

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/969****of 8 June 2017****imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic Regulation') <sup>(1)</sup>, and in particular Article 15 thereof,

Whereas:

**1. PROCEDURE****1.1. Initiation**

- (1) On 13 May 2016, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China ('the PRC' or 'the country concerned'). The initiation was based on Article 10 of Council Regulation (EC) 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community <sup>(2)</sup>. It published a Notice of Initiation in the *Official Journal of the European Union* ('Notice of Initiation') <sup>(3)</sup>.
- (2) The Commission initiated the investigation following a complaint lodged on 31 March 2016 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of Union producers representing more than 90 % of the total Union production of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('HRF'). The complaint contained evidence of subsidisation and of a resulting threat of injury that was sufficient to justify the initiation of the investigation.
- (3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC') <sup>(4)</sup> that it had received a properly documented complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. The GOC accepted the offer for consultations, which were held on 11 May 2016. During the consultations, due note was taken of the comments submitted by the GOC. However, no mutually agreed solution could be reached.
- (4) A few months before the initiation of the present investigation, the Commission initiated, on 13 February 2016 <sup>(5)</sup>, an anti-dumping investigation on imports of the same product originating in the PRC ('the parallel anti-dumping investigation').
- (5) Shortly after the initiation of the present investigation, the Commission also initiated on 7 July 2016 <sup>(6)</sup>, an anti-dumping investigation on imports of the same product originating in Brazil, Iran, Russia, Serbia and Ukraine.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 55.

<sup>(2)</sup> This Regulation was replaced as of 30 June 2016 by Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

<sup>(3)</sup> OJ C 172, 13.5.2016, p. 29.

<sup>(4)</sup> The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies and Administrations at central, regional or local level.

<sup>(5)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ C 58, 13.2.2016, p. 9).

<sup>(6)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine (OJ C 246, 7.7.2016, p. 7).

- (6) On 5 April 2017 the Commission imposed a definitive anti-dumping duty on imports of the same product originating in the PRC <sup>(1)</sup> ('the anti-dumping Regulation'). The injury, causation and Union interest analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are similar, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. They have been up-dated and complemented in order to take account of all factual elements brought forward in the present investigation.

#### 1.1.1. *Comments following initiation*

- (7) The GOC argued that the filing of an anti-dumping complaint against the same product from five countries on the basis of the existence of material injury within less than two months of the filing of the present complaint based on a threat of injury raises serious questions as to whether the present anti-subsidy investigation should have been initiated.
- (8) The Commission noted that the anti-subsidy case against the PRC and the anti-dumping case against the same product from five other countries are two separate investigations that must be assessed on their own merits. First, the two cases have different investigation periods, which only partially overlap (the second half of 2015). Second, the anti-subsidy complaint was based on a threat of injury to the Union industry whereas the subsequent anti-dumping complaint was based on the existence of injury to the Union industry. In this respect, the Commission recalled that the determination of dumping and injury is made on the basis of an investigation period defined in line with the relevant legal provisions and announced in the Notice of Initiation for each of the two cases. Moreover, without prejudice to the results of the ongoing anti-dumping investigation concerning the other five countries, recitals (549) to (551) show that the sufficient evidence available at the time of initiation has not been invalidated by the evidence found during the investigation.
- (9) The Commission thus rejected this claim as unfounded.
- (10) The GOC also claimed that the investigation should be terminated because the complaint did not satisfy the evidentiary requirements of Articles 11(2) and 11(3) of the WTO Agreement on Subsidies and Countervailing Measures and of Article 10(2) of the basic Regulation. According to the GOC, there was insufficient evidence of countervailable subsidies, injury and a causal link between the subsidised imports and the injury.
- (11) The evidence submitted in the complaint constituted the information reasonably available to the complainant. It was also sufficient to show, at initiation stage, that the alleged subsidies were countervailable in terms of their existence, amount and nature. The complaint also contained sufficient evidence that there was a threat of injury to the Union industry, which was caused by the subsidised imports. The complaint consists of 166 pages, in which it describes the evidence contained in the 117 annexes. Insofar as the GOC pointed to any deficiencies with respect to the accuracy and adequacy of the complaint, the Commission examined these during the investigation, but found no reason to exclude any of the prima facie claims about the existence and extent of subsidisation when initiating the investigation.
- (12) After disclosure, the GOC repeated its claim, but provided no additional grounds to substantiate it. Thus, the Commission maintained its position as described in the recital above.

#### 1.2. **Investigation period and period considered**

- (13) The investigation of subsidisation and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to 31 December 2015 ('the period considered') as well as relevant post IP developments.

<sup>(1)</sup> Commission Implementing Regulation (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 92, 6.4.2017, p. 68).

### 1.3. Interested parties

- (14) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the GOC, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (15) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

### 1.4. Sampling

- (16) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

#### 1.4.1. Union producers

- (17) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected a sample on the basis of the highest representative production and sales volumes, which could reasonably be investigated within the time available. The sample also represented a broad geographical spread. The Commission invited interested parties to comment on the provisional sample, but no comments were received.
- (18) As a result, the final sample consisted of six Union producers located in five different Member States. It accounted for over 45 % of Union production.

#### 1.4.2. Importers

- (19) The Commission asked unrelated importers to provide the information specified in the Notice of Initiation in order to decide whether sampling was necessary and, if so, to select a sample.
- (20) One unrelated importer came forward and an importer questionnaire was sent to this importer.
- (21) However, even though the Commission contacted him in an effort to gather relevant information, the unrelated importer only provided an incomplete questionnaire reply.

#### 1.4.3. Exporting producers

- (22) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission requested the authorities of the PRC to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (23) Nine exporting producers / group(s) of exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected the following sample of four groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available:

— Benxi Iron & Steel Group, China

— Hesteel Group, China

— Jiangsu Shagang Group, China

— Shougang Group, China.

- (24) The sampled groups of exporting producers represented 68 % of the total imports of the product concerned to the Union.
- (25) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the GOC, were consulted on the selection of the sample. Comments on the proposed sample were received from the complainant and two exporting producers, one included, one not included in the sample.
- (26) The complainant argued that the proposed sample does not reflect the Chinese HRF industry to be investigated. More specifically, the complainant claimed that the Commission should base its sample not only on the volume of the exports, but also on the inclusion of the full range of subsidies set out in the complaint. In this respect, the complainant considered that two of the sampled companies were not representative recipients of counter-vailable subsidies.
- (27) The Commission observed that the criterion it used for selecting the sample is Article 27(1)(b) of the basic Regulation. According to that provision, the Commission bases the selection on the largest representative volume exported to the Union. The fact that an individual company might not be eligible for a specific type of an alleged subsidy does not render the sample non-representative, as the purpose of the sample is to represent the overall HRF industry in the PRC with regard to eligibility for all types of alleged subsidies. The four sampled groups of exporting producers are representative, in terms of eligibility for the subsidies alleged in the complaint, as the Commission has analysed in a note to the file available in the non-confidential file. Hence, the Commission considered that the selected sample represented a proper basis to examine the existence and the extent of the alleged subsidisation, and complies with Article 27(1)(b) of the basic Regulation.
- (28) After disclosure, the complainant insisted that the Commission should have used Article 27(1)(a) instead of Article 27(1)(b) of the basic Regulation for selecting the sample, as this would have allowed to better reflect the subsidy programmes in place. As explained in the previous recital, the Commission considered that the four sampled groups of exporting producers were representative not only in terms of volume, but also in terms of their eligibility for the subsidies alleged in the complaint as well as the subsidy practices investigated as per the Notice of Initiation. Therefore, this claim was rejected.
- (29) The first exporting producer, which was sampled, enquired about the reasons for deviating from the sample proposed for the parallel anti-dumping investigation. The Commission recalled that the anti-dumping and the anti-subsidy investigations constitute two separate investigations having a different purpose. In the anti-dumping investigation, the Commission determines whether there is dumping or not (i.e. objective price discrimination), i.e. a binary question. The finding of dumping can be extrapolated from the sample to all other companies. In the anti-subsidy investigation, the Commission establishes the amount of the subsidisation per unit exported of the product concerned. Only those subsidies that are found in the sampled companies can be countervailed. Hence, in order to ensure the effectiveness of the investigation and the protection of the Union industry, the Commission considered that it was appropriate to cover a larger volume of exports in the anti-subsidy investigation than in the antidumping investigation, so as to ensure that the sample is representative of the eligibility for the subsidies alleged in the complaint as well as the subsidy practices mentioned in the Notice of Initiation. The extended sample for the anti-subsidy investigation covers a proper scope of eligibility for the subsidisation alleged in the complaint. Three of the four sampled companies were included in the sample of the parallel anti-dumping investigation. The inclusion of an additional company within the sample was based on the consideration that it was the next largest company in terms of volume, and that it ensured representativity of the sample in terms of eligibility for the subsidies alleged in the complaint.
- (30) The second exporting producer, which was not sampled, requested to be added to the sample, or to receive an individual examination, arguing that the selected sample would not fairly represent its particularities. The arguments put forward referred to the production and export of high speed steel and tool steel, which according to it has different product characteristics and a different pricing. The criterion used for selecting the sample is the largest representative volume of exports of the product concerned. However, the exporting producer which requested to be included has significantly less export volumes of the product concerned than the proposed companies. It was therefore not possible to include it in the sample, which is why its claim to be included therein was rejected. In any event, the Commission decided subsequently to exclude high speed steel and tool steel from the scope of the product concerned, thus eliminating the company's entire production from the scope of the

investigation. As a result, the company was not considered to be an exporting producer of the product concerned anymore and its request for individual examination became inadmissible, because it is no longer an interested party.

- (31) The proposed sample hence complies with Article 27(1)(b) of the basic Regulation. The Commission therefore decided to retain the proposed sample as the final sample.

#### 1.5. Questionnaire replies and verification visits

- (32) A questionnaire was sent to the GOC. It included specific questionnaires for the China Development Bank, Agricultural Development Bank of China, Export Import Bank of China (EXIM), Agricultural Bank of China (ABC), Bank of China (BOC), China Construction Bank (CCB) and Industrial and Commercial Bank of China (ICBC). Those banks had been specifically referred to in the complaint as public bodies or bodies directed and entrusted granting subsidies. In addition, the GOC was asked to forward that specific questionnaire for financial institutions to any other financial institution which is fully or partially owned by the GOC ('state-owned banks'). Furthermore, the questionnaire for the GOC included specific questionnaires for those producers of iron ore, coke and coking coal which are partially or fully State-owned ('SOEs'). Questionnaires were also sent to the four sampled groups of exporting producers, to the sampled Union producers, as well as to all related importers, the unrelated importer that had come forward, and two users that had come forward.

- (33) The Commission received questionnaire replies from the GOC. Those comprised replies to the specific questionnaire from EXIM, ABC, BOC, CCB, and ICBC. The Commission also received questionnaire replies from the four sampled groups of exporting producers, from the sampled Union producers, from the unrelated importer, and from one user.

- (34) The Commission sought and verified all information deemed necessary for the determination of subsidy, resulting threat of injury and Union interest. A verification visit took place at the premises the Chinese Ministry of Commerce, during which officials from other relevant ministries also participated. Moreover, representatives from the following financial institutions were present during this verification visit:

- Export Import Bank of China, Beijing, China;
- Industrial and Commercial Bank of China, Beijing, China;
- China Construction Bank, Beijing, China;
- Agricultural Bank Of China, Beijing, China;
- Bank of China, Beijing, China.

- (35) Moreover, verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the following companies:

##### (1) Sampled Union producers

- ThyssenKrupp Steel Europe AG, Duisburg, Germany;
- Tata Steel IJmuiden BV, Velsen-Noord, the Netherlands;
- Tata Steel UK Limited, Port Talbot, South Wales, United Kingdom;
- ArcelorMittal Mediterranee SAS, Fos-sur-Mer, France;
- ArcelorMittal Atlantique Et Lorraine SAS, Dunkerque, France;
- ArcelorMittal España SA, Gozón, Spain.

## (2) Sampled producers in the PRC

## (a) Benxi Iron &amp; Steel Group:

- Benxi Iron & Steel (Group) Co., Ltd, Benxi, PRC;
- Bengang Steel Plates Co., Ltd, Benxi, PRC;
- Benxi Beiyang Iron & Steel (Group) Co., Ltd., Benxi, PRC;
- Benxi Iron & Steel (Group) Mining Industry Co., Ltd., Benxi, PRC;
- Benxi Iron & Steel (Group) International Trading Co., Ltd., Benxi, PRC;
- Liaoning Henderson Assets Operating & Management Co., Ltd., Benxi, PRC.

## (b) Jiangsu Shagang Group:

- Jiangsu Shagang Group Co., Ltd., Zhangjiagang City, PRC,
- Zhangjiagang Hongchang Plate Co., Ltd., Zhangjiagang City, PRC
- Zhangjiagang GTA Plate Co., Ltd., Zhangjiagang City, PRC
- Zhangjiagang Yangtze River Cold rolled Sheet Co., Ltd, Zhangjiagang City, PRC
- Zhangjiagang Hongchang Pellets Co., Ltd, Zhangjiagang City, PRC
- Jiangsu Shagang International Trade Co., Ltd., Jinfeng Town, Zhangjiagang City, PRC.

## (c) Hesteel Group:

- Hesteel Group Co., Ltd., Shijiazhuang and Beijing, PRC;
- Hesteel Co., Ltd., Shijiazhuang, PRC;
- Handan Iron & Steel Group Han-Bao Co., Ltd., Handan City, PRC;
- Hesteel Co., Ltd. Tangshan Branch, Tangshan City, PRC;
- Hesteel Co., Ltd. Chengde Branch, Chengde City, PRC;
- Hebei Iron & Steel Group Mining Co., Ltd, Tangshan, PRC;
- Hesteel Group International Trade Corporation, Beijing, PRC;
- Sinobiz Holdings Limited (British Virgin Islands), Tangshan City, PRC.

## (d) Shougang Group:

- Shougang Jingtang United Iron & Steel Co. Ltd., Caofeidian, PRC;
- Tangshan Shougang Jingtang Xishan Coking Co. Ltd., Caofeidian, PRC;
- Shougang Qian'an Iron and Steel, branch of Beijing Shougang Co. Ltd., Qian'an, PRC;
- Qian'an Coal Chemical Company, Qian'an, PRC;
- Shougang Mining Co. Ltd., branch of Shougang Corporation, Qian'an, PRC;
- Beijing Shougang Co. Ltd., Beijing, PRC;
- China Shougang International Trade & Engineering Corporation, Beijing, PRC;
- Shougang Holding Trade Hong Kong Limited, Hong Kong;
- Shougang Corporation, Beijing, PRC.

## (3) Users

- Marcegaglia Carbon Steel Spa, Gazoldo degli Ippoliti, Italy.

### 1.6. Non-imposition of provisional measures

- (36) On 13 February 2017, the Commission informed all interested parties that no provisional countervailing duties would be imposed on imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC.

### 1.7. Subsequent procedure

- (37) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings, indicating the issues that needed to be further investigated.
- (38) On 28 April 2017, the Commission disclosed to all parties the essential facts and considerations on the basis of which it intended to impose a definitive anti-subsidy duty on imports of the product concerned into the Union, and invited all parties to comment within 17 days. Through such disclosures, the Commission also informed interested parties of the results of its verification visits, including the instances where the Commission had to use best facts available. Moreover, on 18 May, the Commission sent an additional note to the file to all interested parties, explaining in more detail its reasoning on the calculation of benefit for preferential lending. Comments were received within the set deadline of 5 days and dealt with accordingly.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (39) Hot-rolled flat steel products are produced through a metal forming process in which hot metal is passed through one or more pairs of hot rolls to reduce the thickness and to make the thickness uniform, whereby the temperature of the metal is above its recrystallization temperature. They can be delivered in various forms: in coils (oiled or not oiled, pickled or not pickled), in cut lengths (sheet) or narrow strips.
- (40) There are two main uses of the hot-rolled flat steel products. First, they are the primary material for the production of various value added downstream steel products, starting with cold-rolled <sup>(1)</sup> flat and coated steel products. Second, they are used as an industrial input purchased by end users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, cars, pressure vessels and energy pipelines.
- (41) One exporting producer (Jiangsu Tiangong Tools Company Limited) requested on 26 June 2016 that certain types of hot-rolled flat steel products, known in the industry as tool steel and high-speed steel, should be excluded from the product scope. It claimed that tool steel and high-speed steel have significantly different properties, prices, different specifications and uses.
- (42) In this respect, the Commission found during the parallel anti-dumping investigation that there are indeed major physical and chemical differences between other types of the product concerned than tool steel and high-speed steel on the one hand, and tool steel and high-speed steel on the other hand. There are several chemical elements inherently present in tool steel and high-speed steel, which are not found in the product concerned. Furthermore, there are differences in the production process, different uses and significant price differences between tool steel and high-speed steel on the one hand and other types of the product concerned.
- (43) The Commission thus excluded tool steel and high-speed steel from the product scope of the parallel anti-dumping investigation.

<sup>(1)</sup> Cold rolling process is defined by passing a sheet or strip — that has previously been hot rolled and pickled — through cold rolls, i.e. below the softening temperature of the metal.

- (44) Based on the above considerations the Commission decided to exclude tool steel and high-speed steel also from the product scope of this investigation.
- (45) The product concerned is thus defined as certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated originating in the People's Republic of China.

The product concerned does not include:

- products of stainless steel and grain-oriented silicon electrical steel,
- products of tool steel and high-speed steel,
- products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10, 7225 30 90, ex 7225 40 60, 7225 40 90, ex 7226 19 10, 7226 91 91 and 7226 91 99.

## 2.2. Like product

- (46) The investigation showed that the following products have the same basic physical characteristics as well as the same basic uses:
- the product concerned;
  - the product produced and sold on the domestic market of the PRC;
  - the product produced and sold in the Union by the Union industry.
- (47) Therefore, they are considered as alike within the meaning of Article 2(c) of the basic Regulation.

## 3. SUBSIDISATION

### 3.1. Introduction: Presentation of Government plans, projects and other documents

- (48) Before analysing the alleged subsidisation in the form of specific subsidies or subsidy programmes (sections 3.4 and following below) the Commission assessed government plans, projects and other documents, which were relevant for more than one of the subsidies or subsidy programmes. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC's central planning for the following reasons.
- (49) The 12th Five Year Plan for National Economic and Social Development of the PRC ('the 12th Five Year Plan') highlights the strategic vision of the GOC for improvement and promotion of key industries. In particular, chapter 9 of the 12th Five Year Plan, which concerns the transformation and upgrade of the manufacturing industry, calls for the transformation and upgrading of key existing industries to increase the competitiveness of China's industrial core. It indicates that the GOC will formulate policies to support the technical improvement of enterprises in order to improve market competitiveness. The steel industry figures prominently among these key industries.



- (50) The 12th Five Year Plan also attaches great importance to resource conservation and environmental protection, as well as to the development of a circular economy and low carbon technologies targets. In this respect, chapter 9 of the 12th Five Year Plan states that the steel industry should make progress in integrated resources utilization, energy conservation and emission reduction, and that the GOC will support such environmentally friendly development efforts.
- (51) The GOC has also issued a specific plan for the steel industry, i.e. the 12th Five Year Plan for the Steel Industry ('the 12th Five Year Steel Plan'). That Plan highlights that the steel industry is an important basic industry of the national economy. The main priority for the GOC in the period 2011-2015 is the structural adjustment, transformation and upgrade of the steel industry. In addition, chapter 5 of the 12th Five Year Steel Plan emphasizes the importance of '*strengthen[ing] the connection of fiscal, financial, trade, land, energy saving, environmental protection, safety and other policies with the steel industrial policy*'.
- (52) The GOC claimed that the Commission could not rely on the 12th Five Year Plan and the 12th Five Year Steel Plan for its investigation, as those plans expired on 31 December 2015. Hence, there would be no legal basis for continued subsidization. The Commission noted that the 12th Five Year Plan and the 12th Five Year Steel Plan covered the investigation period. In addition, in March 2016, the 13th Five Year Plan was released, which covers the period 2016-2020. As explained in the following recital, the 13th Five Year Plan builds on the objectives highlighted in the 12th Five Year Plan and develops them further. Hence, there is continuity in promoting the development of the steel industry.
- (53) The 13th Five Year Plan further emphasizes the role of technological innovation in the economic development of the PRC, as well as the continued importance of '*green*' development principles. According to its chapter 5, one of the main development lines is to promote the upgrading of the traditional industrial structure, as was already the case in the 12th Five Year Plan. This idea is further elaborated in chapter 22, which explains the strategy to modernize the traditional industry in the PRC by promoting its technological conversion. In this respect, the 13th Five Year Plan states that companies will be supported to '*comprehensively improve in areas such as product technology, industrial equipment, environmental protection and energy efficiency*'. Environmental protection is further elaborated in chapter 44. According to this chapter, a clean production '*renovation*' will be implemented in key industries, and box 16 specifically refers to the steel industry in this respect.
- (54) The '*Steel Industry Adjustment and Upgrading plan for 2016-2020*' (the 13th Five Year Steel Plan) was released in November 2016. It is based on the 13th Five Year Plan. It states that the steel industry is '*an important, fundamental sector of the Chinese economy, a national cornerstone*'<sup>(1)</sup>. That plan further elaborates on the principles of technological innovation, structural adjustment and green development mentioned in the 13th Five Year Plan, links them to more specific priorities within the steel industry (see chapter IV — Main tasks), and makes the link with various fiscal and financial support measures (see chapter V — Safeguard measures).
- (55) The GOC also claimed that these plans issue only policy guidance and, thus, they are not mandatory or binding. However, the introduction to the 12th Five Year Plan states: '*This Plan, upon deliberation and approval by the National People's Congress, bears legal validity.*' Chapter 17 of the 13th Five Year Plan states: '*The national development strategy and plan will come into play with a leading and constraining role.*'<sup>(2)</sup> Finally, the 13th Five Year Steel Plan states that '*all local authorities in charge of the steel industry shall ... implement the tasks and policy measures set out in the present plan*'. At the level of individual companies, '*relevant enterprises shall ensure convergence with the present plan's main objectives and priority tasks*'<sup>(3)</sup>. Thus, rather than making only general statements of encouragement, these plans are binding. The GOC reiterated its position after disclosure, but did not provide any additional evidence to substantiate why the above-mentioned language would constitute only policy guidance, despite the clear wording indicating the opposite. Rather, the GOC cited specific language in these plans, which is more policy-oriented, but which does not contradict the findings on their legally binding nature. The Commission thus maintained its position that these plans are legally binding.

<sup>(1)</sup> Introduction to the 13th Five Year Steel Plan.

<sup>(2)</sup> Chapter 17, section 1 of the 13th Five Year Plan, emphasis added.

<sup>(3)</sup> Ibidem.

- (56) The following documents also identify the steel industry as a strategic, prioritized and/or encouraged industry:
- (a) Decision No. 40 of the State Council on Promulgating and Implementing the 'Temporary Provisions on Promoting the Industrial Structure Adjustment'(Decision No. 40). This Decision states that the '*Guidance Catalogue for the Industrial Structure Adjustment*', which is an implementing measure of Decision No. 40 is an important basis for guiding investment directions. It also guides the GOC to administer investment projects, and to formulate and enforce policies on public finance, taxation, credit, land, import and export <sup>(1)</sup>. The steel industry is indicated as an encouraged industry in Chapter VIII of this Guidance Catalogue. As to its legal nature, the Commission noted that Decision No. 40 is an Order from the State Council, which is the highest administrative body in the PRC. In that regard, the decision is legally binding for other public bodies and the economic operators. <sup>(2)</sup>
  - (b) According to its chapters III.5 and VIII, the National Outline for the Medium and Long-term Science and Technology Development (2006-2020) supports the development of key fields and priority themes, and encourages financial and fiscal support to these key fields and priorities.
  - (c) Order No. 35 of the National Development and Reform Commission ('NDRC') <sup>(3)</sup>'Policies for the development of the Iron and Steel Industry' (2005) ('Order No. 35') mentions that the iron and steel industry is an important basic industry of the national economy.
  - (d) The Blueprint for Steel Industry Adjustment and Revitalisation issued by the State Council in March 2009 ('the Revitalisation Plan') initiates several policies and support measures to guide the steel industry out of the international financial crisis, to maintain growth, and to guarantee the stable operation of the industry, because it is regarded as an important pillar industry of the national economy.
- (57) After disclosure, the GOC quoted from Decision No. 40 that encouraged industries should receive credit support 'according to the credit principles'. According to the GOC it cannot be inferred that such support should be given on a preferential basis. However, the investigation has shown that the vague term 'credit principles' does not mean market-based and commercial behaviour, but rather that those credit principles include important public policy considerations, which override credit risk assessment or lead to a complete absence of any risk assessment. Furthermore, the sampled companies benefited from preferential lending policies where a proper credit risk assessment is effectively absent, as explained in section 3.4 below. The Commission therefore rejected the GOC's assertion that lending to the steel industry was done on market based and commercial terms, and that the reference 'according to the credit principles' would constitute an obligation to follow those terms. The key point remains that according to Decision No 40, all financial institutions shall provide credit to encouraged industries, which includes the steel industry, and that that support is de facto provided on preferential terms disregarding the actual credit risk of the beneficiaries.
- (58) The GOC further commented that the National Outline for the Medium and Long-term Science and Technology Development (2006-2020) does not establish eligibility of steel producers for the alleged subsidies. However, chapter III.5 of this document clearly mentions the steel industry in connection with priority theme No 29, called 'Cyclic Iron and Steel Flow Process and Equipment' and chapter VIII encourages financial and fiscal support to these priority themes. This claim was therefore rejected.
- (59) Upon disclosure, the complainant asked the Commission to expand its analysis of the central plan to include the non-enforcement of bankruptcy law. It argued that figures between 2008 and 2015 show a 'strikingly low' number of bankruptcies in China and cited a bail-out agreement between several Chinese banks and the bankrupt steel trader Sinosteel from December 2016. Furthermore, it made reference to the findings of the IMF's report 'Resolving China's Corporate Debt Problem' <sup>(4)</sup>, identifying a number of reasons for the low insolvency rate in China. The Commission accepted that the complainant had reported in its complaint a number of important

<sup>(1)</sup> Chapter III, Article 12 of Decision No. 40.

<sup>(2)</sup> See Council Implementing Regulation (EU) No 215/2013 (OJ L 73, 15.3.2013, p. 16), recital 182 (*Organic coated steel*).

<sup>(3)</sup> The function of the NDRC is, among others, to formulate and implement strategies of national economic and social development, annual plans, medium and long-term development plans.

<sup>(4)</sup> W. Maliszewski/S. Arslanalp/J. Caparusso and others, 'Resolving China's Corporate Debt Problem', IMF Working Paper, WP/16/203 of October 2016.

individual cases, where bankruptcy proceedings had not been started for particular steel companies in distress. However, it found that the general figures on bankruptcies in China provided upon disclosure could not be broken down with sufficient certainty to the HRF sector. In order to ascertain whether the number of insolvencies is 'normal' or 'low' a proper benchmark would have to be established for the precise number of insolvencies during the IP. Such analytical work could not be conducted in the limited time available after disclosure. In any case, the comment did not call into the question the Commission's findings in this section, but rather confirmed them.

- (60) In conclusion, the steel industry is thus regarded as a key/strategic industry, whose development is actively pursued by the GOC as a policy objective.

### 3.2. Partial non-cooperation and use of best facts available

#### 3.2.1. *The application of the provisions of Article 28(1) of the basic Regulation in relation to the GOC's preferential lending*

- (61) The Commission requested the GOC to contact seven specific state-owned banks mentioned in the complaint, as well as any other state-owned bank, to fill in a specific questionnaire. However, the GOC only contacted five of the seven state-owned banks specifically mentioned by the complainant. According to the GOC, it had no authority to demand information from the other state-owned banks, as they operate independently of the GOC. In this regard, the Commission recalled that the GOC was not requested to provide any information, but only to forward the specific questionnaire to the state-owned banks.
- (62) None of the five state-owned banks that responded to the specific questionnaire provided specific information concerning loans provided to the sampled companies, arguing that they were bound by statutory and regulatory requirements and contractual clauses with respect to the confidentiality of the information related to the sampled companies. In addition, thirty state-owned banks, which the GOC had refused to contact to fill in the specific questionnaire, did provide loans to the sampled groups of exporting producers. The Agricultural Development Bank of China did not provide loans to the sampled groups of exporting producers.
- (63) Therefore, the Commission asked all the sampled groups of exporting producers to grant access to company-specific information held by all banks, state-owned and private, from which they received loans. However, all of the sampled companies declined to provide access to the data pertaining to them without providing any reasons.
- (64) As three of the sampled groups of exporting producers are fully owned by the State, the Commission also requested the GOC, as the owner of these companies, to arrange for access to the requested information. However, the GOC rejected the request of the Commission, arguing that it had no authority to instruct these three groups of exporting producers to provide the requested access.
- (65) The Commission received information on corporate structure and ownership only from the five state-owned banks mentioned in recital (34), but not from any of the other 40 financial institutions. Moreover, none of the 45 financial institutions provided any information specific to the risk assessment of the loans granted to the sampled groups of exporting producers.
- (66) Therefore, the Commission informed the GOC that it might have to resort to the use of best facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential lending.
- (67) The GOC objected to this use of best facts available, stating that it had no authority to demand information from the financial institutions and the three state-owned groups of exporting producers.

- (68) That claim is unfounded. The Commission only requested the GOC to forward the specific questionnaire for the state-owned banks, because the GOC is best placed to have detailed information on the ownership structure of financial institutions in the PRC. The GOC could also have provided administrative support to collect the replies from the financial institutions.
- (69) Furthermore, the Commission fails to see why the GOC could not support the Commission's request for access to specific information addressed to the three state-owned sampled groups of exporting producers, especially in view of the fact that the authorization for access would in all likelihood have needed an approval at the highest level, and thus needed the involvement of GOC officials.
- (70) After disclosure, the GOC reiterated that it did not have the authority to demand the requested information from the state-owned banks and the three state-owned groups of exporting producers. The GOC also found that the request of the Commission posed an unreasonable burden on the GOC, as it was expected not only to forward the questionnaires, but also to provide administrative support to collect the replies. The Commission failed to see why sending out a questionnaire and collecting replies at a central level would have put an unreasonable burden on the GOC. As the GOC did not bring forward any other new elements, the Commission maintained its position as described in recital (68) above.
- (71) Furthermore, the GOC claimed that the Commission did not indicate which information crucial to the investigation was missing and that it did not provide any explanations on why the requested information was necessary and why the information provided by the GOC was insufficient. In fact, the Commission had already alerted the GOC in its deficiency letter of 16 November 2016 that information was missing especially in relation to questions directed at state-owned banks, and that credit risk assessments should be made available during the verification. As the requested information was still not available after verification, the Commission informed the GOC in its letter of 16 March 2017 that it might have to resort to the use of best facts available under Article 28(1) of the basic Regulation because it still had no information in relation to most of the state-owned banks which provided loans to the sampled companies, and no company-specific information on the loans provided by the cooperating banks. Therefore, the GOC was adequately notified about the nature and the insufficiency of the information to be provided.
- (72) Finally, the GOC stated that the Commission did not adequately explain why certain facts were deemed to be the best available information. The Commission disagreed with this statement. In section 3.4.1.2 below it is explained which facts available were used and why the Commission found that they were the best available information. This claim was thus rejected as unfounded.
- (73) The private group of exporting producers Jiangsu Shagang Group also objected to the use of best facts available and considered that the request to provide an authorisation for the Commission to verify its financial data held by the financial institutions imposed an unreasonable burden on it. In particular, it claimed that the company representative was neither invited to be present at the verification on the financial institutions premises nor notified of the details of such verification.
- (74) In reply to these claims, the Commission recalled that the company had only provided a short and unsubstantiated refusal to provide such an authorisation via a single-sentence e-mail dated 24 November 2016. At that time, the company neither asked about any further details of the verification at the financial institutions premises nor requested the presence of its representative at such verification. If the company had asked for it, the Commission could have provided further details and would have attempted to make arrangements for the company's representative to be present at the verification.
- (75) Therefore, the Commission had to rely partially on best facts available when examining the existence and the extent of the alleged subsidisation granted through preferential lending.

3.2.2. *The application of the provisions of Article 28(1) of the basic Regulation to one exporting producer in relation to grants*

- (76) The Jiangsu Shagang Group failed to provide information on a random selection of grants for verification purposes. In addition, the Commission found evidence in the audited accounts of significant grants that were received prior to but conferring a benefit during the investigation period, and which had not been reported.
- (77) Under these circumstances, the Commission considered that it had not received crucial information relevant to this aspect of the investigation. This caused serious difficulties to arrive at an accurate and substantiated conclusion for the subsidy findings related to grants with respect to this exporting producer.
- (78) Therefore, the Commission notified the company that it would consider basing its findings partially on best facts available pursuant to Article 28(1) of the basic Regulation (i.e. as far as the information related to grants was concerned).
- (79) In the reply to the Commission's letter, the company objected to the application of Article 28(1) of the basic Regulation regarding the grants. It argued that the grants found by the Commission during the verification visit were not reported because the questionnaire did not request to report those grants which were received prior to the IP and which were not recorded as a deferred asset. In addition, it claimed that it had provided a breakdown of these grants during the verification visit.
- (80) The Commission found during the verification visit that most of the grants received prior to the IP were related to assets based on the names of the investigated subsidiaries. Thus, the exporting producer should have recognised these grants as deferred assets/income in accordance with the applicable accounting rules as outlined in the notes to its financial statements. Consequently the company should have reported the grants in the reply to the questionnaire, which asked to report all grants related to assets and booked as deferred income. The fact that the auditor did not qualify these grants as deferred assets does not mean that amounts received prior to the IP cannot confer a benefit during the IP, especially when no further details other than a breakdown per company was provided. Therefore, the Commission concluded that the company had neither provided the detailed information about the grants received in the IP and which were reported in the reply to the questionnaire, nor the details of the grants that were received prior to the IP, and which were found only during the verification visit to be relevant for the IP. In the absence of this detailed information the Commission could not use the information about the grants provided by the company.
- (81) Therefore, the Commission had to rely on best facts available for its findings concerning grants for this company. When investigating the company on the spot, the Commission found that this company received substantial amounts from a variety of grant programmes, and therefore, the Commission used as best facts available the highest subsidy amount for these grants found during the IP.

**3.3. Subsidies and subsidy programmes within the scope of the current investigation**

- (82) On the basis of the information contained in the complaint, the Notice of Initiation and the replies to the Commission's questionnaire, the alleged subsidisation through the following subsidies by the GOC were investigated:
- (i) Preferential policy loans, credit lines, other financing, and guarantees;
  - (ii) De facto guarantee on the continuity of operations for companies in the HRF industry that face difficulties to repay loans;
  - (iii) Grant Programmes
    - China World Top Brand Programme
    - Famous Brand Programme
    - Anti-dumping Respondent Assistance

- The State Key Technology Project Fund Subsidies
  - Export Assistance Grants, such as e.g. rewards for advanced exporting enterprises or export performance, fair trade subsidies, grants for international economic cooperation
  - Innovative Experimental Enterprise Grant
  - Special support fund for non-state owned enterprises (non-SOEs)
  - Environmental Protection grants, such as e.g. incentives for Environmental Protection and Resource Conservation, Promotion of synergistic resource utilization, Incentive funds for energy conservation retrofit projects, Promotion of Energy Management Demonstration Centres
  - Grants related to technological upgrading or transformation, such as e.g. promotion of R&D tasks under Science and Technology Support Plans, Promotion of Key Industry Adjustment, Revitalisation and Technology Renovation, grants for the Commercial Application of R&D Results, Promotion of Quality Improvement, Promotion of Patent Registration, funds received under the 'Three Categories' Programme
  - Grants for elimination of outdated capacity
  - Liaoning Province Grants — Five Point One Line Programme
  - Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area subsidies: Science and Technology Fund and Accelerated Depreciation Programme
  - Ad-hoc subsidies provided by the municipal/provincial authorities;
- (iv) Direct Tax Exemption and Reduction programmes
- Enterprise Income Tax (EIT) privileges for Resource Products from Synergistic Utilisation
  - EIT credits for investment expenses on equipment related to environmental protection, energy and water conservation as well as production safety
  - EIT privileges for High and New Technology Enterprises
  - EIT privileges under the Great Western Development Program,
  - EIT privileges for revenues from Encouraged Products,
  - EIT Credit for the purchase of domestic equipment
  - Exemption or reduction of contributions related to water construction funds
  - The two free/three half programme for foreign invested enterprises (FIEs)
  - EIT offset for research and development
  - Income tax reductions for FIEs purchasing Chinese-made equipment
  - Preferential tax policies under the Northeast Revitalisation Programme
  - Western Region preferential tax policies
  - Coastal Economic Open Areas and Economic and Technological Development Zones preferential tax policies for FIEs
  - Special Economic Zones preferential tax policies for FIEs
  - Land Use Tax exemption or reduction
  - Local tax discounts
  - Dividend exemption between qualified resident enterprises;

- (v) Indirect Tax and Import Tariff Programmes
  - VAT exemptions and import tariff rebates for the use of imported equipment and technology
  - VAT rebates on FIE purchases of Chinese-made equipment
  - VAT exemption for products sold by FIEs
  - VAT reduction/exemption for products generated from synergistic Resource Utilisation
  - Tax concessions for Central and Western Regions;
- (vi) Government provision of goods and services for less than adequate remuneration (LTAR)
  - Government provision of iron ore for less than adequate remuneration
  - Government provision of coke extrusions for less than adequate remuneration
  - Government provision of coking coal for less than adequate remuneration
  - Government provision of power for less than adequate remuneration
  - Government provision of land and land-use rights for less than adequate remuneration;
- (vii) 'Foreign Trade Transformation and Upgrading Demonstration Bases' ('Demonstration Bases') and 'Common Service Platforms';
- (viii) Subsidisation of the provision of hot-rolled flat products to the EU during the investigation period.

### 3.4. Preferential lending

- (83) According to the information provided by the four sampled groups of exporting producers, 45 financial institutions had provided loans to them. Of these 45 financial institutions, 35 were state-owned banks. The 10 remaining financial institutions were either privately owned, or the Commission could not find any conclusive information on their ownership. However, only five state-owned banks filled in the specific questionnaire, despite a request to the GOC that covered all 35 state-owned banks. Out of the 10 remaining financial institutions, only one replied, indicating that it could not reply without having consulted the regulatory authorities. After having consulted the CBRC, this financial institution informed the Commission that it was willing to cooperate, but that the CBRC suggested to it that such cooperation should be carried out through a regulatory cooperation mechanism (i.e. an exchange of information between Chinese and EU regulators respectively rather than directly between the Commission and the bank). The Commission welcomed this offer to cooperate, but noted that it was impossible to set up such an intermediate arrangement for the remainder of the investigation. In any case, the Commission did not receive any further letter or request from the CBRC itself. In addition, the financial institution did not provide any comments on substance within the set deadline. Therefore, the Commission had to base itself on best facts available.

