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STATEMENT OF REASONS

Concerning the making of final determinations with respect to the dumping and subsidizing of

**CERTAIN CARBON STEEL WELDED PIPE
ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

On July 21, 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 carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of ½ inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, 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 "Renseignements".

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

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SUMMARY OF EVENTS

[1] On December 3, 2007, the Canada Border Services Agency (CBSA) received a written complaint from ArcelorMittal/Mittal Canada Inc. (ArcelorMittal) of Montréal, Quebec alleging that imports of certain carbon steel welded pipe (CSWP) originating in or exported from the People's Republic of China (China) are being dumped and subsidized and are causing injury to the Canadian industry. The complainant also alleged that section 20 conditions existed in the welded pipe sector in China.

[2] On December 24, 2007, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed ArcelorMittal that the complaint was properly documented. The CBSA also notified the Government of China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy complaint.

[3] The complainant, ArcelorMittal, provided evidence to support the allegations that certain CSWP from China has been dumped and subsidized. The evidence also disclosed a reasonable indication that the dumping and subsidizing has caused injury or is threatening to cause injury to the Canadian industry producing these goods.

[4] On January 22, 2008, consultations were held with the GOC pursuant to Article 13.1 of the Agreement on Subsidies and Countervailing Measures. During these consultations, China made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint.

[5] On January 23, 2008, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain CSWP from China. On the basis of the available information, the CBSA concluded that there was sufficient evidence to initiate a section 20 inquiry concurrently with the dumping and subsidy investigations to examine the degree of GOC involvement in the welded pipe sector and the related impact on pricing.

[6] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) started a preliminary injury inquiry into whether the evidence disclosed a reasonable indication that the alleged dumping and subsidizing of certain CSWP from China have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods. On March 25, 2008, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of CSWP have caused injury.

[7] On April 22, 2008, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping and subsidizing with respect to certain CSWP originating in or exported from China.

[8] The CBSA continued its investigations and, on the basis of the results, the President is satisfied that certain CSWP 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 July 21, 2008, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[9] 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 August 20, 2008.

PERIOD OF INVESTIGATION

[10] The period of investigation, with respect to dumping (Dumping POI), covered all subject goods released into Canada from January 1, 2007 to December 31, 2007.

[11] The period of investigation, with respect to subsidizing (Subsidy POI), covered all subject goods released into Canada from July 1, 2006 to December 31, 2007.

INTERESTED PARTIES

Complainant

[12] The complainant, ArcelorMittal, is the largest producer of CSWP in Canada. The goods are produced at its manufacturing facilities in Montréal and Lasalle, Quebec.

The complainant's address is:

ArcelorMittal/Mittal Canada Inc.
5880 Saint-Patrick Street
Montréal, Quebec
H4E 1B3.

Exporters

[13] At the initiation of the investigations, the CBSA had identified 135 potential exporters of subject goods based on a review of customs import documentation and the complaint submitted by ArcelorMittal.

[14] The CBSA sent a Dumping Request for Information (RFI) and Subsidy RFI to each of the identified potential exporters of the goods. Since that time, additional information gathered over the course of the investigations has allowed the CBSA to reduce the number of identified potential exporters to 132.

[15] As part of the CBSA's section 20 inquiry, the CBSA also sent section 20 RFIs to each of the 92 identified potential exporters and producers of the goods located in China.

[16] Five exporters in China, accounting for approximately 50% of the total exports of subject goods to Canada during the Subsidy POI, provided a response to the dumping, subsidy and section 20 RFIs. These exporters were:

- Guangdong Walsall Steel Pipe Industrial Co., Ltd. (Walsall)
- Tianjin Shuangjie Steel Pipe Co., Ltd. (TSSP)
- Weifang East Steel Pipe Co., Ltd. (Weifang)
- Zhejiang Kingland Pipeline and Technologies Co., Ltd. (Kingland)
- Tianjin Xingyuda Import and Export Co., Ltd.

[17] It should be noted that one of the five exporters, Tianjin Xingyuda Import and Export Co., Ltd., along with two affiliated non-exporting producers, did not provide complete information in response to the RFI and related follow-up information requests. Accordingly, this exporter, and its related affiliates are considered non-cooperative for purposes of both the dumping and subsidy final determinations.

Importers

[18] At the initiation of the investigations, the CBSA identified 87 potential importers of subject goods based on a review of customs import documentation and information provided in the complaint submitted by ArcelorMittal.

[19] The CBSA sent an RFI to all potential importers of the goods. Since that time, additional information gathered over the course of the investigation has allowed the CBSA to reduce the number of identified potential importers to 85. Fourteen importers provided a response to the CBSA's importer RFI.

[20] There may be instances where the importer in Canada for SIMA purposes may be a different party than the importer of record. For certain transactions involving non-resident importers the CBSA examined available information concerning the importations for purposes of identifying the importer in Canada.

Government of China

[21] For the purposes of these investigations "Government of China" refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government, including but not limited to the China Iron and Steel Institute (CISA).

[22] At the initiation of the investigations, the CBSA sent a subsidy and a section 20 RFI to the GOC. A component of the section 20 RFI was directed towards the CISA. The GOC provided a submission in response to the subsidy and section 20 RFIs.

Surrogate Countries

[23] As part of the CBSA's section 20 inquiry, an RFI was also sent to 43 producers in other countries, who are not subject to the present dumping investigation. These other producers are located in Chinese Taipei, India, the Republic of Korea, and Thailand. No responses to these RFIs were received.

PRODUCT DEFINITION

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

Carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of ½ inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the People's Republic of China.

ADDITIONAL PRODUCT INFORMATION

Technical Information

[25] CSWP falls within a category of products commonly referred to as standard pipe, which is generally intended for the low-pressure conveyance of steam, water, natural gas, air and other liquids and gases in plumbing and heating applications, air conditioning units, automatic sprinkler systems and other related uses. CSWP is also used as structural support for fencing as well as certain mechanical and pressure applications.

[26] The most common grades of CSWP are ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083, Commercial Quality and AWWA C200-97 or equivalent specifications. CSWP may also be produced to proprietary specifications rather than to an industry standard, as is often the case with fence tubing or to foreign specifications. For example, imported CSWP may be produced to British Standard (BS) 1387.

Production Process

[27] CSWP is generally produced in mills using either the continuous weld (CW) process or the electric resistance weld (ERW) process. Both processes begin with strips of steel sheet that have been slit from coils of flat steel sheet. The width of the strips is equal to the circumference of the pipe to be produced.

[28] Once the basic pipe is formed using either one of the processes, it will be made to various forms and finishes. Finishes such as lacquer or zinc (galvanizing) may be applied to the surface of the pipe, depending on the pipe's intended use.

Classification of Imports

[29] CSWP is typically classified under the following Harmonized System (HS) codes:

7306.30.10.14	7306.30.90.14	7306.30.90.29
7306.30.10.24	7306.30.90.19	7306.30.90.34
7306.30.10.34	7306.30.90.24	7306.30.90.39

[30] Further information regarding the relevant tariff classification numbers is provided below. The subject goods are normally classified under the HS heading 7306, using the following HS statistical code breakouts (10 digit level):

HS 73.06	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.
HS 7306.30.10	For use in the manufacture of goods of Section XVI or of Chapter 73, such goods being used in the recovery or production of crude oil from shales, oil-sands or tar-sands; Tubes and pipes, cold-drawn after welding, of an external diameter not exceeding 12.7 cm and a wall thickness of 6.35 mm or more, or of an external diameter exceeding 12.7 cm, for use in the manufacture of telescoping hydraulic cylinders for lifting or dumping devices for motor vehicles"
	-Galvanized, of an external diameter not exceeding 114.3 mm:
HS 7306.30.10.14	Standard Pipe
	-Other, of an external diameter not exceeding 114.3 mm:
HS 7306.30.10.24	Standard Pipe
	-Of an external diameter exceeding 114.3 mm:
HS 7306.30.10.34	Standard Pipe
HS 7306.30.90	Other
	-Galvanized, of an external diameter not exceeding 114.3 mm:
HS 7306.30.90.14	Standard Pipe
HS 7306.30.90.19	Other
	-Other, of an external diameter not exceeding 114.3 mm:
HS 7306.30.90.24	Standard Pipe

HS 7306.30.90.29	Other -Of an external diameter exceeding 114.3 mm:
HS 7306.30.90.34	Standard Pipe
HS 7306.30.90.39	Other

This listing of HS codes is for convenience of reference only. Refer to the product definition above for authoritative details regarding the subject goods.

CANADIAN INDUSTRY

[31] The Canadian CSWP industry is comprised of the following four companies:

ArcelorMittal/Mittal Canada Inc.	Lakeside Steel Ltd.
IPSCO Inc.	Prudential Steel Ltd.

ArcelorMittal/Mittal Canada Inc

[32] ArcelorMittal of Montréal, Quebec, is a wholly owned subsidiary of ArcelorMittal. The Canadian operations have been producing CSWP using the CW process at its Montréal facility since 1960. The CW pipe produced at the Montréal facility ranges in diameter sizes from 1/2 in. to 4 in. inclusive. Pipe is also produced at one of ArcelorMittal's subsidiaries, Delta Tube and Company (Delta Tube) in Lasalle, Quebec. The pipe is produced from ArcelorMittal's hot rolled sheets using an ERW process and is shipped to the Montréal facility for finishing. The ERW pipe produced by Delta Tube ranges in diameter sizes between 2 in. to 6 in. inclusive and is sold through ArcelorMittal.

IPSCO Inc.

[33] In July 2007, IPSCO Inc. (IPSCO) became a wholly owned subsidiary of SSAB Swedish Steel Corporation. In June 2008, IPSCO's tubular businesses (including CSWP production) were divested to Evraz Group S.A., a Russian steel manufacturer, which at the time of the divestiture consolidated all of its North American operations under the name, Evraz Inc. NA. IPSCO (now Evraz Inc NA) has ERW production facilities in Regina, Saskatchewan, Red Deer, Alberta and Calgary, Alberta. IPSCO can produce ERW pipe in diameter sizes ranging from 2 3/8 in. to 16 in. inclusive.

Lakeside Steel Ltd.

[34] Lakeside Steel Ltd. (Lakeside) acquired Stelco Inc.'s pipe and tubular production facilities in 2005. Lakeside has production facilities in Welland, Ontario. Lakeside can produce ERW pipe in diameter sizes ranging from 1/2 in. to 8 in. inclusive.

Prudential Steel Ltd.

[35] Prudential Steel Limited (Prudential) is a wholly owned subsidiary of Tenaris SA. The welded pipe facility is located in Calgary, Alberta and can produce oil well casing, API line pipe, hollow steel structural and ERW pipe. Prudential can produce ERW pipe in diameter sizes ranging from 2 3/8 in. to 12 in. inclusive.

IMPORTS INTO CANADA

[36] During the preliminary phase of the investigations, the CBSA refined the estimated volume of imports based on information from its internal Customs Commercial Systems, customs import entry documentation, and other information received from exporters, importers and other parties. Since that time, a minor adjustment has been made, to account for goods that were found to not be subject to the investigations subsequent to the preliminary determinations.

[37] The following table presents the CBSA's statistics regarding imports of CSWP for purposes of the final determinations:

Imports of Certain Carbon Steel Welded Pipe (January 1, 2007 – December 31, 2007)

Imports into Canada	% of Total Imports
China	50%
U.S.A.	41%
All Other Countries	9%
Total Imports	100%

INVESTIGATION PROCESS

[38] Regarding the dumping and subsidy investigations, information was requested from known and possible exporters, vendors and importers, concerning shipments of CSWP released into Canada during the Dumping POI of January 1, 2007 to December 31, 2007. Information related to potential actionable subsidies was requested from known and possible exporters as well as from the GOC concerning CSWP of Chinese origin imported into Canada during the Subsidy POI of July 1, 2006 to December 31, 2007.

[39] In addition, known and possible exporters and producers of the goods along with the GOC were requested to respond to the section 20 RFI for the purposes of the section 20 inquiry. The GOC, five Chinese exporters, and two non-exporting producers, responded to the section 20 RFI.

[40] The CBSA extended the time allowed for responses to the RFIs for respondents who identified legitimate circumstances affecting their ability to provide the requested information within the stated time frame. This included 10-day extensions granted to the exporters/producers located in China and to the GOC. All respondents provided RFI submissions by the extended due date.

[41] On April 22, 2008, the President made preliminary determinations of dumping and subsidizing respecting certain CSWP from China. This included an opinion that the conditions of section 20 exist in this industry sector in China.

[42] 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 GOC representatives, 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.

[43] Scheduled on-site verification meetings were completed with the following exporters: TSSP, Kingland, Walsall, and Weifang. Verification meetings were also held with various local levels of government including representatives of the provincial governments in the cities of Tianjin, Jinan, Guangzhou, and Hangzhou. CBSA officers also met with representatives from various departments of the central government of China to review the GOC responses to the subsidy and section 20 RFIs.

[44] At initiation, the CBSA identified 26 potential subsidy programs. During the course of the investigation, the CBSA identified and requested information regarding an additional 6 potential subsidy programs.

[45] For purposes of the final determination, the CBSA has determined that 31 programs constitute actionable subsidies and that each of the four cooperating exporters benefited from one or more of these programs during the Subsidy POI.

[46] As part of the final stage of the investigations, case briefs and reply submissions were provided by the legal representatives for the following Chinese exporters: Walsall, TSSP, Kingland, and Weifang. A case brief and reply submission was also provided by counsel for the complainant, ArcelorMittal, while a reply submission (but no case brief) was provided by counsel for the GOC.

DUMPING INVESTIGATION

Section 20 Inquiry

[47] Section 20 of SIMA may be applied to determine the normal value of goods in a 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 SIMA¹, 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. Where section 20 is applicable, the normal value of goods is not determined based on a strict comparison with domestic prices or costs in that country.

[48] For purposes of a dumping proceeding, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation absent sufficient

¹ China is a prescribed country under section 17.1 of the *Special Import Measures Regulations* (SIMR)

information to the contrary. The President may form an opinion where there is sufficient information that the conditions set forth in paragraph 20(1)(a) of SIMA exist in the sector under investigation.

[49] The complaint requested that section 20 be applied in the determination of normal values due to the alleged existence of the conditions set forth in paragraph 20(1)(a) of SIMA. ArcelorMittal provided information to support these allegations concerning the welded pipe sector in China.

[50] On the basis of the information available, the CBSA concluded that there was sufficient evidence to initiate a section 20 inquiry in respect of the welded pipe sector in China. 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, in the sector under investigation, of the conditions described under subsection 20(1) of SIMA.

[51] Accordingly, the CBSA, at the initiation of the dumping investigation, sent section 20 questionnaires to all known potential exporters and producers of CSWP in China as well as to the GOC requesting detailed information related to the steel sector and, more specifically, the welded pipe sector in China. In response to the section 20 inquiry and the relevant questionnaires, the CBSA received submissions from five exporters, two non-exporting producers, and the GOC.

[52] In addition, the CBSA obtained information from both the complainant and other 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 Industry Development Policy” (also referred to as the National Steel Policy (NSP)) issued formally by the GOC.²

[53] The CBSA received very limited cooperation in its section 20 inquiry of the welded pipe sector. Out of the 92 exporters and producers requested to provide information to the CBSA, only 5 exporters participated. These exporters represent approximately 50% of the total exports to Canada of subject goods, by volume during the Dumping POI. These companies represent a far smaller proportion of the Chinese welded pipe industry, which has been reported to exceed 2000 producers.³ A section 20 inquiry assesses the domestic industry for subject goods as a whole. As such, the review of the welded pipe sector was not limited to an examination of the information provided by the five exporters.

[54] For purposes of the preliminary determination, 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 welded pipe sector. The information indicated that the wide range and material nature of the GOC measures, including measures arising from the GOC’s NSP, have had a considerable impact on the steel industry, including the welded pipe sector, through means other than competitive market forces.

² The information obtained by the CBSA for purposes of the section 20 inquiry has been placed on the “Listings of Exhibits and Information” for the dumping investigation.

³ Exhibit 125 Non- Confidential - Weifang East Steel Pipe Co. Ltd.’s Representations Concerning the Welded Pipe Industry in China.

[55] Accordingly, the President formed the opinion that domestic prices in the welded pipe 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.

[56] The CBSA continued with the section 20 inquiry during the final stage of the investigation, including on-site verification meetings with the GOC and various local levels of government, industry representatives and four cooperating Chinese exporters.

[57] 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 welded pipe 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.

[58] **Appendix 2** provides a summary of the findings considered by the President in reaffirming this section 20 opinion.

Normal Value

[59] Normal values are generally based on the domestic selling prices 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 profit.

[60] For purposes of the final determination, the CBSA has concluded 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 welded pipe sector.

[61] Where section 20 conditions exist, the CBSA will establish whether normal values can be determined 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 paragraph 20(1)(c) of SIMA. However, no surrogate country producers provided the information necessary to determine normal values in accordance with this provision.

[62] 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, sufficient information was not submitted by importers in response to the importer RFI to allow for application of paragraph 20(1)(d).

[63] Accordingly, the CBSA has used an alternative methodology to determine normal values for purposes of the final determination, pursuant to a ministerial specification under subsection 29(1) of SIMA. The production of welded pipe and tubular products involves the conversion of hot-rolled steel sheet by forming and welding the substrate into a tubular form, and finishing and testing the product. Two Canadian producers of CSWP provided information regarding the relationship between the cost of hot-rolled steel sheet and the selling price of the

finished product. Based on this information, the CBSA used publicly available market pricing information for hot-rolled steel sheet, as reported by the Metal Bulletin World Steel and Metal News (Metal Bulletin), in its Steelbenchmarker prices. The Metal Bulletin reports pricing data for hot-rolled steel sheet in major regions of the world. The CBSA averaged Metal Bulletin's pricing data, excluding mainland China, for the purposes of benchmarking hot-rolled steel prices during the Dumping POI.

