

COMMISSION IMPLEMENTING REGULATION (EU) 2019/688**of 2 May 2019****imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 18 thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) The Council, by Council Implementing Regulation (EU) No 215/2013 ⁽²⁾, imposed a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China ('China', 'the PRC', or 'the country concerned'). The countervailing duties currently in force range from 13,7 % to 44,7 % ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) The Council, by Council Implementing Regulation (EU) No 214/2013 ⁽³⁾, imposed a definitive anti-dumping duty on imports of certain organic coated steel products originating in China. The anti-dumping duties currently in force range from 0 % to 26,1 %.
- (3) The level of the combined duties ranges from 13,7 % to 58,3 %.

1.2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry of the countervailing measures in force ⁽⁴⁾, on 13 December 2017 the Commission received a request for the initiation of an expiry review of the countervailing measures pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council ('the basic Regulation').
- (5) The request was lodged by The European Steel Association ('EUROFER') on behalf of producers representing more than 70 % of the total Union production of certain organic coated steel products ('the applicant').
- (6) The applicant claimed that the expiry of the countervailing measures would likely result in the continuation or recurrence of subsidisation and injury to the Union industry.

1.3. Initiation of an expiry review

- (7) Having determined that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 14 March 2018, by a notice published in the *Official Journal of the European Union* ⁽⁵⁾ ('the Notice of Initiation'), the initiation of an expiry review of the countervailing measures applicable pursuant to Article 18 of the basic Regulation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 16).

⁽³⁾ Council Implementing Regulation (EU) No 214/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 1).

⁽⁴⁾ Notice of the impending expiry of certain anti-subsidy measures (OJ C 188, 14.6.2017, p. 20).

⁽⁵⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain organic coated steel products originating in the People's Republic of China (OJ C 96, 14.3.2018, p. 21).

- (8) Prior to the initiation of the expiry review, and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of China ('GOC') that it had received a properly documented review request and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 9 March 2018, but no mutually agreed solution could be reached.

1.4. Parallel investigation

- (9) By a notice published in the *Official Journal of the European Union* on 14 March 2018 ⁽⁶⁾, the Commission also announced the initiation of an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽⁷⁾ of the definitive anti-dumping measures in force with regard to imports into the Union of certain organic coated steel products originating in the PRC.

1.5. Investigation

1.5.1. Review investigation period and period considered

- (10) The investigation of the likelihood of continuation or recurrence of subsidisation covered the period from 1 January 2017 to 31 December 2017 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

1.5.2. Interested parties

- (11) In the Notice of Initiation, the Commission made a call to all interested parties to contact it in order to participate in the investigation. In addition, the Commission individually informed the applicant, the known producers in the Union and their relevant associations, the known exporting producers in China, the known unrelated importers in the Union, unrelated users in the Union known to be concerned, and the representatives of the exporting country, of the initiation of the expiry review and invited them to participate.
- (12) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request in writing a hearing with the Commission investigation services and/or the Hearing Officer in trade proceedings.

1.5.3. Sampling

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

1.5.3.1. Sampling of exporting producers in the PRC

- (14) To decide whether sampling was necessary with regard to the exporting producers and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the PRC to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (15) Two exporting producers provided the information requested in Annex I to the Notice of Initiation for the purpose of sampling but neither of them produced organic coated steel products as defined in the Notice of Initiation. A third exporting producer made itself known six weeks after the deadline for replies to the sampling form. This exporting producer was given interested party status, but was considered non-cooperating since it never replied to the sampling form or attempted to reply to the exporting producer's questionnaire.
- (16) Consequently, the Commission informed the authorities of the PRC by Note Verbale of 18 July 2018, that it might resort to the use of facts available under Article 28(1) of the basic Regulation when examining the continuation or recurrence of subsidisation. The authorities of the PRC did not react to the Note.

⁽⁶⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain organic coated steel products originating in the People's Republic of China (OJ C 96, 14.3.2018, p. 8).

⁽⁷⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

1.5.3.2. Sampling of Union producers

- (17) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers, in accordance with Article 27 of the basic Regulation. Prior to the initiation, 21 Union producers had provided the information requested for the selection of the sample and expressed their willingness to cooperate with the Commission. On that basis, the Commission provisionally selected a sample of three producers, which were found to be representative of the Union industry in terms of volume of production and sales of the like product in the Union. The sampled Union producers accounted for 28 % of the estimated total production of the Union industry and for 27 % of the total sales volume of the Union industry to unrelated customers in the Union during the review investigation period. The Commission invited interested parties to comment on the provisional sample. No comments were received and the provisional sample was thus confirmed. The sample was considered representative for the Union industry.

1.5.3.3. Sampling of importers

- (18) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked the nine unrelated importers identified in the request to provide the information specified in the Notice of Initiation. None of them came forward.

1.5.4. Questionnaires and verification visits

- (19) The Commission sent questionnaires to the three sampled Union producers, the applicant and the GOC. Replies to the questionnaires were received from the three sampled Union producers and the applicant.
- (20) The Commission verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of subsidisation and injury, and of the Union interest test. Verification visits were carried out at the premises of the following interested parties:

(a) Union producers:

- ArcelorMittal Belgium, Belgium
- Marcegaglia Carbon Steel SpA, Italy
- Tata Steel Maubeuge SA, France

(b) Association of Union producers:

- EUROFER, Belgium

1.5.5. Subsequent procedure

- (21) On 22 February 2019, the Commission disclosed the essential facts and considerations on which basis it intended to impose countervailing duties. All parties were granted a period within which they could make comments on that disclosure.
- (22) The comments were received only from the applicant. They are addressed in Section 3.3 below.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (23) The product concerned by this expiry review is the same as the one in the original investigation, that is certain organic coated steel products, i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin; currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70 (TARIC codes 7210 70 80 11, 7210 70 80 91, 7212 40 80 01, 7212 40 80 21, 7212 40 80 91, 7225 99 00 11, 7225 99 00 91, 7226 99 70 11 and 7226 99 70 91), and originating in China ('the product under review' or 'OCS').

- (24) The product under review is obtained by applying an organic coating to flat-rolled steel products. The organic coating provides protection and aesthetic and functional properties to steel products.
- (25) The product under review is mainly used in the construction sector and for further processing in products used in construction. Other applications include home appliances.

2.2. Like product

- (26) No interested parties commented on the like product. Hence, as established in the original investigation, this expiry review investigation confirmed that product produced and sold on the domestic markets of China, and the product produced and sold in the Union by the Union producers have the same basic physical and technical characteristics and end uses. They are therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OF SUBSIDISATION

- (27) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined first whether the expiry of the existing measures would be likely to lead to a continuation of subsidisation.

3.1. Non-cooperation and the use of facts available in accordance with Article 28(1) of the basic Regulation

- (28) On 4 June 2018 the Commission sent a questionnaire to the GOC including specific questionnaires for the Export Import Bank of China ('EXIM') and China Export & Credit Insurance Corporation ('Sinosure') based on the fact that they, acting under the GOC's control, had provided loans and financial services to the organic coated steel industry according to the information in the request and/or in the original investigation.
- (29) In addition, the GOC was asked to forward a questionnaire for banks and other financial institutions known by the GOC to have provided loans to the industry concerned as well as to the producers and distributors of the hot-rolled and cold-rolled steel providing inputs for the production of the product under review.
- (30) The Commission received no reply to those above questionnaires either from the GOC nor EXIM, Sinosure or upstream companies.
- (31) By Note Verbale of 18 July 2018, the Commission informed the Chinese authorities that following non-cooperation from the GOC and the Chinese exporting producers of the product under review, as explained in recital (16), the Commission intended to make its findings on the basis of the facts available, in accordance with Article 28(1) of the basic Regulation. They were also informed that a finding based on facts available may be less favourable than if the GOC and exporting producers cooperated.
- (32) No comments in this regard were received. The Commission, in accordance with Article 28 of the basic Regulation, considered the use of facts available necessary in order to establish the continuation of subsidy practices of China in the organic coated steel industry.
- (33) On the use of facts available, the Appellate Body has recalled that Article 12.7 of the WTO Agreement on Subsidies and Countervailing Measures permits the use of facts on record solely for the purpose of replacing information that may be missing, in order to arrive at an accurate subsidisation or injury determination. In particular, the Appellate Body has explained that *'there has to be a connection between the "necessary information" that is missing and the particular "facts available" on which a determination under Article 12.7 is based'*. Therefore, *'an investigating authority must use those "facts available" that "reasonably replace the information that an interested party failed to provide", with a view to arriving at an accurate determination'*. The Appellate Body has further explained that *'the facts available' refers to those facts that are in the possession of the investigating authority and on its written record. As determinations made under Article 12.7 are to be made on the basis of 'the facts available', 'they cannot be made on the basis of non-factual assumptions or speculation'*. Furthermore, in reasoning and evaluating which facts

available can reasonably replace the missing information, ‘*all substantiated facts on the record must be taken into account*’ by an investigating authority. The Appellate Body has explained that ascertaining the ‘*reasonable replacements for the missing “necessary information” involves a process of reasoning and evaluation*’ on the part of the investigating authority. Where there are several facts available to an investigating authority that it needs to choose from, ‘*it would seem to follow naturally that the process of reasoning and evaluation would involve a degree of comparison*’ in order to arrive at an accurate determination. The evaluation of the ‘*facts available*’ that is required, and the form it may take, depend on the particular circumstances of a given case, including the nature, quality, and amount of evidence on the record and the particular determinations to be made. The nature and extent of the explanation and analysis required will necessarily vary from determination to determination ⁽⁸⁾.

(34) Accordingly, the Commission used for its analysis all facts available to it, in particular:

- a) the request for an expiry review under Article 18 of the basic Regulation concerning anti-subsidy duties on imports of OCS originating in China, of 13 December 2017 (‘the request’);
- b) findings of the previous anti-subsidy investigations carried out by the Commission against the same product or upstream industries in China, such as OCS ⁽⁹⁾ (‘the original investigation’) and hot-rolled flat products ⁽¹⁰⁾ (‘the HRFP investigation’ or ‘the HRFP regulation’);
- c) findings of the most recent anti-subsidy investigations carried out by the Commission concerning encouraged industries in China, such as pneumatic tyres ⁽¹¹⁾ (‘the tyres investigation’) and electric bicycles ⁽¹²⁾ (‘the e-bike investigation’) where similar subsidisation was examined;
- d) Commission Staff Working Document on significant distortions in the economy of the PRC for the purpose of trade defence investigation (‘the Report on China’) ⁽¹³⁾;
- e) the submission of the Union industry of 21 December 2018 on facts available and the use of new subsidies (‘the submission of 21 December’) ⁽¹⁴⁾.

3.2. General remarks on the steel sector in China

(35) Before analysing the alleged subsidisation in the form of specific subsidies or subsidy programmes (sections 3.4 and following below) the Commission assessed government plans, projects and other documents, which were relevant for more than one of the subsidies or subsidy programmes. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC’s central planning for the following reasons.

3.2.1. The 13th Five-Year plan for the steel sector

(36) The Commission in the current investigation established that the main document of relevance during the review investigation period was the 13th Five-Year plan for the steel sector, the Steel Industry Adjustment and Upgrade Plan, covering the period from 2016 to 2020. Steel in general remained a favoured sector under that 13th Five-Year plan. In the plan, it is emphasised that the steel sector is ‘fundamental to the national economy and a cornerstone of China’. The plan set out the overall objectives for years 2016-2020, which is to ‘build China into a manufacturing power’.

⁽⁸⁾ WT/DS437/AB/R, United States — Countervailing Duty Measures on Certain Products from China, Appellate Body Report of 18 December 2014, paragraphs 4.178-4.179. This Appellate Body Report quoted WT/DS295/AB/R, Mexico — Definitive Anti-Dumping Measures on Beef and Rice, Appellate Body Report of 29 November 2005, paragraph 293; and WT/DS436/AB/R, United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, Appellate Body Report of 8 December 2014, paragraphs 4.416-4.421.

⁽⁹⁾ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People’s Republic of China (OJ L 73, 15.3.2013, p. 16).

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing a countervailing duty on imports of certain hot-rolled flat products or iron, non-alloy or other alloy steel originating in the People’s Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽¹¹⁾ Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing a definitive countervailing duty on imports of certain pneumatic tyres, new or retreated, of rubber, of a kind used for busses or lorries and with a load index exceeding 121 originating in the People’s Republic of China (OJ L 283, 12.11.2018, p. 1).

