CUSTOMS ACT 1901 - PART XVB

TERMINATION OF PART OF AN INVESTIGATION

TERMINATION REPORT NO. 316

ALLEGED DUMPING AND SUBSIDISATION
OF GRINDING BALLS
EXPORTED FROM
THE PEOPLE’S REPUBLIC OF CHINA

6 June 2016

TER 316 – Grinding Balls – China
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ABBREVIATIONS

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<td>$</td>
<td>Australian dollars</td>
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<tr>
<td>ABF</td>
<td>Australian Border Force</td>
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<td>the Act</td>
<td>Customs Act 1901</td>
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<td>ADN</td>
<td>Anti-Dumping Notice</td>
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<td>the applicants</td>
<td>Commonwealth Steel Company Ltd Pty (trading as Moly-Cop) and Donhad Pty Ltd</td>
</tr>
<tr>
<td>China</td>
<td>the People’s Republic of China</td>
</tr>
<tr>
<td>the Commission</td>
<td>the Anti-Dumping Commission</td>
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<td>the Commissioner</td>
<td>the Commissioner of the Anti-Dumping Commission</td>
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<td>Donhad</td>
<td>Donhad Pty Ltd</td>
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<td>the goods</td>
<td>the goods the subject of the application (also referred to as the goods under consideration or GUC)</td>
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<td>GOC</td>
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<td>Changshu Longte Grinding Ball Co., Ltd</td>
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<td>Moly-Cop</td>
<td>Commonwealth Steel Company Ltd Pty (trading as Moly-Cop)</td>
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<td>Yute</td>
<td>Jiangsu Yute Grinding International Co., Ltd</td>
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1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This termination report (TER 316) has been prepared in relation to investigation number 316, which followed an application by Commonwealth Steel Company Pty Ltd (trading as Moly-Cop) and Donhad Pty Ltd (Donhad) for the publication of a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from the People’s Republic of China (China).

Moly-Cop and Donhad (the applicants) allege that the Australian industry for grinding balls has suffered material injury caused by grinding balls exported to Australia from China at dumped and subsidised prices.

A full description of the goods the subject of the application is set out in chapter 3 of this report.

This termination report sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) based his decisions to terminate part of the investigation in relation to countervailable subsidies from cooperating exporters. The facts and findings in relation to countervailable subsidies received by ‘uncooperative and all other exporters’ and dumping from all exporters generally will be included in a separate report.

1.2 Findings

As a result of the Anti-Dumping Commission’s (the Commission) investigation, the Commissioner is satisfied that:

- in relation to Jiangsu Yute Grinding International Co Ltd (Yute), no countervailable subsidy has been received in respect of the goods and, therefore, the countervailing investigation must be terminated in accordance with subsection 269TDA(2)(b)(i) of the Customs Act 1901 (the Act)\(^1\) in so far as it relates to this exporter; and

- in relation to Changshu Longte Grinding Ball Co., Ltd (Longte), Jiangsu CP Xingcheng Special Steel Co., Ltd (Xingcheng) and Hebei Goldpro New Materials Co., Ltd (Goldpro) countervailable subsidies have been received in respect of some or all of the goods, but the subsidy never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection 269TDA(16) and, therefore, the countervailing investigation must be terminated in accordance with subsection 269TDA(2)(b)(iii) in so far as it relates to those exporters.

Public notice of the Commissioner’s termination decisions were published on the Commission’s website on 6 June 2016 (Anti-Dumping Notice 2016/58 refers).

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\(^1\) All legislative references in this report are to the Customs Act 1901, unless otherwise specified.
1.3 Application of law to facts

1.3.1 Authority to make decision

Division 2 of Part XVB sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application for the publication of a dumping and/or countervailing duty notice.

1.3.2 Application and initiation

On 5 October 2015, the applicants lodged an application under subsection 269TB(1) requesting that the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science\(^2\) (Parliamentary Secretary) publish a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from China.

The Commissioner decided not to reject the application, and notice of the initiation of this investigation was published on 17 November 2015.\(^3\)

1.4 Statement of essential facts and preliminary affirmative determination

A combined Statement of Essential Facts No. 316 (SEF 316) and preliminary affirmative determination (PAD) for this investigation was placed on the public record on 21 April 2016.\(^4\) In preparing SEF 316, the Commissioner had regard to the application, submissions concerning publication of a dumping duty notice and countervailing duty notice that were received by the Commission within 40 days after the date of initiation of the investigation and any other matters considered relevant.

SEF 316 recommended partial termination of the countervailing investigation consistent with the findings in section 1.2.

1.5 Submissions received from interested parties

After the publication of SEF 316, the Commission received submissions from interested parties, the relevant aspects of which were taken into account in preparing this report.

Non-confidential versions of all submissions received are available on the public record.

1.6 Final report

Within 155 days after the initiation of an investigation, or such longer period as the

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\(^2\) The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

\(^3\) Subsection 269TC(4).

\(^4\) The Public Record is available on the Commission’s website at http://www.adcommission.gov.au
Parliamentary Secretary allows, the Commissioner must give the Parliamentary Secretary a final report in respect of the goods the subject of the application.

Following an extension granted by the Parliamentary Secretary to the due date for the SEF to be placed on the public record, the final report in relation to the investigation was due to the Parliamentary Secretary on or by 6 June 2016.

The final report was provided to the Parliamentary Secretary on this date.
2 BACKGROUND

2.1 Initiation

On 5 October 2015, the applicants lodged an application under subsection 269TB(1) for the publication of a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from China.

After examining the application, the Commissioner was satisfied that:

- the application complied with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods.\(^5\)

The Commissioner decided not to reject the application, and on 17 November 2015 initiated an investigation into the goods.

Public notification of initiation of the investigation was made on 17 November 2015. ADN 2015/132 provides further details relating to the initiation of the investigation and is available on the public record.\(^6\)

In respect of the investigation:

- the investigation period\(^7\) for the purpose of assessing dumping and subsidisation is 1 October 2014 to 30 September 2015; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and subsidised goods is from 1 July 2011.

2.2 Investigated programs

In response to the application and a subsequent submission from Moly-Cop\(^8\), the following 47 potential countervailable subsidy programs were investigated.

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<th>Program Name</th>
<th>Program Type</th>
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<td>Raw Materials (Steel billet) Provided by the Government at Less than Adequate Remuneration</td>
<td>Provision of goods</td>
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<td>2</td>
<td>Raw Materials (Electricity) Provided by the Government at Less than Adequate</td>
<td>Provision of goods</td>
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\(^5\) Subsection 269TC(1).

\(^6\) See number 2 on the public record.

\(^7\) Subsection 269T(1).

\(^8\) See number 5 on the public record.
<table>
<thead>
<tr>
<th>Program Number</th>
<th>Program Name</th>
<th>Program Type</th>
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<td>Income Tax</td>
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<td>4</td>
<td>Land Use Tax deduction</td>
<td>Income Tax</td>
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<td>5</td>
<td>Preferential Tax Policies for High and New Technology Enterprises</td>
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<td>Tariff and VAT Exemptions on Imported Materials and Equipment</td>
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<td>7</td>
<td>One-Time Awards to Enterprises Whose Products Qualify for “Well-Known TradeMarks of China” and “Famous Brands of China”</td>
<td>Grant</td>
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<td>8</td>
<td>Matching Funds for International Market Development for Small and Medium Enterprises</td>
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<td>9</td>
<td>Superstar Enterprise Grant</td>
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<td>10</td>
<td>Research &amp; Development (“R&amp;D”) Grant</td>
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<td>11</td>
<td>Innovative Experimental Enterprise Grant</td>
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<td>12</td>
<td>Special Support Fund for Non-State Owned Enterprises</td>
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<td>Venture Investment Fund of Hi-Tech Industry</td>
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<td>Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment</td>
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<td>15</td>
<td>Grant for key enterprises in equipment manufacturing industry of Zhongshan</td>
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<td>16</td>
<td>Water Conservancy Fund Deduction</td>
<td>Grant</td>
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<td>17</td>
<td>Anti-Dumping Respondent assistance</td>
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<td>18</td>
<td>Technology Project assistance</td>
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<td>19</td>
<td>Capital Injections</td>
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<td>20</td>
<td>Environmental Protection Grant</td>
<td>Grant</td>
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<td>21</td>
<td>High and New Technology Grant</td>
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<td>22</td>
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<td>23</td>
<td>Environmental Prize</td>
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<td>24</td>
<td>Provincial emerging industry and key industry development special fund</td>
<td>Grant</td>
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<td>25</td>
<td>Environmental Protection Fund</td>
<td>Grant</td>
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<td>26</td>
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<tr>
<td>Program Number</td>
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<td>31</td>
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<td>32</td>
<td>Raw Materials (Coking coal) Provided by the Government at Less than Adequate Remuneration</td>
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<td>33</td>
<td>Raw Materials (Coke) Provided by the Government at Less than Adequate Remuneration</td>
<td>Provision of goods</td>
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<td>34</td>
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<td>35</td>
<td>Wuxing District Freight Assistance</td>
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<td>36</td>
<td>Huzhou City Public Listing Grant</td>
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<td>Huzhou City Quality Award</td>
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<td>Huzhou Industry Enterprise Transformation &amp; Upgrade Development Fund</td>
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<td>39</td>
<td>Wuxing District Public List Grant</td>
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<td>40</td>
<td>Transformation technique grant for rolling machine</td>
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<td>41</td>
<td>Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009</td>
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<td>43</td>
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<td>Preferential Loans</td>
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Table 1 – subsidy programs initially investigated

Following verification activities, the Commissioner investigated seven further additional programs:
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<th>Program Number</th>
<th>Program Name</th>
<th>Program Type</th>
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<td>48</td>
<td>International trade increase project fund</td>
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<td>49</td>
<td>Industrial economy reform and development fund</td>
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</tr>
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<td>50</td>
<td>Sales revenue increase award</td>
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<td>51</td>
<td>Tax contribution award</td>
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</tr>
<tr>
<td>52</td>
<td>Energy and recyclable economy program</td>
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</tr>
<tr>
<td>53</td>
<td>National controlled essential pollutant source supervision system third party operation and maintenance subsidy program</td>
<td>Grant</td>
</tr>
<tr>
<td>54</td>
<td>Scientific program awards in high and new scientific zone</td>
<td>Grant</td>
</tr>
</tbody>
</table>

**Table 2 – new programs identified with selected exporters**

#### 2.3 Previous investigations

There have been no previous investigations into the alleged dumping or subsidisation of grinding balls exported to Australia from any country.

#### 2.4 Statement of essential facts

On 21 April 2016, the Commissioner published SEF 316 and a PAD as a combined report. SEF 316 is available on the public record.

SEF 316 indicated that grinding balls exported from China had been dumped and subsidised, and that the dumping and subsidy was causing material injury to the Australian Industry. Securities of between 12.6 per cent and 113 per cent were required and taken in respect of grinding balls exported to Australia from China.

SEF 316 lists the 54 subsidy programs examined as part of this investigation, and should be read in conjunction with this report.

SEF 316 found that grinding balls exported to Australia from China by:

- uncooperative and all other exporters had been in receipt of countervailable subsidies of two per cent or more;
- Longte, Xingcheng and Goldpro had been in receipt of countervailable subsidies, but the subsidy margin was not more than two per cent; and
- Yute had not been in receipt of countervailable subsidies.

In light of the above, SEF 316 proposed that the Commissioner would terminate the countervailing investigation into cooperating exporters Longte, Xingcheng, Goldpro and Yute.

Interested parties were invited to lodge responses to SEF 316 by no later than 11 May 2016.
2.5 Final report

Within 155 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows, the Commissioner must give the Parliamentary Secretary a final report in respect of the goods the subject of the application.

REP 316 was provided to the Parliamentary Secretary on 6 June 2016.

2.6 Relevant Legislation

Subsection 269TDA(2) of the Act provides:

If:

(a) application is made for a countervailing duty notice; and
(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:

(i) no countervailable subsidy has been received in respect of any of those goods; or
(ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time after the start of the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the Commissioner must terminate the investigation so far as it relates to the exporter.

