



OTTAWA, February 22, 2008

STATEMENT OF REASONS

Concerning the making of final determinations of dumping and subsidizing of

**CERTAIN SEAMLESS CARBON OR
ALLOY STEEL OIL AND GAS WELL CASING
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC
OF CHINA**

DECISION

On February 7, 2008, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made final determinations of dumping and subsidizing, respecting certain seamless carbon or alloy steel oil and gas well casing, whether plain end, beveled, threaded or threaded and coupled, heat-treated or non-heat-treated, meeting American Petroleum Institute (API) specification 5CT, with an outside diameter not exceeding 11.75 inches (298.5 mm), in all grades, including proprietary grades, originating in or exported from the People's Republic of China.

Cet énoncé des motifs est également disponible en français. Veuillez vous reporter à la section "Information".

This *Statement of Reasons* is also available in French. Please refer to the "Information" section.

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SUMMARY OF EVENTS

[1] Dumping and subsidy investigations were initiated in response to a complaint filed with the Canada Border Services Agency (CBSA) by TenarisAlgomaTubes Inc. (TAT) of Calgary, Alberta on June 22, 2007. The complainant provided evidence that certain seamless carbon or alloy steel oil and gas well casing (hereafter “seamless steel casing”) originating in or exported from the People’s Republic of China (China) had been dumped and subsidized and that the dumping and subsidizing had caused injury to TAT. The complaint also alleged that conditions of section 20 of the *Special Import Measures Act* (SIMA) existed in the steel oil and country tubular goods (OCTG) sector in China.

[2] On July 13, 2007, the CBSA informed TAT that the complaint was properly documented and notified the Government of China (GOC) that a complaint had been filed with the CBSA. At that time, the GOC was also provided with the non-confidential version of the subsidy portion of the complaint.

[3] On August 13, 2007, the CBSA initiated investigations into the alleged injurious dumping and subsidizing of certain seamless steel casing originating in or exported from China. On the basis of the information available, the CBSA also concluded that there was sufficient evidence to initiate a section 20 inquiry concurrently with the dumping and subsidy investigations to examine the degree of Chinese government involvement in the steel OCTG industry sector and the related impact on pricing.

[4] On August 14, 2007, upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) started a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of seamless steel casing from China have caused injury or retardation or are threatening to cause injury. On October 12, 2007, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of seamless steel casing have caused injury.

[5] On November 9, 2007, pursuant to subsection 38(1) of SIMA, the President of the CBSA (President) made preliminary determinations of dumping and subsidizing with respect to certain seamless steel casing originating in or exported from China.

[6] The CBSA continued its investigations and, on the basis of the results, the President is satisfied that seamless steel casing originating in or exported from China has been dumped and subsidized and that the margins of dumping and the amounts of subsidy are not insignificant. Consequently, on February 7, 2008, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[7] The Tribunal’s inquiry into the question of injury to the Canadian industry is continuing. Provisional duty will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal will issue its finding by March 10, 2008.

PERIOD OF INVESTIGATION

[8] The period of investigation, with respect to dumping (Dumping POI), covered all subject goods released into Canada from July 1, 2006 to June 30, 2007.

[9] The period of investigation, with respect to subsidizing (Subsidy POI), covered the period of January 1, 2006 to June 30, 2007.

INTERESTED PARTIES

Complainant

[10] The complainant, TAT, is the only known producer of like seamless steel casing in Canada, constituting 100% of the domestic industry for this product. TAT's production facilities are located in Sault Ste. Marie, Ontario, and its headquarters are located in Calgary, Alberta. TAT is part of Tenaris, a leading global manufacturer of seamless pipe products and provider of pipe handling, stocking, and distribution services to the oil and gas, energy, mechanical and automotive industries.

Exporters

[11] At the initiation of the investigations, the CBSA had identified 37 potential exporters of seamless steel casing based on a review of Customs import documentation and information provided in the complaint submitted by TAT. This included 13 companies located in the U.S. and other jurisdictions that participated in the export of the goods originating in China (i.e. vendors, trading companies, etc.). Information collected during the course of the investigations confirmed that there are 16 exporters of the goods to Canada along with four other companies that participated in the export of the goods as vendors and trading companies.

[12] At initiation, the CBSA sent a Request for Information (RFI) for dumping and a subsidy RFI to each of the identified potential exporters of the goods.

[13] As part of the CBSA's section 20 inquiry, the CBSA also sent a section 20 RFI to each of the identified potential exporters and producers of the goods.

[14] Six exporters in China that accounted for approximately 88% of the exports of seamless steel casing to Canada provided a response to the dumping, subsidy and section 20 RFIs.

[15] Subsequent to the preliminary determinations of dumping and subsidizing, one of the six exporters, Tianjin Tubular Goods Machining Co. Ltd. (TTGM) indicated that it was no longer interested in participating in the investigations and withdrew from the proceedings before the scheduled on-site verification. Despite TTGM's withdrawal, five Chinese exporters cooperated in the CBSA's final stage of the investigations including participating in on-site verifications and/or responding to CBSA's requests for additional information as part of a desk audit verification.

[16] The five cooperating Chinese exporters are:

- Dalipal Pipe Company
- Heng Yang Steel Tube Group Int'l Trading Inc.
- Shandong Molong Petroleum Machinery Co. Ltd.
- Tianjin Pipe Corporation
- Wuxi Seamless Oil Pipe Co. Ltd.

Other Companies

[17] At the time of the initiation of the investigations, two companies which participated in the export of the goods also provided a response to the CBSA's dumping RFI.

- Energy Alloys, LLC (Houston, United States)
- MC Tubular Products Inc. (Houston, United States)

Importers

[18] At the initiation of the investigations, the CBSA identified 30 potential importers of seamless steel casing based on a review of Customs import documentation and information provided in the complaint submitted by TAT.

[19] The CBSA sent an importer RFI to all potential importers of the goods. It was confirmed during the course of the investigations that 16 companies acted as importers of the goods. Seven importers provided a response to the CBSA's RFI.

Government of China

[20] At the initiation of the investigations, the CBSA sent both a subsidy RFI and a section 20 RFI to the GOC. The GOC provided a submission in response to the section 20 RFI. It also provided a response to the subsidy RFI with respect to cooperative exporters only.

Surrogate Countries

[21] As part of the CBSA's section 20 inquiry, an RFI was also sent to known producers in other countries which are not subject to the present dumping investigation, namely Japan, India, Russia and the United States of America. Only one response was provided by NKK Tubes of Japan, a company registered in Japan and a manufacturer of seamless pipe including the seamless steel casing products subject to this investigation.

PRODUCT DEFINITION

[22] For the purpose of this investigation, the subject goods are defined as:

Seamless carbon or alloy steel oil and gas well casing, whether plain end, beveled, threaded or threaded and coupled, heat-treated or non-heat-treated, meeting American Petroleum Institute (API) specification 5CT, with an outside diameter not exceeding 11.75 inches (298.5 mm), in all grades, including proprietary grades, originating in or exported from the People's Republic of China.

Additional Product Information

[23] Seamless steel casing falls within a category of products commonly referred to as oil country tubular goods ("OCTG"), which include drill pipe, casing and tubing. These OCTG goods are used in the drilling of oil and gas wells and to convey these products to the surface. Casing is used to prevent the walls of the bored hole from collapsing, both during drilling and after the well has been completed.

[24] Casing must be able to withstand outside pressure and internal yield pressures within the well. Also, it must have sufficient joint strength to hold its own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined. The manufacturer or a local threading operation may perform threading. Various factors limit the total amount of open hole that can be drilled at any one time, and it may be necessary to set more than one string of casing concentrically for certain portions of the well depth.

Production Process

[25] Producers manufacture seamless steel casing in the same general manner. The process begins with the formation of a central cavity in a solid steel billet (shell). The shell is then rolled on a retained mandrel and reduced in a stretch reduction mill to produce the finished size before cooling on a walking beam cooling bed.¹ The tube rounds are inspected and then cut into the required billet lengths according to the casing size to be produced. Different steel chemistries are used for different casing grades. The final stage of the process involves end finishing according to customer requirements. These can be plain end, beveled or threaded. Finished casing is given a final

¹ Narrative Complaint, "Seamless vs. Welded" Part 2.1.

inspection in which size, wall thickness, concentricity, straightness and surface quality are checked. If necessary, couplings are applied and torqued. The final processing steps involve the application of end protectors and a protective coating. Beveling and threading both ends finish the casing. A coupling and a coupling protector are applied to one end of the casing and a thread protector to the other end before the casing is ready for shipment.

[26] Seamless steel casing is of higher quality than welded products due to the manufacturing process difference whereby seamless steel casing does not have corrosion weakness in the weld which significantly reduces the possibility of a body failure in the well. In practice, welded products are not generally substitutable for seamless products where seamless products are required due to their quality and reliability.

Classification of Imports

[27] Seamless steel casing is typically classified under the Harmonized System (HS) Heading 7304, under the following HS Codes:

HS 73.04	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel.
HS 7304.29.00.11	Casing of an external diameter exceeding 114.3 mm (4.5 inches) but not exceeding 177.8 mm (7 inches): - Of an API grade H-40, J-55, K-55 or equivalent proprietary specification
HS 7304.29.00.19	Casing of an external diameter exceeding 114.3 mm (4.5 inches) but not exceeding 177.8 mm (7 inches): - Other
HS 7304.29.00.21	Casing of an external diameter exceeding 177.8 mm (7 inches) but not exceeding 298.5 mm (11.75 inches): - Of an API grade H-40, J-55, K-55 or equivalent proprietary specification"
HS 7304.29.00.29	Casing of an external diameter exceeding 177.8 mm (7 inches) but not exceeding 298.5 mm (11.75 inches): - Other

CANADIAN INDUSTRY

[28] TAT is the only known domestic producer supplying seamless steel casing to the Canadian industry and thus accounts for 100% of the entire domestic production of like goods. TAT employs over 550 employees and has a production capacity of 250,000 tonnes per year. Based on the latest

full year data available for 2006, TAT supplied 36% of the estimated Canadian market for seamless steel casing.

IMPORTS INTO CANADA

[29] During the final phase of the investigations, the CBSA made minor adjustments to its estimates of the volume of imports to account for updated information from its internal Customs Commercial Systems, Customs import entry documentation and information received from exporters, importers and other parties.

[30] The CBSA's revised data regarding imports of certain seamless steel casing are presented in the following table:

Imports of Certain Seamless Steel Casing (July 1, 2006 to June 30, 2007)

Imports into Canada	% of Total Imports
Imports China	33.8%
Imports USA	15.9%
Imports – Other Tenaris Co's in Argentina and Mexico	31.4%
Imports – Other countries	18.9%
Total Imports	100%

INVESTIGATION PROCESS

[31] Regarding the dumping investigation, information was requested from known and possible exporters, vendors and importers, concerning shipments of seamless steel casing released into Canada during the Dumping POI of July 1, 2006 to June 30, 2007. For purposes of the subsidy investigation, information related to potential actionable subsidies was requested from known and possible exporters and the GOC concerning financial contributions made to exporters of seamless steel casing of Chinese origin imported into Canada during the Subsidy POI of January 1, 2006 to June 30, 2007.

[32] At initiation, the CBSA began a section 20 inquiry as there was sufficient evidence that domestic prices of the goods under investigation are substantially determined by the GOC and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Exporters and potential producers of the goods along with the GOC were requested to respond to the section 20 RFI for the purposes of this inquiry.

[33] On November 9, 2007, the President made preliminary determinations of dumping and subsidizing respecting certain seamless steel casing from China. This included an opinion that the conditions of section 20 exist in this industry sector in China.

[34] As part of the final stage of these investigations and the related section 20 inquiry, the CBSA scheduled on-site verification meetings in China with central GOC representatives, various local levels of government, as well as meetings with selected Chinese exporters, to discuss, review and verify information relating to the dumping and subsidy investigations, including the CBSA's section 20 inquiry.

[35] Scheduled on-site verification meetings were completed with the following exporters: Heng Yang Steel Tube Group Int'l Trading Inc., Tianjin Pipe Corporation and Wuxi Seamless Oil Pipe Co. Ltd. Verification meetings were also held with various local levels of government including representatives of the provincial governments in the cities of Changsha, Nanjing and Tianjin City. CBSA Officers also met with representatives of various departments of the central government of China in Beijing to review the GOC response to the subsidy and section 20 RFI.

[36] One day prior to the scheduled verification meetings with TTGM, the CBSA was informed by the GOC, and later received written notice from TTGM, that the company had withdrawn from the on-site verification. No explanation was provided by the company regarding its decision to withdraw from the scheduled meetings and related proceedings. Therefore, it is considered to be non-cooperative for purposes of the final stage of these investigations.

[37] At initiation, the CBSA identified 26 potential subsidy programs. During the course of the investigation, the CBSA identified and requested information regarding an additional 11 potential subsidy programs.

[38] For purposes of the final determination, the CBSA has determined that 10 programs conferred benefits and that each of the five cooperating exporters benefited from one or more of these 10 programs during the Subsidy POI.

[39] As part of the final stage of the investigations, case briefs and reply submissions were provided by the legal representatives of the following three Chinese exporters: Heng Yang Steel Tube Group Int'l Trading Inc., Tianjin Pipe Corporation and Wuxi Seamless Oil Pipe Co. Ltd. Case briefs and reply submissions were also provided by counsel for the GOC and the complainant, TAT.

PROCEDURAL ISSUES

[40] Following the close of record, counsel for the complainant requested in a letter dated January 8, 2008, that information not previously available prior to the close of record be added to the administrative record on the basis of its relevance and materiality to the CBSA's section 20 inquiry.

[41] Generally, the CBSA will only consider information submitted after the closing of the record in certain exceptional circumstances. After due consideration, the CBSA denied the request and informed counsel of this decision on January 16, 2008. In brief, the CBSA noted the absence of sufficient details concerning the source and timing of the information, a consideration which the CBSA believed would also prevent other parties from providing substantive comments. In addition, the CBSA noted that the administrative record already contained information on the issue. Lastly, given the limited time until the date of the final determination, even if the preceding deficiencies

were remedied, the CBSA is of the opinion that there remained insufficient time to distribute the newly accepted information, to allow for comments on the new information, or for the CBSA to properly consider that information and comments for purposes of the final determination.

DUMPING INVESTIGATION

Section 20 Inquiry

[42] Section 20 is a provision under SIMA that may be applied to determine the normal value of goods in an anti-dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA,² it is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

[43] At the initiation of the investigation, the CBSA concluded, on the basis of the information available, that there was sufficient evidence to initiate a section 20 inquiry in respect of the steel OCTG sector in China. As part of this inquiry, the CBSA sent section 20 questionnaires to all known exporters and producers of seamless steel casing in China as well as to the GOC requesting detailed information related to the steel sector and, more specifically, the OCTG steel sector in China.

[44] In response, the CBSA received submissions from six exporters and the GOC. In addition, the CBSA obtained information from both the complainant and secondary sources including previous CBSA reports, market intelligence reports, public industry reports, academic studies, newspaper and internet articles as well as government documents such as the “China Iron and Steel Industrial Development Policy” (National Steel Policy) issued formally by the GOC in 2005. This information was placed on the record for the anti-dumping investigation.

[45] In brief, the CBSA considered the cumulative effect that the GOC’s administrative, regulatory, tax and other measures have exerted on the Chinese steel industry including the steel OCTG sector. The information indicated that the wide range and material nature of the GOC measures, including measures arising from the GOC’s National Steel Policy, have had a considerable impact on the steel industry, including the steel OCTG sector, through means other than competitive market forces.

[46] Accordingly, for purposes of the preliminary determination of dumping, the President formed the opinion that domestic prices in the steel OCTG sector are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

² China is a prescribed country under SIM Regulation 17.1.

[47] The CBSA continued with its section 20 inquiry as part of the final stage of this investigation including on-site verification meetings with the GOC and various local levels of government, industry representatives and three cooperating Chinese exporters.

[48] Taking together all the information obtained during the course of its section 20 inquiry, including verified information from the on-site meetings in China, the President has reaffirmed the opinion made at the preliminary determination that domestic prices in the steel OCTG sector are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[49] In summary, the CBSA has noted that there is extensive state ownership throughout the steel OCTG industry sector in China. Furthermore, the CBSA has determined that the macro-economic influence of the GOC, as administered through its National Steel Policy and related government initiatives, has resulted in a domestic market where government policy objectives and actions compete and conflict with commercial interests.

[50] Similarly, there is evidence that Chinese domestic market prices are different from other world markets and these price differences are attributable to the GOC's involvement in the steel OCTG sector in China. Specifically, there is evidence that GOC state ownership, influence and macro-economic policies has resulted in non-competitive market practices within the industry which has caused lower domestic selling prices in China when compared with prices from other international markets.

[51] Appendix 4 provides a summary of the findings considered by the President in reaffirming this section 20 opinion.

Normal Value

Exporters of goods located in China

[52] Normal values are generally based on the domestic selling price of the goods in the country of export or on the full cost of the goods including administrative, selling and all other costs plus a reasonable amount for profits.

[53] For purposes of the final determination of dumping, the CBSA has determined that normal values could not be determined on the basis of domestic selling prices in China or on the full cost of goods plus profit, as the CBSA has reaffirmed its preliminary determination decision that the conditions of section 20 exist in the steel OCTG sector.

[54] Where section 20 conditions exist, the CBSA determines normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President, pursuant to SIMA paragraph 20(1)(c). However, only one surrogate producer, NKK Tubes of Japan, provided domestic pricing and costing information relating to the goods under investigation. The CBSA usually uses information from more than one surrogate company in order

to protect commercially sensitive information and to ensure a sufficient representation of industry pricing and costing practices. Such information was not provided in this investigation.

[55] Alternatively, normal values may be determined on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the President, pursuant to paragraph 20(1)(d) of SIMA. However, this option was not considered as it was deemed that to be able to compete on the Canadian market, exporters from other countries would need to match the prevailing alleged dumped prices from China; therefore, the requirements of paragraph 20(2)(b) could not be fulfilled. Consequently, no information was obtained for application of paragraph 20(1)(d).

[56] While the CBSA does not have available sufficient pricing, costing or import data relating to a surrogate country under paragraph 20(1)(c) or 20(1)(d) of SIMA, it does have market pricing information for certain seamless steel casing as reported in an authoritative industry trade publication, the Metal Bulletin Research Seamless Steel Tube and Pipe Monthly (MBR).

[57] Market pricing data is commonly reported for seamless steel casing products based on the steel grade. Grades J55/K55 and N80 represent common industry grades of seamless steel casing and MBR's market reports provide monthly pricing information for these specific grades, expressed in U.S. dollars per metric tonne, for the major regions of the world.

[58] These same grades accounted for approximately 33% of the total volume of exports to Canada from the five cooperating exporters. These five exporters accounted for 57% of the total volume of certain seamless steel casing shipped to Canada during the Dumping POI.

[59] Therefore, for the five exporters who cooperated with the CBSA during the investigation, normal values have been determined based on a ministerial specification, pursuant to section 29 of SIMA, on the basis of the average MBR pricing for those grades for all regions of the world excluding China.

[60] Specifically, individual monthly normal values for seamless steel casing grades J55/K55 (the MBR provides just one monthly selling price for both grades) and N80 were determined for each month during the Dumping POI using a simple average of reported MBR selling prices for Japan, Eastern and Western Europe, the Middle East and the USA.

[61] These monthly normal values, corresponding to the month of sale of the goods exported to Canada, were compared to the export prices of the seamless steel casing shipped to Canada during the Dumping POI for purposes of determining each cooperative exporter's margin of dumping for the three grades in question. Where the month of sale of the goods shipped to Canada by a cooperative exporter preceded the Dumping POI, then the monthly normal value corresponding to the month of invoicing of the goods exported to Canada was used. Both normal value and export price were subsequently converted into Canadian dollars, based on currency exchange rate data from the Bank of Canada, using the date of sale of the goods shipped to Canada.

[62] In instances where a cooperative exporter also shipped other grades of certain seamless steel casing for which pricing data is not reported in the MBR, the normal value was specified under section 29 of SIMA based on the export price of the goods plus an advance equal to the aggregate margin of dumping determined for the exporter on shipments of grades J55/K55 and N80.

[63] Two cooperative exporters shipped grades of seamless steel casing during the Dumping POI for which no matching grade or related MBR pricing data was available. Accordingly, for these two exporters, the normal value was specified under section 29 of SIMA based on the export price plus an advance equal to the aggregate weighted average margin of dumping found for the other three cooperative exporters that shipped grades for which information was available (i.e. J55/K55 and N80).

[64] For exporters which declined to provide information in response to the CBSA's dumping RFI or declined to participate in verification (non-cooperative exporters), the normal values and related margins of dumping were specified under section 29 of SIMA using the highest transaction margin of dumping (91%), expressed as a percentage of export price, as determined for cooperative exporters.

Other Exporters of Subject Goods Originating in China

[65] As noted earlier, a number of the sales to Canada involved companies located in the U.S. and other jurisdictions that participated in the export of the goods originating in China (i.e. vendors, trading companies, etc.). This included two U.S. based companies, Energy Alloys, LLC, (Houston) and MC Tubular Products Inc. (Houston) which provided a response to the CBSA's dumping RFI.

[66] Based on available information, almost all of the export sales to Canada during the Dumping POI involving such intermediaries were shipped directly to Canada from China. In these instances, the exporter of the goods was usually the manufacturer of the goods as these companies knowingly released the goods for direct shipment to Canada. This included sales to Canada involving MC Tubular Products. On all such sales, the Chinese manufacturer is considered to be the exporter of the goods and MC Tubular Products is considered to be a vendor/intermediary.

[67] Regarding export sales involving Energy Alloys of Houston, Texas, the information provided by the company indicates that the goods purchased from a cooperative exporter in China were imported into the United States and subsequently shipped by Energy Alloys to Canada. During the Dumping POI, such shipments by Energy Alloys to Canada represented a very small tonnage amount. Energy Alloys is considered to be the exporter of the goods on these shipments.