#### 3.4.1. State-owned banks acting as public bodies

- (84) The Commission ascertained whether the state-owned banks were acting as public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation. In this respect, the applicable test to establish that a State-owned undertaking is a public body is as follows <sup>(1)</sup>: 'What matters is whether an entity is vested with authority to exercise

<sup>(1)</sup> WT/DS379/AB/R (US — Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9-4.10, 4.17-4.20 and WT/DS437/AB/R (United States — Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.' In the present case, the conclusion that the state-owned banks are exercising governmental authority is based on formal indicia of government control and evidence that it has been exercised in a meaningful way.

- (85) The Commission sought information about State ownership as well as formal indicia of government control in the state-owned banks. It also analyzed whether control had been exercised in a meaningful way. The investigation of that exercise was impeded by the refusal of the GOC and the state-owned banks to enable the Commission to analyse the decision-making process that had led to the preferential lending.
- (86) In order to carry out this analysis, the Commission first examined information for the five state-owned banks that had filled in the specific questionnaire and allowed for verification.

#### 3.4.1.1. Cooperating state-owned banks

- (87) The following five state-owned banks provided a questionnaire reply, which was verified on site: EXIM, ICBC, CCB, ABC, and BOC. These five state-owned banks accounted for a substantial part of the loans granted to the four sampled groups of companies during the investigation period in terms of the amounts borrowed (ranging from 50 % to 60 % for both the Hesteel Group and the Jiangsu Shagang Group, and ranging from 80 % to 95 % for both the Benxi Group and the Shougang Group).

##### (a) Ownership and formal indicia of control by the GOC

- (88) Based on the information received in the questionnaire reply and during the verification visit, the Commission established that the GOC held, either directly or indirectly, more than 50 % of the shares in each of these financial institutions.
- (89) Concerning the formal indicia of government control of the five cooperating state-owned banks, the Commission qualified all of them as 'key State-owned financial institutions'. In particular, the notice 'Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions' states that: '*The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors*'<sup>(1)</sup>.

<sup>(1)</sup> Article 2 of the 'Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions', Decree No. 293 of the State Council, issued on 15 March 2000.



- (90) The Board of Supervisors of the key State-owned financial institutions is appointed according to the 'Interim Regulations of Board of Supervisors of State-owned Key Financial Institutions'. Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating state-owned banks' business activities. In addition to these generally applicable indicia, the Commission found the following with respect to the of the five state-owned banks:

EXIM:

- (91) EXIM was formed and operates in accordance with 'The Notice of Establishing Export-Import Bank of China' issued by the State Council and the Articles of Association of EXIM. The State, as 100 % shareholder of EXIM, controls EXIM by nominating the Members of its Board of Supervisors. Those Members represent the interest of the State, including policy considerations in the meetings of EXIM. There is no Board of Directors. The State directly nominates the management of EXIM. According to its website, EXIM is dedicated to supporting China's foreign trade, investment and international economic cooperation. It is committed to reinforcing financial support to key sectors and weak links in the Chinese economy to ensure sustainable and healthy economic and social development.

ICBC:

- (92) On the basis of chapters 8 to 10 of its Articles of Association, the GOC, through its shareholding of 69,6 %, has the power to appoint the most important positions within the management of the bank, such as the President and the Vice President, the Chairman and the Vice Chairman of the Board of Directors, the Executive Director, as well as the Chairman of the Board of Supervisors.
- (93) Moreover, according to its Articles of Association, the Board of Directors convenes shareholder's meetings, decides on the business strategy and budget of the bank, takes investment (and merger) decisions, decides on the dismissals of senior management, formulates the risk management system, and decides on the establishment of departments and branches. This non-exhaustive list of responsibilities illustrates the institutional control of the State on ICBC's daily business.

CCB:

- (94) According to chapter 11 and 12 of its Articles of Association, the GOC, in its capacity of main shareholder holding 57,31 %, has the power to appoint a majority of the members on the Board of Directors, which is the executive agency of the shareholders' General Meeting carrying out the management of CCB and shall be responsible to the shareholders' meeting. The same applies for the Board of Supervisors, i.e. the supervisory body of the Bank, as provided by chapter 16 of the Articles of Association.
- (95) Moreover, according to CCB's Articles of Association, the Board of Directors decides on the budget of the bank, takes investment decisions, decides on the dismissals of the chief executive auditor and the secretary of the Board of the Directors. The 10 executive members (out of a total of 15 members) of the Board of Directors are the top management of CCB. This non-exhaustive list of responsibilities illustrates the institutional control of the State on CCB's daily business.

ABC:

- (96) As mentioned in Article 134 of the Articles of Association, the GOC, in its capacity of main shareholder holding 79,62 %, has the power to appoint all of the Directors in the Board of Directors. The same applies to the Board of Supervisors according to Article 199 of the Articles of Association.
- (97) Moreover, according to ABC's Articles of Association, the Board of Directors determines the strategy of the bank, decides on the budget of the bank, takes investment decisions, appoints the President and the Board Secretary of the bank, and establishes and monitors the risk management system of the bank. This non-exhaustive list of responsibilities illustrates the institutional control of the State on ABC's daily business.

BOC:

- (98) As mentioned in Article 122 of the Articles of Association, the GOC, in its capacity of main shareholder holding 64,63 %, has the power to appoint both the executive and the non-executive Directors of the bank, which constitute the Board of Directors.
- (99) Moreover, according to BOC's Articles of Association, the Board of Directors decides, inter alia, the financial institution's strategic principles, business plans and major investment plans, appoints or dismisses senior staff such as the President and Secretary of the Board, the Vice President, and other senior management personnel. The Board further decides on the implementation of resolutions at the shareholders' meeting, and approves corporate governance policies. This non-exhaustive list of responsibilities illustrates the institutional control of the State on BOC's daily business.
- (b) Evidence showing that the Government exercised meaningful control over the conduct of those institutions
- (100) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of the five cooperating state-owned banks with respect to their lending policies and assessment of risk, where they provided loans to the steel industry. The following regulatory documents have been taken into account in this respect:
- Article 34 of the Law of the PRC on Commercial Banks ('Bank law');
  - Articles 7 and 15 of the General Rules on Loans (implemented by the People's Bank of China);
  - Chapter 5 of the 12th Five Year Steel Plan;
  - Chapter 5 of the 13th Five Year Steel Plan;
  - Decision No 40;
  - Guidelines of the People's Bank of China, China Banking Regulatory Commission ('CBRC'), China Securities Regulatory Commission ('CSRC'), and China Insurance Regulatory Commission ('CIRC') on supporting the steel and coal industries to resolve overcapacity and achieve turnaround in development (2016) ('Guidelines of the People's Bank of China, CBRC, CSRC and CIRC');
  - Notice 'Several Opinions on Resolving Overcapacity', issued by the NDRC, the Ministry of Industry and Information Technology ('MIIT') and CBRC (2016) ('notice "Several Opinions on Resolving Overcapacity"');
  - Green Credit Guidelines of the CBRC (read in combination with the Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector, June 2010, State Council) ('Green Credit Guidelines').
- (101) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC are operating in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives when taking financial decisions.
- (102) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that '*Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*'. With respect to EXIM, its public policy mandate is established in the notice of establishing the Import Export Bank of China as well as other public available information.

- (103) Following disclosure, the GOC indicated that special loans referred to in Article 7 of the *General Rules on Loans* mentioned above were eliminated in 1999 based on a Circular on Improving the Administration of Special Loans (YINFA [1999] No. 228) and that Article 15 had become irrelevant as the PBOC no longer sets the upper and lower limits of loans.
- (104) The GOC further alleged that the Commission had misinterpreted Article 34 of the Bank law. It also referred to Articles 4, 5, and 7 of the Bank law relating allegedly to the bank's autonomy, the lack of interference by entities or individuals, governments and the examination of the credibility of the borrowers. The GOC further commented that Article 34 should not be read in isolation.
- (105) The Commission acknowledged that special loans were eliminated in 1999. This does not reverse, however, the conclusions drawn about the existence of preferential lending, which is also based on other facts available which, taken on their own, are sufficient.
- (106) As for Article 15 of the General Rules on Loans, the Commission disagreed with the GOC's view. That Article provides: 'In accordance with the State's policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas.' Thus, this provision remains relevant even after the end of floor and ceiling rates. In any event, Article 38 of the Bank law still refers to limits and may at any point in time be applied.
- (107) As far as the Bank law is concerned, Articles 4, 5 and 7 belong to 'Chapter I General provisions' while Articles 34 and 35 belong to 'Chapter IV Basic Rules for Loans and Other Business Operations'. Article 4 states that 'The business operations of commercial banks shall be governed by the principles of safety, liquidity and efficiency. Commercial banks shall make their own decisions regarding their business operations, take responsibility for their own risks, assume sole responsibility for their profits and losses and exercise self-restriction. Commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property'. Article 7 of the Bank law relates to the examination of the creditworthiness of the borrower.
- (108) The investigation showed that Articles 4 and 7 of the Bank law are applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions. The findings of this investigation did not support the claim that banks do not take government policy and plans into account while making lending decisions. It rather confirmed the contrary, as has been clearly described in recitals (121) to (128) below. Therefore, the Commission found that Article 4 of the Bank law did not prevent commercial banks from taking government industrial policy and plans into account.
- (109) The GOC also referred to Article 5 of the Bank law, deriving from it that there would be 'no interference by local governments and government departments at various levels, public organizations or individuals in the business operations of the banks.' However, the actual text of Article 5 of the Bank law reads as follows: '*Commercial banks shall adhere to the principles of equality, voluntariness, fairness and good faith in business dealings with their clients*'. For the Commission, this formulation does not shield banks from their duty to apply public policy considerations as set out in Article 34 of the Bank law. As set out in recitals (121) to (128) below, in view of the behaviour of the banks when providing loans to the sampled companies, this Article can therefore not be considered to contradict the interpretation of Article 34 established by the Commission.
- (110) The industrial policy of the State is established through central planning, as explained in section 3.1 above. With regards to the steel industry, chapter 5 of the 12th Five Year Steel Plan specifically provides for strengthening the connection between financial policies and the steel industrial policy. Furthermore, Chapter 5 of the 13th Five Year Steel Plan issues '*guidance to financial institutions and private capital to support the priority tasks of the Plan*', and provides that '*As regards enterprises having a market and being profitable, banks shall keep the demand for credit reasonable*'.
- (111) Similarly, Decision No. 40 instructs all financial institutions to provide credit support specifically to '*encouraged*' projects. As already explained in section 3.1, projects of the steel industry belong to the '*encouraged*' category.

- (112) Following disclosure, the GOC indicated that the Commission did not explain how Decision No. 40 demonstrates that banks are required to undertake any preferential credit operations, and referred to Articles 17 and 18 of this Decision. The Commission noted that the Decision incorporates the GOC's will to actively support the development of the steel industry. The Decision also instructs all financial institutions to provide credit support only to encouraged projects (the category in which the steel projects belong) and promises the implementation of 'other preferential policies on the encouraged projects'. On the basis of the above, banks are required to provide credit support to the steel industry under Decision No. 40. While Articles 17 and 18 of the same Decision also ask the bank to respect credit principles the Commission could not establish during the investigation that this was done in practice. Decision No. 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations.
- (113) Furthermore, the Guidelines of the People's Bank of China, CBRC, CSRC, and CIRC, as well as the notice 'Several Opinions on Resolving Overcapacity', are specifically targeted at companies in the steel sector. They state that financial institutions must fully recognize the pillar role and strategic importance of steel and coal industries and continue to give credit support to the steel companies which comply with industrial policy and which adjust and regroup themselves without increasing their production capacity. This support *shall* extend to the setting of interest rates and the promotion of bonds and loans for mergers and acquisitions. Furthermore, debt restructuring and debt forgiveness is promoted.
- (114) Following disclosure, the GOC stated that the Commission failed to mention any specific provisions in the above-mentioned documents which support its conclusions. The Commission highlighted that it had based its statements in the previous recital inter alia on the following passages of the notice 'Several Opinions on Resolving Overcapacity':
- (a) *'Banking financial institutions shall raise their appreciation of the pillar and strategic role of the iron and steel industry and the coal industry in the national economy, and earnestly implement credit extension policies of differentiated treatment that are both accommodative and controlling.'*
  - (b) *'Financial support shall be stepped up for iron and steel enterprises and coal enterprises that engage in merger and reorganization.'*
  - (c) *'Banking financial institutions are encouraged to reorganize the loans disbursed to iron and steel enterprises and coal enterprises that are in difficult conditions but take the initiative to reduce capacity.'*
  - (d) *'As regards iron and steel enterprises and coal enterprises with marketable products or services and promising development potentials that are in line with national industrial policies and take the initiative to reduce capacity, adjust structures and transform development models, banking financial institutions shall set up creditor committees, adjust the maturity, interest rates and repayment methods of loans and take other measures.'*
- (115) As far as the Guidelines of the People's Bank of China, CBRC, CSRC, and CIRC are concerned, the following passages are inter alia relevant:
- (a) *'Banking financial institutions should fully recognize the pillar role and strategic position of steel and coal industries, accurately grasp the law of their development, continue to give credit support, in accordance with the principles of risk controllability and business sustainability, to high-quality backbone enterprises, which have advanced technology and equipment, competitive products, markets, and may restore their competitiveness and get rid of temporary difficulties after deepening reform and strengthening internal management; actively offer comprehensive financial services to the enterprise which adjusts and regroups itself but doesn't increase its production capacity.'*
  - (b) *'Improve interest rate pricing management, and reduce enterprise's financing costs.'*
  - (c) *'Actively promote the innovation of green of bonds and high yield bonds. Expand the issuance of green financial bonds, green asset securitization and other innovative financial instruments to guide the green development of the steel and coal industries.'*

- (d) *'Actively and steadily promote debt restructuring at the enterprise. For the enterprise which comply with national industrial policies, and actively take the initiative to reduce production capacity, adjust structure and transform for development, and has certain solvency, under the premise of loan quality monitoring and precise classification, help them weather the storm by adjusting the loan period, ways of repayment, and other debt restructuring measures.'*
- (e) *'Improve the M & A loan business, and expand the scale of M & A loans, reasonably determine the loan term and interest rate, so as to support enterprises and regions with comparative advantage to integrate the industrial capacity.'*
- (116) The Green Credit Guidelines encourage financial institutions to use different credit extension and risk management policies in accordance with industry policies and depending on the environmental status of the borrower. The steel industry is seen as a primary target for the provision of loans related to environmental projects. The industry policy in this context is explained in the 'Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector'. These Opinions highlight that *'the iron and steel industry, being the one with the biggest potential in energy conservation and emission reduction, occupies a vital position in the work of energy conservation and emission reduction. To strengthen energy conservation and emission reduction and structural adjustment is an important and major measure in transforming the development model of the iron and steel industry'*. Projects related to new technologies and techniques of circular economy and energy conservation and emission reduction, such as coke dry quenching under high temperature and pressure, dry dust removal, recovery and utilization of residual heat and pressure of coal gas, and sintering flue gas desulfurization, and the ensuing 'green' financing are thus 'vigorously promoted'.
- (117) The GOC submitted in its disclosure comments that the Green Credit Guidelines and the 'Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector' similarly fail to show the existence of a binding normative framework for lending practices. In particular, the GOC referred to Article 15 of the Green Credit Guidelines, which state that 'banking institutions shall strengthen due diligence in credit granting'.
- (118) The findings of this investigation did not support the claim that Article 15 of the Green Credit Guidelines precluded financial institutions from following government industrial policy and plans when granting loans. It rather confirmed the contrary, as has been clearly described in recitals (121) to (128) below. Therefore, this claim was rejected.
- (119) The Bank law is legally binding. The mandatory nature of the Five Year Plans has been established above at recital (55). The mandatory nature of Decision No. 40 has been established above at recital (55). The mandatory nature of the other regulatory documents is demonstrated by the supervision and evaluation clauses which they contain. The notice 'Several Opinions on Resolving Overcapacity' states that *'The CBRC, the National Development and Reform Commission and the Ministry of Industry and Information Technology shall organize inspection and supervision of the implementation hereof in due course.'* Article 28 of the Green Credit Guidelines states that *'Regulatory authorities in the banking industry shall ... evaluate the effect of green credit extended by financial institutions in the banking industry in a comprehensive manner based on the status of off-site regulation and on-site inspection. The evaluation results shall be used as the important bases for the regulatory ratings, institution access, business access and performance appraisals of the senior management staff of financial institutions in the banking industry in accordance with the relevant laws and regulations'*. The Guidelines of the People's Bank of China, CBRC, CSRC, and CIRC on supporting the steel and coal industries to resolve overcapacity and achieve turnaround in development state that financial institutions should strengthen communication with local government departments.
- (120) On that basis, the Commission concludes that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the five cooperating state-owned banks whenever those were providing loans to the steel industry.
- (121) The Commission also sought concrete proof of the exercise of control in a meaningful way on the basis of concrete loans. During the verification, the five cooperating state-owned banks pointed to Articles 4 and 5 of the Bank law, according to which they are required to make an independent assessment of a loan request. They maintained that in practice they had used sophisticated credit risk assessment policies and models when granting

the loans at issue. However, no concrete examples were provided. The five cooperating state-owned banks refused to provide information, including their specific credit risk assessments, related to the sampled companies for regulatory and contractual reasons. With regard to the latter, they pointed out that without the consent of the borrower, they would breach contract by providing the information. All four groups of sampled exporting producers refused to sign a letter of consent allowing for an examination of their financial data at the bank's premises.

- (122) In the absence of concrete evidence of creditworthiness assessments, the Commission therefore examined the overall legal environment as set out above in recitals (100) to (120), in combination with the behaviour of the five cooperating state-owned banks with regard to the loans provided to the sampled companies. This behaviour contrasted with their official stance, as they were not acting like financial institutions would normally do based on a thorough market-based risk assessment.
- (123) The verification visits revealed that with the sole exception of certain loans in foreign currency and one single loan to one sampled exporting producer, loans were provided to the four groups of sampled exporting producers at interest rates close to the People's Bank of China ('PBOC') benchmark interest rates <sup>(1)</sup>, regardless of the companies' financial and credit risk situation. Hence, the loans were provided below market rates when compared to the rate corresponding to the risk profile of the four sampled exporting producers. In addition, all of the sampled companies had received revolving loans, which allow them to immediately replace the capital repaid on loans at the maturity date by fresh capital from new loans.
- (124) In the cases of the Shougang Group and the Benxi Group, payment schedules were restructured or debt was forgiven because of financial difficulties, and the Commission found one specific example of an intervention by the GOC which led to a debt restructuring against the financial institutions' better financial judgment <sup>(2)</sup>.
- (125) The Commission also found that loans which should have been reported by the banks as not normal loans had not been indicated as such in the national central credit register by the five cooperating state-owned banks. The obligation to report exists in particular when loans had been restructured, when the debtor defaulted on its payments, or when revolving loans had been issued. Such occurrences were found for all four groups of sampled exporting producers. According to the CBRC's 'Guidelines on risk-based loan classification', all of these instances should have been included in the central credit register. This lack of reporting by the financial institutions leads to a distorted picture of the company's credit situation in the central credit register, as the register does not show the real creditworthiness of the company. As a result, even if a financial institution were to apply a market-based risk assessment, it would have done so based on inaccurate information.
- (126) Following disclosure, the GOC submitted that the lack of reporting of some loans in the central credit register demonstrated that the legislative framework for lending practices was not binding. However, a partial non-compliance with the obligation to report certain loans by some actors does not mean that the Guidelines as such had no legal force.
- (127) Furthermore, the GOC noted that the annual reports of various Chinese banks contained extensive chapters on risk management and credit analysis, and clearly showed that loans to the steel industry had recently been restricted rather than promoted. The Commission considered that the information provided on credit risk assessment in the annual reports did not contain any new elements put forward by the GOC. In any event, those were abstract, and did not allow the assessment of individual cases, nor do they constitute proof that such assessment actually takes place. In addition, the examples provided by the GOC for EXIM and CCB merely related to a decrease in the percentage of loans provided to the steel industry. These statements did not provide any information about the conditions at which these loans were granted. In any event, in the absence of any

<sup>(1)</sup> The People's Bank of China RMB loan benchmark interest rate of financial institutions.

<sup>(2)</sup> Meeting minutes between Shougang Jingtang and bank consortium, 2013, exhibit 14 in the limited verification file of Shougang for the English version, and annex 13.3 in the deficiency response for the Chinese version.

information on the overall lending to the steel industry by all state-owned banks and private banks that are entrusted and directed, the fact that two of them have reduced their exposure is not meaningful. As for the annual report of China Merchants Bank, the statement of the GOC only referred to the fact that the bank adjusted its credit policies without any further details. Even if the China Merchants Bank 'raised its entry standards', the quoted reference also stated that the bank 'supported its quality customers'.

- (128) Therefore, the Commission did not see any reason to change its findings and concluded that the GOC has exercised meaningful control over the conduct of the five cooperating state-owned banks with respect to their lending policies and assessment of risk, where they provided loans to the steel industry.

(c) Conclusion on cooperating financial institutions

- (129) The Commission found that the legal framework set out above is being implemented by the five co-operating State-owned financial institutions in the exercise of governmental functions with respect to the steel sector, thereby acting as public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.
- (130) After disclosure, the GOC claimed that the Commission did not meet the evidentiary standards for determining that the state-owned banks were public bodies, as it allegedly relied exclusively on formal indicia of control such as the GOC's ownership or the power to appoint or nominate management officials to draw its conclusions. The Commission rejected this claim as unfounded, since it had also examined the exercise of this control in a meaningful manner in great detail in recitals (100) to (128) above.

3.4.1.2. Non-cooperating state-owned banks

- (131) As set out in section 3.2 above, the GOC did not request any of the other state-owned banks which provided loans to the sampled companies to return the specific questionnaire. Therefore, in line with the conclusions reached in recitals (61) to (75) above, the Commission decided to use best facts available to determine whether those state-owned banks qualify as public bodies.
- (132) Using publicly available information, such as the bank's website, annual reports, information available in bank directories or on the Internet, the Commission established that the following 30 banks that had provided loans to the four sampled groups of exporting producers were partially or fully owned by the State itself or by State-held legal persons: China Development Bank, Bank of Communications, China Everbright Bank, Postal Savings Bank, China Merchants Bank, Shanghai Pudong Development Bank, China Industrial Bank, Shenyang Rural Commercial Bank, Benxi City Commercial Bank, Benxi Commercial Bank, Kailuan Group Financial Co., Liaoning Hengyi Financing Lease Co., Ltd., Bank of Chengde, Bank of Hebei, Bank of Shanghai, Ningbo Bank, China CITIC Bank, China Guangfa Bank, China Bohai Bank, Huaxia Bank, China Resources Bank, China Zheshang Bank, China Credit Trust, Huarong International Trust Co. Ltd., Northern International Trust Co., Ltd., Zhangjiakou Bank, Hebei Iron and Steel Group Financial Co., Ltd, Shougang Group Finance, Finance Bureau of Benxi City, Zunhua Rural Credit Union. Information on the ownership structure of those banks can be found in the table below.

| Bank name                     | Information on ownership structure  |
|-------------------------------|---|
| <i>China Development Bank</i> | 100 % State-owned policy bank   |
| <i>Bank of Communications</i> | The Ministry of Finance and Central Huijin Investments hold 26,53 % of the bank's shares. |
| <i>China Everbright Bank</i>  | The Ministry of Finance and Central Huijin Investments hold 41,24 % of the bank's shares. |

| Bank name                               | Information on ownership structure  |
|---|---|
| <i>Postal Savings Bank</i>              | Initially set up in 2007 by the State Post Bureau, a Department which is currently annexed to the Ministry of Transport. Currently 64 % of shares are held by the China Post Corp., which is wholly-owned by the State.   |
| <i>China Merchants Bank</i>             | This bank is part of the China Merchants Group, a state-owned enterprise (SOE).   |
| <i>Shanghai Pudong Development Bank</i> | <p>China Mobile Communication Group Guangdong Limited (SOE): 20 %</p> <p>Shanghai International Group Co., Ltd (state-owned financial holding group): 16,93 %</p> <p>Shanghai Sitico Assets Management Co., Ltd. (part of the Shanghai International Group): 5,23 %</p> <p>Central Huijin Asset Management Co., Ltd.: 1,49 %</p> <p>(...)</p>   |
| <i>China Industrial Bank</i>            | <p>Finance Bureau of Fujian 17,86 % (State authority)</p> <p><u>State-owned legal persons:</u></p> <p>PICC Property and Casualty Company Limited 4,98 %</p> <p>PICC Life Insurance Company Limited 4,21 %</p> <p>Buttonwood Investment Platform LLC. 3,52 %</p> <p>China National Tobacco Corporation 3,22 %</p> <p>China Securities Finance Corporation Limited 2,87 %</p> <p>PICC Life Insurance Company Limited-universal 2,49 %</p> <p>Fujian Tobacco Haisheng Investment Management Co., Ltd. 2,32 %</p> <p>China Huijin Investment LLC. 1,55 %</p> <p><u>Domestic non state-owned legal person:</u></p> <p>Tianan Property Insurance Co., Ltd 1,71 %</p> <p>(...)</p> |
| <i>Shenyang Rural Commercial Bank</i>   | <p>Shareholding (as of end of 2014)</p> <p><u>State-owned legal persons:</u></p> <p>— Liaoning Energy Investment Group (10 %)</p> <p>— Yingkou Port Group (10 %)</p> <p><u>Domestic non state-owned legal person:</u></p> <p>— Shenyang Zhongyou Tianbao (Group) Materials and equipment (10 %)</p> <p>— Shenzhen Yunfan Technology (10 %)</p> <p>— Beijing Beili Bowen Technology (10 %)</p> <p>— Hangzhou Yongyuan Network Technology (10 %)</p> <p>— Dalian Yidu Group (10 %)</p> <p>(...)</p>   |
| <i>Benxi City Commercial Bank</i>       | <p>Shareholding as of End of 2015:</p> <p>— Local public finance: (1 shareholder) 12,08 %</p> <p>— State-Owned Enterprises (8 shareholders) 59,35 %</p> <p>— Private enterprises (6 shareholders) 23,17 %</p> <p>— Private individuals (789 shareholders) 5,42 %</p>  |



| Bank name  | Information on ownership structure   |
|--|--|
|  | Main shareholders:<br>Benxi City finance Office (local public finance) 12,08 %<br>Shenjing Bank (SOE) 11,88 %<br>Bengang Group (SOE): 9,99 %<br>Liaoning Rongda Investment Enterprise (SOE): 9,99 %<br>Dalian Port Group (SOE): 9,99 %<br>Liaoning Liaoan Engineering and Machinery Group (private enterprise): 9,99 %   |
| <i>Benxi Commercial Bank</i>                     | Idem   |
| <i>Kailuan Group Financial Co.</i>               | The Hebei Province State Asset Commission controls 100 % of the Kailuan Group, which in turn controls Kailuan Group Financial Co.  |
| <i>Liaoning Hengyi Financing Lease Co., Ltd.</i> | Owned by the Benxi Group (SOE)   |
| <i>Bank of Chengde</i>                           | Shareholding, as of end of 2015:<br>— Chengde City Financial Office: 7,359 %<br>— Chengde Zhongsheng Investment Group: 7,359 %<br>— Hebei Beifang Road engineering construction group 7,359 %<br>— Chengde City Jinhui Real Estate 6,211 %<br>— Hebei Beichen Powergrid construction 4,842 %<br>— Chengde city Shuangluan district Kangda industry and trade: 4,842 %<br>(...)   |
| <i>Bank of Hebei</i>                             | Shareholding, as of end of 2013:<br><u>State-owned legal persons:</u><br>— China Guodian Power Development: 18,98 %<br>— Zhongcheng Construction & Investment Holding: 10,98 %<br>— Hebei Port Group: 9,41 %   |
| <i>Bank of Shanghai</i>                          | Major shareholders according to the annual report 2015:<br>206 Chinese state-owned enterprises owned 56 % stake of the share capital in total, as at 31 July 2015.<br><u>Subsidiaries and wholly owned subsidiaries of Shanghai Municipal People's Government and district-level governments:</u><br>— Shanghai Alliance Investment (15,08 %)<br>— Shanghai International Port Group (7,20 %)<br>— Shanghai Huixin (2,16 %)<br>— Shanghai Huangpu District State-Owned Assets Corporation (2,20 %)<br><u>Companies under the supervision of the State Council (SASAC and the Ministry of Finance):</u><br>— China Jiayin Investment (5,48 %)<br>— China Shipbuilding & Offshore International of China Shipbuilding Industry Corporation (4,63 %)<br>— CITIC Guoan of CITIC Guoan Group (2,00 %) |

| Bank name                                     | Information on ownership structure   |
|---|--|
| <i>Ningbo Bank</i>                            | Largest shareholder with 21,38 % is the government of Ningbo, second largest with 20 % is the OCBC Bank of Singapore, and next (11,57 %) is a large Chinese textiles group.  |
| <i>China CITIC Bank</i>                       | CITIC Group Corporation Ltd., formerly the China International Trust Investment Corporation, is a state-owned investment company of the People's Republic of China. It now owns 44 subsidiaries including China CITIC Bank, CITIC Holdings, CITIC Trust Co. and CITIC Merchant Co.   |
| <i>China Guangfa Bank</i>                     | In 2015, 71,86 % of shares were held by state-held legal persons, 20 % were held by Citigroup  |
| <i>China Bohai Bank</i>                       | <p><u>SOEs:</u></p> <ul style="list-style-type: none"> <li>— TEDA Holding (25,00 %)</li> <li>— China COSCO Shipping (13,67 %)</li> <li>— Baosteel Group (11,67 %)</li> </ul> <p><u>State-held legal persons:</u></p> <ul style="list-style-type: none"> <li>— State Development &amp; Investment Corporation, SDIC (11,67 %)</li> <li>— Tianjin Trust (10,00 %)</li> <li>— Tianjin Shanghui Investment (8,00 %)</li> </ul> <p><u>Foreign investor:</u></p> <ul style="list-style-type: none"> <li>— Standard Chartered HK (19,99 %)</li> </ul> |
| <i>Huaxia Bank</i>                            | 20 % stake held by the Shougang Group (SOE), who is the largest shareholder. In addition, 18 % is held by the SOE China State Grid and 1,3 % by Central Huijin.  |
| <i>China Resources Bank</i>                   | The controlling shareholder is the China Resources Group (large SOE) with a 75 % stake   |
| <i>China Zheshang Bank</i>                    | <p>Shareholding as of March 2015:</p> <p><u>State-held legal persons:</u></p> <ul style="list-style-type: none"> <li>— Zhejiang Finance Development Corporation (19,96 %)</li> <li>— Zhejiang Provincial Energy Group Company Ltd (5,50 %)</li> </ul> <p><u>Domestic non state-owned legal person</u></p> <ul style="list-style-type: none"> <li>— Travelers Automobile Group (8,99 %)</li> <li>— Hengdian Group Holdings Limited (8,30 %)</li> <li>— Zhejiang Hengyi Group (6,21 %)</li> <li>— Others (51,04 %)</li> </ul>                    |
| <i>China Credit Trust</i>                     | This financial institution is related to one of the four state-owned asset management companies, whose main task is the acquisition, management and disposal of non-performing assets of state-owned banks.  |
| <i>Huarong International Trust Co. Ltd.</i>   | This financial institution is related to one of the four state-owned asset management companies, whose main task is the acquisition, management and disposal of non-performing assets of state-owned banks.  |
| <i>Northern International Trust Co., Ltd.</i> | This financial institution is related to one of the four state-owned asset management companies, whose main task is the acquisition, management and disposal of non-performing assets of state-owned banks.  |

| Bank name  | Information on ownership structure   |
|--|--|
| <i>Zhangjiakou Bank<br/>Handan Branch</i>                | Owned by the local government.   |
| <i>Hebei Iron and Steel Group<br/>Financial Co., Ltd</i> | Owned by the Hesteel Group (SOE)   |
| <i>Shougang Group Finance</i>                            | Owned by the Shougang Group (SOE)  |
| <i>Finance Bureau of Benxi<br/>City</i>                  | Local bureau of the Ministry of Finance, which provided a loan to one of the sampled companies |
| <i>Zunhua Rural Credit<br/>Union</i>                     | Owned by the local farmers' village  |

- (133) The Commission further established, absent specific information from the financial institutions at issue indicating otherwise, GOC ownership and control based on formal indicia for the same reasons as set out above in section 3.4.1.1. In particular, based on best facts available, managers and supervisors in those 30 state-owned banks are assumed to be appointed by the GOC and accountable to the GOC in the same manner as in the five cooperating state-owned banks.
- (134) With regard to the exercise of control in a meaningful manner, the Commission considered that the findings concerning the five cooperating financial institutions, which accounted for a substantial part of the loans to the four sampled groups of companies during the investigation period (ranging from over 50 % to almost 90 %, depending on the company) could be considered representative also for other non-cooperating state-owned financial institutions. The normative framework analysed in section 3.4.1.1(b) above applies to them in an identical manner. Absent any indication to the contrary, based on best facts available, the lack of concrete evidence of creditworthiness assessments is valid for them in the same manner as for the five cooperating state-owned banks, so that the analysis on the concrete application of the normative framework in section 3.4.1.1(b) above applies to them in an identical manner.
- (135) Moreover, the Commission observed that the majority of loan contracts which the Commission had obtained from the sampled companies had similar conditions and that the lending rates which had been agreed were similar and partly overlap with the rates provided by the five cooperating state-owned banks.
- (136) The Commission considered therefore that the findings for the five cooperating state-owned banks constituted the best facts available for assessing the 30 other state-owned banks, due to those similarities in loan conditions and lending rates and the representativeness of the five financial institutions that were verified.
- (137) On that basis, the Commission concluded that the other 30 state-owned banks which provide loans to the sampled companies are public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation.
- (138) After disclosure, the GOC objected to the assessment of the formal indicia of control by the Commission, stating that the Commission had made a general country-wide assessment of all financial institutions without taking into account the core characteristics and functions of particular entities and their relationship with the government. More specifically, the GOC held that a difference should be made between financial institutions held by SOEs and those which are directly held by the GOC. As far as the country-wide assessment is concerned, the Commission noted that it had carried out a specific public-body-analysis for each of the financial institutions for which the GOC had submitted the relevant information requested. Unfortunately, the GOC did not submit information for all the other financial institutions that extended loans to the sampled cooperating exporting producers, as explained in section 3.2. The Commission was thus forced to make a public-body-analysis on the basis of best facts available.

### 3.4.1.3. Conclusion on state-owned financial institutions

- (139) In light of the above considerations the Commission found that all 35 state-owned Chinese financial institutions that provided loans to the four sampled groups of cooperating exporting producers are public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation.
- (140) In addition, even if the state-owned financial institutions were not to be considered as public bodies, the Commission found that they would also be considered entrusted and directed by the GOC to carry out functions normally vested in the government, within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in recitals (143) and (144) below. Thus, their conduct would be attributed to the GOC in any event.

### 3.4.2. Entrustment and direction of private financial institutions

- (141) The Commission then turned to the ten remaining financial institutions. The following eight financial institutions were considered to be privately owned: HSBC, Standard Chartered Bank, Ping An Bank, Australia & New Zealand Banking Group (China) Limited, Shagang Group Finance, DBS Group (China) Limited, Bank of Beijing, Hang Seng Bank. In addition, Jinfeng Rural Commercial Bank and SPB Bank were considered to be private in the absence of any publicly available information on their ownership structure. The Commission analysed whether these financial institutions had been entrusted or directed by the Government of China to grant subsidies to the steel sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.
- (142) According to the WTO Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body <sup>(1)</sup>. In both cases, the government uses a private body as proxy to effectuate the financial contribution, and 'in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement' <sup>(2)</sup>. At the same time, paragraph (iv) does not allow Members to impose countervailing measures to products 'whenever the government is merely exercising its general regulatory powers' <sup>(3)</sup> or where government intervention 'may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market' <sup>(4)</sup>. Rather, entrustment and direction implies 'a more active role of the government than mere acts of encouragement' <sup>(5)</sup>.
- (143) The Commission noted that the normative framework concerning the steel industry mentioned above in recitals (100) to (120) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the notice 'Several Opinions on Resolving Overcapacity' is addressed to all policy banks, large banks, joint-stock banks, postal savings banks, foreign-invested banks, financial asset management companies, and other financial institutions under the management of the CBRC.
- (144) Furthermore, the verification visits in the sampled companies revealed that the majority of loan contracts which the Commission had obtained from the sampled companies had similar conditions, and that the lending rates provided by the private financial institutions were similar and partly overlapped with the rates provided by the publicly owned financial institutions.
- (145) The Commission also sent letters to these ten financial institutions with a request for further information on their loan practices and risk assessment. Only one replied, indicating that it could not reply without having consulted the regulatory authorities. After having consulted the CBRC, this financial institution informed the Commission that it was willing to cooperate, but that the CBRC suggested to it that such cooperation should be carried out through a regulatory cooperation mechanism (i.e. an exchange of information between Chinese and EU regulators respectively rather than directly between the Commission and the bank). The Commission welcomed this offer to cooperate, but noted that it was impossible to set up such an intermediate arrangement for the remainder of the

<sup>(1)</sup> WT/DS/296 (DS296 United States — Countervailing duty investigation on Dynamic Random Access Memory (DRAMs) from Korea), Appellate Body Report of 21 February 2005, para.116.

<sup>(2)</sup> Appellate Body Report, DS 296, para. 116.

<sup>(3)</sup> Appellate Body Report, DS 296, para. 115.

<sup>(4)</sup> Appellate Body Report, DS 296, para. 114, agreeing with the Panel Report, DS 194, para. 8.31. on that account.

investigation. In any case, the Commission did not receive any further letter or request from the CBRC itself. In addition, the financial institution did not provide any comments on substance within the set deadline. Hence, none of these institutions provided any evidence contradicting the Commission's findings.

- (146) In the absence of any divergent information received from the private financial institutions, the Commission concluded that, in so far as the steel industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the CBRC have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the steel industry.
- (147) Following disclosure, the GOC observed that the Commission needed to clarify whether it applied the 'entrustment' or 'direction' standard, as both are mutually exclusive. Furthermore, the GOC asserted that the Commission's interpretation of entrustment or direction was too narrow, as it focused on a legal standard implying 'a more active role of the government than mere acts of encouragement'. The GOC on the other hand maintained that the Panel in US — Export Restraints required a deeper analysis based on the existence of (i) an explicit and affirmative action, be it delegation or command, (ii) addressed to a particular party, and (iii) the object of which action is a particular task or objective. <sup>(1)</sup>
- (148) On the first point, the Commission considered that the 'entrustment' and 'direction' standards were not mutually exclusive, since in both cases, the government uses a private body as proxy to effectuate a financial contribution. Concerning the second point, the Commission disagreed with the GOC's interpretation of the legal standard to be applied. As already described in recital (142) above, the Commission based itself on subsequent WTO case law, in which the Appellate Body held that the replacement of the words 'entrusts' and 'directs' by 'delegation' and 'command' was too rigid as a standard <sup>(2)</sup> It follows that the standard of proof established by the Appellate Body in this case was less strict than the original Panel's interpretation in the US — Export Restraints case. In any event, the GOC failed to put forward any evidence or argument to rebut the Commission's findings about entrustment or direction in the sense of Article 3(1)(a)(iv) of the basic Regulation in the present investigation. This claim was therefore rejected.

