



OTTAWA, March 9, 2010

4214-26 / AD 1385

4218-27 / CV 125

# STATEMENT OF REASONS

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

**CERTAIN OIL COUNTRY TUBULAR GOODS  
ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

## DECISION

On February 22, 2010, 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 the alleged injurious dumping and subsidizing of oil country tubular goods, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 3/4 inches (298.5 mm) in outside diameter, originating in or exported from the People's Republic of China.

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Cet énoncé des motifs est également disponible en français. Veuillez vous reporter à la section "Information".  
This Statement of Reasons is also available in French. Please refer to the "Information" section.

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## SUMMARY OF EVENTS

[1] On July 14, 2009, the Canada Border Services Agency (CBSA) received a written complaint from Tenaris Canada of Calgary, Alberta, Evraz Inc. NA Canada of Regina, Saskatchewan and Lakeside Steel Corporation of Welland, Ontario (the “Complainants”), alleging that imports of certain oil country tubular goods (“OCTG”) originating in or exported from the People’s Republic of China (“China”) are being dumped and subsidized, and causing injury to the Canadian industry.

[2] On July 24, 2009, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainants that the complaint was properly documented. The CBSA also notified the Government of China (“GOC”) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy portion of the complaint.<sup>1</sup>

[3] The Complainants provided evidence to support the allegations that OCTG from China have been dumped and subsidized. The evidence also disclosed a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing these goods.

[4] On August 14, 2009, consultations were held with the GOC in Beijing pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*. During these consultations, China made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy portion of the complaint.

[5] On August 24, 2009, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of OCTG from China.

[6] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) started a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of OCTG from China have caused injury or retardation, or are threatening to cause injury to the Canadian industry producing the goods. On October 23, 2009, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of OCTG have caused injury.

[7] On November 23, 2009, as a result of the CBSA’s preliminary investigations and pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping and subsidizing with respect to certain OCTG originating in or exported from China.

[8] The CBSA continued its investigations and, on the basis of the evidence, the President is satisfied that certain OCTG 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 February 22, 2010, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(a) of SIMA.

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<sup>1</sup> Excluding sections dealing with normal value, export price, margin of dumping and surrogate country information.

[9] 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 will issue its finding by March 23, 2010.

#### **PERIOD OF INVESTIGATION**

[10] The period of investigation with respect to dumping (Dumping POI), covered all subject goods released into Canada from July 1, 2008 to June 30, 2009.

[11] The period of investigation with respect to subsidizing (Subsidy POI), covered all subject goods released into Canada from January 1, 2008 to June 30, 2009.

#### **INTERESTED PARTIES**

##### **Complainants**

[12] The Complainants are major producers of OCTG in Canada, accounting for almost all production of like goods in the domestic industry. The Complainants' goods are produced at manufacturing facilities in Sault Ste. Marie and Welland, Ontario, Regina, Saskatchewan and also in Red Deer, Calgary and Camrose, Alberta.

The names and addresses of the Complainants are:

Tenaris Canada  
Tenaris Global Services Inc.  
TenarisAlgomaTubes  
TenarisPrudential  
530 8 Ave SW, Suite 400  
Calgary, Alberta T2P 3S8

Evrax Inc. NA Canada  
P.O. Box 1670  
100 Armour Road  
Regina, Saskatchewan S4P 3C7

Lakeside Steel Corporation  
160 Dain Avenue, P.O. Box 1010  
Welland, Ontario L3B 5Y6

##### **Exporters**

[13] At the initiation of the investigations, the CBSA identified 106 potential exporters of the subject goods. The CBSA sent a Dumping Request for Information (RFI) to all exporters and a Subsidy RFI to each identified potential exporter of the goods in China.

[14] As part of the dumping investigation, the CBSA initiated a section 20 inquiry and sent section 20 RFIs to each of the identified potential exporters and producers of the goods located in China.



[15] Responses to the CBSA's RFIs were received by the due date of September 30, 2009, from eight producers/exporters of the subject goods in China.

[16] The eight exporters accounted for approximately 37% of the imports of subject goods to Canada over the Dumping POI (July 1, 2008 to June 30, 2009). These parties provided responses to the dumping, subsidy and section 20 RFIs.

[17] In addition, one exporter in China and one exporter in the United States submitted late RFI responses. One vendor in the United States, which was not an exporter of subject goods, also submitted a late RFI response. These submissions were taken into consideration for purposes of the final determinations.

[18] In conjunction with information submitted by exporters during the first phase of the investigations and the CBSA's review of its import documentation, the CBSA identified several additional parties as potential exporters of subject goods. Those parties were subsequently contacted and requested to respond to the CBSA's RFIs. No information was received from these parties.

[19] After the dumping and subsidy preliminary determinations on November 23, 2009, the CBSA conducted on-site verifications at the end of November and early December 2009 with the following cooperative exporters:

- (1) The Freet Group, including:
  - Freet Petroleum Equipment Company - Zibo Branch
  - Faray Petroleum Steel Pipe Co., Ltd.
  - Shengli Oil Field Freet Petroleum Equipment Company
  - Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.
- (2) Huludao City Steel Pipe Industrial Co., Ltd.
- (3) Jiangsu Changbao Steel Tube

[20] These exporters fully cooperated during the on-site dumping and subsidy verifications.

[21] In addition, during the course of the investigations, desk audits were performed by the CBSA on five other cooperating exporter's dumping and subsidy RFI submissions, plus the one late exporter submission received after the September 30, 2009 due date. A desk audit was also performed by the CBSA on one other exporter located in the USA, which was exporting goods originating in China to Canada. These exporters are:

- Heng Yang Group (China)
- Jiangsu Chengde Steel Tube Share Co. Ltd. (China)
- Shandong Molong Petroleum Machinery Co. Ltd. (China)
- Tianjin Pipe (Group) Corporation (TPCO) (China)
- Tianjin Tiangang Special Petroleum Pipe Manufacture Co., Ltd. (China)
- Shengli Oilfield Shengji Petroleum Equipment Co., Ltd. (China)
- SB International (USA)

[22] All of these exporters provided complete dumping RFI responses and fully cooperated during these desk audits for purposes of the final determinations.

[23] While Shengli Oilfield Shengji Petroleum Equipment Co., Ltd. cooperated for purposes of the dumping investigation, it provided incomplete information in relation to the subsidy investigation. As a result, this exporter has been considered to not be cooperative for purposes of the subsidy investigation. The remaining Chinese exporters fully cooperated for purposes of the subsidy investigation.

## **Importers**

[24] At the initiation of the investigations, the CBSA identified 51 potential importers of subject goods based on a review of CBSA import documentation.

[25] The CBSA sent an importer RFI to all potential importers of the goods. Nine importers provided a response to the RFI, with varying degrees of completeness, for purposes of the preliminary determinations.

[26] Following the preliminary determinations, a tenth importer provided a response to the importer RFI.

[27] Several other importers responded indicating that they either did not import subject goods during the POI or did not wish to participate in the investigation. The remaining importers did not provide a response to the CBSA's importer RFI.

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

## **Government of China**

[29] For the purposes of this investigation "Government of China" refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

[30] At the initiation of the investigations, the CBSA sent a subsidy RFI and a section 20 RFI to the GOC. The GOC provided a submission in response to both RFIs.

[31] The GOC provided its response to the subsidy RFI on time; however, upon reviewing the response, the CBSA considered it to be incomplete.

[32] The GOC provided limited information in respect of only the "nine responding companies" (i.e. the eight that responded on time and the one that filed a late response). Other examples of information requested but not provided by the GOC include: the ownership status of the exporters

and their suppliers; documents on relevant government laws and regulations; and information on the 16 new programs reported by the cooperative exporters. As a result, the GOC was notified of the incomplete status of its response on October 16, 2009.<sup>2</sup>

[33] During the final stage of the investigations, after being advised by the CBSA that its original subsidy RFI response was incomplete, the GOC provided additional subsidy information. Further details regarding the GOC's subsidy submission are provided in the "Subsidy Investigation" section of this report.

[34] The GOC's response to the section 20 RFI was determined to be complete. However, the GOC indicated that it did not have detailed official statistics of Chinese OCTG producers and only provided information with respect to the exporters/producers that are cooperating in the CBSA investigations. Further details regarding the GOC's section 20 submission is provided in the "section 20 inquiry" section of this report.

### **Surrogate Countries**

[35] As part of the CBSA's section 20 inquiry, an RFI was also sent to 36 producers in seven countries, who are not subject to the present dumping investigation. These other producers are located in Spain, Germany, Brazil, Russia, India, Ukraine and the United States. Only one such RFI response was received by the CBSA. Wheatland Tube Company, a U.S. producer of OCTG, provided an incomplete RFI response on October 1, 2009.<sup>3</sup>

### **PRODUCT DEFINITION**

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

Oil country tubular goods, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 3/4 inches (298.5 mm) in outside diameter, originating in or exported from the People's Republic of China.

### **Additional Product Information**

[37] Oil country tubular goods (OCTG) are carbon or alloy steel pipes used for the exploration and exploitation of oil and natural gas. The product definition includes certain casing, tubing, tubular products for use in the production of OCTG ("green tubes"), coupling stock, and non-prime and secondary pipes ("limited service products"). The product definition does not include seamless casing originating in or exported from the People's Republic of China in sizes with an outside diameter not exceeding 11 3/4 inches (298.5 mm) since these products are already subject to a

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<sup>2</sup> CBSA, Subsidy Exhibit S140 (PRO).

<sup>3</sup> CBSA Dumping Exhibit 93 (PRO).

finding by the Canadian International Trade Tribunal (Tribunal) in NQ-2007-001. The product definition also does not include unattached couplings and stainless steel products.

[38] Casing is used to prevent the walls of an oil or gas well from collapsing, both during drilling and after the well has been completed. Tubing is used within the casing to convey oil and gas to the surface.

[39] Both OCTG casing and tubing must be able to withstand outside pressure and internal yield pressures within an oil or gas well. They must also have sufficient joint strength to hold their own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined. Threading may be performed by the manufacturer or a third party threading operation.

[40] OCTG tubing and casing include both heat-treated and not heat-treated grades. Heat-treated grades are more sophisticated grades of pipes and are used in deeper wells and more severe environments such as low temperature services, sour service, heavy oil recovery, etc. These grades are made beginning with the use of a specific chemistry in the steel (either in billet for the seamless process or the steel coil in the Electric Resistance Welded process) and are transformed in the heat-treatment process to attain certain combinations of mechanical properties and/or resistance to corrosion and environmental cracking.

[41] For example, heat-treatment is used to confer maximum strength (N80, P110, Q125), high-strength with low ductility (normally proprietary enhancements of API grades), or high-strength combined with resistance to corrosion and environmental cracking (L80, CR13, C90, C95, C110, T95 and proprietary enhancements).

[42] The most common grades of low-strength casing/tubing include J/K55 and H40.

[43] Typical casing and tubing end finishes include: plain end, bevelled, external upset ends, non-upset ends, threaded, or threaded and coupled. As previously stated, unattached couplings are not subject to these investigations.

[44] OCTG subject to these investigations meet or are supplied to meet American Petroleum Institute (API) specification 5CT, in all grades including and not limited to, H40, J55, K55, M65, N80, L80, L80 HC, L80 Chrome 13, L80 LT, L80 SS, C90, C95, C110, P110, P110 HC, P110 LT, T95, T95 HC, and Q125, or proprietary grades manufactured as substitutes for these specifications.

[45] Subject goods also include green tubes and coupling stock. A tube for which the API 5CT specification requires additional processing such as heat-treatment and/or testing is referred to in the industry as a "green tube". A green tube for a higher strength grade can have a chemistry that meets a lower grade like H40 or J55 that does not require heat-treatment, and could just be tested and threaded to meet the lower grade. Coupling stock is a seamless thick-wall tube intended for use in the manufacture of coupling blanks.

## Production Process

[46] OCTG casing and tubing are made on the same production equipment according to the production process, although seamless OCTG is made on different equipment from welded OCTG.

[47] Seamless tubing and casing are produced by first forming a central cavity in a solid steel billet (shell) that has the chemistry required to meet the grade of the final product. The shell is then rolled on a retained mandrel and reduced in a stretch reduction mill to produce the finished size before cooling on a walking beam cooling bed.

[48] The Electric Resistance Welded (ERW) process begins with a steel sheet (coil) that has been slit from coils of flat steel sheet into the desired width that will determine the outside diameter. The slit sheet is then bent and welded to form a tube. The wall thickness is defined by the coil thickness and the outside diameter is defined by the coil width.

[49] The production machinery used to make pipe in the ERW process are an uncoiler, end-welder, accumulator, breakdown stands, forming cage, fin stands, weld station and internal diameter/outside diameter trim equipment, seam annealers, pull-out stand quench section, mill sonic testing, sizing section, turkshead stand and flying cutoff machine.

[50] Certain specifications require normalization (heat-treatment) to be transformed into the appropriate grade. The heat-treatment transforms the microstructure of the pipe to meet the higher API specifications.

[51] All tubes are then straightened, inspected and threaded on both ends. Inspection includes non-destructive examination (NDE) by electro-magnetic inspection (EMI) and, in some cases, ultrasonic (UT) inspection processes for longitudinal and transverse defects. A special inspection by magnetic particle inspection (MPI) is done at the end areas. Samples from each production heat will be cut and tested for hardness, tensile strength, impact, microstructure and corrosion properties. Wall thickness verification and drift tests will be conducted. A hydro test will assure appropriate yield strength and wall thickness.

[52] From this point, there are certain minor differences in finishing. Generally, a coupling and coupling protector is applied to one end of the casing or tubing and thread protectors are applied to the other end, making the OCTG ready for shipment. In cases where the client wishes to employ its own choice of premium connection, producers will supply a plain-end product. This product is shipped to the customer's preferred third party threader who will then thread the premium connection. Tubing requires that the pipe ends be upset and normalized before threading, to ensure a stronger connection with the coupling.<sup>4</sup>

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<sup>4</sup> CBSA Dumping Exhibit 2 (NC), Complaint Narrative, page 8.

## Classification of Imports

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

7304.29.00.31	7304.29.00.79	7306.29.10.31	7306.29.90.21
7304.29.00.39	7304.39.10.00	7306.29.10.39	7306.29.90.29
7304.29.00.51	7304.59.10.00	7306.29.10.41	7306.29.90.31
7304.29.00.59	7306.29.10.11	7306.29.10.49	7306.29.90.39
7304.29.00.61	7306.29.10.19	7306.29.90.11	7306.29.90.41
7304.29.00.69	7306.29.10.21	7306.29.90.19	7306.29.90.49
7304.29.00.71	7306.29.10.29		

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

## CANADIAN INDUSTRY

[55] The Complainants account for the vast majority of the total domestic production of OCTG, representing an estimated 99% share of the total Canadian production. Consequently, the CBSA considers them to constitute the domestic industry for the purpose of the dumping and subsidy investigations.

### **Tenaris Canada**

[56] Tenaris Canada comprises TenarisAlgomaTubes (TAT), a producer of seamless OCTG, TenarisPrudential, a producer of ERW OCTG, and Tenaris Global Services (Canada) Inc., the commercial agent for Tenaris in Canada.<sup>5</sup>

[57] TAT's history in Canada began in 1999, when Tenaris leased an idle mill that was owned by Algoma Steel Inc. After renovation work was completed, the new company under 'TAT' began production in September 2000. In 2004, TAT purchased the land and manufacturing facilities it had been leasing up until that time. TAT is the lone producer of seamless OCTG in Canada.

[58] TenarisPrudential, located in Calgary, Alberta, is a leading manufacturer of ERW OCTG. TenarisPrudential is wholly owned by Maverick Tube Limited Partnership, which, in turn, is owned by Maverick Tube Corporation. Maverick Tube Corporation was acquired by the Tenaris Group (Tenaris S.A.) in 2006.<sup>6</sup>

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<sup>5</sup> CBSA Dumping Exhibit 2 (NC), Complaint Narrative, cover letter page 3.

<sup>6</sup> CITT Finding in Inquiry No. NQ-2008-001 on Carbon Steel Welded Pipe, August 28, 2008, paragraph 26.

## **Evrast Inc. NA Canada**

[59] Evrast Inc. NA Canada operates ERW OCTG manufacturing facilities in Regina, Saskatchewan and Calgary and Red Deer, Alberta. The company is owned by the 'Evrast Group' a public company registered in Luxembourg which owns steel making assets around the world, including Canadian National Steel Corporation (CNSC) that operates an ERW OCTG manufacturing facility in Camrose, Alberta. CNSC is represented as a Complainant through Evrast Inc. NA Canada's participation in the complaint filed with the CBSA.<sup>7</sup>

[60] Evrast Inc. NA Canada officially acquired the IPSCO Tubulars business from Swedish steel manufacturer SSAB on June 13, 2008.<sup>8</sup>

[61] The former IPSCO Canadian assets, including the Regina Steel mill as well as plate and pipe production capacities in Regina, Calgary and Red Deer, are now part of Evrast's North American operations.

## **Lakeside Steel Corporation**

[62] Lakeside Steel Corporation is a producer of ERW OCTG. Lakeside acquired pipe and tubular production facilities from Stelco Inc. in 2005. Lakeside has production facilities in Welland, Ontario.

[63] The original company's operations began in 1909 under the name of Page-Hersey Iron Tube & Lead Company. Over the years, the company expanded, adding new mills and replacing old ones as technology evolved. In 1965, Stelco Inc., Canada's largest steel company purchased Page-Hersey. In 1985, Stelco Page-Hersey Works became Stelpipe Ltd. On November 1, 2005, Lakeside of Welland, Ontario, was formed when it purchased the assets of Stelpipe Ltd. Lakeside is a wholly owned subsidiary of Added Capital Corp.<sup>9</sup>

## **IMPORTS INTO CANADA**

[64] During the final phase of the investigations, the CBSA refined the total volume of imports based on information from its internal Customs Commercial System (CCS), CBSA import entry documentation and other information received from exporters, importers and other parties.

[65] The following table presents the CBSA's calculation of imports of subject OCTG for purposes of the final determinations:

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<sup>7</sup> CBSA Dumping Exhibit 10 (NC).

<sup>8</sup> Press Release: "Evrast Completes Acquisition of Ipsco Canada", June 13, 2008.

<http://www.osm.com/Company/PressReleases/tabid/99/PressReleaseID/94/CategoryID/10/Default.aspx>

<sup>9</sup> CITT Finding in Inquiry No. NQ-2008-001 on Carbon Steel Welded Pipe, August 28, 2008, paragraph 25.

*Imports of subject OCTG (July 1, 2008 - June 30, 2009)*

Countries	% of Total Imports
China	97.4%
U.S.A.	2.4%
All Other Countries	0.2%
<b>Total Subject Imports</b>	<b>100%</b>

**INVESTIGATION PROCESS**

[66] Regarding the dumping investigation, information was requested from known and possible exporters, vendors and importers, concerning shipments of OCTG released into Canada during the Dumping POI of July 1, 2008 to June 30, 2009. Information related to potential actionable subsidies was requested from known and possible exporters and the GOC concerning financial contributions made to exporters of Chinese origin OCTG imported into Canada during the Subsidy POI of January 1, 2008 to June 30, 2009.

[67] In addition, known and possible exporters and producers of the goods along with the GOC were requested to respond to the section 20 RFI for the purposes of the section 20 inquiry.

[68] The GOC provided a complete response to the section 20 RFI. A supplemental RFI was also sent to the GOC in respect of their section 20 RFI response.<sup>10</sup> A response to that supplemental RFI was received by the CBSA on October 26, 2009.<sup>11</sup>

[69] As previously explained, after being advised by the CBSA that its original subsidy response was incomplete and could not be used for purposes of the preliminary determination, the GOC provided additional supplemental subsidy information. However, this additional information was also insufficient for purposes of the final determination.

[70] Further details regarding the GOC's subsidy response can be found in the "Subsidy Investigation" section of this document.

[71] In summary, 76 subsidy programs were reviewed and 38 of the subsidy programs were determined to be conferring benefits to the cooperative exporters during the subsidy POI.

[72] As part of the final stage of the investigations, case briefs were provided by the legal representatives of the GOC and four Chinese exporters. Reply submissions were provided by the legal representatives of two of the Complainants. Details of all representations can be found in **Appendix 4** to this document.

<sup>10</sup> CBSA Dumping Exhibit 156 (PRO).

<sup>11</sup> CBSA Dumping Exhibit 172 (PRO).



## **DUMPING INVESTIGATION**

### **Section 20 Inquiry**

[73] Section 20 of SIMA may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA,<sup>12</sup> it is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Where section 20 is applicable, the normal value of goods is not determined based on a strict comparison with domestic prices or costs in that country.

