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Panel Proceedings

United States – Definitive Anti-Dumping and Countervailing
Duties on Certain Products from China

(WT/DS379)

Third Party Written Submission
by the European Communities

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I. INTRODUCTION

1. The European Communities thanks the Panel for this opportunity to present its views in this proceeding. The European Communities intervenes in this case because of its systemic interest in the correct interpretation of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("Anti-Dumping Agreement"), the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU").

2. Whilst not taking a final position on the specific facts of this case, the European Communities will provide its views on certain of the legal claims advanced by the Parties to the dispute. First, the European Communities will address the claims relating to the provision of goods by State-Owned Enterprise ("SOEs"). Second, the European Communities will comment on some issues relating to the policy loans and the provision of land-use rights. Third, the European Communities will briefly refer to the simultaneous application of anti-dumping and countervailing measures. Finally, some comments on the due process requirements, in particular those mentioned in Articles 13.1 and 12.1.1 of the SCM Agreement, will be made.

II. PROVISION OF GOODS BY SOEs

A. The Measure at Issue

3. China raises several claims against the USDOC's findings in four CVD investigations that certain transactions involving the purchase and sale of basic inputs (i.e., steel, rubber and petrochemicals) between, on the one hand, suppliers owned in part or in whole by the Chinese government (SOEs) and private trading companies and, on the other hand, producers, amounted to countervailable subsides in the sense of Article 1 of the SCM Agreement. In particular, China considers that the requirements of financial contribution and benefit contained in
the definition of "subsidy" in that provision were missing in those USDOC's determinations.\(^1\) The European Communities will address these issues below.

B. Financial Contribution

1. SOEs

4. China claims that in the four determinations at hand the USDOC abandoned its traditional approach (**i.e.**, the five factor-test)\(^2\) and employed a **per se** rule of majority ownership to conclude that the SOEs were "public bodies" in the sense of Article 1.1(a)(1) of the *SCM Agreement* and, thus, the provision of goods by those SOEs amounted to a "financial contribution" in the sense of Article 1.1(a)(1)(iii) of the *SCM Agreement*.\(^3\) In particular, according to China, what distinguishes the conduct of a public body from a private one is not the degree of ownership but rather the source and nature of the authority the entity possess and exercises. Consequently, in China's view, a "public body" in the sense of Article 1.1(a)(1) of the *SCM Agreement* is an entity that exercises powers and authority vested in it by the State for the purpose of performing government functions.\(^4\)

5. The United States does not dispute that it applied a rule of majority ownership to determine whether the entities concerned were public bodies.\(^5\) In this respect, the United States argues that the ordinary meaning of the term "public body", together with its context and the object and purpose of the *SCM Agreement*, indicates that a "public body" is an entity that is owned by the government, but not necessarily authorised to exercise, or is not necessarily in fact exercising, government functions.\(^6\) Further, the United States maintains that the Working Party Report on China's accession provides recognition by China that its state-owned enterprises

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\(^1\) China's First Written Submission, paras 32 – 153.

\(^2\) The "five factor test" involves an investigation into the following elements: (1) government ownership; (2) government's presence on the entity's board of directors; (3) government's control over the entity's activities; (4) entity's pursuit of governmental policies or interest; and (5) whether the entity is created by statute. China's First Written Submission, para. 90.

\(^3\) China's First Written Submission, paras 89 – 92.

\(^4\) China's First Written Submission, para. 61.

\(^5\) US First Written Submission, para. 135, second sentence.

\(^6\) US First Written Submission, paras 109 and 126.
are public bodies that provide financial contributions. Finally, the United States observes that its interpretation is consistent with the standard adopted by the panel in Korea – Commercial Vessels.

6. The key question on this point appears to be whether the USDOC's application of majority ownership as the only factor to establish that SOEs are "public bodies" is consistent with the SCM Agreement. Whilst not entering into the specific facts of this case, the European Communities agrees with the United States that the Working Party Report on China's accession is a relevant document that the Panel should examine in its assessment. In this respect, the European Communities notes that the relevant part of the Working Party Report records that some members of the Working Party sought to clarify that, when SOEs in China provided financial contributions, they would be considered public bodies within the meaning of Article 1.1(a)(1) of the SCM Agreement; and that China's recorded response, in focusing rather on the question of benefit, and referring to "such financial contributions", does not take issue with the characterisation of such measures as financial contributions. Thus, to the extent that China might reasonably be considered to be under an obligation to respond to the specific clarification requested, and China's silence a reasonable basis on which to construe consent, this would be a relevant factor, to be taken into consideration with all the relevant facts and evidence, in the determination by the United States that the SOEs in this case were "public bodies" providing financial contributions under Article 1.1(a)(1) of the SCM Agreement.

7. Leaving aside the particularities of the Working Party Report, the European Communities considers that a high level of government ownership is a very relevant factor in determining whether an entity is a "public body" in the sense of

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7 In particular, the United States refers to para. 172 of the Working Party Report on China's accession ("Some members of the Working Party, in view of the special characteristics of China's economy, sought to clarify that when state owned enterprises (including banks) provided financial contributions, they were doing so as government actors within the scope of Article 1.1(a) of the SCM Agreement. The representative of China noted, however, that such financial contributions would not necessarily give rise to a benefit within the meaning of Article 1.1(b) of the SCM Agreement. He pointed out that China's objective was that state-owned enterprises, including banks, should be run on a commercial basis and be responsible for their own profits and losses. The Working Party took note of this commitment").

8 US First Written Submission, paras 109 and 136.
Article 1.1(a)(1) of the *SCM Agreement*. This factor\(^9\) should be examined in the light of the specific circumstances of the case in order to establish whether actions by SOEs can be attributed to the government. In the EC view, a fundamental element in the financial contribution determination is the *participation of the government*, either directly (as a government or public body)\(^{10}\) or indirectly (through private parties). In other words, the action of the entity at hand must be somehow *attributable to the government*. In some cases, the government itself would be the actor in the market (e.g., the provision of goods by the central government or grants given by local and sub-national entities). In other cases, private entities (i.e., not owned by the government) would be entrusted or directed by the government to act in a particular manner. In those cases, there should be a demonstrable link between the government and the conduct of the private body.\(^{11}\)

8. In this respect, the European Communities observes that *majority ownership* has been considered a *very relevant factor* (although not the only one) when establishing that actions of private bodies were attributed to the government. For example, in the context of establishing entrustment or direction by the government to private bodies in the sense of Article 1.1(a)(1)(iv) of the *SCM Agreement*, the panel in *EC – DRAMS* observed that:\(^{12}\)

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\(^9\) An investigating authority would not be precluded, for example, from taking into consideration the types of factors referenced in the “five-factor” test.