[64] A conversion factor, determined using information provided by the Canadian producers, was then used to arrive at a normal value for non-galvanized CSWP. The conversion factor accounts for the costs incurred by a producer of CSWP to convert hot-rolled steel sheet into the subject goods, and includes an amount for profit. The amount for profit was obtained from a publicly available document submitted by the Canadian industry, namely the Form 10-K filed with the U.S. Securities and Exchange Commission by Northwest Pipe Company, a manufacturer of welded steel pipe with production facilities in Mexico and the United States of America, for the fiscal year 2007.

[65] Given the nature of the production process, where labour comprises a very low portion of the costs incurred by producers of the subject goods and where the technology used by manufacturers in China and in Canada is essentially the same, this conversion factor is appropriate for the determination of normal values.

[66] In order to obtain the normal value for galvanized CSWP, an amount was added to account for the cost of zinc. The cost of zinc used in this calculation was based on prices reported by the London Metals Exchange during the Dumping POI. It should be noted that this additional amount did not include an amount to account for the costs of galvanization beyond the actual cost of zinc and is thus a conservative amount of the additional costs associated with the production of galvanized CSWP.

[67] For exporters that did not provide information in response to the CBSA's dumping RFI (i.e. 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 (179%), expressed as a percentage of export price, as determined for cooperative exporters.

Export Price

[68] 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.

[69] For purposes of the final determination, export prices for the four cooperative exporters and for Tianjin Xingyuda Import and Export Co., Ltd. were determined using reported export pricing data provided by the exporters of the goods. For non-cooperative exporters, the export price was determined based on the import pricing data available from customs' information.

Results of Dumping Investigation

[70] 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.

[71] 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.

[72] 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 CSWP exported to Canada during the Dumping POI.

[73] Based on the preceding, 100% of the CSWP from China was dumped by an estimated weighted average margin of dumping of 141%, expressed as a percentage of export price.

[74] Under Article 15 of the World Trade Organization (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. Possible 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*⁴ 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.

[75] 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.

⁴ OECD, Development Assistance Committee List of Aid Recipients – As at 1 January 2006, online: <http://www.oecd.org/dataoecd/23/34/37954893.pdf>

Dumping Results by Exporter

[76] Specific margin of dumping details relating to each of the cooperative exporters that provided a response to the CBSA's dumping RFI are as follows:

Guangdong Walsall Steel Pipe Industrial Co., Ltd. (Walsall)

[77] Walsall submitted its exporter RFI response to the CBSA on March 10, 2008. The CBSA conducted on-site verification of Walsall's submissions from May 20 to 23, 2008. Walsall, a privately held limited liability company, is a purchaser of semi-finished product (hot-rolled coil and narrow strip), which it manufactures into subject carbon steel welded pipe.

[78] All products exported to Canada were produced by Walsall and were sold either directly to importers in Canada or through an unrelated trading company. For the final determination export prices were determined pursuant to section 24 of SIMA on the basis of the exporter's selling price, which was lower than the importer's purchase price. Export prices were adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

[79] The total normal value was compared with the total export price for all CSWP imported into Canada during the Dumping POI. It was found that the goods exported by Walsall were dumped by a weighted average margin of dumping of 106%, expressed as a percentage of export price.

Tianjin Shuangjie Steel Pipe Co., Ltd. (TSSP)

[80] TSSP submitted its exporter RFI response on March 10, 2008. On-site verification of the company's submission took place during the week of May 12, 2008. TSSP, a limited liability privately owned enterprise established in 1989, is a purchaser of semi-finished product (hot-rolled coil and narrow strip), which it manufactures into subject carbon steel welded pipe.

[81] All products exported to Canada were produced by TSSP and were sold directly to five importers in Canada. For the final determination export prices were determined pursuant to section 24 of SIMA on the basis of the exporter's selling price, which was lower than the importer's purchase price. Export prices were adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

[82] The total normal value was compared with the total export price for all CSWP imported into Canada during the Dumping POI. It was found that the goods exported by TSSP were dumped by a weighted average margin of dumping of 97%, expressed as a percentage of export price.

Weifang East Steel Pipe Co. Ltd. (Weifang)

[83] Weifang submitted its exporter RFI response to the CBSA on March 11, 2008. The CBSA conducted on-site verification of Weifang's submissions from May 20 to 23, 2008. Weifang, a privately held limited liability company, is a purchaser of semi-finished product (hot-rolled coil and narrow strip), which it manufactures into subject carbon steel welded pipe.

[84] All products exported to Canada were produced by Weifang and were sold directly to three importers in Canada. For the final determination export prices were determined pursuant to section 24 of SIMA on the basis of the exporter's selling price, which was lower than the importer's purchase price. Export prices were adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[85] The total normal value was compared with the total export price for all CSWP imported into Canada during the Dumping POI. It was found that the goods exported by Weifang were dumped by a weighted average margin of dumping of 99%, expressed as a percentage of export price.

Zhejiang Kingland Pipeline and Technologies Co. Ltd. (Kingland)

[86] Kingland submitted its exporter RFI response on February 29, 2008 and provided additional information in its response to subsequent supplementary RFIs from the CBSA. On-site verification of Kingland's submission took place during the week of May 12, 2008. Kingland, a domestic invested limited liability company established in 1993, is a purchaser of semi-finished product (hot-rolled coil and narrow strip), which it manufactures into subject carbon steel welded pipe.

[87] All products exported to Canada were produced by Kingland and were sold through an unrelated trading company, although the goods were shipped directly to Canada by Kingland. Accordingly, Kingland is the exporter of the goods. For the final determination export prices were determined pursuant to section 24 of SIMA on the basis of the exporter's selling price, which was lower than the importer's purchase price. Export prices were adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[88] The total normal value was compared with the total export price for all CSWP imported into Canada during the dumping POI. As a result, the goods exported by Kingland were found to be dumped by a weighted average margin of dumping of 110 %, expressed as a percentage of export price.

Non-cooperative exporters - Margin of Dumping

[89] For non-cooperative exporters, import pricing data available from customs' internal information systems was used for purposes of determining export price. Similarly, the normal value and related margin of dumping was determined using the highest transaction margin of dumping (179%), expressed as a percentage of export price, as determined for cooperative exporters.

SUMMARY OF RESULTS – DUMPING**Period of Investigation - January 1, 2007 to December 31, 2007**

Country	Dumped Goods as Percentage of Country Imports	Weighted Average Margin of Dumping as Percentage of Total Country Imports	Country Imports as Percentage of Total Imports	Dumped Goods as Percentage of Total Imports
China	100%	141%	50%	50%

[90] In making a final determination of dumping in respect of goods imported from a country under 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.

[91] For purposes of a preliminary determination of dumping, the President has responsibility for determining whether the actual and potential volumes of dumped goods are 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 is negligible.

[92] A summary of the margins of dumping determined for each exporter is provided in **Appendix 1**.

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

[93] Representations with respect to the investigation, including case arguments, were received on behalf of ArcelorMittal, Walsall, TSSP, Kingland, and Weifang.

[94] The GOC, ArcelorMittal, Walsall, TSSP, and Weifang 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.

1. Sufficiency of Evidence to Support the Application of Section 20

[95] Weifang, in its case arguments, submitted that the CBSA was incorrect in requiring information from all known exporters and producers of CSWP in China, and should restrict itself to drawing conclusions regarding the entire welded pipe sector from the submissions of those parties in China who submitted information.⁵

[96] Weifang also submitted that there is no evidence on the record that the GOC directly regulates domestic prices within the welded pipe sector, and that there is no evidence on the record indicating that the GOC substantially determines domestic pricing via indirect means. In this regard, it maintained that GOC ownership or control of upstream industries (relating to the production of raw materials, specifically hot-rolled steel) should have no bearing on the CBSA's analysis of the welded pipe sector. In addition, Weifang asserted that the evidence indicates that there is only minimal GOC ownership of companies in both the hot-rolled steel and welded pipe sectors, which would preclude the GOC from playing a role in influencing overall domestic price levels via the actions of state-owned enterprises (SOEs).⁶

[97] Furthermore, Weifang submitted that the GOC's recent changes in its administration of value-added tax (VAT) had no effect on the domestic price of CSWP; instead these changes are more likely to encourage exporters to renegotiate with foreign customers, enhance the value-added nature of their products, or engage in lobbying the GOC to retract the changes.⁷ Both TSSP and Walsall also denied that the GOC's changes to the VAT would have any effect on domestic prices, stating that it would only act to make exports less competitive.⁸ Kingland similarly stated that any effect on domestic prices resulting from this change would be minor.⁹

[98] Finally, Weifang asserted that there was no evidence on the record indicating that the domestic Chinese prices of CSWP are not substantially the same as they would be under competitive market conditions. In making this assertion, it contended that the majority of CSWP producers in China use hot-rolled narrow steel strip rather than hot-rolled steel sheet as the primary raw material, which is available at a significantly lower price than hot-rolled steel sheet and is available only in China. This is a source of competitive advantage to Chinese producers of CSWP, making any proper comparison to prevailing world prices or domestic prices in other countries for purposes of determining what the price of CSWP would be in a competitive market impossible.¹⁰ In relation to the use of hot-rolled narrow steel strip as a raw material, Weifang noted that the GOC does not regulate the price of either hot-rolled steel sheet or strip, citing the fact that the price of both raw materials fluctuated over the Dumping POI as proof that government regulation could not be present.¹¹

⁵ Exhibit 278 – Case Arguments from Weifang, Part I(a) and I(b)

⁶ Exhibit 278 – Case Arguments from Weifang, Part I(c) and I(d)

⁷ Exhibit 278 – Case Arguments from Weifang, Part I(d)

⁸ Exhibit 273 – Case Arguments from TSSP, Paragraph 14; and Exhibit 275 – Case Arguments from Walsall, Paragraph 22

⁹ Exhibit 244 – Case Arguments from Kingland, Part IV

¹⁰ Exhibit 278 – Case Arguments from Weifang, Part I(e)

¹¹ Exhibit 278 – Case Arguments from Weifang, Part I(e)

[99] Similarly, both Walsall and TSSP indicated in their case arguments that the evidence before the CBSA demonstrates that the prices for CSWP are established in a competitive marketplace on the basis of commercial factors and that, even if the GOC substantially determined domestic prices of CSWP, there is no evidence that the prevailing prices are not substantially the same as they would be in a competitive market.¹²

[100] In its case arguments, ArcelorMittal noted the relatively low level of cooperation from exporters/producers in China (5 responded out of 92 contacted) and from importers (14 responded out of 87 contacted). ArcelorMittal submitted that, in accordance with paragraph 41(1)(a) of SIMA, the President must base his determinations on the available evidence. ArcelorMittal also submitted that, where sufficient information is not available to determine normal values in accordance with sections 15 to 28 of SIMA, normal values should be determined in the manner specified by the Minister.¹³

[101] ArcelorMittal contended that section 20 applies to the welded pipe sector in China, identifying the CBSA's two previous conclusions that section 20 conditions existed in other steel sectors (specifically the flat-rolled steel and oil country tubular goods sectors) as evidence of a concerted effort by the GOC to exert influence and control over prices in the steel industry as a whole.¹⁴

[102] Furthermore, ArcelorMittal also asserted that, as hot-rolled steel sheet is the major input in the production of welded pipe (comprising 80%-85% of the cost of the goods), the GOC's determination of domestic pricing in that sector necessarily implied that the GOC also substantially determines domestic prices in the welded pipe sector. In this regard, ArcelorMittal contended that there is no evidence on the record that the use of low-cost hot-rolled narrow strip rather than hot-rolled sheet, as identified by Weifang, is an industry-wide practice, and that even if it were so, the cost difference is minor (approximately \$20/metric tonne). ArcelorMittal also made note of the high level of GOC ownership within the welded pipe sector, with 13 of the 17 largest CSWP producers (as identified by the GOC) being SOEs. ArcelorMittal argued that such substantial state ownership allows the GOC to substantially determine domestic pricing of CSWP.¹⁵

[103] ArcelorMittal additionally stated that the evidence on the record indicates that the domestic price of CSWP is not substantially the same as it would be under competitive market conditions. In support of this, ArcelorMittal noted that there is evidence that the GOC effectively restricted the sale of the exported grades of CSWP via regulations regarding the domestic plumbing market, thereby affecting the domestic price of the like goods, and that there is evidence on the record that the average price of CSWP in China is lower than the average price of hot-rolled steel sheet, a situation which would not occur under competitive market conditions as these conditions would necessarily lead to the price of a finished product being greater than that of raw materials.¹⁶

¹² Exhibit 273 – Case Arguments from TSSP, Paragraphs 29 & 34; and Exhibit 275 – Case Arguments from Walsall, Paragraphs 37 & 42

¹³ Exhibit 277 – Case Arguments from ArcelorMittal, Paragraphs 5-6

¹⁴ Exhibit 277 – Case Arguments from ArcelorMittal, Paragraph 14

¹⁵ Exhibit 277 – Case Arguments from ArcelorMittal, Paragraphs 16-18, 26

¹⁶ Exhibit 277 – Case Arguments from ArcelorMittal, Paragraphs 20-23

[104] In its case arguments, ArcelorMittal also took the opportunity to rebut several of the contentions of the other parties, noting that there is no evidence other than the exporters' assertions that narrow hot-rolled strip rather than hot-rolled steel sheet is used as a raw material input by Chinese CSWP producers.¹⁷

[105] Although the GOC did not submit any case arguments, it did provide a reply submission, wherein it rebutted many of the contentions put forward by ArcelorMittal. The GOC noted that it had provided complete responses to all of the questions asked by the CBSA, and had allowed the submitted information to be verified.

[106] The GOC's primary rebuttal of ArcelorMittal's case arguments centred on the pre-eminence of primary source information over information obtained from secondary sources. The GOC argued that evidence obtained directly from producers and exporters of the subject goods, along with that provided by the country under investigation ("primary source information"), must be used during an investigation. Information obtained via a secondary source is unreliable, not having been verified in a similar manner to information submitted by exporters and the GOC. Accordingly, such evidence can only be used, as a last resort, in the absence of primary source information, rather than in instances where it contradicts primary source information. The GOC submitted that all of the primary-source information, which had been the subject of on-site verifications in China, supports the conclusion that CSWP prices in China are not substantially determined by the GOC and there is no reason to believe that CSWP prices in China are not substantially the same as they would be if they were determined in a competitive market.¹⁸

[107] The GOC also observed that the scope of a section 20 inquiry is limited to "goods sold to an importer", rather than being in regards to the prevailing conditions in China for all goods within the industry sector under review, regardless of whether they are sold to an importer. In addition, the GOC also declared that the section 20 inquiry must be limited to the specific goods subject to the President's inquiry (i.e. CSWP), and not an entire industrial class of goods (such as the entire steel industry) or a broader sector of the industry. Given the above, and given that the cooperative exporters represent 50% of the total subject goods exported to Canada during the POI, the GOC contends that the information submitted by the exporters, and by the GOC itself, is sufficient for purposes of forming a conclusion regarding the applicability of section 20.¹⁹

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 welded pipe sector and related pricing practices, through means other than market forces.

¹⁷ Exhibit 277 – Case Arguments from ArcelorMittal, Paragraph 26

¹⁸ Exhibit 279 – Reply Submission of the GOC, paragraphs 22-34

¹⁹ Exhibit 279 – Reply Submission of the GOC, paragraphs 6-12

[109] Regarding arguments concerning the interpretation of the section 20 provisions of SIMA and the evidentiary threshold, the CBSA believes that there is evidence on the record that is reliable and credible, has been properly interpreted, and is sufficient to form an opinion that section 20 conditions apply in the welded pipe sector in China. The information on the record, as discussed in detail in **Appendix 2**, discloses both the scope and nature of GOC measures in the welded pipe 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. Weifang, for example, stated that the complainants bear the onus of proof, even after the initiation of the inquiry, with the Chinese exporters/producers being in a rebuttal position, needing only to overcome the case alleged by the complainant.²⁰ Representations from Canadian industry noted “there is no burden of proof on the domestic producers. Rather, the CBSA is under obligation to inquire into the issue and make an assessment based on the facts available”.²¹

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 welded pipe 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 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 in the best interests of all parties to participate in a section 20 inquiry and to 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.