⁽¹²⁾ Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People’s Republic of China (OJ L 16, 18.1.2019, p. 5).

⁽¹³⁾ http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

⁽¹⁴⁾ Registration number of this document in the open files of the case is t18.011780.

- (37) The 13th Five-Year Plan further emphasises the role of technological innovation in the economic development of the PRC, as well as the continued importance of 'green' development principles. According to its chapter 5, one of the main development lines is to promote the upgrading of the traditional industrial structure, as was already the case in the 12th Five Year Plan. This idea is further elaborated in chapter 22, which explains the strategy to modernise the traditional industry in the PRC by promoting its technological conversion. In this respect, the 13th Five-Year Plan states that companies will be supported to '*comprehensively improve in areas such as product technology, industrial equipment, environmental protection and energy efficiency*'. Environmental protection is further elaborated in chapter 44. According to that chapter, a clean production 'renovation' will be implemented in key industries, and box 16 specifically refers to the steel industry in this respect.
- (38) The 'Steel Industry Adjustment and Upgrading plan for 2016-2020' (the 13th Five-Year Steel Plan) was released in November 2016. It is based on the 13th Five-Year Plan. It states that the steel industry is '*an important, fundamental sector of the Chinese economy, a national cornerstone*'. That plan further elaborates on the principles of technological innovation, structural adjustment and green development mentioned in the 13th Five-Year Plan, links them to more specific priorities within the steel industry (see chapter IV of the Plan — Main tasks), and makes the link with various fiscal and financial support measures (see chapter V of the Plan — Safeguard measures).
- (39) The consolidation of the steel sector and the reliance on dominant/major producers, essentially state-owned enterprises ('SOEs'), is a key feature of the plan. Steel producers in China are also requested to continue production and expand their production abroad. The 13th Five-Year Plan specified the quantity of steel to be used in the whole country and indicated that steel export must be managed pursuant to the principle that domestic demand should take precedence and that Chinese companies should actively participate in international competition, an environment should be created and maintained for steel export.
- (40) Chapter 17, Section 1 of the 13th Five-Year Plan states: '*The national development strategy and plan will come into play with a leading and constraining role.*' Finally, the 13th Five-Year Steel Plan states that '*all local authorities in charge of the steel industry shall ... implement the tasks and policy measures set out in the present plan*'. At the level of individual companies, '*relevant enterprises shall ensure convergence with the present plan's main objectives and priority tasks*'⁽¹⁵⁾. Consequently, rather than making only general statements of encouragement, the 13th Five-Year plan provides a binding framework for the domestic steel industry. That framework has been replicated at local/provincial level by the adoption of additional plans, which provide for further implementing details.

3.2.2. Order No 35

- (41) Order No 35 of the National Development and Reform Commission — Policies for the development of Iron and Steel Industry (2005) ('Order No 35') is another policy document that governs the Chinese steel sector. Adopted by the State Council, it covers various aspects of GOC's control over the industry, including:
- The prohibition of majority foreign ownership of steelmakers in China (Article 1)
 - The setting up of goals in terms of output for the biggest steel producers (Article 3)
 - The provision of rules for the changes in the corporate structure of steel companies (Article 20)
 - The setting up of GOC's approval procedures for investment in steel producers (Article 22)
 - The provision of loans and land-use rights only to steel producers that comply with the national development policies for the sector (Articles 24 and 25)
 - State intervention aimed at supporting large backbone enterprise groups to establish overseas production and supplying bases of raw materials (Article 30).

3.2.3. Decision No 40

- (42) Decision No 40 is a State Council Order that classifies for investment purpose the industrial sectors into different categories, namely 'encouraged, restrictive and eliminated projects'. This Decision states that the 'Guidance Catalogue for the Industrial Structure Adjustment', which is an implementing measure of Decision No 40 is an important basis for guiding investment directions. It also guides the GOC to administer investment projects,

⁽¹⁵⁾ Chapter 17, section 1 of the 13th Five Year Plan.

and to formulate and enforce policies on public finance, taxation, credit, land, import and export ⁽¹⁶⁾. The steel industry is indicated as an encouraged industry in Chapter VIII of this Guidance Catalogue. As to its legal nature, the Commission noted that Decision No 40 is an Order from the State Council, which is the highest administrative body in the PRC. In that regard, the decision is legally binding for other public bodies and the economic operators ⁽¹⁷⁾.

3.2.4. *The Revitalization Plan*

- (43) The Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009) is an action plan for the steel industry. The plan aims to deal with the international financial crisis and addresses the overall policy requirements of the GOC to maintain growth. It also seeks to 'guarantee the stable operation of the industry' as it is 'regarded as an important pillar industry of the national economy'. The document provides the following:
- an increase in the financial support for 'key backbone' steel producers;
 - an acceleration of the structural adjustments and the promotion of industrial upgrading;
 - the support of the key companies that go abroad in their development, technical cooperation and Merger and Acquisitions;
 - the increase in the scale of the export credit for metallurgical equipment.

3.2.5. *National Outline for the Medium and Long-term Science and Technology Development*

- (44) According to its chapters III.5 and VIII, the National Outline for the Medium and Long-term Science and Technology Development (2006-2020) supports the development of key fields and priority themes, and encourages financial and fiscal support to these key fields and priorities.

3.2.6. *Overall conclusions on the GOC's intervention in the steel sector*

- (45) Taking into account the above-listed documents and their provisions, the Commission reiterated its conclusion from the original investigation that the Chinese steel industry continued to be a key/strategic industry during the review investigation period, the development of which is actively pursued and directed by the GOC as a policy strategic objective.

3.3. **Subsidies and subsidy programmes examined in the current investigation**

- (46) In view of the lack of cooperation by the GOC and the Chinese exporting producers specified in recitals (16) and (31), the Commission decided to examine whether there was continuation of subsidisation as follows. First, the Commission examined whether the subsidies countervailed in the original investigation continued to confer benefit to the organic coated steel industry. Subsequently, the Commission analysed whether that industry benefitted from subsidies which were not countervailed in the original investigation ('additional subsidies') as alleged in the request.
- (47) The Commission has decided that, in view of the findings confirming the existence of continued subsidisation with respect to most of the subsidies countervailed in the original investigation as well as some of the additional subsidies, there is no need to investigate all the other subsidies alleged to exist by the applicant. In this respect, it is recalled that, pursuant to Article 18 of the basic Regulation, the Commission should examine whether there is evidence of continued subsidisation, regardless of its amount.
- (48) In response to the final disclosure the applicant made three main comments. First, it argued that the GOC policy not to allow steel producers to fail and to ensure that finance is available no matter what the health of the specific company is constitutes a 'de facto guarantee'. This should have been treated as a separate subsidy programme and countervailed accordingly by the Commission. Second, it asserted that the new subsidies identified by the Commission, coupled with the alleged 'de facto guarantee' not analysed by the Commission, do not capture the full amount of benefit the Chinese exporting producers enjoyed during the review investigation period and in fact that the level of subsidisation has increased in comparison with the original investigation. Third, it commented that, by not notifying the subsidies to the OCS producers, the PRC failed to comply with the subsidy notification requirement contained in the Agreement on Subsidies and Countervailing Measures (ASCM).

⁽¹⁶⁾ Chapter III, Article 12 of Decision No 40.

⁽¹⁷⁾ See recital 182 of the original investigation.

- (49) In response to the first comment, the Commission recognised that the Chinese government policy contained in the documents referred to in Section 1.2 above and the economic benefit of it may indeed go as far as constituting an implicit de-facto guarantee for some State-owned large enterprises in financial difficulties. However, as the Commission found in HRF, ⁽¹⁸⁾ since the Commission already focused its analysis on the preferential lending, and considering that the amount of subsidisation found in this programme and in the other subsidy programmes analysed was already substantial, it decided not to examine this issue further.
- (50) Regarding the second comment, the Commission acknowledged that, as specified in Section 3.5.4 below, it had established the existence of other subsidy programmes that were not countervailed in the original investigation. However, there is no evidence that the level of subsidisation provided by the subsidy programmes that existed during the original investigation has decreased. This may indeed amount to higher level of subsidisation during the review investigation period. However, the Commission did not consider it necessary to calculate such amounts in view of its findings of continued subsidisation; findings which are sufficient in the context of an expiry review investigation. The Commission reminded the applicant that the review at stake does not concern the actual level of duties and does not prejudice the applicant's right to request a review under Article 19 of the basic Regulation. Consequently, that comment was rejected.
- (51) As far as the third comment is concerned, the PRC has indeed failed to comply with its subsidy notification obligation under Article 25 of the ASCM as far as the subsidies at issue are concerned. The Commission regrets the PRC's failure to comply with that obligation, which seriously impedes its possibility to assess the content and the impact of the subsidies implemented by the GOC to the benefit of the OCS producers. However, there are no legal consequences provided for in the basic Regulation that can be invoked in the context of the ongoing review. The Commission is taking the appropriate steps in the competent WTO fora pursuant to relevant rules in the ASCM. Therefore, that comment claim was also rejected.

3.4. Provisions of goods and services for less than adequate remuneration ⁽¹⁹⁾

3.4.1. *The provision of hot-rolled and cold rolled steel for less than adequate remuneration*

3.4.1.1. Findings of the original investigation

- (52) In the original investigation ⁽²⁰⁾, the Commission established that 'SOEs providing OCS producers with hot-rolled and cold-rolled steel ('HRS' and 'CRS') were public bodies under the test set out by the WTO Appellate Body ⁽²¹⁾, as they perform governmental functions and, in doing so, they exercise government authority.
- (53) The Commission also established that private producers of HRS and CRS in China are entrusted and directed by the GOC to provide goods in line with Articles 3(1)(a)(iii) and 3(1)(a)(iv) of the basic Regulation and act in the same way as steel SOEs ⁽²²⁾.
- (54) In the subsequent analysis ⁽²³⁾, the Commission positively concluded on the existence of a benefit within the meaning Article 3(2) of the basic Regulation for the exporting producers of OCS. This benefit resulted from the provision of raw materials for less than adequate remuneration by the HRS and CRS producers, whether SOE's acting as public bodies or private companies entrusted and directed by the GOC within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

⁽¹⁸⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, section 3.5.

⁽¹⁹⁾ Article 3(1)(a)(iii) of the basic Regulation.

⁽²⁰⁾ See recitals 49 to 73.

⁽²¹⁾ WT/DS379/AB/R (US — Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9-4.10, 4.17-4.20 and WT/DS437/AB/R (United States — Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

⁽²²⁾ See recitals 87 to 98.

⁽²³⁾ See recitals 74 to 83 and 99-100.

- (55) In order to calculate this benefit the Commission compared the prices of HRS and CRS paid by the OCS exporting producers concerned to the relevant benchmark. The Appellate Body confirmed that in a case where the market of the country of provision is distorted by the role of the government, the use of external benchmarks is permitted.
- (56) On the basis of the information on file in the original investigation, it was established that the prices of HRS and CRS sold by SOEs in China were distorted. This was a result of the strong predominance of SOEs in the HRS and CRS market in China and because the prices of HRS and CRS of private suppliers were aligned with the prices of SOEs.
- (57) Therefore, the Commission concluded that there were no reliable market prices in China for the HRS and CRS and constructed the benchmark on the basis of the world market prices of HRS and CRS, which are regularly published in various specialised steel journals like Steel Business Briefing, MEPS and CRU.
- (58) A comparison of the prices from HRS and CRS producers to the out-of-country benchmark showed that the prices in China were well below the benchmark prices and consequently resulted in benefit for the Chinese exporting producers of OCS within the meaning of Article 3(2) of the basic Regulation.
- (59) Furthermore, that subsidy programme was found to be specific within the meaning of Article 4(2)(c) of the basic Regulation given that HRS and CRS is only used by a limited number of industries and enterprises in China in their production process.
- (60) The subsidy rate established in the original investigation for the sampled OCS exporting producers varied from 23,02 % to 27,63 %, with the rate for non-cooperating companies being at 32,44 %.

