AS0046

ANTI-SUBSIDY INVESTIGATION CONCERNING IMPORTS OF CERTAIN EXCAVATORS ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA

COMMENTS

OF

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

ON THE STATEMENT OF ESSENTIAL FACTS

OPEN VERSION

9 January 2025

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1 INTRODUCTION

1. The present submission provides the comments of the Government of the People's Republic of China ("GOC") regarding the Statement of Essential Facts issued by the UK Trade Remedies Authority ("TRA") on 12 December 2024 in the context of the anti-subsidy investigation concerning imports of certain excavators ("product concerned") originating in the People's Republic of China (Investigation No. AS0046) initiated on 15 November 2023.

2. The GOC strongly objects to the TRA's intended recommendations to the Secretary of State that a countervailing measure is imposed on the relevant goods subject to the final affirmative determination.

3. The GOC disagrees with TRA's affirmative findings with respect to subsidization and considers them to be inconsistent with the various provisions of the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), as well as the UK Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("UK Regulations") and Schedule 4 to the UK Taxation (Cross-border Trade) Act 2018 ("TCBA").

2 INCORRECT ASSESEMENT OF SUBSIDIZATION

4. The GOC does not agree with the TRA's determination of subsidization for any of the programs countervailed. Thus, to the extent that any particular program or issue has not been specifically discussed in these comments, it should not be assumed or considered that GOC agrees in any way that such program could be qualified as a countervailable subsidy. Moreover, on the topic of specific factual issues and details concerning the calculation of the subsidy margins for the countervailed schemes, the GOC refers to the comments of the sampled exporting producers.

2.1 Preferential financing

2.1.1 Incorrect conclusion that SOCBs are 'public bodies'

5. In the current investigation the issue of whether an entity is a "public body" arises in relation to the programmes dealing with the provision of preferential financing and the government provision of goods or services.

6. It is clear from the WTO jurisprudence that any approach to developing a basis for determining whether or not an entity is a 'public body' for the purposes of a subsidy investigation must be carefully considered, bearing in mind the Appellate Body's view that an investigating authority must avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant.

7. The GOC takes the view that the key question is whether the nature and degree of control by the government over the body is meaningful in that the entity possesses, exercises or is vested with governmental authority, and so conducts itself by undertaking an activity envisaged in Article 1.1(a)(1). This is the whole point of the public body analysis, and as noted by the Appellate Body, the determination of whether the conduct of an entity is that of a public body in each case must be determined on its own merits, with due regard being had to the core characteristics and functions of the relevant entity, its relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates.

8. The identification of an entity as a "government or any public body" does not, on its own, provide a basis for concluding that a subsidy exists. There must be a financial contribution in the form of one of the activities set out in Article 1.1(a)(1)(i)-(iv) of the SCM Agreement, which also confers a benefit to the recipient, and which is specific.

9. The TRA's conclusion that the so-called 'State-owned commercial banks'[SOCBs] are 'public bodies' is in error.

10. Under Article 1.1 of the SCM Agreement, a subsidy exists if there is a financial contribution by a government or any public body that confers a benefit.

11. Sub-paragraphs (a) to (d) of regulation 20(1) of the Regulations outline the forms a financial contribution from a foreign authority can take. Additionally, in line with regulation 20(1)(e) of the Regulations, where a foreign authority makes payments to a funding mechanism or entrusts or directs a private body to undertake one or more of the type of functions in sub-paragraphs (a) to (d), which would normally be vested in the foreign authority, and the practice in no real sense differs from practices normally followed by foreign authorities, a financial contribution has been made by a foreign authority within the meaning of regulation 20 of the Regulations.

12. With regard to the context within which commercial activity is undertaken in China, it is useful to note the comments by the Appellate Body in DS379, that "no two governments are exactly alike, the precise contours and characteristics of a public body are bound to differ from entity to entity, State to State, and case to case".

13. Today, China can be characterized as having moved towards a market economy based on private property ownership, The state still dominates in strategic "pillar" sectors such as energy production and heavy industries, but private enterprise has expanded enormously.

