Notice of Local Tax Bureau of Zhejiang Province on Further Strengthening Relevant Issues on Administration of Reduction and Exemption of Special Fund for Water Conservancy Construction* (Zhe Di Shui Fa [2007] No.63) has been abolished since 1 September 2014. Moreover, according to the description of the Application on this program, this program is applicable to enterprises located in Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.

### Program 21: Wuxing District Freight Assistance

According to the description of the Application on this program, this program is applicable to enterprises located in Huzhou City of Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.



**Program 22: Huzhou City Public Listing Grant**

According to the description of the Application on this program, this program is applicable to enterprises located in Huzhou City of Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.

**Program 23: Huzhou City Quality Award**

According to the description of the Application on this program, this program is applicable to enterprises located in Huzhou City of Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.

**Program 24: Huzhou Industry Enterprise Transformation & Upgrade Development Fund**

According to the description of the Application on this program, this program is applicable to enterprises located in Huzhou City of Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.

**Program 25: Wuxing District Public List Grant**

According to the description of the Application on this program, this program is applicable to enterprises located in Wuxing District Huzhou City of Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.

**Program 26: Anti-dumping Respondent Assistance**

According to the description of the Application on this program, this program is applicable to enterprises located in Wuxing District Huzhou City of Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.

**Program 27: Technology Project Assistance**

According to the description of the Application on this program, this program is applicable to enterprises located in Zhejiang Province. Since none of the Respondents is located in Zhejiang Province, this grant is not applicable to any of them.

**Program 28: Transformation technique grant for rolling machine**

According to the description of the Application on this program, this program is applicable to enterprises located in Jinan City of Shandong Province. Since none of

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the Respondents is located in Jinan City of Shandong Province, this grant is not applicable to any of them.

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

The description in Application on this program is too vague for the GOC to further identify this program. However, as the GOC is informed, none of the Respondents of this investigation once received any grant which could correspond to the name of this program in 2009.

### **Program 30: Key industry revitalization infrastructure spending in 2010**

According to the description of the Application on this program, this program is applicable to enterprises located in Shandong Province. However, since none of the Respondents is located in Shandong Province, this grant is not applicable to any of them.

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

According to the description of the Application on this program, this program is applicable to enterprises located in Shandong Province. However, since none of the Respondents is located in Shandong Province, this grant is not applicable to any of them.

### **Program 32: Environmental protection grant**

The description in Application on this program is too vague for the GOC to further identify this program. However, the GOC has provided answer to grants related with environmental protection under the program of No.36 and 41. Please refer to the response to these grant programs.

### **Program 33: Environmental protection fund**

According to the description of the Application on this program, this program is applicable to enterprises located in Jinan City of Shandong Province. Since none of the Respondents is located in Shandong Province, this grant is not applicable to any of them.

### **Program 34: Intellectual property licensing**

According to the description of the Application on this program, this program is applicable to enterprises located in Shandong Province. However, since none of the Respondents is located in Shandong Province, this grant is not applicable to any of them.

## Program 35: Financial resources construction - special fund

According to the description of the Application on this program, this program is applicable to enterprises located in Jinan City of Shandong Province. Since none of the Respondents is located in Shandong Province, this grant is not applicable to any of them.

## Program 36: Reducing pollution discharging and environment improvement assessment award

11. Provide full details of the programs including the following.

(a) policy objective and/or purpose of the program.

To strengthen the environmental monitoring of key enterprises for pollutant discharge; to objectively, accurately and in a timely manner observe changes in sources of pollution and to prevent pollution related accidents.

(b) legislation under which the subsidy is granted.

*Environmental Protection Law of the People's Republic of China, Administrative Measure on Automatic Monitoring of Source of Pollution (No.28 order of former State Environmental Protection Administration), and Administrative Measure on Automatic Monitoring of Source of Pollution of Hunan Province (No.203 order of the People's Government of Hunan Province).*

(c) nature or form of the subsidy.

One-time grant for construction of automatic monitoring systems on the site of an enterprise's pollution sources.