²⁰ Exhibit 278 – Case Arguments from Weifang, Part I(a)

²¹ Exhibit 280 – Reply Submission from ArcelorMittal, Paragraph 21

3. Nature of the China Iron and Steel Industry Development Policy (also referred to as the National Steel Policy (NSP))

[116] Both Walsall and TSSP characterized the NSP as a non-binding policy paper that provides guidance to the iron and steel sector, while contending that it is not relevant to the production of CSWP.²² Similarly, Weifang noted that, per the CBSA's Statement of Reasons at the time of the preliminary determination, the only direct action the GOC takes regarding the welded pipe sector is via the NSP. Weifang denied that the NSP applies to the welded pipe sector, and submits that, even if it did apply, it is non-compulsory, with no legal standing in China, and, at least in part, applies only to state-owned steel companies rather than to the steel industry overall.²³ Kingland likewise denied that the NSP applies to CSWP, contending that CSWP was not a metal product or related to steel rolling in the context of the NSP.²⁴

[117] In its case arguments, ArcelorMittal described the position that the NSP does not apply to CSWP as unsubstantiated and incorrect, the contentions of other parties notwithstanding, and noted that the China Metallurgical Council specifically identified CSWP as a rolled steel product subject to the NSP.²⁵ ArcelorMittal further elaborated on this topic in its reply submission, noting that CSWP falls within multiple categories of products and processes covered by the NSP.²⁶ In responding to Weifang's claim that the NSP has no legal standing and is not compulsory, ArcelorMittal notes that the CBSA, in its section 20 guidelines, specifically identified policies, recommendations, and other programs that enable a government to control prices among those factors which suggest price control, and thus is not limited to considering only "those instruments which directly mandate through legislative or judicial fiat the control of domestic pricing."²⁷

[118] In its reply submission, the GOC supported the three exporters' comments, noting that the NSP is a policy without legal force, and is only a set of principles designed to explain industrial policy. The GOC maintains "the NSP has no impact on steel enterprises in their course of business, and does not mandate any procedures that directly or indirectly impact pricing of CSWP or its substrate."²⁸

[119] Furthermore, the GOC characterized its activities through the National Development and Reform Commission (which, per Article 7 of the NSP, formulates the mid- and long-term development policies of the iron and steel industry²⁹) as being restricted to environmental protection, the efficient use of energy, and use of natural resources that are limited in supply in China, while acknowledging that it also approves certain steel-making projects in a manner to ensure consistency with the GOC's macroeconomic policy in accordance with legislated and/or

²² Exhibit 273 – Case Arguments from TSSP, paragraphs 15 & 30 and Exhibit 275 - Case Arguments from Walsall, paragraphs 23 & 38

²³ Exhibit 278 – Case Arguments from Weifang, Part I(c)

²⁴ Exhibit 244 – Case Arguments from Kingland, Part III

²⁵ Exhibit 277 – Case Arguments from ArcelorMittal, paragraph 27

²⁶ Exhibit 280 – Reply Submission from ArcelorMittal, paragraphs 24-25

²⁷ Exhibit 280 – Reply Submission from ArcelorMittal, paragraphs 26-27

²⁸ Exhibit 279 – Reply Submission of the GOC, paragraph 46

²⁹ Exhibit 84 – Response to Section 20 Government RFI from the GOC, Exhibit 3

delegated criteria. The GOC maintains that these activities have no impact on pricing, either directly or indirectly.³⁰

CBSA Response

[120] Numerous articles in the NSP offer guidance for the development of the steel industry in China. However, it is clear from the NSP, including its administration and enforcement, that the document, in aggregate, is substantially more than a mere guideline.

[121] As examples, Article 36 clearly states that punitive measures are available to address violations of the NSP. Article 36 states: “For any violation of the present industrial policies, the person and entity as held responsible shall be given punishments by relevant departments such as the NDRC, the Ministry of Construction and the State Administration of Industry and Commerce, etc. according to the relevant provisions.”³¹ Article 39 also states: “the present industrial policies are published upon the authorization of the State Council” and that, in the event of a violation, any of a long list of parties “shall investigate into the violations and fix responsibilities to the violator.”³²

[122] The results of the section 20 inquiry contained in **Appendix 2** provide additional information concerning the CBSA’s consideration and analysis of the NSP. To that end, the CBSA is satisfied that it has properly understood the nature of the NSP and attached appropriate significance to its standing with respect to the section 20 inquiry.

4. Subject Goods in Relation to the Steel Industry

[123] 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.³³

[124] Similarly, Weifang noted that the CBSA’s analysis regarding the steel industry in general, including the hot-rolled steel sector, was untenable, due to the fact that CSWP producers in China were not in a position to rebut any information regarding sectors of the steel industry beyond the production of CSWP.³⁴

[125] In contrast, ArcelorMittal contended within its case arguments that in considering whether Chinese domestic CSWP prices are substantially determined by the GOC, the cost of the major input (hot-rolled steel) used in the manufacture of CSWP is clearly relevant.³⁵

³⁰ Exhibit 279 – Reply Submission of the GOC, paragraphs 43-44

³¹ Exhibit 84 – Response to Section 20 Government RFI from the GOC, Exhibit 3

³² Exhibit 84 – Response to Section 20 Government RFI from the GOC, Exhibit 3

³³ Exhibit 279 – Reply Submission of the GOC, paragraphs 7-13

³⁴ Exhibit 278 – Case Arguments from Weifang, Part I(d)

³⁵ Exhibit 277 – Case Arguments from ArcelorMittal, paragraphs 28-29

CBSA Response

[126] 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. In addition, government measures related to the cost to producers of CSWP, of the primary raw material (hot-rolled steel) used in the manufacture of CSWP, are relevant.

[127] Nevertheless, the section 20 inquiry is a review of the welded pipe 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 welded pipe sector in its entirety and is not limited to an examination of the activities of the four exporters that cooperated in this investigation.

5. Definition of “Substantially Determines”

[128] Both Walsall and TSSP, in their respective case arguments, raised the issue of the proper definitions of “substantially” and “determine”, and how these terms should be applied in interpreting section 20 of SIMA.³⁶

[129] ArcelorMittal responded to this issue in its reply submission, where it contended that “substantially determines”, as it appears in section 20 of SIMA, is not a rigidly defined term but instead is a “criterion that may be satisfied on the basis of any number of relevant factors”.³⁷ In addition, ArcelorMittal further contends that Walsall and TSSP’s interpretation of the term “substantially” is both inconsistently applied within the exporters’ arguments and is not in accordance with the rules of statutory interpretation.

CBSA Response

[130] 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 welded pipe sector, such that the domestic prices of welded pipe are substantially determined by the GOC, and that these prices are not substantially the same as they would be if determined in a competitive market.

[131] Regarding arguments concerning the interpretation of the section 20 provisions of SIMA the CBSA believes that there is evidence on the record that is reliable and credible, has been properly interpreted, and is sufficient to form an opinion that section 20 conditions apply in the welded pipe sector in China. The information on the record, as discussed in detail in the attached **Appendix 2**, discloses both the scope and nature of GOC measures in the welded pipe sector and the related impact of these measures on pricing.

³⁶ Exhibit 273 – Case Arguments from TSSP, paragraphs 21-28 and Exhibit 275 – Case Arguments from Walsall, paragraphs 29-36

³⁷ Exhibit 280 – Reply Submission from ArcelorMittal, paragraph 10

6. “Double-Counting” of Costs under Section 19 of SIMA

[132] In its case arguments, Weifang argued that Chinese accounting standards require that inland freight and other charges (such as port fees, handling fees, etc.) are included as selling expenses. Given that SIMA requires such expenses be deducted from the export price, Weifang contended that the cost of the goods, for purposes of determining normal values under section 19 of SIMA, should be adjusted downward by the amount of these expenses, so as to avoid including the costs in the normal values while simultaneously removing them from the export price.³⁸

CBSA Response

[133] Given that the President has reaffirmed the opinion made at the preliminary determination that domestic prices in the welded pipe 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, normal values have not been determined under section 19 of SIMA. Accordingly, Weifang’s representations regarding the proper determination of normal values under section 19 are not relevant for purposes of the final determination.

7. Appropriate Basis for a Specification under Subsection 29(1) of SIMA

[134] ArcelorMittal, in its case arguments, noted that sufficient information was not available to enable the determination of normal values in accordance with section 20 of SIMA. Accordingly, having contended throughout its case arguments that section 20 conditions were present in the welded pipe sector in China, ArcelorMittal presented what it stated was an appropriate and reliable methodology of determining normal values pursuant to a ministerial specification under subsection 29(1) of SIMA. This methodology involved utilizing the USA mid-west spot price for hot-rolled steel sheet as the basis for determining normal values, modified by adding a conversion factor representing both the cost to convert the raw material to CSWP and a profit. In addition, in the case of galvanized CSWP, an additional amount would be added, based on the price of zinc reported by the London Metals Exchange, to account for the cost of the zinc used during the galvanization process.³⁹

CBSA Response

[135] The CBSA agrees that the methodology proposed by ArcelorMittal is a reasonable means of determining normal values for cooperative exporters in the absence of sufficient information to determine normal values pursuant to section 20 of SIMA. Indeed, in its final determination, the CBSA used a similar methodology to determine normal values pursuant to a ministerial specification under subsection 29(1) of SIMA. The primary difference being that the CBSA averaged pricing data from three regions in order to determine a benchmark for hot-rolled steel prices during the Dumping POI rather than relying on the market price reported for a single

³⁸ Exhibit 278 – Case Arguments from Weifang, Part II

³⁹ Exhibit 277 – Case Arguments from ArcelorMittal, paragraphs 30-35

region. The CBSA believes that this reliance on averaging prices from three regions ensures a more representative benchmark price for hot-rolled steel.

SUBSIDY INVESTIGATION

Legal Framework

[136] 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.

[137] 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.

[138] Where subsidies exist they may be subject to countervailing measures if they are specific in nature. 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 a 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.

[139] 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.

[140] 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 persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, export or import of goods under investigation have benefited from the subsidy.

Investigation Process

[141] Prior to the initiation of the investigation, the complainant submitted documents alleging that the producers and exporters of CSWP in China benefited from actionable subsidies provided by the GOC.

[142] For purposes of the subsidy investigation, “Government of China” refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government. Consequently, benefits provided by state-owned enterprises operating under direct or indirect government control or influence were also taken into consideration as possibly having been provided by the GOC.

[143] At initiation, the CBSA identified 26 potential subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) and other Designated Areas Incentives;
2. Grants;
3. Equity Infusions/Debt-to-Equity Swaps;
4. Preferential Loans;
5. Preferential Income Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Reduction in Land Use Fees; and
8. Purchase of Goods from State-owned Enterprises.

[144] Details regarding these potential subsidies were provided in the Statement of Reasons issued for the initiation of this investigation. This document is available through the CBSA website at the following address:

<http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1373/ad1373-i08-de-eng.pdf>.

[145] In conducting its investigation, the CBSA sent subsidy RFIs to identified potential exporters located in China and to the GOC. 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 has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of CSWP; and whether any resulting subsidy was specific in nature. The GOC was also requested to forward

the questionnaires to all subordinate levels of government that had jurisdiction over the exporters.

[146] The CBSA received substantially complete responses from the four cooperating exporters located in China. However, a complete response to the CBSA's subsidy RFI was not received from the GOC. Accordingly, the CBSA issued a supplementary RFI to the GOC, in an effort to obtain complete information and to clarify the information received. Specifically, the CBSA requested that the GOC respond to the RFI in respect of all of the exporters identified by the CBSA at the initiation and to provide all specifically identified documents requested in the RFI. The CBSA also requested further information on the six subsidy programs identified subsequent to the initiation of the investigation.

[147] At the time of the preliminary determination, the GOC had failed to provide complete information as requested in the supplementary RFI. Therefore, the CBSA considered the GOC's response to the RFI to be incomplete for purposes of the preliminary determination and, as a result, the preliminary decision was based on the information available at the time of the preliminary determination.

[148] As mentioned earlier, subsequent to the preliminary determination, verification meetings were held with four exporters, as well as Chinese government officials at the municipal, provincial and central levels.

Results of the Subsidy Investigation

[149] The CBSA determined specific subsidy amounts for each of the four cooperative exporters. For the purposes of the final determination, the CBSA determined the subsidies for each exporter on the basis of the program(s) that the exporter had utilized in the Subsidy POI. The resultant amounts of subsidy for each of these exporters are provided in **Appendix 1**.

[150] The information received from the four cooperative exporters indicates that they received actionable subsidies under one or more of the following 9 programs:

- Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in Economic and Technological Development Zones
- Preferential Tax Policies for Foreign Invested Enterprises
- Local Income Tax Exemption and/or Reduction
- Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan
- Export Assistance Grants
- Research & Development Assistance Grant of Wuxing District
- Innovative Experimental Enterprise Grants
- Superstar Enterprise Grants
- Hot-Rolled Steel Provided by Government at Less than Fair Market Value

[151] 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 cooperative exporters, may be found in **Appendix 3**.

[152] 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 regarding the potential benefits conferred to the non-cooperative exporters.

[153] Therefore, for the purposes of the final determination, with respect to the non-cooperative exporters, the CBSA has determined the amount of subsidy, pursuant to subsection 30.4(2) of SIMA, to be the sum of the highest amount of subsidy found for each of the 9 actionable subsidy programs for the 4 cooperative exporters located in China, as determined at the final determination, plus the simple average of the subsidy amounts for the 9 actionable subsidy programs, applied to each of the 22 potentially actionable subsidy program for which information is not available or has not been provided at the final determination. The total amount of subsidy for the non-cooperative exporters will be 5,280 Renminbi per metric tonne.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - July 1, 2006 to December 31, 2007

Country	Subsidized Goods as Percentage of Country Imports	Weighted Average Amount of Subsidy*	Country Imports as Percentage of Total Imports	Subsidized Goods as Percentage of Total Imports
China	100%	73%	50%	50%

*As percentage of the export price

[154] The final results indicate that 100% of the subject goods imported into Canada during the Subsidy POI were subsidized. The amounts of subsidy ranged from 25% to 113%, expressed as a percentage of export price. The estimated overall weighted average amount of subsidy is equal to 73% of the export price.

[155] 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.

[156] 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.

[157] 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.

[158] 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

[159] Representations with respect to the investigation, including case arguments, were received on behalf of ArcelorMittal, Walsall, TSSP, Kingland, and Weifang.

[160] The GOC, ArcelorMittal, Walsall, TSSP, and Weifang 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.

1. Sufficiency of Evidence to Determine the Amount of Subsidy in the Prescribed Manner

[161] In its case arguments, ArcelorMittal noted the relatively low level of cooperation from exporters/producers in China (5 responded out of 92 contacted), from importers (14 responded out of 87 contacted), and from the GOC. ArcelorMittal submitted that, where sufficient information is not available to determine the amount of subsidy in the prescribed manner, the amount of subsidy should be determined in the manner specified by the Minister.⁴⁰

[162] ArcelorMittal catalogued a number of alleged deficiencies within both the GOC's and the various exporters' responses to the CBSA's questionnaires. The majority of these deficiencies were in regards to the GOC's refusals to provide information regarding subsidy programs that were not received by any of the participating exporters, with the remainder being in regards to discrepancies between the responses of the GOC and individual exporters. Given these deficiencies, ArcelorMittal argued that amounts of subsidy could not be determined in the prescribed manner, and thus should be determined in the manner specified by the Minister.⁴¹

[163] Although the GOC did not submit any case arguments, it did provide a reply submission, wherein it rebutted many of the contentions put forward by ArcelorMittal. The GOC noted that

⁴⁰ Exhibit 277 – Case Arguments from ArcelorMittal, Paragraph 36

⁴¹ Exhibit 277 – Case Arguments from ArcelorMittal, Paragraph 37-53

it had provided responses to all of the questions asked by the CBSA, and had allowed the submitted information to be verified. With regards to the allegations of incompleteness, the GOC claimed that the CBSA had (subsequent to the issuing of the RFI) agreed that the limited response submitted by the GOC was sufficient, as anything more extensive would have been impractical and/or impossible to provide.⁴²

[164] Walsall and TSSP, in their response submissions, rebutted ArcelorMittal's case arguments regarding the sufficiency of evidence available for purposes of determining the amount of subsidy in the prescribed manner. Walsall noted that the GOC "could not reasonably be expected to be aware of each and every beneficiary" of a given program, but had provided the requested information once the benefit was drawn to its attention.⁴³ Both parties contended that sufficient evidence was provided to the CBSA, during the verification exercises, to allow for the amount of subsidy received by the exporters to be determined in the prescribed manner.⁴⁴

CBSA Response

[165] The CBSA is satisfied that there is evidence on the record that is reliable and credible, has been properly interpreted, and is sufficient to enable the determination of the amount of subsidy in the prescribed manner, with regards to the four exporters in China who submitted substantially complete responses to the CBSA's subsidy RFIs.

[166] The GOC failed to provide any information regarding non-cooperative exporters, despite being requested to do so in both the original and the supplementary subsidy RFIs. Therefore, the amount of subsidy for non-cooperative exporters was determined under ministerial specification pursuant to subsection 30.4(2) of SIMA.

[167] It should be emphasized, that at no point during the investigation was the GOC informed that it was not expected to provide a complete response, pertinent to all exporters in China, to all of the questions asked. Rather, the limited information the GOC provided was used, in conjunction with the other evidence on the record, to determine the amount of subsidy in the prescribed manner where possible. Where this was not possible, the amount of subsidy was determined as specified by the Minister.

DECISIONS

[168] The CBSA is satisfied that certain carbon steel welded pipe originating in or exported from the People's Republic of China, has been dumped and that the margins of dumping are not insignificant. Consequently, on July 21, 2008, the CBSA made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA

[169] Similarly, the CBSA is satisfied that certain carbon steel welded pipe originating in or exported from China has been subsidized and that the amounts of subsidy are not insignificant.

⁴² Exhibit 279 – Reply Submission of the GOC, paragraphs 49-57

⁴³ Exhibit 282 – Reply Submission from Walsall, paragraph 5

⁴⁴ Exhibit 281 – Reply Submission from TSSP, paragraph 9 and Exhibit 282 – Reply Submission from Walsall, paragraph 6

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

[170] The provisional period began on April 22, 2008, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by August 20, 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>.

[171] 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.

[172] 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 CBSA will offset, where necessary, the amount of anti-dumping duty payable on goods imported into Canada by an amount that is attributable to an export subsidy.

[173] 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.

[174] 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.

