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**GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**

**NOTIFICATION**

**New Delhi  
Dated 27<sup>th</sup> November, 2015**

**Final Findings**

**Subject: Anti-subsidy/Countervailing Duty investigation concerning imports of Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators, originating in or exported from China PR.**

**17/6/2013-DGAD:-** Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter also referred to as the Rules);

**A. BACKGROUND OF THE CASE**

2. WHEREAS, M/s Larsen & Toubro Limited (hereinafter also referred to as the petitioner) filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975 (hereinafter also referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (hereinafter also referred to as the Rules), for initiation of Anti-subsidy/Countervailing Duty investigation concerning imports of "Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators", (hereinafter also referred to as the subject goods or Castings), originating in or exported from China PR. Vide the above petition, the petitioner alleged subsidization of imports of the product under consideration and consequent injury to the domestic industry and requested for levy of anti-subsidy/countervailing duty on the imports of the subject goods, originating in or exported from the subject country.

3. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the petitioner, issued a public notice vide Notification No. 17/6/2013-DGAD dated 29th May, 2014, published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with the sub Rule 6 of the Rules, to determine the existence, degree and effect of the alleged subsidy and to recommend the amount of anti-subsidy/countervailing duty, which, if levied, would be adequate to remove the injury to the domestic industry.
4. Abbreviations/terminology used in the present determination are explained herein below:

SN	Abbreviations/terminology	Meaning
1	Authority	Designated Authority
2	Petitioner/domestic industry	M/s Larsen & Toubro Limited.
3	GOI	Govt. of India
4	MNRE	Ministry of New & Renewable Energy
5	GOC	Govt. of China
	Sole Responding exporter	M/s Zhejiang Jiali Wind Power Technology Company Limited
6	CVD	Anti subsidy/Countervailing duty
8	ASCM/Agreement	Agreement On Subsidies And Countervailing Measures
9	Act	Customs Tariff Act,1975
10	Rules	Customs Tariff (Identification, Assessment And Collection Of Countervailing Duty on Subsidized Articles And For Determination Of Injury) Rules, 1995

## **B. PROCEDURE**

5. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
- i. The Authority notified the Embassy of China PR in India about the receipt of the anti-subsidy application before proceeding to initiate the investigation in accordance with Sub-Rule (7) of Rules supra.
  - ii. The Authority invited the Govt. of China for consultation with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement. The consultation was held on 5<sup>th</sup> May 2014 in New Delhi, which was attended by the following representatives of the Govt. of China (hereinafter also referred to as the GOC):

- i. Jha Xinjiang, Second Secretary, Embassy of China, Delhi.
- ii. Yang Xiuqing, Third Secretary, Embassy of China, Delhi.
- iii. Gu Yuan, First Secretary, MOFCOM, China PR.
- iv. Luo Xin, dy. Commissioner.
- v. Gu Yu, First Secretary, MOFCOM, China PR.
- vi. Wang Hejun, Commercial Counselor.
- vii. Xu Yan Guang, Dy. Director, MOFCOM
- viii. Wang Xihui, Commercial Counselor.

iii. During the consultations and subsequently vide their note verbal dated 26th May, 2014, the GOC claimed that the evidence in the petition was incomplete in certain critical respects, the alleged subsidy schemes/programmes have already been rescinded and the Designated Authority should not consider the petition for initiating the investigation. Vide the aforesaid note verbal, GOC made the following post consultation submissions:

- a. The petition is not properly documented.
- b. Most of the alleged programs in the petition are mere assertions without supportive evidence.
- c. In order to make an anti-subsidy complaint, the petitioner has simply copied the contents of findings of other WTO member countries such as USA, EU, Canada, Australia etc, without justifying how such outdated information relevant to other products and situations could be relevant for the present petition.
- d. Benefits conferred on some other industries cannot be obtained by industries involved in the product under consideration of the present petition.
- e. The rescinded programs alleged by the petitioner should be rejected.
- f. Scope of the product under consideration (PUC) is too broad and unclear.
- g. If the PUC is defined in such broad manner, then the Indian producers of all the like articles should be covered in the scope of domestic industry.
- h. Further, given the physical differences and diversity of usages among various product categories within the scope of PUC, the petitioner has to make clear distinction among different categories of products and conduct analysis on competition, price effect, as well as injury and causal link separately.
- i. The petition suffers from utmost confidentiality. Certain critical information concerning import data, costing etc are missing in

the petition. Lack of transparency may impair the rights of the other interested parties to rebut the allegations of the petitioner.

- j. Imposition of countervailing measures against the imports of product under consideration from China will impair the competitiveness of the Indian power plant sector, the development of private sector and the welfare of Indian people at large.
- iv. The Authority notes that the Government of China PR did not provide any substantiated evidence in support of their claims made during the pre-initiation consultations. Consequently, the Authority went ahead with the initiation of the investigation with the prima facie evidence of countervailable subsidized imports of product under consideration from China PR and injury caused to the domestic industry due to such imports. The Authority considered the petition filed by the petitioner and the contentions of the GOC and held that it was appropriate to initiate and conduct countervailing duty investigations in order to determine whether the producers/exporters of the product under consideration were benefited from countervailable subsidies and, whether such subsidized imports were causing injury to the domestic industry and if so, whether it is appropriate to recommend imposition of countervailing duty measures (hereinafter referred to as "CVD" or "subsidy duty") on imports of the product under consideration from China PR and if so, to determine the quantum of CVD that should be imposed on the imports of the product under consideration.
  - v. The Authority sent a copy of the initiation notification dated 29th May, 2014 to the Embassy of China PR in India, known producers/exporters from China PR, known importers/users in India, other Indian producers of subject goods and the domestic industry as per the addresses made available by the petitioner and requested them to make their views known in writing within 40 days of the initiation notification.
  - vi. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of China PR in accordance with Rule 7(3) of the Rules supra.
  - vii. The Embassy of China PR in India was informed about the initiation of the investigation in accordance with Rule 7(2) of the Rules with a request to advise the producers/exporters from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to the Embassy of China PR along with the names and addresses of the known producers/ exporters from China PR.

- viii. The Authority sent a questionnaire to the GOC in order to seek relevant facts/information with regard to various schemes/programs where countervailable benefit might have been conferred by the GOC. The GOC filed a questionnaire response, which has been taken into account to the extent the same is relevant and could be adopted for the present purposes.
- ix. The Authority sent exporter's questionnaires to elicit relevant information to the following known producers/exporters in China PR, in accordance with Rule 7(4) of the Rules:
- a) Wenzhou Kaicheng Foundry Co. Ltd., Beijing
  - b) Jiangsu Wenhui Steel Engineering Co. Ltd., Jiangsu
  - c) Shaanxi Quinchuan Machinery Import and Export Co Ltd., Shaanxi
  - d) Dingzhaou Dongfang Foundry Co. Ltd., Hebei
  - e) Beijing Beiyong Foundry Co. Ltd., Beijing.
  - f) Zhejiang Jiali Wind Power Technology Company Limited, Hangzhou
- x. Although GOC identified more than 200 producers of castings in China in their response, only one producer/exporter from China i.e. M/s Zhejiang Jiali Wind Power Technology Company Limited filed the questionnaire response. Neither there is any response from other Chinese producers/exporters directly, nor has GOC provided any information with regard to these producers in China.
- xi. The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
- a) M/s Chiranjeevi Wind Energy Ltd.
  - b) M/s Gamesa Wind Turbine Pvt. Ltd.
  - c) M/s GE India Industrial Pvt. Ltd.
  - d) M/s Global Wind Power Ltd.
  - e) M/s Inox Wind Ltd.
  - f) M/s Leitwind Shriram Manufacturing Ltd.
  - g) M/s Pioneer Wincon Pvt. Ltd.
  - h) M/s Regen Powertech Pvt. Ltd.
  - i) M/s RRB Energy Ltd.
  - j) M/s Shriram EPCI Ltd.
  - k) M/s Siva Wind Turbine India Pvt. Ltd.
  - l) M/s Southern Wind Farms Ltd.
  - m) M/s Wind World (India) Ltd.
  - n) M/s Suzlon Energy Ltd.
  - o) Indian Wind Turbine Manufacturers Association

- xii. The following importers filed importers questionnaire response in the prescribed format:
- i. M/s Pioneer Wincon Pvt Ltd
  - ii. M/s Inox Wind Ltd.
  - iii. M/s GE India Industrial Pvt. Ltd.
- xiii. Submissions were also made by the interested parties post initiation and during the course of the investigation, which have been examined and addressed in the present final finding to the extent considered relevant by the Authority.
- xiv. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xv. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide details of imports of subject goods for the past three years, including the period of investigation. The said information was received from the DGCI&S. The Authority has relied upon DGCI&S data in this finding.
- xvi. The Non-injurious Price has been worked out based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and consistent practices in the DGAD.
- xvii. Verification of the information provided by the petitioner, to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary rectification, wherever applicable, has been relied upon by the Authority.
- xviii. The Authority requested the Govt. of China to notify its willingness or otherwise to conduct on-the-spot verification of the responses/evidences submitted by the Government of China and the responding Chinese exporter. However, on the spot verification of the information/data/evidences furnished and claims made by the Govt of China as well as the only respondent Chinese producer/exporter could not be carried out as despite best persuasion Govt of China neither consented for their verification nor provided the necessary permission to the Authority to visit China to conduct on the spot verification. Resultantly, due to such

non-cooperation, the Authority relied upon the best available information as per the Rules.

- xix. The questionnaire response filed by the GOC and M/s Jiali Wind, the lone respondent Chinese producer/exporter were examined in detail. It was considered necessary and appropriate to seek further information/clarifications on various submissions and information filed by these interested parties. Further, it was considered appropriate to provide further opportunity to the GOC and the responding exporter to rectify deficiencies in the questionnaire responses. The GOC and respondent exporter responded to the supplementary questionnaires issued by the Authority. It was however noted that GOC and responding exporter did not provide all such information as was requested by the authority. Moreover, the veracity and correctness of the information/data furnished by the GOC as well as Jiali Wind could not be established by the Authority through on the spot verification due to non-cooperation by GOC. The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated as confidential.
- xx. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded this final finding on the basis of the facts available.
- xxi. The Period of Investigation for the purpose of the present investigation is from 1<sup>st</sup> October, 2012 to 31<sup>st</sup> December, 2013 (15 Months annualized). The injury investigation period has however been considered as the period from 1<sup>st</sup> April 2009 to the end of the POI, i.e., 2010-11, 2011-12, 2012-13 and the POI.
- xxii. In accordance with the Rules, the Authority provided opportunity to all the known interested parties to present their views orally in hearings held on

22nd July, 2015 and 14th August, 2015. The parties, which presented their views in the oral hearings, were requested to file written submissions of the views expressed orally followed by rejoinder submission.

- xxiii. In accordance with Rule 18 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 17<sup>th</sup> November, 2015 and comments received thereon, along with the submissions made by the interested parties during the course of the investigation, considered relevant by the Authority, have been addressed in this final finding.
- xxiv. \*\*\* in this final finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxv. The Central Government in the Department of Revenue, Ministry of Finance extended the time limit for completion of the investigation and issue of the final findings up to 28th November, 2015 vide their Office Memorandum No. 354/84/2015--TRU dated 15th May, 2015.
- xxvi. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs 58.05.

### **C. Level of cooperation by Government of China**

- 6. The Authority notes that despite adequate opportunities provided to the Government of China (GOC), through the deficiency letters and otherwise, to provide detailed information concerning the various alleged subsidy schemes, the benefits provided to the Chinese producers/exporters under the same and the countervailability of the same vis-à-vis the Subsidy Agreement, the GOC neither provided the complete information, nor consented for the on the spot verification offered by the Authority. The GOC did not permit the Authority to visit China to conduct on the spot verification of the data/information furnished by the sole Chinese respondent producer/exporter. Had the GOC cooperated and allowed on the spot verification of their information/documents/records and that of the sole respondent Chinese producer/exporter, the Authority would have been in a better position to establish whether the alleged programs exist, whether the SOEs involved in the alleged programs are public bodies and whether the alleged programs are countervailable under the law. Since GOC did not extend the required cooperation, the Authority had to look for and rely upon other best available information.

## **D. SCOPE OF PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **D.1. Submissions made by the Domestic Industry**

7. Following are the submissions made by the domestic industry with regard to product under consideration and like article:
- i. The Product under Consideration (PUC) in the present investigation is “Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators”. Castings for wind-operated electricity generators are also known as “windmill” or “wind turbine”.
  - ii. A Windmill requires a number of casting parts, including the
    - a) Hub, Rotohub, Rotor Nabe,
    - b) Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation,
    - c) Bearing Housing, Bearing Support,
    - d) Hollow Shaft,
    - e) Main Axle, Rotor Shaft, Main Shaft, Rotor Coupling, Axle Pin, ,
    - f) Lateral Suspender,
    - g) Pitch Stop, Stator,
    - h) Generator castings, Part of Generators, Rotor,
    - i) Torque Arm support, Gear Box.
  - iii. The product scope includes only wind turbine casting within the scope of the PUC. Casting if imported in raw/unfinished/semi finished or if imported as a part of sub-assembly equipments are within the scope of PUC. In case of sub-assembly, petitioner has not sought anti subsidy duty on entire sub-assembly. Petitioner has sought CVD on casting portion of the sub-assembly.
  - iv. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like blades, etc. which leads to the generation of electricity.
  - v. Although the product under consideration is classified under Customs sub-heading No. 8503 under the Customs Tariff Act, they are also being imported under other tariff heads viz; 84834000, 85030090, 85030010 in Chapter 84 and 85. However, customs classification is indicative only and in no way it is binding on the scope of the present investigation.

- vi. There is no difference in subject goods produced by the petitioner and exported from the subject country. Subject goods produced by the petitioner and imported from the subject country are having comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Subject goods produced by the domestic industry and imported from subject country are like article in accordance to the Rules.
- vii. “Wind operated electricity generators (WOEG)” is a “wind mill” and therefore casting for “wind operated electricity generators” implies casting for “wind mill” or “Wind Turbine”. The central government in various notifications is using the term for wind mill as WOEG.
- viii. The sole responding exporter, Jiali Wind submitted that the goods sold by the company in home market and exported to India are directly comparable. Jiali Wind submitted that there is no difference between the goods sold in home market and exported to other countries including India in physical and technical characteristics.

**D.2. Submissions made by GOC**

- 8. Post initiation, no submission has been made by the Government of China with regard to the product under consideration.

**D.3. Submissions made by producers/exporters/ importers/ other interested parties**

- 9. Following are the submissions made by the producers/exporters/ importers/ other interested parties with regard to the product under consideration:
  - i. The product under consideration is too broad and defined wrongly. It needs to be simplified and defined clearly without any ambiguity. Castings by definition mean a single object made using a mould. There can never be a casting in a sub-assembled form.
  - ii. The product under consideration, as defined by authority in the initiation notification, is restricted to only castings for wind operated electricity generators. Thus, any other casting, which is not used in wind-electricity generators are outside the purview of subject investigation.
  - iii. The products that are not castings and the product types that were not even imported into India or produced by the domestic industry should be excluded from the purview of this investigation.

- iv. It is not necessary that benefits conferred on sub-assembled parts will be included in the final product. Unless it is proved that the subsidy enjoyed by the castings manufacturer have been passed on to the other products, such downstream products should not be included in a CVD investigation. Therefore, Authority should exclude Castings in sub-assembled form, Castings as a part of sub-assembly or as a part of an equipment/component meant for wind-operated electricity generators from the scope of the present investigation.

#### **D.4. Examination by the Authority**

10. The meaning and scope of the product under consideration was defined by the Authority in the initiation notification as follows:

*“5. The product under consideration in the present investigation is “Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators”. A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like blades, etc. which leads to the generation of electricity.*

*6. The product under consideration is classified under Customs sub-heading No. 8503 under the Customs Tariff Act, 1975. The product under consideration does not have dedicated customs classification. The classification is, however, indicative only and in no way binding on the scope of the present investigation.”*

11. Following are the observations made by the Authority in regard to the product under consideration:

- i. The product under consideration (PUC) in the present investigation, as defined in the initiation notification, is “Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/ component meant for wind-operated electricity generators”.

The product under consideration has also been collectively referred to as castings for wind operated electricity generators (WOEG).

- ii. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity.
- iii. The product under consideration is a casting for a wind-operated electricity generator (WOEG) which is popularly known as windmill. A windmill is a mill that converts the wind energy into mechanical energy by means of rotating blades, which in turn moves the turbine to generate electricity. A windmill comprises of various casting and non-casting parts such as fan or blades made of fibre glass, tower made of steel structure etc.
- iv. A windmill requires a number of casting parts including Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc.
- v. Although the product under consideration is classified under Customs sub-heading No. 8503 under Chapter 85 of Customs Tariff Act, 1975, as reported by the domestic industry and reflected in the relied upon imports data obtained from DGCI&S, the PUC is being imported under various other heads as well. However, customs classification is indicative only and not binding on the scope of the investigation. It has been contended by the opposite interested parties that the scope of the product under consideration is too wide. It has also been contended that the scope of the product under consideration refers only to castings in a generator used in a windmill. The Authority notes that there are at least three terminologies in vogue in this regard - (a) windmill; (b) wind turbine; and (c) wind-operated electricity generators. All these nomenclatures are one and the same meant for generating electricity from the kinetic power of the wind. For example, the Customs authorities have issued Notification No. 21/2014- Customs dated 11th July'2014 which refers to "Parts and raw materials required for use in manufacturing the Wind Operated Electricity Generators". This further proves that when it refers to "Wind Operated Electricity Generators", it actually refers to wind mill. The Authority thus notes that windmill, wind turbine and WOEG refer to the same product and castings for WOEG are nothing but castings for windmill or castings for wind turbine.

- vi. The Authority notes that the basic production process involved in the production of the product under consideration is production of raw casting. Once raw casting has been made, it undergoes multiple machining operations. These machining operations can be performed either by the producers themselves or by stand alone parties specializing in machining operations (in China or in India) or by the end consumers themselves. Further, a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub-assembly. Eventually, a windmill comprises of a number of these sub-assemblies. Therefore, the eventual consumer has a choice of buying the product under consideration at any stage of its production process and even as a part of a sub-assembly.
- vii. Some of the sub-assemblies used in a windmill include Gear Box, Nacelle assembly and Hub pitch assembly. These sub-assemblies comprise of castings and other components. For example, Nacelle assembly consists of base frame, Gear Box consists of Planet Carrier, Housings, Torque arm and Hub assembly consist of Rotor hub/Hub and a pitch system. Therefore, it is open to a consumer to either buy a casting and other mating parts separately and assemble at its own place, or, instead buy the sub-assembled product as well.
- viii. The operations involved in preparing sub-assembly are almost a screw driver technology and efforts involved are quite insignificant in proportion to overall operations carried out. Therefore, it is quite feasible for an eventual consumer to buy sub-assembled products instead of buying castings and other products separately. The Authority, therefore, notes that if the scope of the PUC does not include the sub-assemblies, it shall defeat the very purpose of imposing any trade defense measure, if any. The Authority however appreciates that the scope of the PUC cannot be extended to entirety of sub-assemblies, merely because it contains castings within the scope of the measures. The Authority therefore holds that it is appropriate to consider sub-assemblies within the scope of the product under consideration so long as the scope of the CVD measures, if any, is limited to casting portions of the sub-assemblies.
- ix. For the reasons similar to inclusion of sub-assemblies, it is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting

portions of these equipments/components used for wind mills or wind turbines or wind-operated electricity generators.

- x. In view of the above, the Authority holds that the scope of the product under consideration defined in the notice of initiation is appropriate and defines the scope of the product under consideration for final determination as follows:

*"Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators"*

#### **D.5. Like Article**

12. The WTO Agreement on Subsidies and Countervailing Measures defines like product as:

*"[T]he term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike; in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."*

13. Following are the observations made by the Authority in regard to the like article:

- i. The product under consideration in the present investigation is "Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators".
- ii. A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc.
- iii. Various castings parts are used in a wind mill at different places at the top of wind mills. Various parts are produced by similar

production process, using similar raw materials and differ essentially in their shape, size, design, and extent of machining depending on the place where these casting parts are required to be used in eventual application. Therefore, different parts of castings fall in the same general category of castings. Casting is a very wide terminology and there are several types of castings produced for different purposes. The present investigation is however limited to casting for WOEG only. Since different types of castings are interchangeably produced and differ only in terms of shape, size, design, extent of machining, different types of castings constitute one article for the purpose of present investigations. It is, however, recognized that different types of castings are produced to meet different end application and these castings may differ significantly in terms of their associated costs and prices. It would, therefore be not appropriate to do a comparison of imported product price with the domestic industry price/NIP on the basis of weighted average of different types of castings. The Authority has therefore devised a model match criteria in order to ensure fair comparison between the domestic product and imported product as elaborated separately herein below. However, difference in costs and prices of different types of castings does not mean that each casting is a different article.

- iv. The Authority notes that the PUC can be broadly categorized into different types of castings produced for different end applications in a wind mill. For example, a Hub is one of wind turbine’s heaviest components, weighing 8 to 10 tons for a 2-MW turbine. The hub is produced and designed to be rigid yet able to absorb a high level of vibration. Whereas Rotor Nave is the component which, with the help of the rotor blades, converts the energy in the wind into rotary mechanical movement. And, Base Frame is used to give base to the blades or in which the blades are fitted in. Different types of castings produced and sold in this industry are listed below along with their end application:

SN	Type of Casting	Application
1	A - Hub, Rotohub, Rotor Nabe	Connects the Three Blades and transmits the rotational Movement to the Gear Box. The hub is also connected to the pitch mechanism of the Machine.
2	B - Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation	Sits on the tower and supports the load of Hub, Rotorshaft, Gear box, Generator, the nacelle cover and other smaller assemblies. The Framesa Yaws also is connected to the Yaw mechanism of the machine.

SN	Type of Casting	Application
3	C - Bearing Housing with or without the use of Front & Rear, Bearing Support.	The Bearing Housing houses the bearings and supports the Rotor shaft which rotates on the bearing housing.
4	D - Hollow Shaft	Hollow Shaft Houses the Main Axle or the rotoshaft and in this design the shaft is stationary and the hollow shaft connects the hub to the generator.
5	E - Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft (At times can be forged)	The main Axle is attached to the main frame and bears the load of the hub, and other stationary and rotating parts
6	F - Lateral Suspender, Pitch Stop	Lateral Suspensor suspends on to a Main Frame. Pitch Stop for the Pitching Mechanism.
7	G - Stator, Generator castings, Part of Generators, Rotor	The Stator and rotors are part of the generator.
8	H - Torque Arm Support, rear Frame	Torque arm and supports are meant for holding the gear box in position.
9	O - Others	Not Considered Elsewhere

- v. It is noted that different types of castings differ in terms of associated cost and price and therefore the type of casting has been considered as one of the parameters for comparison purposes. Further, the product can be sold in raw form or machined form. In view of significant difference in raw and machined form of the product, this factor has been used as a parameter for fair price comparison. On the basis of the above, the Authority has devised following model match criteria in order to ensure fair comparison:

#### **PCN Terminology- Castings for WOEG**

Field Description	SN	Type of Casting
Product Type	Z	A - Hub, Rotohub, Rotor Nabe
		B - Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation
		C - Bearing Housing with or without the use of words Front & Rear, Bearing Support.
		D - Hollow Shaft

Field Description	SN	Type of Casting
		E - Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft (At times can be forged)
		F - Lateral Suspender, Pitch Stop
		G - Stator, Generator castings, Part of Generators, Rotor
		H - Torque Arm Support, rear Frame
		O – Others
Processing	X	M= Machined C= As Cast
Capacity	Y	As per the following table

Capacity (in KW)		PCN
100	299	A
300	499	B
500	699	C
700	899	D
900	999	E
1000	1000	F
1001	1199	G
1200	1399	H
1400	1599	I
1600	1799	J
1800	1999	K
2000	2000	L
2001	2099	M
2100	2100	N
2101	2299	O
2300	2499	P
2500	2699	Q
2700	2899	R
2900	3099	S
3100	3299	T
Above 3300		Z

- vi. The petitioner claimed that the goods are produced as per requirements and specifications given by the consumer/buyer and therefore the goods supplied by the domestic industry and Chinese suppliers have to confirm to the specifications laid down by the consumers. This claim of the petitioner has not been disputed by the interested parties.

- vii. The product is primarily sold in pieces/nos. The price depends upon the design, size, weight, and processing involved in a particular casting. Two castings of the same nature like HUB of two different windmills may not be the same in terms of associated weight, design, machining and process involved. Hence, the two may differ significantly in terms of cost and price.
- viii. The sole responding Chinese exporter has admitted that the goods produced by them are comparable to the goods supplied by the domestic industry. Some of the consumers have however claimed that the goods produced by the domestic industry are different from goods imported from China primarily in terms of quality.
- ix. The Authority notes that the argument of the interested parties is with regard to quality differences perceived by one of the consumers. The Rules itself recognize a situation where the goods produced by the domestic industry may not be alike in all respect and provides that the authority shall consider in those situations another article which, although may not be alike in all respects to the product under consideration, has characteristics closely resembling those of the product under consideration.
- x. The interested parties disputing the acceptability of the goods produced by the domestic industry have not provided evidence to establish that the goods produced by the domestic industry cannot be considered as a product which, although may not be alike in all respects to the product under consideration, has characteristics closely resembling those of the product under consideration. The authority also notes that there are significant contrary submissions by the domestic industry and interested parties with regard to acceptability of the goods produced and supplied by the domestic industry. The domestic industry has contended that it has produced and supplied goods to several consumers, including to the interested parties disputing the quality of the domestic industry product, in India and overseas for past several years and there is no instance where the goods produced by the domestic industry have been rejected. The domestic industry has also stated that the consumer has raised the quality issue whereas the real issue is the low priced imports accessible to the consumer. The domestic industry has also contended that the fact that one of the consumers has significantly switched over to the domestic industry product from imports further establishes that the domestic industry product is in fact substitutable with the imported product.

- xi. The Authority notes that the domestic industry is producing and selling the product under consideration for past several years both in India and abroad and there is no evidence of failure of the goods produced by the domestic industry. After careful consideration of the submissions made by various interested parties, the Authority holds that the subject goods produced by the domestic industry are comparable to the goods imported from China in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. Some of the consumers importing the product under consideration have also purchased the same from the domestic industry. Further, goods supplied by the domestic industry and imported from China serve the same general purpose and perform the same function.
- xii. In view of the above, the authority holds that subject goods produced by the domestic industry are like article to the product under consideration imported from China in terms of the Rules.
- xiii. The product is design and model specific depending upon the design and capacity of the wind mill producers. However, both the domestic producers and exporters supply to the same wind mill producers in India.

## **E. SCOPE OF DOMESTIC INDUSTRY & STANDING**

### **E.1. Submissions made by the Domestic industry**

14. The submissions made by the domestic industry with regard to the scope of domestic industry and standing and considered relevant by the Authority are as follows:

- i. The present petition has been filed by Larsen & Toubro Limited whose production constitutes more than 50% of Indian production. M/s Patel Alloys Steels Pvt. Limited has supported the petition.
- ii. Petitioner is eligible producer of the subject goods in India. Production of the petitioner constitutes a major proportion in Indian production. The petitioner, therefore, constitutes domestic industry and satisfies the requirement of standing under the Rules.

## **E.2. Submissions by GOC**

15. No relevant submission has been made by the GOC with regard to scope of domestic industry and standing.

## **E.3. Submissions by producers/exporters/importers/other interested parties**

16. The submissions made by the producers/exporters/importers/other interested parties with regard to the scope of domestic industry and standing and considered relevant by the Authority are as follows:

- i. There is no supporting letter enclosed with the petition from Patel Alloys.
- ii. It is mentioned in the petition that there are number of other producers in India. However neither exact number nor an estimate of their numbers has been provided.
- iii. Petitioner has filed two sets of data – one in the original petition and other in the updated petition. In the original petition filed by the Petitioner, it has estimated the production of other producers to be 2500MT for the period October 2012 to September 2013. However, in the revised annexure filed by the Petitioner for the updated and enlarged period – October 2012 to December 2013, the production has actually witnessed a sharp decline, instead of increasing further. It is incomprehensible as to how production for a larger period, which includes the period covered in the original petition, can be lower.

## **E.4. Examination by the Authority**

17. Rule 2(b) of the Countervailing Duty Rules defines domestic industry as under:-

*"(b) "domestic industry" means the domestic producers as a whole of the like article or domestic producers whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidised article, or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry".*

18. The Authority notes that the petition has been filed by Larsen & Toubro Limited. Subsequently, a copy of support letter by M/s Patel Alloys has been submitted along with information concerning capacity, production and sales. The production by the petitioner constitutes a major proportion in the Indian

production of the subject goods. Petitioner has neither imported the product under consideration from the subject country during the POI nor is related to either importers or exporters of subject goods from the subject country. The Authority, therefore, notes that the petitioner has standing to file the present petition and constitutes domestic industry within the meaning of the Rules.

## **F. CONFIDENTIALITY**

### **F.1. Views of the Domestic industry**

19. The submissions made by the domestic industry with regard to confidentiality during the course of the investigation and considered relevant by the Authority are as follows:
- i. The petitioner has claimed only such information as confidential, confidentiality of which has been permitted under the rules and as per consistent practice of the Authority.
  - ii. The petitioner has provided sufficient non confidential version of the application. No interested party has been able to point out any specific instance of information which has been claimed confidential and confidentiality of which is not justified under the rules.
  - iii. The response has been submitted by GOC and one of the exporters of the subject country. Non-confidential version of the questionnaire responses filed by them is grossly inadequate. Even information that is publicly available (such as names of the raw material etc) has not been disclosed. Out of the identified 44 schemes, the GOC has responded to only 3 schemes and the exporter has responded only 2 schemes.
  - iv. Exporter has not even provided indexed information.

### **F.2. Submissions by GOC/producers/exporters/importers/other interested parties**

20. The submissions made by the GOC/producers/exporters/importers/other interested parties with regard to confidentiality and considered relevant by the Authority are as follows:
- i. Excessive confidentiality has been claimed by the petitioner. Petition is incomplete and does not meet the 'adequacy and accuracy' standards as supporting evidence.

- ii. The petitioner has not provided soft copy of the import statistics in MS-Excel format, evidence in respect of existence of each subsidy program, evidence of subsidy program being applicable to the product concerned, evidence of subsidy program being applicable to this particular industry and evidence of other domestic producer and source of their production quantity.
- iii. In terms of Rule 7(7) of CVD Rules, Designated Authority is mandated to make available the evidence presented by one interested party to other interested parties. In the petition filed by the Petitioner Domestic Industry, lot of information has not been shared by the Petitioner.
- iv. Rule 6(2) of CVD Rules requires the application to be supported by evidence of, inter-alia, subsidy and if possible, its amount. Petitioner has nowhere provided any information whatsoever with respect to amount of subsidy.
- v. In addition, certain benchmark would have been used by the Petitioner for each subsidy program to arrive at the level of subsidization. However, there is no information with respect to such benchmark used.

### **F.3. Examination by the Authority**

21. With regard to confidentiality of information, Rule 8 of the Rules, 1995 provides as follows:-

*8. Confidential informations. ( 1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.*

*(2) The designated authority may require the parties providing information on confidential basis to furnish nonconfidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.*

*(3) Notwithstanding anything contained in subrule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.* Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties.

22. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of a public file. The Authority notes that any information which is available in the public domain cannot be treated as confidential.
23. As regards the submission of the opposite interested parties that the petitioner has not provided soft copy of the import statistics, the Authority notes that the public version of the transaction wise imports statistics submitted by the domestic industry from DGCI&S has been made available in the public file. However, it is not mandated that either the domestic industry or the Authority should make available the soft copy of the relied upon imports statistics in the public file. The Authority initiated the present investigation after examining and satisfying prima facie the countervailability of the alleged subsidy programmes being provided by the GOC to the producers/exporters of the subject goods in China.

## **G. Miscellaneous Submissions**

### **G.1. Miscellaneous Submissions made by the Domestic Industry**

24. The miscellaneous submissions made by the domestic industry and considered relevant by the Authority are as follows:
- i. GOC's contention that the petition suffers from inadequacy and inaccuracy of the information to justify initiation of investigation is baseless. The petition contains the evidence in the form of decision of other investigating authorities demonstrating that the schemes brought out by the petitioner were indeed found countervailable by the other investigating authorities. It is thus not a case that the petitioner merely made allegation about existence of some schemes and provide no evidence to establish countervailability of these schemes. Further, evidences provided by the petitioner during the course of the

investigations establish the existence and countervailability of these schemes.

- ii. Petition contains sufficient evidences to justify initiation of investigation. It cannot be expected that all evidences required for making a determination shall be made available to the Authority at the stage of initiation itself. It is well established WTO jurisprudence that quality and quantity of evidence improves as an investigation progresses.
- iii. The various schemes identified by the petitioner can be categorized into – (a) country wide programs, (b) sector specific programs, (c) region specific program. It is well known fact that casting producers in China are entitled for various incentives/subsidies identified by the petitioner. In fact, the evidences provided by the petitioner clearly establish that casting producers have been benefitted from these countervailable subsidies.
- iv. The responding exporter has not fully co-operated – (a) all entities involved in production and sale of the PUC have not cooperated with the Authority; (b) the exporter has restricted information only for POI in respect of various kinds of scheme, whereas the information should be provided over useful life of the assets for those schemes where benefit goes over the life of the assets; (c) the exporter has withheld vital information from the Authority.
- v. The annual report as well as the website of the exporter clearly shows that the company has received subsidies. However, the exporter has nowhere made references to these schemes in the questionnaire response.
- vi. GOC has willfully restricted its response only to a few schemes and has not replied to all the schemes identified by the petitioner. Further, while stating that certain programs have been rescinded, GOC has provided no evidence establishing the same, nor GOC has stated that there were no residual benefits in these programs; nor GOC has even stated that no other program have not been introduced while rescinding these. A number of programs by GOC conferred benefits which shall continue even if the program is withdrawn (popularly known as "residual benefits" under subsidies). Further, GOC has withdrawn few programs and brought some other programs. Above all, even when GOC stated that these programs have been withdrawn in 2008, other investigating authorities have held existence of these programs and conferment of countervailable subsidies in these programs by other investigating authorities.

- vii. Petitioner has identified a large number of programs which are China wide and are applicable to all industry. Therefore, to such extent, it is not necessary to establish availment of benefits by each and every producer of casting in China. As regards existence of financial contribution and benefits conferred, the petition specifically provides the relevant information.
- viii. There is no basis for the statement that reference to other jurisdiction's findings is unsubstantiated assertion. Majority of the program are product neutral and therefore the mere fact that these schemes pertain to different products is immaterial.
- ix. The statement in the application that evidence is not available should be read as reference to "independent evidences". Petition contained sufficient evidences. Further, the GOC has been provided opportunity for consultation prior to initiation and therefore GOC had sufficient opportunity to establish that the scheme identified by the petitioner were not applicable to the producers of the PUC in the present case.
- x. Reference to Appellate Body (AB) finding (WT/DS 379/AB/R dated 25.3.2011) is entirely immaterial as regards contents of the application. The AB finding is with regard to determination which arose in a situation where the quality and quantity of evidence did not improve at all during the course of the investigation. The relevant AB order may be perused, which clearly demonstrates that authority in that case made no effort to ascertain whether the factual position remained the same in the present period as compared to previous determination made by the US DOC.
- xi. The WTO AB held that there may be material changes in the factual positions between previous and present determination. However, in the instant case, there has been significant improvement in the quality and quantity of evidences that was available in the application and now available to the Designated Authority for determination. Petitioner has now provided ample evidence to demonstrate that the factual position with regard to these schemes has remained the same. Further, GOC or the responding exporter has not provided evidence to show that the factual position has materially changed (barring the argument that some schemes were rescinded in 2008, an argument which is incorrect and has been found so by other authorities).
- xii. GOC has not established absence of residual benefit in these programs. Further, the other investigating authorities continue to

countervail these programs despite the claim that these have been rescinded.

- xiii. No reasonable burden of proof is being imposed on the exporting country or the exporters in the present case. Firstly, if the scheme has been withdrawn, there should be a notification and it should not be difficult at all for GOC to provide a copy of the same. Secondly, barring one exporter, no exporter has cooperated with the Authority. Therefore, question of imposing unreasonable burden on an exporter does not arise at all. As far as cooperating exporter is concerned, no instance has been pointed out with regard to unreasonable burden imposed by the Authority. Evidently, the GOC has simply referred to the decision of the investigating authorities without establishing how the same applies to the facts of the present case.
- xiv. Information and evidence is required to be co-related with PUC only if the program is specific to the PUC. If the program is not specific to the PUC, question of providing information or evidences relating to PUC will not be critical. For example, if “Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)” program provides benefit to the FIEs established in the SEZ zone excluding Pudong area, it is not necessary to provide information and evidence that a producer of PUC located in SEZ areas have in fact availed the benefit. It would be reasonable to proceed on the basis of an assumption that a company entitled for the benefits if it is located in any of the SEZ other than Pudong area and would have availed the benefit available under the program. It is for the exporter to establish that despite eligibility, it has not availed the benefit.
- xv. There is only one Chinese company who has responded in the present investigation. The information collected by the petitioner shows existence of almost 50 exporters of product concerned in China. The questionnaire response filed by GOC may be perused where one of the questions concerns names and addresses of various producers of the PUC in China. The information provided by the GOC may be co-related, which shall show that despite existence of a large number of producers in China, only one producer has responded to the Authority. Further, information and evidences provided by the petitioner in the petition and thereafter so far during the course of the investigation clearly establishes that the producer of the PUC in fact has availed subsidies.

- xvi. The contention of GOC that power to investigate the subsidy is not unlimited and any information or evidence required beyond the legal requirement would be a contrary to the spirit and letter of the WTO laws is irrelevant. No information beyond the legal requirement is being demanded and therefore statement is without basis.
- xvii. The importers of castings for Wind Operated Electricity Generators (WOEG) are currently importing Castings from China at subsidized prices, whereas similar goods are being produced/can be produced by domestic industry. Casting industry is very important for development of energy industry in the Country. Unfairly low priced imports have caused and are causing significant injury to the casting industry in India.
- xviii. The subject goods originating in China have been benefited from actionable subsidies provided by various levels of the Government of China. These schemes have been held to be countervailable by the other anti dumping authorities of Canada, Europe, Australia and USA.
- xix. Belated participation by parties should not be permitted. Indian Wind Turbine Manufacturers Association attended the oral hearing though without having filed even a single page of information. Participation by the association is one year and 20 days after the deadline for response.
- xx. The response filed by the GOC has been grossly deficient. Further, GOC has responded only in respect of the responding exporter and no information has been provided in respect of rest of the exporters in China.

## **G.2. Miscellaneous Submissions by GOC**

25. The miscellaneous submissions made by the Government of China PR and considered relevant by the Authority are as follows:
- i. The petition contains insufficient evidence. In accordance with Article 11.2 of the Agreement on Subsidies and Countervailing Measures (ASCM), an application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this provision in the ASCM.

