



Canada Border
Services Agency Agence des services
frontaliers du Canada

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OTTAWA, May 9, 2012

STATEMENT OF REASONS

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

**CERTAIN STAINLESS STEEL SINKS ORIGINATING IN OR EXPORTED FROM THE
PEOPLE'S REPUBLIC OF CHINA**

DECISION

On April 24, 2012, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency made final determinations of dumping and subsidizing respecting stainless steel sinks with a single drawn bowl having a volume between 1,600 and 5,000 cubic inches (26,219.30 and 81,935.32 cubic centimetres) or with multiple drawn bowls having a combined volume between 2,200 and 6,800 cubic inches (36,051.54 and 111,432.04 cubic centimetres), excluding sinks fabricated by hand, originating in or exported from the People's Republic of China.

Cet énoncé des motifs est également disponible en français.
This Statement of Reasons is also available in French.

Canada

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SUMMARY OF EVENTS

[1] On September 6, 2011, the Canada Border Services Agency (CBSA) received a written complaint from Novanni Stainless Inc. (Novanni) of Coldwater, Ontario, and Franke Kindred Canada Limited (FKC) of Midland, Ontario (hereafter, “the complainants”), alleging that imports of certain stainless steel sinks 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 September 27, 2011, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainants 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 received and provided the GOC 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] On October 24, 2011, 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 accuracy and adequacy of the evidence presented in the non-confidential version of the subsidy portion of the complaint. On October 26, 2011, the CBSA received written representations from the GOC with respect to its views. The CBSA considered these written representations in its analysis of whether there was sufficient evidence of subsidization to warrant a subsidy investigation.

[4] On October 27, 2011, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated the investigations respecting the dumping and subsidizing of certain stainless steel sinks from China.

[5] On October 28, 2011, the Canadian International Trade Tribunal (Tribunal) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain stainless steel sinks from China have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the goods.

[6] On December 28, 2011, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain stainless steel sinks have caused injury or are threatening to cause injury to the domestic industry.

[7] On January 25, 2012, the CBSA made preliminary determinations of dumping and subsidizing with respect to certain stainless steel sinks originating in or exported from China pursuant to subsection 38(1) of SIMA, and began imposing provisional duties on imports of the subject goods pursuant to subsection 8(1) of SIMA.

[8] On January 26, 2012, the Tribunal initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry.

[9] The CBSA continued its investigations and, on the basis of the evidence, the President is satisfied that certain stainless steel sinks originating in or exported from China have been dumped and subsidized and that the margins of dumping and the amounts of subsidy are not insignificant. Consequently, on April 24, 2012, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.

[10] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duties will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal has announced that it will issue its finding by May 24, 2012.

PERIOD OF INVESTIGATION

[11] Each of the two investigations has its own separate Period of Investigation (POI). The POI with respect to dumping (dumping POI), covered all subject goods imported into Canada from September 1, 2010 to August 31, 2011.

[12] The POI with respect to subsidy (subsidy POI), covered all subject goods imported into Canada from January 1, 2010 to August 31, 2011.

INTERESTED PARTIES

Complainant

[13] The complainants account for a major proportion of the production of like goods in Canada. The complainants' goods are produced at manufacturing facilities located in Coldwater, Ontario, and Midland, Ontario.

[14] The name and address of the complainants are:

Novanni Stainless Inc.
2978 Southorn Road, P.O. Box 189
Coldwater, Ontario L0K 1E0

Franke Kindred Canada Limited
1000 Franke Kindred Road
Midland, Ontario L4R 4K9

[15] There are no other known producers of like goods in Canada.

Exporters

[16] At the initiation of the investigations, the CBSA identified 199 potential exporters of the goods under investigation. The CBSA sent a dumping Request for Information (RFI) to all identified potential exporters in China and other countries and a subsidy RFI to each identified potential exporter in China.

[17] The CBSA received seven exporter responses to the exporter dumping RFI, along with six responses from vendors by the deadline of December 5, 2011. One further exporter response was received after the due date.

[18] At the time of the preliminary determination, only two exporter responses were sufficiently complete to allow for the calculation of a preliminary margin of dumping.

[19] During the final phase of the investigation, the CBSA received additional information, and three additional exporters were considered to have submitted a substantially complete response to the dumping RFI.

[20] As a result, substantially complete responses were received from five exporters for purposes of the final determination of dumping.

[21] The CBSA considered substantially complete responses from seven exporters and two producers for purposes of the final determination of subsidy.

Importers

[22] At the initiation of the investigations, the CBSA identified 287 potential importers of subject goods based on a review of CBSA import documentation. The CBSA sent an importer RFI to all potential importers of the goods.

[23] The CBSA received 30 RFI responses from importers, with varying degrees of completeness. Sixteen importers provided a substantially complete response to the importer RFI.

Government of China

[24] For the purposes of these investigations “Government of China” refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of, 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.

[25] At the initiation of the investigations, the CBSA sent a subsidy RFI to the GOC. The CBSA received a response to the subsidy RFI from the GOC on December 5, 2011, and a second filing of additional information on December 15, 2011. The CBSA reviewed these responses and while some of the information requested was provided, the GOC’s responses were limited. As a result, on December 19, 2011¹, the GOC was notified of the incomplete status of its submission.

PRODUCT DEFINITION

[26] For the purpose of these investigations, the subject goods are defined as:

Stainless steel sinks with a single drawn bowl having a volume between 1,600 and 5,000 cubic inches (26,219.30 and 81,935.32 cubic centimetres) or with multiple drawn bowls having a combined volume between 2,200 and 6,800 cubic inches (36,051.54 and

¹ Subsidy Exhibit S134 (NC)

111,432.04 cubic centimetres), excluding sinks fabricated by hand, originating in or exported from the People's Republic of China (hereafter referred to as certain stainless steel sinks).

Additional Product Information

[27] For purposes of the definition of the subject goods, volume is calculated as the product of the length, width and depth of the bowl, regardless of the taper and radius of the bowl, where length and width are measured from front to back and left to right of the bowl rim and where depth is measured from the bowl rim to the bottom of the sink at the point closest to the drain.

[28] For purposes of the definition of the subject goods, "sinks fabricated by hand" refers to the process by which sinkware is formed by hand. The sink stock is notched and folded, and sides are then welded and hand-polished to form a box-like shape. Hand-fabricated sinks may also be referred to as handcrafted or handmade sinks.

[29] The subject goods may be supplied with seals, strainer or strainer sets, mounting clips, fasteners, sound-deadening pads, cut-out templates, and additional accessories such as rinsing baskets and bottom grids.

[30] Stainless steel sinks are commonly used in residential and non-residential installations including in kitchens, bathrooms, utility and laundry rooms. Stainless steel sinks sold in Canada are required to be manufactured in accordance with *ASME A112.19.3-2008/CSA B45.4.08*². However, the complainants believe it is possible that some of the subject goods from China do not meet these standards. Stainless steel sinks are available in a variety of shapes and configurations. They may have single or multiple bowls, and may be undermount, top mount, or designed as work tops.

[31] Stainless steel sinks are generally made from grades 301, 304 and 316 cold-rolled stainless steel sheet that is 16, 18 or 20 gauge. The subject goods may be made of additional stainless steel grades and thinner or thicker gauges. Indeed, the complaint states that 15 and 22 gauge stainless steel sinks and grade 202 and 416 stainless steel sinks from China have been observed in the Canadian market. Gauge refers to the nominal thickness of steel. Typically, the lower the number, the thicker the material (e.g. 16 gauge = 0.060 inches, 18 gauge = 0.046 inches, 20 gauge = 0.035 inches). Grade identifiers such as T301, T304 and T316 are American Iron and Steel Institute (AISI) designations for the chemical composition of stainless steel. Each designation has a specific chemical makeup that provides the steel with its unique properties (e.g. mechanical properties, weldability and corrosion resistance). Terms such as 18-8 and 18-10 are commonly used to describe the chemical composition of the stainless steel. The first number defines the nominal percentage of chromium in the steel and the second number defines the nominal percentage of nickel in the steel.

² Manufacturing standard established by the American Society of Mechanical Engineers (ASME) and the Canadian Standards Association (CSA).

Production Process³

[32] The process begins with sheets of stainless steel that are sheared into pieces, referred to as “blanks”. The blanks undergo a series of forming, shearing, welding and finishing operations.

[33] A sink bowl is formed through a combination of two forming operations: deep drawing and stretch-forming. In the first operation, the blanks are conveyed through mechanical or hydraulic presses that punch the blanks into rough sink shapes. For each different bowl shape, there is a unique punch and die set that is interchangeable with the press. At this stage, the depth and diameter of the bowl are slightly less than the required dimensions. The early forms are placed through further equipment that uses a re-draw process to stretch the sink bowl to its final depth.