[175] Exporters that were non-cooperative in the dumping investigation will have normal values established by advancing the export price by 179% 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 5,280 Renminbi per metric tonne, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[176] Under certain circumstances, anti-dumping and countervailing 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 and/or subsidized 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 and/or subsidized 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 and/or countervailing duty.

[177] 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

[178] 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

[179] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's website at the address below. For further information, please contact the officers identified as follows:

Mail SIMA Registry and Disclosure Unit
 Anti-dumping and Countervailing Program
 Trade Programs Directorate
 Canada Border Services Agency
 100 Metcalfe Street, 11th Floor
 Ottawa, Ontario K1A 0L8
 CANADA

Telephone Richard Pragnell (613) 954-0032
 Iqbal Motani (613) 952-7547
 Edith Trottier (613) 954-7182

Fax (613) 948-4844

Email SIMARegistry@cbsa-asfc.gc.ca

Website <http://www.cbsa-asfc.gc.ca/sima>

A handwritten signature in black ink, appearing to read 'M.R. Jordan', with a long horizontal stroke extending to the right.

M.R. Jordan
Director General
Trade Programs Directorate

Attachment

APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY

Exporter	Margin of Dumping*	Amount of Subsidy (RMB/Metric Tonne)
Guangdong Walsall Steel Pipe Industrial Co., Ltd.	106%	1,130
Tianjin Shuangjie Steel Pipe Co., Ltd.	97%	1,616
Weifang East Steel Pipe Co., Ltd.	99%	1,449
Zhejiang Kingland Pipe Technologies Co., Ltd	110%	1,670
All other exporters	179%	5,280

*As a percentage of export price

APPENDIX 2 – SUMMARY OF FINDINGS – SECTION 20

Section 20 Policy

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 factors are considered by the Canada Border Services Agency (CBSA) when examining whether to government substantially determines domestic prices in the country of export.

The following factors indicate 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. This section 20 inquiry examined the welded pipe sector. The welded pipe sector includes standard pipe, pressure pipe, line pipe, structural pipe, mechanical pipe and oil country tubular goods. For purposes of this report, the term “welded pipe” refers to all these welded pipe products made from carbon steel.

At the initiation of the dumping and subsidy investigations regarding certain carbon steel welded pipe⁴⁵ from China, the CBSA sent a section 20 Request For Information (RFI) to 92 known exporters and producers of welded pipe in China, as well as to the Government of China (GOC), requesting detailed information related to the steel sector and specifically, the welded pipe 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 products.

In response to the section 20 RFI, the CBSA received submissions from five producers, the GOC. The four cooperative producers indicated that there are no restrictions or involvement by the GOC with respect to welded pipe products.⁴⁶ The CBSA examined the facts surrounding these statements in the course of the on-site verification meetings held with cooperative producers and the GOC.

In addition, the CBSA obtained information from both the complainant and other 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 Industry Development Policy” (also referred to as the National Steel Policy (NSP)) issued formally by the GOC.⁴⁷

For the purposes of the preliminary determination on April 22, 2008, the President formed the opinion that domestic prices in the welded pipe sector in China are

⁴⁵ For the purpose of the dumping and subsidy investigations, the subject goods are defined as: Carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of ½ inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200 97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the People’s Republic of China

⁴⁶ Exhibits NC 71, 78, 82 and 178 – Section 20 response to question B5.

⁴⁷ The information obtained by the CBSA for purposes of the section 20 inquiry has been placed on the “Listings of Exhibits and Information” for the dumping investigation.

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 if they were determined in a competitive market. The President's section 20 opinion was provided in the Statement of Reasons (SOR) issued on May 7, 2008.⁴⁸

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 welded pipe sector. The information indicated that the wide range of GOC measures have had an impact of a material nature on the steel industry, including the welded pipe sector, through means other than competitive market forces.

The following is the CBSA's analysis of the relevant facts considered by the CBSA in conducting the Section 20 inquiry. The analysis is composed of two parts. Part 1 examines whether the GOC has substantially determined the Chinese domestic selling prices in the welded pipe sector. The report outlines the impact of the NSP and the significant GOC ownership of steel enterprises, specifically in the hot-rolled steel and strip sector, which is the main raw material input used by the welded pipe sector. It also examines the impact that GOC government policy objectives and actions have had on the steel industry and the welded pipe sector. The analysis indicates that the GOC has, through a variety of mechanisms, substantially determined prices in the welded pipe sector.

Part 2 is an analysis of the Chinese domestic welded pipe selling prices. This analysis indicates that Chinese domestic prices are different from those in competitive markets. In addition, the GOC's macro-economic controls, including those related to the implementation of the NSP, have resulted in non-competitive conditions and domestic selling prices that are not substantially the same as they would be if they were determined in a competitive market.

PART 1 - Whether domestic prices are substantially determined by the government

China Is An Economy In Transition

The GOC started to move from a planned economy to socialist market economy in the early 1990's. China's current economic structure reflects the legacy of the central planning and the elements of a modern and increasingly market based competitive system.⁴⁹

There are differences between a socialist market economy and a market economy. The main difference being the government involvement in various industrial sectors deemed to be important to the GOC. For example, the GOC has identified two industry groups where the GOC must maintain a degree of control. The two groups are "strategic

⁴⁸ Exhibit 177 NC - Preliminary Determination respecting certain carbon steel welded pipe from the People's Republic of China [pages 11 – 15].

⁴⁹ Exhibit NC 264 [Tab 1] China: Description of Selected Government Practices and Policies Affecting the Decision-Making in the Economy, USITC December 2007 [page xiv]

industries”⁵⁰ and “pillar industries”⁵¹. As reported by the United States International Trade Commission (USITC) in December 2007⁵², the State-owned Assets Supervision and Administration Commission (SASAC) noted that for “strategic industries” the GOC must maintain “absolute control”, which is a minimum of 50% GOC equity stake in every company in the industry group. For “pillar industries”, the GOC should maintain relatively strong control over the principal companies, which is a minimum of 50% GOC equity in the principal enterprises in the industry group.⁵³ Based on this information, it is the view of the CBSA that the GOC considers the iron and steel industry to be a “pillar industry” and subject to these conditions.

There is publicly available information on the record regarding the influence that the GOC has on the domestic economy, the steel sector and in particular the welded pipe sector. For example, an annual report (Form 10-K) filed with the United States Securities and Exchange Commission (SEC) by General Steel Holdings Inc. (General Steel), provides some insight on the GOC influence in the economy. General Steel is a company incorporated in the United States, which through its British Virgin Island holding company is involved in a joint venture arrangement with three Chinese steel companies. One of these three steel companies is a carbon steel spiral welded pipe operation, which is considered part of the welded pipe sector. In the company’s Form 10K filing, General Steel stated the following regarding the status of the economy in China:

The economy of China is transitioning from a planned economy to a market oriented economy subject to five-year and annual plans adopted by the government that set down national economic development goals. Policies of the Chinese government can have significant effects on the economic conditions of China. The Chinese government has confirmed that economic development will follow a model of market economy under socialism.⁵⁴

General Steel also noted the following risks relating to operation of a business in China:

All of our business, assets and operations are located in China. The economy of China differs from the economies of most developed countries in many respects, including government involvement, level of development, growth rate, control of foreign exchange, and allocation of resources. The economy of China has been transitioning from a planned economy to a more market-oriented economy. Although the Chinese Government has implemented measures recently emphasizing the utilization of market forces for economic reform, the reduction of

⁵⁰ Ibid, Strategic industries include armaments, power generation and distribution, petroleum and petrochemicals, telecommunication, coal, civil aviation and shipping [page 18]

⁵¹ Ibid, Pillar Industries include machinery and equipment, automobiles, information technology, construction, iron and steel, nonferrous metals, chemicals, mining resources exploration, and science and technology [page 18]

⁵² Ibid

⁵³ Ibid [page 18 and 27]

⁵⁴ Exhibit NC 216 [Tab 3] General Steel Holdings, Inc. Annual report pursuant to section 13 or 15(d) of the securities exchange act of 1934. Fiscal year ended December 31, 2007, [page 9]

state ownership of productive assets and the establishment of sound corporate governance in business enterprises, a substantial portion of productive assets in China is still owned by the Chinese Government. In addition, the Chinese Government continues to play a significant role in regulating industry by imposing industrial policies. It also exercises significant control over China's economic growth through the allocation of resources, controlling payment of foreign currency denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. Therefore, the Chinese Government's involvement in the economy may negatively affect our business operations, results of operations and our financial condition.⁵⁵

Given these statements it is clear that General Steel, a company operating in the welded pipe sector, must take into account the role the GOC plays in the economy through the five-year and annual plans and its substantial ownership of productive assets. Further, they must operate their business in an environment that is regulated by industrial policies which can negatively impact their financial position.

Communist Party of China (CPC)

With respect to state-owned enterprises (SOEs) and the CPC mandate, Article 32 of the CPC Constitution states that:

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.⁵⁶

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

⁵⁵ Exhibit NC 216 [Tab 3] General Steel Holdings, Inc. Annual report pursuant to section 13 or 15(d) of the securities exchange act of 1934. Fiscal year ended December 31, 2007 [page 11]

⁵⁶ Exhibit NC 215 Statement of Reasons – Final Determination - Certain Seamless Carbon or Alloy Steel Oil and Gas Well Casing, February 22, 2008

National Five-Year Plans for Economic and Social Development

Five-Year Plans for National and Economic and Social Development (Five-Year Plans) are established by the GOC and arrange national key construction projects, manage the distribution of productive assets and economic development, map the direction of future regional development and establish social and economic targets. 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 Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development 2006-2010 (Eleventh Five-Year Plan)⁵⁷ and was compiled according to the suggestions of the Central Committee of the CPC.

The Eleventh Five-Year Plan specifically sets out a framework for the steel industry in Chapter 13, Section 1 entitled "Optimize the Development of Metallurgical Industry", which notes that the GOC 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.⁵⁸

Further, 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. In combination with the relocation of urban iron and steel enterprises such as Shougang and elimination of backward production capacity, construct Caofeidian⁵⁹ iron and steel base.⁶⁰

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

Formulate and improve the laws and associated administrative regulations for supervision and control system of operating state-owned assets, establish and complete government capital operation budget, enterprise operation 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

⁵⁷ Exhibit 84 NC – GOC response to Section 20 Government RFI, March 20, 2008 [Exhibit 4-B8(c)]

⁵⁸ Ibid [page 16]

⁵⁹ Caofeidian Island, a small island in the Bohai Bay, to the south of Tangshan City. The development of the island will be centered on four main areas – large port terminals, steel plants, petrochemical plants and power generation.

⁶⁰ Exhibit 84 NC – GOC response to Section 20 Government RFI, March 20, 2008 [Exhibit 4-B8(c)] [page 16]

supervision and management systems of state-owned financial assets, non-operating assets and natural resource assets etc and prevent losses of stated own assets.⁶¹

In addition, Chapter 19 of the Eleventh Five-Year Plan outlines various regional development strategies. The Northeast and Central regions of China have been specifically targeted for development in the iron and steel industry.⁶² 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.⁶³

The Central Region's development strategy includes the following:

Accelerate the structural readjustment of superior industries such as iron and steel.⁶⁴

Similar to the National Eleventh Five-Year Plan explained above, each province develops their own corresponding Five-Year Plan that reflect the Central Government's overall objectives and incorporates the specific National objectives for that province. These Five-Year plans are considered to be a guideline for the economic and social development for that province and are a collaborative effort between the Provincial and Central Committee's of the CPC.

The National Five-Year Plan, the associated provincial Five-Year Plans and the subsequent SOE Five-Year Plans indicate that the Central Government's macro economic plans flow through to the provincial/municipal level and down to the SOE level.

Eleventh Five-Year Plan for Economic and Social Development of Hebei Province

Welded pipe producers in Hebei province accounted for approximately 21.3% of total production of "welded tube and pipe" in China in 2006, making it the largest producing province.⁶⁵ Hebei's Provincial Five-Year Plan specifically directs that:

Build Tangshan Steel, Handan Steel, the two ten million ton level enterprises group, build Caofeidian highquality sheet, Chengdefantai products, the two bases, make excellent in plate strip material, rod and wire material, tubing material, shaped material, special steel and steel deep processing, the six products lines. Speed up the construction of projects such as overall planning of structural

⁶¹ Ibid [page 40-41]

⁶² Exhibit 84 NC – GOC response to Section 20 Government RFI, March 11, 2008 [Exhibit 4-B8(c)]

⁶³ Ibid [page 23]

⁶⁴ Ibid [page 23]

⁶⁵ Exhibit 248 PRO – China Steel Yearbook 2007, Basic Statistics on Provincial Iron and Steel Industry of China in the Year 2006, by product, by Province [page 111]

optimizing and industry upgrading for Caodeidian Steel, Handen Steel, realize the transformation from the big steel province to the strong steel province.⁶⁶

Eleventh Five-Year Plan for Economic and Social Development of Tianjin Municipality⁶⁷

Welded pipe producers in Tianjin municipality accounted for approximately 21.1% of total production of “welded tube and pipe” in China in 2006, making it the second largest producing province.⁶⁸ The Five-Year Plan for Tianjin specifically directs that:

Following the principal of controlling overall production scale, highlighting knockout products, reducing energy consumption, and accelerating reshuffle, we will take initiative actions to push forward the restructuring of the local metallurgical sector. We will adopt the world’s first-class technologies and equipments and speed up expansion and renovation of Tianjin Pipe Corporation Ltd., the eastward location of Tianjin Steel, as well as the construction of key projects like steel sheets and high grade metal products...⁶⁹

Eleventh Five-Year Plan for Economic and Social Development of Zhejiang Province

Welded pipe producers in Zhejiang Province account for approximately 7.4% of total production of “welded tube and pipe” in China, making it the fourth largest producing province.⁷⁰ Concerning the iron and steel industry, the Five-Year Plan for Zhejiang Province notes it will “accelerate the construction of the bases of heavy industries of large scale and high-tech around the port in industries of petrochemistry, energy, shipbuilding and steel, etc.”⁷¹

It should also be noted that the intervention by the GOC in the steel sector is not limited to the current Five-Year Plans. For example, in the Zhejiang Provincial Tenth Five-Year Plan the following was stated regarding the Metallurgical Industry:

Make large enterprise groups as the backbone, readjust and optimize the iron and steel industry. To focus on energy savings, target at alloyage, refine and

⁶⁶ Exhibit 84 NC -GOC response to Section 20 Government RFI, March 11, 2008 [Exhibit 5-B8(D)] page 870]

⁶⁷ Tianjin administratively is a municipality that has provincial-level status and reports directly to the central government.

⁶⁸ Exhibit 248 PRO – China Steel Yearbook 2007, Basic Statistics on Provincial Iron and Steel Industry of China in the Year 2006, by product, by Province [page 111]

⁶⁹ Exhibit 84 NC -GOC response to Section 20 Government RFI, March 11, 2008 [Exhibit 5-B8(D)] [page 440]

⁷⁰ Exhibit 248 PRO – China Steel Yearbook 2007, Basic Statistics on Provincial Iron and Steel Industry of China in the Year 2006, by product, by Province [page 111]

⁷¹ Exhibit 84 NC -GOC response to Section 20 Government RFI, March 11, 2008 [Exhibit 5-B8(D)] [page 661]

specialization, optimize the smelting process and the product structure of non-ferrous metals industry.⁷²

Eleventh Five-Year Plan for Economic and Social Development of Shandong Province

Welded pipe producers in Shandong Province accounted for approximately 6% of total production of “welded tube and pipe” in China in 2006, making it the fifth largest producing province.⁷³ The Five-Year Plan for Shandong Province notes the following concerning the iron and steel industry:

Strictly execute the state iron and steel industrial policies, encourage combination and restructuring, enhance industrial concentration, develop high-efficiency steel products, consolidate large-scale iron and steel bases, strengthen market competitiveness, and by 2010, the sales revenue of the material industry will reach RMB 760 billion.⁷⁴

Eleventh Five-Year Plan for Economic and Social Development of Guangdong Province

Welded pipe producers in Guangdong Province accounted for approximately 4.7% of total production of “welded tube and pipe” in China in 2006, making it the seventh largest producing province.⁷⁵ The Five-Year Plan for Guangdong Province states that:

We will accelerate the development of leading industries such as auto, equipment manufacturing and iron and steel....We will bolster the scientific planning and make a balanced structure adjustment of iron and steel industry, pushing forward the major enterprises to build joint iron and steel bases along the coast with other significant iron and steel enterprises in China.⁷⁶

Accordingly, the Five-Year plans layout the strategic intentions of the GOC for the country and sets out and prioritizes the objectives that the GOC believes should be implemented over that period. The Five-Year plans also provide details on the government priorities, which include economic adjustment, market regulation and development, social administration and public services. Further, a review of the Five-Year Plans clearly shows that GOC believes that iron and steel industry is an important industry for China and warrants guidance in its development.

⁷²Ibid [page 606]

⁷³ Exhibit 248 PRO – China Steel Yearbook 2007, Basic Statistics on Provincial Iron and Steel Industry of China in the Year 2006, by product, by Province [page 111]

⁷⁴ Exhibit 84 NC -GOC response to Section 20 Government RFI, March 11, 2008 [Exhibit 5-B8(D)] [page 15]

⁷⁵ Exhibit 248 PRO – China Steel Yearbook 2007, Basic Statistics on Provincial Iron and Steel Industry of China in the Year 2006, by product, by Province [page 111]

⁷⁶ Exhibit 84 NC -GOC response to Section 20 Government RFI, March 11, 2008 [Exhibit 5-B8(D)] [page 743]

The Origins of the Iron and Steel Industrial Policy

On April 20, 2005 the State Council⁷⁷ reviewed and approved the NSP⁷⁸, which is the guiding document for China's iron and steel industry. The National Development and Reform Commission⁷⁹ (NDRC) administers this policy along with other related departments.