[68] In these circumstances, subsection 30(2) of SIMA was used to determine the normal value including an examination of normal value in both the country of origin and the country of export. The normal value for the country of origin (China) was calculated using the ministerial specification under section 29 based on an export price advance of 45%. This advance over export price represents the weighted average margin of dumping for all cooperative Chinese exporters. The resulting normal value is higher than the normal value determined in the country of export (United States) calculated pursuant to section 19 of SIMA based on the total cost of the goods plus

profit. Accordingly, normal value was determined for Energy Alloys based on the normal value calculation using the country of origin of the goods.

Export Price

[69] The export price of goods sold to importers in Canada is generally calculated pursuant to section 24 of SIMA based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

[70] For purposes of the final determination, export prices for the five cooperative Chinese exporters and the one U.S. exporter were determined using export pricing data provided by the exporters of the goods. For non-cooperative exporters, import pricing information available from Canada Customs' internal information systems was used for purposes of determining export price.

Results of Dumping Investigation

[71] The CBSA determined margins of dumping by comparing normal values with the export prices. When the export price is less than the normal value, the difference is the margin of dumping.

[72] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter has been determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e. 100%) is considered dumped. Similarly, where a given exporter's net aggregate dumping results are zero, then the total quantity of exports deemed to be dumped by that exporter is zero.

[73] In calculating the weighted average margin of dumping, the overall margins of dumping found in respect of each exporter were weighted according to each exporter's volume of seamless steel casing exported to Canada during the Dumping POI.

[74] Based on the preceding, 100% of the seamless steel casing from China were dumped by a weighted average margin of dumping of 62%, as a percentage of export price.

[75] Under Article 15 of the WTO *Anti-dumping Agreement*, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possibilities of constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As China is listed on the Development Assistance Committee (DAC) *List of Official Development Assistance (ODA) Aid Recipients*³

³ OECD, *Development Assistance Committee List of Aid Recipients – As at 1 January 2006*, online: <http://www.oecd.org/dataoecd/23/34/37954893.pdf>

maintained by the Organization for Economic Co-operation and Development (OECD), the President recognizes China as a developing country for purposes of actions taken pursuant to SIMA.

[76] Accordingly, the obligation under Article 15 of the WTO Anti-dumping Agreement was met by providing the opportunity for exporters to submit price undertakings. In this particular investigation, the CBSA did not receive any proposals for undertakings from any of the identified exporters.

Dumping Results by Exporter

[77] Specific details relating to each of the exporters that cooperated in the CBSA's dumping investigation are as follows:

Dalipal Pipe Company, Hebei Province (Dalipal)

[78] Dalipal submitted its exporter RFI response on September 26, 2007, and provided additional supplementary and supporting information in response to a series of follow-up information requests from the CBSA. Dalipal is a privately owned company operating at one facility located in the Hebei province. The company identified itself as an end finisher of the goods as it purchases semi-finished steel pipe and processes it into seamless steel casing.

[79] This company made two direct shipments to a Canadian distributor during the Dumping POI and no third parties are involved in these sales. Export selling price data, including applicable export price adjustments provided by Dalipal in its RFI submissions, was used as the basis for determining export price under section 24 of SIMA for purposes of the final determination.

Margin of Dumping

[80] The total normal value was compared with the total export price for all seamless steel casing imported into Canada during the Dumping POI. It was found that all of the goods exported by Dalipal were dumped by a weighted average margin of dumping of 45%, expressed as a percentage of export price.

Heng Yang Steel Tube Group Int'l Trading Inc., Hunan Province (Heng Yang)

[81] The company submitted its exporter RFI response to the CBSA on September 26, 2007. On-site verification of the company's submission took place during the week of November 19, 2007. Heng Yang is a multi-subsidary integrated steel billet producer and manufacturer of seamless steel casing.

[82] All export sales to Canada during the Dumping POI involved one international steel trading company. In all instances, the goods were knowingly released for direct shipment to Canada by Heng Yang. Accordingly, Heng Yang is the exporter of the goods. Export selling price data, including applicable export price adjustments provided by Heng Yang in its RFI submissions, was

used as the basis for determining export price under section 24 of SIMA for purposes of the final determination.

Margin of Dumping

[83] The total normal value was compared with the total export price for all seamless steel casing imported into Canada during the Dumping POI. It was found that all of the goods exported by Heng Yang were dumped by a weighted average margin of dumping of 45%, expressed as a percentage of export price.

Shandong Molong Petroleum Machinery Co. Ltd., Shandong Province (Shandong Molong)

[84] Shandong Molong submitted its exporter RFI response on September 26, 2007, and provided additional supplementary and supporting information in response to a series of follow-up information requests from the CBSA. Shandong Molong is a producer of the goods and is a joint stock limited company that was officially listed on the Hong Kong Exchange in 2004.

[85] All export sales to Canada during the Dumping POI involved one international steel trading company. In all instances, the goods were knowingly released for direct shipment to Canada by Shandong Molong. Accordingly, Shandong Molong is the exporter of the goods. Export selling price data, including applicable export price adjustments provided by Shandong Molong in its RFI submissions, was used as the basis for determining export prices under section 24 of SIMA for purposes of the final determination

Margin of Dumping

[86] The total normal value was compared with the total export price for all seamless steel casing imported into Canada during the Dumping POI. It was found that all of the goods exported by Shandong Molong were dumped by a weighted average margin of dumping of 61%, expressed as a percentage of export price.

Tianjin Pipe Corporation, Tianjin (TPCO)

[87] TPCO submitted its exporter RFI response on September 26, 2007. On-site verification of the company's submission took place during the week of November 12, 2007. TPCO is a state owned enterprise and a joint stock company, established in 1989. It is a fully integrated manufacturer of seamless steel casing.

[88] Exports to Canada during the Dumping POI were all made to two importers. One international based third party is involved in some of these export sales. However, in all instances, the goods were knowingly released for direct shipment to Canada by TPCO. Accordingly, TPCO is the exporter of the goods. Export selling price data, including applicable export price adjustments provided by TPCO in its RFI submissions, was used as the basis for determining export prices under section 24 of SIMA for purposes of the final determination.

Margin of Dumping

[89] The total normal value was compared with the total export price for all seamless steel casing imported into Canada during the Dumping POI. It was found that all of the goods exported by TPCO were dumped by a weighted average margin of dumping of 37%, expressed as a percentage of export price.

Wuxi Seamless Oil Pipe Co. Ltd., Jiangsu Province (WSP)

[90] The WSP submission was received on September 26, 2007. On-site verification of the company's submission took place during the week of November 19, 2007. WSP is a privately held, foreign invested enterprise (FIE) that was founded in 1999. Besides producing seamless steel casing, the company also produces other OCTG products.

[91] During the Dumping POI, WSP exported goods to four importers in Canada. No third parties are involved in these export sales. In one instance, there was an importation by a company related to WSP. This importation represented less than 4% of WSP's total volume of goods exported to Canada and represents a one-time transaction.

[92] Regarding this related party importation, the CBSA further examined this sale to determine if the export price as determined pursuant to section 24 was reliable. This included an examination of the related importer's re-sale price in Canada and related profit margins. Taking this information into consideration, the CBSA is satisfied that the section 24 export price between WSP and this importer is reliable.

[93] Accordingly, for this and all other exports to Canada, export price has been calculated pursuant to section 24 for purposes of the final determination, using WSP export pricing data provided in its RFI submission, including applicable export price adjustments.

Margin of Dumping

[94] The total normal value was compared with the total export price for all seamless steel casing imported into Canada during the Dumping POI. It was found that all of the goods exported by WSP were dumped by a weighted average margin of dumping of 51%, expressed as a percentage of export price.

Non-Cooperative Exporters

[95] For all non-cooperative exporters, normal values for the final determination were specified under section 29 of SIMA using the highest transaction margin of dumping (91%), expressed as a percentage of export price, as determined for cooperative exporters. Import pricing information available from Canada Customs' internal information systems was used for purposes of determining export price.

Summary – Dumping

Country	Dumped Goods as Percentage of Country Imports	Weighted Average Margin of Dumping as a Percentage of Total Imports	Country Imports as a Percentage of Total Imports	Dumped Goods as a Percentage of Total Imports
China	100%	62%	34%	34%

[96] In making a final determination of dumping in relation to goods imported from a country in the investigation, the President must be satisfied that the subject goods have been dumped and that the margin of dumping is not insignificant. Subsection 2(1) of SIMA defines insignificant as being less than 2% of the export price of the goods. The table above indicates that the margin of dumping is not insignificant.

[97] For purposes of the preliminary determination of dumping, the President has responsibility for determining whether the actual or potential volume of dumped goods is negligible. After a preliminary determination of dumping, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its injury inquiry in respect of any goods if the Tribunal determines that the volume of dumped goods from a country is negligible.

[98] Details regarding the margins of dumping determined by exporter and country are provided in Appendix 1.

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

[99] Representations with respect to the dumping investigation, including case arguments, were received on behalf of the complainant, the GOC, WSP, Heng Yang and TPCO.

[100] The GOC, TPCO and Heng Yang also provided reply submissions in response to the case arguments received from other parties. In the section below, listed by topic, are details of the representations. Since there were a number of common positions from multiple parties, the CBSA may make specific reference to only one or two parties when documenting the issue raised. Following each argument below is a response explaining the position of the CBSA.

[101] A number of parties also raised objections to the CBSA's initiation of these investigations, culminating with the preliminary determinations on November 9, 2007.⁴ Given that the CBSA's final determinations supersedes any decision made at the preliminary determinations stage of the investigations, the CBSA will only address issues raised within the context of the preliminary determinations to the extent that these issues carry relevance for the final determinations.

⁴ Exhibit 144 – Letter from WSP Regarding Section 20.

1. There is Insufficient Evidence to Support the Application of Section 20 and the Evidence on the Record Discloses that Steel Prices in China are Directed by the ‘Market’

[102] In their case arguments, the GOC submitted that this section 20 investigation was improperly initiated and there is insufficient evidence to support the application of section 20. To this end, the GOC claimed that the OCTG sector is operating on the basis of market principles.⁵

[103] Further on the issue of section 20, the GOC submitted that the evidence relied on by the CBSA was not sufficient to meet the section 20 evidentiary thresholds and that the factors used by the CBSA in its section 20 investigation are too broad to make an appropriate assessment as to whether the government is determining pricing.⁶

[104] The GOC also stated that there is a requirement for a strict interpretation of section 20 which, it asserted, is an exception from general practice. The GOC added that the burden of proof, with respect to the application of section 20, lies with those parties seeking a departure from normal policy.⁷

[105] The GOC also provided a wide range of specific comments regarding the evidence and information used by the CBSA in forming its section 20 opinion at the preliminary determination including the CBSA’s interpretation of the National Steel Policy.⁸ Lastly, the GOC provided several pages of articles and pricing analyses which, it contended, demonstrate that the Chinese OCTG sector operates under competitive market conditions.⁹

[106] Other parties, including WSP, expressed similar concerns regarding the quality of evidence relied upon by the CBSA, questioning its reliability, and characterizing it as speculative in nature.¹⁰

[107] Counsel for TAT provided opposing arguments concerning the application of section 20 of SIMA in this proceeding. TAT claimed that the GOC participates actively in all aspects of the seamless steel casing market, including exercising ownership or control over companies involved in the production and sale of the goods. Similarly, counsel for TAT claimed that the extent of Chinese state ownership in this sector alters price determination at every stage of production and that this can be seen in Chinese market prices which are substantially below market prices elsewhere in the world.¹¹

⁵ Exhibit 225 (PRO) – GOC Case Brief (section 20).

⁶ Exhibit 255 (PRO) – GOC Case Brief (section 20), pages 4-11.

⁷ Exhibit 225 (PRO) – GOC Case Brief (section 20), pages 11-13.

⁸ Exhibit 225 (PRO) – GOC Case Brief (section 20), pages 14-32.

⁹ Exhibit 225 (PRO) – GOC Case Brief (section 20), pages 33-34 and attached Exhibits.

¹⁰ Exhibit 138 – GOC Preliminary Comments, page 2; Exhibit 144 – Letter from WSP Regarding Section 20, Paragraph 62-66.

¹¹ Exhibit 229 – TAT Case Brief, Paragraphs 4, 9-10.

CBSA Response:

[108] The CBSA is satisfied that, based on information collected during the course of the investigation including that obtained and verified during the final stage of the dumping investigation, the GOC is exerting significant influence on the steel OCTG sector and related pricing practices, through means other than market forces.

[109] Regarding arguments concerning the interpretation of the section 20 provisions of SIMA and the evidentiary threshold, the CBSA believes that the evidence on the record is reliable and credible, has been properly interpreted, and is sufficient to form an opinion that section 20 conditions apply in the steel OCTG sector in China. The information on the record, as discussed in detail in the attached *Summary of Findings for the Final Determination – Section 20* (Appendix 4), discloses both the scope and nature of GOC measures in the steel OCTG sector and the related impact of these measures on pricing.

2. The Burden of Proof

[110] Parties opposed to and those in favour of the use of section 20 in this proceeding made representations concerning which party carries the burden of proof. The GOC, for example, stated that this responsibility lies with the complainant and the CBSA, while citing the CBSA's section 20 policy as authority.¹² Representations from Canadian industry cited the WTO accession protocol, where the onus is placed upon producers in the country of export to “clearly show that market economy conditions prevail in the industry producing the like product with regard the manufacture, production and sale of that product.”¹³

CBSA Response:

[111] For purposes of an anti-dumping proceeding, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation absent sufficient information to the contrary.

[112] Where there is sufficient information to the contrary, the CBSA may conduct a section 20 inquiry in which parties to the proceeding may provide information, evidence, and case arguments in respect of the sector under investigation.

[113] As previously stated, the CBSA concluded, on the basis of the information available, that there was sufficient evidence to initiate a section 20 inquiry in respect of the steel OCTG sector in China. All known exporters, producers and the GOC were informed of the section 20 inquiry and requested to provide relevant information, evidence and arguments.

[114] Once a section 20 inquiry is undertaken, the President may, having regard to the information obtained from the complainant, the government of the country of export, producers, exporters or any

¹² Exhibit 225 (PRO) – GOC Case Brief (section 20), Paragraph 42.

¹³ Exhibit 229 – TAT Case Brief, Paragraph 6.

other sources of relevant information, form an opinion on the basis of fact and positive evidence that the conditions described under section 20 exist in the sector under investigation. Thus, it is incumbent upon the President to form an opinion as to whether the conditions set forth in section 20 of SIMA exist in the sector under investigation on the basis of the information available to the President as a result of the section 20 inquiry.

[115] Accordingly, it is the best interests of all parties to participate in a section 20 inquiry and provide all relevant information or evidence to ensure that the President may form an opinion on the basis of all the information that is reasonably available in respect of the sector under investigation.

3. The Nature of the China Iron and Steel Industry Development Policy

[116] Heng Yang suggested that the CBSA has placed too much emphasis on the China Iron and Steel Industry Development Policy (National Steel Policy). Heng Yang contended that the National Steel Policy is a mere guideline and that it does not “impose any enforceable obligations on Chinese steel companies.”¹⁴ Moreover, it was suggested that the CBSA has “unfairly and selectively extracted a variety of Articles contained within the National Steel Policy to justify its finding that the Casings industry is not operating under market conditions.”¹⁵

[117] The GOC also characterized the National Steel Policy as “intended to be a macro-economic guideline addressing high level issues relating to the steel industry.”¹⁶ They further cited comments made by TPCO in its non-confidential version of the section 20 questionnaire where the company stated that the National Steel Policy “is not legally binding upon either the iron and steel industry nor the banks.”¹⁷

[118] A series of other comments and examples were cited by the GOC to support its position concerning the proper interpretation of the nature and intent of the National Steel Policy.¹⁸

CBSA Response:

[119] Numerous Articles in the National Steel Policy offer guidance to the development of the steel industry in China. However, it is clear from the Policy, including its administration and enforcement, that the document, in aggregate, is substantially more than a mere guideline.

[120] As examples, Article 36 clearly states that punitive measures are available to address violations of the National Steel Policy. Article 36 states: “For those violating the policy, the NDRC, the Ministry of Construction, the State Administration for Industry and Commerce shall punish the person and unit in charge.”¹⁹ Article 39 also states: “this policy is issued under the Authorization of

¹⁴ Exhibit 220 (PRO) – Heng Yang Case Brief, Paragraph 14.

¹⁵ Exhibit 220 (PRO) – Heng Yang Case Brief, Paragraph 16.

¹⁶ Exhibit 225 (PRO) – GOC Case Brief (Section 20), Paragraph 46.

¹⁷ Exhibit 225 (PRO) – GOC Case Brief (Section 20), Paragraph 48.

¹⁸ Exhibit 138 – GOC Preliminary Comments, Page 5-6; Exhibit 225 (PRO) – GOC Case Brief (Section 20), pages 14-25.

¹⁹ Exhibit 1 (PRO) – Attachment 12 Confidential Complaint “China Steel Policy”, Article 36.

the State Council” and that any of a long list of parties “which violate the policy, shall be held to be accountable.”²⁰

[121] The results of the section 20 inquiry contained in Appendix 4, provide additional information concerning the CBSA’s consideration and analysis of the National Steel Policy. To that end, the CBSA is satisfied that it has properly understood the nature of the National Steel Policy and attached appropriate significance to its standing with respect to the section 20 inquiry.

4. State Owned Enterprises and the GOC are not one and the same and CISA is not a Government Body

[122] The GOC expressed concern in how the CBSA regards State Owned Enterprises (SOEs) in the context of their relationship to the government. The GOC, through the Bureau of Fair Trade (BOFT) expressed:

“strong objections to CBSA about how properly to define the concept of state-invested enterprises and their relationship to the government. Specifically BOFT has explained (1) state-invested enterprises are not government...”²¹

[123] The GOC also made representations concerning the nature of the China Iron and Steel Association.²² The GOC asserted that:

“CBSA treats China Iron & Steel Association (CISA) as a part of government for purposes of responding to the RFI. This is wrong. In any sovereign state, there are clear legal definitions regarding what would constitute a government body as well as how their functions are legally specified.

In law, CISA is not a government body: (1) there are no laws in China specifying CISA as a government body to implement government-defined functions; this forms contrast with government bodies, such as Ministry of Commerce, Ministry of Finance and General Administration of Environment Protection; (2) The formation of CISA which is the voluntary membership. Trade association of the steel industry is no different than other non-government bodies. CISA is established and registered as a legal corporate entity.

By incorrectly assuming that CISA is part of government, CBSA blurs the relationship between government-registered corporations which are trade associations. Such a presumptive and inflexible approach creates and apprehension of bias on the part of CBSA in its view of China's government bodies and independent organizations in China. The GOC and the responding exporters are concerned that this apparently biased approach could result in normal functions legitimately performed by government bodies being improperly considered to be "control or restriction" of economic forces in the OCTG sector.”²³

²⁰ Exhibit 1 (PRO) – Attachment 12 Confidential Complaint “China Steel Policy”, Article 39.

²¹ Exhibit 138 – GOC Preliminary Comments, Page 8.

²² Exhibit 138 – GOC Preliminary Comments, Page 4.

²³ Exhibit 138 – GOC Preliminary Comments, Pages 4 and 5.

CBSA Response:

[124] Subsection 2(1) of SIMA defines a government, in relation to any country other than Canada, to mean the government of that country, including:

“Any person, agency or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state, municipal or other local or regional government.”

[125] Concerning the relationship between SOEs and the GOC, for the purposes of the CBSA’s analysis, it is important to understand the relationship between the SOEs and the “government” in order to assess the extent to which these entities may fall under government influence, authority and/or control.

[126] The evidence on the record indicates that there is a significant degree of state ownership of companies in this industry, including both buyers and suppliers, and other industry participants. The evidence also confirms that state ownership has provided the means to control and influence decisions in the steel OCTG sector, which are in line with wider economic interests of the state but which may be in conflict with the commercial interests of the respective companies.

[127] Regarding the claim that CISA is not a government body, given the information available at that time, the CBSA believes that addressing questions to CISA within the GOC questionnaire was appropriate for the purposes of this investigation.

[128] Furthermore, information available on the CBSA record, which comes directly from CISA, confirms its close relationship to the GOC. That information states that CISA’s top management group includes a “Secretary for the Communist Party of China party committee”. In addition, CISA’s functions serve to replace those functions that were formerly undertaken by China’s now defunct Ministry of Metallurgical Industry. CISA’s self-described business scope, available at www.mmi.gov.cn, a GOC domain website, includes the following:

- Provide consultations and suggestions for strengthening the governments’ macro control and administration;
- Cooperate with the government branches to supervise and urge the reform and improvement of enterprises and products that are not in line with the quality and other criteria;
- Committed and authorized by the government branches to develop the steel industrial statistics, investigations, analysis and working report, organize the supervision for the process and export of specialized steel products, represent or coordinate enterprises on the relevant missions concerning anti-dumping, anti-subsidy, and insurance measures, execute the relevant rights on foreign affairs including the examination and approval of going abroad, introduce talents from abroad, organize international and domestic exhibitions;

- Take on other affairs delivered by the government branches.²⁴

[129] It is clear from the preceding that the manner in which the CBSA has treated CISA is appropriate for purposes of questions in its RFI and with respect to its connection with the GOC.

5. Normal Values under Surrogate Methodology and Required Adjustments

[130] Heng Yang stated in its case arguments that the surrogate methodology for determining normal values, which is based on pricing data from the Metal Bulletin Research (MBR) trade publication, does not include details of delivery terms or distinguish differing product characteristics within grades such as end-finishing. It is alleged that this renders the matching between the surrogate normal values and the actual exported products less reliable.²⁵

[131] WSP also questioned the use of any methodology which fails to account for alleged necessary adjustments to normal values.²⁶

[132] The Canadian producer, TAT, also contended that surrogate normal values might require adjustments to account for more expensive steel being employed in the production process and premium pricing of higher grade products in relation to base products.²⁷

CBSA Response:

[133] As previously stated, the CBSA could not determine normal values on the basis of domestic selling prices in China or on the full cost of goods plus profit, as the CBSA has confirmed that the conditions of section 20 exist in the steel OCTG sector. Similarly, the CBSA did not have available sufficient pricing, costing or import data relating to a surrogate country and could not establish normal values under paragraph 20(1)(c) or 20(1)(d) of SIMA. Accordingly, normal values were determined based on a ministerial specification, pursuant to section 29 of SIMA, on the basis of pricing information provided in the MBR trade publication for all regions of the world excluding China.

