

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant meets the eligibility criteria discussed above the applicant will receive the benefit.. no further discretion is exercised by the administering agency.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

Please see above response to D1.9(a).

(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.).

There are no contractual agreements between the Government of China and the companies that are receiving the benefits under the program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

D1.14 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 program has been renewed in 2010. There is no anticipated changes to the program

6 PROGRAM 6: SUPERSTAR ENTERPRISE GRANT

Superstar Enterprise Grant in Huzhou

D1.1 Provide details of the program including the following.

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

To guide enterprises to achieve exceptional business performance.

(b) Legislation under which the subsidy is granted.

Measures for Assessment and Encouragement for Superstar Enterprises and Excellent Enterprises Attachment 98

(c) Nature or form of the subsidy.

Grant

(d) When the program was established.

2008

(e) Duration of the program.

2008 to the present

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

This program is administrated by the Huzhou Economic Committee, which is responsible for interpretation of this measures and participate in the assessment in accordance with the *Measures for Assessment and Encouragement for Superstar Enterprises and Excellent Enterprises*.

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

An enterprise located in Huzhou city that satisfies following criteria may apply for this program:

- (a) The output scale of the enterprise must meet one of the following criteria:
 - business income of the current year not exceeding CNY3.5 billion and sales revenue within the city exceeding CNY2 billion;
 - sales revenue within the city exceeding CNY2.5 billion;
 - sales revenue within the city exceeding CNY1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than CNY10 million; or
 - revenue from self-export of current year is more than USD150 million.
- (b) The enterprises accumulated industrial input between 2006 to 2008 must have exceeded RMB150 million.
- (c) The enterprise must be profitable, and its paid up VAT, consumption tax, income tax, business tax, city construction tax and education supplementary tax must exceed RMB30 million.
- (d) The enterprise must not have suffered environmental or unsafe production accidents (or other illegal incidents) in the current year.
- (e) If the enterprise is not a State-owned enterprise, it must have passed the "Five- Good Enterprises" assessment conducted by county or district.

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

Please see above response to D1.1(g).

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Measures for Assessment and Encouragement for Superstar Enterprises and Excellent Enterprises **Attachment 98**

Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises

Attachment 99

D1.3. Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

D1.4 Identify the GOC department or agency administering the program.

Authority: Huzhou Economic Committee
 Address: Jingwei Building, 18 Longfen Road, Huzhou, 313000

D1.5 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 authority maintains the record.

D1.6 Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011.

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the respondent applied for, accrued, or received benefits under the program during the POI.

D1.7 Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

Any enterprise meeting the criteria can apply for this program.

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

After an application is submitted, the assessment group for Superstar Enterprises will examine and assess the application documents. Once successful applicants have been selected the city government will announce the successful applicants.

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(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the application is approved, it means that the applicant has satisfied the eligibility criteria listed in the response to D1.1 (g).

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the application was not approved, it means that the applicant has not satisfied the eligibility criteria listed in the response to D1.1 (g).

D1.8 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. Eligibility for this program is based on business performance generally which is determined with reference to the sales volumes of applicants. Applicable sales volumes are broken down with reference to the market and the year/s in which they are made. Export sales volume is one eligibility criteria, but is only one of four sales volume criteria. A business without exports is also eligible to apply.

(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.

This program is not contingent upon the use of domestic over imported goods.

(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.

This program is available to companies within Huzhou city that meet the specified eligibility requirements.

(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, eligibility for this program is not limited to any particular enterprise, group of enterprises or to any industry or group of industries.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant meets the eligibility criteria discussed above the applicant will receive the benefit, no further discretion is exercised by the administering agency.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of

benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

D1.14 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 GOC does not anticipate any changes to the program at this time.

7 PROGRAM 7: RESEARCH & DEVELOPMENT (R&D) ASSISTANCE GRANT

D1.1 Provide details of the program including the following.

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

The purpose of the program is:

- (a) to regulate the utilisation and management of three expenses (namely, "expense in the trial manufacture of new products", "internal examination expense" and "grant to key scientific research programs") for science and technology in Wuxing District;
- (b) to encourage the development of new technologies and products;
- (c) to promote energy saving and consumption reduction;
- (d) to enhance product quality;
- (e) to improve export structure; and
- (f) to foster the development of high technology and new backbone industries.

(b) Legislation under which the subsidy is granted.

Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District. Attachment 100

(c) Nature or form of the subsidy.

Grant

(d) When the program was established.

26 December 2005

(e) Duration of the program.

2005 to the present.

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

The government of Wuxing district and the Science and Technology Bureau of

Wuxing District ("STB") are jointly responsible for the administration of this program.

The STB examines applications and publishes them for public comment.

Applications are approved by Wuxing District's Administrative Office and the STB in conjunction with the Finance Bureau of Wuxing District issue approval notices.

The fund is provided from the budget of the local Wuxing district government.

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

This program may apply to enterprises located in the Wuxing District of Huzhou City.

Enterprises apply to the STB and are assessed according to a grading system. Emphasis is placed on selecting enterprises with research projects addressing scientific and technological problems, technology innovation projects, projects aimed at innovation in science and technology in the agricultural sector, as well as some high and new technology industries.

According to Article VII of *Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District*, the STB will make grants to sponsor units of projects whose funding application has been approved. The fund may be released as a one-off payment or by two-stage instalment.

As to the grant made on the two-stage instalment, 50% of the total approved amount will be provided at the commencement of the project, and the remaining balance will be provided after the project is completed. Regarding the development projects of new products, the grant will be provided only after a province-level identification assessment.

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

Applications from companies meeting the objectives of the program are assessed on merit by the STB.

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology

Expenses of Wuxing District Attachment 100

- D1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

- D1.4** Identify the GOC department or agency administering the program.

Authority: Science and Technology Bureau of Wuxing District
Address: 158 Waihuan Road East, Wuxing District, Huzhou City, 313000

- D1.5** 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.

Records are maintained by local authority.

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011.

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the respondents had applied for, accrued, or received benefits under the program during the POI.

- D1.7** Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

Enterprises may apply for "three types of science and technology expenses". The STB carries out a preliminary examination of the project. In this initial stage relevant experts are invited to assess applications.

The findings of these preliminary examinations are then assessed at an internal meeting of the STB, following which the application will be published on the internet

for public consultation.

Once a project is examined and approved by Wuxing District's Administrative Office, the STB in conjunction with the Finance Bureau of Wuxing District will issue an approval notice.

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

Once the project is approved, the STB will directly dispense the funds to the applicants, in one or two instalments. Where funds are dispensed in two instalments, 50% of the total amount will be provided in the first instalment with the remaining 50% provided once the project is completed and has passed final examination.

Funds for new product development projects will not be dispensed until the project is examined by the institutions at the provincial level.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the application is approved, it means that the applicant has satisfied the relevant eligibility criteria.

There are no specific approval documents.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the application is denied it is because the applicant did not satisfy the relevant eligibility criteria.

There are no specific disapproval documents.

D1.8 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.

This program is not contingent upon export performance.

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(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.

This program is not contingent upon the use of domestic over imported goods.

(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.

Eligibility for this program is limited to enterprises or industries in Wuxing District.

(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.

Eligibility for this program is limited to enterprises or industries involved in science and technology innovation and development. Such innovation and development is broadly applicable and does not limit this program to particular types of industry or enterprise but rather any industry or enterprise could be eligible if they were engaged in technological development or innovation in their particular sector.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant meets the eligibility criteria discussed above the applicant will

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receive the benefit.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required.

(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.).

There are no contractual agreements between the GOC and the companies who receive the benefits. However the use of any grants provided are inspected and monitored to ensure compliance. Please refer to Part VII and Part VIII of *Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.*

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

D1.14 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?

GOC does not anticipate any change in this program.

8 PROGRAM 8: PATENT AWARD OF GUANGDONG PROVINCE

D1.1 Provide details of the program including the following.

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

To encourage innovation and the generation of associated patents.

(b) Legislation under which the subsidy is granted.

2009 Guangdong Patent Award Implementation Proposal

(c) Nature or form of the subsidy.

Grant

(d) When the program was established.

2009

(e) Duration of the program.

2009 to the present

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

This program is administered by the Guangdong Province Department of Intellectual Property and Department of Personnel. The Guangdong Patent Award Appraising and Electing Committee and Appraising and Electing Offices and Expert Committee are established under the Guangdong Province Department of Intellectual Property. The Expert Committee includes technical, economic, legal and management experts.

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

The Departments grant "Guangdong Patent Golden Award" and "Guangdong Patent Excellence Award" after applications are assessed. These awards include an Award Certificate and a bonus to the successful patent holder or operation institute. Guangdong Province Department of Intellectual Property will in turn recommend the

successful enterprises to the China Patent Award competition.

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

There are two areas in which an application can be made - innovations and utility models patent or industrial design.

An application under the innovations and utility models patent head must establish that the product in question:

- is skilfully constructed and innovative with high creation and technical level;
- contributes to technical improvement and creation.
- the patent has created or have the potential to bring significant economic or social benefit;
- the patent holder has significantly protected the patent.

An application under the industrial design head must establish that:

- the industrial design has reached high level at shape, pattern and colour;
- application of this industrial design has brought or has the potential to bring significant economic or social benefit;
- the patent holder has significantly protected the patent.

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

2009 Guangdong Patent Award Implementation Proposal Attachment 101

D1.3. Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

D1.4 Identify the GOC department or agency administering the program.

Authority: Guangdong Province Department of Intellectual Property
Address: 100 Xianlie Middle Road, Guangzhou, Guangdong province

Authority: Guangdong Province Department of Personnel
 Address: No.305 of Dongfeng Middle Road, Guangzhou

- D1.5** 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 authorities maintain the payment document.

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the respondents had applied for, accrued, or received benefits under the program during the POI.

- D1.7** Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

An enterprise can either directly apply to the Department of Intellectual Property Bureau, Department of Personal or apply to be recommended by a provincial related institute for consideration for this program. Institutes that choose to recommend an enterprise make that recommendation to the Electing Committee.

There is no standard application form.

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

The Expert Committee will assess final applications and make comments to the Guangdong Patent Award Appraising and Electing Committee who will make the final determination as to successful enterprises.

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(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

A successful applicant will have satisfied the relevant eligibility criteria to a higher degree than other applicants.

Upon determination of the successful enterprises the results will be published and open for public comment for 15 days.

Provided there are no reasonable objections the Guangdong Province Department of Intellectual Property and Department of Personnel will publish the award items and institutes granted the awards on Nanfang Daily and broadly promote the awards and winners.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If an applicant is unsuccessful it is because the applicant they either did not satisfy the relevant eligibility criteria or did not satisfy it to the extent that other applicants did.

There are no specific disapproval documents.

D1.8 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.

This program is not contingent upon the use of domestic over export performance.

(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.

This program is not contingent upon the use of domestic over imported goods.

(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.

The award is available to enterprises located in Guangdong Province.

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(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.

Eligibility for this program is not limited to any particular enterprise, group of enterprises or to any industry or group of industries.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant meets the eligibility criteria discussed above the application will be considered and assessed in relation to other applications received.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required.

(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.).

There are no contractual agreements between the Government of China and

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companies benefiting from this program.

- D1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

- D1.11** 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

- D1.12** How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

- D1.13** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

- D1.14** 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 GOC does not anticipate any changes to the program at this time.

9 PROGRAM 9: TRAINING PROGRAM FOR RURAL SURPLUS LABOUR FORCE TRANSFER EMPLOYMENT

Training Program for Rural Surplus Labour Force Transfer Employment in Taishan City

D1.1 Provide details of the program including the following.

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

To improve rural surplus labour force employability

(b) Legislation under which the subsidy is granted.

Taishan City 2005-2009 Training Program for Rural Surplus Labour Force Transfer Employment Implementation Proposal. Attachment 102

(c) Nature or form of the subsidy.

Grant

(d) When the program was established.

2005

(e) Duration of the program.

2005 to 2009

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

Not applicable, this program is terminated in 2009
The program was administrated by the Taishan City Rural Surplus Labour Force Transfer Employment Coordination Committee.

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

Not applicable, this program has been terminated in 2009.

The City financial bureau arranges RMB1 million as special fund for the Training Program for Rural Surplus Labour Force Transfer Employment which is then divided between the Villages and Towns.

An individual who belongs to a city's rural surplus labour force can apply for a Rural Surplus Labour Force Employment Certificate (Employment Certificate). Training Certificates can then be obtained based on the Employment Certificate. The Training Certificate details an amount which will be paid to the pointed institutes or the training enterprises.

RMB300 is paid per person as a training subsidy to allow for city rural surplus labour force participation in the training.

RMB100 is paid per person as a training subsidy for any member of the city rural surplus labour force who have signed a labour contract for a duration of one year or more where their employer has provided the training

RMB100 is paid per person as a training subsidy for members of the city rural surplus labour force who participate in rural application technology training.

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

Not applicable, this program has been terminated in 2009.

Please see above response to D1.1 (g).

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Taishan City 2005-2009 Training Program for Rural Surplus Labour Force Transfer Employment Implementation Proposal Attachment 102

D1.3. Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please refer to above response to D1.2

D1.4 Identify the GOC department or agency administering the program.

Not applicable, this program is terminated in 2009

Authority: Taishan City Rural Surplus Labour Force Transfer Employment

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Coordination Committee - Taishan City Labour Bureau
Address: 92 Dongcheng Street, Taicheng County, Taishan City

- D1.5** 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.

Payment document is maintained by local authority.

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the respondents had applied for, accrued, or received benefits under the program during POI.

- D1.7** Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

Not applicable, this program was terminated in 2009.