2.7 Matters considered in this report

In making the decision to terminate part of the investigation, the Commissioner has had regard to:

- the application;
- any submissions concerning publication of the notice to which the Commissioner has had regard for the purpose of formulating SEF 316;
- SEF 316 itself;
- any submission in response to SEF 316 received by the Commission within 20 days after the day that statement was placed on the Public Record; and
- any other matters considered relevant.
3 THE GOODS UNDER CONSIDERATION

3.1 The goods under consideration

The goods the subject of the investigation (the goods) are:

*Ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range 22mm to 170mm (inclusive).*

The goods covered by this application include all ferrous grinding balls, typically used for the comminution of metalliferous ores, meeting the above description of the goods regardless of the particular grade or alloy content.

Goods excluded from this application include stainless steel balls, precision balls that have been machined and/or polished, and ball bearings.

3.2 Tariff classification

At the initiation of this investigation, ADN 2015/132 stated that the goods are typically classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- Tariff subheading 7325.91.00 with statistical code 26; and
- Tariff subheading 7326.11.00 with statistical code 29.

Prior to 20 December 2015, the goods were subject to a 4 per cent Customs duty. However on 20 December 2015, the China Australia Free Trade Agreement came into force at which time the goods became subject to a reduced rate of 3.3 per cent Customs duty. From 1 January 2016, the rate of Customs duty applicable to the goods further reduced to 1.7 per cent. From 1 January 2017 the goods will be free of Customs duty.

3.3 Additional tariff classification

During the course of the investigation, the Commission became aware that a small volume of the goods have been declared under tariff subheading 7326.90.90 with statistical code 59. This tariff subheading covers other articles of iron and steel not specified or included in previous subheadings.

The Commission published ADN 2016/50 on 6 May 2016 notifying that goods meeting the goods description that were imported into Australia during the investigation period under this additional tariff classification would also be examined as part of the investigation.

The inclusion of this tariff classification does not constitute a change to the goods description. Rather, this is a clarification of the tariff subheadings that may include goods meeting the goods description.

ADN 2016/50 is available on the public record. Goods classified under tariff subheading 7326.90.90, with statistical code 59 are subject to the same rate of duty as detailed in section 3.2 above.
4 SUBSIDY INVESTIGATION – COOPERATING EXPORTERS

4.1 Findings

Having regard to all relevant information, the Commissioner considers that:

- during the investigation period Yute did not receive financial contributions under countervailable subsidy programs in respect of grinding balls exported to Australia; and
- during the investigation period Longte, Xingcheng and Goldpro received financial contributions under countervailable subsidy programs in respect of grinding balls exported to Australia, however the overall subsidy margin attributable to the goods exported by Longte, Xingcheng and Goldpro is considered to be negligible, as it is less than two per cent.  

4.2 Relevant legislation

Subsection 269T(1) defines a ‘subsidy’ as follows:

"subsidy", in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

This reflects Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures.

9 Subsection 269TDA(16).
Section 269TAAC defines a countervailable subsidy as follows:

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if:

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
(b) eligibility for the subsidy is automatic; and
(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) The Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or
(b) the fact that the subsidy program predominantly benefits particular enterprises; or
(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

(5) In making a determination under subsection (4), the Minister must take account of:

(a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
(b) the length of time during which the subsidy program has been in operation.

Sections 269TACC and TACD directs how it is to be determined whether benefits have been conferred by a subsidy and the amount of this benefit.

4.3 Background

4.3.1 Exporters

At the commencement of the investigation, the Commission contacted all known exporters of the goods and each identified supplier of the goods within the relevant
tariff subheadings for grinding balls as identified in the Australian Border Force (ABF) import database and invited them to complete an exporter questionnaire.

The Commission received completed exporter questionnaire responses from the following four exporters:10

- Longte;
- Xingcheng;
- Goldpro; and
- Yute.

These exporters have cooperated with the investigation.

4.3.2 Government questionnaire

At the time of initiating the investigation, the Commission contacted the Government of China (GOC) to notify them of the investigation.

As the investigation involved considerations of:

- the existence of a market situation in the Chinese grinding ball market (relevant to the dumping investigation); and
- receipt of countervailable subsidies by Chinese exporters of the goods

the Commission forwarded the GOC a Government Questionnaire with questions relevant to assessing these matters.

A response to the Government Questionnaire was not received from the GOC.

4.3.3 Exporter verification and identification of new programs

The Commission undertook verification visits to Longte and Xingcheng in February 2016, to verify the data these exporters submitted in their exporter questionnaires, and to identify and verify any other information relevant to this investigation. These verifications involved:

- gathering and verifying information to verify receipt and benefit under any of the 47 subsidy programs that investigations were initiated into following the allegations made in the application (which were specifically addressed in the exporter questionnaires); and
- examining each company’s management and financial accounts to determine whether any other subsidies were received by each exporter.

Longte’s verification found that the company:

- received a benefit under one of the 47 subsidy programs that the Commission had initiated investigations in to; and
- had received benefits under five other subsidy programs during the investigation period.

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10 As defined in subsection 269T(1).
Xingcheng’s verification found that the company:
- received benefits under two of the 47 subsidy programs that the Commission had initiated investigations in to; and
- had received benefits under two additional programs during the investigation period.

Goldpro and Yute were not visited, however the Commission analysed the data submitted by each company and was satisfied that the data was reasonably accurate, relevant and complete. This data was used to calculate dumping and subsidy margins. Verification reports for all four cooperating exporters are available on the public record.

In relation to Goldpro and Yute, the Commissioner found:
- Goldpro had received a benefit under one of the 47 subsidy programs that the Commission had initiated investigations into;
- Yute had not received any benefits; and
- benefits had not been received under any additional programs.

Following these verification activities, the Commission added seven new programs to the subsidy investigation.

4.4 SEF 316 findings

SEF 316 found that during the investigation period:
- countervailable subsidies had been received in respect of grinding balls exported to Australia from China under 46 of the 54 programs investigated;
- the volume of subsidised goods exported to Australia from China was not negligible;
- Longte, Xingcheng and Goldpro received financial contributions under a number of these countervailable subsidy programs that conferred benefits to the goods exported by those exporters, however the overall attributable subsidy margin for exports of the goods was found to be negligible, as it was calculated to be less than 2 per cent; and
- Yute had not received financial contributions under any of these countervailable subsidy programs.

SEF 316 proposed that the Commissioner would terminate the investigation into the alleged subsidisation of exports of the goods to Australia from China by Longte, Xingcheng, Goldpro and Yute, in accordance with subsection 269TDA(2).

4.5 Submissions in response to the SEF 316

Interested parties were invited to lodge responses to SEF 316 by no later than 11 May 2016.

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11 Subsection 269TDA(16).
The Commission did not receive any submissions in response to the Commissioner’s proposal to terminate the countervailing investigation, so far as it relates to exports by Longte, Xingcheng, Goldpro and Yute.

The Commission received a submission from Moly-Cop in response to SEF 316 that related to the Commissioner’s finding that Program 1 and Program 2 were not countervailable subsidies.

4.5.1 Program 1

Moly-Cop submitted that:

- the subsidy investigation should be extended beyond the cooperating exporters to assess the pass-through of benefits conferred to upstream inputs, specifically in relation to steel billet (Program 1) and electricity (Program 2); and
- having required cooperative exporters to identify their suppliers of steel billet or grinding bar, it is incumbent upon the Commission to analyse whether the suppliers of steel billet or grinding bar to cooperating exporters received a benefit in relation to their purchases of steel billet. Moly-Cop cited Article 10 of the SCM Agreement and Appellate Body Report, United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, in support of its claims.

In response to Moly-Cop’s submission Longte reiterated the fact that it did not purchase steel billet and therefore any claims that a benefit in relation to steel billet passed-through from an upstream entity was not possible.

4.5.2 Program 2

Moly-Cop asserted that the pass-through of benefits in relation to the provision of billet applied equally to the provision of electricity. Moly-Cop further submitted that the Commission has failed to recognise the regional specificity of electricity. Moly-Cop asserted that, in European Communities and Certain Member States - Measures Affecting Trade in Large Civil Aircraft, the Panel, having regard to Article 2.2 of the SCM Agreement, concluded that a subsidy available in a designated region within the territory of the granting authority is specific even if it is available to all enterprises in that designated region. Moly-Cop referenced a submission published on the public record on 24 December 2015 as evidence that a benefit had been conferred to the region applicable to cooperating exporters.

Longte responded to Moly-Cop’s submission with its views that, while a subsidy can be “specific” if it is applicable to a region, specificity does not override the questions of whether a benefit is conferred. Longte asserted that the question of whether a subsidy is provided in the provision of electricity is not merely an exercise of finding the highest rate for electricity somewhere in a country and then comparing it with the rate paid by the recipient concerned.

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12 See number 38 on the public record
13 No. 5 on the public record
14 See number 42 on the public record
4.6 The Commission’s consideration – subsidies

4.6.1 Program 1

The Commission has information from exporter questionnaires indicating that the cooperating exporters did not purchase steel billet during the investigation. However, each of the cooperating exporters did purchase grinding bar during the investigation period. Where the grinding bar supplier was not the manufacturer of the grinding bar or steel billet used in that grinding bar, the Commission examined the information to the next level upstream supplier. Those upstream suppliers were not listed as SIEs.

The Commission also established through verification that Longte has transitioned to being a fully integrated producer of grinding balls during the investigation period. The Commission is satisfied that its production of grinding balls towards the end of the investigation period was undertaken predominately from grinding bar purchased from its related party, Longteng. Longteng is not an SIE and manufactures its own steel billet. Similarly, the Commission established through verification that Xingcheng is a fully integrated producer of grinding balls and purchases the majority of its grinding bar from related parties. Those related parties are not SIEs and manufacture their own billet.

On the basis of the above, the Commission has examined the pass-through of benefits to one level upstream, which is the Commission’s general practice as outlined in the Dumping and Subsidy Manual.

4.6.2 Program 2

In relation to Program 2, Electricity, the Commission notes earlier claims made by Moly-Cop in its submission on subsidies which states:

*The electricity prices are set by the NDRC on the basis of a procedure that includes cost investigation, expert appraisal, public hearings, and final price determination and publication…The final price reflects purchasing costs, transmission costs and losses, and government surcharges. The prices are differentiated by province depending on the local situation and policy objectives pursued in the various provinces. They are set for different end-user categories (e.g. residential, industrial users).*

The Commission considers that the submission made by Moly-Cop is an accurate description of the price setting process in relation to electricity in China, however does not in itself provide evidence that regionally specific electricity subsidies have been provided to manufacturers of grinding balls. The Commission is of the view that many factors will cause regional differences in electricity pricing.

The Commission further notes that Moly-Cop’s submission addresses specificity on an entity level rather than a regional level, concluding:

*Therefore, given that the tariff rates identify specific types of entities that receive a favourable rate of electricity it is clear that only these enterprises...*
would benefit from the provision of the input by the GOC at less than adequate remuneration. For this reason the subsidy is determined to be specific.

The Commission found no evidence during the course of the investigation to suggest that grinding ball producers were in receipt of benefits in relation to electricity on an entity specific or regionally specific basis.

4.7 Final subsidy findings

Following SEF 316 and the lapsing of the period of time for submission in response to SEF 316 to be made, the Commissioner has made his final findings in relation to the subsidy investigation into exports of the goods by Longte, Xingcheng, Goldpro and Yute. The details of these findings are outlined below.

4.7.1 Programs received

Longte

The Commission has determined that Longte received benefits under the following programs:

<table>
<thead>
<tr>
<th>Program Number</th>
<th>Program Name</th>
<th>Program Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>47</td>
<td>Preferential loans and interest rates</td>
<td>Preferential Loans</td>
</tr>
<tr>
<td>48</td>
<td>International trade increase project fund</td>
<td>Grant</td>
</tr>
<tr>
<td>49</td>
<td>Industrial economy reform and development fund</td>
<td>Grant</td>
</tr>
<tr>
<td>50</td>
<td>Sales revenue increase award</td>
<td>Grant</td>
</tr>
<tr>
<td>51</td>
<td>Tax contribution award</td>
<td>Grant</td>
</tr>
<tr>
<td>52</td>
<td>Energy and recyclable economy program</td>
<td>Grant</td>
</tr>
</tbody>
</table>

Table 3 – subsidy programs - Longte

The receipt of benefits under these programs was confirmed at the company’s verification visit. No evidence was found that Longte received benefits under any programs other than those listed above.