3.4.1.2. Findings of the current investigation

- (61) In its request and corresponding annexes, the applicant provided evidence that Chinese OCS producers continued to benefit from the provision of HRS and CRS for less than adequate remuneration for the production of OCS, which covers both the purchases from SOEs and from non-SOEs.
- (62) The provision of HRS and OCS for less than adequate remuneration concerned OCS producers that are not vertically integrated steel producers. It benefited those that have either only (i) a cold-rolling line and must buy HRS as a substrate for cold-rolling or (ii) coating lines and must purchase CRS as input. Many OCS producers in China are still re-rollers today rather than vertically integrated and they need consequently flat steel inputs to produce OCS ⁽²⁴⁾.
- (63) As a first step, the applicant provided evidence that suppliers of HRS and CRS continue to be public bodies under the test set up by the WTO Appellate Body (see recital (48)). The applicant indicated that the GOC controls and manages SOEs in the various ways.
- (64) First, the institutional framework allowed the GOC to have a tight control over SOEs through various bodies.
- (65) The State-owned Assets Supervision and Administration Commission of the State Council ('SASAC') is the ultimate owner of all SOEs in China. SASAC directors and managers are all appointed by the Communist Party of China. SASAC has a leading role in the management of SOEs, including disciplinary surveillance, and ensures that SOEs follow the objectives set by the GOC. It is also involved in investment decisions, and stocks and share transactions. Therefore, the SASAC can be considered as the State regulator of SOEs.

⁽²⁴⁾ See Annexes 3 and 45 of the request.

- (66) The National Development and Reform Commission ('NDRC') is another regulatory authority that controls SOEs. The NDRC is in charge of elaborating the macroeconomic and industrial development strategies and ensuring that the local players properly implement the GOC policy. The NDRC adopts guidelines and directives and approves large investment projects. All investment by steel producers in China must be approved by the NDRC.
- (67) Second, the GOC exercises a strict control over the steel industry by law. The steel sector is classified under the 'basic and pillar industries' where the State must 'maintain relatively strong controlling power' ⁽²⁵⁾. It is also part of the 'encouraged' industries and, thanks to this status, it benefits from various advantages in relation to, for example, loans, land-use rights, and tax preferential policies. That control is further reinforced by the fact that majority foreign ownership, which could lessen GOC control, is prohibited in the steel sector.
- (68) Third, the GOC controls SOEs through the appointment and surveillance of top management. The Organisation Department, which is a body subject to the Communist Party Secretariat, appoints and monitors individuals at top positions in the Party, the GOC, the military organisation and SOEs. That power is shared with the SASAC, which appoints individuals for, inter alia, vice-CEO positions ⁽²⁶⁾.
- (69) SOEs act as public bodies by pursuing governmental objectives and exercising governmental functions in the steel sector. They follow the GOC policy, implement mergers and acquisitions, focus their production on certain products, try to reach national targets and favour specific downstream industries.
- (70) It should be underlined that all the above evidence on the GOC's actual direction, management and control of the SOEs is based on the analysis of the same main documents, laws and regulations as in the original investigation that are still in force during the review investigation period ⁽²⁷⁾. The only major amendment since the original investigation has been the replacement of the 12th Five-year plan for the steel sector with the 13th Five-Year plan. However, such a replacement did not modify the GOC's predominant role in the steel sector.
- (71) As a second step, the applicant provided evidence of the significant presence and continued domination of SOEs in the steel sector in general and in OCS and HRS sectors in particular. In points 65 to 68, the request listed the major State-owned companies in the sectors concerned and summarised recent findings of the investigations conducted by the Australian ⁽²⁸⁾ and US ⁽²⁹⁾ authorities.
- (72) As a third step, the applicant provided evidence that private companies in the CRS and HRS sector continued to be entrusted and directed by the GOC to provide goods in line with Articles 3(1)(a)(iii) and 3(1)(a)(iv) of the basic Regulation and that their pricing is similar to that of SOEs. Hence, the Commission findings in the original investigation remain valid during the review investigation period.
- (73) To support its request, the applicant indicated that non-SOE producers were still induced to follow national and local five-year plans and they are subject to strong interference from the GOC on the market and also on their corporate structures. To prove continued strong interactions between the public authorities, the Communist Party and the non-SOE producers, the applicant invoked findings of the recent US anti-subsidy investigation ⁽³⁰⁾ and two studies of the European Chamber of Commerce in China ⁽³¹⁾.

⁽²⁵⁾ *China's status as a non-market economy*, US Department of Commerce A-570-056, 26 October 2017, p. 57.

⁽²⁶⁾ *China's status as a non market economy*, US Department of Commerce A-570-056, 26 October 2017, p. 82-85.

⁽²⁷⁾ Articles 7 and 15 of the Constitution of the People's Republic of China, Order No 35 of the NDRC — Policies for the development of Iron and Steel Industry (2005), Decision No 40 of the State Council (2011).

⁽²⁸⁾ Inquiry concerning the continuation of anti-dumping and countervailing measures applying to hollow structural sections exported from the People's Republic of China, Republic of Korea, Malaysia and Taiwan, Anti-Dumping Commission, Australian Government, Final Report No 379, May 2017, pp. 89-90.

⁽²⁹⁾ Countervailing Duty Investigation on Food Domestic Dry Containers from the People's Republic of China: Decision Memorandum for a Preliminary Determination, C-570-015, 22 September 2014, p. 14.

⁽³⁰⁾ Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China, C-570-027, Christian Marsch, 24 May 2016, p. 16.

⁽³¹⁾ China Manufacturing 2025 and the European Business in China Position Paper 2016/2017.

- (74) The above evidence shows continued behaviour of the SOEs in the CRS and HRS sectors as public bodies and the entrustment and direction of the non-SOE producers. In the absence of cooperation from the GOC, no arguments were presented that would challenge the evidence presented by the applicant in this regard. Therefore, the Commission concluded that the OCS producers continue to benefit from the supply of raw materials from the CRS and HRS producers at less than adequate remuneration as established in the original investigation.
- (75) Furthermore, the Report on China with regard to the steel sector in general ⁽³²⁾ and the findings of the HRFP investigation with regard to hot-rolled steel sector in particular ⁽³³⁾ confirmed the critical issues in the establishment of this subsidisation programme and its continuation, such as: the behaviour of SOEs as public bodies, their dominance in the sector concerned, the entrustment and direction of the non-SOE producers, and price distortions.

3.4.1.3. Benefit

- (76) In points 76 to 78 and Annex 20 of the request, the applicant provided a calculation of the benefit under this subsidy measure in the review investigation period, using the same methodology as in the original investigation and an international benchmark composed of roughly the same countries as in the original investigation. For both CRS and HRS, the price differential between the average Chinese domestic prices and the benchmark price exceeded 25 %.
- (77) In the absence of cooperation from the Chinese exporting producers, the Commission had no company-specific information on which it could calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts. That being said, the information contained in the requests indicates that the subsidy amounts continue being similar to the levels found in the original investigation.

3.4.1.4. Specificity

- (78) The subsidy measure in question is still specific within the meaning of Article 4(2)(c) of the basic Regulation taking into account limited number of industries China using CRS and HRS in their production.

3.4.1.5. Conclusion

- (79) Accordingly, the Commission concluded that there is sufficient evidence showing that the provision of hot-HRS and CRS for less than adequate remuneration as a countervailable subsidy continued during the review investigation period.

3.4.2. *The provision of land-use rights for less than adequate remuneration*

3.4.2.1. Findings of the original investigation

- (80) In the original investigation ⁽³⁴⁾, the Commission established that the provision of land-use rights by the GOC should be considered a subsidy measure within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation. As there is no market for land functioning in China, the GOC provides land-use rights for less than adequate remuneration, thereby conferring a benefit upon the recipient companies. The use of an external benchmark demonstrated that the amount paid for land-use rights by the producers of OCS is well below the normal market rate.
- (81) The Commission also established that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation, because the access to industrial land is by law limited only to companies respecting the industrial policies set by the State. Furthermore, only certain transactions were subject to a bidding process, prices were often being set by the authorities, and government practices in this area are unclear and non-transparent.

⁽³²⁾ See chapter 14 of the Report.

⁽³³⁾ See recitals 48 to 60 of Commission Implementing Regulation (EU) 2017/969.

⁽³⁴⁾ See recital 107 to 118.

- (82) Using the benchmark of prices of land in Taiwan, the subsidy rate with regard to this measure was established in the original investigation for the sampled OCS exporting producers in the range of 0,34 % to 1,12 % with the rate for non-cooperating companies at the level of 1,36 %.

3.4.2.2. Continuation of the subsidy programme

- (83) In the request and corresponding annexes ⁽³⁵⁾, the applicant provided evidence that Chinese OCS producers continued to benefit from land-use rights for less than adequate remuneration.
- (84) The applicant indicated that the law governing this matter has not changed since the original investigation. Private ownership of land is prohibited in China. The Land Administration Law, and Article 2 in particular, still provides that all land in China is ultimately owned by the GOC as it belongs collectively to China. The Property Law (Articles 45-48) specifies that land in China is either 'collectively owned' or 'state owned'. No land can be sold but land-use rights can be assigned through public bidding, quotation or auction.
- (85) Neither the GOC nor the exporting producers provided evidence suggesting the OCS industry stopped benefiting from the provision of land-use rights for less than adequate remuneration.
- (86) On the basis of available information, including the conclusions of the Report on China ⁽³⁶⁾ in this regard and findings of the most recent tyres and e-bikes investigations ⁽³⁷⁾, the Commission concluded that the rates paid for land use continued to be subsidised because the system imposed by the GOC does not adhere to market principles.

3.4.2.3. Benefit

- (87) Given the lack of the market for land in China, an external benchmark has to be used to determine an appropriate market price and calculate the amount of subsidy granted during the review investigation period in line with Article 6(d)(ii) of the basic Regulation. The above-mentioned Taiwanese prices of land, normally used as benchmark in such calculations, were updated and adjusted upwards following the findings of the most recent countervailing investigations.
- (88) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts. That being said, since the benchmark prices in Taiwan were higher than the ones used in the original investigation, it is likely that at the very least subsidisation continued at the same levels.

3.4.2.4. Specificity

- (89) The subsidy is specific within the meaning of Articles 4(2)(a) and 4(2)(c) of the basic Regulation. Land-use rights are only granted to a limited group of companies. Furthermore, the steel sector, which is part of the encouraged category within the framework of Decision No 40 of the State Council, falls within the sectors that benefit from land-use rights. In addition, the provision of land-use rights in China continues being non-transparent.

3.4.2.5. Conclusion

- (90) Accordingly, the Commission concluded that there is sufficient evidence showing that the provision of land-use rights for less than adequate remuneration as a countervailable subsidy continued during the — review investigation period.

⁽³⁵⁾ See points (101) to (104) and Annexes 4 and 8 of the request.

⁽³⁶⁾ See chapter 9 of the Report.

⁽³⁷⁾ See recitals (474) to (493) and (503) to (512) respectively

3.4.3. *The provision of electricity for less than adequate remuneration*

3.4.3.1. Findings of the original investigation

- (91) In the original investigation ⁽³⁸⁾, the Commission established that the NDRC set the prices of electricity applicable in the various provinces. It was found that the local price bureaus merely act as an executive arm of the decision taken at central level by the NDRC. This was also confirmed by the fact that the NDRC issued notices in which it sets the actual prices set for each province. These notices are then formally transposed into local notices adopted by the local price bureaus and implemented at local level.
- (92) Additionally, the original investigation established that differential electricity rates applicable for certain sectors and/or at provincial and local level are set in accordance with certain factors, including the pursuit of the industrial policy goals set by the central and local governments in their 5-year plans as well as in the sectoral plans.
- (93) Furthermore, the Commission established that one of the cooperating sampled exporting producers benefited from an electricity rate lower than the rate generally applicable for large industrial users. It was found that in the specific area where this exporter was located a sub-category of certain industrial users, including those producing the product under review, were entitled to this lower rate. The company thus received a financial contribution in the sense of Article 3(1)(a)(iii) of the basic Regulation, in that the government provided electricity through the local public electricity supply company. This constituted a government contribution in the form of provision of goods other than general infrastructure within the meaning of the basic Regulation.
- (94) The subsidy was found to be specific within the meaning of Article 4(2)(a) and 4(3) of the basic Regulation. The lower electricity rate was set out in the relevant NDRC Notice and incorporated in the Notice issued by the local Price Bureau. Thus, it was mandated by a central authority and administered at local level. This lower rate was limited to certain enterprises in certain specified sectors. The subsidy was also limited to a certain region in that it only applies in a limited designated geographical area where the exporting producer was located.