[74] For purposes of a dumping proceeding, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation absent sufficient information to the contrary. The President may form an opinion where there is sufficient information that the conditions set forth in paragraph 20(1)(a) of SIMA exist in the sector under investigation.

[75] The CBSA is also required to examine the price effect resulting from substantial government determination of domestic prices and whether there is sufficient information on the record for the President to have reason to believe that the resulting domestic prices are not substantially the same as they would be in a competitive market.

[76] The Complainants requested that section 20 be applied in the determination of normal values due to the alleged existence of the conditions set forth in paragraph 20(1)(a) of SIMA. The Complainants provided information to support these allegations concerning the steel industry in China including the OCTG sector.

[77] At the initiation of the dumping investigation, the CBSA had sufficient information from the Complainants, CBSA's own research and previous CBSA section 20 opinions to support the initiation of a section 20 inquiry to examine the extent of GOC involvement in pricing in the OCTG sector. The information indicated that prices of OCTG in China have been influenced by various GOC industrial policies concerning the Chinese steel industry including the OCTG sector.

[78] Consequently, the CBSA sent section 20 RFIs to the GOC and all known Chinese OCTG producers/exporters to obtain information on the matter. In response to the section 20 RFIs, the CBSA received complete and timely responses from eight Chinese exporters and from the GOC. One other exporter provided a late section 20 RFI response which was considered for the final determination.

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<sup>12</sup> China is a prescribed country under section 17.1 of the Special Import Measures Regulations.

[79] Together, the nine cooperative Chinese exporters represent approximately 37% of the total exports to Canada of subject goods, by volume, during the Dumping POI and approximately 21% of the API-certified production in China. As such, the cooperating exporters comprise a limited coverage of the Chinese OCTG sector. However, the CBSA's review of the OCTG sector is not restricted to only these exporters but encompasses an examination of the entire OCTG sector in China.

[80] The CBSA's analysis includes information sourced from the GOC, as provided in the *China Steel Monthly* publication, in addition to market intelligence reports, public industry reports, newspaper and internet media articles as well as other government documents.

[81] The CBSA continued with its section 20 inquiry during the final stage of the investigation. Refer to **Appendix 3** of this document for the results of the CBSA's section 20 inquiry concerning the OCTG sector.

[82] For the purposes of the final determination, the President has affirmed the opinion made at the preliminary determination that domestic prices in the OCTG sector are substantially determined by the GOC and that there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

### **Normal Value**

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

[84] For purposes of the preliminary determination, normal values could not be calculated on the basis of domestic selling prices in China or on the full cost of goods plus profit, as the President formed the opinion that the conditions of section 20 exist in the OCTG sector.

[85] Where section 20 conditions exist, the CBSA may determine normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)(c) of SIMA. However, sufficient surrogate country data on the necessary domestic pricing and costing information relating to the goods under investigation was not provided to the CBSA. This issue was addressed in the Statement of Reasons issued for purposes of the preliminary determination and is addressed further in the "Dumping Representations" section in **Appendix 4** to this Statement of Reasons.

[86] Alternatively, normal values may be determined on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the President, pursuant to paragraph 20(1)(d) of SIMA. However, sufficient information was not submitted by importers in response to the importer RFI to allow for the application of paragraph 20(1)(d). This issue was also addressed in the Statement of Reasons issued for purposes of the preliminary determination and is addressed further in the "Dumping Representations" section in **Appendix 4** to this Statement of Reasons.

[87] Accordingly, the CBSA has used an alternative method to determine normal values for cooperative exporters for the purposes of the final determination, pursuant to a ministerial specification under subsection 29(1) of SIMA.

[88] In determining normal values for the final determination, the CBSA used OCTG pricing data from a U.S. based publication, *Pipe Logix*, which reports spot prices for OCTG pipe on a monthly basis.

[89] The report is published by Spears and Associates, Inc. an Oklahoma (USA) based firm which provides business planning, analysis, activity forecasts and market research-based consulting services to the worldwide petroleum equipment and service industry.

[90] In addition to being the only publicly available information that provides data in sufficient detail to allow a proper product comparison with the OCTG goods imported into Canada, the CBSA is satisfied that pricing data from this source is an appropriate basis to be used in the calculation of normal values when considering the similarities between the U.S. and Chinese petroleum markets and industries.

[91] The U.S. and China are both major world consumers of OCTG and both have major oil production and refinery capacities. The U.S. consumed approximately 6 million metric tonnes (mmt) of OCTG in 2008, while Chinese demand for OCTG was 2.3 mmt. The CBSA is satisfied that the U.S. is an appropriate alternative OCTG market operating under competitive market conditions.

[92] The spot market price data reported by *Pipe Logix* over the period of investigation includes average prices for 36 categories of OCTG pipe. All prices are reported on a U.S. dollar per net ton (\$/ton) basis.

[93] Prices are from distributors to end users/retailers, FOB Houston. The report covers the most popular sizes of tubing and casing.

[94] These monthly prices of OCTG were matched with imports of subject goods during the POI to arrive at the margin of dumping for each exporter.

### ***Pipe Logix Price Adjustments***

[95] Since the *Pipe Logix* prices are in U.S. dollars per net ton, prices were converted to Canadian dollars per metric tonne. As prices are reported on a monthly basis, the average monthly exchange rate as per the Bank of Canada has been used to adjust pricing.

[96] Furthermore, since *Pipe Logix* reports prices by distributors to end users/retailers while import prices to Canada from cooperative exporters were made predominantly to distributors, a downward adjustment has been made to these domestic U.S. prices to account for the differing levels of trade.

[97] To determine this adjustment, information provided by Canadian importers in this investigation was used. This involved comparing the weighted average import price paid by Canadian importers on OCTG products during the period of investigation, to the re-sale prices by those importers on sales made in Canada of the same products during the same period. The weighted average percentage difference between the import prices and re-sale prices (gross profit) is the factor by which the prices reported by *Pipe Logix* have been adjusted downward to account for the higher prices a subsequent trade level would be expected to pay versus those paid by distributors upon importation. This adjustment was determined to be 14.91%.

### **Normal Value Matching**

[98] Each unique subject good exported to Canada over the POI from cooperative exporters was compared with the *Pipe Logix* listing of products. Where an exact match was not possible, a comparison was made based on the best closest match between the exported good and the list of products reported by *Pipe Logix*, taking into consideration the product type (i.e. seamless or welded), grade and outside diameter, or combination thereof.

### **Export Price**

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

[100] For purposes of the final determination, export prices for the cooperative exporters were determined using reported export pricing data provided by the exporters of the goods. For 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**

[101] The CBSA determined margins of dumping for each of the cooperative exporters by comparing the total normal value with the total export price. When the total export price is less than the total normal value, the difference is the margin of dumping.

[102] For the exporters that did not respond to the RFI, the normal values were determined under a ministerial specification pursuant to section 29 of SIMA, based on the export price as determined under section 24, plus an amount equal to 166.9% of that export price, which represents the highest amount by which the normal value exceeded the export price on an individual transaction for a cooperative exporter.

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

[104] In calculating the margin of dumping for the country, the margins of dumping found in respect of each exporter were weighted according to each exporter's volume of subject OCTG exported to Canada during the Dumping POI.

[105] Based on the preceding, 100% of the subject OCTG from China was dumped by a weighted average margin of dumping of 137.6%, expressed as a percentage of the export price.

[106] In making a final determination of dumping in respect of goods imported from a country under investigation, the President must be satisfied that the subject goods have been dumped and that the margin of dumping is not insignificant. Subsection 2(1) of SIMA defines "insignificant" as being less than 2% of the export price of the goods. The table following the "Dumping Results by Exporter" section indicates that the margin of dumping is not insignificant.

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

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

### **Dumping Results by Exporter**

[109] Specific details relating to each of the exporters that provided a response to the CBSA's Dumping RFI are as follows:

#### **The FREET GROUP**

[110] The following four companies are related parties who are identified in these investigations collectively as the Freet Group. Shengli Oil Field Freet Petroleum Equipment Company (Freet) is the parent company of this corporate entity. Each of the four entities shipped subject goods to Canada independently and, therefore, each was requested to reply to the CBSA's dumping and subsidy RFIs.

#### **Shengli Oil Field Freet Petroleum Equipment Co., Ltd. (Freet)**

[111] Freet, the parent company of the 'Freet Group, is a national and international distributor of OCTG and other oilfield machinery and equipment. The company sells products produced by its related companies and is located in Dongying in the province of Shandong.

[112] The company's RFI response was received by the September 30, 2009 deadline.<sup>13</sup> The CBSA conducted an on-site verification of Freet and the other responding companies of the Freet Group from November 30, 2009 to December 11, 2009.

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<sup>13</sup> CBSA Dumping Exhibit 103 (PRO).

[113] The company has been in business for over 40 years and is a former subsidiary of SINOPEC, one of the largest integrated energy companies in China. Freet was privatized in 2005 when it became a privately held limited liability company.

[114] During the Dumping POI, Freet exported seamless tubing and welded casing to Canada and sold the same in the domestic market. Exports to Canada were sold both directly and through unrelated trading companies and shipped directly from China to multiple unrelated importers in Canada.

[115] For the final determination, 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 of the goods.

#### Margin of Dumping

[116] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Freet were dumped by a weighted average margin of dumping of 86.28%, expressed as a percentage of the export price.

#### **Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field the Thermal Recovery Equipment, Zibo Branch (Zibo)**

[117] Zibo is a branch of its parent company, Freet, and is a manufacturer and seller of tubing products. The company is located in Zibo City, Shandong, and has been manufacturing tubular products for 20 years. The company purchases semi-finished pipes and converts them into API certified products on its tubing production lines.

[118] The company's RFI response was received by the September 30, 2009 deadline.<sup>14</sup> The CBSA conducted an on-site verification of Zibo and the other responding companies of the Freet Group from November 30, 2009 to December 11, 2009.

[119] During the Dumping POI, Zibo exported seamless tubing to Canada and sold the same in its domestic market. Exports to Canada were sold both directly and through unrelated trading companies and shipped directly from China to multiple unrelated importers in Canada.

[120] For the final determination, 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 of the goods.

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<sup>14</sup> CBSA Dumping Exhibit 104 (PRO).

### Margin of Dumping

[121] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Zibo were dumped by a weighted average margin of dumping of 86.81%, expressed as a percentage of the export price.

### **Faray Petroleum Steel Pipe Co., Ltd. (Faray)**

[122] Faray is a manufacturer and seller of ERW casing and non-subject line pipe. The company is located in Dongying, Shandong, and was founded in 2005. Faray produces its welded casing from hot-rolled steel sheet purchased from unrelated domestic suppliers.

[123] The company's RFI response was received by the September 30, 2009 deadline.<sup>15</sup> The CBSA conducted an on-site verification of Faray and the other responding companies of the Freet Group from November 30, 2009 to December 11, 2009.

[124] Faray is a Sino-Japanese joint venture enterprise and a privately held limited liability company. The company has five shareholders, one of which is its parent company, Freet.

[125] Faray exported ERW casing to Canada during the Dumping POI. Exports to Canada were sold and shipped directly from China to an unrelated importer in Canada.

[126] For the final determination, 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 of the goods.

### Margin of Dumping

[127] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Faray were dumped by a weighted average margin of dumping of 106.43%, expressed as a percentage of the export price.

### **Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd. (Freet Steel Pipe)**

[128] The last of the exporters forming part of the 'Freet Group' of companies, Freet Steel Pipe, is a privately held limited liability company and manufacturer and seller of casing and tubing products.

[129] The company purchases semi-finished pipes and converts them into API certified products on its casing and tubing production lines. The company is located in the same city as its parent company.

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<sup>15</sup> CBSA Dumping Exhibit 102 (PRO).

[130] The company's RFI response was received by the September 30, 2009 deadline.<sup>16</sup> The CBSA conducted an on-site verification of Freet Steel Pipe and the other responding companies of the Freet Group from November 30, 2009 to December 11, 2009.

[131] During the Dumping POI, Freet Steel Pipe exported welded casing to Canada and sold seamless tubing and seamless and welded casing in its domestic market. Exports to Canada were sold through an unrelated trading company and shipped directly from China to an unrelated importer in Canada.

[132] For the final determination, 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 of the goods.

#### Margin of Dumping

[133] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Freet Steel Pipe were dumped by a weighted average margin of dumping of 49.75%, expressed as a percentage of the export price.

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

[134] Heng Yang Steel Tube Group is a multi-subsidary integrated steel billet producer and manufacturer of seamless OCTG products.

[135] Heng Yang Trading was established in 1996 to handle all the imports and exports for the group. This company exported the subject goods to Canada during the Dumping POI. Heng Yang Valin was established in 2000 and is a producer of OCTG. Heng Yang MPM, established in 2003, is a joint venture of Heng Yang Valin and Hunan Valin Steel Co., Ltd. which also produces OCTG.

[136] The company's RFI response was received after the September 30, 2009 deadline<sup>17</sup> and was taken into consideration for purposes of the final determination.

[137] Exports to Canada are sold both directly and through an unrelated trading company, and shipped directly from China to multiple unrelated importers in Canada.

[138] For the final determination, 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 of the goods.

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<sup>16</sup> CBSA Dumping Exhibit 105 (PRO).

<sup>17</sup> CBSA Dumping Exhibit 143 (PRO).



### Margin of Dumping

[139] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Heng Yang were dumped by a weighted average margin of dumping of 48.15%, expressed as a percentage of the export price.

### **Huludao City Steel Pipe Industrial Co., Ltd. (Huludao City Steel Pipe)**

[140] Huludao City Steel Pipe is located in Liaoning province and is an integrated steel pipe producer, including standard pipe, line pipe and OCTG. In terms of subject goods, the company produces only welded pipe.

[141] The company's RFI response was received by the September 30, 2009 deadline.<sup>18</sup> The CBSA conducted an on-site verification of Huludao City Steel Pipe from December 7 to 11, 2009.

[142] During the Dumping POI, the company exported welded casing to Canada, but had no domestic sales of OCTG. Exports to Canada were sold and shipped directly from China to multiple unrelated importers in Canada.

[143] Huludao City Steel Pipe is a domestic invested enterprise (DIE). The company has a related affiliate, Huludao Bohai Oil Steel Pipe Co. Ltd., which provides a tolling service for Huludao City Steel Pipe.

[144] For the final determination, 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 of the goods.

### Margin of Dumping

[145] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Huludao City Steel Pipe were dumped by a weighted average margin of dumping of 83.16%, expressed as a percentage of the export price.

### **Jiangsu Changbao Steel Tube Co. Ltd. (Jiangsu Changbao)**

[146] Jiangsu Changbao is a privately held company that is a domestically invested enterprise (DIE).

[147] The company's RFI response was received by the September 30, 2009 deadline.<sup>19</sup> The CBSA conducted an on-site verification of Jiangsu Changbao from November 30, 2009 to December 3, 2009.

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<sup>18</sup> CBSA Dumping Exhibit 86 (PRO).

<sup>19</sup> CBSA Dumping Exhibit 82 (PRO).

[148] The company purchases its major raw material (billet) from various suppliers and has production facilities to produce finished seamless tubing and casing.

[149] All goods exported to Canada during the Dumping POI consisted of seamless tubing while domestic sales consisted of seamless OCTG as well. Exports to Canada were sold both directly and through an unrelated trading company. All goods were shipped directly from China to multiple unrelated importers in Canada.

[150] For the final determination, 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 of the goods.

#### Margin of Dumping

[151] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Jiangsu Changbao were dumped by a weighted average margin of dumping of 86.33%, expressed as a percentage of the export price.

#### **Jiangsu Chengde Steel Tube Share Co. Ltd. (Jiangsu Chengde)**

[152] Jiangsu Chengde was founded in 1998, although it has existed since 1988 under a different, albeit similar corporate name. Since 2002, the company has been a wholly owned private company invested in by individual shareholders.

[153] The company's RFI response was received by the September 30, 2009 deadline.<sup>20</sup>

[154] The company is both a manufacturer and exporter of seamless OCTG. Jiangsu Chengde purchases steel billets in its production of seamless OCTG.

[155] Jiangsu Chengde exported seamless tubing to Canada during the Dumping POI and sold both seamless casing and tubing in the Chinese domestic market. Exports to Canada were sold both directly and through an unrelated trading company. All goods were shipped directly from China to multiple unrelated importers in Canada.

[156] For the final determination, 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 of the goods.

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<sup>20</sup> CBSA Dumping Exhibit 108 (PRO).

### Margin of Dumping

[157] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Jiangsu Chengde were dumped by a weighted average margin of dumping of 75.54%, expressed as a percentage of the export price.

### **Shandong Molong Petroleum Machinery Co., Ltd. (Molong)**

[158] Molong is an OCTG producer as well as a petroleum machinery manufacturer and service provider. The company's main products include: casing and tubing, line pipe, drill pipe, various tools and equipment for the petroleum industry, and technical services.

[159] The company's RFI response was received by the September 30, 2009 deadline.<sup>21</sup>

[160] The company, which began operations in 1987, was restructured into a public company in 2001. Molong is a privately held limited liability company.

[161] Molong manufactures seamless tubing from billets it purchases from its subsidiary Weihai Baolong Special Petroleum Materials Co., Ltd.

[162] During the Dumping POI, Molong exported seamless tubing to Canada and sold mostly seamless tubing in its domestic market. Exports to Canada were sold both directly and through an unrelated trading company. All goods were shipped directly from China to multiple unrelated importers in Canada.

[163] For the final determination, 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 of the goods.

### Margin of Dumping

[164] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Shandong Molong were dumped by a weighted average margin of dumping of 90.69%, expressed as a percentage of the export price.

### **Tianjin Pipe (Group) Corporation (TPCO)**

[165] TPCO is a state-owned enterprise (SOE) and producer of seamless pipe, including casing, tubing and line pipe.

[166] The company's RFI response was received by the September 30, 2009 deadline.<sup>22</sup>

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<sup>21</sup> CBSA Dumping Exhibit 95 (PRO).

<sup>22</sup> CBSA Dumping Exhibit 100 (PRO).

[167] During the Dumping POI, TPCO exported both seamless tubing and coupling stock to Canada. In the domestic market, TPCO sold the full range of seamless OCTG products. Exports to Canada were sold and shipped directly from China to multiple unrelated importers in Canada.

[168] For the final determination, 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 of the goods.

#### Margin of Dumping

[169] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by TPCO were dumped by a weighted average margin of dumping of 39%, expressed as a percentage of the export price.

#### **Shengli Oilfield Shengji Petroleum Equipment Co., Ltd. (Shengli Oilfield Shengji Petroleum)**

[170] Shengli Oilfield Shengji Petroleum is a limited liability company and manufacturer of pipes, located in Shandong province.

[171] The company's RFI response was received by the September 30, 2009 deadline.<sup>23</sup>

[172] Shengli Oilfield Shengji Petroleum exported seamless tubing and coupling stock to Canada during the Dumping POI and sold seamless tubing as well in the domestic market. Exports to Canada were sold and shipped directly from China to multiple unrelated importers in Canada.

[173] For the final determination, 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 of the goods.

#### Margin of Dumping

[174] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Shengli Oilfield Shengji Petroleum were dumped by a weighted average margin of dumping of 81.91%, expressed as a percentage of the export price.

#### **Tianjin Tiangang Special Petroleum Pipe Manufacture Co., Ltd. (Tiangang)**

[175] Tiangang is a privately-owned limited liability company incorporated on December 17, 2001. The company produces a range of petroleum pipe products, including the subject goods for sale on both the domestic and export markets.

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<sup>23</sup> CBSA Dumping Exhibit 125 (PRO).

[176] The company's RFI response was received by the September 30, 2009 deadline.<sup>24</sup>

[177] During the Dumping POI, the company exported ERW casing and seamless tubing to Canada and a full range of seamless OCTG products in the domestic market as well. Exports to Canada were sold both directly and through an unrelated trading company. All goods were shipped directly from China to multiple unrelated importers in Canada.

[178] For the final determination, 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 of the goods.

#### Margin of Dumping

[179] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by Tiangang were dumped by a weighted average margin of dumping of 76.46%, expressed as a percentage of the export price.

#### **SB International (United States)**

[180] SB International is a Houston, Texas, based distributor and exporter of Chinese origin OCTG goods. SB International sourced its subject goods exported to Canada during the Dumping POI from multiple Chinese OCTG manufacturers.

[181] The company's RFI response was received after the September 30, 2009 deadline<sup>25</sup> and was taken into consideration for purposes of the final determination.

[182] During the Dumping POI, SB International's exports consisted of both seamless tubing and ERW casing. Subject goods were sold and shipped directly to Canada from the USA to multiple unrelated importers.

