



OTTAWA, October 5, 2010

STATEMENT OF REASONS

Concerning the initiation of investigations into the dumping and subsidizing of

**CERTAIN METAL BAR GRATING OF CARBON, ALLOY OR STAINLESS STEEL
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 September 20, 2010, respecting the alleged injurious dumping and subsidizing of certain metal bar grating of carbon, alloy or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China.

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 August 3, 2010, the Canada Border Services Agency (CBSA) received a written complaint from Fisher & Ludlow Ltd. of Burlington, Ontario (the Complainant) alleging that imports into Canada of metal bar grating of carbon, alloy or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, (certain steel grating), originating in or exported from the People's Republic of China (China) are being injuriously dumped and subsidized and causing injury or threatening to cause injury to the Canadian industry.

[2] On August 20, 2010, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. On the same date, the CBSA notified the Government of China (GOC) that a properly documented complaint had been filed with the CBSA and the GOC was also provided with the non-confidential version of the subsidy portion of the complaint, which excluded sections dealing with normal value, export price and margin of dumping.

[3] The Complainant provided evidence to support the allegations that certain steel grating 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 September 16, 2010, consultations were held with the GOC in Ottawa, 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 portion of the complaint.

[5] On September 20, 2010, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated the investigations respecting the dumping and subsidizing of certain steel grating from China.

INTERESTED PARTIES

Complainant

[6] The Complainant is a major producer of certain steel grating in Canada. The Complainant manufactures certain steel grating in Canada at its facility in Burlington, Ontario and at its facility in Wetaskiwin, Alberta.

The name and address of the Complainant is:

Fisher & Ludlow Ltd.
750 Appleby Line
Burlington, Ontario
L7L 2Y7

[7] There is one other known Canadian producer of certain steel grating, Borden Metal Products (Canada) Ltd. (“Borden”) in Beeton, Ontario. Borden is not a Complainant but fully supports the complaint filed by Fisher & Ludlow Ltd. of Burlington, Ontario (as expressed in Borden’s letter to the CBSA dated September 7, 2010).

Exporters

[8] The CBSA identified 65 potential exporters of the subject goods from CBSA import documentation and from information submitted in the complaint.

Importers

[9] The CBSA has identified 59 potential importers of the subject goods from CBSA import documentation and from information submitted in the complaint.

Government of China

[10] 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 China.

PRODUCT INFORMATION

Definition

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

Metal bar grating of carbon, alloy, or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People’s Republic of China.

Additional Product Information¹

[12] The subject goods can be referred to as “metal bar grating”, “steel grating” or simply “bar grating”. The goods are sold in “panel” or “mat” form, produced as either standard bar grating or heavy-duty bar grating. Standard bar grating is manufactured in Canada according to American National Standards Institute (“ANSI”) and National Association of Architectural Metal Manufacturers (“NAAMM”) MBG 531 specifications with maximum bearing bar thickness of 3/16 inches ((4.76 millimeters (mm))). Heavy duty bar grating is made according to

¹ Complaint Narrative, Section 2.2, 2.3 and 2.4, pages 3-5

ANSI/NAAMM MGB 532 specifications with maximum bearing bar thickness of 3/8 inches (9.53mm).

[13] The “mats” or “panels” are typically made in standardized sizes and the most common panel size is 3 feet (.91 meters) wide by 24 feet (7.32 meters) long. In accordance with the ANSI/NAAMM specifications referred to, the size of the bearing bars usually ranges from 1/8” (3.18mm) thickness and 3/4” (19.05 mm) in depth (width) to 3/8” (9.53mm) thickness and 5” (127 mm) in depth (width), depending on the load requirements.

[14] In addition to ANSI/NAAMM specifications, the subject goods may be produced to other recognized standards, such as Chinese, U.K. and Australian specifications².

[15] The subject goods may be imported and sold even if not made or certified to the ANSI/NAAMM or other recognized standards. Non-certified product includes secondary material or other kinds of “non-spec” grating. These goods lack the requisite mill tests or other proof of compliance with international standards.