Xingcheng

The Commission has determined that Xingcheng received benefits under the following programs:

<table>
<thead>
<tr>
<th>Program Number</th>
<th>Program Name</th>
<th>Program Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Preferential Tax Policies for High and New Technology Enterprises</td>
<td>Income Tax</td>
</tr>
</tbody>
</table>
Table 4 - subsidy programs - Xingcheng

The receipt of benefits under these programs was confirmed at the company's verification visit. No evidence was found that Xingcheng received benefits under any programs other than those listed above.

Goldpro

The Commission has determined that Goldpro received benefits under the following program:

Table 5 – subsidy programs - Goldpro

The receipt of benefits under this program was confirmed during the Commission’s verification activities. No evidence was found that Goldpro received benefits under any programs other than that listed above.

Yute

The Commission has determined that Yute did not receive benefits under any of the investigated programs.

4.7.2 Are the programs subsidies in accordance with subsection 269T(1)?

The Commission has determined that all programs received by Longte, Xingcheng, and Goldpro, are subsidies in respect of the goods exported to Australia by those parties.

The details of this assessment are included in Appendix 1 to this report. The findings in Appendix 1 have not changed since SEF 316.
4.7.3 Are the programs countervailable subsidies (section 269TAAC)?

The Commission has determined that all of the subsidy programs received by Longte, Xingcheng and Goldpro are countervailable subsidies.

The analysis undertaken by the Commission pertaining to the countervailability of the subsidy programs received is included in Appendix 1.

4.7.4 Benefit and subsidy margin calculations

The financial contribution received (including taxation foregone) under each applicable subsidy program received by Longte, Xingcheng and Goldpro is determined to be the amount of the benefit received under that program.

In accordance with subsection 269TACD(2), the amount of subsidy received in respect of grinding balls has been apportioned to each unit of the goods using the total applicable sales volume relevant to that benefit.

This per unit amount was then calculated as a proportion of that exporter’s weighted average export price, to determine a subsidisation rate (percentage).

Using the method detailed above, the Commission determined that the overall subsidy margin attributable to the goods exported by Longte, Xingcheng and Goldpro is considered to be negligible, as it is less than 2 per cent.

The Commissioner relies on this classification when applying section 269TDA. Accordingly, where exporters from China receive countervailable subsidies of not more than 2 per cent of their export price, subsection 269TDA(2) requires that the countervailable subsidy investigation be terminated insofar as it relates to those exporters.

The subsidy calculation for each program is at Appendix 1. Calculation of the cooperating exporter subsidy margins is at Confidential Attachment 1.

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15 In some cases, only export volume was used, while in other whole company volume, depending on the nature of the program. If the country of export is a developing country but not a special developing country, a countervailable subsidy received is negligible if the subsidy is not more than 2 per cent when expressed as a percentage of the export price of the goods. China is a developing country as that term is defined in subsection 3(1) of the Customs Tariff Act 1995.

16 Subsection 269TDA(16).
# LIST OF APPENDICES

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<td>Assessment of countervailable subsidies</td>
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<td>Appendix 3</td>
<td>Assessment of whether State Invested Enterprises are public bodies</td>
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</tbody>
</table>
APPENDIX 1 - ASSESSMENT OF COUNTERVAILABLE SUBSIDIES

A1.1 OVERVIEW

A1.1.1 INTRODUCTION AND SUMMARY OF FINDINGS

This appendix details the Commission’s assessment of the 54 subsidy programs investigated in relation to grinding balls exported from China.

The 54 investigated programs, and the Commission's preliminary assessment of whether each is countervailable in relation to grinding balls exported from China, is outlined in the below table.

<table>
<thead>
<tr>
<th>Program Number</th>
<th>Program Name</th>
<th>Program Type</th>
<th>Countervailable in relation to the goods (Yes/No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Raw Materials (Steel billet) Provided by the Government at Less than Adequate Remuneration</td>
<td>Provision of goods</td>
<td>No</td>
</tr>
<tr>
<td>2</td>
<td>Raw Materials (Electricity) Provided by the Government at Less than Adequate Remuneration</td>
<td>Provision of goods</td>
<td>No</td>
</tr>
<tr>
<td>3</td>
<td>Preferential Tax Policies in the Western Regions</td>
<td>Income Tax</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Land Use Tax deduction</td>
<td>Income Tax</td>
<td>Yes</td>
</tr>
<tr>
<td>5</td>
<td>Preferential Tax Policies for High and New Technology Enterprises</td>
<td>Income Tax</td>
<td>Yes</td>
</tr>
<tr>
<td>6</td>
<td>Tariff and VAT Exemptions on Imported Materials and Equipment</td>
<td>Tariff and VAT</td>
<td>Yes</td>
</tr>
<tr>
<td>7</td>
<td>One-Time Awards to Enterprises Whose Products Qualify for &quot;Well-Known TradeMarks of China&quot; and &quot;Famous Brands of China&quot;</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>8</td>
<td>Matching Funds for International Market Development for Small and Medium Enterprises</td>
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<td>Yes</td>
</tr>
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<td>9</td>
<td>Superstar Enterprise Grant</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>10</td>
<td>Research &amp; Development (&quot;R&amp;D&quot;) Grant</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>11</td>
<td>Innovative Experimental Enterprise Grant</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>12</td>
<td>Special Support Fund for Non-State Owned Enterprises</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>13</td>
<td>Venture Investment Fund of Hi-Tech Industry</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>Program Number</td>
<td>Program Name</td>
<td>Program Type</td>
<td>Countervailable in relation to the goods (Yes/No)</td>
</tr>
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<td>----------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>---------------------</td>
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<tr>
<td>14</td>
<td>Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment</td>
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<tr>
<td>15</td>
<td>Grant for key enterprises in equipment manufacturing industry of Zhongshan</td>
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<td>Yes</td>
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<td>16</td>
<td>Water Conservancy Fund Deduction</td>
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<td>17</td>
<td>Anti-Dumping Respondent Assistance</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>18</td>
<td>Technology Project Assistance</td>
<td>Grant</td>
<td>Yes</td>
</tr>
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<td>19</td>
<td>Capital Injections</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>20</td>
<td>Environmental Protection Grant</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>21</td>
<td>High and New Technology Grant</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>22</td>
<td>Independent Innovation and High-Tech Industrialisation Program</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>23</td>
<td>Environmental Prize</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>24</td>
<td>Provincial emerging industry and key industry development special fund</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>25</td>
<td>Environmental Protection Fund</td>
<td>Grant</td>
<td>Yes</td>
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<td>26</td>
<td>Intellectual Property licensing</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>27</td>
<td>Financial resources construction special fund</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>28</td>
<td>Reducing pollution discharging and environmental improvement assessment award</td>
<td>Grant</td>
<td>Yes</td>
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<td>29</td>
<td>Comprehensive utilisation of resources – VAT refund upon collection</td>
<td>Tariff and VAT</td>
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<td>30</td>
<td>Grant for elimination of out dated capacity</td>
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<td>Yes</td>
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<td>31</td>
<td>Grant from Technology Bureau</td>
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<td>Yes</td>
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<td>32</td>
<td>Raw Materials (Coking coal) Provided by the Government at Less than Adequate Remuneration</td>
<td>Provision of goods</td>
<td>No</td>
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<td>33</td>
<td>Raw Materials (Coke) Provided by the Government at Less than Adequate Remuneration</td>
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<td>Patent Award of Guangdong Province</td>
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<tr>
<td>35</td>
<td>Wuxing District Freight Assistance</td>
<td>Grant</td>
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<td>36</td>
<td>Huzhou City Public Listing Grant</td>
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<td>37</td>
<td>Huzhou City Quality Award</td>
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</table>
### PUBLIC RECORD

<table>
<thead>
<tr>
<th>Program Number</th>
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<th>Program Type</th>
<th>Countervailable in relation to the goods (Yes/No)</th>
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<tbody>
<tr>
<td>38</td>
<td>Huzhou Industry Enterprise Transformation &amp; Upgrade Development Fund</td>
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<td>39</td>
<td>Wuxing District Public List Grant</td>
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<td>40</td>
<td>Transformation technique grant for rolling machine</td>
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<td>41</td>
<td>Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009</td>
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<td>42</td>
<td>Key industry revitalization infrastructure spending in 2010</td>
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<td>43</td>
<td>Jinzhou District Research and Development Assistance Program</td>
<td>Grant</td>
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<td>Debt for equity swaps</td>
<td>Equity Programs</td>
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<td>45</td>
<td>Equity infusions</td>
<td>Equity Programs</td>
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<td>46</td>
<td>Unpaid dividends</td>
<td>Equity Programs</td>
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<td>47</td>
<td>Preferential loans and interest rates</td>
<td>Preferential Loans</td>
<td>Yes</td>
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<td>International trade increase project fund</td>
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<td>Industrial economy reform and development fund</td>
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<td>51</td>
<td>Tax contribution award</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>52</td>
<td>Energy and recyclable economy program</td>
<td>Grant</td>
<td>Yes</td>
</tr>
<tr>
<td>53</td>
<td>National controlled essential pollutant source supervision system third party operation and maintenance subsidy program</td>
<td>Grant</td>
<td>Yes</td>
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<tr>
<td>54</td>
<td>Scientific program awards in high and new scientific zone</td>
<td>Grant</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### A.1.1.2 RELEVANT LEGISLATION

Section 269T defines a 'subsidy' as follows:

"subsidy", in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

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(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

This reflects Article 1.1 of the WTO SCM Agreement.

S.269TAAC defines a countervailable subsidy as follows:

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if:
PUBLIC RECORD

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) eligibility for the subsidy is automatic; and

(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and

(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) The Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

(5) In making a determination under subsection (4), the Minister must take account of:

(a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and

(b) the length of time during which the subsidy program has been in operation.

Section 269TACC directs how the Minister is to determine whether benefits have been conferred by a financial contribution or income or price support and the amount of this benefit.

Under section 269TJ, one of the matters of which the Minister must be satisfied to publish a countervailing duty notice is that a countervailable subsidy has been received in respect of the goods.

A1.2 INFORMATION CONSIDERED BY THE COMMISSION

A.1.2.1 DONHAD AND MOLY-COP’S APPLICATION

The Commission has relied upon information submitted by the applicants in the application and in Moly-Cop’s submission with respect to its investigation of the 47 countervailable subsidy programs (Programs 1 – 47) that were allegedly received by Chinese exporters of grinding balls exported to Australia.

A1.2.2 INFORMATION PROVIDED BY EXPORTERS

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by exporters in the exporter
questionnaire responses, as well as information provided by exporters during verification visits.

**A1.2.3 INFORMATION PROVIDED BY THE GOVERNMENT OF CHINA**

The Commission included questions relating to each program in Government questionnaires that were sent to the GOC on 17 November 2015 and 12 January 2016.

The GOC did not cooperate with the Commission’s request for detailed information about the programs identified in the Government questionnaires.

**A1.2.4 OTHER INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT**

The Commission also considered as part of this assessment:

- Information submitted by interested parties in various general submissions to the investigation;
- Information submitted to various previous ACBPS and Commission investigations into the alleged subsidisation of various goods exported from China; and
- Other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in China.
A1.3 ASSESSMENT OF SUBSIDY PROGRAMS

A1.3.1 CATEGORY ONE: PROVISION OF GOODS

PROGRAM 1: RAW MATERIALS (STEEL BILLET) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION

BACKGROUND

The application alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of steel billet by the GOC at an amount reflecting less than adequate remuneration (LTAR), having regard to prevailing market conditions in China.

In particular, it was claimed that steel billet, as a main raw material used in the manufacture of grinding balls, was being produced and supplied by GOC-owned (or partially-owned) enterprises in China at LTAR. For the purposes of this report, these GOC-owned or partially owned entities will be referred to as ‘state-invested enterprises’ (SIEs).

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that produce steel billet are public bodies, and that a financial contribution in the form of provision of raw material inputs at LTAR by these SIEs to grinding balls producers constitutes a countervailable subsidy.

The Commission’s assessment of whether SIEs constitute a public bodies within the meaning of subsection 269T(1) is discussed in Appendix 3.