The pointed enterprises for rural surplus labour force transfer employment training or the enterprises which have generate such programmes submit the copy of participants' register fom, ID card and employment certificate, training plan, education outline, training terms, training hours, the list of teachers and their certificate or professional title certificate to the Taishan City Rural Surplus Labour Force Transfer Employment Coordination Committee for examination 10 days before the training.

If training plans are approved by the Taishan City Rural Surplus Labour Force Transfer Employment Coordination Committee, the enterprise can then submit the requisite documentation such as participants' Training Certificates in order to receive the training subsidies.

Please see **Attachment 103** for a copy of the application form.

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

Once a training program is accredited the process for obtaining the subsidy does not require an assessment but rather simply the submission of relevant documentation.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If an application for payment is approved it is because it provided the requisite documentation relating to the participants.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If an application for payment is rejected it is because it did not include the requisite documentation relating to the participants.

D1.8 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.

This program is not contingent upon export performance.

(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.

This program is not contingent upon the use of domestic over imported goods.

(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.

This program is available to enterprises or institutes within Taishan city.

(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.

Eligibility for this program is not limited to any particular enterprise, group of enterprises or to any industry or group of industries.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws. Please see above response to D1.1(g) for details of benefits available.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant provides the requisite documentation it will receive the benefit, no further discretion is exercised by the administering agency.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

D1.11 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 July 2007 to 30 June 2011.

The GOC does not keep such data.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.
This program has been terminated since 2009.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.
This program has been terminated since 2009

D1.14 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 program has been terminated since 2009.

10 PROGRAM 10: PREFERENTIAL TAX POLICIES FOR FOREIGN INVESTED ENTERPRISES - REDUCED TAX RATE FOR PRODUCTIVE FOREIGN INVESTED ENTERPRISES SCHEDULED TO OPERATE FOR A PERIOD NOT LESS THAN 10 YEARS

Preferential tax policies for foreign-invested enterprises.

D1.1 Provide details of the program including the following.

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

To encourage foreign investment.

(b) Legislation under which the subsidy is granted.

The Foreign Enterprise Tax Law (repealed) Attachment 81

Rules for Foreign Enterprise Tax Law Attachment 82

Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax Attachment 80

(c) Nature or form of the subsidy.

Preferential tax treatment.

(d) When the program was established.

1 July 1991.

(e) Duration of the program.

The program was in operation from 1991 through to 31 December 2007. Transitional provisions are now in operation until 2012.

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

The program is administered by the State Administration of Taxation in conjunction with other competent authorities, and is implemented by the local tax authorities within their respective jurisdictions. Enterprises that seek the tax reduction do so in

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PUBLIC FILE

the normal course of their Income Tax assessment.

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

Any production enterprise with foreign investment that is intended to operate for a period of not less than ten years shall, from the year it begins to make a profit, be exempted from income tax in the first and second years of operation and provided a 50% reduction from the third to fifth year of operation.

Any foreign investor of an enterprise with foreign investment that reinvests its share of profit directly into that enterprise by increasing its registered capital, or uses the profit as capital investment to establish other enterprises with foreign investment to operate for a period of not less than five years, may be refunded 40% of the income tax already paid on the reinvested amount.

Where a foreign investor directly reinvests profits in expansion of export-oriented enterprises or advanced technology enterprises, the entire portion of enterprises income tax that has been paid on the reinvested amount may be refunded.

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

According to *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* as of 1 January 2008 enterprises that previously enjoyed a 2-year exemption and 3-year half payment of the enterprise income tax and other preferential treatments (including periodic tax deductions and exemptions) may continue to enjoy any preferential treatments previously enjoyed until the expiration of the transitional time period.

For enterprises that previously had not enjoyed preferential treatment, the preferential time period shall be calculated from 2008.

The program will be completely terminated at the expiration of transitional period (ie, by 2012).

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Foreign Enterprise Tax Law (repealed) **Attachment 81**

Rules for the Implementation of the Foreign Enterprise Tax Law **Attachment 82**

Notice of the State Council on the Implementation of the Transitional Preferential

NON-CONFIDENTIAL-FOR PUBLIC FILE

140

Policies in respect of Enterprise Income Tax Attachment 80

Enterprise Income Tax Law 2008 Attachment 8

- D1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

- D1.4** Identify the GOC department or agency administering the program.

Authority:	Ministry of Finance
Address:	3 South Three Alley of Sanli River, Xicheng District, Beijing 100820
Authority:	Administration of Taxation
Address:	6 Jianguomen Avenue, Dongcheng District, Beijing 100730
Authority:	Ministry of Commerce
Address:	No.2 Dong Chang'an Avenue, Beijing, 100731

- D1.5** 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 authority keeps record of payment of tax.

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2010 to 30 June 2011.

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

[CONFIDENTIAL TEXT DELETED]

- D1.7** Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

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There is no specific application form.

An enterprise's eligibility is assessed on the basis of their standard annual income tax reporting. Enterprises indicate on standard reporting documents whether they are seeking to be considered under this program.

Copies of the standard income tax assessment forms are provided in **Attachment P1-4**

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

Upon receipt of standard income tax reporting the competent authority examines the submitted materials to determine whether they are complete and properly documented.

The competent authority will assess complete materials in accordance with the relevant regulations. Provided the enterprise satisfies all the relevant criteria the authority will approve the reduction or exemption. If the enterprise does not meet the relevant criteria the reduction or exemption will not be provided.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the enterprise meets the eligibility criteria outlined in D1.1(h) the enterprise will receive the legislated exemption or reduction.

There are no specific approval documents, successful enterprises simply receive the exemption or reduction as a matter of course.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the enterprise does not meet the eligibility criteria it will not be afforded the preferential tax rate and will not receive a exemption or reduction.

There is no specific, single-purpose disapproval document or form.

D1.8 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.

NON-CONFIDENTIAL-FOR PUBLIC FILE

142

NON-CONFIDENTIAL-FOR PUBLIC FILE

PUBLIC FILE

This program is not contingent on export performance.

(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.

This program is not contingent on the use of domestic over imported goods.

(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.

This program is not limited to particular 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.

Eligibility for this program is not limited to any particular enterprise, group of enterprises or to any industry or group of industries.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws. Please see above response D1.1(g) for details of the relevant rates.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the enterprise meets the eligibility criteria discussed above the enterprise will

NON-CONFIDENTIAL-FOR PUBLIC FILE

143

NON-CONFIDENTIAL-FOR PUBLIC FILE PUBLIC FILE

receive the benefit, no further discretion is exercised by the administering agency.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

NON-CONFIDENTIAL-FOR PUBLIC FILE

This information is not available. Please see above response to D1.10.

D1.14 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?

As previously explained, the new *Enterprise Income Tax Law Attachment 8* was adopted at the fifth session of the Tenth National People's Congress on 16 March 2007. It came into effect on 1 January 2008.

The new *Enterprise Income Tax Law* repeals the laws under which this program was established.

According to *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax Attachment 80* as of 1 January 2008 enterprises that previously enjoyed a 2-year exemption and 3-year half payment of the enterprise income tax and other preferential treatments (including periodic tax deductions and exemptions) may continue to enjoy any preferential treatments previously enjoyed until the expiration of the transitional time period.

For enterprises that previously had not enjoyed preferential treatment, the preferential time period shall be calculated from 2008.

The program will be completely terminated at the expiration of transitional period in 2012.

11 PROGRAM 11: PREFERENTIAL TAX POLICIES FOR ENTERPRISES WITH FOREIGN INVESTMENT ESTABLISHED IN SPECIAL ECONOMIC ZONES (EXCLUDING SHANGHAI PUDONG AREA)

D1.1 Provide details of the program including the following.

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

To encourage foreign investment in, and enhance development of the relevant areas.

(b) Legislation under which the subsidy is granted.

Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax **Attachment 80**

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (Repealed) (the "Foreign Enterprise Tax Law") **Attachment 81**

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise **Attachment 82**

(c) Nature or form of the subsidy.

Preferential tax treatment

(d) When the program was established.

For the program applicable broadly to Shenzhen, Zhuhai, Shantou, Xiamen – 1980
For the remaining additional programs – 1991.

(e) Duration of the program.

The program was in operation from 1991 through to 31 December 2007. Transitional provisions are now in operation until 2012.

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

The program is administered by the State Administration of Taxation in conjunction with other competent authorities, and is implemented by the local tax authorities within their respective jurisdictions. Enterprises that apply for a tax reduction do so in

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the normal course of their income tax assessment.

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

Enterprises with foreign investment that are established in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Special Economic Zones and foreign enterprises that have operations in these areas were levied at the reduced rate of fifteen percent.

Enterprises with foreign investment established in the Hainan Special Economic Zone and engaged in infrastructure projects such as airports, harbors, docks, highways, railways, power stations, coal mines and water conservation, or agricultural operations and development projects where operations are anticipated for fifteen years or more were exempt from enterprise income tax from between the first and fifth years from the first profitable year with a tax rate reduced by one half between the sixth and tenth years.

Foreign investors who reinvest profit made from operations in the Hainan Special Economic Zone into the infrastructure construction projects of, or agricultural development enterprises in, were refunded tax paid on the reinvested amount.

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

Please see above response to D1.1(g).

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Foreign Enterprise Tax Law (repealed) Attachment 81

Rules for the Implementation of the Foreign Enterprise Tax Law Attachment 82

Enterprise Income Tax Law 2008 Attachment 8

Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax Attachment 80

D1.3. Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

D1.4 Identify the GOC department or agency administering the program.

Authority:	Ministry of Finance
Address:	3 South Three Alley of Sanli River, Xicheng District, Beijing 100820
Authority:	Administration of Taxation
Address:	6 Jianguomen Avenue, Dongcheng District, Beijing 100730
Authority:	Ministry of Commerce
Address:	No.2 Dong Chang'an Avenue, Beijing, 100731

D1.5 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 authority keeps record of payment of tax.

D1.6 Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2010 to 30 June 2011

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the responding companies were in receipt of benefits under the program during POI

D1.7 Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

There is no specific application form.

An enterprise's eligibility is assessed on the basis of their standard annual income tax reporting. Enterprises indicate on standard reporting documents whether they are seeking to be considered under this program.

Copies of the standard income tax assessment forms are provided in the **Attachment P1-4**.

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

Upon receipt of standard income tax reporting the competent authority examines the submitted materials to determine whether they are complete and properly documented.

The competent authority will assess complete materials in accordance with the relevant regulations. Provided the enterprise satisfies all the relevant criteria the authority will approve the exemption or reduction. If the enterprise does not meet the relevant criteria the exemption or reduction will not be provided.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the enterprise meets the eligibility criteria outlined in D1.1(g) the enterprise will receive the legislated reduction or exemption .

There are no specific approval documents, successful enterprises simply receive the reduction or exemption as a matter of course.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the enterprise does not meet the eligibility criteria it will not be afforded the preferential tax rate and will not receive a reduction or exemption.

There is no specific, single-purpose disapproval document or form.

D1.8 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.

The program is not made in connection with the production, manufacture or export of any exported goods.

(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.

NON-CONFIDENTIAL-FOR PUBLIC FILE

149

NON-CONFIDENTIAL-FOR PUBLIC FILE

PUBLIC FILE

This program is not contingent on the use of domestic over imported goods.

(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.

Enterprises with foreign investment that are established in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Special Economic Zones and foreign enterprises that have operations in these areas.

(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 is available to any enterprise or industry that has an element of foreign investment. As foreign investment can occur in any enterprise, group of enterprises or industry this program is not limited to any particular ones.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

Please see above response to D1.1(h) for an explanation of the criteria determining the size of the benefit.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the enterprise meets the eligibility criteria discussed above the enterprise will receive the benefit, no further discretion is exercised by the administering agency.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official

NON-CONFIDENTIAL-FOR PUBLIC FILE

document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

D1.14 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?

According to *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* as of 1 January 2008 enterprises that previously enjoyed the preferential policies of reduced tax rates shall be gradually transitioned to the statutory tax rate over a 5 year period after the implementation of the Income Tax Law.

In particular the enterprises that enjoyed a tax rate of 15% shall be subject to the following increases:

- 18% in 2008;
- 20% in 2009;
- 22% in 2010;
- 24% in 2011; and
- 25% in 2012.

Enterprises that previously enjoyed tax rate of 24% shall immediately be subject to a 25% rate as of 2008.

The program will be completely terminated at the expiration of transitional period in 2012.

12 PROGRAM 12: PREFERENTIAL TAX POLICIES FOR ENTERPRISES WITH FOREIGN INVESTMENT ESTABLISHED IN PUDONG AREA OF SHANGHAI

D1.1 Provide details of the program including the following.

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

To encourage foreign investment and enhance development of the relevant area.

(b) Legislation under which the subsidy is granted.

Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax **Attachment 80**

Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (Repealed) (the "Foreign Enterprise Tax Law") **Attachment 81**

Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise **Attachment 82**

(c) Nature or form of the subsidy.

Preferential tax treatment

(d) When the program was established.

1 July 1991

(e) Duration of the program.

The program was in operation from 1991 through to 31 December 2007. Transitional provisions are now in operation until 2012.

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

The program is administered by the State Administration of Taxation in conjunction with other competent authorities, and is implemented by the local tax authorities within their respective jurisdictions. Enterprises that apply for a tax reduction do so in the normal course of their income tax assessment.

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

The income tax on enterprises with foreign investment of a production nature established in Pudong area of Shanghai as well as enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations shall be levied at the reduced rate of fifteen percent.

Enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations where the period of operations is fifteen years or more may be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

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

The income tax on enterprises with foreign investment in coastal economic open zones, in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located or in other regions defined by the State Council, within the scope of energy, communications, harbor, wharf or other projects encouraged by the State, may be levied at the reduced rate of fifteen percent.

Enterprises with foreign investment established in the Pudong New Area of Shanghai and engaged in construction projects such as airports, ports, railways, highways and power stations where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of the municipality of Shanghai and commencing with the first profit-making year, be exempt from enterprise income tax from the first year to the fifth year and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Foreign Enterprise Tax Law (repealed) Attachment 81

Rules for the Implementation of the Foreign Enterprise Tax Law Attachment 82

Enterprise Income Tax Law 2008 Attachment 8

Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax Attachment 80

- D1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

- D1.4** Identify the GOC department or agency administering the program.

Authority:	Ministry of Finance
Address:	3 South Three Alley of Sanli River, Xicheng District, Beijing 100820
Authority:	Administration of Taxation
Address:	6 Jianguomen Avenue, Dongcheng District, Beijing 100730
Authority:	Ministry of Commerce
Address:	No.2 Dong Chang'an Avenue, Beijing, 100731

- D1.5** 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 authorities keeps the record of tax payment

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2010 to 30 June 2011

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the responding companies were in receipt of benefits under the program during POI.

- D1.7** Answer the following questions regarding the application process:

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(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

There is no specific application form.

An enterprise's eligibility is assessed on the basis of their standard annual income tax reporting. Enterprises indicate on standard reporting documents whether they are seeking to be considered under this program and quote the figure they expect to be reduced or exempted.

Copies of the standard income tax assessment forms are provided in **Attachment 83**

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

Upon receipt of standard income tax reporting the competent authority examines the submitted materials to determine whether they are complete and properly documented.

The competent authority will assess complete materials in accordance with the relevant regulations. Provided the enterprise satisfies all the relevant criteria the authority will approve the application. If the application does not satisfy the relevant criteria the application will be rejected.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

Please see above response to D1.1(h) for an explanation of the criteria for assessment.

There are no specific approval documents, successful enterprises simply receive the reduction or exemption as a matter of course.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the applicant does not meet the eligibility criteria it will not be accorded the preferential tax rate and will not receive a reduction or exemption.

There is no specific, single-purpose disapproval document or form.

D1.8 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.

This program is not contingent on export performance.

(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.

This program is not contingent on the use of domestic over imported goods.

(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.

This program is available to enterprises established in the Pudong area of Shanghai.

(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 is available to any enterprise or industry that has an element of foreign investment. As foreign investment can occur in any enterprise, group of enterprises or industry this program is not limited to any particular.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

Please see above response to D1.1(h) for an explanation of the criteria determining the size of the benefit.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to B1.2, no further legal instruments govern the application of this program.

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(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant meets the eligibility criteria discussed above the applicant will receive the benefit, no further discretion is exercised by the administering agency.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not record such data and as such is unable to respond to this question.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

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This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

D1.14 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?

According to *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* as of 1 January 2008 enterprises that previously enjoyed the preferential policies of reduced tax rates shall be gradually transitioned to the statutory tax rate over a 5 year period after the implementation of the Income Tax Law.

In particular the enterprises that enjoyed a tax rate of 15% shall be subject to the following increases:

- 18% in 2008;
- 20% in 2009;
- 22% in 2010;
- 24% in 2011; and
- 25% in 2012.

Enterprises that previously enjoyed tax rate of 24% shall immediately be subject to a 25% rate as of 2008.

The program will be completely terminated at the expiration of transitional period in 2012.

**13 PROGRAM 13: PREFERENTIAL TAX POLICIES IN THE WESTERN REGIONS
EXEMPTION OF TARIFF AND IMPORT VAT FOR IMPORTED TECHNOLOGIES AND
EQUIPMENT**

The GOC notes that neither the applicant nor Customs have suggested what the legal basis is for this program. The GOC is not aware of such a program. However, the GOC consider the following program meets this description:

- *Preferential Tax Policies in the Western Regions*

The GOC has responded to the standard questions on the assumption that this is the intended programs

D1.1 Provide details of the program including the following.

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

To accelerate the development of China's Western Regions by promoting increased liberalisation and thereby reducing the imbalance in economic development among different areas in China.

(b) Legislation under which the subsidy is granted.

Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions, State Council Circular Guo Fa No. 33 of 2000 Attachment 104.

Implementing Some Policies and Measures for the Development of Western Regions, General Office of State Council Circular Guo Ban Fa No. 73 of 2001 Attachment 105.

Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas (Cai Shui (2001) No. 202) Attachment 106.

SAT Circular Guo Shui Fa No. 172 of 1999 Attachment 107.

Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions(CAISHUI[2011]No.58) Attachment 108

(c) Nature or form of the subsidy.

Tax exemption

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(d) When the program was established.

26 December 1999

(e) Duration of the program.

1 January 2001 to 31 December 2020

Exemption for import VAT for imported equipment has been terminated since 2009

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

The program is administered by the State Administration of Taxation and is implemented by the local tax authorities within their respective territorial jurisdictions.

Enterprises that apply for a tax reduction or exemption are required to file their application and other relevant supporting materials with the taxation authority for examination. If the application meets the eligibility criteria it is approved and the applicant receives the benefits.

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

The GOC provides its response in relation to this question as follows.

Before January 1st, 2011:

- (a) The income tax on enterprises, domestic and foreign-invested, established in the Western regions which are engaged in industries encouraged by the State is levied at the reduced rate of 15% from the year 2001 to 2010.
- In relation to domestic enterprises which are engaged in industries encouraged by the State, GOC draws Australian Customs attention to the *Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State Attachment 109*. According to the *Circular on Development of China's Western Regions Attachment 104* as of 1 January 2006, domestic enterprises of encouraged projects enjoying preferential tax policies for Western region development were required to be re-examined to confirm that they fall within the category of encouraged projects under the *Guiding Catalogue for Industry Restructuring* (hereafter the "New Catalogue") **Attachment 110**. Under the *Circular on the Preferential Tax Policy of the Western Regions Attachment 106*, "domestic enterprises of encouraged projects" refers

to those that have the industrial items specified in the *Catalogue of Industries, Products and Technology Particularly Encouraged by the State for Development 2000 Attachment 109* as their main business, and whose main revenue takes up at least 70% of the total revenue. With respect to enterprises that have been approved to enjoy the preferential tax policies according to the older Catalogue (ie, the one prior to 1 January 2006), the measures continue and will be implemented until their expiration, as restricted and prohibited under the *New Catalogue*. Regarding enterprises listed as restricted and prohibited projects under the *New Catalogue*, all the preferential tax policies for the Western region development shall be suspended. Those enterprises that fall within the category of encouraged projects under the *New Catalogue* shall enjoy preferential policies on income tax as from 2006.

- In relation to foreign-invested enterprises that are engaged in industries encouraged by the State, the GOC draws Australian Customs attention to the *Catalogue for the Guidance of the Foreign Investment Industries Attachment 111* and listed in the *Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment Attachment 113* and the enterprises must have the items as listed in the two Catalogues as its major business revenue and the revenue from that must amount to over 70% of their total business revenue.
- (b) The new enterprises (including both domestic enterprises and foreign-invested enterprises) that are established in the Western regions and engaged in business such as transportation, electricity, water conservation, of which the revenue accounts for over 70% of total revenue, shall be, from the year production or operation commenced (for domestic enterprises) and from the year profit was first earned (for foreign-invested enterprises), having a period of operation of ten years or more, exempt from income tax for the first and second years and subject to enterprise income tax at a rate reduced by one half for the third year through the fifth year.
- (c) The land used to construct highways in Western regions is exempt from farmland occupation tax.
- (d) Domestic and foreign-invested enterprises established in the Western regions and engaged in the respective "encouraged industries", as explained above in item (a), are exempt from tariff and import VAT for imported equipment for self use within the total amount of the capital invested, except for those listed in *Catalogue for the imported products not*

subject to tax exemption in foreign invested projects Attachment 119 or in the Catalogue for the imported products not subject to tax exemption in domestic invested projects Attachment 120.

- (e) Since 1 January 2000, foreign-invested enterprises established in nineteen provinces, autonomous regions and municipalities directly under the Central Government in central and western regions, namely Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region, which are engaged in the industries encouraged by the State as listed in the *Catalogue for the Guidance of Foreign Investment Industries Attachment 111* as well as engaged in the advantageous industries and projects approved by the State Council, shall be subject to income tax at a reduced rate of 15% for another three years following the expiration of the period of two years exemption and three years of fifty per cent reduction (ie "two free three half").

After January 1st, 2011, some preferential tax policies in the Western Regions have been adjusted in accordance with *Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions(CAISHUI[2011]No.58)*. The GOC provides this document in **Attachments 108**.

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

Please refer to above response to D1.1(g).

- D1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions ("Circular on Development of China's Western Regions") Attachment 104

Implementing Some Policies and Measures for the Development of Western Regions, General Office of State Council ("Circular on Development of Western Regions") Attachment 105

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PUBLIC FILE

<i>Circular on Preferential Tax Policy for Western Region</i> Attachment 106
<i>Circular on Implementation of Preferential Income Tax for FIEs in Mid-West</i> Attachment 107
<i>Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions</i> (CAISHUI[2011]No.58) Attachment 108
<i>Catalogue of Industrial Restructuring ("New Catalogue")</i> Attachment 110
<i>Catalogue of Encouraged Industries, Products and Technologies</i> Attachment 109
<i>Catalogue of Guidance of Advantageous Industries in Central and West for Foreign Investment</i> (2004) Attachment 112
<i>Catalogue of Guidance of Advantageous Industries in Central and West for Foreign Investment</i> (2008) Attachment 113
<i>Directory of Imported Commodities of Non-Tax-Exemption to be Used in Domestic Invested Projects</i> (2000) Attachment 114
<i>Directory of Imported Commodities of Non-Tax-Exemption to be Used in Domestic Invested Projects</i> (2008) Attachment 115
<i>Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects</i> (2002) Attachment 116
<i>Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects</i> (2008) Attachment 117
<i>Catalogue for the Guidance of the Foreign Investment Industries</i> 2004 Attachment 118
<i>Catalogue for the Guidance of the Foreign Investment Industries</i> 2007 Attachment 111

- D1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

- D1.4** Identify the GOC department or agency administering the program.

Authority: Ministry of Finance
Address: 3 South Three Alley of Sanli River, Xicheng District, Beijing 100820

NON-CONFIDENTIAL-FOR PUBLIC FILE PUBLIC FILE

Authority:	State Administration of Taxation
Address:	5 Yangfangdian West Road, Haidian District, Beijing 100038
Authority:	Ministry of Commerce
Address:	2 Dong Chang'an Avenue, Beijing 100731
Authority:	State Council Development-Oriented Poverty Alleviation Leading Group
Address:	11 Nongzhanguan Nanli, Beijing 100026
Authority:	National Development and Reform Commission
Address:	38 Yuetan South Avenue, Beijing 100824

D1.5 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.

Tax payment document.

D1.6 Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2010 to 30 June 2011

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the companies are located in the Western Region, and as such none applied for or received any benefits under this program.

D1.7 Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

Please refer to **Attachment 121** and **Attachment 122** for copies of the relevant application forms.

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

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Upon receipt of an application the competent authority will assess complete materials in accordance with the relevant regulations. Provided the enterprise satisfies all the relevant criteria the authority will approve the application. If the application does not satisfy the relevant criteria the application will be rejected.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

Please see above response to D1.1(g) for an explanation of the criteria for assessment.
There are no specific approval documents, successful enterprises simply receive the reduction or exemption as a matter of course.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the applicant does not meet the eligibility criteria it will not be accorded the preferential tax rate and will not receive a reduction or exemption.
There is no specific, single-purpose disapproval document or form.

D1.8 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.

This program is not contingent on export performance.

(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.

This program is not contingent on the use of domestic over imported goods.

(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.

This program is available to enterprises located in the Western Regions. Before the

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promulgation of *Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions*(CAISHUI[2011]No.58) **Attachment 108**, the "Western Regions" includes Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region and Guangxi Zhuang Autonomous Region. After the promulgation of CAISHUI[2011]No.58, the "Western Regions" enjoying relevant preferential tax policies under that document includes Chongqing, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Xinjiang Production and Construction Corps, Inner Mongolia Autonomous Region and Guangxi Zhuang Autonomous Region.

(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 is available to enterprises that are engaged in industries encouraged by the State and advantageous industries. Under the relevant legislative instruments these include a wide variety of industries and sectors including agriculture, mining, power generation, waste, ceramics, equipment, electronics, chemicals and transportation.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

Please see above response to D1. 1(g).

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the applicant meets the eligibility criteria discussed above the applicant will receive the benefit, no further discretion is exercised by the administering agency.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the legal instruments provided and explained above. No further official discretion is required.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not record such data and as such is unable to respond to this question.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial

assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

D1.14 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?

Since January 1st, 2011, some preferential tax policies in the Western Regions have been adjusted in accordance with *Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions* (CAISHUI [2011] No.58) At the same time, the aforementioned document *Circular on Preferential Tax Policy for Western Region (Cai Shui [2001] No. 202)* **Attachment 106** shall not be implemented any more.

14 PROGRAM 14: TARIFF AND VAT EXEMPTIONS FOR IMPORTED MATERIALS AND EQUIPMENT REDUCTION IN LAND USE FEES

The GOC notes that neither the applicant nor Customs have suggested what the legal basis is for this program. The GOC is not aware of such a program. However, the GOC consider the following program meets this description:

- *Tariff and VAT Exemptions for Imported Materials and Equipment*

The GOC confirms that this program has been repealed by the State Council. The last date for the operation of this program was 31 December 2000. The relevant instrument in this regard is *Circular of the State Council on Reforming and Readjusting Import Taxation Policies Attachment 123*.

