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Proposal for a

COUNCIL REGULATION

**imposing a definitive anti-subsidy duty on imports of coated fine paper originating in
the People's Republic of China**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

Provisional anti-dumping measures were imposed on the same product group by Commission Regulation (EU) No 1042/2010 (OJ L 299, 16.12.2010, p.7).

Parallel proposal to impose definitive anti-dumping measures.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 17 April 2010, the Commission initiated an anti-subsidy proceeding concerning imports of coated fine paper originating in the People's Republic of China.

The investigation found subsidisation of the product concerned, which caused injury to the Union industry. The investigation also found that it was not against the Union interest to impose anti-subsidy measures.

Therefore, it is proposed that the Council adopts the attached proposal for a Regulation in order to impose definitive anti-subsidy measures on imports of coated fine paper originating in the People's Republic of China.

Legal basis

Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation')

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instrument: Regulation.

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the EU budget.

Proposal for a

COUNCIL REGULATION

imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Article 15 thereof,

Having regard to the proposal submitted by the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 17 April 2010, the European Commission announced by a notice published in the *Official Journal of the European Union*² ('Notice of initiation'), the initiation of an anti-subsidy proceeding with regard to imports into the Union of coated fine paper originating in the People's Republic of China ('PRC' or the 'country concerned').
- (2) The anti-subsidy proceeding was initiated following a complaint lodged on 4 March 2010 by CEPIFINE, the European association of fine paper manufacturers, ('the complainant') on behalf of producers representing a major proportion, in this case more than 25% of the total Union production of coated fine paper. The complaint contained *prima facie* evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of the PRC ('the GOC') that it had received a properly documented complaint alleging that subsidised imports of coated fine paper originating in the PRC were causing material injury to the Union industry. The GOC was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed

¹ OJ L 188, 18.7.2009, p. 93.

² OJ C 99, 17.4.2010, p. 30.

solution. The GOC accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the authorities of the GOC in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes. Following the consultations, submissions were received from the GOC.

1.2. Anti-dumping proceeding

- (4) On 18 February 2010, the European Commission had announced by a notice published in the *Official Journal of the European Union*³, the initiation of an anti-dumping proceeding concerning imports into the Union of coated fine paper originating in the PRC.
- (5) On 17 November 2010, the Commission, by Regulation (EU) No 1042/10⁴, imposed a provisional anti-dumping duty on imports of coated fine paper originating in the PRC.
- (6) The injury analyses performed in the present anti-subsidy and the parallel anti-dumping investigation are identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. For this reason, comments on injury aspects put forward in any of these proceedings were taken into account in both proceedings.

1.3. Parties concerned by the proceeding

- (7) The Commission officially advised the complainant, other known Union producers, the known exporting producers in the PRC and an association of producers (a paper association), the representatives of the country concerned, known importers and known users of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of initiation.
- (8) In view of the apparent high number of exporting producers, Union producers and unrelated importers, sampling was envisaged in the Notice of initiation in accordance with Article 27 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and if so, to select samples, all exporting producers and their known paper association, all Union producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the Notice of initiation, basic information on their activities related to the product concerned (as defined in section 2.1 below) during the period from 1 January 2009 to 31 December 2009. The authorities of the PRC were also consulted.
- (9) As explained in recital (51) below, two Chinese exporting producer groups provided the requested information and agreed to be included in a sample. On the basis of the above it was decided that sampling was not necessary for exporting producers in the PRC.

³ OJ C 41, 18.2.2010, p. 6.

⁴ OJ L 299, 17.11.2010, p.7.

- (10) As explained in recital (53) below, it was decided that sampling was not necessary for Union producers.
- (11) As explained in recital (54) below, it was decided that sampling was not necessary for unrelated importers.
- (12) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the Notice of initiation, namely the complainant, other known Union producers, the known exporting producers in the PRC and an association of producers, the representatives of the country concerned, known importers, known users.
- (13) Replies to the questionnaires and other submissions were received from two groups of Chinese exporting producers, the complainant association (the European association of fine paper manufacturers or ‘CEPIFINE’), the four complainant Union producers and one additional Union producer, 13 unrelated importers and traders, 5 users and one association of the printing industry.
- (14) The Commission sought and verified all information deemed necessary for the determination of subsidisation, resulting injury and Union interest. Verification visits were carried out at the premises of the following State authority and companies:
- (a) *Government of the People Republic of China*
- Chinese Ministry of Commerce, Beijing, China
- (b) *Union producers and association*
- CEPIFINE, Brussels, Belgium
 - Sappi Fine Paper Europe, Brussels, Belgium
 - LECTA Group (CARTIERE DEL GARDA SpA, Riva del Garda, Italy CONDAT SAS, Le Plessis Robinson, France and TORRASPAPPEL, S.A., Barcelona, Spain), Barcelona, Spain
 - Burgo Group spa, Altavilla Vicentina, Italy and its related companies Burgo Distribuzione srl, Milan, Italy and Ebix sa, Barcelona, Spain
 - Papierfabriek Scheufelen GmbH, Lenningen, Germany
- (c) *Exporting producers in the PRC*
- (1) Sinar Mas Paper (China) Investment Co Ltd, the holding company of the Asia Pulp & Paper Group (‘APP’)
- Gold East Paper (Jiangsu) Co., Ltd, Zhenjiang City, Jiangsu Province, PRC
 - Gold Huasheng Paper (Suzhou Industrial Park) Co., Ltd, Suzhou City, Jiangsu Province, PRC
 - Ningbo Zhonghua Paper Co., Ltd, Ningbo City, Zhejiang Province, PRC

– Ningbo Asia Pulp & Paper Co., Ltd, Ningbo City, Zhejiang Province PRC

(2) Chenming Paper Group ('Chenming')

– Shangdong Chenming Paper Holdings Limited, Shouguang City, Shandong Province, PRC

– Shouguang Chenming Art Paper Co., Ltd, Shouguang City, Shandong Province, PRC

(d) *Importers in the Union*

– Cartaria Subalpina, Turin, Italy

– Paperlinx, Northampton, UK

1.4. Investigation period and period considered

(15) The investigation of subsidisation and injury covered the period from 1 January 2009 to 31 December 2009 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(16) The product concerned is coated fine paper which is paper or paperboard coated on one or both sides (excluding kraft paper or kraft paperboard), in either sheets or rolls, and with a weight of 70 g/m² or more but not exceeding 400 g/m² and brightness of more than 84 (measured according to ISO 2470-1), originating in the PRC ('the product concerned' or 'CFP') currently falling within CN codes ex 4810 13 20, ex 4810 13 80, ex 4810 14 20, ex 4810 14 80, ex 4810 19 10, ex 4810 19 90, ex 4810 22 10, ex 4810 22 90, ex 4810 29 30, ex 4810 29 80, ex 4810 99 10, ex 4810 99 30 and ex 4810 99 90.

(17) CFP is high quality paper and paperboard generally used for printing of reading material such as magazines, catalogues, annual reports, yearbooks. The product concerned includes both sheets and rolls suitable for use in sheet-fed ('cut star') printing machines. Rolls suitable for use in sheet-fed presses ('cutter rolls') are designed to be cut into pieces before printing, and are thus considered to be substitutable and directly competitive with sheets.

(18) The product concerned does not include rolls suitable for use in web-fed presses. Rolls suitable for use in web-fed presses are defined as those rolls which, if tested according to the ISO test standard ISO 3783:2006 concerning the determination of resistance to picking – accelerated speed method using the IGT tester (electric model), give a result of less than 30 N/m when measuring in the cross-direction of the paper (CD) and a result of less than 50 N/m when measuring in the machine direction (MD). Also, in contrast to rolls used in sheet-fed printing machines, rolls for use in web-fed presses are normally directly fed into the printing machines and are not cut beforehand.

- (19) One party claimed that the product scope of the investigation was too narrowly defined and that rolls of CFP suitable for web-fed printing should have been included. It was claimed that web-fed rolls and the ones included in the scope of the present investigation (cutter rolls and sheets) shared the same basic technical and physical characteristics and were not distinguishable from one another. Furthermore it was claimed that both were used for high quality printing and that they were therefore to some extent interchangeable.
- (20) However, in contrast to the above claim the investigation confirmed that there are indeed distinct technical and physical characteristics such as humidity and stiffness between paper used in web-fed and the one used in sheet-fed printing. The investigation further confirmed that the technical characteristics listed in recital (18) above are unique to rolls suitable for use in web-fed presses. Due to these differences paper used in web-fed or the one used in sheet-fed printing cannot be used in the same type of printing machine and they are therefore not interchangeable. It is noted that all parties agreed that the two types of paper are distinct as regards their surface strength and tensile strength.
- (21) Furthermore, the party in question claimed that customers view CFP in the form of sheets, cutter rolls and web rolls as a single market and thus distribution channels are the same. The different technical characteristics are only reflected in minor price differences among these product groups.
- (22) However, the investigation revealed that the two types of rolls are also non-interchangeable from an economic point of view because rolls for web-fed printing are used for mass-volume printing jobs and are generally made to order and require just-in-time delivery therefore these products are not stocked by intermediaries but are shipped directly to the final users, i.e. they are also sold through a different distribution channel than rolls used in sheet-fed printing. The different production process and the different economies of scale in the printing process are reflected in distinct price differences.
- (23) To note as well is that no rolls for use in web-fed presses were imported from the PRC during the period considered. It may also be considered unlikely that these products would be imported in the future as sourcing these products from long distance is economically not viable for the reasons mentioned in the previous recital.
- (24) On this basis, these claims were rejected.
- (25) The same party claimed that the resistance to picking was not a suitable technical characteristic for differentiating between products as this test would be of a general nature and test results may moreover be affected by the moisture content of the paper tested. The party further claimed that on the basis of some other tests conducted in its own laboratory measuring the resistance to picking of web rolls produced by the Union producers, it can be seen that these products would not fall into the current product definition which would show that the criterion of "resistance to picking" for distinguishing CFP used in web-fed and sheet-fed printing is unsuitable. With this evidence the party alleged that the exclusion of web rolls was made on an arbitrary basis.

- (26) No evidence was submitted with regard to the claim that the moisture content of the paper may render test results for ISO test standard ISO 3783:2006 unreliable.
- (27) The test results presented by the exporting producer consisted of a summary of the test results performed in its own laboratory. Crucially, the results were not made available for inspection and comments by other interested parties, in particular, the Union industry, nor did the exporting producer submit a meaningful non-confidential summary thereof despite repeated reminders.
- (28) After disclosure, no further detailed information was provided by the exporting producer which could help assess the reliability of the test. Since no non-confidential version of this test was provided, the companies whose web rolls were allegedly tested could not respond to the conclusions of the test. The Commission thus could not objectively check whether the submitted test results were reliable and correct and could be relied upon for the purposes of the investigation. On the basis of the facts available to the Commission, the objectivity and reliability of the test was found to be insufficient since the information submitted under confidentiality could not be counterchecked by any reliable sources.
- (29) After the disclosure of the findings, the same exporting producer presented the results of a further test conducted on its behalf by an external test laboratory and reiterated that CFP used in web-fed printing has been arbitrarily excluded from the scope of the investigation. The test reports stated that the resistance to picking has been measured on 25 samples of web-fed rolls provided and identified by the exporting producer to the laboratory as paper samples produced by Union producers. According to this report, none of the paper met both criteria set in recital (18) above.
- (30) The assessment of the test report brought to light that, first of all, the test report by the external laboratory related mostly to products for which these results were irrelevant as the vast majority of the samples tested were not in fact web rolls; secondly, the test report related to products which were not sufficiently identified as it could not be ascertained from the test report whether the paper tested was for sheet-fed printing or web-fed printing as the paper brand described in the report existed in both formats. Furthermore the test report provided no assurance that the sampled rolls indicated were indeed the ones that were tested.
- (31) In response to the external laboratory's test report, the complainant provided the results of the testing performed by one of the Union producers on the same samples of web rolls that were allegedly tested by the external laboratory. This test showed different results. The complainant attributed the differences to possibly different test conditions and thus a potential non-compliance with the ISO 3783:2006 standard, i.e. the standard according to which resistance to picking set in Recital (16) of the provisional Regulation should be measured.
- (32) After disclosing the definitive findings, the exporting producer questioned the Commission's objectivity in rejecting the test result of the external laboratory. It claimed that the testing was carried out blindly by the independent expert and in accordance with the relevant ISO standard. It provided an affidavit of its manager explaining the sourcing process of the samples used in the testing in order to prove the independence, correctness and representativeness of the testing.

- (33) Firstly, the objectivity of the external laboratory test report was never questioned by the Commission and in this regard it is irrelevant that the testing was carried out blindly. On the other hand, doubts were raised as to the assurances on the selection and origin of the samples tested and not on the test itself. The arguments of the exporting producer did not remove these doubts as these were not comprehensive and were unclear in several aspects, for example the inclusion of products other than web rolls were claimed to have been caused by administrative errors or were blamed on mistakes by the suppliers in providing possibly wrong samples.
- (34) Since both the source as well as the samples of the allegedly tested products were not clear and the results of the testing by the different parties were contradictory, it was considered that the submitted test report of the external laboratory acting on behalf of the Chinese exporting producer did not conclusively demonstrate that the resistance to picking test was not appropriate to distinguish between CFP suitable for use in web-fed printing on the one hand and CFP used in sheet-fed printing on the other hand. Consequently, the test report did not demonstrate that CFP used in web-fed printing had been arbitrarily excluded from the scope of the investigation.
- (35) As regards the relevance of the resistance to picking as a distinguishing criterion for rolls suitable for web-fed printing, it is recalled that in the product definition the two product groups are distinguished from each other based on, among other things, the use of the products, i.e. whether the product is suitable for use in web-fed or sheet-fed printing as determined by the requirements of the presses on which they are used which is reflected in, inter alia, the characteristic of resistance to picking. Furthermore it is noted that resistance to picking is only one of the characteristics that distinguish CFP suitable for use in web-fed printing from CFP used in sheet fed printing; recitals (18) and (20) above set out additional criteria which have not been contested by the exporting producer concerned. One party claimed that humidity as defined in recital (20) was not a distinct basic characteristic to distinguish products. During the investigation however differing claims in this regard were made by other parties. In any event, it was found that stiffness and resistance to picking are the most relevant factors.
- (36) In its responding submission, the complainant acknowledged that there might be rolls that do not fully meet all the criteria for resistance to picking set in recital (18) above, which could still be used in web-fed printing. However, it sustained its view that pick resistance is the only test that is able to identify with certainty that a roll is indeed suitable for web-fed printing, i.e. if a roll meets the picking resistance criteria in recital (18) above, it is certainly a web roll.
- (37) In support of the above claims concerning resistance to picking the exporting producer referred to arguments put forward by one of the complainant Union producers in anti-dumping and anti-subsidy investigations in the USA in which the Union producer allegedly acknowledged that web rolls cannot be differentiated based on pick resistance test or by any other measurement.
- (38) The complainant contested these statements of the exporting producer and claimed that contrary to what has been claimed, it follows from the proceedings in the USA that there is a clear dividing line distinguishing web rolls from CFP.

- (39) Firstly, it should be noted that the statements referred to by the exporting producer were presented in investigations under other jurisdictions and by different parties than the ones in the current proceeding and thus are not relevant. Secondly, the US authorities in the mentioned investigations concluded that there was a clear distinction between on one hand CFP used in sheet-fed printing and on the other hand rolls suitable for use in web-fed printing. Cutter rolls were regarded as semi-finished products while rolls suitable for web fed printing were not considered as product concerned. The US authorities did not explicitly define web rolls in their definition of the product scope.. For this reason, the criterion of resistance to picking was not relevant in the definition of the product scope in the mentioned investigations.
- (40) Based on the above comments, the technical characteristic "resistance to picking" was confirmed as being a reliable characteristic to describe CFP suitable for use in web-fed printing.
- (41) The comments put forward have however also revealed that there exist web rolls that can be used in web-fed printing even if they do not fully meet all the criteria for resistance to picking. For this reason it was considered necessary to further refine the definition of rolls suitable for web-fed printing.
- (42) In order to provide a further criterion to distinguish web rolls which do not fully meet all the criteria for resistance to picking, the complainant suggested that a roll which does not fully meet the picking resistance test but has an internal core size of less than 80mm, should be considered as a web roll.
- (43) The GOC and the exporting producer claimed that the addition of core size as a new element into the product definition constituted a revision of the definition of web rolls and thus the product concerned. It also claimed that the internal core size is not a suitable criteria as there exist web rolls with higher than 80mm core size and cutter rolls with lower than 80mm core size.
- (44) The Commission endeavoured to further refine the definition of rolls suitable for use in web-fed printing and to give further clarification in order to distinguish even more clearly between the product concerned and other products, also with a view to minimize the possibility of circumvention of the measures. The evidence submitted on the suitability of the core size as an alternative criterion in the definition however proved that this criterion would lead to the possible exclusion of product concerned, i.e. cutter rolls with a core size of less than 80mm from the measures. Therefore this criterion to define rolls suitable for use in web-fed printing was abandoned.
- (45) The above is without prejudice to the reliability of the method according to which rolls suitable for use in web-fed printing have been excluded from the scope of the investigation as it was claimed by the Chinese group of exporting producers.
- (46) During the course of the investigation, certain parties also claimed that multi-ply paper and multi-ply paperboard (as defined in the next recital) should be excluded from the scope of the investigation. They claimed that multi-ply paper and multi-ply paperboard had different physical characteristics such as multiple plies, higher stiffness and lower density and that the final use of these products was different as these are usually used for folding carton and packaging applications. These parties finally claimed that

single-ply and multi-ply paper and paperboard would be easily distinguished by their physical appearance.

- (47) Multi-ply paper and multi-ply paperboard, as defined in the Harmonised System Explanatory Notes to subheading 4805, are products obtained by pressing together two or more layers of moist pulps of which at least one characteristics different from the others. These differences may arise from the nature of pulps used (e.g. recycled waste), the method of production (e.g. mechanical or chemical) or, if the pulps are of the same nature and have been produced by the same method, the degree of processing (e.g. unbleached, bleached or coloured).
- (48) The investigation showed that multi-ply paper and paperboard has indeed some different physical and technical characteristics; more specifically it has several layers of pulp giving it an increased rigidity. Multi-ply paper and paperboard is produced by a different production method requiring a different paper machine than the one used for the production of CFP, as in the production process several layers of pulp are layered into a single product. Finally, multi-ply paper and paperboard serves different purposes (mainly packaging) compared to CFP that is used for high quality printing of promotional material, magazines, etc. Multi-ply paper and paperboard as defined in recital (47) is therefore considered as not being the product concerned. Consequently, the CN codes mentioned covering imports of multi-ply paper and multi-ply paperboard are excluded from the scope of the investigation.
- (49) Finally, one Chinese producer claimed that so called "paperboard" should be excluded from the scope of the investigation as it does not fall under the definition of fine paper (whether coated or not) because of alleged differences in its weight, thickness and rigidity. It was found that the term 'paperboard' is generally used for paper with high substances making the paper in general heavier, i.e. "paperboard" is commonly defined as paper with a basis weight of above 224 g/m². However, the investigation revealed that the difference in weight does not have a significant impact on the remaining physical and technical characteristic and end uses which would it make distinguishable from the product concerned. It is also noted that, as outlined in recital (16), all CFP with a weight of 70 g/m² or more but not exceeding 400 g/m² were explicitly included in the definition of the product concerned. Therefore paperboard is considered as being the product concerned.

2.1.1. Like product

- (50) The product concerned, the product produced and sold on the domestic market of the PRC as well as the product manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same basic uses. They are therefore considered as alike within the meaning of Article 2(c) of the basic Regulation.

3. SAMPLING

3.1. Sampling for exporting producers in the PRC

- (51) Only two exporting producers groups in the PRC came forward and replied to the request for sampling data in the Notice of initiation. One group (Chenming) represents 2 related exporting producers while the other group (APP) represents 4 related exporting producers. The cooperating exporting producers represent the total exports

of the product concerned from the PRC to the Union. In these circumstances, the Commission decided that sampling was not necessary for exporting producers in the PRC.

- (52) Two out of four related exporting producers of the APP group were found to produce only the multi-ply paperboard, mentioned in recital (47) above. In this respect it is recalled that it was concluded that multi-ply paperboard should be excluded from the product scope of the current investigation. It is also recalled that the multi-ply paperboard was excluded from the product scope of the parallel anti-dumping proceeding. It is therefore concluded that the two related exporting producers found to produce only multi-ply paperboard are not concerned by the current proceeding. Thus the hereunder presented findings are not based on their information and data.

3.2. Sampling of Union producers

- (53) In view of the potentially large number of Union producers sampling was envisaged in the Notice of initiation in accordance with Article 27 of the basic Regulation. However, after examination of the information submitted and given that only four Union producers came forward within the deadlines set in the Notice of initiation, it was decided that sampling was not necessary. The four above-mentioned producers were considered to be representative (covering 61% of total production) of the Union industry as defined in recital (372) below. The information provided by the four companies was verified on-spot and was used for the micro indicators as explained in recital (386).

3.3. Sampling of unrelated importers

- (54) In view of the potentially large number of importers, sampling was envisaged for importers in the Notice of initiation in accordance with Article 27 of the basic Regulation. However, after examination of the information submitted and given the low number of importers which indicated their willingness to co-operate, it was decided that sampling was not necessary.

4. SUBSIDISATION

4.1. Preliminary remarks

- (55) It is recalled that both the GOC and the four Chinese exporting producers submitted questionnaire replies and accepted on-spot visits in order to verify the replies.
- (56) With respect to the GOC, following the submission of the questionnaire reply, the Commission sent to the Chinese side three deficiency letters and a pre-verification letter. The Commission provided to the GOC ample time for the preparation and submission of its representations whenever this was requested and justified. Indeed substantial deadline extensions were granted to the GOC, i.e. two weeks extension for the reply to the questionnaire which led to a total deadline of 49 days for the submission of the questionnaire reply and three weeks for the reply to the first deficiency letter which led to a total deadline of 40 days.
- (57) Prior to the on-spot verification visit, the GOC requested the Commission to provide further information in writing, in particular a list of all the questions that it intended to ask during the verification plus a list of the Government departments which were

expected to participate in the on-spot visit. In the absence of these, it was argued that the Commission would not fulfil its obligations as an investigating authority set out in the Agreement on Subsidies and Countervailing Measures ('SCM Agreement') and in particular those contained in paragraph 8 in Annex VI. The GOC also submitted that due to lack of such information it would not be in a position to guarantee the outcome of the verification.

- (58) The Commission respectfully disagreed with GOC's request. In this respect it is noted that the Commission has fulfilled all the relevant conditions of paragraph 8 in Annex VI of the SCM Agreement as well as of Article 26 of the basic Regulation. A detailed pre-verification letter was sent to the GOC confirming the agenda (days and group of schemes to be discussed per verification day) and requesting the presence of the authorities responsible for the relevant schemes and of the officials involved in the preparation of the GOC submissions. The Commission also explained before the on-spot verification visits that only the GOC knows the authorities responsible for the schemes under investigation as well as those officials whose are best placed to take part in the verification and answer questions. As regards the list of specific questions, the Commission explained before and during the on-spot verification visit that such a list is not required by WTO or EU legislation and that the purpose of this investigation is to verify the GOC reply to the questionnaire and the relevant supplementary submissions; therefore the verification would follow the structure of these documents. The Commission would also seek to obtain and clarify further information necessary for the ongoing proceeding but precise questions in this context would depend on the GOC's replies to the initial verification of its replies. It was also made clear to the GOC before the on-spot verification visit that refusals to provide necessary information or to assist the investigating authority in verifying information and data deemed necessary for the purposes of the proceeding may seriously undermine the investigation process. The GOC was also reminded of the consequences of the provisions of Article 28 of the basic Regulation.
- (59) During the on-spot verification visit to the Chinese Ministry of Commerce in Beijing, the Commission endeavoured to verify information provided on the basis of the supporting documents that were used to prepare the GOC's response, in line with the provisions of Articles 11 and 26 of the basic Regulation. In doing so, the Commission came preliminarily to the conclusion that the lack of information and supporting documents available does not allow a proper verification of the reply to the questionnaire. Moreover, certain information was not submitted at all although it was specifically requested and certain questions were simply not replied to. The GOC has been made aware of the consequences of non-cooperation in accordance with Article 28(1) and (6) of the basic Regulation.
- (60) The GOC argued that the investigating authority should determine the necessity of information in a reasonable manner that would not amount to abuse of rights. It was also argued that even if information is considered not ideal in all aspects it should not be disregarded. On the basis of the above arguments the GOC submitted that it cooperated to the best of its ability and that its questionnaire reply was complete. It was also argued that the on-spot verification was poorly scheduled as the pre-verification letter failed to provide a reasonable understanding of what was to be verified and the Commission did not conduct specific on-spot visits at each government entity. It was also submitted that the Commission imposed an

unreasonable burden on the GOC and requested irrelevant and unnecessary information.