[134] The CBSA first notes that the MBR publication identifies its prices as being on an FOB basis. Export prices of the subject goods are determined net of delivery charges. Consequently, the CBSA believes each of these prices is representative of the price of the goods and excludes charges associated with delivery.

[135] Secondly, normal values were determined on the basis of the facts available. This took into account the level of cooperation and the information that could be used in light of the result of the section 20 inquiry, which precludes the CBSA from using sales data from the respective cooperating exporters.

²⁴ Exhibit 193 – Brief Introduction to China Iron and Steel Association, Article 1, 2 pages.

²⁵ Exhibit 220 (PRO) – Heng Yang Case Brief, Paragraph 22.

²⁶ Exhibit 216 (PRO) – WSP Case Brief, Paragraphs 43 and 50.

²⁷ Exhibit 229 – TAT Case Brief, Paragraph 2(a)(ii).

[136] Furthermore, while aggregate information at the “grade level” may not provide an identical match with the goods exported to Canada, the CBSA has not noted, nor has Heng Yang provided, any evidence that would confirm a consistent relationship between factors, other than product grade, in determining selling prices.

[137] It is also noted that each of Heng Yang’s exports during the Dumping POI were reported by the company to be one of the most common end-finishings and would thus be quite comparable with the aggregate figures provided in MBR. It is further noted that for the one grade of seamless casing, which Heng Yang sold to Canada during the Dumping POI in more than one diameter, the unit-selling price for each product was the same.²⁸

[138] Although Heng Yang has alleged that the MBR pricing data is not a reliable source for determining normal values for the goods exported to Canada during the Dumping POI, it did not provide any numerical analysis or other information to support these allegations, including that relating to possible adjustments to normal values.

[139] In respect of WSP’s concerns that surrogate data for normal value purposes may not sufficiently account for possible adjustments related to terms of sale, taxation, levels of trade etc., the CBSA notes that the surrogate data used for normal value purposes is reasonable in the circumstances. Similarly, the CBSA found no manner in which such an adjustment would be made, nor is there any compelling evidence that any adjustment, significant or otherwise, would be warranted under the Special Import Measures Regulations.

6. The Opportunity to Defend Interests

[140] In their case arguments, WSP expressed concern that the methodology for the determination of normal values used by the CBSA at the preliminary determination and the failure to disclose ‘preliminary calculations’ for the purpose of the final determination would not provide a full opportunity for the defence of their interests.²⁹

CBSA Response:

[141] The CBSA maintains an open and transparent process with respect to its investigation proceedings. Following initiation, the investigation process includes both a preliminary set of findings and a final decision where its final investigation results are released. At each decision point, public notices, ruling letters, and a Statement of Reasons are provided which explain the findings and conclusions reached by the CBSA.

[142] Throughout the process, parties to the proceeding are free to provide comments or additional evidence (up to the close of the record) for the CBSA to consider. This includes the opportunity, following the release of the preliminary findings, for parties to comment directly on the

²⁸ Exhibit 97 (PRO) – Heng Yang Response to Exporter RFI, Appendix 1.

²⁹ Exhibit 216 (PRO) – WSP Case Brief, Paragraphs 14-20.

methodology and results of the CBSA's preliminary calculations, and to have this information taken into consideration for purposes of the final stage of the investigation.

[143] Furthermore, as part of its investigation process, parties have the opportunity after the close of record to file case arguments concerning information on the record and to provide reply submissions to information contained in case arguments from other parties.

[144] Ultimately, the CBSA is satisfied that all parties have been kept fully informed during these investigation proceedings of the facts and evidence under consideration, and the basis underlying the CBSA's final determinations of dumping and subsidy, and that all parties have had the opportunity for the defence of their interests.

7. Subject Goods in Relation to the Steel Industry

[145] Several parties, including the GOC, raised concerns that the evidence under consideration by the CBSA relates to the entire Chinese steel industry in general, of which the subject goods are either only a small distinct part or no part at all.³⁰

[146] Similarly, WSP raised questions as to the list compiled by the CBSA of OCTG producers who are also sheet producers to suggest that none of those are linked to the five cooperative exporters in this investigation.³¹

CBSA Response

[147] The evidence considered by the CBSA included information covering the broader Chinese steel industry given that many of the government measures under consideration were applicable to a wide range of steel producers and steel goods. To that end, the purpose of the CBSA listing of producers of both steel sheet and OCTG products was to demonstrate the link between the steel OCTG sector and the broader steel industry in China.

[148] Nevertheless, the section 20 inquiry is a review of the steel OCTG sector and the results of the inquiry have been limited to this particular industry sector in China. Furthermore, the section 20 inquiry is an evaluation of the domestic steel OCTG sector in its entirety and is not limited to an examination of the activities of the five exporters which cooperated in this investigation.

8. Double Counting in Relation to Dumping Margins and Domestic Subsidies

[149] In their case brief, the GOC expressed its concerns with concurrent surrogate country normal value determinations and countervailing investigations, to the extent that they 'double-count' where the amount of a domestic subsidy also forms part of the margin of dumping.³² The GOC also stated

³⁰ Exhibit 216 (PRO) – WSP Case Brief, Paragraphs 31-36; Exhibit 144 – Letter from WSP regarding Section 20, Paragraph 10; Exhibit 225 (PRO) – GOC Case Brief (section 20), Paragraph 101.

³¹ Exhibit 216 (PRO) – WSP Case Brief, Paragraph 36.

³² Exhibit 224 (PRO) – GOC Case Brief ('Double Counting').

that the prohibition on double counting is not limited to export subsidies but must properly extend to the treatment of all subsidy margins where double counting occurs.

[150] The GOC made specific reference to SIMA sections 3(1) and 10 as well as Article VI:5 of GATT 1994 (WTO rules) to support its position that the legislative framework itself expressly prohibits this practise.³³

CBSA Response:

[151] The CBSA maintains that it has adhered to the provisions of both SIMA and the relevant international rules governing anti-dumping and countervailing investigations.

[152] Neither the *General Agreement on Tariffs and Trade 1994* (GATT 1994), the *Anti-Dumping Agreement*, *SCM Agreement*, or SIMA explicitly preclude the imposition of a countervailing duty in respect of goods that are also subject to an anti-dumping duty in which normal values have been determined pursuant to surrogate country methodology.

[153] More specifically, SIMA does not restrict or limit the applicability of the subsidizing provisions set forth in the Act when section 20 is used to determine normal values in a dumping investigation.

[154] Similarly, the *Accession of the People's Republic of China* to the WTO does not specifically prohibit concurrent dumping and subsidizing investigations in respect of the same goods even where, for the purposes of a dumping investigation, normal values have been determined on the basis of surrogate country methodology.³⁴

[155] With respect to concurrent dumping and subsidizing investigations, the *General Agreement on Tariffs and Trade 1994* (GATT 1994) does provide that no goods of a WTO Member will “be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.”³⁵ Article VI:5 of the GATT 1994 is reflected in section 10 of SIMA, which sets forth that anti-dumping duty levied, collected and paid in respect of goods will reflect the margin of dumping that, is not, in the opinion of the President, attributable to the export subsidy.

[156] Accordingly, the CBSA will, insofar as it is necessary, offset the amount of anti-dumping duty levied or collected on goods imported into Canada by an amount that is attributable to an export subsidy.

[157] However, there is no analogous provision in either the GATT 1994 or SIMA in respect of domestic subsidization. Moreover, there are no specific provisions in SIMA that expressly require

³³ Exhibit 224 (PRO) – GOC Case Brief, ('Double Counting'), Paragraphs 6 and 8.

³⁴ Accession of the People's Republic of China (23 November 2001), WT/L/432 at subparas. 15(a) to (d).

³⁵ Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations legal instruments – results of the Uruguay round (15 April 1994) at art. VI:5 of the General Agreement on Tariffs and Trade 1994 [GATT 1994].

the CBSA to offset an amount of anti-dumping duty by an amount attributable to domestic subsidy in instances where section 20 is used to determine normal values in a dumping investigation.

[158] As a result, the CBSA finds that there is no basis in law for the proposition that an amount of anti-dumping duty must be offset by an amount that is attributable to a domestic subsidy.

SUBSIDY INVESTIGATION

Legal Framework

[159] In accordance with SIMA, a subsidy exists if there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement, that confers a benefit.

[160] Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada where:

- (a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- (b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
- (c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
- (d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

[161] If a subsidy is found to exist, it may be subject to countervailing measures if it is specific. A subsidy is considered to be specific when it is limited, in law, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy. An “enterprise” is defined under SIMA as also including a group of enterprises, an industry and a group of industries. A “prohibited subsidy” includes an export subsidy which is contingent, in whole or in part, on export performance or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

[162] Notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific having regard as to whether:

- (a) there is exclusive use of the subsidy by a limited number of enterprises;
- (b) there is predominant use of the subsidy by a particular enterprise;
- (c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and
- (d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[163] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an “actionable subsidy,” meaning that it is subject to countervailing measures if the imported goods under investigation have benefited from the subsidy.

Investigation Process

[164] Prior to the initiation of the investigation, the complainant submitted documents alleging that the producers and exporters of seamless steel casing in China benefited from actionable subsidies provided by the Government of China (GOC).

[165] For purposes of the current subsidy investigation, “Government of China” has been interpreted to refer to all levels of government, including federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial levels, as well as government-sponsored agencies and institutions. Benefits provided by state-owned enterprises operating under the direct or indirect government control or influence were also taken into consideration as possibly having been provided by the GOC.

[166] At the initiation of the investigation, the CBSA sent a subsidy RFI to the GOC as well as to the identified potential exporters of subject goods located in China. Information was requested in order to establish whether there had been financial contributions made by any level of government and, if so, to establish if a benefit had been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of seamless steel casing. It was also necessary to establish whether any resulting subsidy was specific in nature. The GOC was requested to forward the questionnaires to all subordinate levels of government in whose jurisdictions the exporters were located.

[167] The CBSA identified 26 potential subsidy programs at initiation, which are listed in Appendix 3. During the course of the investigation, the CBSA identified and requested information regarding an additional 11 potential subsidy programs, also listed in Appendix 3.

[168] Responses to the subsidy RFI were received from the GOC and from six producers/exporters in China. However, despite the granting of a two-week extension for submission, the GOC's response to the subsidy RFI was received incomplete. As a result, two supplemental subsidy RFIs were sent to the GOC: the first requesting information pertaining to subsidies conferred to the six responding exporters; the second requesting information pertaining to subsidies offered to all of the other exporters. The GOC submitted its response to the first supplemental subsidy RFI on October 30, 2007. However, with respect to the second supplemental subsidy RFI, the GOC supplied a letter stating that it would not be furnishing the information requested. As a result, the

GOC response respecting any potential subsidies granted to the non-cooperating exporters remains incomplete.

[169] Supplemental subsidy RFIs were also sent to the six responding exporters. After receiving supplemental responses from the six companies, the latest of which was submitted on November 6, 2007, all six submissions were deemed to be complete.

[170] Given that the GOC response was not complete at the time of the preliminary determination, the CBSA was unable to analyze the subsidy information provided by the exporters in time for the preliminary determination (PD) on November 9, 2007. As a result, for the PD, the CBSA estimated the amount of subsidy by comparing the average selling price of like goods sold in the Chinese domestic market to their cost of production estimated by the CBSA. In cases where the like goods were sold at prices lower than their estimated cost of production, the difference was assumed to be attributable to the amount of subsidy.

[171] As mentioned earlier, subsequent to the PD, verification meetings were held with three exporters, as well as Chinese government officials at the municipal, provincial and central levels.

Results of the Subsidy Investigation

[172] Based on the CBSA's review of the information submitted by the GOC and the co-operating exporters, and further to the results of the verification meetings, the CBSA found that the following three programs were not specific and are, therefore, not actionable:

- Tax exemption for enterprises qualified as a "welfare" enterprise;
- Tax exemption for employing former employees laid-off from SOEs; and
- Export credit provided by the Export-Import Bank of China.

[173] In addition, the CBSA found that three names of programs were in actuality only additional titles for already identified programs, so these redundant titles were therefore removed. For the final determination, the CBSA has identified 31 actionable subsidy programs in China.

[174] The information received from the five co-operating exporters indicates that they received actionable benefits under one or more of the following 10 programs:

- Corporate income tax exemption/reduction in Special Economic Zones and designated areas;
- Local income tax exemption/reduction in designated areas;
- State key technology renovation projects;
- Preferential tax policies for research and development;
- Preferential tax policies for domestic enterprises purchasing domestically produced equipment for technology upgrading purposes;
- Exemption of tariff and import VAT for imported technologies and equipment;
- Accelerated depreciation on fixed assets in Tianjin Binhai New Area;
- Supportive Fund (Grant) provided by the Government of Xuyi County, Jiangsu Province;

- Repaying Foreign Currency Loan by Returned VAT; and
- Debt-to-Equity Swap.

[175] Full details regarding the determination of subsidy and specificity respecting each of the above programs, as well as an explanation of the calculation of specific amounts of subsidy for the co-operating exporters, may be found in Appendix 3.

[176] Given that the GOC failed to provide any information regarding the use of the identified programs by exporters of subject goods who did not respond to the CBSA's subsidy RFI, the CBSA is unable to determine any specific subsidy amounts respecting the potential benefits conferred to the non-co-operating exporters. It is noted that TTGM was deemed non-co-operating as it did not permit the CBSA to verify the information it provided.

[177] Therefore, the amount of subsidy for the non-cooperative exporters has been determined according to a ministerial specification under subsection 30.4(2) of SIMA. This amount is equal to: the aggregate of the highest amount of subsidy found for each of the 10 actionable programs listed above; plus the average amount of subsidy found for these 10 programs applied to each of the 21 actionable subsidy programs for which information has not been provided. It was considered appropriate to calculate an amount of subsidy for each of the 31 identified benefit programs, even though some appear to apply to restricted geographic areas, since information has not been provided regarding the locations of the facilities of the non-cooperating exporters.

Summary – Subsidy

Country	Subsidized Goods as a Percentage of Country Imports	Weighted Average Amount of Subsidy as a Percentage of Export Price	Country Imports as a Percentage of Total Imports	Subsidized Goods as a Percentage of Total Subject Goods Imported
China	100%	19%	37%	37%

[178] The results of the investigation indicate that 100 % of the subject goods imported into Canada during the Subsidy POI were subsidized. The weighted average amount of subsidy is equal to 19%, expressed as a percentage of the export price.

[179] Details regarding the amounts of subsidy determined by exporter are provided in Appendix 2.

[180] In making a final determination of subsidizing under subsection 41(1) of SIMA, the President must be satisfied that the subject goods have been subsidized and that the amount of subsidy on the goods of a country is not insignificant. According to subsection 2(1) of SIMA, an amount of subsidy that is less than 1% of the export price of the goods is considered insignificant.

[181] However, section 41.2 of SIMA directs the President to take into account the provisions of Article 27 of the Subsidies Agreement when conducting subsidy investigations. These provisions

stipulate that any investigation involving a developing country must be terminated as soon as the President determines that the total amount of subsidy for a developing country does not exceed 2% of the export price of the goods.

[182] The CBSA normally makes reference to the DAC *List of Official Development Assistance Aid Recipients*, maintained by the Organization for Economic Co-operation and Development, to determine eligibility for the differential amounts for developing countries in subsidy investigations. As China is a developing country according to this list, the 2% threshold for insignificance would apply. As the table above illustrates, the amount of subsidy found during this investigation is not insignificant.

[183] For purposes of the preliminary determination of subsidizing, the President has responsibility for determining whether the actual or potential volume of subsidized goods is negligible. After a preliminary determination of subsidizing, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its inquiry in respect of any goods if the Tribunal determines that the volume of subsidized goods from a country is negligible.

REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION

[184] Representations with respect to the subsidy investigation were received on behalf of the GOC, TenarisAlgotubes Inc. (TAT), Wuxi Seamless Oil Pipe Co., Ltd. and its affiliates (WSP), Heng Yang Steel Tube Group (Heng Yang) and Tianjin Pipe (Group) Corp (TPCO).

[185] The GOC, TAT, TPCO and Heng Yang also provided reply submissions in response to the case arguments received from other parties.

[186] Details of the representations are listed by topic in the section below. In instances where there were a number of common positions brought forward from multiple parties, it is possible that not all these parties will be referenced when documenting the issues raised. Following each argument is a response explaining the position of the CBSA.

[187] It is also noted that in cases where identical issues were mentioned within the context of both the dumping and the subsidy investigations, details of the representation will not be repeated below as they have already been provided in the dumping section of this Statement of Reasons.

1. Procedural Concerns Related to the CBSA's Conduct of the Subsidy Investigation

[188] The GOC, in its Preliminary Comments³⁶ and Case Brief,³⁷ expressed concern that the subsidy RFI lacked precision and clarity, and tended to be repetitive, thus creating unnecessary burden and confusion on the part of the respondents.

³⁶ Exhibit 138 – GOC Preliminary Comments, Page 10.

³⁷ Exhibit s164 – GOC Case Brief (Subsidy), Paragraph 8.

[189] The GOC also expressed dissatisfaction with the CBSA's refusal to amend the timing of its verification meetings, as was requested by the GOC,³⁸ as well as the CBSA's decision not to extend the date of the preliminary determination by the 45 days permitted under SIMA.³⁹

CBSA Response:

[190] The CBSA acknowledges that the complexity of its RFIs may create a burden for the respondent, but notes that the level of detailed information the CBSA requires in the conduct of its investigations renders such complexity unavoidable. The instructions to the RFIs, which were forwarded to the GOC⁴⁰ and the exporters⁴¹ at the initiation of the investigation, encouraged respondents to raise any questions they may have had and to seek any explanations necessary to assist in completing their submission. No representative of the GOC approached the CBSA in this respect.

[191] With respect to the timing of the verification meetings, the CBSA wishes to emphasize that officers expended considerable time and effort in attempting to accommodate the requests of all parties involved when arranging its meetings with four exporters and numerous GOC bodies, including the GOC request that senior BOFT officials from Beijing be present at meetings where CBSA queries would be directed to provincial and municipal officials. The CBSA also modified its own schedule as much as was possible to oblige the wishes of the GOC.

[192] Regarding the decision not to extend the date of the preliminary determination, the CBSA notes that it was not provided with any compelling information on which to base a recommendation for such an extension under the legislation. Therefore, as was explained in the Statement of Reasons issued at the preliminary determination, the CBSA determined that an extension to the preliminary determination was not warranted.⁴²

2. The CBSA's Methodology for the Preliminary and Final Determinations of Subsidy

[193] In their Case Briefs, the GOC⁴³ and WSP⁴⁴ expressed their position that the CBSA had improperly based its preliminary determination of subsidy on information other than that provided by the six responding exporters.

[194] Conversely, TAT argues that not only was the CBSA correct in the methodology chosen for the preliminary determination, but that the GOC's continued failure to provide complete information justifies a final determination made according to a ministerial specification pursuant to

³⁸ Exhibit 138 – GOC Preliminary Comments, Page 13.

³⁹ Exhibit s164 – GOC Case Brief (Subsidy), Page 6.

⁴⁰ Exhibit s24 – Subsidy RFI for GOC paragraph B.27.

⁴¹ Exhibit s25 – Subsidy RFI for Exporters, paragraph B.24.

⁴² Exhibit s137 – CBSA (November 23, 2007), paragraph 37.

⁴³ Exhibit s164 – GOC Case Brief (Subsidy), Part B.

⁴⁴ Exhibit s157 – Case Arguments on Behalf of WSP, paragraph 5 and Part A(i).

subsection 30.4(2) of SIMA, rather than in the prescribed manner using information from the cooperating exporters.⁴⁵

CBSA Response:

[195] In making a preliminary determination of subsidy pursuant to subparagraph 38(1)(b)(i) of SIMA, the President is to estimate the amount of subsidy: “..using the information available to him at the time.” As was indicated earlier in this document, the responses from the co-operating exporters were not considered complete until November 6, 2007, whereas the submission from the GOC remains incomplete to this day. The CBSA was, therefore, unable to analyze the subsidy information provided by the exporters in time for the preliminary determination on November 9, 2007. As such, the President based the preliminary determination on third party data, which was the information available at the time.

[196] Concerning the final determination, the CBSA is satisfied that the information provided with respect to the co-operating exporters, as submitted by both these exporters and the GOC, is complete. Therefore, the CBSA determined specific amounts of subsidy for these fully co-operating exporters in the prescribed manner pursuant to subsection 30.4(1) of SIMA, on the basis of information provided by the exporters.

[197] As noted above, the GOC has failed to provide any information regarding the possible benefits conferred to non-co-operating exporters, despite being requested to do so in both the original and the supplementary RFIs. The final determination of subsidy for the non-co-operating exporters was, therefore, made under ministerial specification pursuant to subsection 30.4(2) of SIMA.

3. The Subsidy Programs Identified at Initiation and at the Preliminary Determination are not Actionable

[198] The GOC, in both its Preliminary Comments⁴⁶ and Case Brief,⁴⁷ argued that all the programs named by the CBSA, even those that were used by the responding exporters, were generally available. As a result, the GOC contends that none of the subsidy programs identified at initiation or at the preliminary determination are either specific or actionable (subject to countervailing duties). This assertion has also been put forward by Heng Yang,⁴⁸ TPCO,⁴⁹ and WSP.⁵⁰

⁴⁵ Exhibit s165 – Case Brief of TAT, Part B.I.

⁴⁶ Exhibit 138 – GOC Preliminary Comments, Part III.

⁴⁷ Exhibit s164 – GOC Case Brief (Subsidy), Section II.B.