(d) when the program was established.

2008.

(e) duration of the program.

From 2008 to 2010.

(f) how the program is administered and explain how it operates.

Pursuant to the list of key source of pollution under national control of Hunan Province of 2008, the provincial financial department provided one-time grant of 20% of an estimated construction budget for on-site automatic pollution monitoring systems. The funds are transferred to financial departments at the city level and then issued to relevant enterprises.

(g) to whom and how is the program provided.

The grant was provided to the enterprises whose industries are on the list of key sources of pollution under national control of Hunan Province of 2008. The fund was administered by provincial financial departments.

(h) the GOC department or agency administering the program.

Financial and environmental protection departments at various levels of Hunan

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provincial government.

- (i) the eligibility criteria in order to receive benefits under the program.

**The enterprises whose industry is on the list of key sources of pollution under national control of Hunan Province of 2008.**

12. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

**Please refer to:**

- **Attachment 38 - *Environmental Protection Law of the People's Republic of China*;**
- **Attachment 39 - *Administrative Measure on Automatic Monitoring of Source of Pollution* (No.28 order of former State Environmental Protection Administration);**
- **Attachment 40 - *Administrative Measure on Automatic Monitoring of Source of Pollution of Hunan Province* (No.203 order of the People's Government of Hunan Province) [CONFIDENTIAL ATTACHMENT].**

13. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

**Local financial department retains fund allocation notices and fund allocation records.**

14. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):
- (a) the business' address (including the city, province and region);
  - (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
  - (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
  - (d) whether the entity produces rod in coil

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

**[CONFIDENTIAL TEXT DELETED – details and amount of benefit received]**

15. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.

**Please refer to the GOC's response to question 15 for all alleged subsidies, above.**

16. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions.

**Please refer to the GOC's response to question 16 for all alleged subsidies, above.**

17. Describe the application process (including any application fees charged by the government agency or authority) for the program.

After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

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**The grant was arranged according to the list of key sources of pollution under national control of Hunan Province of 2008 and the construction situation of on-site automatic monitoring systems at the enterprise. Enterprises did not need to apply.**

18. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

(a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**No.**

(b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**No.**

(c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**No. The provincial government of Hunan does not limit the grant to enterprises located in any designated regions within its administrative jurisdiction.**

(d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**The grant is provided to the enterprises whose industries are on the list of key sources of pollution under national control of Hunan Province of 2008. But there is no specific limit to certain type of enterprise or industry.**

(e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contract was needed for accessing the grant.**

19. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2011 to 30 June 2015.

**The administrative department does not retain such data by industries.**

20. For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**This grant was only instituted in 2008, and no similar grants were instituted after that. The last day a company could receive benefits under this program was 31 December 2010.**

### Program 37: Grant for elimination of out dated capacity

According to the description of the Application on this program, this program is applicable to enterprises located in Shandong Province. However, since none of the Respondents is located in Shandong Province, this grant is not applicable to any of them.

### Program 38: Grant from Technology Bureau

According to the description of the Application on this program, this program is applicable to enterprises located in Shandong Province. However, since none of the Respondents is located in Shandong Province, this grant is not applicable to any of them.

### Program 39: High and New technology Enterprise Grant

The description in Application on this program is too vague for the GOC to further identify this program. However, the GOC has provided answer to preferential tax program related with high and new technology enterprise under the program of No.5. [CONFIDENTIAL TEXT DELETED – details of benefit received under this program]

### Program 40: Independent Innovation and High Tech Industrialization Program

The description in Application on this program is too vague for the GOC to further identify this program. However, the GOC is informed that none of the Respondents of this investigation received any grant which could correspond to the name of this program during the period from 2010 to June 2015.

### Program 41: Environmental Prize

The GOC has been informed [CONFIDENTIAL TEXT DELETED – details of benefit received], which is considered similar to this program, and thus we provides responses for this grant.

11. Provide full details of the programs including the following.

(a) policy objective and/or purpose of the program.