- (61) With respect to the scheduling of the on-spot verification, it is recalled that the GOC agreed to the timing, schedule of visit and venue. Indeed, discussions on the timing of the on-spot visit took place in August 2010. The Commission initially proposed the on-spot verification visit to take place on the first week of October 2010 and subsequently amended its proposal twice, on the basis of Chinese requests, first for the second week of October 2010 and finally for the third week of October 2010. Thus there is no basis to any complaints concerning scheduling of on-spot visits as the Commission did its utmost to accommodate any duly justified Chinese request. With respect to the requested information it is noted that the GOC has never disputed the format of the questionnaire or the way information was requested. The Chinese Ministry of Commerce submitted on behalf of the GOC its questionnaire reply and subsequent representations. The Commission requested information that is deemed necessary for the purposes of arriving at a representative finding and remained consistent in its requests by asking for the same data and information during the investigating process and requesting from the GOC to explain the submitted information and its implication to the investigated schemes.

4.2. Specific Schemes

- (62) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by the Governmental authority, were investigated:

(I) Preferential lending to the coated paper industry

(II) Income tax Programmes

- *Preferential tax policies for companies that are recognised as high or new technology enterprises*
- *Preferential tax policies for Research & Development*
- *Dividend exemption between qualified resident enterprises*

(III) Indirect Tax and Import Tariff Programmes

- *VAT and Tariff exemption on imported equipment*
- *VAT rebates on domestically produced equipment*
- *City maintenance and Construction Taxes and education surcharges for Foreign Invested Enterprises*

(IV) Grant Programmes

- *Famous Brands*
- *Special Funds for Encouraging Foreign Investment Projects*
- *Anti-dumping Respondent Assistance*

- *Shouguang Technology Renovation Grant*
 - *Suzhou Industrial park Intellectual Property Right Fund*
 - *Subsidy of High-Tech Industrial Development Fund*
 - *Award received from Suzhou Industrial Park for maintaining growth*
 - *Special fund for water pollution treatment of Taihu lake of Jiangsu province*
 - *Special funds for energy-saving of Suzhou Industrial Park*
 - *Special fund for reduction of total emissions of major pollutants at municipal level of Suzhou municipality*
 - *Subsidy for water-saving and emission reduction*
 - *Environmental Protection award received from Suzhou Environmental Protection Bureau*
 - *Energy saving award in Shouguang*
- (V) *Government Provision of Goods and Services for Less than Adequate Remuneration (“LTAR”)*
- *Provision of land use rights*
 - *Provision of paper-making chemicals*
 - *Provision of electricity*

4.2.1. Preferential lending to the coated paper industry

(a) Introduction

(63) It is alleged that Chinese producers of the product concerned benefit from low-interest rate loans from government policy banks and state-owned commercial banks (“SOCBs”) pursuant to the GOC’s policy to provide financial assistance in order to encourage and support the growth and development of the paper industry in China. As illustrated in the five-year plans and industrial policy, preferential financing initiatives have been granted by the banking system to the papermaking industry.

(b) Use of facts available

(64) On the basis of the information contained in the complaint the Commission sought to investigate the bank lending to the coated paper industry. To this extent it was considered necessary to request from the GOC to provide in its questionnaire reply and subsequent submissions specific information and data on a series of government plans and projects to encourage and support the development of China's paper sector. These plans and projects were:

- China Civilian Economy and Social Development 10th Five-Year Plan ('The 10th Five Year Plan')
- The "10th Five year Plan" in the Papermaking Industry ('Papermaking Plan')
- The 10th Five year and 2010 Special Plan for the Construction of a National Forestry and Papermaking Integration Project ('Integration Project')
- Decision No. 40 of the State Council on Promulgating and Implementing the "Temporary Provisions on Promoting Industrial Structure Adjustment" ('Decision No. 40')
- Directory Catalogue on Readjustment of Industrial Structure ('Directory Catalogue')
- Guidelines for the Eleventh Five-Year Plan for National Economic and Social Development (2006-2010) ('11th Five-year Plan')
- State Council Circular on Realizing the Major Targets in (The 11th Five Year-Year Plan) and the Division of Tasks ('11th five-year plan implementing circular')
- 2007 Development Policy for the Papermaking Industry ('2007 Papermaking Plan')
- The Guandong Development Plan
- The Zhanjiang City 11th Five-Year plan
- The 11th Five Year Plan of Jining Municipality

(65) The GOC only partially provided the information requested in relation to plans. Only two of the plans requested were provided in full, i.e. in the Chinese version together with an English translation (Decision No. 40 and Directory Catalogue on Readjustment of Industrial Structure). For the three regional plans originally requested by the Commission, the Chinese authorities submitted that they are not relevant since the co-operating exporting producers are not located in these regions. They were thus not provided. The Commission accepted this but requested the development plans related to the areas (regions, provinces, municipalities) where the cooperating exporting producers are established. The GOC provided Chinese copies of the 11th Five year plan for Jiangsu Province and 11th Five year plan for Shandong Province, but no translation whatsoever, not even a translation of the table of contents. In relation to two plans that were not provided, the GOC submitted that they cover the period between 2000 and 2005 and are thus obsolete. The Commission accepted this. The remaining plans were provided only in Chinese (Integration Project, 11th Five-year Plan, 11th five-year plan implementing circular, 2007 Papermaking Plan) together with English tables of the contents. The GOC claimed that the Commission's requests were too burdensome, that they only had limited resources and therefore could not translate the texts.

(66) With respect to the above it is noted that the Commission requested information that was deemed necessary for the investigation as the aforesaid documents have been

identified in the complaint. Moreover the Commission had repeatedly emphasized the need to provide the requested documents in English. This is necessary for this type of significant document given that, on the basis of the index only, it was not possible to determine which part of the document is relevant for the investigation. Moreover, the plans provided in Chinese were not voluminous and it appears that copies in English of the relevant documentation exist either from independent sources (legal firms that specialize in Chinese law) or from anti-subsidy investigations conducted in China by the United States of America ('USA').

- (67) Consequently, the Commission had the possibility to verify only the following documents: the Decision No. 40, the Directory Catalogue and the 2007 Papermaking Plan, an English version of which was in the complaint and it was also made available from an exporting producer.
- (68) In order to investigate the level of government intervention in the Chinese financial market and obtain the necessary overview of the financial sector in the PRC, the Commission requested information on the percentage of government ownership of financial institutions and on the records of amounts/percentages of loans given by State owned banks. The GOC claimed that they did not have any records on the bank shareholding although Article 61 of the Law on Commercial Banks [2003] No. 13 provides that banks report these data "*to the banking regulatory organ of the State Council and People's Bank of China*". As regards the amounts/percentages of loans given by State owned banks, the GOC confirmed that although relevant data is kept, it could not provide it. The Commission further facilitated the work of GOC by limiting the requested information on the percentage of government ownership only to such financial institutions that were found to provide loans to the co-operating exporting producers. Nevertheless, the GOC did not provide relevant data even for this restricted segment of financial institutions operating in China.
- (69) In order to investigate the lending policies of the Chinese banks (e.g. methods used as regards the setting of the interest loan rates, assessment of loans etc), the GOC was requested to provide information with respect to the policies followed by the relevant state authorities namely the People's Bank of China ('PBOC') and the Bank Regulatory Commission. The GOC did not provide any relevant information on the loan policies. No document, regulation or guidelines addressed to the banking system from the PBOC was provided in order to substantiate the role of the PBOC in setting interest rates and its relation with the banking system. Furthermore no explanation was given, although specifically requested, with respect to the application of the Law on Commercial Banks [2003] No. 13 and particularly Articles 34, 38 and 39 that set out the basic rules governing loans and other businesses of commercial banks.
- (70) In order to investigate the lending policies of the Chinese banks that provided loans during the IP to the cooperating exporting producers, the Commission requested the GOC to arrange meetings with specific banks that have provided loans to the cooperating exporting producers in order to verify information concerning preferential lending to the CFP industry in China. The GOC claimed that it was unable to intervene with State-owned banks to arrange such meetings. Therefore, no evidence has been collected from Chinese banks as to whether and, if so, how those banks evaluate credit risk when providing loans.

- (71) The GOC was made aware of the consequences of non-cooperation in accordance with Article 28(1) and (6) of the basic Regulation. In view of this lack of cooperation, it has been necessary, in addition to taking account of relevant GOC documents submitted by other parties, to use information from secondary sources, including the complaint and publicly available information retrieved from internet. The GOC disputed the use of facts available but did not provide any further new evidence.
- (72) The cooperating exporting producers were also requested to arrange meetings with specific banks that have provided loans to them during the IP in order to verify information concerning preferential lending to the CFP industry in China. However, no such meetings took place. The cooperating exporting producers communicated the repeated requests of the Commission for such meetings but the relevant banks refused to cooperate with the investigation. The co-operating exporting producers were made aware of the consequences of non-cooperation in accordance with Article 28(1) and (6) of the basic Regulation. In view of this lack of cooperation, it is considered necessary to base any findings with respect to the loans provided by banks to the co-operating exporting producers on facts available. The co-operating exporting producers disputed the use of facts available but did not provide any further evidence.
- (73) One Chinese exporting producer was requested to provide specific information concerning a specific debt restructuring agreement with three Chinese banks. The aforesaid exporting producer refused to provide the necessary information. Consequently, it was not possible to verify the relevant overall agreement and corresponding contract loans as well as all specific points like duration of loans, repayment schedules and interest rates. The co-operating exporting producer was made aware of the consequences of non-cooperation in accordance with Article 28(1) and (6) of the basic Regulation. In view of this lack of cooperation, it is considered necessary to base any findings with respect to the relevant loans provided by banks to the co-operating exporting producer on facts available. The co-operating exporting producer disputed the use of facts available but did not provide any further evidence.

(c) *Findings of the investigation*

- (i) Government intervention in the financial banking system for a preferential lending to paper making industry

- *Role of government plans*

- (74) The investigation established the existence of specific policy plans with respect to the papermaking industry. These plans stipulate that the state authorities monitor closely the performance of the papermaking industry and implement special policies (e.g. implementing decrees) for the fulfilment of the goals of the policy plans. Furthermore, the investigation also established that the specific policy plans provide for preferential lending to the paper making industry.
- (75) Indeed, by examining the Decision No 40 and the specific financing section of the 2007 Papermaking Plan it is obvious that the Chinese state planning system directs banks to provide loans to the paper making industry.
- (76) With reference to the Decision No 40, it is noted that this Act is an order from the State Council i.e. the highest administrative body in the PRC and so legally binding for other public bodies and the economic operators. The Decision classifies the

industrial sectors into 'Encouraged, Restrictive and Eliminated Projects'. This Act represents an industrial policy guideline that along with the Directory Catalogue shows how the GOC maintains a policy to encourage and support groups of enterprises or industries, such as the paper industry, classified by the Directory Catalogue as an 'Encouraged industry'. With respect to the number of industries listed as 'Encouraged' it is noted that there are in total 26, representing only a portion of the Chinese economy. Furthermore, only certain activities within these 26 sectors are given "encouraged" status. The Decision No 40 also stipulates under Article 17 that the 'Encouraged investment projects' shall benefit from specific privileges and incentives (financial support, import duty exemption, VAT exemption, tax exemption). On the other hand, with reference to the 'Restrictive and Eliminated Projects', the Decision No 40 empowers the state authorities to intervene directly to regulate the market. In fact, Articles 18 and 19 request the relevant authority to stop financial institutions from supplying loans; they also order the State price administrative department to raise the electricity price and instruct the electricity supply companies to stop supplying electricity to such 'Restrictive and Eliminated Projects'. It is obvious from the above that Decision No 40 provides binding rules to all the economic institutions in the form of directives on the promotion and support of encouraged industries, one of which is the paper making industry.

- (77) With respect to the 2007 Papermaking Plan it is noted that it provides specific conditions, orientations and targets for the papermaking industry. It describes the state of the papermaking industry in China (e.g. number of enterprises, production, consumption and exports, statistics on the type of raw materials used). It sets out the policies and goals for the papermaking industry with respect to the industrial layout, the use of raw materials, the use of technology and equipment, the product structure and the organizational structure of the papermaking producers. The text also sets industry "admission criteria", as it lays down specific assets/liability ratio requirements for the papermaking industry, sets specific credit ratings for the papermaking industry and specific targets for economies of scale, market share ratios, energy and water consumption to be achieved or attained by companies. It requests enterprises to formulate development plans based on the 2007 Papermaking Plan. It also instructs the local provinces and regions to participate in the implementation of the plan, while an entire chapter is devoted to "Investment and Financing" of the papermaking industry. In this respect it is pertinent to note that the Plan clearly states that financial institutions shall not provide loans for any project which does not comply with its regulations. In sum it is clear from the reading of the text and the wording used that the 2007 Papermaking Plan is a specific state instrument aimed at regulating the papermaking industry in China and can only be considered as a compulsory industrial policy tool that has to be concretely implemented by relevant interested parties in China (state authorities, financial institutions and producers).
- (78) The GOC argued that the 2007 Papermaking Plan is to be considered a guideline plan without binding force. It was also submitted that in the same context none of the government plans and projects are legally binding and as a result no financial contribution or benefit can be granted in the framework of such plans and projects. However, a simple reading of the text on the 2007 Papermaking Plan and its above-stated specific provisions reveals that the text cannot be considered as a non-binding guideline. In this respect it is noted that the 2007 Papermaking Plan text *inter alia* reads "*The industrial development policy is formulated based on the requirements of perfecting the reform of the socialist market economy and the related laws and*

regulations, so as to establish a fair market order and good development environment, solve the issues existing in the development of papermaking industry and direct the healthy development of the industry" With respect to the remaining plans and projects as listed under recital (64) above it is noted that at least one refers to an implementing circular of the 11th Five Year Plan. It is difficult to understand how an allegedly non-legally binding document (a government plan) can have a legally binding implementing act (in this case a circular of the State Council).

- (79) In addition, Article 34 of the Law on Commercial Banks [2003] No. 13 states that banks *'carry out their loan business upon the needs of the national economy and the social development and under the guidance of the state industrial policy'*. In this particular case the relevant state industrial policy is the 2007 Papermaking Plan. Thus, it only logical to conclude that loans received by the CFP producers from SOCBs are made pursuant to government directives.
- (80) The role of the National Development and Reform Commission ('NDRC') was also investigated. It was submitted by the GOC that the NDRC is an agency of the State Council coordinating macro-economic policy and managing the Government investments. This state authority issued among other plans the 2007 Papermaking Plan. No available information was submitted, although explicitly requested, on the legal framework under which the NDRC was established and operates, e.g. its statute. The only explanation provided by the GOC was that the State Council, the highest governmental administrative body, gives the instructions which the NDRC has to follow and that in any event this information is irrelevant to the investigation. This argument cannot be accepted. The statutes of the authority that issues government plans is considered relevant to the investigation, in view of the fact that government plans and projects are investigated in this proceeding. The Commission also enquired about the reasons why the NDRC collects, on a permanent basis, detailed information from companies. The GOC clarified that the information could be collected through industrial associations and other public sources. Nevertheless, the existence of a systematic mechanism to collect company related data to be used in government plans and projects reveals that these plans and project are considered as an important element of state industrial policy.
- (81) It follows from the above that any decision taken by financial institutions with respect to the papermaking industry would have to take into consideration the need to fulfil the goals of the relevant policy plans. Indeed, companies qualified by these specific policy plans as 'Encouraged industries' are considered of high credit rating, something that has direct consequences on the assessment of the creditworthiness by the Chinese financial system. Furthermore, from examining the specific financing section of the 2007 Papermaking Plan and a credit rating note that was made available from one co-operating exporting producer it is obvious that the Chinese state planning system directs banks to provide loans to the papermaking industry and companies are considered of high credit rating because they qualify for specific policy plans. It is pertinent to note that the particular credit rating note obtained during the investigation directly links the positive future prospects of the company with the existence of the papermaking policy plans and the fulfilment of their objectives. There is also evidence that the State authorities monitor the performance of companies as they examine annually their business licenses and retain in this way financial and performance statistics. Furthermore, there is also evidence, derived from information submitted from co-operating exporting producers, that the PBOC monitors, in line with the

provisions of Article 9 of the Regulation on Registration and Consultation of Banks, the loan situation of companies through the annual examination of the loans companies avail themselves of each year.

- (82) All the above facts demonstrate the link between the specific policy plans and the financing of the papermaking industry.

- *Government intervention in the banking sector*

- (83) With respect to the co-operating exporting producers the investigation established that two of them were, in the majority of cases, automatically granted the lowest possible interest rate within the limits set out by the PBOC while other two co-operating exporting producers benefited from a substantial rescheduling of their loans that took place in 2008. Indeed, Chinese state-owned banks purchased all loans due to foreign banks and the rescheduled loans did not provide for a significant risk premium over the PBOC interest rate benchmark.

- (84) In addition, the investigation has established that the Chinese financial market is characterised by government intervention because most of the major banks are state-owned. The Chinese authorities have only provided some very limited information concerning shareholding/ownership of banks in China. However, as further outlined below, the Commission compiled available information in order to arrive at a representative finding. In performing its analysis whether banks are entities vested with or exercising government authority the Commission also sought information concerning not only the government ownership of the banks but also other characteristics such as the government presence on the board of directors, the government control over activities, the pursuit of government policies or interests and whether entities were created by statute.

- (85) From the available information it is concluded that the state-owned banks in China command the highest market share and are the predominant players in the Chinese financial market; according to the 2006 Deutsche Bank Research on China's banking sector, the state-owned banks' share may amount to more than 2/3 of the Chinese market. For the same matter the WTO Trade Policy Review of China noted that "*The high degree of state ownership is another notable feature of the financial sector in China*"⁵. It is pertinent to note that the four big state-owned banks (Agricultural Bank, Bank of China, Construction Bank and Industrial and Commercial Bank) appear to represent more than half of the Chinese banking sector. Policy banks and other state-owned banks are more than 50% state-owned. The Commission also requested information concerning the structure of government control in the aforesaid Chinese banks and the pursuit of government policies or interests with respect to the Papermaking industry (i.e. board of directors and board of shareholders, minutes of shareholders/directors meetings, nationality of shareholders/directors, lending policies and assessment of risk with respect to loans provided to the cooperating exporting producers). Nevertheless, the GOC or the banks did not provide such information. They only repeatedly referred to information in the Annual reports of the banks they had submitted. However, the information in the Annual reports of banks did not (and cannot) contain the required level of detailed information. Consequently, the

⁵ Document WT/TPR/S/230 p. 79.

Commission had to use the information available. It concluded on the basis of the available data that the aforesaid banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the State. The relevant data used in order to arrive at the aforesaid findings is derived from information submitted by the GOC, the annual reports of Chinese banks that were either submitted from GOC or publicly available, information retrieved from the 2006 Deutsche Bank Research on China's banking sector, information submitted from the co-operating exporting producers and information existing in the complaint. As for foreign banks, independent sources estimate that they represent a minor part of the Chinese banking sector so to play an insignificant role in the policy lending with relevant information suggesting that this may be as low as 1% of the Chinese market⁶. Relevant public available information also confirms that Chinese banks, particularly the large commercial banks, still rely on state-owned shareholders and the government for replenishment of capital when there is a lack of capital adequacy as result of credit expansion⁷. With respect to the banks that provided loans to the co-operating exporting producers, the great majority are state-owned banks. Indeed on the basis of the available information it was found that at least 13 out of the 19 reported banks are state-owned banks, including two Policy banks (Export-Import Bank of China, the China Development Bank) and the major Commercial banks in China like Agricultural Bank of China, Bank of China, China Construction Bank and Industrial and Commercial Bank of China. With respect to the remaining state-owned banks, again the Commission requested the same information mentioned above concerning the government control and the pursuit of government policies or interests with respect to the Papermaking industry. Again, no such detailed information was provided apart from a repeated claim to refer to information in the relevant Annual reports of the banks which in the majority of cases was only in Chinese and without any English translation. However, information in the Annual reports of banks cannot provide the required level of detailed information. With respect to the Policy banks, as explained hereunder the investigation established that there are no clear legal provisions regulating their role and their relationship with the government. But it is also pertinent to note that according to statements made by the GOC during the on-spot verification it appears that Policy banks supported government policies in China and are not operating for profit. All the above points confirm that the aforesaid banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the State.

- (86) The Commission also sought to investigate the difference between the Policy banks (according to available information these are the Export-Import Bank of China, the China Development Bank and the Agricultural Development Bank of China) and State Owned Commercial banks. The Commission requested clarifications on these two different types of financial institutions. The GOC submitted that the Policy banks do not have any written legal provisions regulating their sector, given that the Chinese authorities are currently drafting a law on Policy banks. It was also argued that one Policy bank (namely the China Development Bank) should not be considered as such since it has become a shareholding company and is in a transitional period. In relation to the above it is noted that information submitted confirms that policy banks are

⁶ Information retrieved from the 2006 Deutsch Bank Research on China's banking sector, pages 3-4.

⁷ Information retrieved from the China Monetary Report Quarter Two, 2010 of the Monetary Policy Analysis Group of the People's Bank of China, dated 5 August 2010, page 10.

treated differently. Although there lack of any rules governing the Policy banks sector and the way these banks act in the Chinese financial market it appears from the PBOC circulars mentioned hereunder, where they are mentioned explicitly, that they have a special status as compared to the remaining banks. As to the status of the China Development Bank it is noted that the Chinese state (through the Chinese Ministry of Finance) holds more than 50% of the bank's shares and thus its transformation into a share-holding company does not have any impact on the government control.

- (87) Another factor that creates a distortion on the Chinese financial market is the role played by the PBOC in setting the specific limits on the way interest rates are set and fluctuate. Indeed, the investigation established that the PBOC has specific rules regulating the way interest rates float in China. According to the available information these rules are set out in the PBOC's Circular on the Issues about the Adjusting Interest Rates on Deposits and Loans-Yinfa (2004) No 251. Financial institutions are requested to provide loan rates within a certain range of the benchmark loan interest rate of the PBOC. For commercial bank loans and policy bank loans managed commercially there is no upper limit range but only a lower limit range. For urban credit cooperatives and rural credit cooperatives there are both upper and lower limit ranges. For preferential loans and loans for which the State Council has specific regulations the interest rates do not float upwards. The Commission sought clarifications from the GOC on the definition and wording stated in the aforesaid circular as well as to its preceding legislation (Circular of PBOC concerning expansion of Financial Institution's Loan Interest Rate Float Range – YinFa [2003] No. 250). The GOC explained that the above Circulars formed part of the marketization reform of interest rates in China but gave no further explanation. The GOC was also requested to explain what are the preferential loans and other loans specified by State Council. GOC argued that the wording of the relevant Chinese text refers to an assumption of other loans specified by the State Council. No other explanation or relevant documentation was provided by the GOC to explain why preferential loans are defined in the Chinese legislation. As to the other type of loans, even if one accepts the argument of the GOC, it is unclear why the legislator felt it necessary to introduce the possibility of other loans set out by the State Council. The Commission also requested clarifications on the existence of policy loans managed commercially, as mentioned in the aforesaid Circular. No explanation or any evidence was provided by the GOC on this matter. The GOC was also requested to provide any updates or subsequent legislation issued on the aforesaid Circular in relation to the loan policy of commercial and policy banks but no such information was provided.
- (88) Finally it is noted that no other data or statistics concerning the structure of the Chinese banking system was provided by the GOC.
- (89) On the basis of all the above (see recitals (74) to (88) above) and account taken of the lack of Chinese cooperation (and in the light of the considerations in recital (90) below), the Commission concludes that , the financing market in China is distorted by government intervention and interest rates charged by non-government banks and other financial institutions are likely to be aligned with government rates. Therefore, the interest rates charged by non-governmental banks and other financial institutions cannot be considered as appropriate commercial benchmarks when determining whether government loans confer a benefit.