[16] The subject goods do not include: (1) expanded metal grating comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded and not consisting of welding or joining of multiple pieces of steel; and (2) plank-type safety grating comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, pierced and cold formed and without welding or joining of multiple pieces of steel.

[17] Subject goods produced by different manufacturing processes (welding, hydraulic pressing or riveting) are fully interchangeable. Hydraulically-produced or riveting-produced gratings are substitutable in every respect for grating produced by welding processes and vice-versa. They have the same or comparable physical and mechanical properties in accordance with the international standards and specifications described earlier.

[18] Subject goods have a multitude of load-bearing end uses, including industrial flooring, walkways, mezzanines, stairways, trenches, highway signs platforms and fire escapes. Primary markets are large-scale oil production structures and systems, electric power generating plants, steel mills, cement plants, saw mills, pulp and paper mills, mining, automotive plants and other industrial facilities. Although primarily used in large industrial projects, commercial and residential applications for these goods are also commonplace.

Production Process³

[19] The goods are manufactured on specialized machinery which involves the joining of two components to form a section of grating into a “panel” or “mat”. The main components of the panel are: (1) bearing bars which extend across the length of the grating section; and (2) cross-bars which extend across the bearing bars perpendicular to the bearing bars. The joining of

² The goods are produced in China in accordance with the foregoing ANSI/NAAMM specifications as well as other standards, including: YB/T 4001.1-2007 (China), BWS4592 (U.K.) and AS-1657 (Australia).

³ Complaint Narrative, Section 2.5, pages 6-9

the bearing bars and cross-bars is commonly done through welding, although riveting and hydraulic joining processes may also be used, as described below.

[20] Manufacturing generally includes three phases: slitting, forming/welding or other methods of joining and finishing.

[21] Slitting: The first phase involves the sizing of the “panel” or “mat”. Hot-rolled steel coils used for the main bearing bars are unrolled and slit lengthwise into the appropriate width and then cut into the appropriate length. Flat steel bars may also be used, pre-cut to the prerequisite lengths and widths. Steel bars or rods used as the cross-bars are also cut to size. For grating that utilizes twisted cross-bars, the rod or bar may be placed into a twisting machine and physically twisted before being cut to length. As with the length-wise bearing bars, pre-cut and pre-twisted steel cross rods may be employed.

[22] Forming/Welding: The bearing bars are placed into a setter which ensures the bars are properly spaced. The bars are then run through a high-voltage electrical welder which heats the same spot across each of the bearing bars to high heat. Immediately after heating, the cross-bars are machine-pressed into the heated bearing bars. The pressing of the cross-bars into the bearing bars completes the welding process, forming the semi-finished steel grating in the form of a “panel” or a “mat”. Following this step, the mat undergoes testing and inspection to ensure the integrity of the weldments, that the product possess proper tensile strength, that the bearing bars are aligned correctly and that the panel as a whole can withstand load tolerances.

[23] Other joining methods: (1) In “pressure-locked” grating, a form of hydraulic pressing, the bearing bars and cross-bars are hydraulically pressed together to create a secure bond between the bearing bars and the cross bars. (2) In “swage-locked” grating, a form of hydraulic pressing, the cross-bars are hydraulically driven through the bearing bars (usually through the center). (3) In the riveting process, reticulated cross-bars are riveted to the bearing bars. The bearing bars are pre-punched with a round hole prior to being placed in the jig. The cross bar is pressed into a "W" shape and placed between the bearing bars. The height of the "W" becomes the bar spacing. A rivet is used at the apex of the "W" through the hole that was punched in the bearing bar to lock the cross bar to the bearing bar.

[24] The production processes for hydraulic pressed grating and riveted grating are similar to welded grating. In each case, the longitudinal bearing bars are placed in a jig that holds the bars in place. The cross-bars are then joined to the bearing bars through each of the various processes: welding, pressing and/or riveting. Hydraulic pressing and riveting are older forms of production, are more labour intensive, and entail larger material costs than welding.

[25] Finishing: The final phase may involve painting, galvanizing or end finishing. Painted panels are dipped into a bath of lacquer and then air dried. Galvanized panels are dipped into an electrolytically charged bath of zinc to protect against corrosion. End finishing operations may include the addition of end bands, small weldments or basic cut-outs.