- ii. As per the clarifications by the Panel on China – Grain Oriented Flat-Rolled Electrical Steel (US), evidence of the existence of a subsidy requires evidence of the existence of a financial contribution and a benefit and the evidence of the nature of the subsidy includes evidence regarding whether the subsidy is specific.
- iii. The petition has alleged 7 major categories of subsidies containing in total 44 subsidy programmes. But, it failed to identify which specific subsidy programs is related to the product under investigation and whether these programs existed and financial benefit conferred in the sector within which the exporting producers fall. The petition simply collected or pasted findings made by other jurisdictions involving other industrial products to present an unsubstantiated assertion, assuming all those 44 subsidy programs existed to have a financial contribution and a benefit.
- iv. Simple reference to other findings is not allowed. In US – Definitive Anti-dumping and Countervailing Duties on Certain Products from China, the Appellate body states that findings of other investigations do not suffice as a reasoned and adequate explanation. This is especially so considering every single investigation is different from others in factual issues such as products involved, period concerned and entities targeted. The present petition is merely a grouping of different findings reached by other WTO members investigating different products of different sectors of industry, without identifying specifically the subsidies relevant for the subject merchandise.
- v. Certain subsidy programs have been rescinded and thus confer no benefit. Sufficient evidence in support of rescinding of certain programs has been furnished along with questionnaire response which should be enough to terminate the investigation in respect of these rescinded programs.
- vi. The investigating authority should not place unreasonable burden of proof on the exporters. The exporters ought to be accorded with rights to submit information and evidence to disprove or rebut any allegations made by an industry of importing country.
- vii. The investigating authority is in a neutral position to collect and analyze all the submitted or collected information and evidence. A hearing can also be organized to further hear views and comments. Thus any information or evidence that is not necessary or bears no

direct relevance to the investigated product shall not be requested, because this action may overly burden an exporter.

- viii. Development of energy industry, especially green energy, is one of the key economic agenda for Govt of India. Imposition of countervailing measures may not be conducive for the growth of this sector in the country.

### **G.3. Miscellaneous Submissions made by producers/exporters/importers/other interested parties**

26. The miscellaneous submissions made by producers/exporters/importers/other interested parties and considered relevant by the Authority are as follows:

- i. The petition is deficient since it is not supported by any evidence. Moreover, it does not also exclude the subsidy programs rescinded in the exporting country. Petitioners have failed to provide evidence to show that the subject goods coming to India are subsidized and are countervailable. Accordingly, the entire investigation needs to be terminated.
- ii. List of 44 schemes given in the petition has not been duly substantiated by the petitioner. The submission of the Petitioner in this regard is grossly inadequate and should not be considered.
- iii. The initiation of the present anti subsidy investigation is inconsistent with the WTO Agreement on Subsidies and Countervailing Measures "SCM Agreement" on account of procedural and substantive issues.
- iv. New subsidy allegations cannot be included in the present investigation. Even if a new subsidy allegation is accepted by the Authority, no investigation shall be initiated against those new subsidies at this belated stage.
- v. As per Article 1 subparagraph 2 of the ASCM agreement a subsidy is countervailable as per Part III or V of the agreement and states that:

*A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2.*

Therefore only if a subsidy is specific, it will be countervailable. It is necessary for the Domestic Industry to prove that the benefit is availed by the producers of the product under consideration.

- vi. Rule 18 of CVD Rules states that authority shall disclose the essential facts under consideration and permit the interested parties to defend their interests. Therefore, it is mandatory under the Indian law to hold another hearing after disclosure of essential facts so that the interested parties can make their views known and defend their interests adequately.
- vii. Vendor selection process for the product under consideration is quite lengthy and the vendor is selected after a validation process that takes several months. Resultantly, it is not at all easy to change vendors easily once they are chosen. It is totally incorrect to suggest that buyers choose imports over domestic product based on price factors alone. Designated Authority needs to consider this aspect as well while examining demand-supply trends.
- viii. Also, at page 8 of the petition filed by Petitioner, it has been stated that two castings of the same nature may not be same in terms of associated weight, design, machining and process involved. Thus, in terms of the above submissions, it is possible that the Chinese made casting of same size may still have substantially different weight compared to Indian like article. As a result, unit of measurement in terms of Kgs or MTs may not correctly aid in examination of injury to the domestic industry.
- ix. IWTMA is an interested party in the present investigation as per the Rules and his rights cannot be taken away on ground of procedural requirements. Merely because IWMTA has not made any submissions until the oral hearing does not take away its right to present itself during the oral hearing and provide necessary information for the purposes of the present investigation. When Authority itself has extended time for completing the investigation and has conducted oral hearing during such extended period, in such a case, the rights of interested parties cannot be curtailed on the ground that investigations are time-bound.
- x. Domestic Industry has only provided line by line sorted import statistics for the POI and the injury analysis period. Domestic Industry should have provided the raw data and methodology adopted for sorting the data. Authority has also not provided the transaction wise relied upon data. Since there is no set tariff

classification for the product under consideration, unless transaction wise import statistics are examined, correct level of imports cannot be ascertained.

- xi. The casting for wind operated electricity generator is non-conventional, non-polluting and renewable source of energy. Castings are used in wind turbines to be used in wind mills along some other non casting parts which generate electricity using wind energy. If the duty is imposed on the castings it will be against the policy of government to promote renewable and non-conventional source of electricity. Therefore, the present investigation should be terminated and no duty should be imposed on casting for wind operated electricity generator.
- xii. Energy generation is the high priority for the country today for achieving greater energy production India's total energy consumption has been rising over the years and is met mostly by conventional energy sources such as coal, oil, and natural gas. Ever increasing consumption of energy not only increases our total expenditure on energy but also increases our share of greenhouse gas emissions. Imposition of countervailing duty will be against public interest.

#### **G.4. Views Expressed by the Ministry of New & Non-renewable Energy (MNRE)**

27. The following are the views expressed by MNRE:

- i. MNRE guideline allows installation of only type tested and type certified wind turbine as per IEC and GL systems certification schemes from internationally accredited testing and certifying agencies or National Institute of Wind Energy. Wind turbine components must comply with the required standards laid down by the above testing and certifying scheme.
- ii. The total demand of casting components of WOEg will be 7,00,000 MT by 2022 as against the local manufacturing capacity of 90,000 tonne/annum from L&T and Patel Aloys only.
- iii. MNRE has set an ambitious target of 60 GW capacity installation by 2022. Accordingly, the demand for the casting components would increase manifold. However, domestic manufacturing sector should not suffer due to unfair trade practices and a level playing field is required to be provided to them.
- iv. Domestic manufacturing companies have the capacity to meet the required demand, but quality of the products needs to be ensured.

## **G.5. Examination by the Authority**

28. In the notice of initiation of the present investigation, Authority had stated that the following prima facie actionable subsidy programs are proposed to be investigated:

<b>Sl.No</b>	<b>Heads</b>	<b>Program No.</b>	<b>Schemes</b>
1.	Special Economic Zone (SEZ) Incentives and Other Designated Areas-	Program No. 1	Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area).
		Program No. 2	Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
		Program No. 3	Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
		Program No. 4	Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
		Program No. 5	Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
		Program No. 6	Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
		Program No. 7	Preferential Tax for Casing and Forging System
2	Grants	Program No. 8	The State Key Technology Renovation Projects Fund
		Program No. 9	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
		Program No. 10	Research & Development (R&D) Assistance Grant
		Program No. 11	Innovative Experimental Enterprise Grant
		Program No. 12	Superstar Enterprise Grant
		Program No. 13	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

Sl.No	Heads	Program No.	Schemes
		Program No. 14	Venture Investment Fund of Hi-Tech Industry
		Program No. 15	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
		Program No. 16	Innovative Small and Medium Enterprise Grants
		Program No. 17	Grants to Privately-Owned Export Enterprises
3	Equity Programs	Program No. 18	Equity infusions
		Program No. 19	Unpaid dividends
4	Preferential Loans	Program No. 20	Preferential loans and interest rates to the casting industry
5	Preferential Income Tax Programs & Tax Incentives	Program No. 21	Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years
		Program No. 22	Preferential Tax Policies for Foreign Invested Export Enterprises
		Program No. 23	Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
		Program No. 24	Preferential Tax Policies for the Research and Development of FIEs
		Program No. 25	Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments
		Program No. 26	Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose
		Program No. 27	Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
		Program No. 28	Tax Policies for the deduction of research and development (R&D) expenses
		Program No. 29	Tax concessions for Central and Western Regions
		Program No. 30	Income tax credit for the purchase of domestically manufactured

Sl.No	Heads	Program No.	Schemes
			production equipment
		Program No. 31	Preferential tax policies for companies that are recognized as high and new technology companies
		Program No. 32	Income tax concessions for the enterprises engaged in comprehensive resource utilization (special raw materials')
		Program No. 33	Tax credit concerning the purchase of special equipment
		Program No. 34	Preferential income tax policy for the enterprises in the Northeast region
		Program No. 35	Dividend exemption between qualified resident enterprises
6	Relief from Duties and Taxes on Materials and Machinery	Program No. 36	Exemption of Tariff and Import VAT for Imported Technologies and Equipment
		Program No. 37	Reduction in Land Use Fees
7	Goods/Services Provided by Government at Less than Fair Market Value	Program No. 38	Input Materials Hot Rolled Steel Provided by Government at Less than Fair Market Value
		Program No. 39	Hot rolled Steel Provided by Government at Less than Fair Market Value
		Program No. 40	Electricity provided by Government at less than Fair Market Value
		Program No. 41	Land for Less Than Adequate Remuneration to Companies Located in Industrial or Other Special Economic Zones
		Program No. 42	Program consisting of provision of water for less than adequate remuneration
		Program No. 43	Provision of various goods for less than adequate remuneration
		Program No. 44	Purchase of Goods by the Government for higher than adequate Remuneration
		Program No. 45 (Added in later submission)	Input Materials (raw material) & Utilities provided by Government at less than Market value

29. As regards the argument of the opposite interested parties that the petition is deficient and devoid of evidences and therefore the investigation needs to be terminated, the Authority notes that the petitioner has provided the information that was reasonably available to them to support the petition and the investigation was initiated on the basis of sufficient prima facie evidence furnished by the domestic industry showing existence of countervailable subsidies, injury and causal link to justify initiation of the investigation in accordance with the ASCM and Indian Act and the Rules. The Authority notes in this regard that the petition need not have evidence at the stage of initiation of the investigation as is required for making a final determination. The Authority is required to merely satisfy itself that there is sufficient prima facie evidence to justify an initiation. The Authority has called additional information wherever required and verified the information furnished by the domestic industry.
30. As regards the contention that the Petitioner itself had stated in the petition that evidence was not available, the Authority notes that even though the petition's write up part stated that evidence was not available, the petition indeed included evidence in respect of each of the schemes. Even for these schemes where the petitioner had stated that the evidence was not available, Petitioner had provided evidence in the form of determination of other investigating authorities. While the authority appreciates that the determinations made by other investigating authorities may not be a sufficient basis to make a determination, the same at the least constitutes sufficient evidence to justify initiation of investigations. The petition contained sufficient prima facie evidence to show that these alleged schemes have been held countervailable by various other Authorities.
31. It is, thus, noted that even at places where the petitioner has stated that the relevant evidence has not been enclosed, in fact, the petition contains evidences in the form of findings of other investigating authorities. The Authority notes that at the stage of initiation, the Authority may not have evidence linked to individual producers/exporters of the PUC, particularly in a situation where there is no publically available information in China. None of the interested parties have shown existence of publically available information/evidence while contending that the petitioner has not provided relevant information. The Authority also notes that the evidences brought out by the petitioner in the petition shows that the CVD margins determined by some of the investigating authorities were as high as 10.54% for loans provided and 9.71% for preferential tax exemption for R&D and for preferential tax policies for FIEs cumulatively in respect of various programs and where eligibility is contingent upon export performance the margin is high up to 5.3%. The Authority notes in this regard that the de-minimus limits under the rules is mere 1% for developed countries and 2% for developing

countries and therefore these schemes alone justified initiation of investigation.

32. The Authority notes that while contending that several schemes are no longer in force, the GOC has not provided any documentary evidence to show that the scheme is no longer in force. The Authority considers that if a program was introduced by the GOC at some point in time and was withdrawn subsequently, the GOC should have in its possession relevant documents showing introduction of the program and withdrawal of the same. It is, however, noted that while contending that some of the alleged schemes are no longer in force, the GOC has not provided either the documents relating to introduction of the program or documents relating to withdrawal of the program. The Authority, therefore, holds that the contention of the GOC with regard to withdrawal of the programs is unsupported with relevant documentary evidences. Since the GOC did not consent for on the spot verification of their data/information including claims made by them during the course of this investigation, the veracity of their contention that many erstwhile subsidy programmes have been rescinded cannot be accepted. Moreover, other investigating authorities have found these schemes to be in existence and countervailable in their findings.
33. The Authority further notes that vide notifications No. G/SCM/N/220/CHN, G/SCM/N/253/CHN and G/SCM/N/284/CHN dated 30 October 2015, the GOC has notified to the WTO several schemes/programmes under the SCM Agreement, covering most of the schemes/programmes which are under challenge in the present investigation.
34. As regards examination of the accuracy and adequacy of the evidence and satisfaction of the Authority with regard to sufficiency of evidence to justify initiation, the Authority notes that the petitioner provided evidences in the form of decisions of other investigating authorities where alleged programs were countervailed. Further, petitioner provided other relevant evidences in support of their claim. The Authority notes in this regard that EC in the matter of “imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China” made final determination regarding some schemes solely based on determination made by US Decision Memorandum in the matter of Circular Welded Carbon Quality Steel Line Pipe. Under these circumstances, the Authority considers that at the stage of initiation, it is only a question of accuracy and adequacy of the evidences and prima facie satisfaction of the Authority. The authority holds that it is not appropriate to contend that there was no evidence for 19 programs in the application. The Authority also notes the decision of the WTO in the matter of Guatemala Anti-Dumping Investigation Regarding Portland Cement from Mexico (WT/DS60/R) wherein it was held that it is not

necessary that the Authority restricts itself to the evidences brought by the petitioner in their petition. The Authority can consider evidence otherwise available in the petition, even if not relied upon by the petitioner.

35. With regard to the contention that subject merchandise is related to "green industry" and any countervailing measure against their imports may adversely affect growth of this sector, the Authority notes that as demonstrated by the domestic industry the costs on account of castings forms hardly 3-4% of the total project cost. Therefore, as argued by the domestic industry, the impact of the countervailing measures, if any, even at 100% level, may imply hardly 0.1% increase in costs to a consumer. This claim of the domestic industry has not been refuted by the opposing interested parties. In any case, the Authority notes that the purpose of anti-subsidy duties, in general, is to eliminate injury caused to the domestic industry by the subsidization of goods so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of CVD measures would not restrict imports from China in any way, and, therefore, would not affect the availability of the products to the consumers. Imposition of CVD measures would remove the unfair advantage gained by imports, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or even more sources of supply.
36. As regards New Subsidy Allegations, the Authority notes that while the petitioner initially requested extension of investigation to include these new subsidies, the petitioner subsequently modified its contention and submitted that the evidence brought out by the petitioner with regard to existence of other subsidy schemes should be considered to hold that the GOC has not disclosed all the schemes which are in vogue in China and where the casting producers have benefitted from countervailable subsidies. The Authority notes in this regard that extension of investigation to these schemes now identified by the petitioner shall not be appropriate considering the overall time left for completion of the present investigations. Extension of investigation to these new subsidy schemes identified by the petitioner implies calling relevant information from interested parties and thereafter conducting elaborate investigations about these schemes as well. Thus, the Authority considers it appropriate not to extend the investigation to cover these new schemes brought out by the petitioner on record of the investigation. It is, however, noted that the GOC has not provided any information with regard to these subsidy schemes prevalent in China in spite of specifically seeking this information in the questionnaire issued by the authority. The Authority considers it appropriate not to extend investigations

to these schemes at this stage considering the time left for completion of the investigation.

37. As regards the argument that injury to the domestic industry is because of declining demand and withdrawal of Accelerated Depreciation scheme, Generation Based Incentive, the Authority notes that while demand for the PUC declined over the injury period, it is seen that market share of domestic producer as a whole declined from 14,122 MT to 6,888 MT over the injury period. Thus, while the domestic industry was already suffering because of declining demand, the subsidized imports took away increasing share from the declining market of the domestic producers.
38. Some of the interested parties have contended that Authority should hold another hearing after issuance of disclosure of essential facts. The interested parties have compared the legal provision in anti dumping and anti subsidy law and have contended that presence of "permit the interested parties to defend their interest" phrase under anti subsidy law and absence of same under anti dumping law implies that the Authority should provide an opportunity for oral hearing to the interested parties after disclosure of essential facts. The issue was examined in detail by the Authority. It is noted in this regard that anti dumping rules provides as follows with regard to issuance of disclosure statement:-

***Indian Antidumping Rules:*** "16. **Disclosure of information.** - The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision."

***WTO Agreement provision:*** "6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests."

***The ASCM Provision:*** "12.8 The authorities shall, before a final determination is made, inform all interested Members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests."

39. Opportunity for oral hearing has been provided under Rule 7 of the CVD Rule which is extracted below:

*“The designated authority may allow an (6) interested country or an interested party or its representative to present information relevant to the investigation orally also, but such oral information shall be taken into consideration only when it is subsequently reproduced in writing.”*

40. From the above, the Authority notes that a plain reading of the rule that the Authority is required to disclose essential facts of the investigation to the interested parties. In fact, the Agreement also makes it evident that the Authority is required to disclose the essential facts so as to enable them to defend their interests. This does not put any obligation on the Authority to allow the interested party to submit their comments orally after the issuance of the disclosure statement. The Authority in any case will provide opportunities for the interested parties to provide their comments after issue of disclosure statement and address those comments to the extent considered relevant in the Final Findings. It has been contended that the Authority should not place unreasonable burden of proof on the interested parties. The Authority, however, holds that the statement is without justification. The Authority has not sought any information or evidence which can be construed as unreasonable burden. If some subsidy programs were prevalent in China, it should not be difficult either for the exporter or for the GOC to provide relevant information about introduction or withdrawal of these programs. If a large number of programs are being maintained in China and if these large numbers of programs are being administered by different authorities in China, it is in fact an ominous task for petitioner to provide all these information to the authority. The Authority also notes the contentions of the petitioner in this regard that lot of information with regard to these schemes are not publically available in China.
41. The Authority notes the contention of GOC that the power to investigate the subsidy is not unlimited and any information or evidence required beyond the legal requirement would be a contrary to the spirit and letter of the WTO laws. The Authority notes that no unlimited powers have been used by the Authority. The Authority has merely sought information with regard to existence of certain programs. In fact, barring two programs out of 44 programs, it is not even the contention of the GOC that these programs identified by the petitioner were never in existence in China. Only for two schemes, the GOC made submissions that there was no such program in vogue in China. Even for these two programs, the petitioner domestic industry contended that they used an incorrect name and otherwise a program conferring the benefits identified by the petitioner does exist in China. Further, the Authority merely sought information with regard to nature of program, details of administering authority, relevant legal statute, eligibility criteria, evidence regarding the commencement or the termination of the schemes, etc. Authority considers that the information sought by the

Authority in any case is not excessive. It is noted in this regard that all investigating authorities seeks similar information in CVD investigation. The contention of GOC therefore that unlimited power has been exercised by the Authority is without basis. It is noted in this regard that while contending that certain programs were no longer in force, the GOC chose not to provide a copy of the document introducing the program and withdrawing the program.

42. As regards treatment of SOE as a public body, Authority notes that the petitioner has initially identified 44 programs, out of which, 37 programs are administered by those Bodies who fall within the category of state (GOC, Provincial, Municipal Corporation, local bodies in China). Only 7 programs were identified by the petitioner, which are being administered by SOE. The actual status of these SOEs could have been established, had the Chinese authority consented for on the spot verification.
43. As regards disclosure of information in the petition, the Authority examined the contention of the interested parties in detail and holds as follows:
  - a. As regards soft copy, the Authority notes that the request is beyond the prescribed proforma. The application proforma does not oblige an applicant to provide information in soft copy in the NCV version of the application.
  - b. As regards lack of evidence in respect of existence of each subsidy program, the Authority notes that the petitioner provided evidence to the reasonable extent and the petition contains information with regard to decision of other investigating authorities where these programs were considered countervailable.
  - c. With regard to evidence of subsidy program being applicable to the product concerned, the Authority notes that out of 44 programs identified in the application, 42 programs were such where the alleged benefits are not linked to the product. The benefit is linked either to the type of the business enterprise or the location where business enterprise was located or the program is contingent upon export. If a program is contingent upon exports, it follows that benefit under the program is available to all the exporters regardless of whether they are manufacturing PUC or other products. In fact, the present investigation is justified by identification of a number of programs which were contingent upon exports and where significant CVD margins were established by other investigating authorities.

- d. A copy of the support letter from Patel Alloys has been provided by the said Company and was repeated in the post hearing written submissions filed by the domestic industry.
  - e. As regards production of other Indian producers, the petition contains sufficient information establishing that the production by the petitioner was beyond the limits prescribed under the Rules. In fact, it is noted that standing of the petitioner has not materially changed after initiation of investigation.
44. As regards the contention that there cannot be a presumption and it must have been proved that the subsidy enjoyed by the castings manufacturer have been passed on to the other products, one cannot include such downstream products in a CVD investigation, the Authority notes that the petitioner has not included downstream product within the scope of investigation. Petitioner has sought CVD duty on the casting portion of the downstream product that might be imported in future. As far as present period is concerned, information on record does not show any import of the product in the form of assemblies or sub-assemblies and therefore the question of inclusion of downstream product in the present determination in any case does not arise.
45. As regards the contention that the alleged programs are related to specific geographical areas or cities, no averment that any producer was operating/ located in the geographical area, the Authority notes that GOC has provided a list of more than 200 casting producers in China showing their location. But, further details concerning status of these industries and subsidies availed by them have not been provided. Moreover, GOC did not cooperate to get their or the sole respondent exporter's data verified by the Authority.
46. Some interested parties have referred to the decisions of the Hon'ble Supreme Court in the matter of SC Automotive Tyre Manufacturers Assn. Versus DA [2011 (263) E.L.T. 481 (S.C.)] and have contended that Designated Authority is bound to follow principles of natural justice and any violation of principles of natural justice by Authority will vitiate the recommendations of the Authority. The Authority holds that the principles of natural justice have been duly complied in the present determination in so far as the same are applicable and relevant. For example, despite the fact that IWTMA Association made itself known at the stage of hearing and did not provide any information upon initiation of investigation and till the stage of oral hearing, the Authority permitted the said association to make submissions orally and thereafter file written submissions. Further, all the submissions made by the Association, to the extent considered relevant, have been examined and addressed in the present final finding.

47. It has been contended that as per Rule 4- DA is required to investigate the existence, degree and effect of any subsidy in relation to the import of an article. Unless the product is defined correctly, effect of subsidy cannot be examined correctly. The Authority holds that article has been defined correctly in the present proceedings. No ambiguity in the definition of PUC has been alleged either by GOC or by the responding exporters.
48. As regards the contention of the interested parties that petitioner' reference to US case of utilities scale wind turbine is not applicable to the present case, the Authority notes that the reference of the petitioner is with regard to countervailable schemes found by the US Authorities in this product. Further, the petitioner has contended that the scope of the PUC in this case is in fact far wider than what has been considered by the petitioner in the present case.
49. As regards the contention that the determination made by other investigating authorities cannot be applied by the Authority, it is clarified that the present determination is not based on *ipso facto* application of determination made by other investigating authorities. The petitioner has referred to these decisions of other investigating authorities to merely establish existence of countervailable subsidies. The Authority has in any case made independent determination in the present case with regard to each and every scheme.
50. With regard to the argument of non application of mind by the DGAD at the time of initiation, the Authority does not agree with the contention and holds that the investigations were initiated only after sufficient prima-facie satisfaction with regard to adequacy, accuracy and sufficiency of evidence to justify initiation.

## **H. SUBSIDY AND SUBSIDY MARGIN**

### **H.1. Introduction**

51. Petitioner alleged that GOC is providing subsidy to its producers/exporters of the subject goods. The Petition contained reasonable prima facie evidence for several subsidy schemes included in both legislation and a number of policy documents which are the basis for the state support to the product. Upon initiation, Govt. of China and one of the producer/exporter from China has filed questionnaire response. The petitioner contended that the goods have been supplied by more than one Chinese producer and questionnaire response has been filed only by one Chinese producer. The petitioner has therefore contended that in any case, Govt. of China should be considered

non cooperative to the extent of benefits that might have been availed by other Chinese producers.

52. The authority has considered information provided by the petitioner, the Govt. of China and the sole responding exporter in China with regard to countervailability of various alleged subsidy programs. The authority notes that the Govt. of China has not contended that the product under consideration was produced and exported only by one Chinese producer-exporter during the POI. Further, the authority notes that the Govt. of China has filed questionnaire response in so far as it relates to the responding exporter. The Govt. of China has not provided any information with regard to other Chinese producers-exporters despite acknowledging existence of many casting producers/exporters and schemes that might have been availed by these other producers-exporters.
53. Before proceeding to initiate the present investigation and in accordance with SCM Agreement, the authority invited the Govt. of China for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement. The consultations were held on 5<sup>th</sup> May 2014 in New Delhi, which was attended by the following representatives of the Govt. of China (hereinafter also referred to as the GOC):
- i. Jha Xinjiang, Second Secretary, Embassy of China, Delhi.
  - ii. Yang Xiuqing, Third Secretary, Embassy of China, Delhi.
  - iii. Gu Yuan, First Secretary, MOFCOM, China PR.
  - iv. Luo Xin, dy. Commissioner.
  - v. Gu Yu, First Secretary, MOFCOM, China PR.
  - vi. Wang Hejun, Commercial Counselor.
  - vii. Xu Yan Guang, Dy. Director, MOFCOM
  - viii. Wang Xihui, Commercial Counselor.
54. During the consultations and subsequently vide their note verbal dated 26th May, 2014, the GOC claimed that the evidence in the petition was incomplete in certain critical respects, that some of the alleged subsidy schemes/programmes have already been rescinded and the Designated Authority should not consider the petition for initiating the investigation. Although the GOC contended that most of the alleged subsidy schemes/programmes have either never existed or existed but rescinded, adequate documentary support in proof of their contention was never furnished. Even then, had the GOC consented for verification and allowed the Authority to conduct on the spot verification of the data/information of GOC as well as Jiali wind, the Authority could have established the facts.

But, unfortunately GOC neither consented for its verification, nor allowed the only respondent Chinese producer/exporter to be verified.

55. The Authority notes that the Government of China PR did not provide any substantiated evidence in support of their claims made during the pre-initiation consultations. Consequently, the Designated Authority went ahead with the initiation of the investigation with the prima facie evidences of countervailable subsidized imports of product under consideration from China PR and injury caused to the domestic industry due to such imports. The Authority considered the petition filed by the petitioner, contentions of the GOC and held that it was appropriate to initiate and conduct countervailing duty investigations in order to determine whether the producers/exporters of the product under consideration were benefited from countervailable subsidies and, whether such subsidized imports were causing injury to the domestic industry and if so, whether it is appropriate to recommend imposition of countervailing duty measures (hereinafter also referred to as "CVD" or "anti-subsidy duty") on imports of the product under consideration from China PR and if so, to determine the quantum of CVD that should be imposed on the imports of the product under consideration.

## **H.2. Views of the Domestic industry regarding countervailable subsidies**

56. The submissions made by the domestic industry regarding the alleged countervailable subsidies provided by GOC are as follows:
- i. GOC is providing countervailable subsidy to its producers/exporters of the subject goods.
  - ii. The Petition contained prima facie evidence for several subsidy schemes included in both legislation and a number of policy documents which are the basis for the state support to the product.
  - iii. Domestic industry has identified existence of following subsidy schemes in China which are countervailable within the meaning of ASCM and Indian Rules:-

### **Special Economic Zone (SEZ) Incentives and Other Designated Areas-**

- a. Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area).
- b. Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
- c. Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai

- d. Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
- e. Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
- f. Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
- g. Preferential Tax for Casing and Forging Systems

**A. Grants**

- a. The State Key Technology Renovation Projects Fund
- b. Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- c. Research & Development (R&D) Assistance Grant
- d. Innovative Experimental Enterprise Grant
- e. Superstar Enterprise Grant
- f. Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
- g. Venture Investment Fund of Hi-Tech Industry
- h. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- i. Innovative Small and Medium Enterprise Grants
- j. Grants to Privately-Owned Export Enterprises

**B. Equity Programs**

- a. Equity infusions
- b. Unpaid dividends

**C. Preferential Loans**

- a. Preferential loans and interest rates to the casting industry

**D. Preferential Income Tax Programs**

- a. Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years
- b. Preferential Tax Policies for Foreign Invested Export Enterprises
- c. Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
- d. Preferential Tax Policies for the Research and Development of FIEs
- e. Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments
- f. Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose
- g. Income Tax Refund for Re-investment of FIE Profits by Foreign Investors

- h. Tax Policies for the deduction of research and development (R&D) expenses
- i. Tax concessions for Central and Western Regions
- j. Income tax credit for the purchase of domestically manufactured production equipment
- k. Preferential tax policies for companies that are recognized as high and new technology companies
- l. Income tax concessions for the enterprises engaged in comprehensive resource utilization (special raw materials')
- m. Tax credit concerning the purchase of special equipment
- n. Preferential income tax policy for the enterprises in the Northeast region
- o. Dividend exemption between qualified resident enterprises

**E. Relief from Duties and Taxes on Materials and Machinery**

- a. Exemption of Tariff and Import VAT for Imported Technologies and Equipment
- b. Reduction in Land Use Fees

**F. Goods/Services Provided by Government at Less than Fair Market Value**

- a. Input Materials Hot Rolled Steel Provided by Government at Less than Fair Market Value
- b. Hot rolled Steel Provided by Government at Less than Fair Market Value
- c. Electricity provided by Government at less than Fair Market Value
- d. Land for Less Than Adequate Remuneration to Companies Located in Industrial or Other Special Economic Zones
- e. Programme consisting of provision of water for less than adequate remuneration
- f. Provision of various goods for less than adequate remuneration
- g. Purchase of Goods by the Government for higher than adequate Remuneration
- h. Input Materials (raw material) & Utilities provided by Government at less than Market value

57. The aforesaid alleged schemes are in the nature of either revenue conferred such as grants, loans, equity infusion or revenue forgone like tax incentives. On the basis of prima facie evidence, the Authority has initiated the investigation in respect of the said alleged schemes/programs.

58. In their responses, GOC has made the following five sets of replies:

- a) No such Program exists in China- the GOC has not responded if such scheme has been used in China with an alternate name.
- b) The scheme is no longer in force- there has been no document submitted by the GOC regarding the termination of the scheme. Even if the scheme has been terminated and is of the nature of Grant, Loan or

equity, the benefit will be drawn throughout the useful life of the assets. Secondly, it impliedly proves that the scheme existed in China at some point of time. If the scheme was ever in force in last 15 years the benefit will continue throughout the useful life of the assets. However, GOC has not provided any evidence in support of withdrawal of these programs. Further, despite these claims of the GOC, these programs continue to be investigated by other investigating authorities and continue to hold countervailable subsidies in these programs. Therefore mere statement that these schemes are "no longer" in force does not mean that the investigations should not be conducted in respect of these schemes.

- c) No evidence being provided by the petitioner- Prima facie petitioner has provided other authority findings which establish that the schemes are countervailable. Further the GOC has never mentioned that these schemes never existed in China or the producer of the product has never availed the financial contribution out of it or being benefitted out of it.
- d) Not applicable to the PUC- the GOC has mentioned that the product is manufactured with steel scrap and pig iron and not with hot rolled steel. Though in the later submissions the petitioner has mentioned that due to the typographical error scheme was mentioned wrongly. The scheme was mainly intended to inputs provided on less than adequate remuneration. Thus, as regards access to input materials at Less than Fair Market Value is concerned, the petition inadvertently mentions "hot rolled steel". The petition makes it evident that the reference by the petitioner is to the inputs involved in production of the product under consideration, which are Pig Iron, Steel Scrap (CRCA), Ferro Silicon, Ferro Silicon Mg, Coke, Inoculants, Silica Sand, Resin, Catalyst, LPG, Furnace Lining Material, Diesel, Laddle Lining Material, Ceramic Tubes, Sleeves and Refractory Coating. Thus, reference to Hot Rolled Steel in the petition may kindly be read as reference to Pig Iron, Steel Scrap (CRCA), Ferro Silicon, Ferro Silicon Mg, Coke, Inoculants, Silica Sand, Resin, Catalyst, LPG, Furnace Lining Material, Diesel, Laddle Lining Material, Ceramic Tubes, Sleeves and Refractory Coating. The petitioner regrets reference to Hot Rolled Steel, petitioner submits that this inadvertent error was quite obvious and therefore GOC and exporter should have responded on the basis of inputs involved in production of the product under consideration.
- e) Not as subsidy or Non actionable subsidy- The prerogative to decide the same is with the Designated Authority. Even the said schemes have been held countervailable by other authorities. Also GOC has not given any evidence to prove how the scheme is a non actionable subsidy.

59. Govt. of China or responding exporter has not disputed that these schemes were in the nature of grants. Nor Govt. of China or responding exporter has contended that the responding exporter did not avail any benefits under these grant schemes in the past. Considering that the benefits of a grant scheme flow throughout the useful life of the assets, the Authority should hold that the investigations is required to be continued in respect of these schemes. Further, the other investigating authorities have established countervailability of these grants schemes.
60. In any case, it is a well settled position that the petition may not have an exhaustive account of all the schemes and the exporter and GOC are required to truthfully provide details of "any other scheme" that was applicable to the producers and/or exporters in China.
61. The Govt. of China claimed that the responding exporter, M/s Zhejiang Jiali Wind Power Technology, Hangzhou has not availed any benefit under any of the schemes alleged to be countervailable by the petitioner. Though the sole responding exporter has applied for the following schemes:
- i. Preferential tax policies for companies that are recognised as high and new technology companies.
  - ii. Dividend exemption between qualified resident enterprises.
62. Thus it shows that the above mentioned schemes do exist in China PR and are applicable to the producers/exporters of the product.
63. GOC was unable to clarify how the alleged schemes/programs have been held countervailable by the other investigating authorities in the recent years. It is not the argument of Govt. of China or the responding exporter that there is no program maintained by Govt. of China wherein a benefit in the nature of benefit stated by the petitioner exists. The argument of the Govt. of China is that the petitioner does not have the relevant documentary evidence.
64. The evidences regarding the existence and financial contribution by the GOC in respect of various schemes are not available in the public domain. It is not the argument of the Govt. of China that it has placed all such kind of information in public domain; nor is it the argument of Govt. of China that some information is publically available and the same has not been provided by the petitioner.
65. It is possible that the program is known by different names than the one specified by the petitioner. In fact, it is understood that even names of Chinese companies could be different in Chinese language and in English language. What is relevant is not the "name" per-se but the "benefit" that is

being extended by Govt. of China. Mere fact that the benefit is being given in some other name and the petitioner has used some other name does not alter the legal position with regard to the countervailability of the benefit. The petitioner has given name only to link the benefit to some particular scheme notified by the Govt. of China.

66. The GOC has never refuted with documentary support any of the evidences provided by the petitioner, such as other authority findings, WTO reports, Trade policy reviews, private research reports etc submitted by the petitioner during the course of this investigation.
67. The GOC has in fact not responded to the “other Subsidies” prescribed in the questionnaire response. During the course of investigation, petitioner has found that the GOC has in fact not responded to a number of schemes prevailing in China. Questionnaire prescribes as follows:

*“2. For each program, even if some of them are not listed by the applicant, you should respond fully to the questions, even if Government of subject country believes that the program is not countervailable.*

*5. For each program, please reply to all the questions in Standard Question Annexure and all other annexure given in this questionnaire, as applicable, to the respective program.*

*7. The Department is also required to investigate any program discovered during the course of this investigation which may confer countervailable subsidies on the manufacture, production or exportation of the subject goods. You are therefore required to identify each program, whether or not any benefit under the program has been availed by an enterprise.”*

68. The questionnaire is therefore meant to address those schemes as well which may be prevalent in China but for which petitioner has not requested investigations. The GOC cannot restrict its response to merely the schemes identified by the petitioner. The GOC is required to provide information in respect of each and every scheme available and applicable in China. It is however evident that the GOC has not disclosed existence of these schemes to the Authority.
69. The petitioner has thus brought following schemes on record existing in China and requests the Designated Authority to hold that these schemes constitutes countervailable schemes and the GOC has preferred not to respond to these schemes. The QR of GOC is incomplete to such an extent. Further, GOC has consciously not provided any information in respect of the following schemes:

## **Grants**

- i. Export Assistance Grant
- ii. Grant -Special Fund for Fostering Stable Growth of Foreign Trade
- iii. Government of Shijiazhuang City Export Award (Hebei Province)
- iv. Grants for Listing Shares
- v. Grants under the Science and Technology program of Hebei Province & Jiangsu Province
- vi. Initial Public Offering (IPO) Grants from the Hangzhou Prefecture and the City of Fuyang (Zhejiang Province) & (Anhui Province)
- vii. Municipal Government - Export Grant
- viii. Fuyang and Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centers (Anhui Province)
- ix. Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes
- x. Fuyang City Government Grants Under the Export of Sub-Contract Services Program
- xi. Provincial Government - Equipment Grant
- xii. Reimbursement of Foreign Affairs Services Expenses
- xiii. Refund from Government for Participating in Trade Fair
- xiv. Special Fund for Energy Saving Technology Reform
- xv. State Special Fund for Promoting Key Industries and Innovation Technologies
- xvi. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area

## **Tax Programs**

- i. Two Free, Three Half Program for FIEs
- ii. Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone
- iii. Tax credit concerning the purchase of special equipment
- iv. Various local tax discounts (Shandong Province, Chongqing City, Guangxi Region Zhuang, Tax privileges to develop central and western regions)
- v. VAT deduction on fixed assets in the Central region
- vi. VAT Exemptions for Central Region
- vii. VAT Rebates on Domestically Produced Equipment
- viii. VAT Rebates on FIE Purchases of Chinese-Made Equipment

## **Export Subsidies**

- i. Export Seller's Credit
- ii. Export Buyer's Credits

### **Preferential Loans and Lending's**

- i. Preferential Export Financing from the Export-Import Bank of China
- ii. Treasury Bond Loans or Grants
- iii. Policy Lending for Renewable Energy Industry

### **Provision for Goods and Services**

- i. Exemptions From Administrative Charges for Companies in Industrial Zones and SEZs
- ii. Raw Materials Provided by the Government at Less than Fair Market Value

70. Petitioner has not sought extension of CVD investigation on individual subsidy schemes found by the petitioner at this stage. Petitioner has brought forward existence of these subsidies in China to establish gross deficiencies and willful withholding of information by the exporter and GOC. The questionnaire issued by the Designated Authority included information on "any other schemes" applicable to the product under consideration for which Chinese producers and GOC were obliged to respond. These companies and GOC have however preferred not to provide any such information. The evidence now provided by the petitioner clearly establishes concealment of facts and withholding of the facts.

71. The petitioner has submitted that the GOC on the one hand states that no such program is present, whereas on the other hand mentions the name and address of the government agency responsible for administrating these schemes/ programs.

72. The questionnaire response has been filed only by Zhejiang Jiali Wind Power Technology. Though the benefits received are not restricted/limited to the sole responding exporter. However, this company is not the sole producer of the product under consideration in China. The import data clearly shows that the product has been exported by number of other exporting companies during the relevant period. Therefore, the questionnaire response filed by Govt. of China should be considered incomplete/deficient, as it has considered benefits received only by the responding exporter.