(ii) Financial Contribution

(90) Furthermore, having regard to the totality of the evidence, it is concluded that the vast majority of loans to the two co-operating producers are provided by policy or other state-owned banks which are considered to be public bodies because of their close relationship to the government. They are more than 50% state-owned and are thus considered controlled by the government. There is further evidence that these banks effectively exercise government authority since as it is explained in recital (65) there is a clear intervention by the State (i.e. PBOC) in the way commercial banks take decisions on interest rates for loans granted to Chinese companies while in some cases as explained in recital (83) companies were attributed *quasi* automatically the lowest possible rate within the limits set by the State. In these circumstances, the lending practices of these entities are directly attributable to the government. The fact that banks exercise government authority is also confirmed by the way the 2007 Papermaking Plan, Decision 40 and Article 34 of the Law on Commercial Banks act with respect to the fulfilment of the government industrial policies (see recitals (74) to (81) above). There is also a great deal of circumstantial evidence, supported by objective studies and reports, that a large amount of government intervention is still present in the Chinese financial system (see recital (312) below). Finally, China failed to provide information which would have enabled a greater understanding of the state-owned banks' relationship with government (see recitals (68) to (70) and recital (84) to (86) above) Thus, in the case of loans provided by policy or other state-owned banks, the Commission concludes that there is a financial contribution to the coated paper producers in the form of a direct transfer of funds from the government within the meaning of Article 3(1)(a)(i) of the basic Regulation.

(iii) Benefit

(91) There is a benefit according to Articles 3(2) and 6(b) of the basic Regulation to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market. Since it has been established that non-government loans in China do not provide an appropriate market benchmark, this has been constructed using the method described in recitals (96) to (102) below.

(iv) Specificity

(92) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available in accordance with Article 28 of the basic Regulation. It is noted that Article 28(6) states that "*If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had co-operated*". The facts considered included the following:

- The evidence of specificity submitted by the complainant.
- The findings (see recitals (77) and (78)) that specific subsidies are channelled to the papermaking industry through a specific sectoral plan i.e. the Papermaking Plan.

- The evidence (see recital (76)) that the papermaking industry is an "encouraged industry" (Decision No 40).
 - The provisions of Article 34 of the Law on Commercial Banks [2003] No. 13 (see recital (79)) stipulating that commercial banks shall carry out their loan business upon the needs of the national economy and the social development and in the spirit of the state industrial policies i.e. in this particular case in the spirit of the Papermaking Plan.
 - The findings (see recital (81)) that the Chinese state planning system directs banks to provide loans to the papermaking industry and companies are considered of high credit rating because they qualify for specific policy plans.
- (93) In the light of the above, and in the absence of any cooperation by the GOC, the available evidence indicates that subsidies granted to companies in the paper industry are not generally available and are therefore specific under Article 4(2)(a) of the basic Regulation. In the light of the GOC's non-cooperation, there is nothing to suggest that eligibility for the subsidy is based on objective criteria or conditions under Article 4(2)(b) of the basic Regulation.
- (d) *Conclusion*
- (94) Account taken of the above, the financing of the papermaking industry has to be considered a subsidy.
- (95) In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, this subsidy is considered countervailable.
- (e) *Calculation of the subsidy amount*
- (96) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is considered to be the difference between the amount 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.
- (97) As explained above, since the loans provided by Chinese banks reflect substantial government intervention in the banking sector and do not reflect rates that would be found in a functioning market, an appropriate market benchmark has been constructed using the method described below. Furthermore, due to the lack of cooperation by the GOC, the Commission has also resorted to facts available in order to establish an appropriate benchmark interest rate.
- (98) When constructing an appropriate benchmark, it is considered reasonable to apply Chinese interest rates, adjusted to reflect normal market risk. Indeed, in a context where the exporters' current financial state has been established in a distorted market and there is no reliable information from the Chinese banks on the measurement of risk and the establishment of credit ratings, it is considered necessary not to take the creditworthiness of the Chinese exporters at its face value, but to apply a mark-up to reflect the potential impact of the Chinese distorted market on their financial situation.

- (99) With respect to the above as explained in recitals (68) to (72) both GOC and the cooperating exporting producers were requested to provide information on the lending policies of the Chinese banks and the way loans were attributed to the exporting producers. Parties failed to provide such information although repeatedly requested to do so. Accordingly in view of this lack of cooperation and the totality of facts available, and in line with the provisions of Article 28(6) of the basic Regulation, it is deemed appropriate to consider that all firms in China would be accorded the highest grade of "Non-investment grade" bonds only (BB at Bloomberg) and apply the appropriate premium expected on bonds issued by firms with this rating to the standard lending rate of the People's Bank of China. For loans received in foreign currency, the Commission applies the appropriate premium expected on bonds issued by firms with this rating to the standard lending rate as mentioned in the relevant Chinese loan contracts (LIBOR rate). However, given the total non-cooperation of the GOC as regards providing information on, or access to, state-owned banks, it is considered appropriate, in accordance with Article 28(6) of the basic Regulation, to use a credit rating of BB (non-investment grade-speculative), in view of the totality of the facts available.
- (100) The benefit to the exporting producers has been calculated by taking into consideration the interest rate differential, expressed as a percentage, multiplied by the outstanding amount of the loan, i.e. the interest not paid during the IP. This amount was then allocated over the total turnover of the co-operating exporting producers.
- (101) As explained in recital (73), one exporting producer refused to provide an important debt restructuring agreement. As a consequence it was not possible to verify basic information reported in relation to the loans falling under this agreement, such as interest rate, maturity of the loan, repayment schedule etc. The exporting producer could also not prove that it repaid the principals of the loans falling under this agreement. Therefore in the calculation of benefit these loans were considered as a grant and were allocated over the IP in addition to the interest not paid during the IP as explained in recital (100) above.
- (102) The subsidy rate established with regard to this scheme during the IP amounts to 5.37% for APP companies and 1.26% for Chenming companies.

4.2.2. Income tax Programmes

- *Preferential tax policies for companies that are recognised as high and new technology enterprises*

(103) This scheme allows a company that applies successfully for the Certificate of High and New Tech Enterprise to benefit from a reduced income tax rate of 15%, compared to the normal rate of 25%.

(a) Legal Basis

(104) The scheme is provided as a preferential tax treatment by Article 28 of the Enterprise Income Tax Law of the PRC (n. 63 promulgated on 16 March 2007) along with Administrative Measures for the determination of High and New Tech Enterprises. The Notice of the State Administration of Taxation on the Issues concerning Enterprise Income Tax Payment of High & New Technology Enterprises (Guo Shui

Han [2008] No.985) also relates to this scheme, providing further details on its implementation.

(b) *Eligibility*

- (105) Article 10 of Administrative Measures for the determination of High and New Tech Enterprises lists the eligibility criteria for the companies to benefit from this scheme. If the company fulfils all the conditions set out in Article 10, it has to submit an application to the relevant authorities according to the procedure in Article 11 of the same Act.

(c) *Practical implementation*

- (106) Any company that intends to apply for this scheme has to proceed to an on-line application to the local Science and Technology Bureau that will make a preliminary examination. Subsequently, the local Science and Technology Bureau will make a recommendation to the provincial Science and Technology department. Before taking any decision on the issuance of the certificate of High and New Tech Enterprise, the latter can also decide to carry out an investigation directly at the premises of the applicant.

(d) *Findings of the investigation*

- (107) This scheme was used by the 3 cooperating exporting producers who obtained benefits during the IP. Although no administrative rules were provided by the GOC, the exporting producers provided the available legal texts. Even from these texts, however, it is difficult to discern the application procedure which remains vague and non-transparent.

(e) *Conclusion*

- (108) Account taken of the above, the scheme is considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.
- (109) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1, in accordance with Article 28 of the basic Regulation.
- (110) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to certain enterprises and industries classified as encouraged, such as those belonging to the coated paper industry. Indeed, in chapter 4 of the Enterprise Income Tax Law of the PRC (No. 63 promulgated on 16 March 2007) devoted to "Tax Incentive", Article 25 provides that "*the State grants enterprise income tax incentives to key industries and projects supported and encouraged by the State*". According to the Commission's understanding, the State

Council in its Decision 40 (Article 14) and in the Guiding Catalogue of the Industrial Restructuring offers the principles and the classification to consider an enterprise as encouraged. In addition, there are no objective criteria to determine eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with Article 4(2)(b) of the basic Regulation. Indeed, although some administrative rules have been collected during the visit to the exporting producers, the lack of cooperation from the GOC authorities do not permit to assess the existence of such objective criteria.

(111) Account taken of the above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(112) 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 total tax payable according to the normal tax rate, after the deduction of what was paid with the reduced preferential tax rate. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers 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.

(113) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 1.22% for the APP Group and 0.58% for the Chenming Group.

- *Preferential tax policies for Research & Development (R&D)*

(114) This scheme provides a benefit to all companies that are recognized as carrying out R&D projects. This qualification permits that the corporate income tax is decreased by 50% of the actual expenses for approved projects.

(a) *Legal Basis*

(115) The scheme is provided as a preferential tax treatment by Article 30(1) of the Enterprise Income Tax Law of the PRC (n. 63 promulgated on 16 March 2007), Art. 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC, Decree n. 512 of the State Council of the PRC, promulgated in date on 6 December 2007 and the Guide to Key Fields (Notification n. 6, 2007).

(b) *Eligibility*

(116) This scheme provides a benefit to companies that are recognized as carrying out R&D projects. Only R&D projects of the companies of New and High Tech Sectors Receiving Primary Support from the State and projects listed in the Guide to Key Fields of High Tech Industrialization under the current Development Priority promulgated by the National Development and Reform Commission are eligible for the scheme.

(c) *Practical implementation*

(117) Any company that intends to apply for this scheme needs to file detailed information about the R&D projects with the local Science and Technology Bureau. After examination, the tax bureau will issue the notice of approval. The amount subject to the corporate income tax is decreased by 50% of actual expenses for approved projects.

(d) *Findings of the investigation*

(118) This scheme was used by the cooperating exporting producers who obtained benefits during the IP. Although no administrative rules were provided by the GOC, the exporting producers provided the available legal texts. Even from these texts, however, it is difficult to discern the application procedure - which remains vague and non-transparent.

(e) *Conclusion*

(119) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

(120) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1, in accordance with Article 28 of the basic Regulation.

(121) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to certain enterprises and industries classified as encouraged, such as those belonging to the coated paper industry. In addition, there are no objective criteria to limit eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with Article 4(2)(b) of the basic Regulation. Indeed, although some administrative rules have been collected during the visit to the exporting producers, the lack of cooperation from the GOC authorities does not permit to assess the existence of such objective criteria.

(122) Account taken of the above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(123) 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 total tax payable according to the normal tax rate, after the subtraction of what was paid with the additional 50% deduction of the actual expenses on R&D for the approved projects. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers 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.

(124) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 0.02% for the APP Group and 0.05% for the Chenming Group.

- *Dividend exemption between qualified resident enterprises*

(125) The scheme concerns resident enterprises in China which are shareholders in other resident enterprises in China. The former are entitled to a tax exemption on income from certain dividends paid by the latter.

(a) *Legal Basis*

(126) This scheme is provided as a preferential tax treatment by Article 26 of the Enterprise Income Tax Law of the PRC and further explained in Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC, Decree n. 512 of the State Council of the PRC, promulgated in date on 6 December 2007.

(b) *Eligibility*

(127) This scheme provides a benefit to all resident companies which are shareholders in other resident enterprises in China.

(c) *Practical implementation*

(128) The companies may make use of this scheme directly through their tax return.

(d) *Findings of the investigation*

(129) On the income tax statement of the cooperating exporting producers there is an amount exempted from income tax. This amount is referred to as Dividends, bonuses and other equity investment income of eligible residents and enterprises in line with the conditions in Appendix 5 to the Income tax return (Annual Statement of Tax Preferences). No income tax was paid by the relevant companies on these amounts.

(e) *Conclusion*

(130) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

(131) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1, in accordance with Article 28 of the basic Regulation.

(132) This subsidy scheme is specific within the meaning of the Article 4(2)(a) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme only to resident enterprises in China

receiving dividend income from other resident enterprises in China, as opposed to those enterprises which invest in foreign enterprises.

(133) In addition, since all the above tax schemes under Chapter 4 of the Enterprise Income Tax Law of the PRC are reserved exclusively to important industries and projects supported or encouraged by the State as stated in Article 25, also this scheme is specific because it is reserved only to certain enterprises and industries classified as encouraged, such as the coated paper industry. Indeed, according to the Commission's understanding, the State Council in its Decision No. 40 (Article 14) and in the Guiding Catalogue of the Industrial Restructuring offers the principles and the classification to consider an enterprise as encouraged. Furthermore, in that case there are no objective criteria to limit eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with Article 4(2)(b) of the basic Regulation. Indeed, although some administrative rules have been collected during the visit to the exporting producers, the lack of cooperation from the GOC authorities does not permit to assess the existence of such objective criteria.

(134) Account taken of the above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(135) 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 total tax payable with the inclusion of the dividend income coming from other resident enterprises in China, after the subtraction of what was actually paid with the dividend tax exemption. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producers companies 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.

(136) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 1.34% for the APP Group and 0.21% for the Chenming Group.

4.2.3. Indirect Tax and Import Tariff Programmes

- *VAT and Tariff exemption on imported equipment*

(137) This scheme provides benefits in the form of VAT exemption and duty free imports of capital goods to the FIEs or domestic companies which are able to obtain the Certificate of State-Encouraged projects issued by the Chinese authorities in line with relevant investment, tax and customs-related legislation.

(a) *Legal Basis*

(138) The scheme is based on a set of legal provisions i.e. the Circular of the State Council on Adjusting Tax Policies on Imported Equipment No. 37/1997, the Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No. 43, the 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, No. 316 2006, dated 22 February 2006 and on the Catalogue on non-duty-exemptible Articles of importation for either FIEs or domestic enterprises-2008.

(b) *Eligibility*

- (139) Eligibility is limited to applicants, either FIEs or domestic enterprises, which are able to obtain the Certificate of State-Encouraged projects.

(c) *Practical implementation*

- (140) According to the 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, No. 316 2006, dated 22 February 2006, Article I.1. the foreign investment projects complying "*with those of the encouraged category in the Catalogue of industries for Guiding Foreign Investment and the Catalogue of Priority Industries for Foreign Investment in Central-Western Region with technology transfer, the tariff and the VAT shall be exempted on the self-use equipment imported within the total investment and the technology, parts and components, and spare parts imported along with the equipment according to the contract; excluded are those commodities that are listed in the Catalogue of Import Commodities under Foreign Investment Projects not exempted from tax*". The Projects Confirmation Letter for foreign investment projects of the encouragement category with the total investment of USD 30 million or more shall be issued by the NDRC. The Project Confirmation Letter for foreign investment projects of the encouragement category with the total investment of less than USD 30 million shall be issued by the commissions or economic municipalities at the provincial level. Once they have received the Project Confirmation Letter of the encouragement category, the companies present the certificates and other application documents to their local Customs authorities in order to be eligible for customs and VAT exemption on equipment imports.

(d) *Findings of the investigation*

- (141) All co-operating exporting producers benefited from this scheme.

(e) *Conclusion*

- (142) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.
- (143) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1, in accordance with Article 28 of the basic Regulation.
- (144) This subsidy scheme is specific within the meaning of the Article 4(2)(a) of the basic Regulation given that the legislation itself, pursuant to which the granting authority

operates, limited the access to this scheme only to enterprises that invest under specific business categories defined exhaustively by law (i.e. catalogue for guidance of industries for foreign investment and catalogue of key industries, products and technologies which the state currently encourages development). In addition, there are no objective criteria to determine eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with Article 4(2)(b) of the basic Regulation. Indeed, although some administrative rules have been collected during the visit to the exporting producers, the lack of cooperation from the GOC authorities does not permit to assess the existence of such objective criteria.

(145) Account taken of the above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(146) 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 calculated by taking into consideration the VAT and duties exempted on imported equipment. In accordance with Article 7(3) of the basic Regulation this subsidy amount (numerator) has been allocated to the IP using a useful life corresponding to the average depreciation period of the industry concerned (i.e. 15 years). The resulting amount was then allocated over the total sales turnover of the cooperating exporting producers 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.

(147) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 1.17% for the APP Group and 0.61% for the Chenming Group.

- *VAT rebates on domestically produced equipment*

(148) This scheme provides benefits in the form of VAT rebates paid for purchase of domestically produced equipment by FIEs.

(a) *Legal Basis*

(149) The scheme is based on the Circular of State Administration of taxation on the release of the provisional measures for the Administration of tax refunds for purchases of Domestically-Manufactured Equipment by Foreign Invested Enterprises No. 171, 1999, 20/09/1999 and terminated by the Circular on Terminating Tax Refund Policies on Purchase of Domestically-Manufactured Equipment by FIEs [Caishui 2008, No. 176]. The latter provides for a transitional period after the termination of the programme as of 1 January 2009.

(b) *Eligibility*

(150) Eligibility is limited to FIEs that purchase domestically-manufactured equipment.

(c) *Practical implementation*

(151) The programme is aimed to refund VAT paid for purchase of domestically produced equipment by FIE if the equipment does not fall into the Non-Exemptible Catalogue

and if the value of the equipment does not exceed the total investment limit on an FIE according to the "trial Administrative measures on Purchase of Domestically Produced Equipment".

(d) *Findings of the investigation*

(152) All co-operating exporting producers benefited from this scheme.

(e) *Conclusion*

(153) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

(154) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1 above, in accordance with Article 28 of the basic Regulation.

(155) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme to a certain type of enterprises (i.e. FIE's). In addition, there are no objective criteria to determine eligibility and no conclusive evidence to conclude that the eligibility is automatic in accordance with Article 4(2) (b) of the basic Regulation. Indeed, although some administrative rules have been collected during the visit to the exporting producers, the lack of cooperation from the GOC authorities does not permit to assess the existence of such objective criteria.

(156) Furthermore, the scheme is specific within the meaning of Article 4(4)(b) of the basic Regulation, given that the subsidy is contingent upon the use of domestic over imported goods.

(157) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(158) 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 calculated by taking into consideration the VAT reimbursed on the purchase of domestically produced equipment. In accordance with Article 7(3) of the basic Regulation this subsidy amount (numerator) has been allocated to the IP using a useful life corresponding to the average depreciation period of the industry concerned (i.e. 15 years). The resulting amount was then allocated over the total sales turnover of the co-operating exporting producers 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.

(159) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 0.03% for the APP Group and 0.05% for the Chenming Group.

- *City maintenance and Construction Taxes and education surcharges for FIEs*

(160) This scheme provides an exemption to FIEs from paying the local city maintenance and construction tax and education surcharge.

(a) *Legal Basis*

(161) The scheme is based on the Interim Rules on City Maintenance Tax of the People's Republic of China (Guo Fa published 8 February 1985, No 19) and the Regulations of the Ministry of Finance on Several Specific Issues concerning the implementation of Interim Rules on City Maintenance Tax of the People's Republic of China (Cai Shui Zi, published 22 March 1985, No 69).

(b) *Eligibility*

(162) Eligibility is limited to the FIEs.

(c) *Practical implementation*

(163) According to the Interim Rules on City Maintenance Tax of the People's Republic of China the tax basis of the city maintenance and construction tax "*is the amount of product tax, VAT and business actually paid by the taxpayers, and it shall be paid at the same time respectively as the product tax, VAT and business tax*".

(d) *Findings of the investigation*

(164) As explained under recitals (347) and (348) tax obligations with respect to this scheme are applicable from 1 December 2010 to all companies operating in China.

(e) *Conclusion*

(165) Account taken of the above and on the basis of information up to 30 November 2010, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

(166) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, excludes certain type of enterprises (i.e. FIE's) from the payment of the city maintenance and construction tax.

(167) Consequently, this subsidy is considered countervailable.

(168) Nevertheless, in view of the information provided by the GOC and the relevant cooperating exporting producers it is concluded that the parties were in a position to demonstrate that this scheme no longer confers any benefit on the exporters involved.

(169) Thus the conditions lay down in Article 15 of the basic Regulation are fulfilled. It was therefore concluded that this scheme should not be countervailed.

4.2.4. Grant Programmes

(170) From the various grant programmes mentioned in the complaint two were found to be used by co-operating exporting producers, i.e the Famous brands award and Special funds for encouraging foreign economic and trade development and for drawing significant foreign investment project in Shandong province. The remaining programmes found to be used were reported by the co-operating exporting producers. The GOC was made aware of the existence of these programmes and was requested to provide necessary information on them. The GOC submitted that any programme which was not included in the complaint cannot be investigated, as this is contrary to the WTO rules. It was thus argued by the GOC that the Commission request has to be considered inconsistent with the rules of evidence and consultation under the WTO SCM Agreement. It was also submitted by the GOC that the information provided by the Commission with respect to these schemes was general and that, even assuming that these programs can be investigated, the Commission should send a new, sufficiently substantiated request to the GOC, requesting it to provide details on the newly- alleged subsidies that would be relevant to the investigation.

(171) In this respect it is noted that it is standard EU practice to inform the authorities of the investigating country of the existence of any alleged subsidy scheme used by the cooperating exporting producers, other than the ones mentioned in the complaint, and request information and clarification thereon. The practice followed is in line with the relevant WTO rules. The Commission informed the GOC on the existence of such schemes at the time that these schemes were made known and provided the GOC with the information it has received from the Chinese co-operating exporting producers. The Commission provided the GOC with the opportunity for consultations with respect to the relevant schemes and consultations were subsequently held. Consequently, the provisions of Articles 12.1, 13.1 and 13.2 of the SCM Agreement as well as of Article 11(10) of the basic Regulation were fully honoured. The findings presented hereunder take into consideration the information submitted by the GOC with respect to the relevant programmes.

(i) Programmes mentioned in the complaint

- *Famous Brands*

(a) *Legal Basis*

(172) This programme is implemented with the Notice of Shandong Province concerning the special award Fund Budget in 2008 for the Development of Self Exporting Brand [Lucaiqizhi (2008) No. 75]. This programme provides grants to companies in order to boost exporting brands and increase the market share of famous brands.

(b) *Eligibility*

(173) Only the exporting famous brand enterprises established in the Shandong Province are eligible to get the award. No legal or administrative acts were submitted to substantiate the eligibility criteria.

(c) *Practical implementation*

(174) The programme aims to award the enterprises which have been recognized as the exporting famous brand enterprises of Shandong Province, so as to improve their development and competitiveness. The enterprise does not need to apply for this programme, so there is no approval document.

(d) *Findings of the investigation*

(175) One co-operating exporting producer benefited from this scheme.

(e) *Conclusion*

(176) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation in the form of direct transfer of funds which confers a benefit upon the recipient companies.

(177) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1 above, in accordance with Article 28 of the basic Regulation.

(178) This subsidy scheme is specific within the meaning of the Article 4(2)(a) of the basic Regulation as access to it is limited to certain enterprises i.e. exporting famous brand enterprises. In the light of the lack of any legal or administrative information on the eligibility criteria, there is nothing to suggest that eligibility for the subsidy is based on objective criteria and conditions under Article 4(2)(b) of the basic Regulation.