⁴⁸ Exhibit 221 – Case Brief of Heng Yang, Part IV; Exhibit s166 – Reply Submissions of Heng Yang, Part 5.

⁴⁹ Exhibit s163 – Case Brief of TPCO, Page 3.

⁵⁰ Exhibit s164 – GOC Case Brief (Subsidy), Part C.

[199] Specifically, several submissions⁵¹ argued that subsidy programs restricted to foreign invested enterprises (FIEs) are not specific. This issue has also been raised in a number of previous CBSA subsidy investigations involving China.

CBSA Response:

[200] The interested parties are requested to refer to Appendix 3 of this document, which describes all actionable and non-actionable subsidy programs reviewed in this investigation. Included in this Appendix are comprehensive explanations of the CBSA's determinations of subsidy and specificity for each identified program for which information was provided by the GOC and/or cooperative exporters. Only in instances where no information was submitted to the CBSA is a detailed explanation of specificity regarding a particular program justifiably absent.

[201] The CBSA maintains its view that subsidy programs restricted to FIEs constitute specific subsidies pursuant to paragraph 2(7.2)(a) of SIMA. A complete explanation of the CBSA's position in this matter may be found in the Statement of Reasons for the final determination on laminate flooring.⁵²

4. The Parties' Opportunities to Defend Their Interests, including Disclosure Issues

[202] As this is an issue that was already largely dealt with in the dumping section of this Statement of Reasons, discussion of the matter will be restricted to those arguments relating strictly to the subsidy investigation.

[203] The GOC has concerns that the methodology used to develop the cost of production used in the CBSA's preliminary determination estimate was not filed for the record.⁵³

[204] WSP expressed concern that the methodology employed for the preliminary determination subsidy had not been disclosed, either to WSP or its counsel.⁵⁴ WSP further requests that the CBSA release a draft final subsidy calculation to the company in advance of the final determination.⁵⁵

CBSA Response:

[205] The cost of production estimate that the CBSA used at the preliminary determination was the same as that developed at initiation, which was explained in the Statement of Reasons issued at initiation.⁵⁶

⁵¹ Exhibit s164 – GOC Case Brief (Subsidy), Appendix I; Exhibit s157 – Case Arguments on Behalf of WSP, Paragraphs 47 –50.

⁵² CBSA, (June 1, 2005), Paragraphs 113-120 Available at: www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1332/ad1332f-eng.html

⁵³ Exhibit s164 – GOC Case Brief (Subsidy), Paragraph 16.

⁵⁴ Exhibit s157 – Case Arguments on Behalf of WSP, Paragraph 22.

⁵⁵ Exhibit s157 – Case Arguments on Behalf of WSP, Paragraph 54.

⁵⁶ Exhibit s32 – CBSA (August 28, 2007), Paragraphs 35 & 36.

[206] In addition, the CBSA notes that WSP was provided full details of the methodology that had been used for the preliminary determination, including an explanatory worksheet, when CBSA officials met with WSP employees and counsel at the company's premises on November 19, 2007.

[207] Included in the CBSA's description of its methodology was an explanation that the domestic selling prices in the estimates used were average prices for OCTG products in China, not WSP's domestic selling prices. As such, the CBSA was not in violation of paragraph 2(7)(b) of SIMA, as has been alleged.⁵⁷

[208] As explained in the dumping section of this Statement of Reasons, draft calculations would not be released prior to the final determinations. However, in the event of a CITT injury finding, any changes to the specific amounts of subsidy calculated for WSP and the other co-operating exporters, which may arise from disclosure meetings held after the final determination, will be taken into account for the CBSA's review of imports made during the provisional period pursuant to section 55 of SIMA, as well as for future imports.

5. The Export Rebate of Value-Added-Tax (VAT) as an Actionable Subsidy

[209] In its Case Brief, TAT re-iterated its contention that the VAT export rebate constitutes an actionable subsidy, questioning whether the 13% rebate rate for seamless casing was covered by the VAT paid by the exporters on their input costs, and noting that imported equipment for this encouraged industry is exempt from VAT. TAT further submitted that since the 13% export rebate on seamless casing is considerably higher than the 5% rebate on other steel products, at least this differential should be considered an actionable benefit.⁵⁸

CBSA Response:

[210] The CBSA notes that, pursuant to subparagraph 2(a)(iii) of SIMA, any internal tax imposed on "goods incorporated into exported goods and that have been exempted or have or will be relieved by means of remission refund or drawback" is specifically excluded from the definition for "subsidy."

[211] Further, as was explained in the CBSA's Statement of Reasons for the initiation of this investigation, the Chinese VAT rebate system is consistent with the WTO Subsidies Agreement as long as the exemption or remission of indirect taxes on the production and distribution of exported goods is not in excess of the indirect taxes levied on the production and distribution of the same products sold in the domestic market.⁵⁹

[212] The CBSA reports that neither the current nor any previous subsidy investigations has revealed evidence that exporters in China are receiving export rebates in excess of the VAT they have paid on inputs. The fact that the rebate rate on certain other steel products is lower than it is for

⁵⁷ Exhibit s157 – Case Arguments on Behalf of WSP, Paragraph 37.

⁵⁸ Exhibit s165 – Case Brief of TAT, Part B. II.

⁵⁹ Exhibit s32 – CBSA (August 28, 2007), Paragraph 72.

seamless casing, or that certain production equipment is imported tax exempt, does not alter this finding.

[213] TAT's argument regarding the VAT exemption on imported machinery would have validity only in the event that the imported equipment itself was exported and the exporter were to receive a rebate thereon. Further, as detailed in Appendix 3 of this document, benefits arising from the reduction or exemption from VAT on imported equipment already constitute an actionable benefit.

DECISIONS

[214] The CBSA is satisfied that certain seamless carbon or alloy steel oil and gas well casing originating in or exported from the People's Republic of China, have been dumped and that the margins of dumping are not insignificant. Consequently, on February 7, 2008, the CBSA made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA

[215] Similarly, the CBSA is satisfied that certain seamless carbon or alloy steel oil and gas well casing originating in or exported from China have been subsidized and that the amounts of subsidy are not insignificant. As a result, the CBSA also made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA on this same date.

FUTURE ACTION

[216] The provisional period began on November 9, 2007, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by March 10, 2008. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available on the CBSA Web site at <http://www.cbsa-asfc.gc.ca/sima/menu-e.html>.

[217] If the Tribunal finds that the dumped and subsidized goods have not caused injury and do not threaten to cause injury, all proceedings relating to these investigations will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.

[218] If the Tribunal finds that the dumped and subsidized goods have caused injury, the anti-dumping and/or countervailing duties payable on subject goods released from customs during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released from customs after the date of the Tribunal's finding will be subject to anti-dumping duty equal to the margin of dumping and countervailing duty equal to the amount of subsidy. In accordance with section 10 of SIMA, the amount of export subsidy will be deducted from any margin of dumping to arrive at the countervailing duty payable. Anti-dumping duty plus countervailing duty will equal the total duty payable by the importer.

[219] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act* apply with

respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[220] Normal values and amounts of subsidy have been provided to the co-operating exporters for future shipments to Canada in the event of an injury finding by the Tribunal. These normal values and amounts of subsidy will come into effect the day after the date of the injury finding.

[221] Exporters that were non-cooperative in the investigations will have normal values established by advancing the export price by 91% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, non-cooperative exporters will be subject to a countervailing duty amount of 3,381 Renminbi per metric tonne, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[222] Under certain circumstances, anti-dumping duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping duty.

[223] However, in respect of importations of subsidized goods that have caused injury, this provision is only applicable where the President has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy.

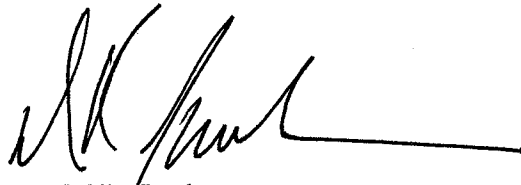
PUBLICATION

[224] A notice of these final determinations of dumping and subsidizing will be published in the *Canada Gazette* pursuant to paragraph 41(3)(a) of SIMA.

INFORMATION

[225] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA Web site at the address below. For further information, please contact the following officers:

Mail	SIMA Registry Anti-dumping and Countervailing Program Trade Programs Directorate Canada Border Services Agency 100 Metcalfe Street, 11 th Floor Ottawa, Ontario K1A 0L8 Canada	
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M.R. Jordan
Director General
Trade Programs Directorate

APPENDIX 1 – MARGINS OF DUMPING BY EXPORTER

Exporter	Weighted Average Margin of Dumping (as a Percentage of Export Price)
Dalipal Pipe Company	45%
Hengyang Steel Tube Group Int'l Trading Inc.	45%
Shandong Molong Petroleum Machinery Co. Ltd.	61%
Tianjin Pipe Corporation	37%
Wuxi Seamless Oil Pipe Co. Ltd.	51%
Energy Alloys LLC (USA)	45%
All Other Exporters	91%

APPENDIX 2 - AMOUNTS OF SUBSIDY BY EXPORTER

Exporter	Weighted Average Amount of Subsidy (as a % of Export Price)	Amount of Subsidy (RMB/metric tonne)
Dalipal Pipe Company	3%	241
Hengyang Steel Tube Group Int'l Trading Inc.	2%	226
Shandong Molong Petroleum Machinery Co. Ltd.	2%	160
Tianjin Pipe Corporation	7%	790
Wuxi Seamless Oil Pipe Co. Ltd.	4%	318
Energy Alloys, LLC (USA)	7%	790
All Other Exporters	38%	3,381

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A. ACTIONABLE SUBSIDY PROGRAMS THAT HAVE BEEN USED BY COOPERATIVE EXPORTERS

Program 1: Corporate Income Tax Exemption And/Or Reduction In Special Economic Zones (SEZs) And Other Designated Areas

General Information:

This program was established under the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which was promulgated on June 30, 1991, and came into effect on July 1, 1991. The program was established to absorb investment in special economic zones (SEZs) and designated areas to take the lead in their economic development. The program is administered by the State Administration of Taxation and local tax authorities.

Under this program, all eligible enterprises may receive a reduced corporate income tax rate of 15%.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax reduction for foreign-invested enterprises (FIEs) under this program is provided for in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. This program is available to FIEs recognized as new and high-tech enterprises and established in the State new and high-tech industrial development zones designated by the State Council.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the CBSA believes that the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the *Special Import Measures Regulations* (SIMR), any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 2: Local Income Tax Exemption And/Or Reduction In SEZs And Other Designated Areas

General Information:

This program was established in the *Provision of Reduction and Exemption of Local Income Tax of Foreign Invested Enterprise in Jiangsu, (1992) No. 49*, which was promulgated on June 17, 1992, and came into force on the same date. This program was established to provide preferential tax treatment to FIEs to accelerate the development of the local economy. The program is administered by the Local Tax Bureau of Jiangsu Province.

Under this program, FIEs that are eligible for a 15% reduction of their corporate income tax, may receive an exemption in local income taxes.

The program was in operation during the Subsidy POI.

Legal Basis:

The program is provided for in Article 6 of the *Provision of Reduction and Exemption of Local Income Tax of Foreign Invested Enterprise in Jiangsu, (1992) No. 49*.

Eligibility Criteria:

The eligibility criteria can be found in Article 6 of the *Provision of Reduction and Exemption of Local Income Tax of Foreign Invested Enterprise in Jiangsu, (1992) No. 49*.

The program is available to FIEs that are located in the economic and technological development zones, the coastal economic open areas, the state new and high-tech industrial development zones of Jiangsu province, as well as foreign-invested projects encouraged by the state.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Local income tax exemption provided to FIEs located in the SEZs and designated areas were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Provision of Reduction and Exemption of Local Income Tax of Foreign Invested Enterprise in Jiangsu, (1992) No. 49*. In addition, the CBSA believes that the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the abovementioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 3: The State Key Technology Renovation Projects

General Information:

This program was established in the *Administrative Measures on the State Key Technological Renovation Projects* and the *Administrative Measures on Special Fund Generated by Treasure Bonds for the State Key Technological Renovation Projects, Guo Jing Mao Tou Zi (1999) No. 886*, which came into effect as of September 10, 1999. Relevant provisions of the *1999 No. 886 Circular* were further amended and published in the *Circular Guo Jing Mao Tou Zi (2000) No. 822*. The purposes for this program include technological renovation in key industries, enterprises and products, facilitation of technology upgrades, improvement of product structure, improvement of quality, promotion of domestic production, increase of supply, expansion of domestic demand, and promotion of continuous and healthy development of the state economy.

The authority responsible for administering this program was the State Economic & Trade Commission (SETC). The GOC stated that the SETC was discontinued during the institutional reform of state agencies in 2003. As a result, no administrative office overseeing the program exists and, as a practical matter, the program ceased to function in 2003.

Legal Basis:

The funds (grants) provided under the State Key Technology Renovation Projects are provided for in Article 4 of the *Administrative Measures on the State Key Technological Renovation Projects*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article 4 of the *Administrative Measures on the State Key Technological Renovation Projects*, which stipulates that enterprises were selected based on their performance. Emphasis was placed on selecting from 512 key enterprises, 120 experimental enterprise groups and leading enterprises in their respective industries, including those larger state-owned or state enterprises and enterprises with controlling state shares that have strong management teams, sound management and high credit rating.

Determination of Subsidy:

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

Determination of Specificity:

The grant provided to the 512 key enterprises, the 120 experimental enterprise groups and the leading enterprises in their respective industries were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative,

regulatory, or administrative instrument or other public document, in this case, as set forth in the *Administrative Measures on the State Key Technological Renovation Projects*.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters had received a one-time grant under this program in 2002. Pursuant to subsection 27.1(1) of the SIMR, any amount that relates to the direct transfer of funds by the practices of a government shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of grant over the total quantity of subsidized goods for the production, purchase, distribution, sale, export or import of which was carried out by the exporter during the weighted average useful life, not exceeding 10 years, of fixed assets used by the industry of the exporter, pursuant to paragraph 27(c) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 4: Preferential Tax Policies for Research and Development

General Information:

This program was established in the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*, which was promulgated on September 17, 1999, and came into effect on January 1, 2000. This program was established to encourage the research and development of enterprises. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities.

Under this program, certain foreign investment enterprises may offset their taxable income by 150% of their R&D expenses for the same year, not to exceed the taxable income for the year.

The program was in operation during the Subsidy POI.

Legal Basis:

The taxable income reduction for certain FIEs is provided for in Article 1 of the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*.

Eligibility Criteria:

This program is limited to FIEs that have increased their R&D expenses by 10% or greater from the previous year. The applicable R&D expenses are as follows:

- New products designing fee for R&D of new production, new skills and new technologies;
- Technology process formulation fee;
- Equipment test adjustment fee;
- Trial production fee for raw materials and semi-products;
- Technology books and material fee;
- Intermediate experiment fee not enlisted to the State plan;
- Staff members wages of the research institutions;
- Depreciation fee for research equipment; and
- Other fees related with trial production of new products and technology research.

Exclusions include the following:

- Purchase fee or using fee for technology purchased from other units by the enterprise or technology using right transferred to the enterprises; and
- Fees for operation costs and expenses paid by the enterprises engaged.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

The reduction of taxable income provided to FIEs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the State Administration of Taxation on the Issues Related with the Offset Taxable Income on Technology Development Fee for Foreign Investment Enterprises (Guo Shui Fa [1999] No. 173)*.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government, that is not collected, shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over

the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 5: Preferential Tax Policies For Domestic Enterprises Purchasing Domestically Produced Equipment For Technology Upgrading Purpose

General Information:

This program was established in the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*, which came into force on July 1, 1999. This program was established to encourage domestic investment and support the technology upgrading of enterprises. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities.

Under this program, for all enterprises in the nation, which have investment in technological transformation projects conforming to the State Industrial policy, 40% of domestic equipment investment necessary for projects may be offset from the newly added business income tax in the current year of purchasing the technological transformation project equipment of enterprises compared with the previous year.

The program was in operation during the Subsidy POI. It was mentioned in the GOC's response that the *Income Tax Law of the People's Republic of China for Enterprises* (the "New Income Tax Law") has been adopted at the fifth session of the Tenth National People's Congress on March 16, 2007 and will come into effect as of January 1, 2008. This program is not included in the *New Income Tax Law*. The provisions of the *New Income Tax Law* shall prevail after it comes into effect.

Legal Basis:

The income tax refund for domestic enterprises is provided for in Article 2 of the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*.

Eligibility Criteria:

The eligibility criteria can be found in Articles 2 and 11 of the *Circular Concerning Printing and Distributing Interim Measures on Business Income Tax Credit Applicable to Technological Transformation Domestic Equipment Investment (Cai Shui Zi [1999] No. 290)*.

This program is available to all domestic enterprises in the nation with investment in technological transformation projects conforming to the State industrial policy. FIEs and foreign enterprises are not eligible for this program.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

The income tax refund for purchasing domestically made equipment is considered to be a prohibited subsidy pursuant to subsection 2(1) of SIMA, as it is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

Calculation of Amount of Subsidy:

The CBSA has determined that four of the cooperative exporters have received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government, that is not collected, shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

At the Preliminary Determination, the CBSA also identified another program (i.e., Program 37: *Tax exemption of purchased fixed assets used for qualified technological improvement projects*). However, it was found that this program is the same program addressed under Program 5: *Preferential tax policies for domestic enterprises purchasing domestically produced equipment for technology upgrading purpose*.

Program 6: Exemption Of Tariff And Import VAT For Imported Technologies And Equipment

General Information:

According to information submitted during the course of the investigation, exemption from tariffs and import-linked VAT is provided for and administered in accordance with the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment*, which was

established on December 29, 1997, and came into effect on January 1, 1998. This program was initiated to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement, and to maintain the rapid and healthy development of the national economy. The authorities responsible for administering this program are the Ministry of Finance and the General Administration of Customs in cooperation with local provincial and municipal customs branches.

Under this program, enterprises meeting the eligibility criteria set forth below may apply for exemption from tariffs and VAT on imported equipment and its related technologies, components and parts. The enterprise must first receive approval of its application from the appropriate authority. Subsequently, that approval documentation is submitted to the local customs officials, who verify that the documents presented are adequate and that the imported items are not listed in the catalogues of commodities that are not eligible for tax exemptions.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The submitted information indicates that this program is administered in accordance with the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment*.

Eligibility Criteria:

The CBSA was informed that the eligibility criteria related to this program also take into consideration the following documents:

- *The Current Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State (2000);*
- *Catalogue for the Guidance of Foreign Investment Industries;*
- *Guiding Catalogue of the Industrial Restructuring (2005);*
- *The Directory of Imported Commodities of Non-Tax Exemption to be Used in Domestic Invested Projects (2000);* and
- *The Directory of Imported Commodities of Non-Tax Exemption to be used in Foreign Invested Projects.*

In accordance with the Circular noted above, in order for a domestic invested enterprise (DIE) to be eligible for tariff and VAT exemptions on imported equipment, the domestic investment project relating to that equipment must be listed in the *Current Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State (2000)*. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the domestic project. Finally, any type of equipment that is imported and listed in the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Domestic Invested Projects* is not eligible for the exemptions under this program.

In order for a FIE to be eligible for tariff and VAT exemptions on imported equipment, the foreign investment project involving that equipment must relate to those listed in the *Guideline Catalogue for Foreign Investment Industries* under the encouragement category or the restricted B category. In addition, the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the foreign project. Finally, any type of equipment that is imported and listed in the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Foreign Invested Projects* is not eligible for the exemptions under this program.

Determination of Subsidy:

The available information indicates that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government, are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction and/or exemption.

Determination of Specificity:

An analysis of the submitted information has revealed that SOEs received 89 % of the benefits provided to cooperating exporters during the subsidy POI under this program. In addition, the GOC did not submit any information regarding the recipients of tax and duty reductions and/or exemptions that would indicate that such benefits were generally available.

It is also noted that the *Accession of the People's Republic of China to the WTO* specifically sets forth that "subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies".⁶⁰

As a result, the CBSA has concluded that benefits arising from the reduction or exemption from import tariffs and VAT on imported technology and equipment, of which a disproportionately large amount were granted to a limited number of enterprises, constitute a specific subsidy pursuant to paragraph 2(7.3)(c) of SIMA.

Calculation of Subsidy Amount

The CBSA has determined that three of the cooperative exporters received preferential treatment under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted, shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods for the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was used for the anticipated useful life of the fixed asset pursuant to paragraph 27(b) of the SIMR.

⁶⁰ *Accession of the People's Republic of China to the WTO* (23 November 2001), WT/L/432 at para 10(2).

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting any possible reduction or exemption from import tariffs and VAT on imported technology and equipment granted to the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 7: Accelerated Depreciation On Fixed Assets In Binhai New Area Of Tianjin

General Information:

This program was established in the *Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin, Cai Shui (2006) No. 130*, which came into effect as of July 1, 2006. This program was established in order to promote the development of the Binhai New Area of Tianjin. The authorities responsible for administering this program are the Department of Public Finance of Tianjin Municipality, the State Taxation Bureau of Tianjin Municipality and the Local Taxation Bureau of Tianjin Municipality.

Under this program, enterprises located in the Binhai New Area of Tianjin are eligible to reduce the depreciation period of eligible fixed assets (excluding houses and buildings) by up to 40%.

This program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The tax benefit as a result of this program is provided for in Article II of the *Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin, Cai Shui (2006) No. 130*, which stipulates that:

The accelerated depreciation applies to fixed assets that were purchased by enterprises after July 1, 2006 as well as those which were purchased before July 1, 2006 and have not yet been fully depreciated.

The depreciation period of the fixed assets (excluding houses and buildings) that were purchased by enterprises before July 1, 2006 shall be reduced by up to 40% of the remaining depreciation period.

With respect to fixed assets (excluding houses and buildings) that were purchased after July 1, 2006, enterprises can select one of the following three methods: a) the shortening depreciation period, b) the declining balance method, and c) the number of years. The enterprise may not apply more than one method at a time and once the method is selected it cannot be changed.