The Commission requested information from Chinese exporters in relation to their purchases of steel billet during the investigation period. For each supplier of steel billet, the Chinese exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

As well as identifying the manufacturers of all purchased steel billet, the exporters were also asked to indicate whether these enterprises were SIEs. The exporter questionnaire responses received by the Commission indicated that none of the exporters had purchased steel billet from SIEs during the investigation period.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

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

There are no articulated eligibility criteria for enterprises receiving steel billet at LTAR.

IS THERE A SUBSIDY?

Financial contribution

The cooperating exporters do not purchase steel billet for the production of grinding balls. Based on the information above, the Commission has no relevant information on which to conclude that any Chinese grinding ball exporters received this benefit, or if such a benefit exists.

As such, the available evidence does not support a finding that Program 1 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for steel billet.

PROGRAM 2: RAW MATERIALS (ELECTRICITY) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION

BACKGROUND

The application alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of electricity by the GOC at LTAR. In particular, it was claimed that electricity was being produced and supplied by SIEs.

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that provide electricity are public bodies, and that a financial contribution in the form of provision of raw material inputs at LTAR by these SIEs to grinding ball producers constitutes a countervailable subsidy.

Under this program, it is alleged that a benefit to exported grinding balls is conferred by electricity being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission requested information from the cooperating Chinese exporters in relation to their electricity costs during the investigation period. Each exporter was also asked to indicate whether the electricity providers were SIEs.

The Commission also requested information from the GOC in relation to this program, however no response was received.

Previous consideration

US Findings

The 2011 findings of the US countervailing investigation into aluminium extrusions exported from China determined that Provision of Electricity for LTAR to foreign invested enterprises located in the Nanhai District of Foshan City was countervailable. This finding
was made under the US adverse facts available provisions and in the absence of a response from the GOC. The investigation also determined that provision of electricity for LTAR to firms located in the ZHITDZ was not countervailable.

In a later countervailing review concluded in 2014, the US did not find that that electricity for LTAR to FIEs Located in the Nanhai District of Foshan City was countervailable.

The 2008 US Thermal Paper countervailing investigation found that electricity was provided at LTAR in the Zhanjiang Economic and Technological Development Zone. The investigation found that tariff rates in Guangzhou were higher than those paid by firms in Zhanjiang and preferential pricing exists within Guangdong province. The amount of subsidy received was the difference between the rate paid by the exporter and the higher provincial rate.

EU Findings

In its 2013 countervailing investigation relating to Coated Steel exported from China the European Union (EU) determined that subsidies had been received in relation to the provision of electricity at LTAR. The EU observed that “price differentials exist for different industrial users to pursue the industrial policies set by the GOC and reflected in the catalogue contained in Decision No. 40 (2005) of the NDRC (see further explanation in recital (182)).” The EU case examined one exporter who was found to be benefiting from a lower rate than the generally applicable large industrial users rate on the basis that the exporter was located in a sub-category of certain industrial users. The subsidy amount was calculated by comparing the actual rate paid by the exporter to the large industrial users rate.

Australian and Canadian Findings

In separate countervailing investigations in relation to exports of silicon metal from China the Commission and Canadian authorities determined that producers of silicon metal had received electricity at LTAR.

Both cases found that the ferro-alloy industry, of which the silicon metal producers were a part, was entitled to a specific rate of electricity that was found to be below the rate available to large industrial users. This is consistent with the findings of the EU coated steel case and to a lesser extent the findings of the US thermal paper case.

In Review of Measures - Aluminium Extrusions exported from China, the Commission was not satisfied that that the requirements of subsection 269TACC(3)(d) were met. The Commission found that tariff data did not show that preferential pricing existed the province where the selected exporters were located.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

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

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving electricity at LTAR.

IS THERE A SUBSIDY?

In determining the existence of a subsidy, the investigation has followed the approach adopted by the Commission in Investigation 237 – Silicon Metal exported from China (INV 237) and Review of Measures 248 – Aluminium Extrusions exported from China (REV 248), as well as the Canadian and EU investigations detailed above, in determining if a subsidy exists.

As stated throughout this report, information about this program was requested from the GOC, however no response was provided. In the absence of a GOC response, the Commission sought to establish if the grinding ball industry was eligible for a specific rate of electricity that was below the rate available to large industry.

Provincial electricity tariff data was obtained for both the Jiangsu and Hebei provinces, the provinces in which the cooperating exporters are located, for both 2014 and 2015. The Commission compared the tariff data with the information supplied by each exporter and established that each exporter was subject to the tariff applicable to large industry. The tariff data indicated that certain industries were subject to preferential pricing, including the agricultural sector. The tariff data did not indicate that the grinding ball industry was subject to specific or preferential pricing.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Based on the evidence available, the Commission is not satisfied that the requirements of subsection paragraph 269TACC(3)(d) are met. This program will therefore not be countervailed in respect of grinding balls exported from China.

PROGRAM 32: RAW MATERIALS (COKING COAL) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION

BACKGROUND

The application alleged that Chinese exporters of grinding balls have benefited from the provision of raw material in the form of coking coal by the GOC at LTAR.

In particular, it was claimed that coking coal, one of the main raw materials used in the manufacture of grinding bar, which is in turn used for the manufacture of grinding balls, was being produced and supplied by SIEs in China at LTAR.

During this investigation it has been established that Longte transitioned to being an integrated producer of grinding balls during the investigation period. Integrated producers manufacture grinding balls using coking coal as one of the raw materials, while non-integrated producers purchase grinding bar to produce those goods.
The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that produce coking coal are public bodies, and that a financial contribution in the form of provision of raw material inputs (coking coal) at LTAR by these SIEs to manufacturers of grinding balls constitutes a countervailable subsidy.

The Commission’s assessment of whether SIEs constitute a public bodies in the meaning of subsection 269T(1) is discussed at Appendix 3.

This assessment concludes that these Chinese SIEs that produce coking coal are ‘public bodies’ for the purposes of section 269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit to exported grinding balls is allegedly conferred by coking coal being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission’s assessment of what constitutes ‘adequate remuneration’ for coking coal in China is contained in Appendix 2.

The Commission requested information from all Chinese exporters in relation to their purchases of coking coal during the investigation period. For each supplier of coking coal, the Chinese grinding ball exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

Information presented by Longte showed that coking coal was supplied to its parent company Longteng by non SIEs, however one supplier of coking coal was supplied by a SIE producer.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

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

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving coking coal at LTAR.

IS THERE A SUBSIDY?

Based on the available information, the Commission considers that this program does not represent a financial contribution that involves the provision of the goods (coking coal) by SIEs, being public bodies, at LTAR.
Using the information supplied by Longte, the Commission assessed each purchase of coking coal from an SIE for adequate remuneration.

In accordance with subsection 269TACC(5), the adequacy of remuneration was determined by reference to a ‘benchmark’ for adequate remuneration, established having regard to the prevailing market conditions in China (as discussed in Appendix 2).

In accordance with subsection 269TACC(6)(d), the amount of the benefit has been determined as the difference between adequate remuneration (the established benchmark) and the actual purchase price paid for coking coal incurred by the relevant exporter in purchasing those goods from an SIE.

The Commission notes that the export prices used to determine the benchmark price are at FOB terms, whereas the purchase price paid by Longte was on delivered terms. Given the absence of information in relation to freight costs for both the supplier of the coking coal to Longte, and the freight costs associated with transporting coking coal from the Australian mine to port of loading, the Commission considers it is reasonable to compare the delivered purchase prices as reported by the exporter to the FOB export prices, given that both incorporate some amount of freight cost.

The Commission has determined that the weighted average price paid by Longte over the investigation period for coking coal supplied by SIEs is lower than the weighted average export price for Australian premium low volume hard coking coal as supplied by an independent provider of export pricing data.

Based on this analysis, the Commission is not satisfied that coking coal has been provided at LTAR. As such, the available evidence does not support a finding that Program 32 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for coking coal.

**PROGRAM 33: RAW MATERIALS (COKE) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION**

**BACKGROUND**

The application alleged that Chinese exporters of grinding balls have benefited from the provision of raw material in the form of coke by the GOC at LTAR. In particular it was claimed that coke, one of the main raw materials used in the manufacture of grinding balls, was being produced and supplied by SIEs in China at LTAR.

Coke is an intermediate raw material used in the manufacture of grinding bar. Coking coal is put through a coking oven to produce coke, hence coking coal is the main raw material used in the production of coke.

Integrated producers manufacture grinding balls using coking coal and/or coke as one of the raw materials, while the non-integrated producers purchase grinding bar to produce those goods.

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.
The application alleges that Chinese SIEs that produce coke are public bodies, and that a financial contribution in the form of provision of raw material inputs (coke) at LTAR by these SIEs to manufacturers of grinding balls constitutes a countervailable subsidy.

The Commission’s assessment of whether SIEs producing coke constitute a public body in the meaning of subsection 269T(1) is discussed in Appendix 3.

This assessment concludes that these Chinese SIEs that produce coke are ‘public bodies’ for the purposes of subsection 269T, and the remainder of this section continues on the basis of this finding.

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

The Commission requested information from all Chinese exporters in relation to their purchases of coke during the investigation period. For each supplier of coke, the Chinese grinding ball exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

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

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving at LTAR.

IS THERE A SUBSIDY?

The cooperating exporters did not purchase coke from SIE’s during the investigation period. Based on the above, the Commission has no relevant information on which to conclude that any Chinese grinding ball exporters received this benefit, or if such a benefit exists.

As such, the available evidence does not support a finding that Program 33 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for coke.
A1.3.2 CATEGORY TWO: INCOME TAX

PROGRAM 3: PREFERENTIAL TAX POLICIES IN THE WESTERN REGIONS

BACKGROUND

The application alleges that grinding ball exporters located in the Western Regions of China are likely to have benefited from exemptions to income tax.

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

In certain circumstances, the program also operates to exempt enterprises from VAT and tariff on imported goods (Program 6, below). As the Commission will examine Program 6 as a separate program, the assessment of this Program 3 focuses specifically on reduced income tax rates only.

LEGAL BASIS

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

- Law of the People's Republic of China on Enterprise Income Tax (2007);
- Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (200);
- the Circular of the State Council Concerning Several Policies on Carrying out the Development of China’s Vast Western Regions, State Council Circular Guo Fa No. 33 of 2000;
- the Implementing Some Policies and Measures for the Development of Western Regions, State Council Circular Guo Ban Fa No. 73 of 2001;
- the Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas (Cai Shui No. 202 of 2001);
- State Council Circular Guo Fa No. 39 of 2007;
- the Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Preferential Policies of Enterprise Income Tax, State Council Circular Cai Shui No.1 of 2008;
- State Council Circular Cai Shui No.4 of 2013; and
- the Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions, State Council Circular Cai Shui No.58 of 2011.

The program is administered by the SAT and its local Branch Offices or Bureaus.

WTO NOTIFICATION

The GOC notified this program in WTO document G/SCM/N/284/CHN, dated 30 October 2015.
ELIGIBILITY CRITERIA

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

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

IS THERE A SUBSIDY?

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

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

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

Where exporters of grinding balls during the investigation period received tax savings under this program it would therefore confer a benefit in relation to grinding balls and the financial contribution would meet the definition of a subsidy under section 269T.

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

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

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

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

As the criteria or conditions providing access to the subsidy favours particular enterprises, being those ‘encouraged’ enterprises in the Western Regions, over all other enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).
For these reasons the Commission finds that the subsidy is specific.

**AMOUNT OF SUBSIDY**

Cooperating exporters

The Commission has determined that cooperating exporters did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to cooperating exporters under this program.

**PROGRAM 4: LAND USE TAX DEDUCTION**

**BACKGROUND**

The application alleges that grinding ball exporters are likely to have benefited from land use tax deduction. This program provides for the reduction or exemption of land use taxes for high and new technology enterprises.

**LEGAL BASIS**

*Approval of Tax (Expense) Deduction (ZhengDiCaShui [2010] No. 11581).*

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

**WTO NOTIFICATION**

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

**ELIGIBILITY CRITERIA**

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

**IS THERE A SUBSIDY?**

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

Due to the nature of this program (exemption of land use tax), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

Where received, financial contribution is considered to confer a benefit to recipient manufacturers of grinding balls due to reduced tax liability owed to the GOC.
Where exporters of grinding balls during the investigation period received tax savings under this program, this would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

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

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

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

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

The Commission therefore considers this subsidy to be specific.