Classification of Imports

[26] The subject goods are normally classified under the following 13 Harmonized System (HS) classification codes:

7308.90.90.10	7308.90.90.20
7308.90.90.30	7308.90.90.40
7308.90.90.50	7308.90.90.60
7308.90.90.91	7308.90.90.92
7308.90.90.93	7308.90.90.94
7308.90.90.95	7308.90.90.96
7308.90.90.99	

[27] The listing of HS codes is for convenience of reference only. The HS codes listed may include non-subject goods. Also, subject good may fall under HS codes that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

LIKE GOODS

[28] 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.

[29] Certain steel grating produced by the Canadian industry competes directly with and have the same end uses as the subject goods imported from China. Certain steel grating produced in Canada and China are completely substitutable. Therefore, the CBSA has concluded that the certain steel grating produced by the Canadian industry constitutes like goods to the subject goods.

[30] Subject and like goods cannot be subdivided into classes. They are made from the same input materials: carbon, alloy, or stainless steel. Although certain steel grating can be produced via different manufacturing processes (welding, hydraulic pressing or riveting), they are fully interchangeable. Whether subject or like goods, when sold, certain steel grating is sold in the same channels of distribution, to the same types of customers and in many cases, to the same customers. All subject and like goods form one class of goods.

THE CANADIAN INDUSTRY

[31] The Complainant is estimated to account for more than half of the entire domestic production of certain steel grating.

[32] The only other identified Canadian producer, Borden Metal Products (Canada) Ltd., officially stated their position of fully supporting the complaint filed by the Complainant in their letter dated September 7, 2010.

Standing

[33] SIMA requires that no investigation may be initiated as a result of a complaint unless:

- 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.

[34] Based on an analysis of information provided in the complaint, as well as other information gathered by the CBSA, the President is satisfied that the standing requirements of subsection 31(2) of SIMA have been met by the Complainant.

CANADIAN MARKET

[35] The Complainant stated that certain steel grating, which is either domestically produced or imported, is sold to distributors, service centres or directly to end-users. Steel service centers re-sell certain steel grating to end-users along with many other steel products or re-sell certain steel grating to metal fabricators to fabricate or modify a steel structure. Some sales are made directly to large construction projects without passing through a distributor. The market for certain steel grating is primarily large-scale oil production structures, power generating plants, steel mills, pulp and paper mills, saw mills, cement plants, automotive plants and other industrial plants. Certain steel grating is also sold for commercial and residential applications.

[36] The Complainant provided estimates respecting the Canadian market for certain steel grating. These estimates are based on their own domestic sales, on market intelligence from their knowledge of the Canadian and US markets, and on publicly available information.

[37] The CBSA conducted its own analysis of imports of certain steel grating under the applicable Harmonized System classification codes based on actual import data from CBSA documentation.

[38] A review of CBSA import data demonstrated that import volumes of subject goods from China have been increasing and are not negligible. The CBSA's import trend analysis also bears similar results as those provided by the Complainant.

[39] Detailed information regarding the volume of subject imports and domestic production cannot be divulged for confidentiality reasons. The CBSA has prepared the following table to show the estimated import share of subject steel grating in Canada.

CBSA Estimates of Import Share
(By Volume)

Country	2007	2008	2009	Q1-Q2 2010
Imports China	4.19%	6.20%	10.89%	28.51%
Imports U.S.A.	95.81%	93.80%	87.73%	70.40%
Other Country Imports	0.00%	0.00%	1.38%	1.09%
Total Imports	100%	100%	100%	100%

EVIDENCE OF DUMPING

[40] The Complainant alleges that subject goods from China have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

[41] Normal value is generally based on the domestic selling price of like 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.

[42] 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.

[43] The Complainant's allegations of dumping are based on a comparison of an estimated normal value of the allegedly dumped goods with two estimated export prices to Canada.

[44] The CBSA's analysis of the alleged dumping is based on a comparison of the CBSA's estimated normal value with the estimated export price. The information used to estimate the export price was obtained from CBSA documentation.