Enterprises may freely choose how much of accelerated depreciation entitlement to use up to the 40% maximum.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article V of the *Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin, Cai Shui (2006) No. 130*, which specifies that the preferential tax policies shall only be applicable to three ecological urban areas of Tanggu, Hangu and Dagang and seven functional areas within the Binhai New Area of Tianjin.

Determination of Subsidy:

On the basis of available information, the CBSA has determined that this program constitutes a financial contribution given that an exporter participating in the scheme pays reduced income taxes in present value terms. This subsidy has been determined pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the tax reduction/exemption.

Determination of Specificity:

The tax benefits provided to enterprises located in the Binhai New Area of Tianjin, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Notice of the Ministry of Finance and the State Administration of Taxation on the Relevant Preferential Enterprise Income Tax Policies for Supporting the Development and Openness of Binhai New Area of Tianjin, Cai Shui (2006) No. 130*.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received preferential treatment under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is exempted, shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of tax benefit received during the subsidy POI over the total quantity of subsidized goods to which the benefit was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 8: Supportive Fund (Grant) Provided By The Government Of Xuyi County, Jiangsu Province

General Information:

This program was established in the *Notification of Eight Solemn Promises on Attracting Foreign Investment in the Industrial Zone of Xuyi County, Xu Fa (2001) No. 28*, which came into effect as of September 26, 2001. This program was established in order to attract foreign investment in the Industrial Zone of Xuyi County. The authority responsible for administering this program is the Government of Xuyi County.

Under this program, enterprises are eligible to receive supportive funds (grants) provided by the Local Xuyi Government. The amount of grants provided under this program is calculated on the basis of 40% of enterprise income tax paid in the previous year, 25% of VAT paid in the previous year, and 100% of other types of taxes (i.e., stamp tax, real estate tax, urban construction tax and land usage tax) paid in the previous year.

This program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The grant under this program is provided for in the *Notification of Eight Solemn Promises on Attracting Foreign Investment in the Industrial Zone of Xuyi County, Xu Fa (2001) No. 28*.

Eligibility Criteria:

Under this program, enterprises are eligible to receive a grant based on the following criteria:

- a) the company must be located in the Industrial Zone of Xuyi County;
- b) the company has over RMB 3 million investment on fixed assets, and;
- c) the project should be non-polluting and non-combustible.

Determination of Subsidy:

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds, and confers a benefit to the recipient equal to the amount of the grant provided.

Determination of Specificity:

Grants provided to enterprises located in the Industrial Zone of Xuyi County, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document,

in this case, as set forth in the *Notification of Eight Solemn Promises on Attracting Foreign Investment in the Industrial Zone of Xuyi County, Xu Fa (2001)*.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(1) of the SIMR, any amount that relates to the direct transfer of funds by the practices of a government shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the grant over the total quantity of subsidized goods to which the grant was attributable pursuant to paragraph 27(a) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 9: Repaying Foreign Currency Loan by Returned VAT

General Information:

This program was established in the *Notice of the Ministry of Finance and the State Administration of Taxation on Continuing the Policy of Repaying Foreign Currency Loans (Incurred prior to December 31, 1994) by Returned VAT During the "Tenth Five-Year" Period, Cai Qi (2002), No. 368*, which was published on September 10, 2002. The "Tenth Five-Year" period covers the five years from 2001 to 2005. The authority is responsible for administering this program are the Ministry of Finance and the State Administration of Taxation.

Under this program, industrial enterprises are eligible to receive a VAT refund if the enterprise had outstanding foreign currency loans as of December 31, 1994, and the refund can be used to repay the outstanding foreign currency loans. The amount of the VAT refund shall not exceed 12% of the total amount of the principal and interests payment for the foreign currency loan in any given year.

Although the program was officially discontinued in 2005, the CBSA will normally consider a benefit as having been received on the date on which the recipient actually has received the funds. In this subsidy investigation, one cooperative exporter was found to have received benefits under this program during the Subsidy POI.

Legal Basis:

The VAT refund under this program is provided for in the *Notice of the Ministry of Finance and the State Administration of Taxation on Continuing the Policy of Repaying Foreign Currency Loans (Incurred prior to December 31, 1994) by Returned VAT During the "Tenth Five-Year" Period, Cai Qi (2002), No. 368*.

Eligibility Criteria:

Under this program, enterprises are eligible to receive a VAT refund if the enterprise had outstanding foreign currency loans as of December 31, 1994. However, it appears that not all enterprises which had outstanding foreign currency loans as of December 31, 1994, are eligible for receiving benefit under the program. For example, in 2004 and 2005, only those enterprises, which were listed in the *Notice of on the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2004 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2005), No. 218* and the *Notice of on the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2005 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2006), No. 491*, were eligible for receiving such benefit.

During the verification meetings, the CBSA requested to see the list of enterprises participating in the program; however, the GOC failed to provide this list.

Determination of Subsidy:

On the basis of available information, it has been determined that this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA; i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the VAT refund.

Determination of Specificity:

VAT refunds provided to selected enterprises, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Notice of on the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2004 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2005), No. 218* and the *Notice of on the Name List of Companies which are Entitled to Repay Foreign Currency Loans by Returned VAT in 2005 and on the Amount of VAT Returned issued by Ministry of Financial and the State Administration of Taxation, Cai Qi (2006), No. 491*.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters had received benefits under this program during the Subsidy POI. Pursuant to subsection 27.1(2) of the SIMR, any amount owing and due to government that is not collected, shall be treated as a grant under section 27 of the SIMR. Therefore, the amount of subsidy was calculated by distributing the amount of the tax exempted over the total quantity of subsidized goods for the production, purchase, distribution, transportation, sale, export or import of which was carried out by the exporter during the weighted average useful life, not exceeding 10 years, of fixed assets used by the industry of the exporter, pursuant to paragraph 27(c) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

Program 10: Debt-to-Equity Swap

General Information:

The debt-to-equity swap is one of the most significant measures used in the financial restructuring of China's state-owned enterprises (SOEs) and state-owned banks. Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on November 20th, 2000), the State Council of the People's Republic of China (State Council) established four asset management companies (AMCs) that were directed to purchase certain non-performing loans from state-owned banks including the Bank of China (BOC), the Industrial and Commercial Bank of China (ICBC), the China Construction Bank (CCB) and the Agricultural Bank of China (ABC). According to the *Regulations of Asset Management Companies*, the AMCs are supervised and managed by the People's Bank of China, China's Ministry of Finance, and the China Securities Regulatory Commission. The four AMCs are China Orient AMC (paired with the BOC), China Huarong AMC (paired with the ICBC), China Xinda AMC (paired with the CCB) and China Great Wall AMC (paired with the ABC).

One of the authorized business activities available for the management of non-performing loans purchased by the AMCs is the debt-to-equity swap. A debt-to-equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company. The *Regulations of Asset Management Companies* (2000) set forth that the State Economic and Trade Commission (SETC) would recommend companies to the AMCs for debt-to-equity swap consideration and that, ultimately, any plans or agreements related to a specific debt-to-equity swap required final approval from the State Council. Based on the information available, approximately 580 SOEs were officially approved for debt-to-equity swaps with AMCs.

Eligibility Criteria:

The GOC failed to provide sufficient information regarding the selection criteria and approval process for the enterprises involved in government approved debt-to-equity swaps. In addition, the CBSA requested a listing from the GOC of the specific companies that were involved in government approved debt-to-equity swaps. However, the GOC explained that the SETC was discontinued during the institutional reform of state agencies in 2003 and that, consequently, the listing was not available.

Determination of Subsidy:

An equity infusion by a government AMC in the form of a debt-to-equity swap constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA in that it involves the direct transfer of funds or liabilities and pursuant to paragraph 2(1.6)(b) in that amounts owing and due to the government are forgiven or not collected. Benefit to the recipient is conferred to the extent that the

equity infusion is inconsistent with the usual investment practice of private investors in the territory of the country that is subject to the subsidy investigation. Accordingly, the CBSA will examine whether a company received an equity investment by a government on terms more favourable than would be available to that company in the market.

To this end, the CBSA will first determine whether there was a fair market value for the shares immediately before the government's decision to acquire the shares became public. The price paid by private investors for the same class of shares acquired by the government would represent fair market value if the acquisition of the shares by private investors occurred before the debt-to-equity swap became public. During the investigation, the CBSA identified two cooperative exporters that were involved in debt-to-equity swaps. In each instance, the CBSA was unable to determine whether there was a fair market value for the shares acquired by a government AMC in the debt-to-equity swap.

Where there is no fair market value for the shares acquired by the government, the CBSA will determine whether the government acted in a manner that is consistent with the usual investment practice of private investors in respect of the decision to provide an equity infusion. The usual investment practices of private investors would include, amongst others, a financial risk assessment before the investment decision is made in addition to considerations related to the future financial prospects of the company under consideration for the equity infusion.

As previously stated, the GOC did not provide sufficient information with respect to the selection criteria or approval process related to government approved debt-to-equity swaps. In addition, the GOC did not provide a listing of the companies that were involved in government approved debt-to-equity swaps. As a result, the CBSA is unable to determine whether any financial risk assessment was undertaken prior to the SETC's decision to recommend a particular company for a debt-to-equity swap or prior to the State Council's decision to approve a debt-to-equity swap or prior to an AMC's decision to carry out a debt-to-equity swap. The *Regulations of Asset Management Companies*, however, indicate that the government approved debt-to-equity swaps are part of the GOC's greater efforts to manage the non-performing loans purchased by AMCs in order to relieve the debt burden on state-owned banks and SOEs. As such, government approved debt-to-equity swaps are connected to significant government initiatives intended to effect the financial restructuring of China's SOEs and state-owned banks. When evaluated as a whole, the financial restructuring of the state-owned banking sector in China and a wide range of SOEs through government regulation, loan management, and debt relief is not in the nature of private investment nor likely is such financial restructuring within the capacity of private investors. Consequently, the CBSA concludes, on the basis of the information available, that government approved debt-to-equity swaps are part of the same government-driven initiatives that, in toto, are not consistent with the usual investment practices of private investors. Thus, the two cooperative exporters received a benefit to the extent that the government equity infusion in the form of a debt-to-equity swap was inconsistent with the usual investment practices of private investors.

Determination of Specificity:

Based on the information available, equity infusions by government AMCs in the form of debt-to-equity swaps have been provided predominantly, if not exclusively, to a limited number of SOEs. It should be further noted that the two cooperative exporters that were involved in debt-to-equity swaps were both SOEs.

In addition, the *Accession of the People's Republic of China to the WTO* specifically sets forth that “subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies”.

As a result, the CBSA has concluded that there is predominant use of debt-to-equity swaps by a particular enterprise, if not exclusive use of debt-to-equity swaps by a limited number of enterprises such that a debt-to-equity swap provided by a government AMC constitutes a specific subsidy pursuant to subsection 2(7.3) of SIMA.

Calculation of Amount of Subsidy:

As previously stated, the CBSA could not determine whether there was a fair market value for the shares acquired by the government AMCs in the debt-to-equity swaps. In such instances, subsection 27.1(1) of the SIMR provides that any amount that relates to the direct transfer of funds or liabilities by the practices of a government will be treated as a grant in accordance with section 27 of the SIMR for purposes of calculating the amount of a subsidy in terms of the benefit to the recipient. In addition, subsection 27.1(2) provides that any amount owing or due to the government that is forgiven or not collected by the government will also be treated as a grant in accordance with section 27 of the SIMR. Accordingly, the amount of subsidy pursuant to a debt-to-equity swap will be the amount of the equity infusion or the amount owing or due to a government that was not collected or forgiven. Therefore, the amount of subsidy was calculated by distributing the amount owing or due the government that was not collected or forgiven over the total quantity of subsidized goods for the production, purchase, distribution, sale, export or import of which was carried out by the exporter during the weighted average useful life, not exceeding 10 years, of fixed assets used by the industry of the exporter, pursuant to paragraph 27(c) of the SIMR.

The GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amount received by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount respecting this program under ministerial specification.

B. ACTIONABLE SUBSIDY PROGRAMS THAT HAVE NOT BEEN USED BY COOPERATIVE EXPORTERS

Program 11: Preferential Tax Policies For Enterprises With Foreign Investment Established In Sezs (Excluding Shanghai Pudong Area)

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to absorb foreign investment, expand the open-up policy and enhance development in SEZs.

The authority responsible for administering this program is the State Administration of Taxation. The local tax offices are responsible for implementing State policy and all relevant matters related to income tax assessment and collection, including examination and approval of applications relating to preferential tax treatment.

Under this program, non-wholly foreign owned FIEs established in SEZs and FEs (wholly foreign owned FIEs) established in SEZs engaging in production or business operations shall pay income tax at a reduced rate of 15%.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax reduction for FIEs under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article 69 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Article 69 defines SEZs as the SEZs of Shenzhen, Zhuhai, Shantou and Xiamen and the Hainan SEZ established by law or established upon approval of the State Council.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential tax rates provided to FIEs located in the SEZs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the CBSA believes that the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the abovementioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 12: Preferential Tax Policies For Enterprises With Foreign Investment Established In The Coastal Economic Open Areas And In The Economic And Technological Development Zones

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investment in Economic and Technical Development Zones (ETDZs) in open coastal cities and encourage some districts to take the lead in development. The authorities responsible for administering this program are the State Administration of Taxation and local tax offices.

Under this program, FIEs of a productive nature established in coastal economic open zones or in the old urban districts of cities where the SEZs or the ETDZs are located shall pay income tax at a reduced rate of 24%.

FIEs established in coastal economic open zones or in the old urban districts of cities where the SEZs or the ETDZs are located or in any other regions defined by the State Council, who are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, (b) projects with foreign investments of over US \$30 million and having long periods of return on

investment, and (c) energy resource, transportation and port construction projects, may be levied at the reduced rate of 15%.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax reduction for FIEs under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

The eligibility criteria for this program can be found in the following articles of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Article 69 defines ETDZs as the economic and technological development zones in the coastal port cities established upon approval of the State Council.

FIEs established in ETDZs that are eligible for preferential tax treatment under this program are located in the following ETDZ areas: Changchun, Wuhan, Haerbin, Nanchang, Changsha, Zhengzhou, Taiyuan, Hefei, Wuhu, Xi'an, Chongqing, Chengdu, Hohhot, Kunming, Nanning, Yinchuan, Guiyang, Shihezi, Urumchi, Lanzhou, Xining, Tianjin, Kunshan, Suzhou Industrial Park, Guangzhou, Jinqiao, Beijing, Nanjing, Dalian, Caohejing, Qingdao, Hangzhou, Ningbo, Yantai, Shenyang, Haichang Xiamen, Rongqiao Fuqing, Minhang, Fuzhou, Nansha, Xiaoshan, Nantong, Qinghuangdao, Yingkou, Wenzhou, Lianyungang, Weihai, Daxie Ningbo, Zhanjiang, Dayawai Huizhou, Yangpu Hainan, Dongshan and Hongqiao.

Article 70 defines coastal economic open zones as "those cities, counties and districts established as coastal economic open zones upon approval of the State Council".

FIEs of a productive nature are defined in Article 72 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* as FIEs engaged in the following industries:

- (a) Machine manufacturing and electronics industries;
- (b) Energy resource industries (not including exploitation of oil and natural gas);
- (c) Metallurgical, chemical and building material industries;
- (d) Light industries, and textiles and packaging industries;
- (e) Medical equipment and pharmaceutical industries;
- (f) Agriculture, forestry, animal husbandry, fisheries and water conservation;
- (g) Construction industries;
- (h) Communications and transportation industries (not including passenger transport);

- (i) Development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; and
- (j) Other industries as specified by the tax authorities under the State Council.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential tax rates provided to FIEs located in the coastal economic open areas and the ETDZs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the CBSA believes that the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 13: Preferential Tax Policies For Enterprises With Foreign Investment Established In The Pudong Area Of Shanghai

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investment in the SEZs of the Pudong Area of Shanghai. The authority responsible for administering this program is the State Administration of Taxation. The local tax offices are responsible for implementing State policy and all relevant matters related to income tax

assessment and collection, including examination and approval of applications relating to preferential income tax treatment.

Under this program, FIEs, FEs, joint-venture DIES and single-investor DIES established in the SEZs of the Pudong New Area of Shanghai shall pay income tax at a reduced rate of 15%.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax rate reduction for FIEs and FEs under this program is specifically provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. The income tax rate reduction for joint-venture DIES and single-investor DIES under this program can be found in the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*. These legal documents also clearly indicate that the reduced income tax rate of 15% is to apply to all enterprises, including FIEs, located in the aforementioned SEZs.

Eligibility Criteria:

The eligibility criteria relating to FIEs for this program can be found in Article 73 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which specifically identifies productive-oriented FIEs established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15%.

The eligibility criteria for this program relating to DIES located in the Pudong New Area of Shanghai can be found in the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*, which specifically identifies Chinese joint venture and single-investor DIES established in the Pudong New Area of Shanghai as being eligible for the reduced income tax rate of 15%.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential income tax rates provided to enterprises located in the SEZs of the Pudong Area of Shanghai were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income*

Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises and the *Circular on Income Tax Rate Applied to Chinese Joint Ventures in Pudong New Area of Shanghai*. In addition, the CBSA has determined that, in this case, the particular enterprise consists of a group of enterprises which are specifically located in the SEZs of the Pudong Area of Shanghai.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 14: Preferential Tax Policies In The Western Regions

General Information:

This program was established for domestic-invested enterprises (DIEs) and FIEs in the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*, which was promulgated on December 30, 2001, and came into effect as of January 1, 2002. This program was established in order to encourage investment in the western region of China. The authority responsible for administering this program is the State Administration of Taxation. The local tax offices are responsible for implementing State policy and all relevant matters related to income tax assessment and collection, including examination and approval of applications relating to preferential income tax treatment.

Under this program, DIEs in industries classified in the encouraged category in the *Guiding Catalogue for Industrial Structure Regulation (2005 Version)* and FIEs classified in the encouraged category in the *Guideline Catalogue for Foreign Investment Industries* and the *Guideline Catalogue of the Advantageous Industries in Central and Western Regions for Foreign Investment*, and who are located in the western region and other specified locations are eligible for a preferential income tax rate of 15%.

The program was in operation during the Subsidy POI and is scheduled to expire in 2010.

Legal Basis:

The income tax rate reduction is specifically provided for in Article 1 of the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

Eligibility Criteria:

The eligibility criteria relating to this program can be found in Article 1 of the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

The eligibility criteria states that enterprises located in the western region and in industries classified as encouraged in the *Guiding Catalogue for Industrial Structure Regulation (2005 Version)* or in the *Guideline Catalogue for Foreign Investment Industries* and the *Guideline Catalogue of the Advantageous Industries in Central and Western Regions for Foreign Investment* are eligible for the preferential income tax rate of 15% provided they are major businesses and their income from major businesses accounts for more than 70% of total income.

The western region for the purposes of this program is defined as: Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region and Guangxi Zhuang Autonomous Region.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential income tax rates provided to enterprises located in the western region and other specified locations were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Circular of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Tax Policy of Development of the Western Region*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 15: Tariff And Value-Added Tax (VAT) Exemptions On Imported Materials And Equipment In SEZ And Other Designated Areas

General Information:

This program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. The program was established to absorb investment in SEZs and encourage districts to take the lead in development. The program is administered by the General Administration of Customs and local customs authorities.

Under this program, machinery and equipment, spare parts, raw and semi-processed materials, means of transportation and other capital goods necessary for production that are imported by enterprises in special zones shall be exempted from import duties.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The import duty exemption is detailed in Article 13 of the *Regulations on Special Economic Zones in Guangdong Province*.

Eligibility Criteria:

The eligibility criteria are stated in Article 13 of the *Regulations on Special Economic Zones in Guangdong Province*.

Any enterprise located in the special zones may receive the import duty exemption.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the

government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Import duty exemptions provided to enterprises in the SEZs of Guangdong province were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Regulations on Special Economic Zones in Guangdong Province*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 16: Income Tax Refund Where Profits Re-Invested In SEZ And Other Designated Areas

General Information:

This program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. This program was established to encourage investors to reinvest profits into businesses in the SEZs of Guangdong province. The authority responsible for administering this program is the State Administration of Taxation. The local tax offices are responsible for implementing State policy and all relevant matters related to income tax assessment and collection, including examination and approval of applications relating to preferential tax treatment.

Under this program, investors that reinvest their profits derived in the SEZs of Guangdong province for a period of five years or longer, may apply for a reduction of or an exemption from income tax on the reinvested portion.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The income tax reduction for investors in the SEZs of Guangdong province is provided for in Article 16 of the *Regulations on Special Economic Zones in Guangdong Province*.

Eligibility Criteria:

This program is available to any investors that reinvest their share of profits in the special zones for a period of five years or longer, according to Article 16 of the *Regulations on Special Economic Zones in Guangdong Province*.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential tax rates provided to enterprises located in the SEZs of Guangdong province were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Regulations on Special Economic Zones in Guangdong Province*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 17: VAT And Income Tax Exemption /Reduction For Enterprises Adopting Debt-To-Equity Swaps

General Information:

This program was established in the *Notice on the Tax Policies for Debt-to-Equity Swap Enterprises, Cai Shui (2005) No. 29*, which came into effect as of January 1, 2004. The authorities responsible for administering this program are the Ministry of Finance and the State Administration of Taxation.

Under this program, enterprises adopting debt-to-equity swaps, pursuant to the debt-to-equity swap agreement signed between the enterprise and a financial asset management company, are exempted from paying value-added tax and/or consumption tax.

This program was in operation during the Subsidy POI and is scheduled to expire on December 31, 2008.

Legal Basis:

The tax exemption under this program is provided for in Article I of the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*.