(179) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(180) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. This amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producer 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.

(181) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to less than 0.01% (negligible) for the Chenming group.

- *Special Funds for Encouraging Foreign Investment Projects*

(a) *Legal Basis*

(182) The official document on this programme is the Announcement of Shouguang People's Government on Commendation of advanced enterprises in 2008. This programme, established on 9 February 2008, gives commendation to the enterprises which achieved excellent performance during 2008.

(b) *Eligibility*

(183) Companies which have been recognized as the "*advanced enterprise on foreign investment attraction*" and the "*advanced enterprise on foreign trade business performance*" with remarkable foreign trade business performance or significant foreign investment attractions are eligible for the programme. No law or regulation concerning the policy or the definition of the "*advanced enterprise on foreign investment attraction*" and the "*advanced enterprise on foreign trade business performance*" was provided by the GOC.

(c) *Practical implementation*

(184) Shouguang People's Government is responsible for awarding funds to enterprises which have been recognized as "*advanced enterprise on foreign investment attraction*" and the "*advanced enterprise on foreign trade business performance*".

(185) According to the GOC, the enterprise does not need to apply for this programme, so there is no approval document.

(d) *Findings of the investigation*

(186) One co-operating exporting producer benefited from this scheme.

(e) *Conclusion*

(187) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation in the form of direct transfer of funds which confers a benefit upon the recipient companies.

(188) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1 above, in accordance with Article 28 of the basic Regulation.

(189) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation as access to it is limited to certain enterprises i.e. to advanced enterprise on foreign investment attraction and advanced enterprise on foreign trade business performance. In the light of the lack of any legal or administrative information on the eligibility criteria, there is nothing to suggest that eligibility for the subsidy is based on objective criteria and conditions under Article 4(2)(b) of the basic Regulation.

(190) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(191) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. This amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producer 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.

(192) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to less than 0.01% (negligible) for the Chenming group.

(ii) Programmes reported by the cooperating exporting producers

- ***Anti-dumping Respondent Assistance***

(a) *Legal Basis*

(193) The official document on this programme is the Rules for the Implementation of the Support Policy for the Anti-dumping, Anti-subsidy, Safeguard investigation Respondent. GOC claims that the scheme was terminated in 2008, but no relevant law legal notification was provided.

(b) *Eligibility*

(194) Subsidy provided by regional/provincial financial bureau in order to facilitate company's participation in the US anti-dumping investigation. Eligible companies must be registered in Shandong Province (excluding Qingdao City), and shall work in compliance with the instructions of the Ministry of Commerce and provincial authorities.

(c) *Practical implementation*

(195) The programme is regional specific (only available in Shandong Province but with the exception of its largest city Qingdao) with eligibility criteria that are not objective by law.

(196) According to the relevant law, 40% of the lawyer fees will be granted to the applicant.

(d) *Findings of the investigation*

(197) One co-operating exporting producer benefited from this scheme.

(e) *Conclusion*

(198) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation in the form of a direct transfer of funds which confers a benefit upon the recipient companies.

(199) This subsidy scheme is specific within the meaning of Article 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority

operates, limited the access to this scheme to companies within a designated geographical region.

(200) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(201) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. This amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producer 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.

(202) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to less than 0.01% (negligible) for the Chenming group.

- *Shouguang Technology Renovation Grant*

(a) *Legal Basis*

(203) The programme was implemented according to the Opinion to accelerate high-tech industry development (Trial Implementation) (Shoufa [2005] No. 37) issued by the Shouguang Municipal Government. The GOC claimed that relevant legal framework for the scheme exists but it did not provide a copy of it.

(b) *Eligibility*

(204) The scheme is a subsidy provided to enhance competitiveness of enterprises. No legal or administrative acts were submitted to substantiate the eligibility criteria.

(c) *Practical implementation*

(205) According to GOC this programme is a local grant to encourage R&D, energy-saving and environmental protection. There is no application procedure. The regional Government issues from time to time notices informing the exporting producers that are awarded a grant of a certain amount.

(d) *Findings of the investigation*

(206) One co-operating exporting producer benefited from this scheme.

(e) *Conclusion*

(207) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation in the form of a direct transfer of funds which confers a benefit upon the recipient companies.

(208) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The

Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated in Section 4.1 above, in accordance with Article 28 of the basic Regulation.

(209) This subsidy scheme is specific within the meaning of the Article 4(2)(a) of the basic Regulation as access to it is limited to certain enterprises. In the light of the lack of any legal or administrative information on the eligibility criteria, there is nothing to suggest that eligibility for the subsidy is based on objective criteria and conditions under Article 4(2)(b) of the basic Regulation.

(210) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(211) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. This amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producer 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.

(212) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 0.59% for the Chenming group.

- ***Suzhou Industrial Park Intellectual Property Right Fund***

(a) *Legal Basis*

(213) The programme is implemented in accordance with the Interim Measures on Strengthening the Work of Suzhou Industrial Park Intellectual Property Right and the Administrative Rules on Suzhou Industrial Park Intellectual Property Right Fund.

(b) *Eligibility*

(214) The scheme is provided only to company established in the Suzhou Industrial Park that have obtained Certificate of Registry of Computer Software Copyright, Certificate of Registry of Integrated Circuit Layout Design and has newly obtained famous brand products.

(c) *Practical implementation*

(215) An eligible company to obtain a grant for patent application or trademark award has to fill in an application form for the Famous Brand Award of Suzhou Province or level-above and submit it to the Science and Technology Bureau of the Park. Grants are provided by the Suzhou Industrial Park. No information exists on the Park's financing and from which state authorities it receives the grants amounts.

(d) *Findings of the investigation*

(216) One co-operating exporting producer benefited from this scheme. However, the Commission notes the total lack of any relevant documentation concerning the

cooperating exporting producer as no application to the scheme or decision granting the award was provided.

(e) *Conclusion*

- (217) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation in the form of a direct transfer of funds which confers a benefit upon the recipient companies.
- (218) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1 above, in accordance with Article 28 of the basic Regulation.
- (219) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation as access to it is limited to certain enterprises. In the light of the lack of any legal or administrative information on the eligibility criteria, there is nothing to suggest that eligibility for the subsidy is based on objective criteria and conditions under Article 4(2)(b) of the basic Regulation.
- (220) In addition, this subsidy scheme is specific within the meaning of Article 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme to companies within a designated geographical region. The scheme is only available for companies established in the Suzhou Industrial Park.
- (221) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

- (222) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. This amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producer 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.
- (223) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to less than 0.01% for the APP Group.

- ***Subsidy of High-Tech Industrial Development Fund***

(a) *Legal Basis*

- (224) No legal basis was provided by the GOC or by the exporting producers. The programme foresees financial assistance to companies in the Suzhou Industrial Park and according to the GOC, this scheme aims to accelerate the reforming and upgrading

of Suzhou Industrial Park and to promote the improvement of scientific research quality of enterprises in the Park.

(b) *Eligibility*

(225) The scheme is provided only to companies established in the Suzhou Industrial Park that comply with the requirements set out in a number of plans as well as the existence of relevant scientific research projects. The GOC submitted the description of the programme however did not provide copies of the relevant plans.

(c) *Practical implementation*

(226) Assistance is provided to companies that invest in the Park and request grants for specific types of action (research and development; new products assistance; intellectual property administration; overseas market development; project coordination with government; public technology service). Grants are provided by the Suzhou Industrial Park. No information exists on the Park's financing and from which state authorities it receives the grant amounts.

(d) *Findings of the investigation*

(227) One co-operating exporting producer benefited from this scheme.

(e) *Conclusion*

(228) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation in the form of direct transfer of funds which confers a benefit upon the recipient companies.

(229) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1 above, in accordance with Article 28 of the basic Regulation.

(230) This subsidy scheme is specific within the meaning of Article 4(2)(a) of the basic Regulation as access to it is limited to certain enterprises. In the light of the lack of any legal or administrative information on the eligibility criteria, there is nothing to suggest that eligibility for the subsidy is based on objective criteria and conditions under Article 4(2)(b) of the basic Regulation.

(231) In addition, this subsidy scheme is specific within the meaning of the Article 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme to companies within a designated geographical region. The scheme is only available for companies established in the Suzhou Industrial Park.

(232) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(233) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. This amount (numerator) has been allocated over the total sales turnover of the co-operating exporting producer 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..

(234) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 0.03% for the APP Group.

- *Award received from Suzhou Industrial Park for maintaining growth*

(a) *Legal Basis*

(235) No legal basis was provided by the GOC or by the exporting producers. The GOC states that the programme is implemented according to the Opinion of Suzhou Industrial Park on Promoting Smooth, Stable and Rapid Growth and its aim is to accelerate industrial structure growth and foreign trade.

(b) *Eligibility*

(236) The scheme is provided only to companies established in the Suzhou Industrial Park. No eligibility criteria have been clearly set out by the Chinese authorities. However, in order to receive this grant, enterprises established in the park must reach a higher export performance in 2009 than the previous year's actual performance.

(c) *Practical implementation*

(237) According to the GOC the enterprises does not need to apply for this programme, although the relevant cooperating exporting producer has submitted an application form of Suzhou Industrial Park for hi-tech Industrial Development Fund. As submitted by the GOC, the programme is related to the export performance of the enterprises with companies receiving a set amount of RMB for every dollar of growth in increased export quantities and values. The RMB incentive is also differentiated on the basis of type of products and models. Grants are provided by the Suzhou Industrial Park. No information exists on the Park's financing and from which state authorities it receives the grants amounts.

(d) *Findings of the investigation*

(238) One cooperating exporting producer benefited from this scheme.

(e) *Conclusion*

(239) Account taken of the above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation in the form of a direct transfer of funds which confers a benefit upon the recipient companies.

(240) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access

to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available, as stated under Section 4.1 above, in accordance with Article 28 of the basic Regulation.

(241) This subsidy scheme is specific within the meaning of Article 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme to companies within a designated geographical region. The scheme is only available for companies established in the Suzhou Industrial Park.

(242) In addition, the scheme is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation. The grant is linked and calculated according to the export performance since benefit received is based on the increase of export quantities and values from one year to the next.

(243) Consequently, this subsidy is considered countervailable.

(e) *Calculation of the subsidy amount*

(244) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the IP. This amount (numerator) has been allocated over the total export turnover of the co-operating exporting producer during the IP, because the subsidy is contingent upon export performance.

(245) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 0.05% for APP Group.

- *Programmes reported by the cooperating exporting producers but not assessed*

(246) The following schemes and programmes related to energy saving and environment protection were reported from the cooperating exporting producers:

- Special fund for water pollution treatment of Taihu lake of Jiangsu province
- Special funds for energy-saving of Suzhou Industrial Park
- Special fund for reduction of total emissions of major pollutants at municipal level of Suzhou municipality
- Subsidy for water-saving and emission reduction
- Environmental Protection award received from Suzhou Environmental Protection Bureau
- Energy saving award in Shouguang

(247) In view of the small amount of benefits involved, it was not considered necessary to pursue our investigation of these programmes.

4.2.5. Government Provision of Goods and Services for Less than Adequate Remuneration (“LTAR”)

(i) Programmes mentioned in the complaint and assessed

- *Provision of land use rights*

(a) *Legal Basis and Eligibility*

(248) The allegation in the complaint was that the GOC had provided land use rights to the cooperating exporters for less than adequate remuneration. In response to this, GOC provided the Land Administration Law and the Provisions on the Assignment of State-Owned Construction Land Use Right through Bid Invitation, Auction and Quotation, No. 39, dated 28 September 2007. The GOC refused to provide any data with respect to actual land use rights prices, minimum land price benchmarks that they claim that exist, the way of evaluating minimum land price benchmarks as well as the methodology followed when the State expropriates land from former users.

(b) *Practical implementation*

(249) According to Article 2 of the Land Administration Law, all land is government-owned since according to the Chinese constitution and relevant legal provisions land belongs collectively to the People of China. No land can be sold but land use rights may be assigned according to the law: the State authorities assign it through public bidding, quotation or auction.

(c) *Findings of the investigation*

(250) The cooperating exporting producers have reported information regarding the land they hold as well as the relevant land use rights contracts/certificates, but no information was provided by the GOC about pricing of land-use rights.

(d) *Conclusion*

(251) Account taken of the above, the provision of land-use rights by the GOC has to 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 (260) to (262) below, there is no functioning market for land in China and the use of an external benchmark demonstrates that the amount paid for land-use rights by the cooperating exporters is well below the normal market rate.

(252) The GOC was requested to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine to what extent access to the subsidy is limited to certain enterprises and whether it is specific according to Article 4 of the basic Regulation. The GOC provided no such information. The Commission, mindful of the requirement of Article 4(5) of the basic Regulation that any determination of specificity shall be "clearly substantiated" on the basis of positive evidence, therefore had to base its findings on the facts available in accordance with

Article 28 of the basic Regulation. It is noted that Article 28(6) states that " *If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had co-operated*". The facts considered included the following:

- (253) The evidence of specificity submitted by the complainants.
 - (254) The findings (see recitals (77) and (78)) that specific subsidies are channelled to the papermaking industry through a specific sectoral plan i.e. the Papermaking Plan. In this respect it is noted that Articles 7 to 11 of the aforesaid Plan set out specific rules on industrial layout by stating what type of papermaking industries shall be established in various geographical regions of the country.
 - (255) The evidence (see recital (76)) that the papermaking industry is an "encouraged industry" (Decision No 40).
 - (256) The findings (see recitals (260) to (262)) that there is no functioning market for land in China.
 - (257) The findings from the cooperating exporting producers, as confirmed in the parallel anti-dumping investigation, that land was allocated to them in view of their papermaking projects⁸.
 - (258) In the light of the above, and in the absence of any cooperation by the GOC, the available evidence indicates that subsidies granted to companies in the paper industry are not generally available and are therefore specific under Article 4(2)(a) of the basic Regulation. In the light of the GOC's non-cooperation, there is nothing to suggest that eligibility for the subsidy is based on objective criteria and conditions under Article 4(2)(b) of the basic Regulation.
 - (259) Consequently, this subsidy is considered countervailable.
- (e) *Calculation of the subsidy amount*
- (260) Account taken of the above, it is concluded that the situation in China with respect to land use rights is not market-driven. Indeed, there appear to be no available private benchmarks at all in China. Therefore, an adjustment of costs or prices in China is not practicable. In these circumstances it is considered that there is no market in China and, in accordance with Article 6(d)(ii) of the basic Regulation, the use of an external benchmark for measuring the amount of benefit is warranted. Given that the GOC did not cooperate and failed to submit any proposal for an external benchmark the Commission had to resort to facts available in order to establish an appropriate external benchmark. In this respect it is considered appropriate to use information from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matscu (Chinese Taipei), hereafter mentioned as "Taiwan", as an appropriate benchmark.
 - (261) The Commission considers that the land prices in Taiwan offers the best proxy to the areas in China where the cooperating exporting producers are based. All the exporting producers are located in the east part of China, in developed high-GDP areas in

⁸ See Commission Regulation (EC) No 1042/10, OJ L 299, 17.11.2010, p. 7, recitals (39) and (46).

provinces with a high population density surrounding Shanghai. 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 calculated by taking into consideration the difference between the amount paid by each company for land use rights and the amount that should have been normally paid on the basis of the Taiwanese benchmark.

- (262) In doing this calculation, the Commission used the average land price per square meter established in Taiwan corrected for currency depreciation 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 currency depreciation was calculated on the basis of inflation rates for Taiwan as published by the IMF in its 2009 World Economic Outlook. In accordance with Article 7(3) of the basic Regulation this subsidy amount (numerator) has been allocated to the IP using the normal life time of the land use right for industrial use land in China, i.e. 50 years. This amount has then been allocated over the total sales turnover of the co-operating exporting producers 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.
- (263) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producers amounts to 2.81% for APP companies and 0.69% for Chenming companies.

(ii) Programmes mentioned in the complaint but not assessed

- *Provision of electricity*

- (264) It was found that the cooperating exporting producers did not benefit from this scheme during the IP. Therefore there was no need to assess whether this scheme is countervailable or not.

- *Provision of paper-making chemicals*

- (265) It was found that the cooperating exporting producers did not benefit from this scheme during the IP. Therefore there was no need to assess whether this scheme is countervailable or not.

4.3. Comments of parties in relation to subsidisation

4.3.1. Introduction

- (266) The GOC, two groups of cooperating exporting producers (APP and Chenming) and the EU complainant submitted comments on the definitive disclosure.

- (267) The EU complainant supported the findings of the Commission.

- (268) The GOC, APP and Chenming disputed the findings of the Commission. To the extent that arguments have already been fully addressed in the definitive disclosure they are not repeated in this Regulation.

4.3.2. Allegations with respect to double remedy

- (269) The GOC argued that the proposal for countervailing measures amounts to a double remedy. It was submitted that under the EU practice in anti-dumping investigations against China normal value is determined by reference to data obtained from producers in a third market-economy country. Thus, in such cases countervailing duties would provide a double remedy to address the same matter since the anti-dumping duties effectively 'offset' any subsidy allegedly granted to Chinese companies.
- (270) APP claimed that if the normal value is based on domestic sales in the analogue country, the rejection of the MET claim and the use of non-subsidised normal value have the effect of increasing the duty by the amount of subsidisation and the subsidies would be counted twice.
- (271) GOC submitted that the same alleged distortions have already been addressed in the parallel anti-dumping proceeding. GOC also submitted that that the practice of the Commission is in violation of EU and WTO law and that the Commission should either terminate the CVD proceeding or grant MET to the co-operating exporting producers in the parallel anti-dumping proceeding. The GOC also submitted that it does not accept the Commission's argument that there is no double counting by virtue of the injury margin that is lower than the dumping margin. Finally the GOC argued that on the basis of the findings of the WTO Appellate Body on the US – PRC dispute DS379⁹ with respect to double remedy the current proceeding should be terminated.
- (272) These claims had to be rejected. In this respect it is noted that double remedy does not play any role in this proceeding. Whether or not the simultaneous imposition of anti-dumping and countervailing duties in the case of a non-market economy can lead to a potential "double remedy", this situation, by definition, could only occur where there is a *cumulation* of the dumping margin and the amount of subsidy i.e. where the combined level of two types of duty exceeds the higher of the dumping margin or the amount of subsidy. As will be explained below, this is not the case here.
- (273) First of all it is recalled that the EU is applying the *lesser duty rule* when imposing anti-dumping and countervailing duties on the same product. In other words in EU investigations the Commission establishes the level of dumping, subsidization and injury caused to the Union industry. The level of duties can never be higher than the injury margin and the injury margin here is the same for both proceedings. In the parallel anti-dumping proceeding the Commission established a margin of dumping that is much higher than the injury margin. In line with the lesser duty rule the Commission proposed the imposition of measures that are based on the injury margin (see Council Regulation (EU) No xxx/2011). Thus the subsidy margin found in the current ant-subsidy investigation will not provide any additional protection to the Union industry as compared to the dumping margin because the anti-dumping duty will already be capped by the injury margin. Therefore there is no overlap or cumulation of duties in the two parallel proceedings and consequently, even assuming that there is a potential for a double remedy as described in recital (269) above, there can be no requirement by law to "offset" dumping against the subsidy. Indeed, the difference between the dumping and injury margins found in the anti-dumping proceedings was much higher than the amount of subsidization found in the present

⁹ *United States –Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, (DS379), Appellate Body Report WT/DS379/AB/R, 11 March 2011

investigation. It should be also highlighted that when it comes to the actual composition of the duties to be paid the Commission has a practice to first impose the duty amount resulting from the CVD investigation. If there is still a gap between the aforementioned duty level and the injury margin, this gap can be filled with the duty resulting from the anti-dumping investigation. However, this does not mean that there is double counting because the combined level of duties could already have been justified as a result of the anti-dumping investigation alone.

- (274) Secondly, it should be noted that the remedies proposed by the GOC are not permitted by law since (i) the investigation established the existence of countervailing subsidies that caused material injury to the Union industry and imposition of measures was found to be in the Union interest thus this proceeding cannot be terminated, (ii) not all Chinese parties requested MET in the parallel anti-dumping proceeding, (iii) MET cannot be granted automatically to parties that have not requested and (iv) for those parties where MET was refused this was done because of the serious deficiencies found with respect to Criteria 1, 2 and 3 of Article 2(7)(c) of the basic anti-dumping Regulation.

4.3.3. Allegations with respect to use of adverse inferences

- (275) The GOC also argued that the Commission used illegally adverse inferences as a result of the insufficient cooperation. In this context, they refer to Article 28(6) of the basic Regulation that inter alia mentions that if an interested party does not cooperate or cooperates partially the result may be less favourable to the party than if it had cooperated. According to the GOC the application of adverse inferences is in violation of Article 12(7) of the SCM Agreement as well as of Annex II of the WTO Anti Dumping Agreement.

- (276) With respect to this point it is noted that the GOC understanding of Article 28 (6) of the basic Regulation is groundless. The Commission did not impose any "adverse inferences" to the GOC, in that the Commission did not deliberately choose a less favourable outcome for the exporters concerned, nor did it seek to impose a punitive option with regard to the existence of subsidies or amount of countervailing duties. The Commission as investigating authority requested a set of information from the GOC within a reasonable period of time. However, the GOC failed to provide the information deemed necessary for the investigation (e.g. copies of plans, information on banks, the assessment that banks carried out when attributing loans to the cooperating exporting producers, pricing of land use rights). Under these circumstances the Commission was forced to use the provisions of Article 28 of the basic Regulation concerning facts available in order to arrive at a representative finding. It is pertinent to underline that this was not done by imposing punitive findings to the GOC. By way of example, it is noted that the Commission did not *reject* information concerning LUR; rather, the GOC did not submit all the required information on the pricing of LUR. In the same way the Commission did not apply any adverse inferences to the GOC with respect to preferential lending to the coated paper industry but had to find the missing information with respect to plans, the role of the banks and the lending policies of the banks to the cooperating exporting producers, since such information was simply not provided by the GOC. Thus the Commission used whatever information provided by the GOC. Whenever information submitted was not sufficient or not found to be probative the Commission had to complement it with other relevant data in order to make its findings. In some instances, it cannot be

excluded that the result was less favourable to the GOC than if it had fully cooperated but this outcome was not sought by the Commission.

- (277) The Commission's approach in this case can be contrasted with the manner in which the notion of "adverse inferences" under paragraph 7 of Annex V of the SCM Agreement has been applied by WTO panels. For example, the *EC-Aircraft* panel applied adverse inferences on two occasions with regard to the Spanish "PROFIT" R&D programme in cases where insufficient data was provided by the EU. With regard to both the amount of funding and the issue of de-facto specificity, the panel disregarded the evidence submitted by the EU and substituted the solution proposed by the complainant (the United States) for its findings¹⁰. This was not the case in the present investigation as the Commission did not disregard any data provided by the GOC and simply substitute the solution proposed by the complainant but rather used the totality of information it had available to come to a conclusion. In view of the above it is concluded that the aforesaid claims had to be rejected.
- (278) As the Commission did not use adverse inferences in relation to the GOC or any exporter, the claim that the application of adverse inferences to a government is in violation of the WTO legal provisions is devoid of any purpose.
- (279) This had to be rejected as this allegation is not supported by the actual facts. The Commission informed the GOC on the provisions of Article 28 and on which cases these provisions may apply in the first letter the GOC received upon the initiation of this proceeding as well as in the last letter the GOC received before the on-spot verification visit. Furthermore the GOC was made aware of the consequences of non-cooperation as explained under recital (59) above.
- (280) The GOC also claimed that the Commission never requested it to arrange meetings with state-owned banks.
- (281) This had to be rejected. In this respect it is noted that the Commission requested the direct involvement of the GOC when arranging meetings with those banks that have provided loans to the cooperating exporting producers. For this purpose, the GOC was also provided with a list of the banks that had provided such loans. The GOC was also requested to ensure that policy banks and other financial institutions would be present during the on-spot verification visit at the premises of the GOC in order to reply to questions referring to the part of the questionnaire intended for these parties. None of the above requests was ever acted upon by the GOC.
- (282) The GOC argued that the use of adverse inferences is unjustified in the present case as the GOC provided to its best of its abilities the information it had available. GOC submitted that banks are third parties to this proceeding and not interested parties as defined in Article 12(9) of the ASCM and thus there is no obligation for them to cooperate. It was also submitted that the Commission displayed arbitrariness and acted inconsistently to WTO rules since GOC provided sufficient information with respect to lending from banks and land use rights.