[183] For the final determination, 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 of the goods.

#### Margin of Dumping

[184] The total normal value was compared with the total export price for all subject OCTG imported into Canada during the Dumping POI. It was found that the goods exported by SB International were dumped by a weighted average margin of dumping of 13.85%, expressed as a percentage of the export price.

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<sup>24</sup> CBSA Dumping Exhibit 112 (PRO).

<sup>25</sup> CBSA Dumping Exhibit 116 (PRO)

## **All Other Exporters - Margin of Dumping**

[185] For all other exporters, import pricing information available from the CBSA's internal information systems was used for the purposes of calculating the export price. The normal value and related margin of dumping was determined by advancing export prices by the highest amount by which the normal value exceeded the export price on an individual transaction (166.9%) for a cooperating exporter in accordance with the ministerial specification.

### **SUMMARY OF RESULTS – DUMPING**

*Period of Investigation - July 1, 2008 to June 30, 2009*

<b>Country</b>	<b>Dumped Imports as Percentage of All Subject Imports</b>	<b>Country Margin of Dumping</b>	<b>Imports as Percentage of All Country OCTG Imports</b>	<b>Dumped Imports as Percentage of All Country OCTG Imports</b>
China	100%	137.6%	60.5%	60.5%

[186] Details regarding the margins of dumping for each of the cooperative exporters are provided in **Appendix 1**.

### **REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION**

[187] After the preliminary determinations and prior to the close of the record of January 7, 2010, the CBSA received written representations on various issues including representations from counsel for the GOC.<sup>26</sup> Following the January 7, 2010 close of the record, a series of case briefs were also received from counsel for Chinese exporters Jiangsu Chengde, TPCO, the Freet Group and Heng Yang. Reply submissions were received on January 21, 2010, from counsels for Canadian complainants Tenaris Canada and Lakeside Steel Corporation.

[188] Details regarding the issues raised in representations and the CBSA's response to these issues are provided in **Appendix 4**.

### **SUBSIDY INVESTIGATION**

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

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<sup>26</sup> CBSA Dumping Exhibit 369 (NC), 370 (NC), 371 (NC), 373 (NC) and 359 (NC).

[190] 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.

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

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

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

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

### **Investigation Process**

[194] Prior to the initiation of the investigation, the Complainant submitted documents alleging that the OCTG producers and exporters in China benefited from actionable subsidies provided by the Government of China (GOC).

[195] Financial contributions provided by State-Owned Enterprises (SOEs) operating under the direct or indirect control or influence of the GOC may also be considered to be provided by the GOC for purposes of this investigation.

[196] At initiation, the CBSA identified 46 potential actionable subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) and other Designated Areas Incentives;
2. Grants;
3. Equity Programs;
4. Preferential Loan Programs;
5. Preferential Income Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Reduction in Land Use Fees; and
8. Goods/Services Provided by the Government at Less than Fair Market Value.

[197] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation and the preliminary determination. The *Statement of Reasons* documents are available through the CBSA website at the following address: <http://www.cbsa-asfc.gc.ca/sima-lmsi>

## **Results of the Subsidy Investigation**

[198] During the preliminary phase of the investigation, 15 subsidy programs not identified at the initiation were reported by the cooperative exporters in their responses, while one new program was identified by the CBSA immediately prior to the preliminary determination.

[199] Further to on-site verification and desk audits of the submissions during the final phase of the investigation, another 14 new subsidy programs were either reported by the cooperative exporters, related suppliers or their subsidiaries, or identified by the CBSA.

[200] As previously stated, 76 subsidy programs were reviewed and 38 of the subsidy programs were determined to be conferring benefits to the cooperative exporters during the subsidy POI.

[201] In conducting its investigation, the CBSA sent Subsidy RFIs to the GOC, as well as to 58 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 OCTG 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.

[202] The CBSA received Subsidy RFI responses, including responses in reply to supplemental RFI's issued by the CBSA, from eight exporters located in China.



[203] A ninth exporter submission was received by the CBSA 13 days past the due date. It has been taken into consideration for purposes of the final phase of the investigation.

[204] While eight of the nine Chinese exporters submitted complete RFI subsidy responses, one exporter, Shengli Oilfield Shengji Petroleum Equipment Co. Ltd., provided deficient and incomplete information in response to the CBSA's supplemental information requests relating to subsidy. Accordingly, this company's subsidy information has not been taken into consideration for purposes of the final determination.

[205] As stated at the preliminary determination, the CBSA had determined the GOC's response to the subsidy RFI to be incomplete in that it had only provided limited information in respect of programs utilized by only the "nine responding companies," whereas the RFI had requested data pertaining to subsidies received by all parties in China, who had exported subject goods to Canada during the POI. In addition, necessary information on the ownership status of the exporters and their suppliers was not provided; data respecting relevant government laws and regulations were also missing and none of the 15 new programs reported by the cooperative exporters were identified by the GOC in the submission.

[206] On November 9, 2009, the GOC provided a supplemental submission containing general information on the new programs reported by the cooperative exporters, but lacking certain specifics that were required to determine subsidy amounts in accordance with the *Special Import Measures Regulations* (SIMR). The submission also included a table indicating the status of each of the 58 exporters referred to in the RFI respecting their shipments to Canada and their intention to respond to the CBSA. The GOC maintained that 28 of the 58 exporters identified by the CBSA had not exported subject goods to Canada during the POI.

[207] During the on-site and desk verification of the exporters' responses, the CBSA noted several other programs that had not been reported. Therefore, on December 22, 2009, the CBSA sent the GOC a supplemental RFI respecting eight additional programs. At that time, the CBSA also informed the GOC that certain information required to determine specific amounts of subsidy for the responding exporters remained outstanding. This included, in particular, a listing of all producers of hot-rolled steel sheet and billets, including the identification of those that are SOEs, as well as information on which companies had received benefits under the specific programs. Immediately prior to the closing of the record date, six more programs were reported by one related raw material supplier and one subsidiary of the cooperative exporters.

[208] On January 7, 2010, the closing of the record date, the GOC again submitted a response that did not contain sufficient information on the additional programs to allow the determination of amounts of subsidy according to the SIMR. Although the GOC did provide the requested legal documents and general information on the programs as well as a listing of state-owned steel sheet producers, the latest submission did not contain data respecting the value or recipients of the benefits in question.

[209] Due to the 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 eight cooperative exporters, individual amounts of subsidy have been determined for those exporters where sufficient information had been provided by them to enable the necessary calculations.

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

[211] Details regarding the amounts of subsidy for each of the eight cooperative exporters are provided in **Appendix 1**. For purposes of the final determination, the aggregate amount of subsidy for the eight Chinese cooperative exporters ranges from 84.15 Renminbi per metric tonne to 1,108.31 Renminbi per metric tonne.

[212] Expressed as a percentage of export price, the amounts of subsidy as determined by the CBSA for the cooperative exporters range from 0.73% to 13.73%.

[213] 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:

- (1) the highest amount of subsidy for each of the 38 programs, as found at the final determination, for the cooperative exporters located in China, plus
- (2) the average of the highest amounts of subsidy for the 38 programs in (1), applied to each of the remaining 38 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[214] Using the above methodology for non-cooperative exporters, the result is an amount of subsidy of 4,070 RMB per MT.

[215] In summary, 100% of the goods from China are subsidized and the amount of subsidy is 25.7%, as a percentage of the export price.

#### **SUMMARY OF RESULTS – SUBSIDY**

*Period of Investigation - January 1, 2008 to June 30, 2009*

Country	Subsidized Goods as Percentage of Country Imports	Amount of Subsidy as Percentage of Export Price	Country Imports as Percentage of Total Imports	Subsidized Goods as Percentage of Total Imports
China	100%	25.7%	55%	55%

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

[217] However, section 41.2 of SIMA directs the President to take into account the provisions of Article 27 of the WTO *Agreement on Subsidies and Countervailing Measures (ASCM)* when conducting subsidy investigations. These provisions stipulate that any investigation involving a developing country must be terminated as soon as the President determines that the total amount of subsidy for a developing country does not exceed 2% of the export price of the goods.

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

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

#### **REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION**

[220] As stated in the section ‘Representations Concerning the Dumping Investigation,’ a series of representations from exporters, the Canadian Complainants and the GOC were made after the preliminary determination on various issues.

[221] Details regarding the issues raised in representations and the CBSA’s response to these issues are provided in **Appendix 4**.

#### **UNDERTAKING PROPOSAL**

[222] Section 49 of SIMA provides that, after a preliminary determination of dumping, exporters may give a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. Similarly, after a preliminary determination of subsidizing, the government of a country may give a written undertaking to eliminate the subsidy on the goods or to eliminate the injurious effect of the subsidy by limiting the amount of the subsidy or the quantity of goods exported to Canada. Exporters, with the consent of their government, may undertake to revise their selling prices so that the injurious effect of the subsidy is eliminated.

[223] Acceptable undertakings must account for all or substantially all of the exports to Canada of the dumped and subsidized goods. In the event that an undertaking is accepted, the required payment of provisional duties on the goods would be suspended.

[224] Written undertaking proposals must be made no later than 60 days after the preliminary determination.

[225] On January 6, 2010, within 60 days following the preliminary determination, a Chinese exporter, Jiangsu Changbao, filed an Undertaking proposal with the CBSA.<sup>27</sup> During the Dumping POI, Jiangsu Changbao accounted for under 4% of the total quantity of subject goods exported to Canada. Notification that a proposal was received was communicated to all participating parties in this investigation.

[226] Two of the Complainants, Tenaris Canada and Lakeside Steel, filed objections to the proposal, arguing that since the exporter accounted for only a small proportion of the subject imports during the POI, their proposal could not be considered as it would not be sufficient to eliminate all or substantially all of the dumped or subsidized goods as required in SIMA.

[227] No other undertaking proposals were filed by any other exporter of the goods by the end of the 60 day period following the preliminary determination. Accordingly, the undertaking proposal filed by Jiangsu Changbao was not accepted as it was the only party that filed an undertaking proposal, and it does not account for all, or substantially all, of the exports to Canada.

## **DECISIONS**

[228] The CBSA is satisfied that certain oil country tubular goods 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 February 22, 2010, the CBSA made a final determination of dumping pursuant to paragraph 41(1)(a) of SIMA.

[229] Similarly, the CBSA is satisfied that certain oil country tubular goods 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 CBSA also made a final determination of subsidizing pursuant to paragraph 41(1)(a) of SIMA on this same date.

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

## **FUTURE ACTION**

[231] The provisional period began on November 23, 2009, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by March 23, 2010. 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 website at: <http://www.cbsa-asfc.gc.ca/sima-lmsi>

[232] 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.

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<sup>27</sup> CBSA Dumping Exhibit 335 (PRO).

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

[234] 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*<sup>28</sup> 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.

[235] 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.

[236] Exporters who were not cooperative in the dumping investigation will have normal values established by advancing the export price by 166.9% 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 were not cooperative in the subsidy investigation will be subject to a countervailing duty amount of 4,070 Renminbi per metric tonne, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

#### **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

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

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

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<sup>28</sup> *Customs Act* R.S.C. 1985.

## **PUBLICATION**

[239] 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**

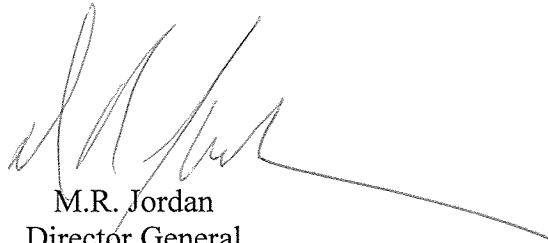
[240] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's website at the address below. For further information, please contact the officers identified as follows:

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

Telephone              Andrew Manera              (613) 946-2052  
                                Barbara Chouinard        (613) 954-7399

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E-mail                   [SIMARegistry@cbsa-asfc.gc.ca](mailto:SIMARegistry@cbsa-asfc.gc.ca)  
Website                 <http://www.cbsa-asfc.gc.ca/sima-lmsi/>



M.R. Jordan  
Director General  
Trade Programs Directorate

Attachments

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

<b>Exporter</b>	<b>Margin of Dumping as Percentage of Export Price</b>	<b>Amount of Subsidy (Renminbi per metric tonne)</b>
Freet Group		
Freet Petroleum Equipment Company - Zibo Branch	86.81%	157.95
Faray Petroleum Steel Pipe Co., Ltd.	106.43%	1,108.30
Shengli Oil Field Freet Petroleum Equipment Company	86.28%	157.95
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	49.75%	85.14
Heng Yang Group	48.15%	91.50
Huludao City Steel Pipe Industrial Co. Ltd.	83.16%	91.26
Jiangsu Changbao Steel Tube	86.33%	167.18
Jiangsu Chengde Steel Tube	75.54%	179.82
Shandong Molong	90.69%	187.17
Tianjin Pipe (Group) Corporation	39.00%	613.10
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd.	81.91%	4,070
Tianjin Tiangang Special Petroleum Pipe Manufacture Co., Ltd.	76.46%	228.02
SB International (USA)	13.85%	N/A
All Other Exporters / Tous les autres exportateurs	166.9%	4,070

## **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. The absence of such information would normally prevent the CBSA from determining amounts of subsidy for the cooperative exporters and would result in the use of other available information. However, in recognition of the amount of cooperation and the volume of information provided by the cooperative exporters, the CBSA has determined an amount of subsidy for each cooperative exporter under ministerial specification pursuant to subsection 30.4(2) of SIMA.

This appendix consists of descriptions of the 38 subsidy programs used by the cooperative exporters in the current investigation, followed by a listing of the other subsidy programs investigated by the CBSA that were not found to have been used by the cooperative exporters.

### **SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS**

Without a complete response to the subsidy RFI from the GOC, the CBSA has used the best 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.

With respect to calculations of amounts of subsidy for the non-cooperative exporters for programs 1 to 38, the CBSA has no information, or incomplete information, regarding benefits received under those programs by the non-cooperative exporters. Therefore, the CBSA was unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

On the basis of available information, these 38 programs constitute financial contributions pursuant to subsection 2(1.6) of SIMA.

#### **Program 1: Accelerated Depreciation on Fixed Assets in Binhai New Area of Tianjin**

##### **General Information:**

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



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

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 2: Export Assistance Grant**

General Information:

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

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

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

**Program 3: Research & Development (R&D) Assistance Grant**

General Information:

Based on the information available, this program was established by governments at the local level to encourage and support enterprises to develop new technologies and products, to promote energy savings, to enhance product quality, to improve export structure, and to cultivate and develop high-tech industries and new pillar industries.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 4: Provincial Scientific Development Plan Fund**

##### General Information:

Based on the information available, this program was established by governments at the local level and was established to provide financial assistance to research and development projects. The granting authorities responsible for this program are the Science and Technology Departments located in Liaoning province and Tianjin.

#### Calculation of Amount of Subsidy:

The CBSA has determined that two of the cooperative exporters have received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 5: Five Points, One Line Strategy in Liaoning Province**

##### General Information:

This program was established in the *Several Opinions of the People's Government of Liaoning Province on Encouraging the Extended Opening-up of the Coastal Development*. The "Five Points" include the following five industrial zones in Liaoning province: Dalian Changxing Island Seaport Industrial Zone, Yingkou Coastal Industrial Base, Liaoxi Jinzhou Bay Coastal Economic Zone, Dandong Industrial Zone and Dalian Huayuankou Economic Zone. Under this program, the Liaoning provincial government provides refunds of VAT and business tax, income tax reduction/exemption, interest subsidy and fee exemptions to enterprises located within the above-mentioned five industrial zones. The granting authority responsible for this program is the Liaoning Development and Reform Commission.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 6: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not Less Than 10 Years**

General Information:

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

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

The program was terminated when the *Income Tax Law of the People's Republic of China for Enterprises* came into effect on January 1, 2008. However, according to Article 57 of the *Income Tax Law of the People's Republic of China for Enterprises* and the *Notification of the State Council on Carrying out the Transitional Preferential Policies concerning Enterprise Income Tax*, Guo Fa (2007), No. 39, enterprises currently receiving the benefits under this program as of January 1, 2008, can continue to receive the relevant preferential treatments set forth in the previous tax laws and administrative regulations until the end of the fifth profitable year.

Calculation of Amount of Subsidy:

The CBSA has determined that two of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

**Program 7: Preferential Tax Policies for FIEs and Foreign Enterprises which have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment**

General Information:

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

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

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

**Program 8: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose**

General Information:

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

Under this program, for all enterprises with investment on the technological transformation projects conforming to the State Industrial Policy in the nation, 40% of the expenses on purchasing domestically produced equipment shall be deducted from the increment of income tax of that year compared to the previous year. In the case where the total increment of income tax is less than 40% of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years.

Calculation of Amount of Subsidy:

The CBSA has determined that two of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

## **Program 9: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment**

### General Information:

The exemptions of tariffs and import VAT is provided for and administered in accordance with the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment*, which was established on December 29, 1997, and came into effect on January 1, 1998. This program was established to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement and to maintain the sustained, rapid and healthy development of the national economy. The granting authorities responsible for this program are the Ministry of Finance and the General Administration of Customs, and the program is administered by local provincial and municipal customs branches.

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

### Calculation of Amount of Subsidy:

The CBSA has determined that three of the cooperative exporters have received benefits under this program during the Subsidy POI. 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 10: Liaoning High-tech Products & Equipment Exports Interest Assistance**

### General Information:

Based on the information available, this program was established by governments at the local level to provide financial support to enterprises of high-tech products or the equipment manufacturing industry in Liaoning province. The granting authority responsible for this program is the Liaoning Economic Commission.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 11: Corporate Income Tax Reduction for New High-Technology Enterprises**

### General Information:

The program was established in the *Income Tax Law of the People's Republic of China for Enterprises*, which came into effect as of January 1, 2008. This program was established to provide income tax reduction for new high-technology enterprises and to promote enterprise technology upgrades. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, new high-technology enterprises may apply for and receive an income tax reduction at a reduced rate of 15%.

### Calculation of Amount of Subsidy:

The CBSA has determined that four of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

## **Program 12: Changzhou Qishuyan District Environmental Protection Fund**

### General Information:

Based on the information available, this program was established by governments at the local level to protect the environment respecting sewage disposal. The granting authority responsible for this program is the Environment Protection Bureau of Qishuyan District of Changzhou.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

## **Program 13: 2007 Technology Innovation Award**

### General Information:

Based on the information available, this program was established by governments at the local level to promote technology innovation and energy savings. The granting authority responsible for this program is the Changzhou Economic & Trade Commission.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 14: 2007 & 2008 Energy-saving Fund**

##### General Information:

Based on the information available, this program was established by governments at the local level to promote energy savings. The granting authority responsible for this program is the Changzhou Economic & Trade Commission.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 15: Enterprise Innovation Award of Qishuyan District**

##### General Information:

Based on the information available, this program was established by governments at the local level to encourage and support enterprises to develop high-tech products. The granting authority responsible for this program is the Qishuyan District Government of Changzhou.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 16: Energy-saving Technique Special Fund**

##### General Information:

Based on the information available, this program was established by governments at the local level to encourage the development of energy-saving technologies. The granting authority responsible for this program is the Changzhou Economic & Trade Commission.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 17: Changzhou Technology Plan**

##### General Information:

Based on the information available, this program was established by governments at the local level to encourage and support enterprises to develop new technologies. The granting authority responsible for this program is Changzhou Science and Technology Bureau.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 18: 2008 Water-saving Technique Assistance**

##### General Information:

Based on the information available, this program was established by governments at the local level to encourage the development of water-saving technologies. The granting authority responsible for this program is Changzhou Water Conservancy Bureau.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 19: 2009 Energy-saving Fund**

##### General Information:

Based on the information available, this program was established by governments at the local level to promote energy savings. The granting authority responsible for this program is the Department of Foreign Trade & Economic Cooperation of Jiangsu.