### 3.4.3. Specificity

- (149) As demonstrated in recitals (100) to (120), several legal documents which are specifically targeted at companies in the steel sector, direct the financial institutions to provide loans at preferential rates to the steel industry. On the basis of these documents it is demonstrated that the financial institutions only provide preferential lending to a limited number of industries/companies which comply with the relevant policies of the GOC.
- (150) The Commission therefore concluded that subsidies in the form of preferential lending are not generally available but are specific within the meaning of Article 4(2)(a) of the basic Regulation. Moreover there was no evidence submitted by any of the interested parties suggesting that the preferential lending is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.
- (151) Following disclosure, the GOC indicated that, based on the AB report in US-Aircraft (Second Complaint), the specificity analysis should focus not only on *'the particular recipients identified in the complaint, but ... also on all enterprises or industries eligible to receive that same subsidy'* <sup>(3)</sup> and that, according to the Panel report in EC — Aircraft <sup>(4)</sup>, in order to be specific, a subsidy must be provided to a sufficiently limited 'group' of enterprises or industries. The GOC also submitted that the Commission failed to specify which part of the documents referred to by the Commission concerns the explicit granting of preferential loans to the steel industry. In this respect, the Commission referred to the documents that were listed in recital (100) above. It considered that references to the

<sup>(1)</sup> WT/DS194/R, Panel Report, US — Export Restraints, para. 8.29.

<sup>(2)</sup> Appellate Body Report, DS 296, paras. 110-111.

<sup>(3)</sup> WT/DS353/AB/R, Appellate Body Report, US — Aircraft (Second Complaint), para. 753.

<sup>(4)</sup> WT/DS316/R, Panel Report, EC — Aircraft, para. 7.919.

steel industry are sufficiently clear as this industry is identified either by its name or by a clear reference to the product that it manufactures or the industry group that it belongs to. Moreover, the fact that the GOC supports a limited group of encouraged industries, including the steel industry, makes this subsidy specific.

#### 3.4.4. *Benefit and calculation of the subsidy amount*

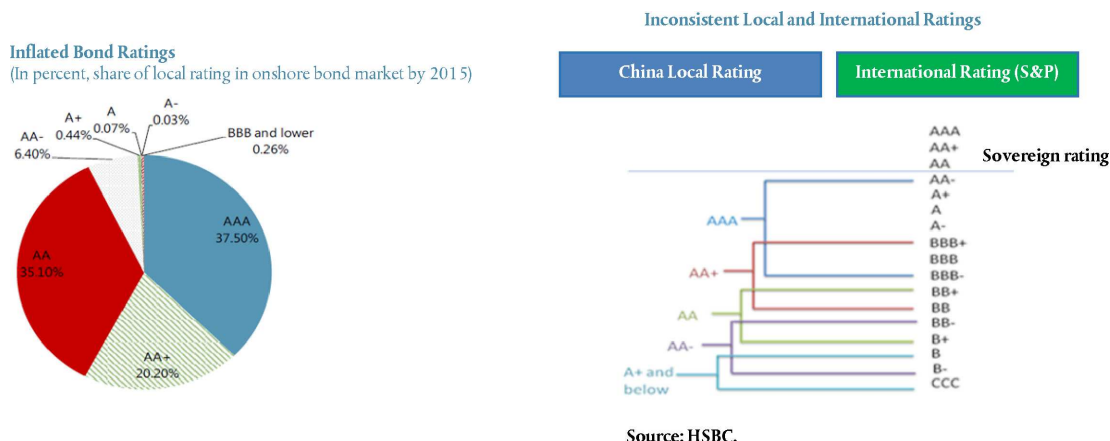
- (152) The Commission calculated the amount of the countervailable subsidy. For this calculation it assessed the benefit conferred on the recipients during the IP. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company pays on the government loan and the amount that the company would pay for a comparable commercial loan obtainable on the market.
- (153) In this regard, the Commission noted a number of specificities on the Chinese steel market. As explained in sections 3.4.1 to 3.4.3 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning financial market.
- (154) The sampled groups of companies differ in terms of their general financial situation. Each of them benefitted from different types of loans during the investigation period with variances in respect of e.g. maturity, collateral, guarantees and other attached conditions. For those two reasons, each company had a different average interest rate based on its own set of loans received.
- (155) The Commission found during the investigation that the Chinese financing practices in the steel market, as shown by the four sampled groups of producers, are characterised by 'revolving loans', i.e. loans which allow a company to replace the capital repaid on loans at the maturity date by fresh capital from new loans. According to the Chinese guidelines on risk-based loan classification, they should be classified as so called 'concerned' loans, indicating that even though a borrower is currently able to repay the principal and interest of the loan, there are some factors which may negatively affect its repayment ability. However, this was not done in practice as explained above in recital (125).
- (156) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. The Commission first analysed the general financial situation and the existence of revolving loans at group level. This analysis was then further extended to the individual companies in the group operating at the level of the HRF production. As a result, the Commission calculated the benefit from the preferential lending practices for each sampled group of exporting producers on an individual basis, and allocated such benefit to the product concerned.

##### 3.4.4.1. *Jiangsu Shagang Group*

- (157) The Jiangsu Shagang Group presented itself in a generally profitable situation during the IP, according to its own financial accounts. However, the profitability of the group was continuously weak over the period 2012-2015, indicating that minor changes in the internal or external business environment could expose the group to a loss-making situation. Its debt to assets ratio is high, but sustainable in a capital intensive industry such as the steel industry. This general perception was confirmed on-spot.
- (158) The Commission noted that the Jiangsu Shagang Group has been awarded an AAA rating by the Chinese credit rating agency China Lianhe Credit Rating Co., Ltd., for the issuance of bonds in the Chinese market.
- (159) However, the Commission also noted that a recent study published by the International Monetary Fund <sup>(1)</sup> showed significant divergences between local Chinese rating grades and international rating grades. For example, over 90 % of Chinese bonds are rated AA to AAA by local rating agencies, whereas less than 2 % of firms enjoy such top-notch ratings in the U.S. market.

<sup>(1)</sup> IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203

(160) This is further illustrated in the graph below taken from the study:



- (161) On this basis, even if the Jiangsu Shagang group is awarded a good credit rating by a Chinese rating agency, the Commission concluded that this rating is not reliable.
- (162) At the level of the individual companies involved in the production of HRF, losses were recorded in the accounts during the IP, but this was not a recurring situation, and other financial indicators, such as the debt to assets ratio or the interest coverage ratio did not indicate any significant structural problems regarding the companies' debt repayment abilities. However, on-spot, the Commission also found that this company received one revolving loan among the sampled loans. Moreover, in the loan tables, a significant number of short term loans was replaced with new loans for the same amount at expiry. Furthermore, one of the sampled companies in the group received a short term loan from a financial institution specialised in bad loans at a very high interest rate between 14 % and 16 %, which also indicates that it experienced liquidity issues in the IP.
- (163) This situation further confirmed the Commission's assessment to disregard the Chinese AAA rating of the Jiangsu Shagang Group as trustworthy.
- (164) Finally, a commercial paper issued by the Jiangsu Shagang Group had received a Prime-1 rating from Moody's in 2013. However, that rating was based on the rating of the Bank of China, New York Mellon branch, which had provided a guarantee, precisely because Jiangsu Shagang Group did not have a reliable and independent rating on its own.
- (165) The lending financial institutions had not carried out a creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Jiangsu Shagang Group were at market level.
- (166) The Commission considered that the financial situation of the group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. 'Investment grade' means that bonds issued by the company are judged by the rating agency as likely enough to meet payment obligations that banks are allowed to invest in them.
- (167) Non-investment grade bonds are regarded as having speculative characteristics. Obligors rated at non-investment grade will likely have some quality and protective characteristics, but these may be outweighed by large uncertainties or major exposure to adverse conditions. The BB rating is the highest grade in this category, which reflects the fact that an obligor is less vulnerable in the near-term than other lower-rated obligors. However, it faces major ongoing uncertainties and exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitments according to Standard and Poor's credit rating definitions.
- (168) The premium expected on bonds issued by firms with this rating (BB) was then applied to the standard lending rate of the People's Bank of China ('PBoC') in order to determine the market rate.

- (169) That mark-up was determined by calculating the relative spread between the indexes of US A rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the benchmark interest rates as published by the PBoC at the date when the loan was granted, and for the same duration as the loan in question. This was done individually for each loan provided to the company.
- (170) As for loans denominated in foreign currencies in the PRC, a similar situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, BB rated corporate bonds with relevant denominations issued during the IP were used to determine a mark-up, which was applied to the USD LIBOR lending rate in order to determine an appropriate benchmark.
- (171) Furthermore, in order to take into account the increased risk highlighted by the revolving loan practices at the level of the individual companies involved in the HRF production, the Commission tried to identify another appropriate benchmark on the Chinese market. In this respect, the Commission noted that one state-owned bank had provided a loan with a maturity of 16 months to one of the companies of the Jiangsu Shagang Group for an interest rate between 14 % and 16 %. According to the Jiangsu Shagang Group, the comparatively high interest rate was due to the fact that this specific financial institution specializes in loans to companies in financial distress, and the company called upon its services to alleviate a temporary liquidity problem. Given that revolving loans are usually a sign of short term liquidity problems, the conditions and the maturity of that loan are considered to be appropriate to reflect the additional benefit derived from the use of revolving loans.
- (172) The Commission thus found it appropriate to use this figure as the relevant benchmark for all loans with a maturity of 2 years or less provided at the level of the production companies which were making use of revolving loans. Indeed, revolving loans are usually concluded for short durations. It is highly unlikely that a revolving loan would be found for a maturity of more than two years, and the concrete evidence of the loans verified in the sampled companies supports this conclusion.
- (173) In its disclosure comments, the GOC and the sampled cooperating companies took issue with the methodology related to the relative spread, as described in recital (169) above. In view of these comments, the Commission sent subsequently an additional document to all interested parties, in which it further explained the methodology used.
- (174) In summary, the following comments were received:
- (1) International banking practice works by a reference to a benchmark plus an additional premium, which is expressed as an absolute mark-up and not as a relative mark-up. As example, it could be IBOR or LIBOR or EURIBOR plus 1 %.
  - (2) The two elements of the interest rate reflect the country or currency risk (that is the part of the interest that corresponds to the central bank or risk-free company rate) and the company specific risk (that is the mark-up, expressed in absolute terms, for the BB-rated company).
  - (3) The relative spreads get larger when the risk free rate gets lower, even though the absolute spread stays the same. In addition, the methodology produces extremely high relative spreads for negative interest rates.
  - (4) According to historical data provided by the GOC ('Historical Data on Relative Spread'), the absolute spread remains roughly stable over time, while the relative spread shows great variations. Furthermore, the average absolute spread over time is close to the absolute spread found in the IP.
  - (5) The Commission used the average relative spread during the IP for loans with different maturities, ranging from 1 to 10 years. In fact, the application of the relative spread to bonds with different maturities shows big differences depending on the duration of the loans, and shows that absolute and relative spread move in different directions for different maturities.



- (6) Using a single average relative spread of bonds with different maturities instead of a weighted average assigns too much weight to short-term maturities, as bonds are typically issued with a long maturity. This was especially relevant since the Commission only used the relative spread for long-term loans.
- (7) The relative spread has been applied to the wrong PBoC reference rate for loans granted before 2015 but which were still outstanding during (part of) 2015, as the Commission took into account the PBoC rate applicable at the time when the loan was granted. The Commission should have used the 2015 PBoC rates instead.
- (8) The sources referred to in the additional disclosure document referred to the use of a relative spread with regards to yields and not to the difference between loan interest rates obtained from banks. None of the sources stated that this difference needed to be expressed in a relative way, and not all of them were credible sources.
- (175) On the first point, the Commission recognised that commercial banks usually use a mark-up expressed in absolute terms. It observed that this practice seems mainly based on practical considerations, because the interest rate is ultimately an absolute number. The absolute number is however the translation of a risk assessment that is based on a relative evaluation. The risk of default of a BB-rated company is X % more likely than default of the government or the risk-free company. This is a relative evaluation, which is illustrated by data submitted by the GOC on the historical development of spreads (see analysis below). The relative spread captures changes in the underlying market conditions which are not expressed when following an absolute spread.
- (176) On the second and third point, the Commission agreed with the starting point that interest rates reflect not only company risk profiles, but also country- and currency specific risks. Often, as in the present case, the country- and currency-specific risk varies over time, and the variations are different for different countries. As a result, the risk-free rates vary significantly over time, and are sometimes lower in the US, sometimes in China. These differences relate to factors such as observed and expected GDP growth, economic sentiment, and inflation levels. Because the risk-free rate varies over time, the same nominal absolute spread can signify a very different assessment of the risk. For example, where the bank estimates the company-specific risk of default at 10 % higher than the risk-free rate (relative estimation), the resulting absolute spread can be between 0,1 % (at a risk-free rate of 1 %) and 1 % (at a risk-free rate of 10 %).
- (177) From an investor perspective, the relative spread is hence a better measure as it reflects the magnitude of the yield spread and the way it is affected by the base interest-rate level.
- (178) The method is country-neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US the method will lead to lower absolute mark-ups. To further illustrate this point, the data provided by the GOC show that the relative spread was low before the bust of the dotcom-bubble in 2002. It returned to low levels until the financial and economic crisis caused by subprime and sovereign debt. Following that financial and economic crisis, the relative spreads remained at a higher level compared to before that crisis. This higher level of the relative spread reflects well worsened macro-economic fundamentals and suppressed aggregate demand, which also caused the inflation rate in the US (and other advanced economies) to fall to very low levels.
- (179) The data provided by the GOC shows that the absolute spread fails to reflect the worsened underlying fundamentals. For instance, there is a relatively small difference in the absolute yield spread in the US – 2,46 p.p. in 2003 and 2,35 p.p. in the IP, even if there is a large difference in the average inflation rate – 2,27 % in 2003 and only 0,12 % in 2015. The relative spread better captures the divergences in the economic situation between the two, namely 48,86 % in 2003 against 71,57 % in 2015. Similarly, in 2006 (before the crisis) the absolute spread was at 1,55 %, which is almost the same as in 2017 (1,56 %), even though the underlying market conditions have significantly changed. That change in market conditions is expressed in the relative spread, which was 27 % in 2006 and 46 % in 2017.
- (180) Finally the Commission acknowledged that using the relative spread methodology in cases of negative interest rates would produce unreasonable results. However, that scenario is not at issue in the present case. The Commission considered that during the IP the relative spread better captured the underlying market conditions affecting company-specific credit risks than using an absolute spread approach.

- (181) On the fourth point, the Commission interpreted the facts presented by the GOC in a different manner. Using the set of data provided by the GOC, it can be seen that the absolute spread is not as stable as alleged by the GOC, but instead varies over time, from 1 % to 4,5 %. In addition, the relative spread follows exactly the same trend as the absolute spread over the past 23 years, i.e. when the relative spread increases the absolute spread also increases and vice versa. As for the alleged volatility of the relative spread, the magnitude of the changes are similar — the difference between the highest and the lowest figures is 530 % for the relative spread and 450 % for the absolute spread. Finally, when applying the data provided by the GOC to the historical PBoC rates, it shows that in some years the relative methodology produces a lower benchmark than the absolute spread.
- (182) Based on the additional information document, the GOC claimed that the years 2002 and 2008 to 2010 should be taken out from the analysis because they were 'abnormal' years. The Commission fails to see why changes in the business cycle should be disregarded. Recessions are part of the economic life cycle and an analysis of the data should take into account all facets of this life cycle, not only the good years. This holds true also for extraordinary strong recessions, such as the economic and financial crisis 2008 to 2010.
- (183) On the fifth point, the use of the relative spread observed during the IP indeed provided results diverging from the absolute spread when it was applied more precisely at the level of different maturities instead of as an average for all loan durations. However, these diverging results were not due to the fact that the relative spread as such was erroneous, but due to the fact that there were major differences in the time structure of risk between the US and the PRC interest rates. Indeed, in the US, the difference in interest rate between a 1-year and a 10-year bond was much wider (ranging from 2,5 % to 3,7 %) than the difference between the 1-year and above 5-year interest rates of the PBoC (0,8 % difference). The divergence thus stemmed from the starting point on which the relative spread was applied. If the PRC would have had a similar time structure of risk as a starting point, then the resulting benchmark rates would have again followed a logical trend across all loan durations. For example, assuming a 3 % difference between short-term and long-term PBoC interest rates would have resulted in a benchmark rate of 15,81 % for long-term loans, which is higher than the 14,22 % benchmark for short-term loans.
- (184) The Commission recognized this issue from the outset. In order to minimize the impact of differences in time structure of risk between the two countries, the Commission decided to use the average relative spread for all loan durations, thus bringing the international benchmark closer to Chinese conditions and avoiding penalization of Chinese companies having a high proportion of short-term loans.
- (185) On the sixth point, the Commission disagreed with the GOC's claims. The claim that the Commission only used the relative spread for long-term loans is factually incorrect. The methodology of the relative spread was used for both long-term and short-term loans. Using a single average relative spread for loans with different maturities did not assign too much weight to short-term maturities, as the Commission in practice applied this spread to loans with various maturities.
- (186) On the seventh point, the Commission recognized that it had used data from two different time periods, i.e. the relative spread applicable during the IP and the PBoC rate applicable at the time when the loan was granted, and that the time period considered for each loan should match. However, the Commission disagreed with the GOC's conclusion that all data should have been taken from the IP instead. In this respect, the Commission noted that the specific conditions attached to each loan, such as for example the variability of the interest rate, should be taken into account when determining the correct time period to be used for the spread as well as for the PBoC rate. However, in the present investigation, this information was not available to the Commission for all loans granted to the sampled companies. In view of the absence of information on the specific conditions of the loans granted in the past, and upon GOC's request, the Commission decided that it would use the relative spread and the PBoC rate applicable during the IP for all loans granted to the sampled companies for this investigation. The Commission adjusted downward the amount of benefit related to preferential lending accordingly.
- (187) Finally, on the last point, the Commission agreed that the sources referred to in the additional information document referred to the use of a relative spread with regards to yields and that none of the sources stated that this difference needed to be expressed in a relative way. The Commission pointed to the fact that the aim of the relative spread exercise was to construct a credit risk premium, to be applied to the risk-free rate in order to

arrive at a benchmark interest rate. Credit risk premiums are indeed related to how investors view securities, and what is the yield they expect to receive in return for the increased risk. Furthermore, even though not all sources were based on scholarly books, they did echo the references made in other sources. For all these reasons, the Commission still viewed all of these sources as being relevant.

- (188) The Commission thus maintained its position that the relative spread method reflects more adequately the risk premium that a financial institution would apply to the Chinese exporting producers in a non-distorted market, in particular given that the base interest rate in the PRC and the base interest rate in the US have evolved differently over time.
- (189) Furthermore, following disclosure, the GOC and two sampled companies also objected to the use of an interest rate between 14 % and 16 % for all loans with a maturity of 2 years or less at the level of the companies which were making use of revolving loans. The following comments were received:
- (1) The Commission classified all loans with a duration of two years and less as revolving loans without an adequate explanation or supporting evidence. Not all short-term loans provided to the sampled companies were revolving loans.
  - (2) Revolving loans are not necessarily a sign of liquidity issues. Revolving loans are part of standard business practices in Europe. They do not generate higher interest rates, and have been used by the EU steel industry. More specifically, the Shougang Group claimed that the Commission identified revolving loans mainly for the companies Qian'an Coal, Xishan Coking and Shougang Corp., which were not in financial distress.
  - (3) The proxy benchmark used by the Commission was not consistent with Article 14 of the SCM Agreement. The loan which was used as a basis for the proxy benchmark was a single, exceptional loan accounting for only 2 % of the total loans provided to the Jiangsu Shagang Group, and the Commission did not provide a reasoned explanation on why this would be comparable to a commercial loan. In addition, the Commission did not make adjustments to approximate this loan to comparable commercial loans.
- (190) On the first point, the Commission did not classify all loans with a duration of two years and less as revolving loans. The existence of revolving loans in a given company was merely considered an indication that the company was in a worse financial situation than what the financial statements would suggest at first sight, and that the additional risk was related to short-term liquidity problems. Therefore, all short-term loans had to be given a higher risk premium, whether such loans were revolving or not.
- (191) Concerning the second point, the Commission disagreed with the assessment made by the GOC and the exporting producers. The Chinese authorities themselves consider revolving loans to be an additional factor of credit risk. As stated in the CBRC's 'Guidelines on risk-based loan classification', revolving loans should be reported at least as a 'concerned' loan <sup>(1)</sup>. A loan falling under this category means that even though a borrower can pay the principal and interest of the loan now, there are some factors which may negatively affect the repayment thereof.
- (192) Revolving credit facilities do indeed exist in Europe and have been used by the Union steel industry, but their terms and conditions are very different from the Chinese revolving loans. Revolving credit facilities in the Union are basically credit lines, with a pre-determined maximum amount that can be withdrawn and repaid on several occasions during a pre-specified time period. In addition, contrary to what the GOC claims, such credit facilities entail an additional cost, be it a contractual margin on top of the usual short-term market rates <sup>(2)</sup>, or a predetermined management fee. Furthermore, the example of BNP Paribas provided by the GOC also foresaw a fee for unused capital over the duration of the credit facility. On the other hand, the revolving loans found during the verification visits at the Chinese sampled companies did not have conditions different from other short-term loans. They were not labeled as being a credit line or a revolving credit facility and there were no extra fees or margins attached to it. At first sight, they appeared to be normal short-term loans. However, when verifying the repayments of such loans during the verification visit, it became clear that the capital amount was actually being repaid by fresh loans received from the same bank for the same amount within a week before or

<sup>(1)</sup> Article X, point II of the CBRC's Guidelines on risk-based loan classification.

<sup>(2)</sup> Also the example of BNP Paribas provided by the GOC makes this point.

after the maturity date of the initial loan. The Commission then extended its analysis to the other loans in the loan tables and found in most cases other instances with exactly the same characteristics. For all these reasons, the Commission maintained its position on revolving loans.

- (193) The Commission disagreed on the facts of the specific claim of the Shougang Group that the Commission identified revolving loans mainly for the companies Qian'an Coal, Xishan Coking and Shougang Corp. The Commission identified revolving loans in all of the verified companies of the Shougang Group, including in the production companies Shougang Mining and Qian'an, where all of the short-term loans granted during the IP were considered to be revolving loans.
- (194) Finally, on the third point, the Commission considered that the loan provided to the company in the Jiangsu Shagang Group was a comparable commercial loan as the conditions for granting it, described in recital (162) above, corresponded to a financial situation characterized by short-term liquidity issues. In addition, the maturity of the proxy loan (16 months) generally corresponded to the short-term nature of the loans on which this proxy benchmark was applied for the benefit calculation. Nevertheless, the proxy benchmark rate was adjusted to take into account interest rate differences for loans with a maturity of less than one year compared to loans with a maturity of one to two years, based on the respective differences between the two maturities in the PBoC rates. The detailed calculation of this adjustment was provided to the companies concerned.
- (195) The Commission therefore rejected all claims related to the use of an interest rate between 14 % and 16 % for all loans with a maturity of 2 years or less at the level of the companies which were making use of revolving loans.
- (196) In addition, the Jiangsu Shagang group criticised that the Commission double counted loans borrowed by its subsidiaries from Shagang Finance and the parent company in its calculation of the benefit. Shagang also claimed that the Commission should have subtracted the 'negative benefit' i.e. the benefit on the loans for which the actual interest payments were higher than the calculated benchmark rates by the Commission. The Commission rejected both claims.
- (197) Regarding the alleged double counting, the Commission noted that Shagang had mainly referred to inter-company loans between Shagang Finance and related steel producing companies. In this respect, it recalled that Shagang Finance had not provided any information on loans taken by itself to the Commission. Moreover, the Commission did not calculate any benefit at the level of Shagang Finance. This excludes any possibility of double counting. With respect to the few remaining inter-company loans between the Shagang Group and the steel producing companies, the Commission verified whether double counting had actually occurred. However, already before disclosure the loan-sheet received from Shagang Group had only indicated two loans as inter-company loans, whereas the loan-sheet of Hongchang Plate only indicated one such loan. Moreover, even when comparing these loans on substance, they did not match in terms of borrowed amount, duration and applicable interest. The company did not provide any new information after disclosure to substantiate its claim that those loans were in reality corresponding. Therefore, the Commission considered that each of these loans was reported only once, either on the group or on the producing company list of loans.
- (198) Regarding the claim related to the 'negative benefit' referred to in recital (196), the Commission observed that no issue of fair comparison arises. In particular, the receipt of a loan at a non-preferential rate cannot offset the benefit received from another loan received with a preferential rate. The Commission only took into account the loans for which the calculated benchmark was higher than the interest rate paid by the companies when calculating the benefit. This claim was therefore rejected.

#### 3.4.4.2. Hesteel Group

- (199) The Hesteel Group also presented itself in a generally profitable financial situation according to its own financial accounts. It was not loss-making, but profitability levels were generally weak, which exposes the group to adverse changes in business, financial, or economic conditions. The group also has a high debt to asset ratio.

- (200) At the level of the companies involved in the production of HRF, the general financial situation was presented in a similar way to the group level, with low profitability levels but no losses. Furthermore, other financial indicators, such as the debt to assets ratio or the interest coverage ratio did not indicate any significant structural problems regarding the companies' debt repayment abilities. However, on-spot, the Commission found that 80 % of the sampled loans examined received by these companies were revolving and were substantial in amount, pointing to a more fragile situation in terms of liquidity than the financial statements would lead to believe.
- (201) The Commission noted that the Hesteel Group was awarded an AAA- rating by a Chinese credit rating agency, the Agricultural Bank of China Hangang Sub-branch. For the same reasons as set out in recitals (159) to (161) above, the Commission concluded that this rating is not reliable. Furthermore, the existence of the revolving loans further confirmed the Commission's assessment to disregard the Chinese AAA- rating of the Hesteel Group.
- (202) The Commission therefore considered that it is appropriate to use the BB benchmark as set out in recitals (166) to (168) above at the level of the group activities to calculate the overall benefit conferred upon HFR derived from the absence of a proper risk assessment.
- (203) In addition, in order to take into account the increased risk highlighted by the existence of revolving loans at the level of the individual companies involved in the HRF production, and given that the conditions and the maturity of these loans were essentially comparable to the high interest loan mentioned in recital (162) above, the Commission found it appropriate to use the same benchmark as set out in that recital as the relevant benchmark for all loans with a maturity of 2 years or less provided at the level of the production companies which were making use of revolving loans. As revolving loans are usually concluded for short durations, it is highly unlikely that a revolving loan would be found for a maturity of more than two years, and the concrete evidence of the loans verified in the sampled companies supports this conclusion.
- (204) The claims and arguments put forward by the GOC and some sampled companies with regard to the general methodology for the relative spread and the use of a proxy benchmark apply equally to the Hesteel Group. The Commission rebutted these points already in recitals (175) to (195).
- (205) Upon disclosure, the complainant wondered whether the Commission had taken into account a significant capital injection of circa 1 billion Euro to Hesteel in 2010, still conferring benefits to this group in the IP. The Commission observed that this alleged capital injection was subject to a question in April 2017 from the United States and the EU to the PRC within the framework of the Committee on Subsidies and Countervailing Measures of the WTO. The Commission did not find any evidence during this investigation that this alleged capital injection had conferred any benefit to Hesteel Group during the IP.

#### 3.4.4.3. Shougang Group

- (206) The Shougang Group presented itself in a generally difficult financial situation according to its own financial accounts. Based on the evidence received for the years 2014 and onwards, the Group was loss-making both in 2014 and 2015. It was highly leveraged and it increased its short-term liabilities by more than 10 % during the IP. Furthermore, 25 revolving loans were found on-spot during the verification at the level of the parent company. Moreover, in the loan tables, a significant number of additional short term loans was replaced with new loans for the same amount at expiry.
- (207) At the level of the companies involved in the production of HRF, the financial statements as well as evidence found relating to specific loans, in asset evaluation and feasibility reports, showed that these companies were operating as a going concern despite consecutive years of losses or marginal profits, high debt to assets ratios, low interest coverage, worsening financial indicators and an uncertain outlook for the future. These companies did not generate enough operating profit to cover the payment of their interest expenses for several consecutive years during the period 2012-2015. Furthermore, the Commission found instances of debt restructuring due to payment difficulties during the verification. In addition, all of the short-term loans granted during the IP to one of the production companies were revolving loans.
- (208) Despite these circumstances, the Shougang Group was awarded an AAA credit rating by a Chinese credit rating agency, Dagong International. For the same reasons as set out in recitals (159) to (161) above, as well as the evidence found during the verification, the Commission disregarded the Chinese rating of the Shougang Group.

- (209) In view of the above general situation, the Commission found it necessary to find an appropriate benchmark at the level of the group. In order to take into account the increased risk highlighted by the existence of revolving loans, and given that the conditions and the maturity of these loans were essentially comparable to the high interest loan mentioned in recital (162) above, the Commission used the same benchmark as set out in that recital for all loans with a maturity of 2 years or less provided. As revolving loans are usually concluded for short durations, it is highly unlikely that a revolving loan would be found for a maturity of more than two years, and the concrete evidence of the loans verified in the sampled companies supports this conclusion.
- (210) For the remaining loans at group level with a maturity of 2 years and above, based on the available information, the Commission reverted to the general benchmark awarding the highest grade of 'Non-investment grade' bonds to the group level, as explained in recitals (166) to (168).
- (211) Furthermore, the Commission concluded that at the level of the companies involved in the production of HRF, the situation was such that these companies would not have had access to further loans during the IP absent State support. Therefore, the received benefit for these companies went beyond an ordinary mark-up of an interest rate. Rather, the benefit during the IP derived from the award of loans which would not have been granted absent State support based on these companies' overall financial situation. In this respect, the Commission noted that the Shougang Group is a large State Owned Enterprise ('SOE') which was earmarked as a 'champion' in the 11th Five Year Plan and the 12th Five Year Steel Plan.
- (212) Therefore, in line with section E(b)(V) of the 1998 guidelines <sup>(1)</sup>, the Commission decided to treat the outstanding amounts of these loans during the IP as a grant provided in pursuit of governmental policies. Based on the information available, the Commission only countervailed the loans granted during the IP.
- (213) The claims and arguments put forward by the GOC and some sampled companies with regards to the general methodology for the relative spread and the use of a proxy benchmark apply equally to the Shougang Group. The Commission rebutted these points already in recitals (175) to (195).
- (214) Following disclosure, the GOC also objected to the treatment of loans as grants and put forward the following arguments:
- (1) The Commission did not disclose the essential facts related to its finding of 'State support' absent which these companies could not have received the concerned loans.
  - (2) The countervailing of certain loan amounts as grants was inconsistent with Articles 1.1(b), 14 and 14(b) of the SCM Agreement. The GOC based its claim on the Panel Report in the case EC — DRAMS, in which this approach was found to be unreasonable and inconsistent with Articles 1.1(b) and 14 of the SCM Agreement. <sup>(2)</sup>
  - (3) The Commission's calculation methodology represented an exception not permitted by Article 14(b) of the SCM Agreement, as it converted the legal nature of the contribution from loans to grants. The Panel in EC — DRAMS underlined that a loan is fundamentally different from a grant, as it entails a debt still owed <sup>(3)</sup>. All loans were accounted for as loans and not grants in the companies' accounting records, none of the loans reported in the loan tables mentioned any debt forgiveness, and interest payments were paid on those loans. Finally, section E(b)(V) of the EU's 1998 guidelines to calculate the amount of a subsidy assumes the existence of debt forgiveness or default.
  - (4) The alleged economic situation of the concerned companies did not justify the treatment of certain loan amounts as grants. Indeed, the concerned companies formed part of a large group of companies, and their

<sup>(1)</sup> Guidelines for the calculation of the amount of subsidy in countervailing duty investigations (OJ C 394, 17.12.1998, p. 6).

<sup>(2)</sup> Panel Report, EC — DRAMS, para. 7.213.

<sup>(3)</sup> Panel Report, EC — DRAMS, para. 7.212.

loans were guaranteed by the parent companies. In addition, EU producers were also making losses since 2012, but still received loans and were able to refinance their debts. More specifically, concerning the Shougang Group, the Jingtang production company actually made profits in 2014 and 2015, even though it only started commercial operations in 2010. Finally, the Commission itself considered the financial situation of the Shougang and Benxi Groups as corresponding to a 'BB' rating, which should be sufficient to obtain loans on the market.

- (215) The exporting producers mainly echoed the comments of the GOC. However, some additional specific comments were received from the Shougang Group:
- (1) The Shougang Group noted that certain loan amounts were reclassified as grants for three companies of the Group without adequate explanation or reasoning.
  - (2) The Shougang Group as a whole was profitable during 2014 and 2015, and had high levels of undistributed profits. The Qian'an production company in the group was loss-making in 2015, but was actually profitable between 2011 and 2014. The Shougang group also disagreed with the fact that the production companies did not generate sufficient profit to cover their interest expenses, and pointed out that the operating profit reported in the financial statements actually was the profit after payment of the financial expenses.
- (216) On the first point, the Commission disagreed with the GOC's statement that it did not disclose the essential facts related to the State support underlying the Commission's findings. The State support mentioned in recital (211) above was part of the overall reasoning on preferential lending and thus referred to the same evidence as the one already described at large in sections 3.4.1 to 3.4.3. In addition, the Commission provided some additional reasoning on the existence of State support to some companies in the steel industry having financial difficulties in section 3.5 below. As both the Shougang Group and the Benxi Group were considered to be national champions, the reasoning described in section 3.5 also applies to them.
- (217) Concerning the second and third points, the Commission clarified that it had not considered the loans provided to the sampled companies to equate to grants as such. Contrary to what was stated by the GOC, the Commission had not changed the legal nature of the financial contribution from loans to grants. Rather, the Commission had acknowledged that the loans provided to the companies had payment obligations attached to it. Only when calculating the benefit of such transaction, the Commission did not make a comparison of interest rates, but took the outstanding capital amount of the loan as a starting point.
- (218) In this respect, the Commission further specified that it did not take the entire amount of the loan into account for the benefit calculations. Only the outstanding part of the loans was taken as a starting point, and several downward adjustments were subsequently made on this amount. First, the benefit was determined based on the outstanding capital amount of the loan minus the interest paid during the IP. Second, the capital amount of the loan was adjusted by depreciating it according to the underlying purpose of the loan. If the purpose of the loan was labelled as liquidity/working capital, the full amount was taken. If the loan was clearly linked to a long-term investment, the capital amount was depreciated over the duration of the loan, and only the amount allocated to the IP was taken into consideration. Finally, the amount of the benefit was further adjusted to reflect only the number of days in the IP the loan was running.
- (219) All these adjustments show that the Commission did not take into account the full amount of the loan for the benefit calculation. Therefore, the Commission found that the reasoning as applied in the Panel Report in EC — DRAMS was not applicable to this investigation. That case, dealt with a question of calculation methodology <sup>(1)</sup>, and the Panel mainly took issue with the fact that the EC had taken the full amount of Hynix's loans as a benefit, without taking into consideration the obligations attached to it <sup>(2)</sup>. As this was not the case in the current investigation, this claim was therefore rejected.
- (220) With respect to the GOC's claim that the financial situation of the Shougang and Benxi Groups corresponded to a 'BB' rating, which should be sufficient to obtain loans on the market, the Commission recalled that it made a differentiated assessment of the companies at the group level and the companies at the level of the production companies. The Commission's conclusion was that the financial situation corresponding to a BB rating was only applicable at the level of the group, but not at the level of the companies involved in production activities. It thus rejected this claim.

<sup>(1)</sup> Panel Report, EC — DRAMS, para. 7.178.

<sup>(2)</sup> Panel Report, EC — DRAMS, para. 7.212.

- (221) With respect to the GOC's observation that the EU producers were also making losses, but were still able to refinance their debts, the Commission noted that, contrary to the situation in the PRC, the refinancing of debts of the EU industry took place at the level of the overall group, not at the level of the production companies. The financial situation of the EU industry at the level of the group was not the same as at the level of the individual production companies. In particular, the consolidated financial statements of the Arcelor Mittal, Thyssen Krupp and Tata Groups all showed profits during the IP. In addition, as described in recital (192) above, the terms and conditions of the refinancing operations in the EU and in the PRC were very different. Therefore, this observation was ill-founded.
- (222) As for the Shougang Group more specifically, the fact that the Group as whole has been profitable did not put in question the Commission's calculation methodology on reported loans. As explained in (156), companies in the group have been assessed separately and conclusions and treatment adapted according to their individual situation. This approach was confirmed during the verification visit where parties stated that in its assessment of the guarantor, the specific company's situation is considered and not the situation at group level. As for the guarantees, except for Qian'an Coal, no information was provided in the questionnaire replies on the guarantors of the reported loans. Therefore, this claim was rejected.
- (223) Concerning the financial situation of the Jingtang production company, this company has been continuously loss-making since the start of its commercial operations in 2010, except for the years 2014 and 2015, when it barely managed to break even with profits in a range of 0 % to 0,5 %. In addition, since its creation, this company has recorded accumulated losses of [13-16] billion RMB. The company has continuously performed far below the expectations raised in the feasibility report on which the approval of the Jingtang construction project was based. During the IP, an asset evaluation report was drawn up in relation to a change in the shareholding structure of Shougang Jingtang. This report evaluated the net value of the company during the IP at less than a third of the initial investment amount. The Commission therefore maintained its conclusions with respect to the Jingtang production company.
- (224) With respect to Shougang Group's questioning of the Commission's calculation methodology, the Commission clarified that it did notice that in all Chinese companies the operating profit reported in the financial statements actually was the profit after payment of the financial expenses. Therefore, when calculating its financial indicators, the Commission had added the financial expenses back to the operating profit in order to know the earnings before interest expenses of each company. Therefore, the Commissions maintained its position on the calculation of the financial indicators.
- (225) Upon disclosure, the Shougang Group also criticised the lack of detail with respect of the Commission's treatment of three of its producing companies. The Commission observed that it provided full detail in its second specific disclosure. In particular, the Commission made an assessment of the financial situation of Qian'an Coal, Shougang Mining, and Xishan Coking over the period 2012-2015. Next to the profitability, other financial ratios were considered in order to draw conclusions on the financial soundness of the companies, as described in recitals (226) to (228) below.
- (226) In the case of Qian'an Coal, the company had recorded marginal profits (close to the break-even point) before 2014, a small profit in 2014 (less than 3 %), and was loss-making during the IP. Its turnover had been continuously decreasing and nearly reduced by half between 2012 and 2015. Moreover, the company had a continuously high leverage (debt/asset ratio over 60 %) in that time span, and did not generate enough operating profit to cover the payment of its interest expenses during the IP (interest coverage ratio < 1). About one third of the short-term loans of the company granted during the IP (and representing around one third of the total outstanding debt of the company) are considered to be revolving loans.
- (227) Shougang Mining had been continuously loss-making over the period 2012 to 2015, except in 2013, when it generated a small profit margin. In total, the company had recorded accumulated losses of around 2 billion RMB in 2015. The turnover of the company had been continuously decreasing over the past 4 years, and reduced by more than half between 2012 and the IP. Shougang Mining had a continuously high leverage (debt/asset ratio around 80 %) over the past 5 years, and did not generate enough operating profit to cover the payment of its interest expenses in any of the past 5 years (interest coverage ratio < 1). The only loan granted to the company during the IP was considered to be a revolving loan. The Commission therefore maintained its conclusions with respect to Qian'an Coal and the Shougang Mining companies.