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

Normal Value

[46] Normal value was estimated by the Complainant in accordance with section 19 of SIMA based on the estimated costs of like goods in China plus an amount for profits. The estimated costs for raw materials (i.e. hot-rolled steel) were derived from various industry reports and publications, adjusted for VAT and freight costs. The estimated conversion costs for producing certain steel grating from the raw materials were based on an estimated percentage of the Complainant's conversion costs for producing certain steel grating while the conversion cost ratio was derived from industry reports. The estimated amount for profits was the Complainant's conservative and reasonable estimate taking into account all available information.

[47] The Complainant's analysis appears to be conservative and reasonable in nature. As well, the Complainant provided the reference materials upon which their estimates were based.

[48] In estimating normal value, the CBSA used the Complainant's submission as the basis for its estimate, and then updated the hot-rolled steel prices with the prices for the quarter ending June 30, 2010 from *Steel Benchmark*⁴.

[49] The CBSA did not have any information to perform an estimate of normal value based on domestic sales of like goods in China.

Export Price

[50] The export price of goods sold to an importer in Canada 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.

[51] The Complainant estimated export prices using two methods. For the first method, in accordance with section 24 of SIMA, the Complainant used an actual quoted price received from a Chinese exporter. For the second method, in accordance with section 25 of SIMA, the Complainant used a deductive methodology to estimate an export price, beginning with an importer's quoted price, the Complainant deducted from this price charges that this price would be expected to cover and worked back to an FOB China ex-factory price. The charges include sales tax, the importer's profit, ocean freight, inland delivery costs and inland freight in China. In light of what was provided and reasonably available to the Complainant, the CBSA found the Complainant's estimates to be acceptable.

[52] In estimating export price, the CBSA used actual import data from its internal information system and documentation to arrive at estimated export prices of the allegedly dumped and subsidized goods.

[53] The CBSA reviewed and selected sales to Canada by the identified alleged Chinese exporters for the period of January 1, 2009 to June 30, 2010.

[54] After these sales transactions were sampled and confirmed to be sales of subject goods originating in China, they served as the basis for the CBSA to estimate the export price.

Estimated Margins of Dumping

[55] The CBSA estimated the margin of dumping by comparing its estimate of the normal value with the export prices obtained from actual CBSA import data.

⁴ Steel Benchmark prices have been used in prior CBSA cases and have been deemed reliable to establish the fair market value of hot-rolled steel in Mainland China.

[56] Based on the analysis, it is estimated that 76%, by volume, of the subject goods from China were dumped. The overall weighted average margin of dumping is estimated to be 21%, expressed as a percentage of the export price.

MARGIN OF DUMPING AND VOLUME OF DUMPED GOODS

[57] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied in respect of some or all of those goods that:

- i. There is insufficient evidence of dumping or subsidizing to justify proceeding with the investigation,
- ii. The margin of dumping of, or the amount of subsidy on, the goods of that country or of any of those countries is insignificant, or
- iii. The actual and potential volume of dumped and subsidized goods is negligible

The President shall cause the investigation to be terminated with respect to the goods in respect of which the President is so satisfied.

[58] 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.

[59] On the basis of the estimated margin of dumping and the import data for the period of January 1, 2009 to June 30, 2010, summarized in the table below, the estimated margin of dumping is not insignificant and the estimated volume of dumped goods is not negligible.

**ESTIMATED MARGIN OF DUMPING AND IMPORTS OF SUBJECT STEEL
GRATING**

January 1, 2009 to June 30, 2010

Country	Estimated share of Total Imports by volume	Estimated Dumped Goods as % of Total Imports by volume	Estimated Margin of Dumping as % of Export Price
China	18%	14%	21%
USA	80.8%	N/A*	N/A*
Other Countries	1.2%	N/A*	N/A*
Total Imports	100%	N/A*	N/A*

*N/A indicates Not Applicable.

EVIDENCE OF SUBSIDIZING

[60] Under section 2 of SIMA, a subsidy exists where 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 is also 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.

- [61] 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.

[62] Where a subsidy is found to exist, it may be subject to countervailing measures when 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.

