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Australian Government
Department of Industry, Science,
Energy and Resources

Anti-Dumping
Commission



中华人民共和国商务部

Ministry of Commerce of the People's Republic of China

GOVERNMENT QUESTIONNAIRE

The People's Republic of China

Case number: 557

Product: Certain Copper Tube

From: The People's Republic of China

Investigation period: 1 July 2019 to 30 June 2020

Response due by: Extended to 2 November 2020

Return completed questionnaire to: investigations2@adcommission.gov.au

Anti-Dumping Commission website: www.adcommission.gov.au

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SECTION A

BACKGROUND AND GENERAL INSTRUCTIONS

A1. Background

On 13 July 2020, following an application by Metal Manufactures Pty Ltd trading as MM Kembla (MM Kembla), the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated a dumping and countervailing investigation in respect of certain copper tube exported to Australia from the People's Republic of China (China). On the same day, the Commissioner also initiated a dumping investigation in respect of certain copper tube exported to Australia from the Republic of Korea (Korea).

MM Kembla alleges that the Australian industry has suffered material injury caused by certain copper tube exported to Australia from China and Korea (collectively, the subject countries) at dumped and subsidised prices.

Anti-Dumping Notice (ADN) No. 2020/071 outlining the details of the investigation and the procedures to be followed during the investigation was published on 13 July 2020 on the Anti-Dumping Commission's (the Commission) website at www.adcommission.gov.au.

A2. Goods under consideration

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

Round seamless copper tube complying with Australian Standard AS 1432, Australian and New Zealand Standard AS/NZ 1571, or Australian Standard AS 1572 with an outside nominal diameter between 9.52 mm and 53.98 mm, and a nominal wall thickness between 0.71 mm and 1.83 mm, including coated tube.

Goods specifically excluded from the goods description are:

- *thermally insulated copper tube, such as Pair Coil;*
- *Annealed coils;*
- *Layer Wound Packs/Level Wound Coils; and*
- *Copper alloy tube.*

Additional information

The physical and technical characteristics of the goods subject to this application are in accordance with the requirement of one of the following Australia or Australian/New Zealand product standards:

- AS1432 - Copper Tubes for Plumbing, Gas fitting and Drainage Applications

Physically, AS1432 round seamless copper tubes are typically bare or coated copper tube containing ink marking and incising in accordance with and referencing the product standard and are packaged with open ends (uncapped).

- AS/NZ1571 - Copper - Seamless Tubes for Air Conditioning and Refrigeration

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Physically, AS/NZS 1571 round seamless copper tubes are bare (uncoated) and contain ink marking in accordance with and referencing the standard, are internally cleaned and tube ends are plastic/rubber capped to protect from internal contamination (green, pink, yellow or black caps).

- AS1572 - Copper and Copper Alloys - Seamless Tubes for Engineering Purposes

Physically, AS 1572 tubes can be round, square or rectangular. For the goods the subject of this application, physically the goods are round seamless copper tubes typically bare, and containing ink marking in accordance with and referencing the standard

Tariff Classification

The goods may be classified in Schedule 3 to the *Customs Tariff Act 1995* as follows:

Tariff Subheading	Statistical Code	Description
7411.10.00	11	Copper tubes and pipes of refined copper

A3. Investigation period

The existence and amount of any dumping and subsidisation in relation to the goods exported to Australia from the subject countries will be determined on the basis of an investigation period of **1 July 2019 to 30 June 2020** (the investigation period).

The Commission will examine details of the Australian market from 1 July 2016 for injury analysis purposes.

A4. Purpose of this questionnaire

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

Please note that the subsidy/countervailing sections of this questionnaire focus on the programs alleged in the application. The Commission may also investigate any additional subsidy program(s) if additional information becomes available.

Any additional questions, if necessary, will be put to the GOC using supplementary questionnaires.

A separate exporter questionnaire will be available for exporters of the goods from China to complete, if they choose to cooperate with the investigation. The exporter questionnaire also requests information on subsidies and the market situation.

A5. Response to this questionnaire

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

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Therefore, it may be in the GOC's interests and the interest of Chinese exporters of the goods to provide a complete response.

If the GOC chooses to respond to this questionnaire, the response is due by **Wednesday 19 August 2020**.

The due date for the Government of China ("the GOC") to respond to this questionnaire was extended by the Commission to 2 November 2020.

A6. If you decide to respond

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

Confidential and non-confidential versions

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

In submitting these versions, please ensure that each page of the information you provide is clearly marked either "**FOR OFFICIAL USE ONLY**" (for the confidential version) or "**PUBLIC RECORD**" (for the non-confidential version) in the header and footer.

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

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

Declaration

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

Coordination of responses

In completing the questionnaire, if a question requires information from other authorities (e.g. provincial or local governments, state owned entities, etc.) please forward the questions to the relevant source.

However, it is the responsibility of the GOC to ensure that a full and complete response to all sections of the questionnaire is submitted, and that responses from all levels of governments, agencies and/or other applicable entities are collated and coordinated in the one response.

Consultants/parties acting on your behalf

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

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

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The GOC confirms that the law firms of Allbright Law Offices and Moulis Legal have been appointed to act on behalf of the GOC in this matter.

Provision of documents

Numerous documents are requested from the GOC throughout this questionnaire. In many cases, the titles or description of these documents within the questionnaire may not correlate to the official title that the GOC has granted each document, but is rather a descriptor of the document to the best of the Commission's knowledge.

If the listed title is unknown to the GOC but a document that appears to be similar to the requested document, relates to a similar topic area, or otherwise would be considered to contain useful information is identified by the GOC, please provide this document.

Further, when providing requested documents, please indicate whether the documents:

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

Where the documents have been repealed, revised or superseded:

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

Responses to questions should:

- be as accurate and complete as possible, and attach all relevant supporting documents,¹ even where not specifically requested in this questionnaire;
- be in English (with fully translated versions of all requested and other applicable documents submitted);
- list your source(s) of information for each question;
- identify all units of measurement used in any tables, lists and calculations;
- show any amounts in the currency in which they were originally denominated.

¹ This includes, but is not limited to, any laws, decrees, regulations, statements of policy, or other administrative guidelines. In each case, include any legislative history as well as other descriptive materials and explanations of the criteria underlying the decisions relating to each of the programmes mentioned in this questionnaire. If applicable, a sample of each of the applications that a company must complete to participate in each of the programs should also be included.

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Please note that references throughout this questionnaire to companies benefiting from a particular program should be read as including any parent and associated companies, and, if the company has been subject to merger or acquisition, any former associated companies or former parent companies.

Also note that answers such as "Not Applicable", or an answer that only refers to an exhibit or an attachment without any explanation, may be considered to be inadequate by the Commission. We therefore suggest that in answering the questions you outline the key elements of your response in the primary submission document, and not merely refer to supporting documents, the relevance and reliability of which has not been explained in your answer.

Lodgement

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

In completing any lists of names and addresses requested throughout this questionnaire, electronic responses in a Microsoft Excel spreadsheet would be preferred.

A7. Clarification

If you have any difficulties in completing the questionnaire, or require clarification on any questions asked, contact the Commission as soon as possible.

A8. Future questions and verification

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

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

A complete response, including all of the documentation requested, must be submitted to the Commission before a verification meeting will be considered.

If a verification visit is undertaken, the key Government officials involved in preparing the response and those who have knowledge of the source documentation and the information contained therein should be available to meet with Commission officers and to provide additional clarification and explanation, as required.

If verification meetings are unreasonably delayed, cancelled, or otherwise hindered by the GOC, the assessment of a particular market situation and subsidies may be based on the facts available to the Commission.

The purpose of the verification meeting will be to verify the information provided in your questionnaire response. It is not intended to be a second opportunity for the GOC to provide new or additional information. Accordingly, it is important that your response be as complete and accurate as possible.

**SECTION B
GENERAL QUESTIONS**

- B1.** Identify the administration co-ordinating the response to this questionnaire and provide the names and contact details of the official(s) (including email addresses). Please note that the Commission may have further inquiries concerning the questionnaire response and a contact must be available to respond to any further information requests.

The Trade Remedy and Investigation Bureau of the Ministry of Commerce (“TRIB”) is coordinating the response to this questionnaire.

The extensive information provided in response to this questionnaire is provided in the spirit of full cooperation, and is the work of a large number of government departments and agencies across the country, at various levels, and to the best of their capabilities.

The contact information for TRIB, and for the GOC’s legal counsel is:

TRIB	
Contact name:	Mr. Jianfeng Wang
Address:	2, Dong Chang An Street Beijing 100731 China
Telephone:	[CONFIDENTIAL TEXT DELETED]
Email:	[CONFIDENTIAL TEXT DELETED]

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Allbright Law Offices	
Contact name:	Mr. Ye Li
Position:	Partner
Address:	6F, Office Tower C1, Oriental Plaza, No.1 East Chang An Avenue, Beijing 100738 China
Telephone:	+86 10 85230688
Email:	liye@allbrightlaw.com

- B2.** For the period **1 July 2019 to 30 June 2020**, describe the nature and structure of the copper tube industry and market sector in China. Without limiting your response, include details of any government involvement in the copper tubes including upstream raw materials (i.e. copper cathode, copper billet, copper ingot, copper scrap).

TRIB welcomes the invitation of the Australian Anti-Dumping Commission (“the Commission”) to comment on the nature and structure of the copper tube industry and market sector in China.

An accurate and contextual understanding of the features and mechanics of this industry is critical for the Commission’s best consideration of the allegations made by the applicant, Metal Manufactures Pty Ltd trading as MM Kembla (MM Kembla) (hereafter “the Applicant”), in its application for this investigation.

TRIB provides the following information to assist with the Commission’s investigation.

Circumstances of the copper and copper tube market in China

The copper tube industry is a downstream sector of the broader copper industry. The copper industry, and resultantly the copper tube industry, are highly interactive with global copper market.

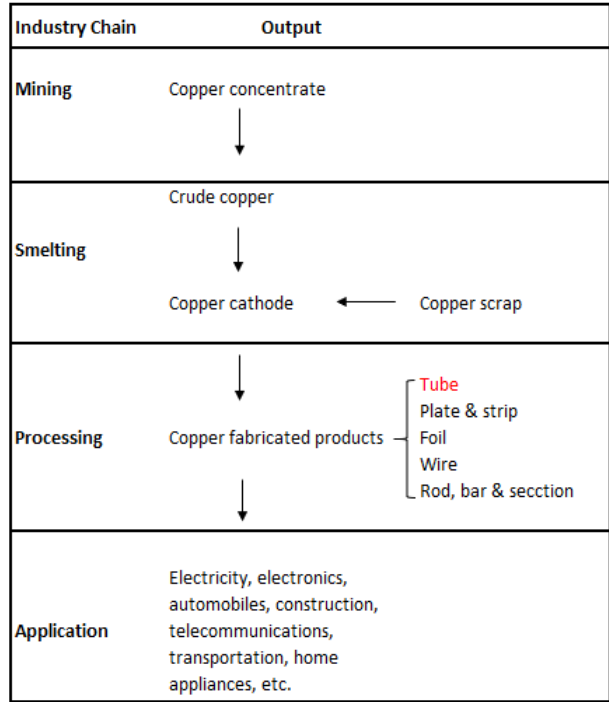
According to the *Industrial Classification for National Economic Activities* amended in 2017 (GB/T4757-2017) as published by the Standardization Administration of the P.R.C. (SAC), the copper tube industry falls into the sub-category of copper processing industry due to its use of upstream raw

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materials (mainly copper cathode and copper scrap) from the copper smelting industry.

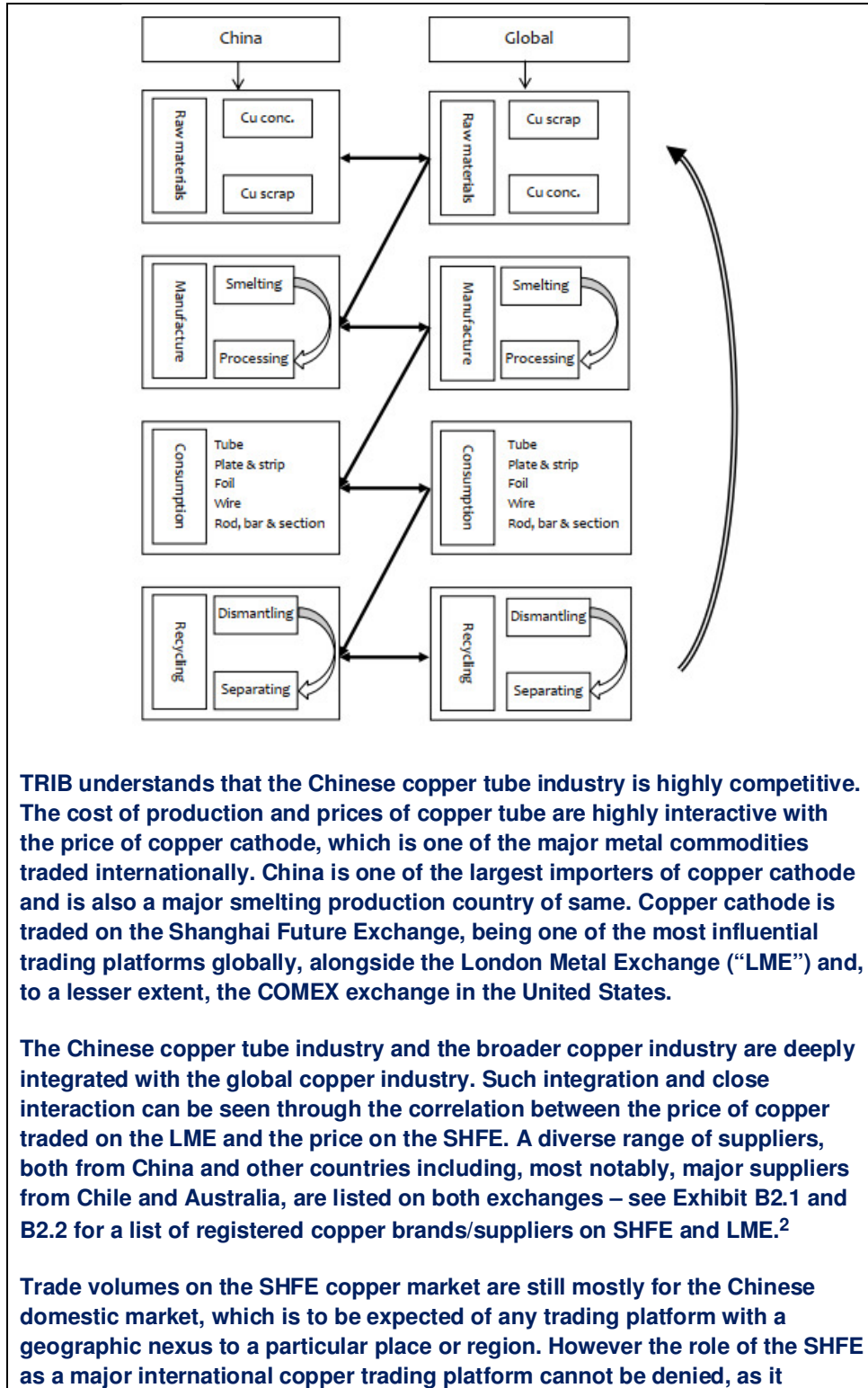
To the best of TRIB’s knowledge, participants in the copper processing industry, including copper tube producers, are not integrated producers. The copper tube producers typically convert semi-finished copper raw materials (mainly copper cathode and copper scrap) purchased from suppliers in the copper smelting industry for the purpose of fabrication of copper products.

The chart below provides an illustration of the copper industry chain in China, based on industrial activities:



TRIB has learnt that the Chinese copper industry is highly interactive and reliant on global copper markets, at all stages of the industry chain, from mining to smelting, and for fabricating, consumption, recycling and re-utilisation. China’s copper supply chains are strongly linked with foreign markets, including Australia, which are structurally similar and compatible, as illustrated:

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TRIB understands that the Chinese copper tube industry is highly competitive. The cost of production and prices of copper tube are highly interactive with the price of copper cathode, which is one of the major metal commodities traded internationally. China is one of the largest importers of copper cathode and is also a major smelting production country of same. Copper cathode is traded on the Shanghai Future Exchange, being one of the most influential trading platforms globally, alongside the London Metal Exchange (“LME”) and, to a lesser extent, the COMEX exchange in the United States.