\(^{10}\) The European Communities notes that the references to "government" and "any public body" in Article 1.1(a)(1) of the *SCM Agreement* should be understood as equivalent, since the same provision states that both are "referred to in this Agreement as 'government'".


\(^{12}\) Panel Report, *EC – DRAMS*, para. 7.119. Similarly, the Panel in *US – DRAMS* noted that, in its view, the USDOC might have been entitled to treat the 100 per cent-owned firms as "public bodies", but having refused to so classify them, the USDOC was required to establish entrustment or direction with respect to such creditors (Panel Report, *US – DRAMS*, footnote 29 to para. 7.8 and footnote 80 to para. 7.62).
It is not contested that Woori Bank was 100 per cent government-owned via the Korea Deposit Insurance Corporation ("KDIC") since late 2000. The EC did not consider Woori Bank to be a public body. This implies that, in order for a loan by this bank to be considered a financial contribution in the sense of Article 1.1(a)(1) of the SCM Agreement, the EC was required to establish that the government entrusted or directed the bank to provide the financial contribution in question. In our view, even if an investigating authority decides that such 100 per cent government ownership is not sufficient to qualify an entity as a public body, the extent of government ownership still remains a very relevant factor in the evaluation of the evidence concerning possible entrustment or direction by the government. It is clear that, as the sole shareholder, it is easier for the government to direct the bank to act in a certain manner than in a situation of no or only minor government involvement. At the same time, it should be clear that, in our view, government ownership, in and of itself, is not sufficient to establish entrustment or direction under Article 1.1(a)(1) of the SCM Agreement. We consider that Article 1.1(a)(1) of the SCM Agreement is clear: either a financial contribution is provided by the government or a public body, or it is provided by a private body, in which case it will be covered by the SCM Agreement only in case this private body acted under the direction or the entrustment of the government to behave in this manner, in which case the private body's action may be attributed to the government, and the SCM Agreement applies. (emphasis added)

9. In a similar context of entrustment/direction, in US – DRAMS the Appellate Body noted that:13

We note that the conduct of private bodies is presumptively not attributable to the State. The Commentaries to the ILC Draft Articles explain that "[s]ince corporate entities, although owned by and in that sense subject to the control of the State, are considered to be separate, prima facie their conduct in carrying out their activities is not attributable to the State unless they are exercising elements of governmental authority". (Commentaries to the ILC Draft Articles, supra, footnote 104, Article 8, Commentary (6), pp. 107-108); see also Korea's appellee's submission, paras. 58-59). (emphasis added)

10. In the specific context of establishing whether an entity is a "public body", majority ownership by the government has also been considered as significant evidence of government control in order to attribute certain actions to the government. In particular, the panel in Korea – Commercial Vessels observed that:14

14  Panel Report, Korea – Commercial Vessels, paras 7.50, 7.54 – 7.56.
In our view, an entity will constitute a "public body" if it is controlled by the government (or other public bodies). If an entity is controlled by the government (or other public bodies), then any action by that entity is attributable to the government, and should therefore fall within the scope of Article 1.1(a)(1) of the SCM Agreement. We consider that KEXIM is a "public body" because it is controlled by GOK. This is evidenced primarily by the fact that KEXIM is 100 per cent owned by GOK or other public bodies. Evidence suggesting governmental control over KEXIM also lies in the fact that the operations of KEXIM are presided over by a President (Article 9(1) of the KEXIM Act) appointed and dismissed by the President of the Republic of Korea (Article 11(1) of the KEXIM Act), and that the KEXIM President shall be assisted by a Deputy President and Executive Directors (Article 9(2) and (3) of the KEXIM Act) to be appointed and dismissed by the Minister of Finance and Economy upon the recommendation of the President of KEXIM (Article 11(2) of the KEXIM Act). Government control is also exercised through the Ministerial approval of the annual KEXIM Operation Programs (Article 21 of the KEXIM Act). (…)

We consider that the "public" nature of KEXIM is further confirmed by KEXIM's own perception of itself as a "special governmental financial institution". In addition, we note that Korea describes KEXIM as an "export credit agency" (see Korea's reply to Question 52 from the Panel). This phrase is generally reserved for official export credit agencies, and not for private providers of export financing or insurance. Since the term "agency" suggests a relationship of agent and principal, one could reasonably assume that the relevant principal on whose behalf KEXIM acts as agent is the Government of Korea.

The EC also refers to KEXIM's public policy objective in support of its argument that KEXIM is a public body. Although a public policy objective or creation through public statute might also be indicative of the public nature of an entity, this may not always be the case. For example, the fact that a private philanthropist may pursue public policy objectives should probably not cause that person to be treated as a "public body". In addition, the privatization of a company might be finalized through a public statute. In all cases, though, we consider that public status can be determined on the basis of government (or other public body) control.

Since we find that KEXIM is a "public body", there is no need to consider the EC's alternative argument that KEXIM is a private body entrusted or directed by the government. (emphasis added)

11. Consequently, in order to determine whether the actions of an entity can be attributed to the government directly or indirectly, the degree of ownership is a highly relevant factor.

12. The European Communities further notes that a test such as the "five-factor" test is not expressly referred to in the SCM Agreement as a basis on which to determine...
whether or not an entity is a public body within the meaning of Article 1(1)(a) of the SCM Agreement. In some cases such a test may be appropriate. In other cases, depending on the totality of the facts and evidence, and the particular procedural circumstances, the extent of ownership may have a preponderant role to play in determining that an entity is a "public body" under Article 1.1(a)(1) of the SCM Agreement. If no other facts or evidence are available, and the appropriate procedural steps have been followed, or if all other available facts and evidence confirm the systematic role of the State, then State ownership could be determinative. If, as the United States points out in its First Written Submission, an interpretation would be adopted that would effectively render the term "public body" in Article 1.1(a)(1)(iii) of the SCM Agreement equivalent to a government agency, then the European Communities would be concerned that such an approach would be unnecessarily rigid, and could preclude an investigating authority from the more flexible approach of taking into consideration the totality of facts and evidence in any particular case.