[34] Following the stretch-forming step, the edges of the bowl are trimmed and a drain hole is punched. Hold-downs (metal clips) are then spot-welded to the sides of the sink bowl.

[35] In some cases, double and triple bowl sinks are made by taking single drawn bowls, shearing them so that the ledges are straight, then tig-welding the ledges.

[36] At this stage, the bottom and sides of the sink bowl are buffed. The deck of the sink is also buffed to produce a mirror-type finish.

[37] A ring-form operation trims the sink to its final form and creates decorative edging. The sinks may be further buffed and washed following this operation. Sound dampening pads are then added to the sink and the finished sinks are packaged for market.

Classification of Imports

[38] The subject goods are usually classified under Harmonized System (HS) classification code 7324.10.00.11.

[39] The subject goods may also be classified under the following HS classification codes:

7324.10.00.19

7324.10.00.21

7324.10.00.29

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

³ Dumping Exhibit 2 (NC) - Complaint narrative, pages 10 and 11.

CANADIAN INDUSTRY

[41] As previously stated, the complainants account for the major proportion of domestic production of like goods. There are no other known producers of certain stainless steel sinks in Canada.

[42] Novanni is a privately held company with its production facility located in Coldwater, Ontario. Novanni produces stainless steel sinks and strainers and is a distributor of stainless steel faucets and water coolers.

[43] FKC is a manufacturing company under Franke Holdings AG, with its production facility located in Midland, Ontario. FKC produces stainless steel sinks and distributes an extensive line of kitchen and bath sinkware.

IMPORTS INTO CANADA

[44] During the final phase of the investigations, the CBSA refined the total volume of imports based on data from its internal information system, CBSA import documentation and information received from cooperative exporters and importers.

[45] The following tables present the CBSA's calculation of the volume of imports of certain stainless steel sinks for purposes of the dumping and subsidy final determinations, respectively:

Imports of Certain Stainless Steel Sinks (September 1, 2010 – August 31, 2011)

Imports into Canada	Volume (units)	% of Total Imports
China	392,651	86.4%
All Other Countries	61,975	13.6%
Total Imports	454,626	100%

Imports of Certain Stainless Steel Sinks (January 1, 2010 – August 31, 2011)

Imports into Canada	Volume (units)	% of Total Imports
China	618,506	84.4%
All Other Countries	114,015	15.6%
Total Imports	732,521	100%

INVESTIGATION PROCESS

[46] Regarding the dumping investigation, information was requested from known and potential exporters, vendors and importers, concerning shipments of subject stainless steel sinks released into Canada during the dumping POI of September 1, 2010 to August 31, 2011.

[47] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters located in China, as well as the GOC

concerning financial contributions made to exporters or producers of subject stainless steel sinks released into Canada during the subsidy POI of January 1, 2010 to August 31, 2011.

[48] After reviewing the exporters' responses to the RFIs, supplemental RFIs were sent to each of the responding exporters to clarify information submitted by the respective companies. In addition, on-site verification visits were conducted during the final phase of the dumping and subsidy investigations.

[49] As previously explained, the CBSA advised the GOC that its original subsidy response and its one additional filing were incomplete. No further information was received during the final phase of the investigation.

[50] Further details regarding the GOC's subsidy response can be found in the "Subsidy Investigation" section of this *Statement of Reasons*.

[51] In summary, at initiation 86 subsidy programs were reviewed. Of these 86 subsidy programs, six were determined to be conferring benefits to the cooperative exporters during the subsidy POI. In addition, the CBSA identified nine new subsidy programs through examination and on-site verification of exporter and producer submissions. As a result, the CBSA has identified in total 15 programs that were found to be conferring benefits to the cooperative exporters.

DUMPING INVESTIGATION

Normal Value

[52] Normal values of goods sold to importers in Canada are generally determined based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or based on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits pursuant to paragraph 19(b) of SIMA. Where, in the opinion of the President, sufficient information has not been furnished or is not available, normal values are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

Export Price

[53] The export price of goods sold to importers in Canada is generally determined as the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price pursuant to section 24 of SIMA. These prices are adjusted, where necessary, by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA. Where, in the opinion of the President, sufficient information has not been furnished or is not available, export prices are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

[54] For purposes of the final determination, export prices of goods of the cooperative exporters were determined using their reported export price of the goods. For goods of all other

exporters, import pricing information available from the CBSA's internal information systems and, where applicable, importer RFI responses, were used for the purposes of determining export prices.

Results of Dumping Investigation

[55] The CBSA determined a margin of dumping of goods for each cooperative exporter by comparing the total normal value with the total export price of the goods. When the total export price is less than the total normal value, the difference is the margin of dumping for that specific exporter.

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

[57] In determining the weighted average margin of dumping for the country, the overall margins of dumping found in respect of each exporter were weighted according to each exporter's volume of subject stainless steel sinks exported to Canada during the dumping POI.

[58] Based on the preceding, 100% of certain stainless steel sinks from China were dumped by a weighted average margin of dumping of 71.1%, expressed as a percentage of the export price.

[59] Under paragraph 41(1)(a) of SIMA, the President shall make a final determination of dumping when he is satisfied that the goods have been dumped and that the margin of dumping of the goods of a country is not insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. The margin of dumping of certain stainless steel sinks from China is not less than 2% of the export price of the goods and is, therefore, not insignificant.

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

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

Dumping Results by Exporter

[62] Specific margin of dumping details relating to each of the cooperative exporters are as follows:

Gacor Kitchenware (Ningbo) Co., Ltd.

[63] Gacor Kitchenware (Ningbo) Co., Ltd. (Gacor) is a producer and exporter of certain stainless steel sinks to Canada. Gacor also has domestic sales of goods of the same general category.

[64] For the purposes of the final determination, normal values could not be determined under section 15 because there were not sufficient sales of like goods domestically to permit a proper comparison with the sales of the goods to the importer in Canada. Therefore, the normal values of the goods were determined pursuant to paragraph 19(b) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[65] The cost of production was determined in accordance with paragraph 11(1)(a) of the *Special Imports Measures Regulations* (SIMR), based on the verified cost data relating to the exported goods. The amount for profits was the weighted average profit made on Gacor's domestic sales of goods of the same general category during the dumping POI, in accordance with subparagraph 11(1)(b)(ii) and section 13 of the SIMR. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(c)(i) of the SIMR.

[66] Gacor exported the subject goods to unrelated importers in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[67] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Gacor were dumped by a weighted average margin of dumping of 57.7%, expressed as a percentage of the export price.

Guangdong Dongyuan Kitchenware Industrial Co., Ltd.

[68] Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) is a producer and exporter of certain stainless steel sinks to Canada. Dongyuan also has domestic sales of goods of the same general category.

[69] For the purposes of the final determination, normal values could not be determined under section 15 because there were not sufficient sales of like goods domestically to permit a proper comparison with the sales of the goods to the importer in Canada. Therefore, the normal values of the goods were determined pursuant to paragraph 19(b) of SIMA, as the aggregate of the cost

of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[70] The cost of production was determined in accordance with paragraph 11(1)(a) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was the weighted average profit made on Dongyuan's domestic sales of goods of the same general category during the dumping POI, in accordance with subparagraph 11(1)(b)(ii) and section 13 of the SIMR. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(c)(i) of the SIMR.

[71] Dongyuan exported the subject goods to unrelated importers in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[72] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Dongyuan were dumped by a weighted average margin of dumping of 4.4%, expressed as a percentage of the export price.

Guangdong Yingao Kitchen Utensils Co. Ltd.

[73] Guangdong Yingao Kitchen Utensils Co. Ltd. (Yingao) is a producer and exporter of certain stainless steel sinks to Canada. Yingao also has domestic sales of goods of the same general category.

[74] For the purposes of the final determination, normal values could not be determined under section 15 because there were not sufficient sales of like goods domestically to permit a proper comparison with the sales of the goods to the importer in Canada. Therefore, the normal values of the goods were determined pursuant to paragraph 19(b) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[75] The cost of production was determined in accordance with paragraph 11(1)(a) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was the weighted average profit made on Yingao's domestic sales of goods of the same general category during the dumping POI, in accordance with subparagraph 11(1)(b)(ii) and section 13 of the SIMR. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(c)(i) of the SIMR.

[76] Yingao exported the subject goods to unrelated importers in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[77] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Yingao were dumped by a weighted average margin of dumping of 9.5%, expressed as a percentage of the export price.

Guangzhou Komodo Kitchen Technology Co., Ltd.

[78] Guangzhou Komodo Kitchen Technology Co., Ltd. (Komodo) is an exporter of certain stainless steel sinks to Canada. Komodo is a privately held limited liability company.

