

4214-22 AD/1379  
4218-26 CV/124

OTTAWA, September 2, 2008

## STATEMENT OF REASONS

**Concerning the initiation of investigations into the dumping and subsidizing of**

**CERTAIN ALUMINUM EXTRUSIONS  
ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

## DECISION

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency initiated investigations on August 18, 2008, respecting the alleged injurious dumping and subsidizing of aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm., with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm., originating in or exported from the People's Republic of China.

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*Cet Énoncé des motifs est également disponible en français. Veuillez consulter la section "Information".*  
This *Statement of Reasons* is also available in French. Please refer to the "Information" section.

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## SUMMARY

[1] On July 4, 2008, the Canada Border Services Agency (CBSA) received a complaint from Almag Aluminum Inc. of Brampton, Ontario, Apel Extrusions Limited of Calgary, Alberta, Can Art Aluminum Extrusion Inc. of Brampton, Ontario, Metra Aluminum Inc. of Laval, Quebec, Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.) of Richmond Hill, Ontario, Spectra Aluminum Products Ltd. of Bradford, Ontario and Spectra Anodizing Inc. of Woodbridge, Ontario (the “Complainants”) alleging that imports of certain aluminum extrusions originating in or exported from the People’s Republic of China (“China”) are being dumped and subsidized and causing injury to the Canadian industry.

[2] On July 18, 2008, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainants 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 Complainants provided evidence to support the allegations that aluminum extrusions from China have been dumped and subsidized. The evidence also discloses 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 August 13, 2008 the CBSA received written preliminary comments from the GOC concerning the evidence presented in the non-confidential version of the subsidy complaint and comments concerning the CBSA’s practices in previous subsidy investigations involving China. The GOC claimed that the complaint lacks sufficient evidence to initiate a subsidy investigation on aluminum extrusions. The GOC also claimed that the complaint fails to provide supporting evidence to show that subsidies applied to the aluminum extrusions sector in China. The CBSA considered the representations made by the GOC in its analysis of whether there was sufficient evidence of subsidizing to warrant an investigation.

[5] On August 14, 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.

[6] On August 18, 2008, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of aluminum extrusions from China.

**INTERESTED PARTIES****Complainants**

[7] The Complainants are major producers of aluminum extrusions in Canada, accounting for a major proportion of the domestic industry for like goods.

The name and address of the Complainants are:

Almag Aluminum Inc.  
22 Finley Road  
Brampton, ON  
L6T 1A9

Apel Extrusions Limited  
7929-30 Street S.E.  
Calgary, AB  
T4C 1H7

Can Art Aluminum Extrusion Inc.  
85 Parkshore Drive  
Brampton, ON  
L6T 5M1

Metra Aluminum Inc.  
2000 Fortin Boulevard  
Laval, QC  
H7S 1P3

Signature Aluminum Canada Inc.  
500 Edward Avenue  
Richmond Hill, ON  
L4C 4Y9

Spectra Aluminum Products Ltd.  
95 Reagens Industrial Parkway  
Bradford, ON  
L3Z 2A4

Spectra Anodizing Inc.  
201 Hanlan Rd  
Woodbridge, ON  
L4L 3R7

[8] Three other producers of the like goods, Extrudex Aluminum, Daymond Aluminum and Kaiser Aluminum Canada Ltd provided letters supporting the complaint.

## Exporters

[9] The CBSA has identified 261 potential exporters of the subject goods from Customs import documentation and from the complaint.

## Importers

[10] The CBSA has identified 535 potential importers of the subject goods from Customs import documentation and from the complaint.

## Government of China

[11] For the purposes of this 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.

## PRODUCT INFORMATION

### Definition

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

“Aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm., with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm., originating in or exported from the People’s Republic of China.”

### Additional Product Information<sup>1</sup>

[13] Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the subject goods do not include goods made by the process of impact extrusion or cold extrusion. Impact (or cold) extrusion is commonly used to make collapsible tubes such as toothpaste tubes or cans usually using soft materials such as aluminum, lead and tin. Usually a small shot of solid material is placed in the die and is impacted by a ram, which causes cold flow in the material. Impact (or cold) extrusion is not performed by the same machinery or using the same inputs as the extrusion operations of the Complainants.

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<sup>1</sup> Based on the complaint.

[14] Alloys are metals composed of more than one metallic element. Alloys used in aluminum extrusions contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc which enable characteristics such as corrosion resistance, increased strength or improved formability to be imparted to the major metallic element, aluminum. Aluminum alloys are produced to specifications in "International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys" published by *The Aluminum Association*. These specifications have equivalent designations issued by other certifying bodies such as the International Standards Organization (ISO).

[15] All aluminum extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customized shapes.

[16] In addition to 'as extruded' or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminum. Also, they can be finished with liquid or powder paint coatings utilizing an electrostatic application process.

[17] The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment. The Complainants cannot produce extrusions having a wall thickness less than 0.5 mm or a weight greater than 22 Kg. per meter or a cross-section larger than would be enclosed within a 254 mm diameter circle.

[18] Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. These can include precision cutting, machining, punching and drilling.

[19] Aluminum extrusions are widely used in many end-use applications that span numerous market sectors. The main end-use sectors for aluminum extrusions are building and construction, transportation, and engineered products. Uses for aluminum extrusions in the building and construction industry cover a wide range of products, including windows, doors, railings, bridges, light poles, high-rise curtainwalls, framing members, and other various structures. Uses for aluminum extrusions in the transportation industry include parts for automobiles, buses, trucks, trailers, rail cars, mass transit vehicles, recreational vehicles, aircraft, and aerospace. Aluminum extrusions are also used in many consumer and commercial products, including, air conditioners, appliances, furniture, lighting, sports equipment, electrical power units, heat sinks, machinery and equipment, food displays, refrigeration, medical equipment, and laboratory equipment.<sup>2</sup>

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<sup>2</sup> Aluminum Extruders Council ([www.aec.org](http://www.aec.org)).