[63] 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.

[64] 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.

[65] The Complainant has alleged that the subject goods originating in China have benefited from actionable subsidies provided by various levels of the 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 their allegations, the Complainant has provided and/or referenced documents such as the CBSA’s Statements of Reasons for various investigations,⁵ a US countervailing duty investigation,⁶ relevant Chinese laws and regulations, media sources, government reports and independent reports, analyses and studies.⁷

[66] Due to the scarcity of publicly available detailed information regarding subsidy programs in China, the Complainant was unable to provide exhaustive information regarding all subsidy programs. Instead, the Complainant provided all information that was reasonably available to support the allegations.

Programs Being Investigated

[67] In reviewing the information provided by the Complainant and obtained by the CBSA through its own research, the CBSA has developed a list of programs and incentives that may be provided to manufacturers of the subject goods in China. This list is contained in **Appendix I**. It was determined with the available information, that there is sufficient reason to believe that these

⁵ Complaint narrative, Section 7.2, pages 40 - 43.

⁶ Complaint narrative, Section 7.2, page 44 and Annex Volume 3 of the complaint contains certain documents pertaining to the US Commerce Department’s investigation concerning certain steel grating from China.

⁷ Complaint, Annex Volume 4.

programs may constitute actionable subsidies provided by the GOC and that the exporters and producers of the subject goods may benefit from these programs.

[68] Under section 2 of SIMA, “prohibited subsidy” means a subsidy that is prohibited by virtue of being an export subsidy, 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

[69] 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.

[70] As well, the President is satisfied that there is sufficient evidence indicating that the exporters of subject goods may receive subsidies in the form of grants, preferential loans, relief from duties or taxes, and provision of goods and services which provided a benefit and that are not generally granted to all companies in China.

[71] The CBSA will investigate whether such programs constitute actionable subsidies.

Programs Not Being Investigated

[72] The following alleged subsidy program was identified by the Complainant under the category of “Preferential Income Tax Programs”. Based on the CBSA's analysis, this subsidy programs will not form part of this investigation:

1. Stamp Exemption on Share Transfers under Non-tradable Share Reform

[73] Under this reform, there is a stamp duty exemption on transfers of equity as consideration from non-tradable shareholders to tradable shareholders. This transaction pertains to the tax implications of transfers of equity between shareholders of the company and does not represent a benefit to the company itself. Therefore, this is a “non-actionable” subsidy.

[74] The above-mentioned program will not be investigated by the CBSA.

Estimated Amount of Subsidy

[75] The Complainant alleged that these subsidy programs significantly lower the cost of production of the subject goods; however, the Complainant was unable to accurately assess the value of the alleged subsidies on a per-unit basis, due to a scarcity of available information.

[76] For purposes of this initiation, the CBSA estimated the amount of subsidy conferred on producers of the allegedly subsidized goods by comparing the estimated cost of production used in the calculation of the CBSA's estimate of normal value to the sales prices of export transactions concerning the alleged exporters, as reported in customs documentation.

[77] The CBSA's analysis of the information indicates that 74% of the subject goods imported into Canada during the period from January 1, 2009 to June 30, 2010, were subsidized and that the estimated weighted average amount of subsidy is equal to 16% of the export price of the subject goods.

Amount of Subsidy and Volume of Subsidized Goods

[78] 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 shall cause the investigation to be terminated with respect to those goods. 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.

[79] 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.

[80] 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 guidance⁸. 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 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.

NEGLIGENCE TEST AS PER IMPORT ENTRY ANALYSIS January 1, 2009 to June 30, 2010

Country	Imports of Subject Goods as %	Estimated Subsidized Goods as % of Country Total	Estimated Subsidized Goods as % of Total Imports	Estimated Amount of Subsidy % of Export Price
China	18%	74%	13%	16%
Total Imports	100%			

[81] The CBSA performed cursory negligibility and insignificance tests based on the available data, as shown above. The volume of subsidized goods, estimated to be 13% of total imports

⁸ The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at January 1, 2006, the document is available at www.oecd.org/dataoecd/23/34/37954893.pdf.

from all countries, is greater than the threshold of 4% and is therefore not considered negligible. The amount of subsidy, estimated to be 16% of the export price, is greater than the threshold of 2% and is therefore not considered insignificant.