To accelerate the construction of resource-saving and an environmentally friendly society, to support technical development and environmental protective ability of enterprise, and to promote the development and upgrade of traditional industry.

(b) legislation under which the subsidy is granted.

*Environmental Protection Law of the People's Republic of China.*

(c) nature or form of the subsidy.

Direct grant.



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(d) when the program was established.

**The grant was a one-time support which was provided in December 2011.**

(e) duration of the program.

**The grant was a one-time support which was provided in December 2011.**

(f) how the program is administered and explain how it operates.

**The grant was provided based on assessment of expenditure of enterprise related to technical development to support environmental protection and control and disbursed according to the development status of enterprise.**

(g) to whom and how is the program provided.

**The grant was provided [CONFIDENTIAL TEXT DELETED – identity of recipient] upon its application, and through research.**

(h) the GOC department or agency administering the program.

**Financial Department of Hunan Province.**

(i) the eligibility criteria in order to receive benefits under the program.

**The technical development of the enterprise has met requirements in environmental protection and control.**

12. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

**Attachment 38 provides *Environmental Protection Law of the People's Republic of China*.**

13. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

**Electronic record of disbursements on financial payment network.**

14. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as B-7 (or in a Microsoft Excel compatible format):

- (a) the business' address (including the city, province and region);
- (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
- (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
- (d) whether the entity produces rod in coil

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

**[CONFIDENTIAL TEXT DELETED – details and amount of benefit received]**

15. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.

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**Please refer to the GOC's response to question 15 for all alleged subsidies, above.**

16. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions.

**Please refer to the GOC's response to question 16 for all alleged subsidies, above.**

17. Describe the application process (including any application fees charged by the government agency or authority) for the program.
- After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

**[CONFIDENTIAL TEXT DELETED – details of benefit received]**

18. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**No.**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**No.**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**No.**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**No.**

- (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contract is needed for accessing the grant.**

19. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2011 to 30 June 2015.

**The grant was a one-time support which was provided in December 2011.**

20. For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the

program?

The grant was a one-time support which was provided in December 2011.

#### **Program 42: Jinzhou District Research and Development Assistance Program**

According to the description of the Application on this program, this program is applicable to enterprises located in Jinzhou District Dalian City of Liaoning Province. Since none of the Respondents is located in Liaoning Province, this grant is not applicable to any of them.

#### **Program 43: Debt for equity swaps**

The GOC has been informed, none of the Respondents of this investigation ever engaged in a debt for equity swap during the period from 2005 to June 2015.

#### **Program 44: Equity infusions**

[CONFIDENTIAL TEXT DELETED – financial information concerning Respondents]

#### **Program 45: Unpaid dividends**

The GOC has been informed [CONFIDENTIAL TEXT DELETED – financial information concerning Respondents]

#### **Program 46: Preferential loans and interest rates**

The GOC advises there is no such subsidy program.

The GOC notes that the Applicant has not provided any information or evidence which is applicable to the investigation period. The European Commission's findings concerning organic coated steel from China referred to by the Applicant – arrived at in an investigation which took place five years ago – are not evidence of its claim.

The GOC rejects the claim that Chinese State-invested commercial banks are public bodies. The allegation by the applicant in relation to “preferential loans” lacks legal basis. The industry policies that the GOC issues are aspirational in nature and are not mandatory on stakeholders. Commercial banks in China will take those industry policies into consideration when evaluating whether a loan is to be provided to a company, but they are not the decisive factor and certainly do not dictate the behaviour of the banks. The most critical factors the commercial banks are considering in that process are commercial terms and the ability of the borrower to pay interest and to repay the principal, and they are completely market oriented in this undertaking. The interest rate is determined on the basis of market conditions when the situation is being evaluated.

Further, the allegation that Chinese rod in coil exporters were provided with loans by State invested banks which have a “lower” interest rate, thereby constituting a subsidy, are simply not true. Differential interest rates are not proffered by Chinese banks to rod in coil or steel industry enterprises when compared to other industries,

unless there is a commercial risk differential to be taken into account.