(228) Xishan Coking was created at the end of 2009, and started with a large loss (exceeding 300 million RMB), which had still not been absorbed during the IP. The turnover of the company had been decreasing over the past 4 years and the company was increasingly leveraged over that time span. Many loans granted to the company during the IP were considered to be revolving loans. However, the Commission accepted the claim by the Shougang Group that a high proportion of the debts of the Xishan Coking could actually be attributed to Jingtang and that the financial results of Xishan Coking were highly affected by this fact. In addition, the company had continuously recorded profits between 2012 and 2015. As a result, the 2015 loans by Xishan Coking were not treated as grants, and the benefit received was recalculated under the same methodology as for the companies at the level of the group, as described in recitals (209) to (210) above.

#### 3.4.4.4. Benxi Group

(229) The Benxi Group presented itself in a generally difficult financial situation according to its own financial accounts. It was loss-making in 2015, it was highly leveraged and it continuously increased its liabilities over the period 2012-2015. Furthermore, revolving loans were found on-spot during the verification at the level of the parent company.

(230) At the level of the company involved in the production of HRF, the financial statements as well as evidence found relating to specific loans showed that this company was operating as an ongoing concern despite consecutive years of losses or marginal profits, continuously increasing debt to assets ratios, worsening financial indicators and an uncertain outlook for the future. The company did not generate enough operating profit to cover the payment of its interest expenses during the entire period 2012-2015. Furthermore, the Commission also found one revolving loan among the sampled loans, and in the loan tables, some short term loans were replaced with new loans for the same amount at expiry.

(231) Despite these circumstances, the Benxi Group was awarded a AA+ domestic credit rating during the IP by a Chinese subsidiary of Moody's. However, the general disclaimer of this subsidiary highlights that it only provides domestic ratings reflecting relative credit risk within China, whereas Moody's role is to provide management expertise, technological support and analyst training. Therefore, in light of the overall distortions of Chinese credit ratings mentioned in recitals (159) to (161) above, as well as the evidence found during the verification, the Commission disregarded the Chinese rating of the Benxi Group.

(232) In view of the above general situation, the Commission found it necessary to find an appropriate benchmark at the level of the group. In order to take into account the increased risk highlighted by the existence of revolving loans, and given that the conditions and the maturity of these loans were essentially comparable to the high interest loan mentioned in recital (162) above, the Commission used the same benchmark as set out in that recital for all loans with a maturity of 2 years or less provided. As revolving loans are usually concluded for short durations, it is highly unlikely that a revolving loan would be found for a maturity of more than two years, and the concrete evidence of the loans verified in the sampled companies supports this conclusion.

(233) For the remaining loans at group level with a maturity of 2 years and above, based on the available information, the Commission reverted to the general benchmark awarding the highest grade of 'Non-investment grade' bonds to the group level, as explained in recitals (166) to (168).

(234) Furthermore, the Commission concluded that at the level of the production company, the situation was such that that this company would not have had access to further loans during the IP absent State support. Therefore, the received benefit for these companies went beyond an ordinary mark-up of an interest rate. Rather, the benefit during the IP derived from the award of loans which would probably not have been granted absent the State support based on the company's overall financial situation. In this respect, the Commission noted that the Benxi Group is a large SOE which was earmarked as a 'champion' in the 12th 5 Year Steel Plan.

(235) Therefore, as illustrated in section E(b)(V) of the 1998 guidelines, the Commission decided to treat the outstanding amounts of these loans during the IP as a grant provided in pursuit of governmental policies. Based on the information available, the Commission only countervailed the loans granted during the IP. The benefit

conferred was determined based on the outstanding capital amount of the loan minus the interest paid during the IP. The capital amount of the loan was adjusted by depreciating it according to the underlying purpose of the loan. If the purpose of the loan was labelled as liquidity/working capital, the full amount was taken. If the loan was clearly linked to a long-term investment, the capital amount was depreciated over the duration of the loan, and only the amount allocated to the IP was taken into consideration. Finally, the amount of the benefit was further adjusted to reflect only the number of days in the IP the loan was running.

- (236) The claims and arguments put forward by the GOC and some sampled companies with regards to the general methodology for the relative spread and the use of a proxy benchmark applies equally to the Benxi Group. The Commission's position on these claims, as described above in recitals (175) to (195) applies equally to the Benxi Group.
- (237) Furthermore, the claims and arguments put forward by the GOC and some sampled companies with regards to the general methodology for the loans treated as grants applies equally to the Benxi Group. The Commission's position on these claims, as described above in recitals (216) to (221) applies equally to the Benxi Group.
- (238) Following disclosure, the Benxi Group mainly echoed the comments of the GOC. However, it also added some additional specific comments:
- (1) The Benxi Group claimed that the financial indicators mentioned in its specific disclosure document did not adequately demonstrate that Bengang had no ability to repay its loans. Furthermore, even if Bengang might have been faced with some financial difficulties in recent years, it still kept normal operations during these years, and had sufficient capacity to repay its loans.
  - (2) The Benxi Group also argued that the analysis of its credit rating was not comprehensive enough.
  - (3) Finally, the Benxi Group claimed that the complainant had not submitted this subsidy program in its application, and that the approach to treat loans as grants was therefore not in accordance with Article 11.1 of the SCM Agreement.
- (239) On the first point, the Commission noted that the company recognized in its reply to the disclosure document that it had been faced with financial difficulties in the recent years, and that it did not dispute any of the findings made by the Commission, such as declining profit margins and turnover, high debt ratio, and inability to pay the interests on loans. The company also had significant losses during the IP. Furthermore, the Benxi Group recognized that some loans were not repaid in line with the original repayment schedule, thus showing that the company experienced difficulties in its ability to repay loans. In view of this overall situation of the company, the Commission maintained its position that under normal market conditions, the company would not have had access to further loans.
- (240) Concerning the fact that the concerned companies formed part of a large group of companies, and that their loans were guaranteed by the parent companies, the Commission recognized that the loans provided to the production company in the Benxi Group were indeed guaranteed by another company in the group. However, it became clear during the verification visit that these guarantees were provided by other several other companies in the group which were in a similar difficult financial situation. In fact, all of the verified companies in the Benxi Group were loss-making during the IP, and the company itself stated in its questionnaire reply that the group was in a situation of 'sustained loss' affecting several affiliated companies, with no prospects of coming back to profits in the near future.
- (241) With respect to the credit rating of the company, the Commission considered that the confirmation of the difficult financial situation by the company itself clearly showed that it should not have gotten an AA+ rating. The only new evidence provided by the company in this respect was that there was not necessarily a link between its financial difficulties and its credit rating, as it was a large iron and steel group with a long history and a good credit reputation. The Commission considered that this kind of argumentation adequately reflected the Commission's claim that credit ratings in China were not reliable, as they were mainly based on the size and the status of companies, and not on their actual credit situation.
- (242) Concerning the third point, the Commission disagreed with the company's claim that the subsidy related to loans treated in a similar way as grants was not included in the complaint. Indeed, this concerned a separate calculation methodology within the preferential lending, which was indeed included in the complaint. This claim was therefore rejected.

### 3.4.5. Conclusion on preferential lending

- (243) The investigation showed that all sampled groups of exporting producers benefited from preferential lending during the IP. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, this benefit should be considered as a countervailable subsidy.
- (244) The subsidy rate established with regard to this scheme during the IP for the sampled groups of companies amounts to:

| Preferential policy loans |                        |                        |                                   |
|---------------------------|------------------------|------------------------|-----------------------------------|
| Company/Group             | Overall Subsidy amount | From state owned banks | From other financial institutions |
| Benxi Group               | 26,70 %                | 26,70 %                | 0 %                               |
| Hesteel Group             | 4,68 %                 | 4,66 %                 | 0,02 %                            |
| Jiangsu Shagang Group     | 1,99 %                 | 1,44 %                 | 0,55 %                            |
| Shougang Group            | 27,91 %                | 27,17 %                | 0,74 %                            |

### 3.5. De Facto Guarantee

- (245) The complainant alleged the existence of a separate subsidy programme which entails a potential direct transfer of funds by the GOC through a de facto guarantee that ensures the continuity of operations for companies in the hot-rolled flat industry that, due to their financial situation, face difficulties to repay loans.
- (246) The Commission noted that the evidentiary threshold for proving unwritten measures under the WTO is particularly demanding in terms of the evidence required to show their existence. In particular, the investigation authority must clearly establish, through arguments and supporting evidence, at least that the alleged unwritten 'rule or norm' is attributable to foreign government; its precise content; and that it does have general and prospective application. This high threshold is only met if sufficient evidence is put forward with respect to each of these elements <sup>(1)</sup>.

#### 3.5.1. Attribution to the GOC

- (247) The Commission first verified whether the alleged de facto guarantee could be attributed to the GOC. In that respect, it confirmed that there is a governmental policy in the PRC to develop large national champions (mostly state-owned) in the steel industry over smaller (mostly private) mills.
- (248) This policy was already in place in 2009, when the 'Blueprint for the Steel Industry Adjustment and Revitalisation' was issued by the State Council. This document stated that as a basic principle, the key backbone enterprises and key categories in the iron and steel industry should be supported to keep a stable market and to promote a stable development of the industry.
- (249) In order to counter the crisis of 2008, the Blueprint document further emphasized that the layout of the industry should be adjusted and optimized based on 'the control of total quantity in combination with the elimination of backward capacity, enterprise restructuring and relocation of urban steel'.

<sup>(1)</sup> WT/DS294/AB/R (US- Zeroing), Appellate Body Report of 18 April 2006, paragraph 198; and WT/DS438/AB/R (Argentina — Import Restrictions), Appellate Body Report of 15 January 2015, paragraph 5.108.

- (250) According to the document, the objective of the GOC is to establish several super-large enterprises with strong independent innovation capability and international competitiveness, and to make the capacity of the top five domestic iron and steel enterprises account for over 45 % of the national output. Therefore, several super-large iron and steel enterprises are expected to be built with a capacity of over 50 000 000 tonnes and strong international competitiveness such as Baosteel, Ansteel and Wuhan Iron and Steel. In addition, several large iron and steel enterprises with a capacity of 10 000 000-30 000 000 tons are expected to be formed. Furthermore, the document mentions the completion of the relocation of Shougang Group and the construction of its Caofeidian Iron and Steel Base as an objective.
- (251) The Blueprint policy document envisaged and promoted financial support for these key backbone enterprises, and also foresees support in terms of share issuance, corporate bonds, medium term notes, short-term financing bill, bank loan and absorption of private equity investment for those projects consistent with environmental protection and land laws and rules and investment management regulations, and enterprises with merger & acquisition or restructuring activities.
- (252) On the other hand, however, the document mentioned financing limitations for the projects with illegal construction and unauthorized approval and enterprises with 'backward capacity'. It specifically stated that 'in case of random extension and renovation or transfer of backward facilities to other places, the financial institutions will not provide the credit loan support in any forms, and the national land and resources department will not handle the land use procedures'.
- (253) The 12th Five Year Steel Plan continued the same strategy as set out in the Blueprint. The 12th Five Year Plan also referred to key steel enterprises, and optimization of the layout of the industry is considered to be a main target. It specified that big projects are encouraged while small projects should be curbed, and it combined this with the elimination of backward production capacities.
- (254) One of the main objectives of the 12th Five Year Plan was also to reach a certain industrial clustering level by significantly reducing the quantity of the steel enterprises. The target was to increase the proportion of the steel production of the top-10 steel enterprises to 60 % of the national aggregate. This target had to be achieved through the promotion of mergers, restructuring, and elimination of backward capacities. The Plan furthermore contained a list defining which products and production processes are considered to be backward.
- (255) All of the sampled companies in this investigation were mentioned as key large-scale enterprises in the 12th Five Year Steel Plan.
- (256) Finally, the 13th Five Year Steel Plan mentions in chapter I.2 that 'Some Chinese steel enterprises are good and some others are not.' One of the key objectives is again to increase the industrial concentration degree (of the first 10 enterprises) to 60 % in 2020 (since the target was not reached during the 12th Five Year Steel Plan). This fits within the overall objective to reduce overcapacities, and is again accompanied by a determination to foster mergers and restructuring
- (257) Chapter IV of the 13th Five Year Steel Plan also emphasizes the necessary withdrawal of zombie enterprises from the market. These enterprises are defined as enterprises with successive years of losses, with insufficient assets to reduce debt, with losses and no perspectives, and relying on banks' continuous loans and other methods. According to the Plan, enterprises with insufficient assets to reduce debt or defaulting on their debt should proceed to bankruptcy and reorganization.
- (258) In addition, the specific guidelines relating to financial support and the reduction of overcapacity which were discussed in section 3.4.1.1 above, make a distinction between the 'good' companies, i.e. large industrial groups that follow the national industrial policies, and the 'bad' companies, i.e. smaller companies with 'backward production capacity', that do not fit into governmentally encouraged categories.
- (259) Since all the above-mentioned documents (the 2009 Blueprint, the 12th and 13th Five Year Plan and the respective Steel plans) emanate from the State Council, the policies therein can therefore be attributed to the GOC.

### 3.5.2. Precise content of the de-facto guarantee

- (260) The Commission then analysed the precise content of the alleged de facto-guarantee. It did not find that there was an overall encompassing unwritten measure to bail-out all steel companies in China. Rather, all the documents presented in the previous section make a distinction between 'good' companies, i.e. large industrial groups that follow the national industrial policies, and 'bad' companies, i.e. smaller companies with 'backward production capacity', that do not fit into governmentally encouraged categories. Accordingly, even assuming its very existence, an unwritten de-facto guarantee would only apply to the national champions that fall within the first category.

### 3.5.3. General and prospective application of the de-facto guarantee

- (261) The Commission then tried to ascertain whether such an unwritten guarantee was of general and prospective application.
- (262) The impact of this governmental policy was recently described in a Research Report of the National Academy of Development and Strategy of the Renmin University of China <sup>(1)</sup> on zombie companies in China. According to this report, 51 % of the listed Chinese steel companies in 2013 could be defined as zombie enterprises. Seen from the angle of ownership, the proportion of zombie enterprises was the highest in state-owned and collectively-owned enterprises. From the perspective of age and scale, old large and medium-sized enterprises have the highest proportion of zombie enterprises. The report also analysed the causes for the existence of such a large number of zombie enterprises in certain sectors, and found that local governments continuously support zombie enterprises on the verge of bankruptcy and maintain the picture through subsidies and loans. Therefore, if a company receives more subsidies or is a state-owned enterprise, the chance for it to become a zombie is higher.
- (263) Furthermore, if an industry, such as the steel industry, is listed by the government in the key support scope, local governments will rush to support this industry, thus leading to overcapacity and the creation of additional zombie companies. Then the government tried to reduce the number of companies by encouraging mergers and acquisitions by larger enterprises. The report confirms that local governments made stipulations that only allow a certain number of big enterprises to be saved during industry aid. Finally, the report highlights that credit discrimination by financial institutions also influences the creation of zombie enterprises. Indeed, after 2008, the profit ratio of SOEs saw a decrease, whereas their debt ratio increased every year. On the contrary, the debt ratio of private enterprises decreased although their profit ratio remained stable. This indicates that it was easier for the SOEs than for the private enterprises to get loans.
- (264) In summary, the aim of this policy is thus to financially support the 'good' companies, i.e. the key enterprises or national champions, through all sorts of measures, whereas the bad ones shall disappear by not awarding them any loans at all. Furthermore, the champions are encouraged to eliminate their smaller competitors through mergers and acquisitions supported by the government. The economic benefit of this policy may go as far as constituting an implicit de-factor guarantee for some State owned large enterprises in financial difficulties.
- (265) However, the Commission was unable to identify any more precise criteria for the general and prospective application of such an unwritten measure as a separate scheme. It rather concluded that having treated preferential loans given to specific large SOEs in financial difficulties as grants rather than loans, that there was no need to further investigate into this issue.
- (266) Upon disclosure, the complainant took issue with this conclusion and argued that the 'wider measure is the state plan to subsidise steel production' that is 'implemented through both written norms such as law and rules as well as orders, administrative guidelines or recommendations'. In support of its view that the evidentiary requirements were met, the complainant cited inter alia the ruling of the WTO Appellate Body in the US-Zeroing case, where the evidence consisted of considerably more than a string of cases, or repeat action <sup>(2)</sup>. The Commission did not agree with this analysis. In the US-Zeroing case, the continuous practice of the US Department of Commerce to apply a certain unfair calculation methodology in anti-dumping cases was at issue. This was a very specific course of action, based on an internal preference of one government authority which is specifically entrusted by

<sup>(1)</sup> Nie Huiha, Jiang Ting, Fang Mingyue, 'China's zombie firms: cause, consequence and cure', Renmin University, 2016.

<sup>(2)</sup> WT/DS/294/AB/R, Appellate Body Report of 18 April 2006, US — Zeroing, para. 204.

the federal government to conduct trade defence cases. It cannot be compared to the construction of 'wider measure' which would encompass the prospective action of potentially thousands of government actors at local, regional or central level, implementing one single plan. The Commission thus rejected this claim.

### 3.6. Government provision of goods at less than adequate remuneration

(267) As mentioned in section 3.2 above, the Commission informed the GOC that, given the absence of questionnaire replies from producers of iron ore, coke and coking coal, it might have to base its findings on best facts available pursuant to Article 28(1) of the basic Regulation as far as the information relating to suppliers of iron ore, coke and coking coal was concerned. The Commission investigated whether the sampled companies received raw materials for producing HRF at subsidised prices from the Government.

#### 3.6.1. Iron ore

(268) All sampled companies purchased iron ore domestically from either related or unrelated companies but also imported iron ore in significant volumes. The Commission established, based on verified information concerning individual iron ore transactions from all sampled companies that the purchase prices for iron ore were similar irrespectively of whether the iron ore was procured domestically or imported or procured from related or unrelated companies.

(269) Two sampled companies had related overseas mines. However, the investigation did not reveal any indications of State support connected to the investment in those mines. In any case, the purchase (transfer) price from the related mines appeared to have been set at arm's length.

(270) The complainant also alleged that the GOC used the China Iron & Steel Association ('CISA') to influence the international purchase price negotiations. The Commission found evidence that pointed to such practice in the past. However, this practice was abandoned in 2013 and there is no indication that the practice conferred any benefits to the sampled HRF producers during the investigation period.

(271) Based on the above findings the Commission did not establish that the Government provided a subsidy to the sampled companies for the purchase of iron ore during the investigation period.

#### 3.6.2. Coke

(272) All sampled companies purchased coke domestically from either related or unrelated companies but also imported small quantities of coke. The Commission established, based on verified information concerning individual transactions from all sampled companies that the purchase prices for coke were similar irrespectively of whether the coke was procured domestically or imported or procured from related or unrelated companies.

(273) Based on verified information from the sampled companies the Commission could not establish that the GOC had provided a subsidy to them for the purchase of coke during the investigation period.

#### 3.6.3. Coking coal

(274) The GOC explained that the overall coal export market is regulated under State-trading enterprise rules, which have been notified to the WTO <sup>(1)</sup>. Export volumes are restricted through export quota, and exporters need to apply for an export license. This export license has only been granted to five companies, namely China National Coal Group Corporation, China Minmetals Corporation, Shanxi Coal Import and Export Group Co. Limited, Shenhua Group Corporation Ltd. and Aluminum Corporation of China Limited. All of them are large SOEs. In addition, an export duty of 3 % is in place. According to the information received from the GOC, both exports and imports represent less than 1 % of domestic consumption, respectively.

<sup>(1)</sup> G/STR/N/15/CHN, State trading new and full notification pursuant to article XVII:4(a) of the GATT 1994 and paragraph 1 of the understanding on the interpretation of article XVII, 19 October 2015.

- (275) GOC officials also confirmed during the verification visit that the GOC sets the number of production days per year for the coking coal companies, which is a strong indication that the supply of domestic coking coal is influenced by State intervention. No further information was provided by the GOC on the functioning of the coking coal market.
- (276) All sampled companies purchased coking coal domestically from either related or unrelated companies, but also imported small quantities of coking coal. The Commission established, based on verified information concerning individual transactions from all sampled companies that the purchase prices for coking coal were similar irrespectively of whether the coking coal was procured domestically or imported and irrespectively of whether the coking coal was procured from related or unrelated companies.
- (277) Although the investigation found that the supply of coking coal on the domestic market is to a certain extent influenced by the State for the reasons explained in recitals (274) and (275) above, the Commission could not establish that the sampled companies received any subsidies for related to the supply of coking coal or that they derived any benefit during the IP from the government interventions.
- (278) Upon disclosure, the complainant alleged that the Commission should also have evaluated the extent to which domestic price on iron ore, coke and coal influences the price that the exporting producers are prepared to pay for imported raw materials. The Commission rejected that argument, as the long-term viability of the costs of production of a producer is not required to make a determination of a benefit. Rather, the Commission had to assess — and did assess — whether the government had provided iron ore, coke or coal for less than adequate remuneration. That was not the case as the producers had received their raw materials at market price.

#### 3.6.4. Power

- (279) All sampled companies either generated power themselves or purchased it from the grid. The purchase prices of power from the grid followed the officially established price levels set at provincial level for large industrial clients. As found in previous investigations <sup>(1)</sup>, this level did not confer a specific advantage for these large industrial clients. Moreover, in this case, the Commission found no evidence that any of the companies benefitted from a lower preferential rate. The Commission also did not find any specific electricity-related subsidies in the sampled companies.
- (280) Based on verified information from the sampled companies the Commission could thus not establish that the GOC had provided a subsidy to them for the purchase of energy during the investigation period.

#### 3.6.5. Land use rights (LUR)

- (281) All land in the PRC is either owned by the State or by a collective, constituted of either villages or townships, before the land's legal or equitable title may be patented or granted to corporate or individual owners. All parcels of land in urbanized areas are owned by the State and all parcels of land in rural areas are owned by the villages or townships therein.
- (282) Pursuant to the constitutional law of the PRC and the Land Law, companies and individuals may however purchase 'land use rights'. For industrial land, the leasehold is normally 50 years, renewable for a further 50 years.
- (283) According to the GOC, since 31 August 2006, by Article 5 of the State Council's Notice regarding Strengthening Regulation of Land (GF[2006] No.31), title to industrial land can only be granted from the State to industrial enterprises through bidding or a similar public offering process whereby the final deal price must not be lower than the minimal bidding price. The GOC considers that there is a free market for land in the PRC, and that the price paid by an industrial enterprise for the leasehold title of the land reflects the market price.

<sup>(1)</sup> Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 16), recital 182 (*Organic coated steel*).

(a) Legal basis

(284) The land-use right provision in China falls under Land Administration Law of the People's Republic of China. In addition, the following documents also are part of the legal basis:

- Law of the People's Republic of China on Urban Real Estate Administration;
- Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas;
- Regulation on the Implementation of the Land Administration Law of the People's Republic of China;
- Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation;
- State Council's Notice regarding Strengthening Regulation of Land (Guo Fa [2006] No.31).

(b) Findings of the investigation

(285) According to Article 10 of the 'Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation', local Authorities set land prices according to the urban land evaluation system, which is only updated every three years, and the government's industrial policy.

(286) In previous investigations, the Commission found that prices paid for LUR in the PRC are not representative of a market price determined by free market supply and demand, since the bidding or public offering process was found to be unclear, non-transparent and not functioning in practice, and prices were found to be arbitrarily set by the authorities. As mentioned in the previous recital, the authorities set the prices according to the Urban Land Evaluation System which instructs them among other criteria to consider also industrial policy when setting the price of industrial land. Also, at least in the steel sector, the access to industrial land is by law limited only to companies respecting the industrial policies set by the State <sup>(1)</sup>.

(287) The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that none of the sampled exporting producers had gone through bidding or a similar public offering process for any of its land use rights, not even for the land use rights obtained recently. Land use rights held by the sampled companies from before the year 2000 were usually allocated to the company free of charge. More recent plots of land have been allocated by local authorities at negotiated prices.

(288) The Commission also found that companies in the Shougang Group received refunds from local authorities to compensate for the prices which they paid for the LURs, for example for works done by the company itself as regards basic infrastructure on the land. Furthermore, some of the land use rights obtained by companies in the Shougang Group only had to be paid several years after the land had been put into use.

(289) The above evidence contradicts the claims of the GOC that the prices paid for LUR in the PRC are representative of a market price which is determined by free market supply and demand.

---

<sup>(1)</sup> Article 24 of the Order of the NDRC No. 35 (Policies for Development of Iron and Steel Industry): 'For any project that fails to comply with the development policies for the iron and steel industry and has not been subject to examination and approval or where the examination and approval thereof fails to comply with the relevant provisions, the department of state land and resources shall not handle the formalities for land-use rights.'



- (290) Following disclosure, the GOC claimed that there is also a dynamic land monitoring system in addition to the urban land monitoring system, and that this was acknowledged in the Commission's expiry review on Solar Panels originating in the People's Republic of China. The Commission acknowledged that the dynamic land monitoring system was indeed analysed in the Solar Panels expiry review regulation.<sup>(1)</sup> In recitals 421 and 425 thereof, the Commission had found that these prices are higher than the minimum benchmark prices set by the urban land evaluation system and used by local governments, because the latter are updated only every three years, while the dynamic monitoring prices are updated quarterly. However, there was no indication of land prices being based on the dynamic monitoring prices. In fact, the GOC had confirmed during the investigation on solar panels that the urban land price dynamic monitoring system monitors the fluctuations of the price levels of land in certain areas (i.e. 105 cities) in the PRC and is designed to assess the evolution of land prices. However, the starting prices in biddings and auctions were based on the benchmarks established by the land evaluation system. In addition, in this case, the sampled groups of companies received their plots of land for free or through allocation. Therefore, the fact that the latter system existed is irrelevant since it did not apply to the sampled companies.
- (291) The GOC also claimed that the fact that land had been allocated at negotiated prices did not reflect the absence of fair competition or the fact that companies paid prices below the normal market rate. However, neither the GOC nor the sampled companies provided any new evidence that the prices paid for allocated land were based on market prices.
- (292) Furthermore, the GOC claimed that the Commission referred to findings of previous investigations to establish whether market prices are distorted as a result of government intervention, instead of using the particular facts underlying the case. The Commission notes that it did use the particular facts of the case, as described in recitals (287) to (288) above, which supported the Commission's conclusion that the findings of previous investigations were still valid.
- (293) The Benxi Group also claimed that the Commission should accept the land price in mainland China, as the company considered that it had paid a reasonable price reflecting the real value of the land. However, the company did not provide any new evidence which would change the Commission's assessment. The claim was therefore rejected.
- (294) The GOC also argued that refunds concerning works done by the company for basic infrastructure did not constitute subsidies as this is normally a task for the local government. However, Article 3 (1) (iii) of the basic Regulation only exempts general infrastructure from the notion of a subsidy. Infrastructure services dedicated to the exclusive use of a company or its clients, such as private roads or other utilities, filling holes, other works in order to render the land slot ready for building a factory is not a general infrastructure to be provided by the State. Rather, it is a company dedicated infrastructure which would not have been built unless the company were to be established in a particular land slot. The Commission therefore rejected this claim.

(c) Conclusion

- (295) The situation concerning land provision and acquisition in the PRC is non-transparent and the prices are arbitrarily set by the authorities.
- (296) Accordingly, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods which confers a benefit upon the recipient companies. As explained in recitals (285) to (289) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recitals (300) to (311) below) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate.

---

<sup>(1)</sup> Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037 (OJ L 56, 3.3.2017, p. 1), (Solar panels).

- (297) In the context of preferential access to industrial land for companies belonging to certain industries, the Commission notes that the price set by local authorities has to take into account the government's industrial policy, as mentioned above in recital (285). Within this industrial policy, the steel industry is considered to be a pillar of the Chinese industry, and is listed as an encouraged industry. In addition, Decision No. 40 of the State Council requires that public authorities ensure that land is provided to encouraged industries. Article 18 of Decision No. 40 makes clear that industries that are 'restricted' will not have access to land use rights. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries, in this case the steel sector, and government practices in this area are unclear and non-transparent.
- (298) Following disclosure, the GOC argued that the specificity finding of the Commission is moot if there is no functioning market for land in China, since in that case, all companies in China would have the same starting and sales price for the same parcel of LUR. In addition, the GOC considered that the assessment on specificity was not sufficiently reasoned, because it only referred to steel as an encouraged industry.
- (299) The Commission considered that the existence of a non-functioning market in China does not necessarily preclude a specificity finding within this market. Indeed, the fact that the sampled companies received land use rights for free shows that they received a specific preferential treatment. On the other hand, the fact that some companies are receiving an additional preferential treatment is separate from the way in which the market as a whole is functioning. The evidence collected in the sampled companies also confirmed that the 'encouragement' referred to in the legal basis was applied in practice. Therefore, the Commission maintained its conclusion that this subsidy is specific and that, consequently, this subsidy is considered countervailable.

#### 3.6.6. Calculation of the subsidy amount

- (300) As in previous investigations <sup>(1)</sup> and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei' or 'Taiwan') were used as an external benchmark <sup>(2)</sup>. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e., the actual price paid as stated in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for land use rights and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.
- (301) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:
- the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;
  - the physical proximity of the PRC and Chinese Taipei;
  - the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;
  - the strong economic ties and cross border trade between Chinese Taipei and the PRC;
  - the high density of population in many of the provinces of the PRC and in Chinese Taipei;
  - the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and
  - the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.

<sup>(1)</sup> See, amongst others, Council Implementing Regulation (EU) No 452/2011 (OJ L 128, 14.5.2011, p. 18) (*Coated fine paper*), Council Implementing Regulation (EU) No 215/2013 (OJ L 73, 15.3.2013, p. 16) (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366 (OJ L 56, 3.3.2017, p. 1) (*Solar panels*), Commission Implementing Regulation (EU) No 1379/2014 (OJ L 367, 23.12.2014, p. 22) (*Filament glass fibre*), Commission Implementing Decision 2014/918/EU (OJ L 360, 17.12.2014, p. 65) (*Polyester Staple Fibers*).

<sup>(2)</sup> As accepted by the General Court in Case T-444/11 *Gold East Paper and Gold Huacheng Paper versus Council*, Judgment of the General Court of 11 September 2014 ECLI:EU:T:2014:773.

- (302) Following the methodology applied in previous investigations, the Commission used the average land price per square meter established in Taiwan corrected for inflation and GDP evolution as from the dates of the respective land use right contracts. The information concerning industrial land prices was retrieved from the website of the Industrial Bureau of the Ministry of Economic Affairs of Taiwan. The inflation and GDP evolution for Taiwan were calculated on the basis of inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the IMF for 2015.
- (303) After disclosure, the GOC stated that the Commission should have used a domestic instead of an external benchmark to calculate the amount of the alleged subsidy for the following two reasons: first, if the alleged subsidy is considered to be specific for the steel industry, then the LUR prices of companies from other sector should be used. Alternatively, the prices from the dynamic land monitoring system should have been used. The first point was already addressed above: the fact that some companies are receiving an additional preferential treatment is separate from the way in which the market as a whole is functioning, and the Commission has determined that the market was not functioning as a whole. Concerning the use of the dynamic land monitoring system as a benchmark, the Commission noted that it is designed to monitor the evolution of land prices in certain areas. As such, it is only a reflection of the prices paid for land use rights in China, which are, as stated before, not considered to be market prices.
- (304) The Benxi Group also objected to the use of land prices in Chinese Taipei as a benchmark for the following reasons: Benxi is located in a less-developed area in Liaoning Province, with far less comparable population density, land supplies and GDP than in Chinese Taipei. Furthermore, the Benxi Group has a long history of land use and has invested in land formation and construction for long-term use. Therefore, prices are significantly different. Finally, the company argued that the price of land ownership is not comparable with the price for land use rights.
- (305) First, the Commission disagreed with the company's assessment of Liaoning Province. According to publicly available information <sup>(1)</sup>, Liaoning was one of the first provinces in China to industrialize. Liaoning has the largest provincial economy of Northeast China. Its nominal GDP for 2011 was the 7th largest in China (out of 31 provinces). Although its GDP is lower than the GDP in Taiwan, in 2008, Liaoning was the region with the highest GDP growth among global G8x8, the eight provinces or states below national level with the highest GDP of the top eight GDP nations. Liaoning maintained its GDP growth rate of 13,1 percent in 2009 and held its position as the province with the highest economic growth. Economic growth has since slowed down, with the economy still expanding 3 % in 2015. On a national level, Liaoning is a major producer of pig iron, steel and metal-cutting machine tools, all of whose production rank among the top three in the nation. Liaoning is also one of the most important raw materials production bases in China.
- (306) Second, the fact that some land use rights were acquired in a distant past for long-term use was already taken into account by the Commission when calculating the benefit amount, since the benchmark was adjusted to reflect changes over time by taking into account the evolution of GDP and inflation.
- (307) Third, concerning differences in price between land ownership and land use rights, the Chinese companies do not account for land use rights as a lease, but as an intangible asset, i.e. they treat land use rights in the same way as companies treat purchased land in other countries. The companies themselves do not seem to make any distinction between land ownership and land use rights. Therefore, the claims of the Benxi Group on land use rights were rejected.
- (308) After disclosure, the Shougang Group claimed that the land used by one of its production companies has been reclaimed from the sea. As such, it is temporarily exempted from land use tax as it is considered less valuable. Therefore, a lower benchmark rate should be used for such reclaimed land. The Commission recognized that land reclaimed from the sea is exempted from land use tax during the first years of use. However, the land use tax legislation does not refer to any reduced value of such reclaimed land in connection with the exemption. Furthermore, the Commission already accepted all the adjustments on the land use price requested by the

<sup>(1)</sup> <https://en.wikipedia.org/wiki/Liaoning>.

exporting producer, in order to take into account the costs related to the land filling exercise. Finally, the reclaimed land is situated in a prime coastal location close to Beijing, offering easy access for imported raw materials and transport of finished goods. This claim was therefore also rejected.

- (309) The Shougang Group also made additional claims concerning some expenses related to land use rights which had been disregarded for Shougang Qian'an and the incorrect classification of some plots of land for Shougang Mining. The Commission accepted these claim and adjusted the calculation of the benefit amount for these two companies accordingly.
- (310) In accordance with Article 7(3) of the basic Regulation the subsidy amount has been allocated to the IP using the normal life time of the land use right for industrial use land, i.e. 50 years. This amount has then been allocated over the total respective company turnover during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (311) The subsidy rate established with regard to this scheme during the IP for the sampled exporting producers amounts to:

| Provision of Land use rights at less than adequate remuneration |                |
|---|----------------|
| Company/Group   | Subsidy Amount |
| Benxi Group   | 1,46 %         |
| Hesteel Group   | 2,71 %         |
| Jiangsu Shagang Group   | 1,20 %         |
| Shougang Group  | 7,63 %         |

### 3.7. Direct tax exemption and reduction programmes

#### 3.7.1. The 'two free, three half' programme for foreign invested enterprises

- (312) The 'two free, three half' programme entitles FIEs to pay no corporate income tax for the first two years, and to pay only 12,5 % rather than the standard tax rate of 25 % for the next three years.

#### (a) Legal basis

- (313) The legal basis of this programme is Article 8 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the 'FIE Tax Law') and Article 72 of the Rules for the Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises.

- (314) According to the GOC this programme was terminated under Article 57 of the Enterprise Income Tax Law of 2008 ('EIT Law') with a transition period until the end of 2012.

#### (b) Findings of the investigation

- (315) The 'two free, three half' scheme conferred benefits on companies during the financial year 2012, after which, according to the government of the PRC, the scheme has been withdrawn. The investigation confirmed that the Jiangsu Shagang Group was eligible for this tax scheme, but did not benefit anymore from the scheme after 2012. The Commission furthermore established that this tax programme had indeed been withdrawn by the GOC.

(c) Conclusion

- (316) No financial contribution or benefit was received by the sampled companies under this programme during the IP.

3.7.2. *Enterprise Income Tax (EIT) privileges for Resource Products from Synergistic Utilisation*

- (317) This programme allows companies to deduct the income earned from manufacturing through comprehensive use of resources from its taxable income. If a company produces according to the standards specified in the *Catalogue of Enterprise Income Tax Preference for Synergistic Utilisation*, 10 % of the income is deducted for the calculation of the amount of taxable income of the company concerned.

(a) Legal basis

- (318) The legal bases of this programme are Article 33 of the EIT law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC; as well as the following notices:

- Notice of the Ministry of Finance, National Development and Reform Commission and the State Administration of Taxation on Issuing the 'Administrative Measures for the Determination of Synergistic Utilisation encouraged by the State' (Fa Gai Huan Zi [2006] No. 1864);
- Notice of the Ministry of Finance, National Development and Reform Commission and the State Administration of Taxation on publication of the Catalogue of Enterprise Income Tax Preference for Synergistic Utilisation (Cai Shui [2008] No. 117);
- Notice of the Ministry of Finance and the State Administration of Taxation on implementing the Catalogue of Enterprise Income Tax Preference for Synergistic Utilisation (Cai Shui [2008] No. 47);
- Notice of the State Administration of Taxation on Management Issues on Enterprise Income Tax Preference for Synergistic Utilisation (Guo Shui Han [2009] No. 185).

(b) Findings of the investigation

- (319) This tax deduction only applies when a company uses the resources listed in the *Catalogue of Enterprise Income Tax Preference for Synergistic Utilisation* as the main raw material(s). In addition, the final product resulting from the processing of these raw materials must have been produced in accordance with the relevant national or industrial standards specified in the same catalogue.
- (320) One of the sampled exporting producers, the Hesteel Group, was found to be using this subsidy. This company had applied and received official notification that they had met the criteria of the scheme and would therefore be entitled to complete their corporate tax returns accordingly.