Subsidy Conclusion

[82] Information provided in the complaint, the CBSA's own research, and information available through public documents indicates that subsidy programs exist in China that confer benefit to persons engaged in the production, manufacture, processing, purchase, distribution, transportation, sale, export or import of certain steel grating. Furthermore, the information available indicates that, the volume of allegedly subsidized goods imported into Canada is not negligible and the amount of subsidy is not insignificant. Consequently, the President is satisfied that sufficient grounds are present to warrant the initiation of a subsidy investigation.

[83] 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.

EVIDENCE OF INJURY

[84] The Complainant alleges that the subject goods have been dumped and subsidized, and that such dumping and subsidizing has caused and is threatening to cause injury to the certain steel grating industry in Canada. In support of its allegations, the Complainant provided evidence of increased volume of dumped and subsidized imports, lost sales, price erosion and price suppression, decline in financial performance, reduced market share and underutilization of capacity.

Increased Volume of Dumped and Subsidized Imports

[85] The Complainant's information shows a continuing trend of rising imports from China, which increased its market share by volume in Canada from .03% in 2006, to .20% in 2007, to 3.4% in 2008, to 8.8% in 2009 and to 15% in the first three months of 2010⁹.

[86] This data is also supported by the CBSA's review of customs data. Import data collected by the CBSA shows comparable trends to those provided by the Complainant in terms of relative share of imports in comparison to other countries and total share of imports.

Lost Sales

[87] The Complainant submitted an import activity report¹⁰ documenting specific instances of lost sales to alleged dumped and subsidized Chinese imports.

⁹ Complaint Narrative, Section 8.1, page 48

¹⁰ Complaint, Annex Volume 5, tab 4

Price Erosion and Price Suppression

[88] The Complainant states that the prices of allegedly dumped and subsidized goods have continually been lower than Canadian prices since 2006 and that the prices were significantly eroded and suppressed starting in 2008¹¹.

[89] The average import price of Chinese goods sold to Canada was significantly lower than the Complainant's average price for 2008, 2009 and the first quarter of 2010.

[90] As a result of increased Chinese imports into Canada and undercutting prices, the Complainant's average selling prices decreased.

[91] The Complainant provided documentation highlighting instances where prices were suppressed or where the Complainant was forced to lower prices or lose sales in response to alleged dumped/subsidized imports from China.

Decline in Financial Performance

[92] The Complainant alleges that the significant adverse impact on the domestic industry due to the various forms of injury has translated into a decline in their financial performance¹².

[93] The information provided by the Complainant shows that gross margins decreased significantly from January 2008 to Q1-2010. Also, the information provided shows a decrease in sales volume from January 2008 to Q1-2010.

[94] The information provided by the Complainant shows that the impact on gross margins was most evident in Western Canada where Chinese imports are allegedly more substantial.

[95] The reduction in profitability occurred at the same time that the Complainant estimated that Chinese imports into Canada of allegedly dumped and subsidized goods increased substantially.

Reduced Market share

[96] From January 2006 to March 2010, the Complainant noted that the domestic producers' market share has declined. The Complainant's market share decreased from 2008 to 2009 and decreased again in the first three months of 2010¹³.

Underutilization of Capacity

[97] The Complainant reported that total capacity utilization declined from 2008 to 2009, and again from 2009 to Q1-2010. The Complainant also reported that for production related to

¹¹ Complaint Narrative, Section 8.2, pages 50-52

¹² Complaint Narrative, Section 8.3, pages 52-55

¹³ Complaint Narrative, Section 8.1, page 48

domestic sales alone, the capacity utilization declined significantly from January 2008 to March 2010¹⁴.

THREAT OF INJURY

[98] In light of the recent decisions by the *United States International Trade Commission* (ITC) and the *United States Department of Commerce* (DOC) concerning goods of the same description as the goods of concern in this complaint, the Complainant has indicated that there is a threat of diversion of US-bound goods coming to Canada. The Complainant alleges the diversion of these goods to Canada could pose significant threats of injury to the Canadian industry. The Complainant provided supporting documentation for the alleged divergence.