3.4.3.2. Continuation of the subsidy programme

- (95) In the request, the applicant indicated that the law governing this matter has not changed since the original investigation. Furthermore, the applicant provided evidence that producers of OCS have benefited from this scheme in the review investigation period ⁽³⁹⁾.
- (96) Neither the GOC nor the Chinese exporting producers provided evidence suggesting the OCS industry stopped benefiting from the provision of electricity for less than adequate remuneration.
- (97) On the basis of available information, including the conclusions of the Report on China ⁽⁴⁰⁾ and findings of the recent tyres investigation ⁽⁴¹⁾, the Commission concluded that the electricity rates paid are preferential depending on the individual enterprises, sector of industry, or their geographical location.

3.4.3.3. Benefit

- (98) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review investigation, the Commission does not consider it necessary to calculate such amounts. That being said, the level of subsidisation does not appear to have decreased when compared to the original investigation.

3.4.3.4. Specificity

- (99) As explained in recital (90), the scheme was specific within the meaning of Article 4(2)(a) and 4(3) of the basic Regulation.

⁽³⁸⁾ See recital 144.

⁽³⁹⁾ See Annex 32, p. 6 of the request.

⁽⁴⁰⁾ See chapter 10 of the Report.

⁽⁴¹⁾ See recitals (460) to (470).

3.4.3.5. Conclusion

- (100) Accordingly, the Commission concluded that there is sufficient evidence showing that the provision of electricity for less than adequate remuneration as a countervailable subsidy continued during the review investigation period.

3.5. Direct transfer of funds ⁽⁴²⁾

3.5.1. Preferential lending and interest rates

3.5.1.1. Findings of the original investigation

- (101) In the original investigation ⁽⁴³⁾, the Commission established that State-owned banks ('SOBs') were public bodies as they performed governmental functions and, in doing so, they exercised government authority. Furthermore, it was concluded that in the original investigation period the five largest State-owned commercial banks represented more than half of the Chinese banking sector.
- (102) With respect to the banks that provided loans to the cooperating exporting OCS producers, the great majority was State-owned. The available information showed that at least 14 out of the 17 reported banks were State-owned banks, including the major commercial banks in China, like the Bank of China, the China Construction Bank and the Industrial and Commercial Bank of China. Furthermore, it was also found that these State-owned commercial banks held a predominant place in the market and in their capacity as public bodies were engaged in offering lending at below-market interest rates. Accordingly, it was concluded that the GOC had a policy to provide preferential lending to the OCS sector.
- (103) The Commission also established, on the basis of, inter alia, Articles 34 and 38 of the Commercial Banking Law and Articles 24 and 25 of Order No 35 — Policies for the development of Iron and Steel Industry, that privately owned commercial banks in China were entrusted and directed by the GOC to provide preferential loans to the OCS producers in line with Article 3(1)(a)(iv) of the basic Regulation.
- (104) Therefore, the Commission concluded that: there was a financial contribution to the OCS 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; and privately owned banks were also entrusted or directed by the government to provide financial contributions to the same producers within the meaning of Article 3(1)(a)(iv) of the basic Regulation.
- (105) A benefit within the meaning of Articles 3(2) and 6(b) of the basic Regulation was found to exist to the extent that the government loans were granted on terms more favourable than the recipient could actually obtain on the market. Since it was established that non-government loans in China do not provide an appropriate market benchmark (privately owned banks being entrusted and directed by the GOC), such a benchmark was constructed on the basis of standard lending rate of the People's Bank of China. This rate was adjusted to reflect normal market risk by adding the appropriate premium expected on bonds issued by firms with rating of 'non-investment grade' bonds (at BB rate).
- (106) In the original investigation ⁽⁴⁴⁾, this subsidy programme was found to be specific within the meaning of Article 4(2)(a) of the basic Regulation, as the steel industry belonged to the encouraged category according to the Decision No 40 and the provisions of loans were limited only to steel enterprises which fully complied with the development policies for the iron and steel industry (Order No 35).
- (107) Furthermore, the programme was found to be specific under the Article 4(2)(b) of the basic Regulation, as certain government plans and documents were encouraging and instructing to provide financial support to steel industry also in specific geographical regions of China.
- (108) The subsidy rate established in the original investigation for the sampled OCS exporting producers varied from 0,25 % to 0,89 % with the rate for non-cooperating companies being at a level of 0,97 %.

⁽⁴²⁾ Article 3(1)(a)(i) of the basic Regulation.

⁽⁴³⁾ See recitals 165 to 180.

⁽⁴⁴⁾ See recitals 182 to 185.

3.5.1.2. Continuation of the subsidy programme

- (109) In the request and corresponding annexes ⁽⁴⁵⁾, the applicant provided evidence that Chinese OCS producers continued to benefit from preferential lending and below-market interest rates from domestic banks in China.
- (110) The applicant provided evidence that SOBs continue to be public bodies under the test set up by the AB report (see recital (52)) as:
- (i) The banking sector continued to be controlled by the GOC, for which the applicant relied on recent statements from the People's Bank of China ⁽⁴⁶⁾ and recent new rules and guidelines from the China Banking Regulatory Commission, which further increased such control ⁽⁴⁷⁾. The request also indicated that the October 2017 review of the Market Economy Status of China by the US Department of Commerce concluded on the existence of distortions affecting the Chinese banking system ⁽⁴⁸⁾.
 - (ii) The banking sector followed GOC macro objectives, for which the applicant provided evidence that in accordance with the Chinese law on the Commercial Banks ⁽⁴⁹⁾, it is a legal requirement for the banking industry to comply with national strategic objectives laid down in the various binding guidelines and recommendations. The request indicated that such findings were made in the original investigation and remained valid, as confirmed by the 13th Five-Year plan for the steel sector, recent statements from the People's Bank of China (China Monetary Policy Reports), and recent Union anti-subsidy investigations.
- (111) The applicant provided evidence of the significant presence and continued market dominance of State Owned Banks ('SOBs') in the Chinese banking sector. In point (93), the request listed the major SOBs and Policy Banks, which constitute an instrument of the state in the intervention of the economy.
- (112) Finally, taking into account recital (110) point (ii), the applicant indicated that private banks continued to be entrusted and directed by the GOC to provide subsidised loans in line with Article 3.1(a)(iv) of the basic Regulation. Hence, the Commission findings in the original investigation are still valid in this regard. Moreover, in the HRFP investigation the Commission established that the notice 'Several Opinions on Resolving Overcapacity' which is applicable to the steel sector is addressed to all policy banks, large banks, joint-stock banks, postal savings banks, foreign-invested banks, financial asset management companies, and other financial institutions under the management of the China Banking Regulatory Commission (CBRC) ⁽⁵⁰⁾.
- (113) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the current situation of the Chinese banking system.
- (114) Furthermore, the critical issues in the establishment of this subsidisation programme and its continuation, namely acting of SOBs as a public bodies, their dominance in the banking sector, entrustment and direction of the private banks, were confirmed by the Report on China ⁽⁵¹⁾ and findings of the most recent tyres and e-bikes investigations ⁽⁵²⁾.

3.5.1.3. Benefit

- (115) In Annex 32 to the request and in the submission of 21 December, the applicant listed the Chinese OCS producers benefitting or having benefitted from that programme on the basis of their annual reports.
- (116) In the absence of cooperation from the Chinese exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts. Nothing on the record indicates, however, that the level of subsidisation has decreased when compared to the original investigation.

⁽⁴⁵⁾ See recitals 80-100 and Annexes 8, 12, 21 to 31 and 60 of the request.

⁽⁴⁶⁾ China Monetary Policy Report of Q1 2015, Q2 2016 and Q2 2017.

⁽⁴⁷⁾ Quoted respectively in CHEN Y., BRC's New Supervisory Storm is here-implications for foreign banks in China, China Law Insight, 13 April 2017 and China steps up supervision of policy lenders, Caixin, 30 August 2017.

⁽⁴⁸⁾ See pp. 179-180 of the China's status as a non-market economy report issued by the United States Department of Commerce.

⁽⁴⁹⁾ Article 34 of the Law on Commercial Banks (see Annex 28 of the request)

⁽⁵⁰⁾ Recital (143) of the HRFP Regulation.

⁽⁵¹⁾ See chapter 6.3 of the Report.

⁽⁵²⁾ See recitals (167) to (230) of the tyres Regulation and (347) to (361) of the e-bikes Regulation.

3.5.1.4. Specificity

- (117) The subsidy programme in question was still specific within the meaning of Articles 4(2)(a) and 4(2)(b) of the basic Regulation, given that the legal situation described in recital (106) had not changed and in the light of the new 13th Five-Year plan for the steel sector, confirming the steel industry as an encouraged industry.

3.5.1.5. Conclusion

- (118) Accordingly, the Commission concluded that there is sufficient evidence showing that the preferential lending as a countervailable subsidy continued during the review investigation period.

3.5.2. Debt for equity swaps

3.5.2.1. Findings of the original investigation

- (119) In the original investigation ⁽⁵³⁾, the Commission concluded that several steel producers, including producers of OCS, were involved in debt for equity swaps for a combined total of 62,5 billion RMB of debts. The request in the original investigation alleged that outstanding debt due by State-owned steelmakers to SOBs was cancelled in exchange for equity through the involvement of four Chinese Asset Management Companies ('AMCs') at other than market conditions. The request further asserted that AMCs were specifically created to dispose of massive non-performing loans in key industries, including the steel sector, and to restructure the debts of SOEs through, inter alia, debt to equity swaps.
- (120) Given that the GOC failed to provide any information on this programme, the original investigation based its findings on this programme on the information contained in the request.
- (121) Debt for equity swaps were found to constitute a financial contribution in the form of equity infusion and/or loan within the meaning of Article 3(1)(a)(i) of the basic Regulation or in the form of revenue forgone resulting from debt cancelled or not repaid within the meaning of Article 3(1)(a)(ii). The government provided this financial contribution through public bodies involved in these transactions, i.e. the four AMCs and various SOBs. In the absence of any cooperation from the GOC during the original investigation, the Commission concluded that the evidence on the record sufficiently demonstrated that AMCs were public bodies, as they were specifically created by the GOC to dispose of massive non-performing loans in key industries, including the steel sector, and to restructure the debts of SOEs. Consequently, it was considered that their behaviour corresponded to the exercise of government authority.
- (122) Furthermore, evidence was provided that the large amount of debt cancellations was not subject to normal commercial considerations, as the GOC did not carry out an assessment whether a normal private investor would have carried out these debts to equity swaps in the expectation that a reasonable rate of return would be generated over time. Instead, the request contended that the GOC exchanged massive amounts of debt in exchange for equity with the objective to reduce the liabilities-to-assets ratio of steel producers to increase their competitiveness aside from commercial considerations that a private investor would make. The Commission, after careful analysis of the information provided in the request and in the absence of any other information on the file, concluded that the measures were therefore conferring a benefit within the meaning of Article 6(a) of the basic Regulation.
- (123) This subsidy was found specific in the sense of Article 4(2) of the basic Regulation, as the award of this financing was restricted only to selected entities, was discretionary and no objective criteria existed.

3.5.2.2. Continuation of the subsidy programme

- (124) In the expiry review request under points 115-125 and Annexes 25, 33 and 58, the applicant provided evidence that this programme was still in force, but its use evolved as it is now mainly used to reduce corporate debt of heavily indebted companies.

⁽⁵³⁾ See recitals 198 to 200 thereof.

- (125) The applicant provided two documents issued by the GOC in 2016 governing this matter, namely ‘the Opinions on Actively and Steadily Reducing Corporate Leverage’ and ‘the Guiding Opinions on the Market-based Conversion of Bank’⁽⁵⁴⁾.
- (126) According to these documents, heavily indebted companies must find a domestic commercial bank that agrees to be involved in the programme. Banks with foreign capital are not qualified to partake in the programme. The participating bank sets up a separate swap fund, made up of the company debt. That debt is then converted into equity and other investors are invited to participate and acquire the equity. SOBs, including China Construction Bank, are the most active in the programme.
- (127) Such transactions are not based on market conditions. These large debts are acquired without discount, something that would be irrational for a market-based investor to do. According to China Iron and Steel Association (‘CISA’) the vast majority of recent debt for equity swaps took the form of Minggu Shizhai, namely, stock in name, debt in reality⁽⁵⁵⁾. This means that swap funds may actually have acquired existing loans owed to banks and replaced them with new loans with longer maturities.
- (128) Banks seemed to not act rationally by taking into account the financial situation of a company and carrying out a risk assessment like a private investor would do under normal market conditions. China Construction Bank admitted that domestic banks own commercial interests are secondary to the national economic strategy when performing debt to equity swaps⁽⁵⁶⁾.
- (129) The request provided evidence that at least two OCS producers signed debt to equity agreements with China Construction Bank at the end of 2016 for the amounts exceeding RMB 20 billion each and at least four other OCS producers benefitted from this scheme, although in their cases the exact values of the agreements were not known. According to the ThinkDesk report at least three of the companies benefitting from this debt to equity swap were in dire financial situation at the time the swap took place.
- (130) In the absence of cooperation, the Commission concluded on the basis of the available evidence that the debt to equity swaps to the OCS producers were not based on market conditions.
- (131) Consequently, the Commission found that the debt for equity swaps are a financial contribution in the form of equity infusion and/or loan pursuant to Article 3(1)(a)(i) of the basic Regulation or in the form of government revenue forgone leading to debt cancelled or not repaid within the meaning of Article 3(1)(a)(ii). The programme conferred a benefit to the recipient companies.