(c) Conclusion

- (321) The Commission considered that the tax deduction at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.
- (322) This subsidy is specific as defined in Article 4(2)(a) of the basic Regulation since it is limited to certain categories of raw materials and final products under specific business categories which are defined exhaustively by law in the *Catalogue of Enterprise Income Tax Preference for Synergistic Utilisation*.

(323) Following disclosure, the GOC objected to the specificity established for this subsidy, because it benefited various industries, and was based on objective criteria (i.e. producing with the use of certain resources). The Commission considered that this subsidy is specific given that the legislation itself, pursuant to which the granting authority operates, limited the access to this subsidy only to certain categories of raw materials and final products under specific business categories which are defined exhaustively by law in the *Catalogue of Enterprise Income Tax Preference for Synergistic Utilisation*, such as those belonging to the steel industry. Examples include raw materials such as converter slag, electric furnace slag, and iron alloy furnace slag used to produce iron and iron alloys, blast furnace gas used to produce electricity and heating power, as well as coke oven gas used to produce ferrous sulfate.

(324) The Commission therefore considered this subsidy as countervailable.

(d) Calculation of the subsidy amount

(325) The Commission calculated the amount of countervailable subsidy as the difference between the amount of tax normally paid during the IP and the amount of tax actually paid during the IP by the companies concerned.

(326) The amount of subsidy established for this specific scheme was 0,06 % for the Hesteel Group.

3.7.3. EIT offset for research and development expenses

(327) The tax offset for research and development entitles companies to preferential tax treatment for their R&D activities in certain high technology priority areas determined by the State and when certain thresholds for R&D spending are met.

(328) More specifically, R&D expenditures incurred to develop new technologies, new products and new crafts which do not form intangible assets and are accounted into the current term profit and loss, are subject to an additional 50 % deduction after being deducted in full 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.

(a) Legal basis

(329) The legal basis for the programme is Article 30(1) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC; as well as the following notices:

— Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policy of Pre-tax Deduction of R&D Expenses. (Cai Shui [2015] No. 119);

— Notice of the State Administration of Taxation on Issues Concerning Policy of Pre-tax Deduction of R&D Expenses of Enterprises.

— Guidance on the Priority Areas for High-Tech Industrialization Priority Development [2007] No. 6, issued by the NDRC, the Ministry of Science of Technology, the Ministry of Commerce and the National Intellectual Property Office

(b) Findings of the investigation

(330) During the verification visit at the premises of the GOC, it was established that the 'new technologies, new products and new crafts' which can benefit from the tax deduction are part of certain high technology fields supported by the State, as well as the current priorities on high technology fields supported by the State, as listed in the Guidance on the Priority Areas for High-Tech Industrialization Priority Development.

- (331) Companies benefiting from this scheme have to file their Income Tax Return and relevant Annexes. The actual amount of the benefit is included in the tax return.

(c) Conclusion

- (332) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that incur R&D expenses in certain high technology priority areas determined by the State, such as the steel sector.

- (333) Following disclosure, the GOC objected to the specificity established for this subsidy, because it benefited various industries, was based on objective criteria (i.e. incurring R&D expenses) and was not countervailed in the Canadian anti-subsidy investigation on certain unitized wall modules from China for lack of specificity. The Commission noted that the scheme had already been countervailed in Coated Fine Paper <sup>(1)</sup>. This subsidy is specific given that the legislation itself, pursuant to which the granting authority operates, limited the access to this subsidy only to certain enterprises and industries classified as 'priority areas', such as those belonging to the steel industry.

(d) Calculation of the subsidy amount

- (334) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the IP. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable after the additional 50 % deduction of the actual expenses on R&D.
- (335) Only one company, Hesteel Group, benefitted from this subsidy, and the amount of subsidy was established at 0,28 %

3.7.4. *Land use tax exemption*

- (336) An organization or individual using land in cities, county towns and administrative towns and industrial and mining districts shall normally pay urban land use tax. Land use tax is collected by the local tax authorities where the land is used. However, certain categories of land, such as land reclaimed from the sea, land for the use of government institutions, people's organizations and military units for their own use, land for use by institutions financed by government allocations from the Ministry of Finance, land used by religious temples, public parks and public historical and scenic sites, streets, roads, public squares, lawns and other urban public land are exempted from the land use tax.

(a) Legal basis

- (337) The legal basis for this programme is:

— Provisional Regulations of the People's Republic of China on Real Estate Tax (Guo Fa [1986] No. 90) and

— Provisional Regulations of the People's Republic of China on Urban Land Use Tax (State Council Order No. 483).

(b) Findings of the investigation

- (338) Two companies, Hesteel Group and Shougang Group, benefited from rebates or exemptions on the payment of land use taxes by the local Land Use Bureau, even though they did not fall under any of the exempted categories as set by the national legislation above.

<sup>(1)</sup> Council Implementing Regulation (EU) No 451/2011 of 6 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coated fine paper originating in the People's Republic of China (OJ L 128, 14.5.2011, p. 1) (*Coated fine paper*).

## (c) Conclusion

- (339) The Commission considers that the tax exemption at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the companies received a tax reduction specifically intended for them, and not available to other companies under the general legal framework mentioned in recital (336).
- (340) Following disclosure, the GOC objected to the specificity established for this subsidy, because it benefited various industries, and was based on objective criteria. The Commission acknowledged that there are objective criteria to determine the recipients of land use tax exemptions. As the companies benefiting from this subsidy received an exemption although they did not fit into any of these objective criteria, the subsidy granted to these companies was de facto specific.

## (d) Calculation of the subsidy amount

- (341) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the IP. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax actually paid during the IP.
- (342) The Hesteel and the Shougang Group have benefitted from tax exemptions under this scheme. The amount of subsidy relating to this specific scheme for the Shougang Group was 0,66 %. For Hesteel, the amount was insignificant and did not have an impact on the overall subsidy rate of the group.

3.7.5. *Other direct tax exemption schemes and reduction programmes*

- (343) The Commission concluded that no financial contribution or benefit was received by the sampled exporting producers from the remaining direct tax exemption programmes mentioned in section 3.3(iv) above during the IP.

3.7.6. *Total for all direct tax exemption schemes and reduction programmes*

- (344) The total subsidy amount established with regard to all direct tax schemes during the IP for the sampled exporting producers was as follows:

| Direct tax exemptions and reductions |                |
|--------------------------------------|----------------|
| Company/Group                        | Subsidy Amount |
| Benxi Group                          | 0,00 %         |
| Hesteel Group                        | 0,34 %         |
| Jiangsu Shagang Group                | 0,00 %         |
| Shougang Group                       | 0,66 %         |

3.8. **Indirect Tax and Import Tariff Programmes**3.8.1. *VAT exemptions and import tariff rebates for the use of imported equipment and technology*

- (345) This programme provides an exemption from VAT and import tariffs for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a Certificate of State-Encouraged project issued by the Chinese authorities or by the NDRC in accordance with the relevant investment, tax and customs legislation.



(a) Legal basis

(346) The legal bases of this programme are:

- Circular of the State Council on Adjusting Tax Policies on Imported Equipment, Guo Fa No. 37/1997;
- Notice of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Adjustment of Certain Preferential Import Duty Policies;
- Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No. 43;
- Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, [2006] No. 316;
- Catalogue on Non-duty-exemptible Articles of importation for either FIEs or domestic enterprises, 2008.

(b) Findings of the investigation

(347) Equipment imported in order to develop domestic or foreign investment projects in line with the policy of encouraging foreign or domestic investment projects may be exempted from payment of the VAT and/or import duty, unless the equipment category is listed in the catalogue of non-duty exemptible article. To benefit from this scheme, the company needs to obtain a confirmation letter from the local authority responsible for the project, which needs to be submitted to local customs authority.

(348) The GOC claimed that with effect from 1 January 2009, only the import duty is exempted and VAT on importation of equipment for self-use is collected.

(349) However, exemptions of both VAT and import duty during the IP were identified for the Shougang Group. These included exemptions for equipment imported in previous years, but for which the benefit was amortized over the lifespan of that equipment and was thus partially allocated to the IP. While the Commission saw no evidence that this exemption was operating during the IP, the Commission established on the basis of the evidence on the file that the Shougang Group still availed benefits under this programme.

(c) Conclusion

(350) This programme provides a financial contribution in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) as FIEs and other eligible domestic enterprises are relieved from payment of VAT and/or tariffs which would be otherwise due. It also confers a benefit on the recipient companies in the sense of Article 3(2) of the basic Regulation.

(351) The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation. The legislation pursuant to which the granting authority operates limits its access to enterprises that invest under specific business categories defined exhaustively by law and belonging either to the encouraged category or the restricted category B under the *Catalogue for the guidance of industries for foreign investment and technology transfer* or those which are in line with the *Catalogue of key industries, products and technologies the development of which is encouraged by the State*. In addition, there are no objective criteria to limit eligibility for this programme and the GOC did not provide conclusive evidence to conclude that eligibility is automatic under Article 4(2)(b) of the basic Regulation.

(352) Following disclosure, the GOC objected to the specificity established for this subsidy, because it benefited various industries, and was based on objective criteria (i.e. importing certain capital equipment). The Commission considered that this subsidy is specific given that the legislation itself, pursuant to which the granting authority operates, limited the access to this subsidy only to certain categories of imported capital equipment clearly specified exhaustively by law in the catalogue issued by the NDRC for products encouraged by the State, such as

those belonging to the steel industry. It also noted that this subsidy was already countervailed in the anti-subsidy investigation on Coated Fine Paper originating in the PRC and in the anti-subsidy investigation on Solar Panels originating in the PRC <sup>(1)</sup>. The fact that eligibility is restricted to specific business categories confirms that the scheme is not generally available to broad economic sectors and therefore benefits under this programme are specific under Article 4(2)(a) of the basic Regulation.

(d) Calculation of the subsidy amount

- (353) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. In order to ensure that the countervailable amount only covered the IP period the benefit received was amortized over the life of the equipment according to the company's normal accounting procedures.
- (354) The Shougang Group benefitted from rebates under this scheme. The amount of subsidy established for this specific scheme for the Shougang Group was 0,11 %.

3.8.2. Tax exemption for policy-based relocation

- (355) For environmental reasons, the Shougang Group was asked to relocate its entire steel plant in Beijing to a coastal location in Caofeidian. The project was approved in 2004, construction started in 2006, and production on the new site started end of 2009.

(a) Legal basis

- (356) Notice of the Ministry of Finance and the State Administration of Taxation on Tax Policy Problems related to Shougang Group Relocation (No. 174 [2007] of the Ministry of Finance December 29, 2007).

(b) Findings of the investigation

- (357) The above-mentioned notice provides for an ex-post refund of all value-added taxes and all income tax payments which have been paid by 18 enterprises of the Shougang Group from 2006 to 2009.
- (358) The notice states that '*the foregoing taxes shall be specifically used for solving Shougang Group's investment in Jingtang Iron & Steel project*'. Furthermore, the notice refers to the expenses caused by employee resettlement due to the enterprise relocation.
- (359) However, during the verification at the company, the link with the employee expenses and/or relocation during the period 2006 to 2009 could not be established. In addition, the 18 group companies mentioned in the notice have no link to the Jingtang Iron & Steel project.

(c) Conclusion

- (360) The Commission considered that the tax exemption at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This programme is specific within the meaning of Article 4(2)(a) of the basic Regulation since the tax exemption was only granted to the Shougang Group. During the verification visit, the GOC confirmed that this was a specific, stand-alone case, and not part of a broader tax programme for companies that are relocating based on the government's policy decisions.

<sup>(1)</sup> Council Implementing Regulation (EU) No 451/2011 (OJ L 128, 14.5.2011, p. 1) (*Coated fine paper*), Commission Implementing Regulation (EU) 2017/366 (OJ L 56, 3.3.2017, p. 1) (*Solar panels*).

(d) Calculation of the subsidy amount

- (361) The benefit conferred on the recipient is the total amount of VAT and income tax exempted. Although the exemption refers to a period preceding the IP, that part of the benefit should be allocated to the IP as the financial contribution was related to a large-scale investment project. In order to ensure that the countervailable amount only covered the IP period the benefit received was amortized over the average life of the company's fixed assets according to the company's normal accounting procedures.
- (362) Only the Shougang Group has benefitted from exemptions under this scheme. The amount of subsidy established for this specific scheme for the Shougang Group was 0,90 %

3.8.3. *Other indirect tax exemption or reduction schemes*

- (363) No financial contribution was received by the sampled exporting producers from the remaining indirect tax exemption programmes mentioned in section 3.3(v) above during the IP.

3.8.4. *Total for all indirect tax exemption or reduction schemes*

- (364) The total amount of subsidies established with regard to the indirect tax exemption and import tariff rebates schemes during the IP for the sampled exporting producers was 1,01 % for the Shougang Group.

### 3.9. **Grant programmes**

3.9.1. *Energy saving and conservation grants*

- (365) All of the sampled companies benefited from a variety of grants related to environmental protection and reduction of emissions, such as *e.g.* incentives for Environmental Protection and Resource Conservation, Promotion of synergistic resource utilization, Incentive funds for energy conservation retrofit projects, Promotion of Energy Management Demonstration Centres, grants related to Air Pollution Improvement Projects, grants related to Flue Sintering Desulfuration Projects, incentives for circular economy projects.

(a) Legal basis

- (366) The legal bases of this programme are:

- 'Law of the People's Republic of China on Energy Conservation', version revised and adopted on October 28, 2007, and version amended on July 2, 2016;
- 'State Council Opinions on Strengthening Energy Saving and Emission Reduction and Accelerating Structural Adjustment in the Iron and Steel Sector', State Council, June 2010;
- 'Key Points of Energy Conservation and Comprehensive Utilization in Industry in 2015', issued by the MIIT on 3 April 2015;
- The 2014 Recycling Economy Development Special Fund;
- The 2011 Industrial Enterprise Energy Management Center Construction Demonstration Project- Financial allowance fund Gongxinting Jie Han(2011).

(b) Conclusion

- (367) The energy saving and conservation programme confers subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation *i.e.* a transfer of funds from the GOC in the form of grants to the producers of the product concerned.

- (368) The Commission also found that this subsidy programme is specific within the meaning of Article 4(2)(a) of the basic Regulation since only companies operating in key technologies or in the production of key products as listed in the guidelines and catalogues that are published on a regular basis are eligible to receive them. In particular, the State Council opinion of 2010 applies only to the steel industry. Moreover, the MIT document of 2015 specifically mentions steel as an industry for specific incentives related to energy conservation.
- (369) Following disclosure, the GOC objected to the specificity established for this subsidy, because it benefited various industries. The Commission considered that this subsidy is specific given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to certain categories of companies which are defined exhaustively by law. The previous recital gives specific examples of legislative documents which apply only to the steel industry or specifically mention the steel industry (the other industries mentioned were non-ferrous metals, building materials, chemicals and textiles). The fact that certain other limited industries were mentioned does not contradict its findings on specificity.

(c) Calculation of the subsidy amount

- (370) The benefit was calculated as the amount received in the IP or allocated to the IP, where the amount was depreciated over the useful life of the fixed asset to which the grant was related. The Commission considered whether to apply an additional annual commercial interest rate in accordance with section F.a) of the Commission's 1998 Guidelines for the calculation of the amount of subsidy <sup>(1)</sup>. However, such an approach would have involved a variety of complex hypothetical factors for which there was no accurate information available. Therefore, the Commission found it more appropriate to allocate amounts to the IP according to the depreciation rates of the related fixed assets, in line with the calculation methodology used in previous cases <sup>(2)</sup>.
- (371) As mentioned in section 3.2.2 above, best facts available were used to determine the amount of subsidies with regard to grants for the Jiangsu Shagang Group. The Commission used as best facts available the highest subsidy amount for each type of grants found. The amount of subsidy established with regard to energy saving and conservation grants during the IP for the sampled exporting producers was therefore as follows:

| Energy saving and conservation grants |                |
|---------------------------------------|----------------|
| Company/Group                         | Subsidy Amount |
| Benxi Group                           | 0,26 %         |
| Hesteel Group                         | 0,05 %         |
| Jiangsu Shagang Group                 | 0,38 %         |
| Shougang Group                        | 0,38 %         |

3.9.2. Grants related to technological upgrading or transformation

- (372) The sampled companies benefited from a variety of grants under this programme related to R&D, technological upgrading and innovation, such as e.g. promotion of R&D tasks under the Science and Technology Support Plans, projects under the 863 Plan, Promotion of Key Industry Adjustment, Revitalisation and Technology Renovation, grants for the Commercial Application of R&D Results, Promotion of Quality Improvement.

<sup>(1)</sup> OJ C 394, 17.12.1998, p. 6.

<sup>(2)</sup> Such as e.g. Council Implementing Regulation (EU) 451/2011 (OJ L 128, 14.5.2011, p.1) (*Coated fine paper*), Council Implementing Regulation (EU) No 215/2013 (OJ L 73, 11.3.2013, p.16) (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366 (OJ L 56, 3.3.2017, p. 1) (*Solar panels*), Commission Implementing Regulation (EU) No 1379/2014 (OJ L 367, 23.12.2014, p. 22) (*Filament glass fibre*), Commission Implementing Decision 2014/918/EU (OJ L 360, 17.12.2014, p. 65) (*Polyester Staple Fibers*).

## (a) Legal basis

(373) The legal bases of this programme are:

- The 12th Five-year Industrial Technology Innovation Planning;
- The Blueprint for Steel Industry Adjustment and Revitalisation issued by the Chinese State Council in March 2009 (the Revitalisation Plan’);
- Medium to Long-Term Programme on Technological and Scientific Development (2006-2020) promulgated by the State Council in 2006;
- Administrative Measures for National Science and Technology Support Plan as revised in 2011;
- Administrative measures for National High Technology Research and Development Plan (863 Plan) as revised in 2011;
- Notice of establishment of the Guidance Catalogue of high and new technology products;

## (b) Conclusion

(374) The grants provided under this programme confers subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation i.e. a transfer of funds from the GOC in the form of grants to the producers of the product concerned.

(375) The Commission also determined that these subsidies are specific within the meaning of Article 4(2)(a) of the basic Regulation because only companies operating in key technologies as listed in the guidelines and catalogues that are published on a regular basis are eligible to receive them. The steel sector is listed among the eligible sectors.

(376) Following disclosure, the GOC objected to the specificity established for this subsidy, because it benefited various industries. The Commission considered that this subsidy is specific given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to the steel industry (cfr. the Revitalisation Plan mentioned in the legal basis) or specifically mentioned the steel industry (such as the Medium to Long-Term Programme on Technological and Scientific Development and the 863 Plan). The fact that other industries were mentioned does not contradict its findings on specificity.

## (c) Calculation of the subsidy amount

(377) The benefit was calculated in accordance with the methodology described in recital (370) above.

(378) The amount of subsidy established with regard to this type of subsidies during the IP for the sampled exporting producers was as follows:

| Technological upgrading or transformation grants |                |
|--|----------------|
| Company/Group                                    | Subsidy Amount |
| Benxi Group                                      | 0,09 %         |
| Hesteel Group                                    | 0,01 %         |
| Jiangsu Shagang Group <sup>(1)</sup>             | 0,94 %         |
| Shougang Group                                   | 0,94 %         |

<sup>(1)</sup> Based on the highest subsidy amount found for this type of grants, which corresponds to the subsidy amount found for the Shougang Group.

### 3.9.3. *Ad hoc grants provided by municipal/regional authorities*

- (379) The complaint provided evidence which showed that the steel industry in the PRC may receive various one-off or recurring grants from different levels of government authorities, i.e. local, regional and national.
- (380) The investigation revealed that all sampled groups of companies also received significant one-off or recurring grants from various government levels resulting in the receipt of benefits during the IP. Some of these had already been reported by the sampled companies in their respective questionnaire replies, while others were found on-the-spot during the verification visits. None of them were disclosed in the questionnaire reply of the GOC.

#### (a) Legal Basis

- (381) These grants were given to the companies by national, provincial, city, county or district government authorities and all appeared to be specific to the sampled companies, or specific in terms of location or type of industry. The level of legal detail for the exact law under which these benefits were granted, if there was any legal basis for them at all, was not disclosed. However, the Commission was sometimes provided with a copy of a document issued by a government authority which accompanied the grant of funds (referred to as 'the notice') during the verification visit.

#### (b) Findings of the investigation

- (382) Given the large amount of different grants contained in the complaint and/or found in the books of the sampled companies, only a summary of the key findings is presented in this Regulation. Evidence of the existence of numerous grants and the fact that they had been granted by various levels of the GOC were initially supplied by the four sampled companies.
- (383) Examples of such grants were patent funds, science and technology funds and awards, business development funds, grants for basic infrastructure, support funds provided at district or provincial level, funds for the import of iron ore, funds for the company's relocation, overseas advanced technology introduction special fund, interest discounts on loans for imported equipment.

#### (c) Conclusion

- (384) These grants constitute subsidies within the meaning of Article 3(1)(a)(i) and (2) of the basic Regulation as a transfer of funds from the GOC in the form of grants to the producers of the product concerned took place and a benefit was thereby conferred.
- (385) These grants are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that they appear to be limited to certain companies or specific projects in specific regions and/or the steel industry. These grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.
- (386) In all cases the companies provided information as to the amount of the grant, and from whom the grant was received. The companies concerned also mostly booked this income under the heading 'subsidy income' in their accounts and had had these accounts independently audited. This has been taken as positive evidence of a subsidy that conferred a countervailable benefit.
- (387) Therefore, the Commission decided that the verified findings during on-the-spot verifications represented a reasonable indicator of the level of subsidisation in this respect. As those grants share common features, they are awarded by a public authority and are not part of a wider subsidy programme, but individual grants, the Commission assessed them together.

(388) In its reply to the disclosure the GOC claimed that not enough detail was provided by the Commission in order to justify the specificity of these grants. It should be pointed out, however, that very little detail was supplied to the Commission relating to these grants in questionnaire replies. The sampled exporting producers did not challenge the amounts calculated by the Commission, which were disclosed to them. They also did not challenge the fact that these grants were received from the GOC. The findings of the verifications were very different to the number and total value of grants reported in the questionnaire responses of the GOC. The Commission decided that the on-the-spot findings represented a reasonable indicator of the level of subsidisation in this respect.

(389) The fact that the Commission stated that the grants 'appear' to be limited exactly refers to this lack of transparency concerning the existence of objective eligibility criteria for the sampled companies. The Commission did not accept that this approach demonstrates any failing to justify the specificity of the countervailed grants. The claim that the Commission did not meet the required standard for specificity was therefore rejected.

(d) Calculation of the subsidy amount

(390) The benefit was calculated in accordance with the methodology described in recital (370) above.

(391) The amount of subsidy established with regard to this type of subsidies during the IP for the sampled exporting producers was as follow:

| Ad hoc grants                        |                |
|--------------------------------------|----------------|
| Company/Group                        | Subsidy Amount |
| Benxi Group                          | 0,001 %        |
| Hesteel Group                        | 0,02 %         |
| Jiangsu Shagang Group <sup>(1)</sup> | 0,13 %         |
| Shougang Group                       | 0,13 %         |

3.9.4. *Other grant schemes*

(392) No financial contribution was received by the sampled exporting producers from the remaining grant programmes mentioned in section 3.3(iii) above during the IP.

3.9.5. *Total for all grant schemes*

(393) The total subsidy amounts established with regard to all grants during the IP for the sampled exporting producers were as follows:

| Grants        |                |
|---------------|----------------|
| Company/Group | Subsidy Amount |
| Benxi Group   | 0,34 %         |
| Hesteel Group | 0,09 %         |

<sup>(1)</sup> Based on the highest subsidy amount found for this type of grants, which corresponds to the subsidy amount found for the Shougang Group.

| Grants                |                |
|-----------------------|----------------|
| Company/Group         | Subsidy Amount |
| Jiangsu Shagang Group | 1,45 %         |
| Shougang Group        | 1,45 %         |

### 3.10. 'Foreign Trade Transformation and Upgrading Demonstration Bases' ('Demonstration Bases') and 'Common Service Platforms'

- (394) This subsidy programme had been challenged by the USA at the WTO. In April 2016, China and the United States signed a Memorandum of Understanding <sup>(1)</sup>, in which China committed itself to terminate, amend or replace all the legal instruments connected to this programme. During consultations, the GOC provided further proof of the implementation of these commitments. In addition, none of the sampled companies had benefited from this programme during the IP. Therefore, the Commission considered that there was no evidence of subsidisation to be countervailed under this programme.

### 3.11. Subsidisation of the provision of HRF imports to the EU

- (395) The complainant claimed that the GOC is providing a financial contribution to various actors in the supply chain of the HRF by providing HRF products at less than adequate remuneration as a result of its interventions in the production of HRF in the PRC, e.g. by offering policy loans, raw materials and energy at less than adequate remuneration, and that the benefit of this overall scheme is spread to all actors of the supply chain including the exporting producers in the PRC (who can continue operations and receive economies of scale), the related importers in the EU (who gain market share), the end customers in the EU (they buy at a price they know is lower in the market) and to the GOC itself (who achieves its policy objectives).
- (396) The Commission observed that the basic Regulation tackles subsidies given by foreign governments to their exporting producers, which distort competition when they export to the European Union. Recital (5) requires that there has been a financial contribution by a government or a public body 'within the territory' of the subsidizing country. Moreover, Article 4 of the basic Regulation refers to the concept of specificity when a foreign government gives a subsidy to its industry 'within the jurisdiction of the granting authority'. It follows that subsidies given by a foreign government to entities outside its jurisdiction, such as unrelated importers in the European Union or even the end customer in the European Union are not covered by the instrument insofar as they cannot be attributed to the exporting producer.
- (397) The Commission did not find evidence that countervailable subsidies are provided by GOC to entities which are related to the exporting producer. Therefore, this claim was rejected.
- (398) Upon disclosure, the complainant stated that the Commission's interpretation of recital 5 and Article 4 of the basic Regulation were erroneous. In its view, Recital 5 is not a binding norm and to the extent to which there is a territorial requirement, it does not apply an overriding requirement. In support of this contention, the complainant cited recital 3 of the basic Regulation according to which WTO rules — which do not have a territorial restriction under the Panel's finding in Brazil — Aircraft <sup>(2)</sup>- should be taken into account. With respect to Article 4 of the basic Regulation, the complainant found support for its interpretation in paragraph 4, according to which there is specificity of export- contingent subsidies.

<sup>(1)</sup> WT/DS489/7 of 19 April 2016, Memorandum of Understanding Between the People's Republic of China and the United States of America Related to the Dispute China — Measures Related to Demonstration Bases and Common Service Platforms Programs (DS489).

<sup>(2)</sup> See WT/DS46/R, Brazil — Aircraft, Panel Report.



(399) The Commission rejected these arguments. First of all, the recitals of the basic regulation are legally binding, as they set out the motivation of the basic Regulation. As such they form an important source for the interpretation of the legal act. Second, the complainant does not follow its own position, when it tries to oppose the territoriality element in recital 5 by reference to another recital, namely recital 3. It is unclear, why recital 3 should be legally non-binding, while recital 3 would be legally binding. Hence, the formal argument against recital 5 is not convincing. Third, the authority of the Panel in Brazil — Aircraft does not cover the present case. In the Panel case the subsidy was given to the aircraft suppliers within Brazil and shared with purchasers outside. Here, the subsidy would not be given to Chinese producers in China at all, but only to actors outside. Fourth, the reference to Article 4(4) of the basic Regulation does not support the complainant's point either. Under the provision, a subsidy is specific when the granting authority gives it to a producing company located within its jurisdiction with the proviso that it should be used for export purposes. That is fundamentally different from granting a subsidy directly to an actor outside its jurisdiction. For these reasons, the Commission maintained its position that subsidies given by foreign government to entities outside its jurisdiction, such as unrelated importers in the European Union or even the end customer in the European Union are not covered by the instrument insofar as they cannot be attributed to the exporting producer.

### 3.12. Conclusion on subsidisation

(400) The Commission calculated the amount of countervailable subsidies in accordance with the provisions of the basic Regulation for the sampled companies by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer for the IP. To calculate the overall subsidisation below, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the IP. The subsidy amount per tonne of product concerned exported to the Union during the IP was then calculated, and the margins below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per tonne.

(401) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating companies not included in the sample is calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for the grants of Jiangsu Shagang Group which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings related to preferential lending even if it had to rely partially on best facts available to determine those amounts. Indeed, the Commission considered that the best facts available and used in those cases did not affect substantially the information needed to determine the amount of subsidisation through the preferential leading in a fairly manner, so that exporters who were not asked to cooperate in the investigation were not prejudiced by using this approach. <sup>(1)</sup> In any event, the Commission recalled that non-sampled cooperating companies can have recourse to accelerated reviews in accordance with Article 20 of the basic Regulation.

(402) Given the high rate of cooperation of Chinese exporting producers, the amount for 'all other companies' was set at the level of the highest amount established for the sampled companies. The 'all other companies' amount will be applied to those companies which did not cooperate in the investigation.

| Company name          | Amount of countervailable subsidies |
|-----------------------|-------------------------------------|
| Benxi Group           | 28,5 %                              |
| Hesteel Group         | 7,8 %                               |
| Jiangsu Shagang Group | 4,6 %                               |
| Shougang Group        | 38,6 %                              |

<sup>(1)</sup> See also, *mutatis mutandi*, WT/DS294/AB/RW, US — Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, paragraph 453.

| Company name                | Amount of countervailable subsidies |
|-----------------------------|-------------------------------------|
| Other cooperating companies | 16,9 %                              |
| All other companies         | 38,6 %                              |

#### 4. INJURY

##### 4.1. Definition of the Union industry and Union production

- (403) Within the Union, 17 companies provided production and sales data in the standing exercise and indicated that they produced the like product during the investigation period. Based on the available information from the complaint, these 17 companies are representing around 90 % of the production of the like product in the Union.
- (404) Apart from these 17 companies, there were five other companies producing the like product during the investigation period.
- (405) The total Union production during the investigation period was established at around 74,7 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information from the complainant and from all known producers in the Union. As indicated in recital (18), six Union producers were selected in the sample representing 45 % of the total Union production of the like product. This is a representative sample.
- (406) The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 9(1) of the basic Regulation and are referred to as the 'Union industry'.
- (407) The business model of the Union producers and their degree of vertical integration varies. Nevertheless, the Union industry can overall be characterised as an industry with a high degree of vertical integration, as further explained in recital (408) below.

##### 4.2. Union consumption

- (408) As mentioned in recital (45) above, the product concerned falls within a number of CN codes including certain ex codes. In order not to underestimate Union consumption, and in view of the apparent marginal impact of such codes on total consumption, import volumes of CN ex codes have been fully accounted for the purpose of calculating Union consumption.
- (409) As the Union industry is mostly vertically integrated and the product concerned is regarded as a primary material for the production of various value added downstream products, starting with cold-rolled products, captive and free market consumptions were analysed separately.
- (410) The distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports, and transfer prices are set within the groups according to various price policies. By contrast, production destined for the free market is in direct competition with imports of the product concerned, and prices are free market prices.
- (411) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire activity of the like product and determined whether the production was destined for captive use or for the free market. The Commission found that around 60 % of the total Union producers' production was destined for captive use.

4.2.1. *Captive consumption on the Union market*

- (412) The Commission established the Union captive consumption on the basis of the captive use and captive sales on the Union market of all known producers in the Union. On this basis, the Union captive consumption developed as follows:

Table 1

**Captive consumption on the Union market (tonnes)**

|                           | 2012       | 2013       | 2014       | IP         |
|---------------------------|------------|------------|------------|------------|
| Captive consumption       | 40 775 889 | 42 418 062 | 42 887 175 | 42 271 071 |
| <i>Index (2012 = 100)</i> | 100        | 104        | 105        | 104        |

Source: Eurofer questionnaire reply.

- (413) During the period considered the Union captive consumption on the Union market increased by around 4 %. This increase is mainly due to a growth of the captive markets, including manufacturing parts such as for the automotive industry.

4.2.2. *Free market consumption on the Union market*

- (414) The Commission established the Union free market consumption on the basis of (a) the sales on the Union market of all known producers in the Union and (b) the imports into the Union from all third countries as reported by Eurostat, thereby also considering the data submitted by the cooperating exporting producers in the country concerned. On this basis, the Union free market consumption developed as follows:

Table 2

**Free market consumption (tonnes)**

|                           | 2012       | 2013       | 2014       | IP         |
|---------------------------|------------|------------|------------|------------|
| Free market consumption   | 31 405 157 | 32 292 192 | 33 139 474 | 35 156 318 |
| <i>Index (2012 = 100)</i> | 100        | 103        | 106        | 112        |

Source: Eurofer questionnaire reply.

- (415) During the period considered, the Union free market consumption increased by around 12 %. The increase is mainly due to the economic recovery of the downstream industry.
- (416) By merging the two previous tables, the overall consumption (thus totalling the captive and free market consumption) evolved as follows during the period considered:

Table 3

**Overall consumption (captive and free market) (tonnes)**

|                           | 2012       | 2013       | 2014       | IP         |
|---------------------------|------------|------------|------------|------------|
| Overall consumption       | 72 181 046 | 74 710 254 | 76 026 649 | 77 427 389 |
| <i>Index (2012 = 100)</i> | 100        | 104        | 105        | 107        |

Source: Eurofer questionnaire reply and Eurostat.

- (417) The above table shows that overall consumption has increased to a level that was higher in the investigation period than at the beginning of the period considered. The trend is explained by the increase in captive consumption which was much stronger than the increase in free market consumption in absolute terms.

#### 4.3. Imports from the country concerned

##### 4.3.1. Volume and market share of the imports from the country concerned

- (418) The Commission established the volume of imports on the basis of the Eurostat database. The market share of the imports was established by comparing import volumes with the Union free market consumption as reported in the table in recital (414) above.

- (419) Imports into the Union from the PRC developed as follows:

Table 4

#### Total subsidised imports (tonnes) and market share

|                                | 2012    | 2013    | 2014    | IP        |
|--------------------------------|---------|---------|---------|-----------|
| Volume of imports from the PRC | 246 720 | 336 028 | 592 104 | 1 519 304 |
| <i>Index (2012 = 100)</i>      | 100     | 136     | 240     | 616       |
| Market share PRC               | 0,79 %  | 1,04 %  | 1,79 %  | 4,32 %    |
| <i>Index (2012 = 100)</i>      | 100     | 132     | 227     | 550       |

Source: Eurostat.

- (420) The above table shows that in absolute figures the imports from the country concerned increased significantly during the period considered. In parallel, the total market share of the Chinese imports into the Union increased more than five times during the period considered.

##### 4.3.2. Prices of the imports from the country concerned and price undercutting

- (421) The Commission established the prices of imports on the basis of Eurostat data. The weighted average price of imports into the Union from the country concerned developed as follows:

Table 5

#### Import prices (EUR/tonne)

|                                     | 2012 | 2013 | 2014 | IP  |
|-------------------------------------|------|------|------|-----|
| Average price of subsidised imports | 600  | 505  | 463  | 404 |
| <i>Index (2012 = 100)</i>           | 100  | 84   | 77   | 67  |

Source: Eurostat.

- (422) The average prices of the imports decreased from 600 EUR/tonne in 2012 to 404 EUR/tonne during the investigation period. During the period considered, the decrease of the average unit price of the subsidised imports was around 33 %.

- (423) The Commission assessed the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the six Union producers charged to unrelated customers on the free Union market, adjusted to an ex-works level; and
  - the corresponding weighted average prices at CIF Union frontier level per product type of the imports from the cooperating producers of the country concerned to the first independent customer on the Union market, with appropriate adjustments for post-importation costs.
- (424) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producers' turnover during the investigation period. The main adjustments related to delivery costs (varying between 2,7 % and 6,3 % per sampled Union producer) and discounts (varying between 0,1 % and 19,5 %). As no unrelated importer came forward in this case, a post-importation cost of 7 EUR/tonne was added. This was also the adjustment made in the investigation regarding certain cold-rolled flat steel products <sup>(1)</sup>, so that the Commission considered this amount also appropriate for the present case: the product concerned of the current investigation is similar in many respects to certain cold-rolled flat steel products.
- (425) On the basis of the above, the subsidised Chinese imports were found to undercut the Union industry prices in a range between 2,7 % and 5,6 %.

#### 4.4. Economic situation of the Union industry

##### 4.4.1. General remarks

- (426) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (427) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, stock, growth, market share, employment, productivity and magnitude of dumping margins) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the complainant, cross-checked with data provided by Union producers and available official statistics (Eurostat).
- (428) The analysis of microeconomic indicators (sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, wages and cost of production) was carried out at the level of the sampled Union producers. The assessment was based on their information, duly verified.
- (429) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire production of the product concerned and determined whether the production was destined for captive use or for the free market.
- (430) For some indicators relating to the Union industry, the Commission analysed separately data related to the free and the captive market and made a comparative analysis. These factors are: sales, market share, unit prices, unit cost, profitability, and cash flow. However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry because they depend on the whole activity, whether the production is captive or sold on the free market. These factors are: production, capacity, capacity utilisation, investments, return on investments, employment, productivity, stocks and labour costs. For these factors, analysis of the whole Union industry is warranted in order to establish a complete injury picture of the Union industry, as the data in question cannot be separated out between captive sales and free sales.

<sup>(1)</sup> Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 1).

## 4.4.2. Macroeconomic indicators

## 4.4.2.1. Production, production capacity and capacity utilisation

- (431) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 6

**Production, production capacity and capacity utilisation**

|                              | 2012        | 2013        | 2014        | IP         |
|------------------------------|-------------|-------------|-------------|------------|
| Production volume (tonnes)   | 73 050 974  | 74 588 182  | 75 509 517  | 74 718 189 |
| <i>Index (2012 = 100)</i>    | 100         | 102         | 103         | 102        |
| Production capacity (tonnes) | 102 247 218 | 100 667 836 | 100 040 917 | 98 093 841 |
| <i>Index (2012 = 100)</i>    | 100         | 99          | 98          | 96         |
| Capacity utilisation         | 71,4 %      | 74,1 %      | 75,5 %      | 76,2 %     |

Source: Eurofer questionnaire reply.

- (432) During the period considered, the Union industry's production volume increased by 2 %, despite the fact that one Italian Union producer reduced considerably its production during the same period (– 3 million tonnes).
- (433) The reported capacity figures refer to technical capacity, which implies that adjustments, considered as standards by the industry, for set-up time, maintenance, bottle necks and other normal stoppages have been taken into consideration. The production capacity decreased during the period considered due to the stoppage of production in Belgium and Italy.
- (434) The increase in capacity utilisation rate resulted from a slight increase in the production volume mainly driven by the increase in captive consumption (+ 4 %) and free consumption (+ 12 %) and this despite the significant reduction of production volume by mainly one Italian Union producer.