Accordingly the GOC can readily advise that none of the responding companies have applied for or benefited from this program that impacted in the production and sale of the subject HSS during the investigation period.

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15 PROGRAM 15: INNOVATIVE EXPERIMENTAL ENTERPRISE GRANT

Innovative Experimental Enterprise Grant of Zhejiang Province.

D1.1 Provide details of the program including the following.

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

To accelerate technology development in Zhejiang province.

(b) Legislation under which the subsidy is granted.

Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises.

(c) Nature or form of the subsidy.

Grant.

(d) When the program was established.

20 July 2007

(e) Duration of the program.

2007 to the present.

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

The program is administered in accordance with the *Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises*.

Preliminary assessments are conducted by the municipal Science and Technology Bureau, Economic and Trade Commissions, Finance Bureau, State Property Management Commission, Financial Affairs Office, Quality and Technology Supervision Bureau, and General Trade Union, after which applications are submitted to the science and technology bureau for final assessment.

The program is administered by the administrative office of Science and Technology

Bureau of Zhejiang province.

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

There have been 150 enterprises selected for this program (50 enterprises in 2007 and 100 enterprises in 2008) to date. Selected enterprises fall into six categories:

- (a) high and new technology enterprises at the provincial or higher levels;
- (b) medium/small-size scientific and technological enterprises;
- (c) agricultural technology enterprises;
- (d) key and leading enterprises;
- (e) patent demonstration enterprises; and
- (f) enterprises reorganised from non-profit scientific research institutions.

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

Eligible enterprises are those that are:

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

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises Attachment 124

D1.3. Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

D1.4 Identify the GOC department or agency administering the program.

Authority: Administrative Office of Science and Technology of Zhejiang
Province
Address: 33 Huan Cheng Xi Street, Xi Hu district, Hangzhou 311722

D1.5 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 authority keeps the payment document.

D1.6 Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the responding companies applied for, accrued, or received benefits under this program during the POI.

D1.7 Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

Any enterprise is free to apply for this program by submitting an Innovation Pilot Enterprise Scheme of Zhejiang Province Application Form (see pages 7 to 9 of the *Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises*) along with the requisite supporting documentation including an expert evaluation report prepared on the basis of an on-site inspection.

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

Any enterprise may apply for benefits under this program. Application is made by way of an Innovation Pilot Enterprise Scheme of Zhejiang Province Application Form which will be preliminarily assessed by the municipal Science and Technology Bureau, Economic and Trade Commissions, Finance Bureau, State Property Management Commission, Financial Affairs Office, Quality and Technology Supervision Bureau, and General Trade Union.

The application will then be submitted to the provincial Science and Technology Department to assess and evaluate the proposed projects for capability, input, performance and potential of innovation. This assessment will be made jointly with the departments mentioned above as well as relevant experts. This is the final stage of assessment after which successful pilot projects will be announced.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the application is approved, it means that the applicant has satisfied the relevant eligibility criteria.

There are no specific approval documents.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the application is denied it is because the applicant did not satisfy the relevant eligibility criteria.

There are no specific disapproval documents.

D1.8 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.

This program is not contingent on export performance.

(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.

This program is not contingent on the use of domestic over imported goods.

(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.

This program is available to enterprises operating in Zhejiang Province.

(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.

Eligibility for this program is not limited to particular enterprises or industries or groups thereof, rather it is focussed on the innovation capacity of enterprises across the industrial spectrum and is available to a wide range of enterprises including those engaged in agriculture, marketing, productive, manufacture and research and development institutes.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is assessed under the *Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises* and is based on the expenditure of the enterprise on technological development, equipment and staff training.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

Applicants that meet the eligibility criteria can obtain grant of funds, no further steps are required. Eligibility and the resulting benefit is based purely on whether or not the

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applicant has satisfied the eligibility criteria.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

If the applicant meets the eligibility criteria discussed above the applicant will receive the benefit.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not record such data and as such is unable to respond to this question.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

D1.13 How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

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This information is not available. Please see above response to D1.10.

- D1.14** 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 GOC does not anticipate any changes to the program at this time.

16 PROGRAM 16: SPECIAL SUPPORT FOR NON STATE-OWNED ENTERPRISES

The GOC is not aware of the existence of this program and with the limited information provided is unable to distinguish its features and therefore cannot provide response to question in regard to this "program".

17 PROGRAM 17: VENTURE INVESTMENT FUND OF HI-TECH INDUSTRY

Venture Investment Fund of Hi-Tech Industry of Chongqing.

D1.1 Provide details of the program including the following.

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

To encourage the development of high and new technology industry in Chongqing.

(b) Legislation under which the subsidy is granted.

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

(c) Nature or form of the subsidy.

Grant

(d) When the program was established.

31 March 2005.

(e) Duration of the program.

2005 to the present.

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

The Venture Investment Co., Ltd is responsible for the general investment decisions of the fund, including the amounts and other related matters.
Venture Investment Co., Ltd. collaborates with the Innovation Service Centre of the Hi-tech Zone and the City Development Investment Co., Ltd.

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

High-tech programs of the venture investment fund must be located in the High-Tech Zone or the High-Tech Park of the new Northern District. In addition, the program

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must meet the following conditions:

- (a) have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority);
- (b) the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone;
- (c) the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities;
- (d) the enterprise must have good legal standing; and
- (e) the total investment must be RMB100 million or more.

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

Please see Response to D1.1 (g).

- D1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing Attachment 125

- D1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

- D1.4** Identify the GOC department or agency administering the program.

Authority: Chongqing Municipal Government
Address: 232 Renmin Road, Yuzhong District, Chongqing 400025

- D1.5** 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.

NON-CONFIDENTIAL-FOR PUBLIC FILE

180

NON-CONFIDENTIAL-FOR PUBLIC FILE

The local authority maintains the payment document.

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011.

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of respondents applied for, accrued, or received benefits under the program during the POI.

- D1.7** Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

Prior to submitting an application a proposed venture investment fund project must be registered or approved by the relevant authorities. Following registration the department responsible for undertaking the project then applies to Venture Investment Co., Ltd., or may be recommended to Venture Investment Co., Ltd by the project supervision department.

There is no standard application form for this program.

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

Venture Investment Co. Ltd. will conduct a preliminary examination of the project and then entrust it to an expert panel for a feasibility study of the investment.

If the project is approved by the experts, Venture Investment Co. Ltd. makes an investment proposal for approval in a joint meeting organised by the city government and includes representatives from the Municipal Development and Reform Committee, Municipal Science and Technology Committee, Municipal Economic Committee, Municipal Finance Bureau, Municipal Industry Information Bureau, Municipal State Asset Committee, Management Committee of the New Northern District, Management Committee of the High-tech Zone and the City Development Investment Co., Ltd. The joint meeting assesses the investment proposal and makes a final determination as to approval.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the application is approved, it means that the applicant has satisfied the relevant eligibility criteria.

There are no specific approval documents.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the application is denied it is because the applicant did not satisfy the relevant eligibility criteria.

There are no specific disapproval documents.

D1.8 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.

This program is not contingent on export performance.

(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.

This program is not contingent on the use of domestic over imported goods.

(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.

This program is available to enterprises located in Chongqing.

(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.

Eligibility for this program is not limited to any particular enterprise, group of

enterprises or to any industry or group of industries.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws which provide that the venture investment fund is capped at 30% of the total project investment and 50% of the total project capital.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, the applicant will generally receive a benefit.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit provided is exclusively determined by established criteria found in the law.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program. Pursuant to Article 21 of the *Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing* Venture Investment Co., Ltd. is charged with regularly evaluating, analysing and reporting on the project.

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Chapter 5 of the Circular details the project and financial reporting requirements of the successful enterprises.

- D1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not record such data and as such is unable to respond to this question.

- D1.11** 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

- D1.12** How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

- D1.13** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

- D1.14** 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?

No change to this program is expected.

18 PROGRAM 18: GRANTS FOR ENCOURAGING THE ESTABLISHMENT OF HEADQUARTERS AND REGIONAL HEADQUARTERS WITH FOREIGN INVESTMENT

D1.1 Provide details of the program including the following.

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

Increasing global market access to the outside, improving the investment environment and promoting economic development.

(b) Legislation under which the subsidy is granted.

Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters Attachment 126

(c) Nature or form of the subsidy.

Grant and preferential tax treatment.

(d) When the program was established.

2006.

(e) Duration of the program.

2006 – 2010

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

This program is administered by the local commerce authority of Guangzhou. Specifically this program is one of accrediting Chinese offices of foreign owned enterprises as headquarters or regional headquarters. The Foreign Trade and Economic Cooperation Administrative Department of Guangzhou Municipality (FTEC) is responsible for such certification.

Such accreditation provides the enterprises with the opportunity to be paid a once off cash grant for Headquarters accreditation of RMB5 million or for Regional Headquarters RMB2 million. The program refers to other benefits however these are either not cash benefits or are benefits which would naturally or legally accrue from locating your Headquarters in Guangzhou.

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

This program benefits the enterprise itself as well as its management staff in the conduct of their business in China.

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

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

To qualify as "Headquarters" the facility must control all the operations and management of any enterprises it is invested in both in China and internationally. Only one enterprise Headquarters is permitted in the Guangzhou Municipality.

To qualify as "Regional Headquarters" the facility that control operations and management of some or all enterprises it is invested in within a certain area of China.

Headquarters or Regional headquarters may investment companies, management companies, research and development centres and production enterprises.

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters Attachment 126

D1.3. Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see above response to D1.2.

D1.4 Identify the GOC department or agency administering the program.

Authority: Bureau of Foreign Trade and Economic Cooperation of Guangzhou Municipality
Address: 10th Floor, International Trade Edifice, 158 Dongfeng West Road, Guangzhou, 510170

D1.5 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 authority maintains the record of payment document

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011.

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the responding companies applied, accrued, or received benefits under the program during the POI

- D1.7** Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

- (a) In order to apply for consideration under this program an enterprise must file with the Municipal FTEC Administrative Department the following materials:
- (1) an application letter signed by the enterprise's representative;
 - (2) the authorisation document on the establishment of the headquarters or regional headquarters, signed by the parent company's representative;
copies of the approval certificate, business license and capital verification report of the enterprise;
 - (3) the credit standing certificate, copy of the registration document, and certificate of the parent company's representative;
 - (4) a list of the enterprises approving the management and services of the headquarters or regional headquarters (accompanied by the enterprise approval certificate, and photocopies of the business license and capital verification report);
 - (5) the authorisation document provided by the parent company to the headquarters or regional headquarters representative, and the identity certificate of said representative;

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- (6) any other materials as prescribed from time to time in relevant laws, rules and regulations.
- (b) For newly established companies applying for accreditation the following additional material are required:
 - (1) the articles of association and feasibility research report for the enterprise;
 - (2) a copy of the certificate of lawfulness of the source of company site;
 - (3) the parent company's 3 most recent years balance sheets;
 - (4) a list of the members of the parent company's board of directors; and
 - (5) any other materials as prescribed from time to time in relevant laws, rules and regulations.

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

There is no standard form of application required, rather the legislative instruments stipulate that an application letter signed by the enterprise's legal representative complete with supporting documentation will constitute an application.

Upon receipt of an application the Municipal FTEC Administrative Department will, within 15 working days, assess the application for accreditation. If the enterprise satisfies the relevant criteria the accreditation must be approved and an accreditation certificate issued to the applicant enterprise.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the application is approved, it means that the applicant has satisfied the relevant eligibility criteria.

There are no specific approval documents.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the application is denied it is because the applicant did not satisfy the relevant eligibility criteria.

There are no specific disapproval documents.

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D1.8 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.

This program is not contingent on export performance.

(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.

This program is not contingent on the use of domestic over imported goods.

(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.

This program is available to enterprises or industries whose headquarters or regional headquarters are located within the Municipality of Guangzhou.

(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.

Eligibility for this program is not limited to any particular enterprise, group of enterprises or to any industry or group of industries.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2.

NON-CONFIDENTIAL-FOR PUBLIC FILE

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, the applicant will generally receive a benefit.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

The amount of the benefit granted is determined exclusively by established criteria found in the applicable law.

(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.).

There are no contractual agreements between the Government of China and companies benefiting from this program.

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not record such data and as such is unable to respond to this question.

D1.11 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

D1.12 How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

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- D1.13** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

- D1.14** 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 GOC advises that this named program has ended.

19 PROGRAM 19: GRANT FOR KEY ENTERPRISES IN EQUIPMENT MANUFACTURING INDUSTRY OF ZHONGSHAN

D1.1 Provide details of the program including the following.

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

Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

(b) Legislation under which the subsidy is granted.

Notice of Issuing Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan, Zhongfu (2005) No.127 Attachment B19.
Customs is advised that this is not "legislation" in the sense which may be understood in an Australian context. It is a local administrative instrument only.

(c) Nature or form of the subsidy.

Grant.

(d) When the program was established.

25 July 2005

(e) Duration of the program.

25 July 2005 to present

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

This program is administered in accordance with the *Notice of Issuing Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan*, Zhongfu (2005) No.127, by the local economic and trade office, by the Municipal Economic and Trade Bureau ("METB") and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City ("MLG").
The local economic and trade office reviews the applications at the initial stage. The METB then coordinates an expert panel to review the applications, which then reports to the MLG. The MLG makes the final determinations.