### Production Process<sup>3</sup>

[20] While details may vary from producer to producer, the process by which extrusions are produced is essentially the same for all.

[21] The intended use of the product in which the aluminum extrusion will be applied determines the specifications for the extrusion. Machinability, finish and environment of use will determine the alloy to be extruded. The function of the profile will determine its design and that of the die that shapes it.

[22] The extrusion process begins with an aluminum billet. The billet must be softened by heat prior to extrusion. The heated billet is placed into the extrusion press, a powerful hydraulic device wherein a ram pushes a dummy block that forces the softened metal through a precision opening known as a die, to produce the desired shape. This simplified description of the process is known as direct extrusion, which is the most common method in use today. Indirect extrusion is a similar process. In the direct extrusion process, the die is stationary and the ram forces the alloy through the opening in the die. In the indirect process, the die is contained within the hollow ram, which moves into the stationary billet from one end, forcing the metal to flow into the ram, acquiring the shape of the die as it does so.

[23] The aluminum billet may be a solid or hollow form, commonly cylindrical, and is the length charged into the extrusion press container. It is usually a cast product but may be a wrought product or powder compact. Often it is cut from a longer length of alloyed aluminum known as a log.

[24] The billet and extrusion tools are preheated (softened) in a heating furnace. The melting point of aluminum varies with the purity of the metal but is approximately 1,220° Fahrenheit (660° Centigrade). Extrusion operations typically take place with billet heated to temperatures in excess of 700° F (375° C), and depending upon the alloy being extruded, as high as 930° F (500° C).

[25] The actual extrusion process begins when the ram starts applying pressure to the billet within the container. Various hydraulic press designs are capable of exerting anywhere from 100 tons to 15,000 tons of pressure. This pressure capacity of a press determines how large an extrusion it can produce. The extrusion size is measured by its largest cross-sectional dimension, sometimes referred to as its fit within a circumscribing circle diameter.

[26] As pressure is first applied, the billet is crushed against the die, becoming shorter and wider until its expansion is restricted by full contact with the container walls. Then, as the pressure increases, the soft (but still solid) metal has no place else to go and begins to squeeze through the shaped orifice of the die to emerge on the other side as a fully formed extrusion or profile.

[27] About 10 percent of the billet, including its outer skin, is left behind in the container. The completed extrusion is cut off at the die and the remainder of the metal is removed to be

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<sup>3</sup> Based on the complaint.



recycled. After it leaves the die, the still-hot extrusion may be quenched, mechanically treated and aged.

### **Classification of Imports**

[28] The aluminum extrusions subject to this complaint are normally imported into Canada under the following 34 Harmonized System (HS) classification numbers:

7604.10.11.10	7604.10.20.29	7604.29.12.29
7604.10.11.90	7604.10.20.30	7604.29.20.11
7604.10.12.11	7604.21.00.10	7604.29.20.19
7604.10.12.19	7604.21.00.20	7604.29.20.21
7604.10.12.21	7604.29.11.10	7604.29.20.29
7604.10.12.22	7604.29.11.90	7604.29.20.30
7604.10.12.23	7604.29.12.11	7608.10.00.10
7604.10.12.24	7604.29.12.19	7608.10.00.90
7604.10.12.29	7604.29.12.21	7608.20.00.10
7604.10.20.11	7604.29.12.22	7608.20.00.90
7604.10.20.19	7604.29.12.23	
7604.10.20.21	7604.29.12.24	

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

### **LIKE GOODS**

[30] Subsection 2(1) of SIMA defines “like goods”, in relation to any other goods, as goods that are identical in all respects to the other goods, or in the absence of identical goods, goods for which the uses and other characteristics closely resemble those of the other goods.

[31] Aluminum extrusions produced by the domestic industry compete directly with and have the same physical characteristics and end uses as the subject goods imported from China. The goods produced in Canada and China are fully interchangeable. Therefore, the CBSA has concluded that the aluminum extrusions produced by the Canadian industry constitute like goods to the subject goods.

[32] Aluminum extrusions can be considered a single class of goods. Different aluminum extrusions are made from the same input material; aluminum alloys, in the same manufacturing process.

### **THE CANADIAN INDUSTRY**

[33] The Canadian industry for aluminum extrusions is currently comprised of the following companies:

Almag Aluminum Inc. of Brampton, Ontario,  
Apel Extrusions Limited of Calgary, Alberta,

Can Art Aluminum Extrusion Inc. of Brampton, Ontario,  
 Daymond Aluminum of Chatham, Ontario,  
 Extrudex Aluminum of Woodbridge, Ontario,  
 Indalex Aluminum Solutions Group of Mississauga, Ontario,  
 Kaiser Aluminum Canada Ltd of London, Ontario,  
 Kawneer Company Canada Ltd of Scarborough, Ontario,  
 Kromet International Inc. of Cambridge, Ontario.  
 Metra Aluminum Inc. of Laval, Quebec,  
 Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.) of Richmond Hill, Ontario,  
 Spectra Aluminum Products Ltd. of Bradford, Ontario,  
 Spectra Anodizing Inc. of Woodbridge, Ontario.

### **Standing**

[34] SIMA requires that the following conditions be met in order to initiate an investigation:

- the complaint is supported by domestic producers whose production represents more than fifty per cent of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- the production of the domestic producers who support the complaint represents twenty-five per cent or more of the total production of like goods by the domestic industry.