AMOUNT OF SUBSIDY

Cooperating exporters

The Commission has determined that cooperating exporters did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to cooperating exporters under this program.

PROGRAM 5: PREFERENTIAL TAX POLICIES FOR HIGH AND NEW TECHNOLOGY ENTERPRISES

BACKGROUND

The application alleges that grinding ball exporters are likely to have benefited from preferential tax policies. This program reduces the income tax paid by high and new technology enterprises to 15% (from the standard enterprise income tax rate of 25%).

LEGAL BASIS

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

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

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

WTO NOTIFICATION
The GOC notified this program in WTO document G/SCM/N/284/CHN, dated 30 October 2015.

ELIGIBILITY CRITERIA

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

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

IS THERE A SUBSIDY?

The Commission considers that the law governing this program mandates a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in China.

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

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

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

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

A subsidy is considered specific if access to the subsidy is explicitly limited to particular enterprises (subsection 269TAAC(2)(a)).

The eligibility criteria of this subsidy limits it to enterprises that are considered higher and/or new technology enterprises. As the criteria or conditions providing access to the subsidy favour these particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

AMOUNT OF SUBSIDY

Cooperating exporters

The Commission has determined that of the cooperating exporters only Xingcheng received financial contributions in respect of the goods under this program during the investigation period.
The Commission determined that the amount of subsidy received by Xingcheng in respect of this program is the amount of tax revenue forgone by the GOC. In accordance with subsection 269TACD(2), the Commission then apportioned the total amount of subsidy received by Xingcheng to each unit of the goods using its total sales volume.

The Commission has determined that the remaining cooperating exporters did not receive a financial contribution in respect of the goods under this program and therefore considers a zero subsidy rate is applicable to the remaining cooperating exporters under this program.
A1.3.3 CATEGORY THREE: TARIFF AND VAT EXEMPTIONS
INCOME TAX

PROGRAM 6: TARIFF AND VAT EXEMPTIONS ON IMPORTED
MATERIALS AND EQUIPMENT

BACKGROUND

The application alleges that Chinese producers of grinding balls are likely to have benefited from this program, under which the GOC provides an exemption of VAT and tariffs on imported equipment used as ‘productive’ assets.

LEGAL BASIS

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

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

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

WTO NOTIFICATION

The GOC notified this program in WTO document G/SCM/N/123/CHN dated 13 April 2006.

ELIGIBILITY CRITERIA

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

- the enterprise must be an FIE which falls in the ‘encouraged’ or ‘restricted’ categories in the Catalogue of Industries for Guiding Foreign Investment (2004) (until 30 November 2007) or the Catalogue of Industries for Guiding Foreign Investment (2007) (after 1 December 2007);
- the imported equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise’s own use and not fall in the State Council’s Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue; and
- the total value of the purchase must not exceed the investment ‘cap’;
or

- the enterprise must be a domestic invested enterprise (DIE) which falls in the *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004) and the imported equipment must be for the enterprises own use and not fall in the *Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue*; and
- the total value of the purchase must not exceed the investment ‘cap’.

**IS THERE A SUBSIDY?**

Based on the information above, the Commission considers this program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC (tariff and VAT) by eligible enterprises in China.

It is considered that, depending on the nature of the imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of grinding balls.

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

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

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

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

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

For these reasons the Commission finds that the subsidy is specific.

**AMOUNT OF SUBSIDY**

**Cooperating exporters**

The Commission has determined that the cooperating exporters did not receive financial contributions in respect of the goods under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under this program.
PROGRAM 29: COMPREHENSIVE UTILIZATION OF RESOURCES - VAT REFUND UPON COLLECTION

BACKGROUND

The applicants alleged that one supplier of grinding bar to exporters of grinding balls, namely [redacted], reported receiving payments from the Economic and Information Commission, which it described as "Project: [redacted]."

The applicants asserted that the law governing this program mandates a financial contribution by the GOC, which involves the refund of government revenue, specifically, VAT on comprehensive utilization of resources. Due to the nature of this program (refund of VAT), the applicants considered that a financial contribution under this program would be made in connection with the production, manufacture or export of grinding balls.

The applicants considered that this financial contribution has been made in respect of all products in receipt of grinding bar supplied by [redacted], including grinding balls and that as the financial contribution under this program takes the form of reduced tax liability (rather than a direct transfer of funds) it should be determined that the financial contribution has conferred a benefit under subsection 269TACC(3).

The applicants quantified the amount of subsidy in accordance with subsection 269TACC(6)(d) as the amount of tax revenue forgone by the GOC. This has been disclosed by [redacted] as a credit (deferred income) in the sum of RMB 6,175,000.

LEGAL BASIS

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

WTO NOTIFICATION

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

ELIGIBILITY CRITERIA

The Commission is not aware of the eligibility criteria for this program.

IS THERE A SUBSIDY?

The Commission considers that the law governing this program mandate a financial contribution by the GOC, which involves the refund of government revenue (VAT on comprehensive utilization of resources).
Due to the nature of this program (refund of VAT), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of grinding balls.

Where received, this financial contribution is considered to confer a benefit because of the VAT refunded on ‘comprehensive utilisation of resources’.

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

Due to the lack of information provided by the GOC and the cooperating exporters, the Commission has based its finding on the available information. It finds that VAT refunds made on ‘comprehensive utilisation of resources’ by the GOC could be made only to entities that have the characteristics of ‘comprehensive utilisation of resources’.

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

**AMOUNT OF SUBSIDY**

Cooperating exporters

The Commission has assessed the information supplied by each cooperating exporter and has determined that grinding bar has not been purchased from the manufacturer named by the applicants. The Commission has found no other evidence of the cooperating exporters receiving a benefit under this program.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under this program.
A1.3.4 CATEGORY FOUR: GRANTS

PROGRAMS 7 TO 28, 30, 31, 34 TO 43 AND 48 TO 54

BACKGROUND

The application alleged that Chinese producers of grinding balls are likely to have benefited from the following grant programs:

- Program 7: One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’;
- Program 8: Matching Funds for International Market Development for small and medium size enterprises (SMEs);
- Program 9: Superstar Enterprise Grant;
- Program 10: Research and Development (R&D) Grant;
- Program 11: Innovative Experimental Enterprise Grant;
- Program 12: Special Support Fund for Non-State-Owned Enterprises;
- Program 13: Venture Investment Fund of Hi-Tech Industry;
- Program 14: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment;
- Program 15: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan;
- Program 16: Water Conservancy Fund Deduction;
- Program 17: Anti-Dumping Respondent Assistance;
- Program 18: Technology Project Assistance;
- Program 19: Capital Injections;
- Program 20: Environmental Protection Grant;
- Program 21: High and New Technology Grant;
- Program 22: Independent Innovation and High Tech Industrialization Program;
- Program 23: Environmental Prize;
- Program 24: Provincial emerging industry and key industry development special fund;
- Program 25: Environmental Protection Fund;
- Program 26: Intellectual property licensing;
- Program 27: Financial resources construction special fund;
- Program 28: Reducing pollution discharging and environment improvement assessment award;
- Program 30: Grant for elimination of out dated capacity;
- Program 31: Grant from Technology Bureau;
- Program 34: Patent Award of Guangdong Province;
- Program 35: Wuxing District Freight Assistance;
- Program 36: Huzhou City Public Listing Grant;
- Program 37: Huzhou City Quality Award;
- Program 38: Huzhou Industry Enterprise Transformation & Upgrade Development Fund;
- Program 39: Wuxing District Public List Grant;
- Program 40: Transformation technique grant for rolling machine;
- Program 41: Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009;
PUBLIC RECORD

- Program 42: Key industry revitalization infrastructure spending in 2010; and
- Program 43: Jinzhou District Research and Development Assistance Program.

Under these programs certain enterprises are eligible for cash grants provided by the GOC. Benefits are conferred to these enterprises in the form of funds provided.

During the course of its investigation the Commission requested information from exporters of grinding balls in relation to benefits received over the injury analysis period. The purpose of requesting data for years prior to the investigation period was to determine whether countervailable subsidies had been received that should be amortised over a period of years, such that a benefit could found to be attributable to the period of investigation. The cooperating exporters advised of payments received from the GOC during this period.

Further investigation of information provided by cooperating exporters has shown that other benefits were received during the investigation period. The Commission has assigned the following descriptions to those programs:

- Program 48: International trade increase project fund;
- Program 49: Industrial economy reform and development fund;
- Program 50: Sales revenue increase award;
- Program 51: Tax contribution award;
- Program 52: Energy and recyclable economy program;
- Program 53: National Controlled Essential Pollutant Source Supervision System Third Party Operation and Maintenance Subsidy Program; and
- Program 54: Scientific Program Awards in High and New Scientific Zone.

WTO NOTIFICATION

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

LEGAL BASIS AND ELIGIBILITY CRITERIA – PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43

Program 7: One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’

Legal basis

Decision Concerning Commending and/ or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of ‘China Worldwide Famous Brand’, ‘China Famous Brand’, or ‘China Well-Known Brand’.

The government of Guangdong province is responsible for the administration and management of this program.

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18 Either centrally, or through provincial or local government.
19 Either centrally, or through provincial or local government.
Eligibility criteria

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

Program 8: Matching Funds for International Market Development for SMEs

Legal basis

Regulatory instrument:

Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises.

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

Eligibility criteria

SME enterprises that have:

• a legal personality according to law;
• the capacity to manage an import or export business;
• made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less;
• sound financial management systems and records;
• employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and
• a solid market development plan.

Program 9: Superstar Enterprise Grant

Legal basis

• Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises; and

This program is administrated by the Huzhou Economic Committee.

Eligibility criteria

Enterprises located in Huzhou city that satisfy the following criteria.

(a) The ‘output scale’ of the enterprise must meet one of the following criteria:
• business income of the current year not exceeding RMB 3.5 billion and sales;
• revenue within the city exceeding RMB 2 billion;
• sales revenue within the city exceeding RMB 2.5 billion;
• sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than RMB 10 million; or
• revenue from self-export of current year is more than USD150 million.

(b) The enterprise’s accumulated industrial input between the years 2006 to 2008 must have exceeded RMB 150 million.

(c) The enterprise must be profitable, and its VAT ‘paid up’, while its
• consumption tax;
• income tax;
• business tax;
• city construction tax; and
• education supplementary tax

must exceed RMB 30 million.

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

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

Program 10: Research & Development (R&D) Grant

Legal basis

Regulatory instrument:

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

The GOC stated that the funding shall not be more than RMB150,000 and the duration for supporting an enterprise shall not be more than 3 years.

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

Eligibility criteria

The GOC stated that to qualify for this grant, applicant must meet the following requirements:

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

The GOC provided further information stating that the purpose of the grant is to accelerate the transformation of the economic development pattern and economic restructure of Jinzhou New District, enhance the capacity of self-dependent innovation of the district, implementing the strategy on “innovative Urban District”, and making efforts to achieve the sound and rapid economy development of Jinzhou New District.

Program 11: Innovative Experimental Enterprise Grant

Legal basis

Regulatory instrument:

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

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

Eligibility criteria

Eligible enterprises are those that are located in Zhejiang Province, and are:

• independent economic entities with ‘reasonable asset-liability ratios’, consistent earnings over the past 3 years, and an increasing market share;
• well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres;
• investing at least 5% of annual sales income;
• using intellectual property rights to protect major products; and
• strongly committed to technological innovation and protection with previous technological achievements.
Program 12: Special Support Fund for Non-State-Owned Enterprises

**Legal basis**

Regulatory Instrument:


**Eligibility criteria**

Non-SOEs (SIEs) located in Yunnan Province.

Program 13: Venture Investment Fund of Hi-Tech Industry

**Legal basis**

Regulatory Instrument:

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

The program is administered by the Chongqing Venture Investment Fund.

**Eligibility criteria**

Enterprises with ‘high-tech programs’ located in the High-Tech Zone or the High-Tech Park of the new Northern District.