14. In this context, it is common that financial institutions in the economy as a whole are owned partly or fully by the State, and that they operate within an environment of broad government policies and plans for the development of the sector. However, as the WTO Appellate Body has recognised, ownership

on its own is not sufficient to bring such entities into the ambit of Article 1.1(a)(1) of the SCM Agreement, and there needs to be an examination of the extent to which the entity is, in fact, exercising governmental authority or functions in a sustained and systematic practice.

15. The GOC notes that the TRA refers to the Articles of Association of various SOCBs which provided loans to the sampled exporting producers during the POI and has concluded that SOCBs are public bodies due to the existence of Party Committee in SOCBs and its roles and functions stated thereof.

16. The GOC submits that the ability of a government to nominate or hire officials or staff in an entity is not sufficient to demonstrate control. An authority must also demonstrate that these hires do not act independently, i.e., that they simply follow orders from the government.[1]

17. The GOC submits that a proper reading of the entire Bank Law establishes that the Bank Law explicitly prohibits the GOC from exercising any form of control over the decisions of banks. Articles 4 and 5 of the Bank Law respectively state that commercial banks shall "make their own decisions" and operate "without interference from any unit or individual", and that there will be no interference by local governmental and government departments either. This is further confirmed by Article 41 of the Bank Law which provides that "no entity or individual may coerce a commercial bank into granting loans or providing a guarantee". The same provision also notes that banks in China are entitled to "refuse to grant a loan … forcibly demanded by any unit or individual". What more is needed to be said in order to show that the Bank Law inculcates and encourages independence of banks in China, rather than curtails it.

18. Decision No.40 is more of a guidance document. The TRA's reliance on this legal instrument is especially incoherent given that Article 17 of the same

[1] Appellate Body Report, *US – Carbon Steel (India)*, paras. 4.36-4.37.

Decision requires banks to respect credit principles. Thus, by the TRA's own acknowledgment, this instrument does not show that the banks are required to toe the government line, in disregard of commercial principles and considerations.

19. The GOC has submitted sufficient evidence to prove that China's banks (including the State-owned ones) are autonomous, self-sustaining entities, and that there is no law in China that requires Chinese commercial banks to conduct their credit and loan operations under the guidance of the GOC or its supposed industrial policies. The GOC has repeatedly emphasized that acting in light of industrial policies is not mandatory and banks are not obliged to comply with these policies.

2.1.2 TRA's conclusion on specificity is in error.

20. The specificity issue is whether the provision of government support mandated by Decision No. 40, and provided to the "encouraged" activities, means that support to the overall industry is specific, and whether any such support, which is found to be a subsidy, is specific on the grounds that the activity is identified as being among those that are encouraged. That is, what drives specificity is the fact that there is an "encouraged" category of activities, which is narrower than all enterprises, and which constitutes "certain enterprises."

21. The GOC considers that the heading references to industries and sectors in the Catalogue does not mean that specificity attaches to those industries or sectors in their entirety, so specificity does not apply to the industry or sector as a whole. The limitation of the requirement to provide support through a range of instruments to only those activities identified as "encouraged" means that the support is limited to the group of enterprises and industries undertaking those activities, i.e. "certain enterprises" are those identified activities in the "encouraged" category, and specificity attaches to the listed activities.

22. The industries included in the Guidance Catalogue cover virtually the whole economy, and if that was the level of categorisation then it would be difficult to sustain a claim that the kind of support referred to in Decision No.40 was specific to those industries. The TRA relies entirely on Decision No.40, which is not mandatory or legally binding in nature.

23. The GOC notes that for loans, no proper assessment has been done by the TRA other than to vaguely refer to the "limited number of enterprises or industries" that allegedly receive preferential financing. The TRA relies entirely on Decision No.40, which, as has been shown above, is not mandatory or legally binding in nature.