73. With respect to majority of the programs regarding Grants, Preferential loans and interest rates, Income Tax Programs, Special Economic Zone (SEZ) Incentives and Other Designated Areas, the exporter mentioned that it has never applied to or benefited from any of the programs. Though it is pertinent to note that the website of the exporter shows contradiction with what has been stated by the exporter in the EQR.

74. The exporter mentioned to have applied for the “Tax Policies for the deduction of research and development (R&D) expenses” and ” Preferential tax policies for companies that are recognized as high and new technology companies”, though claimed that the benefits were never received by the exporter due to the losses incurred by the company.

75. Following are the brief of the alleged schemes as submitted by the domestic industry:

I. **Special Economic Zone (SEZ) Incentives and Other Designated Areas-**

i. **Program No. 1: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)** constitutes a countervailable subsidies, as the program is maintained by Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM), which is a public body; the programs grant benefit to FIEs in the form of reduced income tax rate of 15%. The program is specific, as the benefit under the program is limited only to FIEs located in a special economic zone (SEZ) and designated geographical region. Existence of the program is established by Article 19 of Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprises, 1991, State Council Guo Fa No. 39 of 2007; Article 4, 28 and 36 of Enterprises Income Tax Law of the People’s Republic of China, 2008; WTO document G/SCM/N/123/CHN dated 13 April 2006; WT/TPR/S/300.Canada final finding of Certain Galvanized Steel Wire; Canada final finding of Certain Stainless Steel Sinks. Chinese casting producers, such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Antec Braking Systems (Tianjin) Co., Ltd is eligible as it are located in these designated areas and are FIEs.

ii. **Program No. 2: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones** constitutes a countervailable subsidy as the program is maintained by MOF, SAT, MOFCOM which is public body; the program grants benefit to FIEs in the form of reduced income tax rate of 15% and in old urban districts of cities up to 24% which are established in costal economic open areas and Economic and technological development zones. The program is specific, as the benefit under the program is limited only to FIEs located in costal economic open areas and Economic and technological development zones. Existence of the program is established by Income Tax Law of

the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the Tax Law); Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise; Enterprises Income Tax Law 2008; WTO document G/SCM/N/123/CHN dated 13 April 2006. The cities established by GOC as Coastal Economic Open Areas are Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, Beihai. Canada final finding of Certain Galvanized Steel Wire; Canada final finding of Certain Stainless Steel Sinks. The casting producers located in coastal economic and development zone such as Gexpro Industry Supply Shanghai Co. Ltd, Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd, Sinovel Wind Group Co., Ltd. and Antec Braking Systems (Tianjin) Co., Ltd are eligible as they are the FIEs located in Coastal Economic Open Areas and in the Economic and Technological Development Zones.

- iii. **Program No. 3: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai** constitutes a countervailable subsidy, as the program is maintained by Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM), which is a public body; the programs grants benefit to FIEs in the form of reduced income tax established in SEZ region, Pudong Area of Shanghai. The program is specific, as the benefit under the program is limited only to FIEs located in a specific geographical region. Existence of the program is established by Decree [1991] No. 85 of the State Council [30 June 1991], Order [1991] No. 45 of the President of the People's Republic of China [9 April-91], State Council Circular Guo Fa No. 37 of 2000, Notification of the State Council on Carrying out the Transition Preferential Policies Concerning Enterprise Income Tax, Guo Fa No. 39 of 2007 and WT/TPR/S/300. Canada final finding of Certain Galvanized Steel Wire; Canada final finding of Certain Stainless Steel Sinks. Chinese casting producers, such as Gexpro Industry Supply Shanghai Co. Ltd. and Shanghai Zhong Zhu Import & Export Co. Ltd. are eligible as they are FIEs established in Pudong area.
- iv. **Program No. 4: Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas** constitutes countervailable subsidies, as the program is maintained by State Administration of Taxation (SAT), which is a public body; the programs grants benefit to the enterprises located in these SEZ and designated area. The program is specific, as the benefit under the program is limited to certain enterprises located in specific designated area. Existence of the program is established by Article 28.2 of the Enterprises Income Tax

Law of the People's Republic of China, 2008; Article 93 of Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China by the State Council ; "Ministry of Finance, State Administration of Taxation, the State Development and Reform Commission on Comprehensive Utilization of Resources announced the Corporate Income Tax Catalogue (2008 edition) Notice" (Cai Shui [2008] No. 116) and (Cai Shui [2008] No. 117) (2008); Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the Tax Law); State Council Issue Circular Guofa (2014)No.14-(2014); State Council Notice 40-Article 57 of Corporate Income Tax; Decree No-63 of Chairman of China PR - 2007; Decree No-516 State Council of China PR-2007; WTO-Semi-Annual Report-G/SCM/N/N/274/CAN-2014; WTO document WT/TPR/S/300; WTO document G/SCM/N/123/CHN dated 13 April 2006. Canada final finding of Certain Galvanized Steel Wire; Canada final finding of Certain Stainless Steel Sinks. Chinese casting producers, such as Jiangsu Jixin Wind Energy Technology Co. Ltd., Antec Braking Systems (Tianjin) Co., Ltd., Dalian Huarui Heavy Industry International Co. Ltd., Gamesa Wind (Tianjin) Co, Ltd., Gexpro Industry Supply Shanghai Co. Ltd., Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd., Jiangyin Fengdian Flange Manufacture Co., Ltd., Jiangyin Hengrun Ring Forging Co., Ltd., Qingdao Anhua New Energy Equipment Co. Ltd., Qingdao Richuan Precision Machinery Co., Ltd. and Shandong Laiwu Jinlei Wind-power Technology Co. Ltd. are eligible as they are established in SEZs and Other Designated Areas.

- v. **Program No. 5: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas (for FIEs)** constitutes a countervailable subsidies, as the program is maintained by MOF, SAT, MOFCOM which is a public body, the program grants benefit to FIEs which are located in SEZs and other designated zone in form of reduced income tax. The program is specific; as the benefit under the program is limited to certain FIEs located in specific SEZ and designated area. Existence of the program is established by Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the Tax Law); Article 5, Regulation on the Implementation of the Income Tax Law of the People 's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise; Regulations on special economic zones in Guangdong province (1980-08-26) ; Provisions of the State Council Concerning the Encouragement of Investment in Developing Hainan Island (1988-05-04); WTO document G/SCM/N/123/CHN dated 13 April 2006. Canada final finding of Certain Galvanized Steel Wire; Canada final finding of Certain Stainless Steel Sinks. Chinese casting producers, such as

Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd, Gexpro Industry Supply Shanghai Co., Ltd., Sinovel Wind Group Co., Ltd. and Antec Braking Systems (Tianjin) Co., Ltd are eligible as they are established in SEZs and Other Designated Areas.

- vi. **Program No. 6: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas (for FIEs)** constitutes a countervailable subsidies, as the program is maintained by MOF, SAT, MOFCOM which is a public body, grants benefit to FIEs which are located in SEZs and other designated areas which falls in the 'encouraged' or 'restricted' categories in the Catalogue of Industries for Guiding Foreign Investment and purchasing equipments shall be exempted from tariff and import VAT. The program is specific; as the benefit under the program is limited only to certain FIEs located in specific SEZ and designated area. Existence of the program is established by Articles 1 and 2 of the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (Guo Fa [1997] No. 37) and Catalogue of Industries for Guiding Foreign Investment (2004) (until 30 November 2007) or Catalogue of Industries for Guiding Foreign Investment (2007) (after 1 December 2007); SAT announcement No.49 of 2014; SAT announcement No.51 of 2014; WTO Semi-annual report Canada, Doc G/SCM/N274/CAN, 29th august, 2014. US final finding on Carbon and Certain Alloy Steel Wire Rod from China and Canada final finding on Certain Stainless Steel sinks Chinese casting producers Gexpro Industry Supply Shanghai Co. Ltd., Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd., Sinovel Wind Group Co., Ltd. and Antec Braking Systems (Tianjin) Co., Ltd. are eligible as they are located in the said SEZ and designated areas.
- vii. **Program No. 7: Preferential Tax for Casting and Forging System** constitutes a countervailable subsidy, as the program is maintained by Ministry of Finance (MOF) and State Administrative of Tax (SAT), which is a public body and grants benefit to the casting producers in China PR in the form of preferential tax treatment i.e. tax saving. The program is specific; as the benefit under the program is limited only to specific enterprises which are manufacturing and selling products listed in the annex to the Circular which states that they shall be eligible for refund for thirty-five per cent of the actually collected VAT. The program is specific; as the benefit under the program is limited only to the enterprises that are producing such specific products such as castings which are eligible for the said benefit. The existence of the program is established by MOF Circular Cai Shui No. 96 of 2003 and Article 24, 25 and 26 of Renewable Energy Law of China. EU final finding on Certain

Organic Coated Steel Products originating in the People's Republic of China has also held the scheme countervailable. US final finding on Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from PRC has also held the scheme countervailable.

II. **Grants**

- viii. **Program No. 8: The State Key Technology Renovation Projects Fund** constitutes a countervailable subsidy, as the program is maintained by MOFCOM, Ministry of Commerce which is a public body, the program grants benefit to large-size- SOEs which are holding high credit rank among 512 key industries by either direct Government contribution to the enterprise or through the provision of low interest loans where the Government paid the interest payment for loans established by the enterprise. The program is specific; as the benefit under the program is limited only to SOEs which are holding high credit rank among 512 key industries. Existence of the said program is Measures for the Administration of National Debt Special Fund for National Key Technology Renovation Projects; Notice concerning the Promulgation and Circulation of “Measures for the Administration of National Key Technological Renovation Projects” and “Measures for the Administration of Treasury-bond Special Fund for National Key Technological Renovation Projects” (Guo Jing Mao Tou Zi [1999] No 886) (the 1996 Notice); Notice of Amendments to the “Measures for the Administration of National Key Technological Renovation Projects” and “Measures for the Administration of Treasury-bond Special Fund for National Key Technological Renovation Projects” (Guo Jing Mao Tou Zi [2000] No 822); Guojingmao Touzi No 122 of 1999; Notice Concerning the Promulgation and Circulation of “Measures for the Supervision and Administration of National Key Technological Renovation Projects (for Trail Implementation)” from the State Economics and Trade Commission (Guo Jing Mao Tou Zi [1999] No 1038); WTO document G/SCM/Q2/CHN/28; WTO-G/SCM/Q2/CHN/42-2011. US final finding on Non Oriented Electric Steel from China. ; EU final finding of Certain Organic Coated steel ;Canada final finding certain galvanized steel wire; Canada- Certain Stainless Steel Sinks. Chinese casting producers such as Jiali Wind Power and Ningbo Ginlong Technologies Co. is eligible as they are SOEs.
- ix. **Program No. 9: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments** constitutes a countervailable subsidy, as the program is maintained by Ministry of Commerce and provisional authorities which is public body, grants benefit to Companies involved in the anti-dumping investigations

and working in compliance with the instructions of the Ministry of Commerce and provincial authorities are eligible up to 40% legal fee reduction once they have participated in ADD investigations. The program is specific; as the benefit under the program is limited only to respective enterprises which are involved in the ADD or CVD investigations. Existence of the said program is Rules for the Implementation of the Support Policy for the Anti-dumping, Anti-subsidy and Safeguard investigation respondent. US final finding on Carbon and Certain Alloy Steel Wire Rod from China. EU- Certain organic coated steel; Canada- certain galvanized steel wire; Canada- Certain stainless steel sinks.

- x. **Program No. 10: Research & Development (R&D) Assistance Grant** constitutes a countervailable subsidy, as the program is maintained by Local & Municipal government such as Beijing Municipal Science and Technology Commission and Government of Wuxing district and the Science and Technology Bureau of Wuxing District ('STB'), which is public body, grants benefit to accelerate the transformation of the economic development pattern and economic restructure, enhance the capacity of self-dependent innovation of the district, implementing the strategy on "innovative Urban District", and making efforts to achieve the sound and rapid economy development. The program is specific; as the benefit under the program is limited only to respective enterprises which are having R&D facilities and fall under the eligibility criteria. Existence of the said program is Implementation Measure to Support the Acquisition of Foreign Science & Technology Type Enterprises and the Employment of Foreign Science & Technology Development Team, issued by the Shenyang Economic & Technological Development Area administration; Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on three types of Science and Technology Expenses of Wuxing District. Canada final finding on Certain Stainless steel sinks originating in or exported from China PR and Canada- Certain Galvanized Steel Wire. Chinese casting producers such as Sinovel Wind Group Co., Ltd. and Zhejiang Jiali Wind Power Technology Co., Ltd.
- xi. **Program No. 11: Innovative Experimental Enterprise Grant** constitutes a countervailable subsidy, as the program is maintained by Ministry of Science and Technology and its administrative office various provinces, which is a public body such as in Zhejiang Province. The benefit under the scheme is to Small and Medium sized enterprise and placed to undertake research and development activities. The program is specific, as the benefit under the program is limited only to specific provinces and SMEs who fall in the eligibility criterion. Existence of the

program is established by Article 10 & 11 of Law of PRC on promotion of SME, Notice of the ministry of finance and the ministry of industry and information technology on issuing the Measures on Administration of Special Funds for Development of SME's (No. 96 (2012) of ministry of finance), Ministry of industry and information technology, Ministry of science and technology, Ministry of commerce on the issuance of special funds interim measures for SMEs development (Cai Qi (2014) No. 38), Ministry of Finance on the issuance of "Interim Measures on Management of special funds for SMEs development (Cai Jian [2015] No. 458). Chinese casting producers, such as Jiali Wind Power and Ningbo Ginlong Technologies Co. Ltd are some of the exporters in Zhejiang Province eligible for such grant. Ref: US final finding on Alloy and Carbon Steel Wire Rod.

- xii. **Program No. 12: Superstar Enterprise Grant** constitutes a countervailable subsidy, as the program is maintained by Government of China PR through provincial authority which is a public body. Eligible enterprise must have 'output scale' which should fall in the eligibility of the grant. The program is specific, as the benefit under the program is limited only to specific enterprises which have the required output sale. Existence of the said program is Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises, Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprise. Chinese casting produces Jiangsu FAW Foundry co. Ltd.; Deqing Jufeng Machinery Manufacturing Co., Ltd. and Jiali Wind Power are some of the exporters eligible for such grant.
- xiii. **Program No. 13: Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"** constitutes a countervailable subsidy, as the program is maintained by GOC at National, Provincial, and Local Government levels which is a public body. Eligible enterprises are specific to the key enterprises whose products qualify for the title of 'China Worldwide famous Brand' is eligible for the said benefit. The program is specific, as the benefit under the program is limited only to Enterprises whose products qualify for the title of 'China Worldwide famous Brand' and/or 'famous trademark (China famous Trademark). Existence of the program Order No. 124-Measures for the Administration of Chinese famous –brand products- Dec 2009, Measures for the Administration of Chinese famous –brand products- Dec 2006, Trade policy review-WT/TPR/S/300, WTO Report G/SCM/Q2/CHN/42.US final finding on Non Oriented Electric Steel From China, Germany, Japan, Korea, Sweden, and Taiwan ; US final finding on Carbon and Certain Alloy

Steel Wire Rod from China and EU final finding on Solar Glass Originating in China PR. Chinese casting producers Jiali Wind Power, Dalian Huarui Heavy Industry Steel Casting Co. Ltd. and Jiangsu Jixin wind energy technology co. ltd. are some of the exporters eligible for such grant.

- xiv. **Program No. 14: Venture Investment Fund of Hi-Tech Industry** constitutes a countervailable subsidy, as the program is maintained by NDRC and National, Provincial/Municipal Authorities in GOC which is public body. Eligible enterprises are venture capital must be recorded with the relevant local counterpart of NDRC, the said investment companies must be recognized as high-tech enterprises and be small-to medium-sized, are benefited. The program is specific, as the benefit under the program is limited only to Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park present in city or provinces like Beijing, Shanghai, Tianjin, Chongqing. Existence of the program by Circular of Chongqing People's Government Office in Temporary Administration Measures-2005; WTO document-G/SCM/N/267/CAN and Web research-Venture capital investment in China market regulatory overview-2013. Canada final finding on Certain Stainless Steel Sinks from PRC, Canada final finding on Galvanized Steel and Aluminium Extracts. Australia final finding on Galvanized Steel and Aluminium Zinc Coated Steel. Chinese casting producer Gamesa Wind (Tianjin) Co, Ltd., Antec Braking Systems (Tianjin) Co., Ltd., Gexpro Industry Supply Shanghai Co.,Ltd., Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd., Satarem China Ltd., Shanghai SIIC E&A International Trade Co. Ltd., Sinovel Wind Group Co., Ltd. who are located in Beijing, Shanghai, Tianjin, and Chongqing.
- xv. **Program No. 15: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment** constitutes a countervailable subsidy, as the program is maintained by Local commerce authority of provinces which is a public body. The program grants benefit to FIEs located in provinces such as Guangzhou. The program is specific to FIEs which are located in Guangzhou. Existence of this program is established by "Notice of the General Office of Guangzhou Municipal People's Government about Issuing the Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters (No. 34 [2006])" which was later replaced with "Guangzhou Municipal People's Government to speed up the implementation of the views forwarded to notice the development of headquarters economy (Sui [2010] 2)" and Provision of Guangzhou Municipality on Encouraging Foreign Investors to Set Up Headquarters and Regional Headquarters.

Chinese casting producers, such as Gexpro Industry Supply Shanghai Co. Ltd is a FIE, located in Guangzhou Municipality.

xvi. **Program No. 16: Innovative Small and Medium Enterprise Grants** constitutes a countervailable subsidy, as the program is maintained by Government of China at National, Provincial, and Local Government levels such as government of Guangdong province is responsible for the administration and management of this program, which is a public body, the programs grants benefit to SMEs in start-up capital for small firms recognized by R&D for key projects. The program is specific as it is limited to SMEs. Existence of this program is established by Article 12,13,36 of Law of PRC on promotion of SME; Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises; Detailed rules for the implementation of the measures for administration of international market developing funds for small and medium sized enterprises, (July 1, 2001); Circular cooperation issuing the measures for the administration of international market developing funds of small and medium sized enterprises (2010); Foreign trade development funds and management approach, Cai Qi (2014); Notice of the ministry of finance and the ministry of industry and information technology on issuing the "Measures on Administration of Special Funds for Development of SME's (No. 96 (2012) of ministry of finance)"; Ministry of industry and information technology, Ministry of science and technology, Ministry of commerce on the issuance of special funds interim measures for SMEs development (Cai Qi (2014) No. 38) & Ministry of Finance on the issuance of "Interim Measures on Management of special funds for SMEs development (Cai Jian [2015] No. 458.Chinese casting producers Jiali Wind Power Technology Co., Ltd, is eligible for such grant.

xvii. **Program No. 17: Grants to Privately-Owned Export Enterprises** constitutes a countervailable subsidy, as the program is maintained by Yunnan Provincial government which is public body, the programs grants benefit to Non-SOEs located in Yunnan Province. The program is specific as it is limited to Non- SOEs located in specific province. Existence of this program is established by notices concerning accelerating the growth of the non-state-owned economy lists the enterprises eligible.

### III. Equity Programs

xviii. **Program No. 18: Equity infusions** constitutes a countervailable subsidy, as the program is maintained by Government of China at National, Provincial, and Local Government levels, CICC and SASAC

which is public body, grants benefit to companies where government was the main shareholder without acquiring additional shareholder rights. EU final finding on Certain Organic Coated Steel products originating in the People's Republic of China also holds the scheme countervailable. The program is specific as it is limited to limited number of selected entities in which the government participated.

- xix. **Program No. 19: Unpaid dividends** constitutes a countervailable subsidy, as the program is maintained by Government of China at National, Provincial, and Local Government levels, which is public body, grants benefit to limited number of selected entities in which the government participated and thus specific. EU final finding on Certain Organic Coated Steel Products originating in the People's Republic of China has also held the scheme countervailable.

IV. **Preferential Loans**

- xx. **Program No. 20: Preferential loans and interest rates to the casting industry** constitutes a countervailable subsidy, as the program is maintained by Government of China at National, Provincial, and Local Government levels, CICC and SASAC which is public body, grants benefit to Casting producers by providing loan on low (subsidized) interest rates from state-owned commercial banks and government banks to support and develop the expansion of the industry. The GOC is a major shareholder in many of the major banks established in China and therefore it has access to banks. The program is specific as it is limited to limited number of selected entities in which the government participated. Existence of this program is established by YinFa [2003] No.250 and YinFa [2004] No 251; the annual reports of Chinese banks; Catalogue for the guidance of foreign investment industries (amended in 2011); Article 34 and 38 of The Commercial banking law [2003]; NDRC Order No.35- Policies for the development of Iron and Steel Industry, decision 40 and Article 24, 25, 34 of the Law on Commercial Banks act with respect to the fulfillment of the government industrial policies; 2006 Deutsche Bank Research on China's banking sector; Document WT/TPR/S/230 p. 79, April 2010; Document WT/TPR/S/264 p. 122, July 2012; Information retrieved from the 2006 Deutsch Bank Research on China's banking sector, pages 3-4; Information retrieved from the China Monetary Report Quarter Two, 2010 of the Monetary Policy Analysis Group of the People's Bank of China, dated 5 August 2010, page 10; IMF Working Paper, "Progress in China's Banking Sector Reform: Has Bank Behaviour Changed?", WP/06/71, March 2006, (see pages 3-4, 13, 18-20); IMF Working Paper, "Interest Rate Liberalization in China", WP/09/171, August 2009, (see pages 3-4, 21-23); IMF Country Report,

PRC: 2010 Article IV Consultation, No 10/238, July 2010, (see pages 22, 24 and 28-29); OECD 2010 Economic Survey of China, February 2010, (see Chapter 3, pages 71, 73-81, 97); OECD China's Financial Sector Reforms, Economic Department Working Paper No. 747, ECO/WKP (2010) 3, 1 February 2010, (see pages 2, 8-15, 36); Detailed rules for implementing the adjustment and revitalization program for the steel industry [2009] provides for "increasing the financial support for key backbone enterprises". EU final finding on Certain Organic Coated Steel Products originating in the People's Republic of China has also held the scheme countervailable.

V. **Preferential Income Tax Programs**

- xxi. **Program No. 21: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years** constitutes a countervailable subsidy, as the program is maintained by MOF, MOFCOM, SAT and its local tax bureaus which is public body, grants benefit to FIEs which begins to make a profit, they may receive a full exemption from income tax in the first and second years and a 50% reduction in income tax in the third, fourth, and fifth years. General exemption on income tax regardless of what activities generate this income (profit), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise. The program is specific as it is limited to FIEs which are making profits. Existence of this program is established by Article 8 of the FIE Income Tax Law, Decree [1991] No. 85 of the State Council [30 June 1991], Order [1991] No. 45 of the President of the People's Republic of China [9 April-91], State Council Circular Guo Fa No. 37 of 2000 and Notification of the State Council on Carrying out the Transition Preferential Policies Concerning Enterprise Income Tax, Guo Fa No. 39 of 2007; WTO document G/SCM/N/123/CHN dated 13 April 2006; Enterprise Income Tax Law 2008. Canada final finding on Certain Stainless Steel Sinks Originating in or exported from China PR. EU final finding on Certain Organic Coated Steel Products originating in the People's Republic of China has also held the scheme countervailable. Chinese casting Producers such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Gexpro Industry Supply Shanghai Co. Ltd., Antec Braking Systems (Tianjin) Co., Ltd. and Sinovel Wind Group Co., Ltd. are eligible for such benefit.
- xxii. **Program No. 22: Preferential Tax Policies for Foreign Invested Export Enterprises** constitutes a countervailable subsidy, as the program is maintained by MOF, MOFCOM, SAT and its local tax

bureaus which is public body, grants benefit to Export-oriented enterprises invested in and operated by foreign businesses for which in any year the output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Tax Law are reduced by one half. The program is specific as it is limited to FIEs where the exports constitute 70 percent of the company's sales. Existence of this program is established by Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Preferential Policies- Cai Shui [2009] No.69; China Enterprise Income Tax; SAT Circular Guo Shui Fa No. 1 of 2003; Circular 115-Oct 2009; SAT Circular Guo Shui Fa No. 139 of 1995; Circular Caishui (2014)No.59 & 65; China's Industrial Subsidies Study (2007); WT/TPR/S/300; G/SCM/N/123/CHN; G/SCM/Q2/CHN/25; G/SCM/Q2/CHN/29; G/SCM/N274/ CAN; G/SCM/Q2/CHN/48; G/SCM/N/155/CHN; G/SCM/N/186/CHN; G/SCM/N/235/CAN-2012-Certain Thermoelectric coolers and warmers from China PR; US-Carbon and Certain Alloy Steel Wire Rod; US-Initiation Check list in Sodium Nitrate China PR; Certain oil country tubular goods from China PR; Certain seamless casing from China PR; EU-Certain organic steel products-2013; EU-Coated fine paper-2011.US final finding on Carbon and Certain Alloy Steel Wire Rod from China. Chinese casting Producers such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Gexpro Industry Supply Shanghai Co. Ltd., Antec Braking Systems (Tianjin) Co., Ltd. and Sinovel Wind Group Co., Ltd. are eligible for such benefit.

- xxiii. **Program No. 23: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive** constitutes a countervailable subsidy, as the program is maintained by MOF, MOFCOM, SAT and its local tax bureaus which is public body, grants benefit to enterprises with foreign investment which are technology-intensive and knowledge-intensive and whose major products are enlisted in the "Catalogue of High and New Technology Products of China" promulgated by Ministry of Science & Technology and the sales revenue of these products of that year accounts for over 50% of the total annual sales revenue of the enterprise, may be imposed a reduced enterprises income tax rate of 15%. The program is specific as it is limited to FIEs recognized as "high" or "new" technology enterprises or established in "high" or "new" technology industrial development zones. Existence of this program is established by SAT Circular Guo Shui Fa No. 139 of 1995, SAT Circular Guo Shui Fa No. 135 of 2003; G/SCM/N/123/CHN; G/SCM/Q2/CHN/25; G/SCM/N/267/CAN. EU final finding on Certain Organic Coated Steel Products originating in the

People's Republic of China. Chinese casting Producers such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Gexpro Industry Supply Shanghai Co. Ltd., Antec Braking Systems (Tianjin) Co., Ltd. and Sinovel Wind Group Co., Ltd. are eligible for such benefit.

xxiv. **Program No. 24: Preferential Tax Policies for the Research and Development of FIEs** constitutes a countervailable subsidy, as the program is maintained by SAT and its local tax bureaus which is public body, grants benefit to enterprises with foreign investment to encourage enterprises to undertake R&D activities. The program is specific as it is limited to FIEs undertaking R&D activities. Existence of this program is established by Notice concerning the Promulgation and Circulation of The income tax offset under this program for FIEs is provided for in the Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee with Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173) (the FIE R&D Tax Offset); The income tax offset under this program for all enterprises is provided for in the Circular of the Ministry of Finance and the State Administration of Taxation on the Preferential Policies for Enterprise Income Tax on Technical; Innovation Enterprises (Cai Shui Zi [2006] No. 8) (the Enterprise R&D Tax Offset); Circular on Measures for tax refund and exemption granted to Foreign Invested research and development Centers; Decree63-of Chairman of People Republic of China –Article 30, 95 of Enterprise income tax; WT/TRS/300;G/SCM/Q2/CHN/49-OCT-2013;G/SCM/N/267/CAN-Semiannual Report; G/SCM/N/123/CHN; G/SCM/Q2/CHN/25. EU final finding on Coated Fine Paper (2011); US final finding on Carbon and Certain Alloy Steel Wire Rod. Chinese casting Producers such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Gexpro Industry Supply Shanghai Co. Ltd., Antec Braking Systems (Tianjin) Co., Ltd. and Sinovel Wind Group Co., Ltd. are eligible for such benefit.

xxv. **Program No. 25: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments** constitutes a countervailable subsidy, as the program is maintained by SAT and its local tax bureaus which is public body, grants benefit to FIEs that invest in Chinese-made equipment and whose projects are classified in either the Encouraged or Restricted B categories of the Catalogue of Industrial Guidance for Foreign Investment. The program is specific as it is limited to FIEs and it is contingent on the use of domestic over imported goods. Existence of this program is established by Catalogue of Non-Duty-Exemptible Articles of Importation (2012 Adjusted); Income Tax Credits for FIEs on

Purchases of Domestically Produced Equipment; Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax; Catalogue for the Guidance of Foreign Investment Industries (Amended in 2011); Circular of the State Council on Adjustment of Tax Policies of Imported Equipment (GuoFa [1997] No. 37); Notice regarding the adjustment of import-level tax policies related to key technological equipment and machinery (Caiguanshui [2014] No. 2); G/SCM/N/123CHN.doc; G/SCM/N/155/CHN.doc & G/SCM/N186/CHN.doc; G/SCM/N/267/CAN-Canada- Certain Galvanized steel wire from China PR. Chinese casting Producers such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Gexpro Industry Supply Shanghai Co. Ltd., Antec Braking Systems (Tianjin) Co., Ltd. and Sinovel Wind Group Co., Ltd. are eligible for such benefit.

xxvi. **Program No. 26: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose** constitutes a countervailable subsidy, as the program is maintained by MOF, SAT which is public body, grants benefit to Domestic enterprises are provided preferential tax treatment to purchase domestically produced equipment for technology upgrading projects. The program is specific as it is limited to Domestic enterprises that purchase domestic equipment for domestically produced equipment is eligible for the sad program and incentives through this program. Existence of this program is established by Section 771(5) of Tariff Act, 1930, MOF Circular Cai Shui No.290 of 1999; G/SCM/N/123/CHN; G/SCM/Q2/CHN/25; US Boltless Steel Shelving. Chinese casting Producers such as Gamesa Wind (Tianjin) Co, Ltd.; Dalian Huarui Heavy Industry International co. Ltd.; Jiangsu Faw Foundry Co. Ltd.; Jiangsu Jixin Wind Energy Technology Co. Ltd.; Jianguyin Fengdian Flange Manufacture Co., Ltd.; Jianguyin Hengrun Ring Forging Co., Ltd.; Qingdao Anhua New Energy Equipment Co. Ltd.; Qingdao Richuan Precision Machinery Co., Ltd.; Satarem China Limited.; Shandong Laiwu Jinlei Wind-Power Technology Co. Ltd.; Shanghai Siic E&A International Trade Co. Ltd.; Zhejiang Jiali Wind Power Technology Co., Ltd.; Zhuzhou Times New Material Technology Co. Ltd. are eligible for such benefit.

xxvii. **Program No. 27: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors** constitutes a countervailable subsidy, as the program is maintained by SAT and its local tax bureaus which is public body, grants benefit to foreign investors in an FIE have been able to receive a 40% (if profits are re-invested) or 100% (if profits are re-invested in an export-orientated or technologically advanced enterprise)

refund on the income tax that was paid on the re-invested amounts. A benefit to the investor is conferred in the amount of the tax refund. The program is specific as it is limited to encourage foreign investors to reinvestment in enterprises in China. Existence of this program is established by Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Preferential Policies- Cai Shui [2009] No.69; Catalogue-Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Preferential Policies-2015; Article 10 of the Foreign Invested Enterprise and Foreign Enterprise Income Tax law 1991 (the FIE Income Tax Law); Article 80 of Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law (the FIE Tax Regulations); G/SCM/N/235/CAN-2012-Ceratin Thermolectric coolers and warmers from China PR; Certain oil country tubular goods from China PR; Certain seamless casing from China PR; US-Carbon and Certain Alloy Steel Wire Rod; US-Initiation Check list in Sodium Nitrate China PR; Circular of the State Administration of Taxation on Some Issues Concerning Tax Re-imbusement for Re-investment Made by Foreign Investors of Enterprise with Foreign Investment (Guo Shui Fa [1993] No 9). Chinese casting Producers such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Gexpro Industry Supply Shanghai Co. Ltd.; Sinovel Wind Group Co., Ltd.; Antec Braking Systems (Tianjin) Co., Ltd are eligible for such benefit.

- xxviii. **Program No. 28: Tax Policies for the deduction of research and development (R&D) expenses-** constitutes a countervailable subsidy, as the program is maintained by Local Science and Technology Bureau, the programs grant benefits to enterprises upto 50 % reduction in corporate income, where the said companies receiving Primary Support from the State and their projects listed in guide of high tech industrialization, are eligible for the said benefit. Existence of the program, Article 30(1) of the Corporate Income Tax Law, Article 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC, The guide to Key Fields (Notification n.6, 2007); China's State Administration of Taxation (SAT) issued Guoshuifa [2008] No. 116 (Circular 116) outlining the scope of R&D expenses eligible for Super Deduction, which, in practice, resulted in excluding some R&D related expenses that were not explicitly outlined in Circular 116 as qualified R&D expenses for Super Deduction purposes; On 29 September 2013, China's Ministry of Finance and the SAT released Caishui [2013] 70 (Circular 70), providing additions and clarifications to the original categories of R&D expenses outlined in Circular 116. Circular 70 is effective retroactively for R&D expenses incurred on or after 1 January 2013.US final finding on Non Oriented Electric Steel From China,

Germany, Japan, Korea, Sweden and Taiwan Chinese casting producers such as Gamesa Wind (Tianjin) Co. Ltd., Antec Braking Systems (Tianjin) Co. Ltd., Dalian Huarui Heavy Industry International Co. Ltd., Gexpro Industry Supply Shanghai Co. Ltd., Jiangsu Faw Foundry Co. Ltd., Jiangsu Jixin Wind Energy Technology Co. Ltd., Jiangyin Fengdian Flange Manufacture Co. Ltd. Jiangyin Hengrun Ring Forging Co. Ltd., Qingdao Anhua New Energy Equipment Co. Ltd., Qingdao Richuan Precision Machinery Co. Ltd., Satarem China Ltd., Shandong Laiwu Jinlei Wind-Power Technology Co. Ltd., Shanghai Siic E&A International Trade Co. Ltd., Sinovel Wind Group Co. Ltd. and Zhuzhou Times New Material Technology Co. Ltd.

xxix.

**Program No. 29: Tax concessions for Central and Western Regions**

constitutes countervailable subsidies, as the program is maintained by GOC at Provincial Level which is a public body; the programs grants benefit to enterprises in the form of reduced income tax established in Central and Western Regions. The program is specific, as the benefit under the program is limited only to enterprises located in a specific geographical region. Existence of the program is established by Notice on Favourable Tax Policies for Western Region Development (issued by the Ministry of Finance, General Tax Bureau and General Customs Office, effective from 1 January 2001); Circular on the Issues Concerning Related Tax Policies for the In-depth Implementation of the West Development Strategy (Cai Shui [2011] No. 58); Announcement on Enterprise Income Tax Policies Issues Concerning the Further Implementation of the Western China Development Strategy (February 6th, 2013); Announcement No. 14 [2015] of the State Administration of Taxation- Announcement on Issues concerning Enterprise Income Tax in Implementing the “Catalogue of Industries Encouraged to Develop in the Western Region (2015-03-10); 12th five year plan aims western region development; National Development and Reform Commission (“NDRC”) announced on 20 February that the State Council has formally approved The Western Development Plan during the 12th Five-Year Plan period; Midwest industrial catalogue for foreign investment (2013 Amendment), 2013 No.1 order; Foreign investment guidelines for central and western regions issued (effective from June 10, 2013); Announcement of the state administration of taxation on issues concerning enterprise income tax related with enhancing the western region development strategy (announcement no.12); Circular of the state council concerning several policies on carrying out the development of china’s vast western region GuoFa (2000) no. 33. Central region consists of Henan, Hubei, and Hunan provinces and western region consist of Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Qinghai, Ningxia, and Xinjiang. EU final finding on Certain Organic Coated Steel

Products Originating in the People's Republic of China. Chinese casting producers Shi Jia Zhuang Danzhuo Trade Co. Ltd. Zhuzhou Jiabang Photoelectric Material Co., Ltd. and Zhuzhou Times New Material Technology Co. Ltd are located in this designated region.

xxx. **Program No. 30: Income tax credit for the purchase of domestically manufactured production equipment** constitutes a countervailable subsidy, as the program is maintained by SAT and Local Taxation Bureaus of the GOC, which is a public body; the programs grant benefits to the enterprises in the form a tax benefit (i.e. a tax credit) accrued in a certain year may actually be used in a different tax year. The program is specific, as the benefit under the program is limited only to the enterprises using Equipment under Encouraged Category and Restricted B Category. Existence of the program is established by Provisional measures on enterprise income tax credit for investment in domestically produced equipment for technology renovation projects of 1 July 1999 and the Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment, No. 52 [2008] of the State Administration of Taxation, effective 1 January 2008. EU final finding on Certain Organic Coated Steel Products Originating in the People's Republic of China.

xxxi. **Program No. 31: Preferential tax policies for companies that are recognised as high and new technology companies** constitutes a countervailable subsidy, as the program is maintained by Ministry of Science & Technology (MOST), which is a public body, the programs grants benefit to the enterprises in the form of tax savings to those enterprises who have applied for the certificate of high and new technology. The program is specific, as the benefit under the program is limited only to those enterprises who are having high and new technology enterprise status or who applied for the same. Existence of the said program, Article 28 of the PRC Law on Enterprise Income Tax (No. 63 promulgated on 16 March 2007) SAT Circular Guo Shui Fa No. 135 of 2003; Circular Caishui (2014)No.59 & 65; WT/TPR/S/300; G/SCM/Q2/CHN/29; China's Industrial Subsidies Study- 2007; EU-Certain organic steel products-2013; Certain Organic Coated Steel Products Originating in the People's Republic of China . Chinese casting producers are Zhejiang Jiali Wind Power Technology Co., Ltd., etc.

xxxii. **Program No. 32: Income tax concessions for the enterprises engaged in comprehensive resource utilisation (special raw materials')** constitutes a countervailable subsidy, as the program is maintained by GOC and State Council which is a public body, the

programs grants benefit to the enterprises in form of tax savings. The program is specific, which is limited only to those enterprises whose companies manufacturing products listed in the same catalogue in a way to that meets relevant national and industrial standards by using primary raw material which are listed out in the GOC catalogue. Existence of the said program Article 28, & 33 of the PRC Law on Enterprise Income Tax, Article 99 of Regulations on Implementation of the PRC Law on Enterprise Income Tax by the State Council; EU-Coated fine paper-2011. EU final finding on Certain Organic Coated Steel Products Originating in the People's Republic of China; US final finding on Non Oriented Electric Steel From China, Germany, Japan, Korea, Sweden, and Taiwan.

xxxiii. **Program No. 33: Tax credit concerning the purchase of special equipment** constitutes a countervailable subsidy, as the program is maintained by GOC and State Council which is a public body, the programs grants benefit to the enterprises in form of reduction of income tax and thereby tax saving. The program is specific; to those enterprises that purchase equipments for the use of environmental protection, energy and water saving and production saving. Existence of the said program is Article 34 of the PRC Law on Enterprise Income Tax, Article 100 of Regulations on Implementation of the PRC Law on Enterprise Income Tax by the State Council EU final finding on Certain Organic Coated Steel Products Originating in the People's Republic of China.

xxxiv. **Program No. 34: Preferential income tax policy for the enterprises in the Northeast region** constitutes a countervailable subsidy, as the program is maintained by GOC, MOF Ministry of Finance and State Administration of Taxation (SAT), the program grants benefit in the form of tax savings generated for eligible companies by the deduction of accelerated depreciation and amortization expenses linked to the purchase of fixed assets. The program is specific, since it is limited to enterprises located in a designated geographical area, i.e. the Northeast Region, (including Liaoning, Jilin, and Heilongjiang Provinces, and Dalian Municipality). Existence of the said program is Enterprise Income Tax For Revitalization of Companies of the Old Industrial Base In The Northeast (Caishui, No 153, 20 September 2004), Notice of the Ministry of Finance and the State Administration of taxation on the Assets Depreciation and the Implementation Calibre of Amortization Policy in the Northeast Old Industrial Base (Caishui, No 17, 2 February 2005). EU final finding on Certain Organic Coated Steel Products originating in the People's Republic of China Chinese casting producers are Dalian Huarui Heavy Industry International Co. Ltd., etc.

xxxv. **Program No. 35: Dividend exemption between qualified resident enterprises** constitutes a countervailable subsidy, as the program is maintained by GOC, which is a public body, the program grants benefit by the tax exemption on dividends, bonuses and other equity investments for Chinese resident enterprises. The program is specific as it is limited to enterprises resident in China. Existence of the said program under Article 26 of the Enterprise Income Tax Law of the PRC, Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC, Decree no. 512 of the State Council, promulgated on 6 December 2007; EU finding on Certain Organic Coated Steel Products Originating in the People's Republic of China.