2. Private Trading Companies

13. As regards the provision of goods by private trading companies, China argues that the USDOC did not make any analysis as to whether the trading companies themselves made a financial contribution. According to China, the fact that those trading companies received a financial contribution by purchasing goods from a SOE is irrelevant to the separate inquiry of whether those trading companies conveyed a financial contribution when selling those goods. In contrast, the United States maintains that the financial contribution occurred with the sale of goods by the SOEs to the intermediary trading companies. According to the United States, Article 1.1(a) of the SCM Agreement contains no indication as to who must receive a financial contribution, since this provision speaks only to who grants a financial contribution.

14. Whilst not taking a position on the facts of this case, the European Communities would like to highlight that, in general terms, a trading company is a firm that...

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15 US First Written Submission, para. 134.
16 China's First Written Submission, paras 103 – 111.
connects buyers and sellers within the same or different countries but does not get involved in the owning or storing of merchandise. A trading company is often compensated by the seller with a sales commission and does not carry out any activities of transformation of the product concerned, which remains the same. In this sense, the provision of the goods by a trading company can be understood as a mere intermediate act which does not change the nature of the financial contribution (i.e., the fact that SOEs are the suppliers of the inputs which are then incorporated into the subsidised products).

C. Benefit

15. China also claims that the USDOC's determinations at hand were flawed since (1) the USDOC presumed that market prices of the inputs concerned were distorted in China when selecting benchmarks to measure the adequacy of remuneration; (2) the USDOC presumed that private trading companies received benefits in their purchase of inputs from SOEs; and (3) the USDOC found a benefit where none existed by including in its calculation only those purchases made for less than the benchmark price, while excluding all purchases made for more than the benchmark price. These issues are addressed below.

1. Selection of Market Benchmarks

16. China claims that, in the CWP, LWRP and LWS investigations, the USDOC unlawfully disregarded the market prices for the inputs concerned on the basis that the Chinese government accounted for a significant portion of production (dominated by SOEs) and that such involvement distorted private prices. Thus, according to China, the USDOC's use of an alternative market benchmark outside China amounts to a violation of Article 14(d) of the SCM Agreement.

17. The United States maintains that the use of alternative market benchmarks outside China is permitted by China's Accession Protocol. Further, the United States observes that in those investigations the fact that China was the predominant

17 US First Written Submission, paras 147 – 159.
18 China's First Written Submission, para. 112.
19 China's First Written Submission, paras 123 – 130.
owner of production of the inputs concerned was only one factor which was taken into account. In particular, the USDOC also examined other evidence, including prices of inputs established by private parties in China and import data, in order to conclude that prices in China were distorted because of China's predominant role as supplier of the inputs concerned.

18. The European Communities understands that the basis for the USDOC's finding that the Chinese government accounted for a significant portion of production follows from its previous conclusion that SOEs are "authorities" or "public bodies" in the sense of Article 1.1(a)(1) of the SCM Agreement. Thus, if the Panel finds in favour of the United States with respect to the preceding claim, that might have implications for the merits of the present claim.

19. On this issue, the European Communities considers that prices set by public bodies may not be considered as a relevant market benchmark in cases where those bodies are also involved as players in the market concerned. In this vein, the panel in Korea – Commercial Vessels observed that: We recall that Korea has argued that the terms of the KEXIM APRGs should be compared with the terms of certain APRGs provided by KDB and KEB. In this regard, we recall our finding that KDB is a public body. Accordingly, KDB APRGs do not constitute a reliable market benchmark with which to assess the existence of benefit. As for KEB, (...) [w]e also note the EC argument that KEB is not a reliable market benchmark as a result of government entrustment or direction and government ownership. (...) Regarding government ownership, the EC asserts that GOK has a minority shareholding in KEB. In choosing an appropriate market benchmark, we consider it preferable to choose when possible entities without any government ownership. (emphasis added)

20. Furthermore, the European Communities considers that the Appellate Body's observations in US – Softwood Lumber IV would be pertinent to this case:

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21 US First Written Submission, paras 204 – 208 and 224 – 226.
22 By contrast, the European Communities considers that public bodies may provide relevant market benchmarks in other situations (e.g., interest rates established by the OECD Arrangement on Guidelines for Officially Supported Export Credits, referenced in the second paragraph of item (k) of Annex I of the SCM Agreement).
23 Panel Report, Korea – Commercial Vessels, para. 7.179.
Whenever the government is the predominant provider of certain goods, even if not the sole provider, it is likely that it can affect through its own pricing strategy the prices of private providers for those goods, inducing the latter to align their prices to the point where there may be little difference, if any, between the government price and the private prices.

(...)

When private prices are distorted because the government's participation in the market as a provider of the same or similar goods is so predominant that private suppliers will align their prices with those of the government-provided goods, it will not be possible to calculate benefit having regard exclusively to such prices.

(...)

We emphasize once again that the possibility under Article 14(d) for investigating authorities to consider a benchmark other than private prices in the country of provision is very limited. We agree with the United States that "[t]he fact that the government is a significant supplier of goods does not, in itself, establish that all prices for the goods are distorted". Thus, an allegation that a government is a significant supplier would not, on its own, prove distortion and allow an investigating authority to choose a benchmark other than private prices in the country of provision. The determination of whether private prices are distorted because of the government's predominant role in the market, as a provider of certain goods, must be made on a case-by-case basis, according to the particular facts underlying each countervailing duty investigation. (emphasis added)

21. In other words, the fact that the government is the predominant supplier of certain goods in the market is likely to be a determining factor when examining all the relevant facts and evidence in order to ascertain whether market prices established by private parties can be used as the benchmark for the benefit determination, or whether, exceptionally, another benchmark should be used.

22. In this context, the European Communities understands that the rationale for the USDOC to use an alternative benchmark other than private prices in the country of provision was primarily based on the preponderant market share of SOEs in China. If it is demonstrated that domestic prices are almost fully determined by SOEs representing public bodies and are highly distorted, then an investigating authority would have a sufficient ground to depart from the general rule of prices in the country of provision also in light of the above jurisprudence interpreting and applying Article 14 of the SCM Agreement.
23. Finally, the European Communities considers that China's Protocol of Accession does not weaken the relevance of the observations made by the Appellate Body in US – Softwood Lumber IV. To the contrary, paragraph 15(b) of China's Protocol of Accession states that:

In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

24. In other words, according to this paragraph, the general rules contained in Article 14 of the SCM Agreement (and to which the Appellate Body observations referred) are not necessarily the only rules which apply with respect to China. Indeed, China's Protocol of Accession rather provides for an additional set of rules which also permits the use of a benchmark outside China in certain circumstances and subject to certain conditions.