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

This program is available to the key enterprises in the equipment manufacturing industry of Zhongshan.

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

In order to be eligible to receive the grant an applicant must meet the following criteria:

- (1) the enterprise must be established, registered, and carrying out business in Zhongshan City;
- (2) the enterprise's primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies;
- (3) the enterprise must have assets over RMB30 million, annual sales income of over RMB50 million and annual paid-in tax of over RMB3 million or, alternatively, the enterprise's main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development;
- (4) the enterprise must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation; and
- (5) the enterprise must be of good credit standing.

D1.2 Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

Notice of Issuing Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan, Zhongfu (2005) No. 127 is provided at **Attachment B19**

D1.3. Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

Please see response to D1.2

D1.4 Identify the GOC department or agency administering the program.

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Authority:	The Zhongshan Economic and Trade Bureau
Mailing address:	1 Dongsongyuan Road, Zhongshan City, Guangdong 528478

- D1.5** 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 authority keeps payment document

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2001 to 30 June 2011.

Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

None of the respondents had applied for, accrued, or received benefits under the program during POI.

- D1.7** Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

The enterprise applying for the municipal key enterprise of equipment manufacturing industry should submit an application form (Page 4-6 of **Attachment B19**) and other supporting documents.

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

The enterprise meeting the application requirements can make its application to the economic and trade office of the relevant town or district. After making primary review and comments, the economic and trade office of town will submit it to the Municipal Economic and Trade Bureau. After organizing the expert group to make review, the Municipal Economic and Trade Bureau will reported to Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City for determination.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

If the application is approved, it means that the applicant has satisfied the relevant eligibility criteria.

There are no specific approval documents.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

If the application is denied it is because the applicant did not satisfy the relevant eligibility criteria.

There are no specific disapproval documents.

D1.8 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.

This program is not contingent on export performance.

(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.

This program is not contingent on the use of domestic over imported goods.

(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.

This program is available to enterprises operating Zhongshan City that meeting the application requirements.

(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 enterprise applying for this program shall be the enterprise of equipment

manufacturing industry.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

The size of the benefit is determined by direct reference to the relevant regulations and laws.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

Please see above response to D1.2, no further legal instruments govern the application of this program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

Please refer to response to the question D1.9(a) above.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

Please refer to response to the question D1.9(a) 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.).

There are no contractual agreements between the Government of China and companies benefiting from this program

D1.10 Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

The GOC does not keep such data.

- D1.11** 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 July 2007 to 30 June 2011.

This information is not available. Please see above response to D1.10.

- D1.12** How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

This information is not available. Please see above response to D1.10.

- D1.13** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

This information is not available. Please see above response to D1.10.

- D1.14** 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 GOC does not anticipate any changes to the program at this time.

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

20 PROGRAM 20: HOT ROLLED STEEL PROVIDED BY GOVERNMENT AT LESS THAN FAIR VALUE

There is no such program. GOC reserves rights to further comment and clarify on this "program".

D1.1 Provide details of the program including the following.

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

There is no such program. GOC reserves rights to further comment and clarify on this "program".

(b) Legislation under which the subsidy is granted.

There is no subsidy granted and no legislation relevant thereto.

(c) Nature or form of the subsidy.

There is no subsidy granted and no legislation relevant thereto.

(d) When the program was established.

There is no such program.

(e) Duration of the program.

There is no such program.

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

There is no such program.

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

There is no such program.

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

There is no such program.

- D1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period.

There are no decrees, laws or regulations relating to any such program as no program can be identified.

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 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 principle of commercial contract, 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, among others.

- D1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

There is no such program.

- D1.4** Identify the GOC department or agency administering the program.

There is no such program.

- D1.5** 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.

There is no such program.

- D1.6** Indicate which of the companies listed in your response to Question B3 applied for, accrued, or received benefits under the program for the following periods: 1 July 2010 to 30 June 2011

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Provide, on an annual basis by calendar year (separating July – Dec 2001 and January – June 2011) the amount(s) and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the program.

There is no such program

D1.7 Answer the following questions regarding the application process:

(a) Describe the application process (including any application fees charged by the government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

There is no such program.

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

There is no such program.

(c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

There is no such program.

(d) If the application is not approved, provide the disapproval documents together with the reasons for disapproval.

There is no such program.

D1.8 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.

There is no such program.

(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.

There is no such program.

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200

(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.

There is no such program.

(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.

There is no such program.

D1.9 Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

(a) Describe the criteria governing the size of the benefit provided.

There is no such program.

(b) Provide a copy of any law, regulation or other official document detailing these criteria.

There is no such program.

(c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the government agency or authority that administers the program?

There is no such program.

(d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the government agency or authority that administers the program determine the benefit amount?

There is no such program.

(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.).

There is no such program.

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- D1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years from 1 July 2007 to 30 June 2011.

There is no such program.

- D1.11** 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 July 2007 to 30 June 2011.

There is no such program.

- D1.12** How many companies have applied for benefits under this program in the year the financial assistance or benefit was approved and in each of year from 1 July 2007 to 30 June 2011?

There is no such program.

- D1.13** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years from 1 July 2007 to 30 June 2011? Provide the main reasons why applicants have been rejected.

There is no such program.

- D1.14** 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 such program.

ANY OTHER PROGRAM NOT PREVIOUSLY ADDRESSED

If the GOC, any of its agencies, or any other authorised non-governmental body provides any other assistance programs not previously addressed (including market development assistance programs or any domestic support programs related to the manufacture of subject goods) to manufacturers of HSS in China, identify these program(s).

Such assistance programs are those that constitute a subsidy as defined in the Glossary of Terms.

Please provide the information requested in the following Section D-1 for each program identified above and any additional programs you have identified. In addition, please respond to the program-specific information requested in Section I-2.

PART D2 – ENTERPRISES WITH STATE INVESTMENT

General questions

D2.1 It is Customs and Border Protection's understanding that GOC groups SOEs in China into the following categories:

- 'enterprises with state investment'
- 'state-owned assets'
- 'state-invested enterprises'
- 'enterprises under the supervision of SASAC'

Customs and Border Protection has also observed that SOEs in China categorised as:

- wholly state-owned enterprise
- wholly state-owned company
- majority holding company
- minority state-holding company

(a) Confirm whether these categories and definitions are still in use. If not, provide an explanation of the current definitions and structure of SOEs in China.

According to Article 5 of the *Law of the People's Republic of China on State-Owned Assets in Enterprises* ("*Law on State-Owned Assets*", **Attachment 128**) an "SOE" in China can be categorised as:

- (a) a wholly state-owned enterprise,
- (b) a wholly state-owned company,
- (c) a majority state-holding company, and
- (d) a minority state-holding company.

"State-owned assets" is not a category of "SOEs". However, it is a concept in the *Law on State-Owned Assets*, which refers to "the rights and interests formed by the various forms of investment of the State in enterprises" (see Article 2).

"Enterprises with State investment" and "State-invested enterprises" are the same concept expressed in different ways (see Articles 4 and 5).

"Enterprises under the supervision of SASAC" is not a separate category of "SOEs". This refers to the "SOEs" for which SASAC directly performs the contributor's functions on the behalf of the State Council (see Article 11).

In this Government Questionnaire response the GOC will use the more correct description of "State-invested enterprises" to describe all four categories of SOEs.

(b) For each category of SOE, provide an explanation of the characteristics of these types of SOEs, including level of government ownership, influence and control.

The four categories of State-invested enterprises are governed and regulated by different laws.

Wholly state-owned enterprises are established and operate in accordance with the *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People*.

Attachment 15

The other three categories of State-invested enterprises are established and operate in accordance with the *Company Law Attachment 12*.

The main difference among the three categories of State-invested enterprises lies in the different levels shareholdings or interests owned by the State. Specifically, in a wholly state-owned company, all the shares and associated rights and interests belong to the State; in a majority state-holding company, the state-owned capital takes a controlling position; and for a minority state-holding company, the State holds shares but the state-owned capital does not have a controlling position.

The institutions performing the contributor's functions must perform these functions for the state-invested enterprises only in its capacity as a capital contributor of that enterprise. (see Articles 4 and 6).

(c) Explain the differences between each category of SOE.

Please refer to the response above to (a) and (b).

D2.2 Is there any legislation, guidelines, decrees, circulars, directives or other government-issued documents concerning the GOC's role or involvement with respect to SOEs. Provide copies of these documents.

Please refer to the response to D2.6-20.

D2.3 Provide all relevant legislation, guidelines, decrees, circulars, directives or other government-issued documents which provide for the existence, guidance, or administration of SOEs involved in the steel industry.

There are no documents which specifically provide for the existence, guidance, or administration of State-invested enterprises involved in the steel industry.

D2.4 Explain how relevant GOC laws, policies, opinions, guidelines, etc. are communicated to SOEs.

Provide an explanation of repercussions or penalties (if any) for an SOE if they do not adhere to the GOC's laws, policies, opinions, guidelines etc.

As a WTO member, the GOC publishes all laws, policies, opinions, guidelines, and makes them available to the public. Article 5.2 of the *Administrative Permission Law of the PRC* **Attachment 129** provides that no legal document may be taken as the basis for specific administrative permission except for those that are publicly available.

GOC laws, policies, opinions, guidelines, etc. are communicated to the public by the following means, amongst other means:

- (a) Government publications, such as the government gazette, official newspaper issued by government agencies entrusted to publish legal documents, and collections of legal documents edited by government agencies; and
- (b) Official websites.

As a member of the public, State-invested enterprises can receive the relevant laws, policies, opinions, guidelines, etc in the same manner.

D2.5 What advantages, if any, do SOEs enjoy compared with private (non-state) enterprises in the steel sector in China (e.g. reduced income tax rates, easier access to capital, different reporting requirements, etc).

Since the beginning of the 1990s, the GOC has modelled its law-making process in the light of the demands of its developing market economy. Laws and regulations have been enacted for that purpose step by step. These laws and regulations are enacted to assure a market environment of fair competition for all commercial entities, regardless of their ownership structures, rather than provide preferential treatment for any specific category of companies.

The GOC does not consider that State-invested enterprises in the steel sector in China enjoy any advantages compared with non-State-invested enterprises. In fact the GOC has been concerned to encourage and support non-State-invested enterprises.

The Law on State-Owned Assets

The following questions relate generally to the *Law on State-Owned Assets*.

Several questions relate specifically to certain Articles within the *Law on State-Owned Assets*.

In answering the following questions, if additional GOC regulations, policies, guidelines or other government-issued documents (as requested in D2.6(c) and(d) below) relate to the Articles in question, please indicate this in your response.

- D2.6** (a) Confirm whether this law is current and has not been superseded or supplemented by other laws.

This law is currently effective and has not been superseded or supplemented by other laws.

- (b) Provide any regulations, policies, guidelines or other government-issued documents which implement or relate to this law as well as any supplementary or superseding laws identified above.

The GOC suggests that this question is too broad.

State-owned assets may take tangible and intangible form, they may also be dealt with in transaction in goods, shareholder rights, securities, land, among others. To facilitate a better and easier understanding of applicable Chinese law, the GOC has provided the *Property Law Attachment 130*, the *Company Law* and the *Security Law Attachment 131*

Furthermore, about 78.6% of HSS manufacturers are private, foreign (plus those by HK, Macau and Taiwan) or collectively owned, and only about 13% of them have a majority state-holding. The GOC does not consider this question to be closely relevant to the current investigation.

- (c) Provide any supplementary material (e.g. explanatory documents or secondary material) that relates to the law, as well as any such material relating to any supplementary or superseding law.

Please refer to the response to (b) above.

- D2.7** In answering the following questions refer to Article 6 of the Law on State Owned Assets.

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(a) Explain the role of 'capital contributor' including the duties and responsibilities of the capital contributor.

"Capital contributor" is equivalent to the term "shareholder" of a company as used in the Company Law. Therefore, "capital contributor" is a legal notion that indicates the shareholding body comprising the State.

As such, the power of a "capital contributor" varies depending upon its degree of shareholding in a company. A capital contributor does not enjoy more rights than a normal shareholder.

On the other hand, the State as a "capital contributor" must not carry its administrative and public function when performing its contributor's function, and is prohibited from interfering with the normal business operation of the State-invested enterprise concerned.

According to Article 6 of the *Law on State Owned Assets*, the contributor's function must be carried out:

...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.

The role of the capital contributor as separate from the State is further emphasized in Article 15, which requires the capital contributor to act in the interest of the business as a market participant:

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) Do national State-Owned Assets Supervision and Administration Commission and/or provincial or local equivalents perform the role of capital contributor on behalf of the State Council and local people's government? If this function or any other aspect of holding GOC ownership in SOEs, is performed by another or more than one entity, indicate the entity/entities that perform this role.

The State Council and local people's government perform the role of capital contributor respectively (see Article 4 of the *Law on State Owned Assets*). National State-Owned Assets Supervision and Administration Commission and/or the provincial or local equivalents perform the role of capital contributor on behalf of the State Council or local people's government respectively. The latter may also authorise

another agency to perform the contributor's function, when necessary.

(c) Explain the principle of separation of government functions from enterprise management and separation of public administrative functions and the responsibilities of State-owned assets contributors. Provide any regulations, policies, guidelines, circulars or other government issued documents relating to these principles.

The principle of separation of government functions from enterprise management requires the strict separation of government from the enterprise. The enterprises are to be the market participants. The principle of separation of public administrative functions and the responsibilities of state-owned assets contributors requires that the public administrative functions of government of each level be separated from the responsibilities of state-owned assets contributors of government of each level. Both of these principles of separation require GOC entities not to interfere with the normal business activities of enterprises.