The Chinese copper tube industry and the broader copper industry are deeply integrated with the global copper industry. Such integration and close interaction can be seen through the correlation between the price of copper traded on the LME and the price on the SHFE. A diverse range of suppliers, both from China and other countries including, most notably, major suppliers from Chile and Australia, are listed on both exchanges – see Exhibit B2.1 and B2.2 for a list of registered copper brands/suppliers on SHFE and LME.²

Trade volumes on the SHFE copper market are still mostly for the Chinese domestic market, which is to be expected of any trading platform with a geographic nexus to a particular place or region. However the role of the SHFE as a major international copper trading platform cannot be denied, as it

² <http://www.shfe.com.cn/en/products/Copper/attach/111152894.html>; and <https://www.lme.com/en-GB/Trading/Brands/Approved-brands>

becomes more mature and internationalised. See market commentary articles at Exhibit B2.3 and B2.4 for the Commission’s reference.³

Indeed, the SHFE is in the process of launching a new offer of international copper contracts via its subsidiary Shanghai International Energy Exchange (“SIEE”).⁴ The SIEE has received approval from the China Securities Regulatory Commission to offer international financial services for copper cathode trade.⁵ This reflects the continued internationalisation and deepening of the Chinese copper and copper related financial markets.

Because copper cathode is one of the most important internationally traded commodity products there is necessarily strong integration and close interaction between the Chinese and global copper markets. Such correlation can be demonstrated through the copper future contracts traded on the LME and on the SHFE. It is observed that copper prices on the SHFE and LME share an over 95% correlation:⁶



The strong correlation and synergy between the LME and SHFE underpin the commercial reality that the Chinese copper tube market is deeply connected with and forms part of the same international market, which also includes Australia.

Laws and regulations concerning the copper tube industry in China

TRIB considers the treatment of the copper tube and broader copper industry in China as being no different to how major industries are treated in Australia

3 See <https://www.mining.com/web/copper-options-china-steps-challenge-london-new-york-rivals/3219/>; and <https://www.metalbulletin.com/Article/3906233/ACW-2019-SHFE-to-speed-up-its-pace-of-internationalization-especially-in-copper.html>.

4 See <https://www.nasdaq.com/articles/shanghai-exchange-to-list-international-copper-contract-next-month-2020-10-16>; and <http://www.shfe.com.cn/en/AnnouncementandNews/SHFEAnnouncement/911338169.html>

5 See <http://www.shfe.com.cn/news/news/911338241.html>.

6 See <https://www.lme.com/Education-and-events/Online-resources/LME-insight/LME-SHFE-Cross-Market-Arbitrage>.

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by the Australian Government, and how the industries of other countries around the world are treated by their governments.

As would be expected of any government, the GOC passes and enforces laws, makes policies, collects taxes, operates border and customs controls, enters into trade agreements with other countries, and carries out all the other functions customarily associated with the running of a sovereign state.

For the copper industry, because of the particular environmental and health concerns that can be associated with the production process, the GOC takes a particular interest in regulating the industry in terms of its environmental effects, land use, work place health and safety and product standards. As an example, the GOC has introduced stricter environmental standards and restrictions concerning the importation of solid waste, which can be used as copper scrap in the copper production process.

In the more general sense, participants in the copper industry are subject to the same corporate, investment, commercial, employment, competition and consumer laws that apply to all market players in China.

This is discussed in further detail below.

The response should include details of:

- the size and output (value and quantity) of the industry.

TRIB provides information about production output of the copper industry for the period 1 July 2019 to 30 June 2020 as follows, based on data from the National Bureau of Statistics of China (hereinafter referred to as “NBS”):⁷

Refined copper products (including copper cathode)	[CONFIDENTIAL TEXT DELETED – number] tonnes
Fabricated copper products (including copper tube):	[CONFIDENTIAL TEXT DELETED – number] tonnes

The NBS does not maintain output data in value terms or more detailed data specific to the production of copper tube products.

The notable difference in output volume between fabricated copper products and refined copper is demonstrative of the Chinese copper industry’s position as a significant and reliant importer of copper raw material products.

According to NBS’s 2019 data, in that year in China there were:

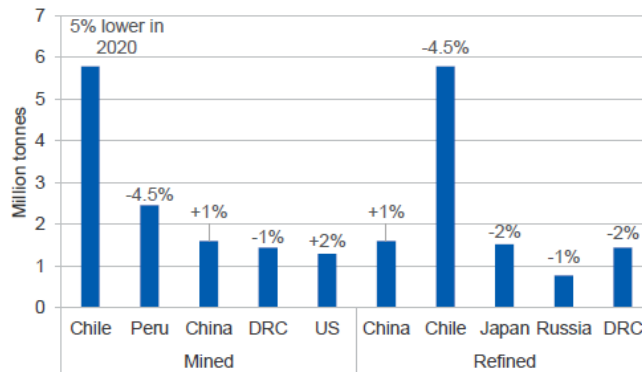
⁷ Please note that the information is maintained by NBS concerning companies with operational income exceeding CNY 20 million annually.

- over [CONFIDENTIAL TEXT DELETED – number] producers of refined copper products; and
- over [CONFIDENTIAL TEXT DELETED – number] producers of fabricated copper products.

This indicates the Chinese’s copper industry’s downstream bias, with a large number of companies at the fabrication level.

The following analysis by the Australian Department of Industry, Science, shows China’s position relative to other major producers:⁸

Figure 12.6: Copper production by major country, 2019 and forecast change in 2020



Source: World Bureau of Metal Statistics (2020); Department of Industry, Science, Energy and Resources (2020); S&P Global (2020)

To assist the Commission with further statistical information and explanation about the copper industry, TRIB provides the 2019 Copper Industry Development Report (“the CNIA report”) prepared by the China Nonferrous Metals Industry Association (“CNIA”) at Exhibit B2.5. [CONFIDENTIAL ATTACHMENT]

- any vertical integration in the industry;

TRIB understands that none of the cooperative exporters for this investigation are vertically integrated. Further, TRIB is unaware of any distinctive vertical integration pattern associated with the production and sale of the goods under consideration. The GOC does not control, direct or dictate vertical integration of copper tube or its input producers.

The cooperative exporters are copper product fabricators, who purchase semi-finished raw materials such as copper cathode, which are then processed into finished goods such as copper tube. As explained, this is typical of the Chinese copper industry’s position as a net importer and as the largest consumer of copper and refined copper products.

⁸ Department of Industry, Science, Energy and Resources, Commonwealth of Australia Resources and Energy Quarterly September 2020, (“the *Resource and Energy Quarterly*”) at page 120 <https://publications.industry.gov.au/publications/resourcesandenergyquarterlyseptember2020/index.html>.

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At a high level, the production of copper tube and its input materials cover economic activities ranging from copper mining and copper smelting to copper processing. It is open to any manufacturer to choose to integrate its chain of supply for the relevant goods by establishing its own branch or subsidiaries, or by using sales channels it controls or operates jointly with, or independently of, others in the domestic or foreign market, as commercially appropriate. There are no restrictions on an enterprise's choice of its business structure. A firm can choose any kind of business portfolio as long as the business is registered in a corporate sense and is not prohibited from operation.

The GOC does not impose any special regulations on vertical integration for producers of copper tube or the producers and sellers of the input materials used by such producers, whether to force or prevent such integration. Nor does the GOC measure the instances of such integration.

- distribution channels

TRIB understands that copper tube and other processed copper products have wide and diverse varieties of distribution channels, including in the property development/construction sector, infrastructure and power supply, automobile, and electrical-appliances sectors, such as air-conditioning and refrigeration, etc.

The GOC does not impose any special regulations on certain distribution channels or the commercial direction of manufacturers of the GUC. Traders or distributors may choose to focus on some products over others, and that decision will be based upon their own commercial imperatives.

- the extent of the reliance on imported raw material inputs;

The Chinese copper tube industry is heavily reliant on imported raw materials, such as copper concentrate and copper cathode.

For copper concentrate, which is used in the smelting process to produce copper cathode and others, the total market supply in 2019 is estimated to have been [CONFIDENTIAL TEXT DELETED – number] million tonnes, of which [CONFIDENTIAL TEXT DELETED – number] million tonnes was locally produced while the remaining [CONFIDENTIAL TEXT DELETED – number] million tonnes was in the form of imported copper ore and crude copper.⁹

For refined copper, such as copper cathode, the total supply in the Chinese market is estimated to have been [CONFIDENTIAL TEXT DELETED – number] million tonnes in 2019, of which imports accounted for [CONFIDENTIAL TEXT DELETED – number] million tonnes. CNIA's data concerning the 2019 import and export of copper products is provided below for the Commission's reference:¹⁰

⁹ See CNIA report, page 9. [CONFIDENTIAL ATTACHMENT]

¹⁰ See CNIA report, table 7. [CONFIDENTIAL ATTACHMENT]

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Variety	Import volume (10,000 tons)	Year-on-year (%)	Export volume (10,000 tons)	Year-on-year (%)
Unwrought copper	[CONFIDENTIAL STATISTICAL DATA]			
Of which: refined copper				
Copper alloy				
Copper				
Among them: copper powder				
Copper rod profile				
Copper wire				
Copper strip				
Copper foil				
Copper tube				
Copper pipe accessories				
Blister copper				
Copper mine				
Copper scrap				

TRIB notes that imports from Australia also have a substantive effect on the Chinese market, particularly with respect to copper raw material products.

The Australian Government Resource and Energy Quarterly report confirms that China was the top export destination for Australian copper during the POI, with the trade valued at AUD3,818 million, or about 37% of Australia’s total copper exports. ¹¹ For China, Australian imports represented about 4% of total

¹¹ See Resource and Energy Quarterly, September 2020, at table 16.7 (page 156).

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imports of copper cathode for each of 2018 and 2019, with Chile being the top supplier.¹²

As the Resource and Energy Quarterly report states, China's copper raw material production (refined copper) is highly connected with imports and the availability of imported copper concentrates, and also places substantive influences on the supply-side:

In China, June quarter 2020 refinery production recovered from low, COVID-19 impacted output in the previous quarter. However, constraints on refinery inputs persist. Reduced availability of copper concentrate (due to international mine outages) and copper scrap (due to new import regulations in China) could impact output of refined production going forward. Lower-than-expected refinery production in China — down 1 per cent to 9.5 million tonnes — is expected to have the largest impact on lower world production in 2020.¹³

TRIB notes that Australian copper producers also position themselves as part of the important copper supply chain that involves the Chinese copper industry. For example, we refer to the following report concerning the Australian miner BHP controlled Olympic Dam mine:

The expansion will be followed by a staged development of an open pit, with an eventual target annual output of 750,000t of copper, 19,000t of uranium and 800,000oz of gold. The company also said it is looking at shipping copper concentrate directly to smelters in China, which will cut the cost of producing cathodes at the mine.¹⁴

We note that BHP's smelter operation at the Olympic Dam mine is also the supplier of copper cathode to MM Kembla for its production of the goods.¹⁵ This highlights the integration and international nature of the global copper industry and copper supply chain of which both Chinese and Australian copper tube producers are part.

- the extent of any restrictions, quotas or limits for the production volumes in the industry;

TRIB advises that there are no restrictions, quotas or limits on the production volumes of the copper tube industry, nor with respect to copper cathode, being the main input material for the GUC. The GOC has taken steps to address environmental impacts of the copper industry and has introduced various measures and implemented restrictions on the importation of solid waste, including that used as copper scrap. TRIB provides further details of these measures in the sections dealing with government regulations, below.

- government laws and regulations applying to the industry;

12 Sourced from UN Comtrade.

13 See Resource and Energy Quarterly, September 2020, at page 121.

14 See <https://www.mining-technology.com/projects/olympic-dam/>.

15 See <https://www.kembla.com/supporting-australias-copper-capacity/>.

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Much like the Australian Government, the GOC very seriously considers the potential environmental impacts of the copper industry, and issues concerning workplace health and safety. Accordingly, the GOC has various measures and approval requirements in relation to the copper industry.

TRIB notes the following recent announcements:

- The *Normative Conditions for Copper Smelting Industry* (the “Normative Conditions”) were published by the Ministry of Industry and Information Technology on 4 September 2019. As provided in the chapeau, the Normative Conditions document is a “best practice” guideline for promoting technological progress and setting standards for the development of the industry. The Normative Conditions do not have mandatory effect. Rather, companies who wish to be certified/accredited as complying with the conditions may apply for audit and approval. See Exhibit B2.6.
- As part of the GOC’s initiative to address environmental pollution, it has issued import bans on a range of solid waste materials since 31 December 2018 pursuant to the *Announcement on Adjustments to the Catalog of Solid Wastes under Import Control*. See Exhibit B2.7. This includes copper waste and scrap fall into customs tariff code of 7404000010.
- Since 1 July 2019 “other copper waste and scrap” (Chinese Customs Tariff Code 7404.0000) has been subject to import licensing approval for solid wastes regulated by the Ministry of Ecology and Environment pursuant to *Announcement on Adjustments to the Catalogs for the Administration of Import of Wastes (December 2018)*. See Exhibit B2.8.
- On 26 June 2017, the State Council issued the *Decision on Adjusting the Management Catalogue of Production License for Industrial Products and Trial Simplification of Approval Procedures*, which officially cancelled the management of production licenses for “copper and copper alloy tube products”. See Exhibit D13. No license for production has been required since then and none existed during the investigation period.
- In 2005 the National Development and Reform Commission, the Ministry of Finance, the Ministry of Commerce, the Ministry of Land and Resources, China Customs, the State Administration of Taxation and the State Environmental Protection Administration together issued the *Notice of Relative Measures of Controlling of Some High Energy Consumption, High Pollution and Resource Products Exports*, limiting exports of several products. Under this regulation, from January 2006, the processing trade of copper scrap, copper concentrate imports, and unwrought copper exports was prohibited. The purpose of the policy was to limit environmental impact by reducing production of copper products made from imported waste. See Exhibit B2.9.

TRIB notes that the Australian Government has applied its own measures on the copper industry. For example, the Olympic Dam mine operates under the *South Australia Roxby Downs (Indenture Ratification) Act 1982 (SA)* and the

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proposed mine expansion is declared a “major development”¹⁶ under the South Australia Development Act 1993 (SA).¹⁷ Expansion of the Olympic Dam mine requires the assessment and approval of the South Australian State Government.¹⁸

We also refer to the following examples of the regulatory environment in which the Australian copper industry operates:

- *Mount Isa Mines Environmental Authority* application, see Exhibit B2.12;
- *EIS Guidelines - BHP Olympic Dam Resource Development Strategy*, see Exhibit B2.13

The Chinese copper industry is of course also governed by a range of laws and regulations of “general application”, such as:

- The *Company Law*, as amended recently on 26 October 2018 to further liberalise the regime governing the activities of all enterprises doing business in China. The amendments removed the registered capital requirements for company establishment, replaced the paid-up capital registration system with a subscribed capital registration system, and cancelled the minimum cash requirement for making capital contributions. See Exhibit B2.14 for the updated Company Law as entered into force on 26 October 2018.
- The amended *Regulation of Company Registration* took effect from 1 March 2014, refining the transparency of market entities by requiring registered legal person businesses, including both SIEs and non-SIEs, to disclose their annual reports. In this way, market players can make better-informed decisions about risk and investment. Please refer to Exhibit B2.15 for Article 57 of the updated *Regulation of Company Registration*.
- The GOC has further advanced its policy of adjusting the structure of State capital and assets in the economy by welcoming and facilitating the investment of more private capital into SOEs, such that more can graduate towards the status of other limited liability commercial ownership models such as SIEs, Sino-foreign joint ventures, wholly-owned foreign enterprises, and the like. These efforts have successfully attracted more private investment and involvement in the important and costly infrastructure and network industries, in line with public-private partnership modes (“PPP”).
- The GOC has opened the Chinese market to international trade and foreign investment to an even greater extent than before. In 2015 China

16 See South Australia Government Gazette dated 14 February 2019, page 461, variation notice in Government Gazette dated 19 September 2019, page 3306 and variation notice in Government Gazette dated 27 August 2020, page 4470

17 See https://energymining.sa.gov.au/minerals/mining/mines_and_quarries/olympic_dam. Also see attached at Exhibit B2.10.

18 See https://plan.sa.gov.au/state_snapshot/development_activity/major_projects/majors/olympic_dam_expansion. Also see attached at Exhibit B2.11.