2.1.3 No basis for resorting to out-of-country benchmark

24. The GOC submits that in order to calculate benefit, the *"[p]roper benchmark prices would normally emanate from the market for the good in question in the country of provision"* and that such in-country prices *"necessarily have the requisite connection with the prevailing market conditions in the country of provision that is prescribed by the second sentence of Article 14(d)."*[2] The Appellate Body has ruled that because in-country prices are the "primary" benchmark, they should also be *"the starting point"* of any benchmark determination.[3] This means that an authority's *"analysis begins with a consideration of these in-country prices"*.[4] Furthermore, the Appellate Body confirmed that *"recourse to out-of-country prices is exceptional"* and must always relate or refer to *"prevailing market conditions in the country of provision"* and reflect *"price, quality, availability, marketability, transportation and other conditions of purchase or sale" pursuant to Article 14(d) of the SCM Agreement"*.[5] As the Panel in US – Coated Paper (Indonesia) put it:

> "*[T]he possibility under Article 14(d) for an investigating authority to use a benchmark other than private market prices in the country of provision is very limited and the mere fact that the government is a significant, or even the*

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2 Appellate Body Report, *US – Carbon Steel (India)*, para. 4.244.

3 Appellate Body Report, *US – Carbon Steel (India)*, para. 4.244.

4 Panel Report, *US – Coated Paper (Indonesia)*, para. 7.33

5 Appellate Body Report, *US – Carbon Steel (India)*, paras.4.185-4.186, 4.208. See also: Appellate Body Report, *US – Softwood Lumber IV*, para. 106; Panel Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 10.187.

> *predominant supplier of the relevant good, cannot automatically lead to a finding of price distortion. The Appellate Body has excluded the application of a per se rule, under which an investigating authority could conclude in every case, and regardless of any other evidence, that the fact that the government is the predominant supplier means that private prices in the country of provision are distorted and, for this reason, unusable as a benchmark. Thus, the distortion of prices in the domestic market for the good in question must be established on a case-by-case basis, based on the particular facts in the investigation".*[6]

25. While the TRA has resorted to benchmarks outside China, it has not established why the in-country benchmarks were rejected. Thus, there is no basis for the TRA's resort to an out-of-country benchmark for the calculation of alleged benefit arising from alleged preferential financing. The TRA did not provide sufficient evidence that the market in China is distorted. Rather, it simply assumed this to be the case, which is not in line with the relevant provisions of the SCM Agreement.

2.1.4 Specific comments on Bank Acceptance Drafts

26. The GOC disagrees with the TRA's findings that bank acceptance drafts can be considered a subsidy in the form of interest-free short-term loans.[7] The GOC emphasises that "[f]*or the company that issues* [them]*, a banker's acceptance is a way to pay for a purchase* <u>*without borrowing to do so*</u>."[8] (emphasis added).

27. The GOC submits that, as the TRA found in the SEF, bank acceptance drafts are generally issued within the framework of a bank acceptance draft agreement specifying the identity of the bank, suppliers and buyer, the obligations of the bank and the buyer and detailing the value per supplier, the payment term agreed with the supplier and the maturity date of the bank acceptance draft. This negotiation is thus no different than the parties agreeing on the standard payment terms. The extended payment term that the use of a bank acceptance implies is thus not an interest-free short-term loan granted by a bank but rather an extension of the payment term that the seller decides to grant. In other words,

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6 Panel Report, *US – Coated Paper (Indonesia)*, para. 7.35. (Underlining added; footnotes omitted)

7 SEF, recital 299.

8 Banker's Acceptance (BA), Investopedia, available here.

it only reflects the agreement between the buyer and the supplier.

28. In essence, in this agreement, *the payee* is the party that (theoretically) finances the buyer because it agrees to accept late payment by a bank acceptance draft based on the payment guarantee of the bank. Usually, the purchase cost would be higher in case of late payment; thus, the additional cost is already reflected in the purchase cost.

29. The TRA failed to establish the necessary elements for bank acceptances to be considered a subsidy within the meaning of the Regulation are present.

30. Concerning the benefit element, the GOC notes that standard payment terms are subject to negotiations between the supplier and the buyer. Any disadvantage suffered by the seller of extending the payment term is thus priced into the underlying commercial agreement between the parties. Therefore, there is no benefit derived by the drawer of the bank acceptance.

31. Moreover, because *the payees* are the parties that finance the buyers, there is no government involvement in the transaction. The GOC submits that the suppliers are not public bodies so that there is no financial contribution by a government or public body within the meaning of the Regulation.