VI. **Relief from Duties and Taxes on Materials and Machinery**

xxxvi. **Program No. 36: Exemption of Tariff and Import VAT for Imported Technologies and Equipment** constitutes a countervailable subsidy, as the program is maintained by NDRC, SAT and its local tax bureaus which is public body, grants benefit to FIE which falls in the 'encouraged' or 'restricted' categories and or DIES that fall under the DIE catalogue and they import equipment which is sought to be exempt from tariff and/or VAT which must be for the enterprise's own use. The program is specific as it is limited to encourage FIEs or DIES that fall under the catalogue. Existence of this program is established by Articles 1 and 2 of the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (Guo Fa [1997] No. 37), WTO document G/SCM/N/123/CHN dated 13 April 2006; Catalogue of Industries for Guiding Foreign Investment; Catalogue of Industry, Product and Technology Key Supported by the State at Present (2004); State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue; Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue. EU final finding on Solar Glass Originating in China PR. Chinese casting Producers such as Gamesa Wind (Tianjin) Co. Ltd.; Antec Braking Systems (Tianjin) Co. Ltd.; Dalian Huarui Heavy Industry International Co. Ltd.; Gexpro Industry Supply Shanghai Co. Ltd.; Jiangsu Faw Foundry Co. Ltd.; Jiangsu Jixin Wind Energy Technology Co. Ltd.; Jiangyin Fengdian Flange Manufacture Co. Ltd.; Jiangyin Hengrun Ring Forging Co. Ltd.; Qingdao Anhua New Energy Equipment Co. Ltd.; Qingdao Richuan Precision Machinery Co. Ltd.; Satarem China Ltd.; Shandong Laiwu Jinlei Wind-Power Technology Co. Ltd.; Shanghai Siic E&A International Trade Co. Ltd.; Sinovel Wind Group Co. Ltd.; Zhuzhou Times New Material Technology Co. Ltd. are eligible for such benefit.

xxxvii. **Program No. 37: Reduction in Land Use Fees** constitutes a countervailable subsidy, as the program is maintained by SAT but the provincial and local land use management authorities were responsible for the collection of the land use fees, which is public body, grants benefit to FIEs who acquired land use rights by transfer are eligible for this scheme. The scheme is specific as it is limited for the FIEs. Existence of this program is established Order of the State Council [2006] No 483); Article IV.5 of Guo Ban Fa [1999] No 73) (Customs Document 18) Measures on readjusting land use fees and preferential reduction and exemption of land use fees in Shenzhen special economic zone. Canada final finding on Certain Stainless Steel Sinks Originating in or exported from China PR; EU final finding on Certain Organic coated Steel Products originating in the People's Republic of China; US final finding on Carbon and Certain Alloy Steel Wire Rod from China; US final finding on Non Oriented Electric Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; EU final finding on Solar Glass originating in China PR

VII. **Goods/Services Provided by Government at Less than Fair Market Value**

xxxviii. **Program No. 38: Input Materials Hot Rolled Steel Provided by Government at Less than Fair Market Value &**

xxxix. **Program No. 39: Hot rolled Steel Provided by Government at Less than Fair Market Value**

The Program No. 38 & 39 have been included in the petition filed due to typographical error. Petitioner is well aware that the hot rolled steel is not used in the manufacturing of castings as a raw material.

xi. **Program No. 40: Electricity provided by Government at less than Fair Market Value** constitutes a countervailable subsidy, as the program is maintained by NDRC and trans-provincial and provincial grids are operated by two state- owned suppliers i.e. State Grid Corporation of China and China Southern Power Grid Corporation, which are public bodies, grant benefits to the enterprises in providing electricity for less than adequate remuneration to the enterprises at a rate lower than the rate generally applicable to other large industrial users in China PR and limited to designated geographical areas where the exporting producers are located. There is discretion to administer the discounted rates to a limited group of preferred enterprises and industries, specifically, priority industries such as the casting industry. The lower electricity rate is set out in the relevant NDRC Notice and incorporated in the Notice issued by the local Price Bureau. Existence of the said program is established by and thereby countervailed by EU final finding on Certain organic coated

steel products originating in the People's Republic of China; US final finding on Non Oriented Electric Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; EU final finding on Solar Glass originating in China PR.

- xli. **Program No. 41: Land for Less Than Adequate Remuneration to Companies Located in Industrial or Other Special Economic Zones** constitutes a countervailable subsidy, as the program is maintained by Ministry of Land and Resources, Government of China through SOEs which maintains this program which is a public body, grants benefits to enterprises by the Chinese government at a discounted rate, or for free. The land-use policies are administered on a specific basis, specifically; local Chinese governments provide access to discounted land only for certain high-tech enterprises are specific in nature. Existence of the said program is established by Article 2 of the Land Administration Law and countervailed by EU final finding on Certain organic coated steel products originating in the People's Republic of China; US final finding Non Oriented Electric Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; US final finding on Carbon and Certain Alloy Steel Wire Rod from China; Canada final finding on Certain Stainless steel sinks originating in or exported from China PR.
- xlii. **Program No. 42: Program consisting of provision of water for less than adequate remuneration** constitutes a countervailable subsidy, as the program is maintained by NDRC, the Ministry of Water Resources and the Ministry of Environment, which is a public body, grants benefits to exporters wherein they pay less than the normal supply of water in form of revenue forgone especially applicable to the "sewage treatment fee". It provided water for less than adequate remuneration. Exporter has not paid the full price for water supply normally applicable to the category of users to which it belongs, as the "sewage treatment fee" component of the water price has not been paid. Existence of the said program is established and countervailed by US final finding of Carbon and Certain Alloy Steel Wire Rod from China.
- xliii. **Program No. 43: Provision of various goods for less than adequate remuneration** constitutes a countervailable subsidy, as the program is maintained by GOC, which is a public body, grants benefits to the SOEs in form of less than adequate remuneration in the form of direct transfer of fund as the raw materials produced by the casting producers are the raw materials produced inputs involved in production of the PUC are Pig Iron, Steel Scrap (CRCA), Ferro Silicon, Ferro Silicon Mg, Coke, Inoculants, Silica Sand, Resin, Catalyst, LPG, Furnace Lining Material, Diesel, Laddle Lining Material, Ceramic Tubes, Sleeves and Refractory

Coating and supplied by the government authorities of China PR. Existence of the program is maintained and countervailed by US-Galvanized Steel Wire from China and Mexico; US-Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (“Seamless Pipe”) from the People’s Republic of China and US- Carbon and Certain Alloy Steel Wire Rod from China.

xliv. **Program No. 44: Purchase of Goods by the Government for higher than adequate Remuneration** constitutes a countervailable subsidy, as the program is maintained by GOC through SOEs, which is a public body, the program grants benefit i.e. direct transfer of funds for purchase of goods for selected enterprises. The said program is specific as it is limited to certain eligible enterprises which are selected by the authorities. EU final finding on Certain Organic Coated Steel Products originating in the People's Republic of China and Canada final finding on Certain Galvanized Steel Wire Originating In or From China PR.

xlv. **Program No. 45: Input Materials (raw material) and utilities provided by Government at Less than Market: Value** Input Materials (raw material) and Utilities provided by Government at Less than Market Value constitutes a countervailable subsidies, as the program is maintained by Government of China PR), which is a public body; the program grants financial contribution in the form of provision of Input Materials (raw material) and Utilities at less than adequate remuneration by SOEs to casting producers and thus constitutes a countervailable subsidy. The program is specific, as the benefit under the program is limited to the casting exporters and is given input materials (raw material) and utilities at less than adequate remuneration and not at the market price. The inputs involved in production of the PUC are Pig Iron, Steel Scrap (CRCA), Ferro Silicon, Ferro Silicon Mg, Coke, Inoculants, Silica Sand, Resin, Catalyst, LPG, Furnace Lining Material, Diesel, Ladle Lining Material, Ceramic Tubes, Sleeves and Refractory Coating. Existence of the program is established by US-Galvanized Steel Wire from China and Mexico; US-Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (“Seamless Pipe”) from the People’s Republic of China and US- Carbon and Certain Alloy Steel Wire Rod from China.

### **H.3. Submissions by GOC/producers/exporters/importers/other interested parties**

76. With regard to the alleged subsidy schemes, the opposite interested parties have contended as follows:

- i. In the present investigation, the Authority has initiated CVD investigation in respect of 44 subsidy programs on the basis of allegations made by the Petitioner. Although claimed by the petitioner, Authority should not consider any new subsidy program at this belated stage. Without prejudice, if Authority does consider any new subsidy allegation, in such a circumstance, a separate investigation has to be initiated
- ii. In the petition filed by the Petitioner, 5 exporters from China PR have been named. However, the petition nowhere alleges, which all program schemes out of 44 schemes listed are applicable to which exporters. None of schemes listed pertain to the geographical region or the specific industries to which the named exporters belong. In absence of same, the alleged programs cannot be countervailed.
- iii. Further, investigations for each of the 44 subsidy programs need to be terminated as each of the subsidies are not countervailable in terms of CVD Rules and SCM Agreement. Moreover, following illustrative discrepancies/problems exist in the subsidy programs alleged by the petitioner:
  - a. Subsidy program rescinded in the exporting country.
  - b. No allegation at all with respect to (a) financial contribution (b) benefit being conferred and (c) specificity.
  - c. No information except the name of the program.
  - d. Express admission that no evidence available with respect to subsidy program alleged.
  - e. No evidence other than certain findings of Canadian, Australian, US and EU authorities have been given with regard to the alleged programs. Even in these cases, none of those findings related to the product concerned or any of the known producers or exporters listed in the petition. In respect of programs related to certain specific geographical areas or cities, there was no averment in the petition that any producer of the product concerned was operating or located in the relevant geographical area or city.
  - f. No averment with regard to why State Owned Enterprises be treated as public bodies
- iv. All the evidence presented in the form of findings from other countries (assuming without admitting, that they may be treated as evidences) did not deal with the findings of Appellate Body

decision in DS 379 and DS 436 that required an investigating authority to first establish that the entity concerned possessed governmental authority to perform governmental functions and not merely trading or other commercial functions. All the findings quoted by the petitioner had treated the State Owned Enterprises (SOEs) as public bodies merely for the reason that they were state owned. Accordingly, none of the findings of other governments quoted in the petition or in the subsequent letters were in line with the decisions of the Appellate Body.

- v. Petitioner has made mere allegations regarding the subsidies in question, with unsubstantiated claims on specificity and benefit. There is a difference between establishing that a program exists (with appropriate information on legislation and administering authority) and establishing that the program is an actionable or prohibited subsidy. While the Petitioner has filed information regarding a few of the alleged programs, there is no actual substantiation of why India as a WTO member is justified in levying duties to countervail these programs. The petitioner has to give evidence in support of allegations of subsidies brought by them.

77. With regard to the alleged subsidy schemes, the Govt of China have contended as follows:

- a) The Govt. of China claimed that the following alleged schemes do not exist:
  - I. Goods/Services Provided by Government at Less than Fair Market Value
    - i. Electricity provided by Government at less than Fair Market Value
    - ii. Land for Less Than Adequate Remuneration to Companies Located in Industrial or Other Special Economic Zones
    - iii. Programme consisting of provision of water for less than adequate remuneration
  - II. Preferential Loans
    - i. Preferential loans and interest rates to the casting industry
- b) The Govt. of China claimed that the following alleged schemes do not apply for the castings producer/ exporter as the main raw material for

production of the products under investigation is not hot rolled steel and cold- rolled steel but the steel scrap.

I. Goods/Services Provided by Government at Less than Fair Market Value:

- i. Input Materials Hot Rolled Steel Provided by Government at Less than Fair Market Value
- ii. Hot rolled Steel provided by Government at Less than Fair Market Value.

c) The Govt. of China claimed that the following alleged schemes are "no longer" in force.

I. Special Economic Zone (SEZ) Incentives and Other Designated Areas:

- i. Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area).
- ii. Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
- iii. Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
- iv. Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
- v. Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
- vi. Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
- vii. Preferential Tax for Casting and Forging Systems

II. Grants

- i. The State Key Technology Renovation Projects Fund
- ii. Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

III. Preferential Income Tax Programs

- i. Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years
- ii. Preferential Tax Policies for Foreign Invested Export Enterprises
- iii. Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive

- iv. Preferential Tax Policies for the Research and Development of FIEs
- v. Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments
- vi. Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose
- vii. Income Tax Refund for Re-investment of FIE Profits by Foreign Investors

#### IV. Relief from Duties and Taxes on Materials and Machinery

- i. Exemption of Tariff and Import VAT for Imported Technologies and Equipment

#### V. Goods/Services Provided by Government at Less than Fair Market Value

- i. Income tax credit for the purchase of domestically manufactured production equipment

d) The Govt. of China claimed that the application does not contain sufficient evidence of the actual existence of the alleged subsidy for the following schemes:

##### I. Grants

- i. Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- ii. Research & Development (R&D) Assistance Grant
- iii. Innovative Experimental Enterprise Grant
- iv. Superstar Enterprise Grant
- v. Venture Investment Fund of Hi-Tech Industry
- vi. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
- vii. Innovative Small and Medium Enterprise Grants
- viii. Grants to Privately-Owned Export Enterprises

##### II. Relief from Duties and Taxes on Materials and Machinery

- i. Reduction in Land Use Fees

##### III. Goods/Services Provided by Government at Less than Fair Market Value

- i. Tax concessions for Central and Western Regions

- ii. Income tax concessions for the enterprises engaged in comprehensive resource utilisation (special raw materials')
  - iii. Tax credit concerning the purchase of special equipment
  - iv. Preferential income tax policy for the enterprises in the Northeast region
  - v. Purchase of Goods by the Government for higher than adequate Remuneration
- IV. Equity Programs
- i. Equity infusions
  - ii. Unpaid dividends
- V. Preferential Loans
- i. Preferential loans and interest rates to the casting industry
- e) The Govt. of China claimed that the following alleged scheme is in force where the benefit is not related to the exports or any imports of any inputs, of the product concerned, that needs key support from the state in order avail tax benefit:
- i. Preferential tax policies for companies that are recognised as high and new technology companies
- f) The Govt. of China claimed that the following alleged scheme is not a subsidy but an exemption in order to avoid double taxation with no benefits conferred:
- i. Dividend exemption between qualified resident enterprises.
- g) New Subsidy Allegations (NSA) cannot be included as allegations have been made belatedly. NSA should have to be made within a reasonable period of time (2 months after the initiation). And even if Authority has to consider NSA, a separate investigation has to be initiated against and prior consultations have to be held with exporting country.
- h) The only responding exporter, Zhejiang Jiali Wind Power Technology, Hangzhou, has claimed that the exporter company has never applied for, used, or benefitted from these programs. Also, Jiali is neither a foreign invested enterprise nor located in SEZs or other designated areas. In the production of subject good, the exporter company has never used Hot rolled Steel as input material. The company has purchased electricity, water, land and various goods during the investigation period and did not receive any benefit from this program.

- i) The only cooperating exporter / producer has stated that they have applied for “Tax Policies for the deduction of research and development (R&D) expenses” and “Preferential tax policies for companies that are recognised as high and new technology companies”, and obtained approval from the local taxation bureau. These programs have not been terminated. However, the nature of this program is reduced income tax rate but such benefit can only be enjoyed when the enterprise has a profit. The Exporter Company, due to huge losses in fiscal year 2012, did not receive any benefits out of the above mentioned schemes. Also the said tax concessions are neither linked directly or indirectly for acquisition of fixed assets or capital goods.
- j) The exporter, Zhejiang Jiali Wind Power Technology, Hangzhou, has claimed that it is a privately owned limited liability company. Thus, they have not received any benefit out of the equity programs i.e. Equity infusions and unpaid dividends.
- k) 5 exporters have been named by the petitioner, though nowhere the petitioner alleges, which all program are applicable to which exporter. None of schemes listed pertain to the geographical region or the specific industries to which the named exporters belong.
- l) The interested parties have raised concerns regarding the sufficiency of the petition's allegations of subsidy. The petition fails to meet the legal standards and requirements. The petition contains insufficient evidence. IWTMA has stated that in order for a program to be it has to be satisfied whether the program qualifies as a ‘subsidy’ in terms of Article 1 of ASCM.
- m) GOC has mentioned that Chinese exporting producer cooperated, in which detailed information and evidence are provided hoping that the authority will take into account the opinions and facts submitted.
- n) Petitioner should include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury and (c) a causal link. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient.
- o) Petitioner has failed to identify which specific programs are related to the PUC and whether there existed a financial contribution and a benefit conferred in the sector.

- p) Investigations for each of the 44 programs need to be terminated as the same are not countervailable. There are discrepancies/problems exist in the subsidy programs alleged such as:
- a. Subsidy program rescinded in the exporting country
  - b. No allegation at all with respect to (a) financial contribution (b) benefit being conferred and (c) specificity
  - c. No information except the name of the program
  - d. Express admission that no evidence available with respect to subsidy program alleged
  - e. No evidence other than certain findings of Canadian, Australian, US and EU authorities has been given with regard to the alleged programs.
    - i. None of those findings related to PUC or any of the known producers or exporters listed in the petition.
    - ii. Programs related to specific geographical areas or cities, no averment that any producer was operating/ located in the geographical area.
    - iii. No averment with regard to why SOEs be treated as public bodies
- q) The petitioner could not establish the existence of the three elements comprising a countervailable subsidy namely: (i) financial contribution by a government or public body; (ii) benefit; and (iii) specificity. If one or more of the above three pre-requisites are not fulfilled, in such a case the investigation for such a program ends.
- r) The GOI should justify: (i) whether it assessed the adequacy and accuracy of evidence concerning subsidization provided by the petitioner; and (ii) the basis on which it considers that the petition contains adequate and accurate information with respect to each subsidy scheme as regards the exporting producers of the product concerned such that the petition could be considered as providing objectively sufficient factual basis for the initiation of the investigation as required by Article 11.3 of the SGM Agreement.
- s) All the information and evidence must be closely related to the specific PUC. No direct relevance to the PUC shall not be requested, it may be tantamount to overly burdens that an exporter may not be able to fulfill. Specifically, all the subsidy related information and evidence must be related to (1) the subject merchandise; (2) cooperating companies.
- t) By virtue of the state or a SOE administering the program, the public body requirement is satisfied- is an incomplete and inaccurate position.

Mere state ownership in an entity does not render such an entity a public body for the purposes of Article 1.1 of the ASCM or Section 9(1) of the Customs Tariff Act. Other factors with regards to the legal, organizational or financial structure of the entity must be analyzed in detail.

- u) Petitioner has not dealt with AB decision in DS 379 and DS 436. The petitioner should first establish that the entity concerned possessed governmental authority to perform governmental functions and not merely trading or other commercial functions. All the findings had treated the (SOEs) as public bodies merely for the reason that they were state owned. None of the findings quoted were in line with the decisions of the AB.
- v) Lot of information has not been shared by the Petitioner as per Rule 7(7). Petition is incomplete and does not meet the 'adequacy and accuracy' standards as supporting evidence-
  - a. Evidence in respect of existence of each subsidy program
  - b. Evidence of subsidy program being applicable to the product concerned
  - c. Evidence of subsidy program being applicable to this particular industry
  - d. Evidence of other domestic producer and source of their production quantity
- w) In the petition, total of 18 programs numbered as program have been alleged as providing some form of exemption or preferential rate of income tax. It is inconceivable that a particular enterprise would be benefitted from preferential rate of tax for all the 18 programs at the same time. Even assuming that such program results in (i) financial contribution (ii) conferment of benefit and (iii) and is also specific, the benefit can only be countervailed with respect to one of the programs or policies and not for all the programs.
- x) In the petition, total of 7 programs numbered as program 14 to 18, 37 and 42 have been alleged as providing subsidy to the enterprises located in that regions. Even assuming that such program results in (i) financial contribution (ii) conferment of benefit and (iii) and is also specific, the benefit Can only be countervailed with respect to one of the programs or policies and not for all the programs. However, it is inconceivable that a particular enterprise would be benefitted from the different subsidies as it cannot be situated in all such different

provinces. In any case, as per Article 8 of the SCM agreement, these programs comprise of subsidy for aid to disadvantaged regions.

- y) Authority has violated the Rule 6 of CVD Rules, Article 11.2 and Article 3 of SCM agreement by initiating the investigation for the alleged Programs because either the program has rescinded in 2008 or is non actionable within the meaning of ASCM. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

#### H.4. **Examination by the Authority**

78. The various contentions raised by the interested parties concerning alleged subsidy schemes and considered relevant by the Authority, are examined and addressed as follows:

- i. As regards New Subsidy Allegations, the Authority notes that while the petitioner initially requested extension of investigation to include these new subsidies, the petitioner subsequently modified its contention and submitted that the evidence brought out by the petitioner with regard to existence of other subsidy schemes should be considered to hold that the GOC has not disclosed all the schemes which are in vogue in China and where the casting producers have benefitted from countervailable subsidies. The Authority notes that extension of investigation to the additional schemes subsequently identified by the petitioner may not be appropriate keeping in view the time available for completion of the present investigations. Consider changing the language It is, however, noted that the GOC has not provided any information with regard to the additional alleged subsidy schemes prevalent in China even though the questionnaire issued by the authority specifically sought information with regard to any other schemes prevalent in China.
- ii. As regards the contention that petitioner did not correlate the subsidy programmes with the identified 5 exporters from China PR in terms of the geographical region or the specific industries to which the named exporters belong, the Authority notes that the petitioner furnished evidences what is reasonably available to them during the course of the investigation. But, while furnishing a list of more than 200 casting producers in China, the GOC could have provided the said information as well. Moreover, had the GOC cooperated and permitted the Authority for conducting on the spot verification of the data/information of Government bodies as well as the only respondent Chinese producer/exporter, the Authority would

have been in a better position to examine and address the claims/evidences made by the domestic industry in this regard.

- iii. As regards the contention that in terms of the findings of Appellate Body decision in DS 379 and DS 436 an investigating authority has to first establish that the entity concerned possessed governmental authority to perform governmental functions and not merely trading or other commercial functions to be termed as public body, the Authority notes that GOC has neither proved with documentary proof that the agencies involved in the alleged subsidies are not public body nor cooperated and allowed verification by the Authority. The Authority notes that the petitioner has initially identified 44 programs, out of which, 37 programs are administered by those Bodies falling within the category of state (GOC, Provincial, Municipal Corporation, local bodies in China). Only 7 programs were identified by the petitioner, which are being administered by SOE. As far as these programs are concerned, the Authority notes that the petitioner provided sufficient evidence to establish that these administering authorities constituted public bodies within the meaning of the law. Therefore, basing on the information furnished by the domestic industry and relying upon the information as available in the public domain, the Authority holds that all the agencies involved in the alleged subsidies in the present investigation have possessed governmental authority to perform governmental functions and therefore are public bodies.
- iv. As regards the contention that the Petitioner has made mere unsubstantiated allegations regarding the subsidies in question, with unsubstantiated claims on specificity and benefit, the Authority notes that the petitioner has provided information in respect of specificity and benefit, that was reasonably available to them, in support of their case during the course of the investigation showing existence of countervailable subsidies. If the GOC had otherwise to prove, then they could have cooperated to allow the Authority to go for on the spot verification of their data as well as the data of the sole respondent Chinese exporter.
- v. The Authority notes that while contending that several schemes are no longer in force, the GOC has not provided any documentary evidence to show that the scheme is no longer in force. The Authority considers that if a program was introduced by the GOC at some point in time and was withdrawn subsequently, the GOC should have in its possession relevant documents showing introduction of the program and withdrawal of the same. It is,

however, noted that while contending that some of the alleged schemes are no longer in force, the GOC has not provided either the documents relating to introduction of the program or documents relating to withdrawal of the program. The Authority, therefore, holds that the contention of the GOC with regard to withdrawal of the programs is unsupported with relevant documentary evidences. Moreover, it may so happen that the name of the program might have been changed or a new program with a different nomenclature might have replaced the old program with the same benefits targeting the same target group. Had the GOC cooperated and allowed the Authority to verify the data/information of the Government as well as the sole Chinese respondent producer/exporter, the truth could have emanated to a great extent. But, since the GOC did not consent for on the spot verification of their data/information including claims made by them during the course of this investigation, the veracity of their contention that many erstwhile subsidy programmes have been resinded cannot be accepted. Moreover, other investigating authorities have found these schemes to be in existence and countervailable in their findings.

79. The domestic industry, vide their letter dated 10th November, 2015, submitted a statement showing consolidated reference to the evidences provided by them earlier during the course of this investigation along with copy of the evidences (hard and soft copy). The Authority has made available the said letter along with the enclosures in the public file for inspection by the interested parties. The subsidy margin has been calculated by the domestic industry as below for the respective schemes as mentioned against each:

SN	Scheme	Jiali	Others
1	Grants under the following schemes (Program 8 to 17)	5.89%	5.89%
2	The State Key Technology Renovation Projects Fund		
3	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments		
4	Research & Development (R&D) Assistance Grant		
5	Innovative Experimental Enterprise Grant		
6	Superstar Enterprise Grant		
7	Awards to Enterprises Whose Products Qualify for "Well-Known		

SN	Scheme	Jiali	Others
	Trademarks of China" or "Famous Brands of China"		
8	Venture Investment Fund of Hi-Tech Industry		
9	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment		
10	Innovative Small and Medium Enterprise Grants		
11	Grants to Privately-Owned Export Enterprises		
12	Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas (Program 5)	0.00%	0.25%
13	Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas (Program-6)	2.17%	2.17%
14	Equity Programs		
15	Equity Infusion (Program 18)	5.18%	5.18%
16	Unpaid Dividend (Program 19)	0.26%	0.26%
17	Preferential loans and interest rates to the casting industry (Program 20)	0.59%	2.46%
18	Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments (Program 25)	0.76%	0.76%
19	Tax Policies for the deduction of research and development (R&D) expenses (Program 28)	0.32%	0.32%
20	Preferential tax policies for companies that are recognized as high and new technology companies (Program 31)	1.56%	1.74%
21	Tax credit concerning the purchase of special equipment (Program 33)	0.19%	0.19%
22	Relief from Duties and Taxes on land use fee	1.69%	1.69%
23	Exemption of Tariff and Import VAT for Imported Technologies and Equipment (Program 36)		
24	Reduction in Land Use Fees (Program 37)		
25	Raw Materials-Electricity (Program	2.17%	2.17%

SN	Scheme	Jiali	Others
	40)		
26	Provision of various goods for less than adequate remuneration (Program 43)		
A	Raw Materials-Pig Iron	0.32%	0.32%
B	Raw Materials-CRCA Scrap	7.62%	7.62%
	Total CVD margin	28.71%	31.00%

80. Further, the domestic industry, vide their letter dated 12th November, 2015 (copy made available in public file), submitted two statements i.e. Statement A – list of schemes for which the investigations may be terminated and Statement B - schemes for which the investigations is required to be continued. They further informed that for the programs listed below in Statement-A, the petitioner does not have any further evidence with regard to the quantum of benefits which is in addition to the benefits that have been identified by the petitioner in the schemes listed in Statement-B below and requested the Authority to terminate the investigations in respect of the programs listed in Statement-A below.

**Statement-A - Schemes for which the investigations to be Withdrawn**

SN	Heads	Program No.	Schemes
1.	Special Economic Zone (SEZ) Incentives and Other Designated Areas-	Program No. 1	Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area).
		Program No. 2	Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
		Program No. 3	Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
		Program No. 4	Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
		Program No. 7	Preferential Tax for Casting and Forging System
2.	Preferential Income Tax Programs & Tax	Program No. 21	Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years

	Incentives	Program No. 22	Preferential Tax Policies for Foreign Invested Export Enterprises
		Program No. 23	Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
		Program No. 24	Preferential Tax Policies for the Research and Development of FIEs
		Program No. 26	Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose
		Program No. 27	Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
		Program No. 29	Tax concessions for Central and Western Regions
		Program No. 30	Income tax credit for the purchase of domestically manufactured production equipment
		Program No. 32	Income tax concessions for the enterprises engaged in comprehensive resource utilization (special raw materials') (For FIE's)
		Program No. 34	Preferential income tax policy for the enterprises in the Northeast region
		Program No. 35	Dividend exemption between qualified resident enterprises
3.	Goods/Services Provided by Government at Less than Fair Market Value	Program No. 38	Input Materials Hot Rolled Steel Provided by Government at Less than Fair Market Value
		Program No. 39	Hot rolled Steel Provided by Government at Less than Fair Market Value
		Program No. 41	Land for Less Than Adequate Remuneration to Companies Located in Industrial or Other Special Economic Zones
		Program No. 42	Program consisting of provision of water for less than adequate remuneration
		Program No. 44	Purchase of Goods by the Government for higher than adequate Remuneration

		Program No. 45	Input Materials (raw material) & Utilities provided by Government at less than Market value
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**Statement-B** - Schemes for which the investigations to be continued

SN	Heads	Program No.	Schemes
1.	Special Economic Zone (SEZ) Incentives and Other Designated Areas	Program No. 5	Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas
		Program No. 6	Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas
2.	Grants	Program No. 8	The State Key Technology Renovation Projects Fund
		Program No. 9	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
		Program No. 10	Research & Development (R&D) Assistance Grant
		Program No. 11	Innovative Experimental Enterprise Grant
		Program No. 12	Superstar Enterprise Grant
		Program No. 13	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
		Program No. 14	Venture Investment Fund of Hi-Tech Industry
		Program No. 15	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
		Program No. 16	Innovative Small and Medium Enterprise Grants
3.	Equity Programs	Program No. 17	Grants to Privately-Owned Export Enterprises
		Program No. 18	Equity infusions
4.	Preferential Loans	Program No. 19	Unpaid dividends
		Program No. 20	Preferential loans and interest rates to the casting industry
5.	Preferential Income Tax Programs & Tax	Program No. 25	Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or

	Incentives		Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments
		Program No. 28	Tax Policies for the deduction of research and development (R&D) expenses
		Program No. 31	Preferential tax policies for companies that are recognized as high and new technology companies
		Program No. 33	Tax credit concerning the purchase of special equipment
5.	Relief from Duties and Taxes on Materials and Machinery	Program No. 36	Exemption of Tariff and Import VAT for Imported Technologies and Equipment
		Program No. 37	Reduction in Land Use Fees
		Program No. 40	Electricity provided by Government at less than Fair Market Value
		Program No. 43	Provision of various goods for less than adequate remuneration

81. In view of the above submissions by the domestic industry and request to withdraw the investigations in respect of the schemes/programs listed in Statement-A above, the Authority does not examine the schemes listed in Statement-A above further and restricts itself to the examination of countervailability of only the schemes/programs listed in the Statement-B above and quantifies the subsidization/injury to the domestic industry.

### **Special Economic Zone (SEZ) Incentives and Other Designated Areas**

82. **Program No. 5: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas (for FIEs)**

- a) **Brief about the program** – The domestic industry has alleged that the program grants benefit to the FIEs, which are located in SEZs and other designated zones in the form of reduced income tax. Where the local income tax paid by the FIEs on the income of their establishments or places set up in China to engage in production or business operations shall be computed on taxable income at the rate of 25%; local income tax shall be computed on the taxable income at the rate of 3%. The eligible foreign invested enterprises fulfilling the criteria will be entitled for paying

local income tax at zero rate which is otherwise due to the GOC at the rate of 3%.

- b) **Views of Interested Parties-** The Govt. of China stated that the program was rescinded when the new Corporate Income Tax Law came into effect on 1 January 2008. They contended that there was no grace period granted for this program. Subsequently at the post disclosure stage, the GOC, by drawing attention of the authority to the Law of the People's Republic of China on Enterprise Income Tax (Adopted at the Fifth Session of the Tenth National People's Congress on March 16, 2007) has reiterated that the scheme /program has been rescinded with effect from 1-1-2008.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has not received any benefit out of this program as it is neither a FIE nor located in SEZs.

IWTMA has contended that the Program was rescinded on 1st January 2008 as per the circular of the State Council on adjusting Tax Policies on import Equipment (GUOFA-I 997) No.37. The program was available for the Hainan Island province of the State Council for encouragement to investments. This program is for the assistance to disadvantaged region within the territory of the exporting country. Therefore the program will fall under the category of Non-actionable subsidy as per Article 8 of the SCM agreement. In view of the above position, investigation for this program should be terminated as per Article 11.9 of the ASCM agreement.

- c) **Administering authority-** The program is maintained by Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM), which is a public body within the meaning of ASCM and the Act & the Rules.
- d) **Benefit under the program -** The program grants benefit to the foreign invested enterprises in the form of tax savings to those FIEs who are located in a SEZ or other designated areas. The Govt. of China claimed that the alleged schemes have been rescinded in 2008 and the responding exporter has not availed the benefit out of the scheme. However, the domestic industry has claimed that the alleged scheme is still in existence in China and has been held countervailable by other authorities such as US and Canada.
- e) **Specificity of the Program-** The program is both enterprise specific and region specific; as the benefit under the program is limited only to FIEs located in SEZ and designated areas. Since the benefit under the program

is limited to certain types of the enterprises of a particular nature as well as to the designated zones such as Hainan Island, Guangdong Province, the program is specific within the meaning of the Rules.

- f) **Countervailability of the Program** – As submitted by the domestic industry, existence of the program is established by Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the Tax Law); Article 5 & 9, Regulation on the Implementation of the Income Tax Law of the People 's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise; Regulations on special economic zones in Guangdong province (1980-08-26) ; Provisions of the State Council Concerning the Encouragement of Investment in Developing Hainan Island (1988-05-04);

As submitted by the domestic industry, GOC has also reported existence of this scheme in the WTO as recorded in the WTO document G/SCM/N/123/CHN dated 13 April 2006. The scheme has also been held countervailable by Canadian Authority in the final finding of Certain Galvanized Steel Wire against PRC and Certain Stainless Steel Sinks from PRC.

- g) **Findings of the investigations & conclusion-** The program provides a financial contribution in the form of revenue forgone by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises situated in particular region, thus the program is specific within the meaning of the Rules. This programme constitutes countervailable subsidy. In later submissions during the course of the investigation, the petitioner has submitted the list of casting producers/exporters in China such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd, Gexpro Industry Supply Shanghai Co., Ltd., Sinovel Wind Group Co., Ltd. and Antec Braking Systems (Tianjin) Co., Ltd which are established in SEZs and Other Designated Areas and are in the nature of FIEs eligible for the benefit. In view of the GOC's post disclosure submission, the authority has not proceeded further to determine the countervailability of the scheme.

### **83. Program No. 6: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas (For both FIEs & DIEs)**

- a. **Brief about the program** – The domestic industry alleged that the program grants benefit to enterprises which are located in SEZs and other designated areas and fall in the 'encouraged' or 'restricted' categories in the "Catalogue of Industries for Guiding Foreign Investment and purchasing

equipments”. Such enterprises shall be exempted from tariff and import VAT. This program provides an exemption from VAT and import tariffs in favor of both FIEs and domestic enterprises for imports of capital equipment used in their production.

- h) **Views of Interested Parties-** GOC has mentioned in its response that The program applies to both certain foreign investment projects and certain domestic investment projects and may result in the exemption of the qualifying enterprises from paying import tariff and VAT on the purchase of imported equipment for self-use as long as the equipment does not fall in the categories listed in the Catalogue on Non-duty-exemptible Article of Importation for Foreign Investment Project and the Catalogue on Non-duty-exemptible Article of Importation for Domestic Investment Project. The program was established on 29 December 1997, pursuant to the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA (1997) No.37). The policy objective is to encourage foreign investment and the introduction of advanced foreign technology equipment and industrial technology upgrades. On 25 December 2008, the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation issued an Announcement on Relevant Issues Concerning the Corresponding Adjustment of Certain Preferential Policies for Import Duties The said Announcement (No. 43 [2008]) states that, as of 1 January 2009, with respect to self-use equipment imported by domestic investment projects and foreign investment projects, equipment imported with foreign government loans and international financial institutions’ loans, non-evaluated imported equipment provided by foreign processing traders, and technologies and matching pieces and spare parts imported with the above-mentioned equipment according to contracts, and which are encouraged by the state in the above-referenced Circular of the State Council (GUOFA(1997)No.37), the imposition of the import value-added tax shall resume, but import duties shall continue to be exempted within the originally prescribed scope. Subsequently at the post disclosure stage, the GOC, by drawing attention of the Authority to the Notice of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Adjustment of Certain Preferential Import Duty has reiterated that the collection of the import value-added tax shall be resumed while the exemptions of tariffs shall remain applicable.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has not received any benefit out of this program as it is not located in SEZ.

IWTMA has contended that the benefit under this program is provided only to FIEs which fall under encouraged or restricted categories. It seems that the program also allows for exemption or remission of prior stage cumulative indirect taxes levied on inputs that are consumed in the production of final product. The Petition does not provide any evidence to show that the exporters are FIEs. It is claimed that equipment are exempted from tariff and import VAT for enterprises situated in SEZ. Enterprises situated in SEZ are entitled to tariff and VAT exemptions on imported materials and equipment which are used to manufacture and export goods. However, the petition does not show that the exemption which is granted is in excess of those which have been accrued as required under footnote 1 of SCM Agreement. Further, para 1 to Annex II to SCM Agreement read with footnote 1 also exempts such prior stage cumulative indirect taxes as a subsidy. That is, government revenue, which is otherwise due when foregone or not collected, can be treated as financial contribution only when the exemption from the taxes on the exported goods is in excess to those on which it has accrued. Therefore the evidence provided by the petitioner is not sufficient and adequate.