It should be noted that the NSP was not the first GOC policy affecting the iron and steel industry. The State Economic and Trade Commission's (SETC)⁸⁰ development plans for the metallurgical industry for the years 2001-2005 (Metallurgical Industry Plan) set out a number of priorities for the steel industry. Of note is the elimination of "backward section rolling mills", controlling the construction of "new welded tube units" and speeding up the elimination of "backward high frequency welded tube units".⁸¹

As part of the Metallurgical Industry Plan, SETC issued in September 2002 a document entitled "Notice of the State Economic and Trade Commission on Promulgating the Guidance of Recent Development in the Industrial Sector", in which they noted that production capacity exceeded demand for hot-rolled narrow strip and common welded tubes and noted:

At present, iron making and steel making production capacities have exceeded the demands, so do that of the common large, medium and small section bars, common wire rods, hot-rolling narrow strip steel, common welded tubes and common seamless steel pipe. The projects of the above newly built or enlarged technical renovations must be approved strictly according to the procedures, and the financial institutions shall grant loans in compliance with the industrial policies.⁸²

This information indicates that the GOC has issued policies that have effected the structure and form of the domestic welded pipe sector since 2001.

⁷⁷ The State Council of the People's Republic of China, namely the Central People's Government, is the highest executive organ of State power, as well as the highest organ of State administration. The State Council is composed of a premier, vice-premiers, State councillors, ministers in charge of ministries and commissions, the auditor-general and the secretary-general. The State Council is responsible for carrying out the principles and policies of the Communist Party of China as well as the regulations and laws adopted by the National People's Congress, and dealing with such affairs as China's internal politics, diplomacy, national defence, finance, economy, culture and education.

⁷⁸ Exhibit NC 216 [Tab 1] Iron & Steel Industrial Development Policy, China Metallurgical Newsletter, Volume 7, No. 14, July 28, 2005

⁷⁹ The NDRC is a Commission under the State Council.

⁸⁰ In March 2003, the responsibilities of SETC were taken over by the NDRC.

⁸¹ Exhibit NC 267 [Tab 19] China: Execution plan for China's industrial revolution, July 20, 2001, Asia Times

⁸² Exhibit NC 267 [Tab 18], Notice of the State Economic and Trade Commission on Promulgating the Guidance of Recent Development in the Industrial Sector, September 28, 2002 [page 13]

China's Iron and Steel Industrial Policy (NSP)

Regarding the development of the NSP, a United Nations (U.N.) document entitled “Clean Development Mechanism (CDM) Anshan Iron and Steel Group Corporation (Anshan) Blast Furnace Gas Combined Cycle Power Plant Project of the United Nations Framework Convention on Climate Change” discusses the origins of its development. In this document there was a summary of a report⁸³ issued in March 2005 by the NDRC concerning problems that the steel industry in China was experiencing. The problems were characterized as overproduction of steel in a fragmented industry that concentrated mainly on the low end products. Further, the steel industry was experiencing low prices and poor profitability. Therefore in order to rectify these problems the NDRC developed the NSP to address these problems. The document also noted that Anshan was required to be one of the leading corporations to implement the objectives of the NSP.⁸⁴

The NSP outlines the GOC's objectives and future plans for the domestic iron and steel industry. Some of the major objectives of the policy 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.

The question arises as to how the GOC⁸⁵ would motivate or encourage steel enterprises to implement and/or satisfy the guidelines outlined in Chapter 1 of the NSP. For example the GOC was asked how it would ensure steel enterprises meet the following objectives of the NSP:

- maintain steel production at a reasonable level;
- change the product mix by 2010 to higher value products;
- increase the size of the key steel enterprises, so that by 2010 the top ten will account for more than 50% of production, and 70% by 2020;
- improve the current “irrational layout” of steel industry;
- encourage the steel enterprises to recycle and generate surplus power;
- ensure that the steel enterprises meet the guidelines for energy and water consumption, by 2010 and 2020.

According to the GOC, the NSP is a general guideline and not law, and the policy'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 it addresses more than environmental concerns.

⁸³ “The current new changing factors in Chinese iron and steel market and its impacts”, Industrial Department of the NDRC, March 30, 2005.

⁸⁴ Exhibit 264 NC [Tab 2] Clean Development Mechanism (CDM) Anshan Iron and Steel Group Corporation (Anshan) Blast Furnace Gas Combined Cycle Power Plant Project of the United Nations Framework Convention on Climate Change (UNFCCC) 21/11/2007 [page 14 - 15]

⁸⁵ In the case of the National Steel Policy the National Development and Reform Commission is responsible for the administration.

For example, there is information on the administrative record on the consolidation, rationalization and approvals for new construction in steel industry, including SOEs operating in the welded pipe sector.⁸⁶

Such examples include:

- In November 2005 the Hebei Provincial government stated that it was consolidating its steel mills into 40 groups through mergers over next five years in line with the Central governments objectives;
- Also announced in November 2005, the two main steel groups in Hebei province will center on Tangshan Iron and Steel Group and Handan Iron and Steel Group, both are SOEs and producers of welded pipe.
- In April 2006 the following mergers were announced; Wuhan Steel with Ezhou and Liuzhou Steel, Anshan Steel with Benxi Steel and Tangshan Steel with Xuanhua Steel and Chengde Steel. Wuhan, Tanshan and Chengde are SOEs and producers of welded pipe;
- In October 2007 it was announced that the merger between Anshan Iron and Steel Group and Benxi Iron and Steel Group was proceeding in a “state directed marriage”, both are SOEs;
- The NDRC announced in March 2008 that Wuhan Iron & Steel Group was given approval to build a new steel plant in Guangxi province;
- In February 2008 the Shandong provincial government announced the establishment of Shandong Iron and Steel Group, which combines the province’s two largest SOE steel mills, Jinan Iron and Steel Group and Laiwu Steel Group;
- In March 2008 the NDRC announced that Baosteel’s had acquired Shaoguan Iron & Steel Group and Guangzhou Iron & Steel Group. Baosteel and Guangzhou are both SOEs and producers of welded pipe;
- Also in March 2008 Baosteel’s was granted state approval for construction of a large steel plant in Zhanjiang, a port city on Guangdong province; and
- The NDRC reported in June 2008 that Shandong Steel Group was established by merging Jinan Steel, Laiwu Steel, Zhangdian Steel and the subsidiaries of Shandong Metallurgical Company, all which are SOEs.

The rationalization of the steel industry through mergers and consolidation appears to be under the supervision of the NDRC. In addition, it also appears that the NDRC is responsible for the approval of new steel projects.

⁸⁶ Exhibit NC 216 [Tab 15] – Various articles relating to: Steel Mergers, Elimination of Outdated Production and Steel Project Approvals, [Tab 2] General Survey - Basic Statistics of Iron and Steel Industry in China (1980-2005) and China’s Iron and Steel Industry – Basic Statistics on all Provincial Iron & Steel Industry of China in the Year 2005 and CBSA Exhibit NC 267 [Tab 1] NDRC backups steel mill combination in Shandong Province; [Tab 4] Baosteel’s Guangdong project gains approval

Regarding consolidation in the industry, General Steel in their Form 10-K filing with the SEC commented on the rationalization in the steel industry and the associated impact:

In 2007, the government held firm on its resolve to consolidate the highly fragmented domestic steel industry through coerced mergers and heightened operating requirements. In November 2007, the National Development and Reform Commission (NDRC), the nation's top economic planner, reported that to date 29.4 million tons of outdated iron smelting capacity and 15.21 million tons of outdated steel smelting capacity had been eliminated. It also later announced obligation contracts with 18 provinces, autonomous regions and municipalities to eliminate 49.31 million tons of outdated iron smelting capacity and 36.1 million tons of outdated steel smelting capacity. The obligation letters involved 573 enterprises. It is the government's goal to consolidate 50% of domestic production among the top 10 steel companies by 2010 with goal rising to 70% by 2020.⁸⁷

These comments are significant for two reasons. Firstly, General Steel used the word "coerced" when referring to mergers, and secondly, they stated that the Central Government has "obligation" contracts with various organizations to eliminate steel production.⁸⁸ Further in their Form 10-K filing, General Steel stated the following on the future of the consolidation efforts in the steel industry by the GOC:

We believe the government will continue, and likely strengthen, its industry consolidation effort. As capacity from weaker market players is removed, capacity allotments are shifted to existing companies, such as our Longmen Joint Venture.⁸⁹

In General Steel's Quarterly Report (Form 10-Q), filed with the SEC on May 15, 2008, they comment further on GOCs ongoing consolidation in the steel industry:

We believe that the government will continue to strengthen its industry consolidation effort. As excess capacity from the weaker market players is removed, the eliminated capacity will be reassigned to steel companies which have gained government approval for expansion.⁹⁰

From these statements, it is clear that "consolidation efforts" in the steel industry is being driven by the GOC through the use of obligation contracts and letters and not through

⁸⁷ Exhibit NC 216 [Tab 3] General Steel Holdings, Inc. Annual report pursuant to section 13 or 15(d) of the securities exchange act of 1934. Fiscal year ended December 31, 2007 [page 21]

⁸⁸ It was announced in January 2008 that the NDRC has signed obligation contracts during 2007 with 10 provinces, involving 344 iron and steel enterprises to reduce iron and steel capacity. Exhibit NC 216 [Tab 15] – Local governments asked to report of pace of eliminating outdated iron and steel production facilities

⁸⁹ Exhibit NC 216 [Tab 3] General Steel Holdings, Inc. Annual report pursuant to section 13 or 15(d) of the securities exchange act of 1934. Fiscal year ended December 31, 2007 [page 22]

⁹⁰ Exhibit NC 267 [Tab 2] General Steel Holdings, Inc. Quarterly report pursuant to section 13 or 15(d) of the securities exchange act of 1934, May 15, 2008 [page 5]

market forces. Also of note is General Steel comments regarding “capacity allotments” being shifted to existing companies and “eliminated capacity” being transferred to companies that have gained government approval for production increases. Clearly, the GOC is closely directing the closure and opening of steel enterprises in order to direct and develop the steel industry according to the objectives of the NSP.

Further, based on statistics issued by the CISA, in 2007 the top 20 steel producers accounted for approximately 51% of total production, compared to less than 50% in 2006.⁹¹ This would indicate that the consolidation efforts are moving slowly towards the goal of the top ten producers accounting for 50% of total production by 2010.

The information on the administrative record indicates 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 the stated objectives. The NSP is a policy approved by the highest body of the GOC, the State Council⁹² and indications are that it is to be strictly enforced.

Other Factors Impacting the Steel Industry and the Welded Pipe Sector

In March 2006 the GOC issued a circular entitled the “Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy No. 11 [2006] of the State Council.”⁹³ This circular discusses the “major and difficult task in the 11th Five-Year Plan period to promote the strategic restructuring of the economy as well as to elevate the international competitiveness of all sectors.”⁹⁴

In order to achieve this “strategic restructuring” the GOC implemented a series of macro control measures to limit “blind investment”, restructure and close enterprises and eliminate outdated production. However, this involvement in the economy was not without its negative consequences:

At the present time, the unfavourable aftermaths, as incurred from the production capacity redundancy of some sectors, have visualized in such forms as down-fall of product prices, increases in inventory, decrease of enterprise profit margin and increase of losses. If such situation is let go at random, the conflict rooting in the binding force of resource scarcity will pop up further, the issue of structural imbalance will be worsen off, there will witness an obvious increase in enterprise bankruptcy as well as in unemployment.⁹⁵

⁹¹ Exhibit NC 216 [Tab 15] – List of top Chinese steel makers in 2007.

⁹² Exhibit NC 178 - Order of the National Development and Reform Commission No. 35, The Development Policies for the Iron and Steel Industry, was adopted by the State Council effective July 8, 2005 [page 57]

⁹³ Exhibit NC 178 - GOC’s “Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy, No. 11 [2006] of the State Council, March 12, 2006 [page 94 - 103]

⁹⁴ Ibid [page 94]

⁹⁵ Ibid [page 95]

The circular goes on to set out requirements and principles for promoting structural adjustment and further outlines the measures to be used to promote restructuring. Concerning the iron and steel industry, the circular notes the following:

We should earnestly implement the Decision of the State Council on Promulgating and Implementing the Interim Provisions on Promoting the Industrial Restructuring (No. 40 [2005] of the State Council) and make efforts to detail the measures formulated to implement all the policies. As to the relevant development planning of as well as industrial policies for such industries as iron & steel, electrolytic aluminium and automobiles, we should intensify the implementation of these policies, strength the examination thereover and improve them in practice as well.⁹⁶

Subsequently, the GOC issued the “Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of Iron and Steel Industry” in June 2006.⁹⁷ In this circular, which is concentrated on the iron and steel sector, the GOC states that their macro-economic controls have achieved some success in restructuring the industry. For example, they have been able to reduce investment, reduce consumption and demand for steel products, improve the product mix to higher value goods, increase the number of mergers and eliminate backward production.⁹⁸ However, the GOC also noted that there were problems with the iron and steel industry, namely, new projects being established without proper approvals, shortage of resources, inefficient steel production, “malignant” competition in the industry and a decrease in industrial concentration in the steel sector.⁹⁹

The GOC noted that the opportunity to transform the iron and steel industry into a global player was being lost.¹⁰⁰ Accordingly, the GOC reaffirmed the requirements for structural adjustment in the iron and steel industry and provided additional stronger measures to ensure that the laws, regulations and development policies (including the NSP) were being followed.

As outlined in the circular in Section 3 under the heading, “Adopting Powerful Measures and Ensuring to Obtain Substantial Effects on Controlling Gross, Eliminating the Backward and Structure Adjustment”, the GOC made the following statement:

Controlling gross and eliminating the backward are important assignments of structure adjustment during the Eleventh “Five-year” Plan. In order to successfully realize the above assignments, macro-control shall be continuously

⁹⁶ Ibid [page 100 - 101]

⁹⁷ Exhibit NC 178 - GOC’s “Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of the Iron and Steel Industry” - Fa Gai Gong Ye (2006) No. 1084, June 14, 2006 [page 76-87]

⁹⁸ Ibid [page 77]

⁹⁹ Ibid [pages 77-79]

¹⁰⁰ Ibid [page 79]

strengthened and improved and the following concrete measure shall be adopted.¹⁰¹

While Subsection 3.1 of the circular, under the heading “Strictly Completing Laws, Regulations and Development Policies for Iron and Steel Industry” it is noted that the State Council has passed the NSP and laws concerning environmental protection and “production safety”. The aim of these laws and policies is to control production, eliminate outdated production and accelerate structural adjustment in the steel sector. Consequently, it appears as if the GOC is encouraging or motivating steel enterprises towards implementing the GOC’s macro-economic objectives for the steel industry through the enforcement of these laws. In addition, these macro-economic objectives may conflict with the commercial interests of the steel enterprises. However, it appears that the GOC is determined that their macro-economic objectives will be implemented, as there are consequences if they are not followed:

Implementing laws, regulations and development policies for the iron and steel industry is important responsibility of administrative authorities, such as the development and reform commission, financial authority, and land authority, environment protection authority, quality supervision authority and commerce authority. For any enterprise or project that fails to comply with the development policies for the iron and steel industry, the financial institution shall not provide credit support in any form, administrative authority for land and resources shall not transact land use formalities, and environmental protection authority shall not accept its appraisal documents for environmental influence, commerce authority shall not approve its contracts and articles of association and not issue Certificate of Foreign-Invested Enterprise, quality supervision authority shall not issue production licence or withdraw production licence pursuant to laws, and Securities Regulatory Commission shall not allow it to collect funds in domestic or overseas securities markets, project approval authority shall not issue project confirmation letter, Customs shall not reduce or exempt tariffs of imported equipments and their imports value added tax, industry and commerce authority and tax authority shall not allow its registration, and design authority shall not supply design. Price authority as well as water & electric power supply units shall study and formulate policies of differential water prices and differential electric power prices and boost water and power consumption prices of backward steel enterprises with high energy consumption, heavy pollution and backward equipments, and then report these policies to the relevant national agencies. Based on industrial policies and combined with departments’ functions, all agencies shall formulate concrete implementation measures.¹⁰²

From this statement it appears that the GOC is able through various administrative, financial and bureaucratic procedures to encourage or motivate steel enterprises to follow the laws and regulations and implement the policies as outlined in the NSP.