¹⁰ *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, (DS316) Panel Report 30.6.2010 Paras 7.1480 & 7.1580

- (283) These claims had to be rejected. In this respect it is recalled that the Commission did not apply adverse inferences to the GOC. Furthermore, as it is stated under recital (276) above the Commission used whatever information the GOC provided but since significant information was missing it had to complement data provided with other available sources in order to arrive at a representative finding.
- (284) With respect to the claims made on interested parties it is recalled that Article 12(9) of the ASCM clearly states that domestic or foreign parties other than the ones mentioned therein could be included as interested parties. With respect to this proceeding the Commission, on the basis of the complaint, requested information concerning the preferential lending to the coated paper industry. Moreover, such information is directly linked to banks that are majority State-owned. Both the cooperating exporting producers and the GOC were made aware of this. The fact that sufficient information with respect to lending from banks was simply not provided forced the Commission to resort in the application of facts available in line with the provisions of Article 28 of the basic Regulation.

4.3.4. Allegations with respect to use of best information available

- (285) APP claimed that the Commission is prevented from discarding information that is not ideal in all respects if the interested party that supplied the information has, nevertheless, acted to the best of its ability. And even in cases where a party failed to cooperate to the best of its ability, the Commission when using facts available must take into account all the substantiated facts provided by an interested party even if those facts may not constitute the complete information requested of the party. The Commission is therefore compelled under both the basic Regulation and the WTO SCM Agreement not to disregard such information.
- (286) The GOC submitted that that recourse to facts available is not permissible if an interested Member or interested party has demonstrated that it has acted to its best of its abilities and provided information that was verifiable, appropriately submitted so it can be used in the investigation, supplied in timely fashion and in a medium or computer language requested by the investigating authorities.
- (287) This was not the case here. In this respect it is recalled that the Commission resorted to facts available in line with the provisions of Article 28 of the basic Regulation and Article 12(7) of the SCM Agreement because the GOC and exporting producers, although repeatedly requested to do so, did not provide information that was considered necessary for the investigation in order to arrive at a representative finding. Indeed, the Commission had to seek to repair the fundamental problem it encountered as investigating authority i.e. the fact that the GOC refused access or failed to provide actual information on plans, role of the banks, evaluation of credit risk when granting loans to cooperating exporting producers, pricing of LUR or legal documents referring to the various investigated schemes. In the same way the co-operating exporting producers failed to provide information concerning loans attributed by Chinese banks. Therefore, the way the GOC and the exporting producers cooperated does not meet the standards established by the WTO Appellate Body in *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, which concluded that the level of cooperation required of interested parties is a "high" one and that interested

parties must act to the "best of their abilities"¹¹. The Commission fails to understand why it was not possible to the GOC and the exporting producers to submit/arrange the missing items and no credible explanation was provided by the GOC or the exporting producers. The GOC also submitted that the conditions for resorting to the use of best information available were not fulfilled and that GOC may have failed to provide certain information simple because such information does not exist, is no longer relevant or is unavailable, it was not requested in the questionnaire or in advance before verification.

- (288) This had to be rejected. In this respect it is noted that as it has been clearly demonstrated under the Subsidisation section above that the use of facts available was the only available option for the Commission as investigating authority in order to arrive at a representative finding. With respect to the type of information requested it is recalled that the Commission requested information that existed (e.g. information on plans, role of the banks, evaluation of credit risk when granting loans to cooperating exporting producers, pricing of LUR or legal documents referring to the various investigated schemes) and offered the possibility to the GOC to provide such information on numerous occasions following the initiation of the proceeding.
- (289) Further to the above it should also be highlighted that the Commission as investigating authority had to investigate allegations made in the complaint and for which sufficient evidence had been provided to initiate an investigation (e.g. use of five-year plans and industrial policies for preferential lending to the coated paper industry, role of the banks as public bodies, existence of direct/indirect tax and grant programmes) and thus the GOC as interested party was requested to provide all the information deemed necessary. However, the GOC took a different approach that was tantamount to substituting themselves for the investigating authority. Indeed, the GOC wanted to judge for itself what they considered relevant and limit their submissions to documents that they considered relevant without allowing the investigating authority to examine these matters. This is perfectly illustrated by the GOC's approach to state-owned banks (see recital (282) above). The GOC claimed that such banks were "third parties": however, the complainant had provided sufficient evidence that they are "public bodies" and the Commission was therefore entitled to require the GOC to provide the requested information on their activities. In response, the GOC took it upon itself to decide that these banks were not public bodies and to refuse to provide any information on them. However, this decision belongs to the investigating authority i.e. the Commission and not to the GOC. Such behaviour is clearly not in line with the abovementioned WTO case law stating that interested parties must act to the "best of their abilities". It is hard to see how it fits with the Appellate Body's conclusion in *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan* that "...cooperation is a process, involving joint effort, whereby parties work together towards a common goal"¹². It should also be noted that the Commission provided ample time to any interested party to submit requested information and conducted the investigation in line with the provisions of Annex VI of the SCM Agreement setting out the rules for on-spot verifications which *inter alia* allow requests made on the spot for further details in light of the information obtained.

¹¹ *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, (DS184) Appellate Body Report, para. 100*

¹² *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, (DS184) Appellate Body Report, para. 99.*

- (290) The GOC argued that the requested Plans are voluminous as they contain 282,000 pages and thus it is an unreasonable extra burden to translate them. It also claimed that it is not aware of Plans appearing in independent translations and that it did not provide the National Five Year Plans in the U.S. proceedings.
- (291) This had to be rejected. The plans mentioned in recital (65) above that the GOC provided in Chinese amounted to less than 300 pages. The claim of 282,000 pages is not confirmed by what the GOC submitted on record. The claim is nevertheless worrying because it may point to an even much more detailed government intervention than found in the current investigation and in the parallel anti-dumping investigation. With respect to plans appearing in independent translations it is noted that the Commission received such documentation from other interested parties and to the extent that such translated plans were received they were used for the purposes of this investigation. It should finally be clarified that the Commission did not wish to allege that the GOC had submitted plans to the U.S. proceedings. Recital (66) above only mentions that it appears that translated information exists in this respect.

4.3.5. Allegations with respect to use of information not ideal in all respects

- (292) The GOC argued that the Commission, before applying best information available, must conduct an analysis as required by Article 28(3) of the basic Regulation and conclude whether the specific conditions set thereon are fulfilled.
- (293) In this respect it is noted that the Commission resorted to the use of facts available in line with the provisions of Article 28 of the basic Regulation because the specific conditions set out under Article 28(3) were not fulfilled. As it is explained above the GOC either provided information that was deficient or in many instances it did not even provide requested information. It is recalled that information on plans was either not provided at all or partially provided, information on the role of the banks was incomplete or non-conclusive, evaluation of credit risk by banks when granting loans to cooperating exporting producers was not provided, pricing of LUR was not provided and a number of legal documents referring to certain tax and grant programmes were also not provided. Account taken of the deficiencies or the non-existence of the information the Commission was not in a position to verify certain information submitted. Given the above, the fact that in these circumstances the GOC could not be considered as acting to the best of its abilities and the undue difficulties in arriving at a reasonably accurate finding, the Commission was forced to resort to the application of facts available.
- (294) The GOC also argued that the Commission should have used as best information available the information already provided by the GOC.
- (295) In this respect it is noted that the Commission used the totality of information provided by interested parties (including whatever information was submitted by the GOC) and found from publicly available sources in order to arrive at a representative finding.
- (296) With respect to loans it was argued that in the absence of information from specific banks in order to evaluate credit risk when providing loans, the Commission should have resorted to the explanations provided by PBOC and the CBRC as well as the Annual Reports of the Commercial Banks.

- (297) This had to be rejected. In this respect it is noted that banks, although explicitly requested to do so, did not provide the necessary data. The information provided by PBOC and CBRC was only of a very general nature and was in no way directly linked to the loans provided to the co-operating exporting producers. The GOC placed on file a number of Annual Reports of Commercial Banks (some of which were only in Chinese) and claimed that Commercial Banks make their own decisions regarding their business operations in accordance with law without any interference from unit or individual. However, these are simple statements that do not allow to verify whether and how the banks evaluated the credit risk when providing loans to the co-operating exporting producers and must be set against specific instances encountered in the investigations where firms clearly obtained loans with no apparent assessment of their credit risk.
- (298) With respect to LUR it was argued that the Commission should have used the information submitted by the GOC which, according to the GOC, demonstrates the existence of a functioning market. It was asserted that information required by the Commission on minimum prices of land use rights was massive and it was not requested in the questionnaire or in advance before verification.
- (299) This had to be rejected. In this respect it is recalled that without having information on pricing on LUR it is not possible to arrive at any conclusion with respect to the existence of a functioning land market in China that reflects supply and demand forces. It is also noted that the Commission has offered ample time to the GOC to provide such information for the areas where the co-operating exporting producers are established but the GOC failed to submit even a single figure in this respect. In any event the Commission followed the provisions of Annex VI of the ASCM setting out the rules for on-spot verifications which *inter alia* allow requests made on the spot for further details in light of the information obtained.

4.3.6. Allegations with respect to the definition of public bodies

- (300) The GOC argued that Government ownership is not a reasonable basis for finding a bank or a utility to be a public body and for such an analysis the Commission should use the EU State aid criteria. The GOC also requested that on the basis of the findings of the WTO Appellate Body on the US – PRC dispute DS379 with respect to the definition of public body the current proceeding should be terminated.
- (301) This had to be rejected. In this respect it is noted that the Commission has explained under recital (90) above the definition of a public body. This definition is in line with the relevant WTO case law on anti-subsidy proceedings including the aforesaid Appellate Body report. Thus, there is no need to depart from what is generally accepted and use another benchmark (i.e. the EU State aid rules) that applies to a very different branch of the law. Note that State aid law operates in a completely different context, i.e. not in order to regulate international trade in goods but as a complement to the common market. Finally there is no legal or factual basis to confirm the claim that the current proceeding should be terminated.

Specific Schemes

4.3.7. Preferential Lending to the coated paper industry

- (302) The GOC submitted with respect to preferential lending to the coated paper industry that the Commission failed to provide sufficient evidence of specific subsidization as required by Article 2(1)(a) of ASCM and Article 4(2)(a) of the basic Regulation. It was submitted that the Commission analysis failed to fulfil its burden to establish de jure specificity of the alleged subsidy.
- (303) Two cooperating exporting producers also claimed that the loans granted Chinese state owned banks are not specific.
- (304) This had to be rejected. In this respect it is recalled that specificity was established on the totality of information on file, including the information provided by the GOC, as listed under recital (92) above. This information confirms the existence of de jure specificity in line with the provisions of Article 2(1)(a) of ASCM and Article 4(2)(a) of the basic Regulation.
- (305) The GOC also argued that the Commission failed to provide positive evidence of subsidisation in line with the provisions of Article 2(4) of the ASCM and Article 4(5) of the basic Regulation since the evidence used by the Commission cannot be considered as positive evidence as it is not of an affirmative, objective and verifiable character which is credible.
- (306) This had to be rejected. In this respect it is noted that the facts described under recital (92) above demonstrate positive evidence of specificity (i.e. specific subsidies granted through a sectoral industrial plan, the papermaking industry considered as an encouraged industry, the role of commercial banks and of the Chinese state planning system as well as the high credit rating of companies because they qualify for specific policy plans). This information is affirmative since it is clear, objective and convincing. It is derived from various sources and was provided by interested parties or found in the public domain.
- (307) With respect to the 2007 Papermaking Plan it was argued that it does not provide specific subsidies or preferential treatment to the papermaking industry. According to the GOC the fact that this plan states that financial institutions shall not provide loans for any project which does not comply with its regulation is only a provision aimed to suspend projects which caused serious pollution.
- (308) This had to be rejected. In this respect it is noted that the wording used in the 2007 Papermaking Plan, as explained in detail in recital (77) above, leaves no doubt on the existence of specific subsidies and preferential treatment to the papermaking industry. The claim that the detailed rules referring to financial institutions exist only for environmental reasons is not borne out by the actual wording of the relevant texts.
- (309) With respect to the policy plans as well as accompanying documents such as the Integration Project and the Directory Catalogue, GOC repeated again that they are not as such legally binding in line with the Chinese Law on Legislation. They rather needed a legally binding implementing act. It was also argued that plans are too vague to be considered for the determination of specificity and the mere fact that the papermaking industry is an encouraged industry does not prove that GOC explicitly limits access to a subsidy to certain enterprises.
- (310) These claims had to be rejected. In this respect it is recalled that the investigation established that plans are legally binding for the reasons detailed in recital (78) above.

The investigation also established that the status of "encouraged industry" for the papermaking industry entails specific benefits to the relevant enterprises.

- (311) With respect to the attribution of loans it was argued that the analysis of the Annual Reports of Chinese banks that provided loans to cooperating exporting producers does not reveal that loans were granted because of policy plans.
- (312) This had to be rejected. As noted above the Annual Reports of banks do not provide specific information on loan attribution to cooperating exporting producers. Indeed Annual Reports are general documents that do not provide any information on the way Chinese banks attributed loans to the co-operating exporting producers and the way the banks evaluated credit risk for the co-operating exporting producers. This information was repeatedly requested from interested parties and is considered crucial *inter alia* account taken of the finding of the IMF 2006 report which suggested that the bank liberalisation in China is incomplete and credit risk is not properly reflected¹³, the IMF 2009 report which highlighted the lack of interest rate liberalization in China¹⁴, the IMF 2010 Country Report which stated that cost of capital in China is relatively low, credit allocation is sometimes determined by non-price means and high corporate saving is partly linked to low cost of various factor inputs (including capital and land)¹⁵, the OECD 2010 Economic Survey of China¹⁶ and OECD Economic Department Working Paper No. 747 on China's Financial Sector Reforms¹⁷ which stated that ownership of financial institutions remains dominated by the State raising issues as the extent which banks' lending decisions are based purely on commercial considerations while banks' traditional role appears to be that of government agencies with ties to the government.
- (313) With respect to the aforementioned credit rating note the GOC argued that a single credit rating note cannot be regarded as positive evidence on specificity. According to the GOC, unless most or even all of the loans granted to the cooperating exporting producers show that the industrial policy enables them to have higher credit rating during the IP, the Commission cannot apply the conditions of one specific instance to all loan decisions.
- (314) This had to be rejected. In this respects it is recalled that the credit rating note mentioned in recital (81) above links directly the positive future prospects of a cooperating exporting producer with the existence of the papermaking policy plans and the fulfilment of their objectives. In order to arrive at its conclusions, the Commission placed considerable emphasis on this document in conjunction with the Papermaking plan because other information requested in this context, such as the risk assessment for loans, was not provided despite repeated requests, as described above.

¹³ IMF Working Paper, "Progress in China's Banking Sector Reform: Has Bank Behaviour Changed?", WP/06/71, March 2006, (see pages 3-4, 13, 18-20).

¹⁴ IMF Working Paper, "Interest Rate Liberalization in China", WP/09/171, August 2009, (see pages 3-4, 21-23).

¹⁵ IMF Country Report, PRC: 2010 Article IV Consultation, No 10/238, July 2010, (see pages 22, 24 and 28-29).

¹⁶ OECD 2010 Economic Survey of China, February 2010, (see Chapter 3, pages 71, 73-81, 97).

¹⁷ OECD China's Financial Sector Reforms, Economic Department Working Paper No. 747, ECO/WKP (2010) 3, 1 February 2010, (see pages 2, 8-15, 36).

- (315) The GOC also argued that the Commission failed to take into account when analyzing allegations on preferential lending the PBOC Circular on Improving the Administration of Special Loans YINFA [1999] No. 228. According to the GOC the aforesaid circular confirms that preferential lending or special loans have been eliminated.
- (316) This had to be rejected. In this respect it is recalled that as explained in recital (87) above the Commission found that more recent PBOC circulars than the 1999 circular exist that clearly mention the existence of preferential loans and other loans specified by State Council. Thus, the arguments of GOC on the abolition of preferential lending and special loans cannot be supported by the actual case facts. Notwithstanding the above, it is pertinent to note that the 1999 circular states that wholly State-owned banks shall actively communicate with the authorities in charge of the relevant industries with a view to gaining their understanding and support. This again is a statement that confirms the control that State authorities exercise over wholly State-owned banks.
- (317) With respect to the evidence of specificity submitted by the complainant it was argued that this is only references of findings of the various U.S. investigations where specificity was established, inter alia, by reference to five-year plans.
- (318) In this respect it is noted that the Commission used all the relevant information it had in its disposal in order to arrive at a representative finding. In this manner, the publicly available information stated in the complaint, even if referring to findings of other investigating authorities, was deemed to be relevant and its use was appropriate.
- (319) With respect to Decision 40 and the Directory Catalogue it was argued that they do not explicitly define the coated fine paper industry as encouraged industry or encouraged projects. It was also argued that the term "encouraged projects" in China spans broad sectors of economy activity, covering various industries.
- (320) These claims had to be rejected. In this respect it is recalled that Decision 40 and the Directory Catalogue define the papermaking industry, to which the coated fine paper industry belongs, as an encouraged industry or encouraged projects. With respect to encouraged projects it is recalled that these cover only certain activities within 26 sectors and thus this categorisation, covering only a subset of enterprises in China, cannot be considered as of a general nature and non-specific. The Commission considered this as the most natural interpretation in the absence of any explanation (and corroborating documents) as to how the GOC precisely applied the notion of the "papermaking industry" e.g. for the purposes of Decision 40 and the Directory Catalogue.
- (321) With respect to the Law on Commercial Banks, the GOC argued that Article 34 is of a general nature and that, in line with the provisions of Article 41 of the same law, there is no mandatory obligation for commercial banks to provide loans based on the industrial policies.
- (322) These claims had to be rejected. In this respect it is noted that the wording of Article 34 links directly commercial banks' loan business with the State's industrial policies. Thus, it cannot be considered of a general and non-compulsory nature. With respect to Article 41 of the aforesaid law it is noted that this refers to the prerogative of a

commercial bank to provide loans to parties but it does not refer to the conditions that banks will have to take into consideration when taking loan decisions.

- (323) APP claimed it has provided the Commission with sufficient information and documents showing that APP was rated A-1 by Moody's in 2007 and 2008 and therefore it was not correct that the Commission disregarded this rating and applied Bloomberg's BB rating.
- (324) The Commission closely analysed credit rating reports submitted by APP group. These credit rating reports are linking the promising future outlook of the paper industry to the promulgation of the Paper Industry Development Policy. Therefore information in these documents actually confirms the Commission's findings that the exporter's current financial state has been established in the distorted market and therefore the creditworthiness of Chinese exporters could not be taken at its face value. This claim had to be rejected.
- (325) APP also claimed that the internal financial management reports mentioned under this point in APP's comments on general disclosure are *"far more satisfactory than the facts currently relied on"*.
- (326) This claim had to be rejected. The figures calculated in these reports result from the financial situation of the company achieved on the distorted market which is of course affected by the preferential lending as established by the Commission. It is therefore a circular issue, i.e. the company receives preferential lending which has a positive impact on its financial indicators and subsequently these have positive impact on the conditions of future loans.
- (327) APP claimed that the methodology used by the Commission in calculating benchmarks for loans in USD and EUR is wrong and claimed that the Commission double counted the spread over LIBOR and thereby inflated the benchmark interest rate.
- (328) This claim has to be rejected. The Commission did not double count the spreads over the LIBOR. As explained in the definitive disclosure, in order to establish benchmarks for the USD and EUR loans with term exceeding 1 year the Commission added to the relevant 1 year LIBOR rate a spread between BB rated corporate bonds with maturity of 1 year and BB rated corporate bonds with maturity of n years, n being the number of years representing the term for which the "long-term USD LIBOR" rate was calculated (i.e. 2, 3, ..., 15 years). It should be stressed that the spread as described above was added to "*clean*" 1 year LIBOR rates (i.e. not increased by x basis points as APP claimed).

4.3.8. Preferential tax policies for companies that are recognized as high and new technology enterprises

- (329) With respect to this scheme the GOC submitted that the Commission failed to establish specificity on the basis of positive evidence. It was submitted that Article 25 of the Enterprise Income Tax Law is a general piece of legislation that applies across the entire Chinese economy and not only to coated fine paper producers.
- (330) GOC also argued that the eligibility criteria for this scheme are objective and defined in detail, that eligibility is automatic and thus the scheme cannot be considered

specific in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.

- (331) These claims had to be rejected. Thus the findings of the Commission were established on the basis of positive evidence. In this respect it is noted that Article 25 of the Enterprise Income Tax Law limits the access to this scheme only to certain enterprises and industries that are classified as "encouraged" i.e. to a specific subset of enterprises in China. As noted above, the Commission concluded that the coated paper industry falls under this category and therefore benefits under this programme are specific under Article 4(2)(a) of the basic Regulation. With respect to eligibility criteria it is noted that the relevant provisions mention *inter alia* the obligation that products are within the range described in the High and New Tech Fields under the Key Support of the State and that enterprises have been incessantly carrying out research and development activities for the purpose of acquiring new knowledge of science and technology, innovatively employing new knowledge or substantially improving technologies or products. These conditions, taken as a whole, cannot be considered as objective eligibility criteria that lead to automatic granting of the subsidy according to the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.
- (332) APP wondered whether the amount of countervailable subsidies resulting from these schemes should not rather be calculated on the basis of the tax return and payment of the year 2008 instead of 2009 (IP). They claimed that these two schemes are related to income tax, which is usually fully paid and settled in the following calendar year to the taxation period in China. Therefore the income tax of 2009 or any preferential treatment granted thereto was only decided in 2010.
- (333) This claim had to be rejected. The actual amounts of benefits received were confirmed and verified with the tax returns for the year 2009, therefore they are benefits relating to sales and income generated in 2009, i.e. the IP.

4.3.9. Preferential tax policies for Research and Development

- (334) With respect to this scheme the GOC submitted that the Commission failed to establish specificity on the basis of positive evidence. It was thus submitted that the eligibility criteria for this scheme are objective and defined in detail and eligibility is automatic and thus the scheme cannot be considered specific in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.
- (335) This had to be rejected. In this respect it is recalled that the investigation established the existence of preferential tax treatment for certain companies that are recognized as carrying out certain type of R&D projects i.e. to a specific subset of enterprises in China. As noted above these are companies falling under the New and High Tech Sectors Receiving Primary Support from the State and projects listed in the Guide to key Fields of High-Tech Industrialization, such as those belonging to the coated paper industry, and therefore benefits under this programme are specific under Article 4(2)(a) of the basic Regulation. With respect to eligibility criteria it is noted that the relevant provisions submitted by the cooperating exporting producers are vague and non transparent and thus cannot be considered as objective eligibility criteria that lead to automatic granting of the subsidy. Thus the findings of the Commission were

established on positive evidence in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.