2. Private Trading Companies: Pass-Through

25. China also claims that the USDOC unlawfully found the existence of a benefit in the provision of inputs from private trading companies because it failed to determine whether their purchases of hot-rolled steel and rubber inputs from SOEs also conferred a benefit. In other words, China maintains that the USDOC presumed the pass-through of a benefit that had not been found to exist in the first place.25 The United States maintains that it properly calculated the benefit conferred when comparing the price the producer of subject merchandise paid to the trading company for the production input with an appropriate benchmark price.26

25 China's First Written Submission, paras 131 – 138.
26 US First Written Submission, para. 323.
26. The European Communities notes that several disputes dealing with the pass-through issue refer to situations where there was a transformation of the product concerned by intermediate entities.\(^{27}\) Thus, conversely, in cases where there appears to be no transformation or processing whatsoever of the product concerned, the burden of proving the absence of pass-through is on the interested party or government making that assertion.

27. Whilst not taking a position on the facts of this case, the European Communities considers that insofar as trading companies act as mere intermediaries in the transaction, without resulting in any transformation of the product concerned, it would be unnecessary for the US authorities to show pass-through. Furthermore, as the European Communities understands that USDOC has calculated the subsidy benefit at the level of the exporters concerned, no adjustment at the level of the trading companies would appear necessary. Indeed, as the Appellate Body found in \textit{US – CVDs on Certain EC Products}, the benefit granted by the financial contribution can be "received and enjoyed by two or more persons".\(^{28}\) In cases where trading companies absorb part of the benefits (\textit{e.g.}, through a commission), the amount of benefit conferred by the provision of goods through the intermediary would need to be adjusted.\(^{29}\) However, the European Communities observes that insofar as the benefit for the transactions between trading companies and buyers is calculated on the basis of the prices established by the price actually paid by the buyer (\textit{i.e.}, the price set by the trading company already deducting its profit), the issue of adjustments (or pass-through) would not seem to arise.\(^{30}\)

\(^{27}\) See, \textit{e.g.}, Appellate Body Report, \textit{US - Softwood Lumber IV}, para. 141.

\(^{28}\) Appellate Body Report, \textit{US – CVDs on Certain EC Products}, para. 110 ("Moreover, there is nothing in the[] findings [of the Appellate Body Report in \textit{US – Lead and Bismuth II}] indicating that the “benefit” of a financial contribution, as contemplated in Article 1.1(b) of the SCM Agreement, should necessarily be “received and enjoyed” by the same person or, put differently, there is nothing indicating that the “benefit” cannot be "received and enjoyed" by two or more distinct persons").

\(^{29}\) Indeed, if the government provides the input to the trading company at 8 and then the trading company charges 8.5 for the input to the buyer, assuming that the market price is 10, the benefit granted to the buyer would amount to 1.5 (\textit{i.e.}, the trading company would have retained 0.5).

\(^{30}\) In other words, following the example mentioned before, the calculation of the benefit could be carried out by deducting the benefit retained by the trading company (0.5) from the comparison between the price established by the government (8) and the market price (10); alternatively, the benefit may be calculated by reference to the difference between the price paid by the buyer (8.5) and the market price (10). In both cases, the amount of benefit conferred to the buyer would be the same (1.5).
3. Denial of Offsets of Benefits Found When Calculating the Amount of Subsidisation ("Zeroing")

28. China also takes issue with the methodology applied by the USDOC in the OTR investigation to calculate the amount of subsidisation with respect to a countervailable programme that the USDOC defined as "government provision of rubber for less than adequate remuneration" or "provision of natural and synthetic rubber by SOEs for less than adequate remuneration". In essence, China claims that the USDOC compared the rubber purchased from the SOEs with a market price benchmark on a monthly basis and disregarded those transactions that provided remuneration to the SOEs in excess of the benchmark price (China has referred to this as "zeroing"). The United States confirms that it used that methodology.

29. The European Communities considers that injurious subsidisation is not investigated on an individual transaction basis; rather, Article VI:3 of the GATT 1994 and Articles 10, 11.2(ii), 12.9, 12.10, 13.1, 13.2, 13.4, 15.3, 15.5, 16.1, 16.3, 18.6, 19.3, 19.4, 20.1, 20.6, 22 and footnote 36 and 46 of the SCM Agreement refer to "merchandise", "product" or "product under investigation". Since the purpose of imposing countervailing duties is to offset any subsidy or subsidies given to a product, the calculation of the total amount of subsidisation granted to a particular product allows for the aggregation of all subsidies found to have been granted to that product during a particular period of time (i.e., the period of investigation or "POI"). Thus, it is undisputed that aggregation of all subsidies is necessary to offset the total benefits obtained by the subsidised product.

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31 China's First Written Submission, para. 141 and footnote 121.
32 China's First Written Submission, paras 139 – 153.
33 US First Written Submission, para. 308.
34 Article 19.1 of the SCM Agreement refers to "subsidy or subsidies".
35 Article VI:3 of the GATT 1994 and Footnote 36 of the SCM Agreement.
36 Article 19.4 of the SCM Agreement ("(…) [c]alculated in terms of subsidisation per unit of the subsidised and exported product").
37 For the sake of clarity, the European Communities would like to mention that, when referring to "all subsidies" in this context it refers to all positive findings of financial contributions which conferred benefits in the sense of Article 1 of the SCM Agreement. Naturally, if a measure does not amount to a subsidy because there is no benefit to the recipient, its relevance for the purpose of the calculation of the total benefits obtained by the subsidised product would be none.
30. However, an issue that arises in the present dispute seems to be whether a similar aggregation can be done when calculating the amount of subsidisation in a particular subsidy scheme. In this respect, the European Communities observes that, although investigating authorities have considerable leeway in calculating benefits in accordance to Article 14 of the *SCM Agreement*, any methodology used to calculate the amount of subsidisation must be *reasonable*. As the panel in *EC – DRAMs* observed:

   We realize that it may be difficult to directly apply Article 14 of the *SCM Agreement* which contains guidelines for the calculation of the subsidy in terms of the amount of the benefit. (...) In light of these problems dealing with the prescribed methodology for calculating benefit in Article 14 of the *SCM Agreement*, we consider that an investigating authority is entitled to considerable leeway in adopting a reasonable methodology.