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signed free trade agreements with Australia and South Korea and upgraded its existing free trade agreement with ASEAN. These followed the signing of the China-Iceland and China-Switzerland Free Trade Agreements in 2014. The China-Australia Free Trade Agreement ("ChAFTA") lowered the tariff rates of more than 80% of the goods traded between the two countries. It is noted that the fifth round of tariff cuts under ChAFTA took place on 1 January 2019, setting Chinese import tariffs at zero on 5,418 types of goods from Australia. China and its largest source of copper imports, Chile, have upgraded the Free Trade Agreement which came into effect on 1 March 2019, with further tariff elimination and greater liberalisation of bilateral trade in goods and services.

- The new *Foreign Investment Law* ("FIL") and its *Implementing Regulations* ("Implementing Regulations") took effect on 1 January 2020. The FIL, as a single unified body of law has, as of that date, replaced the three previous laws governing foreign investment and foreign-invested enterprises ("FIEs") in China. It provides for greater promotion and protection of foreign investment as well as enhanced regulatory transparency.
- In addition to the FIL and the Implementing Regulations, the 2019 *Special Administrative Measures for Foreign Investment* (also known as the "Negative List") and the *Catalogue of Encouraged Industries for Foreign Investment* ("Encouraged Industries Catalogue") took effect on July 30, 2019. The revised Negative List has further liberalized Chinese market sectors and reduced restrictions, and the Encouraged Industries Catalogue identifies more key industries (such as manufacturing, technology, and agriculture) in which China further encourages foreign investment with preferential policies. The intensive processing of non-ferrous metal such as copper is listed in the Encouraged Industries Catalogue, indicating that China has further opened the copper industry and market to encourage foreign investment. Please refer to Exhibit B2.16 and B2.17 for the FIL, its Implementing regulations, the Negative List and the Encouraged Industries Catalogue applicable during the investigation period.
- Businesses in China have been better positioned to defend their legitimate rights since the *Law of Administrative Procedures* was amended in 2014. The newly amended law broadened the scope of matters that may be brought to the courts against any government agency by explicitly listing 12 categories of matters (as compared to only 8 categories before). The newly added claims that enterprises may challenge include administrative decisions regarding appropriation, compensation for appropriation and any abuse of administrative power to preclude or restrict competition on the market. Please refer to Exhibit B2.18 for Article 12 of the updated *Administrative Procedure Law* that entered into force on 1 July 2017. In addition, the Administrative Law provides further legal protection for private enterprise, emphasising the degree to which the State has distanced itself from business activities.
- The *Law on Administrative Licensing* adopted in 2003 and recently amended on 23 April 2019 carves out a larger role for the market, civil

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society, and individuals, and places new restrictions on governmental intervention. Article 13 of the Law specifies that administrative licensing requirements are not necessary if the relevant matters are self-regulated through market competition mechanisms; or if they are matters that can be independently decided by legal persons or associations; or if they are matters of industry self-regulation; or if they are matters that can be addressed via retrospective oversight and supervision. Please refer to Exhibit B2.19 for the updated *Law on Administrative Licensing*. Under this framework, the GOC has repealed a great number of licensing/approval processes for doing business in a range of sectors and business lines. For example, to obtain an official VAT invoice for sales and sales revenue, enterprises previously had to achieve taxation registration, which in turn was subject to approval by the relevant taxation authority. However, from late 2013, this prior approval requirement for taxation registration has been repealed. Enterprises may now register directly with the relevant taxation authority.

- With an aim to protect fair market competition, the *Anti-Monopoly Law* has been in place since 1 August 2008. Since the entry into force of the Anti-Monopoly Law, competing entities cannot enter into monopoly agreements. These include agreements for fixing or changing the price of products, restricting the production quantity or sales volume of products, dividing the sales market or the raw material procurement market, etc. Meanwhile, business entities are also prohibited from entering into agreements with their trading parties with an aim to fix the price of commodities for resale to a third party or to restrict the minimum price of commodities for resale to a third party. In addition, entities with a dominant market position are prohibited from abusing their dominant position, including by (i) selling products at unfairly high prices or buying products at unfairly low prices, (ii) selling products at prices below cost without any justifiable cause, (iii) refusing to trade with a trading party without any justifiable cause, (iv) restricting their trading party so that it may only conduct deals exclusively with themselves or with the designated business operators without any justifiable cause, (v) implementing tie-in sales or imposing other unreasonable trading conditions at the time of trading without any justifiable cause, (vi) applying discriminatory treatment on trading prices or other trading conditions to their trading parties with equal standing without any justifiable cause. Please refer to Exhibit B2.20 for a copy of the Anti-Monopoly Law.
- Since 2015, the GOC has proactively promoted electricity market reform. The main aspects of the reform include the enhancement of a more competitive and effective structure and system for the electricity market, as well as the better articulation of market-oriented pricing mechanisms. Pursuant to the *Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity* (NDRC 2015-3169), which is set out in Exhibit 2.21, electricity price adjustments since 1 January 2016 have been linked to the market fluctuation of thermal coal prices. This has further enhanced the commerciality of electricity pricing in China, reflecting the equilibrium between supply and demand and the price movement of key raw materials.

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- The *Environmental Protection Law of the People's Republic of China*, as amended since 1 January 2015 (See Exhibit B2.22), has strengthened the power of law enforcement departments to seize and confiscate facilities and equipment of enterprises which violate the law, or even directly limit production or stop production by those enterprises that fail to observe statutory emission standards. This is also in line with China's commitments to global environmental protection.
- The *Law of the People's Republic of China on the Coal Industry* has been amended in a way that further liberalises investment in this industry. The original Articles 18 and 19, setting out the criteria and the procedure to establish a coal enterprise, have been removed from the Law (See Exhibit B2.23).

In short, the copper tube and the upstream copper industry operate within a regulatory environment which is aimed at promoting market oriented, open, yet sustainable, and environmentally friendly economy, taking into account the specific features and impact of the copper industry.

- any government involvement in upstream materials and inputs, i.e. copper, electricity, natural gas, etc; and

Please refer to the information provided above concerning the role of the GOC in relation to the passing and enforcing of laws, making policies, collecting taxes, operation of border and customs controls, entering into trade agreements with other countries, and carrying out all of the other functions customarily associated with the running of a sovereign state.

As indicated, TRIB notes that the market for upstream materials such as copper and electricity are closely related to the availability of, and the international markets for, the key raw materials, such as coal, copper concentrates, and refined copper. China is heavily reliant on imports of these materials. Any effect of the Chinese government in the commercial operation of these sectors is likely to be indiscernible.

Environmental protection measures which limit the importation of waste/scrap and on certain types of coal, and restrictions and requirements on the operation of facilities with high environmental impacts, may have the effect of increasing the prices of materials and the cost of compliance by producers. As indicated above, regulation with respect to environmental and social good is the same motivation for the regulatory environments in which the copper industry operates in other countries, including in Australia.

- any Government involvement at each level of the industry.

See the immediate response above.

- B3. At all levels government (central, provincial, regional, municipal, special economic zone (SEZ), etc.) identify the names of the government departments, bureaus or agencies that are responsible for the administration of any the GOC measures concerning copper tubes and/or the copper industry.

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TRIB advises that no central government agency, as identified in the questions below, is exclusively dedicated to the “administration” of measures which may impact copper tubes and/or the copper industry. Local government authorities are also not exclusively dedicated to the “administration” of measures concerning copper tubes and/or the broader copper industry. This is because there are no such measures at the central level, and because these are not things that a local government authority would be empowered to do.

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

Article 3.4 states:

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

Article 110.2 states:

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

Nonetheless, as previously advised the GOC has every intention to reasonably cooperate with the Commission in relation to this matter. TRIB will provide the information requested for the relevant agencies in the localities of the key companies under investigation, within the context stated.

Include information relating to the following areas:

- supervision of copper tubes;

There is no government agency specifically established to supervise the copper tube industry in China. The GOC, as a whole, supervises all entities, both real and legal, within China, to ensure they comply with the laws of China. This is true of every government.

- industrial policy and guidance on copper tube and copper sectors;

There is no government agency that is specifically responsible for the administration of industrial policy and guidance for the copper tube and copper industry. The responses below relate to the non-ferrous industry in general.

Central Government

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

Central Government

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

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

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

Provincial/Municipal Government Authorities

Authority:	Zhejiang Provincial Development and Reform Commission
Mailing address:	No 8, Shengfu Road, Xihu District, Hangzhou, Zhejiang
Phone number:	86-0571-87052748

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Email:	sfgw.fgw@zj.gov.cn
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- market entry criteria for the copper tube and copper industry;

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

- environmental enforcement for the copper tube and copper industry;

Following the restructuring of the State Council in March 2018, the authority responsible for the general environmental enforcement is the Ministry of Ecology and Environment of the People's Republic of China.

Central Government	
Authority:	Ministry of Ecology and Environment ("MEE")
Mailing address:	No.12, East Chang An Avenue, Beijing 100006
Phone number:	86- 10-65646114
Email:	mailbox01@mee.gov.cn

MEE is responsible for China's environmental protection administration. It does not specifically promote or regulate the copper tube or the copper industry. The industries are subject to the general application of law, regulations and policies on environmental protection.

The two selected cooperating Chinese exporters are both located in the Zhejiang Province. The information of the provincial level MEE is as follows:

Provincial/Municipal Government Authorities	
Authority:	Department of Ecology and Environment of Zhejiang Province

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Mailing address:	No.117 Xueyuan Road, Hangzhou City, Zhejiang 310012
Phone number:	86-0571-28869111
Email:	yisq@zjepb.gov.cn

- management of land utilization;

Following the restructuring of the State Council in March 2018, the authority responsible for the general administration of land utilisation is the Ministry of Natural Resources of the People's Republic of China	
Central Government	
Authority:	Ministry of Natural Resources (“MNR”)
Mailing address:	No.64 Funei Street, Xicheng District, Beijing 100812
Phone number:	86-10- 63882118
Email:	mhwz@mail.mnr.gov.cn
The two selected cooperating Chinese exporters are both located in the Zhejiang Province. The information of the provincial level MNR is as follows:	
Provincial/Municipal Government Authorities	
Authority:	Department of Natural Resources of Zhejiang Province
Mailing address:	No.118 Xixi Road, Hangzhou City, Zhejiang 310007
Phone number:	86- 0571-88877374
Email:	xxgk@zidlr.gov.cn

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- banking regulations in relation to copper tube and copper industry;

Following the restructuring of the State Council in March 2018, the authority responsible for the general banking regulations is China Banking and Insurance Regulatory Commission.

Central Government	
Authority:	China Banking and Insurance Regulatory Commission (“CBIRC”)
Mailing address:	Jia No.15, Financial Street, Xicheng District, Beijing 100033
Phone number:	86-10- 66279847
Email:	sqxx@cbirc.gov.cn

CBIRC’s role is as the regulator of the banking and financial services industry. Therefore, the CBIRC is not involved in any way specific to copper industry.

- the section in the National Development and Reform Commission that is responsible for the copper tube and copper sector;

Please note that the NDRC is responsible for the promotion and regulation of the Chinese economy at the national level, which includes the development of overarching industry policy by the Department of Industry. NDRC does not have any section specifically responsible for the copper tube or copper sector.

- import licensing for raw materials used in copper tube and copper cathode manufacture;

MEE is in charge of the import licensing regime for solid wastes, including copper scrap, due to its environmental concerns. This is part of the GOC’s initiative to prevent environmental pollution. The importation of copper waste and scrap under the Chinese tariff code 740400010 has been prohibited from importation since 31 December 2018. Other copper waste and scrap, under tariff code 740400090, is subject to import licensing administered by MEE.

Copper cathode used for the production of copper tube is not subject to import licensing. The importation of copper ores and concentrates takes place under an automatic licensing regime administered by MOFCOM.

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

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MOFCOM is responsible for general export regulations. However, the GUC is not subject to export licensing requirements or any “guidance prices”. The State Council sets up free trade export zones, however there are none for the goods under consideration.

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

The General Administration of Customs is responsible for the administration of export tariffs.

Central Government

Authority:	Department: General Administration of Customs
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Mailing address:	No.6 Jianguomennei Street, Beijing 410114
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Phone number:	86-10-65194114
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Fax number:	86-10-65194114
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Tax rebates and VAT are administered through the taxation regime by the national taxation system and the various local taxation system.

The central government is responsible for enactment and promulgation of tax policies, and regional governments are the bodies responsible for the implementation of these policies. Provincial and City State taxation bureaus have a vertical reporting relationship with the State Taxation Administration (“STA”) and are seen as local branches of the STA. The local taxation system has no vertical reporting relationship with the STA but can seek advice and information assistance from the STA.

Central Government

Authority:	State Taxation Administration (“STA”)
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Mailing address:	No. 5, Yangfangdian West Road, Haidian District, Beijing
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Phone number:	86-10-63417257
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E-mail:	swzjxxgk@chinatax.gov.cn
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The two selected cooperating Chinese exporters are both located in the Zhejiang Province. The information of the provincial level tax authority is as follows:

Provincial/Municipal Government Authorities	
Authority:	Zhejiang Province Tax Service, State Taxation Administration
Mailing address:	No.1, Tihuan 2nd Road, Xihu District, Hangzhou, Zhejiang
Phone number:	86- 0571-85273734
E-mail:	zjtax@mail.zhejiang.chinatax.gov.cn

- B4.** Describe the ownership structure of the copper tube and copper industry, identifying what proportion of the industry is represented by state-invested enterprises (SIEs), foreign-invested enterprises (FIEs), and domestic-owned private enterprises.

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

Pursuant to Article 25 of the *Statistics Law of the People’s Republic of China* and Article 29 and 30 of its implementing regulations (See Exhibit B4), the National Bureau of Statistics (“NBS”) is not authorised to provide a list of producers as this information constitutes data based on which the identity of individual entities in a statistical survey can be recognised or deduced. The NBS also does not maintain information specifically for companies in the “copper tube” industry and does not record the exact percentage of shares that may be held by the State in each of the companies.

In the spirit of good faith cooperation and on a confidential basis, NBS has provided the following information for the Commission’s reference:

Refined Copper	Total Number of Producer in 2019	Total Output (kilo-tonne)
Total Enterprises	[CONFIDENTIAL STATISTICAL DATA]	
SIEs		
FIEs		

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Domestic Private Entities		
Copper fabricated products	Total Number of Producer in 2019	Total Output (kilo-tonne)
Total Enterprises	[CONFIDENTIAL STATISTICAL DATA]	
SIEs		
FIEs		
Domestic Private Entities		
Please note that the above information maintained by the NBS relates to companies with annual operational income above RMB 20 million.		

B5. Complete the attached spreadsheet B-5 (using Microsoft Excel format) listing all manufacturers/producers of copper tube and upstream raw materials (copper cathode, copper sulphides, copper oxides etc.) providers in China including the following details:

- (a) name of the business entity;
- (b) location and address of the business entity;
- (c) function of the business (e.g. manufacturer, trader or exporter);
- (d) type of business (e.g. State invested enterprise (SIE)¹⁹, Foreign invested enterprise (FIE), private enterprise or other (please specify));
- (e) whether the business is a manufacturer of copper tube or cathode;
- (f) production quantity of copper tube or cathode during the investigation period;
- (g) value of total benefit provided to each company;
- (h) whether GOC is a shareholder in the business, if so the percentage of GOC holdings; and
- (i) whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and indicate any special rights provided to the representative (e.g. veto rights)

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

¹⁹ For the purposes of this questionnaire, SIE refers to any company or enterprise that is wholly or partially owned by the GOC (either through direct ownership or through association).

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

Please refer to the comments above regarding the restrictions on the GOC’s ability to provide such information.

TRIB respectfully submits that the scope of this request is overly broad. The information requested goes well beyond the relevant information required for the purpose of this investigation, which only concerns certain types of copper tube exported from China to Australia during the POI. It is neither practicable nor should it be necessary for the GOC to provide detailed commercial information that covers such a large number of companies. As noted above, according to the NBS there are over 1,000 above-scale producers of refined copper and copper fabricated products in China in 2019, with private enterprises accounting for the vast majority of the total number of companies. Copper tube is a common commodity prevalent in many sectors of China’s economy. Its sales and pricing are not subject to any special controls by the GOC.

The selected Chinese exporters for this investigation are both Sino-foreign joint ventures registered in China. The Chinese owners are not SIEs. TRIB understands that the Commission has already requested detailed corporate commercial information, including detailed information concerning raw material procurement and identity of suppliers, in the Exporter Questionnaire. Accordingly, the Commission is kindly requested to obtain the information from the exporter questionnaire responses. It is those responses that will be of direct relevance to the actual goods under investigation in this investigation.