4.3.10. Dividend exemption between qualified resident enterprises

- (336) With respect to this scheme the GOC submitted that the Commission failed to establish specificity on the basis of positive evidence. It was argued that dividend exemption is not a subsidy under the SCM Agreement as dividend exemption is not a subsidy by nature and the relevant Chinese provisions aim to clarify tax basis so to avoid double taxation.
- (337) APP claimed that this scheme is not specific it is generally and uniformly applied all over China on the basis of objective criteria, i.e. the source of dividend income. It also claimed that this scheme does not constitute a subsidy.
- (338) These claims had to be rejected. In this respect it is noted that income from dividends from resident enterprises is exempted from the corporate income tax obligations of resident enterprises. First of all it is recalled that the investigation established the existence of preferential tax treatment for certain companies, i.e. resident enterprises receiving dividend from other resident enterprises and in addition to important industries and projects supported or encouraged by the State such as the coated paper industry i.e. to a specific subset of enterprises in China. Therefore benefits under this programme are specific under Article 4(2)(a) of the basic Regulation. Secondly, this is a tax incentive that leads to government revenue forgone in line with the definition of a subsidy as set out in Article 1(1)(a) of the SCM Agreement and Article 3(a) of the basic Regulation. As to the claim that this incentive aims at avoiding double taxation it is noted that although the SCM Agreement has recognized that WTO Members are not limited from taking measures to avoid double taxation (see SCM Agreement, Annex I, footnote 59), this provision is an "affirmative defence" and no concrete evidence was provided to corroborate the claim that e.g. dividends from resident and non-resident enterprises are treated differently because of legal obligations that the PRC has undertaken under relevant bilateral double taxation agreements with third countries.
- (339) It was also submitted that the scheme is totally irrelevant to enterprises and industries classified as encouraged but by definition applies to all resident companies. The GOC also submitted that Article 2(2) of the SCM Agreement provides that setting of generally applicable tax rates shall not be deemed a specific subsidy. It was thus submitted that the eligibility criteria for this scheme are objective and defined in detail and eligibility is automatic thus the scheme cannot be considered specific in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.
- (340) These claims had to be rejected. In this respect it is recalled that the legal provisions setting out this scheme fall under Chapter 4 "Preferential Tax Treatments" of the Enterprise Income Tax Law that foresees specific tax incentives for important industries and projects supported or encouraged by the State. As explained above under these conditions benefits under this programme are specific under Article 4(2)(a) of the basic Regulation. The investigation did not find objective criteria to limit eligibility and conclusive evidence to conclude that the eligibility is automatic. With respect to the claim on the provisions of Article 2(2) of the SCM Agreement it is noted that the present scheme does not refer to the setting of a generally applicable tax rate

but to the existence of an exemption from tax of a certain type of revenue stemming from a certain type of companies.

4.3.11. VAT and Tariff exemption on imported equipment

- (341) With respect to this scheme the GOC submitted that the Commission failed to establish specificity on the basis of positive evidence. It was argued that the specific business categories defined exhaustively by law are not specific because they span broad sectors of economic activity covering various industries. It was thus submitted that the eligibility criteria for this scheme are objective and defined in detail and eligibility is automatic thus the scheme cannot be considered specific in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.
- (342) These claims had to be rejected. In this respect it is recalled that this scheme is only available to companies that invest under specific business categories defined exhaustively by law (i.e. catalogue for guidance of industries for foreign investment and catalogue of key industries, products and technologies which the state currently encourages development). 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. Furthermore the investigation did not find objective criteria to limit eligibility and conclusive evidence to conclude that the eligibility is automatic. Thus the findings of the Commission were established on positive evidence in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.
- (343) APP claimed that the depreciation period used by the Commission in the calculation of benefit resulting from this scheme attributable to the IP is not correct and the Commission should have used the depreciation period as reported by companies of APP Group. According to APP this methodology is in breach of Article 7(3) of the basic Regulation.
- (344) This claim had to be rejected. The depreciation period reported by APP is determined for the accounting and financial purposes. Other cooperating exporting producers and the Union Industry reported different depreciation periods. Therefore the Commission, in line with its usual practice, and with Article 7(3) of the basic Regulation, used the period of 15 years as the useful life of the machinery for the purpose of this calculation, which is considered as the "normal" depreciation period by the industry concerned.

4.3.12. VAT rebates on domestically produced equipment

- (345) With respect to this scheme the GOC submitted that the Commission failed to establish specificity on the basis of positive evidence. It was argued that the GOC explained the eligibility criteria of this scheme and as a result there is no basis for the application of facts available.
- (346) These claims had to be rejected. In this respect it is recalled that this scheme is reserved to FIEs that purchase certain type of domestically-manufactured equipment, i.e. to a specific subset of enterprises in China and therefore benefits under this programme are specific under Article 4(2)(a) of the basic Regulation. Furthermore the

investigation did not find objective criteria to limit eligibility and conclusive evidence to conclude that the eligibility is automatic. Thus the findings of the Commission were established, by using the submitted information and the provisions of Article 28 of basic Regulation, on positive evidence in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation.

4.3.13. City Maintenance and Construction Taxes and Education Surcharges for the FIEs

(347) Both APP and Chenming claimed that since according to the *Notice on Unifying the Urban Maintenance Construction Tax and Education Surcharges for Domestic and Foreign-invested Enterprises and Individuals* issued by the State Council of China on 18 October 2010 and applicable from 1 December 2010 the above mentioned tax and surcharge are now universally applicable to all companies and individuals in China, without any exception. According to these claims this subsidy scheme is not longer countervailable.

(348) The arguments provided were analyzed in line with the submitted documentation and evidence provided by parties. The GOC was requested to confirm the aforesaid information. The GOC, an interested party in this proceeding and the granting authority for this programme, notify the European Commission that this scheme was withdrawn and was not replaced by any other incentive referring to the same tax obligation. On the basis of information submitted by cooperating exporting producers it is concluded that both groups have demonstrated that they are no longer benefiting from any subsidy derived from this scheme. In this respect it is recalled that in line with Article 15 of the basic Regulation no measures shall be imposed if the subsidy is withdrawn or it has been demonstrated that the subsidy no longer confers any benefit on the exporters involved. Account taken of the above and information on file it is concluded that the subsidy under this scheme no longer confers any benefit to the exporters involved. Thus the findings presented under recitals (160) to (169) above were amended accordingly.

4.3.14. Famous Brands and Special Funds for Encouraging Foreign Investment Projects

(349) With respect to these schemes the GOC submitted that the Commission failed to establish specificity on the basis of positive evidence. It was argued that the GOC provided sufficient information with respect to these schemes and that there is no law or regulation concerning these schemes.

(350) These claims had to be rejected. In this respect it is recalled that these schemes were found specific and countervailable on the basis of information submitted by the GOC and the cooperating exporting producers notwithstanding the fact that no actual legal provisions were submitted. The fact that, as the GOC argued, there are no legal provisions for these schemes confirms beyond any doubt that objective criteria or conditions set by the law governing these schemes simply do not exist. Thus the findings of the Commission were established, by using the submitted information and the provisions of Article 28 of basic Regulation, on positive evidence in line with the provisions of Article 2(1) (b) of the SCM Agreement and Article 4(2)(b) of the basic Regulation. In the absence of any criteria or conditions, the government appears to

have wide discretion and access to the subsidy is considered to be limited to certain enterprises.

4.3.15. Subsidy of High-Tech Industrial Development Fund and Award received from Suzhou Industrial Park for maintaining growth

- (351) With respect to these schemes the GOC argued that the Commission misinterpreted Article 2(2) of the SCM Agreement since Industrial Parks are not designated geographical regions.
- (352) This had to be rejected. In this respect it is recalled that the Suzhou Industrial Park is clearly an economic and administrative subdivision within the jurisdiction of the PRC and thus a designated geographical region in line with the provisions of Article 2(2) of the SCM Agreement. Notwithstanding the above, it should also be noted that even if the above were not confirmed by the actual facts of the investigation, an industrial park by its very definition can only host a sub-set of enterprises within the territory of a country or the granting authority and thus in line with the provisions of Article 2(1)(a) of the SCM Agreement the subsidies provided by the industrial park would be considered as specific.

4.3.16. Provisions of land use rights

- (353) With respect to LUR the GOC argued that the use of an external benchmark is illegal by making reference to Article 14(d) of the SCM Agreement and the Appellate Body in *US – Softwood Lumber IV*. It was submitted that EU and WTO law restricts the use of external benchmarks to very exceptional circumstances i.e. only when private market prices are distorted because of the government's predominant role as a provider of the good or service in question. According to the GOC the Commission has not proven that private market prices are distorted by the GOC's predominant role as a provider.
- (354) These claims had to be rejected. First of all it is noted that WTO rules, as confirmed by the Appellate Body in *US – Softwood Lumber IV (DS257)* and the Panel in *US – China countervailing duties (DS379)* do not prohibit the use of external benchmarks. Secondly, the Commission approach took fully into account the special conditions requested by the WTO case law in order to resort to an external benchmark. Indeed, as it has been demonstrated under recitals (248) to (259) above, land is government-owned in China and provided by the government on a lease basis. Furthermore, the Chinese authorities control the supply and allocation of land to enterprises including in secondary markets and land assignment to enterprises is linked to a strict set of rules, while any type of change in land assignment, e.g. a transfer of a LUR contract from one enterprise to another enterprise, has to be approved by the State and recognized by a new LUR contract between the assignee with the relevant State authority. In view of the above, it is concluded that GOC has a predominant role in the distribution of LUR and that any Chinese "private" market prices (to the extent that they exist – none have been provided in this investigation) are bound to be distorted because of the GOC's predominant role as a provider and its monopoly role as a regulator of land transactions. Consequently, the GOC's financial contribution would effectively determine the level of any private prices.

- (355) GOC also argued that by choosing Taiwan as an external benchmark the Commission failed to use an external benchmark which relates or refers to, or is connected with, the prevailing market conditions in China. It was submitted that the use of Taiwanese benchmark to offset differences in comparative advantages between countries is expressly prohibited by WTO rules.
- (356) These claims had to be rejected. The Commission considers Taiwan¹⁸ as an appropriate external benchmark because of the totality of the information on the file i.e. (i) the level of economic development and economic structure prevailing in Taiwan and the relevant Chinese provinces where the co-operating exporting producers are established, (ii) the physical proximity of these two Chinese provinces with Taiwan, (iii) the high degree of infrastructure that both Taiwan and these two Chinese provinces have, (iv) the strong economic ties and cross border trade between Taiwan and the PRC, (v) the similar density of population in the Chinese provinces concerned and in Taiwan, (vi) the similarity between the type of land and transactions used for constructing the relevant benchmark in Taiwan with those in the PRC and (vii) the common demographic, linguistic and cultural characteristics in both Taiwan and the PRC. One should also add that Jiangsu and Shandong provinces are considered top manufacturing provinces in the PRC¹⁹. Although the GDP per capita of Taiwan and the two Chinese provinces is not identical, the GDP of these Chinese provinces has grown rapidly in recent years i.e. they are catching up with Taiwan. In addition recent data suggest that the both PRC and Taiwan have similar real GDP growth rates²⁰. Having said that, it is important to note that the exact comparison made between the GDP of a non-market economy (the PRC) and the GDP of a well established market economy (Taiwan) is not a decisive fact because it is normal for a non-market economy to lag behind a functioning market economy in terms of GDP. In addition, many other factors e.g. planning rules, environmental policy may affect the supply and demand of industrial land. The real issue is what would be the "prevailing market conditions" with regard to LUR in the PRC if it was a functioning market economy and on the basis of all evidence they would be very similar to those of Taiwan.
- (357) Based on the totality of the above information it is considered that the benchmark chosen is in line with the requirements of the Appellate Body in *US – Softwood Lumber IV (Para.103)* which concluded that "*the benchmark chosen must, nevertheless, relate or refer to, or be connected with, the prevailing market conditions in that country, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d)*". Indeed, the totality of conditions in Taiwan relate to the prevailing market conditions in the two Chinese provinces. Land is available in similarly dense areas, the physical proximity of the areas ensures that quality of land is similar while the fact that both Taiwan and the two Chinese provinces share the same language and culture, have

¹⁸ General information concerning Taiwan retrieved from <http://en.wikipedia.org/wiki/Taiwan>

¹⁹ Information retrieved from http://en.wikipedia.org/wiki/Jiangsu_Province and http://en.wikipedia.org/wiki/Shandong_Province

²⁰ Information on statistical data retrieved from representations made by Chinese cooperating producers and from <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2003rank.html?countryName=China&countryCode=ch®ionCode=eas&rank=6#ch>

export- oriented economies and important manufacturing sectors confirm that price, marketability and other conditions of purchase or sale of land are closely connected.

- (358) Cooperating exporting producers claimed that the information available to the Commission was sufficient to conclude that there is a market for land in China.
- (359) This claim had to be rejected. From the information made available to the Commission it was not possible to come to a conclusion that there is a functioning land market in China. From the legislation made available to the Commission by the GOC it is obvious that all of the land in PRC is government-owned and it is provided only on the lease basis. The Chinese authorities are in full control of the supply and allocation of land to enterprises, including transactions in the secondary market. No evidence was submitted that there is any market mechanism in the distribution of land use rights, despite the Commission's requests to this effect. The situation is explained in detail in recital (354) addressing similar claims of the GOC.
- (360) APP submitted that today's Chinese LUR prices should be used as benchmark or in the alternative today's land prices in the Indian state of Maharashtra. Chenming also suggested Indian state of Maharashtra for benchmark.
- (361) As already described in the recital (359) above, there is no functioning land market in China. Therefore it is not appropriate to use today's Chinese LUR prices as a benchmark. Exporting producers based its claim that the land prices in Maharashtra could be used as a benchmark on the comparison of the Indian state of Maharashtra in terms of GDP per capita and the population density at the time of purchase of LURs. As explained above the Commission is of the opinion that the GDP per capita and the population density cannot be the only decisive factors when choosing a country/region for the purpose of application of external benchmark. In any event the methodology proposed by co-operating exporting producers is not consistent with their claims. In the IP, Mumbai, the capital of Maharashtra and by far the most developed area of the state had per capita income is \$2,675 (Rs1.28 lakh) which is in fact lower than the Chinese national average of \$3,529²¹ let alone the GDP par capita in the highly developed regions of Shandong and Jiangsu (\$5,255 and \$6,550 respectively). As far as population density is concerned, this is also not by itself a decisive factor, but, for the record, the population density is 314/km² in Maharashtra, 736/ km² in Jiangsu and 600/km² in Shandong, i.e. not in the same level. Furthermore, other factors, such as the lack of physical proximity and common characteristics between India and China lead to the conclusion that the Maharashtra benchmark does not relate or refer to, and is not connected with, the prevailing market conditions in China. For the reasons explained in recital (356), Commission maintains the opinion that the prices of land in Taiwan are far more suitable external benchmark.
- (362) APP claimed that some of the LUR taken in account by the Commission in the calculation of benefit resulting from this scheme are no longer held by APP. APP also argued that by using information from the website of the Industrial Bureau of the Ministry of Economics Affairs of Taiwan it has arrived in a different average land price per square meter and the Commission did not make any effort in order to find representative offers for the industrial land.

²¹ <http://www.livemint.com/2009/08/03224002/India-needs-cities-network-for.html>, Livemint.com is an online partner server of Wall Street Journal

- (363) With respect to the total surface of the land used by APP, the Commission took APP's claim into account and on the basis of information and evidence presented in the comments on definitive disclosure it was accepted. The corrected information was reflected in subsidy calculation. With respect to information derived from Taiwan it is noted that this claim had to be rejected. Although this party did not propose to use this price for the calculation of an appropriate benchmark the following should be highlighted. The Commission used the information that was available on file with respect to land prices in Taiwan and the methodology on how it arrived to the benchmark price was disclosed to parties and explained in the Note for the file of 11 February 2011. On the other hand the data presented by APP refer to February 2011 only, i.e. a different time period as used in the Commission's calculation and it appears that it refers only to a list of examples of some data derived from some areas in Taiwan. Furthermore, the Commission can not address the calculation of the benchmark performed by APP, as APP did not provide any details on the methodology it used for this calculation and did not substantiate why its calculation represents more accurately average land prices in Taiwan.
- (364) Cooperating exporting producers claimed that any subsidy in the form of the provision of land-use right for less than adequate remuneration would not be specific.
- (365) This argument had to be rejected. As already explained in the definitive disclosure document, the GOC provided insufficient information in relation to this scheme which had to be complemented with other information and facts in the record. Consequently, the findings were made on this basis and are explained and analysed in recitals (253)-(258).

4.3.17. Other

- (366) APP claimed that the interest rate used by the Commission in order to transform the face value of the subsidy into the value prevailing during the investigation period is not correct.
- (367) The Commission took APP's claim in account and on the basis of information and evidence presented in the comments on definitive disclosure it was accepted. The interest rate suggested by APP was used in the subsidy calculations. This change is already reflected in the recitals dealing with the calculation of subsidy margins and in the resulting subsidy margins for the individual schemes concerned.
- (368) APP claimed that the subsidy amounts must be expressed as a percentage of their reported CIF price and not as a percentage of the turnover and that the Commission should apply this methodology for the calculation of subsidy margins.
- (369) The arguments provided were analyzed in line with the submitted documentation and evidence provided by the party. It is noted that, except for one of the subsidy schemes found to be countervailable, no other scheme was found to be contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported. Therefore the amount of subsidy was allocated over the total sales turnover of the companies of APP group in line with Article 7(2) of the basic Regulation which reads as follows: "*Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy should be determined by allocating the value of the*

total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidisation". Since this subsidy is not linked to production of any particular product or exports, the total sales turnover of the company is the most appropriate denominator. In that respect, it should be noted that the relevant turnover has been determined on a basis which ensures that it reflects as closely as possible the sales value of the products sold by the recipient company. This change is already reflected in the recitals dealing with the calculation of subsidy margins and in the resulting subsidy margins for the individual schemes concerned. Any other proposed methodology in calculating the amount of countervailable subsidy would be contrary to the relevant provisions of the basic Regulation (Articles 7 and 15) and the administrative practice followed by the Commission in its anti-subsidy proceedings when selecting the appropriate numerator/denominator for the allocation of the amount of the countervailable subsidy. The party also invoked the part of the Guidelines²² referring to the calculation of the subsidy per unit as a basis for their claim. However, and for the same reasons as described before, a per unit approach was not considered appropriate in the circumstances of this case. Indeed the proposed methodology is considered non representative as it mixes turnover and units produced only for the product concerned while it disregards units of other products produced. No information was submitted or verified with respect to the total units produced for all products by the respective companies and subsidies were not granted in any event by reference to quantities. As to CIF prices it is pertinent to note that evidence on file suggests that they vary within and between product types. In any event, the subsidies in question are not product-specific. Furthermore, the Commission established the amount of subsidization in the PRC and denominated it by allocating the value of the total subsidy over the turnover in China account taken of the specific modalities of the respective cooperating Chinese exporting producers. This ensures the use of the verified amount of subsidies and the most appropriate turnover. Finally it is noted that account taken of the practical circumstances of this proceeding, i.e. the imposition of anti-dumping and countervailing duties at the level of the injury margin, it is concluded that there is no impact whatsoever to the APP's position irrespective of what methodology one chooses in allocating the amount of countervailable subsidy and the countervailing duty.

4.4. Amount of countervailable subsidies

(370) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated companies are set out in the table below:

Exporting Producer	Anti-subsidy margin rate
APP Group	12.04%
Chenming Group	4.06%

(371) Based on the information available from the complaint and the cooperating Chinese exporting producers, there are other known producers of the product concerned in the

²² Guidelines for the calculation of the amount of subsidy in countervailing duty investigations, OJ C 394, 17.12.98, p.6.

PRC. Nevertheless, given the fact that the reported export volume was found to be higher than the import data derived from Eurostat, the level of cooperation was considered high. It was therefore considered appropriate to set the subsidy level for the non-cooperating exporting producers at the level of the highest subsidisation found for the cooperating exporting producers i.e. 12.04%, in order to ensure effectiveness of the measures.

5. UNION PRODUCERS

5.1. Union production

(372) During the IP, the like product was manufactured by 14 known and some other very small producers in the Union. The data provided by CEPIFINE is estimated to be covering 98% of the production of Union producers. On this basis, the total Union production was estimated to be around 5 270 000 tonnes during the IP. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 9(1) of the basic Regulation.

(373) The coated fine paper industry is energy and capital intensive. For this reason economies of scale apply that explain the concentration of the production within a few large players, complemented by smaller producers that focus on the geographically close markets. Five similarly large producers cover most of the Union market with production facilities spread over Europe. The large part of CFP is a commodity-type product and is mainly traded through paper merchants and wholesalers. These distribution channels are characterized by a high degree of concentration of buying power and price transparency through price quotations.

(374) As mentioned in recital (19) above, one interested party claimed that CFP suitable for web-fed printing should have been included in the scope of the present investigation. On this basis, the party argued that the complainant Union industry would not have enough standing in the present proceeding. Based on the conclusions outlined above in recitals (22) and (25), however, i.e. that CFP suitable for web-fed printing and CPF for sheet-fed printing are two different products, this claim had to be rejected.

(375) The government of China commented that one of the representative producers was allegedly related to a Chinese company and thus should be excluded from the definition of the Union industry. The investigation however revealed that the products produced by the Chinese company referred to are not product concerned. Therefore the relationship does not have any impact on the injury analysis nor on the inclusion of this Union producer in the definition of Union industry.

6. INJURY

6.1. Union consumption

(376) Consumption was established on the basis of the following:

- Eurostat for imports from third countries duly adjusted on the basis of information provided by the Union producers for products not covered by the proceeding. The investigation has found, based on evidence provided, that these assumptions were reasonable and justified;

- the verified total export volume of the cooperating exporting producers in the PRC to the Union market, as the reported export volume was found to be higher than the import data derived from Eurostat;
- the total sales on the Union market of all Union producers based on the information provided by CEPIFINE.

(377) On this basis, total Union consumption was established as follows:

Table 1: Union consumption

Union consumption	2006	2007	2008	2009/IP
Tonnes	5.308.275	5.508.183	5.384.770	4.572.057
<i>Index</i>	<i>100</i>	<i>104</i>	<i>101</i>	<i>86</i>

Source: Verified questionnaire replies, Eurostat adjusted and verified data provided by CEPIFINE.

(378) Overall, Union consumption decreased by 14% during the period considered. It was found that the consumption first increased by 4% between 2006 and 2007, after which it dropped by 18% between 2007 and the IP. The decline in consumption in 2008 and the IP was the result of a lower demand, especially in the first half of 2009, due to the economic downturn.

6.1.1. Imports into the Union from the PRC

(379) As mentioned above in recital (376), the verified total sales volume of the product concerned of the Chinese cooperating exporting producers on the Union market was found to be higher than the import volumes reported by Eurostat. Since it was considered that the verified information is more accurate than the available statistics, total import volume from the PRC was established on the basis of the verified information provided by the cooperating companies. The sales volumes of the cooperating companies that were found to have been exporting only multi-ply paperboard during the period considered, were excluded from the total imports, because it was concluded, as explained in recital (47), that multi-ply paper and paperboard should not be considered as the product concerned. Since the import data relating to the product concerned only refer to two companies, it was considered appropriate for confidentiality reasons to show them in indexed form.

Table 2: Total subsidised imports from the PRC

Total imports from the PRC	2006	2007	2008	2009/IP
Volumes (index)	100	218	212	283
Market share (index)	100	210	209	329
Prices (EUR/tonne)	677	661	657	621
Index	100	98	97	92

Source: Verified questionnaire replies.

(380) The volume of total imports from the PRC increased dramatically, almost tripling over the period considered. As a result, their market share increased significantly from approx. 1% in 2006 to over 4 % in the IP. This has to be seen against the background of a decreasing consumption which dropped by 14% during the same period. Average

prices of the subsidised imports from the PRC showed a decrease of 8% during the period considered.

6.1.2. Price undercutting

- (381) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Union producers to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for the existing duties and post-importation costs.
- (382) As explained in recital (51), cooperation from the Chinese exporters was very high and considered to be covering the total export volume from the PRC to the Union during the IP. Given the fact that two Chinese exporting producers who originally came forward were found not to be exporting the product concerned to the Union market, as explained in recital (52) their imports have not been taken into account for the purpose of the price undercutting analysis. Export sales of a company within the group of one cooperating exporting producer were also excluded from the comparison as none of the representative Union producers produced comparable product types. With respect to the export quantities of this particular company it is noted that they represented only a minor part of the total export sales of the group and their price levels appeared to be in line with the overall export sales price levels of the group.
- (383) The comparison showed that during the IP, the subsidised product concerned originating in the PRC sold in the Union undercut the Union producers' sales prices on average by 7.6 %. The level of the undercutting margin is to be seen against the background of the high level of price transparency supported by price quotations that characterizes the CFP distribution market.