3.5.2.3. Benefit

- (132) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review investigation, the Commission did not consider it necessary to calculate such amounts.

3.5.2.4. Specificity

- (133) The subsidy was specific in accordance with Articles 4(2)(b) of the basic Regulation, as there were no objective criteria for the provision of the subsidies and it has been unclear under which conditions OCS producers may or may not be involved into this programme. The swaps were also specific in line with Article 4(2)(c) of the basic Regulation, given major discretion of the public authorities to grant the subsidy and only certain sectors have benefitted from the subsidy such as those suffering overcapacity.

3.5.2.5. Conclusion

- (134) Accordingly, the Commission concluded that there is sufficient evidence showing that the debt for equity swaps as a countervailable subsidy continued during the review investigation period in the form of financial assistance to reduce corporate debt of heavily indebted companies.

⁽⁵⁴⁾ See Annex 58 of the request.

⁽⁵⁵⁾ See recital 118 and Annex 25 of the Request.

⁽⁵⁶⁾ Deleveraging and Debt Equity Swaps in the Chinese Steel Industry. THINK!DESK China Research & Consulting (Annex 25 of the request).

3.5.3. Grants and ad-hoc subsidies

3.5.3.1. Findings of the original investigation

- (135) In the original investigation ⁽⁵⁷⁾, the Commission concluded that several steel producers, including producers of OCS, received grants under four schemes: China World Top Brand programme, Famous Brands programme, the State Key Technology Project fund, and programmes to rebate anti-dumping legal fees. Furthermore, several grants were found to be awarded to OCS producers under the regional programmes (among others in Liaoning, Jiangsu, and Hebei provinces).
- (136) Given that the GOC failed to provide any information on this programme, the original investigation based its findings on these programmes on the information contained in the request, findings of the US authorities in other anti-subsidy investigations ⁽⁵⁸⁾, and the Commission's own findings in the coated fine paper investigation. ⁽⁵⁹⁾
- (137) The original investigation also positively concluded on the existence of a number of ad hoc subsidies granted to certain OCS producers that were listed in the request, based on the analysis of the audited accounts of the companies in question. These subsidies were either grants or other tax exemptions or reductions in order to finance particular projects or assets. According to the request, they were granted in the context of the general strategic policy to upgrade the steel industry.
- (138) These grants and other ad hoc subsidies were found to constitute a subsidy in the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct transfer of funds with regard to the grants and similar transfers of resources. Furthermore, they constituted a subsidy in the meaning of Article 3(1)(a)(ii) of the basic Regulation in the form of revenue forgone for the various exemptions or reductions of taxes and/or fees at central, provincial, or municipal level otherwise due.
- (139) They were also found to be specific either under Article 4(2)(a) of the basic Regulation, due to limits in access for only specific enterprises, or under Article 4(2)(b), given the apparent absence of objective criteria and conditions for the application of these programmes by the granting authority.
- (140) Some of these subsidies were found to be specific pursuant to Article 4(3) of the basic Regulation, since their access was limited to certain enterprises located in designated geographical regions in a certain province, or pursuant to Article 4(4)(a), as the benefit was found to be contingent upon export performance (for example in the case of 'famous brand' products).

3.5.3.2. Continuation of the subsidy programmes

- (141) In the expiry review request under points 191-198 and Annex 32, the applicant provided evidence that many Chinese steel producers, including at least nine major OCS producers, continue to benefit from grant programmes although the main schemes used are different than those found in the original investigation.
- (142) The evidence provided in the request focus mainly on energy saving and conservation schemes and technological upgrading or transformation schemes and it is based on the findings of the HRFIP investigation ⁽⁶⁰⁾.
- (143) Under points 207-217 and Annexes 32 and 35 of the expiry review request, the applicant also provided evidence of the existence of a number of ad hoc subsidies granted to certain OCS producers in the review investigation period (or before the review investigation period, but due to the nature of the grant the benefit under the subsidy could be allocated to the review investigation period). The evidence in this regard is based on the Annual Reports of the respective OCS producers.

⁽⁵⁷⁾ See recitals 316 to 344.

⁽⁵⁸⁾ See recitals (322), (329), (337) of the original Regulation.

⁽⁵⁹⁾ Council Implementing Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China, (OJ L 128, 14.5.2011, p. 18).

⁽⁶⁰⁾ See recitals (365) to (371) and (372) to (379) of the Regulation.

- (144) In the submission of 21 December 2018, the applicant provided a more detailed list of ad hoc subsidies per the OCS producer, including references to the specific lines of the audited annual reports of the companies in question.
- (145) The subsidies in question were essentially grants pertinent to assets or pertinent to incomes.
- (146) Subsidies pertinent to assets are credited to a deferred income account. They are released to the current income statement/the current profit and losses (P&L) as non-operating income over the expected useful life of the relevant asset by equal annual instalments, or deducted from the carrying amount of the asset and released to the income statement by way of reduced depreciation charges.
- (147) Subsidies pertinent to income and use for compensating the related future expenses or losses are recognised as deferred income and include in the current P&L, while those used for compensating the related expenses or losses incurred are directly included in the current P&L of the relevant accounting period.
- (148) Subsidies given to compensate past expenses or losses are recognised in the income statement in the period during which the subsidy is received. The positive balance between the compensation payments and the compensation amount transferred to deferred income should be considered as capital reserve.
- (149) Most of the grants were provided in order to finance particular projects or assets, reward energy conservation or environmental protection, and modernise steel mills.
- (150) Under points 166-175 and Annexes 25, 34, 35 and 44 of the expiry review request the applicant provided evidence that, in order to address overcapacity in the steel sector, the GOC and other local authorities have made subsidies available to compensate the companies for the production capacity decrease or incentivise that decrease. The request relied on several recent documents issued by the Chinese authorities concerning this matter and on international studies ⁽⁶¹⁾. These subsidies were not countervailed in the original investigation.
- (151) The applicant indicated several specific documents issued in 2016 which form the basis for State intervention with the aim to reduce capacity of the steel sector:
- In February 2016, the GOC published the ‘Opinions on Resolving Overcapacity in the Steel Industry, Escape from Distress and Realize Development’. This document contained a plan, seeking to increase the financial support for steel companies that decrease production capacity.
 - In April 2016, the People’s Bank of China and regulatory commissions in charge of the monitoring of banking, securities and insurance sectors jointly released ‘Opinions on supporting the steel and coal industries to resolve overcapacity and achieve turnaround in development’. This document was directed to all financial institutions and gave instructions as to how to implement the ‘Opinions on Resolving Overcapacity in the Steel Industry, Escape from Distress and Realize Development’. This document indicated that banks are required to give ‘credit support to high-performance key companies’. They are prohibited from charging ‘unreasonable conditions when issuing loans’. Banks must further facilitate the transfer of excess capacity overseas. They must ‘give financing support to steel and coal enterprises in their transferring capacity to overseas and exploiting international market’. ⁽⁶²⁾
 - In May 2016, the GOC issued the ‘Measures for the Management of Special Bonuses and Subsidies for the Structural Adjustment of Industrial Enterprises’ which included details on the allocation of RMB 100 billion of bonuses and subsidies.

⁽⁶¹⁾ See Research Report on Overcapacity Reduction in China’s steel industry, Greenpeace East Asia Report, March 2017, pp. 39, 58, 59-60; the GOC’s Opinions on Resolving Overcapacity in the Steel Industry, Escape from Distress and Realize Development (February 2016) and the PBOC’s Opinions on supporting the steel and coal industries to resolve overcapacity and achieve turnaround in development (April 2016), as quoted in *Deleveraging and Debt Equity Swaps in the Chinese Steel Industry*, THINK!Desk, 31 October 2017, pp. 10-11, the GOC’s Measures for the Management of Special Bonuses and Subsidies for the Structural Adjustment of Industrial Enterprise (May 2016) as quoted in the afore mentioned Greenpeace study.

⁽⁶²⁾ See Request Annex 25, p. 10-11.

- (152) The applicant relied on ‘the Report on Overcapacity Reduction in China’s steel industry’ ⁽⁶³⁾, to show that the GOC promised measures to address the issue of massive overcapacity in steel production in China. In order to compensate for the production capacity decrease/or incentivise that decrease, the GOC and other local authorities have made subsidies available to compensate the companies concerned. These subsidies took various forms (grants and taxation reductions) but most of them were given in the form of grants. An international study in question indicated that the subsidies granted to the steel industry for that purpose in 2016 amounted to RMB 38,4 billion (around EUR 5,2 billion).
- (153) The applicant also provided evidence, based on analysis of annual accounts of specific companies, that at least six OCS producers received financial support to compensate or incentivise a decrease in overcapacity between 2014 and 2016, whose benefits may still linger during the review investigation period and beyond.
- (154) The evidence presented by the applicant corresponds to the conclusion of the Report on China ⁽⁶⁴⁾, which refers to the 13th five-year plan for steel that clearly indicates that specific subsidy funds and other incentives should be used to encourage regions with large production to actively reduce capacity. In order to effectively deal with the consequences of a reduction in capacity, the plan sets out ways to lessen its effects on the sector, most notably the relocation of redundant workforce, the used of subsidies for programmes focused on structural adjustment of industry and enterprises, and provision of subsidies on the local level. Moreover, this was confirmed in the HRFP investigation ⁽⁶⁵⁾.
- (155) All grants and other ad hoc subsidies analysed above constituted a subsidy in the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct transfer of funds with regard to the grants and similar transfers of resources.
- (156) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the OCS producers from grants, whether given to reduce overcapacity or under specific programmes, or awarded ad hoc.

3.5.3.3. Benefit

- (157) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review investigation, the Commission does not consider it necessary to calculate such amounts. That being said, on the basis of the Annual Reports of the OCS producers, such amounts are not negligible.

3.5.3.4. Specificity

- (158) These subsidies were considered to be specific in law or in fact, within the terms of Article 4(2) of the basic Regulation. In the absence of cooperation from the GOC, they are deemed to be granted to a limited number of steel companies in the encouraged steel sector, and/or because of the manner in which discretion of the granting authorities has been exercised for their granting.

3.5.3.5. Conclusion

- (159) Accordingly, the Commission concluded that there is sufficient evidence showing that the exporting producers continued receiving grants as countervailable subsidies during the review investigation period.

3.5.4. *Export subsidies*

- (160) The applicant provided evidence on the existence of certain export subsidy programmes under points 199-206 and Annex 35 of the expiry review request. In what follows the Commission will focus its analysis on export credit insurance from Sinosure. This scheme was not countervailed in the original investigation.

⁽⁶³⁾ Greenpeace East Asia Report, March 2017.

⁽⁶⁴⁾ See chapter 14.1.1.2. of the Report — Production Capacity Reduction.

⁽⁶⁵⁾ See recitals (143), (256)-(259) of the HRFP Regulation.

3.5.4.1. Legal basis

(161) The legal bases for the Sinosure export credit insurance programme are the following:

- the Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance (Shang Ji Fa[2004] No 368), issued jointly by MOFCOM and Sinosure;
- the Export Directory of Chinese High and New Technology Products of 2006;
- the so-called '840 plan' included in the Notice by the State Council of 27 May 2009;
- the so-called '421 plan' included in the Notice on the issues to implement special arrangements for financing of insurance on the export of large complete sets of equipment, issued jointly by the Ministry of Commerce and the Ministry of Finance on 22 June 2009.