32. Lastly, the GOC notes that no individual specificity analysis is conducted by the TRA for bank acceptance drafts. The TRA simply relies on its assessment with respect to loans. With regards to the specificity of the provision of bank acceptance drafts, the TRA states the following at recital 170:

> *In its examination of the provision of a financial contribution, the TRA considered loans and BADs separately. In examining the claim regarding government direction of commercial banks, owing to all the loans and BADs examined being provided by commercial banks, the TRA has considered this claim for loans and BADs concurrently.*

33. This is a substantively insufficient approach: the TRA is required to conduct an

assessment of specificity for each alleged program or instrument it wishes to countervail. In any event, as shown above, the TRA's specificity analysis with respect to loans is flawed; therefore, so is its assessment for bank acceptance drafts.

34. In the meantime, the GOC notes that the TRA didn't address in the SEF that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions. The TRA here seeks to shift the burden of proof. Whether the Excavator sector is eligible for all possible financial support does not demonstrate that the Excavator sector alone is eligible to take advantage of bank acceptance drafts, while other sectors are ineligible. Furthermore, it is not for interested parties to prove that companies outside so-called "encouraged industries" can benefit from bank acceptance drafts under the same terms and conditions as the producers under investigations. Instead, it is for the TRA to provide positive evidence that the specificity requirement is satisfied.

35. Nevertheless, for the sake of completeness, the GOC would like to draw the TRA's attention to the websites referred to in the footnote of this paragraph, including those cited by the TRA, which demonstrate that bank acceptances are payment instruments, open to all companies regardless of business sectors and regions.[9]

2.2 Alleged government revenue forgone or not collected

2.2.1 Enterprise Income Tax privileges and benefits for High and New Technology Enterprises

36. The GOC notes that the TRA has considered 15% preferential income tax rate being restricted to HNTE constitutes specificity. The TRA cited Article 11 of the Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Amending and Issuing the Administrative Measures for the Identification of High-tech Enterprises outlines the criteria to be recognised as a HNTE, and consequently eligible for the reduced EIT rate described above. Paragraph 3 of Article 11 states, "The technologies that play a core supporting role in the main products (services) of

[9] E-bank Acceptance Draft | HSBC China, available here; Bank Acceptance Draft (boc.cn), available here; Bank Acceptance Draft Issuance | DBS CN Corporate Banking, available here.

the enterprise fall within the scope of the provisions of the "High-tech Fields Supported by the State"".[10]

37. The GOC strongly objects to the TRA's findings and the GoC reasserts that the reduced enterprise income tax rate of 15% for HNTEs is not contingent upon any restrictions and is not subject to any limitations or geographical restrictions, and consequently, the qualifying criteria are objective and that this tax rate does not meet the criterion of specificity in the SCM Agreement.

38. Article 1.2 of the SCM Agreement provides that a subsidy, as defined in Article 1.1, shall be subject to the provisions of Part V of the Agreement (i.e. the provisions relating to Countervailing Measures), if such a subsidy is specific in accordance with the provisions of Article 2 of the Agreement.

39. Article 2 of the Subsidies Agreement provides as follows:

- Article 2.1 sets out principles to be applied in determining whether or not a subsidy is specific to an enterprise or industry, or group of enterprises or industries (referred to as "certain enterprises"), and covers explicit limitation of access by the granting authority or in legislation (specific), the use of objective criteria or conditions for eligibility (not specific), and de facto specificity. Objective criteria and conditions are defined in footnote 2 to Article 2.1(b) as "criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise."
- Article 2.2 provides that a subsidy limited to certain enterprises within a designated geographical region within the jurisdiction of the granting authority shall be specific, although the setting or change of generally applicable tax rates by all levels of government shall not be deemed a subsidy.
- Article 2.3 provides that any subsidy falling under the provisions of Article 3 shall be deemed to be specific. This covers prohibited subsidies including subsidies contingent on export performance or import replacement.
- Article 2.4 requires that any determination of specificity shall be clearly substantiated on the basis of positive evidence.

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[10] SEF, recital 409

40. In the current case, the main specificity issue arises in relation to the question of the breadth of the industry or industries to be caught by “certain enterprises”, and the extent to which assistance to the excavator industry is specific.

41. In DS379, the WTO Appellate Body noted that in *US — Upland Cotton*[11] the panel considered that an “industry” or “group of industries”, for the purposes of the chapeau of Article 2, may generally be understood in terms of producers of particular types of product, although the breadth of this concept of “industry” may depend on several factors in a given context. Hence, the specificity of a subsidy can only be assessed on a case-by-case basis.