[79] Komodo has a formal business agreement with Zhongshan Xintian Hardware Co., Ltd. (ZXH), which is a privately held limited liability company. All subject goods sold to Canada by Komodo are produced by ZXH under the terms of this agreement. Given this arrangement and other details of this agreement, Komodo and ZXH are considered associated parties in accordance with subsection 2(2) of SIMA.

[80] Komodo, the exporter for SIMA purposes, does not sell stainless steel sinks in its domestic market. For the purposes of the final determination, normal values could not be determined under section 15 because the exporter of the goods does not have domestic sales. Therefore, the normal values of the goods were determined pursuant to paragraph 19(b) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[81] The cost of production was determined in accordance with paragraph 11(1)(a) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was determined in accordance with subparagraph 11(1)(b)(iv) and section 13 of the SIMR, based on the weighted average profit during the POI made on sales of goods that are of the same general category as the goods sold to the importer in Canada and are for use in the country of export by producers other than Komodo. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(c)(ii) of the SIMR.

[82] Komodo exported the subject goods to an unrelated importer in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[83] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by Komodo were dumped by a weighted average margin of dumping of 43.4%, expressed as a percentage of the export price.

Jiangmen New Star Hi-Tech Enterprise Ltd.

[84] Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star) is a producer and exporter of certain stainless steel sinks to Canada. The company is a privately held, Chinese-foreign equity joint venture.

[85] For the purposes of the final determination, normal values could not be determined under section 15 because New Star does not have acceptable sales to more than one customer at a given trade level that satisfy the terms and conditions of this section, taking into account paragraph 16(2)(a) of SIMA. Therefore, the normal values of the goods were determined pursuant to paragraph 19(b) of SIMA, as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[86] The cost of production was determined in accordance with paragraph 11(1)(a) of the SIMR, based on the verified cost data relating to the exported goods. The amount for profits was determined in accordance with subparagraph 11(1)(b)(iv) and section 13 of the SIMR, based on the weighted average profit during the POI made on sales of goods that are of the same general category as the goods sold to the importer in Canada and are for use in the country of export by producers other than New Star. A reasonable amount for administrative, selling and all other costs was included in accordance with subparagraph 11(1)(c)(i) of the SIMR.

[87] New Star exported the subject goods to an unrelated importer in Canada. Export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[88] The total normal value was compared with the total export price for all subject goods imported into Canada during the POI. The goods exported to Canada by New Star were dumped by a weighted average margin of dumping of 40.4%, expressed as a percentage of the export price.

Other Exporters

[89] Four other exporters provided a response to the CBSA's RFI that could not be used for purposes of this investigation.

[90] In the case of one exporter, Zhongshan Superte Kitchenware Co., Ltd. (Superte), the information submitted to the CBSA contains inconsistencies, despite repeated attempts to obtain clarifications. Their submission, therefore, remains incomplete.

[91] Another exporter, Bonke Kitchen & Sanitary Industrial Co., Ltd., provided an extremely limited response which was unusable by the CBSA.

[92] As for Zoje Holding Group Co., Ltd. (Zoje Holdings) and its related factory, Jiangxi Offidun Industry Co., Ltd. (Offidun), their submissions remain incomplete as they did not provide all of the information requested by the CBSA in a supplemental RFI.

[93] Finally, Jiangxi Zoje Kitchen and Bath Co., Ltd. (Zoje Kitchen), a producer of stainless steel sinks whose parent company is Zoje Holdings, submitted a response to the CBSA's RFI, but their single sale to Canada was not imported into Canada until after the POI. Despite a

representation from Zoje Kitchen's counsel requesting that the sale be considered for the purposes of this investigation, the POI is defined by the date the subject goods are imported into Canada, and thus, Zoje Kitchen's information cannot be used.

[94] Accordingly, import pricing information available from the CBSA's internal information systems was used for the purposes of determining the export price for these companies. The normal values and related margins of dumping were determined by advancing export prices by the highest amount by which the normal value exceeded the export price on an individual transaction (103.1%) for a cooperating exporter in accordance with the ministerial specification.

[95] For all other exporters, import pricing information available from the CBSA's internal information systems was used for the purposes of determining the export price. The normal values and related margins of dumping were determined by advancing export prices by the highest amount by which the normal value exceeded the export price on an individual transaction (103.1%) for a cooperating exporter in accordance with the ministerial specification.

SUMMARY OF RESULTS – DUMPING

Period of Investigation – September 1, 2010 to August 31, 2011

Country	Volume of Dumped Goods as Percentage of Country Imports	Country Margin of Dumping*	Volume of Country Imports as Percentage of Total Imports	Volume of Dumped Goods as Percentage of Total Imports
China	100%	71.1%	86.4%	86.4%

* as a percentage of export price

SUBSIDY INVESTIGATION

[96] In accordance with section 2 of SIMA, a subsidy exists if there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement, which confers a benefit.

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

- (a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;

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

[98] Where subsidies exist, they may be subject to countervailing measures if they are specific in nature. According to subsection 2(7.2) of SIMA, a subsidy is considered to be specific when it is limited, in a legislative, regulatory or administrative instrument, or other public document, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy.

[99] The following terms are defined in section 2 of SIMA. A “prohibited subsidy” is either an export subsidy or a subsidy or portion of 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. An export subsidy is a subsidy or portion of a subsidy contingent, in whole or in part, on export performance. An “enterprise” is defined as also including a group of enterprises, an industry and a group of industries.

[100] Notwithstanding that a subsidy is not specific pursuant to subsection 2(7.2) of SIMA, under subsection 2(7.3) a subsidy may also be considered specific when 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.

[101] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an “actionable subsidy”, meaning that it is subject to countervailing measures if the persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods under investigation have benefited from the subsidy.

[102] Financial contributions provided by State-Owned Enterprises (SOEs) may also be considered to be provided by the GOC for purposes of this investigation. A SOE may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE

meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

[103] Prior to the initiation of the investigation, the complainants submitted documents alleging that the stainless steel sink producers and exporters in China benefited from actionable subsidies provided by the GOC.

[104] At initiation, the CBSA identified 86 potential subsidy programs in the following seven categories:

- I. Special Economic Zones (SEZ) and other Designated Areas Incentives;
- II. Grants;
- III. Equity Programs;
- IV. Preferential Loan Programs (Not Applicable);
- V. Preferential Income Tax Programs;
- VI. Relief from Duties and Taxes on Materials and Machinery;
- VII. Reduction in Land Use Fees and Prices;
- VIII. Goods/Services Provided by the Government at Less than Fair Market Value.

[105] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. This document is available through the CBSA Web site at the following address: www.cbsa-asfc.gc.ca/sima-lmsi.

Results of the Subsidy Investigation

[106] In conducting its investigation, the CBSA sent a subsidy RFI to the GOC, as well as to the 199 potential exporters located in China that had been identified through internal CBSA documentation. Information was requested in order to establish whether there had been financial contributions made by any level of government and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain stainless steel sinks; and whether any resulting subsidy was specific in nature. The GOC was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[107] As previously stated, the information submitted by the GOC for the purpose of the subsidy investigation was incomplete. The GOC did not provide the CBSA with sufficient information to enable a proper analysis of the programs for the final determination. Some of the major deficiencies included: information with respect to all exporters/producers of stainless steel sinks was not provided; information with respect to the ownership status of cold-rolled stainless steel sheet suppliers/producers was not provided; information with respect to subsidies conferred to responding exporters/producers was not provided; and statistical information with respect to amounts of benefits conferred, by industry or by company, was not provided.

[108] For the purpose of the final determination, the CBSA considered the substantially complete subsidy RFI responses received from seven exporters located in China. Two

producers, associated with their respective exporters, also provided substantially complete responses to the subsidy RFI, and were considered for the final determination.

[109] Due to the incomplete status of the GOC submission, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the level of cooperation received from the seven cooperative exporters and the two associated producers, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

[110] A summary of the findings for the named subsidy programs can be found in **Appendix 2**.

[111] Details regarding the amounts of subsidy for each of the seven cooperative exporters are provided in **Appendix 1**. For purposes of the final determination, the aggregate amount of subsidy for the seven cooperative Chinese exporters ranges from 0.21 to 40.84 Renminbi (RMB) per unit.

[112] Expressed as a percentage of export price, the amounts of subsidy, as determined by the CBSA for the cooperative exporters, range from 0.1% to 11.8%.

[113] With respect to calculations of amounts of subsidy for the non-responding exporters, the CBSA has no information, or incomplete information, regarding benefits received by these exporters. Therefore, the CBSA was unable to calculate specific amounts of subsidy for those exporters. As a result, for all other exporters, the CBSA has determined an amount of subsidy under a ministerial specification pursuant to subsection 30.4(2) of SIMA.