Moreover, in case it is alleged that interest rates in China are “artificially low” in international terms, we note that a simple examination of the interest rates published by major central banks indicates that interest rates in China in overall terms are higher than rates in many of its counterparts. For example, the Chinese central bank rate is 4.35%. Other current central bank interest rates include Australia at 2.0%, US and Canada at 0.5%, EU at 0%, Japan at 0%, and Switzerland at negative 0.75%.

The GOC understands that during the period of investigation, the Respondents obtained loans from various financial institutions, including private owned and foreign owned banks, both from China and other countries, and not only from Chinese state-invested commercial banks. The Commission is invited to compare the interest rates provided to the Respondents, and to examine whether the loans interests offered by Chinese State invested commercial banks were “preferential”.

Contrary to the Applicant’s claim that Chinese banks are somehow directed by the GOC to provide loans to Chinese steel companies, the GOC notes that the Commission has already made observation in its SEF 301 that:

*With regard to financing, the Commission holds that the ability of Chinese steel producers to undertake capital investment required to restructure has been constrained by a combination of weak profitability and reduced support from traditional funding sources.*

*For example, in August 2015 the China Iron & Steel Association noted that during the first half of 2015 Chinese banks had cut loans to steel makers by around USD 15 billion or by six per cent (on a year on year basis)...*

These observations do not paint a picture of Chinese state invested banks being requested by the GOC to give “preferential” loans to Chinese steel companies.

Further, we note the Applicant’s claim that “all firms in China” should be accorded with a “non-investment grade” of BB. This claim has no factual or legal basis whatsoever and must be rejected. As mentioned above the GOC provided an example of one Chinese steel company, Baosteel, successfully issuing overseas bonds for financing purposes (see Attachment 20). In particular, the media release of Baosteel states:

*...three big international credit rating agencies including Standard & Poor’s, Moody’s and Fitch rating respectively granted Baosteel Co., Ltd an A-, A3 and A- long-term credit rating, with a stable outlook.*

The GOC respectfully requests the Commission to terminate its investigation insofar as it concerns this program immediately.

## Miscellaneous Programs

According to the description of the Application, the programs under this category are based on the 2014 Annual Report for Hunan Valin Iron & Steel Co., Ltd and Jiangsu Shagang Group Co., Ltd, being exporters of the GUC. The GOC notes that these claims are inaccurate. Firstly, the GOC is informed that, [CONFIDENTIAL TEXT DELETED – information concerning Respondents]. Therefore, the information contained in the annual report [CONFIDENTIAL TEXT DELETED – information concerning Respondents] is not necessarily relevant to the respondent in this investigation or the GUC. Secondly, the GOC is also informed that, the annual report provided for Jiangsu Shagang is in fact the annual report for “Jiangsu Shagang Iron and Steel Co., Ltd”, not that of Jiangsu Shagang Group Co., Ltd. The GOC has been informed [CONFIDENTIAL TEXT DELETED – information concerning Respondents].

Further, the GOC has been informed that, the so called “Programs 53 to 55” as reported in the annual report of Hunan Valin Iron & Steel Co., Ltd are investments made by that company itself, and have nothing to do with subsidies. In relation to the alleged Program 59, the GOC notes that the information provided by the Applicant makes it self-evident that this is in the nature of an account heading. The amount recorded therein is, according to the explanation note, mainly composed of two separate

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amounts, which are separately alleged by the Applicant as being “Programs 60 and 61”.

The GOC respectfully advises that it is unable to identify the alleged “miscellaneous” subsidies based only on accounting records and the transaction descriptions provided by the Applicant. Further, the GOC considers that the claims made by the Applicant in relation to those “programs” do not provide any prima facie evidence that these so called “projects” and “funds” are subsidies. In response to the GOC’s inquiries, the Respondents have advised that none of them received grants under the alleged programs 47 to 62 during the investigation period.