¹⁰¹ Ibid [page 82]

¹⁰² Ibid [page 82-83]

The Beijing Review reported in an article entitled “Streamlining Iron and Steel Production” the following developments in the steel industry in China:

On December 27, 2007, the National Development and Reform Commission (NDRC) signed responsibility pledges with the 18 provinces, autonomous regions and municipalities who are in the process of carrying out their commitments. In April 2007, the NDRC signed responsibility pledges with 10 other provinces and autonomous regions to eliminate outdated production facilities in the iron and steel industry. Altogether, there are 28 provincial-level governments who have signed such responsibility pledges with the NDRC, almost covering all provinces, autonomous regions and municipalities involved in the iron and steel industry.¹⁰³

Regarding the pledges to shut down outdated production, the article reported that the NDRC is using environmental laws and regulation to achieve its goals:

The legal basis for the NDRC to close up poorly performing production facilities include the Law on Prevention and Control of Atmospheric Pollution, the Law on Prevention and Control of Water Pollution, the Law on Prevention and Control of Environmental Pollution by Solid Wastes, the Law on Promoting Clean Production and the Production Safety Law. Compared with administrative measures adopted in the past, using the law to cut back on ailing production facilities is more easily accepted by the companies involved.¹⁰⁴

The article also noted the progress made during 2007 on the closure of outdated steel production:

In 2007, price growth of rolled steel in China exceeded 20 percent. At present, many iron and steel companies are owned by local governments, whose attitude plays an important role in closing up outdated production facilities. Since some local government officials are not willing to lose their interests in fiscal and tax revenues, some of these companies cannot be eliminated as scheduled.¹⁰⁵

In conclusion, the article quotes, Ma Kai, the Minister in charge of the NDRC, who stated the following:

To cope with these problems, Ma Kai said that the government should strengthen the function of the market, adopt measures to strictly control the size of fixed assets investments and curb excessive increase in the demand of rolled steel on the domestic market, obviating the impulse of blind investment in the iron and steel industry. In addition, tax policies should be readjusted based on changes of steel exports in order to nurture a market environment conducive to shutting down outdated production facilities. At the same time, local governments must sign responsibility pledges with related companies to close up these facilities. With

¹⁰³ Exhibit 267 NC [Tab 10] – Streamlining Iron and Steel Production, Beijing Review, Jan. 24, 2008.

¹⁰⁴ Ibid

¹⁰⁵ Ibid

the coordination of local development and reform commission, government departments involved in environmental protection, land resources, social security, safety supervision and quality control, as well as local industrial and commercial administrations, banks and electric power authorities would work in cooperation to intensify examination and supervision, said Ma.¹⁰⁶

From these various policies, circulars, guidelines, laws and comments it is clear that the GOC is involved in economic and administrative measures that encompass more than environmental concerns and ensuring efficient use of energy and natural resources. Furthermore, while there are environmental issues addressed in the NSP by the GOC, the CBSA believes that the main objective of the NSP and associated circulars is to help facilitate the GOC's macro-economic control of the iron and steel industry in China. Based on the information on the administrative record it is clear that the guidelines as outlined in the NSP are being implemented. In addition, the CBSA believes that the NSP, associated circulars, guidelines and laws are part of the macro-economic controls used by the GOC to control the steel industry, including the welded pipe sector.

Hot-rolled Steel Sheet and Strip and the Welded Pipe Sector

Welded pipe made from carbon steel is generally produced in mills using either the continuous weld (CW) process or the electric resistance weld (ERW) process. Both processes begin with strips of hot-rolled steel sheet that have been slit from coils of flat steel sheet. The width of the strips is equal to the circumferences of the pipe to be manufactured. As a percentage of raw material costs, the hot rolled steel sheet accounts for the majority of the raw material costs. Accordingly, the cost of hot-rolled steel sheet is the most significant costing factor in the production of welded pipe.

Concerning pricing information, the CBSA reviewed information from www.isteelasia.com, which is an online steel trading network in Asia. Prices for 2007 for both hot-rolled coil and welded tube were reviewed. Based on this review it appears that welded tube (Q235) was selling for less than the cost of the raw material input, hot-rolled coil (Q235).¹⁰⁷ Several articles substantiated that the price of Chinese welded pipe was being sold in export markets at or below the cost of hot-rolled coil.¹⁰⁸

Based on the information reviewed during the verifications, the CBSA was able to ascertain that a significant majority of the narrow strip that is used by the cooperative producers was produced by state owned or state controlled companies. It should also be noted that the CBSA has already formed the opinion that the conditions of section 20 are applicable to the flat-rolled steel sector in China. This sector includes hot-rolled steel sheet and strip, the major raw material in carbon steel welded pipe production.¹⁰⁹

¹⁰⁶ Ibid

¹⁰⁷ Exhibit 212 NC – Hot-rolled coil prices and welded tube prices in China (Major Cities) January 2007 to December 2007) www.isteelasia.com

¹⁰⁸ Exhibit 216 NC [Tab 18] – Article relating to prices of Chinese welded tube compared to hot-rolled coil prices.

¹⁰⁹ Exhibit 213 NC – CBSA Customs Notice 07-020 certain flat hot-rolled carbon and alloy steel sheet and strip. Narrow strip is included in the hot-rolled steel sheet product segment.

It is clear that the GOC has and continues to influence the domestic prices in the hot-rolled sheet and strip sector. Given that narrow strip makes up the predominant cost of carbon steel welded pipe it is reasonable to assume that this domestic price distortion in that sector will be transferred through to the welded pipe sector.

Other Macro-economic Policies of the GOC affecting the Welded Pipe Sector

One of the difficulties of managing an industrial sector through government intervention is that it tends to affect the normal functions of the market. It distorts the relationship between supply and demand and ultimately the allocation of resources. One tool that the GOC has used to manage the steel industry has been through the value added tax (VAT) system.

In general terms, China's VAT system is similar to a consumption tax, with the ultimate effects borne by the consumer. A manufacturer in China pays 17% VAT on its purchases of raw materials, processes the goods, and then sells the end-products, collecting 17% VAT on any domestic sales made. The manufacturer then remits the difference between the VAT collected and the VAT paid on the purchases of the raw materials. In this manner, a manufacturer does not incur any VAT related costs on his production materials. However, VAT on export sales is treated differently.

Exporters pay the same 17% VAT on their purchases of raw materials. However, when they export the goods, they only receive a VAT tax refund (tax refund) of a fixed percentage of the sale price, which is established by the GOC. The tax refund cannot exceed the VAT paid on raw materials. In theory, the tax refund on exports offsets the VAT paid on the raw materials of the exported goods.

The GOC has provided tax refunds on exported steel products to promote exports but has slowly been eliminating them since 2005, the year the NSP came into effect. The GOC first introduced these export tax refund measures in 1985 and the tax refund for exports was set at 6%. The tax refund for exports was raised to 15% in 1999 during the Asian financial crises and it significantly stimulated exports.¹¹⁰

In addition to the tax refund measure for exports, the GOC has also imposed taxes on the export of various steel products, in order "to control exports of energy intensive industries and ease its huge trade surplus".¹¹¹

For example, steel billet, narrow strip, and welded pipe were at one time eligible for the tax refund of 13% for exports. However, over time the amount of the tax refund has been reduced to 0% for exports for these three steel products.¹¹² The tax refund on exports of steel billet was eliminated in April 2005 and an export tax was implemented in

¹¹⁰ CBSA Exhibit NC 267 [Tab 17] China to adjust export tax rebate mechanism July 23, 2006, www.gov.cn

¹¹¹ Ibid [Tab 15] China ups tax on metals, steel exports, May 21, 2007, www.crienglish.com

¹¹² Ibid [Various]

November 2006. The tax refund on exports of hot rolled narrow strip was eliminated in April 2007 and an export tax implemented in June 2007. The tax refund on exports of welded pipe, excluding petroleum casing, was eliminated in July 2007 and an export tax was implemented in January 2008.¹¹³ It should be noted that these three products are closely linked, as the steel billet is rolled into narrow strip and the narrow strip is then rolled into welded pipe.

The GOC noted that exporters adjusted to the changes in the tax refund by switching to steel products that were still eligible for the tax refund when exported.¹¹⁴ Accordingly, as the tax refund for exported steel billet was eliminated, the steel billet was rolled into narrow strip that was still eligible for the tax refund. When the tax refund for exported narrow strip was eliminated, the narrow strip was rolled into welded pipe that was still eligible for the tax refund.

It was also reported that the tax refund changes were “designed to restructure China’s current export trend and to encourage investment in high value-added production”. The article also reported, “one of the main reasons for cancelling the tax rebate is to encourage the elimination of out-of date steel production capacity”.¹¹⁵

The removal of the tax refund on exports by the GOC is ensuring that one of the objectives of the NSP is being addressed by implementing Article 30 of the policy, which states the following:

The export of initially processed products like coke, ferroalloy, pig iron, steel scarp, semi-finished products (inclusive of ingot) products that consume much energy and generate heavy pollution, will be restrained. The export tax rebate for these products will be reduced or lifted.¹¹⁶

Clearly this article of the NSP is being implemented and the tax refund on numerous steel products have been reduced or removed, including welded pipe. It should be noted that the tax refund on exports of petroleum casing pipe has not been eliminated, as it is considered to be high value-added product¹¹⁷ and is an encouraged industry¹¹⁸.

The GOC has also imposed an additional tax measure on the exports of welded pipe. There is a GOC circular stating that export sales will be treated as domestic sales for VAT purposes when the VAT export refund has been eliminated. The CBSA confirmed that effective July 1, 2007; exports of welded pipe from China were being treated as domestic sales for VAT purposes. According to the “Circular of the State Administration

¹¹³ Current export tax for steel billet is 25%, narrow strip is 15% and welded pipe is 15%.

¹¹⁴ Exhibit NC 267 [Tab 17] China to adjust export tax rebate mechanism July 23, 2006, www.gov.cn [page 4]

¹¹⁵ Exhibit NC 267 [Tab 12] China to Implement Steel Product Tax Rebate Reduction

¹¹⁶ Exhibit NC 216 [Tab 1] Iron and Steel Industrial Development Policy, China Metallurgical Newsletter, Volume 7, No. 14, July 28, 2005 (Special Edition) [page 9]

¹¹⁷ Exhibit 84 NC Response by GOC to Section 20 RFI, question C10.

¹¹⁸ Exhibit 84 NC Response by GOC to Section 20 RFI, Exhibit 7 Guiding Catalogue for Industry Restructuring (2005 Version).

of Taxation on Some Issues concerning Tax Refund or Exemption on Exported Goods”, export sales will be treated as domestic sales, under various conditions.

1. The following goods exported shall be deemed domestic sales to calculate output VAT tax and impose value-added tax, except otherwise provided:
 - (1) It is expressly prescribed by the national laws that the value-added tax of the goods shall not be refunded (or exempted);
 - (2) The exporter fails to apply for tax refund (or exemption) within the prescribed time limit;
 - (3) The exporter fails to submit the complete documents to the tax authorities within the prescribed time limit, albeit it has applied for tax refund (or exemption);
 - (4) The exporter fails to apply for the issue of the certificate of goods export through agency within the prescribed time limit;
 - (5) Other than 4 kinds of products that can be deemed as self-produced, other products purchased and then exported by the producers.¹¹⁹

Therefore, when the GOC eliminated the VAT refund on exports of welded pipe, the producers were then required to treat their export sales as if they were domestic sales, as stated in the Circular. The VAT tax is assessed on the FOB selling price, which is reported to Chinese Custom authorities at the port. This FOB selling price is deemed by the GOC to be a VAT inclusive domestic sale and the exporter is assessed a VAT liability equal to 14.53% of the FOB selling price.¹²⁰

The effect of these tax changes is that it increases the cost of exports and will impact not only the export market but also the domestic market. In the export market the producers will be required to increase their export selling prices, if possible, in order to recover their increased costs. The increase in export selling prices could lead to lost export sales and this production would now be offered for sale in the domestic market, increasing supply. If the demand for the product remains stable then the excess supply will force down domestic prices. Therefore, the producer is faced with increased export costs, which it may not be able to recover and will also be faced with lower selling prices in the domestic market. The outcome for the producer will either be reduced profits or a financial loss.¹²¹

It appears that the GOC is using these macro-economic policies to motivate or encourage steel producers to implement the objectives of the NSP by increasing the costs associated with the production of low end products to encourage rationalization in those industries, which includes welded pipe. At the same time the GOC is also encouraging the steel producers to switch production to higher-value steel products.

¹¹⁹ Exhibit 272 NC [VE 12] Non-confidential verification exhibits for Guangdong Walsall Steel Pipe Co. Ltd., Circular of the State Administration of Taxation on Some Issues concerning Tax Refund or Exemption on Exported Goods, Guo Shui Fa [2006] No. 102

¹²⁰ Exhibit 261 NC [VE 6] Verification Exhibits for the GOC. The formula for calculating the VAT liability is $(1 - (1/1.17)) = 14.53\%$.

¹²¹ Exhibit 267 NC [Tab 14] Domestic market concerned over new steel-product tax policy, Resource Investor, May 23, 2007

Another tool that the GOC is using to manage the steel industry is “The Guiding Catalogue for Industry Restructuring” (Catalogue) which was issued by the NDRC on December 2, 2005.¹²² The catalogue was issued in conjunction with the “Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment”.¹²³ The decision of the State Council notes:

The Catalogue for the Guidance of Industrial Structure Adjustment is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.¹²⁴

The Catalogue is divided into three groups;

- I. Catalogue of Encouraged Investment Industries,
- II. Catalogue of Restricted Investment Industries, and
- III. Catalogue of Eliminated Investment Industries

Of note under the “Encouraged Investment Industries” is the development and application of modern hot-rolled broad band (wide strip) steel rolling; the production of oil well pipe for petroleum exploration; high pressure boiler pipe for power stations and steel pipe used in the long distance transportation of oil and gas.

While under the “Restricted Investment Industries” are hot-rolled steel sheet projects of below 800 mm (which is defined as narrow strip). Finally, under the “Eliminated Investment Industries” are hot-rolled narrow strip steel mills.

These investment designations can also be linked to the “Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of Iron and Steel Industry”¹²⁵, which in turn is linked to the NSP. In this circular it notes that one of the structural adjustment targets is that the ratio of wide band steel to strip steel should reach 50% by the year 2010. In order to achieve this goal the GOC has designated investments for hot-rolled wide band steel in the encouraged category and narrow strip projects in the restricted category. The placement of narrow strip projects in the restricted category is logical since the GOC has placed narrow strip mills in the eliminated category, which means that they “need to be eliminated”¹²⁶. The “Decision of

¹²² Exhibit 84 NC – Guiding Catalogue for Industry Restructuring (2005 Version) [Exhibit 7 -B18(c)]

¹²³ Exhibit NC 261, Verification Exhibits for GOC [VE-3] Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment (No. 40[2005] of the State Council) 12-02-2005

¹²⁴ Ibid

¹²⁵ Exhibit NC 178 [page 76-87] - GOC’s “Circular on Controlling Total (Capacity), Eliminating the Obsolete (Capacity) and Accelerating Structure Adjustment of the Iron and Steel Industry” - Fa Gai Gong Ye (2006) No. 1084, June 14, 2006.

¹²⁶ Exhibit NC 261, Verification Exhibits for GOC [VE-3] Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment (No. 40[2005] of the State Council) 12-02-2005 [page 9]

the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment” under Article 19 states the following:

If any enterprise of the eliminated category refuse to eliminate the production technique, equipment or products, the local people’s government at each level and relevant administrative department shall, in accordance with the relevant laws and regulations of the state, order it to stop production or close it and shall take appropriate measures to resettle the employee of the enterprise and guarantee the safety of financial institutions credit assets, etc. If its products are subject to the administration by permit for production, the relevant administrative department shall lawfully revoke its permit for production; the administrative department for industry and commerce shall urge it to lawfully go through modification registration or nullification registration; the administrative department of environment protection shall revoke its permit for pollution discharge; and the electric power supply enterprise shall lawfully stop supplying electricity to it. If any enterprise violates the provisions, its persons directly held liable and the relevant leaders shall be subject to liabilities in accordance with the law.¹²⁷

Clearly, if the GOC wants to shut down the enterprises it has the means and ability to do so. Since narrow strip mills are in the “eliminated category” and narrow strip is primarily used produce welded pipe or light section steel, this will also impact these sectors.

However, if the companies want to stay in business they can “restructure” themselves into producers of hot-rolled coil, petroleum casing pipe, boiler pipe or oil and gas transportation pipe, all of which are encouraged industries and higher value added products.

China Steel Yearbook 2007

Prior to the Preliminary Determination, Weifang East Steel Pipe Co. Ltd. (Weifang) submitted a report entitled, “A Brief Introduction to the Carbon Steel Welded Pipe Industry in China “ which included data from the China Steel Yearbook.¹²⁸ In the course of the verification with Weifang, the CBSA learned that the Yearbook is published by the China Iron and Steel Association (CISA).¹²⁹

The Yearbook contains information regarding production output, profit levels, in addition to technology, energy and safety achievements. It provides detailed statistics on the iron and steel industry for China in 2006, by province and steel sector, including the welded pipe sector. The requirements of the NSP are of foremost importance, with numerous references to industry rationalization and industry reorganization in 2006. Furthermore, there are references to the implementation of the Five-Year plans, NDRC approval of

¹²⁷ Ibid [pages 10-11]

¹²⁸ Exhibit 125 NC – Weifang East Steel Pipe Co. Ltd. – Representations Concerning the Welded Pipe Industry in China.

¹²⁹ Exhibit 248 PRO, Verification Exhibits (Dumping and Section 20) Weifang East Steel Pipe Company [VE 30]

steel projects and GOC management of steel enterprises in the Yearbook's provincial iron and steel reports. The Yearbook provides additional evidence on how the macro-economic policies of the GOC, including the NSP, substantially influenced China's iron and steel industry, including the welded pipe sector. In addition, the Yearbook provides the evidence on how the GOC monitors the implementation of the objectives of NSP.

Regarding the welded pipe sector, it is clear that the GOC considers it to be an integral component of iron and steel industry in China. Accordingly, the welded pipe sector is subject to the full effect of the GOC's macro-economic policies, including the NSP.

Shortfall in Information

As noted, for purpose of the Section 20 inquiry the CBSA sent questionnaires to 92 exporters and producers in the welded pipe sector in China. Of that total only 4 producers were cooperative and their total production figures account for a fraction of the total production of welded pipe in China. In addition, all of the cooperative welded pipe producers were private companies with no GOC ownership. No state-owned or state controlled producers cooperated in the Section 20 inquiry.