31. In the EC view, when calculating the amount of subsidisation in a given case the question is what amount of benefit has been given to a particular product through the specific subsidy scheme during a defined period of time (*i.e.*, period of investigation). In this respect, it is worth mentioning that the *SCM Agreement* contains a definition of "subsidy" and requires investigating authorities to describe in their notice of initiation the "subsidy practice or practices" to be investigated as well as explain in their determinations the amount of subsidy established and the basis on which the existence of a subsidy has been determined. However, the *SCM Agreement* does not contain any reference as to how investigating authorities should identify and define subsidy schemes in a given case. Such definition results from the identification of the terms and conditions contained in the specific subsidy scheme at issue. Nor does the *SCM Agreement* impose a particular POI. This results from the specific period selected by the investigating authorities (*i.e.*, normally 12 months).

32. Thus, when calculating the amount of injurious subsidisation in a given case investigating authorities must identify the various subsidy schemes from which a

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38 Appellate Body Report, *US – Softwood Lumber IV*, para. 91 ("The reference to 'any' method in the chapeau clearly implies that more than one method consistent with Article 14 is available to investigating authorities for purposes of calculating the benefit to the recipient").


40 Article 1 of the *SCM Agreement*.

41 Article 22.2(iii) of the *SCM Agreement*.

42 Article 22.4(iii) of the *SCM Agreement*. 
particular product has benefited from during an established period of time. In doing this exercise, great importance should be given to how investigating authorities define the relevant subsidy scheme, the specific terms and conditions to obtain the subsidy by the recipient as well as the POI. Once the subsidy scheme has been defined and the POI has been selected, investigating authorities must be coherent with their own selection throughout the investigation when calculating the overall benefit granted to the product concerned through that subsidy practice in the selected period.

33. In comparing a particular price with a benchmark under the SCM Agreement, in order for the result of the comparison to be meaningful, the guiding principle is that like must be compared with like, due adjustment being made where necessary, unless there is a justification for doing otherwise. Accordingly, the terms and conditions and timing of the price should in principle be comparable to those of the benchmark. Thus, for example, if the price, amount and normal delivery date are fixed (ex ante) in the contract, then the market benchmark must also be that prevailing (ex ante) on the date of the contract, on the same terms and conditions. On the other hand, if the price, amount and normal delivery date are only fixed subsequent to the contract at the time of order (ex post), then the market benchmark must be that prevailing (ex post) on the date of the order. Similarly, if the market benchmark is a monthly average of spot prices, then one would expect that to be compared with a monthly average of transaction spot prices.

34. Of course, the ideal objective of ensuring comparability may depend in practice on the facts and evidence that are reasonably available during the municipal administrative proceedings, which depends on the facts of each case. The European Communities does not take a position on the particular facts of the measures before the Panel in these proceedings.

III. POLICY LOANS

35. China claims that in the OTR, CWP and LWS determinations the USDOC imposed countervailing duties based on its finding that state-owned commercial banks ("SOCBs") provided preferential, below-market loans to respondent producers pursuant to the so-called "policy lending” programmes. In particular,
China challenges the mere existence of the "policy lending" programme as well as the USDOC's findings of financial contribution, benefit and specificity. Whilst not entering into the specific facts of this case (e.g., the existence of the "policy lending" programme), the European Communities will provide its comments on the claims dealing with financial contribution, benefit and specificity.

A. Financial Contribution

36. The European Communities understands that, in the financial contribution determination, the USDOC found that SOCBs were "public bodies" in the sense of Article 1.1(a)(1) of the SCM Agreement, by relying inter alia on the state-ownership of the banking sector, China's legal framework limiting the SOCB's independence from the government and the continued government influence in the bank sector and bank lending decisions. However, China argues that the SOCBs are "commercial banks" and not state-policy banks with the express purpose of providing financing for state-supported projects. Thus, China argues that the USDOC should have examined whether those SOCBs had been entrusted or directed by the government to provide the loans at issue pursuant to Article 1.1(a)(1)(iv) of the SCM Agreement.

37. As mentioned before, in the case of SOCBs (i.e., banks more than 50% owned by the government), it may be easier for the government to influence them to act in a certain manner. Other factors may also be relevant.

38. Without entering into the specific facts of the case, the European Communities considers that several WTO disputes have dealt with similar situations (i.e., where public and private banks were involved). The European Communities considers that those disputes may be relevant to the present dispute.

B. Benefit

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43 China's First Written Submission, para. 205.
44 China's First Written Submission, paras 154 – 279.
45 US First Written Submission, paras 167, 237 - 243; and Exhibit CHI-93, pp. 58 – 61.
46 See para. 11 of this submission.
39. As regards the calculation of the benefit, the European Communities notes that, the interpretation followed by the Appellate Body in US – Softwood Lumber IV (although in the context of Article 14(d) of the SCM Agreement) may be relevant for clarifying the meaning of Article 14(b). In that case, the Appellate Body observed that:

Investigating authorities may use a benchmark other than private prices in the country of provision under Article 14(d), if it is first established that private prices in that country are distorted because of the government's predominant role in providing those goods.

(…)

As noted above, in Canada – Aircraft, the Appellate Body stated that the "there can be no 'benefit' to the recipient unless the 'financial contribution' makes the recipient 'better off' than it would otherwise have been, absent that contribution". (…) However, there may be situations in which there is no way of telling whether the recipient is "better off" absent the financial contribution. This is because the government's role in providing the financial contribution is so predominant that it effectively determines the price at which private suppliers sell the same or similar goods, so that the comparison contemplated by Article 14 would become circular.

40. The Appellate Body based its interpretation on the objective of Article 14 of the SCM Agreement, which is the "Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient". In view of this objective, if the relevant market conditions are distorted, the comparison contemplated by Article 14 would become useless. In the case of commercial loans, if it can be shown that the "comparable commercial loan which the firm could actually obtain on the market" is also distorted because of the government intervention, then it would follow that having recourse to other benchmarks could be possible on a reasonable basis.