42. The Appellate Body, in DS379, saw merit in the view that the concept of “specificity” in Article 2 of the SCM Agreement serves to acknowledge that some subsidies are broadly available and widely used throughout an economy and are therefore not subject to the Agreement’s subsidy disciplines. The Appellate Body analysed the words used in Article 2, which suggested that the term “certain enterprises” refers to a single enterprise or industry or a class of enterprises or industries that are known and particularised, but agreed that the concept of specificity involved a certain amount of indeterminacy at the edges, and that any determination of whether a number of enterprises or industries constitute “certain enterprises” can only be made on a case-by-case basis.

43. The GOC re-emphasizes that according to footnote 2 of the SCM Agreement, eligibility criteria are considered objective if they are neutral, do not favour certain enterprises over others, are economic in nature, and are horizontal in their application. This is the case with the eligibility criteria for the income tax reduction for HNTEs, since access to the lower tax rate is available to all enterprises which meet the conditions and does not favour certain enterprises over others because companies from all sectors, covering the entire economy are eligible to obtain a HNTE certificate.

44. Thus, the TRA has illegally countervailed this alleged program.

[11] WTO document WT/DS267/R

2.3 Alleged provision of goods and services at less than adequate remuneration

2.3.1 Alleged provision of land-use rights at LTAR

45. The GOC reiterates its position that there is no such program as the provision of land-use rights at less than adequate remuneration.

46. Contrary to the TRA's finding, the GOC re-submits that Article 2 of the Land Administration Law does not enable the GOC to provide land at LTAR to promoted industries, including producers of the goods concerned. In fact, the reality is that LURs are transferred by public bidding, quotation, or auction in accordance with Land Administration Law. Indeed, pursuant to Article 347 of the Civil Code of the People's Republic of China:

> "*[W]here land is used for industrial, commercial, tourist or entertaining purposes, as commodity residence, or for other profit-making purposes, or there are two or more persons who are willing to use the same piece of land, the right to the use of land for construction shall be assigned through bid invitation, auction or other open bidding. The price of the land is established through market competition."*

47. Moreover, Article 3 of the Interim Regulations of the PRC Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in Urban provides that:

> "*[a]ny company, enterprise, other organization and individual within or outside the People's Republic of China may, unless otherwise provided by law, obtain the right to the use of the land and engage in land development, utilization and management in accordance with the provisions of these Regulations*."

48. Overall, <u>any legal person or individual in China can acquire and use LURs</u>

through fair competition and a public bidding process.

49. Further, as more detailed elaborated in the above section concerning preferential financing, the TRA's reliance on Decision No.40 does not establish the provision of LURs at LTAR being specific to the Excavator industry.

50. Additionally, the TRA's statement that "enterprises categorised as restricted or eliminated by Decision No. 40 pursuant to Article 18 of Decision No.40, are unable to access land use rights" [12] is based on a misinterpretation and incorrect translation of that provision because that provision does not refer to land use rights. Thus, the TRA cannot read words into a document that do not exist and on top of it make an impermissible a contrary interpretation which is not supported by the text, object and purpose of the concerned document.

51. In addition, as noted by the Appellate Body in *US – Carbon Steel (India)*, Article 14(d) of the SCM Agreement does not establish any "*legal presumption that in-country prices from any particular source can be discarded in a benchmark analysis*"[13] and "*a determination of a benchmark for the purposes of Article 14(d) cannot, at the outset, exclude consideration of any potential in-country prices, including government-related prices other than the financial contribution at issue*." [14] The Appellate Body in that case disagreed with the Panel's conclusion that "*Article 14(d) does not require the consideration of government-related prices simply because governments may set prices in pursuit of public policy objectives*."[15]

52. The GOC also notes that the Appellate Body in *US – Carbon Steel (India)* underlined that "*[p]roper benchmark prices would normally emanate from the*

[12] SEF, recital 483
[13] Appellate Body Report, *US – Carbon Steel (India)*, para. 4.154.
[14] *ibid*, para. 4.168.
[15] *ibid*, para. 4.170.