[114] For all other exporters, the amount of subsidy has been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:

- (i) the highest amount of subsidy for each of the 15 programs, as found at the final determination, for the cooperative exporters located in China, plus
- (ii) the average of the highest amounts of subsidy for the 15 programs in (i), applied to each of the remaining 78 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[115] Using the above methodology for all other exporters, the result is an amount of subsidy of 264.94 RMB per unit.

[116] In summary, 100% of the goods from China are subsidized and the amount of subsidy is 38.8%, expressed as a percentage of the export price.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - January 1, 2010 to August 31, 2011

Country	Volume of Subsidized Goods as Percentage of Country Imports	Weighted Average Amount of Subsidy*	Volume of Country Imports as Percentage of Total Imports	Volume of Subsidized Goods as Percentage of Total Imports
China	100%	38.8%	84.4%	84.4%

* as a percentage of export price

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

[118] 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 product from 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.

[119] 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 guidance⁴. As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. As the preceding table illustrates, the amount of subsidy found during this investigation is not insignificant.

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

⁴ The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at October 2011. The document is available at www.oecd.org/document/45/0,3746,en_2649_34447_2093101_1_1_1_1.00.html.

REPRESENTATIONS

[121] Following the March 12, 2012 close of the record, representations were received from counsel for the complainants, the exporters Zoje Kitchen, Dongyuan and Yingao, as well as the GOC. Reply submissions were provided by counsel for the GOC, the vendor Blanco Germany and importer Blanco Canada, and the two exporters Dongyuan and Yingao.

[122] The issues raised by participants pertaining to the dumping and subsidy investigations, along with the CBSA's response to these issues, are provided in **Appendix 3**.

DECISIONS

[123] On the basis of the results of the investigation, the President is satisfied that certain stainless steel sinks originating in or exported from the People's Republic of China have been dumped and that the margin of dumping is not insignificant. Consequently, on April 24, 2012, the President made a final determination of dumping pursuant to paragraph 41(l)(a) of SIMA.

[124] Similarly, on the basis of the results of the investigation, the President is satisfied that certain stainless steel sinks originating in or exported from the People's Republic of China have been subsidized and that the amount of subsidy is not insignificant. As a result, the President also made a final determination of subsidizing pursuant to paragraph 41(l)(a) of SIMA on this same date.

[125] **Appendix 1** contains a summary of the margins of dumping and amounts of subsidy relating to the final determinations.

FUTURE ACTION

[126] The provisional period began on January 25, 2012, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by May 24, 2012. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available on the CBSA Web site at www.cbsa-asfc.gc.ca/sima-lmsi.

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

[128] If the Tribunal finds that the dumped and subsidized goods have caused injury, the anti-dumping and/or countervailing duties payable on subject goods released by the CBSA during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released by the CBSA after the date of the Tribunal's finding will be subject to anti-dumping duty equal to the margin of dumping and countervailing duty equal to the amount of subsidy.

[129] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act*⁵ apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[130] Normal values and amounts of subsidy have been provided to the cooperating exporters for future shipments to Canada in the event of an injury finding by the Tribunal. These normal values and amounts of subsidy will come into effect the day after the date of the injury finding, if there is one. Information regarding normal values of the subject goods should be obtained from the exporter.

[131] Exporters who did not provide a complete response in the dumping investigation will have normal values established by advancing the export price by 103.1% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters who did not provide a complete response in the subsidy investigation will be subject to a countervailing duty amount of 264.94 RMB per unit, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

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

[133] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the President has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. As defined in subsection 2(1) of SIMA, a “prohibited subsidy” is either an export subsidy or a subsidy or portion of 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.

⁵ *Customs Act* R.S.C. 1985.

PUBLICATION

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

INFORMATION

[135] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA Web site, in both English and French, 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, Ontario K1A 0L8 Canada	
Telephone	Danielle Newman	613-952-1963
	Nalong Manivong	613-960-6096
Fax	613-948-4844	
Email	SIMAREgistry@cbsa-asfc.gc.ca	
Web site	www.cbsa-asfc.gc.ca/sima-lmsi	



Caterina Ardito-Toffolo
A/Director General
Anti-dumping and Countervailing Directorate

Attachments

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

Exporter	Margin of Dumping*	Amount of Subsidy (RMB/unit)	Amount of Subsidy*
Gacor Kitchenware (Ningbo) Co., Ltd.	57.7%	0.21	0.1%
Guangdong Dongyuan Kitchenware Industrial Co., Ltd.	4.4%	9.27	4.1%
Guangdong Yingao Kitchen Utensils Co. Ltd.	9.5%	6.76	2.9%
Guangzhou Komodo Kitchen Technology Co., Ltd.	43.4%	8.54	3.1%
Jiangmen New Star Hi-Tech Enterprise Ltd.	40.4%	9.97	5.5%
Zhongshan Superte Kitchenware Co., Ltd.	103.1%	5.10	1.9%
Zoje Holding Group Co., Ltd.	103.1%	40.84	11.8%
All Other Exporters (of subject goods originating in or exported from China)	103.1%	264.94	60.8%
China Overall	71.1%	123.87	38.8%

* Expressed as a percentage of the export price.

APPENDIX 2 – SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As noted in the body of this document, the information submitted by the GOC was considered to be incomplete. The GOC did not provide the CBSA with sufficient information to enable a proper analysis of the programs for the final determination. Due to the incomplete status of the GOC submission, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the level of cooperation received from the seven cooperative exporters and the two associated producers, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

At the time of initiation, the CBSA identified 86 programs for review. During the course of the subsidy investigation, the CBSA identified 12 new potential subsidy programs. The CBSA removed three of these new programs along with two of the programs from the original listing, as follows: Program 47 was removed because it was determined to be a duplicate of Program 55. Similarly, Program 92 was removed because it was determined to be a duplicate of Program 93. In addition, Program 86 was removed because it was determined that producers of stainless steel sinks are not eligible for this program. Program 87 was also removed because it was identified as two programs, specifically, Program 17 and Program 33. Furthermore, Program 96 was removed as it was determined not to be a financial contribution.

This appendix contains descriptions of the 15 subsidy programs used by the cooperative exporters in the current investigation, followed by a listing of the 78 subsidy programs investigated by the CBSA that were not found to have been used by the cooperative exporters. As such, there are 93 subsidy programs that were found to be available to the exporters of certain stainless steel sinks.

SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS

Without a complete response to the subsidy RFI from the GOC, the CBSA has used information available to describe the subsidy programs used by the cooperative exporters in the current investigation. This includes using information obtained from CBSA research on potential subsidy programs in China, information provided by the cooperative exporters and descriptions of programs that the CBSA has previously publicly published in recent *Statements of Reasons* relating to subsidy investigations involving China.

II. Grants

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

During the POI, one of the cooperative exporters reported having received payments from the local government and recorded these in the company's subsidy income ledger. The funds were provided for Science and Technology Research. The exporter did not apply for these payments and, therefore, does not possess any other information about the program. The granting authority is the Foshan Shunde Finance Bureau.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 33: Grants for Export Activities

During the POI, one of the cooperative exporters reported having received payments from the local government and recorded these in the company's subsidy income ledger. The funds were provided for Foreign Trade Development. The exporter did not apply for these payments and, therefore, does not possess any other information about the program. The granting authority is the Foshan Shunde Finance Bureau.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 55: Grant – Special Fund for Fostering Stable Growth of Foreign Trade

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in 2009 and was valid for one year to help exporters survive the financial and economic crises in the world market. This program provided benefits in the form of marketing assistance. The granting authorities responsible for this program are the Department of Finance and the Department of Foreign Trade and Economic Cooperation of Guangdong Province. This program is implemented by the Municipal Bureau of Foreign Trade and Economic Cooperation and the Bureau of Finance.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 89: Allowance to Pay Loan Interest

During the POI, one of the cooperative exporters reported having received an allowance from the local government in support of small and medium sized businesses. According to the exporter, the program came into effect in 2010 and the funds were provided to help reduce interest payments on commercial bank loans. The program was provided and administered by the Economic and Trade Office of the Huangpu government in Zhongshan City, Guangdong Province. The granting authority is the Zhongshan Municipal government.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 90: Supporting Fund for Non-refundable Export Tax Loss on Mechanical & Electrical Product and High-tech Product

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in order to provide support to exporters adversely affected by the financial crisis. This program was administered by the Jiangmen Bureau of Foreign Economic & Trade Development in conjunction with the Finance Bureau of Jianghai District, Jiangmen City.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 91: International Market Fund for Export Companies

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in a document titled 'Measure JiangCaiWai [2010] No. 92' in order to provide support to companies that have export business. This program was administered by Local Finance Funds in Jianghai District, Jiangmen City.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 93: International Market Fund for Small and Medium-sized Export Companies