3.5.4.2. Financial contribution and benefit

- (162) On the basis of the information available to the Commission, and in the light of the GOC's and Sinosure's non-cooperation, the Commission concluded that Sinosure is a public body within the meaning of Article 2(b) of the basic Regulation. In particular, the conclusion that Sinosure is vested with authority to exercise governmental functions is based on facts available relating to State-ownership, formal indicia of government control, as well as evidence showing that the GOC continues exercising meaningful control over the conduct of Sinosure.
- (163) As confirmed by several investigations (the findings in this regard were most recently confirmed in the tyres and the e-bikes investigations) ⁽⁶⁶⁾, the government exercises full ownership and financial control over the company.
- (164) Sinosure is a 100 % State-owned policy insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The Government has the power to appoint and dismiss the company's senior managers and supervisors.
- (165) The registered capital of the company comes from the venture fund of export credit insurance in line with the state finance budget. Furthermore, as established in the coated fine paper investigation ⁽⁶⁷⁾, the state injected to the company RMB 20 billion in 2011.
- (166) On this basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of Sinosure.
- (167) Due to lack of cooperation of the GOC and Sinosure, the Commission could also not establish any specific behaviour of Sinosure with regard to the insurance provided to the sampled exporting producers that would have enabled the Commission to determine whether Sinosure was acting based on market principles.
- (168) In this respect, the Commission was also unable to assess whether the premiums Sinosure charged were sufficient to cover the cost of the claims and the overhead expenses of Sinosure. However, it should be noted that in the recent tyres investigation ⁽⁶⁸⁾, where partial cooperation of Sinosure was obtained, it was concluded that premiums paid by the sampled companies were much lower than the minimum fee needed to cover operational costs of the company. In the above mentioned investigation as well as in the following e-bike investigation, the benefit for this subsidy scheme was calculated on the basis of the external benchmark i.e. the premium rates applied by the Export-Import Bank of the United States of America to non-financial institutions for exports to OECD countries.
- (169) Therefore, the Commission concluded that the legal framework set out above is implemented by Sinosure in the exercise of governmental functions, thereby acting as a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i). Furthermore, it could not be demonstrated that Sinosure acted under normal market conditions and that it did not provide benefits to the OCS exporting producers, notably that the insurance was provided at rates that were not below the minimum fee needed for Sinosure to cover its operational costs.
- (170) In addition, the applicant indicated in the request and the submission of 21 December 2018 that some of the OCS producers benefited from export credit insurance of Sinosure.

⁽⁶⁶⁾ See recitals 426 to 437 and 352 to 360 respectively.

⁽⁶⁷⁾ See recital 131.

⁽⁶⁸⁾ See recital 435.

- (171) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard of the OCS producers benefiting from export subsidies under this scheme.
- (172) Because of non-cooperation, the Commission had no company-specific information either on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts.

3.5.4.3. Specificity

- (173) The export credit insurance of Sinosure is specific under Article 4(4)(a) of the basic Regulation as it is contingent upon export performance.

3.5.4.4. Conclusion

- (174) Accordingly, the Commission concluded that this subsidy is countervailable.

3.6. Government revenue forgone or not collected that is otherwise due

3.6.1. *Income and other direct tax programmes and policies*

3.6.1.1. Findings of the original investigation

- (175) In the original investigation, the Commission established that OCS producers were receiving countervailable subsidies related with preferential treatment under income and other direct tax programmes and policies.
- (176) With regard to two specific programmes: Tax Policies for the Deduction of Research and Development Expenses, and Tax Concessions for Central and Western Regions, the Commission, having sufficient cooperation of the GOC and the Chinese exporting producers, based its findings as to the legal basis, eligibility, nature of the subsidy and its specificity on the verified questionnaire replies and was able to calculate individual subsidy rates for the sampled companies.
- (177) With regard to other eight programmes and policies, due to the lack of the cooperation of the GOC, the Commission based its findings on the evidence provided in the request and results of the anti-subsidy investigations of the US authorities on circular welded carbon quality steel line pipe ⁽⁶⁹⁾, certain steel wheels ⁽⁷⁰⁾, wire decking ⁽⁷¹⁾, certain tow behind lawn groomers, ⁽⁷²⁾ and the Commission's own investigation on coated fine paper. It should be mentioned that two out of these eight programmes were found not to be countervailable.
- (178) The income and other direct tax programmes were found to be subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of government revenue foregone which confers a benefit upon the recipient companies.
- (179) The subsidy schemes were also found to be specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries classified as encouraged, such as those belonging to OCS industry. In addition, that the lack of cooperation from the GOC did not permit the Commission to reach the conclusion to whether objective criteria of eligibility to certain schemes existed which made them also specific under the Article 4(2)(b) of the basic Regulation.

3.6.1.2. Continuation of the subsidy programme

- (180) In the expiry review request under points 126-136 and Annexes 34 and 35, the applicant provided evidence that many Chinese steel producers, including at least three OCS producers, continue to benefit from at least two of the direct tax subsidy programmes countervailed in the original investigation, namely Preferential Tax Policies for the Companies that are Encouraged as High and New Technology Enterprises, and Tax Policies for the Deduction of Research and Development Expenses.

⁽⁶⁹⁾ Federal Register Vol. 73, No 227, page 70961 of 24 November 2008.

⁽⁷⁰⁾ Preliminary Affirmative Countervailing Duty Determination of 6 September 2011. Federal Register 2011-22720.

⁽⁷¹⁾ Federal Register Vol. 75, No 111, page 32902 of 10 June 2010.

⁽⁷²⁾ Federal Register Vol. 74, No 117, page 29180 of 19 June 2009.

- (181) The applicant indicated that both schemes were found countervailable in the HFRP investigation and coated fine paper expiry review ⁽⁷³⁾. The findings of these two investigations confirmed that the schemes are still being used and are still based on the same legal basis and thus there are no changes in the conclusions as to the eligibility, practical application of the schemes, the benefits conferred upon their use and their specificity.
- (182) Furthermore, the most recent anti-subsidy investigations (the tyres investigation and the e-bikes investigation), having the investigation period 6-month or 9-month overlapping with current investigation, confirmed that the schemes were still in use and their nature had not changed ⁽⁷⁴⁾.
- (183) Under points 176-186 and Annex 35 of the expiry review request, the applicant provided evidence that some OCS producers were benefiting from three additional preferential income tax policies, not countervailed in the original investigation, namely Enterprise Income Tax Privileges for Resource Products from Synergic Utilization (at least one OCS producer is using this scheme), Land Use Tax Exemption (at least two OCS producers are using this scheme) and Tax Reduction on Iron Ore (at least one OCS producer is using this scheme). The evidence in this regard is based on the findings of the HFRP investigation and the audited accounts of the companies in question.
- (184) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the OCS producers from income and other direct tax programmes and policies.
- (185) The schemes in question are considered to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

3.6.1.3. Benefit

- (186) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts.

3.6.1.4. Specificity

- (187) The schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries.

3.6.1.5. Conclusion

- (188) Accordingly, the Commission concludes that there is sufficient evidence showing that some of the tax programmes continued being as countervailable subsidies during the review investigation period.

3.6.2. *Indirect tax and import tariff programs and policies*

3.6.2.1. Findings of the original investigation

- (189) In the original investigation, the Commission established that OCS producers were receiving countervailable subsidies related with preferential treatment under two indirect tax and import tariff programs:
- (a) Import tariff and VAT exemptions foreign-invested enterprises ('FIE') and certain domestic enterprises using imported equipment in encouraged enterprises, and
 - (b) VAT refunds to FIE purchasing domestically produced equipment.

⁽⁷³⁾ See recitals 312 to 344 and 68 to 76 respectively.

⁽⁷⁴⁾ See recitals 510 to 546 and 534 to 558 respectively.

- (190) Additionally, one more regional scheme and several other ad-hoc tax privileges related with indirect taxes were countervailed.
- (191) Due to insufficient cooperation of the GOC and the fact that sampled companies were not benefiting from these schemes in the original investigation, the Commission based its findings as to the legal basis, eligibility, nature of the subsidy and its specificity on the evidence provided in the request and results of the anti-subsidy investigation of the US authorities on coated free sheet ⁽⁷⁵⁾ and the Commission own investigation in coated fine paper ⁽⁷⁶⁾.
- (192) The indirect tax and import tariff programmes were found to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.
- (193) The subsidy schemes were also found to be specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated, limited the access to the schemes only to certain enterprises and industries. In addition, the lack of cooperation from the GOC did not permit the Commission to reach the conclusion to whether objective criteria of eligibility to certain schemes existed which made them also specific under the Article 4(2)(b) of the basic Regulation.
- (194) The second scheme referred to in recital (189) was additionally found specific with the terms of Article 4(4)(b) of the basic Regulation as contingent upon use of domestic over imported goods, while regional scheme and ad-hoc privileges were additionally found specific under the terms of Article 4(3) of that Regulation as their eligibility was limited to certain designated areas and municipalities within the jurisdiction of the authority of granting the subsidy.

3.6.2.2. Continuation of the subsidy programme

- (195) In the expiry review request under points 137-141, the applicant indicates that findings of the HFRP investigation confirmed continuation of the benefits and countervailability of the first scheme listed in recital (189). It was also confirmed that legal basis of the scheme did not change and thus there are no changes in the conclusions as to the eligibility, practical application of the scheme, benefits conferred upon its use and its specificity ⁽⁷⁷⁾.
- (196) Furthermore, the HFRP investigation concluded that at least one OCS producer was benefiting from this scheme in the investigation period of the HFRP investigation (2015) ⁽⁷⁸⁾. Since the program in question is linked with purchase of fixed assets, the benefit upon it should be (as it was in the HFRP investigation) amortised over the life span of the equipment. Thus, the Commission concluded that the company in question is still benefiting from this subsidy in the current review investigation period.
- (197) Under points 187-190 of the request, the applicant indicates also that as a result of the HFRP investigation it was found that the same OCS producer was granted *ex post* refund of all the VAT and income taxes paid between 2006-2009, due to the relocation of its production. In the HFRP investigation the subsidy in question was treated as financial contribution related to a large-scale investment project and thus the benefit upon it was amortised over the average life span of the company's fixed assets. Thus, it can be concluded that the company in question was still benefiting from this subsidy in the review investigation period.
- (198) In the absence of cooperation from the GOC, no arguments were presented which would challenge the evidence presented by the applicant with regard to the continued benefits of the OCS producers from indirect tax and import tariff programs and policies.
- (199) The schemes in question are considered to be subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient companies.

⁽⁷⁵⁾ Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of 17 October 2007; Federal Register C-570-907.

⁽⁷⁶⁾ See recitals 95 to 113.

⁽⁷⁷⁾ See recital (346) of the HFRP Regulation.

⁽⁷⁸⁾ See recital (349) of the HFRP Regulation.

3.6.2.3. Benefit

- (200) In the absence of cooperation from the GOC and the Chinese exporting producers, the Commission had no company-specific information on the basis of which to calculate the amount of subsidy conferred during the review investigation period. However, for the finding of continued subsidisation reached in the current expiry review, the Commission does not consider it necessary to calculate such amounts.

3.6.2.4. Specificity

- (201) The schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation as the access to the schemes is limited only to certain enterprises and industries.

3.6.2.5. Conclusion

- (202) Accordingly, the Commission concludes that there is sufficient evidence showing that some of the indirect tax and import tariff programmes continued being as countervailable subsidies during the review investigation period.

3.7. Overall conclusion regarding the continuation of the subsidisation

- (203) Therefore, the Commission concluded that the OCS producers in China continued to benefit from countervailable subsidies during the review investigation period.

3.8. Development of imports should the measures be repealed

- (204) Further to the finding of the existence of subsidisation during the review investigation period, the Commission investigated the likelihood of continuation of subsidised imports from the country concerned, should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in China, the availability of other markets, and the attractiveness of the Union market.

3.8.1. Production capacity and spare capacity in the PRC

- (205) Given the non-cooperation, production capacity and spare capacity in the PRC were established on the basis of facts available and in particular the information provided by the applicant, in accordance with Article 28 of the basic Regulation.
- (206) The production capacity in the PRC substantially exceeded the current production volumes. According to (CISA), the production capacity of colour-coated steel amounted to 40 million tonnes in 2013⁽⁷⁹⁾. With production volumes at the level of 7,5 million tonnes, the capacity utilisation reached only approximately 20 %. Would the measures be repealed, the Chinese producers have sufficient spare capacity estimated at 32,5 million tonnes to flood the Union market, where consumption is 4,5 million tonnes, with subsidised OCS.
- (207) Based on the above, the Commission concluded that the Chinese exporting producers have significant spare capacity, which they could use to produce OCS to export to the Union market if measures were repealed.