#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

#### **Program 20: Enterprise Technology Centers of Tianjin City & Jinnan District**

##### General Information:

This program was established in the *Notice on the Confirmation of the 15<sup>th</sup> Enterprise Technology Centres at the Municipal Level, Jin Jing Ke (2008), No. 15*, which was issued on June 30, 2008. This program was established to setup and approve enterprise technology centres in Tianjin and Jinnan District. The granting authorities responsible for this program are Tianjin City Economic Committee and Tianjin City Science & Technology Committee.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 21: Top Ten Privately-owned Export Enterprises of Tianjin for the Year of 2008**

##### General Information:

Under this program, enterprises located in Tianjin city and elected as “Top Ten Privately-owned Export Enterprises of Tianjin for the Year of 2008” may receive grants from the local government. The granting authority responsible for this program is the Government of Tianjin City.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 22: Income Tax Refund for Enterprises located in Tianjin Jinnan Economic Development Area**

##### General Information:

Based on the information available, this program was established by governments at the local level to provide income tax refund for domestic invested enterprises (DIEs) located in Tianjin Jinnan Economic Development Area. The granting authority responsible for this program is the

Management Committee of Tianjin Jinnan Economic Development Area. Under this program, DIES may apply for and receive income tax refunds up to 50% of the income tax paid to the local government.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

**Program 23: Science and Technology Award**

General Information:

This program was established to provide benefits to enterprises for dedication to technology development. The administrative/granting authorities responsible for this program are the Jiangdu Finance Bureau and the Jiangdu Science and Technology Bureau.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

**Program 24: Financial Subsidy**

General Information:

One of the cooperative exporters reported receiving a financial subsidy from the provincial government but stated that it has no knowledge or details of this program. The granting authority is identified as the Finance Department of Jiangsu Province.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

## **Program 25: Jiangdu City Industrial Economy Performance Award**

### General Information:

This program was established to encourage industrial enterprises to speed up technological transformation, product development and brand building. The administrative authority responsible for this program is the Jiangdu Economic and Development Commission. The granting authority is the Jiangdu Finance Bureau.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

## **Program 26: Environment Protection Award**

### General Information:

This program was established to provide financial assistance to enterprises for environmental protection. The administrative authority responsible for this program is the Environmental Protection Bureau of Jiangsu Province. The granting authority is the Jiangdu Finance Bureau.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

## **Program 27: Emission Reduction and Energy-saving Award**

### General Information:

This program is administered by the Jiangsu Environmental Protection Department. The source of funding is the Finance Department of Jiangsu Province. This program is intended to support the emission-reduction work of major pollutants and the program came into force in September 2008.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

## **Program 28: Energy-saving Technology Renovation Fund**

### General Information:

This program was established to provide support and incentives for energy-saving projects. The administrative authorities responsible for this program are the Ministry of Finance and the National Development and Reform Commission. The granting authority is the Finance Department of Jiangsu Province.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

## **Program 29: Water Saving Enterprise**

### General Information:

Based on the information available, this program was established by governments at the local level to encourage the development of water-saving technologies. The granting authority responsible for this program is Changzhou Water Conservancy Bureau.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

## **Program 30: Grant for Market Promotion and Trade Development**

### General Information:

Based on the information available, this program was established by governments at the local level to encourage the development and expansion of trade and markets for local industries. The granting authority responsible for this program is the Dongying District Finance Bureau.

### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

### **Program 31: Refund of Land Transfer Fee**

#### General Information:

Based on the information available, this program was established by governments at the local level to provide refunds of land transfer fees to enterprises located in the Jinnan Development Zone of Tianjin City. The granting authority responsible for this program is Jinnan Branch Bureau of Tianjin National Land and Resource Administration Bureau.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 32: Grant – Wengeng Government**

#### General Information:

Based on the information available, this program was established by governments at the local level to provide a one-time grant. The granting authority responsible for this program is the local Wengeng government.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

### **Program 33: Grant – Gaocun Government**

#### General Information:

The program was established in the *Notice about Allocation of Government Reward, Gao Zheng Fa (2008), No. 7*, which was issued on June 20, 2008. This program was established to increase employment and promote the local economy. The granting authority responsible for this program is the Gaocun Town People's Government.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

### **Program 34: Grant – Enterprise Technology Centre**

#### General Information:

Based on the information available, this program was established by governments at the local level to provide a one-time grant for enterprise technology centres. One of the cooperative exporters reported receiving benefits under this program but stated that it has no knowledge or details of the program.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

### **Program 35: Grant – Taxpayer**

#### General Information:

Based on the information available, this program was established by governments at the local level to provide a one-time grant. One of the cooperative exporters reported receiving benefits under this program but stated that it has no knowledge or details of the program.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 grant was attributable.

### **Program 36: Debt-to-Equity Swaps**

#### General Information:

The debt-to-equity swap was a measure used in the financial restructuring of China's state owned enterprises (SOE) and state-owned banks. Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on November 20, 2000), the State Council established four asset management companies (AMCs) that were directed to purchase certain non-performing loans from state-owned banks. The four AMCs were supervised and managed by the People's Bank of China, China's Ministry of Finance and the China Securities Regulatory Commission.

One of the authorized business activities available for the management of non-performing loans purchased by the AMCs was the debt-to-equity swap. A debt-to-equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company.

#### Calculation of Amount of Subsidy:

The CBSA has determined that two of the cooperative exporters have received benefits under this program during the Subsidy POI. 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 37: Acquisition of Government Assets at Less than Fair Market Value**

##### General Information:

The CBSA's analysis of exporter submissions revealed that, within the past ten years, several of the cooperative exporters had changed their ownership status from that of SOEs to either FIEs or private limited enterprises. Information received further indicated that, during this time, China's state-owned oil companies shifted their focus toward core businesses and moved to divest themselves of peripheral operations such as production of OCTG. The CBSA ascertained that, during the privatization process for one of the cooperative exporters, the majority of the government-owned assets had been distributed to company employees at no cost.

#### Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. 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 38: Input Materials Provided by Government at Less Than Fair Market Value**

##### General Information:

This program relates to the acquisition cost of the input materials from SOEs. With respect to this investigation, the input materials for subject OCTG vary from exporter to exporter and may comprise one or a combination of hot-rolled steel sheet, billet and green pipe.

The information submitted by the cooperative exporters contained a breakdown of input material purchases, i.e., hot-rolled steel sheet, billets and green pipes. The information also included the names and addresses of suppliers and the material producers, as well as the ownership status of these parties, where known. While the cooperative exporters were generally able to identify the origin of the goods to the best of their ability, the GOC did not provide sufficient information to confirm the ownership status of the suppliers. Therefore, on the basis of the information submitted by the cooperative exporters, the CBSA has determined benefit amounts related to their purchases of input materials from SOEs.

### Calculation of Amount of Subsidy:

Where a subsidy relates to the provision of goods by government, the CBSA determines whether there is a difference between the fair market value of the goods in the territory of the government providing the subsidy, and the price at which the goods were provided by that government.

As mentioned earlier, the input materials for OCTG products vary from exporter to exporter and may comprise one or a combination of hot-rolled steel sheet, billet and green pipe. As a result, the CBSA considered using different fair market value for different types of input materials (i.e., hot-rolled steel sheet, billet and green pipe).

In respect of hot-rolled steel sheet, the CBSA has determined that section 20 conditions exist in the flat-rolled steel sector in China in the re-investigation of *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (concluded on June 27, 2007). As a result, the domestic selling prices for hot-rolled steel sheet in China are not appropriate for the purposes of determining the fair market value of these goods. The CBSA further reviewed information regarding hot-rolled steel sheet purchases by the cooperative exporters and found that none of the cooperative exporters imported hot-rolled steel sheet from suppliers located outside of China during the subsidy POI.

In absence of appropriate domestic benchmark prices of hot-rolled steel sheet in China and of import prices reported by the cooperative exporters, the CBSA determined, based on the information on the record<sup>29</sup>, that monthly world export prices of hot-rolled steel sheet reported by Steel Benchmarker are appropriate for purposes of establishing the fair market value of hot-rolled steel sheet in China.

Regarding billet, without complete responses from the GOC, the CBSA was unable to accurately determine whether the SOE billet producers would form the majority of billets produced in China. However, based on the information on the record, SOE crude steel producers account for a significant proportion of crude steel production in China.<sup>30</sup> In addition, the analysis resulting from the section 20 inquiry noted that a number of GOC industrial policies in relation to the Chinese steel industry would likely have a material impact on the prevailing price of billets in China. As a result, the domestic selling prices of billets are not appropriate for determining the fair market price of billet in China. The CBSA also found that none of the cooperative exporters imported billets from suppliers outside of China during the subsidy POI.

In order to establish the fair market value of billet in China, the CBSA reviewed the information available<sup>31</sup> and found that Steel Benchmarker did not report world export price of billet and the best information that could be used for establishing the fair market value of billet in China was monthly Latin American export prices of billets reported by Steel Business Briefing.

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<sup>29</sup> CBSA Subsidy exhibit S286.

<sup>30</sup> CBSA Dumping exhibit 23, Appendix 1 of 2008 China Steel Yearbook.

<sup>31</sup> CBSA Subsidy exhibit S286.



With respect to green pipe, the CBSA has determined that section 20 conditions exist in the steel pipe sector in China in the investigation of *Certain Carbon Steel Welded Pipe* (concluded on August 5, 2008). As a result, the domestic selling prices for green pipe in China are not appropriate for purposes of determining the fair market value of these goods. The CBSA further reviewed information regarding green pipe purchases by the cooperative exporters and found that none of the cooperative exporters imported green pipe from suppliers located outside of China.

Since green tube is a semi-finished product whose selling prices are not monitored, the CBSA was unable to obtain information from either published commercial reports or participants in the investigation regarding the fair market selling prices of this good. At the same time, it was concluded that since hot-rolled steel sheet and/or billet are raw material inputs for the production of green tube, it was appropriate to determine benefits arising from purchases of green tube from SOEs using data obtained respecting benefits applicable to purchases of billet and hot-rolled steel sheet from SOEs.

As a result, the CBSA determined the benefits received by the cooperative exporters on their purchases of green-tube based on the weighted average of the benefits resulting from the cooperative exporters' purchases of hot-rolled steel sheet and billet from SOEs. A weighted average unit subsidy amount was calculated using information provided by the cooperative exporters who purchased hot-rolled steel sheet and billet, and subsequently applied to the cooperative exporters who purchased green tube.

Based on the above, the CBSA has determined that six of the cooperative exporters have received benefits under this program during the Subsidy POI. 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 programs were also included in the current investigation. Questions concerning these programs were included in the Requests for Information 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 detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not constitute actionable subsidy. In other words, the CBSA does not have sufficient information to determine that any of these programs should be removed from the investigation for the purposes of the final determination.

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

- Program 39: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (excluding Shanghai Pudong Area)
- Program 40: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
- Program 41: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai
- Program 42: Preferential Tax Policies in the Western Regions

- Program 43: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 44: Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas
- Program 45: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas
- Program 46: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas
- Program 47: Income Tax Refund where Profits Re-invested in SEZs and other Designated Areas
- Program 48: Preferential Costs of Services and/or Goods Provided by Government or State-owned Enterprises (SOEs) in SEZs and Other Designated Areas

### **Grants**

- Program 49: Grants for Export Increasing
- Program 50: Grants for International Certification
- Program 51: The State Key Technology Renovation Projects
- Program 52: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- Program 53: Supportive Fund provided by the Government of Xuyi County, Jiangsu Province
- Program 54: Repaying Foreign Currency Loan by Returned VAT
- Program 55: Government Export Subsidy and Product Innovation Subsidy
- Program 56: Innovative Experimental Enterprise Grant
- Program 57: Superstar Enterprise Grant
- Program 58: Awards to Enterprises whose Products Qualify for “Well-Known Trademarks of China” or “Famous Brands of China”
- Program 59: Export Brand Development Fund
- Program 60: Technical Renovation Loan Interest Discount Fund
- Program 61: Venture Investment Fund of Hi-Tech Industry
- Program 62: National Innovation Fund for Technology Based Firms
- Program 63: Guangdong – Hong Kong Technology Cooperation Funding Scheme
- Program 64: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment

### **Equity Programs**

- Program 65: Exemptions for SOEs from Distributing Dividends to the State

### **Preferential Loan Programs**

- Program 66: Loans and Interest Subsidies provided under the Northeast Revitalization Program
- Program 67: Preferential Loans

### **Preferential Income Tax Programs**

- Program 68: Income Tax Exemption for Enterprises Changed Ownership from SOE to Private Limited Company
- Program 69: Preferential Tax Policies for Foreign Invested Export Enterprises
- Program 70: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive
- Program 71: Preferential Tax Policies for the Research and Development of FIEs
- Program 72: Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
- Program 73: VAT and Income Tax exemption /reduction for Enterprises adopting Debt-to-Equity Swaps
- Program 74: Stamp Exemption on Share Transfers under Non-tradable Share Reform

### **Relief from Duties and Taxes on Materials and Machinery**

- Program 75: Relief from Duties and Taxes on Imported Material and other Manufacturing Inputs

### **Reduction in Land Use Fees**

- Program 76: Reduction in Land Use Fees

## **APPENDIX 3 - SUMMARY OF FINDINGS - SECTION 20**

### **INTRODUCTION**

Section 20 is a provision under the *Special Import Measures Act* (SIMA) that is applied to determine the normal value of goods in an anti-dumping investigation where certain “non-competitive” conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA section 20 is applied where, in the opinion of the President, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

### **FACTORS FOR SECTION 20 CONDITIONS**

The following are guidelines that the CBSA considers when examining factors that suggest domestic prices may be substantially determined by the government of an exporting country under investigation.

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

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

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

- governments can control import and export levels through licensing, quotas, duties or taxes to maintain domestic prices at a certain level;
- governments can subsidize producers by providing direct financial subsidies or low-priced inputs in order to maintain the selling price of the product at a certain level;
- governments can purchase goods in sufficient quantities to raise the domestic price of the goods or they can sell stockpiled goods to put downward pressure on prices;
- through taxation or other policies, governments can regulate the level of profits that a company can earn which will affect selling prices;
- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.

## **BACKGROUND**

### **Recent China Section 20 Cases**

Since June 2005, the CBSA has conducted two investigations and three normal value re-investigations involving section 20 inquiries on steel products from China. The investigations covered certain seamless carbon or alloy steel oil and gas well casing (seamless steel casing) and certain carbon steel welded pipe products, while the three re-investigations involved certain flat hot-rolled carbon and alloy steel sheet and strip (two re-investigations) and certain hot-rolled carbon and high-strength low alloy steel plate. In all instances, information available to the CBSA indicated that the domestic prices are substantially determined by the government of China (GOC) and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Accordingly, the CBSA was of the opinion that the conditions of section 20 were present in these respective steel sectors.

The CBSA also concluded a section 20 inquiry on February 16, 2009, concerning certain aluminum extrusions and information available to the CBSA indicated that the domestic prices are substantially determined by the GOC and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Accordingly, the CBSA was of the opinion that the conditions of section 20 were present in the aluminum extrusions sector as well.

This section 20 inquiry is examining the OCTG sector. This is the same sector that was examined in the seamless steel casing section 20 inquiry two years ago. One year ago, the carbon steel welded pipe section 20 inquiry examined the Chinese welded pipe sector, which includes welded OCTG. Both of these section 20 inquiries resulted in the CBSA forming the opinion that the domestic prices are substantially determined by the GOC and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market and section 20 conditions exist in the steel industry in China in the respective product sectors.

### **Investigation Process**

On August 24, 2009, concurrent with the initiation of dumping and subsidy investigations, the CBSA initiated a section 20 inquiry to examine the extent of the GOC involvement in pricing in the OCTG sector. The period of analysis was July 1, 2008 to June 30, 2009.

At the initiation of the dumping investigation, the CBSA had sufficient information, supplied by the Complainants and from its own research to support the initiation of a section 20 inquiry. The information available at the time of initiation indicated that the prices of OCTG in China have been significantly affected by various GOC industrial policies.

Requests for Information specific to this inquiry were sent to all potential exporters/producers of OCTG in China, as well as to the GOC, in order to obtain further information respecting the extent to which the GOC is involved with the determination of domestic prices for OCTG.

During the course of the inquiry, the CBSA obtained information from sources such as the China-based trade publication, the Monthly China Steel Report, which reports GOC policies and information with respect to the Chinese steel industry. In addition, the CBSA obtained information from industry and media reports by Chinese and international industry specialists.

On November 23, 2009, for the purposes of the preliminary determination of dumping and based on the available information, the CBSA formed the opinion that domestic prices in the Chinese OCTG sector were substantially determined by the GOC and there was sufficient reason to believe that the domestic prices were not substantially the same as they would be in a competitive market. In arriving at this opinion, the CBSA considered the cumulative effect that the GOC's measures exerted on the OCTG sector in China.

At this final stage of the inquiry and for the purposes of the final determination, the CBSA considered information provided by the co-operating exporters, the GOC and information obtained through the CBSA's own research.

### **CBSA ANALYSIS FOR THE FINAL DETERMINATION**

In the CBSA's section 20 inquiries concerning seamless steel casing (concluded in 2008) and carbon steel welded pipe (concluded in 2009), the following factors in the Chinese steel industry were reviewed in detail:

- China's Five-Year Plan for National Development and Social Development
- China's Provincial Five-Year Plans for Development
- State-Owned Enterprise Five-Year Plans
- State-Owned Assets Supervision and Administration Commission
- *National Iron and Steel Development Policy* issued July 20, 2005 (NSP)<sup>32</sup>

The cumulative impact of these factors were material to the CBSA's opinion that domestic prices in the Chinese OCTG sector and the welded pipe sector were substantially determined by the GOC and there was sufficient reason to believe that the domestic prices were not substantially the same as they would be in a competitive market. Therefore, the conditions of section 20 were present in both the OCTG sector and the welded pipe sector. Refer to the Statement of Reasons for the final determination for each of these investigations for the CBSA's detailed analysis of each of these factors. Based on the information on the record for the current inquiry, these same factors are present in the Chinese steel industry and are relevant and material to this section 20 inquiry.

### **2009 GOC Policy Concerning the Chinese Steel Industry**

The global financial crisis in the fall of 2008 resulted in a new GOC macro-economic policy with respect to the Chinese steel industry. On March 20, 2009, the *Blueprint for the Adjustment and Revitalization of the Steel Industry* was issued by the General Office of the State Council (2009 Steel Revitalization/Rescue Plan). In this macro-economic policy, the GOC addresses the Chinese steel industry in 2009 and its plans for the industry over the next two years. The GOC states:

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<sup>32</sup> CBSA Dumping Exhibit 99, GOC's section 20 response, Exhibit 1.

“As a pillar industry of the national economy, the steel industry plays an important role in the economic construction, social development, fiscal taxation, national defence and employment because of its broad spectrum, high relevance and powerful stimulus to the consumption demand.”<sup>33</sup>

Given the significance of the steel industry to the Chinese economy, the GOC states in the 2009 policy that the Chinese steel industry “needs a material adjustment”<sup>34</sup> to resolve the problems.

In the 2009 Steel Revitalization/Rescue Plan, the GOC states that the Chinese steel industry has several problems. Chinese steel production has exceeded demand and Chinese steel product quality needs further development. The GOC indicates that the Chinese steel industry is not concentrated enough with too many small steel producers and control of resources is weak with China’s limited iron resources. The GOC cites that the actual industrial layout of the Chinese steel industry is not advantageous with respect to water resources, transportation and energy supply.

This detailed macro-economic policy addresses the GOC’s principles, objectives, major tasks, policies and measures for the Chinese steel industry for 2009 to 2011 as follows:

### Principles

The principles of the Plan detail the GOC’s objectives: to upgrade the Chinese steel industry; control the total steel production output in the Chinese steel industry; and optimize the layout of the Chinese steel industry.

### Objectives

The objectives of the Plan include numerous GOC directed mergers and acquisitions of Chinese enterprise to reform the composition of the Chinese steel industry as determined by the GOC. The 2009 Plan addresses total steel production output, the elimination of obsolete production, the actual relocation of Chinese steel enterprises, domestically sourced production equipment and energy savings measures.

### Tasks

The tasks of the Plan address the stability of the domestic steel market and the GOC’s commitment to improve the export market for steel. Other tasks specify the steel enterprises that are to merge, re-organize and relocate. The GOC-directed tasks include the formation of a few huge steel enterprises as well as a number of large steel enterprises. The GOC plans to form three very large Chinese steel enterprises with an annual steel production output of 50 million metric tonnes (mmt) each and several other large-scale steel enterprises. The GOC has determined in this policy that the GOC direction of the Chinese steel industry continues to be necessary. The GOC also specifies that the total steel production output is to be strictly controlled. Other GOC’s initiatives for the Chinese steel industry include improving the product quality of steel products including high pressure boiler tube.

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<sup>33</sup> CBSA Dumping Exhibit 124, GOC section 20 response, Exhibit b6(a)(i).

<sup>34</sup> CBSA Dumping Exhibit 124, GOC section 20 response, Exhibit B6(a)(i).

## Policies and Measures

The policies and measures of the Plan include the adjustment of import and export tax rates of steel products, special funds for technical reform, mechanisms for the elimination of obsolete steel production, improved measures for enterprise re-organization and steel production standards. For some targeted enterprises, this is reform on a corporate level with a GOC directive to merge, while for other enterprises, the GOC has plans for their actual relocation. The 2009 Steel Revitalization/Rescue Plan stipulates operating minimum requirements with respect to blast and electric furnaces. In addition, the GOC also focuses on key steel products and cites certain steel products for quality improvement.