One of the cooperative exporters reported having received this grant during the subsidy POI. This program was established in a document titled 'Measure CaiQi [2010] No. 87' in order to provide support for export companies identified as small and medium-sized enterprises. The funds are provided for developing international markets including overseas exhibitions, certification of enterprise management system, various product certifications, foreign patent applications, promotional activities in international markets, electronic business, foreign advertisement and trademark registration, international investigation, bids (negotiations) abroad, enterprise training, foreign technology and brand acquisition, etc. Benefits granted to an enterprise under this program shall not exceed 50% of the total expenditure paid by the enterprise. This program is administered jointly by the Ministry of Finance and Ministry of Commerce.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 94: Business Development Overseas Support Fund

During the POI, one of the cooperative exporters reported having received payments from the local government related to this fund. The exporter did not apply for these payments and, therefore, does not possess any information about the program. The granting authority is the Foshan Shunde Finance Bureau.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 95: Refund from Government for Participating in Trade Fair

During the POI, one of the cooperative exporters reported having received a refund for participating in the Canton Trade Fair. The funds are provided for booth modification fees. The granting authority is the Foshan Shunde Economic Promotion Bureau.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 97: Interim Measures of Fund Management of Allowance for Zhongshan Enterprises to Attend Domestic and Overseas Fair

One of the cooperative exporters reported having received an allowance to attend trade fairs during the subsidy POI. This program was issued by the Zhongshan Municipal People's Government office in Documents Zhongfuban [2009] No. 48. This program was established to promote the sustainable development of the economy, to encourage local enterprises to develop domestic and international markets, and to improve the implementation of market diversification strategies for enterprises. The program is administered by the Municipal Economic and Trade Bureau and Foreign Economic and Trade Bureau.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 98: Reimbursement of Foreign Affairs Services Expenses

During the POI, one of the cooperative exporters reported having received reimbursement for expenses incurred in 2004 and 2005. The funds are provided for privately owned businesses involved in export activities. The granting authority is the Foshan Shunde Treasury Payment Center.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

V. Preferential Income Tax Programs

Program 70: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period Not Less Than 10 Years

One of the cooperative exporters reported having received this benefit during the subsidy POI. This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investment. The granting authority responsible for this program is the State Administration of Taxation and is administered by local tax authorities.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 88: Tax Preference Available to Companies that Operate at a Small Profit

One of the cooperative exporters reported having received this benefit during the subsidy POI. This program was established in the Law of the People's Republic of China on Enterprise Income Tax (2007) and came into effect on January 1, 2008. This program was established in order to reduce the burden on enterprises making small profits and to maintain job opportunities. The granting authority responsible for this program is the Ministry of Finance and the State Administration of Taxation. It is administered by local tax authorities.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

VII. Reduction in Land Use Fees and Prices

Program 81: Reduction in Land Use Fees, Land Rental Rates, and Land Purchase Prices

One of the cooperative exporters reported having received this benefit during the subsidy POI. This program was established according to the issue of a document titled '[2003] No.8 Preferential Supply of Land'. This program was established in order to offset costs for industrial companies in the Ninghai Economic Development Zone. The granting authority is the Ninghai government.

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

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

Program 83: Raw Materials Provided by the Government at Less than Fair Market Value

This program relates to the acquisition cost of major raw materials from SOEs and subsequently used in the production of finished subject goods. When exporters or producers of subject goods acquire raw material inputs (in this case cold-rolled stainless steel sheet) at less than fair market value directly or indirectly from SOEs and those SOEs are considered to be possessing, exercising, or vested with governmental authority, a subsidy may be found to exist. This subsidy is equal to the difference between the fair market value of the goods and the price at which the goods were provided by the SOE.

For the purposes of this investigation, there are three key concepts to consider when determining whether this program is applicable. First, did the exporters or producers of subject goods to Canada acquire raw material inputs from SOEs? Second, are the SOEs that supplied these raw materials considered to be possessing, exercising, or vested with governmental authority? Third, what is the fair market value of the goods provided by SOEs?

Concept 1: Ownership Status of Suppliers/Producers of Material Inputs

In terms of the first concept, information submitted by the responding exporters contained purchases of input material (cold-rolled stainless steel sheet), the names of the suppliers/producers, and the ownership status of these parties, where known. Based on the information in the submissions, exporters have purchased from both SOEs and non-SOEs.

For purposes of the final determination, the CBSA determined the amount of subsidy for raw material inputs in instances where responding exporters identified they had purchased directly or

indirectly from SOEs. The CBSA also determined the amount of subsidy for raw material inputs in instances where responding exporters were not able to clearly identify either their suppliers/producers or the ownership status of these parties.

Concept 2: Are SOEs Regarded as Public Bodies?

In terms of the second concept, the following analysis considers whether SOEs in the flat-rolled stainless steel sector could be regarded as “government” for the purpose of subsection 2(1) of SIMA. SOEs may be considered to constitute “government” if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- evidence that an entity is, in fact, exercising governmental functions; and
- evidence that a government exercises meaningful control over an entity.

The CBSA requested that the GOC identify the suppliers/producers of cold-rolled stainless steel sheet it partially or wholly-owned and to describe the percentage of their ownership. The GOC was also requested to determine whether or not these suppliers/producers were under the authority of the State-owned Assets Supervision and Administration Commission of the State Council (SASAC). The GOC stated that it was unable to ascertain the ownership structure of suppliers/producers of cold-rolled stainless steel sheet and that it did not maintain a list of suppliers/producers that are under the authority of the SASAC. As such, the information requested by the CBSA was not provided.

The CBSA also requested information pertaining to SOEs and the GOC’s role regarding these SOEs. The GOC replied in its submission:

- “The SOEs have their own internal governance structure independent of the GOC. The internal governing bodies perform their functions independently, and according to market conditions.”⁶
- “No authority has been vested in SOEs in the cold-rolled stainless steel sheet sector under the relevant statute, law, regulation, direction, letter of incorporation or other legal instrument. An SOE shall be organized and operated the company law or other relevant enterprise law, just as non-SOE, except that the state-owned assets invested or share-hold by state are also governed by the law of state-owned assets in enterprise.”⁷ (sic)
- “According to Law of State-owned Assets in Enterprises: The State Council and the local people’s governments shall, according to law, perform the capital contributor’s functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.”⁸

⁶ Subsidy Exhibit 107 (NC) – GOC Response D8(a)

⁷ Subsidy Exhibit 107 (NC) – GOC Response D8(i)

⁸ Subsidy Exhibit 107 (NC) – GOC Response D9

- “SOE does not perform any government functions. Under the Chinese law, general government functions differ legally and substantially from that of state-owned assets supervision. Please refer to Article 6 of the Law of State-owned Assets in Enterprise. Price regulation function vested with the NDRC and its local counterpart, instead of any SOEs. However, for those prices not under regulation, any enterprises in China, including SOEs, have right to bargain with their business counterparts or buyers at their commercial interests.”⁹

At the initiation of the investigation, exporters were requested to forward a supplemental RFI to suppliers/producers of cold-rolled stainless steel sheet. The supplemental RFI contained similar questions to those found in the GOC subsidy RFI which requested information pertaining to ownership status of the suppliers/producers, their organizational hierarchy, performance and compensation, operations and control, and the role of the SASAC and the GOC. No responses were received from suppliers/producers identified as SOEs. Without information from the SOEs, the CBSA could not corroborate the explanation provided by the GOC. As such, the CBSA conducted an analysis based on the information in the GOC’s submission and CBSA’s own research.

This analysis considered information provided or discovered in the recent pup joints investigation conducted by the CBSA, which revealed that various industrial and economic policies and five-year plans are factors found to have influence in the Chinese steel industry (*e.g. The Development Policies for the Iron and Steel Industry – Order of the National Development and Reform Commission (No. 35), Blueprint for the Adjustment and Revitalization of the Steel Industry, and the 12th Five-Year Plan: Iron and Steel*). The major objectives of these policies and plans include:¹⁰

- The structural adjustment of the Chinese domestic steel industry;
- Industry consolidations through merger and acquisitions;
- Government supervision and management in the steel industry;
- Maintain the stability of the domestic market and improve the export environment;
- Enhance enterprise reorganization and improve the industrial concentration level;
- Spend more on technical transformation and promote technical progress;
- Optimize the layout of the steel industry and overall arrangements of its development;
- Maintain stable import of iron ore resources and rectify the market order;
- Develop domestic and overseas resources and guarantee the safety of the industry;
- Increased mergers and acquisitions to create larger, more efficient steel companies;
- GOC restrictions on steel capacity expansion;
- GOC directed relocation of iron and steel companies to coastal areas.

⁹ Subsidy Exhibit 107 (NC) – GOC Response D10(f)

¹⁰ Subsidy Exhibit 220 (NC) – Pup Joints Final Determination Statement of Reasons

As provided in Article 36 of the Law of State-Owned Assets of the Enterprises, state-invested enterprises¹¹ (SIEs) must comply with all national industrial policies.¹² On the basis of this information, these SOEs are effectively performing a public policy function through their pursuit of state plans and industrial and economic policies, thus supporting the indication that SOEs are in fact performing governmental functions.