C. Specificity

41. Finally, on the specificity issue, the European Communities would like to add that if a subsidy in the form of a loan can be obtained by companies of all sizes (as long as they are sufficiently credit-worthy) with respect to projects across all sectors of the economy, it is unlikely that those loans could be specific under

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Article 2.1(a) or Article 2.1(c) of the *SCM Agreement*. As the panel in *US – FSC* (21.5) found:

In "expanding" the granting of the subsidy to a broad group of users or beneficiaries sufficient to achieve the standard of non-specificity, a Member is at the same time necessarily ceasing to grant it as a specific subsidy.

42. Thus, the fact that a subsidy reaches a wide number of beneficiaries and industries may call into question the specificity of the measure.

43. Furthermore, the European Communities is of the view that the analysis of the specificity of a subsidy should focus on the characteristics of the measure at issue rather than merely on the disbursements made thereunder. In other words, it is the subsidy itself which *de jure or de facto* limits access to an "enterprise or industry or group of enterprises or industries".50

44. These general remarks are of course without prejudice to the determinations of specificity of the cases in question, which the European Communities understands to be influenced by a number of other factors.

IV. **PROVISION OF LAND-USE RIGHTS FOR LESS THAN ADEQUATE REMUNERATION**

45. The European Communities understands that in the LWS investigation the USDOC found that the Huantai County Land Bureau provided land-use rights in the New Century Industrial Park (a facility that covers eight square kilometres near the city of Zibo) to Aifudi, a respondent producer, for less than adequate remuneration. In particular, the USDOC concluded that the subsidy was specific on the basis that the provision of land-use rights within the industrial park was limited to an enterprise or industry located within a designated geographical region.51 In this respect, China claims that the USDOC infringed Article 2.2 of the *SCM Agreement*.52 In addition, China claims that the USDOC's finding of benefit was inconsistent with Article 14 of the *SCM Agreement* because the USDOC rejected the use of land prices in China as the applicable benchmark under Article

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51 US First Written Submission, para. 364.
52 China's First Written Submission, paras 279, 282 – 301.
14(d) of the *SCM Agreement* and took as the relevant benchmark prices for certain industrial property in Bangkok, Thailand, over 3,000 kilometres away.\(^{53}\)

46. On the issue of specificity, the European Communities would like to point out that regional subsidies are not *per se* specific under the *SCM Agreement*. Indeed, Article 2.2 of the *SCM Agreement* addresses the specificity of subsidies limited to *certain enterprises* located within a designated geographical region within the jurisdiction of the granting authority. By contrast, subsidies destined to *all* enterprises in a geographical region are not considered specific *under Article 2.2 of the SCM Agreement*.\(^{54}\) In this respect, the European Communities notes that the text of Article 2.2 of the *SCM Agreement* was changed with respect to the *Dunkel Draft* which would have rendered all regional subsidies specific.\(^{55}\) Thus, such a change should have a meaning. Whether such regional subsidies are specific under Article 2 of the *SCM Agreement* has to be established by an *integrated reading* of Article 2. In particular, it must be the case that eligible regions under the regional subsidy programme are chosen on the basis of objective criteria under Article 2.1(b). If this is the case, there should be no specificity. Whether this is the case with respect to the land-use rights provided by the Huantai County Land Bureau to one or many companies in a delimited zone (such as an industrial park) or to all companies within the jurisdiction of the granting authority is a factual issue for the Panel to determine.

47. As regards the calculation of the benefit, the European Communities considers that the Appellate Body's observations in *US – Softwood Lumber IV* are relevant to the present dispute.\(^{56}\) Indeed, if it is found that prices are distorted in the relevant market, it would be necessary to have recourse to an alternative market benchmark to establish the existence and amount of the benefit granted. In this respect, the European Communities also notes that the fact that a piece of land is located 3,000 kilometres away is not sufficient reason alone to conclude that the market

\(^{53}\) China's First Written Submission, paras 302 – 319.

\(^{54}\) The Appellate Body has referred to *a contrario* interpretations in several cases, most notably in *US – Zeroing (EC)*, para. 156.

\(^{55}\) Article 2.2 of the Dunkel Draft stated that: "A subsidy which is available to all enterprises located within a designated geographical region shall be specific irrespective of the nature of the granting authority" (*Dunkel Draft*, MTN.TNC/W/FA, p. 1.3).

\(^{56}\) See paras 18 – 21 of this submission.
benchmark used is unreasonable. Any comparison should be adjusted in order to replicate the prevailing terms and conditions which would have existed absent price distortion.

V. SIMULTANEOUS IMPOSITION OF ANTI-DUMPING AND COUNTERVAILING MEASURES

48. China claims that in each of the four sets of anti-dumping and countervailing duty determinations at issue in this dispute, the USDOC's use of a non-market economy (NME) methodology to establish normal value in anti-dumping determinations concurrently with a determination of subsidisation and the imposition of countervailing duties on the same products was inconsistent with Articles 19.3 and 19.4 of the SCM Agreement. In particular, China considers that the use of a NME methodology for determining normal value necessarily addresses any allocation of productive resources within that economy that was not determined by market forces, including the provision of subsidised resources. Indeed, according to China, the moving of the normal value from China to an analogue country has the effect of increasing such normal value by removing the subsidy, while the export price continues being reduced by the subsidy. Further, China relies on the term "appropriate" in Article 19.3 of the SCM Agreement to conclude that if an importing Member offsets a subsidy through the manner in which it calculates anti-dumping duties, it is not "appropriate" to impose countervailing duties to offset the same subsidy. As a consequence of the imposition of countervailing duties in violation of those provision, China also claims that the United States infringed Article VI:3 of the GATT 1994 and Article 10 of the SCM Agreement.