Eligibility Criteria:

The eligibility criteria for this program can be found in Article I of the *Notice on the Tax Policies for Debt-to-equity Swap Enterprises, Cai Shui (2005) No. 29*, which states that:

If, pursuant to the debt-to-equity swap agreement signed between a swap enterprise and a financial asset management company, the old swap enterprise offers assets in the form of goods to the new swap enterprise as investments, an exemption of values-added taxes thereon shall be granted; and

If, pursuant to the debt-to-equity swap agreement signed between a swap enterprise and a financial asset management company, the old swap enterprise offers taxable consumer goods to the new swap enterprise as investments, an exemption of consumption taxes thereon shall be granted.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

The tax exemptions provided to enterprises adopting debt-to-equity swaps were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Notice on the Tax Policies for Debt-to-Equity Swap Enterprises, Cai Shui (2005) No. 29*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 18: Reduced Tax Rate For Productive Foreign-Invested Enterprises (Fies) Scheduled To Operate For A Period Not Less Than 10 Years

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investment. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities.

Under this program, from the year an FIE begins to make a profit, they may apply for and receive an exemption from income tax in the first and second years and a 50% reduction in the third, fourth, and fifth years of profitable operation. Should an FIE cease operation following a period of less than 10 years, that enterprise will be responsible for repaying the amount of tax that has been reduced or exempted under this program.

If the FIE business license prescribes a scope that encompasses both business of a “productive” nature and of a “non-productive” nature, the FIE may only apply for and receive benefits under this program in the years where the income from productive business exceeds 50% of its total income. Should the scope of the FIE not include business of a “productive” nature in the scope prescribed by its business license, it may not receive benefits under this program under any circumstance, regardless if it has productive business income that exceeds 50% of total income.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The income tax reduction and/or exemption for FIEs under this program is provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. The program is administered in accordance with the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

As noted above, FIEs of a “productive nature” are eligible for this program as long as they are scheduled to operate for a period not less than ten years. FIEs of a “productive nature” are defined in Article 72 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* as FIEs engaged in the following industries:

- (a) Machine manufacturing and electronics industries;
- (b) Energy resource industries (not including exploitation of oil and natural gas);
- (c) Metallurgical, chemical and building material industries;
- (d) Light industries, and textiles and packaging industries;
- (e) Medical equipment and pharmaceutical industries;
- (f) Agriculture, forestry, animal husbandry, fisheries and water conservation;
- (g) Construction industries;
- (h) Communications and transportation industries (not including passenger transport);
- (i) Development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; and
- (j) Other industries as specified by the tax authorities under the State Council.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential tax rates provided to FIEs were found to be limited, in law, to a particular enterprise pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the CBSA believes that the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the abovementioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 19: Preferential Tax Policies for Foreign Invested Export Enterprises

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established to expand foreign economic cooperation. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities.

Under this program, export oriented enterprises invested in and operated by foreign businesses may pay a reduced income tax rate of 15% if their annual output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year. Export oriented enterprises in the SEZs and ETDZs and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the abovementioned conditions, shall pay enterprise income tax at the tax rate of 10%.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax reduction for foreign invested export enterprises under this program is provided for in Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Article 75.7 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

To obtain this preferential tax treatment, 70% of the sales of the foreign business must be for export.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

The CBSA considers this subsidy to be an export subsidy, as defined in paragraph 2(1) of SIMA, as it is contingent, in whole or in part, on export performance.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 20: Preferential Tax Policies For Enterprises With Foreign Investment Which Are Technology Intensive And Knowledge Intensive

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established to further utilize foreign capital, introduce foreign advanced technology and equipment and accelerate industry structural adjustment. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities.

Under this program, production oriented enterprises with foreign investment established in the coastal economic open zones, SEZs, and in the old urban districts of municipalities where ETDZs are located and which are engaged in technology intensive and knowledge intensive projects, may receive a reduced income tax rate of 15%.

The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The income tax reduction for production oriented enterprises with foreign investment under this program is provided for in Article 7 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Article 73(1)(a) of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

This program is limited to production oriented enterprises with foreign investment established in the coastal economic open zones, SEZs, and in the old urban districts of municipalities where ETDZs are located and which are engaged in technology intensive and knowledge intensive projects.

According to the *Circular of the State Administration of Taxation Concerning the Tax Preferential Policy Applicable to Enterprises with Foreign Investment with Regard to Technology Intensive and Knowledge Intensive Projects Guo Shui Fa [2003] No. 135*, technology intensive and knowledge intensive projects are those involving leading products listed in the *China Catalogue of High and New Technological Products (promulgated in 2000)*, promulgated by the Ministry of Science and Technology (formerly known as Commission of Science and Technology). The income from the sales of the leading products for the year must be more than 50% of the total income from sales of all products of the enterprise for the same year.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

Preferential tax rates provided to production oriented enterprises with foreign investment were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the CBSA believes that the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 21: Preferential Tax Policies For FIEs And Foreign Enterprises Which Have Establishments Or Places In China And Are Engaged In Production Or Business Operations Purchasing Domestically Produced Equipment

General Information:

This program was established in the *Circular of the Ministry of Finance and State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises (Cai Shui Zi [2000] No. 49)*, which came into force on July 1, 1999. This program was established to attract foreign investment and support technology renovation. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities.

Under this program, certain FIEs and foreign enterprises are eligible to receive a refund of 40% of their investment on the purchase of domestically-produced equipment from the increased part of their enterprise income taxes of the purchasing year over those of the year before.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax refund for certain FIEs and foreign enterprises is provided for in Article 1 of the *Circular of the Ministry of Finance and State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises (Cai Shui Zi [2000] No. 49)*.

Eligibility Criteria:

This program is limited to FIEs and foreign enterprises that fall under the Encouraged Category and Restricted B Category listed in the Directive Category of the Industries of Enterprises with Foreign Investment stipulated in the *Circular of the State Council concerning the Adjustment of Taxation Policies for Import Equipment (Guo Fa [1997] No. 37)*.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

The income tax refund provided to FIEs and FEs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the

Circular of the Ministry of Finance and State Administration of Taxation Concerning the Issue of Tax Credit for Business Income tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises (Cai Shui Zi [2000] No. 49).

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 22: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investors to reinvest profits into businesses in China. The authorities responsible for administering this program are the State Administration of Taxation and the local tax offices.

Article 10 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* clearly identifies that any foreign investors who directly reinvest their after tax profit into the organization from which they received the profit from, or use the profits to establish a new foreign enterprise, will be refunded 40% of the tax paid on the profit amount directly reinvested. Further, if the direct reinvestment is in a new foreign enterprise and the investor withdraws the investment before five years have passed, the tax refunded must be repaid. It also states that should State Council pass regulations relating to the provision of this preferential treatment, the provisions of those regulations will be applied.

Article 80 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* refers to “direct reinvestment” as using the profits referred to above, prior to their receipt, to increase registered capital in the FIE who provided the profits, or, following receipt of those profits, establishing another FIE.

Article 81 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* addresses the preferential provisions passed by State Council, as referred to above. It states that where a foreign investor

directly reinvests profits to establish or expand export oriented enterprises or advanced technology enterprises, 100% of the income tax paid on the reinvested profit will be refunded.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax refund for FIEs under this program is provided for in Article 10 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and is administered in accordance with Articles 80, 81 and 82 of the *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

Eligibility Criteria:

In order for a foreign investor to obtain this preferential tax treatment, 100% of the shares of the foreign investor enterprise must be foreign-owned and located outside China. Therefore, foreign-funded enterprises inside China that act as investors in other enterprises will not be considered foreign investors for the purposes of preferential treatment under this program.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

The income tax refund provided to FIEs were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*. In addition, the CBSA believes that the subsidy is further limited to a group of enterprises, which is comprised of FIEs that meet the above-mentioned eligibility criteria.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for

the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 23: Reduction in Land Use Fees

General Information:

This program is administered in accordance with the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*, which was established on August 20, 1999. This program was established to attract foreign investors by providing a land use fee exemption to those enterprises with foreign investment that have acquired their lands from the GOC and have paid the transfer fee. The Administrative Office of the State Council is responsible for administering this program.

The program was in operation during the Subsidy POI.

Legal Basis:

The land use fee exemption provided under this program is administered in accordance with Article 4.5 of the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*.

Eligibility Criteria:

This program is limited to FIEs that have purchased land use rights from the GOC and have paid their transfer fee.

Determination of Subsidy:

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e. amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

Determination of Specificity:

The land use fee exemption provided to FIEs was found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA, i.e. as it is limited, pursuant to a legislative, regulatory, or administrative instrument or other public document, in this case, as set forth in Article 4.5 of the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*.

Calculation of Amount of Subsidy:

The CBSA has confirmed the information provided by the co-operating exporters and the GOC, indicating that they have not received benefits under this actionable subsidy program during the Subsidy POI.

However, the GOC has not provided information regarding the use of this program by the non-cooperative exporters. The CBSA is, therefore, unable to determine specific subsidy amounts respecting the possible utilization of this program by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

C. ACTIONABLE PROGRAMS FOR WHICH NO INFORMATION WAS RECEIVED

The following programs were identified either by the complainant or by the CBSA during the course of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI.

As a result, the CBSA requested the GOC to provide a complete response to the questions listed in Appendix I of the subsidy RFI concerning the legislation, administration and availability of these programs:

Program 24: Exemption/Reduction Of Special Land Tax And Land Use Fee In SEZs And Other Designated Areas

Program 25: Preferential Costs Of Services And Goods Provided By Government Bodies Or SIEs in SEZs and Other Designated Areas

Program 26: Loans And Interest Subsidies Provided Under The Northeast Revitalization Program

Program 27: Reimbursement Of Anti-Dumping And/Or Countervailing Legal Expenses By The Local Governments

Program 28: Preferential Loans

Program 29: Relief From Duties And Taxes On Imported Material And Other Manufacturing Inputs

Program 30: Purchase Of Goods From State-Owned Enterprises

Program 31: Government Export Subsidy And Product Innovation Subsidy

The GOC did not provide any of the requested information regarding the legal basis, eligibility for or administration of the above programs. The GOC simply confirmed that the cooperative exporters had not received benefits under these subsidy programs during the Subsidy POI. However, the CBSA was unable to determine specific subsidy amounts respecting the possible utilization of these programs by the non-cooperative exporters. As a result, for the non-cooperative exporters, the CBSA has determined subsidy amounts pertaining to these programs under ministerial specification.

D. NON-ACTIONABLE SUBSIDY PROGRAMS

Program 32: Tax Exemption For Enterprises Qualified As A "Welfare" Enterprise

This program was established in the *Notice of the Levy of Turnover Tax of Welfare Enterprises, Guo Shui Fa (1994) No. 155*, which came into effect as of January 1, 1994. The *Notice of the Levy of Turnover Tax of Welfare Enterprises, Guo Shui Fa (1994) No. 155* was cancelled and officially substituted by the *Notice of the Promotion of Employment Taxation Benefits for the Handicapped, Cai Shui (2007) No. 92*, which came into effect as of July 1, 2007. This program was established in order to promote employment of handicapped people. The authorities responsible for administering this program are the State Administration of Taxation and local tax offices.

The eligibility criteria for this program can be found in Article V of the *Notice of the Promotion of Employment Taxation Benefits for the Handicapped, Cai Shui (2007) No. 92*. On the basis of available information, this program was not found to be specific pursuant to SIMA.

At the Preliminary Determination, the CBSA also identified two other programs (i.e., Program 35: *VAT refund for enterprises qualified as a "welfare" enterprise*; and Program 36: *Employment taxation benefits for the handicapped*). However, it was found that these two titles describe the same program as Program 32: *Tax exemption for enterprises qualified as a "welfare" enterprise*. Therefore, none of these programs are specific.

Program 33: Tax Exemption For Employing Former Employees Laid-Off From SOEs

This program was established in the *Circular on the Issues of Tax Policy on employment for Unemployed People, Cai Shui (2005) No. 186*, which was issued on January 23, 2006, and came into effect as of January 1, 2006. This program was established in order to promote employment for unemployed people. The authorities responsible for administering this program are the State Administration of Taxation and local tax authorities.

The eligibility criteria for this program can be found in Articles 1, 2 and 3 of the *Circular on the Issues of Tax Policy on employment for Unemployed People, Cai Shui (2005) No. 186*. On the basis of available information, this program was not found to be specific pursuant to SIMA.

Program 34: Export Credit Provided By The Export-Import Bank Of China

During the course of the investigation, the CBSA identified that the Export-Import Bank of China (the EXIM Bank) had provided loans to two of the cooperative exporters during the Subsidy POI.

The EXIM Bank was established in 1994 and is 100% owned by the GOC. The EXIM Bank is one of several government policy banks under the leadership of the State Council in China. The main mandate of the EXIM Bank is to implement the state policies in industry, foreign trade, diplomacy, economy and finance, to provide policy financial support as well as to promote exports of Chinese mechanical and electronic products and high- and new-tech products. One of its activities includes the provision of export credits and import credits, including export seller's credit.

These loans have been characterized as export seller's credits ("supplier credits") for high and new-tech products. According to the EXIM Bank, the export seller's credit for high and new-tech products refers to the loans, denominated either in Renminbi or foreign currencies, provided by the Bank to Chinese companies for financing their export of high- and new-tech products excluding ships and equipment. The GOC has indicated that such loans in the form of supplier credits should not be found countervailable pursuant to the second paragraph of item (k) of Annex I to the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).

The second paragraph of item (k) of the SCM Agreement states that:

If a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

The international undertaking referred to above is the *Organization for Economic Cooperation and Development (OECD) Arrangement on Officially Supported Export Credits* (hereinafter referred to as the "Arrangement"). In this regard, the GOC maintains that these loans characterized as supplier credits are consistent with the interest rate provisions set forth in the Arrangement. Accordingly, an export credit that is consistent with the interest rate provisions contained therein is not to be considered a prohibited export subsidy.

If these loans characterized as supplier credits are not considered prohibited subsidies, then the remedies set forth in Article 4 of the SCM Agreement in respect of prohibited subsidies would not be available to address such loans. Notwithstanding the "safe haven" provided by the second paragraph of item (k) of the SCM Agreement, these loans would still be subject to countervailing measures provided that the requisite elements of a countervailable subsidy have been satisfied (i.e. financial contribution, benefit, and specificity). The determination of specificity, however, would take into account the possibility that such loans may not be considered a prohibited export subsidy.

Based on the information available, the loans provided by the EXIM Bank to the two cooperative exporters were not found to be specific pursuant to SIMA.

E. ADDITIONAL TITLES OF PROGRAMS ALREADY IDENTIFIED

It was found that programs 32, 35, and 36 were the same program, which was subsequently referred to as: *Tax exemption for enterprises qualified as a "welfare" enterprise* and determined not to be actionable.

It was also found that program 37: *Tax exemption of purchased fixed assets used for qualified technological improvement projects* is identical to program 5: *Preferential tax policies for domestic enterprises purchasing domestically produced equipment for technology upgrading purposes.*

**APPENDIX 4: SUMMARY OF FINDINGS FOR THE FINAL DETERMINATION –
SECTION 20**

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SECTION 20

Section 20 is a provision under the *Special Import Measures Act* (SIMA) that may be applied to determine the normal values of the goods in a dumping proceeding where certain conditions prevail in the domestic market of the exporting country.

In the case of a prescribed country under paragraph 20(1)(a) of SIMA, section 20 is applied where, in the opinion of the President of the Canada Border Services Agency (President), domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

The following are guidelines that the Canada Border Services Agency (CBSA) considers when examining factors that suggest price control.

Domestic Prices are Substantially Determined by the Government

These are factors which would suggest that the government directly determines pricing:

- the government or a government body sets minimum and/or maximum (floor or ceiling) price levels in respect of certain goods which permits prices to be established no lower or no higher than the minimum or maximum price levels
- the government or a government body sets absolute pricing levels for certain goods
- the government or a government body sets recommended or guidance pricing at which it is expected that sellers will adhere to within a certain range above and/or below that value
- there are government or regulatory bodies which are responsible for establishing the price levels and for regulating and enforcing these price levels
- there are government-owned or controlled enterprises that set the price of their goods in consultation with the government or as a result of government-mandated pricing policies and, because of their market share or dominance, become price-leaders in the domestic market.

Governments can also indirectly determine domestic prices through a variety of mechanisms that can involve the supply or price of the inputs (goods and services) used in the production of the subject goods or by influencing the supply of the subject goods in order to affect their price. For example:

- governments can control import and export levels through licensing, quotas, duties or taxes to maintain domestic prices at a certain level
- governments can subsidize producers by providing direct financial subsidies or low-priced inputs in order to maintain the selling price of the product at a certain level
- governments can purchase goods in sufficient quantities to raise the domestic price of the goods or they can sell stockpiled goods to put downward pressure on prices

- through taxation or other policies, governments can regulate the level of profits that a company can earn which will affect selling prices
- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices

BACKGROUND

A section 20 inquiry refers to the process whereby the CBSA collects information from various sources so that the President may, on the basis of this information, form an opinion regarding the presence of the conditions described under 20(1) of SIMA in the sector under investigation. For the purposes of this document, “seamless steel casing” refers to the subject goods.

The section 20 inquiry examined the steel Oil Country Tubular Goods, (OCTG) sector.

OCTG includes tubing and drill pipe in addition to casing, which can be welded or seamless.

At the initiation of the dumping and subsidy investigations regarding seamless steel casing from China, the CBSA sent a section 20 Request For Information (RFI) to all known exporters and producers of seamless steel casing in China, as well as to the Government of China (GOC), requesting detailed information related to the steel sector and specifically, the steel OCTG sector in China. The CBSA requested this information in order to conduct a meaningful analysis given that many of the government measures under consideration were applicable to a wide range of steel producers and steel goods.

In response to the section 20 RFI, the CBSA received submissions from six exporters, the GOC and the China Iron and Steel Association (CISA). The co-operating exporters indicated that there were no restrictions or involvement by the GOC with respect to OCTG products.⁶¹ The CBSA examined the facts surrounding these statements in the course of the on-site verification meetings held with selected exporters.

The CBSA also obtained information from the Canadian complainant as well as numerous publicly available sources that included market intelligence reports, industry reports, academic studies, newspaper and internet articles, etc. All these documents were placed on the Record.

For the purposes of the preliminary determination on November 9, 2007, the President formed the opinion that domestic prices in the steel OCTG sector in China are substantially determined by the GOC and there are sufficient reasons to believe that the domestic prices were not substantially the same as they would be if they were determined in a competitive market. The Summary of the Findings for the President’s section 20 opinion was provided in Appendix 4 of the Statement of Reasons (SOR) issued on November 23, 2007.

In arriving at this opinion, the President considered the cumulative effect that the GOC’s measures have exerted on the Chinese steel industry, including the steel OCTG sector in China. The information indicated that the wide range of GOC measures have had an impact of a

⁶¹ Exhibit 66, 70, 77, 75 and 100 – Section 20 response to B5.

material nature on the steel industry, including the steel OCTG sector through means other than market forces.

After the preliminary determination, the CBSA conducted on-site verifications with representatives of the GOC at the central and local level, as well as with three of the co-operating Chinese exporters.

The following is a summary of the relevant information considered by the CBSA. It is composed of two parts. Part 1 addresses the GOC's indirect mechanisms that have determined or had an impact on the Chinese domestic selling price of seamless steel casing. Confidential information on the record indicates that the prevalent state ownership and influence in the OCTG enterprises and the GOC's macro-economic policies including the China National Iron and Steel Policy (NSP) have resulted in a market where government policy objectives and government actions conflict with independent commercial interests. Part 2 is the CBSA's analysis of the Chinese domestic seamless steel casing selling prices.

Chinese domestic prices are different from those in other world markets. Confidential information on the record indicates that the GOC influences and the GOC representatives actively participate in the material decisions of both seamless steel casing producers and their domestic customers. In addition, the GOC's macro-economic controls including the NSP have resulted in non-competitive market actions that support the differences between domestic and international pricing.

PART 1 – GOC IMPACT

China National Iron and Steel Policy

China's National Iron and Steel Policy⁶² outlines the GOC's objectives and future plans for the domestic steel industry. Some of the major objectives of the NSP include: the structural adjustment of the domestic steel industry; industry consolidations through mergers and acquisitions; the regulation of technological upgrading with new standards for the steel industry; and measures to reduce material and energy consumption and enhance environmental protection. In addition, the NSP provides for government supervision and management in the steel industry. Information on the record provided by the GOC and co-operating exporters indicates that NSP directives have been implemented. The GOC is controlling and regulating additional production capacity of steel enterprises, and, with respect to mergers, the GOC supported the consolidation of Anshan Iron and Steel Co. Ltd with Benxi Iron and Steel Co. Ltd.⁶³ The GOC also provided a listing of steel enterprises or steel facilities identified as closure candidates⁶⁴ and a listing of the steel enterprises that were closed in the first half of 2007.⁶⁵

⁶² Exhibit 102 – Exhibit 4 of the GOC Section 20 response.

⁶³ Exhibit 171 – A Notice on Total Output Control, Elimination of Backwardness, Structural Adjustment of Iron and Steel Industry Fa Fai Gong Ye (2006) No 1084.

⁶⁴ Exhibit 102 – GOC Exhibit 7, List of steel enterprises to be closed and eliminated.

⁶⁵ Exhibit 102 – GOC Exhibit 5, List of steel enterprises closed down or eliminated in the first half of 2007.

The CBSA examined the impact of the NSP with respect to the co-operating exporters. Firstly, the CBSA examined whether the NSP was in fact applicable to the steel OCTG sector. In Note 1 of the NSP, the steel industry is referred to as including “iron making, steel making, steel rolling and metal products.”⁶⁶ It was explained to the CBSA by one of the exporters that the production of casing by integrated seamless OCTG casing producers is considered to be a “steel rolling” process and is therefore within the scope of the NSP.⁶⁷ In addition, Article 34 of the NSP relates to “metal products” and specifically addresses the quality of OCTG products and the corrosive characteristics of the higher end products in this sector. Confidential information on the record confirms that the NSP applies to the steel OCTG sector.

In Beijing, officials of the CBSA met with a representative from the National Reform and Development Commission (NDRC) to examine the NSP. According to the NDRC, the NSP is a general guideline and not law and the NSP’s main objective is to address environmental concerns. However, the information on the record indicates that the NSP is more than a guideline for the steel industry and that the GOC exerts a significant amount of control and management over the steel industry as a result of the NSP and the implementation of its stated objectives.