[35] For the consideration of standing under SIMA, domestic industry means the domestic producers as a whole of the like goods except that, if a domestic producer is related to an exporter or importer of allegedly dumped goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

[36] Based on an analysis of information provided in the complaint, the CBSA is satisfied that the complaint is supported by domestic producers whose production represents more than fifty percent of the total production of like goods by those domestic producers who express either support for or opposition to the complaint. Further, the domestic producers who support the complaint represent more than twenty-five per cent of the total production of like goods by the domestic industry. The CBSA is satisfied that the standing requirements of subsection 31(2) of SIMA have been met.

### **CANADIAN MARKET**

[37] Aluminum extrusions are marketed and sold by the domestic industry and by Chinese subject goods exporters/importers through the same channels of distribution to both distributor and end-user customers in Canada.

[38] Importers of subject goods have also established warehouses which permit them to inventory in Canada and ship to customers with essentially the same lead times as the domestic industry for many extrusions.

[39] Distributors generally purchase aluminum extrusions in a wide range of standard shapes and profiles such as solid bar, T sections, angle, channel, hollow tube and pipe. They in turn sell this product, in various quantities, to end-users.

[40] Sales of subject and like goods are also made directly to larger end-users.

[41] The Complainants provided estimates respecting the Canadian market for aluminum extrusions. The Complainants based these figures on their own production and sales data, their commercial intelligence, participation in the Canadian market and import data from Statistics Canada.

[42] The CBSA conducted its own analysis of imports of goods under the applicable tariff classification numbers. The results of the CBSA's review of import data was in line with information provided by the Complainants.

[43] Detailed information regarding the volume of subject imports and domestic production cannot be divulged for confidentiality reasons. The CBSA has however prepared the following table to show the estimated import share of aluminum extrusions.

**CBSA ESTIMATES OF IMPORT SHARE**  
**(BY VOLUME)**

COUNTRY	2005	2006	2007	Q1 2008 (Jan.- June)
IMPORTS CHINA	34.0 %	38.2 %	44.4 %	42.3 %
IMPORTS U.S.A	55.1 %	51.2 %	47.4 %	50.1 %
OTHER COUNTRY IMPORTS	10.9 %	10.6 %	8.2 %	7.6 %
<b>TOTAL IMPORTS</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**EVIDENCE OF DUMPING**

[44] The Complainants allege that aluminum extrusions from China have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods sold to importers in Canada exceeds the export price of the goods. The Complainants provided information to support the allegation that the aluminum extrusions sector in China may not be operating under competitive market conditions and as such, normal values should be determined under section 20 of SIMA.

[45] Normal values are generally based on the domestic selling price of the goods in the country of export where competitive market conditions exist, or on the full cost of the goods plus a reasonable amount for profit. However, where section 20 is applicable, normal values may be determined based on the selling price or cost of like goods in another country designated by the President, or on the basis of the facts available.

[46] The export price of goods sold to importers in Canada is the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges, and expenses resulting from the exportation of the goods.

[47] Estimates of normal value and export price are discussed below.

### **Normal Value**

[48] In estimating normal values, the Complainants selected six aluminum extrusions, each of which is sold in large volumes in the Canadian market for aluminum extrusions. These extrusions also cover the three major extrusions finishes; mill, anodized and painted, as well as represent different major alloys and shapes sold in the Canadian market. For each of the six aluminum extrusions selected, the complaint provides two estimates of normal values. The first estimates of normal values are based on constructed costs of like goods in China. In addition, the Complainants also provided a constructed cost of like goods in a surrogate country as part of their request that section 20 of SIMA be applied.

[49] The Complainants constructed the cost of like goods in China by first accounting for the cost of aluminum based on the Shanghai Futures Exchange aluminum metal price. The cost of aluminum accounts for over 50% of the costs of producing aluminum extrusions. The Complainants used their own costing information, adjusted to reflect for known differences in costs between Canada and China, to estimate other production costs and an amount for administrative, selling and all other costs. The Complainants then added an amount for profit, based on publicly available financial statements for a large Chinese aluminum extruder, to the estimated costs, in order to arrive at a constructed normal value for China.

[50] As part of their request that section 20 of SIMA be applied, the Complainants also estimated normal values for China using a surrogate country methodology. The estimated surrogate normal values were constructed from the cost of like goods in India by first accounting for the cost of aluminum based on the London Metal Exchange aluminum metal price. The Complainants used their own costing information, adjusted to reflect for known differences in costs between Canada and India, to estimate other production costs and an amount for administrative, selling and all other costs. The Complainants then added an amount for profit, based on publicly available financial statements of an Indian aluminum and copper producer that has aluminum extrusions facilities, to the estimated costs, in order to arrive at a constructed normal value for India.

[51] The CBSA also estimated normal values using a constructive methodology. However, since the CBSA's analysis regarding the applicability of section 20 of SIMA resulted in the initiation of a section 20 inquiry, the CBSA estimated normal values using a surrogate country methodology. The CBSA accepted the Complainants' choice of India as an acceptable surrogate country.