(d) In performing the role of capital contributor, how does SASAC (or whatever GOC entity that performs this role) determine how it should act (e.g. directed by policy, regulations, guidelines from other GOC entities, etc)?

Please refer to the above responses under (a), (b) and (c).

The policies, regulations and guidelines issued by other GOC entities are communicated to the public through public channels. SASAC, when performing its shareholder's function, where it believes necessary, may encourage State-invested enterprises to pay attention to and comply with the regulations in order to protect the investors' interests (i.e. ensuring the safety of assets and profit-generating capacity etc.). Again, SASAC can only do so to the extent of its right according to the level of shareholding and within the limit of performing the enterprise management role, as separated from its governmental capacities and functions.

D2.8 In answering the following questions refer to Article 8 of the Law on State Owned Assets.

(a) Provide a detailed explanation of the "system for the administration and supervision of State-owned assets".

The "system for the administration and supervision of State-owned assets" refers to a system designed to ensure and achieve safety and efficient operation of state-owned assets, for which the *Law on State-Owned Assets* is the institutional basis. The State-Owned Assets Supervision and Administration Commission of each level is the main

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body of implementation.

(b) Explain the ways in which this system of administration "accommodates the requirements of the development of the socialist market economy".

Explain what are the requirements of the development of the socialist market economy and how these requirements are communicated to SOEs?

The way that the system of administration and supervision "accommodates the requirements of the development of the socialist market economy" is a dynamic process.

Specifically, this requires deepening the market economy reform by establishing the system for the administration and supervision of State-owned assets. This must ensure the independent business management of the enterprises concerned; strict separation of government bodies and enterprises; separation of the administrative functions of public affairs and the functions of the state-owned assets contributor. On the other hand, the system also requires the capital contributor to supervise the safety of State assets while requesting the enterprises with State investment to be responsible for their own profit and loss.

The development of the socialist market economy itself is a dynamic and complicated process. Therefore, its "requirements of development" are also changing as time passes.

(c) Provide an explanation of the assessment system referred to in this Article.

Evaluation and/or measurement of performance of management of assets is an important and difficult aspect of any assets management, including that of State-owned assets. To show how this difficult and challenging task is dealt with, the GOC provides the *Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises Attachment 132*

D2.9 Provide details of the "specific measures" of the State Council to which Article 9 refers.

Provide copies of any documents containing specific measures of the State Council that relate to SOEs in the steel sector.

There are no specific measures of the State Council that relate to State-invested enterprises in the steel sector, in the sense of being targeted at or specifically related

NON-CONFIDENTIAL-FOR PUBLIC FILE

to that sector.

D2.10 In answering the following questions refer to Article 12 of the Law on State Owned Assets.

(a) Do the capital contributor's rights differ in anyway from those of an ordinary (non-state) share-holder with comparable share-holdings?

No.

(b) Provide an explanation of what are the "major matters" that must be submitted to the people's government for approval.

"Major matters" may include changes of ownership or transfer of assets which result in changing the State-invested enterprise concerned into a non State-invested enterprise.

"Major matters" include: actions which will result in a substantial change of State shareholding in a wholly State owned enterprise, because of a merger, dissolution, bankruptcy or restructuring and actions which will result in a loss of a controlling position over a enterprise with a majority state-holding. These are listed under law as follows:

- (a) "...merger, splitting, dissolution or petition for bankruptcy of an important wholly state-owned enterprise, wholly state-owned company or majority state-holding companies" (see Article 34);
- (b) "...restructuring of an important wholly state-owned enterprise, wholly state-owned company or majority state-holding company" (see Article 40).
- (c) "...transfer of whole state-owned assets or transfer of partial state-owned assets which will cause the state to lose the controlling position over the enterprise" (see Article 53).

D2.11 In answering the following questions refer to Article 13 of the Law on State Owned Assets.

(a) Explain the role of the shareholder representative.

As stated before, the institutions performing contributors' functions are "shareholders" in the normal sense. As an institution (non-natural person) it cannot attend 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.

(b) Who selects and/or approves the shareholders representative (include the criteria for selection of the shareholders representative)?

As clearly stipulated by this provision and by the *Company Law*, the shareholder selects its shareholders representative.

(c) Indicate whether the shareholders representative is an employee or otherwise affiliated with SASAC or has any other affiliation with the GOC and explain the nature of this affiliation.

A shareholders representative may be:

- (a) an employee of SASAC, or of its local equivalent;
- (b) an independent expert or professional person/s;
- (c) a person within the senior management of another State-invested enterprise.

This is a non-exclusive list.

(c) How much influence does the shareholder representative have in the SOE management and operational decisions? Is this influence commensurate with the State's share holding?

A shareholder's influence for any company is commensurate with its shareholding or the right to cast votes, regardless of whether the shareholder is the State or a private party.

(d) When exercising the rights as the shareholder representative, what considerations does the shareholder representative take into account?

Please refer to the response to D2.8(c). Financial performance and corporate governance performance will be taken into account.

(e) Is the shareholder representative bound by the interests of the GOC? If so, provided an explanation of how these interests are communicated to the shareholder representative.

A shareholder representative is similar to those representing other shareholders, as

governed by the company law and by contract law (principal-agent contract). The interests of the GOC in State-invested enterprises have been laid down in the *Law on State-owned Assets*, namely to have the State-owned assets value maintained and appreciated. These are commercial interests. They are well known to the representatives.

D2.12 In answering the following question refer to Article 15 of the Law on State Owned Assets.

(a) In accepting "the supervision and assessment by the corresponding people's government" is the agency performing the capital contributor's role, instructed by any other part of the GOC to exercise its ownership rights in any particular manner? Does the agency take into account GOC policies, directives, circulars or any other such GOC issued documents, when exercising these rights?

Both the SASAC, its local equivalents, and any other "agencies performing the capital contributor's role" are obliged to exercise their ownership rights in a manner as instructed or provided by the law, instead of by any part of the GOC. No other parts of the GOC have any authority to intervene other than in the manner as instructed by the law.

SASAC and agencies can be expected to take into account GOC policies, directives, circulars and other GOC-issued documents, when exercising these rights, in the same way as any other shareholder would consider them. Investors will always take into account commercial, legal, political ("sovereign") and social risks in managing their investments. In the cases of SASAC or agency representatives, simply taking a policy into account is not untoward, especially where the law is clear as to the primary or ruling considerations to be considered in asset management.

D2.13 In answering the following questions refer to Article 17 of the Law on State Owned Assets.

(a) Provide examples of the social responsibilities a SOE may assume.

The social responsibilities of a State-invested enterprise include:

- (a) compliance with law, generally and strictly;
- (b) operating the business in an environmentally friendly manner;
- (c) accord with workplace and production safety rules;
- (d) participate in charitable affairs, etc.

The GOC observes that social responsibility is an important aspect of modern day

corporate culture, across all jurisdictions, whether State-invested or not.

(b) Provide an explanation of the administration and supervision by government and relevant governmental departments and agencies referred to in this Article.

This is a reflection of a similar provision in the context of China's Company Law (at Article 5 paragraph 1), which reads:

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

This is stated under the qualification of paragraph 2 of the same Article, which is as follows:

"The legitimate rights and interests of a company shall be protected by law and may not be trespassed."

"[S]upervision of the government and general public" applies to all enterprises in China. It is entirely unrelated to carrying out government functions.

The law describes a situation which is no different in concept from that which applies in any regulated economy. For example, in Australia the operation of companies takes place under the supervision of ASIC, in its exercise of powers and duties under the *Corporations Act*. Other government agencies also have monitoring, supervision, and enforcement powers (such as the Australian Taxation Office and the Australian Competition and Consumer Commission).

(c) Provide an explanation of 'public supervision' of SOEs and provide examples.

Please refer to response to the response to sub-paragraph (b) above.

(d) Explain how the administration and supervision of SOEs differs from non-state invested enterprises.

There is no substantial difference. Please refer to response to the sub-question (b) above.

D2.14 In answering the following questions refer to Article 19 of the Law on State Owned Assets.

(a) For each type of SOE (as outlined in your response to question **D2.1**) provide a detailed explanation of the role and functions of a Board of Supervisors, including involvement in the decision making processes or operational decisions of SOEs.

The role and functions of a Board of Supervisors do not differ among the different types of State-invested enterprises. Nor do they differ as between State-invested enterprises and non State-invested enterprises.

The function of a Board of Supervisors in any type of company is in the nature of scrutiny and supervision. Boards of Supervisors generally are not allowed nor authorised to become involved in the business decision making processes or operational decisions of the companies to which they are appointed.

A summary of the functions of Boards of Supervisors is stated under Article 54 of the *Company Law* as follows:

The board of supervisors or supervisor of a company with no board of supervisors may exercise the following powers:

- (1) *To check the financial affairs of the company;*
- (2) *To supervise the duty-related acts of the directors and senior managers, to put forward proposals on the removal of any director or senior manager who violates any law, administrative regulation, the bylaw or any resolution of the shareholders' meeting;*
- (3) *To demand any director or senior manager to make corrections if his act has injured the interests of the company;*
- (4) *To propose to call interim shareholders' meetings, to call and preside over shareholders' meetings when the board of directors does not exercise the function of calling and presiding over shareholders' meetings as prescribed in this Law;*
- (5) *To put forward proposals at shareholders' meetings;*
- (6) *To initiate actions against directors or senior managers according to Article 152 of this Law; and*
- (7) *Other duties as provided for by the bylaw.*

(b) For each type of SOE (as outlined in your response to question **D2.1**) provide an explanation as to how each Board of Supervisors is appointed.

Not all State-invested enterprises have Boards of Supervisors. According to Article 19, only wholly State-owned enterprises need to have a Board of Supervisors

appointed by the agency performing the contributor's function.

For all other types of State-invested enterprises - ie. majority State-holding and minority State-holding enterprises, the appointment of a Board of Supervisors may take place, and if it does then it happens in the same manner as for non State-invested enterprises according to the general rules under the *Company Law*.

Under Article 52 of the *Company Law*:

"A limited liability company may set up a board of supervisors, which shall be composed of at least 3 persons ... The board of supervisors shall include shareholders' representatives and representatives of the employees of the company..."

(c) Explain how the role of the Board of Supervisors differs to the role of the shareholder representative appointed by the agency performing capital contributor's duties and responsibilities (refer to Article 13).

As provided in the *Company Law*, a shareholder's representative appointed by the agency performing the capital contributor's function is to perform the rights of shareholder, and to realise the maintenance and appreciation of the assets of the company in the interests of the shareholder it represents. These functions are exercised through shareholder's meeting.

On the other hand, a Board of Supervisors is established to monitor senior management in the performance of their company duties from technical, financial and legal perspectives. Please refer to above response to question 2.14(a) for the role of Boards of Supervisors.

The "Board of Supervisors" is a company law notion and does not convey different duties and responsibilities for State-invested enterprises as compared to non State-invested enterprises.

(d) Explain the distinction between a 'Board of Supervisors' and a 'Supervisory Panel'.

They are the same thing. This is merely a result of inconsistent translation.

(e) What supervision, guidance or direction does SASAC (or other similar GOC entity) have over these Supervisory Boards or Panels?

As we explained above, not all State-invested enterprises have their Boards of Supervisors appointed by SASAC or by any other body performing the capital contributor's function. Where applicable, SASAC supervises, guides and directs the

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Board of Supervisors according to the Company Law, the Law of State-owned Assets in Enterprise, and other relevant laws or regulations.

(f) Describe the contact if any between SASAC (or other similar GOC entity) and these Supervisory Boards or Panels.

Please refer to the GOC's response to question D2.14(e) above.

(g) Are members of Chinese SOE's Board of Supervisors or Supervisory Panels, GOC officials, or in any way affiliated with the GOC? Provide details.

This varies. Members of Board of Supervisors appointed to State-invested enterprises may or may not be GOC officials or former officials.

D2.15 In answering the following question refer to Article 21 of the Law on State Owned Assets.

(a) Are the capital contributor rights commensurate with that of an ordinary (non-state) share-holder? If the capital contributor enjoys additional privileges, influence or rights provide details.

A capital contributor's rights are commensurate with that of an ordinary shareholder, except for wholly owned State enterprises for which there are some special provisions in the *Company Law*.

Please refer to the GOC's response to question D2.11.

D2.16 In answering the following questions refer to Article 22 of the Law on State Owned Assets.

(a) Describe the criteria the agency performing capital contributor's duties and responsibilities uses to appoint or remove or suggest the appointment or removal of the various employees noted in Article 22.

Article 22 confirms that the capital contributor has the same rights as an ordinary shareholder, in that the agency performing the capital contributor's function can appoint and remove the senior executives and directors of an enterprise in which it has a 100% shareholding (ie wholly State-owned enterprises). The agency performing the contributor's function can also nominate director and supervisor candidates to the shareholder's meeting of a company which has State investment but is not wholly State-owned.

The *Company Law* specifies criteria for a shareholder to appoint or remove, or to

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propose the appointment or removal, of company personnel such as a member of the board of directors, a member of the board of supervisors, or a member of senior management.

Further, Article 23 of the *Law on State Owned Assets* states:

Any of the directors, supervisors and senior managers appointed or proposed for appointment by a body performing the contributor's functions shall meet the following requirements:

- (1) *Having good moral character;*
- (2) *Having the expertise and working capability as required by the position;*
- (3) *Being in a health condition enabling him to normally perform his duties; and*
- (4) *Meeting other requirements of laws and administrative regulations.*

(b) Does the GOC provide any directives, requirements or guidance on the selection of the various employees noted in Article 22. Provide any documents that contain these directives, requirements or guidance.