In any case, and as already explained above, the Chinese copper tube industry operates in a fully market-oriented and competitive environment. The industry is highly internationalised and deeply intertwined with the global copper commodity market. This renders irrelevant questions about the level of any State-ownership in a copper tube company or in a company that produces upstream materials, or about the overall presence of State-ownership.

B6. Which industry associations represent copper tube and copper manufacturers in China?

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

The China Nonferrous Metals Industry Association (“CNIA”) and the China Nonferrous Metals Fabrication Industry Association (“CNFA”) are the industry associations related to copper and copper tube manufacturers in China.

Their names and contact details are as follows:

Name	China Nonferrous Metals Industry Association
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Address	No. 12 Fuxing Road, Haidian District, Beijing, China
Tel	+86 010-63971861
Website	http://www.chinania.org.cn/
Name	China Nonferrous Metals Fabrication Industry Association
Address	No. 12 Fuxing Road, Haidian District, Beijing, China
Tel	+86 010- 63972919
Website	http://www.cnfa.net.cn/index.aspx

- B7.** Specify and provide supporting documentation for the corporate tax rates applicable in China (including provincial or local jurisdictions) for:
- (a) companies that manufacture copper tubes;
 - (b) companies that manufacture copper cathode.

The standard corporate tax rate applicable in China is 25%. There are no special corporate tax rates specifically assigned for copper tube or copper cathode manufacturers.

Please refer to Exhibit B7 for a copy of the *Corporate Income Tax Law of the People's Republic of China* amended in 2018.

SECTION C SUBSIDIES

Introduction

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

Table 1 below lists all the alleged countervailable subsidy programs for copper tube that are being investigated.

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

If further information comes to hand during the course of the investigation, the Commission may choose to investigate further programs. In this event, the Commission may issue a supplementary questionnaire.

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

Table 1: INVESTIGATED PROGRAMS

No.	Program name	Type
1	Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (SEZs) (excluding Shanghai Pudong Area)	Tax
2	Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones	Tax
3	Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai	Tax
4	Preferential Tax Policies in the Western Regions	Tax
5	Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas	Tax
6	Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas	Tax
7	Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas	Tax

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No.	Program name	Type
8	Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas in Guangdong	Tariff and VAT
9	Income Tax Refunds where Profits are Re-invested in SEZs and other Designated Areas	Tax
10	Preferential Tax Program for FIEs Recognized as HNTes (High and New Technology Enterprises)	Tax
11	Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive	Tax
12	Services or Goods provided by Government or public bodies at the preferential prices to enterprises located in SEZs and other designated areas	Provision of goods
13	VAT Exemptions for the Central Region	VAT
14	Tax over-refunds or over-exemptions for the water, electricity and gas consumed in the Export Processing Zone	Tax
15	Custom Duty Exemption and VAT Exemption for machinery, equipment, construction materials imported into the Export Processing Zone for the construction of production facilities (such as factory and warehouse) in the zone	Tariff and VAT
16	Custom Duty Exemption and VAT Exemption for machinery, equipment, moulds/dies and the corresponding repairing parts imported into the Export Processing Zone and used for the production by Enterprises in the zone	Tariff and VAT
17	Custom Duty over-refund or over-exemption and VAT over-refund or over-exemption for raw materials, parts, packaging materials and consumable materials imported into the Export Processing Zone and used for the production of exported goods in the zone	Tariff and VAT
18	Export Duty Refund or Exemption for the exported goods produced in the Export Processing Zone and exported from the zone	Tariff and VAT
19	VAT Refunds or Exemptions for the domestically purchased machinery, equipment and construction materials used for the production of exported goods and the construction of production facilities in the Export Processing Zone	Tariff and VAT

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No.	Program name	Type
20	Loans and Interest Subsidies Provided Under the Northeast Revitalization Program	Loan
21	Export Seller's Credit for High- and New-Technology Products by China EMIX Bank	Loan
22	Preferential Loan for the National/Provincial Key Science & Technology Industrialization Projects, High Technology Industrialization Projects, Science & Technology Achievements Commercialization Projects, Modern Equipment Manufacturing Industry and key Information Technology Industrialization Projects by Liaoning Governments	Loan
23	Innovation Fund for Medium and Small Business	Grant
24	Special fund for developing trade through science and technology of Guangdong Province	Grant
25	Special Funds for Foreign Economic and Technical Cooperation	Grant
26	Innovative Experimental Enterprise Grant	Grant
27	Superstar Enterprise Grant	Grant
28	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"	Grant
29	Export Brand Development Fund	Grant
30	Provincial Scientific Development Plan Fund	Grant
31	Technical Renovation Loan Interest Discount Fund	Grant
32	National Innovation Fund for Technology Based Firms	Grant
33	Guangdong - Hong Kong Technology Cooperation Funding Scheme	Grant
34	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant
35	Innovative Small and Medium-Sized Enterprise Grants	Grant
36	Product Quality Grant	Grant

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No.	Program name	Type
37	2009 Energy-Saving Fund	Grant
38	Grants for Export Activities	Grant
39	Grants for International Certification	Grant
40	Emission Reduction and Energy-Saving Award (Special Funds for Reduction of Pollutant Emission)	Grant
41	Emission Reduction and Energy-Saving Award (Advanced Units within Top 30 Electricity Consumption Enterprises in the Competition of Energy-Saving contest)	Grant
42	Grant for Market Promotion and Trade Development (Shandong)	Grant
43	Grant - Assistance for Exhibition Booth Fees (Shandong)	Grant
44	Grant - Patent Application Assistance	Grant
45	Grant - State Service Industry Development Fund	Grant
46	Cleaning-production Qualified Enterprise Reward (Subsidy of Audit Fees for Key Enterprises Cleaning Production)	Grant
47	Grant - Provisional Industry Promotion Special Fund	Grant
48	Grant - Financial Subsidies from Wei Hai City Gao Cun Town Government	Grant
49	Grant - Water Pollution Control Special Fund for Taihu Lake	Grant
50	Grant - Provincial Foreign Economy and Trade Development Special Fund	Grant
51	Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings	Grant
52	Resources Conservation and Environment Protection Grant (Funds for Pollution Sources Monitoring Facilities in 2011)	Grant
53	Grant - Wendeng Government (Shandong)	Grant
54	Enterprise Technology Centres	Grant

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No.	Program name	Type
55	Allowance to Pay Loan Interest	Grant
56	Supporting Fund for Non-Refundable Export Tax Loss	Grant
57	International Market Fund for Export Companies	Grant
58	International Market Fund for Small and Medium-sized Export Companies	Grant
59	Business Development Overseas Support Fund	Grant
60	Refund from Government for Participating in Trade Fair	Grant
61	Grant - Special Fund for Fostering Stable Growth of Foreign Trade	Grant
62	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments	Grant
63	Financial Special Fund for Supporting High and New Technology Industry Development Project	Grant
64	Subsidy for Promoting Energy-Saving Buildings	Grant
65	Subsidy for the Technology Development	Grant
66	Awards for the Contributions to Local Economy and Industry Development	Grant
67	Beijing Industrial Development Fund	Grant
68	Grants, Loans, and Other Incentives for Development of Famous Brands, China Top World Brands or other well-known Brands	Grant
69	Shunde Famous Brands	Grant
70	Guangdong Supporting Fund	Grant
71	Zhabei District "Save Energy Reduce Emission Team" Award	Grant
72	"Five Points, One Line" Program of Liaoning Province	Grant
73	State Special Fund for Promoting Key Industries and Innovation Technologies	Grant

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No.	Program name	Type
74	Fund for SME (small and medium size enterprises) Bank-Enterprise Cooperation Projects by Guangdong Governments	Grant
75	Special Fund for Significant Science and Technology by Guangdong Governments	Grant
76	Fund for Economic, Scientific and Technology Development by the Government of Foshan City	Grant
77	Provincial Fund for Fiscal and Technological Innovation by Guangdong Governments	Grant
78	Provincial Loan Discount Special Fund for SMEs by Guangdong Governments	Grant
79	“Large and Excellent” Enterprises Grant	Grant
80	Advanced Science/Technology Enterprise Grant (Advanced Units for Safety Production in Fengxian District	Grant
81	Award for Excellent Enterprise (First Prize within Top 100 Enterprises in Situan Town for Year 2012	Grant
82	Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants	Grant
83	Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers	Grant
84	Supporting Fund for the Projects Used to Resolve the Important Technological Issues for Enterprises’ Production and R&D by Liaoning Governments	Grant
85	Technology Innovation Fund for Science & Technology Type SMEs by Liaoning Governments	Grant
86	Supporting Fund for the Application Technology Research in the Overseas R&D Institution/Branch by Liaoning Governments	Grant
87	Special Supporting Fund and Special Loan Assistance by Chinese Ministry of Science & Technology for revitalizing the Northeast old industrial base	Grant

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No.	Program name	Type
88	Special Supporting Fund for Key Projects of “500 Strong Enterprises in Contemporary Industries” by Guangdong Governments	Grant
89	Fund for Supporting Strategic Emerging Industries by Guangdong Governments	Grant
90	Medium Size and Small Size Enterprises Development Special Fund	Grant
91	Medium Size and Small Size Trading Enterprises Development Special Fund	Grant
92	Special Fund for Export Credit Insurance by Guangdong Governments	Grant
93	Supporting Fund for Converting the Industry Technology Achievements/Findings by Beijing Governments	Grant
94	Special Development Fund for Beijing Cultural Innovation Industry	Grant
95	Supporting Fund for Becoming Publicly Listed Company	Grant
96	Supporting Fund for the “Working Capital” Loan Interest	Grant
97	Award for Maintaining the Growth by Beijing Governments	Grant
98	Award by Beijing Technology Trading Encouraging Centre	Grant
99	Award by Shanghai Songjiang Economic Committee	Grant
100	Supporting Fund for the Development from Guangzhou Local Governments	Grant
101	Interest Assistance for Technology Renovation Projects by Liaoning Governments	Grant
102	Interest Assistance for the Application of Information Technology by Liaoning Governments	Grant
103	Loan Guarantee Fund for Science & Technology Enterprises by Liaoning Governments	Grant
104	Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products	Grant

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No.	Program name	Type
105	Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River	Grant
106	Repaying Foreign Currency Loan by Refunded VAT	
107	Government Export Subsidy and Product Innovation Subsidy in Shandong Province	Grant
108	Export Assistance Grant	Grant
109	Research & Development (R&D) Assistance Grant	Grant
110	Foreign Trade Promotion Award	Grant
111	Financial Assistance for an Overseas Market Survey	Grant
112	Supporting fund provided to Service Outsourcing Enterprises for the Establishment of their Brands and the Acquisition of their International Qualification Accreditations	Grant
113	Liaoning High-tech Products & Equipment Exports Interest Assistance	Grant
114	Grant for Developing International Markets for SMEs in Zhejiang	Grant
115	Grant for Developing International Markets and Capital Clearing Fund for SMEs in Zhejiang	Grant
116	Export Credit for Insurance Premium in Zhejiang	Grant
117	Property Tax Reduction of Urban Land Use for Companies Who Provide Employment to People with Disabilities in Zhejiang	Tax
118	Support for the Development of Welfare Enterprises and Promoting the Employment of Persons with Disabilities in Zhuji City.	Grant
119	Subsidy for Certification of Clean and Green Production in Zhejiang (Funds for Cleaning Production Demonstration Enterprises)	Grant
120	Subsidy for Construction Projects in the Developmental and Experimental Zone in Zhuji City	Grant

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No.	Program name	Type
121	Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township (Funds for Fulfill Incentive Policies on Industry for the Year 2011)	Grant
122	Policy to Promote Industrial Restructuring and Upgrading, and Enhance the Level of Economic Development in Dianko Township (Incentives of Circular Economy in 2011)	Grant
123	Funds for Standardizing Industrial Systems in the Nonferrous Metals Industry	Grant
124	Award for Science and Technology in Shaoxing City	Grant
125	Policy to Accelerate the Development of Modern Logistics Industry in Zhuji City	Grant
126	Grant for Industrial Transformation and Upgrading of Major Science and Technology Projects in Zhuji City	Grant
127	Funds for Science and Technology Award	Grant
128	Award to Science and Technology Enterprises in Zhuji City	Grant
129	Funds for Science and Technology Award of Zhuji City	Grant
130	Funds for Patent Award	Grant
131	Funds for Key Innovation Team	Grant
132	Special Fund for Fair Trade in Import and Export Zhejiang	Grant
133	Subsidies to Full-time Environmental Monitoring Officer	Grant
134	Grant for Research and Development Centers in the Provincial-level High-Tech Enterprises in Zhejiang	Grant
135	Special Financial Fund for Industrial Transformation and Upgrading in Zhejiang (Brand Awards)	Grant
136	Award for Outstanding Industrial Products and New Technologies in Zhejiang	Grant

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No.	Program name	Type
137	Grant for the Implementation of Quality and Technical Inspection in Zhejiang	Grant
138	Award for Advanced Companies and Individuals in the Recognition of Key Projects and Investment in Tonglin City	Grant
139	Grant to Promote and Accelerate the Economic Development in the Copper Industry in Tonglin City	Grant
140	Financial Incentives to Promote Economic Development in Tonglin City	Grant
141	One-Time Financial Support to Hailiang Copper Co., Ltd.	Grant
142	Special Funds for Use in the Open Economy (Award for Open Economy)	Grant
143	Special Funds for Use in the Open Economy (Reduction/Exemption of Water Conservancy Fund)	Grant
144	Grant to Promote Economic Innovation and Enhance Development (Award for Refinancing by Rationed Shares)	Grant
145	Grant to Promote Economic Innovation and Enhance Development (Incentives of Industrial Economic Policies in 2011)	Grant
146	Grant to Promote Economic Innovation and Enhance Development (Funds for Award of Innovation Carrier)	Grant
147	Grant to Promote Economic Innovation and Enhance Development (Funds for Award of Talent for the Year 2012)	Grant
148	Funds for Scientific and Technology Project for the Year 2011 in Zhuji City	Grant
149	Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City (Funds for City-Grade Project in 2012)	Grant
150	Grant for Scientific and Technological Projects Which Passed Appraisal and Certification in Zhuji City (Funds for Award of Scientific & Technological Achievements through Identification/Review and Project of National Torch, Spark, Key New Product Program)	Grant
151	Support for the Development of Welfare Enterprises to Promote the Employment of Persons with Disabilities in Zhuji City	Grant

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No.	Program name	Type
152	Preferential Tax Policies for Advanced Technology Enterprises with Foreign Investment	Tax
153	Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period Not Less Than 10 Years	Tax
154	Tax Preference Available to Companies that Operate at a Small Profit	Tax
155	Preferential Tax Policies for Foreign Invested Export Enterprises	Tax
156	Preferential Tax Policies for the Research and Development of FIEs (Tax offsets for Research and Development)	Tax
157	Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment	Tax
158	Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose	Tax
159	Income Tax Refund for Re-investment of FIE Profits by Foreign Investors	Tax
160	VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps	Tax
161	Corporate Income Tax Reduction for New High-Technology Enterprises	Tax
162	Income Tax Credits on Purchases of Domestically Produced Equipment	Tax
163	Preferential Tax Programs for Encouraged Industries or Projects	Tax
164	Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for FIEs	Tax
165	Tax Offset for R&D Expenses in Guangdong Province	Tax
166	Accelerated Depreciation on Fixed Assets	Tax
167	Preferential Tax Treatment for the Technology Development Expenses by Liaoning Governments	Tax
168	Accelerated Depreciation on Intangible Assets for Industrial Enterprises in Northeast Region	Tax

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No.	Program name	Type
169	Exemption of Tariff and Import VAT for the Imported Technologies and Equipment.	Tariff and VAT
170	Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs	Tariff and VAT
171	Reduction, Exemption or Refund of Land Use Fees, Land Rental Rates and Land Purchase/Transfer Prices	Tax
172	Deed Tax Exemptions for Land Transferred through Merger or Restructuring	Tax
173	Raw Materials Provided by the Government at Less than Fair Market Value	Provision of goods
174	Utilities Provided by the Government at Less than Fair Market Value	Provision of goods
175	Debt to Equity Swaps	Equity
176	Exemptions for SOEs from Distributing Dividends to the State	Equity
177	Tax offsets for the investment in the acquisition of special facilities for environmental protection, energy and water conservation and work safety etc.	Tax
178	Preferential Loans From State-Owned Banks	Loan

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

ANY OTHER PROGRAM NOT PREVIOUSLY ADDRESSED

If the GOC, any of its agencies, or any other authorised non-governmental body, provides any other assistance programs not previously addressed (including market development assistance programs or any domestic support programs related to the manufacture of the goods) to manufacturers of (copper tube and/or copper manufacturers) in China, identify these programs. Such assistance programs are those that constitute a subsidy as defined in the Glossary of Terms.