- b. Administering authority-** The program is maintained by Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM), which is a public body within the meaning of ASCM and the Act & the Rules. The authorities in charge such as the NDRC and Local Development and Reform Administration confirm whether the investment project is in line with the requirements/criteria or not.
- c. Benefit under the program -** The program grants benefit to the enterprises in the form of revenue forgone to those FIEs or DIEs which are located in a SEZ or other designated areas and fall within the 'encouraged' or 'restricted' categories.
- d. Specificity of the Program-** As contended by the domestic industry, the program is specific, as the benefit under the program is limited only to such FIEs and DIEs which are located in specific SEZ and designated areas and listed under 'encouraged' or 'restricted' categories. As claimed by the domestic industry, the GOC has formulated the eligibility criteria to this program based on "domestic investment project" and "foreign investment project" and the type of equipment being imported.
- e. Countervailability of the Program –** As submitted by the domestic industry, existence of the program is established by Articles 1 and 2 of the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (Guo Fa [1997] No. 37) and Catalogue of Industries for Guiding Foreign Investment (2004) (until 30 November 2007)

or Catalogue of Industries for Guiding Foreign Investment (2007) (after 1 December 2007); SAT announcement No.49 of 2014; SAT announcement No.51 of 2014. As further submitted by the domestic industry, in the WTO Semi-annual report of Canada, the alleged scheme has been reported in G/SCM/N274/CAN, 29th august, 2014. The scheme has also been held countervailable by other authorities in their findings against China.

- f. **Findings of the investigations & conclusion-** The program provides a financial contribution in the form of revenue forgone by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises situated in particular region, thus the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the coasting producer/ exporter which are located in SEZs either FIE or Domestic enterprises are eligible for such benefit. This programme constitutes countervailable subsidy. In later submissions during the course of the investigation, the petitioner has submitted the list of casting producers/exporters in China such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd, Gexpro Industry Supply Shanghai Co., Ltd., Sinovel Wind Group Co., Ltd. and Antec Braking Systems (Tianjin) Co., Ltd which are established in SEZs and Other Designated Areas and are in the nature of FIEs eligible for the benefit. In view of the GOC's post disclosure submission, the authority has proceeded with calculation of the benefits availed by the exporters under the scheme in respect of exemption of tariffs on imported equipments.
- g. **Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients which is found to exist during the POI. The benefit conferred on the recipients is considered to be the amount of tariff and VAT saved, considering the normal tariff rate and the reduced tariff rate payable under the program. Since the benefit is available regardless of exports by the company, the CVD margin has been determined considering the total sales made by the company. The responding exporter M/s Jiali Wind claimed that it has not benefited under the program as it is not located in SEZ.

It is noted that this subsidy is available to the eligible enterprises irrespective of the products they produce. Benefit under the program is available on import tariffs exemption on the imports of the capital equipment used in their production. The benefit under the program is available on the total sales of the company, once the company is able to claim that it is entitled to benefit under the program. The petitioner has not provided any relevant details regarding the exemption of tariff availed by the exporters of the subject goods. In the absence of the relevant

information either from the petitioners or from the interested parties, the Authority has not quantified the countervailability of the program.

### **Grants**

84. Vide their letter dated 12<sup>th</sup> November, 2015, the domestic industry has requested for continuation of the investigation in respect of the following grant related programs only:

Grants	Program No. 8	The State Key Technology Renovation Projects Fund
	Program No. 9	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
	Program No. 10	Research & Development (R&D) Assistance Grant
	Program No. 11	Innovative Experimental Enterprise Grant
	Program No. 12	Superstar Enterprise Grant
	Program No. 13	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
	Program No. 14	Venture Investment Fund of Hi-Tech Industry
	Program No. 15	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment
	Program No. 16	Innovative Small and Medium Enterprise Grants
	Program No. 17	Grants to Privately-Owned Export Enterprises

### 85. **Program No. 8: The State Key Technology Renovation Projects Fund**

- a. **Brief about the program** - The domestic industry has alleged that the program grants benefit to large-size SOEs. These enterprises are holding high credit rank among 512 key industries. These enterprises are either getting direct Government contribution to the enterprise or through the provision of low interest loans where the Government paid the interest payment for loans established by the enterprise. The program is specific; as the benefit under the program is limited only to SOEs which are holding high credit rank among 512 key industries.
- i) **Views of Interested Parties-** The Govt. Of China has responded that program was rescinded on February 22, 2008. There was no replacement and grace period granted for this program. So there is no casting producers/exporters can apply or receive benefits from this program during the period of investigation. According to the petition, the basic law of this

program is Notice Concerning the Promulgation and Circulation of “Measures for (the Administration of National Key Technological Renovation Projects” and “Measures for the Administration of Treasury-bond Special Fund for National Key Technological Renovation Projects”( GUOJINGMAOTOUZI [1999] 886) and Notice Concerning the Promulgation and Circulation of “Measure for Supervision and Administration of National key Technological Renovation Projects (for Trail Implementation)” (GUOJINGMAOTOUZI (199911038). As claimed by the GOC, both these regulations were rescinded vide Order of NDRC No. 59. They further claimed that the responding company cooperated with this investigation did not benefit from this program. Subsequently at the post disclosure stage, the GOC, by drawing attention of the authority to the National Development and Reform Commission Decree No. 59 has reiterated that the program has been rescinded.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program. They further claimed that the grants received by the parent company are not part of the present investigation.

IWTMA contended that the Program has been rescinded on 22<sup>nd</sup> January 2008 as per the National Development and Reform Commission Decree No.59. No evidence is provided to show that the exporter’s enterprises applied for the funds and that the exporter enterprises are large-sized state owned enterprise with capable leadership, sound administration and high credit ranking among 512 key enterprise, 120 pilot enterprise group and the Leading enterprise in industries. Therefore the investigation for this Program should be terminated as per Article 11.9 of SCM Agreement.

- b. **Administering Authority-** The program is maintained by Ministry of Finance (MOF), and Ministry of Commerce (MOFCOM), which is a public body within the meaning of ASCM and the Act & the Rules. The program is a national program, administered by the ministry of commerce and its local authorities, its local Branch Offices or Bureaus.
- c. **Benefit under the program** – As submitted by the domestic industry, this program sought to provide financial support by the GOC to eligible enterprises enlisted in 512 Key enterprises to promote technological renovation in key industries, enterprises and products; facilitation of technology upgradation; improvement of product structure; improvement of quality; increase of supply; expansion of domestic demand; continuous and healthy development of the State economy. The program constitutes a subsidy as it provides financial contributions in the form of grants or direct transfer of fund for the acquisition of fixed assets, which confers a benefit to the recipient. Since the subsidy is linked to fixed assets and is allocated

over time, it is concluded that even if the grant is received by the exporter between 1998 till 2013, the benefit will continue into the POI.

- d. **Specificity of the Program** - This subsidy is specific as the support is limited to certain large-sized state-owned enterprises and state-holding enterprises among 512 key enterprises and 120 pilot enterprise groups. In so far as the project focuses on companies located in specifically designated geographical regions of the old industrial base in north-east, central and west areas, it is also specific within the meaning of Rules.
- e. **Countervailability of the Program** – As submitted by the domestic industry, existence of the said program is Measures for the Administration of National Debt Special Fund for National Key Technology Renovation Projects; Notice concerning the Promulgation and Circulation of “Measures for the Administration of National Key Technological Renovation Projects” and “Measures for the Administration of Treasury-bond Special Fund for National Key Technological Renovation Projects” (Guo Jing Mao Tou Zi [1999] No 886) (the 1996 Notice); Guojingmao Touzi No 122 of 1999; Notice Concerning the Promulgation and Circulation of “Measures for the Supervision and Administration of National Key Technological Renovation Projects (for Trail Implementation)” from the State Economics and Trade Commission (Guo Jing Mao Tou Zi [1999] No 1038); Notice of Amendments to the “Measures for the Administration of National Key Technological Renovation Projects” and “Measures for the Administration of Treasury-bond Special Fund for National Key Technological Renovation Projects” (Guo Jing Mao Tou Zi [2000] No 822) The domestic industry further submitted that the existence of this scheme has been reported in the WTO, as recorded in the WTO document G/SCM/Q2/CHN/28; WTO-G/SCM/Q2/CHN/42-2011. The scheme has also been held countervailable by other investigating authorities in their findings against China.
- f. **Findings of the investigations & conclusion-** In the course of the investigation, the domestic industry has pointed out that GOC has mentioned in its response to European Commission in the matter of CVD investigation of imports of Organic Coated Steel from China PR, that this program has been terminated in 2003. Where as in the response made in the present investigation the GOC has mentioned that the scheme rescinded in 2008.

The program provides a financial contribution in the form of revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, thus the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. The domestic industry further claimed

during the course of the investigation that there are a few Chinese industries whose website information shows that they have received such grants. The domestic industry also claimed that the sole responding exporter is eligible and has received grants under this program.

- g. The Authority notes that only SOEs are eligible to receive grants under this scheme. Since Jiali is not a SOE, the Authority holds that it is not eligible to get grant under the Scheme. The Authority notes that Dalian Huarui Heavy Industry Steel Casting Co. Ltd., Liaoning, Dalian is one of the SOEs eligible to receive grant under this scheme. For all other non-responding exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were availed by these exporters under these programs. In view of the GOC's post disclosure submission, the authority has not proceeded further to determine the countervailability of the scheme.

**86. Program No. 9: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments.**

- a. **Brief about the program** - The petitioner alleges that this program grants benefit to companies involved in the anti-dumping investigations and working in observance with the instructions of the Ministry of Commerce (MOFCOM) are eligible up to 40% legal fee reduction once they have participated in ADD/CVD investigations. The program is specific; as the benefit under the program is limited only to respective enterprises which are involved in the ADD or CVD investigations. Under this program the local financial bureau refunds the 40% of the legal fees for a company's participation in anti-dumping proceeding.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that there has never been any anti-dumping or any other trade remedy measure investigation on the subject product by India in respect of subject product. Petitioner has also not shown that the exporters were ever involved in antidumping investigations and availed the benefits provided under the Program. No specificity has been established by the petitioner for the given program. No evidence provided in support of the program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** The program is maintained by Ministry of Finance (MOF), and Ministry of Commerce (MOFCOM), which is a public body within the meaning of ASCM and the Rules. The program is a national program, administered by the ministry of commerce and its local authorities, its local financial Branch Offices or Bureaus.
- d. **Benefit under the program -** This programme constitutes a subsidy as it provides financial contribution in the form of a grant or direct transfer of funds in order to cover legal fees in anti-dumping or countervailing duty investigation proceedings and confers a benefit within the meaning of Rules
- e. **Specificity of the Program-** This subsidy is specific under Rules because it is restricted to certain enterprises that are subject to foreign anti-dumping proceedings.
- f. **Countervailability of the Program -** Existence of the said program is the Rules for the Implementation of the Support Policy for the Anti-dumping, Anti-subsidy and Safeguard investigation. The scheme has also been held countervailable by other investigating authorities in their findings against China.
- g. **Findings of the investigations & conclusion-** The program provides a financial contribution in the form of revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises and the subsidy is specific within the meaning of Rules. This programme constitutes countervailable subsidy. For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidences that these programs were not relevant to current investigations. The GOC, however, did not provide any further information other than repeating

that the responding exporter has not availed any benefit out of the alleged scheme. The Authority notes that the only responding exporter has stated that it has not availed any benefit under the scheme and their audited accounts also do not show that they have availed the benefit. Further, the domestic industry has also not provided any evidence to the effect that the benefit under the scheme has been availed by Jiali or any other producer/exporter of the subject goods. The Authority has, therefore, not quantified the benefit conferred by GOC under this scheme to other non responding exporters.

#### **87. Program No. 10: Research & Development (R&D) Assistance Grant**

- a. **Brief about the program** - The domestic industry alleged that this programs grants benefits to the eligible enterprises in order to accelerate the transformation of the economic development pattern and economic restructure, enhance the capacity of self-dependent innovation, implementing the strategy on “Innovative Urban District”, and making efforts to achieve the sound and rapid economy development. The program is specific; as the benefit under the program is limited only to respective enterprises which are having R&D facilities and fall under the eligibility criteria. Government of Beijing and Wuxing district and the Science and Technology Bureau of Beijing and Wuxing District are jointly responsible for the administration of this program. It is considered that the program is administered in several regions by different GOC regional bodies.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated by the petitioner. Nevertheless, it is noted that the cooperated exporting producer is not located in the Wuxi city. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that this program will fall under the category of Non-actionable subsidy as per Article 8 of the SCM agreement as it consists of

subsidy for research & development. The similar provision for non-actionable subsidy is present and in force in Section 9(3) of Customs Tariff Act read with Rule 11 of CVD Rules. Further, the program is in respect of entities registered and operating in Jingzhou New District. Petitioner has not provided any evidence whatsoever to suggest that the exporters of subject product are based in Jingzhou New District. Therefore the program is a non-actionable subsidy and investigation for this program should be terminated as per Article 11.9 of the SCM Agreement and Rule 11 of CVD Rules.

- c. **Administering authority-** The program is maintained by Ministry of Science & Technology (MOST) and its Local & Municipal government such as Beijing Municipal Science and Technology Commission and Government of Wuxing district and the Science and Technology Bureau of Wuxing District ('STB'), which are public bodies within the meaning of ASCM and the Act & the Rules. The program is a national program, administered by the Ministry of Science & Technology (MOST), local & municipal governments and local Branch Offices or Bureaus.
- d. **Benefit under the program -** Grants provided under this program are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China. Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.
- e. **Specificity of the Program-** Only enterprises that undertake science and **technology** research are eligible for the subsidy. As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.
- f. **Countervailability of the Program-** As submitted by the domestic industry, the existence of the said program is evidenced by "Implementation Measure to Support the Acquisition of Foreign Science & Technology Type Enterprises and the Employment of Foreign Science & Technology Development Team, issued by the Shenyang Economic & Technological Development Area administration"; "Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on three types of Science and Technology Expenses of Wuxing District". The scheme has also been held countervailable by other investigating authorities in their findings against China.

- g. **Findings of the investigations & conclusion-** The program provides a financial **contribution** in the form of revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, thus the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the list of casting producers/exporters from the subject country which are eligible for the benefit of this scheme. Sinovel Wind Group Co., Ltd. and Zhejiang Jiali Wind Power Technology Co., Ltd are some of the Chinese casting producers which may have benefited out of this scheme. Had the GOC cooperated and permitted on the spot verification, this aspect could have been ascertained by the Authority.

Since Zhejiang Jiali Wind Power Technology Co. Ltd. does not fulfil the eligibility criteria, no benefit has accrued to them under the scheme. For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

#### 88. **Program No. 11: Innovative Experimental Enterprise Grant**

- a. **Brief about the program** - The domestic industry alleged that this program provides benefit to the Small and Medium sized enterprises. The program is specific, as the benefit under the program is limited only to specific SMEs who fall in the eligibility criteria.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grant. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that the petition itself states the eligibility criteria for availing benefit under this program is that the entity should undertake Research & Development activities. Resultantly, this program will fall under the category of non-actionable subsidy as per Article 8 of the SCM agreement as this consists of subsidy for research & development. The similar provision for non-actionable subsidy is present and in force in Rule 11 of CVD Rules. This program is for the assistance with respect to research and development. Further, the program is in respect of entities registered and operating in Zhejiang province. Petitioner has not provided any evidence whatsoever to suggest that the exporters of subject product are based in Zhejiang province. Therefore the program is a non-actionable subsidy and investigation for this program should be terminated as per Article 11.9 of the ASCM Agreement.

- c. **Administering authority-** The program is maintained by Ministry of Science & Technology (MOST) and its administrative office various provinces, which is a public body such as administrative office of Science and Technology Bureau of Zhejiang Province, which is a public body within the meaning of ASCM and the Act & the Rules. The program is a national program, administered by the Ministry of Science & Technology (MOST) and its administrative offices in various provinces.
- d. **Benefit under the program -** Grants provided under this program are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise which falls in the category of SME and undertakes research and development activity for innovation.
- e. **Specificity of the Program-** Only enterprises that small and medium enterprise and undertake innovative research are eligible for the subsidy. As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific. The domestic industry has mentioned that Ningbo Ginlong Technologies Co. Ltd., Ningbo Saivs Machinery Co. Ltd., Zhejiang Jiali Wind Power Technology Co. Ltd., are situated in Zhejiang Province, who are eligible to avail benefits under the scheme. Whjle Zhejiang Jiali Wind Power Technology Co. Ltd., has stated that it has not availed the benefit under the schme, the other companies have not filed any response. Specificity needs too be revisited
- f. **Countervailability of the Program-** As submitted by the domestic industry, the existence of the program is established by Article 10 & 11 of Law of PRC on promotion of SME, Notice of the Ministry of Finance and the Ministry of Industry

and Information Technology on issuing the Measures on Administration of Special Funds for Development of SME's (No. 96 (2012) of ministry of finance), Ministry of Science and Technology, Ministry of Commerce on the issuance of special funds interim measures for SME's development (Cai Qi (2014) No. 38), Ministry of Finance on the issuance of "Interim Measures on Management of special funds for SMEs development (Cai Jian [2015] No. 458). Work Implementation Scheme of Zhejiang Province on Setting up Innovative Enterprises. Administered by the administrative office of Science and Technology Bureau of Zhejiang province. The scheme has also been held countervailable by other investigating authorities in their findings against China.

**Findings of the investigations & conclusion-** The program provides a financial contribution in the form of direct transfer of funds as revenue conferred by the GOC within the meaning of the ASCM and Rules. Benefit under the program being limited to certain types of business enterprises, thus the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the list of casting producer/ exporters. Chinese casting producers, such as Jiali Wind Power and Ningbo Ginlong Technologies Co. Ltd are some of the exporters in Zhejiang Province eligible for such grant.

The Authority notes that the Jiali being non-SME does not fulfill the criteria for benefit under the scheme. For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

#### **89. Program No. 12: Superstar Enterprise Grant**

- a. **Brief about the program** - The domestic industry alleged that the eligible enterprise having 'output scale' is entitled for this grant. The program is specific, as the benefit under the program is limited only to specific enterprises which have the required output sale. Provincial Authority granted this award based on the total value of its sales. The company which meets the relevant sales threshold for the year receives this award in the next year.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not

necessary to answer his question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. Nevertheless, it is noted that the cooperated exporting producer is not located in the Huzhou city. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that the eligibility criteria prescribed with respect to this program relates to period 2006-2008 and not for subsequent period. No information has been provided to suggest that this program is available for subsequent period. The program is maintained by Huzhou Economic committee. No evidence is provided to show that the grants are provided directly by the government or public body as per Article 1(1)(i) of the SCM agreement. Therefore the program cannot be termed as providing financial contribution. This subsidy Program is available only to enterprise located in Huzhou city and no evidence is provided that the exporters are located in Huzhou city. The investigation for this program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** The program is maintained by Government of China PR through provincial authority which is a public body. Such as this program is administrated by the Huzhou Economic Committee.
- d. **Benefit under the program** - Grants provided under this program are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China. Due to the nature of the grant it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.
- e. **Specificity of the Program-** We further determine that the grant provided under this program is limited as a matter of law to certain enterprises; i.e., enterprises that exceed certain sales values during a year. Hence, the subsidy is specific.
- f. **Countervailability of the Program** – As submitted by the domestic industry, the existence of the said program is Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises, Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprise. The scheme has also been held countervailable by other authorities in their findings against China.

**Findings of the investigations & conclusion-** The program provides a financial contribution in the form of direct transfer of funds as revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, thus the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. Chinese casting produces Jiangsu FAW Foundry co. Ltd.; Deqing Jufeng Machinery Manufacturing Co. Ltd., etc are some of the exporters eligible for such grant. The Authority notes that Jiali has not availed any benefit under the scheme. For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

**90. Program No. 13: Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"**

- a. **Brief about the program** – The domestic industry alleged that this scheme provides grants to companies in order to boost exporting brands and increase the market share of famous brands. The eligible enterprises are specifically chosen on the basis of the key enterprises whose products qualify for the title of ‘China Worldwide famous Brand’ and are bestowed with the said benefit. The program is specific, as the benefit under the program is limited only to Enterprises whose products qualify for the title of ‘China Worldwide famous Brand’ and/or ‘famous trademark (China famous Trademark).
- b. **Views of Interested Parties-** The Govt. Of China has responded that China Famous Brands are merely historical honours, which have not been used since the year 2008. So there is no casting producers/exporters can apply or receive benefits from this program during POI. In addition, the amounts granted under this program when it existed were always very small and were not related to fixed assets. Therefore any grants received before the year 2008 were expensed in the year that these were received implying that no benefit can possibly have been existed in or extended to the IP of the current investigation. Nevertheless, it is noted that the cooperated exporting producer is not located in the Guangdong and Shandong Province. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that the petition itself states that the evidence is not available with respect to which products qualified for the program. Also, there is no evidence that any of the exporters of subject goods qualified for the program. This program is available only to enterprise located in Gaungdong province and no evidence is provided that the exporters are located in Gaungdong province. No direct transfer of funds by government of China has been established by the petitioner and therefore does not qualify to be subsidy. No specificity has been established in the petition in respect to this program. The Authority has violated the Rule 6 of CVD rules, Article 11.2 and Article 11.3 of SCM agreement by initiating the investigation for this Program. The investigation for this program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** The program is maintained by GOC at National, Provincial, and Local Government levels which are public bodies. For example, Government of Guangdong province is responsible for the administration and management of this program.
- d. **Benefit under the program -** This programme sought to provide financial support in the form of direct transfer of fund to eligible enterprises. This scheme is to boost exporting brands and increase the market share of famous brands.
- e. **Specificity of the Program-** This subsidy scheme is specific within the meaning of Rules as access to it is limited to certain enterprises i.e. exporting famous brand enterprises. There is no such legal or administrative information on the eligibility criteria, though the eligibility is totally based on the well known aspect of the product being exported.
- f. **Countervailability of the Program –** As submitted by the domestic industry, the existence of the program Order No. 124-Measures for the Administration of Chinese famous –brand products- Dec 2009, Measures for the Administration of Chinese famous –brand products- Dec 2006, Decision Concerning Commending and/ or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of ‘China Worldwide Famous Brand’, ‘China Famous Brand’, or ‘China Well-Known Brand’. Notice of Shandong Province concerning the special award Fund Budget in 2008 for the Development of Self Exporting Brand [Lucaiqizhi (2008) No. 75]. As further submitted by the domestic industry, the program has been reported in the Trade policy review-WT/TPR/S/300, WTO Report G/SCM/Q2/CHN/42. The program has also been held countervailable by other authorities in their findings against China.
- g. **Findings of the investigations & conclusion-** The program provides a financial contribution in the form of direct transfer of funds as revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, thus the program is specific within the

meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the list of casting producer/ exporter which have been bestowed with the famous brand award from the GOC. Chinese casting producers such as Jiali Wind Power and Ningbo Ginlong Technologies Co. are eligible for such grants as reported on their websites.

The Authority notes that Jiali has not availed any benefit under the scheme. For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information. .

#### **91. Program No. 14: Venture Investment Fund of Hi-Tech Industry**

- a. **Brief about the program** - The domestic industry alleged that the program grants the direct transfer of the fund to the eligible enterprises which have venture capital and have recorded the information with the relevant local counterpart of NDRC. The said venture investment companies must be recognised as high-tech enterprises and be small to medium sized, are benefited. The program is specific, as the benefit under the program is limited only to Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park present in city or provinces like Beijing, Shanghai, Tianjin, Chongqing.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that the There is no evidence provided in the petition with respect to direct transfer of funds by Government. Also, there is no evidence that the program qualified to be a subsidy as per Article 1(1)(i) of SCM Agreement. This program is available only to enterprise located in New Northern District and

no evidence has been provided that the exporters of the subject goods are located in New Northern District. No specificity is established in the petition for this program. The Authority has violated the Rule 6 of CVD Rules, Article 11.2 and Article 1 1.3 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** The program is maintained by NDRC and National, Provincial/Municipal Authorities in GOC which are public bodies.
- d. **Benefit under the program** - The grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China. Due to the nature of each grant, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including Casting). This financial contribution is considered to confer a benefit to recipient manufacturers of casting due to receipt of funds from the GOC.
- e. **Specificity of the Program** - the venture investment grant is provided to the specific enterprises which are in possession of; hi-tech status; and are in the nature of the short or medium type of enterprise. Also such enterprise is located in any designated high tech zones. Thus the scheme is specific within the meaning of Indian Rules.
- f. **Countervailability of the Program** – As submitted by the domestic industry, the existence of the program by Circular of Chongqing People’s Government Office in Temporary Administration Measures-2005; and Web research-Venture capital investment in China market regulatory overview-2013. It is further submitted by the domestic industry that the scheme has been reported in existence in the WTO, as recorded in the WTO document G/SCM/N/267/CAN. The scheme has also held countervailable by other authorities in their findings against China.
- g. **Findings of the investigations & conclusion-** The program provides a financial contribution in the form of direct transfer of fund as revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, thus the Authority finds that the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the list of casting producer/ exporter which are eligible for the said benefit. As submitted by the domestic industry, Chinese casting producer Gamesa Wind (Tianjin) Co, Ltd., Antec Braking Systems (Tianjin) Co., Ltd., Gexpro Industry Supply Shanghai Co. Ltd., Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd., Satarem China Ltd., Shanghai SIIC E&A

International Trade Co. Ltd., Sinovel Wind Group Co., Ltd. who are located in Beijing, Shanghai, Tianjin, and Chongqing are eligible for the grant.

The Authority notes that Jiali has not availed any benefit under the scheme. For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

## **92. Program No. 15: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment**

- a. **Brief about the program** – As submitted by the domestic industry, the program grants benefit to FIEs located in certain provinces of China such as Guangzhou. The program is specific to FIEs which are located in Guangzhou. The GOC invites the foreign enterprises to bring their head and brain to the land of China. This program is available to foreign invested enterprises whose headquarters are established in the certain designated areas. To qualify as ‘Headquarters’ the facility must control all the operations and management of any enterprises it is invested in, both in China and internationally. To qualify as ‘Regional Headquarters’, the facility must control operations and management of some or all enterprises it is invested in a certain area of China. Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.
- b. **Views of Interested Parties-** The Govt. of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. Nevertheless, it is noted that the cooperated exporting producer is not located in the Guangzhou city. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that the petition itself states that no evidence is available with respect to this program. There is no evidence in the petition that the program pertains to exporters of the subject product. This program is available only to enterprises located in Guangzhou and no evidence is provided that the exporters of subject goods are located in Guangzhou. Therefore, the investigation for this program should be terminated as per Article 11.9 of SCM Agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** The program is maintained by Local commerce authority of provinces which is a public body. Administered by the local commerce authority of Guangzhou.
- d. **Benefit under the program -** The grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China. It is considered that a financial contribution under such programs would be made in connection to the production, manufacture or export of all goods of the recipient enterprise. This financial contribution is considered to confer a benefit to recipient manufacturers of casting due to receipt of funds from the GOC.
- e. **Specificity of the Program -** as per the prescribed criterion the grant is limited to the enterprises which are located in specific region and are in the nature of FIEs. Furthermore, this programme is also specific within the terms of ASCM and Rules given that it is limited to certain enterprises registered in the designated geographical regions governed by the relevant provincial authorities implementing this programme.
- f. **Countervailability of the Program –** As submitted by the domestic industry, the existence of this program is established by “Notice of the General Office of Guangzhou Municipal People's Government about Issuing the Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters (No. 34 [2006])” which was later replaced with “Guangzhou Municipal People's Government to speed up the implementation of the views forwarded to notice the development of headquarters economy (Sui [2010] 2)” and Provision of Guangzhou Municipality on Encouraging Foreign Investors to Set Up Headquarters and Regional Headquarters.
- g. **Findings of the investigations & conclusion** The program provides a financial contribution in the form of direct transfer of fund as revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, thus the Authority finds that the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. As claimed by the domestic industry, Chinese casting producers, such

as Gexpro Industry Supply Shanghai Co. Ltd is a FIE, located in Guangzhou Municipality are eligible for the grant. The Authority notes that Jiali is not eligible for benefits under the scheme as it is not a FIE.

For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

### 93. Program No. 16: Innovative Small and Medium Enterprise Grants

- a. **Brief about the program** – The domestic industry alleged that the program grants benefit to SMEs in start-up capital for small firms recognized by R&D for key projects. The program is specific as it is limited to SMEs.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. Nevertheless, it is noted that the cooperated exporting producer is not located in the Guangzhou city. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that the petition itself states that the evidence is not available with respect to the program. This Program is available to units located in Guangdong province. Petitioner has not established that the exporters units of subject goods are located in Guangdong province. Specificity in respect to the program is not established. Therefore the investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** The program is maintained by Government of China at National, Provincial, and Local Government levels such as government of Guangdong province and Ningbo Zhenhai Development and Reform Bureau is

responsible for the administration and management of this program, which is a public body.

- d. **Benefit under the program** - The grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China. Authority considers that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise. This financial contribution is considered to confer a benefit to recipient manufacturers of casting due to receipt of funds from the GOC.
- e. **Specificity of the Program**- the alleged program is specific as it is limited to certain enterprises which are in the mainly small and medium scale enterprise and have R&D centers for their key projects.
- f. **Countervailability of the Program** – As submitted by the domestic industry, the existence of this program is established by Article 12,13,36 of Law of PRC on promotion of SME; Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises; Detailed rules for the implementation of the measures for administration of international market developing funds for small and medium sized enterprises, (July 1, 2001); Circular cooperation issuing the measures for the administration of international market developing funds of small and medium sized enterprises (2010); Foreign trade development funds and management approach, Cai Qi (2014); Notice of the ministry of finance and the ministry of industry and information technology on issuing the “Measures on Administration of Special Funds for Development of SME’s (No. 96 (2012) of ministry of finance)”; Ministry of industry and information technology, Ministry of science and technology, Ministry of commerce on the issuance of special funds interim measures for SMEs development (Cai Qi (2014) No. 38) & Ministry of Finance on the issuance of "Interim Measures on Management of special funds for SMEs development (Cai Jian [2015] No. 458.
- g. **Findings of the investigations & conclusion** - The program provides a financial contribution in the form of startup capital which is direct transfer of fund as revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, the program is subsidy is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the list of casting producer/ exporter which are eligible for above mentioned grant. As claimed by the domestic industry, the Chinese casting producers such as Jiali Wind Power Technology Co., Ltd., are eligible for such grant.

The Authority notes that Jiali has not availed any benefit under the scheme. For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

#### 94. **Program No. 17: Grants to Privately-Owned Export Enterprises**

- a. **Brief about the program** – The domestic industry alleged that the programs grant benefit to Non-SOEs located in Yunnan Province. The program is specific as it is limited to Non- SOEs located in specific province. The program is to reduce the investment cost of importing technologies or equipments, and to attract foreign investment and to encourage domestic investment.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used, or benefited from this program.

IWTMA contended that The Program is available to Non- SOEs located in Yunnan Province. However, no evidence has been provided to prove that the exporters of subject goods belong to Yunnan province. The Authority has violated the Rule 6 of CVD, Article 11.2 and Article 11.3 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** the said program constitutes a countervailable subsidy, as the program is maintained by Yunnan Provincial government which is public body.

- d. **Benefit under the program** - The grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China. In light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including Casting). This financial contribution is considered to confer a benefit to recipient manufacturers of casting due to receipt of funds from the GOC.
- e. **Specificity of the Program** - the said grant is specific as it is limited to certain enterprises which are privately owned and are trading focus (export oriented) companies.
- f. **Countervailability of the Program** – As submitted by the domestic industry, the existence of this program is established by Notices concerning accelerating the growth of the non-state-owned economy which lists eligible the enterprises.
- g. **Findings of the investigations & conclusion** The program provides a financial contribution in the form of direct transfer of fund as revenue conferred by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, thus the program is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the list of casting producer/ exporter which are eligible for the above mentioned grant.

The Authority notes that Jiali has not availed any benefit under the scheme as it is not situated in Yunnan province. No information about the existence of any casting manufacturing company has been provided by either the domestic industry or the Government of China or any other interested parties.. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information.

#### **Calculation of Subsidy Margin for Grants**

- 95. In respect of the above examined grants at SI No. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, the amount of subsidy is required to be calculated on the basis of benefit received by the company concerned. The responding exporter claimed that it has not received any benefit from the government. However, the website of the company clearly states that the company was bestowed with grants and awards in the form of “Research & Development (R&D) Assistance Grant”, “Famous Brand Award”, “Excellent innovative enterprise” and “Standard innovative enterprise” certificate. The sole responding company was asked to clarify the contradiction in the website and the response filed by them. However, Jiali chose

to reiterate its position and offered no comments on the certificate shown on the website. Moreover, the GOC did not permit the Authority to conduct on the spot verification of their information as well as that of the respondent exporter. In the deficiency letter issued by the Authority to the responding exporter, regarding the financial benefits received by the company, the company replied as follows:

*“Zhejiang Jiali Technology Co. Ltd. and Zhejiang Jiali Wind Power Technology Co., Ltd. are different entities, Zhejiang Jiali Technology Co. Ltd. is the parent company of Zhejiang Jiali Wind Power Technology Co., Ltd., and it is not involved in production, sales or procurement of raw materials of the product under consideration.*

*Functions of Zhejiang Jiali Technology Co. Ltd. is investment in Jiali Wind. Jiali Wind operates its business and makes decision independently and the parent company does not exercise any control on Jiali Wind’s business operations.*

*We would like to bring the Honorable Designated Authority’s attention that the above honors are rewarded to the parent company Zhejiang Jiali Technology Co. Ltd., which is not subject to this investigation”.*

*(a) Jiali Wind was recognized as “Key high-tech enterprise” in December 2008 by Science and Technology Bureau of Zhejiang Province, the Finance Bureau of Zhejiang Province, State Taxation Bureau of Zhejiang Province and Local Taxation Bureau of Zhejiang Province; no benefit was given to it for getting the recognition.*

*(b) Famous Brand was recognized to Zhejiang Jiali Technology Co. Ltd. on the product of petroleum special pump, petroleum chemical equipment; no benefit was given to it for getting the recognition.*

*(c) Jiali Wind was recognized as excellent innovative enterprise of Zhejiang Province in September 2008, by Zhejiang Science and Technology Association and Zhejiang Science Press; no benefit was given to it for getting the recognition.*

*(d) Zhejiang Jiali Technology Co. Ltd. was recognized as “standard innovative enterprise” in December 2012 by the Quality and Technical Bureau of Zhejiang Province; no benefit was given to it for getting the recognition.*

*(e) Zhejiang Jiali Technology Co. Ltd. was recognized as “Zhejiang Province Innovative Pilot Enterprise” in November 2008 by the following government entities: Science and Technology Bureau of Zhejiang Province, Economic*

*and Trade Committee of Zhejiang Province, Finance Bureau of Zhejiang Province, State-owned Assets Supervision and Administration Commission of Zhejiang Province, Finance Working Group Office of Government of Zhejiang Province, Quality and Technical Bureau of Zhejiang Province, Trade Union of Zhejiang Province; no benefit was given to it for getting the recognition.*

Post disclosure, Jiali Wind submitted that the figure \*\*\* has been double counted and thus the total amount of \*\*\* is not correct: The “government subsidy” in amount of RMB \*\*\* was a total amount which has included all the items listed from item 2 through item 18 as indicated in the annual report. They further submitted that the benefit received by the parent company shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC. None of the subsidy received by the parent company was related to the PUC, thus it shall not be allocated to Jiali Wind. Furthermore, as submitted by Jiali Wind, even if the Authority intends to calculate the benefits for the programs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, it should calculate the benefit for each alleged program, instead of calculating a 5.89% for a package of programs 8 to 17.

After analyzing the annual reports of the parent company, the Authority notes that the parent company received various financial benefits in the form of grants under various heads from the government. The total amount received by the Parent company is \*\*\* RMB. Thus the benefit received by Jiali Wind allocable to the subject goods is \*\*\* RMB. Since the benefits under the various grants is not limited to a particular market and is limited to a type of enterprise, the amount of subsidies received has been divided by the total sales made by the company in all the markets. Accordingly, the quantum of subsidy for the above mentioned programmes is determined at 1.99% for Jiali.

The Authority notes that, in the absence of the above relevant information and as neither the GOC nor any of the other exporters/producers from China have fully cooperated with the Authority in the present investigations, concludes that the non-cooperating exporters meeting the eligibility criteria for these programs, have accessed these programs, and therefore received financial contributions under these programs.

The GOC identified more than 200 producers of castings in China. The Petitioner provided evidence that at least few of the other casting producers were also entitled for this benefit. In the absence of any information from other producers/exporters of castings in China, the authority has determined the CVD margin for other producers/exporters at 1.99% as has been determined for the sole responding exporter.

## Equity Programs

### 96. Program 18: Equity infusions

- a. **Brief about the program** - The GOC has provided over the years substantial amounts of cash to enterprises through equity infusions. The GOC (through various state-owned entities) acquired shares in companies in which it was already the main shareholder without acquiring additional shareholder rights. GOC was requested to submit information about these programs in the original and supplementary questionnaires. But, no relevant information was provided by the GOC. These equity infusions are considered to confer a benefit to the recipient companies within the meaning of Rules. Such infusions are considered to be unusual to the investment practice of private investors. The SOE paid an overvalued price of its portion of the new share issue not in line with fair market conditions, and it used the funds raised to purchase state-owned assets and equity investments at below-market prices. The GOC paid the same price as other investors despite its shares were worth less as they had different rights and prospects than the shares sold to other shareholders.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that Jiali Wind is a privately-owned limited liability company. Jiali Wind did not receive any benefit from this program.

IWTMA contended that there is no evidence in the petition to suggest that CICC and SASAC are public bodies and are acting on behalf of Govt. of China. This program relates to only steel producers and there is no evidence in the petition to suggest that this program is applicable, generally and especially, to casting producers. In the absence of any 'pass through' benefits being established, it cannot be said that benefit has accrued to casting producers through equity infusion. The Authority has violated Rule 6 of CVD Rules, Article 11.2 and Article 11.3 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** The equity infusions concerning an SOE, where China International Capital Corporation Limited (“CICC”) acted as the lead underwriter and manager of the share issuance. As claimed by the domestic industry, CICC is 51 % state-owned and it is ultimately controlled by State-owned Assets Supervision and Administration Commission of the State Council (SASAC), also acted as the GOC entity controlling the SOEs. SASAC performs the responsibilities of the State as an investor and manages the state-owned assets under its supervision. SASAC, authorised by the State Council, appoints and removes the top executives of the supervised enterprises, and evaluates their performances through legal procedures. It is also responsible for urging the supervised enterprises to carry out the guiding principles and policies, has responsibility for the fundamental management of the state-owned assets of enterprises and directs and supervises the management work of local state-owned assets according to the law. SASAC is also responsible for remuneration and assessment of the SOEs' managers; furthermore, it appoints and decides on the rewards and punishments to the SOE managers. The careers of SOE managers depend on SASAC. These circumstances show that the SASAC clearly is vested with Governmental authority. The composition of the Boards of SOEs also demonstrates the high level of control by the GOC of the SOEs. Many of the members of boards of directors and boards of supervisors hold or held in the past government and/or party functions and that their selection is strongly influenced by governmental authorities such as SASAC or Communist Party of China (CCP). Therefore, these transactions were carried out by the GOC through public bodies within the meaning of Rules and the relevant WTO jurisprudence.
- d. **Benefit under the program -** Equity infusions constitute a direct transfer of funds within the meaning of Rules. These financial contributions were provided by the government through public bodies involved in these transactions, including China International Capital Corporation (CICC) and SASAC.
- e. **Specificity of the Program -** These subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it can be concluded that this program constitutes a countervailable subsidy for exporting producers of the product concerned.
- f. **Whether the program is countervailable –** As submitted by the domestic industry, the GOC holds share in the enterprises and paid the same price as other investors. This amounts to direct transfer of Government funds to certain enterprises. However, the domestic industry did not provide any evidence to substantiate their claim.
- g. **Findings of the investigations & conclusion-** The Authority considers that the scheme is countervailable as the benefit is being provided to the certain enterprises in the form of equity infusions where the CICC and manages of the

share issuance. As claimed by the domestic industry, CICC is 51 % state-owned and it is ultimately controlled by SASAC, which is a public body within the meaning of ASCM and Rules.