Please refer to the GOC's response to question D2.16(a) above.

D2.17 In answering the following question refer to Article 24 of the Law on State Owned Assets.

(a) Detail the criteria used to determine if a candidate for the position of director, inspector or senior personnel passes the inspection.

Please refer to the GOC's response to question D2.16(a) above.

D2.18 In answering the following questions refer to Article 27 of the Law on State Owned Assets.

(a) Provide an explanation of the systems that exist for assessing the performance of administrators of SOEs.

Management performance of administrators of State-invested enterprises will be evaluated against the requirements of:

- (a) maintaining and increasing State-owned asset value;
- (b) maximising shareholder interests, and
- (c) sustainable development.

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(b) What actions can be taken if SOE administrators are not performing to the required standard?

Business performance indicators serve as an important criteria for making decisions on setting remuneration, and on proposals for the appointment or removal of administrators of State-invested enterprises.

D2.19 In answering the following questions refer to Article 34 of the Law on State Owned Assets.

(a) Are any of the SOEs in the steel sector in China, 'important' wholly State-invested enterprises, wholly State-invested companies or State-invested holding companies as decided by the State Council?

Yes. Those in the steel sector where SASAC has the role of capital contributor are normally considered to be "important".

(b) Provided a detailed explanation of the matters important State-invested enterprises, wholly State-invested companies or State-invested holding companies must report to the corresponding people's government.

Please refer to the GOC's response to question D2.19(c) below.

Other matters that would need to be reported to the corresponding people's government include State-owned assets being sealed up, frozen, seized, or otherwise detained, and the occurrence of a serious accident relating to safety or product liability.

(c) Provided a detailed explanation of the matters that important State-invested enterprises, wholly State-invested companies or State-invested holding companies must receive approval for from the corresponding people's government.

Matters that must receive approval from the corresponding people's government, for some types of State-invested enterprises, include merger, separation, dissolution and bankruptcy, and transfer of State-owned shares whereby the State would lose its controlling shareholding status.

D2.20 Provide an explanation of the relationship between the agency performing capital contributors duties and responsibility and the State Council (including what role the State Council has in the administration, policy-setting, review and assessment of this agency), as outlined in Article 64 of the Law on State-Owned Assets.

The agency performing the capital contributor's function reports directly to the State Council. The State Council supervises the agency in terms of the legality and effectiveness of its performance according to the law.

The State-owned Assets Supervision and Administration Commission (SASAC)

D2.21 The following questions relate to the role, purpose, and operations of SASAC (and its equivalents at the national, provincial and local levels), which Customs and Border Protections understands has responsibility for the supervision and administration of all SOEs in China, at a national, provincial and local government level.

Please confirm whether this is still the case, and indicate if any other GOC entity has a role with respect to SOEs.

If any other GOC entity plays such a role, provide a detailed explanation of this entity, and the role it plays with regard to SOEs and answer the following questions in relation to these entities as well.

(a) Provide all relevant legislation, guidelines, decrees, circulars, directives or other government-issued documents which provide for the existence and/or administration of SASAC.

The GOC considers this question to be too broad, and that it may well have already provided many documents which are relevant to this inquiry in its responses to some other questions. Therefore please refer to documents referred to in this section in relation to state-owned assets and the relevant *Company Law* and regulations.

The GOC will continue to cooperate with Australian Customs Service and Border Protection to provide further documents which may be necessary for making a fair determination in this investigation.

(b) Is SASAC instructed by the State Council or any other part of the GOC to exercise its ownership rights in any particular manner? Does it take into account GOC policies, directives, circulars or any other such GOC issued position, when exercising these rights?

Please see the relevant GOC responses to questions D2.6 to D2.20.

(c) How are SASAC's policies and activities developed or guided?

SASAC's policies and activities are developed or guided under the *Law of State*

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owned Assets in Enterprises, and other relevant laws and regulations.

(d) Does SASAC, or any affiliated agency or SASAC-administered board or panel, in any way influence, guide or direct the activities, structure or operations of SOEs (both when formally exercising its rights as the capital contributor/member of the Board of Shareholders, or at any other stage)? If so, describe the nature of this.

Please see the relevant GOC responses to questions D2.1 to D2.20.

(e) Does SASAC play a role in evaluating the performance of SOE's? Explain in detail what form any such evaluation takes and the outcome of this evaluation (e.g. can it result in dismissal of employees, change of business operations etc). Include what action is taken, if any, where the SOE makes a loss.

Please see the relevant GOC responses to questions D2.1 to D2.20.

(f) On SASAC's webpage⁴, it is stated that:

'SASAC guides and pushes forward the reform and restructuring of state-owned enterprises, advances the establishment of modern enterprise system in SOEs, improves corporate governance, and propels the strategic adjustment of the layout and structure of the state economy

(i) Has SASAC led any such 'reform and restructuring' of SOEs in the Chinese steel sector (including 'upstream' industries/sector) in the last 10 years? Provide details.

"Reform and restructuring" of State-invested enterprises has been and remains one of the long term policies of GOC. It is applicable to all State-invested enterprises in all sectors. SASAC has no reform or restructuring program specific to the steel sector.

(ii) What is meant by 'advances the establishment of modern enterprise system in SOEs' and has any such action for advancement been led by SASAC in the Chinese steel sector in the last 10 years? Provide details.

"[A]dvanc[ing] the establishment of modern enterprise system in SOEs" has been an important policy of the GOC, and is applicable to State-invested enterprises in all

⁴ <http://www.sasac.gov.cn/n2963340/index.html>

NON-CONFIDENTIAL-FOR PUBLIC FILE PUBLIC FILE

sectors. These words capture the policy whereby the GOC explores and formulates a set of enterprise systems fitting to the Chinese contemporary economy based on experiences and best practices by those in the developed economies around the world. This includes but is not limited to good corporate governance; reasonable incentives for management; and risk management and "check and balance" mechanisms.

SASAC has no reform or restructuring program specific to the steel sector.

(iii) Has SASAC taken any action to 'improve corporate governance' in the Chinese steel sector during the last 10 years. Provide details.

Please refer to the GOC's responses to questions (i) to (ii).

(iv) What is meant by 'propels the strategic adjustment of the layout and structure of the state economy' and has any such action to achieve this been undertaken by SASAC in the Chinese steel sector in the last 10 years?

Please see the GOC's responses to questions (i) to (ii). More specifically, this in many cases refers to privatisation reforms and to the withdrawal of State investment and asset ownership from most industrial sectors.

(f) SASAC's webpage states that SASAC 'undertakes other tasks assigned by the State Council'. Provide details of these 'other tasks'. Has any such 'other task', over the past 5 years, related to the Chinese steel industry? Provide details.

GOC does not have information regarding "other tasks" that would be relevant to this investigation.

D2.22 Describe the GOC's policy of 'zhengqi fenkai' (政企分开) that formally separates government functions from business operations and provide any related documents.

The principle of separation of government functions from enterprise management requests strict separation of government from the enterprise, to ensure that the enterprises themselves are the market players. The principle of separation of public administrative functions and the responsibilities of State-owned assets contributors requests that public administrative functions of government at any level be separated from the responsibilities of State-owned assets contributors of government at all

levels. Both of the two principles of "separation" request GOC entities not to interfere with the normal business activities of enterprises.

This was policy was first proposed and implemented mainly in the late 1980s and continued into the 1990s. After implementation of the policies explained in response to questions D2.21, the focus of State investment reform moved to "reform and restructuring"; "advanc[ing] the establishment of modern enterprise system"; and "improving corporate governance".

The *Company Law* and the *Law of Civil Servant* are two of the major legal documents in this regard.

- D2.23** Provide a detailed explanation of the functions and responsibilities of the National Development and Reform Commission (NDRC). In your answer, outline the relationship between NDRC and SASAC, also include the role (if any) NDRC has with respect to SOEs in China.

NDRC has nothing to do with supervision of State-owned assets, while SASAC is not allowed to intervene with industrial policy issues. Please refer to the GOC's response to question D2.7 (c).

For NDRC's functions and responsibilities, please also see the GOC's response to question C.1. NDRC does not have any functions and responsibilities solely and specifically with respect to State-invested enterprises in China.

NDRC and SASAC both serve the State Council within their own areas of authority. They perform their functions independently of each other and under different laws.

- D2.24** Outline the relationship between SASAC and the China Iron and Steel Association (CISA) including;

- (a) Whether SASAC in any way guides, directs or influences the policies, practices or standards of the CISA.

SASAC has no function or responsibility to guide, direct or influence the policies, practices or standards of CISA. For its part, CISA is an industrial organization of the iron and steel sectors, and does not itself have any government function.

Therefore, the relationship between SASAC and CISA has been of a government-to-business nature.

- (b) Provide any documents that contain any such guidance. Provide fully translated copies of these.

NON-CONFIDENTIAL-FOR PUBLIC FILE **PUBLIC FILE**

Not applicable

(c) Describe the nature and frequency of contact between SASAC and CISA.

Please refer to the GOC's response to question D2.24 (a) above. The GOC has no data in relation to the frequency of contact between SASAC and CISA, since the contact would be *ad hoc* and mostly informal in nature.

Core features of SOEs in the steel sector in China

D2.25 For each entity identified in your response to Question B3 and your response to Question B4 that is an SOE, answer the following questions regarding **ownership**.

- (a) Describe the legal structure of the enterprise showing the percentage of ownership by the GOC and other entities; the ownership of all entities including subsidiaries and parent companies, and the ownership of these entities (also indicate the functions and roles of each associated entity including whether they are involved in the production of HRS, HSS or any other steel product)

As stated earlier, the HSS and HRC sectors are huge, diversified and dynamic, with a low concentration ratio. Unfortunately the GOC has no systematic and comprehensive statistical data to respond to the level of detail required by this question.

However, based on some incomplete data (considered to be reliable), the GOC can at least advise the following:

- (a) there are about [CONFIDENTIAL TEXT DELETED] manufacturers of HSS products;
- (b) the total production volume in the POI was around [CONFIDENTIAL TEXT DELETED] and
- (c) it is believed that [CONFIDENTIAL TEXT DELETED] was produced by State-invested enterprises.

- (b) Describe how GOC categorises the enterprise (for example, wholly state-owned enterprise, wholly state-owned company, majority holding company, minority state-holding company, important state invested asset or other category).

NON-CONFIDENTIAL-FOR PUBLIC FILE

PUBLIC FILE

Please refer to the GOC's response to question (a) above.

- (c) Indicate which GOC agency or entity plays the role of 'capital contributor' for this enterprise.

Please refer to the GOC's response to question (a) above.

- (d) Explain what rights share ownership confers to shareholders, including any voting rights and debt liabilities.

Please refer to the GOC's responses to questions D2.10 and D2.11 above. In short, State share ownership does not confer to State shareholders any special rights other than the rights of an ordinary shareholder under the *Company Law*.

- (e) Explain the rules for share ownership in the enterprise.

There are no special rules for share ownership in the enterprises in HSS and HRC sectors. Hence, it would be necessary to refer to the *Company Law* to understand the rules applicable to all companies.

- (f) Does the GOC restrict the level of ownership by parties outside government? Provide details of any such limitations, and the reason for this.

No.

D2.26 For each entity identified in your response to Question B3 and your response to Question B4 that is an SOE, answer the following questions regarding **governance**.

- (a) Provide the relevant statute, law, regulation, direction, letter of incorporation or other instrument which creates, authorises or provides for the existence of the enterprise.

The GOC provides the *Regulation for Business Registration of Company Attachment 133*, the *Regulation for Business Registration of Enterprise Legal Entity Attachment 134*, and *Form of Business Registration Attachments 135*

Please also refer to the *Company Law*.

NON-CONFIDENTIAL-FOR PUBLIC FILE

224

NON-CONFIDENTIAL-FOR PUBLIC FILE PUBLIC FILE

- (b) Provide all statutes, laws, regulations, directions, circulars or other government issued documents which guide, administer or otherwise relate to the operations of the enterprise.

There are no special statutes, laws, regulations, directions, circulars or other government issued documents which guide, administer or otherwise relate to the operations of the enterprises in the HSS or HRC sectors.

- (c) Provide an organisation chart showing the reporting hierarchy of the enterprise. Detail who directs, manages and controls different operations of the entity.

In relation to those companies identified as enterprises with state investment in B3 and B4, the GOC advises that their corporate governance structure will principally be governed by the *Company Law*. The direction, management and control of the operations of those entities are governed by Chapter II Section 2 of the *Company Law*. The GOC cannot provide information relating to companies with no State investment.

The GOC draws Australian Customs' attention to the fact that the companies identified in B3 and B4 are all limited liability companies. Therefore any assumption that there is a "reporting hierarchy" involving the GOC would be groundless, in view of the strict implementation of the *Company Law* in China.

The GOC can address any technical issues involved, and explain and articulate any similarities or differences between the corporate governance legal framework of China and Australia, as may be necessary.

For an example of reporting hierarchy of an enterprise, please see Angang's Annual Report 2010 at pages 58-71 **Attachment 79**.

- (d) Explain the requirements in law, and in practice, to have government representation at any level of the enterprise.

There are no such requirements in law or in practice. The government will necessarily have some kind of representation in an enterprise in which it is a shareholder. Please refer to the GOC's responses to D2.7 above.

- (e) Explain the role of Chinese Communist Party government representatives (CCP representatives) at any level of the enterprise, including, how these representatives are selected, areas of responsibility and involvement in decision making processes and operational decisions of the enterprise.

The GOC submits that incorrect assumptions which might underlie the words "CCP government representatives", as used in this question, would not be helpful for this investigation.