## 4.4.2.2. Sales volume and market share

- (435) The Union industry's sales volume and market share in the free market developed over the period considered as follows:

Table 7

**Sales volume and market share (free market)**

|                           | 2012       | 2013       | 2014       | IP         |
|---------------------------|------------|------------|------------|------------|
| Sales volume (tonnes)     | 27 273 319 | 27 468 243 | 27 910 748 | 27 327 906 |
| <i>Index (2012 = 100)</i> | 100        | 101        | 102        | 100        |
| Market share              | 86,8 %     | 85,1 %     | 84,2 %     | 77,7 %     |
| <i>Index (2012 = 100)</i> | 100        | 98         | 97         | 90         |

Source: Eurofer questionnaire reply and Eurostat.

- (436) The Union industry sales volume on the Union market remained relatively stable during the period considered, i.e. between 27 and 28 million tonnes.
- (437) During the period considered, the Union industry's market share in terms of Union consumption went down with more than 9 percentage points, i.e. from 86,8 % to 77,7 %. The decrease of Union industry's market share exceeded significantly the slight increase in its sale on the Union free market.
- (438) As far as the captive market on the Union market is concerned, the captive volume and market share developed over the period considered as follows:

Table 8

**Captive volume on the Union market and market share**

|  | 2012       | 2013       | 2014       | IP         |
|--|------------|------------|------------|------------|
| Captive volume on the Union market (tonnes)      | 40 775 889 | 42 418 062 | 42 887 175 | 42 271 071 |
| <i>Index (2012 = 100)</i>                        | 100        | 104        | 105        | 104        |
| Total production of Union industry (tonnes)      | 73 050 974 | 74 588 182 | 75 509 517 | 74 718 189 |
| % of captive volume compared to total production | 55,7 %     | 56,7 %     | 56,6 %     | 56,4 %     |

Source: Eurofer questionnaire reply and Eurostat.

- (439) The Union industry captive volume (composed of captive use and captive sales on the Union market) on the Union market increased by 4 % during the period considered, from about 40,7 million tonnes in 2011 to 42,2 million tonnes during the investigation period.
- (440) The Union industry's captive market share (expressed as a percentage of total production) remained stable over the period considered, ranging between 55,7 % and 56,7 %.

## 4.4.2.3. Employment and productivity

- (441) The employment was calculated by taking only the employees directly working for the like product in the different steel mills of the Union producers. This method provided accurate data which are relatively easy to determine.
- (442) Employment and productivity developed over the period considered as follows:

Table 9

**Employment and productivity**

|   | 2012   | 2013   | 2014   | IP     |
|---|--------|--------|--------|--------|
| Number of employees<br>(Full time employment/ employee) | 18 729 | 18 632 | 17 739 | 17 829 |
| <i>Index (2012 = 100)</i>                               | 100    | 99     | 95     | 95     |

|                               | 2012  | 2013  | 2014  | IP    |
|-------------------------------|-------|-------|-------|-------|
| Productivity (tonne/employee) | 3 900 | 4 003 | 4 257 | 4 191 |
| <i>Index (2012 = 100)</i>     | 100   | 103   | 109   | 107   |

Source: Eurofer questionnaire reply.

- (443) The level of the Union industry employment decreased during the period considered in order to reduce production costs and gain efficiency in view of the increasing competition from Chinese and other imports on the market. This resulted in a reduction of the workforce by 5 % during the period considered, without taking into consideration any indirect employment. As a consequence and in view of the slightly increasing production volume (+ 2 %) over the period considered, the productivity of the Union industry's workforce, measured as output per person employed per year, increased much more (+ 7 %) than the increase in actual production. This shows that the Union industry was willing to adapt to the changing market conditions in order to remain competitive.

#### 4.4.2.4. Inventories

- (444) Stock levels of the Union producers developed over the period considered as follows:

Table 10

#### Inventories

|  | 2012      | 2013      | 2014      | IP        |
|--|-----------|-----------|-----------|-----------|
| Closing stocks (tonnes)                      | 2 908 745 | 2 646 989 | 2 653 224 | 2 798 420 |
| <i>Index (2012 = 100)</i>                    | 100       | 91        | 91        | 96        |
| Closing stocks as a percentage of production | 4,0 %     | 3,5 %     | 3,5 %     | 3,7 %     |
| <i>Index (2012 = 100)</i>                    | 100       | 89        | 88        | 94        |

Source: Eurofer questionnaire reply.

- (445) During the period considered the level of closing stocks decreased slightly. Most types of the like product are produced by the Union industry based on specific orders of the users. Therefore, stocks are not considered to be an important injury indicator for this industry. This is also confirmed by analysing the evolution of the closing stocks as a percentage of production. As can be seen above, this indicator remained relatively stable at ca. 3,5 % to 4 % of the production volume.

#### 4.4.2.5. Magnitude of the amount of countervailing subsidies

- (446) The amount of countervailing subsidies for China, specified above in the subsidy section, is significant. Given the volumes and prices of the subsidised imports from the country concerned, the impact of the actual subsidy margin cannot be considered to be negligible.

#### 4.4.2.6. Growth

- (447) The Union consumption (free market) increased by around 12 % during the period considered, while the sales volume of the Union industry on the Union market remained stable. The Union industry thus lost market share, contrary to the market share of the imports from the country concerned which increased significantly during the period considered.



## 4.4.3. Microeconomic indicators

## 4.4.3.1. Prices and factors affecting prices

- (448) The weighted average unit sales prices of the Union producers on the free market in the Union developed over the period considered as follows:

Table 11

**Sales prices on the free market in the Union**

|                                     | 2012 | 2013 | 2014 | IP  |
|-------------------------------------|------|------|------|-----|
| Sales price (EUR/tonne)             | 553  | 498  | 471  | 427 |
| Index (2012 = 100)                  | 100  | 90   | 85   | 77  |
| Unit cost of production (EUR/tonne) | 572  | 511  | 469  | 431 |
| Index (2012 = 100)                  | 100  | 89   | 82   | 75  |

Source: Questionnaire reply of sampled Union producers.

- (449) The table above shows the evolution of the unit sales price on the Union free market as compared to the corresponding cost of production. Sales prices have on average been lower than the unit cost of production, with the exception of 2014 where the market started picking up and where the market share of Chinese imports was lower than in the investigation period.
- (450) In 2012 and 2013, the aftermath of the Eurozone debt crisis, on top of a declining steel demand in 2012, affected negatively the performance of the Union industry. In 2014, and also in the first half of 2015, the Union industry started recovering, due to increased efforts to remain competitive, in particular by increasing the productivity of the Union industry's workforce, as set out in recital (443), which resulted in productivity gains and in improved capacity utilisation.
- (451) Despite these efforts, the cost of production remained generally higher than the decreasing sales prices, and in order to limit the loss in market share, the Union producers followed the downward price spiral and reduced their sales price significantly, in particular during 2015. As the product concerned is a commodity, Union producers had to follow the decreasing price spiral during the period considered.
- (452) Among the sampled producers, certain hot-rolled flat products of iron, non-alloy or other alloy steel for captive consumption were transferred or sold at transfer prices for further downstream processing using different pricing policies. Therefore, no meaningful conclusion can be drawn from captive use price evolution.

## 4.4.3.2. Labour costs

- (453) The average labour costs of the Union producers developed over the period considered as follows:

Table 12

**Average labour costs per employee**

|   | 2012   | 2013   | 2014   | IP     |
|---|--------|--------|--------|--------|
| Average labour costs per employee (EUR) | 63 722 | 63 374 | 66 039 | 66 023 |
| Index (2011 = 100)                      | 100    | 99     | 104    | 104    |

Source: Questionnaire reply of sampled Union producers.

(454) During the period considered, the average wage per employee went up by 4 %.

#### 4.4.3.3. Profitability, cash flow, investments, return on investments and ability to raise capital

(455) Profitability, cash flow, investments and return on investments of the Union producers developed over the period considered as follows:

Table 13

#### Profitability, cash flow, investments and return on investment

|  | 2012    | 2013    | 2014    | IP      |
|--|---------|---------|---------|---------|
| Profitability of sales in the Union on the free market (% of sales turnover) | - 3,3 % | - 2,7 % | 0,4 %   | - 0,8 % |
| Cash flow ('000 EUR)   | 150 190 | 139 285 | 221 982 | 122 723 |
| Index (2012 = 100)   | 100     | 93      | 148     | 82      |
| Investments ('000 EUR)   | 334 789 | 256 013 | 289 581 | 291 771 |
| Index (2012 = 100)   | 100     | 76      | 86      | 87      |
| Return on investment   | - 4,5 % | - 3,5 % | 0,5 %   | - 1,0 % |

Source: Questionnaire reply of sampled Union producers.

(456) The Commission established the profitability of the Union producers by expressing the pre-tax net loss of the sales of the like product on the free market in the Union as a percentage of the turnover of those sales.

(457) Profitability developed negatively over the period considered: losses were incurred during all the three years, with the exception of 2014. While the losses in the years 2012 and 2013 are partly linked to the aftermath of the Eurozone debt crisis (on top of a declining steel demand in 2012), the Union producers could partly recover during 2014 and the first half of 2015.

(458) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow varies a lot during the period considered, but remained overall largely positive, mainly due to non-cash expenses such as depreciation.

(459) As return on investment remained negative overall during all years, with exception of 2014, the Union industry reduced the level of its investments by 13 % between 2012 and 2015. The ability to raise capital has been affected by the losses incurred during the period considered as can be seen from the decrease in investments.

(460) Finally, the table below contains a breakdown of 2015 per quarter as the complainant alleged in its complaint that there was a significant deterioration in the second half of 2015. The data in the table indeed confirm a significant deterioration, in the second half of 2015, of the profitability and of the net sales value due to further depressing sales prices on the free Union market.

Table 14

**Profitability per quarter of the sampled Union producers**

| Quarter of 2015 | Profitability (Loss) per quarter of the companies (in millions of euro) | Net sales price per tonne | Net sales on the free market (in millions of euro) | Profitability percentage |
|-----------------|---|---------------------------|--|--------------------------|
| First           | 37,98   | 444,71                    | 1 073,34   | 3,5 %                    |
| Second          | 22,78   | 436,19                    | 1 001,60   | 2,3 %                    |
| Third           | - 22,92   | 426,36                    | 857,49   | - 2,7 %                  |
| Fourth          | - 69,80   | 392,92                    | 699,47   | - 10,0 %                 |
| Total           | - 31,9  | 427,2                     | 3 631,9  | - 0,8 %                  |

Source: Questionnaire reply of sampled Union producers.

#### 4.4.4. Conclusion on material injury

- (461) On the one hand, the Union industry as a whole could slightly increase its production volumes (despite the significant reduction of production by mainly one major Italian producer) and improve its capacity utilisation rate due to the increase in captive and free consumption. It also took concrete actions to improve efficiency by keeping a tight grip on costs of manufacturing (mainly raw materials) and by increasing the production per employee. As a result, the cost of production decreased by 25 %. Furthermore, its cash flow remained positive over the whole period considered. The sampled Union producers could still make investments of around 250-330 million euro a year during the period considered.
- (462) On the other hand, despite the Union industry's efforts during the period considered to improve its overall performance, other injury indicators show a deterioration of the situation on the free market: With exception of 2014 and the beginning of 2015, where the Union industry started to slightly recover, losses were incurred throughout the whole period considered, which reached unsustainable levels in the second half of 2015. Indeed, despite the fact that the sales volumes remained relatively stable on the Union free market, the Union industry lost market share and had to reduce investments in the light of the negative return on investment.
- (463) In the light of the foregoing, it is concluded that the above data show that the Union industry was in a weak situation at the end of the investigation period <sup>(1)</sup> but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 8(4) of the basic Regulation.
- (464) After disclosure, the GOC disagreed with the conclusion of the Commission that the Union industry was in a weak situation at the end of the investigation period for the following reasons:
- First, the total production volume increased by 2 % between 2012 and the investigation period. Moreover, the production capacity utilization of the Union industry increased by 4,8 % during the period considered;
  - Second, the Union's industry sales volumes remained stable, and a decrease of a market share by nine percentage points would not be that significant in view of the fact that the Union industry still retained a dominant share of 77,7 % in the investigation period;

<sup>(1)</sup> This conclusion is in line with the conclusion of the Government of China in its submission of 26 August 2016 'that the EU Industry did not suffer material injury during the period considered' (see the submission of the Government of China, 26 August 2016, recital 298). On the other hand, on the basis of the data collected, the Commission does not agree with the conclusion of the Government of China that the EU industry 'was, moreover, not in a vulnerable situation at the end of the IP' (see the submission of the Government of China, 26 August 2016, recital 298).

- Third, though employment decreased by 5 % during the period considered, this would have to be seen in the light of a parallel increase of 7 % in productivity.
- Fourth, the decrease in sales prices should be viewed in the context of a similar decrease in unit costs of production. In addition, the GOC disagreed with the Commission's statement that the profitability developed negatively over the period considered because there was, in fact, an improvement of 2,5 % as compared to 2012. Moreover, the data indicate that the cash flow of the Union industry remained positive over the whole period considered and the sampled Union producers could still make investments of around 250-330 million euro annually.
- Fifth, a comparison of the facts of the present case with those of Case T-528/09 *Hubei Xinyegang Steel v Council* <sup>(1)</sup> would show that the facts in the latter case were much more indicative of a weak position of the Union industry.

(465) The Commission rejected the above mentioned arguments by the GOC on the following grounds:

- First, concerning the arguments of the GOC on the data of production and production capacity, the Commission acknowledged as described in recital (461) above the fact that some macroeconomic indicators (such as the production volumes, the capacity utilisation rates due to the increase in the captive and free consumption) were still following a positive trend. Those trends, however, do not call into question the overall findings that the Union industry was in a weak situation at the end of the investigation period since other indicators showed a deterioration of the Union industry as described in recital (462).
- Second, concerning the arguments of the GOC on the data of sales volumes and market shares, the Commission acknowledged in recital (436) above that the sales volume of the Union industry remained relatively stable. However, the Commission disagreed with the GOC that a decrease by nine percentage points in market share is not significant. Indeed, as explained in recital (437) above the Commission found that *'the decrease of Union industry's market share exceeded significantly the slight increase in its sale on the Union market'*. The analysis is based on the entire Union industry, irrespective of whether they have complained or not. The increases by non-complainant Union producers are marginal compared to the massive reductions of complainant Union producers.
- Third, concerning the arguments of the GOC on employment and productivity, the Commission acknowledged in recital (442) above that the productivity of the Union's industry workforce, measured as output per person, increased much more (+ 7 %) than the increase in actual production. Moreover, even if the Commission would exclude the employees for the captive market segment, the indicator clearly shows the reduction in headcount of persons working in HRF over the period considered.
- Fourth, regarding the arguments of the GOC on the decrease in sales prices and a similar decrease in unit costs of production, profitability, and cash flows, the Commission rejected them for the following reasons:
  - Concerning the similar decrease in unit cost and sales price, the Commission acknowledged in Table 11 of recital (448) above that the evolution of the Union industry sales price is similar to the evolution of the unit cost of production. Nevertheless, as mentioned in recital (449) above, the Commission also pointed to the fact that the sales prices have been on average lower than the unit cost of production, with the exception of 2014, where the market started picking up and where the market share of the Chinese imports was lower than in the investigation period. Moreover, as mentioned in recital (589) below, the cost of production within the Union industry decreased altogether by 25 % over the period considered, whereas the average Chinese import prices decreased by a higher percentage, i.e. by 33 % over the same period (see recital (517) below. In addition, as mentioned in recital (590) below, the Union industry could have maintained its sales price levels so as to reap the benefits of a reduction in its costs. However, it was not capable of doing so because of the subsidised lower priced imports from China.

<sup>(1)</sup> Judgment of 29 January 2014, ECLI:EU:T:2014:35. This judgement was upheld on 7 April 2016 by the Court of Justice in Joined Cases C-186/14 and C-193/14 P *ArcelorMittal Tubular Products Ostrava and Others v Hubei*, ECLI:EU:C:2016:209.

- Regarding the claim of the GOC that the profitability did not develop negatively over the period considered but even improved by 2,5 % during the investigation period as compared to 2012, the Commission disagreed with this argument for the following reasons. The Commission referred to recital (544) below where it found that, even if the loss for the investigation period was – 0,8 %, the profitability of the sampled Union producers reached the unsustainable level of – 10 % in the fourth quarter of 2015, when Chinese price pressure was felt most.
- Concerning the positive cash flow, the Commission acknowledged this fact already in recital (461) above as part of those injury indicators which developed positively during the period considered.
- Fifth, concerning the comparison of the present case with Case T-528/09 *Hubei Xinyegang Steel v Council*: here, the GOC claims that the facts allegedly showed that in the latter case there were much more elements indicative of a weak position of the Union industry. The Commission rejected this claim of GOC as follows: the Commission's assessment in the present case was in line with the quoted case-law. By contrast with Council Regulation (EC) No 926/2009 <sup>(1)</sup>, which was the regulation at issue in Case T-528/09 *Hubei Xinyegang Steel v Council*, it should be noted that:
  - first, every investigation that the Commission undertakes is fact-specific in its own right, including in relation to the product scope, the industry involved, and the injury indicators that require consideration;
  - a threat of injury case is an even more complex endeavour in this regard. So, while, already, a comparison between injury investigations of different products, industries, and periods of investigations is a difficult task, a comparison between threat of injury investigations is an extremely difficult and complex endeavour given the multitude of individual qualifying factors that flow into a threat of injury finding. That comparison cannot be pinned down to one factor alone, or for that matter, as the GOC seems to insinuate, to a mere import volume and market share comparison; and;
  - third, the Commission analysed and assessed thoroughly post-IP data to the extent possible in order to confirm or invalidate its findings, as required by that judgment, and found that the Union industry was in a weak situation at the end of the investigation period, but not to the extent that it had suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation. As such, and in important contrast to the findings of Case T-528/09, the injury indicators considered do not paint a picture of an industry in a situation of strength, which the General Court found to be the case vis-à-vis the industry at issue therein. <sup>(2)</sup>

In summary, the Commission is of the opinion that the GOC does not raise factors beyond those considered that would call the above findings into question: the GOC refers in its argumentation mainly to the indicators which were still positive at the end of the investigation period and which the Commission acknowledged in recital (461) above. However, the GOC does not provide explanation that would call into question, for instance, the findings in recital (462) above where the Commission listed the other indicators, which showed a deterioration of the situation on the free Union market. In recital (462) above, apart from referring to the loss of market share and the reduction of investments in the light of the negative return on investment, the Commission also highlighted that the losses reached unsustainable levels in the second half of 2015. Therefore the Commission rejected all arguments of the GOC in this respect.

- (466) The Commission hence confirmed its conclusions set out in recitals (461) to (463) above, concluding that the data show that the Union industry was in a weak situation at the end of the investigation but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 8(4) of the basic Regulation.

<sup>(1)</sup> Council Regulation (EC) No 926/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in China (OJ L 262, 6.10.2009, p. 19).

<sup>(2)</sup> Judgment of 29 January 2014, Case T-528/09 *Hubei Xinyegang Steel v Council*, ECLI:EU:T:2014:35, paragraph 61.

## 5. THREAT OF INJURY

### 5.1. Introduction

- (467) In the analysis of a threat of material injury to the Union industry, in accordance with Article 8(8), second subparagraph, of the basic Regulation, consideration is given below to such factors as:
- the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;
  - a significant rate of increase of subsidised imports into the Union market indicating the likelihood of substantially increased imports;
  - sufficient freely disposable capacity of the exporting producer on the part of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports to the Union, account being taken of the availability of other export markets to absorb any additional exports;
  - whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports, and;
  - the level of inventories.
- (468) As the wording ‘such as’ in Article 8(8), second subparagraph of the basic Regulation, indicates, next to these five factors other factors may be analysed as well for the determination of a threat of injury. In particular, the Commission further analysed factors like profitability and order intakes, for which it had investigation period and post-investigation period data available.
- (469) With respect to the period considered, the Commission reviewed again the data collected for 2012-2015, as an understanding of the present situation of the Union industry is necessary in order to be able to determine whether there is a threat of injury to the Union industry <sup>(1)</sup>.
- (470) Moreover, under the case-law, the Union institutions are entitled, in certain circumstances, to take post-investigation period data into consideration when conducting anti-dumping (and consequently countervailing duty) investigations initiated on the basis of allegations of threat of injury. Indeed, the case-law considers that the determination of whether there is a threat of injury, by its very nature, requires a prospective analysis.
- (471) The Commission thus conducted a prospective analysis for all factors. In addition, it was able to collect data on subsidised imports, Chinese capacity and import prices for the period January 2016-February 2017 in order to confirm or invalidate the forecasts, as required by the Court <sup>(2)</sup>. For profitability and order intakes though, comprehensive data were not available for the period January-September 2016 and only partial data up to the end of June 2016. For the level of inventories, no comprehensive but only partial data could be found up to the first quarter of 2017.
- (472) Finally, Article 8(8) of the basic Regulation requires that the finding of a threat of material injury is to be based on facts and not merely allegation, conjecture or remote possibility and that the change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent.

<sup>(1)</sup> World Trade Organization, WT/DS132/R, 28 January 2000, Mexico- Anti-dumping investigation of high fructose corn syrup (HFCS) from the United States — Report of the Panel, recital 7.140, page 214. The WTO Panel stated the following in an anti-dumping case ‘in order to conclude that there is a threat of material injury to a domestic industry that is apparently not currently injured, despite the effects of dumped imports during the period of investigation, it is necessary to have an understanding of the current condition of the industry as a background. Merely that dumped imports will increase, and will have adverse price effects, does not, *ipso facto*, lead to the conclusion that the domestic industry will be injured — if the industry is in very good condition, or if there are other factors at play, dumped imports may not threaten injury’. This reasoning can be transposed to anti-subsidy cases as well. [Emphasis added by the Commission.]

<sup>(2)</sup> Judgment of the Court of Justice of 7 April 2016 in Case C-186/14 P *ArcelorMittal Tubular Products Ostrava and Others v Hubei*, ECLI:EU:C:2016:209, recital 72, confirming the General Court’s judgment of 29 January 2014 in Case T-528/09 *Hubei Xinyegang Steel v Council*, ECLI:EU:T:2014:35.

- (473) After disclosure, the GOC recalled that a finding of threat of material injury is a high standard to meet. The threat must be clearly apparent from the circumstances of the case and that special care must be exercised by the investigative authority. As a preliminary point, the GOC claimed that a close analysis of the factors that the Commission considered revealed that the Commission did not meet this high standard for finding a threat of injury.
- (474) The Commission rejected this claim by the GOC for the reasons detailed in section 5.2 below covering the analysis of all factors that have been considered. The Commission has taken a comprehensive approach. It weighted and assessed not only all the factors which are listed in Article 3(9), second subparagraph of the basic Regulation but also some additional factors such as order intakes and profitability.
- (475) The Commission also recalled that under Articles 11 and 5 of the basic Regulation, which equally apply to investigations initiated on the basis of allegations of threat of injury, representative findings have to be based on a period ending before the initiation of proceedings. The purpose of this principle is to ensure that the results of the investigation are representative and reliable. In particular, the factors on which the determination of subsidisation and injury are based should not be influenced by the conduct of the producers concerned following the initiation of the proceeding, so that the definitive countervailing duty imposed remedies effectively the injury caused by the subsidisation.

## 5.2. Threat of injury

### 5.2.1. *The nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom*

- (476) As explained in Chapter 3 above, the Chinese exporting HRF producers benefitted from a large number of subsidy schemes. Most of them are permanent by nature, such as land use rights, tax breaks and grant programmes. Moreover, the credits received were a constant feature of Chinese industrial policy to support its steel industry. The Commission concluded that these subsidies were of structural nature. They are likely to induce Chinese exporting producers to sell their steel products and their ever increasing output in foreign markets when local consumption cannot absorb these quantities.

### 5.2.2. *Significant rate of increase of subsidised imports into the Union market indicating the likelihood of substantially increased imports*

#### 5.2.2.1. IP data

- (477) Imports from the country concerned significantly increased from 246 720 to 1 519 304 tonnes between 2012 and the investigation period, as shown in the table at recital (419) above. These imports have consistently taken place at continuously lowering prices. The substantial increase of the market share held by these Chinese subsidised imports (+ 550 %) confirms that the development of these imports was not only the consequence of an increase in demand (+ 12 %), but that Chinese exporting producers have been penetrating a new market and gaining market share with low-priced imports at the expense of other economic actors, including Union producers.
- (478) After disclosure, the GOC claimed that the HRF imports from China only resulted in a market share of 4,32 % during the IP whereas the Union industry held a dominant market share of 77,7 % during the IP. The GOC also claimed that the import volumes from China were consistently and substantially lower than the imports from Russia, and, with the exception of the IP, Ukraine.
- (479) The Commission rejected these claims on the following ground. The Commission acknowledged that the HRF imports from China resulted in a market share of 4,32 % in recital (419) above. However, in the same recital, the Commission also pointed to the fact that in absolute figures the imports from the country concerned increased significantly during the period considered from 246 720 tonnes to 1 519 304 tonnes during the IP, leading to an increase by 516 % during the period considered. In parallel, the total market share of the Chinese imports into the Union increased more than five times during the period considered. Second, it cannot be denied that China was the country with a substantial increase of imports into the Union: As such, the increase in Chinese imports between 2012 and the IP amounted to 1 273 000 tonnes (see recital (419) above), whereas the increase in Russian and Ukrainian imports amounted for the same period to 373 000 tonnes and 178 000 tonnes

respectively (see recital (564) below). Third, the argument that Chinese imports were lower than those of other countries is a question of causation; but not a relevant factor to consider in the threat of injury analysis, as Article 8(8) of the basic Regulation refers to the significant rate of subsidised imports into the Union market.

#### 5.2.2.2. Post-IP data

- (480) The volume of Chinese imports further increased (by 8,5 %) in the first half of 2016 (773 275 tonnes) (source: Eurostat), compared to the first half of 2015 (712 390 tonnes). The available data show that not only did Chinese subsidised imports see a substantial increase during the period considered, but also that this trend was not stopped or reversed up until June 2016.
- (481) However, on the other hand, available data for the additional periods July-September 2016, October-December 2016 and January-February 2017 evidence that Chinese subsidised imports started to decrease as compared to the IP (2015) and to the post-IP period January-June 2016, when expressed on the basis of monthly averages.

Table 15

#### Evolution of Chinese import volume (tonnes)

|                                 | 2014    | IP (2015) | January-June 2016 | July-September 2016 | October-December 2016 | January-February 2017 |
|---------------------------------|---------|-----------|-------------------|---------------------|-----------------------|-----------------------|
| Volume of imports from China    | 592 104 | 1 519 304 | 773 275           | 296 267             | 1 460                 | 5 024                 |
| Average monthly Chinese imports | 49 342  | 126 608   | 128 879           | 98 756              | 486                   | 2 512                 |

Source: Eurostat.

- (482) The Commission thus found — in line with the statements of the Government of China in its submission <sup>(1)</sup> — that the trend of increasing import volumes stopped. However, when assessing the significance and the reliability of these figures for confirming or invalidating the threat of injury analysis, the Commission also observed that:
- (a) The average monthly Chinese import volumes in the period July-September 2016 are still twice as high as the average monthly imports in 2014;
- (b) The decrease in the average monthly Chinese import volumes from July 2016-September 2016 (compared to 2015) can be explained by:
- the chilling effect of the request for registration by the complainant on 5 April 2016 and its update in June 2016 on financial data in the anti-dumping proceeding against dumped imports from China on the product concerned (which, though, was withdrawn only in mid-August 2016);
  - the adoption by the Commission of Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation <sup>(2)</sup>, under which anti-dumping duties were collected retroactively for the first time and;
  - the knowledge of the intention of the Commission to decide on provisional measures within 8 months of initiation (instead of 9 months).

<sup>(1)</sup> Submission of the Government of China, 26 August 2016, recitals 336 and following.

<sup>(2)</sup> OJ L 210, 4.8.2016, p. 27.



- (c) The significant decrease in the average monthly Chinese import volumes from October 2016-February 2017 can be explained by the imposition of provisional anti-dumping measures in the parallel ongoing anti-dumping proceeding on 7 October 2016 <sup>(1)</sup>.
- (483) Concerning the rationale why the Chinese exports decreased mainly from the second half of 2016 onwards, the Commission pointed to the following four facts as probable explanation:
- On the basis of the Steel Communication from the Commission of 16 March 2016 ('Steel: Preserving sustainable jobs and growths in Europe') <sup>(2)</sup> the Chinese exporting producers had been made aware of the intention of the Commission to *'immediately use the available margins to further accelerate the adoption of provisional measures by reducing investigation procedures by one month (from nine to eight months).'* As a result, due to the initiation of the anti-dumping proceeding against dumped imports from China on the product concerned on 13 February 2016, they had been aware that provisional measures could be imposed early October 2016 in the anti-dumping proceeding against dumped imports from China on the product concerned;
  - On 5 April 2016, the Complainant submitted a request for registration of imports from the PRC of the product concerned in the anti-dumping proceeding against dumped imports from China on the product concerned. On 2 June 2016, the complainant updated the request by providing more recent information. As a result, well-informed exporting producers and exporters knew that there was a risk that — if they shipped the product concerned from the second half of 2016 onwards — their exported like products could become subject to retroactive duties 90 days prior to the potential imposition of provisional duties in October 2016 in the anti-dumping proceeding against dumped imports from China on the product concerned, i.e. by July 2016;
  - On 29 July 2016, the Commission adopted Implementing Regulation (EU) 2016/1329 <sup>(3)</sup>, under which anti-dumping duties were collected retroactively for the first time on certain cold-rolled steel products, also a steel product. As a result, the risk that measures would apply as of early July 2016 in the anti-dumping proceeding against dumped imports from China on the product concerned became even more certain because of the retroactive collection in this case involving a steel product;
  - On 7 October 2016, provisional anti-dumping measures were imposed in the parallel ongoing anti-dumping proceeding.

### 5.2.2.3. Conclusion

- (484) Imports from the country concerned significantly increased from 246 720 to 1 519 304 tonnes between 2012 and the investigation period, as shown in the table at recital (419) above. These imports have consistently taken place at continuously lowering prices. The volume of Chinese imports further increased (by 8,5 %) in the first half of 2016 (773 275 tonnes) (source: Eurostat), compared to the first half of 2015 (712 390 tonnes).
- (485) The decrease of Chinese import volumes after July 2016 can be explained by the chilling effect of the registration request in the anti-dumping proceeding against dumped imports from China on the product concerned, the knowledge of intention of the Commission to decide on provisional measures within eight months of initiation in the anti-dumping proceeding against dumped imports from China on the product concerned, and finally the effective imposition of anti-dumping measures in the parallel ongoing anti-dumping case early October 2016.
- (486) As shown in the table at recital (481), the absolute level of Chinese import volumes for the period July 2016-September 2016 onwards remains very high when compared to 2014. However, the absolute level of Chinese import volumes for the periods October-December 2016 and January-February 2017 significantly decreased as a result of the imposition of measures in the parallel ongoing anti-dumping proceeding. This significant decrease

<sup>(1)</sup> Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

<sup>(2)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Brussels, 16.3.2016, COM (2016) 155 final, Steel: Preserving sustainable jobs and growth in Europe.

<sup>(3)</sup> Commission Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 27).

during the periods October-December 2016 and January-February 2017 alone evidences that, taking into consideration the existing overcapacity in China (see below point 5.2.3.1.), it is likely that this decrease in subsidised import volumes would be only temporarily, and that the import volume trend observed for the period October 2016-February 2017 in particular would revert if no definitive countervailing measures are imposed. Therefore, this consideration did not change the Commission's assessment that there was a clear and imminent threat of injury at the end of the investigation period.

### 5.2.3. Sufficient freely disposable capacity

#### 5.2.3.1. Capacity in the PRC (crude steel and the like product)

- (487) Concerning Chinese crude steel capacity, the available information indicates that the Chinese steel capacity has been increasing rapidly for a long time. Whereas the PRC accounted for 25,6 % of the total world crude steel production in 2004 <sup>(1)</sup>, it almost doubled its actual production and accounted for 50,3 % in 2015. In this respect, the Steel Communication from the Commission states the following: ‘... the spare production capacity in certain third countries, notably in China, has increased dramatically. The overcapacity in China alone has been estimated at around 350 million tonnes, almost the double of the Union's annual production. <sup>(2)</sup>’
- (488) In this respect, the OECD estimated the total Chinese steelmaking capacity to be 1 140 million tonnes <sup>(3)</sup> in 2014, whereas the actual Chinese production was calculated to be 822,8 million tonnes <sup>(4)</sup>. For 2015, the available Chinese crude steel excess capacity is around 350 million tonnes, as shown in the table below.

Table 16

#### Actual production of the like product by third countries (in thousands of tonnes)

| Country | Crude steel capacity estimated for the year 2015 <sup>(1)</sup> | Crude steel production in 2014 | Crude steel production in 2015 <sup>(2)</sup> | Theoretical excess capacity in 2015 | HRF actual production in 2014 | HRF actual production in 2015 |
|---------|---|--------------------------------|---|-------------------------------------|-------------------------------|-------------------------------|
| Russia  | 90 000  | 71 461                         | 70 898  | 19 102                              | 26 898                        | 27 509                        |
| PRC     | 1 153 098   | 822 750                        | 803 825                                       | 349 273                             | 317 387                       | 322 259                       |
| Ukraine | 42 500  | 27 170                         | 22 968  | 19 532                              | 7 867                         | 6 314                         |
| Iran    | 28 850  | 16 331                         | 16 146  | 12 704                              | 8 276                         | 7 872                         |
| Brazil  | 49 220  | 33 897                         | 33 256  | 15 964                              | 14 229                        | 13 388                        |

<sup>(1)</sup> Source for capacity data: OECD (OECD, DSTI/SU/SC(2016)6/Final, 5 September 2016, Directorate for Science, Technology and Innovation, Updated steelmaking capacity figures and a proposed framework for enhancing capacity monitoring activity, Annexe, p. 7 and following).

<sup>(2)</sup> Source for production data: World Steel Association, Steel Statistical Yearbook 2015 (World Steel Association, Steel Statistical Yearbook 2016 table 1 on pages 1 and 2 and table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>).

<sup>(1)</sup> World Steel in figures 2015, World Steel Association, p. 14, <http://www.worldsteel.org/publications/bookshop/product-details/~World-Steel-in-Figures-2015~PRODUCT~World-Steel-in-Figures-2015~.html>.

<sup>(2)</sup> COM(2016) 155 final, Brussels, 16.3.2016, Communication from the Commission to the European Parliament, The European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Steel: Preserving sustainable jobs and growth in Europe, p. 2.

<sup>(3)</sup> OECD, DSTI/SU/SC(2015)8/Final, Directorate for Science, Technology and Innovation, Capacity developments in the world steel industry, Table 1, p. 10, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC\(2015\)8/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC(2015)8/FINAL&docLanguage=En).

<sup>(4)</sup> World Steel Association, World Steel in Figures 2016, table ‘major steel-producing countries 2014 and 2015’, p. 9, <http://www.worldsteel.org/media-centre/press-releases/2016/World-Steel-in-Figures-2016-is-available-online.html>.

- (489) The above updated 2015 production figures for the like product show that the country concerned outnumbers by far all other large exporting countries; the above updated 2015 capacity figures for crude steel also indicate that only the PRC has such a massive crude steel excess capacity (amounting to almost 350 million tonnes in 2015, compared to 317 million tonnes in 2014).
- (490) Accordingly, the Commission reiterated that the overcapacity in steel production in the PRC constitutes an important indicator for the existence of a threat of an imminent injury to the Union industry.
- (491) Such steel overcapacity is also not in line with the demand for the like product in the PRC or in other countries. In fact there is a slowing demand growth in global markets and the capacity/demand gap has been widening, according to a recent OECD study <sup>(1)</sup>.
- (492) The fact that the country concerned has a massive steel overcapacity is not challenged by the Chinese authorities: First, the Chinese State Council issued on 1 February 2016 an 'Opinion for the steel industry to resolve excess capacity' which lays down the overall Chinese approach for tackling more resolutely the overcapacity in the Chinese steel industry. Measures would inter alia be a reduction of the crude steel capacity by 100-150 million tonnes over five years and the strict prohibition of new production capacity. Second, CISA also mentioned in its submission that '*in the last few years the Chinese government and the Chinese steel association have taken effective measures.... Since 2011 China has actively eliminated obsolete capacities and reinforced energy saving measures.*' <sup>(2)</sup> Furthermore, the Commission received anecdotal information that the PRC apparently started to reduce its overcapacity: In this respect, the EU Delegation in Beijing reported that a Deputy Director of CISA declared that the PRC is likely to cut off 70 millions of tonnes of steel overcapacity during 2016 (announcement on 28 October 2016). Furthermore, Baosteel Group and Wuhan Steel Group also announced that they completed their targeted capacity cuts for 2016 already in October 2016 (announcement on 24 October 2016). Moreover, regard should be had to a recent OECD report, which states that two important Chinese steel makers scrapped facilities in the Jilin and in the Anshan provinces, amounting to a total of 2,68 million tonnes <sup>(3)</sup>.
- (493) However, there are also developments pointing to the opposite direction, as follows:
- There are reports that the country concerned suffers from a phenomenon of 'zombie' steel mills <sup>(4)</sup>: these are mills that are forever said to be dying but never actually die.
  - Another source also reported that 41 blast furnaces have been reopened, and more recent reports even indicate that over 50 million tonnes of steel capacity has been restarted in the PRC since the start of 2016 <sup>(5)</sup>.
  - The World Steel Association states the following on the world crude steel production for the first six months of 2016: 'World crude steel production in the first six months of 2016 was 794,8 Mt, a decrease of - 1,9 % compared to the same period of 2015... Crude steel production ... decreased by - 6,1 % in the EU 28... China's crude steel production for June 2016 was 69,5 Mt, an increase of 1,7 % compared to June 2015....' <sup>(6)</sup>
  - A 2016 OECD projection <sup>(7)</sup> estimated that the Chinese capacity would even further increase in 2016, 2017 and 2018. A recent 2017 OECD report <sup>(8)</sup> mentioned that Chinese steelmaking capacity is expected to have stabilised at 1,16 billion tonnes per year (2016 compared to 2015). The Chinese side continued to avoid

<sup>(1)</sup> OECD Directorate for Science, Technology and Innovation (2015): 'Excess capacity in the global steel industry: the current situation and ways forward', Technology and Industry Policy Papers, No. 18, OECD Publishing, pages 5 and 6. <http://dx.doi.org/10.1787/5js65x46nxhj-en>.

<sup>(2)</sup> Submission by Dentons on behalf of China Iron and Steel Association (CISA) and its members, Comments in the anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating the People's Republic of China, 21 March 2016, paragraph (24), page 7.

<sup>(3)</sup> Report of the OECD Steel Committee, 13 March 2017, Capacity developments in the world steel industry, paragraph 14.