[52] The CBSA was able to compare the surrogate country input costs used by the Complainants to world pricing and confirmed it was reasonable. The Complainants provided six estimated normal values covering a variety of aluminum extrusions, including the three major extrusion finishes (mill finish, painted and anodized). Based on information reviewed the CBSA

considers the Complainants' estimated normal value methodology to be reasonable. However, for purposes of the initiation, the CBSA estimated normal values on a monthly basis to account for the fluctuations in aluminum prices. The CBSA also adjusted the amount for profit presented by the Complainants. Under their surrogate country methodology, the Complainants used a profit of 14% earned by an Indian aluminum and copper producer that has aluminum extrusions facilities. The aluminum business accounted for 40% of its net sales in fiscal year 2006/2007 while aluminum extrusions accounted for only a small portion of its net sales. Therefore, the profit of 14% may not be representative of the profit margin for aluminum extrusions. The CBSA was not able to find any other public information regarding the profitability of aluminum extruders in potential surrogate countries. Instead, CBSA calculated an amount for profit based on the profit margin before taxes of the Complainants, based on their 2007 financial information for sales of like goods extrusions (including both domestic and export sales).

[53] The CBSA used the information provided by the Complainants for the six different aluminum extrusions (adjusted as described above) to estimate a single average normal value for each month of the period reviewed. Since the six selected aluminum extrusions cover a variety of extrusions, the average of the six models provides a reasonable estimate for comparison to the product mix that is being imported from China.

### **Export Price**

[54] The export price of imported goods is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's selling price for the goods and the price at which the importer has purchased or agreed to purchase the goods, adjusting by deducting all costs, charges, and expenses, duties and taxes resulting from the exportation of the goods.

[55] The Complainants estimated the export prices of six aluminum extrusions including three major extrusion finishes. The Complainants provided two estimates of export prices for each of the six selected extrusions. The first estimate of export prices is based on commercial intelligence on actual offer and selling prices in Canada. These prices were adjusted to account for distributor profit, freight, brokerage and handling and duties to arrive at a FOB China factory price. The Complainants also provided a second estimate of export prices based on the average declared values of the tariff classifications applicable to each of the six aluminum extrusions, from an import data report from Statistics Canada.

[56] The CBSA relied on actual import data obtained from its internal information system to estimate export prices. The actual import data was used for the period of January 1, 2007 to June 30, 2008, as it was considered more accurate than the limited number of estimates provided in the complaint.

### **Estimated Margins of Dumping**

[57] The CBSA estimated margins of dumping by comparing its estimates of normal values (based on the constructed cost for India), with its estimate of export prices obtained from actual CBSA import data for the period of January 1 2007 through June 30, 2008.

[58] Based on this analysis, it is estimated that 93.5% of the subject goods from China were dumped. Estimated margins of dumping ranged from 1% to 262%, expressed as a percentage of export price. The estimated overall weighted average margin of dumping was 40.5%.

### MARGIN OF DUMPING AND VOLUME OF DUMPED GOODS

[59] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the margin of dumping of the goods of a country is insignificant or the actual and potential volume of dumped goods of a country is negligible, the President must terminate the investigation with respect to that country. Pursuant to subsection 2 (1) of SIMA, a margin of dumping of less than 2% of the export price is defined as insignificant and a volume of dumped goods is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the dumped goods.

[60] On the basis of the estimated margins of dumping and the import data for the period of January 1, 2007 to June 30, 2008, summarized in the table below, the estimated margin of dumping and the estimated volume of dumped goods are above the thresholds outlined above.

#### ESTIMATED MARGIN OF DUMPING January 1, 2007 to June 30, 2008

Country	Percentage of Total Imports	Estimated Dumped Goods as % of Country Total	Estimated Dumped Goods as % of Total Imports	Estimated Margin of Dumping as % of Export Price
China	43.7%	93.5%	40.9%	40.5%

### SECTION 20 INQUIRY

[61] Section 20 is a provision under SIMA that may be applied to determine the normal value of goods in an anti-dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA,<sup>4</sup> it is applied where, in the opinion of the President, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[62] As previously noted, the Complainants have provided information to support the allegation that section 20 of SIMA is applicable to the aluminum extrusions sector in China and consequently, prices established in the Chinese domestic market for aluminum extrusions are not reliable for determining normal values.

[63] The Complainants allege that the conditions of section 20 of SIMA apply to the aluminum extrusions sector in China due to the GOC's "control" of the price of aluminum. The complaint notes that aluminum as an input material accounts for at least 50% of the costs of producing aluminum extrusions.

<sup>4</sup> China is a prescribed country under section 17.1 of the *Special Import Measures Regulations*.

[64] The Complainants further allege that the GOC exerts substantial influence on the price of aluminum and aluminum products in China through the actions of state-owned enterprises, numerous policies and frameworks specific to the aluminum industry, the extensive subsidization of the aluminum industry in China, and the use of value-added tax rebate rates and export taxes to control the level of exports for aluminum products.

[65] The information currently available to the CBSA indicates that there are numerous industrial policies affecting the aluminum and aluminum extrusions industries that have been implemented by the GOC. Other information shows a strong level of GOC involvement in the aluminum industry through changes to import tariffs, VAT rebate levels and export taxes. Further, the CBSA has information that shows that the prices of both aluminum and aluminum extrusions in China may be significantly affected by these GOC actions. Therefore, based on the information currently available to the CBSA, there is evidence indicating that the prices of aluminum extrusions in China are not substantially the same as they would be if they were determined in a competitive market that is free of the influence of GOC industrial policies and preferential treatment.

[66] Consequently, on August 18, 2008, the CBSA initiated a section 20 inquiry based on the information available in order to determine whether the conditions set forth in paragraph 20(1)(a) of SIMA prevail in the aluminum extrusions 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 or otherwise of the conditions described under section 20 of SIMA, in the sector under investigation.

[67] As part of this section 20 inquiry the CBSA sent section 20 questionnaires to all known exporters and producers of aluminum extrusions in China, as well as to the GOC requesting detailed information related to the aluminum extrusions sector in China. In addition, the CBSA requested that producers in other countries, who are not subject to the present investigation, provide domestic pricing and costing information concerning aluminum extrusions.