## Implementation

The implementation terms of the Plan direct that it be executed and that all provinces (regions and municipalities) are to report problems and circumstances in a timely manner to the National Reform and Development Commission (NDRC). Furthermore, all departments under the State Council are to work out the specific implementation plans as soon as possible and provide advice, supervision and inspection. This plan is not a voluntary GOC guideline for either the steel enterprises or local or provincial governments.

### **CBSA's Synopsis of the GOC's 2009 Steel Revitalization/Rescue Plan**

In the fall of 2009, the global financial crisis severely impacted the world's economies and resulted in extraordinary measures by various governments to alleviate the situation. Many governments, including Canada, the U.S., the EU and China quickly established economic stimulus programs to maintain economic stability and address the critical issues within the respective economies.

The GOC's 2009 Steel Revitalization/Rescue Plan is very similar to the guiding principles of the NSP. Through the NSP and continuing with the 2009 Plan, the GOC directs the structural adjustment of the Chinese steel industry through industry consolidation of steel enterprises, stipulates new production standards for the industry, and states technological targets for the industry. In both the NSP and continuing with the 2009 Plan, the GOC states that it is to regulate new or additional production capacity in the Chinese steel industry.

While the GOC's 2009 Steel Revitalization/Rescue Plan provides for state measures to stabilize the economy, it also addresses the current problems in the Chinese steel industry as determined by the GOC. Through its measures in the NSP and continuing with its 2009 Steel Revitalization/Rescue Plan, the GOC directly impacts the commercial decisions of steel enterprises in China. State owned enterprises (SOEs) comprise a substantial proportion of the Chinese steel industry and make a variety of steel products including OCTG.<sup>35</sup> SOEs have GOC representation in the form of SASAC appointees at the corporate level of the enterprise.<sup>36</sup> As a result, the SOEs must be mindful of the states' objectives, mandates and policies in arriving at their corporate decisions which may conflict with corporate decisions made to maximize profits.

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<sup>35</sup> CBSA Dumping Exhibit 23, 2008 China Steel Yearbook, Table 1.

<sup>36</sup> Statements of Reasons for the final determination, seamless steel casing and carbon steel welded pipe.



Through its 2009 Steel Revitalization/Rescue Plan, the GOC's reform of the Chinese steel industry also includes the OCTG sector of the Chinese steel industry. The GOC has directed Tianjin Pipe Corporation (TPCO), the largest Chinese producer of OCTG to re-organize with another company. The CBSA requested the GOC and TPCO to provide the details on this re-organization as this information could be relevant to the section 20 inquiry in respect of the new merged company, its resulting production capacity and other factors for consideration of section 20. However, the GOC responded that it does not have such information relating to re-organizations within the OCTG sector of the steel industry.<sup>37</sup> The CBSA requested TPCO to provide the details on the GOC directed enterprise re-organization however TPCO did not acknowledge the GOC directed merger for the company and stated that there were no plans for the merger.<sup>38</sup> The China Business News reported that the GOC directed merger plans have been finalized.<sup>39</sup>

Based on the scope of the 2009 Steel Revitalization/Rescue Plan and in addition to the NSP, which has been in effect since 2005, the GOC's level of administration and the continuing supervision by the GOC of the Chinese steel industry is indicative of a government that applies the policy of dirigisme (government direction and control in economic matters), in a key industry of the country's economy, in this case the steel industry.

While this Plan is reported to be the GOC's plan for the Chinese steel industry in response to the international financial crisis, there are substantial measures for the re-organization of the Chinese steel industry along with GOC's continued oversight of the Chinese steel industry over the coming years. As a consequence for the steel enterprises in China, including the OCTG sector, market driven forces must compete with GOC-mandated priorities in making their corporate decisions, particularly for the SOE.

The CBSA considers that a government's regulation or control of production levels in an industry influences the supply of goods and indirectly affects their price of the goods and this factor is indicative that section 20 conditions are present when prices are not substantially the same as they would be, if they were determined in a competitive market.

### **Recent GOC Legislation**

On May 1, 2009, the GOC released the *Law of the People's Republic of China on the State-Owned Assets of Enterprises, adopted at the 5<sup>th</sup> session of the Standing Committee of the 11<sup>th</sup> National People's Congress of the People's Republic of China on October 28, 2008 and promulgated and come into force on May 1, 2009.*<sup>40</sup> Article 7 of this law, directs that the state will take measures to promote the centralization of state-owned capital to the important industries and key fields that have bearing on the national economic lifeline and state security,

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<sup>37</sup> CBSA Dumping Exhibit 172, GOC section 20 supplementary response, B6(a)(i).

<sup>38</sup> CBSA Dumping Exhibit 262, TPCO response to supplementary RFI, response to Question 2.

<sup>39</sup> CBSA Dumping Exhibit 354, China Business News report, China's Tianjin launches 20 million t/y steel group.

<sup>40</sup> CBSA Dumping Exhibit 172, GOC section 20 supplementary response, Exhibit 2.

“The state shall take measures to promote the centralization of state-owned capital to the important industries and key fields that have bearing on the national economic lifeline and state security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy and strengthen the control force and influence of the state-owned economy.”<sup>41</sup>

The general provisions of this law concerning state-owned assets of enterprises effectively enable the GOC to reform state-owned enterprises in the manner deemed necessary by the GOC. Similarly, as provided in the 2009 Steel Revitalization/Rescue Plan, one of the GOC’s major tasks is to concentrate efforts to “enhance enterprise re-organization and improve the industrial concentration”<sup>42</sup> through GOC directed mergers. Both Chinese law and macro-economic policies are copacetic in allowing the GOC to direct the SOEs in the Chinese steel industry which comprise a significant proportion of the Chinese steel industry.

The CBSA considers that government influence, through policies supported by legislation, along with state representation at the enterprise level of SOEs which comprise a significant proportion of an industry, result in an environment where government principles, objectives and targets can be efficiently promoted and realized at the enterprise. Through this process, government then can impact product development and production and indirectly influence prices, which result in prices that are not substantially the same as they would be if they were determined in a competitive market.

### **Announcements of Forthcoming GOC Macro-Economic Policies for Steel**

In the China Steel Monthly No 22, May 1-31, 2009, the GOC’s Ministry of Industry and Information Technology (MIIT) indicated that it would put the work of controlling gross steel output as its top priority.<sup>43</sup> Given this proposed GOC action, the Chinese steel industry is alerted to new GOC guidelines before proceeding with its corporate decisions to add new or additional steel production capacity.

General Steel Holdings Inc., a hot-rolled steel and spiral weld pipe producer in China, stated in its 10-Q filing with the U.S. Securities Exchange Commission (SEC) for the period ending June 30, 2009:

#### **“Risks Related to Operating our Business in China**

A change in policies by the Chinese government could adversely affect our interests through, among other factors: changes in laws, regulations or the interpretation thereof; confiscatory taxation; restrictions on currency conversion; imports or sources of supplies; or the expropriation or nationalization of private enterprises. Although the Chinese government has been pursuing economic reforms policies for approximately two decades, the Chinese government may significantly alter such policies. Although the Chinese

<sup>41</sup> CBSA Dumping Exhibit 172, GOC supplementary section 20 response, Exhibit 2.

<sup>42</sup> CBSA Dumping Exhibit 124, GOC section 20 response, Exhibit B6(a)(i), Major Tasks.

<sup>43</sup> CBSA Dumping Exhibit 21, China Steel Monthly, No 22, May 1-31, 2009, page 4.

government has implemented measures recently emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets and the establishment of sound corporate governance in business enterprises, a substantial portion of productive assets in China is still owned by the Chinese government. In addition, the Chinese government continues to play a significant role in regulating industry by imposing industrial policies. It also exercises significant control over China's economic growth through the allocation of resources, controlling payment of foreign currency denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. Therefore, the Chinese government's involvement in the economy may negatively affect our business operations, results of operations and our financial condition".<sup>44</sup>

As illustrated by General Steel Holdings Inc., Chinese steel enterprises are attentive to the current GOC macro-economic policies as the GOC's policies can impact the enterprise's costs, selling prices and resulting financial results. The CBSA considers that government mechanisms, such as significant industrial policies that indirectly influence the supply/prices of inputs or the supply of subject goods indicate that section 20 conditions are present when prices are not substantially the same as they would be if they were determined in a competitive market.

#### **VAT Policies – OCTG**

The specific Value Added Tax (VAT) assesses the amount of VAT returned to the exporters of specific goods and provides the exporter with an incentive to export product. OCTG is considered to be a high value-added steel product and the VAT rebate on OCTG is 13 percent.<sup>45</sup> This rate has been in place since 2005. As a result, OCTG exporters have been given incentive to export by the GOC.

Through its VAT policy, the GOC impacts the Chinese steel products exported and also impacts the domestic market development of steel producers by encouraging them to develop more steel production facilities producing the high value-added steel products. Correspondingly, this is one of the objectives of the NSP and the 2009 Steel Revitalization/Rescue Plan, to develop high value added steel products. The incentive provided with the rebate by the GOC is an impetus for the industry to produce and export more OCTG.

The NSP and the 2009 Steel Revitalization/Rescue Plan focus on the development of steel product mix and encourage the production of higher value added steel products. The export of steel products is also one of the basic principles to ensure economic growth. In the 2009 Steel Revitalization/Rescue Plan, under *Part II, Basic Principles* states that:

"Combination of domestic demand with global allocation. We shall take full advantage of the two markets and two resources, focus on meeting the domestic demand, optimize direct export and expand indirect export"<sup>46</sup>,

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<sup>44</sup> CBSA Dumping Exhibit 195, Reference Material, General Steel Holdings, Inc SEC 10-Q.

<sup>45</sup> CBSA Dumping Exhibit 172, GOC supplementary section 20 submission, response, C10(e).

<sup>46</sup> CBSA Dumping Exhibit 124, GOC section 20 submission, Exhibit B6(a)(i).

The CBSA requested the GOC to explain the above statement and the GOC responded:

“Optimize direct export, expand indirect export are the expression indicating exports shall be arranged by different options through different channels on the basis of economic consideration, for example, if indirect export appears advantageous than direct export, a company should opt for such channel and vice-versa.”<sup>47</sup>

It is not clear to the CBSA how the GOC is to facilitate this process.

With respect to low value-added steel products, such as semi-finished steel (billets and slabs, etc) which are the crude steel products from the first stage of steel making, there is less of an incentive to export offered by the GOC’s VAT policy, thereby effectively increasing the domestic supply of billets, and depressing domestic prices for downstream Chinese steel products, including OCTG. The CBSA considers that government measures that influence the supply of inputs used in the production of the subject goods a factor that can indirectly influence prices and result in prices that are not substantially the same as they would be if they were determined in a competitive market.

### **China’s Economy**

China started to move from a planned economy to a socialist market economy in the early 1990s and China’s current economic structure reflects an economy in transition. As explained above, through its macro-economic policies, the GOC oversees the Chinese steel industry and continues to maintain significant control within the industry. As cited earlier, General Steel Holdings, in its 10-Q U.S. Securities Exchange Commission (SEC) filing for the period ending June 30, 2009, indicated that:

“The Chinese government’s involvement in the economy may negatively affect our business operations, results of operations and our financial condition”.<sup>48</sup>

In contrast, other industrial sectors in China operate under direct GOC controls. In the case of the petroleum industry, the GOC sets the prices of refined petroleum products. Petro China is owned by China National Petroleum Corporation (CNPC), as the controlling shareholder and CNPC is a major purchaser of OCTG. PetroChina’s 2008 Annual Report stated that there were drastic fluctuations in the oil market. With respect to refined petroleum products, PetroChina stated that:

“2008 Prices for Chinese refined petroleum products were still under the macro-economic controls of the PRC Government. Annual average ex-factory prices of domestic gasoline and diesel were RMB5,890 and RMB5,564 per ton respectively, being RMB1,119 and RMB2,347 lower than the Cost, Insurance and Freight (CIF) per ton prices quoted in the Singapore market, respectively. During the first half of 2008, international crude prices surged and as a result, domestic refineries incurred heavy losses in processing and some of them ceased production. Supply in the refined market was very tight at a point in time. On June 20, 2008, the PRC Government raised the ex-factory prices of gasoline, diesel by RMB1,500 per ton. During the fourth quarter of 2008, the demand for refined products

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<sup>47</sup> CBSA Dumping Exhibit 156, GOC section 20 supplementary response, C10(e).

<sup>48</sup> CBSA Dumping Exhibit 195, Reference Material, General Steel Holdings, Inc SEC 10-Q.

consumption decreased and supply exceeded demand resulting from the spreading global financial crisis and domestic slowdown. Both the volume and sales fell in the market, resulting in increased inventories and difficulties in refining operations. On December 18, 2008, the PRC Government promulgated the Notice on Implementing Reforms on Prices of Refined Products and Tax. According to the improved pricing mechanism for refined products, the ex-factory prices of domestic gasoline, diesel and aviation fuel reduced by RMB900 per ton, RMB1,100 per ton and RMB2,400 per ton respectively.”<sup>49</sup>

The GOC directly sets the selling prices of refined petroleum production in China, which is dominated by SOEs. The CBSA considers that government-mandated pricing policies of products, when SOEs dominate the domestic market sector, and when prices are not substantially the same as they would be if they were determined in a competitive market, indicate that section 20 conditions are present. Based on the PetroChina information, this is the situation in the Chinese petroleum industry. These major petroleum companies are also the dominant domestic customers for OCTG in China. As a result, the GOC mandated pricing pressures on the Chinese petroleum industry thereby indirectly flow through to their purchase prices of the OCTG by these same customers which the CBSA considers can be indicative of section 20 conditions when prices of OCTG are not substantially the same as they would be if they were determined in a competitive market.

With respect to developments in the Chinese steel industry, General Steel Holdings Inc. itemizes the relevant GOC measures, under Industry Consolidation in its SEC filing:

“It is the goal of the central government to consolidate 50% of domestic production among the top ten steel companies by 2010 and 70% by 2020. Throughout 2008, it steadily heightened its consolidation effort. The following list highlights a few of the major steel company consolidation done during the year.

- Hubei-based Wuhan Iron & Steel Group acquired Liuzhou Iron & Steel Group and established Guangxi Iron & Steel Group for the purpose of building a new mill in Fangchenggang city, Guangxi province.
- Shanghai-based Baosteel acquired and is recapitalizing Guangzhou Iron & Steel Enterprises Group and Shaoguan Steel Co. Ltd. with the goal of building a new facility in Guangdong province.
- Shandong Iron & Steel Group was formed in Shandong province through the mergers of Laiwu Steel Group and Jinan Iron & Steel Group.
- Hebei Iron & Steel Group was formed through the merger of Tangshan Iron & Steel Group and Handan Iron & Steel Group in Hebei province.”<sup>50</sup>

The inclusion of GOC objectives for the Chinese steel industry and the related accomplishments in respect of these objectives is an indication of the importance of the GOC’s actions in the Chinese steel industry. Steel enterprises are alert to the GOC’s objectives in the NSP and the GOC’s reform of the Chinese steel industry from a fragmented decentralized industry to a more centralized industry with several very large steel enterprises in China. The CBSA considers that the GOC’s comprehensive reform of the steel industry in China whereby the GOC can indirectly influence the

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<sup>49</sup> CBSA Dumping Exhibit 195, Reference Material, PetroChina Annual Report extract.

<sup>50</sup> CBSA Dumping Exhibit 195, Reference Material, General Steel Holdings, Inc., SEC 10-Q.

supply of inputs or price of the inputs or the selling price of the goods by controlling production levels or by limiting the number of producers or sellers in the market, can be indicative of section 20 conditions when domestic prices are not substantially the same as they would be if they were determined in a competitive market.

## World Market for OCTG

Chinese OCTG production for 2008 was an estimated 6.8 mmt. This is reported to be nearly half of the world's output according to Li Helin, the Director of the Chinese Academy of Engineering.<sup>51</sup> China exports more than half of its OCTG production, with most of it destined for the U.S. market.<sup>52</sup>

<b>Estimated OCTG Market</b> <sup>53</sup>		<b>Metric Tonnes</b>
2008 Estimated World Demand for OCTG	13	million mt
2008 Chinese Production of OCTG	7	million mt
2008 Chinese OCTG Domestic Consumption	3	million mt
2008 Chinese Exports of OCTG <sup>54</sup>	4	million mt
(Note that these figures are rounded)		

In the first nine months of 2009, approximately 4 mmt of tubing and casing were exported<sup>55</sup> and the Chinese tubing and casing (OCTG) capacity was reported to be 8.5 mmt by the Chairman of the Chinese Pipe Association of CISA.<sup>56</sup>

Approximately 57 percent of the Chinese sales of OCTG were for export, with the remaining sales made in the domestic market.

Based on this market data, the global market is important to the Chinese and the domestic Chinese market is also an important market.

## OCTG Industry in China

Nine Chinese exporters of OCTG participated in the investigation. In the section 20 Request for Information (RFI), the CBSA requested the GOC to provide information concerning the OCTG producers in China and the ownership structure of each. In its section 20 response, the GOC indicated that,

“The GOC only has information respecting the eight<sup>57</sup> companies participating in this investigation. Other information would presumably come from public sources and is available to the CBSA. The GOC cannot vouch for its accuracy.”<sup>58</sup>

<sup>51</sup> CBSA Dumping Exhibit 2, Complaint, Exhibit 21.

<sup>52</sup> CBSA Dumping Exhibit 2, Complaint, Exhibit 20.

<sup>53</sup> CBSA Dumping Exhibit 2, Complaint, Exhibit 20.

<sup>54</sup> Of exports, 2.43 mmt were shipped to the U.S. which China's largest export market for OCTG.

<sup>55</sup> CBSA Dumping Exhibit 334, October 29, 2009 presentation by the Chairman of the Pipe Association of CISA, page 6.

<sup>56</sup> CBSA Dumping Exhibit 334, October 29, 2009, presentation by Chairman of the Pipe Association of CISA, page 6.

<sup>57</sup> For the purposes of the PD, there were 8 co-operating Chinese exporters with one late submission from Heng Yang which was not considered for the PD.

In a supplemental RFI, the CBSA requested the GOC to provide the top 20 SOE OCTG producers and the 2008 annual production for each. In response to this request the GOC indicated that:

“GOC does not have official statistics with respect to the OCTG sector. Therefore the accurate list of top 20 state-owned OCTG producers is not available”.<sup>59</sup>

Two of the co-operating exporters are the largest OCTG producers in China and both are SOEs: Tianjin Pipe (Group) Corporation (TPCO),<sup>60</sup> and the Heng Yang Group of companies, with its SOE parent company Hunan Valin Steel Group/Hunan Valin Iron and Steel Group Co. Ltd (Heng Yang). The rest of the co-operating exporters are smaller non-SOE Chinese seamless and Electric Resistance Weld (ERW) OCTG producers. Several of the co-operating exporters either heat-treat green pipe to meet a higher American Petroleum Institute (API) 5CT specification and/or end-finish the OCTG by threading and coupling the pipe ends.

The Complainants indicated that there are a possible 227 Chinese producers of OCTG,<sup>61</sup> which would include actual producers of OCTG using an integrated production process or OCTG produced from billets or hot-rolled steel. In addition, there are companies that may heat-treat the green tube to meet an API-5CT specification or simply end-finish the OCTG by threading and coupling. The co-operating Chinese exporters include these various production processes, from fully integrated to semi-processed and end-finishers.

Based on information in the complaint, the CBSA’s inquiry into the OCTG sector has resulted in limited co-operation from the OCTG sector with the co-operating exporters/producers of OCTG accounting for only 21 percent of Chinese API certified<sup>62</sup> capability based on total production capacity.

In the absence of complete information concerning the Chinese OCTG market in the responses by the GOC, the CBSA continued to pursue further information concerning producers of OCTG from the GOC. It is the CBSA’s understanding that industrial Chinese enterprises with 5 million RMB in annual sales are required to file monthly data concerning production and other detailed information to the China Bureau of Statistics. In a supplemental RFI to the GOC, the CBSA requested the GOC to identify the top 20 SOE producers by volume of OCTG, hot-rolled steel sheet and steel billets. The CBSA believed that, at minimum, the GOC would provide this information concerning its SOE producers. The GOC only provided this information concerning hot-rolled steel sheet.<sup>63</sup>

The CBSA also sent the China Iron and Steel Association (CISA) a supplementary RFI and asked CISA to identify the top 20 Chinese producers of OCTG, hot-rolled steel sheet, and steel billets. The CBSA believed that CISA would have this information available based on their membership.