The NSP is a policy approved by the highest body of the GOC, the State Council, and indications are that the NSP is to be strictly enforced. In 2006, the GOC’s “A Notice on Total Output Control, Elimination of Backwardness, Structural Adjustment of Iron and Steel Industry”⁶⁸ states:

Total output control and elimination of backwardness of iron and steel industry is a very important structural adjustment task in the eleventh five-year plan, and in order to finish the aforementioned tasks, it shall continue to strengthen and improve the macro control and take the following measures: (1) enforcing the laws, regulations and development policy of iron and steel industry strictly.⁶⁹

Steel enterprises are further motivated toward the GOC’s macro-economic objectives, which may conflict with the commercial interests of the enterprise, as there are consequences. In Article 1 of Part 3, “Enforcing the laws, regulations and development policy of iron and steel industry strictly,” the State Council “adopted” the NSP and stated the consequences that would effectively close the enterprise if it were non-compliant with the NSP and laws concerning environmental protection and safety production:

Implementing the laws, regulations and development policy of iron and steel industry is an important responsibility of the National Development and Reform Commission,

⁶⁶ Exhibit 102 – Exhibit 4 of the GOC Section 20 response.

⁶⁷ Exhibit 192 – Steel smelting, steel making and steel rolling newly added production capacity was subject to the approval of the competent investment department of the State Council as per VE Exhibit 28, Decision of the State Council on Reforming the Investment System, No 20 (2004) of the State Council.

⁶⁸ Exhibit 171 – A Notice on Total Output Control, Eliminating of Backwardness, Structure Adjustment of Iron and Steel Industry, Fa Gai Gong Ye (2006) No. 1084.

⁶⁹ Exhibit 171 – A Notice on Total Output Control, Eliminating of Backwardness, Structure Adjustment of Iron and Steel Industry, Fa Gai Gong Ye (2006) No. 1084.

department of finance, land, environment protection, quality inspection and commerce etc. For those enterprises and project in breach of laws, regulations and policies, the financial institutions may not provide any credit support; department of land and resources may not handle land using affairs; department of environment protection may not issue any evaluation report for the environment; department of commerce may not approve its contracts and articles of association, and not grant the certificate of foreign investment enterprise; department of quality inspection may not grant production approval certificate or withdrawal of such certificate; China Securities Regulatory Commission (CSRC) may not permit to finance capital both in and out of China on the stock market; department of project approval may grant project confirmation letter; customs may not credit or exempt the tariff occurring to the import of equipments and VAT in the importation; bureau of industry & commerce and tax may not permit registration; department of plan may not provide the design; the price bureau and water and electricity supply department may make separate water and electricity price policy, and for those laggard enterprises with high energy consuming, heavy polluting and low-level equipments, the water and electricity price may be high and submit for filing in the relevant national department. Every relevant department shall constitute implementing measures on the basis of industrial policy and function.⁷⁰

In its notice to the domestic steel industry in 2006, the GOC indicated that it was concerned that demand and supply in the steel industry were not in balance and the GOC acknowledged that the steel industry is under the pressure of the GOC's structural adjustment and macro controls.⁷¹

During the verification meetings with the GOC, the GOC stated that the NDRC maintains a list of the steel projects approved by the NDRC since the NSP came into effect, which further confirms that NSP directives are being followed by the steel industry. Although the CBSA requested a copy of this list, the GOC indicated that the requested document contained confidential information from the companies and could not be provided without authorization.⁷²

Furthermore, while there are environmental issues addressed in the NSP by the GOC, the CBSA believes that the main objective of the NSP is to help facilitate the GOC's macro-economic control of the steel industry in China. Based on the CBSA's on-site verification and the confidential information on the record,⁷³ the CBSA believes that China's NSP is applicable to the steel OCTG sector and that the NSP directives are part of the macro-economic controls of the GOC.

⁷⁰ Exhibit 171 – Notice on Total Output Control, Eliminating of Backwardness, Structure Adjustment of Iron and Steel Industry, Fa Gai Gong Ye (2006) No. 1084.

⁷¹ Exhibit 171 – A Notice on Total Output Control, Eliminating of Backwardness, Structure Adjustment of Iron and Steel Industry, Fa Gai Gong Ye (2006) No. 1084, pages 3 and 5.

⁷² Exhibit 204 – GOC response 3.

⁷³ Exhibit 102 – Exhibit 4, Exhibit 204 – GOC response 3.

State-Owned Assets Supervision and Administration Commission (SASAC)

Two of the co-operating exporters in this investigation are state-owned enterprises or have parent companies that are state-owned, and as such, these enterprises fall under the responsibility of the State-owned Assets Supervision and Administration Commission (SASAC). It should be noted that “state” is a term frequently used by the Chinese and refers to their government (GOC). SASAC is under the authority of the State Council and has 153 enterprises under its central authority, including enterprises that produce seamless steel casing and the main Chinese petroleum companies that are the ultimate users of the seamless steel casing.⁷⁴ The State Council is the chief administrative body of the GOC. Part One of the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprise (May 2003 promulgation by the State Council) states:⁷⁵

These regulations are formulated in order to establish a system for the supervision and administration of State-owned assets that is in accordance with the requirements of a socialist market economy, to further improve State-owned enterprises, to promote the strategic adjustment of the distribution and structure of the State-owned economy, to develop and expand the State-owned economy and to realize the maintenance of and increase in the value of the State-owned assets.⁷⁶

While the central SASAC is responsible for 153 state enterprises, there are also provincial and municipal offices of SASAC that manage other state-owned enterprises that are not under the direct supervision of the central SASAC. However, SASAC’s authority encompasses all state-owned enterprises:

The State-owned assets supervision and administration authorities of people’s governments of provinces, autonomous regions and municipalities directly under the central government and those of people’s government at the level of municipalities divided into districts and autonomous level are directly subordinate authorities specially established to perform the duties of investors on behalf of the people’s governments at their level and are responsible for the supervision and administration of State-owned assets of enterprises.⁷⁷

SASAC’s authority at the enterprise level also includes the following as per Part Three – Administration of the Responsible Persons of Enterprises, Article 17:

State-owned assets supervision and administration authorities shall appoint and dismiss or propose the appointment and dismissal the responsible persons of enterprises in accordance with relevant regulations:

⁷⁴ Exhibit 199 (PRO) – GOC Exhibit 7.

⁷⁵ Exhibit 134 – GOC the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprise (May 2003 promulgation by the State Council).

⁷⁶ Exhibit 134 – GOC the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprise (May 2003 promulgation by the State Council).

⁷⁷ Exhibit 134 – GOC the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprise (May 2003 promulgation by the State Council).

1. appoint and dismiss the general manager, deputy general manager, chief accountant and other responsible persons of wholly State-owned enterprises;
2. appoint and dismiss the chairman of the board of directors, the vice chairman of the board of directors and the directors of wholly State-owned companies, and propose the appointment and dismissal of the general manager, deputy general manager and chief accountant, etc of such companies;
3. nominate candidates for the positions of director and supervisor of State-controlled companies, recommend candidates for the positions of chairman of the board of directors and chairman of the board of supervisors of State-controlled companies and propose candidates for the positions of general manager, deputy general manager and chief accountant of such companies in accordance with the articles of association of the companies; and
4. nominate candidates for the position of directors and supervisors of companies in which the State has an equity participation in accordance with the articles of association of the companies.⁷⁸

The main duties of state-owned assets supervision and administration include:

1. To perform the duties of investors and to safeguard owner's rights in accordance with laws and regulations such as the PRC, Company Law;
2. To guide and promote reform and reorganization of state-owned and state-controlled enterprises:⁷⁹ ...

The main obligations of state-owned assets supervision and administration authorities shall be:

1. to promote the rational circulation and optimal distribution of state-owned assets to promote the adjustment of the distribution and structure of the state-owned economy;
2. to maintain and improve the dominance and competitiveness of the state-owned economy in sectors vital to the national economy and related to national security, and to improve the overall quality of the state-owned economy;...⁸⁰

SASAC is the government authority specifically established to perform the duties of investors on behalf of the State Council. As illustrated above, SASAC's mandates include both investor

⁷⁸ Exhibit 134 – GOC the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprise (May 2003 promulgation by the State Council).

⁷⁹ Exhibit 134 – GOC the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprise (May 2003 promulgation by the State Council).

⁸⁰ Exhibit 134 – GOC the Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprise (May 2003 promulgation by the State Council).

objectives, which may be in direct conflict with state objectives. SASAC appointees at the enterprise level must be mindful of these objectives and are obligated to secure the state 's objectives, for example; to promote the overall quality of the state-owned economy, which may include the GOC's macro economic objectives, or to perform other duties delegated to them by the government at the same level.

Hereafter is the CBSA's examination of the role of the GOC interests at the enterprise level of the state-owned or state-controlled enterprises.

State-Owned Exporters/Producers of Seamless Steel Casing

Heng Yang Group Companies

"Heng Yang Group Companies" (Heng Yang) is comprised of three companies operating at the same location in Hunan Province. There are two seamless steel casing producers, Heng Yang Valin Steel Tube Company Limited and Heng Yang Continuous-Rolling Tube Company Limited and their export trading company, Hengyang Steel Tube Group International Trading Inc. Heng Yang is an integrated producer of seamless OCTG with substantial seamless steel casing and tubing production capacity.

The parent company, Hunan Valin Steel Group Company Limited/Hunan Valin Iron & Steel Group Co. Ltd., is a state-owned enterprise under the local Hunan SASAC. Heng Yang's parent company has ownership interest in various companies⁸¹ and the controlling interest of Heng Yang rests with this state-owned parent company. Hunan Valin Steel Tube & Wire Co. Ltd. one of the companies that has interests in the Heng Yang companies, stated in its 2006 financial statements that its parent company Hunan Valin Iron & Steel Group Co. Ltd., is a state-owned company and it was identified under the title "Related parties with controlling relationships".⁸²

The ownership structure of the individual companies of Heng Yang is complex. Confidential information on the record⁸³ indicates that there are significant GOC interests and influence in Heng Yang and these GOC representatives are actively involved in the major decisions of Heng Yang.⁸⁴

Tianjin Pipe Corporation

Tianjin Pipe Corporation in Tianjin Province (TPCO) is a state-owned enterprise⁸⁵ and an integrated producer of seamless pipe with an annual production capacity of 1,800,000 tonnes.

⁸¹ Exhibit 191 (PRO) – Verification Exhibit 3.

⁸² Exhibit 192 – Verification Exhibit 17, page 48.

⁸³ Exhibit 100 – Heng Yang B5 response; Exhibit 100 – Heng Yang B10 response; Exhibit 100 – Heng Yang B5 response.

⁸⁴ Exhibit 191 (PRO) – Heng Yang, VE#32; Exhibit 99 (PRO) – B2(c) and C3(a); Exhibit 135 (PRO) – B6(2).

⁸⁵ Exhibits 74 (PRO) & Exhibit 116 (PRO) – TPCO B2(b) response.

Confidential information⁸⁶ on the record indicates that there are significant GOC interests and influence in TPCO and these GOC representatives are actively involved in the operations of TPCO.⁸⁷

The CBSA believes that there is significant GOC influence and various GOC interests present and prevalent in the two state-owned enterprises, Heng Yang and TPCO, and that GOC interests are actively involved in the material decisions of these state-owned enterprises.⁸⁸

China's Five-Year Plans for National Economic and Social Development

Five-Year Plans for National Economic and Social Development are established by the GOC and comprise detailed economic guidelines for all regions of the country. The first Five Year Plan was issued in 1953 and since that time, the GOC has issued five-year plans on a consistent basis.

China's current plan is known as China's Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development and was compiled according to the suggestions of the Central Committee of the Communist Party of China 2006-2010.⁸⁹ The Eleventh Five-Year Plan specifically sets out the framework to "Optimize the Development of Metallurgical Industry" in "Chapter 13 – Adjust raw material industrial structure and distribution, Section 1."

In this Five-Year Plan, the GOC indicates that it intends to:

Adhere to domination of domestic demand, make efforts to resolve surplus production capacity, strictly control additional iron and steel production capacity, accelerate the elimination of backward technology, equipment and product, and improve iron and steel product grade and quality.⁹⁰

In the Five-Year plan, the GOC gives directions to optimize the development of metallurgical industries and:

Encourage enterprises to carry out trans-regional collectivized restructuring and form several enterprises with international competitive force.⁹¹

⁸⁶ Exhibit 74 (PRO) – TPCO, Articles of Association, Exhibit 5.

⁸⁷ Exhibit 74 (PRO) – TPCO Exhibit 3; Exhibit 74 (PRO) – TPCO B2 (c) response; Exhibit 74 (PRO) – TPCO Exhibit 15, list of senior managers.

⁸⁸ Exhibit 100 – Heng Yang B5 response; Exhibit 191 (PRO) – Heng Yang Exhibit 3; Exhibit 135 (PRO) – Heng Yang B6; Exhibit 99 (PRO) – response to B6; Exhibit 191 (PRO) – VE 32; Exhibit 102 – Exhibit 9, CCP Constitution; Exhibit 135 (PRO) – Heng Yang Exhibit 3; Exhibit 99 (PRO) – Heng Yang Exhibit B16(d); Exhibit 136 – Exhibit 4 - Seventh Category "Steel" Article 14 "oil well tube for oil exploitation" of the Catalogue for the Guidance of Industrial Structure Adjustment. The Guiding Catalogue for Industry Restructuring Issued by the NDRC on December 2, 2005.

⁸⁹ Exhibit 134 – GOC Exhibit 1, Guidelines of the Eleventh Five-Year Plan.

⁹⁰ Exhibit 134 – GOC Exhibit 1, page 17.

⁹¹ Exhibit 134 – GOC Exhibit 1, page 17.

The GOC's Guidelines for the Eleventh Five-Year Plan gives direction concerning the overall regional development strategy in detail. To note several of the objectives, the GOC's Guidelines for the Five-Year Plan clarifies "the national strategic intention, defines the key emphasis in the government's work and guides the behaviour of the market subject".⁹²

With respect to state-owned enterprise reform, Chapter 31, Section 2 addresses state-owned assets supervision and control systems as follows:

Formulate and improve the laws and associated administrative regulations for supervision and control system of operating state-owned assets, establish and complete government capital operations budget, enterprise operations performance evaluation and wrong major enterprise decision responsibility ascertainment systems, determine supervision and control responsibility and realize the value maintenance and increase of state-owned assets. Establish and complete the supervision and management systems of state-owned financial assets, non-operating assets and natural resource assets etc and prevent losses of stated own assets.⁹³

Chapter 19 of the Guidelines of the Eleventh Five-Year Plan addresses the overall regional development strategy where specific regions of China are directed to take the lead in particular development. Specific regions are addressed such as the Northeast Region, where one of the state-owned seamless steel casing producers, Anshan is located. The regional development strategy for the Northeast Region includes the following:

Construct bases of advanced equipment, top-quality steel, petrochemical, automobile, ship and deep agricultural and sideline product processing and develop high tech industry.⁹⁴

The provincial or municipal Five-Year plans reflect the GOC's mandates while the state-owned enterprises have their own five-year plans. The National five-year plans, the associated provincial plans and the subsequent state-owned enterprise five-year plans indicate that the GOC's influence is prevalent and its macro-economic plans are followed through to the state-owned enterprise.

Hunan Province Five-Year Development Plan & Heng Yang

Similar to China's National Guidelines for the Eleventh Five-Year Plan explained above, Chinese provinces have their own corresponding five-year development plans. "Guidelines for The Eleventh Five-Year Development Plan of Hunan Province"⁹⁵ is the provincial government plan for the province where Heng Yang companies are located. This Five-Year Plan is a collaborative effort between the Central Committee of the Party and Hunan's own Planning Committee. The Five-Year Plan is considered a blueprint for the Hunan province and the

⁹² Exhibit 134 – GOC Exhibit 1, page 1.

⁹³ Exhibit 134 – GOC Exhibit 1 Guidelines for the Eleventh Five-Year Plan.

⁹⁴ Exhibit 134 – GOC Exhibit 1 Guidelines for the Eleventh Five-Year Plan.

⁹⁵ Exhibit 134 – GOC Exhibit 5 Human's Five-Year Development Plan.

foundation for the government to fulfil the function of adjusting the economy, supervising the market in addition to the administration of society and the fulfillment of public service. Hunan's Five-Year Development Plan specifically directs that:

Hunan Valin Steel Tube & Wire Co. Ltd introduce advanced technology equipment and production techniques, expedite the programs of Xiantan Iron and Steel Corporation's wide and heavy plate, Lianyuan Iron and Steel Group Co. Ltd's steel sheet, Hunan Hengyang Steel Tube (Group) Co., Ltd, seamless steel tube and Hunan Valin Steel Tube & Wire Co., Ltd's Copper and Aluminum Tube Manufacturing; put emphasis on refined steel products such as plate, tube.⁹⁶

The central GOC's Guidelines for the Eleventh Five-Year Plan and the Hunan Provincial Five-Year Plan demonstrate the government's interest and influence with Heng Yang with respect to the 2006-2010 plans of the company. The GOC's Five-Year Plan specifically addressed the operations of Hunan Hengyang Steel (Group) Co. Ltd and Valin Steel Tube & Wire Co.

Hunan Valin Group Five-Year Plan

The state-owned parent company of Heng Yang has its own five-year plan.⁹⁷ Information on the record is confidential and was material to the CBSA's decision that the GOC applied the National Steel Policy (NSP) directives to seamless steel casing production capacity.⁹⁸ In addition, the close relationship between the GOC and the state-owned enterprise is evident in the Hunan Province Five-Year Development Plan, which specifically focuses on the developments for Heng Yang.

Five-Year Plan of Tianjin City

The Revised Eleventh Five-Year Plan of Tianjin City specifically indicates that the "area will possess the capability of 2.6 million tonnes of seamless steel pipe...in 2010."⁹⁹ The specific reference of TPCO in the Five-Year Plan of the Tianjin City Government confirms the regional importance of TPCO and the close affiliation between state and state-owned enterprise.

The relationship between GOC plans and Heng Yang and TPCO illustrates the GOC influence and interests in the state-owned enterprise. The GOC through its Five-Year plans includes specific objectives and plans for state-owned or state-controlled steel enterprises. In combination with the NSP requirements, the GOC exerts control of the production capacity of the steel enterprise. In addition, prevalent GOC ownership interests are actively involved in the material decisions of Heng Yang and TPCO. The cumulative impact of these interrelationships is that substantial GOC interests compete with the commercial interests of the enterprise.

⁹⁶ Exhibit 134 – GOC Exhibit 5 Hunan's Five-Year Development Plan.

⁹⁷ Exhibit 191 (PRO) – Heng Yang VE 26B.

⁹⁸ Exhibit 191 (PRO) – Heng Yang VE 27A; Exhibit 191 (PRO) – Heng Yang VE 27B; Exhibit 135 (PRO) – Heng Yang Exhibit 5.

⁹⁹ Exhibit 211 (PRO) – TPCO VE 30.

Other Chinese State-Owned Casing Producers

In the absence of co-operation from other producers of seamless steel casing, the CBSA relied on information on the record regarding the other producers. TenarisAlgammaTubes identified the six largest mills of seamless OCTG production in China: TPCO, Baosteel, Baotou, Hengyang, Anshan, and Chengdu.¹⁰⁰ These mills are all state-owned enterprises and are estimated to account for about half of China's seamless pipe production.¹⁰¹ Furthermore, some of these companies have recently added additional production or have plans to add capacity.¹⁰² The CBSA's sales comparison between state-owned and non-state-owned enterprises based on data from the five co-operating Chinese producers resulted in a similar proportion of sales by state-owned enterprises.

Based on the information on the record concerning Heng Yang and TPCO, the CBSA believes that state-owned enterprises, including Baosteel, Baotou, Anshan and Changdu, have similar prevalent GOC ownership, and that GOC interests actively participate in the major decisions of the enterprise. In addition, the CBSA believes that the GOC's Five-Year Plans and macro-economic policies including the NSP have an impact on steel making and steel rolling enterprises in China. The cumulative impact of the GOC measures, through government actions, and GOC ownership interests and influence, indicates that the GOC significantly affects the steel industry, in this case, the steel OCTG sector, through means other than market forces.

Not State-Owned Exporter: Wuxi Seamless Oil Pipe Co. Ltd. (WSP)

Wuxi Seamless Oil Pipe Co. Ltd., (WSP) was established in 1999 as a privately held, Chinese-foreign joint venture and as such, is not a state-owned producer of seamless steel casing.¹⁰³ WSP is both a producer and end finisher of seamless pipe and has a significant OCTG production capacity.¹⁰⁴

The Eleventh Five-Year Plan of Jiangsu Province does not address any specific plans with respect to the steel industry in general or the steel OCTG sector. WSP does not have a five-year plan since it is a privately held company and not under the authority of SASAC or other GOC interests such as state asset management companies.

Chinese Communist Party (CCP)

The CCP is the party in power in China. With respect to state-owned enterprises and the CCP mandate, Article 32 of the CCP Constitution states that:

¹⁰⁰ Exhibit 1 (PRO) – Tenaris Exhibit 11, page 5.

¹⁰¹ Exhibit 1 (PRO) – Tenaris Exhibit 11.

¹⁰² Exhibit 104 – China's State-Directed Expansion in Oil Country Tubular Goods: A Case Study, Dewey Ballantine LLP, Table 3, page 39.

¹⁰³ Exhibit 80 (PRO) – WSP 2006 audited financial report; Exhibit 178 (PRO) – WSP – Su Wai Jing Mao Zi Shen Zi (2006 No 02097).

¹⁰⁴ Exhibit 178 (PRO) – WSP – Xi Jing Mao Tou Zi (2005) No.15; Exhibit 178 (PRO) – WSP VE 5 - Su Jing Mao Tou Zi (2005) No 241.