[68] In the event that the President forms the opinion that domestic prices of the aluminum extrusions 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 if they were determined in a competitive market, the normal values of the goods under investigation will be determined, where such information is available, on the basis of the domestic price or cost of the like goods sold by producers in any country designated by the President and adjusted for price comparability; or the selling price in Canada of like goods imported from a designated country and adjusted for price comparability.

### **EVIDENCE OF SUBSIDIZING**

[69] 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 *World Trade Organization (WTO) Agreement*, that confers a benefit.

[70] Pursuant to subsection 2(1.6) of SIMA, a financial contribution exists 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 any thing referred to in any of paragraphs (a) to (c) above 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.

[71] If a subsidy is found to exist, it may be subject to countervailing measures if it is specific. A subsidy is considered to be specific when it is limited, in law, to a particular enterprise 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". Any subsidy which is contingent, in whole or in part, on export performance or on the use of goods that are produced or that originate in the country of export is considered to be a prohibited subsidy and is, therefore, automatically considered to be specific for the purposes of a subsidy investigation.

[72] In accordance with subsection 2(7.3) of SIMA, notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific in fact, 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.

[73] 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 countervailable.

[74] The Complainants have alleged that the subject goods originating in China have benefited from actionable subsidies provided by various levels of the Government of China (GOC), which may include the governments of the respective provinces in which the exporters are located, and from the governments of the respective municipalities in which the exporters are located. In support of its allegations, the Complainants have provided documents such as CBSA's Statements of Reasons for various investigations<sup>5</sup>, U.S. anti-dumping and countervailing duty investigations<sup>6</sup>, Preferential Policies published online<sup>7</sup>, Interim Financial

<sup>5</sup> See Attachment 15 of the complaint.

<sup>6</sup> See Attachment 16 of the complaint.

<sup>7</sup> See Attachments 19, 20, and 21 of the complaint.



Statements of one of the largest producers of subject goods (Asia Aluminum)<sup>8</sup>, an Interim Report from China's largest primary aluminum producing SOEs (Chalco)<sup>9</sup>, and China's Subsidy Notification to the WTO<sup>10</sup>.

[75] Due to the lack of publicly available information regarding subsidy programs in China, the Complainants were unable to provide exhaustive information regarding all subsidy programs. Instead, the general details and terms of alleged countervailable subsidy programs were described and the documents that formed the basis for these allegations were included.

### **Programs Being Investigated**

[76] In reviewing the information provided by the Complainants and obtained by the CBSA through its own research, the CBSA has developed the following list of programs and incentives that may be provided to manufacturers of aluminum extrusions in China:

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.

[77] There is sufficient reason to believe that the foregoing programs may constitute actionable subsidies provided by the GOC and that the exporters and producers of aluminum extrusions benefit from these programs. In the case of programs where an enterprise's eligibility or degree of benefit is contingent upon export performance or the use of goods that are produced or originate in the country of export, such programs may constitute prohibited subsidies under SIMA.

[78] For those programs where incentives are provided to enterprises operating in specified areas such as the Pudong New Area of Shanghai or Special Economic Zones, the CBSA considers that these may constitute actionable subsidies for the reason that eligibility is limited to enterprises operating in such regions.

[79] As well, the CBSA is satisfied that there is sufficient evidence indicating that the exporters may receive benefits under programs in the form of grants, preferential loans and relief from duties or taxes that are not generally granted to all companies in China. The CBSA will investigate whether all loans and any form of grant, duty or tax relief received by the exporters constitute actionable subsidies.

[80] **Appendix I** provides further description of the listed programs.

<sup>8</sup> See Attachment 22 of the complaint.

<sup>9</sup> See Attachment 23 of the complaint.

<sup>10</sup> See Attachment 24 of the complaint.

## Conclusion

[81] Sufficient evidence is available to support the allegation that the subsidy programs outlined in **Appendix I** are available to exporters and producers of aluminum extrusions in China. In investigating these programs, the CBSA will request information from the GOC, exporters and producers to determine whether these programs are “actionable subsidies” and, therefore, countervailable under SIMA.

## Estimated Amount of Subsidy

[82] The Complainants allege that these programs significantly lower the cost of production of the subject goods. However, the Complainants were unable to estimate the value of the alleged subsidies on a per-unit basis, due to a lack of available information.

[83] The CBSA estimated the amount of subsidy conferred on producers of the subject goods by comparing the average export prices of the goods sold to Canada with the CBSA’s estimated costs of production in China. The CBSA estimated the average amount of subsidy to be equal to 26% of the export price of the subject goods. As well, the CBSA considers that the alleged subsidies have benefited 89.5% of the imported subject goods originating in China.

## AMOUNT OF SUBSIDY AND VOLUME OF SUBSIDIZED GOODS

[84] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the amount of subsidy on the goods of a country is insignificant or the actual and potential volume of subsidized goods of a country is negligible, the President must terminate the investigation with respect to that country. Under subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the value of the goods is considered insignificant and a volume of subsidized goods of less than 3% of total imports is considered negligible, the same threshold for the volume of dumped goods.

[85] However, according to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the *WTO Agreement on Subsidies and Countervailing Measures* when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a developing country should be terminated as soon as the authorities determine that the overall level of subsidies granted upon the product in question does not exceed 2% of its value calculated on a per unit basis or the volume of subsidized imports represents less than 4% of the total imports of the like product in the importing Member.