- h. **Calculation of subsidy amount-** The amount of countervailable subsidy could not be calculated in terms of the benefit conferred on the recipients, due to lack of information. The information furnished by the sole responding exporter does not show that they had availed any benefit under the scheme. In the absence of any other information provided by the petitioner as well as other interested parties, the Authority has not quantified the benefits accrued to other non-responding exporters.

#### 97. Program 19: Unpaid dividends

- a. **Brief about the program -** According to GOC policy, state-owned enterprises do not have to pay dividends to the government as their owner even when they earn profits. As a result, SOE are able to finance massive investment through retained profits not distributed as dividends according to this program.
- b. **Views of Interested Parties-** The Govt. Of China has responded that there is no evidence in the Petition demonstrating that the Chinese casting producers have received such government grant. The petitioner failed to provide any evidence indicating that casting producers have benefited from such grants. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that Jiali Wind is a privately-owned limited liability company. Jiali Wind did not receive any benefit from this program.

IWTMA contended that No evidence provided in the petition to show that the program is applicable to casting producers. There is no evidence in the petition to suggest that CICC and SASAC are public bodies and are acting on behalf of Govt. of China. The Authority has violated Rule 6 of CVD Rules, Article 11.2 and Article 11.3 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** the body known as SASAC in China is authorised by the State Council, appoints and removes the top executives of the supervised enterprises, and evaluates their performances through legal procedures. Also

SASAC is responsible for urging the supervised enterprises to carry out the guiding principles and policies and has responsibility for the fundamental management of the state-owned assets of enterprises and directs and supervises the management work of local state-owned assets according to the law. SASAC is also responsible for remuneration and assessment of the SOEs' managers; furthermore, it appoints and decides on the rewards and punishments to the SOE managers. The careers of SOE managers depend on SASAC. These circumstances show that the SASAC clearly is vested with Governmental authority. The composition of the Boards of SOEs also demonstrates the high level of control by the GOC of the SOEs. Many of the members of boards of directors and boards of supervisors hold or held in the past government and/or party functions and that their selection is strongly influenced by governmental authorities such as SASAC.

- d. **Benefit under the program** - Unpaid Dividend constitutes a direct transfer of funds within the meaning of Rules. These financial contributions were provided by the government through public bodies involved in these transactions, including CICC and SASAC.
  
- e. **Nature of subsidy program and whether the subsidy program is specific-** These subsidies are specific under Act & Rules because they were provided to a limited number of selected entities in which the government participated. Therefore it is concluded that this program constitutes a countervailable subsidy for exporting producers of the product concerned.
  
- f. **Practical implementation [how the program operates]-** Unpaid dividends must be considered as a grant in disguise in the meaning of ASCM and Rules. The GOC does not collect dividends that are normally paid to private investors on their shares. These disguised grants were provided by the government through the entity directly holding the shares in the SOE steel producers, in principle SASAC.
  
- g. **Whether the program is countervailable** - As submitted by the domestic industry, the GOC infused dividends in the enterprises, which amounts to direct transfer of Government funds to certain enterprises and can be considered as grant in disguise.
  
- h. **Findings of the investigations & conclusion-** Since the GOC failed to provide any information on dividend distributions by the SOEs, the findings on this program are based on the information contained in the petition as well as the subsequent information submitted by the petitioner, as supported by adequate sources. Unpaid dividends must be considered as a disguised grant or as revenue forgone in that the GOC does not collect dividends that are normally paid to private investors on their shares. These disguised grants were provided

by the government through the entity directly holding the shares in the casting producers. The analysis concerning SASAC shows that it performs Government functions.

**Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the period of investigation. The benefit conferred on the recipients is considered to be the amount of the unpaid dividends. In the absence of information for the assessment of this benefit, the Authority could not quantify the benefit conferred under the scheme. From the information made available by the sole responding exporter, the Authority finds that the Government is not the shareholder in the respondent exporter company and therefore not benefited under the scheme. The information furnished by the sole responding exporter does not show that they had availed any benefit under the scheme. In the absence of any other information provided by the petitioner as well as other interested parties, the Authority has not quantified the benefits accrued to other non-responding exporters.

### **Preferential Loans**

#### **98. Program No. 20: Preferential loans and interest rates to the casting industry**

- a. **Brief about the program** – The domestic industry alleged that Chinese producers of the product concerned benefit from low-interest rate loans from government policy banks and state-owned commercial banks ('SOCBs') pursuant to the GOC's policy to provide financial assistance in order to encourage and support the growth and development of the wind power sector. As illustrated in the five-year plans and industrial policy, preferential financing initiatives were granted by the banking system to the renewable sector as well as steel sector. The program grants benefit to casting producers by providing loan on low (subsidized) interest rates from state-owned commercial banks and government banks to support and develop the expansion of the industry. The GOC is a major shareholder in many of the major banks established in China and therefore it has access to banks.
- b. **Views of Interested Parties-** The Govt. of China stated that there is no such program explaining that :

*“Article 4 of the “Commercial Banking Law of China” (provided as “commercial Banks shall follow the principles of safety, liquidity and efficiency. Commercial banks make their own decisions regarding their business operations in*

*accordance with the law and without any interference from any entity or individual”.*

The GOC has endeavored and put great efforts to reform commercial banks since 2003, in order to improve the governance structure and enhance the risk management capability of commercial banks. PBOC does not interfere with the loan business of commercial banks. Following the restructuring, major SOCRs as well as private banks are now publically listed companies operating solely on market principles. There is no specific lending policy designed and applied according to any specific industry sector.”

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has never applied for, used or benefitted from this program.

IWTMA has contended that this program relates to only steel producers and there is no evidence in the petition to suggest that this program is applicable, generally and especially, to casting producers. It is alleged that the lending practices of banks, which are owned by Govt of China amount to contribution, as such provision of loan results in direct transfer of funds from the Govt within the meaning of the Rules. It is to be noted that financial contribution cannot arise where banks, even though Govt owned, are providing loans to producers. It is required to be shown that the Govt provision of loan is beneficial as compared to the comparable commercial loan, which the firm will obtain from the market, as per Article 14 of SCM Agreement. No such market comparison has been made either within China or outside China to demonstrate that benefit is conferred on the enterprises by the state owned banks through their lending practices.

It is not sufficient to merely state that private banks are also entrusted and directed by the Govt to follow preferential lending practices in China. Such fact does not absolve the petitioner from the burden of determining the benefit by comparing the comparable commercial loan outside China. In any case, commercial banks in terms of Article 4 of Commercial Banking Laws of China are not required to follow Govt policies with regard to their commercial operations.

- c. **Administering authority-** the program is maintained by Government of China at National, Provincial, and Local Government levels, CICC and SASAC which is public body. NDRC is an agency of the State Council coordinating macro-economic policy and managing the Government investments.
- d. **Benefit under the program** - In China generally the government loans are granted on terms more favorable than the recipient could actually obtain on the market. The loans provided by Chinese banks reflect substantial government

intervention in the banking sector and do not reflect rates that would be found in a functioning market.

- e. What is the normal rate and what is the preferential rate...some information which this finding is based must be provided.
- f. **Specificity of the Program-** The GOC was asked to provide information on the eligibility criteria for obtaining this subsidy and on the use of the subsidy, in order to determine the extent to which access to the subsidy is limited to certain enterprises and whether it is specific. The GOC provided no such information
- g. **Countervailability of the Program** – As submitted by the domestic industry, the existence of this program is established by YinFa [2003] No.250 and YinFa [2004] No 251; The annual reports of Chinese banks; Catalogue for the guidance of foreign investment industries (amended in 2011); Article 34 and 38 of The Commercial banking law [2003]; NDRC Order No.35- Policies for the development of Iron and Steel Industry, decision 40 and Article 24, 25, 34 of the Law on Commercial Banks act with respect to the fulfillment of the government industrial policies;

The domestic industry further submitted that GOC has reported existence of this scheme in the WTO, as recorded in the WTO Trade Policy Review Report, WT/TPR/S/300; Document WT/TPR/S/264, July 2012; 2006 Deutsche Bank Research on China's banking sector; Information retrieved from the 2006 Deutsch Bank Research on China's banking sector, pages 3-4; Information retrieved from the China Monetary Report Quarter Two, 2010 of the Monetary Policy Analysis Group of the People's Bank of China, dated 5 August 2010, page 10; IMF Working Paper, "Progress in China's Banking Sector Reform: Has Bank Behavior Changed?", WP/06/71, March 2006, (see pages 3-4, 13, 18-20); IMF Working Paper, "Interest Rate Liberalization in China", WP/09/171, August 2009, (see pages 3-4, 21-23); IMF Country Report, PRC: 2010 Article IV Consultation, No 10/238, July 2010, (see pages 22, 24 and 28-29); OECD 2010 Economic Survey of China, February 2010, (see Chapter 3, pages 71, 73-81, 97); OECD China's Financial Sector Reforms, Economic Department Working Paper No. 747, ECO/WKP (2010) 3, 1 February 2010, (see pages 2, 8-15, 36); Detailed rules for implementing the adjustment and revitalization program for the steel industry [2009] provides for "increasing the financial support for key backbone enterprises". As claimed by the domestic industry, the scheme has also been held countervailable by the other investigating authorities in their findings against China.

- h. **Findings of the investigations & conclusion-** Furthermore, having regard to the totality of the evidence, it is considered that the vast majority of loans to the producers/exporter of the subject goods are provided by policy or other state-

owned banks which are considered to be public bodies because of their close relationship to the government. As claimed by the domestic industry, they are more than 50% state-owned and are thus considered controlled by the government. These banks effectively exercise government authority since there is a clear intervention by the State (i.e. PBOC) in the way commercial banks take decisions on interest rates for loans granted to Chinese companies while in some cases companies were attributed *quasi* automatically the lowest possible rate within the limits set by the State. In these circumstances, the lending practices of these entities are directly attributable to the government. There is also a great deal of circumstantial evidence, supported by objective studies and reports, that a large amount of government intervention is still present in the Chinese financial system. Finally, China failed to provide information which would have enabled a greater understanding of the state-owned banks' relationship with government. Thus, in the case of loans provided by policy or other state-owned banks, the Authority notes that there is a financial contribution to the casting producers in the form of a direct transfer of funds from the government within the meaning of Indian Rules.

For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

- i. **Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the period of investigation. The benefit conferred on the recipients is considered to be the difference between the amount that the company pays on the loan availed from banks and the amount that the company would pay for a comparable commercial loan obtainable on the market. Since the loans provided by Chinese banks reflect substantial government intervention in the banking sector and do not reflect rates that would be found in a functioning market.

Both the GOC and the cooperating exporting producers were requested to provide information on the lending policies of the Chinese banks and the way loans were attributed to the exporting producers. The GOC as well as the responding exporter failed to provide such information, although repeatedly requested to do so. Accordingly in view of this lack of cooperation and the totality of facts available, the Authority considered that the normal interest rate for Loans in China is 6% p.a. Jiali in its post disclosure comments has stated that the Authority has considered the book value of assets and the percentage of assets mortgaged/pledged as the amount of loan and the rate of interest respectively. They have further stated that the interest rates on the loans availed by them

ranged from \*\*\*% to \*\*\*%, demonstrating that they were at normal market rates. In view of the above submission of Jiali, the Authority concludes that no benefits were accrued to Jiali under the scheme. In the absence of any other information provided by the petitioner as well as other interested parties, the Authority has not quantified the benefits accrued to other non-responding exporters.

### **Preferential Income Tax Programs & Tax Incentives**

#### **99. Program No. 25: Preferential Tax Policies for FIEs and Foreign Enterprises which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments**

- a. **Brief about the program** – As submitted by the domestic industry, the GOC offers preferential income tax policies to FIEs and Foreign Enterprises if these enterprises upgrade their manufacturing operations with Chinese-made equipments. Specifically, FIEs and Foreign Enterprises which upgrade technology consistent with the GOC industrial policies may deduct 40 percent of the cost of equipment from their next year's income tax obligation, and in those circumstances where the income tax due is less than the 40 percent of the cost of the machinery, the remainder of the cost may be deducted in subsequent years, for a period up to five years. To be categorized as an FIE, the enterprise must be a Chinese-Foreign equity joint venture, a Chinese-Foreign cooperative joint venture or a wholly foreign owned enterprise established in China under Article 8 of the FIE Income Tax Law.
- b. **Views of Interested Parties-** The Govt. of China stated that the program was effectuated on 1 July 1999. This program was rescinded by the new Enterprise Income Tax Law of 2008. As this scheme did not belong to any type of preferential tax treatment under Article 57 of the new Enterprise Income Tax Law of 2008, no grace period was provided. The government's policy behind the program was to attract foreign investment and support technology renovation. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has not received any benefit out of this program as not a FIE.

IWTMA contended that the Program has been rescinded on by new Enterprise Income Tax Law of 2008. Absolutely no information has been provided with respect to the above programs except the title of the program. By no stretch of legal interpretation, such information can be considered as "sufficient evidence" in terms of Article 11.2 of SCM Agreement. Further, program No. 26 applies only

to FIE's. No evidence has been presented in the petition to show that the exporter's enterprises are FIEs. No specificity has been established under this program.

- c. **Administering authority-** The program is maintained by Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM), which is a public body within the meaning of ASCM and the Act & the Rules. The program is a national program, administered by the State Administration of Taxation (SAT) and its local Branch Offices or Bureaus.
- d. **Benefit under the program** - The programme grants benefit to the foreign invested enterprises in form of tax savings to those FIEs. It is one of the most common incentives in China for the purpose of attracting foreign Investment under FIE Tax Law. The program grants benefit to FIEs that invest in Chinese-made equipment and whose projects are classified in either the Encouraged or Restricted B categories of the Catalogue of Industrial Guidance for Foreign Investment.
- e. **Specificity of the Program** - The program is specific, as the benefit under the program is limited only to FIEs. Since the benefit under the program is limited to certain types of the enterprises of a particular nature, the program is specific within the meaning of the Rules. Other companies in China (being domestic invested enterprises or DIEs) are not eligible for this subsidy. Further, only production-oriented FIEs are eligible for the subsidy (i.e. FIEs that are not production- oriented are not eligible for the program). Secondly the benefit under this program is only available to those FIEs, which fulfill the prescribed criterion of being engaged in Production or Business Operations and for which purchasing domestically produced equipments. The program is specific as it is limited to FIEs and it is contingent on the use of domestic over imported goods.
- f. **Countervailability of the Program** – As submitted by the domestic industry, the existence of this program is established by Catalogue of Non-Duty-Exemptible Articles of Importation (2012 Adjusted); Income Tax Credits for FIEs on Purchases of Domestically Produced Equipment; Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax; Catalogue for the Guidance of Foreign Investment Industries (Amended in 2011); Circular of the State Council on Adjustment of Tax Policies of Imported Equipment (GuoFa [1997] No. 37); Notice regarding the adjustment of import-level tax policies related to key technological equipment and machinery (Caiguanshui [2014] No. 2);

It is also found that the scheme has been reported in existence in the WTO, as recorded in the WTO documents [G/SCM/N/123CHN.doc](#); [G/SCM/N/155/CHN.doc](#) & [G/SCM/N186/CHN.doc](#); [G/SCM/N/267/CAN](#); The

scheme has also been held countervailable by Canadian Authority in the final finding on Certain Galvanized steel wire from China PR.

- g. **Findings of the investigations & conclusion-** The program provides a financial contribution in the form of revenue forgone by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, the program is subsidy is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the casting producer/exporter which are in the nature of FIE.

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

Chinese casting Producers such as Hydra Grene Hydraulics Equipment Accessory (Tianjin) Co. Ltd. and Gexpro Industry Supply Shanghai Co. Ltd., Antec Braking Systems (Tianjin) Co., Ltd. and Sinovel Wind Group Co., Ltd. Tiatan Wind Energy (Suzhou) CO. Ltd., Ningbo Wing Wo Hing Machinery Industry Co. Ltd., Jiangsu Jixin Wind Energy Technology Co. Ltd., Dalian Huarui Heavy Industry International Co. Ltd. etc are eligible for such benefit.

- h. **Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients which is found to exist during the POI. The benefit conferred on the recipients is considered to be the amount of total tax saved. Since the benefit is available regardless of exports by the company, the CVD margin has been determined considering the total sales made by the company.

The responding exporter claimed that it has not benefited under the program. In response to the questions raised in the deficiency letter dated 15<sup>th</sup> July 2015, the responding exporter mentioned that:

*“During the investigation period, Jiali Wind was recognized as a high and new technology company. The applicable income tax rate to Jiali Wind is 15%. However, Jiali Wind did not receive any benefit from this program for the reason below:*

*Firstly, the enterprise income tax must be paid when it has a profit. But if the company operates at a loss, it does not need to pay income tax. Article 18 of China’s Enterprise Income Tax Law (effective on January 1, 2008) provides “the losses incurred by an enterprise during a tax year may be carried forward*

*and subtracted from the incomes during subsequent years for a maximum carry-forward period of 5 years.”*

*Secondly, Jiali Wind made a huge loss in an amount of [RMB \*\*\*] in the fiscal year 2012 ... while the total profit made in the fiscal year 2013 is [RMB 4,661,188.33]. According to the program 32 above, the total amount applied for the deduction of R&D expenses from its taxable income is [RMB \*\*\*]....*

*As Jiali Wind made a loss in tax year 2012, the profit made in tax year 2013 is allowed to be used for making up loss of 2012. According to the program 32 above, even if the local taxation bureau did not approve Jiali Wind's application for deduction of R&D expenses, its taxable income in tax year 2013 is still negative. As a result, Jiali Wind did not need to pay enterprise income tax in 2013. Therefore, Jiali Wind did not receive benefit from this program during the investigation period.*

*Jiali Wind was recognized as “Key high-tech enterprise” in December 2008 by Science and Technology Bureau of Zhejiang Province, the Finance Bureau of Zhejiang Province, State Taxation Bureau of Zhejiang Province and Local Taxation Bureau of Zhejiang Province; no benefit was given to it for getting the recognition.”*

Authority notes that Jiali is not entitled to receive the benefit under the program and hence not quantified the benefits accrued to them under the scheme. However, the Authority notes that there are a large number of FIEs operating in the wind power equipment sector, who are eligible to receive benefit under the scheme. The Authority further notes that the benefit under the scheme is not limited to product under consideration alone. Benefit under the program is available on total profits of the company, once the company is able to claim that it is entitled to benefit under the program. The Authority has computed the benefits based on the information available in the extracts of the balance sheet of Jiali Wind. Since no other information is available, the figures computed for Jiali Wind has been adopted for the other Chinese non-responding exporters. Accordingly, the subsidy margin works out to 2.13% of the turnover of the non-responding exporters.

**100. Program No. 28: Tax Policies for the deduction of research and development (R&D) expenses-**

- a. **Brief about the program** - The domestic industry alleged that this scheme provides a benefit to all companies that are recognized as carrying out R&D projects. This qualification permits that the corporate income tax is decreased by 50 % of the actual expenses for approved projects. The program is maintained by Local Science and Technology Bureau of Government of China. The programs

confers benefit to enterprises up to 50 % reduction in corporate income where the said companies receiving primary support from the State and their project listed in guide of high tech industrialization are eligible for the said benefit. The GOC recognises certain companies as business enterprise engaged in production of high and new technology products. This scheme provides a benefit to companies which introduce new technologies, new products or new techniques in their production. The eligible companies can decrease their corporate income tax by 50 % of the actual expenses for approved projects.

- b. **Views of Interested Parties-** The Govt. of China admitted that the scheme is in force until now and no change in the scheme is anticipated. GOC however contended that the scheme is not countervailable, as the scheme has been held as non actionable by Canadian authority CBSA. The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co., Ltd. has applied for the benefit but did not receive the benefit of this program during the investigation period. The responding exporter has mentioned that the eligibility criteria is to engage in the research and development of a project prescribed in the High and New Tech Fields under the Key Support of the State and the Guidelines for Current Priorities for Development in Key Sectors of Hi-Tech Industry (2007) as promulgated by the National Development and Reform Commission and other departments. The eligibility or actual use of this program is not contingent upon export performance, use of domestic over imported goods, located within designated regions, or specific to an enterprise or group of enterprises, or to any industry or group or industries.

IWTMA has contended that the Program rescinded on 1<sup>st</sup> January 2008 also falls under the category of Non- actionable subsidy as per Article 8 of the SCM agreement as this consists of subsidy for research & development. A similar provision for non-actionable subsidy is present and in force in Section 9(3) of Customs Tariff Act read with Rule 11 of CVD Rules. This program is for the assistance with respect to research and development.

- c. **Administering authority-** The program is maintained by Ministry of Science & Technology (MOST), Govt. of China. MOST is a Govt. of China department/body and is responsible for giving benefit to the companies that are recognized as carrying out R&D projects through the local Science and Technology Bureau established in various provinces. MOST is one of the wings of the Central Govt. of China. Being an organ of Govt. of China, MOST is a public body within the meaning of ASCM and the Act & the Rules.
- d. **Benefit under the program -** This program grants benefit in the form of tax savings to those enterprises who has invested in the R&D projects. The GOC has contended that there is fundamental difference between this program and program of Tax offset for research and development by FIEs. The legal document

concerning the program Tax offset for research and development by FIEs was the State Administration of Taxation. According to Article 1 of this circular, the eligibility criterion was that foreign investment enterprises whose technology development fee increased by over 10% (including 10%) compared to the previous year, were permitted, upon examination and approval by the taxation authorities, to re-offset 50% of the amount actually used for technology development fee for the taxable income for the same year.

- e. **Nature of subsidy program and whether the subsidy program is specific-** Benefit under the program is specific as the granting authority operates, limited the access to this scheme only to certain enterprises and industries classified as encouraged. The benefit is limited only to those enterprises who are designated/recognised high and new technology enterprises and carrying out R&D projects. Only R&D projects of the companies of New and High Tech Sectors Receiving Primary Support from the State and projects listed in the Guide to Key Fields of High Tech Industrialization under the current Development Priority promulgated by the National Development and Reform Commission are eligible for the scheme., who have been conferred the status of high and new technology enterprise by the GOC. Since the benefit under the program is limited to certain types of the enterprises, the program is specific within the meaning of the Rules.
- f. **Countervailability of the Program** – As submitted by the domestic industry, the existence of the said program is as per Article 30(1) of the Enterprise Income Tax Law of the PRC (n. 63 promulgated on 16 March 2007), Art. 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC, Decree n. 512 of the State Council of the PRC, promulgated in date on 6 December 2007 and the Guide to Key Fields (Notification n. 6, 2007). The guide to Key Fields (Notification n.6, 2007); China's State Administration of Taxation (SAT) issued Guoshuifa [2008] No. 116 (Circular 116) outlining the scope of R&D expenses eligible for Super Deduction, which, in practice, resulted in excluding some R&D related expenses that were not explicitly outlined in Circular 116 as qualified R&D expenses for Super Deduction purposes; On 29 September 2013, China's Ministry of Finance and the SAT released Caishui [2013] 70 (Circular 70), providing additions and clarifications to the original categories of R&D expenses outlined in Circular 116. Circular 70 is effective retroactively for R&D expenses incurred on or after 1 January 2013. The scheme has also been held countervailable by other investigating authorities in their findings against China.
- g. **Findings of the investigations & conclusion-** The program provides a financial contribution in the form of revenue forgone by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, the program is subsidy is specific within the meaning of Rules. This programme constitutes countervailable subsidy. The government of china has

admitted that the alleged program is still in existence, which is wrongly contended by the IWTMA as rescinded in 2008. The GOC has compared the alleged scheme with the Tax offset for research and development by FIEs” and stated that “The CBSA examined the Corporate Income Tax Law of the PRC and Regulation on the Implementation of Enterprise Income Tax Law, and then agreed that the tax offset for research and development expenses is not specific. Whereas the Authority is herewith examining the “Tax Policies for the deduction of research and development (R&D) expenses”. Article 8 of ASCM states that:

*“Article 8- Identification of Non-Actionable Subsidies*

*8.2 Notwithstanding the provisions of Parts III and V, the following subsidies shall be non-actionable:*

*(a) assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if the assistance covers not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity and provided that such assistance is limited exclusively to:*

*(i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);*

*(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;*

*(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;*

*(iv) additional overhead costs incurred directly as a result of the research activity;*

*(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.*

*(b) assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development<sup>31</sup> and non-specific (within the meaning of Article 2) within eligible regions provided that:*

*(i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;*

*(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;*

*(iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:*

*- one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;*

- unemployment rate, which must be at least 110 per cent of the average for the territory concerned; as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(c) assistance to promote adaptation of existing facilities<sup>33</sup> to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a one-time non-recurring measure; and

(ii) is limited to 20 per cent of the cost of adaptation; and

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and

(iv) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.”

Rule 11 of Indian CVD Rules states that:

*Rule 11- Nature of subsidy. (1) The designated authority while determining the subsidy shall ascertain as to whether the subsidy under investigation:*

*(c) it has been conferred on a limited number of persons, engaged in manufacturing, producing or exporting the article unless such a subsidy is for (i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or*

*Explanation. (1) For the purposes of subclause (i) of clause (c) the term "subsidy for research activity" means assistance for research activities conducted by commercial organisations or by higher education or research establishments on a contract basis with the commercial organisations if the assistance covers not more than seventy five per cent of the costs of industrial research or fifty per cent of the costs of precompetitive development activity and provided that such assistance is limited exclusively to:*

*(i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);*

*(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;*

*(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought in research, technical knowledge, patents, etc.;*

*(iv) additional overhead costs incurred directly as a result of the research activity; and*

*(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.*

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co., Ltd. has applied for the benefit. Even other Chinese producers have benefited under the program. Other non responding Chinese casting producers such as Gamesa Wind (Tianjin) Co. Ltd., Antec Braking Systems (Tianjin) Co. Ltd., Dalian Huarui Heavy Industry International Co. Ltd., Gexpro Industry Supply Shanghai Co. Ltd., Jiangsu Faw Foundry Co. Ltd., Jiangsu Jixin Wind Energy Technology Co. Ltd., Jiangyin Fengdian Flange Manufacture Co. Ltd. Jiangyin Hengrun Ring Forging Co. Ltd., Qingdao Anhua New Energy Equipment Co. Ltd., Qingdao Richuan Precision Machinery Co. Ltd., Satarem China Ltd., Shandong Laiwu Jinlei Wind-Power Technology Co. Ltd., Shanghai Siic E&A International Trade Co. Ltd., Sinovel Wind Group Co. Ltd. and Zhuzhou Times New Material Technology Co. Ltd. have also availed the benefit out of the alleged program. Jiali in their post disclosure comments have stated that the benefit received by the parent company shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC. The exhibit 17 of the original response provided by Jiali Wind has clearly showed that the taxable income of Jiali Wind was negative and it was not eligible for the benefit since the law provides “the enterprise may directly deduct 50% of the research and development expenses actually incurred in the current year from the taxable income of the current year” as prescribed in the Notice of SAT on Issuing the Administrative Measures for the Pre-tax Deduction of Enterprise R&D Expenses. The authority however noted that the losses incurred by the Jiali Wind and the benefit of deduction of R&D expenses can be carried forward for the subsequent years. In view of this the benefit is accrued to the Jiali Wind under this program.

For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

- h. **Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients which is found to exist during the POI. The benefit conferred on the recipients is considered to be the amount of total tax saved, considering the normal tax rate and the reduced tax payable under the program. Since the benefit is not contingent upon export performance and was not granted by reference to the quantities manufactured,

produced, exported or transported by the company, the CVD margin has been allocated over the total sales turnover of the cooperating exporting producers during the POI.

The responding exporter claimed that it has not benefited under the program, as it was suffering financial losses in the product under consideration. It is however noted that the benefit under the program is not limited to product under consideration alone. Benefit under the program is available on total profits of the company, once the company is able to claim that it is entitled to benefit under the program. The information provided by Jiali Wind shows that it had incurred R&D expenses of \*\*\* RMB in the year 2013 and accordingly the benefit on 50% of R&D expenses at the applicable tax rate for Jiali works out to \*\*\* RMB. Considering the turnover of the company as \*\*\* RMB, the subsidy margin for this scheme has been determined for the responding exporter as 0.25%.

The authority notes that, in the absence of the above relevant information and as none of the other exporters/producers from China have cooperated with the authority in the present investigations, Authority considers it is likely that non-cooperating exporters meet the eligibility criteria for these programs, have accessed these programs, and therefore received financial contributions under these programs.

It is considered that this financial contribution has been made in respect of all products of these exporters of the subject goods. The GOC identified above 200 producers of castings in China. Petitioner provided evidence that at least few of the other casting producers were entitled for this benefit. In the absence of any information from other producers/exporters of castings in China, the authority has determined the CVD margin for other producer/exporters also at 0.25%.

**101. Program No. 31: Preferential tax policies for companies that are recognised as high and new technology companies**

- a. **Brief about the program** – The domestic industry alleged that the GOC maintains a program wherein high and new technology companies are allowed preferential/ concessional income tax. The GOC recognises certain companies as business enterprise engaged in production of high and new technology products. These companies are allowed to pay income tax at a reduced rate of 15 % as compared to the normal rate of 25 %. The Chinese producers/exporter of the subject goods have been benefited under the program.
- b. **Views of Interested Parties-** The Govt. of China admitted that the scheme is in force until now and no change in the scheme is anticipated. GOC however contended that the scheme is not countervailable, as the scheme not specific within the meaning of ASCM. The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co., Ltd. has applied for the benefit but

did not received the benefit of this program during the investigation period. IWTMA has contended that no information has been provided to suggest whether the exporters of subject product belonged to the category of 'High and New Technology enterprises'. Further, no details have been provided by the petitioner that the exporter enterprise applied for certificate of high and new technology enterprise to benefit from a reduced income tax rate of 15 % as compared to ordinary rate of 25%.

- c. **Administering authority-** The program is maintained by Ministry of Science & Technology (MOST), Govt. of China. MOST is a Govt. of China department/body and is responsible for issuance of certificate of high and new technology enterprise through the local Science and Technology Bureau established in various provinces. MOST is one of the wings of the Central Govt. of China. Being an organ of Govt. of China, MOST is a public body within the meaning of ASCM and the Act & the Rules.
- d. **Benefit under the program** - The law governing this program mandates a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in China. The programs grants benefit to the enterprises in form of tax savings to those enterprises who has applied for the certificate of high and new technology. Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise
- e. **Specificity of the Program** - Benefit under the program is limited only to those enterprises who designated/recognised as high and new technology enterprises, who have been conferred the status of high and new technology enterprise by the GOC. Since the benefit under the program is limited to certain types of the enterprises, the program is specific within the meaning of the Rules.
- f. **Countervailability of the Program** – As submitted by the domestic industry the existence of the said program is as per Article 28 of the PRC Law on Enterprise Income Tax (No. 63 promulgated on 16 March 2007) SAT along with the Administrative Measures for the Determination of High and New Technology Enterprises, and the Notice of the State Administration of Taxation on the issues concerning Enterprises Income Tax Payment of High and New Technology Enterprises (Guo Shui Han [2008] No. 985), Circular Guo Shui Fa No. 135 of 2003 and Circular Caishui (2014) No.59 & 65. The domestic industry further submitted that GOC has reported existence of this scheme in the WTO, as recorded in the WTO Trade Policy Review Report, WT/TPR/S/300; G/SCM/Q2/CHN/29. Further, China's Industrial Subsidies Study- 2007 has also

a reported existence of this countervailable subsidy program in China. The scheme has also been held countervailable by the other investigating authorities in their findings against China. After the issuance of the disclosure statement, Jiali responded that the benefit received by the parent company shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC. The exhibit 19 provided by Jiali Wind in its original response has clearly showed that the amount of Deduction and exemption was nil.

- g. **Findings of the investigations & conclusion-** The program is only available to the enterprises which fall within the eligibility criteria of the scheme. The issue of High and New technology enterprise, the responding exporter itself mentions in their response as well as on the website that they fall in the category of High & New technology and they are eligible to avail the benefit incurred out of the scheme. As per the Catalogue of High and New technology products of China provided by the petitioner, “new energy and efficient energy saving technology” is within the scope of H&T enterprises.

The program provides a financial contribution in the form of revenue forgone by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, the program is subsidy is specific within the meaning of Rules. This programme constitutes countervailable subsidy.

For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

- i. **Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients which is found to exist during the POI. The benefit conferred on the recipients is considered to be the amount of total tax saved, considering the normal tax rate and the reduced tax payable under the program.

The responding exporter claimed that it has not benefited under the program, as it was suffering financial losses in the product under consideration. It is however noted that Jiali wind has posted profit during the year 2013 and therefore eligible for the benefit under the scheme. The annual report of the Jiali wind shows the profit amounting to \*\*\* RMB on turnover of \*\*\*. The difference between the normal rate of income tax payable and the actual payment of income tax works

out to 0.14% of the turnover, which has been considered as the benefit availed by the Jiali under the scheme.

The authority notes that, in the absence of the relevant information and as none of the other exporters/producers from China have cooperated with the authority in the present investigations, Authority considers that non-cooperating exporters meeting the eligibility criteria for these programs, would have accessed these programs, and therefore received financial contributions under these programs. Accordingly, the authority has determined CVD margin for other producers/exporters also as 0.14%.

**102. Program No. 33: Tax credit concerning the purchase of special equipment**

- a. **Brief about the program** - Petitioner alleged that the program allows enterprises to offset 10% of the purchase cost of special equipment used for environmental protection, energy and water saving and production safety against the corporate income tax payable in the year of purchase. The remaining part of the 10 % of the amount invested can be carried forward to the following 5 years.
- b. **Views of Interested Parties-** The Govt. of China stated that there is no evidence in the Petition demonstrating that the Chinese casting producers received benefit under this program. The petitioner failed to provide any evidence indicating that. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has not received any benefit out of this program.

IWTMA contended that the eligibility criteria requires the enterprise to purchase equipment relating to environmental protection, energy and water saving and production safety. However, no evidence has been shown the enterprise has engaged in purchase of such equipment.

- c. **Administering authority-** The program is maintained by Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM), which is a public body within the meaning of ASCM and the Act & the Rules. The program is a national program, administered by the State Administration of Taxation (SAT) and its local Branch Offices or Bureaus.

- d. **Benefit under the program** - The program provides a tax exemption in the form of revenue forgone by the GOC within the meaning of the Rules.
- e. **Specificity of the Program**- The program is specific; to those enterprises that purchase equipments for the use of environmental protection, energy and water saving and production saving.
- f. **Countervailability of the Program** - Existence of the said program is Article 34 of the PRC Law on Enterprise Income Tax, Article 100 of Regulations on Implementation of the PRC Law on Enterprise Income Tax by the State Council. The scheme has also been held countervailable by EU in the final finding on Certain Organic Coated Steel Products Originating in the People's Republic of China
- g. **Findings of the investigations & conclusion** The program provides a financial contribution in the form of revenue forgone by the GOC within the meaning of the Rules. Benefit under the program being limited to certain types of business enterprises, the program is subsidy is specific within the meaning of Rules. This programme constitutes countervailable subsidy. In later submissions during the course of investigation, the petitioner has submitted the list of casting producer/exporters in China PR.

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

Chinese casting Producers such as Gamesa Wind (Tianjin) Co, Ltd.; Dalian Huarui Heavy Industry International co., Ltd.; Jiangsu Faw Foundry Co., Ltd.; Jiangsu Jixin Wind Energy Technology Co., Ltd.; Jiangyin Fengdian Flange Manufacture Co., Ltd.; Jiangyin Hengrun Ring Forging Co., Ltd.; Qingdao Anhua New Energy Equipment Co., Ltd.; Qingdao Richuan Precision Machinery Co., Ltd.; Satarem China Limited.; Shandong Laiwu Jinlei Wind-Power Technology Co. Ltd.; Shanghai Siic E&A International Trade Co., Ltd.; Zhejiang Jiali Wind Power Technology Co., Ltd.; Zhuzhou Times New Material Technology Co., Ltd. are eligible for such benefit.

For all other non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information other than repeating that the responding exporter has not availed any benefit out of the alleged scheme.

The authority notes that, in the absence of the above relevant information and as none of the other exporters/producers from China have cooperated with the authority in the present investigations, Authority considers it is likely that non-cooperating exporters meet the eligibility criteria for these programs, have accessed these programs, and therefore received financial contributions under these programs.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that it has not received any benefit out of this program. As regards other Chinese exporters, since the details of benefits availed are not available, the Authority is not in a position to quantify the benefits accrued to them.

### **Relief from Duties and Taxes on Materials and Machinery**

#### **103. Program No. 36: Exemption of Tariff and Import VAT for Imported Technologies and Equipment**

- a. **Brief about the program** - The program grants benefit to FIE which falls in the 'encouraged' or 'restricted' categories and or DIES that fall under the DIE catalogue and they import equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise's own use.

**104. Views of Interested Parties-** The Govt. Of China has not responded this scheme in detail stating that this scheme is same as program 25 i.e. "Tariff and Value-added tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas". And the above mentioned scheme has terminated since 1<sup>st</sup> January, 2009. Subsequently at the post disclosure stage, the GOC has stated that this programme is same as program no. 6 i.e. Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas (For both FIEs & DIES).

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that Jiali Wind did not receive any benefit from this program.

IWTMA contended that This Program has been rescinded on 1St January 2008 as per notice by the PRC State Council on the Implementation of the Grandfathering Preferential Policies under the PRC Enterprise Income Tax Law Decree No. [2007] 39. This program applies only to FIE's. No evidence has been presented in the petition to show that the exporter's enterprises are FIEs. No specificity has been established under this program. The Benefit under this program is provided only to FIEs which fall under encouraged or restricted categories. The Petition does not provided any evidence to show that the

exporters are FIEs. It is claimed that equipment are exempted from tariff and import VAT for enterprise situated in SEZ. Enterprises situated in SEZ are entitled to tariff and VAT exemptions on imported materials and equipment which are used to manufacture and export goods. However, the petition does not show that the exemption is granted in excess of those which have been accrued as required under footnote 1 of SCM Agreement. Further, para 1 to Annex II to SCM Agreement read with footnote 1 also exempts such prior stage cumulative indirect taxes as a subsidy. That is, government revenue that is otherwise due when foregone or not collected can be treated as financial contribution only when the exemption from the taxes on the exported goods is in excess to those on which it has accrued. The Authority has violated Rule 6 of CVD and Article 11 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11 .9 of SCM agreement on account of lack of evidence provided in the petition.

- b. **Administering authority-** The program is maintained by NDRC, SAT and its local tax bureaus which is public body.
- c. **Benefit under the program -** This program is considered a subsidy in the form of revenue forgone by the GOC.
- d. **Specificity of the Program -** The program is specific as it is limited to encourage FIEs or DIEs that fall under the catalogue. The program is specific since the legislation pursuant to which the granting authority operates limits its access to enterprises that invest under specific business categories defined exhaustively by law and obtaining the Certificate of State-encouraged Projects. In addition, there are no objective criteria to limit eligibility for this program and no conclusive evidence to conclude that eligibility is automatic.
- e. **Countervailability of the Program –** As submitted by the domestic industry the existence of this program is established by Articles 1 and 2 of the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (Guo Fa [1997] No. 37), Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No. 43, Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, No. 316 2006 of 22 February 2006 and Catalogue on Non-duty-exemptible Articles of importation for either FIEs or domestic enterprises, 2008. Catalogue of Industries for Guiding Foreign Investment; Catalogue of Industry, Product and Technology Key Supported by the State at Present (2004); State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue; Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue.