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

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TRIB respectfully advises of its objection to such an open-ended request for information. The Commission is respectfully requested to limit the scope of the investigation to the countervailable subsidies that are alleged to exist and that are said to have benefited the GUC exported from China.

In relation to the 178 programs alleged, TRIB respectfully submits that it was not open to the Commission to be satisfied that the application contained reasonable grounds that the alleged subsidies existed, and that a countervailing duty notice could therefore be published pursuant to Section 269TC of the *Customs Act 1901*.

The basis of the Applicant's claim is the determination made in an investigation by the Canadian investigating authority ("CBSA"). While TRIB does not dispute the Commission's observation that *"the CBSA is a reputable agency of a comparable jurisdiction"*, it was wrong for the Commission to find that there is an *"absence of contrary information"*, and that *"there appear to be reasonable grounds for the claims by MM Kembla in its application that the subsidy programs it identified could be relevant for exports of copper tube from China to Australia"*.

As the Application itself states, the Canadian investigation found that amongst the "170 potential subsidy programs":

- for SH Hailiang – that *"a subsidy margin equal to 0.19 per cent of the export price for SH Hailiang [was determined], in respect of... five programs"*;
- for ZJ Hailiang – that *"benefits under the following 27 programs were examined and a subsidy margin of 0.65 per cent was determined"*.

That is, the CBSA found, based on evidence available, that it could only establish the existence of 31 subsidy programs. It then made assumptions that a subsidy under *"Program 167 - relating to raw material provided by government at less than fair market value"* *"potentially"* benefited the other exporters, and further assumed the existence of *"the remaining 146 potentially actionable subsidy programs"* against those exporters not participating in the investigation, at the same rate as the 32 programs.

Clearly, the CBSA finding does not support the allegation of the existence of the entire 178 programs at all. The CBSA investigated and found that it was only able to identify 31 programs based on verified information, with a negligible subsidy margin. The CBSA's *assumptions* of the existence of a subsidy for uncooperative exporters *without evidence* cannot be relied upon as evidence or grounds for the existence of those subsidies for the purpose of this investigation.

TRIB respectfully refers the Commission to the requirements under the WTO *Agreement on Subsidy and Countervailing Measures* ("the SCM Agreement"). Article 11.2 of the SCM Agreement provides that an application for countervailing investigation must contain *"sufficient evidence of the existence of... a subsidy and, if possible, its amount... Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirement of this paragraph."* With respect, the Application, by referring to the CBSA investigation as its only source of evidence, being an investigation which

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found that available evidence only supported the establishment of 31 subsidy programs and at negligible subsidy margin, cannot meet the requirement under Article 11.2 of the SCM Agreement.

It follows that there is no legal basis for the Commission to initiate the investigation with respect to the other 147 programs.

C1 – PROGRAM INFORMATION

For **each program** identified above, and any other additional programs that the GOC identifies, answer the following questions.

Consistent with the GOC’s established practice in its participation of countervailing investigations in Australia, TRIB has sought relevant information from the selected Chinese cooperative exporters whose information will be used by the Commission to make findings for all Chinese exports of the GUC during the POI.

TRIB is advised by both cooperative Chinese exporters that the total amount of subsidies they have received is well within the *de minimis* range. The Commission is kindly requested to refer to the response and actual amount reported by the exporters in their response to the exporter questionnaire. TRIB stands ready to provide additional assistance to allow the Commission to verify any information, on an as-needed basis.

For questions concerning specific programs under C1 and C2, TRIB has been advised by the selected exporters that the only subsidy program from which they benefited in relatively substantive terms (but still overall negligible) is the program relating to “*preferential tax policies for the additional calculation and deduction of research and development expenses*”. Accordingly, responses to C1 and C2 are provided in relation to this tax program. TRIB notes that this program has been identified, albeit inaccurately, in Table 1 above as Programs 156 and 165. This tax offset program was notified by the GOC to WTO Members. See program 6 of China’s notification at G/SCM/N/343/CHN.

Concerning the alleged “*less than adequate remuneration*” (“LTAR”) programs, such programs do not exist. Nonetheless, TRIB will provide response to each of the alleged LTAR subsidies separately, at the end of this section.

C1.1. Provide details of the program including the following.

(a) Title of the program;

Preferential tax policies for the additional calculation and deduction of research and development expenses

(b) Policy objective and/or purpose of the program;

The policy purports to encourage enterprises to carry out research and development activities and strengthen independent innovation.

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(c) Legislation under which the subsidy is granted;

The program is established according to Article 30 of the *Enterprise Income Tax Law of the PRC* and Article 95 of the *Implementing Regulations of the Enterprise Income Tax Law of the PRC*.

(d) Nature or form of the subsidy;

According to Article 30 of the *Enterprise Income Tax Law*, the expenses for the research and development of new technologies, new products and new techniques may be additionally calculated and deducted when computing the taxable amount of income. In this sense, it takes the form of a deduction from taxable income.

(e) When the program was established;

The program started on 1 January 2008.

(f) Duration of the program;

The tax declaration and deduction under this program is carried out on an annual basis.

(g) How the program is administered and how it operates;

The program is administered by the State Tax Bureau with the support of other relevant departments, and it is implemented by authorities in charge of local taxation within each jurisdiction.

Additional deduction of R&D expenditures mentioned in Article 30 of *Enterprise Income Tax Law* means that the R&D expenditures incurred to develop new technologies, new products and new crafts that do not form intangible assets and are accounted into the current term profit and loss, such expenditures shall be subject to 50% additional deduction after being deducted in full amount in light of the actual situation. Where the above-mentioned R&D expenditures form intangible assets, they are subject to amortization based on 150% of the intangible asset costs.

With respect to research and development (R&D) expenses actually incurred by an enterprise from its R&D activities, an extra 75% of the actual amount of expenses is deductible before tax, in addition to other actual deductions, during the period from 1 January 2018 to 31 December 2020, provided that the said expenses are not converted into the intangible asset and balanced into this enterprise's current gains and losses; however, if the said expenses have been converted into the intangible asset, such expenses may be amortized at a rate of 175% of the intangible asset's costs before tax during the above-said period.

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According to Article 2.2 of the SCM Agreement, setting or changing the generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of the SCM.

(h) To whom and how the program is provided;

According to Article 1 of the *Enterprise Income Tax Law of the PRC*, this methodology for the calculation of R&D expenses is applicable to all legal person enterprises within China without any bias as to enterprise type, industrial sector, or geographical location.

(i) The GOC department or agency administering the program;

The State Administration of Taxation (SAT) and its local branches are responsible for the administration of this program.

Authority: State Administration of Taxation

Address: Western Road, No. 5, Yangfangdian, Haidian Beijing China

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

The only criterion governing the eligibility for this program is that the expenses borne and to be accounted should be incurred in the work of R&D.

According to Article 2.1(b) of the WTO SCM Agreement, where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist.

C1.2. Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the programs. Specify the sections that govern the program.

For the laws, regulations or guidelines, which are relevant to the alleged program, please see the following exhibits attached to this questionnaire response.

- **Exhibit B7 *Enterprise Income Tax Law of the P.R.C***
- **Exhibit C1.2.1 *Implementation Rules for the Enterprise Income Tax Law of the P.R.C***
- **Exhibit C1.2.2 *Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policy of Pretax Deduction of R&D Expenses (Cai Shui [2015] No. 119)***
- **Exhibit C1.2.3 *Announcement of the State Administration of Taxation on Issues Concerning the Pre-tax Weighted Deduction Policy for***

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Corporate Research and Development Costs (Announcement of the State Administration of Taxation [2015] No.97)

- **Exhibit C1.2.4 Notice of the State Administration of Taxation on Issues Concerning Policy of Pre-tax Deduction of R&D Expenses of Enterprises (Announcement of the State Administration of Taxation [2017] No.40)**
- **Exhibit C1.2.5 Circular on Raising the Proportion of Pre-tax Super Deduction of Research and Development Expenses (Cai Shui [2018] No.99)**

C1.3. Identify and explain the types of records maintained by the relevant Government or agency (e.g., accounting records, company-specific files, databases, budget authorisations, etc.) regarding the program.

This program only provides a methodology for the calculation of R&D expenses and it is applicable to all legal person enterprises within China without any prejudice. Accordingly, no relevant government agency maintained any record for this program, except the income tax returns.

C1.4. Answer the following questions regarding the application process:

- (a) Describe the application process (including any application fees charged by the Government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).
- (b) After an application is submitted, describe the procedures by which an application is analysed and eventually approved or refused.
- (c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.
- (d) If the application is refused, provide the refusal documents together with the reasons for refusal.

The applicant enterprise is required to submit tax return forms for the settlement of the annual income tax. There is no other application requirement established nationwide. TRIB provides a Blank Tax Return at Exhibit C1.4.

C1.5. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

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

No, the export performance or export potential of an applicant or recipient would not be taken into account to determine eligibility or receipt of any assistance under this program.

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

No, the use of domestic goods or the creation of domestic value added by an applicant or recipient would not be taken into account to determine eligibility or receipt of any assistance under this program.

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

No, eligibility for this program is not limited to enterprises or industries located within designated geographical regions.

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

No, the industry or sector in which the applicant or recipient operates is not taken into account to determine eligibility or receipt of any assistance under this program.

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

Not applicable.

C1.6. Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

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

Please refer to the answer to the Question C1.1(g) for criteria governing the size of the benefit provided.

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

Please refer to the answer to the Question C1.2. for official documents detailing these criteria.

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

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All firms which satisfy the above-mentioned criteria can benefit from the program.

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

The amount of the assistance provided is determined solely by the established criteria found in the *Enterprise Income Tax Law*, the *Implementing Regulations of the Enterprise Income Tax Law* as well as relevant official documents set out in the answer to the Question C1.2.

- C1.7.** Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and in each of the years 2017, 2018 and 2019.

Because there are no centralized approval procedures and all enterprises dispersed across legal jurisdictions and geographic regions may qualify for the program, the GOC does not have a central database that could permit the GOC to determine the total amount of assistance approved for each type of industry in each region, and it is impossible as a practical matter to compile the data requested by the Commission from all the different SATs to response to this question.

- C1.8.** For all programs, including those listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

There is no anticipated change with respect to the this tax program.

- C1.9.** If assistance under the program was provided by an entity other than a national, state or local Government entity, please provide details.

Not applicable. Assistance under this program is provided by the governmental entity.

- C1.10.** Identify all copper tube and copper cathode companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as C1.10 (for copper tube) and C1.10a (for copper):

- a) the business address (including city, province and region);
- b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private etc.)
- c) if the business is not an SIE, whether it is otherwise associated with the GOC;

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- d) whether the entity produces copper tube or copper cathode
- e) provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

As advised above, TRIB's response to the questions are based on the specific cooperative exporters, which provides the only relevant consideration for this investigation. TRIB confirms that all of the selected Chinese exporters are sino-foreign joint ventures registered in China, and the Chinese owners are not SIEs.

Further, TRIB advises there are no centralized approval procedures and all enterprises dispersed across legal jurisdictions and geographic regions may qualify for the program. Therefore, there is no central database that could permit the GOC to determine the total amount of assistance approved for each type of industry in each region.

- C1.11.** For each entity identified in your response to Question C1.10 above that is an SIE, answer the following questions regarding their performance and profits.

Please kindly refer to response above at C1.10. TRIB confirms that all of the selected Chinese exporters are private companies registered in China, not SIE.

- (a) How are the operations of the enterprise funded?

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

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

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

TRIB respectfully submit that this question is overtly broad, non-specific, and lack of relevance to the investigation. The Commission is kindly requested to clarify the purpose of this question in order for the GOC to provide appropriate responses.

In any case, TRIB advises it would be impossible to provide detailed commercial information concerning individual enterprises. TRIB suggests that inquiries be directed to Zhejiang Hailiang Co., Ltd. ("Zhejiang Hailiang") and Zhejiang Naile Copper Co., Ltd ("Zhejiang Naile"). The GOC will be amenable to any reasonable supplemental inquiries the Commission may have.

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

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Please kindly refer to response above at C1.10. TRIB confirms that all of the selected Chinese exporters are private companies registered in China, not SIE.

From a legal perspective, the performance of an enterprise can be measured by the property independently owned by the enterprise under Article 3 of the *Company Law*:

A company is an enterprise legal person which owns independent legal person property and enjoys legal person property rights. The liability of a company shall be limited to its entire property.

The liability of a shareholder of a limited liability company shall be limited to the amount of its capital contribution. The liability of a shareholder of a company limited by shares shall be limited to the number of its subscribed shares.

Article 4 of the *Company Law* further provides that:

Shareholders of a company shall be entitled to gains on assets, participation in major decision-making and selection of managers etc in accordance with the law.

In this regard, it can also be inferred that the shareholders measure the performance of the enterprise by the “gains on assets” they can receive.

As a matter of general principle, the GOC understands that Chinese companies, whether SIEs or non-SIEs, are measured their performance according to its business operation, being its profit earning abilities, business achievement, management quality, as well as its interaction and contribution to the general society, where applicable. For instance, Chapter VIII of the *Company Law* requires the performance of an enterprise to be recorded by the established finance and accounting system and to be reflected in the financial accounting reports. In this sense, the key measurement of the performance of an enterprise lies in its financial results in accordance with the *Company Law*. For more details, please refer to Exhibit B2.7 for the full texts of the *Company Law*. Similar financial and corporate management-based performance criteria is also reflected in the *Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises*, applicable for Central-SIEs. Please see Exhibit C1.11.1.

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

- Output and quality performance.
- Performance of employees/directors/managers; and
- Financial performance.

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

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Please kindly refer to response above at C1.10. TRIB confirms that all of the selected Chinese exporters are private companies registered in China, not SIE.

The role of SASAC in an SIE is the same as that of any shareholder in any company. Therefore, SASAC may evaluate the performance of an SIE, in the same way that any shareholder would evaluate the performance of a company in which it has an interest. In essence, SASAC assesses the performance of an SIE based on its commercial and financial performance, in line with industry averages. There is no essential difference between the methods which SASAC adopts to inspect and evaluate enterprise performance and those adopted by other shareholders to inspect and evaluate the business performance of private enterprises.

The performance of managers of State-invested enterprises is evaluated according to the *Law on State-Owned Assets* and more specifically, the *Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises* which provides the evaluation method guideline. Please see Exhibit C1.11.1.

TRIB wishes to emphasize that SASAC exercises its rights a shareholder in the exact same way as does every other shareholder. Each shareholder has different considerations in mind when exercising his or her rights. The considerations which

SASAC has in mind might very well be different from those of an ordinary private shareholder. This does not change the fact that SASAC exercises the same rights as each other shareholder. From the legal perspective, SASAC is required to perform its contributor's function consistently with Article 14 of the *Law of the People's Republic of China on the State-Owned Assets of Enterprises*:

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

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

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

There is no substantial difference between the reporting mechanisms of a non-State invested enterprise and that of an SIE. The difference instead depends on whether a company is publicly listed.

According to Article 37 of the *Company Law*, examples of official reporting mechanisms by the enterprises to shareholders may include reporting during the course of shareholders' meetings, putting forward reports orally or in

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writing. For details, please refer to Exhibit B2.7 on the *Company Law of the People's Republic of China*.

Among SIEs, the reporting requirement may be different according to the type of enterprise and the level of State investment, as well as whether the company is publicly listed. For example, see Articles 32, 33, 34 of the *Law on State-Owned Assets of Enterprises* at Exhibit C1.11.2.

TRIB wishes to clarify that SIEs – like other companies– do not report on every matter relating to their daily operation to their shareholder SASAC. They are not required, not compelled, to do so.

- (b) Provide an explanation of the systems that exist for assessing the performance of administrators of SIEs. Provide examples of recent appraisals of SIE administrators of the enterprise (refer to Article 27 of the Law on State Owned Assets).