In addition:

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

Program 14: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment

**Legal basis**

Regulatory Instrument:

*Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters*
Eligibility criteria

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

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

Only one enterprise Headquarters is permitted in the Guangzhou Municipality.

To qualify as ‘Regional Headquarters’, the facility must control operations and management of some or all enterprises it is invested in a certain area of China.

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

Program 15: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

Legal basis

Regulatory Instrument:


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

Eligibility criteria

For an enterprise to be eligible for this program:

- it must be established, registered and carrying out business in Zhongshan City;
- its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies;
- it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise’s main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development;
- it must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation; and
- it must have good credit standing.
Program 16: Water Conservancy Fund Deduction

Legal basis

Regulatory Instrument:

(Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local Taxation Bureau (ZheDiShuiFa [2007] No.63).

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

Eligibility criteria

The GOC has confirmed that only enterprises satisfying one of following criteria will eligible for the grant under this program:

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

Program 17: Anti-dumping Respondent Assistance

Legal basis

Regulatory Instrument:

(Notification of Receiving Fair Trade Assistance by Wuxing Foreign Economic and Trade Bureau.

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

Eligibility criteria

Enterprises which incur expenses in an anti-dumping proceeding may benefit from this program.
Program 18: Technology Project Assistance

Legal basis

Regulatory Instrument:

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

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

Eligibility criteria

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

Program 19: Capital Injection Grant

The applicants advised subsequent to lodging the application that Program 19 is more correctly categorised under Program 45 – Equity Infusions.

The Commission has assessed this program in the Equity Programs section below.

Program 20: Environmental Protection Grant

Legal Basis

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

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

In a former investigation into galvanised steel and aluminium zinc coated steel products a similar program “Environmental protection grant” was identified. The cooperating exporter in those investigations explained that the program was available to enterprises to purchase equipment to help protect the environment and payments were by the Ministry of Finance. On further inquiry, the GOC advised that it was not able to confirm if there was a ‘program 31’ and otherwise did not provide any information. The Commission considered the GOC’s response in regard to that program to be non-cooperative (program 31 in INV 193 refers).

Program 21: High and New Technology Enterprise Grant

Legal Basis

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

Eligibility criteria
The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 30).

**Program 22: Independent Innovation and High Tech Industrialization Program**

**Legal Basis**

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

**Eligibility criteria**

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 31).

**Program 23: Environmental Prize**

**Legal Basis**

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

**Eligibility criteria**

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 33).

**Program 24: Provincial emerging industry and key industry development special fund**

**Legal Basis**

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

**Eligibility criteria**

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 34).

**Program 25: Environmental Protection Fund**

**Legal Basis**

The Commission is not aware of the legal basis for this program.
Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 38), and in INV 198 (there known as, Program 34).

Program 26: Intellectual property licensing

Legal Basis

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

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 39), and before then INV 198 (there known as, Program 37).

Program 27: Financial resources construction special fund

Legal Basis

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

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 40), and before then INV 198 (there known as, Program 38).

Program 28: Reducing pollution discharge and environment improvement assessment award

Legal Basis

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

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 41), and before then INV 198 (there known as, Program 39).

Program 30: Grant for elimination of out dated capacity
Program 31: Grant from Technology Bureau

Legal Basis
The Commission is not aware of the legal basis for this program.

Eligibility criteria
The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 43), and before then INV 198 (there known as, Program 41).

Program 34: Patent Award of Guangdong Province

Legal basis

Regulatory instrument:


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

Eligibility criteria

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

An application under the ‘innovations and utility models’ patent category must establish that:

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

An application under the industrial design category must establish that:

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

Program 35 – Wuxing District Freight Assistance

Legal basis

Regulatory instrument:


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

Eligibility criteria

Those enterprises whose annual freight cost is RMB 3 million or above, will be refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007.

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

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

Program 36: Huzhou City Public Listing Grant

Legal basis

Regulatory instrument:

Notification of Government of Huzhou City (HuBan No.160).

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

Eligibility criteria

This program is available to enterprises that successfully completed listing of shares during 2010.
Program 37: Huzhou City Quality Award

Legal basis

Regulatory instrument:

Notification of the Office of People’s Government of Huzhou City (HuZhengBanFa No.60).

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

Eligibility criteria

The award is granted to no more than three enterprises each year that are registered in Huzhou City and have been in operation for more than three years and that have:

- ‘enjoyed excellent performance’;
- ‘implemented quality management’; and
- ‘obtained a leading position in industry with significant economic benefits and social benefits’.

The products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy.

Program 38: Huzhou Industry Enterprise Transformation & Upgrade Development Fund

Legal basis

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

The GOC has advised that there is no single purpose legal document directly related to any benefit received by a respondent under investigation.

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

Eligibility criteria

This program is limited to enterprises registered in Huzhou and encourages the transformation and upgrade of enterprises, ‘including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new technology industry and new industry’.

Program 39: Wuxing District Public List Grant
Legal basis

Regulatory instrument:

Notification on Awarding Advanced Individuals and Advanced Entities of Industrial Economy and Open Economy for the Year of 2010 (WuWeiFa [2011] No.14).

This program is administered by the Government of Wuxing District.

Eligibility criteria

A grant is available to eligible advanced publicly listed enterprises.

Program 40: Transformation technique grant for rolling machine

Legal Basis

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

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, Program 31).

Program 41: Grant for Industrial enterprise energy management- centre construction demonstration project Year 2009

Legal Basis

The Commission is not aware for the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, Program 32).

Program 42: Key industry revitalization infrastructure spending in 2010

Legal Basis

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

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.
This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, Program 33).

Program 43: Jinzhou District Research and Development Assistance Program

Legal Basis

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

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, Program 34).

ARE THERE SUBSIDIES - PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43?

Based on the information above, the Commission considers that the grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.

Due to the nature of each grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

The Commission noted that the above detailed programs have been investigated previously during INV 237, INV 193 or INV 177 and found to be countervailable subsidies.

This financial contribution is considered to confer a benefit to recipient manufacturers of grinding balls due to receipt of funds from the GOC.

Where exporters of grinding balls during the investigation period received grants under any of the above programs, these would therefore confer a benefit in relation to the goods, and these financial contributions would meet the definition of a subsidy under section 269T.

Are the subsidies countervailable subsidies (specific or prohibited)?

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

In accordance with the above-listed eligibility criteria, each grant is limited to specific enterprises either by location, enterprise type; product manufacture; ownership structure; the possession of certain patents; trading focus (export oriented); public listing status; participation in an anti-dumping investigation; hi-tech status; and length of operation; capital contribution or other criteria.

As the criteria or conditions providing access to the subsidies favours particular enterprises over all other enterprises in China, the specificity of these subsidies is not excepted by reference to subsection 269TAAC(3).
The Commission therefore considers each of the above-listed grant programs to be specific.

**AMOUNT OF SUBSIDY - PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43**

Cooperating exporters

The Commission has determined that the cooperating exporters did not receive any financial contribution in respect of grinding balls under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under these programs.

**LEGAL BASIS, ELIGIBILITY CRITERIA AND SPECIFICITY – PROGRAMS 48 TO 54**

Program 48: International trade increase project fund

**Legal Basis**

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

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Department of Commerce of Changshu City.

**Eligibility criteria**

The Commission is not aware of the eligibility criteria for this program.

**Are the subsidies countervailable subsidies (specific or prohibited)?**

The Commission considers that enterprises must meet some criteria in relation to increasing international trade and be located in Changshu City district in order to be eligible for the subsidy provided by the Department of Commerce of Changshu City.

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

Program 49: Industrial economy reform and development fund

**Legal Basis**

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Department of Finance of Changshu City.

**Eligibility criteria**

The Commission is not aware of the eligibility criteria for this program.
Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire considers that enterprises must meet some criteria in relation to industrial reform and development and be located in Changshu City district in order to be eligible for the subsidy provided by the Department of Finance of Changshu City.

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

**Program 50: Sales revenue increase award**

**Legal Basis**

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

**Eligibility criteria**

The Commission understands from the relevant cooperating exporter questionnaire that eligibility is determined with reference to the following scale:

1. increase amount for 50,000,000 & ratio for 30%: 10,000 award;
2. increase amount for 100,000,000 & ratio for 30%: 20,000 award;
3. increase amount for 500,000,000 & ratio for 25%: 50,000 award;
4. increase amount for 1,000,000,000 & ratio for 25%: 100,000 award;

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire that enterprises must meet the above detailed criteria in relation to sales revenue increases and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

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

**Program 51: Tax contribution award**

**Legal Basis**

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

**Eligibility criteria**

The Commission understands from the relevant cooperating exporter questionnaire that eligibility is determined with reference to the following scale:
(1) tax paid amount over 30,000,000 & increase ratio over 15%: 200,000 award;
(2) tax paid amount from 20,000,000 to 30,000,000 & increase ratio over 18%: 150,000 award;
(3) tax paid amount from 10,000,000 to 20,000,000 & increase ratio over 18%: 100,000 award;
(4) tax paid amount from 5,000,000 to 10,000,000 & increase ratio over 20%: 50,000 award;
(5) tax paid amount from 2,000,000 to 5,000,000 & increase ratio over 25%: 20,000 award;

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire that enterprises must meet the above detailed criteria in relation to tax contribution increases and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

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

Program 52: Energy and recyclable economy program

Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria in relation to energy and recyclable economy targets and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

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

Program 53: National Controlled Essential Pollutant Source Supervision System Third Party Operation and Maintenance Subsidy Program

Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is jointly administered by the Finance Bureau of Jiangyin City and the Environment Protection Bureau of Jiangyin City.
Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria relating to pollution supervision and control and be located in Jiangsu Province in order to be eligible for the subsidy provided by the Finance Bureau of Jiangyin City.

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

Program 54: Scientific Program Awards in High and New Scientific Zone

Legal Basis

Regulatory instrument:


The Commission understands from the relevant cooperating exporter questionnaire that the program is jointly administered by the Finance Bureau of Jiangyin City and the Science and Technology Bureau of Jiangsu Province.

Eligibility criteria

The Commission understands from the relevant cooperating exporter questionnaire that products recognized in as High and New Technology Products of Jiangsu Province may be rewarded 5,000 yuan per product, not exceeding 20,000 yuan for each enterprise in total.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet the above detailed eligibility criteria and be located in Jiangsu Province in order to be eligible for the subsidy provided by the Finance Bureau of Jiangyin City.

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

AMOUNT OF SUBSIDY – PROGRAMS 48 to 54

Cooperating exporters

The Commission has determined that financial contributions in respect of the goods have been received by:

- Longte under programs 48 to 52; and
- Xingcheng under programs 53 and 54.
Having regard to the nature and eligibility criteria for the subsidy, it is considered that the financial contribution received was in respect of all goods sold by that exporter including grinding balls.

In accordance with subsection 269TACC(2), receipt of the grant is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with subsection 269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with subsection 269TACC(10), the total amount of subsidy received by each exporter has been apportioned to each unit of grinding balls using that exporter's total sales volume. To determine the subsidy margin the weighted average export price of grinding balls for each exporter was used.
A1.3.5 CATEGORY FIVE: EQUITY PROGRAMS

The application alleged that Chinese producers of grinding balls are likely to have benefited from the following equity programs:

- Program 44 Debt for equity swaps;
- Program 45 Equity infusions; and
- Program 46 Unpaid dividends.

PROGRAM 44: DEBT FOR EQUITY SWAPS

BACKGROUND

This program was found to be a current and countervailable subsidy most recently by the CBSA in ‘Concerning the final determinations with respect to the dumping of certain concrete reinforcing bar originating in or exported from the People’s republic of China’, 4218-39 CV/138, 23 December 201420 (there known as, Program 176) and the European Commission (EC) in ‘Countervailing duty on imports of certain organic coated steel products originating in the People’s Republic of China’, 11 March 201321.

The debt for equity swap was a measure used in the financial restructuring of China’s State-owned steelmakers to state owned commercial banks (SOCBs). Pursuant to the Regulations of Asset Management Companies (promulgated by decree on 20 November 2000), the State Council established four Asset Management Companies (AMCs) that were directed to purchase certain non-performing loans from SOCBs. The four AMCs were supervised and managed by the People’s Bank of China (PBC), China’s Ministry of Finance and the China Securities Regulatory Commission. One of the authorised business activities available for the management of non-performing loans purchased by the AMCs was the debt for equity swap. A debt for equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company’s debt in exchange for equity in the company.