The scheme has been reported in existence in WTO document G/SCM/N/123/CHN dated 13 April 2006. The scheme has been held countervailable by EU in the final finding on Solar Glass Originating in China PR, Coated Fine Paper and Organic Coated Steel from China PR.

- f. **Findings of the investigations & conclusion-** This program is considered a subsidy in the form of revenue forgone by the GOC within the meaning of Act and Rules as FIEs and other eligible domestic enterprises are relieved from payment of VAT and/or tariffs otherwise due if they did not obtain the relevant NDRC certificate of State-encouraged project. It therefore confers a benefit on the recipient companies

Chinese casting Producers such as Gamesa Wind (Tianjin) Co. Ltd.; Antec Braking Systems (Tianjin) Co. Ltd.; Dalian Huarui Heavy Industry International Co. Ltd.; Gexpro Industry Supply Shanghai Co. Ltd.; Jiangsu Faw Foundry Co. Ltd.; Jiangsu Jixin Wind Energy Technology Co. Ltd.; Jiangyin Fengdian Flange Manufacture Co. Ltd.; Jiangyin Hengrun Ring Forging Co. Ltd.; Qingdao Anhua New Energy Equipment Co. Ltd.; Qingdao Richuan Precision Machinery Co. Ltd.; Satarem China Ltd.; Shandong Laiwu Jinlei Wind-Power Technology Co. Ltd.; Shanghai Siic E&A International Trade Co. Ltd.; Sinovel Wind Group Co. Ltd.; Zhuzhou Times New Material Technology Co. Ltd. are eligible for such benefit. In view of the GOC's post disclosure submission, the authority has not proceeded further to determine the countervailability of the scheme.

#### 105. **Program No. 37: Reduction in Land Use Fees**

- a. **Brief about the program -** The Chinese Government provides various financial incentives to manufacturers operating in specified Special Economic Areas ("SEA"), such as Special Economic Zones ("SEZs"), High Technology Industrial Development Zones, Export Processing Zones, free ports, bonded zones, and the like. These SEAs promote investment with unique tax packages and other incentives. The incentives generally include significant reductions or exemptions in land use fees, import and export duties, and priority treatment in obtaining basic infrastructure services. The government has also created special incentives for projects involving export-oriented investments and for certain industries.

The requirement to pay land use tax in China is pursuant to "The Interim Regulations of the People's Republic of China Governing land Use Tax on Cities and Towns". This urban land use tax was not applicable to FIEs until recent amendments were passed to include them. The amendments that extend applicability to FIEs were made under "The Decision of the State Council on Amending the Interim Regulations of the People's Republic of China Governing land Use Tax on Cities and Towns" (Order of the State Council [2006] No 483). Effectively from 1 January 2007 (the commencement of the POI) both FIEs and

DIEs pay land use tax. Prior to this 1 January 2007, FIEs paid a complimentary land use fee. An exception to this requirement to pay land use fees was granted to FIEs who acquired their land use rights by means of transfer.

- b. **Views of Interested Parties-** The Govt. Of China has stated that currently, Chinese enterprises have to pay land-transferring fees or land-renting fees to acquire the use rights of State-owned land by transferring or renting. If other market subjects use rural collective-owned land by establishing an enterprise with the rural economic organization, the price of land use right to buy shares or joint operation is determined by the two parties according to market principles. The rural economic organization enjoys the benefits in accordance with its shares or joint operation.

There is no evidence in the Petition demonstrating that, the Chinese casting producers received benefit under this program. Thus, pursuant to Article 11.2 among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that Jiali Wind did not receive any benefit from this program.

IWTMA contended that No financial contribution is shown in the petition for this program. The petition just provides that the program is applicable to FIEs. The petitioner has failed to show that the program is applicable to the exporters named under the petition. The Authority has violated Rule 6 of CVD Rules, Article 11.2 and Article 11.3 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** the program is maintained by SAT but the provincial and local land use management authorities were responsible for the collection of the land use fees, which is public body, grants benefit to FIEs who acquired land use rights by transfer are eligible for this scheme.
- d. **Benefit under the program -** It is found that certain companies located in Special Economic Areas pay reduced long term land use fees for land on which factories are located. In the current property rights regime in China PR, use rights for specified periods, which is 40 to 70 years, can be obtained from the state through the payment of land use fees. This land use fees are determined on the basis of the location, type and density of the proposed development. This separation of land ownership and use rights allows the trading of land use rights while maintaining state ownership of land.

- e. **Specificity of the Program** - The scheme is specific as it is limited for the FIE. Under Chinese law; all land is under state ownership. Foreign investors may lawfully obtain the rights for land development, use and business. They may also transfer and lease land rights, or put them up for mortgage in accordance with the law within the stipulated purposes and terms of the use. When foreigners invest in projects encouraged by the State for an operation term of more than 15 years, the construction land is exempt from land use fees for five years starting from the day when the enterprise obtains the use right, and the fee is collected at half price in the following five years.
- f. **Countervailability of the Program** – As submitted by the domestic industry, the existence of this program is established Order of the State Council [2006] No 483); Article IV.5 of Guo Ban Fa [1999] No 73) (Customs Document 18) Measures on readjusting land use fees and preferential reduction and exemption of land use fees in Shenzhen special economic zone. Article IV.5 of the Opinions on Current Measures to Further Encourage Foreign Investments” (Guo Ban Fa [1999] No 73). The scheme has been held countervailable by the other investigating authorities in their findings against China.
- g. **Findings of the investigations & conclusion-** This program is considered a subsidy in the form of revenue forgone by the GOC within the meaning of Act and Rules as FIEs and other eligible enterprises are relieved from payment of land use fees otherwise due. It therefore confers a benefit on the recipient companies

Chinese casting Producers such as Gamesa Wind (Tianjin) Co. Ltd.; Antec Braking Systems (Tianjin) Co. Ltd.; Dalian Huarui Heavy Industry International Co. Ltd.; Gexpro Industry Supply Shanghai Co. Ltd.; Jiangsu Faw Foundry Co. Ltd.; Jiangsu Jixin Wind Energy Technology Co. Ltd.; Jiangyin Fengdian Flange Manufacture Co. Ltd.; Jiangyin Hengrun Ring Forging Co. Ltd.; Qingdao Anhua New Energy Equipment Co. Ltd.; Qingdao Richuan Precision Machinery Co. Ltd.; Satarem China Ltd.; Shandong Laiwu Jinlei Wind-Power Technology Co. Ltd.; Shanghai Siic E&A International Trade Co. Ltd.; Sinovel Wind Group Co. Ltd.; Zhuzhou Times New Material Technology Co. Ltd. are eligible for such benefit.

- h. **Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the period of investigation. The benefit conferred on the recipients is considered to be the amount of land use fees exempted.

The responding exporter claimed that it has not benefited under the program.

The annual report of the company shows that the Parent company has received “Land Use Tax Refund” amounting to \*\*\* RMB, which works out to 0.04%.

The authority notes that, in the absence of the above relevant information and as none of the other exporters/producers from China have cooperated with the authority in the present investigations, Authority considers it is likely that non-cooperating exporters meet the eligibility criteria for these programs, have accessed these programs, and therefore received financial contributions under these programs. Petitioner provided evidence that at least few of the other casting producers were entitled for this benefit. Post disclosure, Jiali Wind submitted that the “Welfare Business Value Added Tax Refund”, “Export Tax Refund” and “Other Tax Refund” shall not be used for calculation of the program, because firstly they are not related to the land use tax, and secondly the export tax refund shall not be treated as a subsidy. In the light of the above post disclosure submissions made by Jiali Wind, the Authority reviewed the calculation and determined CVD margin for both Jiali Wind and other producers/exporters at 0.03%.

### **Goods/Services Provided by Government at Less than Fair Market Value**

#### **106. Program No. 40: Electricity provided by Government at less than Fair Market Value**

- a. **Brief about the program [Introduction of scheme]-** The program is maintained by officials who use their discretion to administer the discounted rates to a limited group of preferred enterprises and industries, specifically, priority industries such as the casting industry. The lower electricity rate is set out in the relevant NDRC Notice and incorporated in the Notice issued by the local Price Bureau. The petitioner alleged that the GOC has provided electricity for less than adequate remuneration through preferential rates. The electricity rates were set differently in different provinces and also that preferential rates were used as an industrial policy tool to encourage enterprises.
- b. **Views of Interested Parties-** The Govt. Of China has stated that the NDRC is responsible for formulating the electricity prices at trans-provincial, autonomous regional and municipal levels directly under the Central Government level electricity grid and provincial level electricity grid. Trans-boundary provincial electricity grids are operated by the State Grid Corporation of China (SGCC) and China Southern Power Grid Corporation (CSG). There is no such program, so this question is not applicable. The GOC is not aware of the volume and the average cost of production. At present, the sale of electricity in China is subject to government pricing and a competition mechanism has been gradually introduced on both the generation and sales sides. For example, the bidding and bilateral trading pilot has been introduced on the generation side. Direct purchase between power generation enterprises and power users are encouraged in some provinces, under which both parties can voluntarily negotiate prices and users have more options. Except the SGCC and CSG, there are some pilot projects

within some provinces to encourage direct transactions between the electricity users and the power generation enterprises. Both parties can set the prices through voluntary price negotiations. Currently, the price of electricity is managed by the government price departments in accordance with the principle of unified leadership and decentralized responsibility. Trans-boundary provincial electricity grids, and grids of autonomous regions and municipalities are directly managed by the Central Government. Electricity grids under the provincial level are managed by the provincial Government. Tariff levels by the competent authorities of the government are formulated on the principles of “reasonable compensation costs, reasonable ascertainment as to the income, inclusive of the tax amount, in accordance with the law, adherence to fair burden”. Normally, the anticipated yield rate of investors is no less than loan rate of banks. There is a huge amount of electricity production enterprises in China. The GOC does not hold the information of their production cost. Currently, the price of electricity is classified as resident, agriculture, general industry and commerce and others, the users in the same classification are applied the same electricity price.

Tariff levels by the competent authorities of the government are formulated on the principles of “reasonable compensation costs, reasonable ascertainment as to the income, inclusive of the tax amount, in accordance with the law, adherence to fair a burden”.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that Jiali Wind purchased the electricity from the supplier at market price during the investigation period. Jiali Wind did not receive any benefit from this program. Post disclosure, Jiali has drawn the attention of the Authority to the evidence produced by them for the purchase of electricity. The invoice for electricity shows that the purchase price of the electricity was RMB \*\*\* per Kwh as against RMB \*\*\* per Kwh considered by the Authority. Based on the evidence on record the Authority notes that Jiali has purchased the electricity at a rate comparable with the benchmark rate considered by the Authority. In view of the above, the Authority holds that Jiali has not availed any benefit under the scheme.

IWTMA contended that it is claimed that GOC has provided electricity preferentially at less than adequate rates. As per the Petition the National Development and Reform Commission (NDRC) employs preferential rates as a policy to promote and encourage development of Industry. Though Article 15 of Chinese Accession Protocol allows the Authority to use methodology in identifying and measuring the subsidies, which take into account the possibility that prevailing market rate in China may not be appropriate for benchmark. However, petitioner has failed to suggest any benchmark, even outside China to determine the existence of benefit.

Further, no evidence has been provided to show that preferential electricity rates have been provided to casting industries only. Moreover, in relation to specificity of alleged program, the Petitioner merely claims that the provision for electricity is de-facto specific as officials use their discretion to administer the discounted rates and it is the Petitioner's belief that industries located at certain zones are provided at preferential rates. Under Article 2.4 of SCM Agreement clearly provides that specificity can be established based on positive evidence only and cannot be based on assumptions of the Petitioner. In any case, it is inconceivable that electricity rates throughout the Country should be same in order to qualify it as non-specific. Authority has violated the Rule 6 of CVD Rules and Article 11. 2 and Article 11.3 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority** - The NDRC is responsible for regulating the electricity market and setting the pricing in China. The trans-provincial and provincial grids are operated by two state- owned suppliers: State Grid Corporation of China and China Southern Power Grid Corporation. The electricity suppliers at municipal level are subsidiaries of these companies. A competition mechanism is in the process of being introduced in China through a few pilot projects, but its impact is still negligible at this stage. The lower electricity rate is set out in the relevant NDRC Notice and incorporated in the Notice issued by the local Price Bureau.
- d. **Benefit under the program** - The benefit received out of this program is a financial contribution in the sense of Indian Rules and the ASCM under which the government provided electricity through the local public electricity supply company. This constitutes a government contribution in the form of provision of goods other than general infrastructure to the extent that the government has provided electricity for less than adequate remuneration. It has been established that this exporter was entitled to a rate lower than the rate generally applicable to other large industrial users.
- e. **Specificity of the Program** - The program is both enterprise or sector specific and region specific. The subsidy in form of provision of electricity to the producer/exporters is specific as the lower electricity rate is set out in the relevant catalogue set by NDRC. This lower rate is limited to certain enterprises in certain specified sectors included in a sub- category of large-scale industrial users. Therefore, this lower rate is limited de jure only to companies falling into these categories in the meaning of Rules and ASCM.

The subsidy is also region specific as it is limited to a certain region and it only applies in a limited designated geographical area where the exporting producers, listed by petitioner, are located. Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions

explicitly mentions price mechanism in electricity transmission and provision as one of the tools to achieve development of certain sectors.

- f. **Countervailability of the Program** - Existence of the program is evident by Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions. EU final finding on Certain organic coated steel products originating in the People's Republic of China; US final finding on Non Oriented Electric Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; EU final finding on Solar Glass originating in China PR.
- g. **Findings of the investigations & conclusion-** The Authority found that it is the NDRC that sets the prices of electricity applicable in the various provinces. It was verified that the local price bureau merely acts as an executive arm of the decision taken at central level by the NDRC. It is also confirmed by the fact that the NDRC issues Notices in which it sets the actual prices set for each province and then these notices are formally transposed into local notices adopted by the local price bureau and implemented at local level. The investigation also established that differential electricity rates applicable for certain sectors and/or at provincial and local level are set in accordance with certain factors, including notably the pursuit of the industrial policy goals set by the central and local governments in their 5-year plans and in the sectoral plans.
- h. **Calculation of subsidy amount-** The normal price of electricity in China has been estimated on the basis of petitioner's rate at \*\*\* RMB per Kwh. As already explained earlier, Jiali had purchased the electricity at \*\*\* RMB per Kwh. In view of the above, the Authority concludes that Jiali has not availed any benefit under the scheme. In the absence of any further information, the Authority has not computed the subsidy, if any, availed by Jiali Wind and other non-responding exporters in this regard.

#### 107. **Program No. 43: Provision of various goods for less than adequate remuneration**

- a. **Brief about the program** - The domestic industry has contended that the Chinese exporters of Casting have been benefited from the provision of raw material or inputs and utilities provided by the GOC at less than adequate remuneration. In particular the petition makes it evident that the inputs involved in production of the product under consideration, which are Pig Iron, Steel Scrap (CRCA), Ferro Silicon, Ferro Silicon Mg, Coke, Inoculants, Silica Sand, Resin, Catalyst, LPG, Furnace Lining Material, Diesel, Ladle Lining Material, Ceramic Tubes, Sleeves and Refractory Coating. In particular the provision of several steel outputs manufactured by SOEs, including pig iron, steel scrap, and coke are being provided by GOC to the casting producers. The main input used in the

manufacture of Casting, was being produced and supplied by the government authorities of China PR at less than adequate remuneration.

- b. **Views of Interested Parties-** The Govt. Of China has stated that there is no evidence in the Petition demonstrating that the Chinese casting producers received benefit under this program. The petitioner failed to provide any evidence indicating that. Thus, pursuant to Article 11.2, among others, of the SCM Agreement, it is not necessary to answer this question to the extent that the existence, amount and nature of the alleged grants have not been duly substantiated. In any event, the responding company cooperated with this investigation did not benefit from this program.

The responding Chinese casting producer Zhejiang Jiali Wind Power Technology Co. Ltd. has stated that Jiali Wind purchased various goods from suppliers at market price during the investigation period. Jiali Wind did not receive any benefit from this program.

IWTMA contended that Petitioner has generally claimed that Govt of China provides goods at less than adequate remuneration. However, no further information has been provided regarding the existence of program for each such goods. The petitioner has also not provided benchmark that they have adopted in identifying and measuring the subsidy. It cannot be assumed that the price of goods reflects inadequate remuneration. Further, no evidence has been provided in the petition in respect to program to show that casting producers benefited by this program. Therefore, petitioner cannot claim existence of such program.

As per Petition the National Development and Reform Commission (NDRC) employs preferential rates as a policy to promote and encourage development of Industry. No document provided to show that it is available to only casting Industries. Authority has violated the Rule 6 of CVD Rules and Article 11.2 and Article 11.3 of SCM agreement by initiating the investigation for this Program. The investigation for this Program should be terminated as per Article 11.9 of SCM agreement on account of lack of evidence provided in the petition.

- c. **Administering authority-** Input Materials (raw material) and Utilities provided by Government at Less than Market Value constitutes a countervailable subsidy, as the program is maintained by Government of China PR, which is a public body. This program involves a financial contribution that involves the provision of the goods by SOEs, being public bodies, at less than adequate remuneration.
- d. **Benefit under the program** - the program grants financial contribution in the form of provision of Input Materials and Utilities at less than adequate remuneration by SOEs to producers of subject goods and thus constitutes a countervailable subsidy.

Chinese SOEs that produce steel or iron or any other rare earth materials are public bodies. Providing the inputs or the raw materials in the form of less than adequate remuneration is a financial contribution by these SOEs to Casting producers constitutes a countervailable subsidy. Accession treaty clearly shows that “*China did not collect VAT on imported and domestically produced steel used as raw material for the processing trade*”. Same is with the other raw materials like coal, electricity etc., where the government is having complete control over the price structuring.

Under this program, a benefit to exported Casting is conferred by inputs being provided by the GOC through an intermediary or SOEs at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

- e. **Specificity of the Program-** The program is specific, as the benefit under the program is limited as the exporters of the WOEK casting are given input materials and utilities at less than adequate remuneration and not at the market price.
- f. **Countervailability of the Program -** Existence of the program is established by US-Galvanized Steel Wire from China and Mexico; US-Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (“Seamless Pipe”) from the People’s Republic of China and US- Carbon and Certain Alloy Steel Wire Rod from China.
- g. **Findings of the investigations & conclusion-** The Authority considers that provision of inputs being transferred to the producers of the subject goods is an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed through to the exporters by way of inputs being provided at less than adequate remuneration. Where the financial contribution involves the provision of raw materials and inputs by public bodies, SOEs, through private intermediaries, do trade of those inputs to the exporters of product under consideration. The benefit amount is equal to the amount of the difference between the purchase price at the normal rate or at the adequate remuneration and the purchase price of the goods at less than adequate remuneration. Where exporters of the product under consideration during the investigation period received a financial contribution in the form of inputs under the program at less than adequate remuneration, it would therefore confer a benefit in relation to casting, and the financial contribution would meet the definition of a subsidy as per ASCM and Indian Rules.
- h. **Calculation of subsidy amount-** The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to

exist during the investigation period. That benefit is considered to be the amount of Input Materials (raw material) provided by Government at Less than Market Value during the investigation period. In accordance with Rules and ASCM, this subsidy amount (numerator) has been calculated based on the monthly world market prices plus the international delivery charges, import duty, VAT, and Chinese inland freight charges for calculation of subsidy margin. The normal price of Pig Iron and steel scrap are much different from which the goods are being exported in India. Post disclosure, Jiali provided the yearly average prices of the raw materials consumed i.e. pig iron and steel scrap by them. Considering the difference of the average rate of the inputs used by Jiali and the domestic industry along with the norms of the domestic industry, the Authority has considered the benefit and the CVD margin under this scheme as 8.12%. In the absence of any other information, the Authority has applied the same subsidy margin for the non-responding exporters as well.

#### **I. Determination of Subsidy Margin**

108. The Authority has determined the subsidy margin in respect of the sole respondent Chinese exporter and others concerning the above examined schemes/programs as below:

SN	Heads	Program No.	Schemes	% of Subsidy Margin on CIF price For Jiali Wind	% of Subsidy Margin on CIF price For Others
1	Special Economic Zone (SEZ) Incentives and Other Designated Areas	Program No. 5	Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas	----	----
		Program No. 6	Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas	----	----
2	Grants	Program No. 8	The State Key Technology Renovation Projects Fund	1.99	1.99
		Program No. 9	Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments		
		Program No. 10	Research & Development (R&D) Assistance Grant		
		Program	Innovative Experimental		

		No. 11	Enterprise Grant		
		Program No. 12	Superstar Enterprise Grant		
		Program No. 13	Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"		
		Program No. 14	Venture Investment Fund of Hi-Tech Industry		
		Program No. 15	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment		
		Program No. 16	Innovative Small and Medium Enterprise Grants		
		Program No. 17	Grants to Privately-Owned Export Enterprises		
3	Equity Programs	Program No. 18	Equity infusions	----	----
		Program No. 19	Unpaid dividends	----	----
4	Preferential Loans	Program No. 20	Preferential loans and interest rates to the casting industry	----	----
5	Preferential Income Tax Programs & Tax Incentives	Program No. 25	Preferential Tax Policies for FIEs and Foreign Enterprises which have Establishments in China and are engaged in Production or Business Operations Purchasing Domestically Produced Equipments	----	2.13
		Program No. 28	Tax Policies for the deduction of research and development (R&D) expenses	0.25	0.25
		Program No. 31	Preferential tax policies for companies that are recognized as high and new technology companies	0.14	0.14
		Program No. 33	Tax credit concerning the purchase of special equipment	-	-
6	Relief from Duties and Taxes on	Program No. 36	Exemption of Tariff and Import VAT for Imported Technologies and	----	----

	Materials and Machinery		Equipment		
		Program No. 37	Reduction in Land Use Fees	0.03	0.03
7	Provision of input materials and utilities for less than adequate remuneration	Program No. 40	Electricity provided by Government at less than Fair Market Value	---	---
		Program No. 43	Provision of various goods for less than adequate remuneration	8.12	8.12
	Total			10.53	12.66
	Total Subsidy Margin as a % of landed value			11.18	13.44

## **J. INJURY AND CAUSAL LINK**

### **J.1. Submissions made by the Domestic industry**

109. **The Domestic Industry** has submitted the following submissions regarding the injury:

- i. The fact that consumers are importing the product because of lower prices offered by the Chinese producers alone establishes that injury to the domestic industry is being caused by Chinese imports. Whatever be the cause of decline in demand, the same addresses only the volume part of the injury. This however does not address the adverse price effect suffered by the domestic industry.
- ii. In the absence of low priced dumped and subsidized imports from China, the domestic industry would have got a reasonable price for the volumes sold by the domestic industry. If the level of demand that was prevailing in base year is taken as the base and then determine the profitability, the analysis would show that the domestic industry would have still suffered deterioration in parameters such as profit, cash flow, and return on investment. This clearly establishes that injury to the domestic industry is on account of low priced dumped and subsidized imports.
- iii. The market share of the domestic industry and domestic producers as a whole declined whereas that of Chinese imports increased. This further establishes that adverse volume effect. In order to determine production and sales of the domestic industry in a situation where the domestic industry would have had the same share in demand as it had in the base year. It would be seen that the production and sales of the domestic industry would have been

much higher than what these were. This loss of production and sales is because of low priced imports in India.

- iv. There is no difference in the technology employed. There is no truth in the claims of quality issues. The petitioner is producing and selling to several consumers in India and internationally. There is no question of logistics causing inefficiencies or taking additional time. In fact, in this industry, offloading of machining operations to specialized agencies is quite common phenomena and does not materially impact adversely either the costs or the delivery schedule.
- v. Imposition of CVD shall be in public interests and the effect of same should be seen from the perspective of three different parties – the producers, the consumers and the general public. Government should provide level playing field to casting industry in the larger public interest.
- vi. The provision relating to suo moto application clearly establishes that the Designated Authority can initiate investigations on its own, which implies that the Designated Authority is entitled to consider evidences not referred/relied upon by the petitioner but otherwise available to the Authority. Thus, even if petitioner has not referred to the decision of other investigating authorities and has stated that independent evidences is not available, nothing prevents the Authority from taking cognizance of evidences otherwise available in the petition and proceed with the investigation. Petition contains sufficient evidence to initiate, the quantity and quality of evidence improves as the investigation progresses.
- vii. In the present case, out of 44 schemes identified in the petition, 36 are administered by "the state i.e. Central Government (MOFCOM & MOC), Provincial Government and State Administration of taxation" and therefore undisputedly fall in the category of public body and the WTO decision is not applicable to these schemes. Further, as regards 8 schemes where petitioner has identified association/ involvement of SOEs, petitioner submits that the mere fact that WTO has held that SOEs in those cases were incorrectly held public body without adequate examination, the same does not imply that these Bodies in the present case also shall not constitute public Bodies. It only implies proper examination and the petitioner is not against any such proper examination.
- viii. Quality is not at all a consideration given that the product produced by the petitioner confirms to all laid down standards. In fact, one of

the consumers bought only a small portion of its requirement from petitioner over the injury period and increased procurement significantly from petitioner now once the petitioner reduced prices, which establishes that quality and delivery time are not the restraints for not placing orders on the consumers. No evidence has been provided to the Authority to show that the petitioner could not supply the material against orders placed on the company. No evidence has been placed on record to show that a casting supplied by the petitioner had to be discarded by consumers due to quality consideration.

- ix. Imports from the subject country are on subsidized prices and have increased in absolute terms, in relation to production and consumption in India.
- x. Performance of the domestic industry has deteriorated in terms of production, capacity utilization, sales values & volume, profits, return on investments, cash flow and market share.
- xi. Imports are significantly undercutting the prices of the domestic industry. Further, the imports are depressing the domestic prices.
- xii. Significant share in the domestic market is already held by the subsidized imports and such shares are increasing
- xiii. Domestic industry has sufficient capacity to meet current and potential demand in the Country
- xiv. There is significant difference between the prices offered by the domestic industry and Foreign Producers. Resultantly, domestic industry lost significant sales volumes. Thus, despite sufficient demand in India, the domestic industry lost sales volumes, which is a direct consequence of subsidized imports from the subject country;
- xv. Imported product is severely undercutting the prices of the domestic industry. Resultantly, the domestic industry has been forced to reduce the prices.
- xvi. Deterioration in profits, return on capital employed and cash profits are directly a result of subsidized imports;
- xvii. Market share of the imports from the subject country increased significantly. As a direct consequence, the market share of the Indian Producers declined.

- xviii. Production, sales and capacity utilization of the domestic industry has deteriorated due to presence of subsidized imports.
- xix. Growth of the domestic industry became negative in respect of a number of parameters.
- xx. The domestic industry is suffering significantly negative Profitability, cash profits and return on investment during the investigation period.
- xxi. Imports from the subject country are posing threat of material injury to the domestic industry. There is significant increase in imports. The price undercutting is significant. The imports are entering at such prices that there is strong likelihood of further importation. Significant share in the domestic market is already held by the subsidized imports and such shares are increasing.

**J.2. Submissions by GOC/producers/exporters/importers/other interested parties**

110. The GOC and the sole responding exporter have not offered any specific comments with regard to injury. But, the importers and IWTMA have submitted as follow:
- i. Apart from existing injury or threat of injury to the domestic industry due to subsidized imports, Authority is required to examine other factors as well which caused injury to the domestic industry.
  - ii. It is incorrect to suggest that decline in the performance of the domestic industry was due to alleged subsidized imports. The dip in the performance of the domestic industry during 2012-13 and POI was directly a result of fall in demand, which occurred due to withdrawal of the benefits by the Government.
  - iii. In a situation of declining demand, where a premium cannot be charged for the product, prices of such products will definitely go down. Thus, the claim of the Petitioner that its reduction in prices is due to imports is totally incorrect.
  - iv. Further, due to contraction in demand, production of subject goods has declined considerably during the last 4 years. Imports cannot be blamed for such decline in production.
  - v. Similarly, sales of domestic industry have declined with decline in demand for subject goods in India. This clearly indicates that

decline in sales of domestic industry is due to decline in demand and not competition from imports.

- vi. With declining demand, domestic industry had to resort to lowering its selling price. Imports cannot be blamed for the recessionary trend for the product concerned in India.
- vii. There is no link between subject imports and losses to the domestic industry. Between 2011-12 and 2012-13, while volume of imports from China PR showed a decline and import prices increased substantially, losses to domestic industry also increased substantially in terms of per unit loss, cash losses and PBIT. Similarly, between 2012-13 and POI, when imports volume showed increase along with decline in import prices, there was improvement in the performance of the domestic industry. Any injury suffered by the domestic industry is solely due to other factors and not alleged subsidized imports.
- viii. Imports from China PR have not affected the market share of the Petitioner. Compared to 2011-12 and 2012-13, market share of Petitioner has in fact improved during the POI.
- ix. Petitioner has not provided price undercutting table for the updated period. Thus, the price undercutting analysis provided by the petitioner is not reliable.
- x. Different companies in different countries use different technologies, as a result of which cost to produce such casting also varies significantly. Thus, technological difference has to be taken into consideration by the Authority while examining injury to the domestic industry.

### **J.3. Examination by the Authority**

111. In consideration of the various submissions made by the domestic industry in this regard, the Authority has examined the current injury, if any, to the domestic industry and injury on account of subsidized imports from the subject country.

112. Rule 13 (1) of the Countervailing Duty Rules states:

*“13. Determination of Injury - (1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to*

*any industry established in India, or materially retards the establishment of an industry in India.”*

113. Annexure I to the Countervailing Duty Rules, 1995, as amended in 2006, deals with the principles governing the determination of injury. Paragraph 1(1), (2) and (3) of the Annexure read as follows:

*“1. (1) A determination of injury for purposes of rule 13 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.*

*(2) With regard to the volume of subsidized imports, the designated authority shall inter alia consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India.*

*(3) With regard to the effect of the subsidized import on prices, the designated authority shall, consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like article in India, or whether the affect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree.”*

114. Para 1(5) of the Annexure I to the Rules lists relevant economic parameters to be evaluated by the designated authority:

*“(5) The designated authority while examining the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments and, in the case of agriculture, whether there has been an increased burden on government support programmes.”*

115. It may be true that different companies in different countries use different technologies, but it does not address the issue of subsidization and its injurious impact on the domestic industry. Technological difference does not make a product different.

116. For the examination of the impact of the subsidized imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure I of the rules supra.

**a) Volume Effect of the subsidized imports on the Domestic Industry**

**Demand and market share**

117. For the purpose of the present investigation, Authority has defined demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. There was some decline in demand from the base year till the year 2012-13. However, the demand increased in the POI and substantial enough remaining at reasonable level. It may be added here that the NIP workings for domestic industry are based on the 82.40% capacity utilisation during 2012-13 based on projected financials at project conceptualization stage. This takes care of consistent low capacity utilisation by the Domestic Industry. Castings are now made only in the Coimbatore plant of L&T (CMU). However, the production figures given below are for company as a whole:

Demand	Unit	2010-11	2011-12	2012-13	POI*
Sales of Domestic Industry (CMU & KBL of L&T)	MT	14,122	8,079	5,133	6,888
Sales of Other Indian Producers	MT	7,310	7,368	3,076	3,364
Subject country-Imports	MT	4,486	15,117	10,430	14,245
Other Countries-Imports	MT	591	1661	502	214
Total demand/consumption	MT	26,509	32,225	19,141	24,711

*POI\*- Oct' 2012- Dec' 2013 (15 Months)*

**Import volume in absolute terms and in relation to production and consumption in India**

118. There is significant increase in imports from subject country at subsidized prices. The subsidized imports increased from the base year to the year 2011-12. Though imports declined in the year 2012-13, the same increased further in the POI. The volume of imports of the subject goods from China and other countries were as under:-

Imports – Volume	Unit	2010-11	2011-12	2012-13	POI*
China	MT	4,486	15,117	10,430	14,245
Other Countries	MT	591	1,661	502	214
Total Imports	MT	5,077	16,778	10,932	14,459

POI\*- Oct' 2012- Dec' 2013 (15 Months)

119. Authority notes that imports from subject country have increased in absolute terms in POI as compared to the base year. Imports from subject country were in the region of 4,486 MT in base year which increased to more than 14,245 MT in the period of investigation. Show annualized data.

120. Authority notes that the imports from China have increased in relation to imports of the product in India, as is evident from the following table:

Particulars	Unit	2010-11	2011-12	2012-13	POI*
Import Volume					
China	MT	4,486	15,117	10,430	14,245
Other Countries	MT	591	1,661	502	214
Total Imports	MT	5,077	16,778	10,932	14,459
Market Share in Imports- Volume Basis					
China	%	88%	90%	95%	99%
Other Countries	%	12%	10%	5%	1%

POI\*- Oct' 2012- Dec' 2013 (15 Months)

121. Authority notes that the imports from China have increased in relation to production and consumption in India, as is evident from the following table:

Market Share in demand	Unit	2010-11	2011-12	2012-13	POI*
China	%	17	47	54	58
Other countries	%	2	5	3	1
Domestic industry	%	53	25	27	28
Other Indian Producers	%	28	23	16	14
Indian Production	MT	23,327	17,291	8,650	11,261
Subject Country Imports in relation to Indian production	%	19	87	121	126

POI\*- Oct' 2012- Dec' 2013 (15 Months)

122. It is **seen** that the market share of the domestic industry has significantly declined whereas that of subsidized imports from subject country have materially increased over the injury period. The petitioner submitted that it can alone meet the demand of the subject goods in India. The petitioner, however, has not been able to do so due to the presence of subsidized imports from China PR.

**i. Price Effect of the Dumped imports on the Domestic Industry**

123. With regard to the effect of subsidized imports on prices, the Authority has considered whether there has been a significant price undercutting by the subsidized imports as compared with the price of the like product in India, or whether the effect of such subsidized imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) of the domestic industry have been compared with the landed cost of imports from the subject country.

124. Price undercutting has been worked out by comparing the export price with the domestic selling price in India of the comparable type of subject goods for the period. Further, in view of significant difference in the cost and price of the product sold to different customers, the price undercutting has been determined by considering comparable product types.

**i. Price Undercutting**

125. The net sales realization has been arrived after deducting outward freight and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty including applicable cess to the CIF value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the price undercutting from the subject countries is significant during the entire injury period including POI.

	<b>Unit</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>POI</b>
<b>Subject Country</b>					
Landed price of imports	Rs./MT	88520	94416	115836	120662
Trend	Index	100	107	131	136
Net Selling Price	Rs./MT	***	***	***	***
Trend	Index	100	114	101	97
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting Range	%	40-50	50-60	10-20	0-10

**ii. Price Underselling**

126. PCN wise Non injurious price has been worked out and compared with the landed value of the relevant like goods to arrive at the extent of price

underselling. The non-injurious price has been determined considering the cost of production of the domestic industry for the product under consideration during the POI, in accordance with standard practice in the DGAD. The analysis shows that during the POI the landed value of subject imports were below the non-injurious price of the domestic industry as can be seen from the table below.

Particulars	Unit	China PR
Non-injurious price	Rs./MT	***
Landed price (POI)	Rs./MT	***
Price underselling	Rs./MT	***
Underselling	%	***
Underselling - Range	%	15-25

### iii. Price suppression/depression

127. The Authority examined whether the effect of the subsidised imports was to depress the prices of the like article in India, or prevent price increases which would have otherwise occurred.

Parameter	Unit	2010-11	2011-12	2012-13	POI*
Cost of sales - Domestic	Rs./MT	***	***	***	***
	Index	100	137	157	128
Selling price - Domestic	Rs./MT	***	***	***	***
	Index	100	114	101	97
Landed Price	Rs./MT	88520	94416	115836	120662
	Index	100	107	131	136

*POI\*-Oct12-Dec13*

128. The table above shows that the weighted average cost of sales is consistently more than the selling price during the injury period. The Authority also notes that the selling prices in POI have remained almost at the same level as in the base year even though the cost of sales in POI has increased to 128 basis points as compared to 100 basis points in base year. This shows that the prices were suppressed on account of subsidized imports and the domestic industry was not able to increase its prices in proportion to increase in costs. The subsidized imports have also had significant depression effect on the prices of the domestic industry in the market.

129. Thus, the effect of subsidized imports on the domestic industry has been adverse and significant.

**Economic Parameters relating to the Domestic Industry**

130. Article 15.4 of ASCM states that:

*“The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.”*

131. Para 1(5) of the Annexure I to the Rules lists relevant economic parameters to be evaluated by the designated authority:

*“(5) The designated authority while examining the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments and, in the case of agriculture, whether there has been an increased burden on government support programmes.”*

**1) Production, Capacity, Capacity Utilization and Sales**

132. Position of the domestic industry over the injury period (CMU Unit) with regard to Production, Capacity, Capacity Utilization and Sales was as follows

Economic Parameters	Unit	2010-11	2011-12	2012-13	POI*
Capacity	MT	30,000	30,000	30,000	37,500
Production - PUC	MT	11,305	7,751	4,984	7,897
Production - Others	MT	-	156	848	780
Plant Production	MT	11,305	7,907	5,832	8,678
Capacity Utilization	%	38	26	17	21
Plant Utilization	%	38	26	19	23
Sales volume-Domestic	MT	9,410	5,907	4,543	6,888
	Index	100	63	48	73

POI\*-Oct 12-Dec 13

It may be added here that the NIP workings for domestic industry are based on the 82.40% capacity utilisation during 2012-13 based on projected financials at project conceptualization stage. This takes care of consistent low capacity utilisation by the Domestic Industry. Castings are now made only in the Coimbatore plant of L&T (CMU). However, the production figures given above are for company as a whole.

133. Authority notes that the domestic industry alone has sufficient capacity to meet current and potential demand of the product in the Country. The production of the product under consideration declined throughout the injury period. The decline in production is despite sufficient demand in the Country.

134. Capacity utilization of the domestic industry declined very significantly over the entire injury period. Since the petitioner is utilizing production facilities for production of the product under consideration and other products, the authority has determined capacity utilization by including production of other products also. Further, the authority notes that one of the interested parties has contended that the domestic industry cannot produce and supply the product in desired volumes and it is producing other product also. The authority specifically examined the records of the domestic industry at the time of on the spot verification and found that in fact the petitioner has sufficient capacities and was faced with significant underutilized capacities.

135. Authority finds that the sales of the domestic industry declined significantly throughout the injury period.

136. The demand scenario needs to be adequately addressed here

## 2) Profitability, return on investment and cash flows

137. Position of the domestic industry (CMU) over the injury period with regard to profits, return on investment and cash flows was as follows:

	Unit	2010-11	2011-12	2012-13	POI*
Cost of sales	Rs./MT	***	***	***	***
	Index	100	140	158	138
Selling price	Rs./MT	***	***	***	***
	Index	100	115	104	100
Profit/( Loss)	Rs./MT	***	***	***	***
	Index	100	(5)	(159)	(79)
Profit/( Loss)	Rs./Lacs	***	***	***	***
	Index	100	(3)	(77)	(46)
Cash Profit	Rs./Lacs	***	***	***	***
	Index	100	30	(21)	1

ROI	%	***	***	***	***
	Index	100	(3)	(105)	(75)

*POI\*-Oct 12-Dec 13*

138. The Authority notes that profitability of the domestic industry deteriorated very significantly over the injury period. The domestic industry suffered significant financial losses during 2012-13 and POI. The cash profits showed the same trend as that of profits. The domestic industry has suffered significant cash losses in 2012-13 and the POI.