A further analysis of the Law of State-Owned Assets reveals the following information:

- The GOC is responsible for appointing and removing the president, vice-presidents, person in charge of finance, other senior managers, chairman of the board of directors, vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and the supervisors of SOEs wholly-owned by the State.¹³
- The GOC is responsible for proposing the director and supervisor candidates to the general assembly of shareholders of an SIE, regardless of the size of the GOC's capital contribution to the entity, with the exception of employee representatives who are elected by the employees. In other words, the GOC, by contributing any amount of capital whatsoever to an entity, reserves to itself the right to select who is eligible to be a director/supervisor of that entity, although the candidates must still be approved by a majority of the shareholders.¹⁴
- The body performing the contributor's functions (i.e., the GOC) will assess, reward, or punish enterprise managers of SOEs wholly-owned by the State, and will decide on the standards of remuneration for them.¹⁵
- The GOC is directly responsible for establishing the criteria against which the performance of managers in an SIE is measured. In addition, the body performing the contributor's functions (i.e., the GOC) conducts assessments of individual managers according to these criteria, and determines the standards of remuneration for SIE managers.¹⁶
- The departments responsible for audit of the State Council and the local people's governments shall conduct audits of SIEs according to the provisions of the Audit Law of China.¹⁷

As can be seen from the above, the GOC is the only entity that may determine who is eligible to be a director or supervisor within SIEs in China, regardless of the extent of the GOC's ownership of the SIE. The GOC sets the criteria against which management of an SIE is evaluated,

¹¹ State-invested Enterprise: An entity in which the GOC has an ownership stake, regardless of the size of that stake, but does not wholly-own the enterprise. These definitions are based upon those set out on Article 5, Law of State-Owned Assets of the Enterprises. Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 5

¹² Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 36

¹³ Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 22

¹⁴ Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 22

¹⁵ Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 29

¹⁶ Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 27

¹⁷ Subsidy Exhibit 107 (NC) – Exhibit D9-5, Article 65

measures the performance of management against the criteria, and determines the standards of remuneration for management. SIEs must also submit to audits conducted directly by the GOC.

According to the Decree of the State Council of the People's Republic of China No. 378 - Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, Article 12¹⁸ establishes that SASAC is directly a subordinate to the State Council. Article 13 establishes the main responsibilities of SASAC,¹⁹ three of which are highlighted below:

- SASAC appoints and removes the top executives of the supervised enterprises, and evaluates their performances through legal procedures and either grants rewards or inflicts punishments based on their performances; establishes corporate executives' selection system in accordance with the requirements of the socialist market economy system and modern enterprise system, and improves incentives and restraints system for corporate management.
- In accordance with related regulations, SASAC dispatches supervisory panels to the supervised enterprises on behalf of the state council and takes charge of daily management of the supervisory panels.
- SASAC also drafts laws, administrative regulations of the management of the state-owned assets and draws up related rules; directs and supervises the management work of local state-owned assets according to law.

The CBSA views the ability to appoint and remove top executives of supervised enterprises as evidence that supports the indication that the GOC exercises meaningful control over the conduct of such entities. Furthermore, the power vested in SASAC to "take charge of daily management of the supervisory panels" and to "draft laws, administrative regulations" also indicate a significant level of control over SOEs. When the main functions and responsibilities of SASAC are examined more closely, evidence of the extent of the control of the GOC, albeit via SASAC, becomes apparent.

In light of the fact that the GOC did not provide information with respect to the ownership status of suppliers/producers and no information was received from SOEs with respect to the supplemental RFI, the CBSA performed an analysis based on the information available. The exercise of meaningful control by the GOC, examined in conjunction with the performance of government functions as discussed above, is sufficient to indicate that these SOEs possess, exercise or are vested with governmental authority. As such, the CBSA will consider SOEs in the flat-rolled steel sector to be included under the definition of "government" in subsection 2(1) of SIMA.

¹⁸ Subsidy Exhibit 220 (NC)

¹⁹ Subsidy Exhibit 107 (NC) – GOC Response D9

Concept 3: Fair Market Value of Input Materials

The third concept relating to this program is the determination of the fair market value of the material inputs provided by the SOEs for the purposes of evaluating whether the purchase price from SOEs is below fair market value.

In past investigations involving China, the CBSA has determined that the Chinese steel industry is heavily dominated by SOEs. Of particular interest to this investigation is the re-investigation of certain steel plate (concluded on July 16, 2010) in which the CBSA found that domestic prices in the Chinese flat-rolled steel sector were not substantially the same as they would be if they were determined in a competitive market.²⁰ The Chinese flat-rolled steel sector includes the cold-rolled stainless steel sheet which is used in the production of stainless steel sinks. Accordingly, the CBSA has deemed that the domestic selling prices for cold-rolled stainless steel sheet in China are not appropriate for the purposes of determining the fair market value of these goods.

In the absence of appropriate domestic benchmark prices of cold-rolled stainless steel sheet in China and since none of the cooperative exporters reported acquiring cold-rolled stainless steel sheet from sources outside China, the CBSA determined that the monthly world composite 304 stainless steel prices reported by MEPS (International) LTD, a publisher of steel market prices around the world, are most appropriate for purposes of establishing the fair market value of cold-rolled stainless steel sheet in China. This composite price is a weighted average of the low transaction values for all grade 304 stainless steel products in the flat & long categories identified in three regions (European Union, Asia, and North America).²¹

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

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS

The following 78 programs were also included in the current investigation. Questions concerning these programs were included in the RFI sent to the GOC and to all known exporters of the goods in China. None of the cooperative exporters reported using these programs during the subsidy POI. Without a complete response to the subsidy RFI from the GOC and all known exporters, the CBSA does not have sufficient information to determine that any of these programs do not constitute actionable subsidies. In other words, the CBSA does not have

²⁰ Dumping Exhibit 102(Pro) – 4258-102 AD/1139

²¹ Composite Stainless Steel Price & Index – Grade 304. Available at: www.meps.co.uk/composite%20stainless%20steel%20priceindex.html.

sufficient information to determine that any of the following programs should be removed from the investigation for purposes of the final determination.

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

- 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: Preferential Tax Policies in the Western Regions
- Program 5: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 6: Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 7: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas
- Program 8: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas
- Program 9: Income Tax Refund where Profits Re-invested in SEZs and other Designated Areas
- Program 10: Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas
- Program 11: VAT Exemptions for the Central Region

II. Grants

- Program 12: The State Key Technology Renovation Projects
- Program 13: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- Program 14: Repaying Foreign Currency Loan by Returned VAT
- Program 15: Government Export Subsidy and Product Innovation Subsidy
- Program 16: Export 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: Innovative Small and Medium-Sized Enterprise Grants

- Program 29: Product Quality Grant
- Program 30: 2009 Energy-saving Fund
- Program 31: Energy-Saving Technique Special Fund
- Program 32: Grants to Privately-Owned Export Enterprises
- Program 34: Grants for International Certification
- Program 35: Emission Reduction and Energy-saving Award
- Program 36: Grant for Market Promotion and Trade Development
- Program 37: Refund of Land Transfer Fee
- Program 38: Grant – Assistance for Exhibition Booth Fees
- Program 39: Grant – Patent Application Assistance
- Program 40: Grant – State Service Industry Development Fund
- Program 41: Grant – Changzhou Five Major Industries Development Special Fund
- Program 42: Grant – Ecological Garden Enterprise Reward
- Program 43: Grant – Municipal Construction Reward
- Program 44: Grant – Cleaning-production Qualified Enterprise Reward
- Program 45: Grant – Provisional Industry Promotion Special Fund
- Program 46: Grant – Jiangsu Province Finance Supporting Fund
- Program 48: Grant - Water Pollution Control Special Fund for Taihu Lake
- Program 49: Grant – Provincial Foreign Economy and Trade Development Special Fund
- Program 50: Grant – Subsidy from Water Saving Office
- Program 51: Grant – Insurance Expense Compensation
- Program 52: Grant – Industrial Science and Technology Breakthrough Special Fund
- Program 53: Grant – Special Supporting Fund for Commercialization of Technological Innovation and Research Findings
- Program 54: Grant – Changzhou City Key Supporting Industry Upgrading Special Fund
- Program 56: Grant – Financial Subsidies from Wei Hai City Gao Cun Town Government
- Program 57: Grant – Policy on Value-added Tax for Recyclable Resources
- Program 58: Grant – Large Taxpayer Award
- Program 59: Grant – Resources Conservation and Environment Protection Grant
- Program 60: Grant – Wendeng Government (Shandong)
- Program 61: Jiangdu City Industrial Economy Performance Award (Jiangsu)
- Program 62: Changzhou Qishuyan District Environmental Protection Fund (Jiangsu)
- Program 63: Changzhou Technology Plan (Jiangsu)
- Program 64: Supportive Fund Provided by the Government of Xuyi County, Jiangsu
- Program 65: Enterprise Innovation Award of Qishuyan District (Jiangsu)
- Program 66: Environment Protection Award (Jiangsu)
- Program 67: Enterprise Technology Centers