57 US First Written Submission, paras 277 – 287.
58 Appellate Body Report, US – Softwood Lumber IV, paras 108, 109 and 120 ("We emphasize, however, that when an investigating authority proceeds in this manner, it is obliged, pursuant to Article 14(d), to ensure that the alternative benchmark it uses relates or refers to, or is connected with, prevailing market conditions in the country of provision, (including price, quality, availability, marketability, transportation and other conditions of purchase or sale), with a view to determining, ultimately, whether the goods at issue were provided by the government for less than adequate remuneration").
59 China's First Written Submission, paras 375 – 384.
60 China's First Written Submission, paras 368 – 374.
61 China's First Written Submission, paras 348 – 354.
62 China's First Written Submission, para. 383.
Likewise, China claims that the United States took specific actions against subsidies in violation of Article 32.1 of the *SCM Agreement*. 63

49. The United States argues that there is no explicit legal provision in the WTO agreements which prohibits cumulation of duties in the situation at hand, as Article VI:5 of the *GATT 1994* mentions only export subsidies. 64 Further, the United States points out that Article 15.1 of the *Tokyo Round Subsidies Code* provided for the alternative use of either the *Tokyo Round Subsidies Code* or the *Anti-Dumping Code* in cases where imports from a non-market economy were causing injury. According to the United States, since this provision was not carried forward into the WTO Agreement (and no reference was made to this issue in China's Protocol of Accession), 65 this shows that now both anti-dumping and countervailing duties can be imposed on the same imports. 66 The United States also considers that China's claims under paragraphs 3 and 4 of Article 19 of the *SCM Agreement* ignore that an AD duty cannot be transformed into a CVD, since these are two separate remedies. 67 Finally, the United States considers that there is no presumption that subsidies automatically reduce actual costs *pro rata* or that NME dumping margins do not necessarily capture the full amount of any domestic subsidies bestowed upon the subject merchandise. 68

50. On this issue, the European Communities understands that several arguments can be made in relation to the simultaneous imposition of anti-dumping duties and countervailing duties in cases involving NME countries. The European Communities invites the Panel to interpret the relevant provisions of the covered agreements involved (i.e., the *GATT 1994*, the *Anti-Dumping Agreement* and the *SCM Agreement*) in an harmonious manner, 69 applying the customary rules of interpretation of public international law as required by Article 3.2 of the *DSU*.

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63  China's First Written Submission, paras 385 and 468(h).
64  US First Written Submission, paras 389 – 395.
65  US First Written Submission, paras 410 – 417.
66  US First Written Submission, paras 403 – 409.
67  US First Written Submission, paras 418 – 427.
68  US First Written Submission, paras 448 – 459.
69  Appellate Body Report, *US – Continued Zeroing*, para. 268 ("The principles of interpretation that are set out in Articles 31 and 32 are to be followed in a holistic fashion. The interpretative exercise is engaged so as to yield an interpretation that is harmonious and coherent and fits comfortably in the treaty as a whole so as to render the treaty provision legally effective").
51. At the outset, the European Communities wishes to state that it has no interest in the imposition of remedies beyond what is necessary to remove injury. Indeed, in its own investigations, the European Communities systematically applies the "lesser duty rule" (i.e., limits the duty to an amount required to remove injury) in accordance with Article 9.1 of the Anti-Dumping Agreement and Article 19.2 the SCM Agreement.

52. The European Communities notes that, whilst it is true that the Appellate Body has repeatedly confirmed that the WTO Agreement constitutes a single undertaking, the context of the entire agreements being potentially relevant to the process of interpretation of any particular provision, nevertheless anti-dumping and countervailing duties are two separate remedies to counter two different types of unfair trade practice under two distinct WTO agreements. Under international trade rules, the only provision which expressly limits the right of WTO Members to impose both types of duty is Article VI:5 of GATT 1994, which states:

No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

53. This provision therefore requires the investigating authority to choose between the imposition of a countervailing duty or an anti-dumping duty in cases of the "same situation" of dumping and export subsidisation. Article VI:5 of GATT 1994 does not expressly speak to all situations involving anti-dumping and countervailing investigations. For example, there may be cases where export subsidies have no measurable impact on export price, or have no discernable impact on prices at all.70 Furthermore, Article VI:5 of GATT 1994 does not expressly limit the simultaneous imposition of anti-dumping and countervailing duties in cases of domestic subsidisation.

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70 An export rebate (e.g., a $100 grant per tonne of product export) might reasonably be considered to create the "same situation" of dumping and export subsidisation because of the close nexus between the export sale and the subsidy. In such situations, exporters would reasonably take account of the subsidy when setting the export price. However, an export subsidy such as an income tax exemption contingent upon an enterprise exporting, say, 50% of its output, is not linked to any particular sale. It would arguably not only have an impact on export price. Indeed, the benefit from such a subsidy may not affect prices at all, but could be used, for example, to buy equipment to create new capacity in the firm.
54. In this regard, the European Communities notes China's argument that the countervailing duties imposed by the United States are in breach of Article 19.4 of the *SCM Agreement*. The European Communities is of the view that there can be no breach of Article 19.4 if the duty imposed does not exceed the amount of subsidy properly established under the rules of the *SCM Agreement*; that just because a measure taken under another agreement (in this case, an anti-dumping duty) may be alleged to in some way offset subsidisation does not create a violation of Article 19.4 of the *SCM Agreement*; and that likewise, there can be no violation of Article 32.1 of the *SCM Agreement* if the measure in question is a countervailing duty established in accordance with the relevant provisions.

55. The European Communities further notes certain arguments made by the United States to the effect that the provisions of Article 15 of the *Tokyo Round Subsidies Code* (requiring Members to choose between the imposition of anti-dumping or countervailing measures in the case of NMEs) were not reproduced in the WTO Agreements and that this is highly significant. According to the United States, by choosing not to take up this provision, WTO Members recognised Article VI:5 of the *GATT 1994* to be the only provision which limited the simultaneous imposition of both types of duty. The United States also correctly points out that nothing in China's Accession Protocol expressly limits such simultaneous imposition.

56. The European Communities is also concerned with regard to China's allegation that there is an "inherent" double remedy in cases where normal value is established on the basis of a surrogate country. Leaving aside any countervailing determination, it appears to assume that domestic subsidies will inevitably affect prices, including export prices.

57. The European Communities reserves the right to return to this matter should it elect to do so in its written oral statement.

VI. DUE PROCESS

58. Finally, China makes several claims with respect to the four investigations alleging that the USDOC failed to comply with the due process and procedural requirements of the *SCM Agreement*. In particular, the European Communities
would like to comment on the alleged violation of Articles 13.1 and 12.1.1 of the SCM Agreement resulting from the initiation of investigations into so-called "new subsidy allegations".