Some, but not all, administrators of SIEs are assessed according to the *Law on State Owned Assets of Enterprises*, which provides the basic principles for such assessment (at Chapter IV).

Only the administrators of a wholly State-owned enterprise, or an enterprise with majority State-holding, are subject to the performance assessment of the body performing the capital contributor's function. The method of evaluation is solely related to the commercial and financial performance of the enterprise.

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

The GOC is not authorized by law to govern or interfere with the business operations of enterprises, whether or not enterprises are State invested. In fact, the GOC is positively excluded from doing so.

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

- (d) Are dividends/ other payments made to SASAC or any other GOC entity?

The GOC is not authorized by law to govern or interfere with the business operations of enterprises, whether or not enterprises are State invested. In fact, the GOC is positively excluded from doing so.

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

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

As is the case in any jurisdiction, the performance of an enterprise is taken into account by its shareholders, including SASAC, when making decisions

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about the company or making proposals regarding the future management of the enterprise.

If the enterprise makes a loss or under-performs, senior members of the management, such as the directors and senior managers of the enterprise may be held liable in terms of remuneration and promotion.

- (f) Over the past 10 years, has the GOC provided any payment or made any injection of funds to the enterprise, including but not limited to:
- grants;
 - prizes;
 - awards;
 - stimulus payments and rescue type payments;
 - injected capital funds
 - purchasing of shares.

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

TRIB considers that this question has been appropriately answered by reference to the disclosures of the grants made to Zhejiang Hailiang and Zhejiang Naile.

C1.12. For each entity identified in C1.10 above, answer the following questions regarding enterprise functions:

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

Please kindly refer to response above at C1.10. TRIB confirms that all of the selected Chinese exporters are private companies registered in China, not SIE.

Further, TRIB can confirm that Chinese companies who are in the business of copper tube or copper production and sales are purely commercial enterprises. Thus, their functions can only be to conduct their business in order to achieve their corporate and commercial objectives.

TRIB can also advise that – if it is not already clear from its advice above – Chinese companies whose business operation is to produce and sell copper tube or copper, are not and cannot be assigned with any special or governmental function to any of those enterprises whether they are enterprises with State-investment or not. Government powers are not shared or bestowed or vested on or in commercial entities. The functions of enterprises are purely commercial.

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

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

Further, Article 14 of the law provides:

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

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

First of all, government policies of the GOC are not legal instruments. They are not enforceable unless embodied in law or regulation.

Secondly, TRIB can confirm that Chinese companies that produce or sell copper tube or coper cannot and do not "carry out" any government policies "on behalf of" the GOC. *The Law on State Owned Assets* explicitly requires a strict separation of government function from the operation of a business.

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

Enterprises might make commercial decisions which reflect or are in line with government policies. Likewise, government policies are often designed to promote further economic growth and commercial development. Enterprises and market participants share this common interest in the broad sense. For example, a government policy to encourage market competition, or to encourage innovation, does not make every business which also engages in market competition or which strives to be innovative an administrator of the government policy.

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

No enterprise relevant to this investigation has functions which are considered to be governmental in nature.

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

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

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

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

On the other hand, as answered above, TRIB is not aware of any enterprise relevant to this investigation being trusted, tasked, or vested with governmental authority. No enterprises relevant to this investigation are considered to be carrying out any governmental function. Therefore, no enterprise can have the authority or power to entrust or direct another body, private or not, to undertake any governmental function.

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

TRIB respectfully requests the Commission to clarify the legal and factual relevance of this question in this investigation.

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

On the other hand, it is clear every government’s desire for its policies to be supported and that the goals set out in the policies to be achieved – which is why the policies are issued at the first place. Further, TRIB note that the notion of “governmental interests” is very broad – for example, it is almost every government’s interest to have a crime-free society. Therefore, enterprises are required by law to refrain from criminal acts. It is also a governmental interest to increase revenue by collecting income taxes. Therefore, enterprises are required to pay tax according to tax laws.

TRIB is not in any position to advise whether enterprises act “in pursuit of” governmental policies or interests. This is because that the GOC cannot and does not interfere with the daily business operation of enterprises. The GOC has no desire to do so, and in any case, the law requires the separation of government and enterprises.

However, it is possible that what an enterprise is “in pursuit of” will coincide with certain governmental interests. For example, it is an interest of most governments in the world to ensure that the people of their country have a better living standard and to create conditions in which the enterprises of their country can prosper and can be of benefit to the country itself. Commercial companies that maximise their profits and pay more income tax are pursuing their own commercial interests in doing so - but that commercial interest coincides with broad governmental interests. Likewise, every single economic entity in China makes a contribution to the broad governmental policy of

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developing the Chinese market economy, whether as a natural person or as a business, by participating in that economy.

However, those entities do not become “public bodies” simply because they supported government policies or acted in a way which happens to serve a governmental interest. Plainly, development is a recognised right of a nation and its people.

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

For example, to follow policies on environmental protection and energy conservation may also help increase the productivity and profits of the enterprises. The fact that law permits enterprises to support some governmental policies does not mean that the enterprises must support governmental policies. Voluntary behaviour is ultimately driven by each enterprise’s commercial interest.

Further, performing social responsibilities by the enterprises may also be in line with government policies or interests. Nowadays, the social responsibilities of enterprises are well recognised as a key element of corporate management. For example, please refer to Exhibit C1.12 for *OECD Guidelines for Multinational Enterprises*. TRIB notes that more and more enterprises in China are willing to undertake social responsibilities as an act of goodwill and to “give back” to the society in which they operate and prosper.

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

From a legal point of view, *the Company Law* encourages all Chinese companies to undertake social responsibilities. In other words, all enterprises are encouraged to engage in community acts. The law does not, however, require enterprises to do so.

Please refer to Exhibit B2.7 *Company Law* of the People's Republic of China. In particular, Article 5 of *the Company Law* provides that:

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

This is an aspirational provision and is not enforceable. Chinese companies are free to undertake any type of social responsibility as part of their social participation as a legal person.

Further, TRIB advises that the reference to “social responsibility” provided in *the Law on State Owned Assets of Enterprises* is no more than a recognition and encouragement of best practice. As already mentioned above, social

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responsibility is a well-recognized element in corporate management – not just for SIEs.

TRIB notes that “social responsibilities” is a common concept in modern corporate management principles around the world, especially for companies with business operations having greater impact to the broader community and environment. For example, please see:

- <https://www.bhp.com/sustainability/>
- <https://www.bhp.com/investor-centre/esg-and-sustainability/>
- <https://www.ozminerals.com/sustainability/>
- <https://www.bluescope.com/about-us/bluescope-news/2019/09/building-resilience-fy2019-sustainability-report/>
- http://www.hailiang.com/en/index.php/public_welfare

C2 – PREFERENTIAL TAX POLICIES

Please answer the following specific questions in relation to any tax programs.

If any of the companies listed in your response to Question B5 used any program to take deductions from taxable income, to receive credit towards taxes payable, to take exemptions from taxes owed, to reduce the tax rate, to defer payment of taxes, to carry forward losses from previous tax years, to use accelerated depreciation, or to benefit from other tax advantages on the tax return filed during the investigation period, please respond to the following questions.

TRIB is aware that the [CONFIDENTIAL TEXT DELETED – number] of the selected Chinese exporters, [CONFIDENTIAL TEXT DELETED – exporter/s name] used the tax offset program relating to research and development during the investigation period. Accordingly, TRIB provide responses to the following questions in relation this program.

- C2.1.** Explain whether the assistance is a deduction from taxable income, a credit towards taxes payable, an exemption from taxes owed, a reduction in the tax rate, a deferral of taxes, a loss carry-forward from previous tax years, accelerated depreciation, or other tax benefit.

According to Article 30 of the *Enterprise Income Tax Law*, the expenses for the research and development of new technologies, new products and new techniques may be additionally calculated and deducted when computing the taxable amount of income. In this sense, the assistance takes the form of a deduction from taxable income.

- C2.2.** How do companies using this program calculate the tax benefit they claim? Please be specific and provide a sample calculation using a blank tax form.

Please refer to the blank income tax return provided at Exhibit C1.4. The additional deduction is applied to the taxable income. The result of the

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deduction is similar to a tax credit, which the taxpayer is able to subtract from the amount of tax it owes the government. The amount of pre-tax additional deduction will be shown on line 17 of the income tax return. Using the formula listed in the income tax return, the taxable income will be calculated. TRIB provides below an example and sample calculation for ease of explanation.

As an example:

Company A began technology research and development on Jan 1, 2018. By June 30, 2018, the total R&D expense was 1 million RMB and the research stage of this technology was completed. Then the company started its development stage and spent 1.2 million RMB, thereby fulfilling the criteria of capitalizing the expenses for intangible assets. On December 31, 2018, the research and development project was fully completed and the final result is non-patent technology. According to the Enterprise Income Tax Law, the additional deduction shall be applied differently in these two stages:

1st Stage: The R&D Expenses have not formed an Intangible Asset

Assuming Company A's taxable income for FY 2018 is 3 million RMB, there are no other deductible items, and the EIT rate is 25 percent, below is the calculation for the company's FY 2008 payable tax:

$$\text{Taxable Income} = 3,000,000 - (1,000,000 \times 75\%) = 2,250,000$$

$$\text{Tax Payable} = 2,250,000 \times 25\% = 562,500$$

2nd Stage: The R&D Expenses have formed an Intangible Asset

Assuming this non-patent technology's useful life is 10 years, Company A's taxable income for FY 2019 is 3.5 million RMB, there are no other deductible items, and the EIT rate is 25 percent, below is the calculation for the company's FY 2009 payable tax:

$$\text{Taxable Income} = 3,500,000 - (120,000 \times 75\%) = 3,410,000$$

$$\text{Tax Payable} = 3,410,000 \times 25\% = 852,500$$

- C2.3.** If the company carried forward a loss from prior years and used that loss to offset taxes due on the tax return filed during the investigation period, demonstrate that this loss was not generated by use of any countervailing tax program.

According to Article 18 of the *Enterprise Income Tax Law*, where an enterprise incurs a loss in a tax year, the enterprise is allowed to carry the loss forward to subsequent years to be set-off against income from subsequent years, provided the loss carried forward does not exceed five years.

- C2.4.** If the program involves a deferral of taxes owed, please provide the amount and length of the deferral, and the details of any interest charged on the deferral.

Not applicable.

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- C2.5.** If the tax assistance results in negative income for tax purposes, for example through accelerated depreciation, is the company able to carry forward this loss?

According to Article 18 of the *Enterprise Income Tax Law*, where an enterprise incurs a loss in a tax year, the enterprise is allowed to carry the loss forward to subsequent years to be set-off against income from subsequent years, provided the loss carried forward does not exceed five years.

- C2.6.** For a program that provides a reduction in the tax rate or an exemption from taxes payable, please report the tax rate that was paid under the program and the tax rate that would have applied in absence of the program.

Not applicable. This program does not provide a reduction in the tax rate.

C3 – ENTERPRISES WITH STATE INVESTMENT

- C3.1.** Have there been any changes to the arrangements governing the activities of SIEs since the GOC last responded to the Commission?

Please confirm whether SASAC is still the body responsible for the supervision and administration of all SIEs in China and indicate if any other GOC entity has a role with respect to SIEs.

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

TRIB notes that the Commission has not conducted any investigations concerning copper or copper tube industry before now.

TRIB also notes that there has been no evidence in this or any previous investigations that indicate Chinese SIEs operating in the copper or copper tube industries are anything but commercial entities. This feature is even more pronounced in the Chinese copper industry, which is highly internationalised, with strong presence of both state and private investments, both domestically and of foreign background, and is highly synchronised with the global copper market. TRIB notes that China is the top export destination of Australian copper producers.

These facts should suffice to render any concerns or questions relating to the management of Chinese SIE or whether such SIEs are “public bodies” involved in the provision of subsidies completely redundant and unwarranted.

In any case, TRIB notes that it has already answered questions relating to the governance and the role played by SASAC with respect to SIEs in China under the relevant laws, in C-1 above. As explained, the performance of managers of State-invested enterprises is evaluated according to *the Law on State-Owned Assets* and more specifically, *the Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises* which provides the evaluation method guideline. Please see Exhibit C1.11.1. SASAC is required to perform its contributor's function consistently with Article 14 of the

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Law of the People's Republic of China on the State-Owned Assets of Enterprises:

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

- C3.2.** Provide all relevant legislation, guidelines, decrees, circulars, directives or other government-issued documents which provide for the existence, guidance, or administration of SIEs involved in the copper tube and copper industries.

Please refer to Exhibit C1.11.2 for *the Law on State-Owned Assets* which governs the SIEs in general. There is no such legislation which provide for the existence, guidance or administration specific for SIEs involved in the copper tube and copper industries.

- C3.3.** Provide an explanation of repercussions or penalties (if any) for an SIE if they do not adhere to the GOCs laws, policies, opinions, guidelines etc.

The GOCs laws and regulations are generally applied to all enterprises in China, no matter the enterprise is a SIE or not. All the exporters/manufactures in the copper tube industry would be subject to the same legal and regulatory requirements. Please refer to the response to question B2 for the general government laws and regulations applying to all enterprises in China.

- C3.4.** What advantages, if any, do SIEs enjoy compared with private (non-state) enterprises in the copper tube sector in China (e.g. reduced income tax rates, easier access to capital, different reporting requirements, etc.).

TRIB is not aware of SIEs in China enjoying any advantages such as tax, capital etc. compared with non-state enterprises in the copper tube sector in China. As advised above in Section B, NBS data suggests that over 80% of the companies in this sector are private enterprises.

All the exporters/manufactures in the copper tube industry are subject to the same legal and regulatory requirements and market conditions regardless of the ownership nature of the company.

- C3.5.** For each entity identified in your response to Question B5 that is an SIE, answer the following questions regarding governance.
- (a) Provide the relevant statute, law, regulation, direction, letter of incorporation or other instrument which creates, authorises or provides for the existence of the enterprise.
 - (b) Provide all statutes, laws, regulations, directions, circulars or other government issued documents which guide, administer or otherwise relate to the operations of the enterprise.

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- (c) Provide an organisation chart showing the reporting hierarchy of the enterprise. Provide details of who directs, manages and controls different operations of the entity.
- (d) Explain the requirements in law, and in practice, to have government representation at any level of the enterprise.
- (e) Explain the role of Chinese Communist Party government representatives (CCP representatives) at any level of the enterprise, including, how these representatives are selected, areas of responsibility and involvement in decision making processes and operational decisions of the enterprise.
- (f) Indicate whether the enterprise is under the supervision, administration, monitoring or guidance of SASAC or a provincial or local equivalent, or any other government entity. If so, provide contact information for the SASAC division or other government entity responsible for the enterprise.
- (g) Identify and provide details of any guidance, control, influence or power of approval/rejection that SASAC or any other GOC entity has on any of the activities of the enterprise.
- (h) Is the agency performing the role of capital contributor for this enterprise instructed by any other part of the GOC to exercise its ownership rights in any particular manner? If so, describe the mechanism or systems used to communicate these instructions.
- (i) Who selects and/or approves the members of the Board of Directors (include the criteria for selection of members of the Board of Directors)?
- (j) Indicate whether any member of the Board of Directors is an employee or affiliate of SASAC or has any other affiliation with the GOC.
- (k) Indicate whether any member of the Board of Directors is a member of the CCP.
- (l) Describe the roles and responsibilities of the Board of Directors.
- (m) How is the Board of Shareholders formed?
- (n) Describe the roles and responsibilities of the Board of Shareholders.
- (o) Indicate whether the entity has a 'shareholder representative' (refer to Article 13 of the Law on State Owned Assets). Explain the role and responsibilities of the shareholder representative and who appoints this representative.
- (p) Indicate whether the enterprise has a Board of Supervisors or Supervisory Panel.
- (q) Describe the role and responsibilities of the Supervisory Panel and/or Board of Supervisors.
- (r) Detail the membership of the Supervisory Panel or Board of Supervisors including whether any members of this board are employees or otherwise affiliated with SASAC or have any other affiliation with the GOC and explain the nature of this affiliation.