Due to the poor response rate the CBSA did not have complete market information concerning any of the major welded pipe producers' domestic selling prices and volumes. Furthermore, the GOC did not provide any pricing information or pricing studies to support the statements that steel prices in China were set by market forces.

In the absence of complete information the CBSA's sources of information are constrained. Accordingly, the CBSA has relied on the pricing information that was on the administrative record, notwithstanding its efforts to obtain more comprehensive data.

Summary

The four cooperative producers represent a small percentage of the total Chinese welded pipe production in 2007.¹³⁰ Due to this, the CBSA does not consider that these submissions accurately represent the welded pipe sector in China.

Also, information on the administrative record indicates that the majority of welded pipe producers are state owned.¹³¹ Further, the CBSA believes that SOEs are influenced by government policies and guidelines and that the GOC's Five-Year plans and macro-economic policies, including the NSP, have and continue to have an impact on steel enterprises, including those in the welded pipe sector.

Furthermore, during its investigation on certain seamless carbon or alloy steel oil and gas well casing the CBSA conducted an inquiry on the steel Oil Country Tubular Goods (OCTG) sector. In that inquiry the NDRC stated that there is a list of the steel projects

¹³⁰ Exhibit 223 NC, China's output of welded steel pipe 2003 to 2007

¹³¹ Ibid

approved by the NDRC since the inception of the NSP. Accordingly, it is the view of the CBSA that the welded pipe sector is subject to and operates under similar circumstances found in the steel OCTG sector. Therefore, the CBSA believes that there is a strong likelihood that the major welded pipe producers who have recently added additional capacity have been subject to the NDRC's control, regulation and approval process for increasing production.¹³²

The cumulative impact of these GOC relationships and actions indicates that the GOC significantly affects the steel industry, including the welded pipe sector, through means other than market forces to the extent that these prices are substantially determined by the GOC. For example, the CBSA in a previous Section 20 inquiry concerning the flat-rolled steel sector in China formed the opinion that the GOC substantially determines domestic prices in that sector. This sector includes hot-rolled steel sheet and strip, the major raw material in carbon steel welded pipe production. Since narrow strip makes up the predominant cost of carbon steel welded pipe it is reasonable to assume that this domestic price distortion in the flat-rolled steel sector will be transferred through to the welded pipe sector.

PART 2: Whether domestic prices are not substantially the same as they would be if they were determined in a competitive market

Section 20 and the Chinese Steel Industry

The conditions of section 20 of SIMA apply to several current findings with respect to China and the Chinese steel industry.

On February 3, 2006, the president issued his opinion in respect to certain hot-rolled carbon steel plate and high strength low-alloy steel plate, that domestic prices 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.

On June 27, 2007, the President issued his opinion in respect of certain flat hot-rolled carbon and alloy steel sheet and strip, that domestic prices 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.

On February 7, 2008, the President of the CBSA issued his opinion in respect of certain seamless carbon or alloy steel oil and gas well casing, that domestic prices 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.

¹³² For example, based on the statistics reported in CBSA Exhibit 223 NC, the output of welded pipe increased from 15,670,600 Mt in 2005 to 23,607,000 Mt in 2007, an increase of 50% from 2005.

The GOC's macro-economic policies and measures in relation to the steel industry are broadly targeted and thus affect a wide range of steel producers and steel products. In addition, many steel producers in China manufacture a wide range of products and several steel producers manufacture welded pipe as well as flat-rolled steel, and or oil and gas well casing.¹³³

The CBSA examined the importance and the degree of influence of hot-rolled steel on the welded pipe sector, as the domestic Chinese selling prices and costs for hot-rolled steel are, in the opinion of the CBSA, not reliable for the determination of normal values.

World Markets For Hot-rolled Steel during the POI

The CBSA obtained international selling prices for hot-rolled steel coil during the POI from MEPS and the World Steel Dynamics and Metal Bulletin SteelBenchmarker websites. MEPS is an independent supplier of steel materials information and monitors steel market prices on four continents.¹³⁴ The hot-rolled steel price information obtained from the MEPS website included prices from three different geographic areas: the MEPS World Price, MEPS Asian Price and MEPS North American HRC Price.¹³⁵

The World Steel Dynamics and Metal Bulletin Steelbenchmarker website provides hot-rolled steel prices for the USA East, Europe and World Export.¹³⁶ The SteelBenchmarker World Export price data includes hot-rolled steel information from many countries and was generally the lowest values of the three geographic areas. The MEPS Asian Price was not included in the world markets average, as this figure included Chinese hot-rolled steel price data which the CBSA believes is unreliable.¹³⁷

Based on the above, the CBSA calculated an overall world markets monthly average price for hot-rolled steel based on MEPS World Price, MEPS North American and SteelBenchmarker World Export Price. Prices for hot-rolled steel exhibited a moderate price increase over the POI.

The CBSA notes that the production and use of narrow hot-rolled steel strip is unique to China and there was no world market price information available with respect to this product.

Chinese Domestic Prices for Hot-rolled Steel

The CBSA obtained information concerning Chinese domestic hot-rolled steel prices during the POI from the iSteelAsia website.¹³⁸ The iSteelAsia website is a neutral trading

¹³³ Exhibit 248 PRO – China Steel Yearbook 2007

¹³⁴ Exhibit 220 – MEPS (International) Ltd – Independent Steel Industry Analysts, Consultants, Steel Prices, Reports and Publications website information page.

¹³⁵ Exhibit 216 – MEPS and SteelBenchmarker websites price reports.

¹³⁶ Exhibit 219 – SteelBenchmarker – World Steel Dynamics and Metal Bulletin website information page.

¹³⁷ Exhibit 220 – MEPS website information page.

¹³⁸ Exhibit 212 - iSteelAsia prices regarding hot-rolled coil and welded pipe.

platform for the steel industry and steel traders to buy and sell steel.¹³⁹ East Steel also provided domestic prices of hot-rolled steel coil and strip from Mysteel¹⁴⁰, a Chinese website that provides a daily price monitor service for iron and steel products in China.¹⁴¹ Based on the iSteelAsia and Mysteel reports, the Chinese domestic prices for hot-rolled steel increased over the POI.

Hot-rolled Steel Comparison: Average World Market Prices and Chinese Domestic Prices

The CBSA compared the average world markets hot-rolled steel prices (discussed above) to the Chinese domestic hot-rolled steel prices as reported by iSteelAsia and Mysteel. There is a marked difference in price. The Chinese domestic prices for hot-rolled steel coil and narrow strip are significantly lower than the average world market prices for hot-rolled steel. In addition, the CBSA compared the co-operating exporters' hot-rolled steel acquisition costs to the world markets prices for hot-rolled steel. These prices are similarly low. The Chinese domestic prices for hot-rolled steel coil and strip were consistently and substantially below the average world market prices during the POI.

As the subject of this section 20 inquiry is not the hot-rolled steel product segment, it is sufficient for the CBSA to state that 2007 hot-rolled steel prices in China continue to be substantially different from prices in other world markets. As noted, on June 27, 2007, the President issued his opinion in respect of certain flat hot-rolled carbon and alloy steel sheet and strip, that domestic prices 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.

Welded Pipe Pricing

Sufficient information with respect to world market prices for welded pipe was not available for comparison to the Chinese domestic welded pipe prices.

The CBSA examined the cost of hot-rolled steel as a component of welded pipe.

Welded pipe is a downstream steel product from the hot-rolled steel segment. The raw material for welded pipe is hot-rolled steel. Simply explained, welded pipe is flat hot-rolled steel strip that is roll-formed to a round hollow shape and welded on the joined seam. The CBSA examined the hot-rolled steel cost and the total cost of welded black pipe as reported by the co-operating exporters and determined that the cost of hot-rolled steel comprised a very substantial proportion of the total cost of black welded pipe. The cost of welded pipe is effectively the cost of the hot-rolled steel in addition to a minor amount for conversion costs to roll-form and weld the pipe and an amount for the enterprise's general, selling and administration expenses. Confidential data based on the

¹³⁹ Exhibit 230 - iSteelAsia information page from the website.

¹⁴⁰ Exhibit 258 PRO – Exhibit 5.

¹⁴¹ Exhibit 125 NC – page 5.

co-operating exporters' costs supports this information and was material to the CBSA's opinion on section 20.

In the absence of a significant proportion of participation from the Chinese producers of welded pipe, the CBSA compared the iSteelAsia reported Chinese domestic selling prices for hot-rolled steel to the Chinese domestic welded pipe (tube) price as provided on the iSteelAsia website. During the POI, the average reported Chinese domestic welded pipe price was 7% lower than the average reported hot-rolled steel coil price in the Chinese domestic market. However, the Chinese hot-rolled prices are considered unreliable by the CBSA and not appropriate for comparison purposes. When compared with world markets pricing data, the average reported Chinese domestic welded pipe is 16% lower than the average reported world markets price for hot-rolled steel. The CBSA believes that the difference in prices is the result of the GOC policies and measures, including the NSP and the removal of the VAT rebate on exports.

Weifang provided its report, "A Brief Introduction to the Carbon Welded Pipe Industry In China."¹⁴² Weifang submitted that the narrow hot-rolled steel strip industry is unique to China and most welded pipe producers source their hot-rolled steel from these narrow steel strip producers. Weifang also provided domestic prices of hot-rolled steel coil and strip from Mysteel. Mysteel reported Chinese domestic selling prices indicating a general trend of increasing prices over the POI.

Exhibit 13¹⁴³ of the report submitted by East Steel is a listing of domestic selling prices of welded pipe during the POI. The source of this data is not clearly identified and it may be Mysteel data. Nevertheless, the CBSA compared these reported Chinese domestic welded pipe prices to the Mysteel hot-rolled steel strip data provided in Exhibit 5 of the same report. The average Chinese domestic selling price of hot-rolled steel strip for the POI was 3604 Rmb/MT and the average Chinese domestic selling price for welded pipe for the same period was 4196 Rmb/MT.

While the reported Chinese welded pipe sales were made at prices that recovered the reported Chinese domestic hot-rolled steel strip input costs, when the estimated full costs are included in the comparison (based on the co-operating exporters' cost ratio and using the reported Chinese domestic hot-rolled steel strip price), the average total estimated cost for welded pipe, was slightly more than the average reported Chinese domestic selling price for the pipe as provided in Exhibit 13. However, Chinese hot-rolled steel pricing is not reliable and a similar comparison using the average world markets hot-rolled steel price in place of the reported Chinese hot-rolled steel strip price indicates that the reported Chinese welded prices were actually 26% lower than this estimated full cost.

The results of these pricing comparisons indicate that the domestic selling prices in the welded pipe sector in China are less than the selling prices of hot-rolled steel in competitive markets. Hot-rolled steel makes up the predominant cost of welded pipe and

¹⁴² Exhibit 125 NC – A Brief Introduction to the Carbon Welded Pipe Industry in China.

¹⁴³ Ibid

the domestic price distortion in the hot-rolled steel sector clearly impacts the Chinese welded pipe sector. Consequently, domestic prices of Chinese carbon steel welded pipe are not substantially the same as they would be if they were determined in a competitive market.

CONCLUSION

Based on an analysis of the information on the administrative record, the GOC has substantially determined the domestic prices in the welded pipe sector through a number of methods, namely:

- by controlling the export levels of welded pipe sector through various tax mechanisms to maintain domestic prices in the welded pipe sector at a certain level;
- by influencing the price of the main raw material input, hot-rolled sheet and strip that is used in welded pipe sector, and by doing so maintaining the domestic prices in the welded pipe sector at a certain level;
- through various VAT tax policies that have affected the level of profits of the producers in the welded pipe sector which will affect domestic selling prices; and
- through various means regulated the number of and controlled the production of producers in the welded pipe sector in order to affect the domestic prices.

In addition, the CBSA conducted a price analysis of the domestic selling prices in the welded pipe sector. The results of this pricing analysis indicate that there is a substantial price difference between the domestic selling prices in the welded pipe sector and competitive market prices for the main input (hot-rolled steel).

The CBSA has determined that the macro-economic influence of the GOC, as administered through its NSP and related government initiatives, has resulted in a domestic market where government policy objectives and actions compete and conflict with commercial interests. Furthermore, steel smelting, steel making and steel rolling enterprises are constrained in their decision-making ability by the NSP directives, as the GOC controls or regulates additional production capacity in the steel industry and thereby indirectly impacts the domestic selling prices of the steel products, including products in welded pipe sector.

In addition, the CBSA has noted that there is extensive state ownership throughout the welded pipe sector in China, as well as in the hot-rolled steel sector that supplies welded pipe producers with their primary raw material.

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 welded pipe sector in China. Specifically, there is evidence that GOC state ownership, influence, and macro-economic policies have 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.

Based on the foregoing, the President has formed the opinion that the domestic prices in the welded pipe sector 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.

APPENDIX 3 – SUMMARY OF FINDINGS – NAMED SUBSIDY PROGRAMS

ACTIONABLE SUBSIDY PROGRAMS THAT HAVE BEEN USED BY COOPERATIVE EXPORTERS

Program 1: 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 granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, Foreign Invested Enterprises (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%.

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 came 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 prevail after it came into effect as of January 1, 2008.

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 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 amounts 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: Preferential Tax Policies for Foreign Invested Enterprises

Reduced Tax Rate for Productive 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 granting authority responsible for this program is the State Administration of Taxation and the program is administered by 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. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008. However, according to Article 57 of the New Income Tax Law and the *Notification of the State Council on Carrying out the Transitional Preferential Policies concerning Enterprise Income Tax, Guo Fa (2007), No. 39*, enterprises currently receiving the benefits under this program as of January 1, 2008 can continue to receive the relevant preferential treatments set forth in the previous tax laws and administrative regulations until the end of the fifth profitable year.

Legal Basis:

The income tax reduction and/or exemption for FIEs under this program are 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*.

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 amounts 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: Local Income Tax Exemption and/or ReductionGeneral Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which was promulgated on April 9, 1991, and came into force on July 1, 1991. This program was established to provide preferential tax treatment to FIEs to accelerate the development of local economies. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, any FIE that operates in an industry or undertakes a project encouraged by the State may receive an exemption or reduction in local income taxes.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The program is described under Article 9 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 can be found in Article 9 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

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 *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*.

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 amounts 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: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

General Information:

The program was established in the *Notice of Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan"*, Zhong Fu (2005) No. 127. The objective of the program is "promoting the strategy of industrial strong city and enterprise string city, promoting the transition of the structure of industrial enterprises towards higher level and moderate orientation to heavy industry, and elevating the industrial competitiveness and development level." The granting authority responsible for this program is the Municipal Economic and Trade Bureau of Zhongshan.

The benefit provided under this program is in the form of grants and is limited to enterprises in the equipment manufacturing industry located in Zhongshan City. The program was in operation during the Subsidy POI and continues to be in operation to date.

Legal Basis:

The grant available to qualified enterprises is provided for in the *Notice of Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan"*, Zhong Fu (2005) No. 127.

Eligibility Criteria:

The eligibility criteria can be found in Article 4 of the *Notice of Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan"*, Zhong Fu (2005) No. 127.

Determination of Subsidy:

On the basis of available information, 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 in the equipment manufacturing industry located in Zhongshan City, 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 Issuing "Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan"*, Zhong Fu (2005) No. 127.

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 paragraph 27(a) of the SIMR, 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.

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 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: Export Assistance Grant

General Information:

This program was established in the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000*, which was promulgated and came into force on October 24, 2000. This program was established to support the development of Small and Medium-sized Enterprises (SMEs), to encourage SMEs to join in the competition of international markets, to reduce the business risks of the enterprises, and to promote the development of the national economy. The granting authority responsible for this program is the foreign trade and economic department and the program is administered at local levels.

The funds provided under this program are for the purpose of: (i) holding or participating in overseas exhibitions, (ii) accreditation fees for quality management system, environment management system or for the product, (iii) promotion in the international market, (iv) exploring a new market, (v) holding training seminars and symposiums, and (vi) overseas bidding.

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

Legal Basis:

The international market development fund available to qualified SMEs is provided for in the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000*.

Eligibility Criteria:

The eligibility criteria can be found in Article 5 of the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000*.

Enterprises applying for the international market development funds must meet the following criteria:

- Qualification of enterprise as legal person according to law and having the power to manage the import and export businesses;
- Customs statistics of export value of the enterprise of last year is US \$15 million or less and the enterprise has sound financial management system and good financial management records; and
- Having the employees who specialize in foreign trade and economic businesses and who possess the basic skills of foreign trade and economics and having definite work arrangements and market development plans.

Determination of Subsidy:

On the basis of available information, 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:

A grant provided under this program is an export subsidy pursuant to SIMA, as it is contingent, in whole or in part, on export performance. An export subsidy is a prohibited subsidy pursuant to SIMA.

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 paragraph 27(a) of the SIMR, 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.

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 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 6: Research & Development (R&D) Assistance Grant of Wuxing District

General Information:

This program was established in the *Circular of the Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District*, which was promulgated and came into force on December 26, 2005. This program was established to encourage and support enterprises to develop new technologies and products, to promote energy savings, to enhance product quality, to improve export structure, and to cultivate and develop high-tech industry and new pillar industry. The granting authority responsible for the program is the People's Government of Wuxing District and the program is administered by the Science and Technology Bureau of Wuxing District.

The 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 *Circular of the Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District*.

Eligibility Criteria:

The eligibility criteria can be found in Article 2 of the *Circular of the Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District*.