3.8.2. Availability of other markets

- (208) Trade defence measures against Chinese OCS exports are in place in India, Malaysia, Pakistan, Turkey and Vietnam. Therefore, the Commission concluded that, should the current measures be repealed, it is likely that the Chinese exporting producers would redirect exports towards the Union.

3.8.3. Attractiveness of the Union market

- (209) During the review investigation period, the Union industry's sales price was by 194-338 EUR per tonne of OCS (or by 28-59 %) higher than the Chinese export price at CIF level to the five main export markets. It was also by 211-226 EUR per tonne of OCS (or 31-33 %) higher than the average Chinese export price at CIF level to all third countries (excluding the Union). The Chinese exports to the five most important export markets amounted to 48 % of the Union consumption in the review investigation period.

⁽⁷⁹⁾ See recital 277 and Annex 51 of the Request.

- (210) Consequently, would the measures be repealed, it is likely that the Chinese exporting producers redirect the exports of substantial volumes of OCS from third countries to the Union market.

3.9. Conclusion on the likelihood of continuation of subsidisation

- (211) The Commission, on the basis of facts available, conclude that there is sufficient evidence that subsidisation of the OCS industry in the PRC continued during the review investigation period and is likely to continue in the future.
- (212) The subsidisation of the OCS industry allows the Chinese producers to maintain their production capacities at a level by far exceeding domestic demand, in spite of shrinking markets, in China and worldwide.
- (213) Therefore, the Commission found that the repeal of the countervailing measures is likely to result in a redirection of significant volumes of subsidised imports of the product under review to the Union market. Various subsidy programmes continue to be offered by the GOC to the OCS industry and the Commission determined that the OCS industry benefited from a number of them during the review investigation period.

4. INJURY

4.1. Union production and Union industry

- (214) During the review investigation period OCS was manufactured by more than 20 known producers in the Union, some of them related to one another. Several of those producers belong to steelmaking groups.
- (215) The total Union production was estimated at 4 752 003 tonnes during the review investigation period on the basis of the questionnaire responses submitted by the sampled Union producers and data submitted the applicant. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.

4.2. Consumption in the Union

- (216) The investigation found that a share of the Union industry uses its production for captive use, that is it is often simply transferred (without invoice) and/or delivered at transfer prices within the same company or group of companies for further downstream processing. In order to provide as complete a picture as possible of the situation of the Union industry, data was obtained and analysed for the entire OCS activity.
- (217) As in the original investigation (recitals (462)-(463) thereof), it was considered that economic indicators such as production, capacity, capacity utilisation, investments, stocks, employment, productivity, wages and ability to raise capital depend upon the whole activity, regardless of whether the production is for captive use or sold on the free market. However, sales volume and sales prices on the Union market, market share, growth, export volume and prices focus on the situation prevailing on the free market (and thus, excluding captive activities). Thus, the injury indicators were corrected for the known captive use and sales in the Union industry, and captive use and sales were analysed separately.
- (218) The Union consumption was established on the basis of (i) import statistics at TARIC level using information collected on the basis of Article 14(6) of the basic Regulation and (ii) sales volumes of the Union industry (including captive transactions) in the Union as submitted by the applicant. Those sales volumes were cross-checked and updated when necessary as regards sampled Union producers as a result of the verification visits to their premises.
- (219) During the period considered the Union consumption developed as follows:

Table 1

	2014	2015	2016	RIP
Union consumption (tonnes)	3 840 088	3 965 150	4 375 791	4 525 677
Index (2014 = 100)	100	103	114	118

Source: Verified questionnaire replies and Article 14(6) database

(220) During the period considered, the Union consumption increased by 18 %.

4.3. Imports into the Union from China

(221) The Commission established the volume of imports and prices on the basis of import statistics at TARIC level using information collected in accordance with Article 14(6) of the basic Regulation.

4.3.1. Volume and market share

(222) Over the period considered imports from China into the Union developed as follows:

Table 2

Imports from China	2014	2015	2016	RIP
Volume of imports (tonnes)	5 619	4 217	2 958	6 338
<i>Index (2014 = 100)</i>	100	75	53	113
Market share (%)	0,1	0,1	0,1	0,1

Source: Article 14(6) database

(223) During the period considered the volume of imports from the PRC was low. The Chinese market share fluctuated slightly during the period considered and was 0,1 % in the review investigation period.

(224) The imports have remained at a low level since the imposition of the provisional anti-dumping measures in September 2012. It is assumed that their low level is the result of the measures in force.

4.3.2. Price and price undercutting

(225) Over the period considered the price of imports from China into the Union developed as follows:

Table 3

Imports from China	2014	2015	2016	RIP
Average import price (EUR/tonne)	341	747	697	637
<i>Index (2014 = 100)</i>	100	219	204	187

Source: Article 14(6) database

(226) Over the period considered the prices of Chinese imports increased by 87 %. It can be reasonably assumed that this trend is at least partly due to increasing raw material prices.

(227) The average sales prices of the cooperating Union producers to unrelated customers on the Union market were compared to the average prices of imports from China. In the absence of cooperation from Chinese exporting producers, no reliable product type per product type comparisons could be made and imports statistics for the product under review as a whole were used for establishing the average Chinese import price. Due to lack of cooperation from unrelated importers in this expiry review, the estimates contained in the request on the level of the adjustment for post-importation costs were used.

(228) On the basis of that methodology, the comparison showed that during the review investigation period the imports of the product under review undercut the Union industry's prices by 27,8 % (that is, very similar to the undercutting found during the original investigation).

(229) In addition, the analysis of Chinese export prices to other third markets showed that China was selling in some of its main export markets at prices similar to or sometimes even lower than those to the Union, thus reinforcing the conclusion that the current level of Chinese prices would undercut the sales prices of the Union industry in the Union market.

4.4. Imports into the Union from third countries

- (230) Table 4 shows the development of imports to the Union from third countries during the period considered in terms of volume and market share, as well as the average price of these imports.

Table 4

	2014	2015	2016	RIP
Volume of imports from India (tonnes)	191 015	136 208	152 511	247 237
<i>Index (2014 = 100)</i>	100	71	80	129
Market share (%)	5,0	3,4	3,5	5,5
Average price (EUR/tonnes)	755	770	680	818
Volume of imports from The Republic of Korea (tonnes)	155 634	131 959	184 637	222 448
<i>Index (2014 = 100)</i>	100	85	119	143
Market share (%)	4,0	3,3	4,2	4,9
Average price (EUR/tonnes)	899	934	785	925
Volume of imports from other third countries	117 938	113 679	134 352	201 981
<i>Index (2014 = 100)</i>	100	96	114	171
Market share (%)	3,1	2,9	3,1	4,5
Average price (EUR/tonnes)	793	798	714	838

Source: Article 14(6) database

- (231) Over the period considered the volume of imports from third countries increased to reach a market share of 14,8 %. Most of these imports were from India and Korea, followed by Turkey and Taiwan.
- (232) In general the average price of imports from third countries was higher than the average prices at which Chinese imports entered the Union. Depending on the years the average price of imports from third countries was either higher or lower than the average selling prices of Union producers in the Union.

4.5. Economic situation of the Union industry

- (233) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.
- (234) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, growth, magnitude of countervailing margins and recovery from the effects of past subsidisation) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the applicant, cross-checked with the verified questionnaire replies of the sampled Union producers.
- (235) The analysis of microeconomic indicators (stocks, sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, and wages) was carried out at the level of the sampled Union producers. The assessment was based on their information which was duly verified during an on-spot verification visit.
- (236) Given that one of the three sampled companies is not represented by the applicant, pursuant to Article 29 of the basic Regulation the data in Tables 8 to 13 are provided in ranges so as to preserve confidentiality of business-sensitive information.

4.5.1. Macroeconomic indicators

4.5.1.1. Production, production capacity and capacity utilisation

- (237) Over the period considered production, production capacity and capacity utilisation of the Union industry developed as follows:

Table 5

	2014	2015	2016	RIP
Production (tonnes)	4 402 079	4 404 178	4 769 698	4 752 003
<i>Index (2014 = 100)</i>	100	100	108	108
Production capacity (tonnes)	5 076 892	5 113 417	5 361 693	5 339 200
<i>Index (2014 = 100)</i>	100	101	106	105
Capacity utilisation (%)	87	86	89	89

Source: Verified questionnaire replies

- (238) Over the period considered there was a modest increase in production volume (+ 8 %) and capacity (+ 5 %), while the capacity utilisation increased by 2 %, to reach 89 %.

4.5.1.2. Sales volume and market share in the Union

- (239) Over the period considered sales in the Union by the Union industry (captive transactions included) developed as follows:

Table 6

	2014	2015	2016	RIP
Sales volume (tonnes)	3 369 883	3 579 087	3 901 334	3 847 673
<i>Index (2014 = 100)</i>	100	106	116	114
Market share (of Union consumption) (%)	87,6	90,2	89,1	84,9

Source: Verified questionnaire replies

- (240) The sales by the Union industry on the Union market increased by 14 % during the period considered.
- (241) The market share of the Union industry decreased during the period considered to 84,9 %.

4.5.1.3. Employment and productivity

- (242) Over the period considered employment level and productivity within the Union industry developed as follows:

Table 7

	2014	2015	2016	RIP
Number of employees (full time equivalent)	5 667	5 685	5 938	6 021
<i>Index (2014 = 100)</i>	100	100	105	106
Productivity (tonnes per employee)	777	775	803	789
<i>Index (2014 = 100)</i>	100	100	103	102

Source: Verified questionnaire replies

- (243) Both employment and productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, increased during the period considered. Those increases reflect the overall increase in production and sales volume.

4.5.1.4. Growth

- (244) The Union industry managed to benefit from growth on the Union market even if facilities that had been more affected by the lower capacity utilisation observed during the original investigation are still in a recovery phase. The Union industry kept significant market shares during the whole period considered.

4.5.1.5. Magnitude of subsidisation and recovery from past subsidisation

- (245) Subsidisation continued during the review investigation period at a significant level, as explained under section 3 above. It is noted that Chinese producers undercut Union industry's sales prices to a significant extent and that the Union industry is still in a fragile situation.
- (246) Since the volumes of the subsidised imports from China were much lower than during the original investigation period, the Commission concluded that the impact of the magnitude of the countervailing margin on the Union industry was significantly less pronounced than in the original investigation.

4.5.2. Microeconomic indicators

4.5.2.1. Stocks

- (247) Over the period considered stocks levels of the sampled Union producers developed as follows:

Table 8

	2014	2015	2016	RIP
Stocks (tonnes)	68 500-71 500	52 000-55 000	72 000-75 000	83 000-86 000
<i>Index (2014 = 100)</i>	100	77	106	120

Source: Verified questionnaire replies of the sampled Union producers

- (248) The Union producers increased their stock in the period considered. This indicator, however, is not considered to be very relevant to assess the economic situation of the Union producers. OCS is mostly produced on the basis of orders. In any event, the stocks merely represented around 2 % of the total sales during the review investigation period.

4.5.2.2. Average unit sales prices in the Union and cost of production

- (249) Over the period considered average unit sales prices to unrelated customers in the Union and average unit cost of production of the sampled Union producers developed as follows:

Table 9

	2014	2015	2016	RIP
Average unit sales price to unrelated parties (EUR/tonne)	805-820	760-775	740-755	895-910
<i>Index (2014 = 100)</i>	100	94	92	111
Unit cost of production (EUR/tonne)	800-850	750-800	650-730	850-900
<i>Index (2014 = 100)</i>	100	94	87	106

Source: Verified questionnaire replies of the sampled Union producers

- (250) Over the period considered, the Union industry managed to increase its sales prices by 11 %. Following price decreases between 2014 and 2015 and then between 2015 and 2016, prices went up again between 2016 and 2017. Both the decreases and the increase are closely connected to the changes in raw material prices.

4.5.2.3. Profitability and cash flow

Table 10

	2014	2015	2016	RIP
Profitability (%)	- 1,5-0	- 0,5-1	2,5-4	3,5-5
Index (2014 = 100)	- 100	101	413	506

Source: Verified questionnaire replies of the sampled Union producers

- (251) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The net cash flow is the ability of the Union producers to self-finance their activities.
- (252) During the period considered the Union industry stopped making losses. The improvement of the profitability was clearly related to the fact that the Union industry managed to increase its sales and production volume as well as sales prices in the years following the imposition of the original measures. However, profitability remained below the target profit that was considered healthy and sustainable in the original investigation (i.e. 6,7 %).