In China, any adult person is entitled to pursue his or her political belief by applying for membership of a legitimate political party. It is not a requirement of any public or private sector that a person be a member of the CCP. Many GOC officials, including senior ministerial officials, are not CCP members at all. They may be members of the eight democratic parties, or might not hold any party membership at all. When it comes to companies (including State-owned companies), the situation remains the same. That is, company executives may or may not be CCP members.

They are not differentiated and therefore no "process of how these representatives are selected" exists.

In situations where CCP members are also members of a board of directors or board of shareholders, it is because that they meet the criteria of the law to hold those positions and have been duly appointed by the company. They are not such a member simply because they have a particular political belief or being CCP members. The GOC understands that many company executives in Australia are political party members, and that such membership certainly does not preclude them from being involved in company management, regardless of which political party has formed government at the time. It would be entirely inappropriate to address Australian company executives who were also members of the ALP as "government representatives".

The GOC submits that any role played by directors in companies (including State-owned companies), who also happen to be CCP members, must be performed in accordance with the Company Law, which is the most powerful statute governing operation of all types of company in China. If any CCP members happen to be members of the board of directors, they play their roles in their capacity as company executives, as opposed to their capacity as CCP members.

The GOC would be concerned to address any issue relating to a person's political beliefs which Australian Customs might perceive to be factually relevant to this investigation.

- (f) Indicate whether the enterprise is under the supervision, administration, monitoring or guidance of SASAC or a provincial or local equivalent, or any other government entity.

If so, provide contact information for the SASAC division or other government entity responsible for the enterprise.

NON-CONFIDENTIAL-FOR PUBLIC FILE PUBLIC FILE

There are no special rules for share ownership in the enterprises in HSS and HRC sectors.

For information relating to the type of involvement of SASAC as a body performing the capital contributor's function in enterprises with State investment, please see the GOC's other responses.

MOFCOM is the coordinating agency for this investigation and requests that information requests be handled via it and its legal representatives in the first instance.

- (g) Identify and provide details of any guidance, control, influence or power of approval/rejection that SASAC or any other GOC entity has on any of the activities of the enterprise.

Please refer to the GOC's responses to questions D2.6 through D2.24 above.

- (h) Is the agency performing the role of capital contributor for this enterprise instructed by any other part of the GOC to exercise its ownership rights in any particular manner? If so, describe the mechanism or systems used to communicate these instructions.

Please refer to the GOC's responses to questions D2.6 through D2.24 above.

- (i) Who selects and/or approves the members of the Board of Directors (include the criteria for selection of members of the Board of Directors)?

Please refer to the GOC's responses to questions D2.6 through D2.24 above.

Chapter II Section 4 of the *Company Law* contains special provisions governing wholly State-owned companies. Under Article 68, the members of the board of directors shall be appointed by the State-owned assets supervision and administration institutions, and will sit on the board with representatives of the employees elected through the assembly of the representatives of the employees of the company.

Pursuant to Article 45 of the *Company Law*, if a limited liability company is established by two or more State-owned enterprises or other State-owned investors, the board of directors shall include representatives of the employees of the company. The board of directors of any other limited liability company may also include representatives of the employees of the company concerned. The employees' representatives who are to serve as members of the board of directors shall be democratically elected by the employees of the company through the general

assembly of the representatives of employees, employees' assembly of the company or in any other way.

The board of directors shall have one chair and may have one or more deputy chairman. The appointment of the chairman and deputy chair shall be specified in the articles of association.

The GOC confirms that all wholly State-owned companies and companies with State investment as identified in B3 and B4 are governed by the *Company Law*, including (but not limited to) the Articles quoted above.

- (j) Indicate whether any member of the Board of Directors is an employee or affiliate of SASAC or has any other affiliation with the GOC.

Government officials or civil servants cannot also be members of the Board of Directors of any enterprise. Therefore a member of such a Board can only be a non-government official or civil servant, for example an employee of the enterprise rather than of the GOC.

A member appointed by SASAC is necessarily "affiliated" or used to be "affiliated" with SASAC in a broad way, in that the member is appointed by the GOC.

- (k) Describe the roles and responsibilities of the Board of Directors.

The roles and responsibilities of Boards of Directors are provided for under the *Company Law*.

Article 47 provides as follows:

The board of directors shall be responsible for the shareholders' meeting and exercise the following functions:

- (1) *Convening shareholders' meetings and presenting reports thereto;*
- (2) *Implementing the resolutions made at the shareholders' meetings;*
- (3) *Determining the company's business and investment plans;*
- (4) *Working out the company's annual financial budget plans and final account plans;*
- (5) *Working out the company's profit distribution plans and loss recovery plans;*
- (6) *Working out the company's plans on the increase or reduction of registered capital, as well as on the issuance of corporate bonds;*

- (7) Working out the company's plans on merger, split, change of the company form, or dissolution, etc.;
- (8) Making decisions on the establishment of the company's internal management departments;
- (9) Making decisions on hiring or dismissing the company's manager and his salary and compensation, and, according to the nomination of the manager, deciding on the hiring or dismissal of vice manager(s) and the persons in charge of finance as well as their salaries and compensations;
- (10) Working out the company's basic management system; and
- (11) Other functions as specified in the bylaw.

Article 67 provides as follows, in the case of a wholly state-owned company:

"The state-owned assets supervision and administration institution may authorize the company's board of directors to exercise some of the functions of the shareholders' meeting and decide on the important matters of the company, excluding those that must be decided by the state-owned assets supervision and administration, such as merger, split-up, dissolution of the company, increase or reduction of registered capital as well as the issuance of corporate bonds."

For an example of functioning of Board of Directors, please refer to Angang's Annual Report 2010 at pp.40-42 (see **Attachment 79**).

(l) How is the Board of Shareholders formed.

According to Article 37 of the *Company Law*, shareholders meeting of a limited liability company shall be composed of all the shareholders.

(m) Indicate whether any member of the Board of Shareholders is an employee or affiliate of SASAC or has any other affiliation with the GOC.

Please refer to the GOC's responses to questions D2.6 through D2.24 above.

(n) Describe the roles and responsibilities of the Board of Shareholders.

Unlike the situation in Australia and the UK, in China the shareholder's meeting of a limited liability company (including limited liability companies that are partially State-

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owned) is the supreme decision-making mechanism with the ultimate power in relation to all the matters of a company (Article 37 of the *Company Law*).

It exercises the following functions:

- (a) determining the company's operational guidelines and investment plans;
- (b) electing and re-electing the directors and supervisors except those elected by representatives of the employees, and deciding the matters relating to their remuneration;
- (c) deliberating and approving reports of the board of directors;
- (d) deliberating and approving reports of the board of supervisors or the supervisor;
- (e) deliberating and approving annual financial budget plans and final account plans of the company;
- (f) deliberating and approving company profit distribution plans and loss recovery plans;
- (g) making resolutions about the increase or reduction of the company's registered capital;
- (h) making resolutions about the issuance of corporate bonds;
- (i) adopting resolutions about the assignment, split-up, change of company form, dissolution, liquidation of the company;
- (j) revising the articles of association of the company;
- (k) other functions as specified in the articles of association.

- (o) Indicate whether the entity has a 'shareholder representative' (refer to Article 13 of the Law on State Owned Assets). Explain the role and responsibilities of the shareholder representative and who appoints this representative.

Please refer to the GOC's responses to question D2.11.

- (p) Indicate whether the enterprise has a Board of Supervisors or Supervisory Panel.

Please refer to the GOC's response to question D2.25 (a) above.

Under the *Company Law*, a limited liability company is required to have a board of supervisors.

(q) Describe the role and responsibilities of the Supervisory Panel and/or Board of Supervisors.

Please refer to the GOC's response to questions D2.14 above.

(r) Detail the membership of the Supervisory Panel or Board of Supervisors (including whether any members of this board are employees or otherwise affiliated with SASAC or have any other affiliation with the GOC and explain the nature of this affiliation).

Please see the GOC's response to question D2.25(a) above. The GOC is not responsible nor authorised to hold and provide such detailed information about individual enterprises.

(s) If the enterprise has a Board of Supervisors or Panels provide examples of the activities of the Board or Panel over the past 5 years in respect of the entity.

Please see the GOC's response to question D2.25(a) above. The GOC is not responsible nor authorised to hold and provide such detailed information about individual enterprises.

(t) Do any major management decisions/actions of the enterprise require approval from or reporting to SASAC or any other government entity (for example, investment decisions)? Provide details.

Enterprises with State investment have different reporting obligations according to their type. Please refer to the GOC's responses to D2.19 above.

(u) Provide an explanation of what are the "major matters" that must be submitted to the people's government for approval for this enterprise (refer to Article 12 of the Law on State Owned Assets). Provide details of any major matters that have been put to the people's government for approval over the past 10 years by this enterprise.

Please refer to the GOC's response to question D2.10(b).

(v) Outline how each of the following are determined/set for the entity:

- Suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials).
- Purchase prices of raw material inputs.
- Allocation of inputs into production process, including raw materials, energy and labour costs.
- Quality and safety standards.
- Selling prices.
- Customers (including restrictions on entities that can purchase goods produced from the enterprise).
- Production output (detail any restrictions on production output).
- Safety standards.
- Energy costs.

In your explanation outline the role of the Board of Directors, Board of Shareholders, Supervisory Panel and/or Supervisory Board, Shareholder Representative, any other management personnel and SASAC (or its regional equivalent) have.

Where the GOC in any form, influences, controls, guides or approves these decisions, provide details, including the mechanisms/systems used.

Please refer to the GOC's responses to questions D2.6 through D2.25 above. The GOC is not responsible nor authorised to hold and provide such detailed information about individual enterprises.

The above mentioned matters, except for matters of quality or safety standard in some cases/products, are of the business operation of the enterprises. As a matter of principle and fact, the GOC adopt a separation of government function from the operation of business and non-interference approach. The GOC does not "determine" or "set" any of the above matters for enterprises.

D2.27 For each entity identified in your response to Question B3 and your response to Question B4 that is an SOE, answer the following questions regarding **performance and profits**.

(a) How are the operations of the enterprise funded?

The GOC is not responsible nor authorised to hold and provide such detailed information about individual enterprises.

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 may be financed through the commercial banking system, capital markets, equity raising, corporate

bond issuance, etc.

For an example of financing status of an enterprise, please see the example of Angang from its Annual Report 2010 at page 50 **Attachment 79**.

(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 not responsible nor authorised to hold and provide such detailed information about individual enterprises.

In respect of this information its is also noted that it is not required to be communicated under International Financial Reporting Standards.

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

The GOC is not responsible nor authorised to hold and provide such detailed information about individual enterprises.

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

For an example of financing performance measurement of an enterprise, please see Angang's Annual Report 2010 at pages 6-10 **Attachment 79**.

(d) Provide details and explain how SASAC or any other government entity inspects or evaluates enterprise performance, including:

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

Please refer to the GOC's responses to questions D2.6 through D2.25 above.

More specifically, the GOC would advise that State-invested enterprise performance is normally evaluated in line with industry averages. In essence, SASAC will assess the performance of an enterprise with state investment based on its commercial and financial performance.

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*

Attachment 132

- (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.

For an example of reporting mechanism of a State-invested enterprise, please refer to Angang's Annual Report 2010 at pages 31-45 **Attachment 79**.

- (f) Provide an explanation of the systems that exist for assessing the performance of administrators of SOEs. Provide examples of recent appraisals of SOE administrators of the enterprise (refer to Article 27 of the Law on State Owned Assets).

The GOC notes that not all administrators of State-invested enterprises are assessed according to the *Law on State Owned Assets*. 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?

Profits of the company are distributed in light of its Articles of Association and Part VIII of the *Company Law*.

For an example of profits of distribution by a State0-invested enterprise, please refer to Angang's Annual Report 2010 at pages 208-209 **Attachment 79**.

- (h) Are dividends/ other payments made to SASAC or any other GOC entity?

Please refer to the GOC's response to question D2.26 (g) above.

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

Please refer to the GOC's responses to questions D2.6 through D2.25 above.

Performance of an enterprise is a critical aspect of its existence and of the directors,

NON-CONFIDENTIAL-FOR PUBLIC FILE

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.

(j) 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 GOC is not responsible or authorised to hold and provide such detailed information about individual enterprises.

(k) 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 section D.1.

D2.28 For each entity identified in your response to Question B3 and your response to Question B4 that is an SOE, answer the following questions regarding **enterprise functions**:

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

The GOC does not understand what information is required by this question.
The GOC is not responsible or authorised to hold and provide such detailed information about individual enterprises. In any case, no special function is allocated to State-invested enterprises.

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

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 line with government policy is a matter of fact and the GOC cannot comment on behalf of the enterprises.

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

The GOC is not sure about what information is required by this question.

As answered above, the GOC is not aware of any enterprise which has been trusted, tasked, vested with governmental authority, and no enterprises 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.

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

Enterprises are not required or expected to support governmental policies or interests.

The GOC cannot 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.

(g) Provide examples of any 'social responsibilities' the enterprise undertakes or is involved in (refer to Article 17 of the Law on State Owned Assets)?

Please refer to the GOC's responses to questions D2.13.

Once again, the GOC notes that this is eventually a matter of the individual enterprises, about which the GOC cannot comment on their behalf.

For the purposes of best cooperation, the GOC refers to Angang's 2010 sustainability report as an example of an enterprises taking on "social responsibilities" in its corporate governance (see Angang Steel 2010 sustainability report at <http://airpage.zubunet.com/APage.jsp?source=angang&bookIssueID=054321>).