139. Return on investment also shows the same trend as has been witnessed in profitability of the domestic industry. The domestic industry suffered significant negative return on investment during the investigation period.

### 3) Productivity

140. Productivity measured in terms of production per day deteriorated in POI due to decline in production as compared to the base year

Parameters	Unit	2010-11	2011-12	2012-13	POI*
Productivity per day	Day/MT	53	38	24	20
Productivity per employee (CMU)	MT/ person	***	***	***	***
	Index	100	70	49	73

*POI\*-Oct 12-Dec 13*

### 4) Inventories-

141. The subject goods are “make to order” product. Thus the criterion of inventory is not the proper parameter to evaluate the injury.

### 5) Employment and Wages

142. The Authority finds that the production of subject goods is labour-intensive. The wages paid have shown normal growth. The domestic industry has stated that hiring & firing of employees is the last resort to adopt given the labour laws in the country.

Parameters	Unit	2010-11	2011-12	2012-13	POI*
Wages (CMU)	Rs./Lacs	***	***	***	***
	Index	100	70	52	61
Employment (CMU)	Nos	***	***	***	***
	Index	100	100	105	105

*POI\*-Oct 12-Dec 13*

## **6) Growth**

143. The growth of the domestic industry in terms of both volume and price parameters was negative.

## **7) Ability to raise capital investment**

144. The Petitioner has submitted that given the state of affairs of the domestic industry where performance is deteriorating because of subsidized imports from subject country, substantial fresh investments cannot even be imagined. The domestic industry is already holding significant capacities and huge part of it is remaining idle.

## **8) Factors Affecting Domestic Prices**

145. The examination of the import prices from the subject country, change in the cost structure, competition in the domestic market, factors other than subsidized imports that might be affecting the prices of the domestic industry in the domestic market, etc shows that the landed value of imported material from the subject country is below the selling price and the non-injurious price of the domestic industry, causing significant price undercutting. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the landed value of the imports of dumped subject goods from subject countries.

## **9) Conclusion on material injury**

146. The performance of the domestic industry has deteriorated over the injury period, as summarized below:

- a) Subsidised imports from the subject country have increased in absolute terms, in relation to production and consumption in India.
- b) Subsidised imports are significantly undercutting the prices of the domestic industry.
- c) Subsidised imports are suppressing and depressing the prices of the domestic industry in the market. No correlation found
- d) Performance of the domestic industry has deteriorated in terms of production, capacity utilization, sales values & volume, profits, return on investments, cash flow and market share.

## **K. CAUSAL LINK AND OTHER FACTORS**

### **K.1. Views of the Domestic industry**

147. Following are the submissions made by the Domestic Industry regarding Causal Link:

- i. Chinese imports have captured very significant market share. Therefore, decline in demand is not the principal cause for the injury suffered by the domestic industry.
- ii. Material injury is being caused to domestic industry by subsidized imports from China PR. The technology adopted by domestic industry is comparable to the technology being adopted by producers of subject country. There is no significant difference in the manufacturing process. Availability of subsidized imports in the market is the principal reason for the present injury being suffered by the domestic industry.

148. Injury to the domestic industry has been caused by subsidized imports. Further, injury, if any, due to other factors has been segregated by the petitioner, as discussed in detail herein below.

- a) Contraction of demand or Changes in the patterns of consumption: The Authority notes that the demand for the subject goods has declined by about 25% during the POI as compared to the base year. However, the market share of the domestic industry has declined by about 61%, whereas the market share of the imports of subject goods from the subject country has gone up by about 154%. This shows that decline in demand is not the prime factor for the material injury suffered by the domestic industry. Further, the pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.
- b) Trade restrictive practices of and competition between the foreign and domestic producers: There is no trade restrictive practice which could have contributed to the injury to the domestic industry.
- c) Developments in technology: Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.
- d) Export performance: Petitioner does not have exports of the product under consideration. In any case, the Authority has considered the

performance of the domestic industry in the domestic market for injury analysis.

- e) Performance of other products being produced and sold by the domestic industry: Claimed injury to the domestic industry is on account of the product under consideration.

149. Once it is shown that a) there is an adverse volume and price effect from subsidized imports and b) the effects of injury caused by subsidized imports are demonstrated in terms of the parameters set out in paragraph 1(5) of Annexure I, then, the only basis on which to conclude that the injury is not caused by the subsidized imports are through non-attribution analysis, i.e., those other factors have caused the injury.

150. As demonstrated in the preceding paragraphs, listed known other factors do not establish that injury has been caused by these other factors. Such being the case, the only inescapable conclusion is that the injury to the domestic industry has been caused mainly by the subsidized imports from the subject country.

151. Following parameters establish the causal link and show that injury to the domestic industry is due to the subsidized imports-

- i. There is significant difference between the prices offered by the domestic industry and Foreign Producers. Resultantly, domestic industry lost significant sales volumes. Thus, despite sufficient demand in India, the domestic industry lost sales volumes, which is a direct consequence of subsidized imports from the subject country;
- ii. Imported product is severely undercutting the prices of the domestic industry. Resultantly, the domestic industry has been forced to reduce the prices.
- iii. Deterioration in profits, return on capital employed and cash profits are directly a result of subsidized imports;
- iv. Market share of the imports from the subject country increased significantly. As a direct consequence, the market share of the Indian Producers declined.
- v. Production, sales and capacity utilization of the domestic industry has deteriorated due to presence of subsidized imports.
- vi. Growth of the domestic industry became negative in respect of a number of parameters.

#### **L. Magnitude of Injury and injury margin**

152. The Authority has determined PCN wise non-injurious price for the domestic industry on the basis of principles laid down in the Rules, as amended. The PCN wise non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the corresponding PCN wise landed value of the exports from the subject country. The weighted average injury margin thus determined is as under:-

Particulars	M/s Zhejiang Jiali Wind Power Technology Company Limited	Non-Cooperative exporters
Non-injurious price Rs/MT	***	***
Landed value - Rs/MT	***	***
Injury Margin - Rs/MT	***	***
Injury Margin - % of landed value	***	***
Injury Margin Range - %	5-15	15-25

#### **M. Post Disclosure Comments**

153. The following are the post disclosure comments made by the domestic industry, GOC and other interested parties:

##### **Post Disclosure comments by Domestic Industry**

- i. Subsidy investigations extend to benefits received by the affiliates and parent companies. Subsidies received by the parent company are required to be considered and included in CVD margins. Jiali Technology Company (the parent company) has received the subsidies and no information has been provided by them with regard to the subsidiaries received by them. Thus, Jiali Wind Power has failed to fully cooperate and the Authority is entitled to apply best available information.
- ii. Petitioner is not under statutory obligation to identify all exporters and the DA to forward a copy of initiation notification to all known exporters, nor to seek information from individual exporters. US Govt. clearly stated that the GOI is required to ensure that the questionnaire is forwarded to all concerned exporters of the PUC.

- iii. The GOC proved to be non-cooperative while contending that several schemes are no longer in force or withdrawal of the programs is unsupported with relevant documentary evidences by the GOC. It may so happen that the name of the program might have been changed or a new program with a different nomenclature might have replaced the old program with the same benefits targeting the same target group. DI has earlier provided that there are many more schemes/programs which have not been acknowledged by the GOC as subsidy schemes prevalent in China PR or being availed by the producer/ exporter of the subject goods. GOC did not consent to on-the-spot verification of the responses/ evidences submitted by the Government of China and the responding Chinese exporter, thus establishing non-cooperation.
- iv. Jiali Wind submitted that the goods sold by the company in home market and exported to India are directly comparable and are the like article.
- v. The responding exporter is not the sole producer of the subject goods in China and the benefits received are not restricted / limited to the sole responding exporter. The import data clearly shows that the product has been exported by number of other exporting companies during the relevant period.
- vi. Jiali has never responded to the contradiction regarding various grants received and the certificate issued and visible on the website of the subsidiary company as well as the parent company.
- vii. Responding exporter has been non-cooperating in providing the replies to the financial benefits received by the company against the various schemes and thereby Jiali Wind also did not extend full cooperation to the Authority.
- viii. PUC is *“Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators”*. Some of the sub-assemblies used in a windmill include Gear Box, Nacelle assembly and Hub pitch assembly. These sub-assemblies comprise of castings and other components. For example, Nacelle assembly consists of base frame, Gear Box consists of Planet Carrier, Housings, Torque arm and Hub assembly consist of Rotor hub/Hub and a pitch system.

- ix. It is open to a consumer to either buy a casting and other mating parts separately and assemble at its own place, or, instead buy the sub-assembled product as well. The operations involved in preparing sub-assembly are almost a screw driver technology and efforts involved are quite insignificant in proportion to overall operations carried out. It is quite feasible for an eventual consumer to buy sub-assembled products instead of buying castings and other products separately.
- x. If PUC does not include the sub-assemblies, it shall defeat the very purpose of imposing any trade defense measure. It is appropriate to consider sub-assemblies within the scope of the PUC so long as the scope of the CVD measures, if any, is limited to casting portions of the sub-assemblies. It is requested that the Authority may kindly confirm this scope in the Final Findings.
- xi. Since the PUC is reported under customs classification other than the above specified, the DA may specify in duty table that the PUC should attract duty regardless of the customs classifications under which goods are being cleared by the importers. Only the duty table contents are relevant in this regard. Anything mentioned in the para relating to "PUC" but not stated in duty table is likely to get ignored while issuing notification by the Ministry of Finance.
- xii. Further, the Customs authorities at the port consider and rely upon the notifications issued by the MOF. The customs authorities do not take cognizance of the final findings notifications issued by the Authority. It is, therefore, utmost important that the duty table itself includes all these clarifications.
- xiii. The subject goods produced by the DI are like article to the PUC imported from China in terms of the Rules. The product is design and model specific depending upon the design and capacity of the wind mill producers. However, both the domestic producers and exporters supply to the same wind mill producers in India. Jiali Wind submitted that the goods sold by them and exported to India are directly comparable and there is no difference between the goods sold in home market and exported to other countries including India in physical and technical characteristics.
- xiv. The petition was filed by Larsen & Toubro Limited. M/s Patel Alloys has supported the petition. The petitioner commands a major proportion in the Indian production in the POI. Larsen & Toubro Limited constitutes an eligible DI within the meaning of Rules 2(b)

and the production of the petitioner constitutes a major proportion in the Indian production.

- xv. In the present case, the IWTMA has presented itself before the DA at a significantly belated stage of the investigations.
- xvi. It is now settled law in India that the WTO Agreement directly applies to the DA. In fact, the Hon'ble Supreme Court has held that the DA cannot ignore the WTO provisions and therefore WTO decisions. Reliance is placed upon above decisions of WTO as also decision of the DA in the matter concerning Ceramic Tiles.
- xvii. As regards non-extension of investigation to include the new subsidies identified by the petitioner considering the overall time left for completion of the present investigations, it is submitted that the same does not undermine the fact that the GOC has preferred non cooperation and has not provided any information with regard to these subsidy schemes prevalent in China in spite of specifically seeking this information in the questionnaire issued by the authority.
- xviii. Out of 44 schemes identified, 37 programs are administered by those Bodies falling within the category of state (GOC, Provincial, Municipal Corporation, local bodies in China). Only 7 programs were identified by the petitioner, which are being administered by SOEs. Petitioner provided sufficient evidence to establish that these administering authorities constituted public bodies within the meaning of the law.
- xix. Petitioner vide letter dated 12<sup>th</sup> Nov 2015 withdrew the 22 schemes due to non-availability of evidence for quantifying the benefits. These schemes have been held countervailable by other investigating authorities as rightly acknowledged by the DA in the present investigation.
- xx. The website of the Jiali Wind and its parent company clearly show that the company has received various grant certificates. The grants pointed out by the Petitioner are not in the nature of one time grants. In fact, Jiali Wind has been receiving these grants repeatedly and these grants are in the nature of regular grants.
- xxi. DA may kindly hold that the exporter has not established that benefits under these grants are required to be spread over the useful life of the assets.

- xxii. Subsidized imports from the subject country have increased in absolute terms, in relation to production and consumption in India. Subsidized imports are significantly undercutting the prices of the domestic industry. The imports are depressing the prices of the DI in the market. Performance of the DI has deteriorated in terms of production, capacity utilization, sales values & volume, profits, return on investments, cash flow and market share. Both subsidy margin and injury margin in the current POI are positive and significant. The Domestic industry is likely to suffer injury in the event of non imposition of anti subsidy/ countervailing duty.
- xxiii. NIP has been determined on the basis of information provided by the Petitioner/domestic industry. It is however seen that the basis of allocation/apportionment has been changed by the DA. Petitioner submits that this change of methodology is inappropriate.
- xxiv. The duty may be imposed on ad-valorem basis as the PUC involves a large number of product types which is having significantly different prices.

#### **Post Disclosure Comments by GOC**

- i. The present anti-subsidy investigation was initiated on the basis of frivolous and unfounded suits and in contravention with the legal requirements prescribed in the ASCM.
- ii. The “evidence reasonable available” to the petitioner does not exempt the petitioner’s obligation to provide sufficient evidence. To the contrary, the disclosure statement merely states that: “...the petitioner has provided the information that was reasonably available to them to support the petition”. The standards and requirements with regard to “sufficient evidence” cannot be fulfilled by simple reference to or copying of findings made by other jurisdictions.
- iii. GOC has endeavored to cooperate with the GOI to the best of its abilities, by holding consultation, replying to questionnaire, providing evidence with clear clarifications, replying to two deficiency letters, attending hearing, communicating with the GOI concerning further clarifications on-the-spot.
- iv. The disclosure statement stated that “The GOC did not permit the Authority to visit China to conduct the spot verification of the data/information furnished by the sole Chinese respondent producer/exporter.” The GOC has never objected to the on spot verification of the sole Chinese respondent producer/exporter.
- v. Facts available should not be used to make a determination. GOC has

provided, to its best ability, the *necessary information* to the Authority for the current investigation. With regard to those programs that the petitioner failed to establish a *prime facie* case, the burden of proof should not be switched or allocated to the GOC to complete the information for the alleged subsidies.

- vi. Article 12.8 of the ASCM requires that a disclosure of essential facts must be made before the final determination, and such disclosure should take place in *sufficient time* for the parties to defend their interest. The GOI provided insufficient time to the GOC and the cooperating producer for defending their interests.
- vii. The GOI has not disclosed the essential facts relating to financial contribution, benefit and specificity to the GOC and the cooperating producer. Further, GOI failed to adequately explain the methodology to calculate the benefits in respect of the various alleged programs.
- viii. The Authority fails to take account of the documents submitted by the GOC regarding the rescinded programs. This type of investigation is in breach of the GOI's obligations under the WTO laws.
- ix. The GOI's calculation of subsidy amount is wrong in respect of Program 6 i.e. for the tariff and VAT exemption on imported equipment. Firstly, the VAT exemption has expired on 1 January 2009. Moreover, the respondent Chinese producer has never imported any equipment.
- x. Calculation of subsidy amount for Grant programs is not proper. Although some of the grant programs were rescinded already, the GOI, without any justifications provided, calculated subsidy amount for a package of these grant programs.
- xi. The amount of subsidies found by the GOI on the annual report of the producer's parent company has nothing to do with these alleged programs, bearing no relationship with the product under investigation. In other words, there is no connection between the subsidy programs found and the amount of subsidy calculated.
- xii. The program 6 and 36 are the same program which is double accounted by the GOI. Programs 6 and 36 are related to exemption of tariff and VAT on imported equipment. The petitioner mistakenly alleged in its petition that this program as two different programs.
- xiii. No evidence has been provided to support the allegations that the state owned banks and state owned enterprises are public bodies.

#### **Post Disclosure Comments by Zhejiang Jiali Wind**

- i. Jiali Wind is not located in SEZs or other designated areas and Jiali Wind has not purchased any imported material or equipment, all

inputs and capital equipments were sourced from Chinese market. Therefore, Jiali wind is not eligible for the Program No. 6 i.e. Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas (For both FIEs & DIEs).

- ii. As regards grants, it seems the figure \*\*\* has been double counted and thus the total amount of \*\*\* is not correct: The “government subsidy” in amount of RMB \*\*\* was a total amount which has included all the items listed from item 2 through item 18 as indicated in the annual report.
- iii. If the Authority intends to calculate the benefits for the programs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, it should calculate the benefit for each alleged program, instead of calculating a 5.89% for a package of programs 8 to 17.
- iv. The benefit received by the parent company shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC. None of the subsidy received by the parent company was related to the PUC, thus it shall not be allocated to Jiali Wind.
- v. As regards Program No. 20 concerning Preferential loans and interest rates to the casting industry, Jiali Wind obtained loan from various commercial banks with the interest rates ranging from \*\*\*%-\*\*\*%, it has not received any benefit from loans.
- vi. The calculation basis for the “Preferential loans and interest rates to the casting industry” appears to be wrong. It is submitted that \*\*\* and \*\*\* as indicated were not amount of loan, and \*\*\*% and \*\*\*% were not the loan interest rates either. They are book value of the assets and percentage of assets respectively. During the POI, Jiali Wind obtained loan from various commercial banks with the interest rates ranging from \*\*\*%-\*\*\*%, which may fully demonstrate that the interest rates were normal market rate.
- vii. As regards Program No. 28: Tax Policies for the deduction of research and development (R&D) expenses, the benefit received by the parent company shall not be applicable to Jiali Wind since they are two independent companies.
- viii. As regards Program No. 31: Preferential tax policies for companies that are recognised the benefit received by the parent company

shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC.

- ix. As regards Program No. 36: Exemption of Tariff and Import VAT for Imported Technologies and Equipment, in the disclosure statement it is stated by the authority that Jiali Wind has not benefited under the program as it is not being FIE. However, CVD margin for Jiali has been determined as 1.69 instead of “not applicable”. The position needs to be rectified.
- x. The “Welfare Business Value Added Tax Refund”, “Export Tax Refund” and “Other Tax Refund” shall not be used for calculation of the program, because they are not related to the land use tax. Moreover, the export tax refund shall not be treated as a subsidy due to the reasons that a benefit exists only to the extent that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption. The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy in terms of the WTO provisions. Nevertheless, during the investigation period, the amount of VAT exempted upon the export (\*\*\*) was not in excess of the VAT rate levied on the product concerned in the domestic market (\*\*%), therefore the VAT refund does not confer a countervailable benefit.
- xi. As regards Program No. 37: Reduction in Land Use Fees, the “Land Use Tax Refund” received by the parent company shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC.
- xii. As regards Program No. 40: Electricity provided by Government at less than Fair Market Value, Jiali Wind had paid market price for all the inputs including the electricity and therefore has not received any benefit. The electricity price used by the DGAD is neither the price for industrial use nor the actual price paid by Jiali.
- xiii. As regards Program No. 43: Provision of various goods for less than adequate remuneration, Jiali Wind had provided the Raw Materials Consumed in its supplemental response and the actual paid price was RMB \*\*\* per ton. The actual price paid should be used for the calculation by the authority.

**Post Disclosure Comments by Indian Wind Turbine Manufacturers Association (WTMA)**

- i. Insufficient time given by the authority to file comments on the disclosure statement. Authority should provide all the relied upon documents and evidences to the interested parties and provide another opportunity of hearing.
- ii. Initiation of investigation on the basis of prima facie evidence is bad in law. Initiation of investigations to fish out evidences on assumption is not permitted. Decisions of other authorities cannot be relied upon as evidence.
- iii. The Designated Authority has enlarged the scope of the product by including casting for all parts of the Wind Mill whereas in the initiation, the “castings for wind-operated electricity generators” was defined as PUC.
- iv. Product types such as castings in sub-assembled form or castings as a part of a sub-assembly or castings as a part of equipment/ component have never imported into India. Resultantly, inclusion of such product types does not arise.
- v. Designated Authority has not conducted any examination of injury and causal link based on different type of products included in PUC. A revised Disclosure Statement may be issued by the Authority after examining the injury parameters such as market share, production, production capacity utilization, etc. based on product types.
- vi. The Authority has stated in Para 17 that “*the production by the petitioner constitute a major proportion of the subject goods*”. However, it has failed to provide the basis for such assertion.
- vii. Petitioner has claimed excessive confidentiality. Authority should provide the relied upon documents to the Respondents.
- viii. Domestic Industry did not produce any evidences in respect of subsidy schemes claimed in the petition. Domestic Industry could not produce any evidence regarding the remaining schemes operated during the POI as well. In such case, the schemes cannot be specific and therefore cannot be countervailed.

- ix. As regards Program 5: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas and Program 6: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas, the Authority has stated that the Domestic industry had provided list of producers and exporters which are established in SEZs and other Designated Areas and are in nature of FIEs eligible for the benefit. Such list of exporters or producers was never provided to the Respondents. The Authority has not provided the methodology or basis for computation of these subsidies. These programs are non-actionable subsidies and investigation for these programs should be terminated.
- x. As regards Program 8: The State Key Technology Renovation Projects Fund, the Authority has noted that the program provides financial contribution in the form of revenue conferred by the GOC. Firstly the authority has not provided the methodology or basis for computation of the subsidy for this program. Secondly the authority failed to make consideration in the fact that this program has rescinded on 22<sup>nd</sup> January 2008 as per the National Development and Reform Commission Decree No.59. No basis is provided on which the CVD duty is computed and what evidence is relied upon for this program. These programs are non-actionable subsidies and investigation for these programs should be terminated.
- xi. As regards Program 9: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments, no evidence for the program has been provided by the petitioners. Authority should terminate proceeding under Article 9 of the ASCM.
- xii. As regards Program 10: Research & Development (R&D) Assistance Grant, the responding exporters did not avail the benefit under the program and therefore the authority should terminate the proceeding for this program. Further, the program is a non- actionable subsidy and investigation for this program should be terminated.
- xiii. As regards Program No. 11: Innovative Experimental Enterprise Grant, the list of producers/exporters submitted by the petitioner was not provided by the Authority to the respondents and therefore the investigation should be terminated. Further, this program being meant for assistance with respect to research and development, this is non-actionable and therefore should be terminated.
- xiv. As regards Program 12: Superstar Enterprise Grant, The eligibility criteria prescribed with respect to this program relates to period 2006-

2008 and not for subsequent period. No information has been provided to suggest that this program is available for subsequent period. The investigation for this program should be terminated on account of lack of evidence provided in the petition.

- xv. As regards Program 13: Awards to enterprises whose products qualify for "Well-Known Trademarks of China" or "Famous Brands of China", the list of producers/exporters provided by the petitioner has not been shared with the respondents and therefore the investigation should be terminated. Moreover, the petitioner has not provided sufficient evidence to show that the scheme is applicable to product under consideration in this investigation. Further, it has failed to show that the exporter have availed the benefits under this scheme. The Authority should terminate the proceedings for this program.
- xvi. As regards Program 14: Venture Investment Fund of Hi-Tech Industry, the list of producers/exporters provided by the petitioner has not been shared with the respondents and therefore the investigation should be terminated. Moreover, the Respondent repeats and reiterates that the petitioner has not provided sufficient evidence to show that the scheme is applicable to product under consideration in this investigation. The Authority should terminate the proceedings for this program.
- xvii. As regards Program 15: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment, nothing has been provided as evidence except that the scheme is available for province of Guangzhou Municipality on encouraging foreign Investors to Set Up headquarters and regional headquarters. There is no evidence in the petition that the program pertains to exporters of the subject product. Therefore, the investigation for this program should be terminated.
- xviii. As regards Program 16: Innovative Small and Medium Enterprise Grants, the Authority should restrict its finding to the exporters whose names have been produced in the petition. The Petitioner cannot introduce any list of exporters or producers at such later stage of the investigation. Further the specificity in respect to the program is not established. Therefore, the investigation for this Program should be terminated.
- xix. As regards Program 17: Grants to Privately-Owned Export Enterprises, nothing has been provided as evidence and petitioner has simply stated that notices concerning accelerating the growth of

the non-state owned economy lists the enterprise eligible. The Program is available to Non- SOEs located in Yunnan Province. However, no evidence has been provided to prove that the exporters of subject goods belong to Yunnan province. Therefore the authority should terminate the investigation for this program.

- xx. Further, the Authority has calculated the quantum of subsidy for program SI No. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 for cooperating and non-cooperating at 5.89%. The Authority has not provided any evidence to show that the exporters and producers have availed the benefits under the program. Further it has not provided any basis on which it has calculated subsidy for these programs. The Authority is unable to establish that the subsidy, if any, provided to the exporters is causing injury to the domestic Industry. The authority should terminate the subsidy against these programs.
- xxi. As regards Program 18: Equity infusions, merely on the claims made by the petitioner the designated Authority cannot conclude that the program CICC is state owned enterprise. The Authority has to provide the basis of its determination. Further no methodology has been provided by the Authority how it has calculated the subsidy for the given program.
- xxii. As regards Program 19: Unpaid dividends, the Authority has not provided any evidence to show that the program is governed by the public body and that the exporters under the program have availed those benefits. Merely on the assumption by the petitioner the authority cannot conclude that the program constitute countervailable subsidy and that it is provided by the public body. The Authority has not provided any basis on which it has calculated the quantum of subsidy to be 0.26 %.
- xxiii. As regards Program No. 20, preferential loans and interest rates to the casting industry, no evidence is provided to show that this program is available to the casting producers. It is not sufficient to merely state that private banks are also entrusted and directed by the Govt to follow preferential lending practices in China. Such fact does not absolve the petitioner from the burden of determining the benefit by comparing the comparable commercial loan outside China. In any case, commercial banks in terms of Article 4 of Commercial Banking Laws of China are not required to follow Govt policies with regard to their commercial operations.

- xxiv. As regards Program 25: Preferential Tax Policies for FIEs and Foreign Enterprises which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments, the Authority has not provided the basis on which it has made the calculations of the subsidy. Further the list of producers and exporters were never provided to the Respondent to make comment on the same. No evidence has been presented in the petition to show that the exporter's enterprises are FIEs. No specificity has been established under this program.
- xxv. As regards Program 28: Tax Policies for the deduction of research and development (R&D) expenses, the Authority has not provided any basis on which it has calculated the benefit under the program. No evidence is provided to show that the program constitute countervailable subsidy and is in existence.
- xxvi. As regards Program No. 31: Preferential tax policies for companies that are recognized as high and new technology companies, the Authority has provided no basis on which it has calculated the benefit under the program. No evidence is provided to show that the program constitute countervailable subsidy.
- xxvii. As regards Program 33: Tax credit concerning the purchase of special equipment, the Authority has not provided any basis for its finding that the program is countervailable. Further it is submitted that the eligibility criteria requires the enterprise to purchase equipment relating to environmental protection, energy and water saving and production safety. However, no evidence has been shown the enterprise has engaged in purchase of such equipment.
- xxviii. As regards Program 36: Exemption of Tariff and Import VAT for Imported Technologies and Equipment, this Program has been rescinded on 1<sup>st</sup> January 2008 as per notice by the PRC State Council on the Implementation of the Grandfathering Preferential Policies under the PRC Enterprise Income Tax Law Decree No. [2007] 39. Further, this program applies only to FIE's. No evidence has been presented in the petition to show that the exporter's enterprises are FIEs. No specificity has been established under this program. The Petition does not provided any evidence to show that the exporters are FIEs.
- xxix. As regards Program 37: Reduction in Land Use Fees, Authority has provided no basis on which it has calculated the benefit under the program. No evidence is provided to show that the program constitute

countervailable subsidy. The Authority has not provided sufficient evidence to show that the scheme is applicable to present exporter. Therefore the Authority should terminate the proceeding for this program.

- xxx. As regards Program No. 40: Electricity provided by Government at less than Fair Market Value, the Authority has provided no basis on the basis of which it has concluded that the scheme is countervailable or how it has calculated the subsidy for this program. No evidence has been provided to show that preferential electricity rates have been provided to casting industries only.
- xxxi. As regards Program No. 43: Provision of various goods for less than adequate remuneration, the observation of the authority is incorrect. No basis for the calculation of the subsidy is provided by the Authority for this program. Further, no document has been provided to show that it is available to only casting Industries. Therefore, the Authority should terminate the proceedings for this program.

**Post Disclosure Comments by GE India Industrial Private Limited and Inox Wind Ltd**

- i. Designated Authority has failed to adequately disclose the essential facts of the investigation, especially those concerning casual link. Authority must issue a fresh disclosure statement in order to fulfill its obligations by giving sufficient time to respond to the same.
- ii. The Authority has concluded that the product scope includes sub-assemblies as well as components. The PUC needs to be defined by explaining the exact nature and definition of the product scope, the exclusions and various sub-assemblies and components covered to avoid any confusion.
- iii. Authority admits that different types of castings have different end applications and differing costs/prices. But, at the same time insists that such differences do not render the castings as different articles. The very objective of deploying a PCN methodology is to ensure that only comparable articles are compared. Such a paradoxical stance leaves an unclear and unjustified product under consideration scope.
- iv. The Petitioner's goods are not like article with the imported product under consideration due to a lack of commercial substitutability.

- v. The disclosure statement appears to be the first instance of any PCN methodology being communicated to the interested parties. There was no communication by the Designated Authority inviting comments or suggestions with regard to the PCN methodology.
- vi. Authority has conducted a weighted average comparison, but then conducted the price effect comparison without using PCN methodology. Such a haphazard injury analysis is not justified.
- vii. Authority's observation that the impact of the countervailing measures is hardly 0.1% increase in costs to a consumer is inaccurate. The logistical inefficiencies such as the costly supply chain model have a great impact on the cost of purchase from the domestic industry. Moreover, the inability of the Petitioner to produce the product with the necessary technical specifications depending on the consumer preference is the important factor due to which the Importer had to import the subject goods.
- viii. There is no correlation between the decline in market share of the domestic industry and the imports of the subject goods. During the period of 2011-12 to 2012-13 wherein there was a decline in the imports, the demand for the imports of the product under consideration also reduced. Furthermore, from the period of 2012-13 to POI the sales of the domestic industry and the subject country increased which established that there is a lack of correlation of the demand and market share between the domestic industry and the subject country.
- ix. The market share of the imports from the subject country increased irrespective of a decrease in the market share of the domestic industry. Therefore, injury faced by the domestic industry cannot be attributed to the increase in imports.
- x. The Price Effect calculation is inappropriate since it is not on the PCN basis but rather on a weighted average basis. Further, the price underselling has not been analyzed with respect to the previous year's data without which the price effect over the period of injury cannot be analyzed.
- xi. There is no correlation between the decline in profitability and the imports. The determination made by the Authority fails to show a causal link between the profitability and the imports.

- xii. The NIP calculated needs to be based on the PCN as determined by the Designated Authority. Designated Authority should also disclose the essential facts concerning NIP so as to allow the Importer to defend their interests

### **Examination by the Authority**

154. The post-disclosure comments made by the GOC, domestic industry and other interested parties concerning the various schemes/programs have been examined and addressed by the Authority in the relevant Paras of this final finding. The post disclosure comments concerning injury are ipso facto addressed by the injury analysis conducted by the Authority in this finding. The other specific post disclosure comments made by the GOC, domestic industry and other interested parties, considered relevant, are examined and addressed by the Authority as below:

- i. As regards the comment that the present anti-subsidy investigation was initiated on the basis of frivolous and unfounded suits and in contravention with the legal requirements prescribed in the ASCM, the Authority notes that the present investigation was initiated on the basis of adequate prima facie evidences indicating subsidization of exported subject goods, injury to the domestic industry and causal link between the said subsidization and injury to the domestic industry.
- ii. It is agreed that the evidence reasonably available to the petitioner does not exempt the petitioner's obligation to provide sufficient evidence. But, lack of accessibility of the relevant evidences to the petitioner is also not ruled out. The GOC or for that matter the respondent exporter could have substantiated their submissions by complete evidences and enabled the Authority to verify the information/evidences on the spot to ascertain and establish the correct position.
- iii. Adequate efforts were made by the Authority to obtain consent and convenience of the GOC to conduct the on the spot verification of the information/evidences furnished by the GOC during the course of the investigation. The GOC was also requested to provide the necessary permission to visit China to carry out on the spot verification of the respondent producer/exporter. But, on the spot verifications could not be carried out due to non-receipt of consent/permission from the GOC. Had GOC consented for on the spot verification, the correct position regarding many of the subsidy schemes would have emerged and enabled the Authority to properly appreciate the facts of the case.

- iv. As regards the comment that facts available should not be used to make a determination, the Authority notes that when interested parties do not cooperate to the fullest extent, then reliance upon best available facts is an acceptable alternative for the authorities worldwide while conducting investigations. As regards the programs where the petitioner failed to provide sufficient evidences/ explanation, the Authority has not gone ahead with the investigation to establish the countervailability of such programs.
- v. As regards the comment that insufficient time was provided by the authority to the interested parties for commenting on the disclosure statement, the Authority notes that the Rules do not prescribe any specific time line for such purposes. However, reasonable time was provided by the Authority to the interested parties for commenting on the disclosure statement, keeping in view the time available for completion of this investigation. Moreover, adequate opportunities were provided to the interested parties by the Authority during the course of the investigation to make submissions and the non-confidential version of the information furnished by the interested parties were made available by the Authority in the public file
- vi. As regards the comment that GOI has not disclosed the methodology to calculate the benefits in respect of the various alleged programs, the authority notes that the methodology for calculating each and every scheme/program has been explained in the disclosure statement as well as in this final finding.
- vii. As regards the comment that no evidence has been provided to support the allegations that the state owned banks and state owned enterprises are public bodies, the Authority notes that in terms of Article 1 of ASCM, the term 'public body' means any entity that possesses, exercises or is vested with government authority. In this respect, the Authority notes that any State owned entity like state owned banks and state owned enterprises are also public bodies because such entities are vested with government authority while discharging their respective functions.
- viii. As regards the contention that that the Authority should calculate the benefit for each alleged program, instead of calculating a 5.89% for a package of programs 8 to 17, it is noted that the details furnished in the annual report of Jiali do not show scheme wise subsidies received by them. In view of this, the authority has computed benefits accrued to Jiali for the programs 8 to 17 as a whole.
- ix. As regards the contention that the Designated Authority has enlarged the scope of the product by including casting for all parts

of the Wind Mill whereas in the initiation, the “castings for wind-operated electricity generators” was defined as PUC, the Authority reiterates that wind-operated electricity generator and Wind Mill are one and the same. “Wind operated electricity generators (WOEG)” is a “wind mill” and therefore casting for “wind operated electricity generators” implies casting for “wind mill” or “Wind Turbine”.

- x. As regards the contention that Designated Authority has not conducted any examination of injury and causal link based on different type of products included in PUC, the Authority notes that there are no different types of PUC, but different parts of the PUC. Therefore, separate injury analysis for each part of PUC is not required. However, Authority devised PCN for the PUC, determined injury margin and did the injury analysis accordingly.
- xi. As regards the submission that NIP calculated needs to be based on the PCN and Authority should also disclose the essential facts concerning NIP, the Authority notes that the PCN wise NIP has been computed in terms of extant guidelines and consistent practice in the DGAD. NIP being commercially sensitive and confidential information for the domestic industry, the same cannot be disclosed to other interested parties.
- xii. As regards the submission by the domestic industry that the basis of allocation/apportionment in the computation of NIP has been changed by the Authority and this change of methodology is inappropriate, the Authority notes that no change has been made in the allocation of expenses.
- xiii. As regards the contention that inability of the domestic industry to produce the product under consideration with the necessary technical specifications as per the demand of the consumers and their logistical inefficiencies are the real reasons for increasing the imports of subject goods from China PR, the Authority notes from the submissions of the domestic industry that one of the consumers bought only a small portion of its requirement from the domestic industry over the injury period and increased its procurement significantly from the domestic industry after the reduction of prices by the domestic industry. This establishes that price is the prime factor governing the psyche of the consumers for placing orders on the domestic industry for supplying the subject goods.
- xiv. As regards the contention that the benefit received by the parent company shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC, the Authority notes that M/s Zhejiang Jiali Technology Co Ltd, the parent company of the respondent company in the present

investigation has no business of its own and discharges all its business through its five subsidiaries involved in production and sale of the subject goods and other goods including R&D services. However, the Authority notes from the website information of M/s Zhejiang Jiali Technology Co Ltd that this company has obtained performance related several awards and certificates including grants etc. Since apparently the parent company has no business of its own, obviously all its awards, certificates, grants etc obtained by it are on account of the performance of its subsidiaries. Therefore, the Authority notes that the benefits/subsidies obtained by the parent company shall be applicable to its subsidiaries as well.

- xv. As regards the contention that the “Welfare Business Value Added Tax Refund”, “Export Tax Refund” and “Other Tax Refund” shall not be used for calculation of the program, because they are not related to the land use tax, the Authority has reworked the calculations in this final finding.
- xvi. As regards the contention that Program No. 37: Reduction in Land Use Fees, the “Land Use Tax Refund” received by the parent company shall not be applicable to Jiali Wind since they are two independent companies and the parent company is not involved in the PUC, the authority holds that parent company has no business of its own, and the benefit accrued under this programme related to the subsidiaries of the parent company. In the absence of details provided by the parent company, the Authority has allocated the total benefits received by parent company under this programme to the turnover of the parent company, which includes the turnover of all its subsidiaries including the respondent exporter.

## **N. CONCLUSIONS:**

155. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the Authority concludes that:

- a. The product under consideration has been exported to India from subject countries at subsidized value, thus resulting in subsidization of the product.
- b. The domestic industry has suffered material injury due to subsidization of the product under consideration.
- c. The material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject country.

## **O. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

156. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of countervailing duty would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.
157. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidised subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

## **P. RECOMMENDATIONS**

158. The Authority notes that the investigation was initiated and notified to all interested parties including the Government of China PR and adequate opportunity was given to provide positive information on the aspect of subsidization, injury and causal links. Having initiated and conducted the investigation into subsidization, injury and causal links in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from China PR in the form and manner described hereunder.
159. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of countervailing duty equal to the lesser of subsidy margin and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, the definitive countervailing duty as a percentage of the landed value of imports as mentioned in Col 8 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of the subject goods, originating in or exported from China PR.

**Duty Table**

Sl.No	Heading / Subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount as % of landed Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	84834000, 85030090, 85030010 in Chapter 84 and 85 of Customs Tariff Act	Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators	China PR	China PR	Zhejiang Jiali Wind Power Technology Company Limited	Zhejiang Jiali Wind Power Technology Company Limited	8.78
2	-do-	-do-	China PR	China PR	Any	Any	13.44
3	-do-	-do-	China PR	Any Country	Any	Any	13.44
4	-do-	-do-	Any Country	China PR	Any	Any	13.44

160. Landed value of imports for the purpose of computing the countervailing duty shall be the assessable value as determined by the customs authority under the Customs Act, 1962 and all duties of customs except duties levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

161. An appeal against the order of the Central Government arising out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**A.K. Bhalla**  
**Designated Authority**