[99] The Complainant alleges that the large size of the Chinese production capacity and the freely-disposable capacity also pose significant threats of injury to the Canadian industry.

[100] The Complainant states that the large size of the Chinese production capacity and the freely-disposable capacity can easily flood the Canadian market.

CAUSAL LINK DUMPING/SUBSIDIZING AND INJURY

[101] The President finds that the Complainant has provided sufficient evidence that there is a reasonable indication that it has suffered injury due to the alleged dumping and subsidizing of the goods imported into Canada. There is a reasonable indication that the injury it has suffered, in terms of increased volume of dumped and subsidized imports, lost sales, price erosion and price suppression, decline in financial performance, reduced market share, and underutilization of capacity is related to the price advantage the alleged dumping and subsidizing has produced between the Chinese imports and the Canadian produced goods. Evidence has also been provided by the Complainant to establish this link. The Complainant has indicated that the continued alleged dumping and subsidizing in relation to goods exported from China would cause further injury in the future. In summary, the information provided in the complaint has established a reasonable indication that the alleged dumping and subsidizing has caused injury and is threatening to cause injury.

CONCLUSION

[102] Based on information provided in the complaint, other available information, and the CBSA's internal data on imports, there is evidence that certain steel grating originating in or exported from China has 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 a result, based on the evidence, the President initiated dumping and subsidy investigations on September 20, 2010.

¹⁴ Complaint Narrative, Section 8.5, page 57

SCOPE OF THE INVESTIGATION

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

[104] The CBSA has requested information relating to the subject goods imported into Canada from China during the period of July 1, 2009 to June 30, 2010, the selected period of investigation for dumping. The information requested from identified exporters and importers will be used to estimate normal values and export prices and ultimately to determine whether the subject goods have been dumped.

[105] Information relating to shipments into Canada of the subject goods from January 1, 2009 to June 30, 2010, 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.

[106] Importers, exporters, and the GOC have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

FUTURE ACTION

[107] 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 of 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.

[108] 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 President will make a preliminary determination of dumping and/or subsidizing within 90 days of the date of the initiation of the investigations, by December 20, 2010. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[109] 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.

[110] Imports of subject goods released by the CBSA 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.

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

[112] 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.

[113] In the event of an injury finding by the Tribunal, imports of subject goods released by the CBSA 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

[114] 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.

[115] 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 the CBSA during the period of 90 days preceding the day of the CBSA making a preliminary determination of dumping and/or subsidizing.

[116] 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

[117] 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.

[118] 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.

[119] 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.

[120] 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

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

INFORMATION

[122] 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.

[123] To be given consideration in this phase of these investigations, all information should be received by the CBSA by **October 27, 2010**.

[124] Any information submitted to the CBSA by interested parties concerning these investigations is deemed 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.

[125] 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/NAFTA dispute settlement panel. Additional information respecting the Program’s 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.

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

[127] 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:

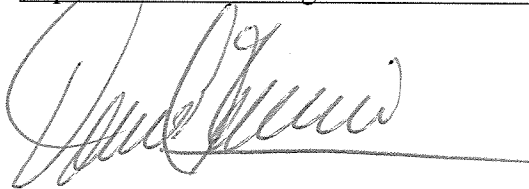
Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th floor
Ottawa, ON K1A 0L8
Canada

Telephone: Ian Gallant 613-954-7186
Gilles Bourdon 613-954-7262

Fax: 613-948-4844

E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html/>.



Daniel Giasson
Director General
Anti-dumping and Countervailing Directorate

APPENDIX I - DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES

Evidence provided by the Complainant 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.