[86] SIMA does not define or provide any guidance regarding the determination of a “developing country” for purposes of Article 27.10 of the *WTO Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance<sup>11</sup>. As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. Therefore, the investigation will be

<sup>11</sup> The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at January 1, 2005, the document is available at [www.oecd.org/dataoecd/23/34/37954893.pdf](http://www.oecd.org/dataoecd/23/34/37954893.pdf).

terminated if the amount of subsidy does not exceed 2% of its value calculated on a per unit basis or if the volume of subsidized goods represents less than 4% of total imports of like goods.

[87] The CBSA used Customs documentation to establish actual import data for all countries for the period of January 1, 2007 to June 30, 2008. On the basis of this information, the volumes of subsidized goods as a percentage of the volume of total imports is estimated as follows:

**Estimated Amount of Subsidy  
January 1, 2007 to June 30, 2008**

Country	Percentage of Total Imports	Estimated Subsidized Goods as % of Country Total	Estimated Subsidized Goods as % of Total Imports	Estimated Amount of Subsidy as % of Export Price
China	43.7%	89.5%	39.1%	26%

[88] The volume of subsidized goods, estimated to be 39.1% of total imports from all countries, is greater than the threshold of 4% and is therefore not considered negligible. The amount of subsidy, estimated to be 26% of the export price, is greater than the threshold of 2% and is therefore not considered insignificant.

### **EVIDENCE OF INJURY**

[89] The Complainants have alleged that the subject goods have been and are being dumped and subsidized, and that such dumping and subsidizing have caused or are threatening to cause material injury to the aluminum extrusions industry in Canada.

[90] SIMA refers to material injury caused to the production of like goods in Canada. The CBSA has accepted that the aluminum extrusions produced by the Complainants are like goods to those imported from China. The CBSA's injury analysis focused on the impact of the allegedly dumped and subsidized goods on the Complainants' production of like goods in Canada.

[91] In support of their allegations, the Complainants have provided evidence of increased volumes of dumped and subsidized goods, reduced market share, price suppression, lost sales, discounted sales, underutilization of capacity, loss of employment and reduced profitability. The Complainants further allege that they are threatened with material injury as a result of competition with the dumped and subsidized goods while anticipating continuing increases in raw materials costs and a declining apparent Canadian consumption.

### **Volume of Dumped and Subsidized Goods**

[92] The Complainants' information shows a continuing trend of rising imports from China. The Complainants' information shows that the volume of import of subject goods from China increased by nearly 27% from 2005 to 2007 and also increased from the first quarter of 2007 to the first quarter of 2008.

## **Reduced Market Share**

[93] During this period of increasing Chinese imports, the Complainants noted that the domestic industry's market share has declined while the Chinese market share has grown from 2005 to 2007.

## **Price Suppression**

[94] The Complainants report that as a result of competition from allegedly dumped and subsidized goods from China they were unable to increase prices during 2007 when production costs increased. Due to the decrease in shipment volumes and the dramatic increases in raw materials costs, high fixed costs of production had to be absorbed by the Complainants over fewer kilograms produced, causing a significant increase in the cost per unit sold. However, during the same period their average selling prices did not increase sufficiently to cover the increases in costs. The Complainants submit that costs are expected to continue to increase through 2008, which will increase the Complainants' average unit costs.

## **Lost Sales**

[95] The Complainants have submitted information documenting several instances where sales to Canadian customers were lost to Chinese imports of the subject goods. The Complainants also provided information detailing the volume of aluminum extrusions in lost sales to particular customers, demonstrating the decline in business. These reports also provide pricing data on the lost sales, as well as the source of those lost sales.

## **Discounted Sales**

[96] The Complainants have submitted information documenting several instances where sales to Canadian customers had to be discounted to meet dumped and subsidized pricing of subject goods imports. Their examples show the difference between dumped and subsidized pricing of subject goods and both the Complainants' original prices and the subsequent competitive Complainants' discounted transaction prices required to retain the orders. The Complainants allege to have lost significant revenues and that this reduction in prices is the direct result of dumped and subsidized imports from China.

## **Underutilization of Capacity**

[97] The Complainants allege that due to the import penetration of the subject goods they have additional unused capacity. The Complainants note that during 2007 they lost several orders of like goods to subject goods imports. They further note that, since they had unused capacity, they could have easily produced and sold all of these lost orders. The Complainants allege that the deterioration in capacity utilization is due to the presence of dumped and subsidized Chinese imports.

## **Loss of Employment**

[98] The Complainants also presented information relating to how the presence of the allegedly dumped and subsidized Chinese imports has impacted the employment at their production facilities.

## **Reduced Profitability**

[99] The Complainants allege that a significant adverse impact on the domestic industry of the various forms of injury referred to above can be seen in their financial performance. The Complainants note that the gross and net income margins on domestic sales have declined in 2007. As a result, they consider their financial performance as a reliable indicator of the impact that the allegedly dumped and subsidized Chinese imports have had on the domestic industry profits.

## **CONCLUSION**

[100] Based on the information provided in the complaint, other available information, and the CBSA's internal data on imports, there is evidence that aluminum extrusions originating in or exported from China have been dumped and subsidized, and there is a reasonable indication that such dumping and subsidizing has caused or is threatening to cause injury to the Canadian industry. As such, dumping and subsidy investigations were initiated on August 18, 2008.

## **SCOPE OF THE INVESTIGATION**

[101] The CBSA will conduct investigations to determine whether the subject goods have been dumped and/or subsidized.

[102] The CBSA has requested information relating to the subject goods imported into Canada from China during the period of July 1, 2007 to June 30, 2008, the selected period of investigation for dumping. The information requested from potential exporters and importers will be used to estimate normal values and export prices and ultimately to determine whether the subject goods have been dumped.