<sup>(4)</sup> Reuters, press article, 'China's zombie steel mills fire up furnaces, worsen global glut', <http://in.reuters.com/article/china-steel-overcapacity-idINKCNOXI070>.

<sup>(5)</sup> Reuters press article, 'BHP says over 50 million tonnes of steel capacity restarted in China', <http://www.reuters.com/article/us-bhp-china-idUSKCN0YA09E>.

<sup>(6)</sup> World Steel Association, media centre, June 2016 crude steel production, <https://www.worldsteel.org/media-centre/press-releases/2016/June-2016-crude-steel-production0.html>.

<sup>(7)</sup> Report of the OECD Steel Committee, 13 March 2017, Capacity developments in the world steel industry.

<sup>(8)</sup> Report of the OECD Steel Committee, 8-9 September 2016, Updated steelmaking capacity figures and a proposed framework for enhancing capacity monitoring activity.

engaging in a bilateral platform between the Union and the PRC to monitor steel excess capacity. In addition, the 13<sup>th</sup> Five-Year Plan in relation to 'Steel industry adjustment and upgrading plan' (2016-2020) assumes crude steel production volume forecast at 750-800 million tonnes in 2020 and crude steel production capacity reduction by 100-150 million till 2020. It also encourages steel enterprises being in a good position to go overseas and set up steel production bases as well as processing and distribution centres.

- (494) In conclusion, the issue of overcapacity in the steel sector in the PRC is widely-known and also acknowledged by the Chinese authorities. Despite some announcements by the latter, this issue is not likely to be resolved in the near future: the Chinese overcapacity is so large that it realistically cannot disappear in the short or medium-term period.
- (495) Following disclosure, the GOC commented that CISA's submission of 21 March 2016 specified that around 77,8 million tonnes of capacity have been taken out of operation since 2011 and that Chinese steel producers have also taken action and decreased their output by more than 15 million tonnes between January and October 2015. Therefore, it concluded that any overcapacity of HRF will likely decrease, rather than substantially increase as is required to establish a threat of injury within the meaning of subparagraph 2(c) of Article 8(8) of the basic Regulation.
- (496) The Commission reiterated its previous findings, namely that despite some announcements by the Chinese authorities, the Chinese overcapacity issue is not likely to be resolved in the near future. The spare capacity is so large that it realistically cannot disappear in the short or medium-term period. Moreover, subparagraph 2(c) of Article 8(8) of the basic Regulation refers either to sufficient freely disposable capacity of the exporting producer on the part of the exporter or to an imminent and substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports to the Union.
- (497) The like product is assessed to be a large portion of the total crude steel production for the following reason: whereas the total Chinese crude steel production was 822 000 million tonnes and 822 698 million tonnes, the total Chinese production of hot-rolled flat products was 311 564 million tonnes (or about 37,9 % of overall crude steel production) and 317 387 million tonnes (or about 38,6 % of overall crude steel production) in respectively the years 2013 and 2014 <sup>(1)</sup>. Therefore, the above data on crude steel provide a good indication as well on the overcapacity of the like product in the PRC.
- (498) After disclosure, the GOC commented that the Commission relied on statistics for only 2013 and 2014 without providing any more recent data. Therefore, it questioned the reliability of the Commission conclusion on the extent of China's overcapacities of HRF because would largely be based on data of crude steel in general that are not necessarily representative.
- (499) The Commission rejected this claim for the following reasons. First, the statistics for 2013 and 2014 were the last available data. Therefore, the Commission was not able to take more recent data into account. Furthermore, the GOC itself, even if it is the best placed, failed to provide in its most recent submission more updated figures on capacities and/or a plausible alternative explanation.
- (500) Second, reference is made to the table at recital (571) where the actual production of the like product of the PRC is compared to the actual production of other countries for the years 2014 and 2013. This table shows for instance that the 2014 actual production of the like product in the PRC (317,4 million tonnes) is about 5 times the total aggregate production of Russia, Ukraine, Iran and Brazil combined (57,4 million tonnes). This is an indication of the enormous production capacity of the like product in the PRC.
- (501) Third, the investigation confirmed that during the investigation period, three out of the four sampled Chinese exporting producers run on average, at a capacity utilisation rate of 65 %. The fourth one had though a capacity utilisation rate which was higher than 80 %. In total, there is more than 15 million metric tonnes of freely disposable capacity of the product concerned among only four companies. This is another indicator of the spare capacity of the like product. Assuming similar ratios from other Chinese HRF producers, a high total HRF spare capacity in China can be deduced.

<sup>(1)</sup> World Steel Association, Steel Statistical Yearbook 2015, table 1 on page 2 and table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archiv/yearbook-archiv.html>.

(502) Furthermore, the Union market is an open market with a lot of imports from several countries, as shown in the table at recital (564). As shown in table 4 at recital (419), the Chinese exporting producers have been exporting to the Union market from mainly 2012 onwards and gaining rapidly market shares with low-priced imports at the expense of other economic actors, including the Union producers. This proves that penetration has proven relatively easy and very successful during the period considered for the Chinese exporting producers and is as such an indication of the attractiveness of the Union market for Chinese and other exporting producers.

#### 5.2.3.2. Absorption capacity of third countries

(503) In line with Article 8(8), 2nd subparagraph, lit (c) of the basic Regulation, the Commission analysed the availability of other export markets for the Chinese exporting producers to absorb any additional exports.

(504) In this respect, the Government of China stated that Chinese exports to Vietnam and South Korea are around double the export volume to the Union, while exports to the Middle-East and to Pakistan are roughly the same as the export volume to the Union.

(505) Nevertheless, the Commission noted that some (major) exporting markets are increasingly difficult to access for the Chinese exporting producers because of trade defence measures (countries such as the USA, Malaysia, India, and Mexico) and/or investigations (countries such as Thailand) or increased customs duties (South Africa).

(506) The data concerning the absorption capacity of third countries that became available after July 2016 onwards indicated that:

— On the one hand, Malaysia terminated in January 2016 a safeguard investigation with regard to hot-rolled coils against China and some other countries in January 2016, whereas Turkey terminated in April 2016 an anti-dumping investigation concerning imports of hot-rolled coils from China, France, Japan, Romania, Russia, Slovakia and Ukraine;

— On the other hand, India imposed final duty rates in a safeguard investigation of hot-rolled flat sheet and plates of alloy and non-alloy steel. Furthermore, Brazil initiated an anti-subsidy investigation against imports of hot-rolled flat carbon steel. Finally, Turkish producers have filed new anti-dumping and countervailing duty petitions against imports of hot-rolled coils, originating inter alia in China. In this respect, one interested party informed the Commission that the Turkish authorities had opened in the meantime a new dumping investigation on 21 December 2016, covering heavy plate and certain types of HRF.

(507) Statistical export data — for 2015 and for the first six months of 2016 — for a sample<sup>(1)</sup> of CN codes concerning the like product — showed that Chinese export volumes varied with respect to the destination, but remained stable with respect to its overall export volumes to the rest of the world.

(508) First, the country concerned exported about the same volumes during the first six months of 2016, if these figures were annualised and compared to 2015. Nevertheless, the average unit sales price was lower during the first six months of 2016 compared to 2015. Second, the loss of market share in some countries (such as Indonesia and Vietnam) during the first six months of 2016 compared to 2015 is compensated by a gain of market share in other countries (such as Bangladesh and the Democratic People's Republic of Korea). The Commission hence concluded that it is unlikely that third countries would absorb on their own the huge amount of freely disposable Chinese capacity. Even if Chinese exports to other third countries remained stable with respect to its overall volumes, the attractive Union market is likely to continue to be among the primary targets of Chinese subsidised exports.

(509) After disclosure, the GOC commented that the markets of third countries were not only much more important than the Union market but also showed much more potential. Third countries markets would already absorb any alleged overcapacities of HRF. It also indicated that there are much more important destinations for exports of Chinese HRF than the countries identified by the Commission. Finally, it stated that the Union market would not be a primary target for Chinese HRF.

<sup>(1)</sup> The sample consisted of 679,4 million tonnes of Chinese exports of the like product for the year 2015 and of 343,8 million tonnes of Chinese exports of the like product for the first 6 months of 2016.

(510) The Commission rejected these comments for the following reasons. First, it recalled the significant increase of Chinese imports during the period considered, as laid out in Table 4 above, showing an increase of 1,3 million tonnes. This was clearly an indication that the Union market was attractive and among the primary targets of Chinese subsidised imports. The Commission also recalled the reasons, described in recital (482)(b) above, why the trend of increasing import volumes stopped after June 2016. Moreover, as indicated in recital (523) below, the Commission reiterated that, if no measures were taken, and taking into account the massive existing Chinese excess capacity in steel, including the product concerned, Chinese exporting producers could again take on an aggressive price strategy, by lowering their subsidised sales prices to minimal levels. Finally, the Commission did not analyse the absorption capacity of third countries as an isolated factor, but took a comprehensive approach. It weighted and assessed not only all the factors which are listed in Article 3(9), second subparagraph, of the basic Regulation but also some additional factors such as order intakes and profitability (see recital (540) below), so as to have a strong factual basis for its overall assessment.

#### 5.2.3.3. Absorption capacity of the PRC

(511) There is no sufficient absorption capacity in the PRC either. The domestic demand in the PRC for steel is slowing down: According to the World Steel Association, China's steel demand was first expected to decrease by – 3,5 % in 2015 and – 2,0 % in 2016, following its demand peak in 2013. <sup>(1)</sup> However, these figures were afterwards adjusted by the same organisation as follows: *'the decline in steel demand in China is expected to be – 4,0 % in 2016 followed by – 3,0 % in 2017. This suggests a demand of 626,1 Mt steel (15 % down from 2013) for 2017, a contraction to 41,9 % of world steel use from 47,9 % in 2009 and 44,8 % in 2015'* <sup>(2)</sup>.

(512) The data concerning the absorption capacity of the PRC that became available after July 2016 is limited. Nevertheless, the Commission found that the domestic Chinese steel demand forecast is one of 'low to no growth' in the coming four-five years (2015-2020) as investments (such as in the construction business) are slow, which will impact dramatically the domestic Chinese finished steel consumption. <sup>(3)</sup>

(513) After disclosure, the GOC noted that the Commission relied singularly on information concerning Chinese domestic demand for the entire steel sector without providing any specific data on demand for HRF. It claimed that as such general information would not necessarily be representative for the HRF sector, and therefore that it would be impossible to comment on this assertion and considered that it should therefore be dismissed.

(514) The Commission rejected this claim for the following reasons. Even if the Commission referred to the Chinese domestic steel demand for all types of steel, it also referred in recital (512) above to the investments in the construction business which, according to the complainants' statistics is among the biggest sectors using HRF. Furthermore, the GOC itself, even if it is the best placed, failed to provide in its most recent submission figures on the absorption capacity of China concerning HRF and/or an alternative plausible explanation on the absorption capacity of China.

#### 5.2.3.4. Conclusion on capacity

(515) In conclusion, it is likely that significant volumes of the existing massive excess capacity on steel, including the like product, will continue to be directed to the Union market. The present overcapacities and the insufficient absorption capacity of third states or the PRC itself indicate the likelihood of substantially increased Chinese subsidised exports to the Union would no measures be taken.

<sup>(1)</sup> Worldsteel Short Range Outlook 2014-2015, World Steel Association, <https://www.worldsteel.org/media-centre/press-releases/2015/worldsteel-Short-Range-Outlook-2015-2016.html>.

<sup>(2)</sup> See also recital (444) for the slight decrease in inventories at the sampled Union producers as a percentage of production.

<sup>(3)</sup> Richard Lu, the downside Chinese steel demand scenario: gory details, [http://www.crugroup.com/about-cru/cruinsight/The\\_downside\\_Chinese\\_steel\\_demand\\_scenario\\_gory\\_details](http://www.crugroup.com/about-cru/cruinsight/The_downside_Chinese_steel_demand_scenario_gory_details), 15 July 2016.

## 5.2.4. Price level of subsidised imports

- (516) The Commission has not analysed the trend of Chinese prices as an isolated factor, but has taken a comprehensive approach. It weighted and assessed not only all the factors which are listed in Article 3(9), second subparagraph, of the basic Regulation but also additional factors such as order intakes and profitability (see further below) so as to have a strong factual basis for its overall assessment.

## 5.2.4.1. IP data

- (517) During the period considered, as set out in recital (421), average import prices from the country concerned decreased by 33 %, from 600 EUR/tonne in 2012 to 404 EUR/tonne in 2015.
- (518) The table below compares the average unit Chinese import prices with the unit sales prices of the five sampled Union producers:

Table 17

**Sales prices on the free market in the Union compared to Chinese subsidised import prices during the period considered**

|  | See recital | 2012 | 2013 | 2014 | IP   |
|--|-------------|------|------|------|------|
| Sales price of the 5 sampled Union producers (EUR/tonne)           | (448)       | 553  | 498  | 471  | 427  |
| Average price of Chinese imports according to Eurostat (EUR/tonne) | (421)       | 600  | 505  | 463  | 404  |
| Difference (EUR/tonne)   |             | - 47 | - 7  | + 8  | + 23 |

Source: Questionnaire reply of sampled Union producers and exporting producers, and Eurostat.

- (519) The average Chinese prices were substantially higher than those of Union producers in 2012. However, in 2015, the prices of the subsidised Chinese imports fell below the level of the prices of the Union industry (404 EUR/tonne versus 427 EUR/tonne). This is confirmed by the undercutting analysis in recital (425) above.

## 5.2.4.2. Post-IP data

- (520) The following table shows

- a further continuing decrease of Chinese unit prices during the post-investigation period January-June 2016 when entering the Union market,
- the rising price levels of the subsidised imports for the period July-December 2016.

Table 18

**Chinese subsidised import prices during the post-IP period**

| Average import prices of Chinese imports<br>(first half of 2016) | (euro/tonne) | Average import prices of Chinese imports<br>(second half of 2016 and first two<br>months of 2017) | (euro/tonne) |
|--|--------------|---|--------------|
| Jan-16   | 326          | Jul-16  | 371          |
| Feb-16   | 312          | Aug-16  | 367          |
| Mar-16   | 313          | Sep-16  | 370          |
| Apr-16   | 303          | Oct-16  | 729          |
| May-16   | 299          | Nov-16  | 795          |
| Jun-16   | 308          | Dec-16  | 1 289        |
|  |              | Jan-17  | 454          |
|  |              | Feb-17  | 7 840        |

Source: Eurostat.

(521) The negative effect of the low prices during the IP and the first half of 2016 of the Chinese imports is found to be twofold:

- on the one hand, the significant price differential is likely to cause (further) a shift towards these subsidised imports, because users will be more likely to buy increasing quantities of goods that are sold at low prices; and
- on the other hand, the existence of such low prices in the market is likely to be used by buyers as a negotiating tool to depress the prices offered by the Union producers and other sources, thereby causing further a depressive effect in terms of both diminishing volumes and lower prices. While these effects can be questioned in situations where the price differentials are not substantial, in the case at hand, and considering the price undercutting found, the resulting damage to the Union industry is expected to be serious.

(522) The rise in the Chinese import prices during the period July-February 2017 must be put in the following context:

- The Chinese import prices were not the only ones to increase after 30 June 2016. Import prices of other main exporting countries to the Union also increased after 30 June 2016;
- The level reached in the period July-September 2016 was still below the average costs of production of the EU industry (around 431 EUR/tonne at the end of the investigation period). Hence, despite the increase in price levels, the enormous price depression up to September 2016 remains. In this context, it is important to highlight that the cost of production- data of the Union industry at the end of the IP were the most recent available data in this proceeding since post-IP data on the costs of production of the Union industry are not collected. In any case, even if — hypothetically — the cost of production of the Union industry in the most recent period had decreased, this would not invalidate the fact that the level of Chinese subsidised prices in September 2016 had still been exerting an enormous prices pressure on the Union steel industry;



- On the other hand, the price level reached in the period October-February 2017 is far above the average cost of production of the EU industry. Nevertheless, the price levels during this period relate to an insignificant volume of imports (1 460 tonnes during the period October-December 2016 and 5 024 tonnes during the first two months of 2017, see table 15 above). It could be that these imports relate to a limited number of high-end products. The Commission also observed that the export prices of other third countries, apart from Japan, for the period October-December 2016 are much lower (ranging between 375 and 439 EUR/tonne). Accordingly, the price levels of an insignificant volume of Chinese exports during October 2016-February 2017 cannot be regarded as sufficiently representative; and
- The global price increases of the product concerned can to some extent be explained by the increase in the raw material prices. In particular, prices of coking coal nearly doubled (to about 200 USD/tonne) in the last quarter of 2016, compared to prices in the first half of 2016. In addition, prices of coking coal during the first quarter of 2017 remained volatile and amounted to about 150 USD/tonne at the end of March 2017, which is still above the price levels during the first half of 2016.

#### 5.2.4.3. Conclusion

- (523) Even with the rising prices of Chinese subsidised import prices from July 2016 onwards, the post-IP data on prices as a whole do not invalidate the finding that the Chinese price decreases had led to a threat of injury. This threat of injury was not removed by the recent rising Chinese import prices from July 2016 onwards. Even this increased price level does not stop the enormous price depression which puts the EU industry into an unsustainable position when comparing the increased Chinese prices with the cost of production of the Union producers at the end of the investigation period. Finally, the Commission concluded that the trend of increasing import prices might stop once the volatility of the recent raw material price increases has faded out. The Chinese exporting producers had an aggressive price setting in the Union market, in particular in the second half of 2015 and the first half of 2016. The Commission is aware that Chinese prices have been steadily increasing after the first half of 2016. Nevertheless, if no measures were taken, and taking into account the massive existing Chinese excess capacity in steel, including the product concerned, Chinese exporting producers could again take on an aggressive price strategy, by lowering their subsidised sales prices to minimal levels.
- (524) Following disclosure, the GOC referred first to the fact that import prices from other third countries developed in a similar manner and that the decrease in Chinese prices simply reflected the overall price trend on the Union market and was not an indicator of an aggressive price strategy by the Chinese exporting producers. Second, it alleged that the Chinese prices developed in line with the cost of production of the Union industry. Third, it alleged that, unlike producers in China, the Union industry could not fully reflect this decrease in raw material costs during the period considered in their sales prices as a result of their inability to control their own expenses. Fourth, the GOC disagreed with the Commission that it was the Chinese prices that exerted pressure on the Union industry. In this context, it referred to the fact that the prices of the other countries were consistently below the prices of the Union industry throughout the period considered, whereas the Chinese prices did not fall below the prices of the Union industry until 2014. Finally, it claimed that import prices of Chinese HRF increased since July 2017 and that the Commission consistently resorted to hypothetical claims or made broad statements, failing to add any information that would substantiate those statements.
- (525) The Commission rejected all these arguments as laid out in detail in the following recitals.
- (526) First, the Commission acknowledged in recital (571) below that imports of the like product from some other countries such as Iran, Russia and Ukraine, were made at prices even lower than that of imports from the country concerned. However, the GOC did not consider in its argumentation that, as stated in recital (571) below, the level of imports from Iran was much lower than the level of imports from the PRC in the investigation period. Moreover, imports from Russia and Ukraine indeed increased in volumes during the period considered, but at a much slower pace than the imports from the PRC. Also, contrary to what happened to imports from the PRC, imports from Russia and Ukraine lost a significant share in the total Union import volumes during the period considered.
- (527) Second, concerning the allegation that the Chinese prices developed in line with the cost of production of the Union industry, the Commission referred to the findings made in recital (451) above: even if it were acknowledged that there would be a similar trend between the Chinese import prices and the cost of production

of the Union industry, the fact remains that the cost of production of the Union industry remained generally higher than the decreasing sales prices. Therefore, in order to limit the loss in market share, the Union producers followed the downward price spiral and reduced their sales price significantly, in particular during the year 2015. As the product concerned is a commodity, Union producers had to follow the decreasing price spiral during the period considered.

- (528) Third, concerning the allegation that the Union producers were unable to control their own expenses, the Commission noted the contradiction in the argumentation of the GOC. Whereas the GOC alleged in paragraph 267 of its submission on the one hand that the Union industry was unable to control its expenses, it stated on the other hand in paragraph 239 of its submission that there was an increase in productivity of 7 % during the period considered. Moreover, the Commission referred also to the productivity gains indicated in recital (450) above.
- (529) Fourth, the Commission referred once again to the argumentation made in recital (571) above where it clearly acknowledged that imports of the like product from some other countries such as Iran, Russia and Ukraine, were made at prices even lower than that of imports from the country concerned. However, the Commission also argued in the same recital that the level of imports from Iran was much lower than the level of imports from the PRC in the investigation period. Moreover, imports from Russia and Ukraine indeed increased in volumes during the period considered, but at a much slower pace than the imports from the PRC.
- (530) Finally, the Commission rejected the claim that it consistently resorted to hypothetical claims or made broad statements, failing to add any information that would substantiate those statements. The Commission has based its determination on facts, and not on allegations, conjectures or remote possibilities. This is required of it as an independent investigation authority and flows, *inter alia*, from its obligation under Article 6(8) of the basic Regulation. In any case, the Commission has not analysed the trend of Chinese prices as an isolated factor, but has taken a comprehensive approach.

#### 5.2.5. Level of inventories

- (531) The Commission considered that this factor is not of any particular significance for the analysis because normally stocks are kept by traders (stockists) and not so much by producers. Furthermore, Union producers are mainly producing on order, enabling them to keep their inventory levels as low as possible. Nevertheless, it analysed this factor which is expressly mentioned in Article 8(8), second subparagraph, lit (e), of the basic Regulation (see recital (467) above).
- (532) After disclosure, the GOC claimed that the Commission itself undermined the relevance of its analysis on the level of inventories since it mentioned repeatedly that the level of inventories is not of any particular significance.
- (533) The Commission reiterated that the level of inventories is not of any particular significance for the analysis for the reasons as set out in recital (531) above. Nevertheless, the Commission analysed the level of inventories not as an isolated factor, but has taken a comprehensive approach. Therefore, this claim was rejected.
- (534) Falling levels of stock were noted both in the PRC and on the Union market <sup>(1)</sup> at the end of the investigation period. This might be explained in the framework of the price decreases in 2015 and in 2016, as follows: if a producer or trader expects that prices would rise, it should be building up stocks rapidly expecting to make proportionally more profits when prices rise.
- (535) The Commission was unable to find comprehensive post-investigation period data on stocks despite requests and own research. It found it nevertheless likely that inventory levels of the product concerned remain rather low in the Union during early 2016: For instance, in Germany, *'according to the German Association of Steel Distribution (BDS), at the end of last year flat steel inventories dropped to the lowest level since December 2003. The latest data showed some improvement, but with flat steel stocks at 1,4 million tonnes in February, they remained 7 % lower year-on-year.'* <sup>(2)</sup> Moreover, a recent article seems to indicate that inventory levels at the beginning of 2017 have been rising, as this article provides that *'buyers equally insistent that their stocks are high enough to avoid major purchasing'* <sup>(3)</sup>.

<sup>(1)</sup> See also recital (443) for the slight decrease in inventories at the sampled Union producers as a percentage of production.

<sup>(2)</sup> Platts, press article, European steel producers on the offensive, but will price increases stick? Article, <http://blogs.platts.com/2016/04/05/european-steel-producers-on-offensive/>, 4 May 2016.

<sup>(3)</sup> Platts, press article, 2017 could be a huge year for the European steel industry, <http://blogs.platts.com/2017/03/08/2017-european-steel-industry/>, 8 March 2017.

- (536) In the PRC, steel inventories in the warehouses of 40 major Chinese cities reportedly decreased to 8,86 tonnes late June 2016 from 9,47 tonnes late May 2016, which compares to 12,86 tonnes late June 2015. During the month of May 2016, the steel inventories of 80 major Chinese mills amounted to 14,17 tonnes, comparing to 16,71 tonnes late May 2015 <sup>(1)</sup>. Moreover, steel inventories in the warehouses of 40 major Chinese cities reportedly decreased to 8,89 million tonnes late October 2016 from 9,41 million tonnes late September 2016. Furthermore, the steel inventories of 80 major Chinese mills amounted to 13,46 million tonnes late September 2016 <sup>(2)</sup> compared to 16,07 million tonnes late September 2015. Nevertheless, a recent 2017 article indicates that hot rolled coil inventory levels are again rising in China as ‘China seems to be stocking its excess steel production in the absence of comparable end user demand’. <sup>(3)</sup> In this respect, another very recent article states that ‘[i]t certainly doesn’t seem logical that prices can continue to rally when inventories are reaching uncomfortably high levels.’ <sup>(4)</sup>
- (537) In conclusion, steel inventories were decreasing both during the end of the investigation period and in 2016, but rose again at the beginning of 2017. Although this factor is not decisive in the analysis, it might indicate a potential decrease in prices in the course of 2017 reinforcing the threat of injury.

#### 5.2.6. Other elements: Profitability and order intakes in the Union by the Union industry

##### 5.2.6.1. IP data

- (538) As set out in recital (457), the Union producers started slightly to recover during the year 2014 and the first two quarters of 2015 in terms of profitability. As set out in recital (460), during the second half of 2015, the Union profitability became loss making and losses reached the unsustainable level of – 10 % in the 4th quarter of the investigation period.

##### 5.2.6.2. Post IP data

- (539) For the post investigation period, profitability figures were collected for the complainants, which represent about 90 % of the total production of the Union industry, as mentioned under recital (403).
- (540) The investigation established a further deterioration of the profitability for the complainants up to June 2016.

Table 19

#### Evolution of profitability and order intakes of the Complainants

| Description   | 2012       | 2013       | 2014       | 2015         | April 2015-March 2016 | July 2015-June 2016 |
|---------------|------------|------------|------------|--------------|-----------------------|---------------------|
| Profitability | – 1,31 %   | – 4,86 %   | – 1,28 %   | – 3 to – 5 % | – 5 % to – 7 %        | – 7 to – 9 %        |
| Order intakes | 16 763 734 | 16 631 630 | 16 677 099 | 15 529 155   | 15 636 444            | 15 944 183          |

Source: Eurofer.

- (541) The above table shows that the order intakes had increased slightly compared to the year 2015, but that at the same time record losses had been incurred by the complainants. As such, recorded losses amounted to – 7,8 %

<sup>(1)</sup> WorldSteel Association, The Chinese steel industry, A monthly update for world steel members, Issue 115, June 2016.

<sup>(2)</sup> Worldsteel Association, Extract from Worldsteel monthly update on the Chinese steel industry, October 2016.

<sup>(3)</sup> Marketrealist, press article, Are rising Chinese steel inventories a risk for steel investors? <http://marketrealist.com/2017/03/are-rising-chinese-steel-inventories-a-risk-for-steel-investors/>, 1 March, 2017.

<sup>(4)</sup> Reuters, press article, China’s surging steel, iron ore inventories at odds with price gains: Russell, <http://www.reuters.com/article/us-column-russell-ironore-china-idUSKBN1610FI>, 22 February 2017.

for the sampled Union producers for the period 1 July 2015-30 June 2016, which is another indicator of the deterioration of the Union industry. That being said, a very recent article provides that *'most of the major European steel companies are back in profit after a revival in steel prices in 2016.* <sup>(1)</sup> As a consequence, even if there would be a possible recovery for the Union producers during the most recent post-IP period, compared to 2015, such a recovery would not compensate for the dramatically increasing losses incurred during the same period. Furthermore, any data that dates as of the second half of 2016 is influenced by the impending imposition of measures and the parallel anti-dumping duties, for the reasons set out in recital (482) above.

#### 5.2.6.3. Conclusion

- (542) In conclusion, the Commission found a further deterioration of the profitability of the complainants during the first half of 2016. It also found indications that the Union steel producers are possibly recovering during the second half of 2016, but this would not compensate for the losses incurred during 2015 and the first half of 2016. Accordingly, the assessment that a threat of imminent injury existed at the end of 2015 has not been invalidated. Rather the further deterioration in profitability in the entire first half of 2016 confirmed the accuracy of the Commission's assessment of this indicator.

#### 5.2.7. Foreseeability and imminence of the change in circumstances

- (543) Article 8(8) of the basic Regulation provides that *'... the change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and must be imminent.'*
- (544) All the above-mentioned factors have been analysed and verified with respect to the investigation period. In particular, the profitability of the sampled Union producers reached the unsustainable level of – 10 % in the fourth quarter of 2015 when Chinese price pressure was felt most. Furthermore, the post-investigation period data revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016.
- (545) The available data for the periods July-December 2016 and January-February 2017 presented a mixed picture. While the Chinese import volumes decreased after July 2016, likely as a result of the registration request in the anti-dumping proceeding against dumped imports from China on the product concerned, the knowledge of intention of the Commission to decide on provisional measures within eight months of initiation in the anti-dumping proceeding against dumped imports from China on the product concerned, and finally the effective imposition of anti-dumping measures in the parallel ongoing anti-dumping case early October 2016 (see recital (485)), the overcapacity remained threatening. Furthermore, as explained in recital (486), it is likely that this decrease in subsidised import volumes would be only temporarily, and such trend would revert if no definitive countervailing measures are imposed.
- (546) Concerning the increase in Chinese prices during the same recent period, even if — hypothetically — the cost of production of the Union industry in the most recent period had decreased, the fact remains that the level of subsidised Chinese prices up to September 2016 had still been exerting an enormous price pressure on the Union steel industry. Moreover, as explained in recital (523), the trend of increasing import prices might stop once the volatility of the recent raw material price increases has faded out. It follows that the threat of injury was imminent and foreseeable after the end of the investigation period.
- (547) The Commission thus confirmed that there was a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would have created a situation in which the subsidy would have caused injury. As explained in the preceding recital, this change in circumstances was not rebutted by post-IP data, which, in any case, must be viewed through the lens of immediate market reaction to the imposition of anti-dumping duties and the likely further imposition of countervailing measures.
- (548) Following disclosure, the GOC claimed that there was no clearly foreseeable and imminent change in circumstances. For the reasons explained in recitals (543) to (547) above, the Commission rejected this claim.

(1) Platts, press article, 2017 could be a huge year for the European steel industry, <http://blogs.platts.com/2017/03/08/2017-european-steel-industry/>, 8 March 2017.

### 5.3. Conclusion on threat of injury

- (549) While the Union industry was recovering during 2014 and the first two quarters of 2015, almost all injury indicators started to fall dramatically during the second half of 2015. The investigation revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016. As a result, all factors assessed in the framework of Article 8(8) of the basic Regulation, in particular the significant rate of increase of subsidised imports in 2015 at further decreasing prices, the huge excess capacity in the PRC, and the negative developments in profitability of the Union industry point to the same direction.
- (550) The available data for the period July-December 2016 present a mixed picture. While the Chinese import volumes decreased significantly in particular during the periods October-February 2017, the overcapacity remained threatening and the prices remained up to September 2016 below the Union industry's cost of production despite their more recent increase. Furthermore, as shown in recital (545), the decrease in Chinese import volumes after July 2016 can likely be explained as a result of the registration request in the anti-dumping proceeding against dumped imports from China on the product concerned, the knowledge of intention of the Commission to decide on provisional measures within eight months of initiation in the anti-dumping proceeding against dumped imports from China on the product concerned, and finally the effective imposition of anti-dumping measures in the parallel ongoing anti-dumping case early October 2016. In addition, as explained in recital (546), the trend of increasing import prices might stop once the volatility of the recent raw material price increases has faded out.
- (551) In the view of this analysis, the Commission concluded that there was a threat of a clearly foreseeable and imminent injury to the Union industry at the end of the investigation period. This assessment was not invalidated by the post-IP developments analysed above.

## 6. CAUSATION

- (552) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the threat of material injury to the Union industry was caused by the existing subsidised imports from the country concerned. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have threatened to injure the Union industry. The Commission ensured that any possible threat of injury caused by factors other than the subsidised imports from the PRC was not attributed to the subsidised imports. These factors are: the economic crisis and decrease in steel demand, the cost of raw materials causing the decrease of the sales prices, imports from other third countries, the export sales performance of the Union producers, and the allegation that one Union producer on its own is injuring the Union industry.

### 6.1. Effects of the subsidised imports

- (553) Sales prices of the Chinese exporting producers decreased on average from 600 EUR/tonne in 2012 to 404 EUR/tonne during the investigation period (– 33 %). By continuously lowering their unit sales price during the period considered, and as set out in recital (418), the Chinese exporting producers were able to significantly increase their market share from 2012 (0,79 %) to the investigation period (4,32 %). In particular, during the investigation period, compared to the previous years, there was a substantial increase of Chinese imports.
- (554) While the drop in steel demand and the aftermath of the Eurozone debt crisis affected negatively the performance of the Union industry in 2012 and 2013, the Union industry was able to recover slightly in 2014. However, in particular from the second half of 2015 onwards, the continuous increase in imports from the country concerned at undercutting prices had a clear negative impact on the performance of the Union industry. Indeed, while the Union industry was cutting in 2015 its costs by productivity gains, including some labour reductions and benefitting from the decrease in raw material prices, subsidised imports kept on increasing and forced the Union industry to decrease its Union sales prices even more to limit its loss of market share. As a result, while the Union industry's profitability showed slight improvement by reducing losses in 2014 and the first half of 2015, the trend reversed completely from the second half of 2015 onwards: the volume of Chinese imports increased further and the Chinese prices decreased even more while the Union industry prices and profitability went further down.

In view of the coincidence in time between, on the one hand, the ever-increasing level of subsidised imports at continuously decreasing prices and, on the other hand, the Union industry's loss of market share and price depression resulting in further losses, in particular from the second half of 2015 onwards, the Commission concluded that the subsidised imports had a negative impact on the situation of the Union industry. Moreover, the progressive slowing down of the Chinese economy and the significant overcapacity of the Chinese steel industry has pushed Chinese steel producers to direct their excess production towards export markets and the Union market is an attractive export destination. Indeed, some other traditionally important export markets imposed measures against Chinese steel products, including hot-rolled flat steel products.

(555) With the growing imposition of trade defence measures across the globe, it is likely that the Union market has become one of the most attractive destinations for Chinese subsidised imports of the product concerned, to the detriment of Union industry. This conclusion is corroborated by

— Eurostat import statistics which show that the level of Chinese imports continues to be significant after the end of the investigation period, in particular during the first half of 2016; and

— weakened Chinese internal steel demand.

Moreover, the reasons for the decrease in subsidised Chinese import volumes to the Union have been explained in recital (550). As also set out in recital (545), it is likely that this decrease in subsidised import volumes would be only temporarily, and that this trend would reverse if no definitive countervailing measures were imposed.

(556) Following disclosure, the GOC claimed that there is a lack of causal link between the subsidised imports and their negative impact on the situation of the Union industry for the following reasons. While imports of HRF from China only increased from 0,79 % to 4,32 %, Chinese prices were consistently higher than the prices of Brazil, Iran, Russia and Ukraine, and only fell below the prices of the Union industry in 2014. Furthermore, it alleged that the losses of the Union industry were much more significant in 2012 and 2013 than during the investigation period.

(557) These allegations were already dealt with before: Concerning the market share of China, the Commission referred to recital (479) above of this document. Concerning the Chinese prices, it refers to recitals (465), (526) and (527) above. Finally, concerning the losses of the Union producers, the Commission referred once again to recital (465) above.

## 6.2. Effects of other factors

### 6.2.1. *The economic crisis*

(558) The Government of China argued that the Union industry is in part suffering as a result of the continued effect on the Union industry of the economic recession.

(559) The drop in steel demand mainly in the year 2012 and the aftermath of the Eurozone debt crisis affected negatively the performance of the Union steel industry in the years 2012 and 2013. As mentioned in recital (450), the Commission recognised the negative effect. It is also observed, however, that the Union industry started recovering during the years 2014 and 2015.

(560) Therefore, on the one hand, even if the Union industry was impacted by the Eurozone debt crisis, namely during the years 2012-2013, the market was recovering slightly from their effects with a relatively stable, even increasing Union market demand from 2013 onwards. As a result, whereas between 2014 and 2015 the Union industry could have benefited more from the recovery of the market, it was prevented from doing so by a steep increase in imports from the PRC. Low-priced Chinese imports gradually increased and captured market shares to the detriment of the Union industry. The continuous pressure of imports started to be fully felt from the second half of 2015.

- (561) Following disclosure, the GOC claimed that any alleged threat of material injury to the Union industry would at least partly be due to the effects of the economic recession to be felt throughout the period considered.
- (562) The Commission rejected this claim for the reasons and explanations provided in recitals (558) to (560) above.
- (563) The Commission thus concluded that the Eurozone debt crisis had had a negative impact during mainly the years 2012 and 2013 of the period considered and before the investigation period. However, it did not contribute to the threat of injury found at the end of 2015.

#### 6.2.2. Imports from third countries

- (564) The volume of imports and market share (in volume of total imports) from third countries developed over the period considered as follows:

Table 20

#### Volumes, unit prices and market shares from third countries

|                                    | 2012   | 2013    | 2014    | IP        |
|------------------------------------|--------|---------|---------|-----------|
| <b>BRAZIL</b>                      |        |         |         |           |
| Volume of imports from Brazil      | 69 457 | 41 895  | 108 973 | 580 525   |
| <i>Index (2012 = 100)</i>          | 100    | 60      | 157     | 836       |
| Unit import prices from Brazil     | 515    | 461     | 433     | 386       |
| <i>Index (2012 = 100)</i>          | 100    | 89      | 84      | 75        |
| Market share                       | 0,22 % | 0,13 %  | 0,33 %  | 1,65 %    |
| Share in total Union import volume | 1,68 % | 0,87 %  | 2,08 %  | 7,42 %    |
| <b>IRAN</b>                        |        |         |         |           |
| Volume of imports from Iran        | 96 505 | 125 202 | 527 161 | 1 015 088 |
| <i>Index (2012 = 100)</i>          | 100    | 130     | 546     | 1 052     |
| Unit import prices from Iran       | 499    | 454     | 415     | 369       |
| <i>Index (2012 = 100)</i>          | 100    | 91      | 83      | 74        |
| Market share                       | 0,31 % | 0,39 %  | 1,59 %  | 2,89 %    |
| Share in total Union import volume | 2,34 % | 2,60 %  | 10,08 % | 12,97 %   |

|                                    | 2012      | 2013      | 2014      | IP        |
|------------------------------------|-----------|-----------|-----------|-----------|
| RUSSIA                             |           |           |           |           |
| Volume of imports from Russia      | 1 341 666 | 1 334 322 | 1 376 412 | 1 714 880 |
| <i>Index (2012 = 100)</i>          | 100       | 99        | 103       | 128       |
| Unit import prices from Russia     | 500       | 448       | 431       | 387       |
| <i>Index (2012 = 100)</i>          | 100       | 90        | 86        | 77        |
| Market share                       | 4,27 %    | 4,13 %    | 4,15 %    | 4,88 %    |
| Share in total Union import volume | 32,47 %   | 27,66 %   | 26,32 %   | 21,90 %   |
| SERBIA                             |           |           |           |           |
| Volume of imports from Serbia      | 156 894   | 155 055   | 211 835   | 427 558   |
| <i>Index (2012 = 100)</i>          | 100       | 99        | 135       | 273       |
| Unit import prices from Serbia     | 523       | 468       | 442       | 400       |
| <i>Index (2012 = 100)</i>          | 100       | 89        | 84        | 77        |
| Market share                       | 0,50 %    | 0,48 %    | 0,64 %    | 1,22 %    |
| Share in total Union import volume | 3,8 %     | 3,21 %    | 4,05 %    | 5,46 %    |
| UKRAINE                            |           |           |           |           |
| Volume of imports from Ukraine     | 906 872   | 905 397   | 939 545   | 1 084 477 |
| <i>Index (2012 = 100)</i>          | 100       | 100       | 104       | 120       |
| Unit import prices from Ukraine    | 478       | 429       | 415       | 370       |
| <i>Index (2012 = 100)</i>          | 100       | 90        | 87        | 78        |
| Market share                       | 2,89 %    | 2,81 %    | 2,84 %    | 3,08 %    |
| Share in total Union import volume | 21,95 %   | 18,77 %   | 17,97 %   | 13,85 %   |

Source: Eurostat.