Special Economic Zone (SEZ) Incentives and Other Designated Areas

Program 1: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)

Program 2: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones

Program 3: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai

Program 4: Corporate Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas

Program 5: Local Income Tax Exemption and/or Reduction in SEZs and Other Designated Areas

Program 6: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas

Program 7: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and Other Designated Areas

Program 8: Income Tax Refund where Profits Re-invested in SEZs and Other Designated Areas

Program 9: Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas

Grants

Program 10: The State Key Technology Renovation Projects

Program 11: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments

Program 12: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin

Program 13: Supportive Fund Provided by the Government of Xuyi County, Jiangsu Province

Program 14: Repaying Foreign Currency Loan by Returned VAT

Program 15: Government Export Subsidy and Product Innovation Subsidy

Program 16: Export Assistance Grant

Program 17: Research & Development (R&D) Assistance Grant

Program 18: Innovative Experimental Enterprise Grant

Program 19: Superstar Enterprise Grant

Program 20: Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”

Program 21: Export Brand Development Fund

Program 22: Provincial Scientific Development Plan Fund

Program 23: Technical Renovation Loan Interest Discount Fund

Program 24: Venture Investment Fund of Hi-Tech Industry

Program 25: National Innovation Fund for Technology Based Firms

Program 26: Guangdong - Hong Kong Technology Cooperation Funding Scheme

Program 27: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment

Program 28: Five Points, One Line Strategy in Liaoning Province

Program 29: Innovative Small and Medium-Sized Enterprise Grants

Program 30: Product Quality Grant

Program 31: Changzhou Qishuyan District Environmental Protection Fund

Program 32: 2007 Technology Innovation Award

Program 33: 2007 & 2008 Energy-Saving Fund

Program 34: Enterprise Innovation Award of Qishuyan District

Program 35: Energy-Saving Technique Special Fund

Program 36: 2008 Water-Saving Technique Assistance

Program 37: Grants to Privately-Owned Export Enterprises

Program 38: Grants for Export Activities

Program 39: Grants for International Certification

Program 40: Liaoning High-Tech Products & Equipment Exports Interest Assistance

Program 41: Income Tax Refund for Enterprises Located in Tianjin Jinnan Economic Development Area

Program 42: Enterprise Technology Centers of Tianjin City and Jinnan District

Program 43: Jiulong Lake Town Grant 2008

Program 44: Energy Saving Grant 2008

Equity Programs

Program 45: Debt-to-Equity Swaps

Program 46: Exemptions for SOEs from Distributing Dividends to the State

Preferential Loans

Program 47: Loans and Interest Subsidies Provided Under the Northeast Revitalization Program

Preferential Income Tax Programs

Program 48: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years

Program 49: Preferential Tax Policies for Foreign Invested Export Enterprises

Program 50: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive

Program 51: Preferential Tax Policies for the Research and Development of FIEs

Program 52: 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

Program 53: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipments for Technology Upgrading Purpose

Program 54: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors

Program 55: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps

Program 56: Corporate Income Tax Reduction for High-New Technology Enterprises

Relief from Duties and Taxes on Materials and Machinery

Program 57: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment

Program 58: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

Reduction in Land Use Fees

Program 59: Reduction in Land Use Fees

Goods/Services Provided by Government at Less than Fair Market Value

Program 60: Input Materials Provided by Government at Less than Fair Market Value

Program 61: Electricity Provided by Government at Less than Fair Market Value

DETERMINATIONS OF SUBSIDY AND SPECIFICITY

Available information indicates that the programs identified under: *SEZ and Other Designated Areas Incentives; Preferential Loans; Preferential Income Tax Programs; Relief from Duties and Taxes on Materials and Machinery; and Reduction in Land Use Fees*, would likely constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

Grants and Equity Programs would likely constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA in that they involve 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 as amounts owing and due to the government that are forgiven or not collected.

Goods/Services Provided by Government at Less than Fair Market Value would likely constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure.

Benefits provided to certain types of enterprises or limited to enterprises located in certain areas under program categories: *SEZ and Other Designated Areas Incentives; Preferential Loans; Preferential Income Tax Programs; Relief from Duties and Taxes on Materials and Machinery; and Reduction in Land Use Fees*, would likely be considered specific pursuant to paragraph 2(7.2)(a) of SIMA.

As well, *Grants, Equity Programs and Goods/Services Provided by Government at Less than Fair Market Value* would likely be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.