[103] The CBSA has also requested information from producers in several countries not subject to these investigations, namely Chinese Taipei, Malaysia, Mexico and India. This information may be used to determine normal values of the goods in the event that the President of the CBSA forms an opinion that section 20 conditions exist in the aluminum extrusions sector in China.

[104] Information relating to shipments into Canada of the subject goods from January 1, 2007 to June 30, 2008, the selected period of investigation for subsidizing, has been requested from the GOC and the identified exporters. The information requested will be used to determine whether the subject goods have been subsidized and to estimate the amounts of subsidy.

[105] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

## **FUTURE ACTION**

[106] The Canadian International Trade Tribunal (Tribunal) will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the goods has caused or is threatening to cause injury to the Canadian industry. The Tribunal must make its decision within 60 days after the date of the initiation of the investigations. If the Tribunal concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigations will be terminated.

[107] If the Tribunal finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the ongoing CBSA investigations reveal that the goods have been dumped and/or subsidized, the CBSA will make a preliminary determination of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by November 17, 2008. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[108] If, in respect of the named country, the CBSA's investigations reveal that imports of the subject goods have not been dumped or subsidized, that the margin of dumping or amount of subsidy is insignificant or that the actual and potential volume of dumped or subsidized goods is negligible, the investigations will be terminated.

[109] Imports of subject goods released by Customs on and after the date of a preliminary determination of dumping and/or subsidizing may be subject to provisional duty in an amount not greater than the estimated margin of dumping or the estimated amount of subsidy on the imported goods.

[110] Should the CBSA make a preliminary determination of dumping and/or subsidizing, the investigations will be continued for the purpose of making final decisions within 90 days after the date of the preliminary determination.

[111] If a final determination of dumping and/or subsidizing is made, the Tribunal will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The Tribunal is required to make a finding with respect to the goods to which the final determination of dumping and/or subsidizing applies, not later than 120 days after the CBSA's preliminary determination.

[112] In the event of an injury finding by the Tribunal, imports of subject goods released from Customs after that date will be subject to anti-dumping duty equal to the applicable margin of dumping and countervailing duty equal to the amount of any actionable subsidy on the imported goods. Should both anti-dumping and countervailing duties be applicable to subject goods, the amount of any anti-dumping duty may be reduced by the amount that is attributable to an export subsidy.

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[113] When the Tribunal conducts an inquiry concerning 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 an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[114] Should the Tribunal issue such a finding, anti-dumping and countervailing duties may be imposed retroactively on subject goods imported into Canada and released by Customs during the period of 90 days preceding the day of the CBSA making a preliminary determination of dumping and/or subsidizing.

[115] In respect of importations of subsidized goods that have caused injury, however, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy, as explained in the previous section "Evidence of Subsidizing". In such a case, the amount of countervailing duty applied on a retroactive basis will be equal to the amount of subsidy on the goods that is a prohibited subsidy.

## **UNDERTAKINGS**

[116] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[117] Similarly, after a preliminary determination of subsidizing by the CBSA, a foreign government may submit a written undertaking to eliminate the subsidy on the goods exported or to eliminate the injurious effect of the subsidy, by limiting the amount of the subsidy or the quantity of goods exported to Canada. Alternatively, exporters with the written consent of their government may undertake to revise their selling prices so that the amount of the subsidy or the injurious effect of the subsidy is eliminated.

[118] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address, if available, to one of the officers identified in the "Information" section of this document.

[119] If an undertaking were to be accepted, the investigations and the collection of provisional duty would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA's investigations be completed and that the Tribunal complete its injury inquiry.

**PUBLICATION**

[120] Notice of the initiation of these investigations is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

**INFORMATION**

[121] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping and subsidizing. Written submissions should be forwarded to the attention of one of the officers identified below.

[122] To be given consideration in this phase of these investigations, all information should be received by the CBSA by September 24, 2008.

[123] Any information submitted to the CBSA by interested parties concerning these investigations is considered to be public information unless clearly marked "confidential". Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

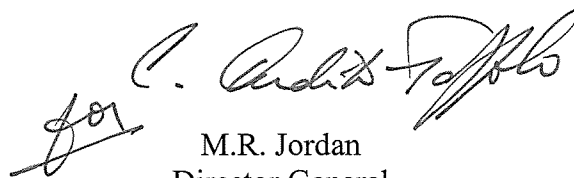
[124] Confidential information submitted to the President will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the Tribunal, any court in Canada, or a WTO/North American Free Trade Agreement dispute settlement panel. Additional information respecting the policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA's Web site.

[125] The investigation schedules and a complete listing of all exhibits and information are available at <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html>. The exhibit listings will be updated as new exhibits and information are made available.



[126] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site 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, 11 <sup>th</sup> Floor Ottawa, Ontario K1A 0L8 CANADA
Telephone	Matthew Lerette      613-954-7398 Robert Wright      613-954-1643
Fax	613-948-4844
E-mail	<a href="mailto:simaregistry@cbsa-asfc.gc.ca">simaregistry@cbsa-asfc.gc.ca</a>
Web site	<a href="http://www.cbsa-asfc.gc.ca/sima">www.cbsa-asfc.gc.ca/sima</a>

  
 M.R. Jordan  
 Director General  
 Trade Programs Directorate

## **APPENDIX I - DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES**

Evidence provided by the Complainants suggests that the Government of China may have provided support to manufacturers of subject goods in the following manner. For purposes of this investigation, "Government of China" (GOC) refers to all levels of government, i.e. federal, central, provincial/state, regional municipal, city, township, village, local, legislative, administrative or judicial. Benefits provided by state-owned enterprises operating under the direct or indirect control or influence of the GOC may also be considered to be provided by the GOC for purposes of this investigation.