In a state-owned or collective enterprise, the primary Party organization acts as the political nucleus and works for the operation of the enterprise. The primary Party organization guarantees and supervises the implementation of the principles and policies of the Party and the state in its own enterprise and backs the meeting of shareholders, board of directors, board of supervisors and manager (factory director) in the exercise of their functions and powers according to law. It relies wholeheartedly on the workers and office staff, supports the work of the congresses of representatives of workers and office staff and participates in making final decisions on major questions in the enterprise.¹⁰⁵

Therefore, given that there is CCP representation at the decision making level of state-owned enterprises and this includes state-owned enterprises in the steel sector, the CCP actively participates along with the prevalent state interest holders in making the major decisions for the enterprise. The presence of the CCP, further strengthens the state influence and authority in the state-owned enterprise. The GOC's Five-Year Guidelines are compiled according to the suggestions of the Central Committee of the CCP. As a result, CCP representatives at the enterprise level must be mindful to secure state objectives and policies rather than being motivated primarily by commercial objectives.

As part of the on-site verification, the CBSA requested to meet with the CCP to gain an understanding of the CCP's role, activities and responsibilities in the state-owned enterprise. However, an opportunity to meet with the CCP representatives was not provided by the GOC.

Asset Management Companies

There are four state asset management companies that were approved by the State Council of the GOC in 1999 to facilitate the conversion of debts of the state-owned enterprises into equity holdings in the state-owned enterprise by the state asset management companies. The debts were originally owed to the state-owned banks. Information on the record indicates that when there are holdings by the state owned asset management companies, generally there are representatives from the state asset management companies on the shareholder and director boards of state-owned enterprises and these GOC representatives actively participate in the material decisions of the enterprise.

China's Bureau of Statistics

Chinese enterprises are generally required to submit detailed sales, production and costing information to the Bureau of Statistics on a monthly basis.¹⁰⁶ According to information obtained during the on-site verification meetings, all enterprises with annual revenues of over 5 million Rmb must provide this information. The substantial volume of confidential information that is required from both state-owned and privately owned producers on a monthly basis illustrates the GOC's interest in the detailed performance of this industry sector.

¹⁰⁵ Exhibit 102 – GOC Exhibit 9.

¹⁰⁶ Exhibit 75 – TPCO, submission to the Bureau of Statistics.

The CBSA requested information concerning domestic OCTG pricing,¹⁰⁷ to which the GOC provided a response.¹⁰⁸ At the verification, the CBSA determined that the information submitted was incomplete. While the Bureau of Statistics has detailed pricing data from producers and virtually all of the seamless steel casing producers are required to submit this data, the GOC did not provide this information in response to the CBSA's request. The information would have been very useful to the CBSA's analysis of domestic selling prices of seamless steel casing.

China Iron and Steel Association (CISA)

The role of CISA was formerly fulfilled by the GOC's Ministry of Metallurgical Industry and the web site for CISA is in fact a government web site. The role of CISA is addressed in the dumping section of the present SOR. In response to the CBSA's request, CISA provided a list of its OCTG members, which included the three OCTG producers that were verified by the CBSA.¹⁰⁹ However two of these producers indicated in their responses to the CBSA that they were not members of CISA.¹¹⁰

At verification, the CBSA requested CISA to provide domestic selling price information during the period of investigation (POI) with respect to OCTG products by the close of the record date. However, on December 10, 2007, CISA stated that it does not regularly monitor or develop statistics for the quantity and price of OCTG and has no data on OCTG.¹¹¹

In place of specific price information, CISA did provide public reports issued by its information centre concerning pricing trends on steel products as of June 2006 and June 2007. The Financial and Assets Department of China Iron and Steel Association Metallurgy Price Information Center issued the "Analysis of Domestic Steel Market Price in 2006" that stated:

The composite price level of the domestic steel market in 2006 was lower than in 2005. In 2006, national economy development featured a steady increase in domestic steel production, steel exports increased, imports decreased, and supply and demand in the domestic market maintained basic balance. The market was affected by factors such as high international steel prices, the rising prices of energy, fuel and raw materials and macro-adjustment. Domestic steel prices went through three stages: revival from the decline of 2005, a moderate decline followed by a more stable trend and slightly upward.¹¹²

¹⁰⁷ Exhibit 33 – Question of the Section 20 RFI Government.

¹⁰⁸ Exhibit 101 (PRO) – GOC, Exhibit 10, Steel Price Index.

¹⁰⁹ Exhibit 204 – CISA Exhibit 3, CISA listing of steel pipe members.

¹¹⁰ Exhibits 100 and 77, Heng Yang & WSP responses to C9(a).

¹¹¹ Exhibit 204 – GOC Item 6 response.

¹¹² Exhibit 204 – GOC Exhibit 4, page 1.

CISA's June 2007 report stated:

During June, the prices for domestic steel materials were unstable and declining while the international price was high. ...The increase in domestic iron and steel production moderated and declined and the price of iron and steel declined because of declining growth trends and the influence of macro policies aimed at reducing export. International demand for steel is still strong and prices are stabilized at high levels.¹¹³

The June 2007 report further summarized that:

A review of the environment in the domestic market and abroad, as far as steel market is concerned, is good. But continued issue of macro-adjustment policies has affected the price tendency of domestic market. Therefore, the steel enterprises, should firstly, completely and rightly understand the national macro-adjustment policies and measures and have full confidence with the future of our economy development, make effort to together to maintain the steady development of market;¹¹⁴

The measures taken by the GOC were substantial in nature and were referenced by the authoritative steel association in China as the reason for domestic steel price decline during the POI. The GOC's macro economic measures encouraged steel producers to focus on the domestic steel market. As a result, with increased domestic steel supplies, prices decreased and likely impacted the profitability of steel enterprises. The steel exporters were not able to realize the higher international prices as the GOC's macro-economic policies conflict with the commercial objectives of enterprises and took precedence over the enterprises' commercial objectives.

Publicly Listed Company

Over the course of the verification meetings, the CBSA frequently encountered the term "Publicly listed company" used by Chinese officials, including those from the state-owned banks, to identify an enterprise's ownership structure in China. The CBSA asked the officials to identify the controlling or majority interest in the company. In each response, the state was identified as the majority interest holder.

Subsection 2(1) of SIMA defines a government in relation to any country other than Canada to mean of the government of that country including:

Any person, agency or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state, municipal or other local or regional government.

The CBSA examined the relationship between the state-owned or state-controlled enterprises and the GOC in order to ascertain the degree of GOC influence and interest at the enterprises. In

¹¹³ Exhibit 204 – GOC Exhibit 4, page 1.

¹¹⁴ Exhibit 204 – GOC Exhibit 4, page 7.

cases where there is majority state ownership in an enterprise and the GOC involvement is not passive, rather the GOC representatives appear to be actively involved in the material decisions of the enterprise, the CBSA concludes that there is effective government control of that enterprise.

Shortfall in Information

The CBSA did not have complete market information with respect to the major OCTG producers' selling prices and volumes during the POI. Furthermore, neither CISA nor the GOC provided useful domestic pricing information to the CBSA. As a result, the CBSA relied on the information provided by the five co-operating exporters in respect of domestic selling prices.

The CBSA initially had six co-operating exporters/producers participating in the investigations. The day before a scheduled on-site verification, the CBSA was notified by the GOC that Tianjin Tubular Goods Machining Co. Ltd. (TTGM) had withdrawn from the verification.

Baosteel, another major seamless steel casing producer, which was a regular participant in the CBSA re-investigations concerning hot-rolled steel sheet products and hot-rolled steel plate, did not participate in the investigations. Consequently, additional information was not available to the CBSA.

In the absence of complete information from the GOC, CISA and exporters, the CBSA's sources of information are constrained. The CBSA has had to make use of the information available notwithstanding its efforts to obtain more comprehensive data from the GOC and exporters/producers in China.

While Ministry of Commerce (MOFCOM) officials insisted on being present for all of the CBSA's meetings with the provincial and local GOC and other state bodies, it is surprising to the CBSA that MOFCOM did not ensure that the information requested by the CBSA concerning domestic selling prices of the subject goods submitted was complete and thorough.

PART 1 SUMMARY

With respect to the two state-owned producers verified by the CBSA, the boards of shareholders and directors represent state interest holders and are actively involved in the major corporate decisions including the budget and distribution of profits. These state interests include SASAC and state asset management representation. In addition there is CCP representation in the decision making level of the state-owned enterprise. With respect to TPCO and Heng Yang, the GOC's current Five-Year plans specify the target for the capacity production (TPCO) and product quality (Heng Yang) for the next five-year term. The CBSA believes that other state-owned producers of seamless steel casing operate under similar circumstances. Furthermore, steel smelting, steel making and steel rolling enterprises are constrained in their decision-making ability by the NSP directives, as confidential information on the record confirms that the GOC controls additional production capacity in the steel industry and thereby indirectly impacts domestic prices.

The cumulative impact of the GOC's macro-economic policies, including the NSP and the Five-Year Plans, in addition to the prevalent active GOC representatives in the state-owned enterprises, result in an environment where the enterprises have GOC responsibilities and mandates to secure and these objectives conflict with commercial interests of the enterprise.

PART 2 – PRICE ANALYSIS

Markets

The Metal Bulletin Research, Seamless Steel Tube and Pipe Monthly (MBR) from June 2007 has Chinese seamless pipe production listed at 14.9 million tonnes and consumption listed at 13.08 million tonnes.¹¹⁵ Confidential information on the record supports this estimate.¹¹⁶

According to MBR, seamless pipe consumption in 2006, for Asia overall, was approximately 16.5 million tonnes and the estimated total for all international markets for seamless pipe is just over 28 million tonnes.

Based on these estimates, the world market consumption for seamless steel casing is estimated to be about 4.3 million tonnes,¹¹⁷ with demand in the Middle East, Eastern Europe, Western Europe, and the U.S.A. MBR estimates the overall Canadian OCTG market at around 600,000 tonnes, which includes seamless steel casing, pipe and tubing.

Domestic Customers

Information provided by the co-operating exporters confirms that domestic sales are almost all ultimately made to the three state-owned oil and gas companies: China National Petroleum Company (PetroChina or CNPC), China National Offshore Oil Corporation (CNOOC) and China Petroleum and Chemical Corporation (Sinopec).

According to WSP information, CNPC is the largest oil company in China and in 2006, CNPC accounted for 59% of the oil and 73% of the gas output in China.¹¹⁸ CNPC has an online website, www.Energyahead.com where qualified bidders and tenders are listed. CNPC provides the information concerning the specifications of products and all qualified vendors provide bidding to CNPC. The bidding price is confidential to the bidders such that only CNPC and its affiliates know the bidding prices. There are two rounds of price negotiations.

WSP's Amendment No. 3 to Registration Statement Under the Securities Act of 1933 to the U.S. Securities and Exchange Commission (SEC) on November 30, 2007,¹¹⁹ indicated in its prospectus that its Chinese domestic selling prices are based on the prevailing domestic market

¹¹⁵ Exhibit 1 (PRO) – Appendix 2, Metal Bulletin Research, Seamless Steel Tube and Pipe.

¹¹⁶ Exhibit 211 (PRO) – TPCO Verification Exhibit 7.

¹¹⁷ Estimate: 13 divided by 2 = 6.5 Million tonnes, 28 million divided by 6.5 = 4.3. Seamless casing consumption in China was estimated to be just over 2 million tonnes. This factor was applied to the overall pipe consumption in 2006.

¹¹⁸ Exhibit Subsidy 145 – WSP Prospectus Summary to the SEC, page 1.

¹¹⁹ Exhibit Subsidy 145 – WSP Prospectus Summary to the SEC., page 61.

price which is usually the price at which CNPC purchases from its major suppliers, which include TPCO, Baosteel and Chengdu.

Furthermore, WSP's prospectus filed with the U.S. SEC states that its international pricing is based on the prevailing international market prices, which are usually higher.

Domestic Market in China

The information on the record shows that there is prevalent state-ownership of buyers and sellers of seamless steel casing in the domestic market. Furthermore, the GOC's macro-economic measures, including the NSP, result in a domestic market where state objectives conflict with commercial interests and thus is not competitive. Confidential information on the record concerns the customers of seamless steel casing in the domestic market, domestic market share, profit margins, and domestic selling practices. This information was material to the CBSA's section 20 decision.

In a recent article from the China Daily, Sinopec and CNPC announced that they were suspending the export of refined oil products for the time being because of a shortage of these products in the domestic market. The article further states that:

Considering the higher profits gained from exporting rather than selling domestically, it is easy to understand the decisions. However, the petroleum giants in China should not put themselves in the same position as other businesses.¹²⁰

Run by the State, they are monopoly players in the market. They control the whole business link from crude oil exploration to retail and distribution. Such a monopoly position guarantees profits.¹²¹

Now that Sinopec and Petro China have decided to give more priority to demand in the domestic market, they obviously realized their roles as state-owned enterprises. And although this decision might cause some loss in financial terms, it will definitely improve their business image, fulfill their social responsibility and boost public welfare.¹²²

If state priorities take precedence over the maximization of profits and the macro-economic influence by the GOC is encouraging more domestic sales than the market would otherwise dictate, the comparatively lower domestic selling price in comparison to world prices is more understandable. A higher supply would normally keep domestic prices down. Confidential information on the record indicates that there are concerted efforts to sell domestically in spite of the acknowledged lower profit potential. The CBSA's record confirms that there is a substantial difference between domestic and international prices.

¹²⁰ Exhibit 172 – ChinaDaily.com “Right move by Oil Giants”, November 22, 2007.

¹²¹ Exhibit 172 – ChinaDaily.com “Right move by Oil Giants”, November 22, 2007.

¹²² Exhibit 172 – ChinaDaily.com “Right move by Oil Giants”, November 22, 2007.

Analysis of Chinese Domestic Pricing

The CBSA collated the net domestic selling prices and quantities sold for seamless steel casing grades J55, K55, L80, N80 and P110 over the POI from the information on the record from five co-operating Chinese exporters. The CBSA then examined the overall average selling price and quantity for each of these products over the POI for each exporter. The CBSA's analysis indicates that for each grade, there is limited price convergence amongst the producers over the POI. The movement in selling prices did not demonstrate a trend where the price differential between the producers eventually narrowed. Rather there are price differentials in the domestic market for the same product, and in some instances, these are significant.

Product quality was considered as a possible reason for the differences in selling price within the same grade. However, the co-operating producers are all certified to produce API specification 5CT seamless OCTG casing. As such, the certified grade products are homogenous and interchangeable at the specification and grade level. As a result, quality does not appear to be a reason for the price differential.

Price Analysis of Chinese Domestic Prices & International Markets

The CBSA compared the overall average Chinese domestic selling prices for casing grades J/K55 and N80 to international average prices based on the Metal Bulletin Research (MBR) monthly data during the POI for casing grades J/K55 and N80 from the USA, Western Europe, Eastern Europe, Japan and the Middle East. MBR merged grades J55 and K55 together and a breakdown by grade is not available.

With respect to grades J/K55, the Chinese average domestic selling price was substantially below average selling prices for the same product in world markets during the POI. Furthermore, the domestic price movements were generally flat in comparison to the trends in the international markets.

In respect of grade N80, the average Chinese domestic selling price was substantially lower in comparison to the USA, Western Europe, East Europe, Japan and Middle East prices.

Chinese Domestic Market Factors

A market is considered to be competitive when it operates under the foundations of supply and demand, there are no barriers to entry or exit to the market and no producer or consumer has the market power to influence prices. The supply and demand competitive model predicts that, in a competitive market, price will function to equalize the quantity demanded by consumers and the quantity supplied by producers. This is a theoretical example of market supply and demand. However, there are other factors involved in any real market economy.

For example, government involvement with a company's ability to enter or leave a market (i.e. forced closures, denial of energy sources, etc) and government involvement with the

dynamics of supply and demand in determining prices (i.e. policies aimed at reducing exports thereby cause a flood of supply domestically) distort a market economy.

With respect to the Chinese market, the degree of competitive characteristics is continually eroded by the presence and domination of the state-owned enterprises. These include both the suppliers and the buyers of seamless steel casing (CNOOC, Sinopec and CNPC).

As examined in Part 1 of this document, GOC representatives actively participate in the material decisions of the state-owned enterprise. The prevalent state-ownership and GOC influence of both buyers and sellers of seamless steel casing in the domestic market creates an environment where the enterprises are not motivated by clear distinct commercial interests but rather operate in varying degrees to satisfy the wider interests of the GOC. This is further reinforced by the presence and influence of communist party representatives who sit on the boards of state-owned enterprises.

As stated in the GOC's response to the section 20 RFI:

Local people's governments at different levels are responsible, and report on their work, to the state administrative organs at the next higher level. Local people's governments at different levels throughout the country are state administrative organs under the unified leadership of the State Council and are subordinate to it.¹²³

Consequently, the nature of the relationship between these parties results in transactions for seamless steel casing that are, by definition, non-market. It is of little consequence that certain entities may be locally owned (i.e. municipal or local government) or owned by the central government.

As state-owned enterprises, corporate decisions that would be made in order to maximize profits may be replaced by decisions which favour of state interests. The ability to manage and direct the steel OCTG sector thereby ensures that the greater interests of the state are realized, while balancing the effects of uneven bargaining power and pure corporate self-interest.

The market has GOC interests competing with commercial objectives. The GOC representatives actively participate in the material decisions of the enterprise and this relationship provides the GOC with the means to procure the most favourable overall benefit to the state. This alters the market from what would have materialized under purely corporate commercial approach to business, to a situation where some will benefit and others will not.

There is ample information on the record to support this assessment of the market. For instance, the leverage exerted by the state to encourage state-owned oil companies to forego more lucrative export profits to help meet domestic demands, indicates that GOC interests have decided the course for the state-owned enterprise as the cost of profit maximization. This is best summarized in the context of the report through the statement: "Now that Sinopec and

¹²³ Exhibit 102 – GOC response page 6.

Petro China have decided to give more priority to demand in the domestic market, they have obviously realized their roles as State-owned enterprises.”¹²⁴

The information on the record demonstrates that most material inputs (i.e. iron ore, coke) and capital equipment for use in the Chinese domestic market are purchased at world market prices such that costs of production should not be significantly different from other world producers. However prices in China for seamless steel casing were consistently and substantially below world market prices during the course of the POI.

In a competitive market, these Chinese prices would closely approximate the selling prices in other world markets. The attraction of higher returns on the export markets would push domestic supply down to levels that would result in a domestic selling price providing domestic sellers a comparable return for their commodity grade product.

The information on the record also demonstrates that the state-owned oil companies exert significant clout in the domestic market and the market appears to be a virtual monopsony. Confidential information on the record concerning domestic selling practices and terms was material to the CBSA’s section 20 opinion that the domestic market for seamless steel casing is not a competitive market. As explained earlier in this document by WSP, the true nature of the domestic market for seamless steel casing is further illustrated by the way parties have conceded prices are set:

The domestic prices of our API products are generally set based on the prevailing domestic market prices, which are usually the prices at which CNPC, the largest owner of oilfields in China, purchases from its major suppliers.¹²⁵

Other Items Reviewed

The CBSA reviewed other factors regarding raw material inputs, such as billets and green pipe and their costs; however, the domestic data provided and/or the data from the international sources such as the CRU Monitor and MBR was not in sufficient detail to allow for a meaningful comparison.

The CBSA determined that no valid comparison could be made with respect to billet pricing from the international markets and the Chinese domestic acquisition costs, as the data was not in sufficient detail.

The CBSA reviewed the acquisition costs of billets from state-owned enterprises and not state-owned enterprise sources, however, there was insufficient information available and no valid comparison could be done.

TPCO also provided billet price information, but the CBSA noted several inaccuracies with the source data and their conclusions were therefore considered invalid.¹²⁶

¹²⁴ Exhibit 172 – ChinaDaily.com “Right move by Oil Giants”, November 22, 2007.

¹²⁵ Exhibit Subsidy 145 – WSP Prospectus Summary to the SEC, page 61.

¹²⁶ Exhibit 225 (PRO) – GOC Exhibit 2, Section 20 Billet purchasing.

CISA provided information concerning domestic Chinese carbon steel billet prices during the POI. However, the information was not sufficient to conduct a valid analysis.

PART 2 SUMMARY

Prices in the Chinese domestic market for seamless steel casing are substantially below those of other international markets throughout the POI. There is a significant degree of state ownership in the industry, including both sellers and buyers, and this state ownership has provided the means to control and influence decisions in the steel OCTG sector, which are in line with the wider economic interests of the state and which may be in conflict with the commercial interests of the enterprise. In addition, the GOC's macro-economic measures, including the National Steel Policy result in a domestic market that is not a competitive market. Therefore, the price differences between the domestic and world markets are believed by the CBSA to be attributable to the GOC.

CONCLUSION

On November 7, 2007, the GOC made representations to the CBSA as per the following:

It is inappropriate for the CBSA to apply irrelevant industry newsletter speculation and assumptions. Allegations and conjecture to support a conclusion that the market conditions and operations of the OCTG sector are anything other than market oriented.¹²⁷

The CBSA's on-site verification and information obtained from the Chinese exporters and the GOC form the basis of the reasons for the application of section 20 to the steel OCTG sector in China. Contrary to the GOC's representations, the industry articles and reports with respect to the steel industry and the steel OCTG sector that the CBSA relied on at the preliminary determination were generally consistent with CBSA's analysis the information obtained from co-operating exporters and the GOC during the dumping investigation.

The GOC itself indicated its concerns in its December 20, 2007 brief that:

There are many differences in social, political, economic and culture traditions between China and western countries. The economic structure and levels of development are also very different. However, China has decided to be a member of the world economic system and political system. Government of China is trying very hard to understand their differences with western countries.¹²⁸

In addition, the CBSA has specifically noted instances where it believes that there was a shortfall of information from various Chinese sources, including the GOC.

¹²⁷ Exhibit 138 – GOC representations to the CBSA.

¹²⁸ Exhibit 227 – GOC representations to the CBSA.

Based on the foregoing, as per section 20(1) (a) of SIMA, where goods sold to an importer in Canada are shipped to Canada from a prescribed country, in this case China, the President of the CBSA formed the opinion that domestic prices of seamless carbon or alloy steel oil and gas well casing are substantially determined by the GOC and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.