III. Equity Programs

- Program 68: Debt-to-Equity Swaps
- Program 69: Exemptions for SOEs from Distributing Dividends to the State

IV. Preferential Loan Programs

N/A

V. Preferential Income Tax Programs

- Program 71: Preferential Tax Policies for Foreign Invested Export Enterprises
- Program 72: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
- Program 73: Preferential Tax Policies for the Research and Development of FIEs
- Program 74: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment
- Program 75: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose
- Program 76: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
- Program 77: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps
- Program 78: Corporate Income Tax Reduction for New High-Technology Enterprises

VI. Relief from Duties and Taxes on Materials and Machinery

- Program 79: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment
- Program 80: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

VII. Reduction in Land Use Fees and Prices

- Program 82: Deed Tax Exemptions for Land Transferred through Merger or Restructuring

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

- Program 84: Utilities Provided by Government at Less than Fair Market Value
- Program 85: Acquisition of Government Assets at Less than Fair Market Value

APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS

REPRESENTATIONS RELATED TO SUBSIDY

Representations from the Government of China

On January 11, 2012, counsel for the GOC submitted a representation addressing the completeness of its submission to the CBSA.²² This representation was received subsequent to a letter of deficiency sent by the CBSA on December 19, 2011.²³ Refer to the *Statement of Reasons* issued for the preliminary determination for further details.

Counsel for the GOC submitted further representations regarding the subsidy investigation on Thursday, March 8, 2012.²⁴ The representations address the following issues:

Completeness of the GOC Submission

The GOC maintained its position that its response is complete based on the information that it currently has. The GOC also submitted that to reject the GOC's entire submission would be a denial of natural justice and a blatant disrespect and contempt of the GOC's efforts to fully cooperate with the CBSA in this investigation. The GOC further submitted that the CBSA does not have the right to reject the information it provided with regards to the program benefits received by the cooperating exporters.

Programs Not Identified by the GOC

With respect to additional programs identified by the CBSA during the preliminary phase of the investigation, the GOC submitted that it has no information regarding these programs. The GOC stated that some of these programs may have been identified by the CBSA in its initial subsidy RFI, but the program descriptions given by the CBSA were unclear and too broad, which made them impossible to identify. The GOC asserted that it is the responsibility of the CBSA to confirm that the subsidies received by the exporters are as reported by the GOC in its response to the RFI.

In addition, the GOC noted that it had reviewed the CBSA's research pertaining to these alleged subsidy programs but failed to find the factual and legal basis for investigating these alleged programs. As a result, it was unable to provide any information with respect to these alleged programs.

Request for Extension

The GOC disagreed with the CBSA that the reasons given for requesting their extension are to be considered part of "normal business activities". It argued that the CBSA has historically never

²² Subsidy Exhibit 152 (NC)

²³ Subsidy Exhibit 134 (NC)

²⁴ Subsidy Exhibit 203 (NC)

explained what it considers to be “normal business activities,” but uses the terminology indiscriminately in refusing to grant extensions requested by the GOC.

It also submitted that the reasons it had provided are not part of “normal business activities” since the GOC had to deal with an unprecedented number of investigations that were unforeseen and not planned for, all at the same time.

Representations from Franke Kindred Canada Limited and Novanni Stainless Inc.

Counsel for the complainants submitted a case brief on March 19, 2012, which addresses some of the issues raised by the GOC in its representations.²⁵ For the reasons provided below, the complainants requested that subsidy amounts for all exporters be determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA.

Counsel recalled that the deficiencies outlined in the preliminary determination SOR have not been resolved. Counsel also stated that the GOC’s explanations for failing to provide a complete response are unjustified.

Counsel also noted that the GOC refused to release customs information to the CBSA under the grounds that disclosure of such information is prohibited. Counsel for the complainants also submitted that the GOC’s position in this regard cannot be reconciled with the fact that it has disclosed this very type of information in previous cases. As such, the GOC’s refusal to provide the requested information can be regarded as a gesture of non-cooperation.

Counsel further submitted that the GOC did not provide satisfactory information concerning its ownership of producers of stainless steel sinks or cold-rolled stainless steel sheet under the grounds that neither the GOC nor the SASAC maintain any comprehensive database of such companies. However, in response to question D.8(b)(i), the GOC had indicated that certain cold-rolled stainless steel sheet producers/suppliers may be SOEs. Furthermore, it asserts that the GOC’s failure to maintain such databases is, in itself, a failure to fully co-operate with the CBSA in this investigation and with other investigating authorities in many other investigations.

In addition to the representations specific to the GOC, counsel disagreed with the response provided by an exporter with respect to the CBSA’s supplemental RFI. The exporter stated that it had received subsidies for attending a trade show in the USA and therefore the subsidies should only apply to goods exported to the United States. Counsel for the complainants argued that the trade shows are attended by potential customers from the entire North American market. As such, the subsidies are applicable to Canadian exports.

Reply Submission from the GOC

On March 26, 2012, the GOC submitted a reply submission providing rebuttals to the arguments made by counsel to the complainants.²⁶

²⁵ Dumping Exhibit 224 (NC)

²⁶ Subsidy Exhibit 211(NC)

With regard to the release of customs information to the CBSA, the GOC submitted that each member state is a distinct customs territory with distinct and separate autonomy in the conduct of its business affairs. The GOC further submitted that given that the HS codes under which the subject goods are classified may contain non-subject goods, it would not be appropriate to disclose the exporters' information to the CBSA.

Regarding the complainants' claims that the GOC should maintain a database for companies in which it has an ownership interest, the GOC submitted that to consolidate and maintain a database of companies at the state, provincial and municipal levels in China would be an impossible task.

Further, the GOC submitted that the CBSA is obligated to verify and to use the GOC's information to confirm the information provided by the identified cooperating exporters. The GOC also claimed that information submitted with regard to the benefits received by the exporters known to the GOC is complete.

Reply Submissions from DongYuan and Yingao

On March 26, 2012, counsel representing Dongyuan and Yingao submitted reply submissions with respect to the subsidy investigations.²⁷

Counsel indicated that there is no evidence in the record that the GOC withheld any information with respect to Dongyuan and Yingao. Information with respect to the ownership of Dongyuan and Yingao has been provided and verified and must be the basis of any subsidy margin attributed to the two exporters. Further, Dongyuan and Yingao disputed the suggestion that the failure on the part of the GOC (in the past) to maintain databases constituted failure to co-operate in the current investigation.

Counsel also noted that the CBSA's practice has been to accept verifiable company-specific subsidy evidence in establishing subsidy margins for co-operative and verified respondents.

CBSA Response

The GOC failed to provide a complete response to the CBSA's subsidy RFI. The information requested from the GOC would have enabled the CBSA to conduct a proper analysis for each of the alleged programs and determine amounts of subsidy in the manner prescribed by SIMA.

In respect of the representation from the GOC regarding the completeness of its subsidy response, the CBSA did notify the GOC, in a letter dated December 19, 2011, that their original response to the subsidy RFI was not sufficiently complete to be used for the investigation.²⁸ In that letter, the CBSA explained the most significant aspects of the submission that were found to be deficient, including the following:

²⁷ Subsidy Exhibit 217(NC) and Subsidy Exhibit 219(NC)

²⁸ Subsidy Exhibit 134 (NC)

- Information with respect to the ownership status of cold-rolled stainless steel sheet suppliers/producers was not provided.
- The GOC limited its response to account for only seven “responding companies” instead of taking into account all 199 of the exporters identified by the CBSA.
- In many instances, the GOC did not answer the question posed by the CBSA and simply stated that none of the “responding companies” received benefits under the identified programs.
- In cases where “responding companies” received benefits under a program, the GOC failed to answer all of the CBSA’s questions, and did not provide information concerning the number of industries and enterprises that received, applied for, or were denied benefits.
- Information with respect to subsidies conferred to responding exporters/producers was not provided.

Despite being informed of the above-noted deficiencies and given an opportunity to furnish this information, a complete response from the GOC was not received. The CBSA has nonetheless considered the information provided by the GOC in its subsidy response. Whenever information was not furnished by the GOC or found to be insufficient, the CBSA made determinations based on the information available. As a result, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. Moreover, in consideration of the level of cooperation received from the cooperative exporters, individual amounts of subsidy have been determined for those exporters where sufficient information has been furnished to enable the necessary calculations.