market for the good in question in the country of provision" and such in-country prices "*necessarily have the requisite connection with the prevailing market conditions in the country of provision that is prescribed by the second sentence of Article 14(d)*."[16] According to the Appellate Body, the "*primary*" benchmark, and "*therefore the starting point of the analysis*" for determining a benchmark, rests in the in-country benchmarks.[17] As noted by the Appellate Body in *US – Carbon Steel (India)* and *US – Softwood Lumber IV*, as well as by the Panel in *US – AD and CVD (China)*, the use of out-of-country benchmarks is "exceptional" and, if resorted to, must relate or refer to, or be connected with, the prevailing market conditions in the country of provision and must reflect price, quality, and availability and other conditions of purchase or sales pursuant to Article 14(d) of the SCM Agreement.[18]

53. The GOC also notes that, in this case, in-country prices are adequate because among others, private companies are also engaged in sub-letting or transferring LURs. The government is thus not the only player in that market. Indeed, private companies owning LURs also rent or sell these LURs to unrelated buyers in the market. In-country prices should, therefore, be used as a benchmark. With respect to producers that have gone through bidding for their LURs, in- country prices constitute an appropriate benchmark because, according to the Appellate Body in *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, "*…a benchmark may also be found in price-discovery mechanisms such as competitive bidding or negotiated prices*", as this ensures that the price paid reflects adequate remuneration.[19] Consequently, the fact that prices are determined through competitive bidding and

[16] *ibid*, para. 4.151.

[17] Appellate Body Report, *US – Carbon Steel (India)*, para. 4. 154.

[18] Appellate Body Report *US – Softwood Lumber IV*, para. 106; Panel Report, *US – AD and CVD (China)*, para. 10.187; Appellate Body Report *US — Carbon Steel (India)*, para.4.158.

[19] Appellate Body Reports, *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, para. 5.228.

negotiation, ensures that they are not distorted but instead reflect an adequate market price.

54. Thus, the resort to an out-of-country benchmark in this investigation is illegal.

2.3.2 Alleged provision of electricity at LTAR

55. The GOC notes that no benefit was calculated for both sampled exporting producers though the TRA concluded that provision of electricity at LTAR constitutes a countervailable subsidy. [20]

56. The GOC notes that the TRA fails to provide any evidence of specificity within the meaning of Article 2 of the SCM Agreement. Indeed, the TRA does not address how the alleged provision of power at LTAR would be specific to the Chinese Excavator producers. Instead, the TRA merely asserts that *"relevant departments including those overseeing electricity supervision should effectively enhance the effectiveness of industrial policy implementation and correctly handle the relationship between government guidance and market regulation. This indicates that the guidance in the respective catalogues that place excavators in the "encouraged" category must be implemented by institutions that oversee electricity supervision to ensure the development of the excavator market".* The GOC re-submits that the ability to directly purchase electricity from power generators does not amount to a financial contribution or benefit.

57. The GOC appreciates that the TRA taking notes on the Chinese government conducting the marketization of electricity and it encourages direct transactions between electricity generation companies and electricity users, by which the prices are determined by the supply and demand on the market.

[20] SEF, recital 583

58. In the meantime, the GOC notes that the TRA cited a notice published by the NDRC during the POI stating that electricity prices continue to be split into tiers, depending on the organization that is using it such as total electricity usage and end uses to conclude that the marketization of energy markets is incomplete and the GoC continues to direct the pricing of energy in the PRC based on industrial policy.[21]

59. However, the TRA failed to address whether the industries that purchase/use electricity are limited to the excavator industry. The GOC submits that it does not impose any limitation on the consumption of electricity by law or policy. Indeed, all companies located in the same region are entitled to the same electricity rate, irrespective of the business sectors.

60. Thus, the conclusion of countervailability of the provision of electricity at LTAR is inconsistent with Articles 11.2 and 11.3 of the SCM Agreement in this case.

4. <u>CONCLUSION</u>

61. For the reasons given above, the TRA's findings and the definitive measures recommended are WTO-inconsistent. Accordingly, the GOC respectfully requests the TRA to terminate the present investigation proceeding without imposing AS measures on Excavator imports from China.

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[21] SEF, recital 561