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<sup>58</sup> CBSA Dumping Exhibit 99, GOC section 20 response.

<sup>59</sup> CBSA Dumping Exhibit 172, GOC section 20 supplementary response.

<sup>60</sup> CBSA Dumping Exhibit 23, 2008 China Steel Yearbook Excerpts.

<sup>61</sup> CBSA Dumping Exhibit 1, Complaint, Exhibit 2.

<sup>62</sup> CBSA Dumping Exhibit 1, Complaint, Exhibit 21.

<sup>63</sup> CBSA Dumping Exhibit 172, GOC supplementary section 20 response, Exhibit 1.

In its response, CISA provided information with respect to seamless steel tube/pipe producers and hot-rolled steel producers.<sup>64</sup>

As a result, the GOC and CISA have not provided sufficient information to establish the current OCTG production capacity in the Chinese OCTG sector and there is insufficient coverage of OCTG from the co-operating exporters to enable the CBSA to determine the composition of the OCTG sector in China. A review of the information provided by CISA indicates that almost all of the seamless steel/tube pipe producers are SOEs and many of them have very large production capacities. Based on the information provided by CISA, SOEs account for the majority of seamless steel tube/pipe production capacity and this production capacity includes OCTG seamless production.<sup>65</sup> Since these SOE's comprise a significant element of the OCTG industry and are the large volume producers of OCTG, they exert some degree of influence within the industry.

### **Tianjin Pipe Group Co. Ltd (TPCO)**

TPCO was cited in the Eleventh Five-Year Plan for the Economic and Social Development of Tianjin Municipality<sup>66</sup> as follows under the Metallurgical Sector:

“Following the principle of controlling overall production scale, highlighting knockout products, reducing energy consumption and accelerating reshuffle, we will take (initiate) actions to push forward the restructuring of the local metallurgical sector. We will adopt the world's first class technologies and equipments and speed up the expansion and renovation of Tianjin Pipe Corporation Ltd. ....We will establish a pipe & tube fittings manufacturing center (mainly for the production of seamless steel tubes) and a petroleum steel pipe high-grade steel processing center.”<sup>67</sup>

The planned development of TPCO in this five-year plan is based on GOC plans at the municipal government level. As cited earlier in this analysis, in the 2009 Steel Revitalization/Rescue Plan, TPCO has been directed by the GOC to re-organize with another enterprise. Based on this information, the GOC's oversight of TPCO continues from the GOC's five-year plan objectives for TPCO to the GOC-directed merger with other municipal steel company which was announced in March 2009. This GOC directive would have impacted TPCO corporate decisions from that date forward. The CBSA requested detailed information in order to determine whether the GOC-directed merger included factors for consideration of section 20. For example, the impact of the merger and the terms of the new merged enterprise's production.

The GOC's response was that it “does not have such information relating to reorganizations with OGTG sector of steel industry,”<sup>68</sup> which is contrary to the GOC's 2009 Steel Revitalization/Rescue Plan. TPCO responded to the same question, on December 7, 2009, that:

“There is no reorganization or merger plan for TPCO, so this question is not applicable.”<sup>69</sup>

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<sup>64</sup> CBSA Dumping Exhibit 172, CISA supplementary section 20 response, Exhibits 5 & 6.

<sup>65</sup> CBSA Dumping Exhibit 172, CISA supplementary response, Exhibit 5 & 6.

<sup>66</sup> CBSA Dumping Exhibit 124, GOC section 20 response, B9(c)ii.

<sup>67</sup> CBSA Dumping Exhibit 124, GOC section 20 response, Exhibit B9(c)ii.

<sup>68</sup> CBSA Dumping Exhibit 172, GOC supplementary section 20 response.

<sup>69</sup> CBSA Dumping Exhibit 262, TPCO section 20 supplementary response to Question 2.



On the same date, December 7, 2009, the Tianjin government was reported to have launched plans to consolidate Tianjin steel enterprises through the TPCO merger.<sup>70</sup>

### **Heng Yang**

Heng Yang is a large SOE producer of seamless casing located in Hunan province. The company also co-operated in the seamless steel casing investigations in 2007.<sup>71</sup> In respect of the CBSA's 2007 seamless steel casing investigations, confidential information on the record was material and confirmed that the GOC applied the NSP directives to seamless steel casing production capacity. Heng Yang provided this information for the current section 20 inquiry<sup>72</sup> and Heng Yang's information is material to this inquiry that confirms the GOC's NSP directives apply to seamless steel casing.

The GOC's Five-Year Plans for Hunan Province<sup>73</sup> and Heng Yang City where Heng Yang is located also include macro-economic targets that direct Heng Yang to concentrate its efforts on refined steel products such as tube,<sup>74</sup> which demonstrates the GOC's oversight and influence concerning Heng Yang and the OCTG sector.

### **WSP Holdings Limited (WSP)**

Publicly available information in the form of U.S. Securities Exchange Commission filings by WSP, a Chinese producer of seamless OCTG, addressed the GOC's National Steel Policy in its Form 20-F filing of December 31, 2008, stating several business risk factors with respect to the NSP as follows:

“Pursuant to The Iron and Steel Policy, government approvals are required for the establishment of new steel plants and their upgrades, among other things. The Iron and Steel Policy also provides that as a matter of principle, foreign investors may not own controlling stakes in PRC enterprises engaging in the iron and steel business. For violators of the policy, the Iron and Steel Policy provides various administrative punishments, including withholding manufacturing permits, environmental impact evaluation reports and waste discharge licenses. ... In July 2008, WSP China entered into an agreement to acquire Mengfeng, a company located in Inner Mongolia, China. Mengfeng has been approved as a seamless steel pipe manufacturer by the Hohhot Municipal Commission of Development and Planning. However, Mengfeng has not built a seamless steel production line yet and its current primary business provides raw material for our subsidiaries in China. Nevertheless, because Mengfeng is part of our integrated OCTG manufacturing business and its steel billet outputs are used for our production of OCTG rather than for sale to any third party,

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<sup>70</sup> CBSA Dumping Exhibit 354.

<sup>71</sup> Seamless Steel Casing Statement of Reasons at final determination.

<sup>72</sup> CBSA Dumping Exhibits 313, 99, 266 and 333, Heng Yang additional information and National Reform and Development Commission documentation.

<sup>73</sup> Refer to the Statement of Reasons for the final determination of seamless steel casing for the detail.

<sup>74</sup> CBSA's Statement of Reasons for the final determination of certain seamless or alloy steel oil and gas well casing.

our management believes that WSP China's ownership in Mengfeng is not in violation of the Iron and Steel Policy. Accordingly, there can be no assurance that the PRC regulatory authorities, in particular the NDRC will not in the future take a view that is contrary to the view of our management.”<sup>75</sup>

WSP's specific risk factors include the GOC's NSP and the requirement that the GOC's approval of new or additions to existing steel production capacity. This confirms that the directives of the NSP have an impact on steel enterprise in China. The CBSA considers that government regulation of production levels of subject goods that indirectly influences domestic selling prices is a factor that indicates section 20 conditions are present.

### **China Steel Monthly's Assessment of the Chinese Steel Industry**

In the trade publication, China Steel Report No. 27 October 1-31, 2009, the report titled “The Impact of the International Financial Crisis on the China Steel Industry:”<sup>76</sup> describes the situation in the Chinese steel industry from fall of 2008 to the first 8 months of 2009:

- Steel demand and selling prices for steel dropped and steel enterprises were in difficult situations
- Steel exports from China decreased and imports increased. China became a net importer rather than a net exporter of the goods. The excessive steel products put increasing pressure on the Chinese domestic market.
- In response to the global financial crisis, the GOC established a stimulus package to expand domestic demand and promote economic growth. This then resulted in more fixed asset investment in response to the increase in domestic demand and the abnormal increase of domestic structural steel consumption, which added more difficulties to the structural adjustment of the Chinese steel industry.

As a result, to cope with the new post-crisis challenges, the Chinese steel industry therefore requires an accelerated structural adjustment.<sup>77</sup>

According to the report, as a result of the global financial crisis, Chinese production of crude steel initially dropped in October and November 2008 and then recovered to normal production levels in early 2009 to surpass the 2008 crude steel production high.

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<sup>75</sup> CBSA Dumping Exhibit 195, Reference Material, WSP Annual Report for the period ending December 31, 2008, filed May 5, 2009.

<sup>76</sup> CBSA Dumping Exhibit 315, Additional Reference Material, China Steel Report No. 27 October 1-31, 2009.

<sup>77</sup> CBSA Dumping Exhibit 315, Additional Reference Material, China Steel Report No. 27, October 1-31, 2009.

Global information from other sources indicates that for the first six months of 2009<sup>78</sup> monthly crude steel production in almost all other countries fell by double digits when compared to the same period in 2008:

European Union fell by 43.2%

North America fell by 48.4%

Commonwealth of Independent States (CIS) fell by 32.3 %

In contrast China was one of several countries that reported an increase in crude steel production of 1.2 percent. This response illustrates an absence of steel production management according to market principles and the resulting pressures of supply and demand in the Chinese steel industry.

The China Steel Monthly reported that in 2009, China is still projected to produce 550 mmt of crude steel, up 50 mmt, or 10 percent over 2008. With the decreased levels of exports in 2009, the Chinese domestic market would then see increased new steel supplies this year, up 25 percent from 2008. According to the China Steel Monthly, Chinese steel inventories continue to increase. The report cites two problems in the Chinese industry: huge inventories and production over capacity.

Mr. Chen Bin, Director of the Co-ordination Department of the Development and Reform Commission, noted that one of the tenets of China's steel industry policy is foremost to serve the domestic market and to participate in the international market on suitable occasions. However the CBSA notes that the GOC's 2009 Steel Revitalization/Rescue Plan states that the GOC intends to

“Improve the import and export environment for steel products, implement moderately flexible export tax policies, maintain the share in the international market, encourage the indirect export of steel...”<sup>79</sup>

## **PRICING ANALYSIS**

### **Chinese Domestic Price**

There are several market factors that impacted Chinese domestic prices of OCTG during the July 1, 2008 to June 30, 2009 period.

The Chairman of the China Pipe Association of CISA stated that seamless OCTG accounted for 85.34 percent of China's total seamless pipe export volumes in the first nine months of 2009 and that seamless pipe exports dropped 41.11 percent during this period.<sup>80</sup> The Chairman stated that large inventories and overcapacity are major problems in the Chinese steel industry.

Information concerning the Chinese domestic market for OCTG products is available through WSP in its Securities Exchange Commission filing for the period ending December 31, 2008. Substantially all of WSP's business operations are conducted in China. WSP sells OCTG

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<sup>78</sup> CBSA Dumping Exhibit 315, Additional Reference Material, World Steel Association, Crude Steel Production, June 2009.

<sup>79</sup> CBSA Dumping Exhibit 99, GOC section 20 response, Exhibit B6(a)(i) 2009 Steel Revitalization/Rescue Plan page 13.

<sup>80</sup> CBSA Dumping Exhibit 334, October 29, 2009 presentation by the Chairman of the China Pipe Association of CISA.

domestically in China and to international customers. WSP indicated that there are no domestic prices of OCTG subject to any price controls or regulations by the GOC and the GOC does not participate in their pricing decisions. WSP does not state why it does not focus entirely on export sales of OCTG, where higher prices and higher profits can be realized. Instead, WSP states that China is its most important market. In establishing domestic prices for OCTG, WSP stated that:

“Prices for our API products in the PRC domestic market are generally set, based on the prevailing market prices, which are usually the prices at which CNPC purchases from its major suppliers. Our export prices are typically higher than our domestic prices. The PRC seamless market is dominated by a few major steel producers with a large number of small producers competing for the remaining small portion of the market. We face competition mainly from top producers who have succeeded in establishing a strong brand name with oil companies. Our major competitors in the PRC seamless OCTG market in China are Tianjin Pipe (Group) Corporation, Shanghai Baosteel Group Corporation and Pangang Group Chengdu Iron and Steel Co., Ltd. Among these major competitors, we are the only one specializing in seamless OCTG products, while the others also produce welded OCTG or non-OCTG products. Many of our competitors are state-owned enterprises.”<sup>81</sup>

CNPC and SINOPEC are large SOEs and account for a significant volume of WSP’s domestic sales. In fact, CNPC accounts for approximately 24 percent of WSP sales.<sup>82</sup> A small number of buyers can exert a disproportionate influence in the market. The fact that CNPC’s purchase price of OCTG is the prevailing market price by which suppliers set their domestic prices indicates that in the OCTG market, CNPC, one of WSP’s major customers has substantial influence in that market. WSP establishes its domestic selling prices on the basis of its largest customer’s purchase price from its major suppliers.

The Chinese domestic demand for OCTG is an important market segment for Chinese OCTG producers. According to Mr. Yan, the Chairman of the Chinese Pipe Association of CISA, PetroChina, Sinopec, CNOOC and Yanchang Company consumed 3 mmt of OCTG (2.78 mmt of domestic product and .22 mmt of imported product). These petroleum companies are all SOEs.<sup>83</sup> At the same time, the customers of OCTG have their own domestic market restrictions and price pressures imposed by the GOC’s macro-economic measures, as explained by PetroChina:

“2008 prices for Chinese refined petroleum products were still under the macro-economic controls of the PRC Government.”<sup>84</sup>

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<sup>81</sup> CBSA Dumping Exhibit 195, Reference Material, WSP SEC filing May 5, 2009 for the period ending December 31, 2008.

<sup>82</sup> CBSA Dumping Exhibit 195, Reference Material, WSP SEC filing May 5, 2009 for the period ending December 31, 2008.

<sup>83</sup> CBSA Dumping Exhibit 334, October 29, 2009, presentation by the Chairman of the Pipe Association of CISA.

<sup>84</sup> CBSA Dumping Exhibit 195, Reference Material, PetroChina Annual Report extract.

For the purposes of the final determination, the CBSA reviewed the available Chinese domestic pricing as provided by the co-operating exporters during the period when steel prices were high, after which the global financial crisis occurred and steel prices subsequently collapsed. The CBSA then compared the Chinese price trends with the price trends in a selected third country OCTG market operating under competitive market conditions.

### **Selection of Comparable Third Country Market**

As part of the price analysis under a section 20 inquiry, the CBSA reviewed the available information in order to select an appropriate third country OCTG market that operates under competitive market conditions. At initiation, the CBSA contacted multiple surrogate countries for the purposes of the section 20 inquiry. However no complete responses were received. Paragraphs 20(1)(c) and (d) of the *Special Import Measures Act* were also considered, however, there was insufficient information received to proceed on this basis.

The available information indicated that the U.S. OCTG market was an appropriate market for this comparison for the following reasons. The U.S. and Chinese are both major world consumers of OCTG and both have major oil production and refinery capacities.<sup>85</sup> The U.S. consumed approximately 6 mmt of OCTG in 2008 while Chinese demand for OCTG was 2.3 mmt. The U.S. and China are ranked #1 and #2 in oil consumption, #3 and #4 in oil production and #1 and #2 in refinery capacities.<sup>86</sup>

The U.S. OCTG market operates under competitive market conditions and there is publicly available OCTG pricing for the U.S. market on a monthly basis. As part of this analysis, this selected market's OCTG price trends were compared to the Chinese domestic price trends.

### **U.S. Pricing Information**

The available OCTG pricing information for the U.S. market is based on *Pipe Logix* published by Spears and Associates. This is an authoritative industry publication and market research-based consulting service to the world wide petroleum equipment and service industry.<sup>87</sup> The U.S. prices are the average price of OCTG by distributors operating in Houston Texas basis.

### **The Chinese and U.S. Market OCTG Price Comparison**

Throughout the period of analysis, Chinese domestic prices were substantially below the average *Pipe Logix* price.

The *Pipe Logix* OCTG prices reflect the high demand for OCTG when global oil and gas prices were at record highs in mid 2008. In the fall of 2008, the global financial crisis occurred and the global steel markets collapsed.

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<sup>85</sup> CBSA Dumping Exhibit 2, Complaint, page 12.

<sup>86</sup> CBSA Dumping Exhibit 2, Complaint, Appendix 8.

<sup>87</sup> CBSA Dumping Exhibit 195, Reference Material, Spears & Associates.

The U.S. domestic OCTG prices were severely impacted by the international financial crisis and the ensuing drop in petroleum prices. This downward trend continued through to the end of the period of analysis. U.S. average monthly OCTG prices exhibited a fall in prices of 48 percent over the period of analysis.

In contrast, the Chinese domestic OCTG market exhibited high prices in mid 2008 and then a moderate trend downward over the period of analysis. There is no radical drop in Chinese domestic OCTG prices over the rest of the period. The average Chinese domestic selling price for OCTG based on the co-operating exporters' data fell 27 percent over the period of analysis.

OCTG is an internationally traded commodity made to the internationally recognized API-5CT specification for export and domestic market customers and is essentially a fungible good for either the domestic or export market. Given the similarities between the U.S. and China petroleum market, two competitive markets should exhibit similar price trends and a degree of convergence in response to the forces of supply and demand in respect of an internationally traded commodity product. However, the data does not support this conclusion. The U.S. OCTG market exhibited a steep drop in pricing of 48 percent while the Chinese OCTG prices fell less severely at 27 percent over the period of analysis.

The CBSA also compared price trends between Chinese domestic selling prices of OCTG seamless tubing as reported by the co-operating exporters and *Pipe Logix* selling prices of OCTG seamless tubing over the period of analysis. The data indicates that Chinese domestic prices for seamless tubing dropped 28 percent while the U.S. *Pipe Logix* seamless tubing prices fell 51 percent over the period of analysis.

The U.S. OCTG market operates under competitive market conditions and a global economic downturn experienced a fall in pricing that was almost double the Chinese trends. As a result, the Chinese domestic OCTG price trends reflect other factors outside of a competitive market present in the Chinese domestic OCTG industry.

### **Prices of Raw Material Inputs for OCTG Production**

A review of the raw material costs to total cost ratio of OCTG indicates that raw material costs account for a significant proportion of the total cost of a seamless or ERW OCTG product. As a result, raw material input prices have a significant impact on the costs and subsequently on the Chinese selling prices of OCTG.

The raw material input for ERW OCTG is hot-rolled steel sheet. The CBSA has conducted section 20 inquiries into this product sector and the information available to the CBSA indicated that there was reason to believe that section 20 conditions exist in the Chinese flat-rolled steel industry sector which encompasses the hot-rolled steel sheet sector. As a result, domestic prices of Chinese hot-rolled steel sheet and strip are not reliable for the determination of normal values. With the substantial proportion of hot-rolled steel sheet/strip cost included in the total cost of the ERW OCTG, this domestic Chinese price distortion in the hot-rolled steel sector is transferred through to the ERW OCTG costs, impacting the selling price of OCTG. Chinese ERW OCTG prices are, therefore, not reliable for the determination of normal values.

The raw material input for seamless OCTG is the steel billet and large Chinese steel producers, the majority of which are SOEs, produce crude steel products which includes steel billets along with a variety of downstream products such as flat-rolled steel products, welded and seamless tube/pipe.<sup>88</sup> The GOC's NSP and the 2009 Steel Revitalization/Rescue Plan apply to all steel products. In addition, there are no steel products that are excluded from the GOC's macro-economic policies. The CBSA's section 20 inquiries concerning hot-rolled steel sheet, hot-rolled plate, carbon steel welded pipe and seamless steel casing establishes that section 20 conditions exist in these steel sectors. Large integrated Chinese steel producers generally make several categories of steel products<sup>89</sup> which include crude steel products such as steel billets and other products such as hot-rolled steel sheet and plate products. Consequently, it is also likely that given the price distortion in the Chinese hot-rolled steel sheet, plate and carbon steel welded pipe sectors, that Chinese domestic selling prices of steel billets are also influenced by the GOC's macro-economic measures.

## INCONSISTENCIES IN AND LACK OF INFORMATION

In addition to the response by the GOC with respect to the GOC directed merger for TPCO, cited earlier in this document, there are several other concerns with the GOC's responses to the CBSA. In its section 20 response, the GOC indicated that the NDRC "may participate in reviewing and approving new steel facilities, none of which are price or market mechanism related, directly or indirectly."<sup>90</sup> The GOC's statement indicates that there may or may not be GOC controls present when there is new or additional production capacity added by a Chinese steel producer. In the seamless steel casing investigation, the GOC was found to regulate new or additional production capacity of steel enterprises including OCTG. The macro-economic policies of the GOC, namely the NSP and the 2009 Steel Revitalization/Rescue Plan succinctly direct that new or additional steel production capacity be regulated by the GOC.

The 2009 Steel Revitalization/Rescue Plan stipulates that as a major task, the GOC:

"Will concentrate our efforts in the following...