With respect to the additional subsidy programs identified during the course of the investigation, the CBSA requested further information from the cooperative exporters. The CBSA has provided descriptions of these programs based on the information submitted by the cooperative exporters. The CBSA maintains that the GOC is in the best position to confirm whether or not these programs are in operation and to provide detailed information on these programs.

Regarding the request for a deadline extension from the GOC, the CBSA maintains that its denial of the GOC’s request in no way denied the GOC its right to meaningfully participate in the investigations. The CBSA notes that the GOC submitted its initial response on the due date and filed supplemental information subsequent to the deadline. The CBSA has endeavoured to take all of the information provided into consideration. In addition, the CBSA afforded the GOC the opportunity to provide information with respect to the deficiency letter after the RFI response deadline, provided there was sufficient time to properly analyze the information. This is consistent with the CBSA’s handling of similar requests in other investigations involving the GOC.

With respect to subsidies received by an exporter for attending a trade show in the United States, the CBSA has considered the benefits received by the exporter in determining an amount of subsidy. The subsidy received is referenced in Program 97: Interim Measures of Fund Management of Allowance for Zhongshan Enterprises to Attend Domestic and Overseas Fair.

REPRESENTATIONS RELATED TO DUMPING

Representations from Franke Kindred Canada Limited and Novanni Stainless Inc.

In their case brief submitted on March 19, 2012, counsel for the complainants also submitted representations regarding the dumping investigation. These representations are summarized as follows:

- All costs of production should be accounted for when determining normal values under paragraph 19(b) of SIMA.
- Any sales made between associated persons should be subject to a reliability analysis, as envisaged by section 25 of SIMA.
- Dongyuan's domestic customers are not at the same trade level as its Canadian customers.
- Some of the exporters' domestic customers are in fact trading companies that sell for export.
- Dongyuan did not submit full cost information until verification and certain normal values should be determined in accordance with a ministerial specification.
- Yingao's costs are improperly allocated and the CBSA should reject the cost allocation as presented by Yingao.

Representations from Dongyuan and Yingao

Counsel for these exporters submitted case briefs to the CBSA on March 19, 2012. These case briefs are general in nature and provide a summary of each company's participation in the dumping and subsidy investigation. In addition, counsel for Dongyuan and Yingao has submitted that there is no basis for attributing third party or arbitrary costs to these companies, that there is nothing in the record which would dispute or challenge the evidence and submissions provided, nor is there anything in the record which would support using arbitrary, surrogate or so-called "market value" costs for inputs

Representations from Zoje Kitchen and Bath Co., Ltd. (Zoje Kitchen)

On March 6, 2012, counsel for Zoje Kitchen submitted a representation requesting the CBSA determine an individual margin of dumping and an amount for subsidy for Zoje Kitchen because the company exported the goods to Canada within the POI.²⁹

Counsel for Zoje Kitchen noted that the company considers the purchase order date as the date of sale and that for anti-dumping practices found in other jurisdictions, the date of sale is also used as the basis of determining which sales to include within the POI. Counsel for this company submitted that the date of import shall not be used to determine whether relevant sales be included in the POI, because the exporter does not have knowledge of the exact date of importation, which is out of its control after the goods have been shipped.

²⁹ Dumping Exhibit 225 (NC)

Reply Submissions from BLANCO GmbH + Co. KG and BLANCO Canada Inc. (“Blanco”)

On March 26, 2012, counsel representing Blanco submitted reply submissions with respect to case briefs filed by the complainants addressing costs of production and the proposed section 25 reliability test.³⁰

Submissions Regarding Costs of Production

Regarding the cost of production, when normal values are determined in accordance with paragraph 19(b) of SIMA, counsel for Blanco stated that subparagraphs 19(b)(i), (ii) and (iii) refer to the costs and profits of the exporter/producer and not the purchaser/importer. In addition, counsel for Blanco argued that costs incurred by the exporter/producer in respect of domestic sales in China and not incurred by the manufacturer for export sales should be deducted from the normal value.

Submissions Regarding the Proposed Section 25 Reliability Test

Counsel for Blanco submitted that it is only once the export price has been determined under section 24 of SIMA that the question of unreliability under section 25 may be considered. Furthermore, counsel for Blanco submitted that it is only when the export price, as determined under section 24 of SIMA, is based on a transaction between associated persons that the potential issue of reliability under subparagraph 25(1)(b)(i) arises.

Reply Submissions from Yingao

On March 26, 2012, counsel for Yingao submitted reply submissions responding to the case brief filed by the complainants that addressed issues related to Yingao.

Domestic Customers

In response to counsel for the complainants' concern regarding Yingao's domestic customer base, counsel submitted that Yingao's domestic sales involve goods which are picked up at the factory by or delivered to these customers in China. Counsel further highlighted that this question was addressed at verification.

Accuracy and Allocation of Costs

In response to counsel for the complainants' concerns regarding the accuracy and allocation of Yingao's costs, counsel submitted that Yingao provided full details of their cost methodology, and that this data was verified by the CBSA. Counsel further noted that Yingao's financial statements have been audited and were reviewed by the CBSA at the time of verification.

³⁰ Dumping Exhibit 227(NC)

Counsel further stated that information on the record indicates that Yingao's costing methodology is consistent with Chinese generally accepted accounting principles and reflects the costs associated with the production and sales of the subject product. Additionally, counsel submitted that there is no basis for rejecting the cost information provided by Yingao and that the costs filed must be used in the normal value calculation.

In order to support its position, counsel for Yingao noted that Article 2.2.1.1 of the WTO Anti-Dumping Agreement provides the following:

“costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.”

Reply Submissions from Dongyuan

On March 26, 2012, counsel for Dongyuan submitted reply submissions responding to the case brief filed by the complainants that addressed issues related to Dongyuan.

Trade Level of Domestic Customers

In response to counsel for the complainants' concern regarding the trade level of Dongyuan's domestic customers, counsel for Dongyuan highlighted that it has already explained to the CBSA that it did not perform different activities for customers who may be at different levels of trade. In addition, counsel noted that since there is no evidence on the record showing otherwise, the level of trade is not a factor affecting price comparison. Counsel also indicated that Dongyuan is not seeking a trade level adjustment. Dongyuan also explained that, for its purposes, the terms 'wholesalers' and 'distributors' have the same meaning.

Domestic Customers

In response to counsel for the complainants' concern regarding Dongyuan's domestic customers, counsel for Dongyuan stated that the complainants could not cite any evidence in the record illustrating that Dongyuan's domestic sales are not for domestic consumption, and further noted that the complainants' allegations regarding this issue are broad and unsupported.

Model-specific Monthly Costs

In response to counsel for the complainants' statement concerning costs, counsel for Dongyuan submitted that it has provided cost information and that it was verified by CBSA officers.

Submissions Regarding Reliability

With respect to counsel for the complainants' reference to section 25 of SIMA, counsel for Dongyuan submitted that this section of SIMA does not apply to Dongyuan's situation.

CBSA Response

The CBSA has used the information on the record to determine normal values, margins of dumping and amounts for subsidy and has done so in accordance with the provisions of SIMA.

The CBSA did not dispute the designation of the date of sale by Zoje Kitchen. The CBSA informed counsel that the POI with respect to the investigations covers all goods imported into Canada during the POI. The designation of the date of sale relates to the determination of normal values and export prices and does not relate to which sales to Canada will be used in determining margins of dumping and amounts of subsidy for purposes of these investigations. Since Zoje Kitchen's goods were not imported into Canada during the POI, a margin of dumping and amount of subsidy cannot be determined.

In regards to counsel for the complainants' submission that a reliability test under section 25 of SIMA should be conducted for sales between associated persons, the CBSA submits that section 25 refers to sales where there is no exporter's sale price or no price at which the importer in Canada has purchased or agreed to purchase the goods, or where the President is of the opinion that the export price as determined under section 24 is unreliable for the following reasons:

- by reason that the sale of the goods for export to Canada was a sale between associated persons; or
- by reason of a compensatory arrangement between two parties that affects the price of the goods, the sale of the goods, the net return to the manufacturer, producer, vendor or exporter of the goods, or the net cost to the importer of the goods.

The CBSA submits that these conditions are not presently met, and therefore, a reliability analysis under section 25 is not required.

In response to the representations pertaining to the domestic sales used to determine amounts for profit, the CBSA submits that it has excluded any sales it considers to be ultimately destined for the export market. Additionally, when comparing the trade levels of domestic customers with Canadian importers, the CBSA not only gives consideration to the nominal trade level, but also considers the functions performed by the parties involved in the transaction.

Regarding Yingao's cost allocations, these costs have been verified and the CBSA is satisfied that all costs have been accounted for. With respect to Dongyuan's costs, the CBSA had sufficient information to determine normal values.