6.2. Economic situation of the Union industry and the four representative Union producers

6.2.1. Preliminary remarks

- (384) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union producers included an evaluation of all economic indicators for an assessment of the state of the Union producers from 2006 to the end of the IP.
- (385) The macroeconomic elements (production, capacity, capacity utilization, sales volume, market share, growth and magnitude of the amount of countervailable subsidies) were assessed at the level of the whole Union industry, on the basis of the information provided by CEPIFINE.
- (386) The analysis of microeconomic elements was carried out at the level of the Union producers (average unit prices, employment, wages, productivity, stocks, profitability, cash flow, investments, return on investments, ability to raise capital) on the basis of their information, duly verified.
- (387) It was claimed that the injury analysis failed to analyze all injury indicators for the complainants and for the Union industry as a whole in a coherent and comprehensive

fashion. Parties suggested that conclusions concerning material injury would be different, were some indicators such as market share established at the level of complainants.

- (388) Firstly it is noted that the statements of these parties seem to have been drawn on the basis of indicators calculated from different datasets and information than those established during the investigation and presented below. Consequently, these conclusions are factually wrong and are thus irrelevant.
- (389) Secondly, it is the Commission's practice to evaluate macroeconomic factors for the indication of the injury suffered at the level of the Union industry as a whole as explained above. In the present investigation the Union industry was defined at the level of Union producers accounting for the total Union production as explained in recital (372) above, regardless of whether producers supported the complaint or have been cooperating in the investigation.
- (390) Microeconomic factors are analyzed at the level of the representative Union producers, regardless of whether these support the complaint or not. The representative producers covered 58% of the Union production. None of the other Union producers came forward claiming that the Commission's conclusions on microeconomic factors would be unreliable or not substantiated. Therefore there are no reasons to put into question the findings established based on the information provided by the representative Union producers only.
- (391) It was claimed that one of the four representative producers failed to fully cooperate as it would be related to another producer in the European Union that did not cooperate in the investigation. The companies were alleged to be related as a consequence of transitional agreements concluded at the time of the acquisition by the cooperating Union producer of the CFP business segment of the other producer. It was alleged that through these transitional agreements the cooperating Union producer controls some of the mills which remained in the ownership of the partially acquired producer. To support its claim the exporting producer made reference to the Commission Decision²³ examining at the time of the acquisition whether the transaction should be considered as an acquisition within the meaning of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.
- (392) The investigation on the other hand confirmed that the number of shares held by the EU producer in question was minor and below the threshold set in Article 143 of the IPCCC²⁴. Furthermore, the transitional agreements referred to did not show any relationship between the companies that would be extending beyond a normal business relationship between a buyer and a seller. In particular, the terms of the transitional agreements aim to administer the coated paper sales for a transitional period and according to these terms the Union producer only has functions comparable to a sales agent during the transitional period. Furthermore, in its consolidated audited accounts

²³ Commission Decision of 31/10/2008 declaring a concentration to be compatible with the common market (Case No COMP/M.5283 - SAPPI / M-REAL) according to Council Regulation (EEC) No 139/2004, OJ C 324, 19.12.2008, p. 8

²⁴ Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EC) No 2913/92 establishing the Community Customs Code, OJ L 253, 11.10.1993, p. 1.

and in its reply to the questionnaire it reported commission income while acting as an agent for the mills concerned; no ownership and therefore no costs were recognized for these mills by the Union producer.

- (393) According to the Commission Decision referred to above, the transaction between the companies was considered as an acquisition by the Union producer of part of the other companies' business, not the take-over of the company as such. The Decision does not suggest that the companies should be considered as one entity after the acquisition; in particular, there is no joint venture between the companies. It is also noted that the geographical scope examined in the above decision is EEA – wide and not EU wide. To note is also that in the Decision the Commission did not analyze the relationship between the companies in question within the meaning of Article 143 of the IPCCC²⁵.
- (394) In view of the above, it was considered that the two companies are not related in the sense of Article 143 of the IPCCC and therefore the Union producer in question cooperated fully with the investigation.
- (395) In the analysis of microeconomic indicators information about paper mills that have been acquired by the above mentioned Union producer were excluded for all years under examination in order to present a fully comparable trend over the years.
- (396) The exporting producer also claimed that each affiliated company of the Union producers should have filled in a separate questionnaire reply as they were separate legal entities.
- (397) In the case of the Union producer in question it was considered that one questionnaire reply would be sufficient for a meaningful reply and analysis of the injury aspects. In particular, the reply provided a detailed breakdown of information at individual paper mill level and all the necessary data relating to all of the related producers/sellers of the like product could be verified during the verification visits.
- (398) In a subsequent submission the exporting producer also claimed that the same company failed to fully cooperate as it filed its questionnaire reply on behalf of a non-existing entity and that the audited accounts of the company do not reflect the data provided in its questionnaire reply. The conclusions in the preceding recital are relevant also in this regard.

6.2.2. Data relating to the Union industry (macroeconomic indicators)

- (399) After disclosure of the findings, the GOC and one Chinese exporting producer argued that the macro-economic data used for the analysis is incomplete and inaccurate thus cannot be used as a positive evidence of material injury.
- (400) The on spot verification at the complainant association confirmed that the data used to establish macroeconomic indicators are directly collected from Union producers covering around 98% of the total Union production and are sufficiently detailed to identify information about the product concerned. Assumption and / or estimations

²⁵ Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EC) no 2913/92 establishing the Community Customs Code, OJ L 253, 11.10.1993, p.1.

used were made on a reasonable and justifiable basis, e.g. cutter rolls were not taken into account because of their clearly insignificant volumes as witnessed in their proportion in the total sales volume of the representative Union producers. Therefore this claim had to be rejected.

6.2.2.1. Production, production capacity and capacity utilisation

Table 3: Production, production capacity and capacity utilisation

	2006	2007	2008	2009/IP
Production (tonnes)	6.483.462	6.635.377	6.381.324	5.164.475
<i>Index</i>	100	102	98	80
Capacity (tonnes)	7.032.734	7.059.814	6.857.226	6.259.129
<i>Index</i>	100	100	98	89
Capacity Utilisation	92%	94%	93%	83%
<i>Index</i>	100	102	101	90

Source: Verified data provided by CEPIFINE.

- (401) As shown in the above table, the production volume of the Union industry decreased by 20 % over the period considered. It should be noted that although Union consumption increased by around 1 % between 2006 and 2008, the production of the Union industry fell by 2% during that period, while it decreased significantly between 2008 and the IP, following the drop in the Union consumption.
- (402) Since 2000, Union producers have undertaken major restructuring efforts aiming at addressing structural overcapacity. Through consolidations and mill closures the Union industry decreased its CFP production capacity by approximately 770 000 tonnes between 2006 and the IP, i.e. by 11%.
- (403) Despite the drop in total capacity, utilisation rates still declined from 92% in 2006 to 83 % in the IP. The main decrease occurred in the period between 2008 and the IP. It is noted that high capacity utilization is an important factor in the long-term viability of the paper producing producers because of high investment in fixed assets. Therefore, the capacity utilisation rate during the IP was considered to be low.

6.2.2.2. Sales volume and market share

- (404) The sales figures in the table below relate to the volume sold to the first independent customer on the Union market.

Table 4: Sales volume and market share

	2006	2007	2008	2009/IP
Sales volume (tonnes)	4.921.141	4.999.524	4.875.841	4.008.354
<i>Index</i>	100	102	99	81
Market share	93%	91%	91%	88%
<i>Index</i>	100	98	98	95

Source: Verified data provided by CEPIFINE.

- (405) While Union consumption grew by 4 % between 2006 and 2007 (see recital (377) above), the sales volume of the product concerned by the Union industry to independent customers on the Union market only increased by 2% during that same

period. This means that the Union industry could not benefit fully from the increased consumption in that period. Moreover, between 2008 and the IP, whereas Union consumption decreased by 15 %, the sales volume of all Union producers decreased even more, by 18 %. Consequently the Union industry's sales volume, after a small increase in 2007, decreased continuously and significantly which translated in a loss in market share of 5 percentage points during the period considered.

- (406) One group of Chinese exporting producers claimed that the market share of the Union producers should also include imports from Switzerland as these come from a mill owned by one of the representative Union producer.
- (407) The geographical scope of anti-subsidy investigations is the European Union. Therefore this claim had to be rejected.
- (408) It was also claimed that the complainants' market share increased remarkably during the period considered.
- (409) Market share is a macro indicator analyzed at the level of the whole Union industry and not at the level of the complainants. Secondly, the statement concerning the complainant's market share is factually erroneous.

6.2.2.3. Growth

- (410) When looking at the development over the period considered, the drop of 19 % in the sales volume of the Union industry was far more pronounced than the decrease of 14 % in Union consumption. As a consequence, the market share of the Union industry also decreased significantly by 5 percentage points during the same period.

6.2.2.4. Magnitude of the amount of countervailable subsidies

- (411) The amount of countervailable subsidies for the PRC, specified above in the subsidy section, is significant. Given the volumes and the prices of the subsidised imports, the impact of the actual subsidy margin cannot be considered to be negligible.

6.2.3. Data relating to the four representative Union producers (microeconomic indicators)

6.2.3.1. Average unit prices of the four representative Union producers

- (412) Overall, average ex-works sales prices of the four representative Union producers to unrelated customers on the Union market remained stable over the years, except for the year of 2007 when they were slightly above this level.

Table 5: Prices of the Union producers

Prices of the Union producers	2006	2007	2008	2009/IP
Average price (EUR/tonne)	692	717	691	699
<i>Index</i>	<i>100</i>	<i>104</i>	<i>100</i>	<i>101</i>

Source: Verified questionnaire replies.

6.2.3.2. Stocks

- (413) Stocks represented around 10 % of the production volume in the IP. The four representative Union producers increased their stock levels by 10 % during the period considered, in particular between 2006 and 2007 and later between 2008 and the IP. Notably, this coincided with the surge in the low-priced subsidised imports from the PRC.

Table 6: Stocks

Stocks	2006	2007	2008	2009/IP
Stocks (tonnes)	278.265	298.547	296.387	306.588
<i>Index</i>	100	107	107	110

Source: Verified questionnaire replies.

6.2.3.3. Employment, wages and productivity

Table 7: Employment

Employment	2006	2007	2008	2009/IP
Employment — full-time equivalent (FTE)	7.756	7.487	7.207	6.197
<i>Index</i>	100	97	93	80
Labour cost (EUR/FTE)	54.053	54.948	57.026	58.485
<i>Index</i>	100	102	105	108
Productivity (unit/FTE)	453	478	486	484
<i>Index</i>	100	106	107	107

Source: Verified questionnaire replies.

- (414) Due to the paper mill closures and consolidation of the four representative Union producers, the number of employees was reduced substantially by 20 % (almost 1600 jobs) during the period considered.

- (415) Efficiency gains have been achieved by raising and maintaining a high output per employee even at a time of significant layoffs in 2007 and 2008. Labour costs increased steadily, totalling an 8 % increase over the period considered.

6.2.3.4. Profitability, cash flow, investments, return on investment

Table 8: Profitability

	2006	2007	2008	2009/IP
Profitability	-1,08%	-0,20%	-2,49%	2,88%
Change (100=2006)		+0,88%	-1,41%	+3,95%
Cash flow (EUR thousand)	260.047	211.036	172.570	336.753
<i>Index</i>	100	81	66	129
Investments (EUR thousand)	151.900	151.027	127.845	87.875
<i>Index</i>	100	99	84	58
Return on investments	-0,73%	-0,54%	-2,73%	0,39%
Change (100=2006)		+0,19%	-2,00%	+1,12%

Source: Verified questionnaire replies.

- (416) The four representative Union producers incurred losses in the years 2006 to 2008 and the financial situation only turned positive in 2009 when the world price of pulp, the main raw material exceptionally decreased significantly as a result of the economic downturn. The drop in the price of pulp (20%) was considered an abnormally large drop that directly contributed to the improved financial situation in the IP. It is to be noted that since the IP, pulp prices returned to their pre-IP levels.
- (417) The trend shown by the cash flow, which is the ability of the producers to self-finance their activities, reflects to a large extent the evolution of profitability. Consequently, the cash flow shows an exceptional increase in the IP due to the falling pulp prices. Return on investments showed negative development in line with the negative profit results achieved by the four representative Union producers until 2008 and a positive trend in the IP due to the exceptional cost savings on pulp prices.
- (418) Following the above, the ability of the four representative Union producers to invest became limited as the cash flow significantly deteriorated during the period considered, except for the IP. As a consequence, the investments dropped by 35% during the period considered and were limited to the installation of cogeneration plants that helped the Union producers to mitigate the effect of continuously raising energy costs.
- (419) One party claimed that the improvement of profitability should not be considered as a limited instance based on an exceptional drop of raw material costs. The drop in costs benefited both: all local as well as Chinese producers, not only the complainants, therefore the breakthrough in profitability was not exclusively based on the drop in costs but was rather the result of a change in the pricing behaviour of the complainants.
- (420) Furthermore the exporting producer claimed that the profitability is driven by CFP prices, rather than the price of pulp. It was found, however, that when pulp prices sharply fell in 2009, CFP prices remained stable and profits rose as a consequence. Therefore given that prices remained stable, no correlation can be made between prices and profitability in this specific time period.
- (421) The profitability rate is an indicator that is analysed at the level of the representative Union producers and not at the level of complainants as suggested by the party. The analysis of information gathered showed a direct link between the exceptional fall in pulp prices, the main raw material and the increased profitability; whereby stable prices of the finished products indeed played a role in the improvement of profitability. While this was probably the case for other producers on the market as well, this does not affect the conclusion that this temporary improvement of profitability is due to the exceptional drop in raw material prices in the IP.

6.2.3.5. Ability to raise capital

- (422) The paper industry in general is characterized by high indebtedness linked to the significant investment in fixed assets. As a consequence of the losses incurred in most of the period considered, the ability of the four representative Union producers to raise capital and to finance its activities at reasonable finance costs was also undermined. This was the case in particular in 2008 when one of the four representative Union producers had to be refinanced at a significant risk premium while the smallest

representative producer went into insolvency in 2008 and was taken over by another Union producer.

6.3. Conclusion on injury

- (423) The investigation has shown that most of the injury indicators such as production volume (– 20%), capacity utilisation (– 10%), sales volume to unrelated customers on the Union market (– 19%), market share (– 5 percentage points) deteriorated during the period considered. In addition, the injury indicators related to the financial performance of the four representative Union producers such as return on investment and profitability were seriously affected until 2008. The sudden increase of the profitability in the IP was due purely to the temporary and exceptional drop of world pulp prices in the IP. It is noted that even during the IP the profitability rate was very low and was not considered to be altering the conclusion that the four representative Union producers were in a very weak financial position.
- (424) The investigation also showed that the above injury picture can be mainly explained by the fact that despite its restructuring efforts and productivity improvements the four representative Union producers were not able to raise their CFP prices above cost-covering level or to a level of viable profitability. This is mainly due to the price undercutting practiced by the Chinese exporters during the IP which has a significant effect in a market where price transparency is high. During the IP, the four representative Union producers managed to reduce their cost of production through further productivity improvement and due to the decrease of pulp prices which mainly occurred in the second half of the IP. As demand and supply became more balanced on the market following the efforts of the producers to tackle structural overcapacity by means of consolidation and capacity closures, CFP prices could be kept at a stable level. However, the four representative Union producers were not in a position to increase their sales prices to a level that would have profitability rates necessary for long-term viability.
- (425) As mentioned above in recital (19), one party claimed that CFP used in web-fed printing should have been included in the scope of the present investigation. On this basis, the party claimed that the exclusion of this product from the determination of material injury and the analysis of trends would have distorted the injury picture. However, based on the conclusions presented in recitals (20) and (22) to (25), i.e. that CFP used in web-fed and sheet-fed printing are different products, this claim was rejected.
- (426) The same party claimed that the acquisition of one Union producer by one of the four representative Union producers in 2008 was evidence that this four representative Union producer was in rather good health. It is first noted that material injury is assessed on the basis of the situation of the Union industry and not based on the particular situation of a single producer. As concluded in (423) above, most injury indicators have shown a negative trend evidencing the deterioration of the Union industry's situation over the period considered. The acquisition was furthermore considered as part of the restructuring efforts of the Union industry during the period considered. In any case, it is noted that when analysing macro indicators such as production volume, capacity, sales volume and market share the acquisition had a neutral effect since macro indicators are assessed with respect to all Union producers

constituting the Union industry as defined in recital (372). In other words these factors should remain overall unchanged in case of a change in the ownership.

- (427) After disclosure, parties claimed that there was no positive evidence that the complaining Union producers suffered material injury. Contrarily, complainants presented overall stable economic results and increased profitability in the IP.
- (428) First of all, the state of the Union industry is analysed at the level of the representative Union producers and not at the level of complainants as suggested by the parties.
- (429) Secondly, as already pointed out in recital (409) above, the conclusions of these parties seem to have been drawn from indicators calculated on the basis of different datasets and information than what was established during the investigation and presented above. Consequently, these conclusions are factually wrong. Furthermore, the parties' analysis was not consistent in the use of two different datasets for macro and micro indicators.
- (430) It was further claimed that the improvement of profitability should be regarded also as a consequence of the restructuring efforts of the industry including reduction of production, employment and increased productivity. In this case, the latter factors cannot be deemed to be the sole indicators of injury, but all injury indicators should be looked at together.
- (431) Article 8(2) of the basic Regulation lists the economic factors and indices to be evaluated in the examination of the impact of the dumped imports on the Union industry. Article 8(2) explicitly states that the list of factors is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance. Thus, while indicators have to be assessed individually, conclusions should be reached through the analysis of all factors.
- (432) Parties also commented on a possible threat of further material injury in view of the huge capacity build-up by Chinese producers supported by State policies and subsidies. The scope of the investigation was the existence of material injury and not the threat of further material injury. Therefore these comments could not affect the findings and had to be disregarded.
- (433) Considering the above, it is concluded that the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

7. CAUSALITY

7.1. Introduction

- (434) In accordance with Articles 8(5) and (6) of the basic Regulation, it was examined whether the material injury suffered by the Union industry has been caused by the subsidised imports from the country concerned. Furthermore, known factors other than the subsidised imports, which might have injured the Union industry, were examined to ensure that any injury caused by those other factors was not attributed to the subsidised imports.

7.2. Effect of the subsidised imports

- (435) It is to be noted that the Union CFP market is characterized by a high degree of concentration of buying power and price transparency through price quotations. Furthermore CFP is a commodity-type product and does not allow for significant price differences among different sources. A major part of the products is sold through merchants that force the Union industry to keep prices in line with low priced and subsidised imports. Therefore the prices of imported CFP, out of which 35% originated in the PRC in the IP, have in general a significant effect on price levels on the Union market.
- (436) The investigation showed that subsidised imports from the PRC increased dramatically (+183%) over the period considered. The subsidised imports from the PRC first doubled from 2006 to 2007, while prices were in 2007 2% lower than the year before. In 2008 imports from China remained stable while average prices fell by 1 more %. Chinese import volumes (+71%) and market share (+120%) increased again dramatically in the IP with falling prices (-5%) undercutting the prices of the four representative Union producers by 7.6% thereby exerting price pressure on the Union market and preventing the Union producers from raising their prices to profitable levels.
- (437) It is recalled that during the period considered the Union consumption decreased by about 14%. The Union industry faced a significant drop in their sales volume (19%). However this decrease of sales was much more pronounced than the drop in demand and led to a loss of market share of 5 percentage points. At the same time the market share of Chinese imports increased by 3 percentage points. This shows that the Union industry's market share has largely been taken over by the subsidised imports from the PRC.
- (438) It is therefore considered that the continued pressure exercised by the low-priced subsidised imports from the PRC on the Union market did not allow the Union industry to adapt its sales prices to the increased raw material costs, in particular in 2008, when pulp prices peaked. This led to the loss in market share and the loss in profitability of the Union industry.
- (439) During the investigation and after disclosure, several parties brought forward the argument that Chinese imports did not have significant impact in terms of volume and prices. It was argued that there was no surge of Chinese imports but rather these grew gradually over the years and therefore their impact was quite limited which should not be exaggerated for the purpose of the injury determination. It was further argued that Chinese prices, even if they were below Union prices, did not have any impact on the relatively stable prices of the Union industry. One exporting producer questioned the Commission's finding that there would be price suppression caused by Chinese prices. It pointed out that in 2009 when the Chinese prices declined further, the Union industry's prices not only recorded an increase but in fact allowed the Union industry to make profits.
- (440) The evolution of Chinese imports is analyzed in detail in recitals (380) and it was concluded that the increase in the volume cannot be regarded as insignificant.
- (441) In terms of prices Chinese imports undercut the prices of the representative Union producers by 7.6% which is considered significant in a market where price transparency is high. As depicted in recital (412) above, indeed prices of the

representative Union producers were stable over the period considered, with an exceptional increase in 2007, the year where Chinese exports did not grow. In 2009 the Union producers could keep their prices stable at the expense of losing further market share and their profitability derived from the combination of these stable prices and the decreased cost of raw material.

- (442) One Chinese exporting producer claimed that CFP imports from China do not have an impact on the prices of the Union industry as these are not comparable to the CFP manufactured and sold by the representative Union producers as only 10% of the sales of the representative Union producers were compared in the determination of the undercutting and non-injurious price level. It is noted that these determinations are made on the basis of fully comparable products that are directly matching in all characteristics so as to ensure a fair comparison. However, CFP produced by the Chinese and Union producers in general are comparable products as concluded in recital (50) and thus are competing with each other directly on the Union market.
- (443) It was furthermore alleged that the finding that the CFP market is a commodity-market characterized by a high degree of transparency is incorrect as the Union producers sell around half of their products directly to end users. In contrast to this claim the representative Union producers sold the majority of their products through merchants either directly or indirectly (so called indent sales when products are directly shipped to the customer but ordering and invoicing process goes through merchants). Indeed merchants play a crucial role in both stocking products and providing price transparency to the market.
- (444) In view of the established trend of imports from the PRC that cannot be regarded as insignificant, it was concluded that the surge of the low-priced subsidised imports from the PRC had a considerable negative impact on the economic situation of the Union industry.

7.3. Effect of other factors

7.3.1. Development of the consumption on the Union market and the economic crisis

- (445) As mentioned in recital (378) above, the Union consumption of CFP first increased in 2007, after which it decreased in 2008 and the IP. During the period considered, the Union industry lost market share. One of the cooperating exporters in the PRC and the government of China claimed that the decrease in sales volume, market share and production of the Union industry was due to the decrease in consumption which had been caused by the economic crisis and the expansion of electronic media and should not be attributed to Chinese imports. To support its claim, the GOC quoted a Manifesto for Competitiveness and Employment launched by the paper and pulp industry in June 2009 ('Manifesto').
- (446) Although it cannot be disregarded that this negative evolution of the Union consumption, for whatever reason, between 2007 and the IP has had a negative impact on the situation of the Union industry in terms of sales volumes and production, it is noteworthy that the Chinese exporters managed at the same time and especially from 2008 to 2009 to increase their sales volumes and market share through the price pressure exerted on the market by the subsidised imports.

- (447) The Manifesto quoted by the GOC covers the whole paper and pulp industries sectors and serves a general policy purpose. On the basis of the information included in this document, no separate conclusions could be drawn for the production and sales of the product concerned. It is therefore not possible to conclude whether the statements or findings of the Manifesto in fact apply one-to-one to the product concerned. Since, in addition, the investigation did not bring to light a strong link between the financial crisis and the material injury suffered by the Union industry, this argument had to be rejected.
- (448) Account taken of the above, it is considered that the deterioration of the economic situation of the Union industry is mainly caused by the surge in the subsidised imports from the PRC and the undercutting practised by the Chinese exporters and not by decreasing consumption. Even though the contraction in demand contributed to the injury, it could not break the causal link between the material injury suffered and the increase in subsidised imports.