## LIST OF ATTACHMENTS

No	Document Title	Language
1.	List of products produced by Jiangsu Shagang Group Co., Ltd.	BI
2.	Imports of coking coal in 2014 and 2015	EN
3.	Exports of coking coal in 2014 and 2015	EN
4.	Imports of coke in 2014 and 2015	EN
5.	Exports of coke in 2014 and 2015	EN
6.	Administrative Compulsion Law	BI
7.	Company Law of the People's Republic of China.	BI
8.	New Regulation for Business Registration of Company	BI
9.	Law of Administrative Procedure	BI
10.	Short list of deregulations since 2011	BI
11.	NBS data on rod in coil industry	EN
12.	List of rod in coil suppliers	EN
13.	List of industry associations	EN
14.	Contract Law of the People's Republic of China	BI
15.	Catalogue of Price Regulated by the State Development Planning Commission and Other Department under the State Council	BI
16.	Price Law of the People's Republic of China	BI
17.	List of electricity providers	EN
18.	Electricity tariff of Hunan Province	EN
19.	Electricity tariff of Jiangsu Province	EN
20.	Baosteel News on Issuing Bonds	EN
21.	Law of the People's Republic of China on State-Owned Assets of Enterprises	BI
22.	Interim Measures for Administration of Comprehensive Performance Evaluation of Central Enterprises	BI
23.	OECD Guidelines for Multinational Enterprises	EN
24.	Shagang news on social responsibility	EN



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No	Document Title	Language
25.	Administrative Measures on Accreditation of High-tech Enterprises	BI
26.	Corporate Income Tax Law of the People's Republic of China	BI
27.	Implementation Regulations for the Corporate Income Tax Law of the People's Republic of China.	BI
28.	Interim Regulations of the People's Republic of China on Urban and Town Land Use Tax	BI
29.	Notice of State Administration of Taxation on Relevant Matters Regarding Delegating the Approval Right for Reduction and Exemption of Urban and Town Land Use Tax Due to Difficulty (Public Notice of SAT No.1/2014)	BI
30.	Implementation Measure of Urban and Town Land Use Tax of Hunan Province (No.217 order of the People's Government of Hunan Province)	BI
31.	Public Notice of Local Taxation Bureau of Hunan Province on Certain Issues Regarding Reduction and Exemption of Property Tax and Conduct Tax (Public notice of Local Taxation Bureau of Hunan Province No.2/2015)	BI
32.	Notice of the State Council on the Adjustment of Tax Policies for Imported Equipment	BI
33.	Announcement No.43 of General Administration of Customs in 2008	BI
34.	Notice of Ministry of Finance and State Administration of Taxation on Exemption of VAT for Certain Products Comprehensively Utilizing Resources (Cai Shui Zi [1995] No.44)	BI
35.	Notice of Ministry of Finance and State Administration of Taxation on VAT Policy for Comprehensive Utilization of Resources and Other Products (Cai Shui [2008] No.156)	BI
36.	Notice of Ministry of Finance and State Administration of Taxation on Adjustment and Improvement of VAT Policy for Products and Services with Comprehensive Utilization of Resources (Cai Shui [2011] No.115).	BI
37.	Notice of Ministry of Finance and State Administration of Taxation to Print and Issue Catalogue of Products and Labour Services with Comprehensive Utilization of Resources (Cai Shui [2015] No.78)	BI
38.	Environmental Protection Law of the People's Republic of China	BI
39.	Administrative Measure on Automatic Monitoring of Source of Pollution	BI

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No	Document Title	Language
40.	Administrative Measure on Automatic Monitoring of Source of Pollution of Hunan Province (Hunan Provincial People's Government Decree No. 203)	BI

DECLARATION

DECLARATION

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

April 11th, 2016

Date



Signature of authorised official

(Mr) Wang Jianfeng

Name of authorised official

Deputy Director  
Bureau of Trade Remedy Investigation  
Ministry of Commerce  
People's Republic of China

Title of authorised official