### **1. Special Economic Zone (SEZ) Incentives and other Designated Areas**

In its *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement to the World Trade Organization (WTO notification)*, China identified the following programs:

- Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area);
- Preferential tax policies for enterprises with foreign investment established in the costal economic open areas and in the economic and technological development zones;
- Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai;
- Preferential tax policies in the Western Regions.

In addition, there is information that the GOC may also be providing various benefits and incentives to enterprises in China located within SEZs and other designated areas. The various benefits and incentives are as outlined below:

- Corporate Income Tax Exemption and/or Reduction;
- Local Income Tax Exemption and/or Reduction;
- Exemption/reduction of special land tax and land use fee;
- Tariff and Value-added Tax (VAT) exemptions on imported materials and equipments;
- Income Tax Refund where Profits Re-Invested;
- Preferential costs of services or goods provided by government bodies or state-owned enterprises.

### **2. Grants**

There is information that the GOC may be providing grants to enterprises in China under the following identified programs:

- The State Key Technology Renovation Projects;
- Reimbursement of Antidumping and/or Countervailing Legal Expenses by the Local Governments;

- Grant for Key Enterprises in Equipment Manufacturing Industry;
- Export Assistance Grant;
- Research & Development Assistance Grant;
- Innovative Experimental Enterprise Grant;
- Superstar Enterprise Grant;
- Inward Remittance of Export Earnings;
- Matching Funds for International Market Development for SMEs;
- Interest Subsidies for Loans Secured by Tax Refund Accounts;
- Special Support Fund for Non-State-Owned Enterprises (NSOEs);
- State Fund with Interest Discount;
- State Fund for R&D Technology Projects;
- Innovation Fund for Medium and Small Business;
- Provincial Scientific Development Plan Fund;
- Technical Renovation Loan Interest Discount Fund;
- One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”;
- Special Project Support Fund;
- Special Funds for Foreign Economic and Technical Cooperation;
- Export Brand Development Fund;
- Special Fund for Brand Development;
- Key Export Enterprise Assistance Fund;
- Support Fund for Key Commercial and Industrial Enterprises;
- Venture Investment Fund of Hi-Tech Industry;
- National Innovation Fund for Technology Based Firms;
- Guangdong – Hong Kong Technology Cooperation Funding Scheme;
- Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.

### **3. Equity Infusions/Debt-to-Equity Swaps**

There is information that certain enterprises in China have received equity infusions and been involved in debt-to-equity swaps.

### **4. Preferential Loans**

There is information that the GOC may be providing preferential loans to enterprises in China under the following programs:

- Loans and Interest Subsidies provided under the Northeast Revitalization Program;
- Loan Guarantee Fund for Small and Medium Enterprises;
- Interest-Free Loans to High and New Technology Projects.

## 5. Preferential Income Tax Programs

In its WTO notification, China identified the following programs:

- Preferential Tax Policies for Foreign-Invested Enterprises (FIE);
- Preferential Tax Policies for Foreign-Invested Export Enterprises;
- Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive;
- Preferential tax policies for the research and development of foreign-invested enterprises;
- Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipment;
- Preferential tax policies for domestic enterprises purchasing domestically produced equipment for technology upgrading purpose.

There is information that the GOC may be providing tax benefits to enterprises in China under the following programs:

- Local Income Tax Exemption and/or Reduction;
- Income Tax Refund for Re-investment of FIE Profits by Foreign Investors;
- VAT and income tax exemption/reduction for enterprises adopting debt-to-equity swaps.

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

In its WTO notification, China identified the following program:

- Exemption of tariff and import VAT for the imported technologies and equipment.

## 7. Reduction in Land Use Fees

There is information that the GOC may be providing a reduction in land use fees to enterprises in China.

## 8. Purchase of Goods/Services from State-owned Enterprises

There is information that the GOC may be providing goods and/or services other than general infrastructure to enterprises in China. These goods and/or services other than general infrastructure may be provided directly by the GOC or indirectly by state-owned enterprises.

There is information that suggests that producers may be purchasing inputs from state-owned enterprises (SOE) at prices below fair market value (i.e. below what the purchaser would pay at arms length from non-SOE suppliers). Based on information available, the GOC may also be providing favourable utility and energy rates to producers in China.

## Determinations of Subsidy and Specificity

On the basis of available information, the programs identified under SEZ and Other Designated Areas Incentives, the various Preferential Income Tax Programs, Relief from Duties and Taxes on Materials and Machinery, Reduction in Land Use Fees, and the provision of Preferential Loans, would likely constitute 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 would confer a benefit to the recipient equal to the amount of the reduction/exemption.

Equity Infusions/Debt to Equity Swaps would likely constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA in that it involves the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities, and pursuant to paragraph 2(1.6)(b) of SIMA, amounts owing and due to the government are forgiven or not collected.

Purchase of goods from state-owned enterprises would likely constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA as it involves provision of goods or services, other than general governmental infrastructure.

Preferential tax rates provided to certain types of enterprises or limited to enterprises located in certain areas, Relief from Duties and Taxes on Materials and Machinery, Reduction in Land Use Fees, and provision of Preferential Loans would be considered specific pursuant to paragraph 2(7.2)(a) of SIMA.

The Equity Infusion/Debt-to-Equity Swaps and the provision of goods/services would be considered specific in that the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available. On the basis of available information, equity infusions in the form of debt-to-equity swaps have been provided predominantly, if not exclusively to a limited number of SOEs and this would constitute a specific subsidy pursuant to subsection 2 (7.3) of SIMA.