- (565) As set out in the table in recital (419), imports from the PRC grew with 516 % during the period considered. Although the growth rate during the period considered was even higher for Brazil (+ 736 %) and Iran (+ 952 %), their levels of imports (580 525 tonnes from Brazil, and 1 015 088 tonnes from Iran respectively) were much lower than the imports from the PRC in absolute figures (1 519 304 tonnes from the PRC) during the investigation period.
- (566) Furthermore, comparing absolute export figures, it is observed that the country concerned was the second largest exporter to the Union market during the investigation period, after Russia. Russian imports <sup>(1)</sup> may have contributed to the threat of injury, but did not break the causal link because of the following considerations.
- (567) First, the growth rate of the PRC during the period considered (+ 516 %) is much higher than the one of Russia (+ 28 %).
- (568) Second, the PRC closed the gap with Russia that exported only slightly more, i.e. 773 686 tonnes (source: Eurostat) during the first half of 2016 compared to a volume of 773 275 tonnes (source: Eurostat) from the PRC in the same period.
- (569) Third, the excess capacity of Russia is not as significant as the excess capacity existing in PRC as shown in the table below:

Table 21

**Actual production of the like product by third countries (in thousands of tonnes)**

| Country | Crude steel capacity estimated for the year 2014 | Crude steel production in 2013 | Crude steel production in 2014 | HRF actual production in 2013 | HRF actual production in 2014 |
|---------|--|--------------------------------|--------------------------------|-------------------------------|-------------------------------|
| Russia  | 89 000   | 69 008                         | 71 461                         | 26 140                        | 26 996                        |
| PRC     | 1 140 000  | 822 000                        | 822 698                        | 311 564                       | 317 387                       |

Source for capacity data: OECD (OECD, DSTI/SU/SC(2015)8/Final, Directorate for Science, Technology and Innovation, Capacity developments in the world steel industry, Table 1, p. 10, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC\(2015\)8/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC(2015)8/FINAL&docLanguage=En)).

Source for production data: World Steel Association, Steel Statistical Yearbook 2015 (World Steel Association, Steel Statistical Yearbook 2015, table 1 on pages 1 and 2 and table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>).

- (570) Even if the figures above on capacity are exclusively on crude steel, and even under the unlikely assumption that all crude steel in Russia could be used for producing the like product, the excess capacity of Russia would be far below the excess capacity of China.
- (571) Furthermore, the Commission then assessed the prices and market shares of the third country imports. It noted that imports of the like product from some other countries such as Iran, Russia and Ukraine, were made at prices even lower than that of imports from the country concerned. However, the level of imports from Iran was much lower than the level of imports from the PRC in the investigation period. Moreover, imports from Russia and Ukraine indeed increased in volumes during the period considered, but at a much slower pace than the imports from the PRC. Also, contrary to what happened to imports from the PRC, imports from Russia and Ukraine lost a significant share in the total Union import volumes during the period considered.
- (572) Finally, the Commission compared the actual production by third countries with the production of the country concerned showing that China outnumbers all other countries both in production of the like product and in capacity of crude steel.

<sup>(1)</sup> As mentioned before, on 7 July 2016, the Commission initiated an investigation into dumped imports of the same product originating *inter alia* in Russia. However, the initiation of that investigation does not prejudice the outcome of the present investigation.

Table 22

**Actual production of the like product by third countries (in thousands of tonnes)**

| Country | Crude steel capacity estimated for the year 2014 <sup>(1)</sup> | Crude steel production in 2013 | Crude steel production in 2014 <sup>(2)</sup> | Theoretical excess capacity in 2014 | HRF actual production in 2013 | HRF actual production in 2014 |
|---------|---|--------------------------------|---|-------------------------------------|-------------------------------|-------------------------------|
| Russia  | 89 000  | 69 008                         | 71 461  | 17 539                              | 26 140                        | 26 996                        |
| PRC     | 1 140 000   | 822 000                        | 822 698                                       | 317 302                             | 311 564                       | 317 387                       |
| Ukraine | 42 500  | 32 771                         | 27 170  | 15 330                              | 8 929                         | 7 867                         |
| Iran    | 27 000  | 15 422                         | 16 331  | 10 669                              | 8 250                         | 8 276                         |
| Brazil  | 48,000  | 34 163                         | 33 897  | 14 103                              | 15 014                        | 14 229                        |

<sup>(1)</sup> Source for capacity data: OECD (OECD, DSTI/SU/SC(2015)8/Final, Directorate for Science, Technology and Innovation, Capacity developments in the world steel industry, Table 1, p. 10, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC\(2015\)8/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SU/SC(2015)8/FINAL&docLanguage=En)).

<sup>(2)</sup> Source for production data: World Steel Association, Steel Statistical Yearbook 2015 (World Steel Association, Steel Statistical Yearbook 2015, table 1 on pages 1 and 2 and table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>).

- (573) The above production figures for the like product show that the country concerned outnumbers by far all other large exporting countries. Furthermore, the above capacity figures for crude steel also indicate that only the PRC has such a massive excess capacity. Accordingly, the Commission found that the exports from the PRC posed a threat of an imminent injury to the Union industry.
- (574) However, it is also likely that imports from Brazil, Iran, Russia, Serbia and Ukraine have contributed to the threat of material injury. Nevertheless, the underlying production, the import trends and the precise import volumes in absolute figures are not of such a scale that they would break the causal link between ever increasing and ever more heavily subsidised imports from the PRC and the threat of injury to the Union industry.
- (575) Following disclosure, the GOC alleged that the Commission had disproven the above conclusion as a result of the finding of material injury in an ongoing parallel investigation concerning imports from five countries <sup>(1)</sup> on the same product concerned. It stated that 'material injury' and 'threat of material injury' are two distinct legal concepts that cannot co-exist, whereby the finding of one automatically excludes the other.
- (576) The Commission rejected these allegations for the following reason. Although it acknowledged that the current investigation covered exactly the same product concerned and like product as the investigation in the 'five countries' case, it first noted that the current investigation and the five countries' investigation do not cover the same periods relevant for the assessment of trends for injury and causal link. First of all, the investigation of dumping/subsidy and threat of injury in the current investigation covered the period from 1 January 2015 to 31 December 2015, whereas the examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of 2015. Therefore, the post-IP period for the current investigation started on 1 January 2016. On the other hand, with regard to the five countries investigation, the investigation of dumping and injury covered the period from 1 July 2015 to 30 June 2016, whereas the examination of trends relevant for the assessment of injury covered the period from 1 January 2013 till 30 June 2016. Therefore, the post-IP period for the five countries proceedings started on 1 July 2016. Although it is true that there is an overlap of

<sup>(1)</sup> Notice of initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine (O) C 246, 7.7.2016, p. 7).

six months concerning the investigation period between the two investigations (the period from 1 July 2015 to 31 December 2015), the determination of dumping and injury was made on the basis of an investigation period and a period considered which were different in the current investigation and the five countries investigation and which were already defined in line with the relevant provisions of the basic Regulation and announced in the Notice of Initiation.

- (577) In addition, the assertion that an investigation based on injury excludes an investigation based on the threat of injury which refers to an investigation period at least partially preceding the one based on material injury is legally and economically not tenable. First, for the five countries case, the Commission had received sufficient evidence for initiating a procedure based on the allegation of actual injury, in particular due to the very low pricing, during the investigation period. The present case concerns, on the contrary, a threat of injury covering an investigation period partially preceding that other investigation period, which is not only based on the pricing and volume development of Chinese imports, but also on the future expected behaviour of Chinese exporting producers in view in particular of the existing spare capacities.
- (578) The case law requires the Commission to carry out an attribution analysis of the different factors. In the five countries case, imports from these five countries may have, if the sufficient evidence in the complaint is confirmed in the final determination, caused actual injury to the Union industry in the investigation period of that case. Independent of that actual injury, Chinese imports constitute an additional threat of injury to the Union industry. Hence, given the difference in the two investigations periods and the findings made in recitals (571)-(574) any future definitive determination in the five countries case cannot break the causal link in the case at hand.

#### 6.2.3. Export sales performance of the Union industry

- (579) The volume of exports of the sampled Union producers developed over the period considered as follows:

Table 23

#### Export volumes to unrelated customers by the sampled Union producers

|                                      | 2012      | 2013      | 2014      | IP        |
|--------------------------------------|-----------|-----------|-----------|-----------|
| Export volume to unrelated customers | 2 344 463 | 2 379 035 | 2 777 446 | 2 409 721 |
| <i>Index (2012 = 100)</i>            | 100       | 101       | 118       | 103       |
| Average price (EUR/tonne)            | 516       | 463       | 459       | 391       |
| <i>Index (2011 = 100)</i>            | 100       | 90        | 89        | 76        |

Source: Questionnaire reply of sampled Union producers.

- (580) The volume of exports to unrelated customers increased by 3 % during the investigation period. As far as prices are concerned, they dropped significantly by – 24 % over the period considered.
- (581) Export sales accounted for not more than 4 % of the total Union production and for 22 % of total sales to unrelated customers during the investigation period. Also, the decrease in export prices followed percentage-wise the same trend as the sales prices of the Union producers on the Union market. Therefore, the Commission concluded that the export sales performance of the Union producers contributed to the weak situation of the industry. However, given their relatively small size in the overall turnover of the Union industry, this factor did not break the causal link between the subsidised imports and the threat of material injury to the Union industry either.

#### 6.2.4. Union producers threatened by an increase in energy costs

- (582) The Government of China alleged that the Union producers were faced with higher energy costs than most of its international competitors and that the Union industry suffered from price increases of 38 % on average. <sup>(1)</sup> Following disclosure, the GOC commented that the comparatively higher energy costs of the Union industry were another more likely cause of any alleged threat of material injury than the HRF imports from China and argued that energy costs are one of the main drivers of competitiveness for the Union steel producers. Furthermore, the GOC alleged that, even if there had been a decrease in energy costs, such a decrease was slowing down in 2015 and increased again in 2016.
- (583) Concerning energy costs, first, they are indeed an important, but not the major cost component for producing the product concerned, which is in fact the raw material cost (see further below under section 6.2.5). Second, they are an important driver of competitiveness. This is in line with the statement of the GOC in recital (300) of its submission that energy costs are a key, but not the only driver of profitability. Indeed, according to a recent study by a consortium of energy specialists, European electricity prices decreased by 12 % during the period 2010-2015. As a result, the Union became the region with the fourth lowest electricity price level. <sup>(2)</sup> The Commission was not able to retrieve information that would show a reversal of this situation. Third, these arguments on electricity costs cannot be reconciled with the fact that the Union industry was still able to achieve profits of about 0,4 % in 2013 as well as during the period 2007-2011, when this alleged comparative disadvantage in cost terms would also have existed most likely.
- (584) Therefore, the Commission concluded that this factor did not break the causal link.

#### 6.2.5. Low HRF prices on the Union market due to low raw material prices and/or low HRF prices worldwide

- (585) The Government of China argued also that the low prices of raw materials in the manufacturing of steel, in particular of iron ore, have led to a decline of HRF market prices in the Union market. <sup>(3)</sup> Following disclosure, the GOC reiterated its position that the decrease of raw material prices did cause the decline in the HRF prices and were thus, other than the HRF imports from China, another cause of the alleged threat of injury to the Union industry.
- (586) The Commission analysed both the HRF prices and the developments in raw material prices for HRF for the period considered.
- (587) The Commission confirmed during the investigation that the prices for raw materials fell between 2012 and 2015. For instance, the price for iron ore decreased from about 141 USD/MT to 52 USD/MT, or a decrease of more than 60 %.
- (588) However, when analysing the cost of production of the biggest sampled Union producer, it turns out that the impact of these falling raw materials prices is much lower than the mentioned price evolution. For example, the input from the three above mentioned raw materials accounted for about 60 % of the total cost of production of one big producer in 2012, but was still at 50 % of its total cost of production in 2015. This shows that there is no direct correlation between the fall in raw material prices and a decrease of cost of production for HRF.
- (589) Furthermore, the cost of production within the Union industry decreased altogether by 25 % over the period considered (see recital (448)), which was the result of not only a lower cost for the raw materials but also due to efficiency gains achieved by Union producers. In addition, the average import prices decreased by a higher percentage, i.e. by 33 % over the same period (see recital (517)).

<sup>(1)</sup> Submission of the Government of China, 26 August 2016, recitals 362- 366.

<sup>(2)</sup> Extract from the latest EC bottom-up study on energy prices and costs performed by a consortium of consultants, including Ecofys and CEPS, July 2016.

<sup>(3)</sup> Submission of the Government of China, 26 August 2016, recitals 367-370.

- (590) Under fair market conditions, the Union industry could have maintained its sales price levels so as to reap the benefits of a reduction in costs and reach profitability again. However, Union producers had to follow the trend of prices on the Union market and prices fell down. During the investigation period Union producers were even forced to sell at prices below costs, even though they had already managed to reduce significantly their costs of production.

### 6.3. Conclusion on causation

- (591) A causal link was established between the Chinese subsidised imports and the threat of material injury of the Union industry. There is a clear coincidence in time between the sharp increase of, in particular, the level of the subsidised imports at continuous decreasing sales prices from the PRC, and the drop of the Union's performance, in particular from the second half of 2015 onwards. The Union industry had no other choice but to follow the price level set by the subsidised imports in order to avoid a further shrinking of its market share. This resulted in a loss-making situation which is likely to further deteriorate.
- (592) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports, causing the threat of material injury for the Union industry as a whole at the end of the investigation period. The other identified factors such as the economic crisis, imports from third countries, and the export sales performance of the Union producers were not found to break the causal link between the threat of material injury and the Chinese subsidised imports. On the basis of the above, the Commission concluded that the subsidised imports from the PRC in the investigation period were causing a threat of material injury to the Union industry within the meaning of Article 8(5) and (6) of the basic Regulation. Known other factors other than the subsidised imports from the PRC which at the same time had an impact on the situation of the Union industry were not found to break the causal link.

## 7. UNION INTEREST

- (593) In accordance with Article 31 of the basic Regulation, the Commission examined whether compelling reasons existed for concluding that it was not in the Union interest to adopt measures in this case. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users. In this determination, the Commission gave special consideration to the need to eliminate the trade distorting effects of injurious subsidisation and to restore effective competition.

### 7.1. Interest of the Union industry

- (594) The Union industry is located in several Member States (UK, France, Germany, Czech Republic, Slovak Republic, Italy, Luxembourg, Belgium, Poland, the Netherlands, Austria, Finland, Sweden, Portugal, Hungary and Spain), and employs directly ca. 18 000 employees in relation to hot-rolled flat steel products.
- (595) Seventeen producers cooperated during the investigation. None of the known producers opposed the initiation of the investigation. As shown above when analysing the injury indicators, the whole Union industry showed some signs of injury during the period considered. In particular, injury indicators related to the financial performance of the sampled Union producers, such as profitability, were seriously affected. The sampled Union producers experienced a deterioration of their situation, in particular from the second half of 2015 onwards, and were negatively affected by the subsidised imports, causing the threat of injury which became imminent at the end of the investigation period.
- (596) Nevertheless, as mentioned under recital (542), the Commission also found indications that the Union steel producers started possibly recovering in terms of profitability during the second half of 2016, but, even if this would be true, this would not compensate for the losses incurred during 2015 and the first half of 2016.

- (597) Following disclosure of GDD, the GOC alleged that there would be no need to impose definitive measures in the present investigation because it would be by no means clear that it would bring benefits to the Union industry. For instance, it alleged that if definitive measures were to be imposed, imports of HRF from other countries not subject to duties would be likely to replace the Chinese imports.
- (598) The Commission rejected this claim: it is expected that the imposition of definitive countervailing duties will restore fair trade conditions on the Union market, enabling the Union industry to further recover. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry. It is therefore important that prices be restored to a non-subsidised or a non-injurious level in order to allow all various producers to operate on the Union market under fair trade circumstances. In the absence of measures, it is likely that the threat of injury will materialise and that there will be a further deterioration of the Union industry's economic situation.
- (599) The Commission therefore concluded that the imposition of definitive countervailing duties would be in the interest of the Union industry.

## 7.2. Interest of importers

- (600) As mentioned in recital (21), no unrelated importer completed a full questionnaire reply or provided the Commission with elements showing to what extent importers would be harmed by the imposition of measures. Therefore and also taking into account that, in addition to the PRC, many other countries export to the Union, the Commission concluded that it is likely that the imposition of measures may not be in the interest of importers.

## 7.3. Interest of users

- (601) The hot-rolled flat steel products are used as an industrial input purchased by end users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, pressure vessels and energy pipelines.
- (602) Only one user from Italy (Marcegaglia Carbon Spa) with imports from the country concerned and producing *inter alia* tubes, pipes and downstream steel products provided a questionnaire reply in the framework of the anti-dumping investigation against China on the same product concerned. The product concerned/like product is a cost item for this user.
- (603) This Italian user alleged that the imposition of measures on imports from the country concerned would lead to a situation whereby it would no longer have access to reliable supplies of the product concerned on the Union market, in particular of high quality coils used for re-rolling. It alleged that 88 % of the total Union production is accounted for by only 16 companies belonging to eight large groups, whereby the largest part of the production (about 70 %) is used in the captive market. As a consequence, allegedly, the Union producers as a result of their still relatively high market share can exercise a strong pressure both on the market of the product concerned as on the downstream market.
- (604) First, the Commission noted that the objective of definitive countervailing duties is not to close off the Union market from any imports, but to restore fair trade by removing the effect of injurious subsidisation. Accordingly, the Italian as well as other Union users would continue to be able to rely on high quality supplies of the product concerned, be that from the Union or from third countries.
- (605) Second, the Commission found that the user is not exclusively dependent on Chinese imports, but also purchased the product concerned during the investigation period from Union producers as well as from other producers in third countries other than the country concerned. Its supply chain should therefore not be greatly disrupted.
- (606) Third, even if the prices of the Chinese product concerned were to increase by around 30 %, this would have a 3 % impact of the cost of production of this Italian user. While this may be considerable in this business, the simulation also showed that his pre-tax profit would remain slightly above break-even.

- (607) Fourth, because imports from the country concerned and from other countries are expected to continue after the imposition of definitive countervailing duties, and since as such alternative sources of supply still exist, the claim that the imposition of countervailing duties would result in the Union industry being able to exercise strong price pressure is unfounded. The Union industry consists of 22 producers which provide users with a wide range of supply already within the Union, in addition to the option of imports from the other third countries which produce and export the like product. Therefore, the Commission rejected the claim that the imposition of measures would lead to a shortage of supply of the product concerned/like product.
- (608) With regard to any potential negative effects on the competition on the Union market, it is true that the EU competition rules impose more stringent standards of behaviour on a company that has a significant market share. In any event, the Commission is unaware of any abuse of a dominant position on the Union market of the product concerned. However, and in any event, it is ultimately up to the competent competition authorities to determine whether there is a dominant position and whether it is abused.
- (609) Following disclosure, the GOC was of the opinion that any benefits that the definitive measures against HRF imports would have for the Union industry would be outweighed by the negative effects on users. Moreover, it alleged that the imposition of measures would be particularly disproportionate for unrelated importers, who are in direct competition with, and already in a disadvantageous position vis-à-vis related users, who are able to set prices and who benefit from favourable commercial conditions granted by integrated producers.
- (610) The Commission rejected this claim on the basis of the explanations in recital (607) above, since alternative sources of supply will continue to exist.
- (611) In view of the above, the Commission concluded that the imposition of measures would be against the interest of users, but would not have a clearly disproportionate negative effect on them. In particular, even if Chinese exports would *de facto* stop, a wide range of supply would remain available on the market. Moreover, the Commission found that the impact of the measures on the profitability of users that came forward was limited.

#### 7.4. Conclusion on Union interest

- (612) The Commission concluded that the imposition of measures would contribute to the recovery of the Union industry in terms of profitability. The imposition of measures would allow the Union producers to make the necessary investments and R&D to better equip their HRF steel production equipment and boost their competitiveness.
- (613) The Union industry underwent already significant restructuring in the (recent) past. If no measures were imposed, the threat of imminent injury at the end of the investigation period is likely to materialise. Some Union hot-rolled flat steel producers might have to close down/reduce their hot-rolled flat steel products activities, dismiss employees and leave many Union users with limited sources of supply.
- (614) As regards the interest of unrelated importers and users, the Commission concluded that the imposition of measures at the proposed level would have only a limited impact. More specifically, the prices, their profitability and the employment in the user's industry would not be disproportionately affected. Hence, the imposition of definitive countervailing measures at the proposed level only has a limited impact on the prices of the supply chain and the performance of users.
- (615) Weighing and balancing the strong interests of an important Union industry to be protected against unfair practices, on the one hand, and the limited likely effects of measures on unrelated importers and users, which continue to benefit from a wide array of supply in the Union, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on subsidised imports of the product concerned originating in the country concerned.

## 8. DEFINITIVE ANTI-SUBSIDY MEASURES

(616) On the basis of the conclusions reached by the Commission on subsidy, threat of injury, causation and Union interest, definitive anti-subsidy measures should be imposed to prevent that the imminent threat of material injury which is caused to the Union industry by the subsidised imports would materialise.

### 8.1. Injury elimination level (Injury margin)

(617) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the threat of injury suffered by the Union industry.

(618) The threat of injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product (the so-called target profit) in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.

(619) As regards the determination of a target profit, the Commission first analysed the proposal of the complainant in the anti-dumping investigation against China on the same product concerned, which pointed to 12,9 %, taken from a previous Commission decision on the same product <sup>(1)</sup>. However, this finding dates back to the year 2000, and the data from over 15 years ago cannot be regarded as representative anymore given the technological and financial changes the Union industry faced since then and given the changes in size of the Union market since 2000 as a result of the growing number of Member States during the period 2000-2016.

(620) The Government of China proposed that only a profit margin of at most 5 % can be considered reasonable <sup>(2)</sup>. In this regard, it referred to Commission past practice, whereby 4,8 % and 3 % target profit was found to be appropriate in respectively the Rebars case <sup>(3)</sup> and the Seamless Pipes and Tubes case <sup>(4)</sup>. However, these products are downstream steel products, which are not similar to the product concerned.

(621) The Commission then turned to the profitability data of the year 2008, which it had regarded as the most representative year for a downstream product, namely cold-rolled steel products. <sup>(5)</sup> The product concerned of the current investigation is similar in many aspects to certain cold-rolled flat steel products (cold-rolled products) for the following reasons:

— For both products (iron ore and coking coal) certain alloys are major parts of their cost of production and they go through similar processes (furnace, hot strip mill).

— As set out in recital (40) above, the product concerned is the primary material for the production of various value-added downstream steel products, starting with cold-rolled products.

(622) On this basis, the Commission found a profit margin of 14,4 %.

<sup>(1)</sup> See Commission Decision No 284/2000/ECSC of 4 February 2000 imposing a definitive countervailing duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in India and Taiwan and accepting undertakings offered by certain exporting producers and terminating the proceeding concerning imports originating in South Africa (OJ L 31, 5.2.2000, p. 44), para. 338.

<sup>(2)</sup> Submission by the Government of China, open version, 26 August 2016, recital 311, p. 114.

<sup>(3)</sup> Commission Implementing Regulation (EU) 2016/1246 of 28 July 2016 imposing a definitive anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ L 204, 29.7.2016, p. 70), recital (127).

<sup>(4)</sup> Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine (OJ L 175, 29.6.2006, p. 4), recital (233).

<sup>(5)</sup> See Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 1), Recital 156.



- (623) However, various elements in that case relating to injurious dumping from China and Russia are not present in the current case, where the Commission found a threat of injury from Chinese subsidised exports, which involves a prospective analysis. In particular, in that case, imports at low prices from the countries under investigation had taken place throughout the four-year period prior to the investigation period.
- (624) The Commission then tried to establish a target profit by simulating how the recovery of the Union industry from the recession caused by the economic and financial crisis in 2009 might have developed if it had not been interrupted by the high volumes of price-depressing Chinese imports. For this exercise, it relied on more recent data and a prospective analysis presented to the OECD's Steel Committee in December 2013. In a study entitled 'Laying the foundations for a financially sound industry' an expert opinion looked at the profitability of the global steel industry in recent years and fixed a long-term sustainability profit threshold. In particular, this study argued in favour of 17 % global average EBITDA margin (earnings before interest, taxes, depreciation and amortisation) <sup>(1)</sup>. The report also points to an average of 7 % investment costs and an average debt cost of 3 %. The Commission deducted these two cost categories, and arrived at level of 7 % for earnings before taxes (EBT). Absent any other reliable data, it equated these figures made for the steel industry as a whole to the product concerned, as HRF makes up a big proportion of the crude steel production.
- (625) In conclusion, the Commission established that a target profit of 7 % can be used to calculate the threat of injury margin for the Union HRF industry.

## 8.2. The period to be used for the injury margin calculation in a threat of injury case

- (626) First, the Commission recalls that the determination of subsidy and injury is made on the basis of an investigation period and a period considered defined in line with the relevant provisions of the basic Regulation and announced in the Notice of Initiation. On the other hand, the basic Regulation does not provide any specific method for the calculation of the injury margin used for the application of the lesser-duty rule. Second, the basic Regulation also does not provide specific criteria for the definition of the period during which the parameters for the calculation of the injury margin are assessed. In the present case, the Commission needed to consider that the period chosen reflects the specificity of the case and is appropriate in the context of a prospective analysis.
- (627) In this respect, the Commission was of the opinion that it could not apply a standard material injury approach by taking the average injury margin over the whole IP (i.e. 2015); the threat of injury margin needs to reflect the threat, and when the threat materialises later on during the IP, the injury margin must reflect the concrete impact of the threat. In order to effectively remove the impact of the threat of injury the Commission therefore looked at those parts of the IP where the threat of injury started to materialise as follows: It referred inter alia to recital (549) stating that *'while the Union industry was recovering during 2014 and the first two quarters of 2015, almost all injury indicators started to fall dramatically during the second half of 2015. The investigation revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016.'* It further provided in recital (554) that *'In view of the coincidence in time between, on the one hand, the ever-increasing level of subsidised imports at continuously decreasing prices and, on the other hand, the Union industry's loss of market share and price depression resulting in further losses, in particular from the second half of 2015 onwards, the Commission concluded that the subsidised imports had a negative impact on the situation of the Union industry.'*
- (628) Second, as to the substance of the matter, the Commission established that, as laid out in recital (462), the negative trend started in the second half of 2015 and led to a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would create a situation in which the subsidisation would cause injury, if no measures were taken. This is in line with what was stated by the Commission in recital (457) that *'the Union producers could partly recover during 2014 and the first half of 2015'*. As a result, the second half of 2015 better reflects the actual impact of the threat of injury to the Union industry that should be removed.

<sup>(1)</sup> McKinsey & Company, Laying the foundations for a financially sound industry, OECD Steel Committee meeting of 5th December 2013, p. 7.

- (629) Third, the Court held that the analysis of the post-investigation period data is particularly appropriate in an investigation to determine whether there is a threat of injury which, by its very nature, requires a prospective analysis. For the Commission, the second half of 2015 seems to better respond to this requirement, as it is closer to future developments than the full IP.
- (630) Fourth, a calculation on the basis of a full investigation period, irrespective whether there were signs of negative trends, would undermine the objective of a threat of injury case to act effectively and preventively before the threat of injury has caused injury.
- (631) After disclosure, the exporting producer Shougang Group disagreed with the Commission's approach of only taking data with respect to the second half of 2015 for the determination of the injury margin. It argued that an investigation period is set at the beginning of an investigation in order to avoid any subjective determinations by investigating authorities. Moreover, it alleged that, since the lesser duty rule applies to the imposition of countervailing duties, meaning that both the subsidy and injury margin should determine the duty, it should be logical that both the subsidy and injury margin should relate to the same period.
- (632) The Commission rejected these claims for the following reasons: First, as stated in recital (627) above, the threat of injury margin needs to reflect the threat, and when the threat materialises later on during the IP, the injury margin must reflect the concrete impact of the threat. Second, under Articles 11 and 5 of the basic Regulation, which equally apply to investigations initiated on the basis of allegations of threat of injury, representative findings have to be based on a period ending before the initiation of proceedings (see recital (475)). The purpose of this principle is to ensure that the results of the investigation are representative and reliable. Finally, as set out in recital (626), the basic Regulation does not provide any specific method for the calculation of the injury margin used for the application of the lesser-duty rule.
- (633) For all the reasons above, the Commission concluded that the period for calculating the injury margins in this particular case should be based on the second half of 2015 and not on the entire investigation period.
- (634) As a result, the Commission requested additional data to co-operating producers. It received additional quarterly IP data on the cost of production per product type from the sampled Union producers and verified these data afterwards. The verifications concerned solely the additional data provided which were not requested before and ensured that the data on which the Commission eventually based its findings were reliable.
- (635) With respect to the calculation of its specific injury margin, the exporting producer Shougang Group submitted that the data for two product types were not taken into consideration.
- (636) After the analysis of this claim, the Commission accepted it. Therefore, the injury margin for the Shougang Group decreased from 31,9 % to 31,5 %.

### 8.3. Definitive measures

- (637) The anti-subsidy investigation was carried out in parallel with an investigation concerning the anti-dumping measures, limited to the threat of injury. In view of the use of the lesser duty rule, and the fact that the definitive amounts of countervailable subsidies expressed on ad valorem basis are lower than the injury elimination level, the Commission should impose the definitive countervailing duty at the level of the established definitive amounts of countervailable subsidies and then impose the definitive anti-dumping duty up to the relevant injury elimination level. However, as the definitive anti-dumping regulation was already adopted on 6 April 2017, it was necessary to amend that regulation to take account of the findings present herein.
- (638) On the basis of this methodology and of the facts of the case, in particular the fact that the present investigation did not countervail any export subsidies, the measures are limited by the injury margin, the Commission considers that no 'double-counting' issue arises in this case.

- (639) Given the high rate of cooperation of Chinese exporting producers, the 'all other companies' duty was set at the level of the highest duty imposed on the sampled companies. The 'all other companies' duty will be applied to those companies which did not cooperate in this investigation.
- (640) For the other cooperating non-sampled Chinese exporting producers listed in the Annex, the definitive duty rate is set at the weighted average of the rates established for the cooperating exporting producers in the sample.
- (641) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Table 24

**Definitive Countervailing duty**

| Chinese exporting producers   | Dumping margin (established in the anti-dumping investigation) | Amount of countervailable subsidies | Injury elimination level | Countervailing duty rate | Anti-dumping duty |
|---|--|-------------------------------------|--------------------------|--------------------------|-------------------|
| Benxi Group   | 97,3 %   | 28,5 %                              | 28,1 %                   | 28,1 %                   | 0 %               |
| Hesteel Group   | 95,5 %   | 7,8 %                               | 18,1 %                   | 7,8 %                    | 10,3 %            |
| Jiangsu Shagang Group   | 106,9 %  | 4,6 %                               | 35,9 %                   | 4,6 %                    | 31,3 %            |
| Shougang Group  | Not sampled in the anti-dumping investigation                  | 38,6 %                              | 31,5 %                   | 31,5 %                   | 0 %               |
| Other companies cooperating in both anti-subsidy and anti-dumping investigation                 | 100,5 %  | 17,1 %                              | 27,9 %                   | 17,1 %                   | 10,8 %            |
| Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation | 100,5 %  | 38,6 %                              | 35,9 %                   | 35,9 %                   | 0 %               |
| All other companies   | 106,9 %  | 38,6 %                              | 35,9 %                   | 35,9 %                   | 0 %               |

- (642) The individual company anti-dumping and anti-subsidy duty rate specified in this Regulation was established on the basis of the findings of the present investigations. Therefore, it reflects the situation found during these investigations with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (643) 'Hebei Iron & Steel Group Co., Ltd' changed its name to 'Hesteel Group Co., Ltd.' during the investigation. Some of its related companies have also changed their names. The Commission duly acknowledged these name changes.

- (644) A company may request the application of the individual duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (645) In order to ensure a proper enforcement of the countervailing duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Union during the IP.

## 9. DISCLOSURE

- (646) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC.
- (647) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council <sup>(1)</sup>,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A definitive countervailing duty is imposed on imports of certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in the People's Republic of China. The product concerned does not include:

- products of stainless steel and grain-oriented silicon electrical steel,
- products of tool steel and high-speed steel,
- products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC code 7226 19 10 90), 7226 91 91 and 7226 91 99.

<sup>(1)</sup> Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

2. The rate of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

| Country                    | Company  | Definitive countervailing duty | TARIC additional code |
|----------------------------|--|--------------------------------|-----------------------|
| People's Republic of China | Bengang Steel Plates Co., Ltd.                         | 28,1 %                         | C157                  |
|                            | Handan Iron & Steel Group Han-Bao Co., Ltd.            | 7,8 %                          | C158                  |
|                            | Hesteel Co., Ltd. Tangshan Branch <sup>(1)</sup>       | 7,8 %                          | C159                  |
|                            | Hesteel Co., Ltd. Chengde Branch <sup>(2)</sup>        | 7,8 %                          | C160                  |
|                            | Zhangjiagang Hongchang Plate Co., Ltd.                 | 4,6 %                          | C161                  |
|                            | Zhangjiagang GTA Plate Co., Ltd.                       | 4,6 %                          | C162                  |
|                            | Shougang Jingtang United Iron and Steel Co. Ltd.       | 31,5 %                         | C164                  |
|                            | Beijing Shougang Co. Ltd., Qian'an Iron & Steel branch | 31,5 %                         | C208                  |
|                            | Other cooperating companies listed in the Annex        | 17,1 %                         | See Annex             |
|                            | All other companies                                    | 35,9 %                         | C999                  |

<sup>(1)</sup> Formerly 'Hebei Iron & Steel Co., Ltd. Tangshan Branch'.

<sup>(2)</sup> Formerly 'Hebei Iron & Steel Co., Ltd. Chengde Branch'.

3. The application of the individual countervailing duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of hot-rolled flat steel products sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the (country concerned). I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

## Article 2

1. Article 1(2) of Implementing Regulation (EU) 2017/649 is hereby replaced by the following.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price before duty, of the product described in paragraph 1 and manufactured by the companies listed below shall be as follows:

| Country                    | Company  | Definitive anti-dumping duty | TARIC Additional Code |
|----------------------------|--|------------------------------|-----------------------|
| People's Republic of China | Bengang Steel Plates Co., Ltd.                         | 0 %                          | C157                  |
|                            | Handan Iron & Steel Group Han-Bao Co., Ltd.            | 10,3 %                       | C158                  |
|                            | Hesteel Co., Ltd. Tangshan Branch <sup>(1)</sup>       | 10,3 %                       | C159                  |
|                            | Hesteel Co., Ltd. Chengde Branch <sup>(2)</sup>        | 10,3 %                       | C160                  |
|                            | Zhangjiagang Hongchang Plate Co., Ltd.                 | 31,3 %                       | C161                  |
|                            | Zhangjiagang GTA Plate Co., Ltd.                       | 31,3 %                       | C162                  |
|                            | Shougang Jingtang United Iron and Steel Co. Ltd.       | 0 %                          | C164                  |
|                            | Beijing Shougang Co. Ltd., Qian'an Iron & Steel branch | 0 %                          | C208                  |
|                            | Angang Steel Company Limited                           | 10,8 %                       | C150                  |
|                            | Inner Mongolia Baotou Steel Union Co., Ltd.            | 0 %                          | C151                  |
|                            | Jiangyin Xingcheng Special Steel Works Co., Ltd.       | 0 %                          | C147                  |
|                            | Shanxi Taigang Stainless Steel Co., Ltd.               | 0 %                          | C163                  |
|                            | Maanshan Iron & Steel Co., Ltd                         | 10,8 %                       | C165                  |
|                            | Rizhao Steel Wire Co., Ltd.                            | 10,8 %                       | C166                  |
|                            | Rizhao Baohua New Material Co., Ltd.                   | 10,8 %                       | C167                  |
|                            | Tangshan Yanshan Iron and Steel Co., Ltd.              | 0 %                          | C168                  |
|                            | Wuhan Iron & Steel Co., Ltd.                           | 10,8 %                       | C156                  |
|                            | All other companies                                    | 0 %                          | C999                  |

<sup>(1)</sup> Formerly "Hebei Iron & Steel Co., Ltd. Tangshan Branch".

<sup>(2)</sup> Formerly "Hebei Iron & Steel Co., Ltd. Chengde Branch".

2. Article 1(5) of Commission Implementing Regulation (EU) 2017/649 is hereby replaced by the following.

‘5. Where any new exporting producer in the People’s Republic of China provides sufficient evidence to the Commission that:

- (a) it did not export to the Union the product concerned in paragraph 1 in the period between 1 January 2015 and 31 December 2015 (investigation period);
- (b) it is not related to any exporter or producer in the People’s republic of China which is subject to the anti-dumping measures imposed by this Regulation;
- (c) it has actually exported to the Union the product concerned after the investigation period on which measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

Article 1(2) may be amended by adding the new exporting producer to the list of companies identified in the table and subject to an individual duty not exceeding the duty rate applicable to those companies that cooperated in the anti-dumping investigation but not in the anti-subsidy investigation, i.e. 0 %.’

*Article 3*

The Annex to Commission Implementing Regulation (EU) No 2017/649 is hereby repealed.

*Article 4*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 June 2017.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

## ANNEX

| Country | Name                                 | TARIC additional code |
|---------|--------------------------------------|-----------------------|
| PRC     | Angang Steel Company Limited         | C150                  |
| PRC     | Maanshan Iron & Steel Co., Ltd       | C165                  |
| PRC     | Rizhao Steel Wire Co., Ltd.          | C166                  |
| PRC     | Rizhao Baohua New Material Co., Ltd. | C167                  |
| PRC     | Wuhan Iron & Steel Co., Ltd.         | C156                  |