7.3.2. Prices of raw material

- (449) The average cost of production of the four representative Union producers slightly increased (2%) between 2006 and 2008 and fell by 5% in the IP. The investigation showed that the cost of production of the four representative Union producers to produce CFP followed in general a similar trend as the evolution of the prices of the pulp, one of the main raw materials in paper production. The average price of pulp increased by 8% between 2006 and 2008 after which it decreased sharply from the end of 2008 till the last month of the IP. The price of pulp was on average 19% lower in 2009 than in the previous year.
- (450) In the absence of subsidization causing injury to the Union industry, it could be expected that prices are regularly adapted to reflect the development of the various components of the cost of production. Up until 2008, this did, however, not take place. Indeed, the Union producers was forced to keep their sales prices low even when pulp prices were increasing in 2008 in order to compete against the low-priced subsidised imports from the PRC, which led to a significant drop in their profitability in that period. In the IP, the situation ameliorated due to the abnormal decrease in prices of pulp – while prices of CFP could be kept stable at the same time. However even in this exceptional period the still very low profit levels did not allow the four representative Union producers to recover from continued subsidisation. Indeed, despite the decrease in raw material costs the price levels could still not be increased to levels to achieve solid profit margins necessary for this capital intensive industry.
- (451) Accordingly, it is concluded that the subsidised imports from the PRC which undercut the four representative Union producers' prices depressed the prices on the Union market and prevented the four representative Union producers from increasing their sales prices to cover their costs or to achieve a reasonable profitability. Given that the raw material prices were significantly decreasing in the IP, it was concluded that they could not have had an impact on the material injury suffered by the Union industry during that same period.

7.3.3. Export performance of the representative Union producers

- (452) Export performance was also examined as one of the known factors other than the subsidised imports, which could at the same time have injured the Union industry, to ensure that possible injury caused by these other factors was not attributed to the subsidised imports. The analysis showed that the export sales to unrelated parties made by the four representative Union producers represented an important part of their sales (around 26%) during the period considered. Even though export sales volumes also decreased in the period considered by 16 %, the loss of export sales volumes was less pronounced than the loss of sales volumes on the Union market (19%). Hence, it was considered that the decrease in export volume cannot explain the level of injury suffered by the four representative Union producers. Since exports play an important role in keeping capacity utilization high to cover the high fixed costs of investments into machinery, it was considered that although the export performance was deteriorating it had an overall positive effect. Accordingly, it is considered that even if the decrease in export activities may have contributed to the overall deterioration of the situation of the Union industry, these activities were on the other hand still mitigating the losses suffered on the Union market and thus are not such as to break the causal link established between the subsidised imports from the PRC and the injury suffered by the Union industry.
- (453) One party claimed that the Union industry suffered a significant decline in exports because of the strength of the Euro versus the US dollar and that the injury caused by this factor should not be attributed to imports from the PRC. As concluded above, the deterioration of the export performance of the Union industry, regardless of the causes for such deterioration, is not the main reason for the injury suffered by the producers and thus does not break the causal link established in recital (444).

7.3.4. Imports from other third countries

- (454) The trends in import volumes and prices from other third countries between 2006 and the IP were as follows:

Table 9: Imports from third countries

	2006	2007	2008	2009/IP
Switzerland				
Imports (tonnes)	194.748	191.636	226.736	172.233
<i>Index</i>	100	98	116	88
Market share	3,7%	3,5%	4,2%	3,8%
<i>Index</i>	100	95	115	103
Price (EUR/tonne)	787	782	758	793
<i>Index</i>	100	99	97	105
Indonesia				
Imports (tonnes)	19.834	30.714	27.178	49.877
<i>Index</i>	100	155	137	251
Market share	0,4%	0,6%	0,5%	1,1%
<i>Index</i>	100	149	135	292
Price (EUR/tonne)	855	818	845	681
<i>Index</i>	100	96	99	80
South Korea				
Imports (tonnes)	45.154	65.251	46.498	46.068
<i>Index</i>	100	145	103	102
Market share	0,9%	1,2%	0,9%	1,0%

<i>Index</i>	<i>100</i>	<i>139</i>	<i>102</i>	<i>118</i>
Price (EUR/tonne)	562	669	664	618
<i>Index</i>	<i>100</i>	<i>119</i>	<i>118</i>	<i>110</i>
All other countries				
Imports (tonnes)	58.623	70.984	62.844	100.711
<i>Index</i>	<i>100</i>	<i>121</i>	<i>107</i>	<i>172</i>
Market share	1,1%	1,3%	1,2%	2,2%
<i>Index</i>	<i>100</i>	<i>117</i>	<i>106</i>	<i>199</i>
Price (EUR/tonne)	962	860	914	824
<i>Index</i>	<i>100</i>	<i>89</i>	<i>95</i>	<i>86</i>

Source: Eurostat.

- (455) The main other third countries exporting CFP to the Union market are Switzerland, Indonesia and South Korea. From the trends of import volumes it can be seen that the increase of the imports from the PRC was more pronounced than from any of the other third countries. In case of imports from Switzerland, these were sold always at significantly higher prices than imported products from the PRC. The market share of Swiss products remained relatively stable, except for the year 2008 when they increased temporarily to above 4% before falling back to close to the 2006 level in the IP. CFP imported from Switzerland constituted mainly the production of one company owned by one of the four representative Union producers and the higher unit prices may be linked to different product mixes and sales structures. As far as imports from Indonesia are concerned, these were also entering the Union at higher prices than the Chinese products, with the exception of the IP where prices fell, very likely in large part due to the decrease in pulp prices. The resulting increase of imports, which however remained in volume terms at a low level in the IP, led to a market share which also remained at a low level in that period. Imports from South Korea entered the Union in low quantities throughout the period considered and market share remained stable. Even though Korean import prices were comparable to import prices from the PRC, Korean prices were not showing a continuously decreasing trend as the Chinese imports did over the whole period considered. Imports from all other countries had significantly higher prices than the imports from the PRC and import volumes were low.
- (456) On the basis of the above, it is concluded that the imports from these third countries did not contribute to the material injury suffered by the Union industry.

7.3.5. Structural overcapacity

- (457) One cooperating exporter in the PRC argued that the injury suffered by the Union industry was caused by the Union industry's overcapacity. The reduction in capacity and consolidation of the Union industry were therefore not a consequence of the Chinese imports but should be seen as a measure against the overcapacity. However, the investigation showed that losses were incurred by the Union industry in the period considered, especially in 2008, despite the restructuring of the producers because, as outlined above in recitals (435) to (444), the Union industry was still not able to raise its prices to levels above costs. This situation was mainly caused by the price pressure exerted by the subsidised imports undercutting Union industry prices. This argument had therefore to be rejected.

(458) It was also argued that the restructuring efforts of the Union industry were completed in 2009 by the consolidation of two large producers that resulted in the immediate improvement of the situation of the Union industry. Restructuring efforts took place since 2000 up until the IP. The positive effect of the mentioned consolidation should have been reflected in the improvement of capacity utilisation and at least in stable sales volume but both these indicators deteriorated in the IP. On the other hand, it had been established that the improved profitability of the Union industry in the IP was caused primarily and directly by the exceptional one-off drop in pulp prices. Therefore this argument had to be rejected.

7.4. Conclusion on causation

(459) The above analysis demonstrated that there was a substantial increase in the volume and market share of the low-priced subsidised imports originating in the PRC over the period considered. In addition, it was found that these imports were made at subsidised prices which were below the prices charged by the Union industry on the Union market for similar product types.

(460) This increase in volume and market share of the low-priced subsidised imports from the PRC coincided with an overall decrease of the demand on the Union market during the period between 2006 and the IP and also with the negative development in the market share of the Union producers during the same period. At the same time a negative development in the main indicators of the economic and financial situation of the Union industry was observed as outlined in recital (423).

(461) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors are not such as to break the causal link established between the subsidised imports from the PRC and the injury suffered by the Union industry.

(462) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports, it is concluded that the subsidised imports from the PRC have caused material injury to the Union industry within the meaning of Article 8(5) of the basic Regulation.

8. UNION INTEREST

8.1. Preliminary remark

(463) In accordance with Article 31 of the basic Regulation, it was examined whether, despite the above findings, compelling reasons existed for concluding that it was not in the Union interest to adopt countervailing measures in this particular case. For this purpose, and in accordance with Article 31(1) of the basic Regulation, the likely impact of possible measures on the Union producers, importers, merchants and distributors and users of the product concerned and also the likely consequences of not taking measures were considered on the basis of all evidence submitted.

8.2. Union industry

(464) The Union industry as a whole is composed of 14 known producers estimated to represent around 98% of the Union CFP production according to CEPIFINE. The

producers are located in different Member States of the Union, employing directly over 11 000 people in relation to the product concerned.

- (465) Two of the known producers opposed the initiation of the investigation but provided no further information and did not cooperate with the investigation. On the basis of the information available, however, and in particular on the basis of the data made available by CEPIFINE which showed a deterioration of the situation of the Union industry, it can be reasonably assumed that these two companies were also negatively affected by the subsidised imports. The non-cooperation was therefore not seen as an indication that their situation would be different from the one of the remaining Union producers.
- (466) The Union industry has suffered material injury caused by the subsidised imports from the PRC. It is recalled that most injury indicators showed a negative trend during the period considered. In particular injury indicators related to the financial performance of the four representative Union producers, such as profitability and return on investments, despite a slight improvement in the IP, were seriously affected. In the absence of measures, a further deterioration in the Union industry's economic situation appears very likely.
- (467) It is expected that the imposition of countervailing duties will restore effective and fair trade conditions on the Union market, allowing the Union industry to align the prices of CFP to reflect the costs of the various components. It can be expected that the imposition of measures would enable the Union industry to regain at least part of the market share lost during the period considered, with a further positive impact on its economic situation and profitability.
- (468) It was therefore concluded that the imposition of definitive countervailing measures on imports of CFP originating in the PRC would be in the interest of the Union industry.

8.3. Importers and traders

- (469) Questionnaires were sent to fourteen known unrelated importers and traders [in the Union that were listed in the complaint. During the investigation several other traders (called also merchants in the industry) made themselves known. Finally thirteen companies cooperated in the investigation, even though some of these respondents provided only partial information. Importers were found to be acting also as traders on the market therefore all these parties will hereinafter be referred to as 'traders'.
- (470) The investigation showed that all traders purchased CFP from several sources and mainly from Union producers. Two traders did not purchase or only occasionally purchased the imported CFP from the PRC. The ten companies that provided quantitative information about their purchases of the product concerned represented in total 47 % of the total imports from the PRC. Imports, including imports from the PRC represented only a limited share of their total business and any negative impact of the proposed measures is thus likely to be negligible. All traders stated that CFP produced in the Union and the PRC were largely of a similar quality and were interchangeable. Furthermore the investigation confirmed that there exist a large number of other import sources and traders could revert to these other sources of supply, at least in the longer term.

- (471) Two importing traders were relying mainly on Chinese sources for their purchases of CFP. Both companies stated that they would have difficulties in sourcing products from Union producers because there would be traditional sales channels due to minimum order volumes required by producers and distribution agreements to be respected. This did, however, not directly affect the availability of CFP from Union producers as they had sufficient spare capacity available. This argument had therefore to be rejected.
- (472) Concerning the possibility to pass on possible cost increases to their customers, all cooperating traders referred to the strong price transparency on the Union market and stated that they would only be able to increase their sales prices to the final customers in case the price level in the Union, in general, would increase. On this basis, and given that the intended effect of countervailing duties is, *inter alia*, to increase the price level in the Union to cost-covering levels, it is expected that importers would therefore be able to pass any price increases caused by the countervailing duty at least partly on to their customers. It should also be noted that as mentioned above, it was found that Chinese imports constitute only a very small part of the overall business of traders and that therefore, the effect of the countervailing duty, in general would be negligible. Finally it is also considered that importers achieve a higher profitability on their re-sales of CFP sourced from the producers in the PRC; therefore they would also be able to make less profit by absorbing at least a partial cost increase.
- (473) Therefore, the imposition of definitive measures should overall not have a significant negative impact on the importers and traders.

8.4. Users

- (474) Questionnaires were sent to eight known users in the Union that were listed in the complaint. During the investigation several other users made themselves known. Altogether five companies provided a full or partial questionnaire reply. These companies are located throughout the Union and represent the printing and publishing sectors. Since market conditions and cost structures were found to be different for printers and publishers, the impact of measures was analysed separately for each group.

8.4.1. Printers

- (475) Only one printer provided basic information. According to the information submitted by this printer, the share of the CFP in relation to the total cost of production of a printed material was relatively high. While the investigation has shown that printers are mainly sourcing CFP from Union producers, it was confirmed that CFP produced in the Union and the PRC are of similar quality and that there is a strong price competition between traders.
- (476) It was stated that any price increase would have a significant negative effect on the profitability. It was claimed that the printing industry is already under pressure due to structural overcapacity and any increase in purchase prices of CFP would put further pressure on the printers. In this regard, it is noted that given the small quantities of Chinese CFP used by printers (who still source the majority of the CFP needed from Union producers) the direct impact of any duty was considered negligible. As far as a general price increase in the Union market is concerned, it was considered that since

this price increase would impact on all economic players this would have a neutral effect.

8.4.2. Publishers

- (477) Regarding the publishing sector, four questionnaire replies were received from companies. Only one company had a minor purchase of Chinese-origin CFP in the IP. Two of the companies provided quantitative data concerning their use of CFP.
- (478) Overall, it was found that on average the products where CFP is used represented 16 % of the total turnover of these companies and that the average profit achieved in this business was around 12 %. Furthermore, it was found that the six companies purchased CFP mainly from the Union producers, while only one of them used CFP imported from the PRC. Another one started to buy Chinese products only after the IP. Therefore, and in particular on the basis of the low volumes of Chinese-origin CFP used in this sector, the imposition of countervailing measures on imports from the PRC is unlikely to seriously affect the publishing sector overall. In addition, these companies were found to be profitable and could pass on price increases to the final customer more easily because the use of customer-directed and customer-nominated paper whereby the paper used in the production is purchased by the customer itself is more common. Finally, publishers have stronger purchasing power because of economies of scale.
- (479) Two associations of the printing and publishing industry provided submissions. One opposed the imposition of duties, claiming that any price increases would lead to higher costs and consequently to loss of competitiveness and jobs in downstream industries. The other remained neutral but claimed that the measures could have negative effects on the downstream industries as price increases could lead to the relocation of the printing industry leading to increased imports of downstream printed matter.
- (480) The investigation found that there exist several segments in paper products in terms of expected growth and that the segment of high quality printing paper, in which CFP is primarily used, is still growing. As regards the claim that losses would shift to the downstream market, this claim is vague and was not supported by any substantiating information or evidence.
- (481) After disclosure, the same claim about possible effects on the downstream industry was repeated and supported by the fact that imports of printed matter from China increased rapidly in recent years and apparently took a considerable market share within European consumption for all printed matter.
- (482) As explained above, the cooperation of printers was limited and on the basis of the limited quantitative information received it was found that because of their profitability level and the share of CFP in their costs, printers are indeed sensitive to price increases. However, most printers had no or very limited direct purchases of Chinese paper in the IP and the amount of Chinese paper used by printers is in general low therefore the direct impact of the duty would be negligible. Most printers also stated that because of their need for short delivery times, the share of supplies directly from third countries would remain limited.

- (483) As regards the claims concerning downstream printed matter from China it should be noted that the import statistics of printed matter cover a wide range of products that include final printed matter that is not printed on coated fine paper. Based on the information available it could not be assessed what part of the products imported from China is printed on the product concerned and what is printed on other types of paper. However, from information submitted it is known that printed matter originating in China is mostly comprised of some specific categories of books, children books, calendars, packaging and greeting cards. Products that are more "time sensitive" such as weekly/monthly magazines and other newsprint are less susceptible to be imported from China because of the time needed for transportation. While the printing of some printed products may be more susceptible to relocation, on the other hand there exist product types for which proximity and service are crucial and therefore would not be affected by foreign competition. Furthermore, even though paper is an important cost element for the printing industry, it is also a labour-intensive industry and thus labour costs may be a more significant driver in relocation trends. In summary, it cannot be excluded that imports of printed products that are printed on CFP will increase but it is not possible to estimate with any accuracy what the level of increase might be and how far this would play a role in the competitiveness of printing producers and therefore and therefore what direct impact price increases might have on the downstream Union printing industry.
- (484) From information submitted, it is also known that the printing industry suffers from structural overcapacity that leads to the continuing restructuring of the sector. One of the driving forces towards the restructuring was also the consolidation of the paper manufacturers within the value chain. Any difficulty of the printing industry to increase prices is considered to be rather largely due to this structural overcapacity within the printing industry itself.

8.4.3. Conclusions on users

- (485) Taking the above into consideration, even if some of the users are likely to be negatively impacted by the measures on imports from the PRC, the impact on the users in the two distinctive sectors appears to be limited overall. Furthermore, the investigation did not bring to light any significant impact on users which purchased paper mainly from other sources than the PRC. On the contrary, most users stated that because of their need for short delivery times, the share of supplies from third countries remains limited. Finally, the difficulties of the printing industry to increase prices are considered to be rather due to the structural overcapacity within the printing industry itself.
- (486) It was also claimed that measures would cause a shortage of supply on the market and longer delivery times for users.
- (487) The interested parties claiming possible shortages of supply did not quantify or give an estimate of the possible shortages. These claims in any case do not seem to be supported by the capacity utilization rate of the Union producers that was 83% in the IP leaving around one million tonnes of free capacity. On this basis, it is unlikely that shortages would occur.

(488) Therefore, it was concluded that, on the basis of the information available, the effect of the countervailing measures against imports of CFP originating in the PRC will most likely not have a significant negative impact on the users of the product concerned.

8.5. Conclusion on Union interest

(489) In view of the above, it is concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of measures on imports of CFP originating in the PRC.

9. COUNTERVAILING MEASURES

9.1. Injury elimination level

(490) In view of the conclusions reached with regard to subsidization, injury, causation and Union interest, anti-subsidy measures should be imposed in order to prevent further injury being caused to the Union producers by the subsidised imports.

(491) For the purpose of determining the level of these measures, account was taken of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained by the Union producers, without exceeding the subsidy margin found.

(492) When calculating the amount of duty necessary to remove the effects of the injurious subsidization, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of subsidised imports, on sales of the like product in the Union.

(493) The complainant requested that the target profit should be set at minimum 10%, basing its arguments on the expected profit margin used by independent rating agencies in their classification methodology and the profitability achieved by a producer active in another paper production segment that is not affected by Chinese imports.

(494) The target profit as suggested in the complaint and the subsequent request of the complainant was examined based on the questionnaire replies and verification visits to the representative Union producers. It was considered that the target profit should reflect the high up-front investment needs and risk involved in this capital-intensive industry in the absence of dumped and or subsidised imports. Also the cost of investment into machinery was considered. It was considered that a profit margin of 8 % on turnover could be regarded as an appropriate minimum which the Union producers could have expected to obtain in the absence of injurious subsidisation.

(495) On this basis, a non-injurious price was calculated for the Union producers for the like product. The non-injurious price was obtained by adding the abovementioned profit margin of 8 % to the cost of production.

(496) The export sales of a company within the group of one cooperating exporting producer were excluded based on the reasons explained in recital (382).

(497) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price of the exporting producers in the

PRC, with the non-injurious price of the product types sold by the Union producers on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average CIF import value of the compared types.

9.2. Definitive measures

(498) In the light of the foregoing conclusion reached with regard to subsidisation, injury, causation and Union interests, and in accordance with Article 15(1) of the basic Regulation, it is considered that a definitive countervailing duty should be imposed on imports of the product concerned originating in the PRC at the level of the lower of the subsidy and the injury margins in line with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the subsidy margins found.

(499) The injury elimination margins and the subsidy margins and the proposed rates of the definitive countervailing duty for the PRC, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Exporting producer	Subsidy margin	Injury margin	Countervailing duty rate
Gold East Paper (Jiangsu) Co., Ltd, Zhenjiang City, Jiangsu Province, PRC	12%	20%	12%
Gold Huasheng Paper (Suzhou Industrial Park) Co., Ltd, Suzhou City, Jiangsu Province, PRC	12%	20%	12%
Shandong Chenming Paper Holdings Limited, Shouguang City, Shandong Province, PRC	4%	39.1%	4%
Shouguang Chenming Art Paper Co., Ltd, Shouguang City, Shandong Province, PRC	4%	39.1%	4%
All other companies	12%	39.1%	12%

(500) As concerns the parallel anti-dumping investigation, pursuant to Article 24(1), second subparagraph of the basic Regulation and Article 14(1) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from

countries not members of the European Community²⁶ no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with the one and the same situation arising from dumping and from export subsidisation. As concerns the subsidy schemes, as stated under recitals (235) to (245), only one scheme refers to export subsidisation. The relevant dumping margin of the cooperating exporting producer concerned will be adjusted accordingly in the parallel anti-dumping investigation. With respect to other subsidy schemes, in view of the use of the lesser duty rule in the anti-dumping investigation carried out in parallel and the amount of subsidisation found in the present investigation, it was not considered necessary to further examine whether and to what degree the same subsidies are being offset twice when anti-dumping and countervailing duties are simultaneously imposed on the same imported product.

- (501) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to ‘all other companies’) are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, 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’.
- (502) Any claim requesting the application of an individual company countervailing duty rate (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission²⁷ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (503) In order to ensure proper enforcement of the countervailing duty, the residual duty level 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.

10. DISCLOSURE

- (504) 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 coated fine paper originating on the People's Republic of China. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly.

²⁶ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, OJ L 343, 22.12.2009, p. 51.

²⁷ European Commission, Directorate-General for Trade, Directorate H, Office Nerv- 105, B-1049 Brussels.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on coated fine paper, which is paper or paperboard coated on one or both sides (excluding kraft paper or kraft paperboard), in either sheets or rolls, and with a weight of 70 g/m² or more but not exceeding 400 g/m² and brightness of more than 84 (measured according to ISO 2470-1), currently falling within CN codes ex 4810 13 20, ex 4810 13 80, ex 4810 14 20, ex 4810 14 80, ex 4810 19 10, ex 4810 19 90, ex 4810 22 10, ex 4810 22 90, ex 4810 29 30, ex 4810 29 80, ex 4810 99 10, ex 4810 99 30 and ex 4810 99 90 (TARIC codes 4810 13 20 20, 4810 13 80 20, 4810 14 20 20, 4810 14 80 20, 4810 19 10 20, 4810 19 90 20, 4810 22 10 20, 4810 22 90 20, 4810 29 30 20, 4810 29 80 20, 4810 99 10 20, 4810 99 30 20 and 4810 99 90 20) and originating in the People's Republic of China.

The definitive countervailing duty does not concern rolls suitable for use in web-fed presses. Rolls suitable for use in web-fed presses are defined as those rolls which, if tested according to the ISO test standard ISO 3783:2006 concerning the determination of resistance to picking – accelerated speed method using the IGT tester (electric model), give a result of less than 30 N/m when measuring in the cross-direction of the paper (CD) and a result of less than 50 N/m when measuring in the machine direction (MD). The definitive countervailing duty does also not concern multi-ply paper and multi-ply paperboard.

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:

Company	Countervailing duty rate	TARIC additional code
Gold East Paper (Jiangsu) Co., Ltd, Zhenjiang City, Jiangsu Province, PRC; Gold Huasheng Paper (Suzhou Industrial Park) Co., Ltd, Suzhou City, Jiangsu Province, PRC	12%	B001
Shandong Chenming Paper Holdings Limited, Shouguang City, Shandong Province, PRC ; Shouguang Chenming Art Paper Co., Ltd, Shouguang City, Shandong Province,	4%	B013

PRC		
All other companies	12%	B999

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

Article 2

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,

For the Council