Table 11

	2014	2015	2016	RIP
Cash flow (EUR)	- 18 000 000- (- 15 000 000)	28 000 000- 31 000 000	30 000 000- 34 000 000	34 000 000- 37 000 000
Index (2014 = 100)	- 100	273	295	311

Source: Verified questionnaire replies of the sampled Union producers

- (253) During the period considered the evolution of the cash flow reflects mainly the development of the overall profitability of the Union industry.

4.5.2.4. Investment, return on investments and ability to raise capital

Table 12

	2014	2015	2016	RIP
Investments (EUR)	12 000 000- 17 000 000	20 000 000- 25 000 000	27 000 000- 32 000 000	25 000 000- 30 000 000
Index (2014 = 100)	100	159	200	180
Return on investments (net assets) (%)	- 2,2	0,0	7,0	11,0

Source: Verified questionnaire replies of the sampled Union producers

- (254) During the period considered the Union industry, highly capital-intensive, made regular investments for the optimisation and upgrading of the existing production machinery. In addition, significant investments were made in order to comply with legal requirements for environment protection and increased safety. Depending on the company, there were investments aimed at costs reduction, energy optimisation and/or also at revamping facilities that had been negatively affected by the lower capacity utilisation observed during the original investigation period.

- (255) Return on investments is the profit in percentage of the net book value of investments. The return on investments during the period considered followed closely the profitability trend.
- (256) Since the imposition of measures the ability to raise capital has improved.

4.5.2.5. Wages

Table 13

	2014	2015	2016	RIP
Labour costs per employee (EUR)	63 000-72 000	63 000-72 000	64 000-73 000	64 000-73 000
Index (2014 = 100)	100	101	102	102

Source: Verified questionnaire replies of the sampled Union producers

- (257) The average wage levels increased slightly over the period considered, but less than the unit cost of production.

4.6. Conclusion

- (258) The injury analysis shows that the situation of the Union industry improved significantly in the period considered. The imposition of the definitive countervailing measures in March 2013 allowed the Union industry to slowly but steadily recover from the injurious effects of the subsidisation. The fact that the Union industry has significantly benefited from the measures is illustrated, inter alia, by increase in production and Union sales volumes, positive cash flow and return on investments, selling prices in general higher than the unit cost of production, minimum increase in labour costs and significantly improved profitability.
- (259) However, even if the Union industry has largely recovered from the past injury and seems to be on the right track to further improve its condition in the long-run, it is still in a fragile situation due to its limited profitability, which is still below the target profit.

5. LIKELIHOOD OF RECURRENCE OF INJURY

- (260) As shown in section 4.6 above the Union industry has largely recovered from the past injury caused by the Chinese subsidised imports. Nonetheless, this section will examine whether the precarious situation of the Union industry will further deteriorate leading to recurrence of material injury should the measure are allowed to lapse.

5.1. Impact of the projected volume of imports and price effects in case of repeal of measures

- (261) Should the measures be repealed, the volume of imports from China is expected to increase dramatically. It is recalled that imports during the original investigation period amounted to more than 702 000 tonnes, while they amounted to 6 338 tonnes during the review investigation period.
- (262) China's overcapacity in steel production is well established⁽⁸⁰⁾. The applicant submitted data from Plantfacts indicating that China's OCS capacity amounts to 7 million tonnes (i.e. more than 4 times China's OCS apparent consumption). This appears to be a conservative estimate. The applicant also provided detailed information dating from 2013 according to which the China Iron and Steel Association published that China colour coated steel production capacity was almost 40 million tonnes in that year.
- (263) Although the Chinese export volumes to the Union shrank after the imposition of the original measures, Chinese producers manufacture significant volumes of product under review and export more than 80 % of it. According

⁽⁸⁰⁾ See e.g. Global forum on steel excess capacity, *Ministerial report 20 September 2018*, https://www.g20.org/sites/default/files/gfsec_ministerial_report_2018.pdf, in which Chinese overcapacity in the sector as a whole is confirmed, by all parties including China. With a steel capacity of 1018,3 million MT in 2017, China accounts for the largest share of global capacity (45 %, according to page 42). Table 1 of the report illustrates that China reduced capacity by 10 % in the period 2014-2017. Page 51 reads that China 'set clear goals for reducing excess capacity, that is, to reduce 100-150 million MT of crude steel capacity from 2016 to 2020'.

to the data published by the World Steel Association, China produced more than 8 million tons of OCS per year in the years 2013-2014. One of the companies supporting the complaint provided figures from the China Metallurgical Newsletter of the China Metallurgical Information and Standardization Research Institute & the Metallurgical Council of the China Council for the Promotion of International Trade suggesting that China produced some 8 million tons of OCS per year in the years 2015-2017. According to the same submission of that applicant, it is estimated that in the period 2015-2017 Chinese OCS apparent consumption ranged 1-1,8 million tons per year.

- (264) However, as important as export markets are for Chinese industry, China faces more and more difficulties accessing them. Between 2016 and 2018 countries such as India, Malaysia, Vietnam, Pakistan or Turkey imposed trade defence measures that affect OCS originating in China. As to the USA, since January 2018 steel (OCS included) from many countries of origin, including China, is subject to a 25 % tariff ⁽⁸¹⁾.
- (265) The Union is the largest OCS market after the Asian and the North/Central America ones.
- (266) The Chinese database shows that in the recent past China exported significant volumes to countries outside the Union at low prices. In 2017 Chinese FOB prices to the Union were 10,5 % higher than for instance to Korea, China's main export market for this product. During the review investigation period, the volumes exported to countries outside the Union were bigger than the total Union industry production and the apparent consumption in the Union. Because of the attractiveness of the Union market in terms of pricing, openness (there are no customs duties for this product) and increased apparent consumption, it is considered that if the measures are terminated, Chinese exporters are likely to re-direct significant volumes of OCS to the more lucrative Union market. The fact that the Union recently adopted safeguards on certain steel products, including OCS, does not alter this conclusion. The import volumes under the tariff rate quotas are set at levels which may allow China to export significant amounts of OCS.
- (267) Furthermore, as described in section 4.3.2, Chinese imports on the Union market significantly undercut the Union producers' prices during the review investigation period, in particular when discounting the effect of the countervailing duties.
- (268) The market for OCS products is very price competitive as the competition mainly takes place on the basis of prices. The potential pressure on the Union industry's prices is further exacerbated by the fact that, according to the request, Chinese sales usually take place for relatively big quantities. If cheap and subsidised imports are sold in significant quantities on the Union market, the Union producers will lose large sales volumes. The ability to raise capital and to invest could be hindered if the profitability of Union producers drops further or becomes negative.

5.2. Conclusion

- (269) Therefore, the Commission concluded that the repeal of measures on the imports from China would likely result in a recurrence of injury to the Union industry.

6. UNION INTEREST

6.1. Introduction

- (270) In accordance with Article 31 of the basic Regulation, it was examined whether the maintenance of the existing subsidisation measures would not be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, that is those of the Union industry on the one hand, and those of importers and users on the other hand.
- (271) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which subsidisation measures have already been in place, allows for the assessment of any undue negative impact on the parties concerned by the current subsidisation measures.
- (272) On this basis it was examined whether, despite the conclusions on the likelihood of continuation of subsidisation and recurrence of injury, it could be concluded that it would not be in the Union interest to maintain measures in this particular case.

⁽⁸¹⁾ Section 232 Tariffs on Aluminum and Steel, <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>.

6.2. Interest of the Union industry

- (273) The investigation showed that should the measures expire, this would likely have a significant negative effect on the Union industry. The Union industry's situation would quickly deteriorate in terms of lower sales volumes and sales prices resulting in a strong decrease in profitability. The continuation of measures would allow the Union industry to further exploiting its potential on a Union market that is a level-playing field.
- (274) Therefore, maintaining the countervailing measures in force is in the interest of the Union industry.

6.3. Interest of importers

- (275) As mentioned in recital (18) above, nine known importers were contacted in this investigation and invited to cooperate. None came forward or cooperated in any way in the investigation.
- (276) It is recalled that in the original investigation it was found that, given the importers' profits and sources of supply, any negative impact of the imposition of measures on importers, if any, would not be disproportionate.
- (277) In the current investigation there is no evidence on file suggesting the opposite, and it can thus accordingly be confirmed that the measures currently in force had no substantial negative effect on the financial situation of importers and that the continuation of the measures would not unduly affect them.

6.4. Interest of users

- (278) Some sixty known users were contacted in this investigation and invited to cooperate. No user came forward or cooperated in any way in the investigation.
- (279) It is recalled that in the original investigation ten users submitted questionnaire replies. At that time it was found that, given the users' profits and sources of supply, the impact of the imposition of measures on users, if any, would not be disproportionate.
- (280) In the current investigation there is no evidence on file suggesting that the measures in force affected them in any negative way. In fact the applicant submitted evidence that key users experienced improvements in profitability during the period under review. According to the request, the measures in place do not have a sizeable impact on users and consumers as OCS represents a negligible part of the cost of downstream products (for example 0,42 EUR of the cost of producing a washing machine or 0,4 % of the investment of an empty factory building).
- (281) On that basis it is confirmed that the measures currently in force had no substantial negative effect on the financial situation of users and that the continuation of the measures would not unduly affect them.

6.5. Conclusion

- (282) Therefore, the Commission concluded that there are no compelling reasons of Union interest against the maintenance of the definitive countervailing measures on imports of OCS originating in the PRC.

7. COUNTERVAILING MEASURES

- (283) It follows from the above that, as provided for by Article 18 of the basic Regulation, the countervailing measures applicable to imports of certain organic coated steel products originating in China should be maintained.
- (284) A company may request the application of individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁸²⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name should be published in the *Official Journal of the European Union*.

⁽⁸²⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

- (285) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ⁽⁸³⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (286) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed on imports of certain organic coated steel products, i.e. flat-rolled products of non-alloy and alloy steel (not including stainless steel) which are painted, varnished or coated with plastics on at least one side, excluding so-called 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, excluding those products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70 % or more of zinc), and excluding those products with a substrate with a metallic coating of chromium or tin, currently falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70 (TARIC codes 7210 70 80 11, 7210 70 80 91, 7212 40 80 01, 7212 40 80 21, 7212 40 80 91, 7225 99 00 11, 7225 99 00 91, 7226 99 70 11 and 7226 99 70 91), and originating in the People's Republic of China.

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

Company	Duty (%)	TARIC Additional Code
Union Steel China	13,7	B311
Zhangjiagang Panhua Steel Strip Co., Ltd, Chongqing Wanda Steel Strip Co., Ltd, and Zhangjiagang Free Trade Zone Jiaxinda International Trade Co., Ltd	29,7	B312
Zhejiang Huadong Light Steel Building Material Co. Ltd and Hangzhou P.R. P.T. Metal Material Company, Ltd	23,8	B313
Angang Steel Company Limited	26,8	B314
Anyang Iron Steel Co., Ltd	26,8	B315
Baoshan Iron & Steel Co., Ltd	26,8	B316
Baoutou City Jialong Metal Works Co., Ltd	26,8	B317
Changshu Everbright Material Technology Co., Ltd	26,8	B318
Changzhou Changsong Metal Composite Material Co., Ltd	26,8	B319
Cibao Modern Steel Sheet Jiangsu Co., Ltd	26,8	B320
Inner Mongolia Baotou Steel Union Co., Ltd	26,8	B321
Jiangyin Ninesky Technology Co., Ltd	26,8	B322
Jiangyin Zhongjiang Prepainted Steel Mfg Co., Ltd	26,8	B323
Jigang Group Co., Ltd	26,8	B324
Maanshan Iron&Steel Company Limited	26,8	B325

⁽⁸³⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

Company	Duty (%)	TARIC Additional Code
Qingdao Hangang Color Coated Sheet Co., Ltd	26,8	B326
Shandong Guanzhou Co., Ltd	26,8	B327
Shenzen Sino Master Steel Sheet Co., Ltd	26,8	B328
Tangshan Iron And Steel Group Co., Ltd	26,8	B329
Tianjin Xinyu Color Plate Co., Ltd	26,8	B330
Wuhan Iron And Steel Company Limited	26,8	B331
Wuxi Zhongcai New Materials Co., Ltd	26,8	B332
Xinyu Iron And Steel Co., Ltd	26,8	B333
Zhejiang Tiannu Color Steel Co., Ltd	26,8	B334
All other companies	44,7	B999

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

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

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, 2 May 2019.

For the Commission
The President
Jean-Claude JUNCKER