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- (s) If the enterprise has a Board of Supervisors or Panels provide examples of the activities of the Board or Panel over the past 5 years in respect of the entity.
- (t) Do any major management decisions/actions of the enterprise require approval from or reporting to SASAC or any other government entity (for example, investment decisions)? Provide details.
- (u) Provide an explanation of what are the “major matters” that must be submitted to the people’s government for approval for this enterprise (refer to Article 12 of the Law on State Owned Assets). Provide details of any major matters that have been put to the people’s government for approval over the past 10 years by this enterprise.
- (v) Outline how each of the following are determined/set for the entity:
- suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials);
 - purchase prices of raw material inputs;
 - allocation of inputs into production process, including raw materials, energy and labour costs;
 - quality and safety standards;
 - selling prices;
 - customers (including restrictions on entities that can purchase goods produced from the enterprise);
 - production output (detail any restrictions on production output);
 - safety standards; and
 - energy costs.

In your explanation outline the role of the Board of Directors, Board of Shareholders, Supervisory Panel and/or Supervisory Board, Shareholder Representative, any other management personnel and SASAC (or its regional equivalent) have.

Where the GOC in any form, influences, controls, guides or approves these decisions, provide details, including the mechanisms/systems used.

As advised above, TRIB provides responses to this questionnaire to the extent that it is practicable and reasonable to do so, and will limit its response to only relevant information – being the information concerning the selected cooperative exporters of the GUC. As identified, the selected cooperative exporters, being Zhejiang Hailiang and Zhejiang Naile, are sino-foreign joint ventures, which are not owned by Chinese SIEs.

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In any case, in so far as the information requested relates to the legal instruments relevant to the governance, operation, and commerciality of the relevant Chinese SIEs, such information has been provided above.

Where these questions are raised in the context of the Commission's consideration of the LTAR subsidies, TRIB provides the following information concerning the issue of "public body", before turning to the specific "programs" claimed.

With respect to the question of whether any Chinese SIE suppliers to the responding exporter meets the definition of "public body" at law or in fact, Firstly TRIB can advise that Chinese SIEs involved in the supplying of raw materials, utilities, or provision of commercial loans are not "public bodies" with the meaning of Article 1.1(1)(a) of the SCM Agreement.

TRIB notes that the Applicant's attempt to claim the raw material suppliers in China as public bodies without any evidence other than the fact that they are state invested enterprise is factually and legally false. Such approach has been consistently rejected by WTO jurisprudence, as well as by the Australian Anti-Dumping Review Panel ("the ADRP").

TRIB wishes to respectfully remind the Commission of the following WTO jurisprudence:

- the key question in determining whether an entity is a public body is whether that entity possesses, exercises or has been vested with government authority;²⁰
- the exercise of functions by an entity that may also be undertaken by a government body will not serve as evidence that that entity is a public body, other than the power to regulate, control, or supervise individuals, or otherwise restrain their conduct through the exercise of lawful authority;²¹
- the existence of mere formal links between government and the entity, such as government ownership, does not establish that an entity is a public body;²²
- an investigating authority must avoid focusing exclusively or unduly on any single characteristic, with each case determined on its own

20 See Appellate Body Report, US – Anti-Dumping and Countervailing Duties (China) ("WT/DS379/AB/R") paras 310, 317 and 318, Panel Report, US – Countervailing Measures on Certain Products (China) ("WT/DS437/R"), para 7.66; and Appellate Body Report, US – Countervailing Measures on Certain Hot-Rolled Carbon Flat Steel Products (India) ("WT/DS436/AB/R"), para 4.9.

21 See WT/DS437/T, para 7.71.

22 See WT/DS379/AB/R, para 318.

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merits. Due regard must be had to the entity's core characteristics and functions.²³

WTO jurisprudence confirms that the percentage of government shareholding in a SIE does not mandate a finding that such entities are or are not public bodies. It cannot and must not be assumed that a SIE is, by definition, a public body, and the suppliers to the responding exporter do not have government authority nor do they exercise same.

TRIB also wishes to emphasise that its position on public bodies has been officially supported by the ADRP and its predecessor the Trade Measures Review Officer ("TMRO") time and time again. The legal system and decision-making hierarchy of the Australian anti-dumping system has repeatedly ruled, at the review level, that there is no evidence that the relevant Chinese suppliers, whether SIEs or non SIEs - are "public bodies".

Whether or not a SIE is also a "public body" is a matter that must be factually determined in the context of the applicable law. It cannot be presumed to be the case. To be clear, there are two elements to this test. The first is that the government exercises "meaningful control" over the entity. The second is that, as a consequence, the entity itself possesses and exercises governmental authority. WTO jurisprudence makes clear that "meaningful control" of an entity by government is not sufficient to establish that an entity is a public body, unless that control properly evidences that the entity possesses, exercises or is vested with governmental authority.²⁴ Thus, there are two elements, and both must exist and be proven to establish the "public body" proposition.

Program 173 - Raw Materials Provided by the Government at Less than Fair Market Value

TRIB reiterates that the Applicant's allegations concerning Program 173 and Program 174 cannot be said to meet the evidentiary and legal standard required of Australian law or required by the WTO SCM Agreement.

TRIB notes that the evidence relied on by the Applicant, being the CBSA investigation finding, found no evidence that such programs actually existed. Indeed, the Applicant has failed to provide evidence to support any of the following:

- that the GUC exported from China is produced by materials supplied by SIE or the GOC;
- that any Chinese SIEs that supplied "raw materials" to a Chinese export of GUC is a "public body";

23 United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R (8 December 2014) at para. 4.43; see also United States – Countervailing Duty Measures on Certain Products from China, WT/DS437/R (14 July 2014) at Sec. 7.5.5.3 (rejecting the "rebuttable presumption" that majority government ownership renders a company a public body).

24 See WT/DS436/AB/R, para 4.36.

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- that any “raw materials” were supplied at less than adequate remuneration

Indeed, TRIB notes that the Application could not even specify the “raw materials” referred to under Program 173. Once again, TRIB respectfully advises that the Commission could not have been satisfied that the application contained adequate evidence, and that the initiation of investigation concerning the alleged “program 173” could not have met the relevant legal requirements.

TRIB advises that there is simply no evidence that any Chinese copper tube “raw material” supplier is a “public body”, or that the Chinese copper tube producers benefited from purchasing raw materials from any such “public body”. As already demonstrated above, the Chinese copper industry is fully marketised and commercially driven, and is deeply rooted in the global copper market. There is no evidence to suggest that any entities involved in the supplying of raw material, whether being copper cathode or copper scrap, to the copper tube producers possesses, exercises or has been vested with government authority. The fact is these companies are engaged in purely commercial operations in the same way as their peers both domestically and internationally.

The Applicant has alleged that raw materials for the GUC were provided by public bodies at less than fair market value. This is not the case and is counter-intuitive given the pricing mechanisms for copper products, which is fully market driven, and inter-connected with the global supply and demand of copper products.

TRIB understands that the price of Chinese copper cathodes is typically negotiated between purchaser and suppliers on a formulaic basis, by reference to the prevailing spot market, or SHFE price, which are mostly correlated, plus a conversion fee customised to the product specifications to ordered, or an “as delivered” premium or price adjustment, as negotiated between the parties. Such mechanisms are always transparent, and reflective of the prevailing market conditions in China and the balance of negotiation powers between the parties.

TRIB expects that the practices in China are consistent and comparable to the pricing mode used throughout the global copper industry, including Australia. As noted above, we understand that the Applicant’s copper cathode supplier BHP also exports copper cathode or export copper concentrate for smelting in China. The Applicant’s stated “pricing strategy” for copper tube is also consistent with the future exchange benchmark-based negotiation practice, albeit with the use of LME rather than SHFE as the basis:

The pricing of copper tube in the market can be considered as the sum of two price components, a Premium or NAV, and the LME copper price. For the determination of product prices these are usually represented as \$/tonne and converted to a final item price of \$/length. These two price components can be defined as follows with regards to Kembla’s pricing strategy:

- *Premium or NAV - includes cost of producing the goods (cost of fabrication), packaging and other materials excluding copper,*

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freight and distribution costs, cathode premium and margin applied to the item; The NAV or Premium can be determined as the “Net Sell Price less LME Copper Price”.

- *LME Copper Price - the prevailing London Metals Exchange (LME) market price for copper. Typically MM Kembla prices are determined using the 2mth LME average converted to AUD.²⁵*

TRIB notes that the daily trading prices of copper contracts on the SHFE and the LME are not identical, and that no two markets should be expected to behave identically. Such differences can be attributed to many underlying and behavioural factors, including the fact that the two financial markets operate under different trading rules, terms of contracts, and currency.

For instance, SHFE has a more conservative risk management regime, which uses daily price movement caps/limits of 8%. This means that over the short term the SHFE may appear to be less volatile than the LME. This could also result in some lag in price movement between the LME, which is generally the price setter/leader, and the SHFE, which reflects more of a price “taker” market. Further, the LME’s contract term requires the copper cathode traded on LME to be Grade A/Grade 1 only,²⁶ whereas the standard grade of copper cathode traded under SHFE’s contract is Grade 2/“standard grade”, with Grade A/1 as an alternative.²⁷

What is important is that the SHFE or the spot market prices of copper cathode in China are freely-negotiated and are highly international in nature, and best reflect the free market and prevailing market conditions in China. This is irrespective of any number of SIEs who might also operate in that free market.

Lastly, TRIB takes note of the Commission’s statement in the Consideration Report about the alleged LTAR program concerning “raw material”:

The Commission also notes that in its investigation into dumped and subsidised PVC flat electric cables from China, the Commissioner found in REP 469 that there existed subsidies in the form of copper sold for less than adequate remuneration provided by the GOC. This demonstrates the contemporaneous existence of subsidies in the market for the main raw material for seamless copper tubes. [footnote omitted]

With respect, this appears to be a misunderstanding and inaccurate description of the Commission’s own finding in Report 469. TRIB refers the Commission to the following:

- For the Chinese exporters accounting for the largest volume in that investigation, being Guilin International Wire and Cable Group Co., Ltd

25 See Application page 30.

26 See <https://www.lme.com/en-GB/Metals/Non-ferrous/Copper/Physical>.

27 Please refer to the SHFE website for further information regarding its trading terms and the participating manufacturers for copper cathode at:

<http://www.shfe.com.cn/en/products/Copper/attach/111152894.html> and

<http://www.shfe.com.cn/en/products/Copper/contract/211238434.html>.

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("Guilin International"), the Commission determined that *"based on its analysis of Guilin's copper purchases, Guilin did not receive any benefit under program 1 (the provision of copper at LTAR)".*²⁸ The countervailing investigation was ultimately terminated in so far as it concerns exports from Guilin International.

- The Commission considered that the copper raw materials used by the Guilin International, being copper rod, reasonably reflected competitive market cost.
- For the only other cooperative Chinese exporter in that investigation, being Nanyang Cable (Tianjin) Co. Ltd ("Nanyang"), the Commission considered the information provided by Nanyang to be unreliable due to its inability to provide a complete listing of information as requested. Instead, the Commission determined the cost of copper rod for Nanyang with *"regard to the competitive market cost of copper rod in China, calculated as being the total of the average Value Added Tax (VAT) exclusive copper cathode price on the Shanghai Futures Exchange (SHFE)..."* with certain adjustment. The same data was used for the purpose of determining any benefit under the alleged "provision of copper at less than adequate remuneration" program.²⁹
- The determination of the "public body" element of the LTAR program in Report 469 was equally influenced by the Commission's view that the decision was only made in relation to Nanyang and for "all other" exporters who were deemed to be non-cooperative:

As Nanyang is deemed to be non-cooperative for the purposes of the subsidy investigation and provided insufficient evidence to conclude otherwise, Nanyang's purchases of copper rod are taken to have been purchased from state owned or invested enterprises (SOE). The Commission considers this approach to be the most reasonable method available, noting the presence of SOE suppliers of copper in the market and the absence of Nanyang's actual copper purchase listing to enable further examination of the actual circumstances of its purchases.

- Report 469 did not undertake any analysis as to whether the Chinese SIEs who supplied copper rod to the cable producers were "public bodies" or whether any such LTAR program satisfied the specificity requirement, noting a lack of evidence.

Accordingly, we respectfully submit that Report 469 cannot provide any probative support for the existence of any "LTAR" subsidy concerning copper raw materials in China. On the other hand, TRIB commends Report 469's finding that, in so far as "adequacy of remuneration" is concerned, the prevailing Chinese market for copper cathode itself is the correct benchmark/reference for such determination. That is, copper cathode prices in

²⁸ See [https://www.industry.gov.au/sites/default/files/adc/public-record/469-030 - notice - _adn_2019-46 - termination of part of an investigation.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/469-030_-_notice_-_adn_2019-46_-_termination_of_part_of_an_investigation.pdf).

²⁹ See REP 469, at pages 29-30 and 42.

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China reflect the competitive market, and are not “distorted” by the presence of any SIEs or any government policies.

Program 174 - Utilities Provided by the Government at Less than Fair Market Value

In relation to this allegation, TRIB once again express its objection to the Commission’s acceptance of and decision to investigate such program. The Applicant has not provided any evidence whatsoever. TRIB can advise that there is no such subsidy programs for copper tube industry in China.

In any case, TRIB can advise, there is no government backed preferential pricing for any utilities that supply copper tube producers in China. For instance, insofar as electricity is concerned, TRIB understands that copper tube producers are typically subject to the same “large industry” electricity tariff rate, which is not industry specific. TRIB notes that the Commission has consistently determined in previous cases that Chinese companies purchasing electricity from State-owned utility suppliers at corresponding regional “large industry” tariff rates are not considered to have either benefited from a specific or preferential rate.

Further, TRIB can advise that since 2015 the GOC has proactively promoted electricity market reform. The main aspects of the reform include the enhancement of a more competitive and effective structure and system for the electricity market, as well as the better articulation of the applicable market pricing mechanisms. Since 1 January 2016, electricity price adjustments are also linked to the market fluctuation of thermal coal prices. This has further enhanced the commerciality of electricity pricing. As such, electricity prices in China are based on market mechanisms that reflect market supply and demand. TRIB understands that pricing decisions take into account the overall demand and supply present in the electricity market, as well as the costs of electricity generation and transmission. The retail prices of electricity consist of purchasing cost, transmission prices, transmission losses, and governmental surcharges. Different cost profiles are the basic reason for different rates applying in different regions. Within each category for each province in question, the electricity prices are equally applied to all end users.

Program 178 - Preferential Loans From State-Owned Banks

TRIB advises there is no such subsidy program.

The GOC rejects the claim that Chinese State-invested commercial banks are “public bodies”. TRIB is also not aware of any systemic offering of “preferential loan” to Chinese copper tube producers by Chinese State-invested commercial banks.

Interest rates are offered by banks in China within a competitive range. Moreover, in case it is alleged that interest rates in China are somehow “artificially low” or “preferential” in international terms, we note that a simple examination of the interest rates published by major central banks indicates that interest rates in China in overall terms are higher than the rates available in many of China’s trade partners. For example, the Chinese central bank rate

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has been staying at 4.35% level since 2015. In comparison, the Reserve Bank of Australia's latest cash rate is 0.25%.

TRIB believes the fact that Chinese copper tube producers do not benefit any "preferential loans" within the meaning of the SCM Agreement will be clear from their relevant commercially confidential financial information.

SECTION D PARTICULAR MARKET SITUATION

TRIB appreciates that the Chinese copper tube industry represents a relatively new area for the Commission in the context of anti-dumping and countervailing investigations. This will also be the first time TRIB has participated in an investigation concerning such industry in Australia.

However, TRIB does note that the Chinese copper or downstream copper product market is not entirely unfamiliar to the Commission. The Commission has considered associated issues, such as copper material prices and market conditions in China, in its previous investigations concerning electric cables (Investigations 178, 271, and 469). In each of those investigations, the Commission found that the prevailing Chinese market prices for the copper materials (being copper rod in those cases), “*reasonably reflect[ed] competitive market cost*”. As noted above, in Report 469 the Commission also considered and determined the copper cathode price traded on the SHFE to be a suitable benchmark for both the price/cost of a competitive market and “*adequate remuneration*” for copper materials in China. TRIB expects that the Commission will come to the same conclusions in the current investigation.

The applicant has made baseless allegation about a “*particular market situation*”, or “PMS”, presumably because it is considered easy to do so, and not because it is borne out of the factual circumstances at hand. As shown in this response, the Chinese copper tube market is highly integrated and reliant on the global copper market. The integration involves China being the biggest copper concentrate *and* copper cathode importing country in the world, with copper imported from a range of countries, including Australia, and potentially from the supplier of the Applicant, being BHP.³⁰

It is TRIB’s belief that the competitiveness of the Chinese industry for copper tube and copper cathode is in line with the global copper market. The Chinese market is competitive nature and is closely integrated with the global market.