A. US Failure to Request Consultations under Article 13.1 of the SCM Agreement

59. China argues that the United States failed to comply with Article 13.1 of the SCM Agreement when, once the investigation had been initiated, it allowed petitioners to include new subsidy allegations not presented in their original petition without inviting China for consultations on those new subsidy allegations. The United States observes that it remained available for consultations in each of the four investigations, as required by Article 13.2 of the SCM Agreement and, thus, China had ample opportunity to avail itself of consultations subsequent to learning of the new subsidy allegations.

60. On this point, the European Communities considers that Article 13.1 of the SCM Agreement establishes a temporal moment where the invitation for consultations must occur: after an application under Article 11 is accepted and before the initiation of the investigation. The specific reference to Article 11 (entitled "Initiation and Subsequent Investigation") of the SCM Agreement would seem to indicate that Article 13.1 deals with the situation where the investigating authority has not yet complied with the substantive requirements mentioned in Article 11 that must be satisfied before an importing Member may initiate a countervailing duty investigation.

61. By contrast, Article 13.2 of the SCM Agreement (which should serve as immediate context) contains the obligation throughout the period of investigation to afford "a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution" (emphasis added). This would seem to indicate that, if investigating authorities find new subsidy schemes in the course of an investigation, they may continue the investigation including the new subsidy allegations provided that due process rights are not

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71 China's First Written Submission, paras 430 – 443.
72 US First Written Submission, paras 464 – 473.
disregarded. In this respect, the obligation for continued consultations with the country concerned throughout the investigations would seem to have an identical objective as the obligation to invite that country for consultations before the initiation of the investigation pursuant to Article 11: to preserve the Member's due process rights by allowing both parties to clarify the factual situation and try to reach a solution. This objective is equally stressed by footnote 44 of the SCM Agreement which states that "no affirmative determination (…) be made without reasonable opportunity for consultations having been given".

62. Moreover, the European Communities notes that the SCM Agreement provides for several deadlines that the investigating authorities must meet which all flow from the date of initiation of the investigation (e.g., the deadline for completing an investigation in Article 11.11; the requirement to release the application to interested exporters in Article 12.1.3; and the timeframes for imposing provisional measures in Article 17.3). Should the term "initiation" in Article 13.1 of the SCM Agreement be interpreted as suggested by China, this could imply that new deadlines and procedural requirements (such as publication of the notice of initiation) would have to be reissued. This could result in predictability for other interested parties being affected.

63. However, in addition to the explicit legal requirements, the European Communities believes that it is desirable and reasonable for investigating authorities, provided that deadlines permit, to invite the government of the exporting country for consultations on a new alleged subsidy (not included in the original complaint) before requesting substantive information from the government and exporters on the subsidy concerned. Such a procedure may be helpful to clarify issues relating to the subsidy and may help avoid unnecessary and burdensome questionnaires being sent out to parties.

B. US Failure to Issue New Questionnaires

64. China also claims that the USDOC failed to comply with Article 12.1.1 of the SCM Agreement by refusing to give China and the respondent producers at least 30 days to respond to all questionnaires issued in the investigations at issue,
including questionnaires issued in response to new subsidy allegations. The United States considers that not every request for information would constitute the "questionnaire" for which a minimum of thirty days must be provided for reply under Article 12.1.1. According to the United States, the obligation in Article 12.1.1 to provide thirty days for reply applies to the questionnaire issued at the outset of an investigation and not to every subsequent request for information by the investigating authority.

65. In this respect, the European Communities considers that the interpretation of Article 12.1.1 of the SCM Agreement should be read in light of the chapeau provided by Article 12.1. This provision states that:

Interested Members and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

66. In interpreting the requirement to provide "ample opportunity" in the mirroring provision to Article 12.1 of the SCM Agreement in the Anti-Dumping Agreement (i.e., Article 6.1), the Appellate Body has highlighted that interested parties must be afforded ample opportunities for presentation of evidence and defence of their interests. Nevertheless, the Appellate Body also noted that such provision does not provide for "indefinite" rights, so as to enable respondents to submit relevant evidence, attend hearings or participate in the inquiry as and when they choose. In this sense, the panel in US – OCTG Sunset Reviews (21.5) pointed out that:

[T]he investigating authorities [should] allow adequate opportunities to interested parties for the submission of evidence that they deem relevant for their case and for the defence of their interests in investigations and reviews, while keeping in mind that these rights should not preclude the authorities from concluding investigations and reviews in a timely manner.

67. Similarly, when interpreting Article 6.1 of the Anti-Dumping Agreement, the panel in Guatemala – Cement II observed that.

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73 China's First Written Submission, paras 444 – 457.
74 US First Written Submission, paras 476 – 480.
What counts is whether, in practice, sufficient opportunity was provided, not whether time limits for the submission of evidence were set.

68. Consequently, the European Communities considers that Article 12.1 of the SCM Agreement calls for an adequate balance between the rights given to interested parties (which should be given ample opportunities to provide the necessary evidence) on the one hand, and the obligation for the authorities to conclude investigations in a timely manner, on the other hand. Such analysis should be made on a case by case basis and on reasonable grounds. Indeed, for example suppose that an investigation was initiated with respect to ten subsidy schemes. It would seem reasonable that the addition of one additional subsidy scheme at a later stage of the proceeding requiring modest amounts of information from interested parties would not, in the EC view, necessarily trigger the 30 days requirement in Article 12.1, although investigating authorities should be as generous as possible, consistent with the timeline of the investigation. In contrast, if an investigation has been initiated with respect to one subsidy scheme and in the course of the investigation ten new and complex subsidy schemes requiring significant amounts of information from interested parties are added, this would require that interested parties are given sufficient time to reply to the new questionnaires. This latter example illustrates the problem of adding significant numbers of new subsidy allegations after an investigation has been initiated and underlines the desirability of holding consultations on such alleged subsidies before sending out requests for information.

69. In sum, the European Communities considers that deadlines to reply to questions asked by the investigating authorities should be proportionate to the amount and complexity of the information requested.

VII. CONCLUSIONS

70. The European Communities considers that this case raises important questions on the interpretation of the covered agreements, and in particular Articles 1 and 2 of

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78 In addition, investigating authorities should avoid expanding their original request for information by means of supplementary questionnaires, unless such requests are reasonable and sufficient time is given for a reply.
the SCM Agreement. While not taking a final position on the merits of the case, the European Communities requests this Panel to carefully review the scope of the claims in light of the observations made in this submission. The European Communities reserves its right to make further comments at the third party session of the first substantive meeting with the Panel.