Strictly controlling the total output of steel and accelerating the process of eliminating what is backward. We will strictly control the newly added production capacity, stop approving and supporting steel projects merely for creating new production capacity or expanding the current production capacity and base all projects on eliminating the backward."<sup>91</sup>

However, contrary to its macro-economic policy, the GOC stated in its section 20 response that:

"There are no specific laws or regulations in China relating to steel pricing. The GOC notes that prices in China are the result of supply and demand and competitive market conditions. Neither the central government nor local governments, directly or indirectly, control or interfere with price setting or the operation of a market mechanism for OCTG and steel products generally of individual companies. The industrial policy relative to steel is

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<sup>88</sup> CBSA Dumping Exhibit 23, 2008 China Steel Yearbook excerpts, Table 1.

<sup>89</sup> CBSA Dumping Exhibit 23, 2008 China Steel Yearbook excerpts, Table 1.

<sup>90</sup> CBSA Dumping Exhibit 124, GOC section 20 response, Part A.

<sup>91</sup> CBSA Dumping Exhibit 124, GOC section 20 response, Exhibit B6(a)(i).

intended to ensure appropriate development and preservation of the natural environment, policy goals shared and similarly implemented by other countries.”<sup>92</sup>

Another concern with the GOC’s response to the CBSA relates to information that was confirmed by the NDRC 2007. In the CBSA’s section 20 RFI, the CBSA requested the GOC to provide the list of GOC approvals of new or additional steel production capacity. The GOC’s replied:

“The GOC does not maintain such summary detailed information.”<sup>93</sup>

The CBSA requested this information from the GOC in 2007 for the seamless steel casing investigation, in 2008 for carbon steel welded pipe and has made this request for a current list again in this section 20 inquiry. The existence of this list was confirmed by the NDRC when the CBSA conducted verification meetings with the NDRC in China<sup>94</sup> in respect of the seamless steel casing investigation. The GOC did not provide the list at that time and has not provided the CBSA with this information to date.

A third area of concern in the GOC’s responses to the CBSA relates to GOC institute, the China Metallurgical Industrial Planning and Research Institute (CMIPRI). In its examination of the Chinese steel industry, including the OCTG sector, the CBSA examined the role and activities of different GOC agencies, departments and ministries that are involved in the Chinese steel industry in order to assess potential factors for section 20 conditions.

In the February 2009 China Steel Report<sup>95</sup>, the Vice-President of the CMIPRI reported on the problems in China’s steel industry and offered solutions. According to publicly available information on its website, the CMIPRI is under the GOC’s State Assets and Management Commission:

“is dedicated to steel industry development and strategy and under temporary agent leadership of China Iron and Steel Association and currently holds first class consultations with the approval of the State Development and Reform Commission.”<sup>96</sup>

On the institute’s website, the CMIPRI indicated that it services both government and enterprises. In the section 20 RFI, the CBSA requested the GOC to provide information concerning the CMIPRI. In its response the GOC stated:

“The function of this institute bears similarities as those recognized international research institutions such as CRU, MB and IISI, whose primary objectives are to conduct research”.<sup>97</sup>

The CBSA requested the GOC to provide information concerning the CMIPRI’s statement on its website that it had completed a draft for the development of the steel industry (2010 and 2020).<sup>98</sup>

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<sup>92</sup> CBSA Dumping Exhibit 124, GOC section 20 response.

<sup>93</sup> CBSA Dumping Exhibit 124, GOC Section 20 Submission, B24.

<sup>94</sup> CBSA Dumping Exhibit 2, Complaint, Exhibit 9, Seamless Casing Statement of Reasons.

<sup>95</sup> CBSA Dumping Exhibit 21, China Steel Report, Exhibit 3.

<sup>96</sup> CBSA Dumping Exhibit 23, Exhibit 10.

<sup>97</sup> CBSA Dumping Exhibit 99, GOC section 20 response to B2(b).



Based on the activities carried out by CMIPRI, the GOC institute has a role in the development of the Chinese steel industry and CMIPRI's publications are relevant to the CBSA in its section 20 inquiry concerning the GOC's administration of the Chinese steel industry, including the OCTG sector.

In response, the GOC stated that:

“After an extensive search, the GOC did not find references to or the existence of this report.”<sup>99</sup>

The GOC's response is not consistent with the publicly available information with respect to the drafts of the development of the steel industry as reported on the CMIPRI's own website.

In the supplemental section 20 RFI, the CBSA requested the GOC to provide the titles of the reports produced by CMIPRI since 2004. In response, the GOC identified the functions and responsibilities of CMIPRI's departments along with a description of the CMIPRI's activities as follows:

“services on evaluation of large or medium sized steel plant construction and technical renovation projects, new steel base feasibility study, development strategy research, steel production market demand forecast, steel industry economic-technical policy research and etc.”<sup>100</sup>

In response to the CBSA's request for the titles of the reports published by the CMIPRI, the GOC also made representations that the CBSA's requests to provide the titles of the reports and whatever necessary actual reports by the General Office were “unnecessary.”<sup>101</sup>

The CMIPRI's website provides a list of its reports for 2006 and 2007.<sup>102</sup> The CBSA made this particular request in order to have a complete list of the reports by CMIPRI, and specifically to obtain its reports issued in 2008 to assess the potential relevance of the reports to section 20.

## CONCLUSION

Based on the information in the record concerning TPCO, Heng Yang and WSP, along with the other Chinese steel industry information on the record, the GOC's macro-economic policies are followed by the Chinese steel industry and through these policies, the GOC exerts significant influence in the Chinese steel industry including the OCTG sector and the GOC influence extends to the domestic selling prices in the OCTG sector as domestic prices are substantially not the same as they would be if they were determined in a competitive market.

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<sup>98</sup> CBSA Dumping Exhibit 22, Exhibit 10 China Metallurgical Industrial Planning and Research Institute, website information and reference to draft for the development of the steel industry.

<sup>99</sup> CBSA Dumping Exhibit 99, GOC section 20 response to B12(b).

<sup>100</sup> CBSA Dumping Exhibit 172, GOC section 20 supplementary response page 9.

<sup>101</sup> CBSA Dumping Exhibit 197, GOC representations page 3.

<sup>102</sup> CBSA Dumping Exhibit 21, Attachment 7 to Complaint Analysis, Exhibit 10.

In addition, with respect to the OCTG sector, based on information on the record, the industry is dominated by three customers that are all SOEs. A small proportion of buyers can exert a disproportionate influence on the market. As explained by WSP, its domestic market prices are generally established at the price CNPC purchases from its major suppliers. As explained earlier in this document, these same customers had their own selling prices of refined petroleum products set by the GOC and have transferred these GOC pricing pressures to the subordinate domestic OCTG market where the petroleum enterprise are the dominant customers. Chinese sales of OCTG in export market such as North America result in a much higher rate of return, while domestic sales realize much lower rate of return. In a competitive market for a fungible good such as OCTG, the Chinese prices should more closely approximate the selling prices in other markets. The attraction of higher return on the export market would push domestic supply down to levels that would result in a domestic selling price providing domestic sellers a comparable return for their commodity grade product.

With respect to the SOEs, GOC representatives actively participate in the material decisions of the enterprise. This state-ownership and GOC influence creates an environment where the enterprises are not motivated by commercial interests, but must operate to satisfy the interests of the GOC, creating conflict with those commercial interests. Through the GOC's macro-economic policies, the GOC is reforming the steel industry in China on a corporate enterprise level and in the relocation of industries. The CBSA considers that governments can indirectly influence domestic prices by the regulation of production levels and by the number of producers in the market and these are some of the conditions for section 20 where domestic prices are not substantially the same as they would be if they were determined in a competitive market.

Based on information on the record, the GOC exerts a substantial degree of influence over the steel industry in China, through its macro-economic policies, the NSP and the 2009 Steel Revitalization/Rescue Plan. The GOC regulates steel production capacity and directs mergers and relocations of SOE steel enterprises which comprise a significant proportion of the Chinese steel industry. The GOC's reforms include the largest SOE OCTG producer in the OCTG sector. Rather than allow the Chinese steel industry to develop according to market forces, the GOC has undertaken the reform of the industry.

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

Based on these considerations, the President of the CBSA affirmed his opinion that the conditions of section 20 exist in the OCTG sector in China.

## **APPENDIX 4 - REPRESENTATIONS**

### **Representations Concerning the Dumping Investigation**

The details of representations made to the CBSA with respect to the dumping investigation, including case arguments and reply submissions from exporters, the GOC and the Complainants are listed below. Following the representations on each issue is a response explaining the position of the CBSA. Since there were a number of common positions from multiple parties, the CBSA may make specific reference to only one or two parties when documenting the issue raised.

Given that the CBSA's final determination supersedes any decision made at the preliminary determination stage of the investigation, the CBSA will only address issues raised within the context of the preliminary determination to the extent that these issues carry relevance for the final determination.

#### ***The CBSA's International Obligations***

Counsel for Jiangsu Chengde, TPCO, Freet Group and Heng Yang have all made representations identifying the CBSA's obligations under the WTO's *Anti-Dumping Agreement* and *Agreement on Subsidies and Countervailing Measures* as it relates to both the procedures and methodologies employed in the respective anti-dumping and countervailing investigations. In identifying these obligations, counsel for each of these parties has alleged a number of CBSA violations of these agreements.

In separate correspondence, submitted on December 3, 2009, and on January 7, 2010, counsel made representations on behalf of the GOC, in respect of the CBSA's conduct of the dumping and subsidy investigations as they related to WTO law. In these extended representations, alluding to numerous items of WTO jurisprudence, counsel alleged that the CBSA's conduct constituted contraventions made "to date and in anticipation thereof" of provisions of the *Agreement on Subsidies and Countervailing Measures* and of Article VI of the *General Agreement on Tariffs and Trade*.<sup>103</sup>

#### **CBSA Response:**

The CBSA acknowledges its obligations to the WTO Agreements and believes it has met the standards set forth in both the *Anti-Dumping Agreement* and the *Agreement on Subsidies and Countervailing Measures*.

With this said, the CBSA's anti-dumping and countervailing investigations were conducted under the authority of the *Special Import Measures Act* (SIMA). The CBSA's responsibility is to administer and follow the relevant Canadian legislation in the form of SIMA. The CBSA believes it has adhered to the standard set forth in SIMA in the conduct of these investigations.

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<sup>103</sup> CBSA Dumping Exhibit 258 (NC) and 359 (NC), Representations on behalf of the GOC.

### ***Sufficiency of Evidence to Support the Application of Section 20***

Counsel for Jiangsu Chengde submitted that the CBSA's section 20 analysis is deficient and cannot support a determination of the two part test in paragraph 20(1)(a) of SIMA.<sup>104</sup> Counsel alleged that the information provided by cooperative exporters, in particular Jiangsu Chengde, supports a determination that paragraph 20(1)(a) cannot be satisfied and thus outweighs any analysis done by the CBSA. This allegation was also extensively made by counsel for Heng Yang in its case arguments, submitting that the determination respecting section 20 is "defective" and the surrogate value methodology "flawed."<sup>105</sup>

In support of this allegation, counsel for Jiangsu Chengde cited the specific wording in paragraph 20(1)(a), the WTO Anti-Dumping Agreement and the CBSA's section 20 public policy on its conduct of section 20 inquiries. Counsel contended that the CBSA must accept "primary source information" provided by cooperative exporters and only resort to secondary sources where that primary source information is properly refuted.<sup>106</sup> Counsel further alleged that the CBSA is "exercising impermissible discretion by not relying, for purposes of its determination, on timely filed, verifiable and accurate information governing the OCTG sector in China as presented by the Chinese respondents themselves."<sup>107</sup>

Counsel further asserted that any factor relied upon by the CBSA for section 20 purposes other than direct price controls by the GOC should be met with caution.<sup>108</sup> In relation to the preliminary determination on section 20, counsel cited the CBSA's "weak inferential links between primary steel prices, flat-rolled steel prices, welded/seamless pipe prices and OCTG"<sup>109</sup> as part of its allegation.

Counsel for the GOC, TPCO and the Freet Group, submitted that the CBSA has withheld information upon which the President relied on at the time of the preliminary determination to form the opinion that section 20 exists.<sup>110</sup>

In its submission of January 7, 2010, counsel for the GOC further presented a summary of objections that the conditions of section 20 exist in the OCTG sector as well as procedural issues in determining the existence of section 20. Counsel alleged that the investigation is overly broad, presumptive and not evidence based, refers to information outside the POI, and lacks an adequate demonstration of price control.<sup>111</sup>

In separate reply submissions to these arguments, counsel for Tenaris Canada and Lakeside Steel Corporation submitted that the CBSA had been provided with the *prima facie* evidence that is required to initiate a section 20 inquiry and that there is now sufficient evidence on the record that indicates that prices are substantially determined by the GOC in the OCTG sector.<sup>112</sup> Counsel

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<sup>104</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 12.

<sup>105</sup> CBSA Dumping Exhibit 373 (NC), Case Arguments on behalf of Heng Yang, paragraph 92.

<sup>106</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 25.

<sup>107</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 30.

<sup>108</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 33.

<sup>109</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 40.

<sup>110</sup> CBSA Dumping Exhibit 257 (NC), Representations on behalf of the GOC, TPCO and Freet Group.

<sup>111</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, pgs. 24-26.

<sup>112</sup> CBSA Dumping Exhibit 375 (NC) and 376 (NC), Reply Submissions on behalf of Tenaris Canada and

specifically pointed to government control through the ownership of the major producers and buyers of OCTG in China. They further contended that this control, through macroeconomic policies, substantially affected prices in the sector.<sup>113</sup>

Counsel for Lakeside Steel Corporation also submitted that a section 20 analysis does not concern whether an individual company or companies act according to competitive market conditions as some exporters have argued, but rather concerns the entire sector. Counsel further noted the application of section 20 in CBSA investigations of other OCTG products concluded less than two years ago, indicating that there is nothing on the record that shows that the “extensive state ownership through the OCTG industry sector in China” and the “macroeconomic influences of the Government of China, as administered through its National Steel Policy and related government initiatives” have changed.<sup>114</sup>

### **CBSA Response:**

As part of the preliminary determination of dumping, the CBSA formed the opinion that the conditions of section 20 exist in the OCTG sector in China; that is, the GOC plays an active role in the OCTG sector in China and in the determination of industry prices. The CBSA continued with its inquiry into the matter as part of the final stage of the investigation.

The CBSA has undertaken extensive research into the GOC’s involvement in the steel industry, including the OCTG sector in China. The full details of this research are available on the CBSA’s listing of exhibits. It is important to note that responses from exporters and other interested parties form only part of this information. The results of the CBSA’s analysis in this case are consistent with the evidence on the record and the President’s previous section 20 opinions regarding hot-rolled steel sheet, aluminum extrusions, carbon steel welded pipe, carbon steel plate and the same industry sector that is under investigation in this case, OCTG.

Further explanation of the CBSA’s position regarding its section 20 opinion can be found in **Appendix 3** of this *Statement of Reasons*. In addition, all other relevant evidence used to reaffirm the section 20 opinion can be found on the CBSA’s listing of exhibits.

### ***Sufficiency of Information Regarding Paragraphs 20(1)(c) and 20(1)(d) of SIMA***

The CBSA received submissions specifically concerning its obligation to seek out information under section 20 of SIMA, notably under paragraphs 20(1)(c) and 20(1)(d). Paragraph 20(1)(c) deals with the determination of normal values using information from producers in a surrogate country while paragraph 20(1)(d) deals with the determination of normal values using information on the re-sale in Canada of goods imported from a third country.

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Lakeside Steel Corporation, respectively.

<sup>113</sup> CBSA Dumping Exhibit 375 (NC), Reply Submissions on behalf of Tenaris Canada, page 3.

<sup>114</sup> CBSA Dumping Exhibit 376 (NC), Reply Submissions on behalf of Lakeside Steel Corporation, paragraphs 10-13.

Prior to the preliminary determination, counsel for TPCO and the Freet Group expressed concern that the CBSA did not take the necessary steps to obtain sufficient information from surrogate producers as envisioned in paragraph 20(1)(c) of SIMA.<sup>115</sup> Counsel further stated that where sufficient information was not available under paragraph 20(1)(c), that sufficient information under 20(1)(d) could be made available by Tenaris Canada in respect of its re-sales of like goods imported from affiliates in other countries.<sup>116</sup>

These submissions were addressed by the CBSA in the *Statement of Reasons* at the preliminary determination. Following the preliminary determination, additional representations concerning paragraphs 20(1)(c) and (d) of SIMA were submitted.

On December 3, 2009, counsel for the GOC submitted representations stating that the CBSA had an obligation to disclose why import data from the Canadian producers (Complainants) was not used in calculating normal values under paragraph 20(1)(d) of SIMA.

On December 21, 2009, the CBSA responded to counsel's letter of December 3, 2009 deferring response on the issue to the pending preliminary determination *Statement of Reasons*.<sup>117</sup> The CBSA, in its *Statement of Reasons*, cited the fact that the number of importing parties contacted accounted for over 70% of all subject and like goods imported into Canada during the Dumping POI and yet none provided sufficient re-sale information which could be used under paragraph 20(1)(d) of SIMA.<sup>118</sup>

On January 7, 2010, two additional representations on this issued were made. The first stated that:

“(i)mport prices of subject goods imported into Canada by Tenaris Canada from its foreign affiliates is historical and factual information which is readily available to the CBSA...it is not surprising that Tenaris is not keen to see the CBSA rely on their own expertise - which is available to CBSA, along with other data provided by importers. The prices at which subject goods are transferred within the Tenaris Group to Canada from its affiliates and imports into Canada are too low...There is no basis for CBSA ignoring data which is available to it or which it can request the petitioner to provide.”<sup>119</sup>

The other representation followed a similar path of logic, objecting “to the CBSA’s assertions respecting its purported inability to secure data that would allow the determination of normal values under paragraphs 20(1)(c) and 20(1)(d) of SIMA.”<sup>120</sup>

In regards to the deductive methodology detailed under paragraph 20(1)(d) of SIMA, counsel for Heng Yang contended that “there is data in the CBSA FIRM data base which would permit calculation of surrogate values on a deductive basis under section 20(1)(d) of SIMA.”<sup>121</sup>

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<sup>115</sup> CBSA Dumping Exhibit 142 (NC), Representations on behalf of TPCO and Freet Group, paragraph 8.

<sup>116</sup> CBSA Dumping Exhibit 142 (NC), Representations on behalf of TPCO and Freet Group, paragraph 20.

<sup>117</sup> CBSA Dumping Exhibit 312 (NC).

<sup>118</sup> CBSA Dumping Exhibit 259 (NC), paragraphs 72 and 73.

<sup>119</sup> CBSA Dumping Exhibits 342 (NC) and 359 (NC), Representations on behalf of Heng Yang and the GOC, respectively.

<sup>120</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, paragraph 68.

<sup>121</sup> CBSA Dumping Exhibit 373 (NC), Case Arguments on behalf of Heng Yang, paragraph 77.

With respect to the selection of surrogate countries, counsel for Tenaris Canada contended that Argentina and Mexico are not suitable surrogates, since there is only one major producer in each country and that CBSA confidentiality requirements preclude the use of information from these countries. Further, counsel argued that the designation of potential surrogate countries was made by the President at the time of initiation of the investigation and that the deadline for judicial review of this selection of surrogates had long since past.<sup>122</sup>

Counsel for Lakeside Steel Corporation argued that the CBSA did not have the information required to apply either section 20(1)(c) or 20(1)(d) of SIMA. Lakeside noted that the CBSA made a thorough and reasonable attempt to acquire sufficient information for paragraph 20(1)(c) from 36 producers in seven countries.

### **CBSA Response:**

SIMA provides no guidance as to the selection of surrogate sources of information under section 20, including the appropriateness of requesting such information from the Complainants. A concern over possible conflict of interest in a similar set of circumstances was raised by counsel representing an exporter in the *seamless casing* investigation.<sup>123</sup>

Nonetheless, the CBSA would like to provide clarification of a few further issues in response to those raised by parties who alleged the CBSA erred in not pursuing such data from the Complainants.

The information required under paragraph 20(1)(d) was not available to the CBSA as suggested in one of the representations above; it would have to be furnished by the Complainants. The import data available to the CBSA is insufficient to calculate normal values under this provision. It is the re-sale information that is most critical. The CBSA's database does not contain the Canadian re-sale information required under paragraph 20(1)(d).

In this case, CBSA import data revealed that only one of the three Complainants had commercially significant imports of like goods during the POI. These imports are all from related affiliates. The import data does not indicate any exporters in these countries of export other than the Canadian producer's affiliates, with the exception of some small volume imports from those countries.