TRIB observes that the concept of PMS was recently further developed by the WTO panel report in *Australia – A4 Copy Paper*.³¹ The Panel considered that a PMS must be something:

*...distinct, individual, single, specific...*³²

More importantly, the Panel report emphasized that, faced with such question, an investigating authority must analyse whether “*“because of” that situation, domestic sales did “not permit a proper comparison” of the export price and the domestic price*”,³³ or whether, despite the PMS, domestic sales still

30 See <https://www.kembla.com/supporting-australias-copper-capacity/>.

31 See Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WTO Doc. WT/DS529/R (27 January 2020), (“*Australia-A4 Copy Paper*”).

32 See *Australia – A4 Copy Paper*, at 7.22.

33 *Ibid*, at 7.82.

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permitted a proper comparison with the export prices, therefore not triggering the pre-condition under Article 2.2 of the WTO *Anti-Dumping Agreement*.³⁴

TRIB does not consider that there is anything in the Chinese market for the GUC that is distinct, individual or specific in a way that is out of ordinary. This is not to say that the Chinese copper tube market is indistinguishable from other regional or national markets. The Chinese copper tube market of course has its own market features, defined by the supply and demand conditions of the *Chinese* market, including the thousands of copper tube producers operating in China, and because China is the largest copper consumer and one of the largest economies in the world. These factors all make the Chinese market necessarily different to the Australian copper tube market. In our view, such differences are caused by the size and conditions of economy, which is not distinct for the Chinese copper tube industry/market. TRIB does not consider such ordinary and as-expected market and economic differences would give rise to a PMS in its proper meaning under Article 2.2 of the WTO ADA, or Section 269TAC(2)(c) of the *Customs Act 1901*, as may cause domestic prices to not permit a proper comparison to the export price to Australia. Otherwise, there could never be prices from two different markets, with their own features, that could be said to be “comparable” for anti-dumping purposes.

TRIB notes that both the Chinese market and the Australian market are more or less sensitive to or connected with the price movement of copper cathode. TRIB understands that the Chinese market for copper cathode typically uses the SHFE trading prices as the reference point, and that SHFE trading prices are sensitive to and correlated with the movement of copper cathode prices on the LME. TRIB understands that the LME prices are typically used by both Chinese and Australian companies as a reference and negotiation basis for copper tube prices in the Australian market. Such similar underlying commercial considerations – not only by nature (being free market negotiation, and the use of internationally traded commodity price as basis of negotiation) but also by number (due to the similarity between copper cathode prices on SHFE and LME) – strongly suggest that the Chinese copper tube market prices are more likely to permit proper comparison with the Australian market for copper tube, rather than the contrary. Any differences in the realised prices from the two different markets reflect the commercial conditions on each market and the balance of negotiation powers between the parties, which is not at all “particular”.

Accordingly, TRIB expects the Commission to find:

- that the Chinese copper tube producers’ cost records reasonably reflect competitive market costs in China, provided that they are kept in accordance with generally accepted accounting principles of China, and reasonably reflect the cost associated with the production and sale of the GUC in China; and
- that the Chinese domestic sales prices of the copper tube producers are not affected by any “*particular market situation*” and can be compared to their export prices to Australia, provided that they are

34 Ibid, at 7.87.

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arm's length transactions in the ordinary course of trade.

TRIB advises that it will maintain close observation of the Commission's approach towards the "particular market situation" issue and the question of whether costs "reasonabl[y] reflect competitive market cost" in this investigation. TRIB stands ready to provide further comments or assistance for the Commission's investigation, as appropriate.

- D1.** Identify and provide an explanation of the specific roles and responsibilities of government departments, agencies or institutions, which are either directly or indirectly involved in economic policy development, economic regulation and decision-making activities with respect to:
- (a) the copper tube industry; and
 - (b) the copper industry as a whole.

TRIB note that this question effectively duplicates Question B-3. Therefore, please refer to responses at B-3 above.

- D2.** Identify any government departments, agencies or institutions that are involved in the manufacture, sale, purchase or acquisition of copper tube, and explain the nature of their involvement.

There are no GOC departments, agencies or institutions that are involved in the manufacture, sale, purchase or acquisition of copper tube.

- D3.** Provide details of any GOC policies that require different corporate tax rates to be applied to producers within the copper tube sector. For example, for producers in any of these specific sectors, do taxation rates differ due to sales revenue, location, export / domestic market orientation etc.? Detail any industry specific tax exemptions or tax rebates such as R&D expenditures.

The applicable corporate income tax rate for the selected cooperative exporters is 25%, which is a standard corporate income tax rate stipulated in Article 4 of the *Corporate Income Tax Law of the P.R.C.* This tax rate does not vary by sales revenue, location or market orientation. TRIB notes that tax exemptions or rebates are not specific to any industry.

In terms of R&D expenditures, Article 30 of the *Corporate Income Tax Law* and Article 95 of its implementing measures (see Exhibit D3) allows an enterprise to deduct R&D expenditures for the development of new technologies, new products and new process, which is applicable on a general basis and not specific to any industry. Please refer to the answers in Section C for details of such tax rules.

- D4.** Provide quarterly data (using Microsoft Excel format) over the last 5 calendar years of:
- (a) **import** quantity (by volume and value) of copper tube and copper cathode;
 - (b) **export** quantity (by volume and value) of copper tube and copper cathode; and

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- (c) For export and import values, specify if the value is based on ex-factory, F.O.B. (port, shipping point, etc.), C.I.F. or some other value.

Please refer to Exhibit D4 for import and export quantity (by volume and value) of copper tube (related to the GUC) and copper cathode for 2015 to 2019. [CONFIDENTIAL ATTACHMENT]

- D5.** Provide a schedule for the last 5 calendar years and provide supporting documentation of:
- (a) the corporate tax rate in relation to of copper tube and copper cathode;
 - (b) import tariff rates and/or import quotas applicable to of copper tube and copper cathode;
 - (c) export tariff rates and/or export quotas applicable to copper tube and copper cathode; and
 - (d) value added tax (VAT) export rebates applicable to exports of copper tube and copper cathode.

The corporate tax rate of 25% remains unchanged for producers of copper tube and copper cathode over the last 5 calendar years.

There are no import/export quotas applicable to copper tube or copper cathode.

Please refer to Exhibit D-5 for a list of the import/export tariff rates and VAT export rebates applicable to copper tube and copper cathode.

- D6.** If export quotas applied to any of the items at Question 6(c) above, identify which agency of the GOC legislates and monitors the quotas.

No export quota has been applied to copper tube or copper cathode.

- D7.** The following series of questions concern the *Price Law of the People's Republic of China* (the Price Law). These questions are based on the text of the Price Law, as provided to the Commission by the GOC in the past.

- (a) For completeness, please provide a translated copy of the Price Law.

Please refer to Exhibit D7 for a copy of the *Price Law of the People's Republic of China*.

- (b) Have there been amendments to the Price Law since last being provided to the Commission (or its predecessors)? If so, in the copy provided of the current Price Law, highlight all such amendments.

No, there have been no recent amendments.

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- (c) Article 27 of the Price Law states that the government shall ‘...establish a price regulation fund to control and stabilise the market’;
- What form does the ‘price regulation fund’ take generally and what department of the GOC is responsible for the fund?
 - What ‘price regulation fund’ regulations have applied to the copper industry since 1 July 2006?
 - What ‘price regulation fund’ regulations have applied to copper tube and copper cathode since 1 July 2006?

There is no “price regulation fund” for either the copper tube and copper cathode or the copper industry as a whole.

Please note that Article 27 of the Price Law states that the government “may” set up a price adjustment fund in order to adjust and control prices and stabilise the market. In this regard, the government is not obliged to set up a price adjustment fund but enjoys discretionary power to do so.

The purpose of such a fund is to help vulnerable groups of people to survive sharp fluctuations in the market prices of daily necessities, such as that might occur in a period of extreme inflation. This policy target is reflected by the fact that the relevant articles are found under Chapter 4 of the Price Law with the heading “General Price Level Adjustments”, which relates to the attempt to avoid “spikes” for daily necessities where possible and appropriate.

There are currently no uniform specific collection and administration measures for any “price adjustment fund” at the central government level. TRIB notes that some local governments have formulated their own local regulations in accordance with the Price Law.

- (d) Article 28 states that ‘in order to better control prices government price departments shall establish a price monitoring system to monitor changes in the prices of major merchandises and services’.
- What price monitoring system has been established generally and what department is responsible?
 - What ‘price monitoring’ has applied to copper tube and copper cathode since 1 July 2006?

No “price monitoring system” has applied to copper tube since 1 July 2006.

According to Article 28 of the Price Law, a price monitoring and reporting system has been established for a few important consumer goods and services, important energy resources, important production materials (including copper) and important economic crop. However, no price monitoring specifically applies to copper cathode.

The Price Monitoring Centre of NDRC is responsible for organizing and coordinating national price monitoring, while local price bureaus at or above the county level are responsible for collecting and reporting information on local

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price. To clarify, the price monitoring system is not a price-fixing or setting process but simply a way to collect price information on important commodities and services.

- D8.** Provide a list and copies of any specific laws, decrees, rules, promulgations, edicts, opinions, measures, regulations and/or directives regarding:
- (a) The regulation of the price of copper tube, or any of the raw materials used to manufacture those products;
 - (b) Investment in projects related to copper tube, or any of the raw materials used to manufacture those products; and
 - (c) Identify the specific government department or institution responsible for the above-mentioned laws and regulations above.

The GOC does not regulate the price of copper tube or any of its raw materials.

The prices for copper tube, and its raw material inputs, is determined by the competitive market conditions and the influence of supply and demand factors. There are no laws or regulations that are specific to the price of copper tube or any of the raw materials used to manufacture the goods under consideration.

TRIB provides the pricing catalogue initiated by the Central Government and by the Government of Zhejiang Province (being the province where the respondents are located) which were effective during the investigation period at Exhibit D8.1, D8.2, D8.3 and D8.4. TRIB notes that all the pricing catalogues mentioned above do not include copper tube.

- D9.** Identify and document any financial assistance provided by the GOC since 2011 in support of the copper tube and copper cathode industry.

“Financial assistance” is related to the alleged subsidisation in relation to the GUC exported from China during the POI, accordingly please refer to responses at Section C of this questionnaire.

- D10.** Has the GOC (at any level of government) issued or participated in the issuance of any debt or equity instruments³⁵ in any business entity associated with the copper tube and copper cathode industries in the last 5 years? If so:
- (a) provide the names and address of the business entities;
 - (b) explain the reasons for using a particular financial instrument(s);
 - (c) provide full details (such as number of shares and value of bonds), including the period of investments and the rate of return(s) (and/or expected yields); and

³⁵ Examples of such instruments include ordinary shares (including initial public offers), preferential shares, rights issue, bonds, quasi-government bonds warrants, debentures, sub-ordinate loans.

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- (d) are any of these instruments or securities listed in any securities exchange in China or overseas, and if so:
 - provide the name(s) of the securities of exchange;
 - identify any trading restrictions by the business entity and/or the securities exchange.

TRIB does not understand what relevance this has to the price of the GUC in the Chinese market for those products, and therefore cannot see how this information would be relevant to the PMS allegation.

TRIB also notes that the question itself is vague. How would the GOC “participate” in the issuance of any debt or equity instruments in a business? Also, where is the borderline of entities associated with the copper tube and copper cathode industries?

Nonetheless, TRIB can advise that its only “involvement” in the issuance of debt or equity instruments by business entities, if any, would be in the form of its share ownership in the State-invested enterprises in the sector. Business financing activities of the type described in this question in relation to any business entity associated with the copper tube or copper cathode industries would need to be carried out in a normal commercial manner and would be subject to the same legal and regulatory requirements and market conditions as applicable to any other business category operating in China.

- D11.** Provide details (quantify the value) of any government guarantee provided for any commercial loans by a business entity associated with copper tube and copper cathode industries in the last 5 years.

Consistent with its response to the subsidy questions above, TRIB provides here its response specific to the selected Chinese exporters of the GUC.

TRIB advises that the selected Chinese exporters did not receive any “government guarantee” for any commercial loans in the last five years.

- D12.** Do enterprises need to be verified by the GOC prior to being approved entry to copper tube and copper cathode industries?

There is no requirement for copper tube or copper cathode producers to be specifically verified by the GOC before entering to the respective industry.

- D13.** Are copper tube and copper cathode producers in China required to hold any types of licences for production? If so, provide details and documentary evidence.

Copper tube and copper cathode producers were not required to hold a license for production during the investigation period.

Any requirement to hold a license was ended 26 June 2017, where the State Council issued the *“Decision on Adjusting the Management Catalogue of Production License for Industrial Products and Trial Simplification of Approval*

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Procedures”, which officially cancelled the management of production licenses for copper and copper alloy tube products, including copper cathode (See Exhibit D13).

D14. Are there any production limits and/or export limits placed on copper tube and copper cathode producers? If so, provide documentary evidence.

There are no production or export limits placed on copper tube or copper cathode producers.

D15. Are there any price restrictions on copper tube and copper cathode domestic sales? If so, provide details.

There are no price restrictions on the domestic sales of copper tube or copper cathode.

D16. Provide copies of the following documents:

(a) Directory Catalogue on Readjustment of Industrial Structure;

Please refer to Exhibit D16.1 for the Catalogue for Guiding Industry Restructuring.

(b) China Nonferrous Metals Yearbooks for the years 2016, 2017, 2018 and 2019;

The China Nonferrous Metals Yearbook is a reference book about the development of China’s non-ferrous metal industry. The latest edition is the 2018 yearbook, which is about 800 pages containing nearly one million words, with the information up to the end of 2017

TRIB notes that that the Yearbook is published by CNIA, and not the GOC, and with respect advises that it is not practicable and unnecessarily burdensome for such document to be translated and provided as part of this questionnaire.

TRIB will endeavour to provide excerpts of the yearbook to the extent that it is relevant to the GUC and the POI, and if the Commission requires any specific and relevant information from the Yearbook.

(c) 13th Five-Year plans including the two most recent five-year plans at all levels of the GOC (including, central, regional, provincial and for any special zones, areas or other such regions), as well as the original Chinese versions.

Please refer to the following Exhibits:

Exhibit D16.2 – 12th National Five Year Plan for Development of the PRC,

Exhibit D16.3 – 13th National Five Year Plan for Development of the PRC,

Exhibit D16.4 – 12th Five Year Plan of Zhejiang Province,

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Exhibit D16.5 – 13th Five Year Plan of Zhejiang Province.

SECTION E

DECLARATION

DECLARATION

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

Oct-30, 2020
Date

王静峰
Signature of authorised official

Wang Jianfeng
Name of authorised official

Deputy Director
Title of authorised official

GLOSSARY OF TERMS

Throughout this questionnaire certain words and terminology have been used and they have the following meanings:

Associated Persons and/or Companies

Persons shall be deemed to be associates of each other if:

- (a) both being natural persons:
 - (i) they are connected by a blood relationship or by marriage or adoption; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate:
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
 - (ii) both of them together control, directly or indirectly, a third body corporate; or
 - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or
- (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or
- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
- (e) they are members of the same partnership.

Enterprise

"Enterprise" includes a group of enterprises, an industry and a group of industries.

Government of China (GOC)

For the purposes of this questionnaire, GOC refers to all levels of Government, i.e., central, provincial, regional, city, special economic zone, municipal, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed.

It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the Government of that country or that provincial, state or municipal or other local or regional Government.

Program(s)

The term "program", as used throughout this questionnaire in reference to alleged subsidies, refers to broad categories of subsidies that the Commission has reason to believe may be available to exporters of the goods.

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In this regard, the term “program” as used in this questionnaire should not be taken to necessarily refer to formal programs maintained by the GOC, nor should it be taken to refer to one specific subsidy. Rather, “program” as used in this questionnaire can refer to informal subsidies provided by the GOC, and can also refer to multiple individual, albeit similar, subsidies.

State Invested Enterprises (SIE)

For the purposes of this questionnaire, SIE refers to any company or enterprise that is wholly or partially owned by the GOC (either through direct ownership or through association).

This includes (but is not limited to) any enterprises referred to as:

- ‘state owned enterprises’ (SOEs);
- ‘enterprises with state investment’ (ESIs);
- ‘state-owned assets’;
- ‘state-invested enterprises’; and
- ‘enterprises under the supervision of SASAC’.

Subsidy

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;

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