The EC found that, in the absence of any cooperation from the GOC, the evidence available to it demonstrated that AMCs are public bodies because they were specifically created by the GOC to dispose of massive non-performing loans in key industries including the steel sector and to restructure the debts of SOEs, and, consequently, they were considered to exercise government authority. The EC further found in relation to SOCBs that at least 14 out of the 17 reported banks in that case were state-owned banks, and they were controlled by the government and exercised government authority in a manner that their actions were attributable to the State. For these reasons the AMCs and SOCBs China were considered public bodies.

The subsidy was considered specific as it was restricted only to selected entities selected by the State and the award of this financing is discretionary and no objective criteria exist. Therefore it was concluded that this programme constituted a countervailable subsidy.

LEGAL BASIS

20 Hereinafter Canada – Countervailing measures on rebar from China
21 Hereinafter European Community – Countervailing measures on organic steel from China
The Commission is not aware of the legal basis for this program.

**WTO NOTIFICATION**

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

**ELIGIBILITY CRITERIA**

The Commission is not aware of the eligibility criteria for this program.

**PROGRAM 45: EQUITY INFUSIONS**

**BACKGROUND**

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

The applicants assert, based on the CBSA and EC findings, that the GOC has provided substantial amounts of cash to steel producers through equity infusions, specifically, the GOC (through various state-owned entities) acquired shares in companies in which it was already the main shareholder without acquiring additional shareholder rights. As such, equity infusions constitute a direct transfer of funds.

The applicants consider that these equity infusions confer a benefit to the recipient companies as they are inconsistent with the usual investment practice of private investors, specifically, the payment by the SIE steel producer of an overvalued price of its portion of the new share issue not in line with fair market conditions. In the case of *European Community – Countervailing measures on organic steel from China*, the EC was satisfied that the GOC paid the same price as other investors despite the GOC’s shares in the SIE steel producer being worth less as they had different rights and prospects than the shares sold to other shareholders.

The applicants asserted that these subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of the grinding balls.

**LEGAL BASIS**

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

**ELIGIBILITY CRITERIA**

The Commission is not aware of the eligibility criteria for this program.

**WTO NOTIFICATION**

The Commission is not aware of any WTO notification in respect of this program.
PROGRAM 46: UNPAID DIVIDENDS

BACKGROUND

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

The applicants asserted that SIEs including the steel companies producing grinding balls do not have to pay dividends to the government as their owner even when they earn profits, and as a result, SIE steel producers are able to finance investment through retained profits not distributed as dividends according to this program.

The applicants contended that unpaid dividends must be considered as a disguised grant or as revenue forgone in that the GOC does not collect dividends that are normally paid to private investors on their shares. These disguised grants were provided by the government through the entity directly holding the shares in the SIE steel producers, in principle SASAC, which, as noted above, performs Government functions.

The full amount of unpaid dividends is considered to confer a benefit to the recipient SIE steel producers as this is inconsistent with the usual investment practice of private investors that require dividend distributions normally attached to their shares.

The applicants asserted that these subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of grinding balls.

LEGAL BASIS

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

ELIGIBILITY CRITERIA

The Commission is not aware of the eligibility criteria for this program.

WTO NOTIFICATION

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

ARE THERE SUBSIDIES – PROGRAMS 44 TO 46?

The Commission has determined that the cooperating exporters did not receive any financial contribution in respect of grinding balls under these programs during the investigation period, nor has the Commission found cooperating exporters to have received any financial contribution under these programs in respect of other goods in previous investigations.
The Commission further notes that the CBSA and EC cases relied upon by the applicants were investigated prior to the commencement of the investigation period as it relates to this investigation.

On the basis of these factors, the Commission is not satisfied that exporters of grinding balls received any financial contribution in respect of grinding balls under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to all exporters under these programs.
A1.3.6 CATEGORY SIX: PREFERENTIAL LOANS

PROGRAM 47: PREFERENTIAL LOANS AND INTEREST RATES

BACKGROUND

The application alleged that during the investigation period, Chinese exporters of the goods benefited from low (subsidised) interest rates from SOCBs and government banks in accordance with the GOC policy to support and develop the expansion of the Chinese steel industry under the five year plans.

The applicants rely on the findings in European Community – Countervailing measures on organic steel from China (organic steel), to support the claim.

The application alleges that SOCBs are public bodies because they are vested with government authority and exercise government functions, and further, that privately owned banks are also subject to GOC direction. The application asserts that a benefit exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market.

The Commission requested information from the cooperating Chinese exporters in relation to their lending arrangements during the investigation period.

The Commission also requested information from the GOC in relation to this program, however no response was received.

Previous consideration

EC Findings

The EC investigation established that the Chinese financial market is characterised by government intervention because most of the major banks are state-owned. It concluded on the basis of the available data that state-owned banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the State. The EC further concluded that the GOC had a policy to provide preferential lending to the organic coated steel sector, because public bodies, in the form of SOCB were engaged in such provision and held a predominant place in the market, which enabled them to offer below-market interest rates.

In relation to privately owned commercial banks, the EC found that the GOC policy to provide preferential lending to the organic coated steel producers extended to privately-owned commercial banks and that the GOC instructs them to "carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies."22

In relation to loans provided by both SOCBs and privately owned banks the EC concluded that there was a financial contribution to the organic coated steel producers in the form of a direct transfer of funds from the government, and that a benefitted existed to the extent

22 Article 34 of the Commercial Banking Law
that the government loans were granted on terms more favourable than the recipient could have obtained in the market.

The EC determined that the authorities only allow the financial institutions to provide preferential loans to limited number of industries/companies which comply with the development policies of the GOC, and on this concluded that the subsidies in form of preferential lending are not generally available and are therefore specific.

Accordingly, the EC concluded that the financing of the organic coated steel industry should be considered a subsidy.

The subsidy amount was determined by the EC as the difference between the amount that the company paid on the government loan and the amount that the company would pay for a comparable commercial loan obtainable on the market. As the loans provided by Chinese banks reflected substantial government intervention in the banking sector and did not reflect rates that would be found in a functioning market, the EC constructed a market benchmark. Chinese interest rates as measured by the standard lending rate of the People’s Bank of China were adjusted to reflect the EC's assessment of normal market risk, the adjustment being the premium expected on bonds issued by firms with the highest grade of “non-investment grade” bonds (BB rating at Bloomberg).

**LEGAL BASIS**

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

**WTO NOTIFICATION**

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

**ELIGIBILITY CRITERIA**

There are no articulated eligibility criteria for enterprises receiving preferential loans and/or interest rates.

**IS THERE A SUBSIDY?**

**Financial contribution**

The Commission considers that this program involves a financial contribution in the form of a direct transfer of funds from the government.

As part of the exporter questionnaires provided to Chinese exporters of grinding balls, the Commission requested information about the total value of loans held and the proportion of state ownership of the banks providing those loans. The Commission established that the majority of loans provided to the cooperating exporters were provided by state owned banks. The Commission’s analysis is contained at Confidential Attachment 9.

**By a government or public body?**
In order for this program to be considered to be a ‘subsidy’ the financial contribution must be from a government, public body, or private body entrusted with governmental functions.

The Commission’s consideration of the term “public body” is detailed in Appendix 3.

In relation to the provision of loans, the Commission makes the following additional comments.

According to the most recent WTO Trade Policy Review on China, conducted in 2014, “credit policy continues to be of major importance in China. Efforts continue to be made to enhance the coordination between credit policy and industrial policies, by speeding up rural financial products and service innovation, improving the provision of financial services for and medium-sized enterprises, and by adopting measures to prevent and alleviate local debt-related risks. The PBC has guided financial institutions to intensify financial support to areas such as scientific and technological innovation, emerging industries of strategic importance, and service industries. Financial institutions were also guided to extend credit support for railways, shipping, thermal power and steel, and were encouraged to use credit products flexibly to support profitable export-oriented enterprises.”

The WTO Review further noted that “the General Rules on Loans of 1996 stipulates that Banks determine the interest rate for a loan on the basis of the interest rate "ceiling" and "floor" fixed by the PBC. In 2013, however, the PBC issued a notice liberalizing lending rates. As a result, financial institutions may set lending rates independently. Nonetheless, according to the General Rules on Loans: “in accordance with the State’s policy, relevant departments may subsidize interests on loans, to promote growth of certain industries and economic development in some areas (Article 15)”.

The WTO review noted that Chinese authorities claimed the General Rules on Loans of 1996 no longer reflected the current situation in the financial sector in China. The Commission notes that Article 34 of the Law of the People’s Republic of China on Commercial Banks [2003] states that “commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State”.

Without cooperation from the GOC the Commission was unable to clarify the continuing applicability of Article 15 of the General Rules on Loans or Article 34 of the Law on Commercial Banks, and in the absence of evidence provided to the contrary has deemed it reasonable to conclude that these provisions continue to apply within the framework of financial sector reform undertaken within China.

The Commission further noted that SOBCs continue to be the predominant players in the Chinese financial market. According to a Fortune 500 report China’s 12 largest companies are state owned, and of those 12, four are banks.

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23 WTO Trade Policy Review 2014 paragraph 28
24 Ibid paragraph 3.130

Report 316 - Grinding Balls - China
In the absence of a GOC response to the Commission in relation to this program, the Commission had to rely on the information available from the application, exporter questionnaire responses and publicly available sources. The Commission concludes on the basis of the available information that both SOBCs and privately owned banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the GOC.

Conferral of benefit on the goods

As Chinese exporters rely on loans to as a funding source in the production of grinding balls, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

The Commission considers that a benefit exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market. The benefit is found to be the amount of the difference between the interest rate paid by the producer of grinding balls and the interest rate that would be payable on a the market.

Where exporters of the goods during the investigation period received a financial contribution under the preferential loans and interest rates program, it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Are the subsidies countervailable subsidies (specific or prohibited)?

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

As detailed above, the WTO Review found that Chinese financial institutions were guided to extend credit support to a range of industries, including steel. This finding is consistent with:

- Decision No. 40, being an Order from the State Council, which categorises the steel industry as an “encouraged industry”, and identifies “encouraged investment projects” as being eligible for special privileges and incentives, such as financial support; and
- Order No. 35 - Policies for the development of Iron and Steel Industry, in particular Articles 24 and 25, which limit the provision of loans to those companies complying with the national development policies for the Iron and steel industry.

Taking these policies into consideration the Commission is satisfied that the GOC only allows financial institutions to provide preferential loans to a limited number of industries/companies which comply with the development policies of the GOC. In the absence of cooperation from the GOC on this matter it is concluded that the subsidies in form of preferential lending are not generally available and are therefore specific.

AMOUNT OF SUBSIDY
Applicants’ view

The applicants assert that because loans provided by Chinese banks were subject to substantial government intervention they did not reflect rates that would be found in a functioning market, and therefore an appropriate market benchmark would need to be constructed.

In keeping with the EC methodology conclusion in organic steel, the applicants proposed applying a benchmark based on Chinese interest rates, adjusted to reflect normal market risk. The applicants consider that in the absence of reliable information about the creditworthiness of Chinese grinding balls exporters, it is appropriate to consider that all firms in China would be accorded the highest grade of "Non-investment grade" bonds only (BB at Bloomberg). The benchmark rate would include the appropriate premium expected on bonds issued by firms with this rating in addition to the standard lending rate of the PBC.

Commission’s view

The Commission notes that as of 13 July 2013, subsequent to the conclusion of the organic steel investigation, the PBC liberalised interest rates, allowing financial institutions to set lending rates independently, and in keeping with commercial lending practices.

The Commission has undertaken an analysis of the information provided by cooperating exporters in relation to loans they have sourced. The Commission established that while the majority of loans were sourced from SOCBs, those loans sourced from privately owned banks were all subject to interest rates above the prevailing PBC official interest rate. Furthermore, the Commission established that the interest rates differed considerably between exporters and between banks. The Commission considered this indicative of financial institutions setting lending rates based on commercial risk assessments, a fundamental tenet of a functioning financial market.