In the case of two separate countries of export to the Canadian producer (Complainant), the use of importations from each respective country covered too narrow a product segment of the subject goods, making the prospective use of that information when re-sold in Canada of insufficient breadth to calculate normal values on the other categories of subject OCTG.

Furthermore, given that no importer provided information that could be used under paragraph 20(1)(d), the information from one Complainant, were it requested, would not be used for reasons of confidentiality protection since the re-sales sourced from any country selected, would be based on importations from a single exporter.

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<sup>122</sup> CBSA Dumping Exhibit 375 (NC), Reply Submissions on behalf of Tenaris Canada, paragraphs 38 and 39.

<sup>123</sup> CBSA Dumping Exhibit 157 (NC), Representations on behalf of Complainants.

The CBSA would also like to emphasize that subparagraph 20(1)(d)(ii) requires that goods under this provision be sold in Canada “in the condition in which they were imported.” Counsel alleging that the CBSA should have requested data from the Complainants for use under paragraph 20(1)(d) did not consider the magnitude of goods this clause may exclude from consideration.

Notwithstanding the preceding, given the degree of import coverage that the contacted importers accounted for, as disclosed in the preliminary determination *Statement of Reasons*, the CBSA believes a reasonable attempt was made in its efforts to obtain information that may have been usable under paragraph 20(1)(d) of SIMA.

### ***Establishment of Normal Values***

At the time of the preliminary determination, the President formed the opinion that the conditions of section 20 exist in the OCTG sector. Where section 20 conditions exist, the CBSA may determine normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)(c) of SIMA or, failing that, paragraph 20(1)(d) of SIMA provides for calculating normal values using re-sales in Canada of goods imported from a third country. The CBSA was unable to obtain sufficient information for either of these two approaches and accordingly used an alternative method to estimate normal values for purposes of the preliminary determination.

In estimating normal values for the preliminary determination, the CBSA referenced publically available monthly average OCTG prices sourced from the U.S. based trade publication *Pipe Logix*, a well respected industry authority. These monthly OCTG prices covered the four major categories of subject goods, namely, ERW and seamless tubing and ERW and seamless casing during the Dumping POI.

Counsel for exporters submitted that the normal values used by the CBSA at the preliminary determination did not allow a proper “fair comparison” to their export sales.<sup>124</sup> Counsel stated that there are significant price differences between different grades of seamless tubing and that prices for high end grades could be double the lower end grades.<sup>125</sup> Counsel for the GOC further stated that “the use of a single normal value for each of the four categories... based on prices derived from a different trade level, without any regard to critical differences in physical or selling characteristics is inappropriate, punitive, and contrary to Canada’s WTO obligations.”<sup>126</sup>

Counsel for Heng Yang rejected the selection of surrogate normal values by the CBSA stating that they are unreasonable as they do not make due allowance for differences in terms of conditions of sale, taxation and other differences affecting price comparability.<sup>127</sup> Counsel further stated that they appear to have been designed to maximize the dumping margins and that they have no relation to prices of a developing country nor are they located in Asia.<sup>128</sup> Further, counsel contended that the CBSA has improperly rejected verifiable data to determine normal values for their company using their pricing data.<sup>129</sup>

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<sup>124</sup> CBSA Dumping Exhibit 373 (NC), Representations on behalf of Heng Yang, paragraph 110.

<sup>125</sup> CBSA Dumping Exhibit 316 (NC), Representations on behalf of Shandong Molong, page 1.

<sup>126</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, paragraph 19.

<sup>127</sup> CBSA Dumping Exhibit 373 (NC), Case Arguments on behalf of Heng Yang, paragraph 111.

<sup>128</sup> CBSA Dumping Exhibit 373 (NC), Case Arguments on behalf of Heng Yang, paragraphs 37-41.

<sup>129</sup> CBSA Dumping Exhibit 373 (NC), Case Arguments on behalf of Heng Yang, paragraphs 14 and 137.



In a reply submission on behalf of Lakeside Steel Corporation, counsel rejected Heng Yang's assertion that the CBSA should use their company specific information to determine normal values as it is neither reasonable nor workable under a section 20 determination as exporter data is considered unusable by virtue of government influence.<sup>130</sup>

Counsel for Jiangsu Chengde stated that the US market is an inappropriate surrogate for Chinese normal values and that this market "cannot be compared to China."<sup>131</sup> Counsel further alleged that the CBSA's comparison of China and the U.S. petroleum industries is an 'oversimplification of the fundamental structure, systemic and economic differences which differentiate these two economies."<sup>132</sup> Further, counsel suggested that a surrogate country such as Brazil, "a major OCTG producer and consumer," would have been more appropriate.<sup>133</sup>

In the reply submissions of Tenaris Canada, counsel stated that the selection of U.S. based surrogate normal values by the CBSA was reasonable due to the similarities between China and the United States in terms of the volume of production and consumption of OCTG. Further, counsel notes that the European Union has employed the United States as a surrogate to determine normal values for the Chinese seamless tube industry.<sup>134</sup>

### **CBSA Response:**

At the time of the preliminary determination, the President formed the opinion that the conditions of section 20 exist in the OCTG sector. Where section 20 conditions exist, the CBSA may determine normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)(c) of SIMA or, failing that, paragraph 20(1)(d) of SIMA provides for calculating normal values using re-sales in Canada of goods imported from a third country. The CBSA was unable to obtain sufficient information for either of these two approaches and accordingly used an alternative method to estimate normal values for purposes of the preliminary determination.

In estimating normal values for the preliminary determination, the CBSA referenced publically available monthly average OCTG prices sourced from the U.S. based trade publication *Pipe Logix*, a well respected industry authority. These monthly OCTG prices covered the four major categories of subject goods, namely, ERW and seamless tubing and ERW and seamless casing for the Dumping POI.

The CBSA acknowledged issues raised by parties objecting to its methodology for determining normal values at the preliminary determination. This acknowledgment led to the CBSA refining its approach for the purposes of the final determination. That approach has been disclosed in this document.

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<sup>130</sup> CBSA Dumping Exhibit 376 (NC), Reply Submissions on behalf of Lakeside Steel Corporation, paragraphs 26-28.

<sup>131</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 39.

<sup>132</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 41.

<sup>133</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 32.

<sup>134</sup> CBSA Dumping Exhibit 375 (NC), Reply Submissions on behalf of Tenaris Canada, paragraphs 27-29.

The methodology used by the CBSA to calculate normal values is, however, limited by the information available on the record. While counsel has identified issues with the ‘idealness’ of published information for the purposes of product comparison in calculating normal values, no alternative methodology (other than the use of Chinese prices provided by cooperative exporters which the CBSA has deemed unreliable as per section 20) was specifically articulated which would address this concern and satisfy the relevant provisions of SIMA.

### ***Disclosure of Documents***

On December 3, 2009, representations were made by counsels on behalf of several Chinese exporters and the GOC, concerning information the CBSA had not placed on the public exhibit listing.<sup>135</sup>

Counsel for the GOC suggested that since customs information such as internal customs reports, import entries and other commercial documents provided by importers are used by the CBSA in tabulating a list of the respective importers and exporters of the goods, this information should form part of the listing of exhibits because it essentially forms part of the CBSA investigation information.

On January 7, 2010, counsel again protested the omission of such information from the public record, stating that:

“As far as it is known, this information is not on the record of this proceeding, notwithstanding the fact that the CBSA has made preliminary determinations based on these documents, including [sic] identity of mandatory respondents, assessment of levels of co-operation and calculation of all other rates of dumping and or subsidy.”<sup>136</sup>

Counsel also asserted that the relevant WTO Agreements “impose obligations on investigating authorities to disclose all essential facts and/or information to ensure that interested parties have the opportunity to assess the accuracy of the determinations and effectively defend their interests.”<sup>137</sup>

### **CBSA Response:**

On December 21, 2009, the CBSA responded to counsel’s letter, denying its request to have internal customs documentation and commercial invoice information placed on the record, given that the contact lists derived from this information are already on the record in various forms and have been kept up-to-date.<sup>138</sup>

The CBSA has made all necessary information regarding the identification of exporters, both cooperative and non-cooperative, available to counsel throughout the course of the investigations. The CBSA has placed the essential facts under consideration which formed the basis for the decision in this case on its listing of exhibits. In addition, parties were provided sufficient time in which to defend their interests.

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<sup>135</sup> CBSA Dumping Exhibit 257 (NC), Representations on behalf of the GOC, TPCO and Freet Group.

<sup>136</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, paragraph 62.

<sup>137</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, paragraph 70.

<sup>138</sup> CBSA Dumping Exhibit 312 (NC).

### ***Legislative Authority of Subsection 38(1) of SIMA***

Counsels for the GOC, TPCO and Freet Group submitted that subsection 38(1) of SIMA cannot be the basis for determining margins of dumping and amounts of subsidy and any duties imposed as a result thereof are not valid. Subsection 38(1) falls within SIMA's procedural provisions, and directs the timing and notification requirements under which preliminary determinations may be made. Subsection 38(1) of SIMA contemplates an investigation into margins of dumping (through ascertaining normal values and export prices) and amounts of subsidy. It was also submitted that the use of estimates does not replace the normative provisions of SIMA relating to normal values, export prices, margins of dumping or amounts of subsidy.<sup>139</sup>

The parties also submitted that margins of dumping are determined under sections 30.1 to 30.3 of SIMA. The parties submit that the determination required under subsection 30.2(1) requires determinations of normal values and export prices. The parties submitted that the *Statement of Reasons* at the preliminary determinations did not specify a legislative authority for estimation of the margin of dumping or the amount of subsidy as required by sections 30.1 to 30.4 of SIMA.<sup>140</sup>

The parties further asserted that normal values were not determined under the provisions of section 20, therefore, the only other statutory methods for determination of margins of dumping and amount of subsidy are subsections 29(1) and 30.4(2) of SIMA. As a result, the parties submitted that the margins of dumping and the amounts of subsidy ostensibly based on subsection 38(1) of SIMA are without legislative foundation and of no force or effect.<sup>141</sup>

In response to this position, counsel for Tenaris Canada stated that if TPCO had issue with the validity of the preliminary determinations that it was incumbent upon it to seek judicial review within 30 days of the preliminary determinations. This was not done and Tenaris argued that the statutory deadlines to revisit the validity of the initiation of the investigation or the preliminary determinations have long since past.<sup>142</sup>

### **CBSA Response:**

In accordance with subsection 38(1) of SIMA, the President is required to make a preliminary determination after estimating the margin of dumping or the amount of subsidy and specifying the goods to which the preliminary determination applies. Consequently, the authority to make the preliminary determination and estimate the margin of dumping or the amount of subsidy is provided in this subsection.

Paragraphs 38(1)(a) and (b), direct the President to 'estimate' the margin of dumping and the amount of subsidy using the information available to him at the time the estimates are made. It is the position of the CBSA that the use of the word 'estimate' recognizes that the President has the authority to approximate the margin of dumping and the amount of subsidy using the information before him. For example, the President must often estimate the margin of dumping and the amount

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<sup>139</sup> CBSA Dumping Exhibit 359 (NC), 370 (NC) and 371 (NC), Representations and Case Arguments on behalf of the GOC, TPCO and Freet Group, respectively.

<sup>140</sup> CBSA Dumping Exhibit 359 (NC), Representation on behalf of the GOC, paragraph 10.

<sup>141</sup> CBSA Dumping Exhibit 359 (NC), Representation on behalf of the GOC, paragraph 15.

<sup>142</sup> CBSA Dumping Exhibit 375 (NC), Reply Submission on behalf of Tenaris Canada, paragraph 34.

of subsidy based on information unverified by the CBSA or that is subsequently amended by a party to the proceeding.

It is only at the point of making a final determination under section 41 of SIMA, that the President must 'specify' the margin of dumping or the amount of subsidy on the goods. The purpose of the final phase of the investigation is to establish precise normal values or amounts of subsidy, under the provisions of SIMA and SIMR, for use in the President's final determination. At this point, recourse is made to subsection 29(1) and 30.4(2) where the President is of the opinion that sufficient information has not been furnished or is not available to determine normal values, export prices, or the amounts of subsidy under the other provisions of SIMA.

Further, the CBSA agrees with counsel for Tenaris Canada's argument that any issues TPCO may have had with the formal validity of the preliminary determination of dumping should have been raised at the Federal Court within 30 days of the preliminary determination.

### **Representations Concerning the Subsidy Investigation**

The details of representations made to the CBSA with respect to the subsidy investigation, including case arguments and reply submissions from exporters, the GOC and the Complainants are presented below. Following the representations on each issue is a response explaining the position of the CBSA. Since there were a number of common positions from multiple parties, the CBSA may make specific reference to only one or two parties when documenting the issue raised. In instances where identical issues were presented within the context of both the dumping and the subsidy investigation, details of the representation will not be repeated below as they have already been provided in the dumping representation section of the *Statement of Reasons*.

Given that the CBSA's final determination supersedes any decision made at the preliminary determination stage of the investigation, the CBSA will only address issues raised within the context of the preliminary determination to the extent that these issues carry relevance for the final determination.

### ***Status of the GOC's Response Regarding the Subsidy Investigation***

Counsel for the GOC submitted that the CBSA has incorrectly categorized the GOC's response to the Subsidy RFI as incomplete, and correspondingly, failed to consider the information contained in the response. To support this position, counsel had made various references to the *Agreement on Subsidies and Countervailing Measures*.<sup>143</sup>

### **CBSA Response:**

In regards to the subsidy investigation, the GOC did not provide a complete response to the CBSA subsidy RFI for purposes of the preliminary determination. Notwithstanding the incomplete GOC subsidy response, an amount for subsidy was estimated for the preliminary determination for the eight cooperative exporters in China who provided sufficient information in their subsidy RFI responses.

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<sup>143</sup> CBSA Dumping Exhibit 359 (NC), Representation on behalf of the GOC, pages 12-21.

Further explanation in support of the CBSA's position regarding the completeness of the GOC's submission can be found in the "Results of the Subsidy Investigation" section in this *Statement of Reasons*.

### ***Subsidy Calculation Methodology for All Other Exporters***

Counsel for the GOC argued that the calculation of an "all other exporters" rate (for non-responding and non-exporters alike) which assumes a maximum amount of subsidy or an average of maximum amounts of subsidy in 62 potentially actionable programs, at the preliminary determination, is punitive, irresponsible and without justification.<sup>144</sup>

Counsel for Jiangsu Chengde alleged that the CBSA's methodology for calculating amounts of subsidy for 'all other exporters' violates Article 19.4 of the SCM Agreement by "levying duties far in excess of any amounts of subsidy that could reasonably be said to have been found."<sup>145</sup> Counsel further stated that "stacking *de minimis* rates end-to-end to achieve a large 'All Others' rate necessarily leads to a levy in excess of the amount of the subsidy."<sup>146</sup>

In a reply submission, counsel for Lakeside Steel Corporation refuted the above position by arguing that the CBSA has appropriately calculated the amounts of subsidy for each of the relevant programs. They submit that the CBSA is not required to make an insignificance determination for each program as doing so would allow governments to create numerous programs, each with levels of subsidization below the threshold, which collectively would provide a significant amount of subsidy.<sup>147</sup>

Counsel for the GOC further stated that the CBSA has ignored its list of responding exporters, non-responding exporters, and non-responding non-exporters and made no further investigative inquiries intended to clarify actual exporters. Counsel contends that this has resulted in an artificial inflation of the "country rate" for the amount of subsidy and the result is thus distorted.<sup>148</sup>

### **CBSA Response:**

The methodology used by the CBSA to calculate the 'all others rate' for amounts of subsidy in this investigation is consistent with SIMA and its approach in other subsidy investigations conducted by the CBSA. The methodology necessarily reflects the fact that the CBSA cannot assume that subsidies received by non-responding or non-compliant exporters correspond to those received by cooperative parties. It should also be noted that under the CBSA's methodology, the 'country rate' is not affected whatsoever by the number or status of non-responding parties.

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<sup>144</sup> CBSA Dumping Exhibit 359 (NC), Representation on behalf of the GOC, paragraph 27.

<sup>145</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 53.

<sup>146</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraph 54.

<sup>147</sup> CBSA Dumping Exhibit 376 (NC), Reply Submissions on behalf of Lakeside Steel Corporation, paragraphs 31 and 32.

<sup>148</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, paragraph 27 and 28.

### ***Insignificant Amounts of Subsidy***

Counsel for Jiangsu Chengde argued that under section 2(1) of SIMA, an amount of subsidy of less than one percent of the value of the good is considered insignificant, and accordingly, any exporter with a calculated amount of subsidy of less than one percent should not be levied any countervailing duty.<sup>149</sup>

In reply submissions, counsel for Lakeside Steel Corporation states that the definition of insignificance, under section 35 of SIMA, provides that the President may terminate an investigation if the amount of subsidy on the goods of that “country” is insignificant.<sup>150</sup> Counsel for Tenaris Canada further states that the standard of insignificance is met only where the weighted average amount of subsidy in relation to all of China is insignificant; it is not measured at the exporter level.<sup>151</sup>

#### **CBSA Response:**

The CBSA is guided by subsection 41(1) of SIMA to make a determination that the amount of subsidy is not insignificant at the final phase of the investigation. This determination is made on a country basis, and is not measured at the exporter level. Accordingly, individual exporters may be levied countervailing duties below the threshold considered for insignificance.

### ***Double Counting in Relation to Dumping Margins and Domestic Subsidies***

Counsel for the GOC submitted that the dual imposition of anti-dumping duties and countervailing duties on goods exported from a non-market economy, where normal values have been established based on surrogate sales or cost data that is not reflective of the effects of domestic subsidization which are reflected in export prices, results in double counting. Counsel argues that this double counting is in violation of international obligations and has the effect of levying excessive duties.<sup>152</sup>

#### **CBSA Response:**

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

Neither the WTO *Anti-Dumping Agreement*, the Agreement on *Subsidies and Countervailing Measure*, nor SIMA preclude the imposition of countervailing duties in respect of goods that are also subject to anti-dumping duties, where normal values have been determined pursuant to a surrogate country methodology.

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<sup>149</sup> CBSA Dumping Exhibit 368 (PRO), Case Arguments on behalf of Jiangsu Chengde, paragraphs 46-49.

<sup>150</sup> CBSA Dumping Exhibit 376 (NC), Reply Submissions on behalf of Lakeside Steel Corporation, paragraphs 29-31.

<sup>151</sup> CBSA Dumping Exhibit 375 (NC), Reply Submissions on behalf of Tenaris Canada, paragraphs 30-31.

<sup>152</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, pages 28-37.

SIMA does not restrict or limit the applicability of the subsidizing provisions set forth in the Act when, in the opinion of the President, section 20 conditions exist in the industry sector under investigation, which requires that normal values be determined in a manner other than those set forth in sections 15 or 19 of SIMA.

With respect to concurrent dumping and subsidy investigations, section 10 of SIMA does direct that anti-dumping duties levied, collected and paid in respect of goods will only reflect the margin of dumping that is not, in the opinion of the President, attributable to an export subsidy.

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

The CBSA treats dumping and subsidy investigations as separate processes. In so doing, the CBSA is in no way prohibited in law or in practice, from conducting concurrent dumping and subsidy investigations where the conditions of section 20 are found to exist in the industry sector under investigation. In effect, neither investigation impedes nor restricts the process of the other and thus, it is well within the scope of the CBSA to conduct both concurrently, each with their own distinct results.

### ***The CBSA's Qualification of State Owned Enterprises and Treatment of Financial Contributions***

Counsel for the GOC strongly objected to the CBSA's approach of characterizing all financial contributions provided by SOEs, operating under the direct or indirect control or influence of the GOC, as being provided by the GOC. Counsel contended that this approach violates the *Agreement on Subsidies and Countervailing Measures* and further that the CBSA has disregarded its evidentiary burden to positively qualify an entity as a 'public body' within the meaning of the agreement.<sup>153</sup>

Counsel argued that the CBSA's characterization of SOEs as 'public bodies' in the preliminary determination was done without a comprehensive analysis, absent any clearly delineated reasons, transparent evidence and proper analysis of the financial contributions necessary to do so.<sup>154</sup>

### **CBSA Response:**

As previously stated, the CBSA's investigation was conducted under the authority of SIMA. Subsection 2(1) of SIMA defines a government, in relation to any country other than Canada, to mean the government of that country, including:

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

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<sup>153</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, pages 37-45.

<sup>154</sup> CBSA Dumping Exhibit 359 (NC), Representations on behalf of the GOC, page 43.

The CBSA believes that SOEs operate under the direct or indirect control or influence of the GOC and are thus well within the scope of the definition of government described in SIMA as noted above, such that no further ‘comprehensive analysis’ as alleged by counsel is required.