According to the Circular, only major scientific research and technology enterprises listed by the Science & Technology Bureau of Wuxing District, technology innovative enterprises and agricultural science & technology enterprises listed by the science & technology departments at various levels, certain high-tech enterprises, etc. are eligible for the benefits provided under this program.

Determination of Subsidy:

On the basis of available information, 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 selected enterprises located in Wuxing District, 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 Office of the People's Government of Wuxing District Concerning Printing and Distributing the Administrative Measures of the Use of Science & Technology Three Types of Funds of Wuxing District*.

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 paragraph 27(a) of the SIMR, 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.

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 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 7: Innovative Experimental Enterprise Grant

General Information:

This program was established in the *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172*, which was promulgated and came into effect on July 20, 2007. This program was established to promote the technology development of Zhejiang province. The granting authority responsible for this program is the Science and Technology Department of Zhejiang Province.

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

Legal Basis:

The grants available to innovative experimental enterprises are provided for in the *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172*.

Eligibility Criteria:

The eligibility criteria can be found in Article 4 of the *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172*.

According to the Circular, only 150 enterprises were selected as “innovative experimental enterprises of Zhejiang province” (50 enterprises selected in 2007 and another 100 enterprises selected in 2008) and the selected enterprises were limited within the following six types of enterprises: high-tech enterprises at the provincial level, technical SMEs, agricultural technical enterprises, key enterprises, exemplary enterprises on patent, and enterprises which were transferred from research institutions.

Determination of Subsidy:

On the basis of available information, 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 150 enterprises located in Zhejiang 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 *Circular of the Implemental Scheme for Constructing the Innovative Enterprises of Zhejiang Province, Zhe Ke Fa Zheng (2007) No. 172*.

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 paragraph 27(a) of the SIMR, 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.

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 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: Superstar Enterprise Grant

General Information:

Under this program, enterprises located in Huzhou City and selected as “Superstar Enterprises” may receive grants from the local government. In order to qualify for a “Superstar Enterprise”, total annual sales of the superstar enterprise have to reach a threshold. The granting authority responsible for this program is the People’s Government of Huzhou City.

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

Eligibility Criteria:

In order for an enterprise to receive the grants under this program, the enterprise must be a “Superstar Enterprise” located in Huzhou City and must exceed the relevant sales threshold.

Determination of Subsidy:

On the basis of available information, 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 superstar enterprises located in Huzhou City, were found to be limited, in law, to a particular enterprise, pursuant to paragraph 2(7.2)(a) of SIMA.

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 paragraph 27(a) of the SIMR, 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.

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 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: Hot-Rolled Steel Provided by Government at Less than Fair Market Value

General Information:

At the preliminary determination, the CBSA stated that information was still being reviewed to determine whether CSWP producers had purchased goods or services from state-owned enterprises (SOEs) at prices below fair market value. Pursuant to this review, the CBSA examined the information provided by the four cooperative exporters in respect of hot-rolled steel purchases during the Subsidy POI.

The information submitted by the cooperative exporters provided a detailed breakdown of hot-rolled steel purchases (both strip and coil) including the names and addresses of suppliers as well as the ownership structure of the suppliers when known. The cooperative exporters indicated that hot-rolled steel was purchased from SOEs, domestic-invested enterprises, and private trading companies during the Subsidy POI. The hot-rolled steel purchased by CSWP producers from the private trading companies is, itself, provided to the private trading companies by producers that are either SOEs or domestic-invested enterprises. However, only one cooperative exporter was able to identify the producers of origin for hot-rolled steel that was purchased from the private trading companies. Upon examination of this information, the CBSA determined that approximately 79% of the hot-rolled steel purchased by the cooperative exporter from private trading companies was produced by SOEs. On the basis of the information available, the CBSA will presume that 79% of the hot-rolled steel purchased from private trading companies is attributable to SOEs. Thus, SOEs provide hot-rolled steel directly to CSWP producers or indirectly to CSWP producers through private trading companies.

Determination of Subsidy:

Based on the available information, hot-rolled steel that is provided directly by SOEs constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, i.e. the government provides goods other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods in China and the price at which the goods were provided by the government.

In addition, hot-rolled steel that is provided indirectly by SOEs through private trading companies constitutes a financial contribution pursuant to paragraph 2(1.6)(c), i.e. the government provides goods other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods in China and the price at which the goods were provided by the government.

Where hot-rolled steel was provided indirectly by SOEs through private trading companies, the CBSA compared the selling prices of hot-rolled steel from the private trading companies with those of the SOEs when selling hot-rolled steel directly to CSWP producers. The difference in price was not significant and, therefore, the CBSA

determined that a benefit is conferred to CSWP producers when hot-rolled steel is provided indirectly by SOEs through private trading companies.

A state-owned enterprise refers to any corporation that is acting for, on behalf of, or under the authority of the government. This would include any corporation, which is effectively controlled by the GOC through laws, regulations, orders, directives, or through any other similar mechanism or, alternatively, whose shares are majority or wholly owned by the GOC. Such corporations are considered “government” for purposes of a subsidy investigation conducted pursuant to SIMA.

Determination of Specificity:

The provision of hot-rolled steel by SOEs is specific pursuant to paragraph 2(7.3)(a) of SIMA because the government is providing this product to a limited number of enterprises, i.e. enterprises that use hot-rolled steel.

Calculation of Amount of Subsidy:

Where a subsidy relates to the provision of goods by government, the CBSA determines whether there is a difference between the fair market value of the goods in the territory of the government providing the subsidy, and the price at which the goods were provided by that government. However, the CBSA’s most recent re-investigation in respect of *Certain Hot-Rolled Steel Sheet* determined that section 20 conditions continue to exist for this particular steel sector in China.¹⁴⁴ As a result, the domestic selling prices for hot-rolled steel in China are not appropriate for purposes of determining the fair market value of these goods.

To establish the fair market value of hot-rolled steel in China, the CBSA reviewed the information available. The CBSA found that one cooperative exporter had imported hot-rolled steel from a supplier located outside of China during the Subsidy POI. The CBSA subsequently compared the import price of the hot-rolled steel with the average monthly SteelBenchmarker.com price for hot-rolled steel in three regions (excluding China).¹⁴⁵ The import price paid by the CSWP producer in China was not significantly different than the monthly average world prices listed in SteelBenchmarker.com during the Subsidy POI. Accordingly, the import price paid by a CSWP producer in China is appropriate for purposes of establishing the fair market value of hot-rolled steel in China.

Where hot-rolled steel was provided directly by SOEs, the CBSA compared the average monthly price paid by each cooperative exporter with the import price paid for hot-rolled steel in China. Where hot-rolled steel was provided indirectly by SOEs through private trading companies, the CBSA compared the average monthly price paid by each cooperative exporter with the import price paid for hot-rolled steel in China.

¹⁴⁴ Exhibit 213 – CBSA Customs Notice 07-020 Certain Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip (concluded June 27, 2007) at paras. 6-8.

¹⁴⁵ SteelBenchmarker.com is a recognized source for price information on steel products and the data contained therein is considered authoritative and reliable.

As previously stated, the CBSA, on the basis of the information available, presumed that 79% of the hot-rolled steel purchased from private trading companies is attributable to SOEs. In addition, all purchases of hot-rolled steel from domestic-invested enterprises (non-SOEs) were excluded for purposes of determining an amount of subsidy.

As a result, the CBSA has determined that all four cooperative exporters have received benefits under this program during the Subsidy POI. Pursuant to section 36 of the SIMR, the amount of subsidy was calculated by distributing the difference between the fair market value of hot-rolled steel in China and the price at which the hot-rolled steel was provided by the government over the estimated total quantity of subsidized goods to which this subsidy was attributable.

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

**ACTIONABLE SUBSIDY PROGRAMS THAT HAVE NOT BEEN USED BY
COOPERATIVE EXPORTERS**

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

**Program 10: Preferential Tax Policies for Enterprises with Foreign Investment
Established in Special Economic Zones (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 Special Economic Zones (SEZs). The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, non-wholly foreign owned FIEs established in SEZs and Foreign Enterprises (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. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

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 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 11: Preferential Tax Policies for Enterprises with Foreign Investment Established in the Pudong Area of ShanghaiGeneral 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 Pudong Area of Shanghai. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, FIEs, Foreign Enterprises, joint-venture Domestically Invested Enterprises (DIEs) and single-investor DIEs established in 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. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

Legal Basis:

The income tax rate reduction for FIEs and Foreign Enterprises 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 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*.

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 in the Western Regions

General Information:

This program was established for 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 granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

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 13: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas

General Information:

This program was established 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*, which was promulgated on June 30, 1991, and came into effect on July 1, 1991. The program was established to absorb investment in SEZs and designated areas to take the lead in their economic development. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by 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 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 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 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 14: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, enterprises located in SEZs and other designated areas may receive exemption and/or reduction of land tax and land use fees. 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 this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy 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 reduction/exemption of land tax and land use fees is specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises located in SEZs.

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

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 granting authority responsible for this program is the General Administration of Customs and this program is administered by 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 SEZs shall be exempted from import duties.

The program was in operation during the Subsidy POI.

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

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 the reinvestment of profits into businesses located in the SEZs of Guangdong province. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, businesses that reinvest profits derived in the SEZs of Guangdong province for a period of five years or longer are eligible to receive a refund of the income tax already paid on the profit that was reinvested.

The program was in operation during the Subsidy POI.

Legal Basis:

The income tax refund for the reinvestment of profits 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 businesses that reinvest profits in the SEZs 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:

Income tax refund 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: Goods and Services Provided by Government at Less Than Fair Market Value to Enterprises Located in SEZs and Other Designated Areas

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. There is information that the GOC may be providing goods and/or services other than general infrastructure to CSWP producers located in SEZs and other designated areas. These goods and/or services other than general infrastructure may be provided directly by the GOC or indirectly by state-owned enterprises.

Based on the information provided by the complainant, the GOC may be providing favourable rates such as utility and energy to CSWP producers located in SEZs and other designated areas. 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 this program. The GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

Based on the available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA, i.e., the government provides goods or services, other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods or services in China and the price at which the goods or services were provided by the government.

Determination of Specificity:

Goods and services provided by government to CSWP producers located in SEZs and other designated areas are specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to the limited number of enterprises located in SEZs.

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.

II. GRANTS

Program 18: 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 granting authority responsible for this program is 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 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 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. If relevant information were available, the amount of subsidy would be calculated by distributing the amount of the 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. As a result, for the non-cooperative exporters, the CBSA has determined a subsidy amount pertaining to this program under ministerial specification.

Program 19: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, CSWP producers located in Guangdong and Zhejiang provinces may receive reimbursement of anti-dumping and/or countervailing legal fees. 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 this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

On the basis of available information, 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 legal expenses reimbursed.

Determination of Specificity:

Reimbursements of legal expenses incurred by enterprises in responding to anti-dumping and/or countervailing proceedings is specific pursuant to paragraph 2(7.3)(a) of SIMA, because the subsidy is provided to a limited number of enterprises, i.e. enterprises that have legal expenses related to anti-dumping and/or countervailing investigations.

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.

III. Equity Infusions/Debt-to-Equity Swaps

Program 20: Debt-to-Equity Swaps

General Information:

The debt-to-equity swap is one of the most significant measures used in the financial restructuring of China's SOEs and state-owned banks. Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on November 20, 2000), the 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 provided by the complainant, it appears that only SOEs including state-owned CSWP producers, for example, Baosteel were involved in debt-to-equity swaps with AMCs. 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. A 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.

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.

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.

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.

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, debt-to-equity swaps are specific pursuant to subsection 2(7.3) of SIMA.

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.

IV. Preferential Loans

Program 21: Preferential Loans Provided Under the Northeast Revitalization Program

General Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information provided by the complainant, enterprises located in the northeast region of China may receive preferential loans in the form of interest subsidy under the Northeast Revitalization program. 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 this program. However, the GOC did not provide any of the requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy program.

Determination of Subsidy:

On the basis of available information, a preferential loan provided under 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 difference between the interest payable on a commercial loan and the interest payable on the preferential loan provided by the government.

Determination of Specificity:

The provision of preferential loans under this program is specific pursuant to paragraph 2(7.3)(a) of SIMA because the subsidy is only provided to a limited number of enterprises located in the northeast 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.

V. Preferential Income Tax Programs

Program 22: 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 granting authority responsible for this program is the State Administration of Taxation and the program is administered by 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. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

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:

Preferential tax rates provided to foreign invested export enterprises under this program are an export subsidy pursuant to SIMA, as such subsidies are contingent, in whole or in part, on export performance. An export subsidy is a prohibited subsidy pursuant to SIMA.

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: 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 granting authority responsible for this program is the State Administration of Taxation and the program is administered by 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.

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 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 24: Preferential Tax Policies for Research and Development by FIEs

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 research and development by FIEs. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by 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 rights transferred to the enterprises; and
- Fees for operational 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 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 25: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipments

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 granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, 40% of the expenses incurred by certain FIEs and foreign enterprises on purchasing domestically produced equipment are deducted from the increment of income tax of that year compared to the previous year. The deducted portion shall not exceed that year's total increment of income tax, and in the case where the total increment of income tax is less than 40% of such expenses; the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

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 for purchasing domestically made equipment is a prohibited subsidy pursuant to 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.

In addition, the income tax refund provided to FIEs and Foreign Enterprises 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 26: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments 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 granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, all enterprises with investment on the technological transformation projects conforming to the State Industrial policy in the nation, 40% of the expenses on purchasing domestically produced equipments shall be deducted from the increment of income tax of that year compared to the previous year. In the case where the total

increment of income tax is less than 40% of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years.

The program was in operation during the Subsidy POI. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

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 DIES with investment on the technological transformation projects conforming to the State industrial policy in the nation.

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 a prohibited subsidy pursuant to 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 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 27: Income Tax Refund for Re-investment of FIE Profits

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 the reinvestment of profits into FIEs in China. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, FIEs who reinvest profits into that FIE by increasing its registered capital, or use FIE derived profit to establish another FIE which is planned to operate for a period not less than five years, are eligible to receive a refund of the income tax already paid on the profit that was reinvested.

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 FIEs who directly reinvest 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 FIE withdraws the investment before five years have passed, the tax refunded must be repaid. It also states that should the 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 the State Council, as referred to above. It states that where an FIE 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. This program is not included in the New Income Tax Law. The provisions of the New Income Tax Law prevail after it came into effect as of January 1, 2008.

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 an FIE to obtain this preferential tax treatment, 100% of the shares of the FIE 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 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 28: 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. This program was established in order to exert further efforts for the debt-to-equity work and support the reform of enterprises. The granting authority responsible for this program is 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.

VI. Relief from Duties and Taxes on Materials and Machinery

Program 29: Exemption of Tariff and Import VAT for Imported Technologies and Equipment

General Information:

The exemptions of 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 established to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement and to maintain the sustained, rapid and healthy development of the national economy.

The granting authorities responsible for this program are the Ministry of Finance and the General Administration of Customs and the program is administered by 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 receive approval of its application from the appropriate authority, and 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.

Legal Basis:

The VAT exemption provided under 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 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 to be eligible for tariff and VAT exemptions on imported equipment, the domestic investment project that the equipment relates to 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 an FIE to be eligible for tariff and VAT exemptions on imported equipment, the foreign investment project that the equipment relates to must be 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:

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:

On the basis of available information¹⁴⁶, duty and tax exemptions under this program are specific pursuant to paragraph 2(7.3)(c) of SIMA because disproportionately large amounts of the subsidy are granted to a limited number of enterprises, i.e. SOEs. 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.

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”.

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 30: Relief from Duties and Taxes on Imported Materials and Other Manufacturing InputsGeneral Information:

This program was identified at the initiation of the investigation as possibly having provided actionable benefits to the exporters of subject goods during the Subsidy POI. Based on the information available, CSWP producers importing materials and other manufacturing inputs such as raw materials may be exempted from paying import duties and taxes. 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 this program. The GOC did not provide any of the

¹⁴⁶ See Exhibit 215 – Seamless Carbon or Alloy Steel Oil and Gas Well Casing, CBSA Statement of Reasons – final determination – February 22, 2008, page 53.

requested information regarding this program and simply confirmed that the cooperative exporters had not received benefits under this subsidy 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 exemption of import duties and taxes provided to CSWP producers was found to be limited to a particular enterprise, pursuant to of SIMA.

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.

VII. Reduction in Land Use Fees

Program 31: 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 transferring fee. The granting authority responsible for this program is the Administrative Office of the State Council.

At present, every Chinese enterprise is required to pay a land transfer fee when land use rights are acquired through the bidding system. Effective January 1, 2007, all FIEs were required to pay land use tax which is administrated by the State Administration of Taxation and local tax authorities.

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 the relevant 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.

NON-ACTIONABLE SUBSIDY PROGRAMS

Program 32: Income Tax Reduction for Township Enterprises Regarding Local Social Expenses

This program was established under the *Circular of the Ministry of Finance and the State Administration of Taxation on Matters Concerning Preferential Policies for Enterprise Income Tax, Cai Shui Zi [1994] No.1*. The objective was to cover social expenses of township enterprises via preferential tax treatment. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities. The GOC has stated that the program was terminated on December 31, 2007.

The eligibility criteria for this program can be found in Article 1, Clause 10 of the *Circular of the Ministry of Finance and the State Administration of Taxation on Matters Concerning Preferential Policies for Enterprise Income Tax, Cai Shui Zi [1994] No.1*. On the basis of available information, this program was not found to be specific pursuant to SIMA.