The Commission does not consider it is reasonable based on this evidence to assert that all Chinese exporters should be accorded a risk premium on par with non-investment grade bonds.

The Commission has instead calculated the benchmark rate for interest rates as the average interest rate charged by the privately owned banks over the investigation period.

The Commission has determined the amount of subsidy as the differential between this benchmark rate and the rate actually charged where that rate was less than the official PBC interest rate at the time the loan was sourced.

Cooperative exporters

The Commission found that Longte, Xingcheng and Goldpro received a financial contribution that conferred a benefit under this program during the investigation period, in accordance with subsection 269TACC(3)(b).

In accordance with section 269TACD(1), the amount of the subsidy has been determined for each exporter as the difference between the benchmark rate as described above and
the actual interest rate incurred where that interest rate was below the official PBC rate at the time the loan was sourced.

The amount of subsidy received in respect of grinding balls has been calculated by taking the interest rate differential, expressed as a percentage, and multiplying it by the outstanding amount of the loan.

In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the total turnover of the company.
A2.1 Introduction

After determining that SIEs that supplied coking coal in China are ‘public bodies’ for the purposes of the Act (Appendix 3 refers), the Commission has sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal (under subsection 45(2) of the Regulations) and the benefit received under subsidy Program 32 (purchases of coking coal from SIEs at less than adequate remuneration).

In REP 193, the Commission established a benchmark price for coking coal using GOC supplied data for the Chinese export price of coking coal in the investigation period.

The Commission notes that in the current investigation, the GOC did not provide a response to the questionnaires provided to it. As such, the Commission could not reliably ascertain the volume and value of production of coking coal in China, the volume and value of imports of coking coal into China, and the volume and value of exports of coking coal from China.

The Commission further notes that there is no international benchmark price for coking coal. China has been identified as the major producer and consumer of coking coal. China also restricts the trade of coking coal to the international market by levying high export taxes and restrictions. As such, the market for coking coal is highly concentrated in China.

In light of these considerations, in establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for coking coal, the Commission has relied upon information contained in the application, information supplied by an independent provider of trade statistics and measures, and other publicly available data.

A2.2 Adequate remuneration for coking coal

Having found that domestic prices of coking coal in China are being influenced and distorted by the GOC, a benchmark price has been established. The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

   i. private domestic prices;
   ii. import prices; and
   iii. external benchmarks.

(i) Private domestic prices

The Commission has previously found that private prices of coking coal are affected by government influence and are therefore not suitable.

In the absence of information from the GOC in relation to the domestic market for coking coal, the Commission considers that private domestic prices of coking coal in China are
not suitable for determining a competitive market price free from government influences.

(ii) Import prices

The Commission has previously found that import prices were not suitable as a benchmark due to the lack of import penetration of coking coal and the likelihood that import prices were equally affected by the government influences on domestic prices.

In the absence of a response by the GOC in relation to imports of coking coal the Commission does not have sufficient information available to it to make an assessment in regard to import prices. As such, the Commission considers that import prices are not suitable for determining a competitive market price of coking coal in the investigation period.

(iii) External benchmarks

Having eliminated the first two options discussed above, the Commission considered other options to establish a benchmark price for coking coal.

As stated, in INV 193 the Commission used the Chinese export price in the investigation period to establish the benchmark price for coking coal. In assessing the data collated from various sources in INV 193, the Commission found there to be a variety of factors affecting the quality and forms of coking coal produced, imported and/or exported by each of the top five countries trading in these commodities. The coking coal exported from China was considered to be the most comparable to the coking coal purchased domestically by the cooperating Chinese exporters, and the export data provided by the GOC was considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration.

In the absence of information from the GOC in relation to export pricing, the Commission was unable to follow the methodology set in INV 193.

The applicants proposed that the benefit obtained by exporters of grinding balls be calculated based on the difference between the Platts daily metallurgical coal assessment for hard coking coal (HCC) (HCC 64 Mid Volume) for 30 September 2015 at a cost and freight (CFR) Jingtang price of USD 83.11/tonne, compared to the Atlantic HCC (Low Volume HCC) price for the same period of USD 107/tonne (CFR China), multiplied by the percentage of coking coal required to manufacture one tonne of grinding balls.

The Commission notes that the applicants uplifted the Atlantic HCC price (quoted at FOB terms) by an amount for freight to arrive at a comparable CFR price. The applicants also calculated the benefit amount based on one month only of the investigation period. For these reasons, the Commission was not satisfied that the approach proposed by the applicants was reasonable.

The Commission has instead adopted as a benchmark the Platts Australian low volume premium HCC FOB export price. The Commission is satisfied that this is an appropriate benchmark for the following reasons:

- Australia is a major producer of coking coal and is a significant supplier to China;
The Commission was able to cross reference the Platts data against Australian government data to ensure the Platts data being used was reliable; and

The reservations presented in INV 193 against using Australian export pricing, notably the possibility that export prices were high at that time due to isolated supply factors, are no longer applicable to the current investigation period.

The Commission notes that in INV 193, the GOC objected to the use of an Australian export price benchmark on the grounds that the quality of Australian coking coal is higher than that produced domestically in China, and would therefore be more expensive.

Based on the Commission’s analysis of prices paid for coking coal by Longte compared to Australian export prices, as detailed in in the discussion of Program 33 above, Chinese exporters are not disadvantaged by the use of an Australian benchmark, even if the quality of Australian coking coal is superior to that available domestically in China.
APPENDIX 3 - ASSESSMENT OF WHETHER STATE INVESTED ENTERPRISES ARE PUBLIC BODIES

A3.1 Background

In order for the programs alleged in the application to be considered a ‘subsidy’ the financial contribution provided under the program must be from a government, public body, or private body entrusted with governmental functions.

The application asserted that SIEs are public bodies (for the purposes of section 269T), relying upon:

- the Appellate Body Report in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)*\(^{26}\), where the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority;
- the Appellate Body Report in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*\(^{27}\), where guiding principles were stated as regards the meaning of “meaningful control”;
- a 2014 Worldsteel Association report which detailed that nine of the top ten steel companies in China, in terms of total crude steel production were SIEs, all of which are either wholly or partly owned by the *State-Owned Asset Supervision and Administration Commission of the State Council* (SASAC), and all of which produce steel billet and/or grinding balls, themselves or through their subsidiaries;
- the *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) which set out the functions and obligations of a state-owned assets supervision and administration authority; and
- examples of SASAC’s current and ongoing direct control and responsibility for the appointment and removal of personnel from SIEs.

The applicants relied upon this information to conclude that the functions of SASAC, such as the power to appoint persons to key management positions, evidence a greater role in the management of enterprises than mere shareholder, and that this serves as evidences that the GOC exercises meaningful control over the nine SIEs known to produce steel billet and/or grinding balls, themselves or through their subsidiaries, and as such these entities possess governmental authority and therefore each are a public body.

The Commission requested exporters in their questionnaire responses to provide a list of all purchases of steel billet, electricity, coke, coking coal, and grinding bar during the investigation period.

A3.2 Previous consideration

The term ‘public body’ is not defined in the legislation or the SCM Agreement. It has been considered by the Commission in previous investigations and has been the subject of a

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number of WTO Appellate Body findings. To inform the Commission’s assessment of this issue in the present investigation the following documents are considered to be relevant:

- INV 177 – the Commission’s finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- INV 203 – the Commission’s reinvestigation of certain findings in INV 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- INV 193 – the Commission’s findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively ‘coated steel’) exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- INV 237 – the Commission’s finding in relation to the subsidisation of silicon metal exported from China;
- INV 238 – the Commission’s finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- Anti-Dumping Review Panel (ADRP) Report (15 November 2013) in relation to INV 193 – the ADRP disagreed with the Commission’s finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP’s finding in relation to this issue;
- DS 379 – this Appellate Body finding considered the meaning of ‘public body’ in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- DS 436 – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- United States – Countervailing Measures (China) (DS 437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to DS 437, while this decision is recent the Commission considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS 437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commission agrees with the views of the Panel in this dispute, and the Appellate Body in DS 379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commission does not advocate such an approach in the present investigation.

In DS 379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):28

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

28 Appellate Body report DS379 at [318]
• **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commission, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether entities subject to dumping and countervailing investigations should be considered to be public bodies.

### A3.3 Decisions of the Commission

In INV 177, the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met, however evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence ‘show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.’

The Commission’s finding was appealed to the Trade Measures Review Officer (TMRO), who directed the Commission to conduct a reinvestigation of the public body finding. The Commission’s reinvestigation report, INV 203, affirmed the findings in INV 177. It considered that “SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.”

In INV 193, relating to coated steel, the Commission relied on its findings in INV 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the Commission’s finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;
- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;
- Article 14 of the Interim Measures, which vests SASAC with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;
- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and
- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.
A3.4 Commission’s consideration

The Commission considers that the ADRP’s decision to direct a reinvestigation of the findings in INV 177 was, to a large extent, premised on the TMRO’s view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS 379, ‘that the term “government” is defined as the “continuous exercise of authority over subjects; authoritative direction or regulation and control”.’

The Panel considered this issue in DS 437, a decision that was handed down after the ADRP’s report in relation to coated steel. The Panel stated in its report that ‘(it) was not persuaded by China’s argument that…“[a] public body, like government in the narrow sense, thus must itself possess the authority to ‘regulate, control, supervise or restrain’ the conduct of others”.’ The Appellate Body’s view was that this was not supported by the findings in DS 379. It stated that:

‘In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond “the effective power to ‘regulate’, ‘control’, or ‘supervise’ individuals, or otherwise ‘restrain’ their conduct”.’

The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS 436, also released after the ADRP’s findings, the WTO Dispute Settlement Body further considered the issue of whether a government exercises ‘meaningful control’ over an entity. The Panel stated that ‘to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is “meaningful”.’

The Dispute Settlement Body stated that, in its view:

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

The Interim Regulations set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:
• Article 13 states that one of the main responsibilities is to ‘appoint or remove the responsible persons of the invested enterprise’;
• Article 16 states that a state-owned assets supervision and administration authority ‘shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises’;
• Article 17 describes the positions presumably considered to be ‘responsible persons’, which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
• Article 17 also states that where the State Council or any level of government ‘provide otherwise’ in relation to the appointment or removal of responsible persons then those decisions prevail;
• Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
• Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commission is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to any of the suppliers of steel billet, electricity, coke, coking coal or grinding bar identified within the exporter questionnaire responses submitted. Additionally, as part of the government questionnaire, the GOC was requested to respond to a number of questions concerning entities that produce grinding balls and upstream raw material, including:

• a list of all manufacturers of grinding balls and upstream raw materials suppliers and the percentage of GOC ownership in each (A4);
• whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and an indication of any special rights provided to the representative (e.g. veto rights) (A4);
• for each business where the GOC is a shareholder and/or there is GOC representation in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A4);
• confirm whether the ‘Law of the People’s Republic of China on State-Owned Assets of Enterprises’ is current and has not been superseded or supplemented by other laws and if so provide any superseding or supplementary laws (C2).

The GOC did not provide a response to these questions. In the absence of this information the Commission has had regard to other relevant information in its possession, including information contained in the application and other information obtained by the Commission relating to the ownership structures of Chinese steel producing enterprises, the findings of previous investigations, and the Interim Regulations.

The Commission observes that the GOC submitted during INV 177 that the current law, as outlined in Article 7 of the Interim Regulations, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

People’s governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned enterprises.
assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

The Commission does not consider this Article to be at odds with a finding that SIEs are public bodies. The Appellate Body in DS 379 stated that an entity may possess certain features suggesting it is a public body and others that suggest that it is a private body. In DS 436 the Government of India argued that the National Mineral Development Corporation enjoyed a significant amount of autonomy from it, which was granted “to make the public sector more efficient and competitive”. These are similar sentiments to those expressed by the GOC in the Commission’s previous considerations of public bodies. The Dispute Settlement Body in DS 436 stated that ‘(s)o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies.’

In the absence of information from the GOC in relation to its role in the operation of SIEs, and in light of the reasons considered above, the Commission considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that produce and supply raw materials to manufacturers of grinding balls should be considered public bodies.